ORDINANCE NO. NS-2128

AN ORDINANCE AMENDING CHAPTER 1 OF THE CITY OF BEND CODE BY ADDING A NEW SECTION 1.450 CITY MANAGER AUTHORITY TO ADOPT ADMINISTRATIVE REGULATIONS, POLICIES AND GUIDELINES.

Findings

A. The City of Bend Charter Section 24 makes the City Manager the administrative head of the City. Charter Section 24(3)(e) authorizes the City Manager to appoint, discipline and remove city employees other than mayor or council appointees, and Charter Section 24(3)(f) authorizes the City Manager to supervise and control the Manager's appointees. Charter Section 24(3)(j) grants the City Manager the authority to supervise operation of all city-owned utilities and property.

B. Under Charter Section 6, the City Council has all powers of the City not otherwise assigned by the Charter. The Council has the authority to delegate its powers.

C. The most reasonable interpretation of Charter Section 24 is that the authority granted to the City Manager under the various subsections of Section 24 already includes the right to adopt regulations, policies and guidelines concerning matters within the Manager's authority. However, since administrative rule-making authority is not expressly granted in the Charter, the City Council desires to confirm that the right to administrative rule-making is not reserved to the Council under Charter Section 6.

D. The City Manager's ability to engage in administrative rule-making on matters within his or her authority helps the city run and be managed efficiently and consistently, and reserves to Council the policy-making, city direction and legislative functions.

E. Therefore, in order to clarify the proper functioning of the City and to fully authorize the City Manager to exercise his or her authority under the Charter, the Council wishes to clearly establish the City Manager's authority to adopt administrative regulations, policies and guidelines pursuant to Section 24.

F. Bend Code Section 1.519 vests the administrative responsibilities of the Bend Urban Renewal Agency ("BURA") with City of Bend personnel under the supervision of the City Manager; as a result this Ordinance also applies to Bend Urban Renewal Area (BURA) owned properties.

BASED ON THSES FINDINGS, THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. Bend Code Chapter 1 is amended by adding a new Section 1.450 City Manager Authority to Adopt Administrative Regulations, Policies and Guidelines to read as follows:

1.450 City Manager Authority to Adopt Administrative Regulations, Policies and Guidelines

(1) The City Manager is authorized to adopt administrative regulations, policies and guidelines to implement the City Manager's authority under the Charter or as delegated by the City Council.

(2) The City Manager's authority under Subsection (1) includes but is not limited to the authority to adopt regulations, policies and guidelines relating to:

(a) Hiring, discipline, termination, supervision and control of City staff other than Council and Mayor appointees.

(b) Operation and use of city-owned public utilities, including water, sewer, storm drainage, and transportation utilities, and the watershed.

(c) Operation and use of city-owned property, including; properties generally open to the public or a segment of the public such as the Bend Municipal Airport, public areas at Bend City Hall, the downtown parking structure, the cemetery and the Carlton House lot, all other properties owned by the City or Bend Urban Renewal District, as well as city-owned properties that have restricted public access such as the Police Department building, and public works buildings.

(d) Operation of public services offered by the City, including but not limited to transit services, and

(e) Any authority delegated to the City Manager by the City Council.

(3) Regulations adopted by the City Manager and made available to the public by posting on a city website, by posting at the facility subject to the regulations, or by being made available at City offices shall be enforceable and binding on members of the public. The Council may review any regulation adopted by the City Manager on its own motion or on petition of any person filed within 30 calendar days of the first public posting of the regulation. Policies and guidelines shall govern the action of City employees according to their terms.

(4) All regulations, policies and guidelines adopted by the City Manager shall be consistent with the City of Bend Charter, the Bend Code, and council ordinances.

Section 2. In adopting Section 1, the Council delegates to the City Manager any authority not already provided to the City Manager under the Charter.

Section 3. City Council Policies 6-1-3 Skydiving, 6-1-6 Gliders, 6-1-7 General Aviation Standards and 6-1-8 Airport Development Standards are repealed effective upon the effective date of administrative policies authorized by this ordinance covering the same subject matter.

Section 4. This ordinance takes effect 30 days after passage.

Read for the first time the 5th day of August, 2009.

Read for the second time the 19th day of August, 2009.

Placed upon its passage the 19th day of August, 2009.

YES: 7 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 19th day of August, 2009.

Kathie Eckman

Kathie Eckman, Mayor

Attest:

Patri S. Stell

Patricia Stell, City of Bend Recorder

ORDINANCE NO. NS-2129

AN ORDINANCE AMENDING THE CITY OF BEND CODE BY ADDING A NEW SECTION 1.910 GOVERNING APPEALS OF THE AMOUNT OF SYSTEM DEVELOPMENT CHARGES

Findings

A. Bend Code Section 1.900 imposes system development charges on development within the City of Bend.

B. The Bend Code currently does not provide for an appeal process to allow a person paying a system development charge to challenge the amount charged.

C. The Council wishes to provide for an appeal process to allow a challenge that the amount charged by the City in an individual situation is not the appropriate amount to be charged under the applicable methodology.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The City of Bend Code is amended by adding a new Section 1.910 to read as follows:

1.910 Appeals

A. Appeal of Amount Charged.

1. A person responsible for paying SDCs (the "Payor") may request review of the amount of SDCs calculated by staff by submitting a written request for review to the Community Development Department Engineer (CDD Engineer) prior to paying the SDCs or at the same time as the SDCs are paid. The request for review must state the amount in dispute and must provide reasons why the amount charged is incorrect. The CDD Engineer shall respond to the request for review within five working days unless a meeting between the Payor and CDD Engineer is requested. If a meeting is requested, the CDD Engineer shall meet with the Payor and issue the response no later than five working days after the meeting. The CDD Engineer's response may be to affirm the original amount, increase or reduce the original amount, or require a traffic report prepared by a licensed traffic engineer. A decision requiring a traffic report is not a final decision. If a traffic report is requested and provided pursuant to the parameters established by the City, the CDD Engineer shall provide a final decision within 15 working days of receiving the report.

2. The Payor may appeal the final decision of the CDD Engineer to a panel comprised of the City Manager, the Community Development Director, and the Public Works Director, by submitting a written appeal to the Permit Center stating the amount in dispute and specifying why the amount charged is incorrect. The appeal must be filed with the City within five working days of delivery to Payor of the CDD Engineer's decision. A mailed decision shall be deemed to be delivered three days after mailing. If the SDCs have not been paid in full at the time of the appeal, the Payor shall pay an appeal fee in an amount set by Council resolution. The permittee may provide additional written argument or evidence regarding the amount within 10 days after filing the appeal. iThe City shall provide a final written decision on appeal within 30 days of the filing of

the appeal. The appeal panel shall meet with the Payor if requested in the appeal document.

3. A Payor challenging the amount of SDCs may pay the SDCs in full at any time after the request for review is filed. The Payor may also pay the uncontested portion of the SDCs any time after the request for review is filed provided the uncontested portion is reasonable as determined by the CDD Engineer. No building permit will be issued until the uncontested amount of the SDCs is paid unless deferral of payment is allowed under some other provision of law. If the uncontested amount of SDCs is paid and a building permit issued, the Payor shall pay any additional amounts determined to be payable within 30 days of the City's final decision on review or appeal. Failure to pay the additional amounts within 30 days will result in interest of 12% charged on the additional amounts from the date of issuance of the building permit. No certificate of occupancy will be issued or final inspection scheduled until all SDCs are paid in full. If the amount originally charged by the City is paid in full and the final City decision reduces the amount payable, the City shall refund the difference. If the Payor has paid the appeal fee and the City reduces the amount payable on appeal, the appeal fee shall be refunded. No interest shall accrue on the amounts to be refunded to the Payor.

B. Delegation of Authority. The responsibilities of the CDD Director, CDD Engineer, City Manager and Public Works Director under this section may be exercised by the persons in those offices or their designees. Authority to act shall be delegated if needed to meet decision deadlines.

Section 3. This ordinance takes effect 30 days after passage.

Read for the first time the 19th day of August, 2009.

Read for the second time the 2nd day of September, 2009.

Placed upon its passage the 2nd day of September, 2009.

YES: 7 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 2nd day of September, 2009.

Kathie Eckman

Kathie Eckman, Mayor

Attest:

Patricia Stell

Patricia Stell, City of Bend Recorder

ORDINANCE NS-2130

AN ORDINANCE GRANTING A NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO ELECTRIC LIGHTWAVE, LLC

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. Definitions - as used in this ordinance:

"City" means City of Bend, Oregon.

"Grantee" means Electric Lightwave, LLC, a Delaware limited liability company, its successors or assigns.

"Council" means the City Council of the City of Bend, Oregon.

"Facilities" means the conduits, cables, poles, wires, fixtures, underground lines, and appurtenances thereto, including other technical Facilities necessary for the purpose of providing telecommunication services.

"Gross revenues" means all revenues earned by the Grantee in the delivery of goods and services within the City of Bend, and is further defined in Section 9.

"Person" means any person, firm, partnership, association, corporation, limited liability company or organization of any kind.

"Rights of way" include streets, roads, highway, bridges, alleys, sidewalks, and public utility easements, including the subsurface under and air space over these areas. This definition applies only to the extent of the City's right, title, interest or authority to grant a franchise to occupy and use such areas for siting telecommunications facilities. "Rights of way" excludes other property owned by the City, such as parks or public buildings.

"Telecommunications service provider" means any entity that transmits information for hire, in electromagnetic frequency, electronic or optical form, including voice or data, whether or not the transmission medium is owned by the provider itself.

"Ultimate consumer" means any entity that obtains telecommunications services transmitted over Grantee's Facilities for its own use by any means, including purchase, lease or direct receipt of such services.

Section 2. Grant of Authority. City grants to Grantee the right and privilege, subject to all City of Bend ordinances, policies, rules and regulations, to construct, install, maintain and operate over, in, on and under the present and future City rights of way of the City of Bend, Facilities necessary for the purpose of providing telecommunication services. This franchise is not exclusive, and City reserves the right to grant a similar privilege to any other Person at any time during the period of this franchise. This grant is further subject to all prior rights, interests, agreements, permits easements or licenses granted by the City, and to the City's right to use the rights of way for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder.

Section 3. Compliance with Laws, Rules and Regulations. The locations and methods of installation and maintenance of all Grantee's Facilities shall be subject at all times to regulation by the City (including City's ordinances and policies on street cuts and use of right-of-way), and all such Facilities shall be so constructed and maintained as to interfere as little as practicable with street or other traffic. Nothing herein however shall be construed to change or modify any applicable Oregon law regarding Grantee's ability to recover costs for any relocation of its Facilities. All of such Facilities shall be installed and at all times maintained by Grantee in accordance with telecommunications industry standards. Grantee shall change the location of or remove any pole, conduit, structure or Facility within the public right of way when the City determines that the

public convenience requires such changes or removal. The expense of said change shall be paid by Grantee

Section 4. Grantee Liability, Indemnification of City and Insurance.

Grantee shall at all times conduct its operations under this franchise, including installation, construction or maintenance of its Facilities, in a safe and workmanlike manner so as not to present a danger to the public or City.

Grantee shall defend, save harmless and indemnify City from any loss or claim against City on account of or in connection with any activity of Grantee in the construction, operation or maintenance of its Facilities.

This franchise shall not be effective until Grantee secures, and shall at all times be conditioned upon Grantee maintaining, a comprehensive liability insurance policy which shall contain the following provisions:

a. Grantee shall obtain, at Grantee's expense, and keep in effect at all times during the term of this franchise, comprehensive general liability insurance covering bodily injury and property damage in an amount equal to at least two-times the City's tort liability limit, as established by Oregon Law.

b. Grantee, and its subcontractors, if any, will comply with the Oregon Worker's Compensation Law at all times.

c. City, its officers, directors, and employees shall be added as additional insured with respect to all policies. All commercial general liability insurance policies will be endorsed to show this additional coverage. Grantee will require that its insurance carrier give the City 30 days written notice of any change in insurance coverage. The certificate of insurance as required under 3.e of this Section shall provide that there shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage without 30 days written notice in advance to City. Any failure to comply with this provision will not affect the insurance coverage provided to City.

d. Coverages provided by Grantee must be underwritten by an insurance company authorized to do business in the state of Oregon and with a Best's rating of A-VII or higher.

e. As evidence of the insurance coverage required by this franchise, Grantee shall furnish a Certificate of Insurance to City. This franchise shall not be in effect until the required certificates have been received and approved by City. The Certificate will specify and document all provisions within this franchise. A renewal certificate will be sent to City 10 days prior to coverage expiration.

In the event that City's tort liability limits are raised by law, Grantee shall obtain and maintain insurance in the amount of two-times the City's tort liability limits as they are amended.

Section 5. Performance Bond.

Grantee shall provide a performance bond in the amount of $100,000 or other lesser amount as agreed to by the City as being sufficient to assure proper restoration of any street, sidewalk or other surface disturbed by Grantee. Grantee shall keep the bond in full force and effect during any activities that disturb the surface of any right of way and for a period of at least one year after restoration of rights of way. The bond may be withdrawn after one year after restoration of rights of way, but shall be restored prior to any further action that would disturb any street, sidewalk, or other surface. The bond shall be issued by surety authorized to do business in the state of Oregon and with a Best's rating of A- VII or higher.

During the term of this franchise, Grantee shall file with City a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall City exercise its rights against the performance bond under Section 5.1 if a bona fide, good faith dispute exists between City and Grantee.

City may, in the event of any construction which is likely to be substantially greater than $100,000.00, or in the event the City's cost to complete or repair such construction upon Grantee's failure to perform the same would be greater than $100,000.00, as reasonably determined by the City, require the amount of the performance bond to be increased to $100,000.00, which performance bond shall remain in place until completion of any construction. The performance bond is subject to increase under this Section 5(3) each time Grantee applies for permits to perform work within the City. . Grantee shall provide to City all necessary documentation demonstrating Grantee's cost estimation in a format reasonably acceptable to the City.

Section 6. Conditions on Right of Way Occupancy.

Use. Grantee shall construct, install, maintain and operate its Facilities in designated City rights of way to the industry standard and City's satisfaction, in compliance with all City ordinances, rules, policies and regulations; and in a manner so as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the streets, alleys or other public ways or places.

Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing by Grantee, Grantee shall, at its own cost and expense and in a manner approved by City, replace and restore all paving, sidewalk, driveway, landscaping or surface of any street or alley disturbed. If Grantee fails to make restoration as required, City may cause the repairs to be made at the expense of Grantee.

Relocation. Except as provided below, if the removal or relocation of Facilities is caused directly by an identifiable development of property and the removal or relocation of Facilities occurs within the area to be developed, or is made for the convenience of a customer, Grantee may charge the expense of removal or relocation to the developer or customer. Grantee shall be solely responsible for enforcing collection from the developer or customer. City may require Grantee to relocate its Facilities. If the removal or relocation of Facilities results from City's need to provide public Facilities, is a City project, or is otherwise requested by City and is made for the purpose of improving a street to City standards or other improvement for the benefit of the public, Grantee will remove or relocate its Facilities at Grantee's expense within a reasonable time frame after notification by City. In cases of capital improvement projects undertaken by City, Grantee shall convert existing overhead distribution Facilities to underground at Grantee's expense if requested to do so by City. City agrees to comply with provisions of applicable law when requiring such conversion.

Placement of Facilities. Grantee shall not place its Facilities where they will interfere with any existing or future City utility, gas, electric or telephone fixture, power, sanitary sewer, storm sewer or water facility. Grantee will consult with City's Public Works Department prior to placement of Facilities, and will comply with all City ordinances, policies, rules and regulations in connection with its placement of Facilities. Whenever all existing electric utilities, cable facilities and telecommunications facilities are located underground within a public right of way of the City, Grantee must also locate and relocate its facilities underground.

Temporary Rearrangement of Facilities. Grantee shall, consistent with City policies, ordinances, rules and regulations, arrange to temporarily raise, lower, or otherwise move its Facilities to permit the moving of buildings or other objects if the Person wishing to move the building or other object makes a reasonable arrangement to reimburse Grantee for its expenses in rearranging its Facilities. Nothing contained in this section shall preclude City from requiring Grantee to move its Facilities at its own expense when public convenience requires the move, as described in Subsections 3 and 4 of this section.

Section 7. Transfer of Franchise. Grantee shall not sell, assign, dispose of, lease or transfer in any manner whatsoever any interest in this franchise or in the Facilities authorized by this franchise, or any part of the Facilities, without prior written approval of City, which consent shall not be unreasonably withheld. The City may impose reasonable conditions on its approval of any transfer, including but not limited to the requirement that the transferee acknowledge in writing and agree to be bound by the terms of this Franchise. City shall have the right to collect from Grantee City's actual administrative costs associated with processing a transfer request, including the cost of ascertaining the financial responsibility of the proposed transferee.

Section 8. City Rights in Franchise.

City Supervision and Inspection. City shall have the right to supervise all construction or installation of Grantee's Facilities subject to the provisions of this franchise and make such inspections as it shall find necessary to insure compliance with governing laws, ordinances, rules and regulations.

Termination or Abandonment of Franchise. Upon any termination of this franchise, all Facilities installed or used by Grantee shall be removed by Grantee at Grantee's expense and the property upon which the Facilities were used restored by Grantee to the condition it was in before installation except that City or its designee shall have the following options after termination of this franchise:

a. City or its designee may elect to acquire the Facilities for their fair market value consistent with any applicable law; and

b. Value shall be determined by an appraiser who is mutually acceptable to City and Grantee. In the event that City and grantee are unable to agree on a single appraiser, then the City and grantee shall each appoint an appraiser, and those two appraisers shall select a third appraiser. The opinion of any two appraisers shall be determinative of the value of the Facilities.

c. City agrees to provide Grantee with written notice of its intention to acquire Grantee's Facilities pursuant to this section within 120 days after termination of this franchise by City, or City's declaration of Facilities abandonment by Grantee, with the closing of the acquisition to occur as soon thereafter as is practicable.

3. Co-location. Grantee shall offer the City the opportunity to co-locate City conduit and lines in trenches dug by Grantee in City rights of way and shall charge the City only any incremental additional costs incurred in making the trenches available for City use.

Section 9. Franchise Fee.

Grantee shall pay monthly to City the sum of 7% of Grantee's gross revenues earned within the corporate limits of the City, but excluding any rental or lease payment from users of its facilities who pay either a franchise fee or license fee under Bend Code 3.112 to City. Grantee may at its option deduct uncollectible accounts of customers within the corporate limits of City from gross revenues.

The fee required by this section shall be due and payable within 30 days after the end of each applicable calendar month. Any payment not made when due shall bear interest at the rate of 9% per annum, compounded monthly, from the date due until paid.

With each payment, Grantee shall furnish City with a written statement in the form shown as Exhibit A, verifying the amount of gross revenues of Grantee within City for the period covered by payment.

City's acceptance of any payments due under this section shall not be considered a waiver by City of any breach of this franchise.

Grantee shall pay City a monthly fee for use of the City's right-of-way in the amount of $833.33 per month until Grantee generates income from within the City or has installed facilities in City rights of way. Grantee shall thereafter pay either the franchise fee based on gross revenues as provided in Section 9 or $833.33 per month, whichever is greater.

Section 10. Grantee Records and Reports.

Grantee shall keep accurate books of financial accounts at an office within the State of Oregon throughout the term of this franchise. Grantee shall produce all books and records directly concerning its gross revenues and other financial information deemed necessary by City for purposes of calculation of the franchise fee for inspection by City, upon no less than 10 days prior written notice, during normal working hours. City may require periodic reports from Grantee relating to its operation within City. City shall have the right during the term of this franchise or within 180 days thereafter to conduct audits of Grantee's records. Such audits shall be undertaken by a qualified person or entity selected by City. The cost of any such audit shall be borne by City, unless the results of any such audit reveal an underpayment of more than 8% of the franchise fee for the period audited. In the case of such underpayment, the full cost of such audit shall be paid by Grantee. Grantee shall immediately pay the amount of the underpayment as determined by such audit to City together with 12% per annum interest (NOTE –this is intended to encourage accurate reporting). from the date such payment should have been made to the date the payment is actually made.

Any audit information obtained by City under these provisions shall be kept confidential to the maximum extent allowed by Oregon law, except that this obligation shall not prevent the City from introducing audit results in any forum where enforcement of the provisions of this franchise is at issue.

Section 11. Permit and Inspection Fees. Nothing in this ordinance shall be construed to limit the right of City to require Grantee to pay reasonable costs incurred by City in connection with the issuance of a franchise or permit, making an inspection, or performing any other service for or in connection with Grantee or its Facilities, whether pursuant to this ordinance or any other ordinance or regulation now in effect or hereafter adopted by City.

Section 12. Enforcement and Termination of Franchise for Violation.

Default: Time of payment and performance are of the essence in the franchise. The following shall be events of default:

a. Default in Payments. The failure of Grantee to pay City when due any amounts required by the franchise and such failure continues for a period of 10 days after the due date.

b. Default in Other Covenants. The failure of Grantee to perform any of the covenants and conditions required herein to be kept and performed by Grantee, and such failure continues for a period of 30 days after notice from City of such failure.

Upon the occurrence of an event of default, Grantee shall pay to City the sum of $200 per day for each day the default continues along with any additional damages suffered by City as a result of Grantee's default.

The City may terminate this agreement for defaults that are not cured within the time allowed by this section by providing notice to Grantee at least 30 days prior to termination. Grantee may avoid termination by completely curing the default, including payment of the penalty required by Subsection 2 of this section, unless the notice of

termination is the third notice of termination within a 12 month period for unrelated defaults. Grantee may challenge a notice of termination by providing a written protest to the City Manager within 10 business days of the date of the notice of termination. The City Manager, on receipt of the protest shall either grant the protest, in which case the franchise will remain in place, or refer the matter to the City Council for a decision. The termination will not become final until after the decision by the City Manager or City Council.

Section 13. Remedies not Exclusive; Waiver. All remedies under this ordinance are cumulative, and recovery or enforcement of one is not a bar to the recovery or enforcement of any other remedy. Remedies contained in this ordinance are not exclusive and City reserves the right to enforce penal provisions of any ordinance and also use any remedy available to City at law or in equity. Failure to enforce any provision of this ordinance shall not be construed as a waiver of a breach of any other term, condition or obligation of this ordinance.

Section 14. Franchise Term. This franchise is granted for a term of five years beginning on the date on which this franchise ordinance is approved. City agrees to renegotiate in good faith a renewal of this franchise for a similar term

Section 15. Acceptance of Franchise. Within 30 days from the effective date of this ordinance, Grantee shall file with the City Recorder a written unconditional acceptance of this franchise executed by its duly authorized representative and all of its terms and conditions, and if it fails to do so, this ordinance shall be void and of no effect.

Section 16. Severability. If any section, subsection, sentence, clause or portion of this ordinance is for any reason held invalid or rendered unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity or constitutionality of the remaining portion thereof. If for any reason, the franchise fee is invalidated or amended by the act of any court or governmental agency, then the highest reasonable franchise fee allowed by such court or other governmental agency shall be the franchise fee charged by this ordinance.

Section 17. Notices. Any notice required or permitted under this franchise shall be deemed given when received or when deposited with postage prepaid in the United States Mail as registered or certified mail addressed as follows:

TO CITY:
Eric King
City Manager
710 NW Wall Street
Bend, OR 97701

TO GRANTEE:
Electric Lightwave, LLC
Attn: Department of Law & Policy
1201 NE Lloyd Blvd., Suite 500
Portland, Oregon 97232
Facsimile: 503-453-8221

or to such other address as may be specified from time to time by either parties in writing.

Section 18. Interpretation/Jurisdiction. Interpretation of the franchise shall be governed by laws of the State of Oregon and any legal action relating to this Franchise shall be brought in Deschutes County Circuit Court.

Section 18. This ordinance takes effect 30 days after passage.

Read for the first time the 19th day of August, 2009.

Read for the second time the 2nd day of September, 2009.

Placed upon its passage the 2nd day of September, 2009.

YES: 7 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 2nd day of September, 2009.

Kathie Eckman

Kathie Eckman, Mayor

Attest:

Patricia S Stell

Patricia Stell, City of Bend Recorder

EXHIBIT A

Company: _____

Reporting Period: _____

Description	Amount
Gross revenues	$_____
Less: Revenues exempt from franchise fees	
Other adjustments to gross revenues	
Net revenues subject to franchise fees	$_____
Franchise fee	7%
Franchise fee remitted to City of Bend PO Box 1024 Bend, OR 97709	$_____

I declare under the penalties for perjury that the information provided herein is true, complete and accurate to the best of my knowledge and belief.

Signature: _____ Date: _____

Name: _____

Title: _____

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ORDINANCE NO. NS-2131

AN ORDINANCE AMENDING THE CITY OF BEND DEVELOPMENT CODE (ORDINANCE NO. NS-2016) BY REMOVING THE TEXT "CHURCH PARK 2.4 ac" AND PARK SHADING FROM FIGURES CONTAINED IN SECTION 2.7.300 OF THE BEND DEVELOPMENT CODE, ADDING USE RESTRICTIONS TO SECTION 2.7.320.B.3, AND ADDING A SPECIAL PARTITIONING REGULATION TO SECTION 2.7.320.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The applicant, Westside Church, initiated a Development Code text amendment request on February 22, 2008.

Section 2. The application was submitted in accordance with Section 4.1.215 and 4.1.220 of the Bend Development Code. Timely and sufficient notices of two public hearings, pursuant to Section 4.1.820 of the Bend Development Code, have been provided.

Section 3. On April 18, 2008 and May 13, 2008, the Hearings Officer conducted a public hearing to accept testimony on the request. The Community Development Department Staff notes and recommendation together with the testimony and submittals of the persons testifying at the hearing were considered and are part of the record of the proceeding. On January 27, 2009 the Hearings Officer issued Findings and a Recommendation to the City Council to approve the proposed amendment to the text of the Bend Development Code.

Section 4. On April 1, 2009 the Bend City Council opened a public hearing, considered the testimony, the record, and the Hearings Officer's Recommendation. The City Council continued the proceeding at the April 20, May 6, May 20, July 1, 2009, and August 5, 2009 meetings.

Section 5. On August 12, 2009 the City Council reopened the record to allow new evidence and responses thereto to be submitted regarding the remand associated with State Land Use Board of Appeal (LUBA) File # 2009-039, relating to City of Bend File PZ 08-91; the Site Plan, Conditional Use Permit, and Variance permit approval on the subject property.

Section 6. On September 2, 2009 the City Council found that the request satisfies the applicable approval criteria of Section 4.6.300 of the Bend Development Code. This general finding is supported by the specific finding contained in the Hearings Officer's Recommendation to the City Council dated January 27, 2009, (file PZ 08-92) and the Staff Findings dated August 26, 2009 (File PZ 08-92).

Section 7. Section 2.7.300 of the Bend Development Code is amended by removing the words "Church Park 2.4 ac" from Figure 2.7.330C, and by amending figures 2.7.320.B; 2.7.320.C; 2.7.320D; 2.7.320E; 2.7.320.F; 2.7.320.L; and 2.7.330C, to delete the park identification shading from the subject property (described in Exhibit C) as detailed in Exhibit A.

Section 9. Section 2.7.320.B.3 Uses Permitted of the Bend Development Code is amended by adding subsection c, which states, "Notwithstanding "Subsection a", preschool use and child care facility use shall not be permitted on Tax Lot 311 of Deschutes County Assessor's Map 17-11-36 (more specifically described in Exhibit C of Ordinance NS-2131)", as detailed in Exhibit B.

Section 10. Section 2.7.320.B.3 Uses Permitted of the Bend Development Code is amended by adding subsection d, which states, "Notwithstanding "Subsection a", the use of the approximately 100' wide set aside area on

Tax Lot 311 of Deschutes County Assessor's Map 17-11-36 (more specifically described in Exhibit D of Ordinance NS-2131), shall be restricted to the following uses: neighborhood park, single family detached housing, accessory dwellings, Type 1 home occupation, and accessory uses and structures", as detailed in Exhibit B.

Section 11. Section 2.7.320.B Urban Standard Residential Districts [of the Northwest Crossing Overlay Zone] of the Bend Development Code is amended by adding subsection 8 Special Partitioning Regulation, which states, "Notwithstanding other local regulations to the contrary, specifically including but not limited to block length, lot frontage, pedestrian and vehicle access and public improvement requirements, the approximately 100' wide set aside area on Tax Lot 311 of Deschutes County Assessor's Map 17-11-36 (more specifically described in Exhibit D of Ordinance NS-2131) may be partitioned once, without dedicating or extending Newport Hills Drive and without providing street, sidewalk, street tree, stormwater, or utility improvements to Newport Hills Drive, without dedicating a pedestrian easement or walkway across the 100' set aside area and without providing frontage for the lot on a public street. This Special Partitioning Regulation expires on December 31, 2011. Any other division of this land shall comply with all relevant code standards."

Read for the first time the 2nd day of September, 2009.

Read for the second time the 16th day of September, 2009.

Placed upon its passage the 16th day of September, 2009.

YES: 7 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 16th day of September, 2009.

Kathie Eckman

Kathie Eckman, Mayor

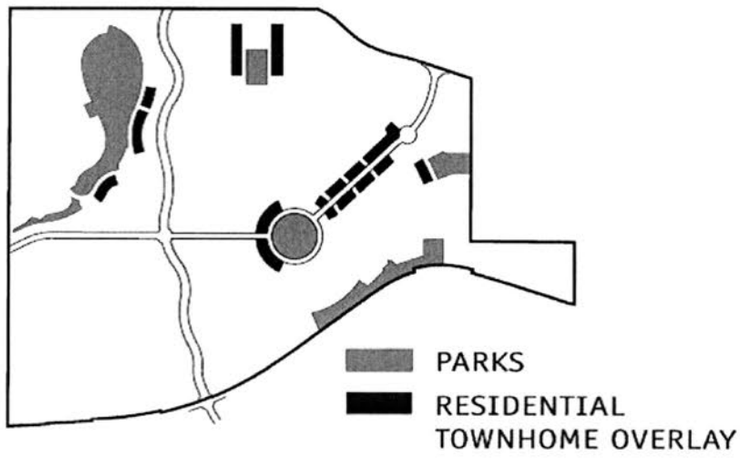
Attest:

Patricia Stell

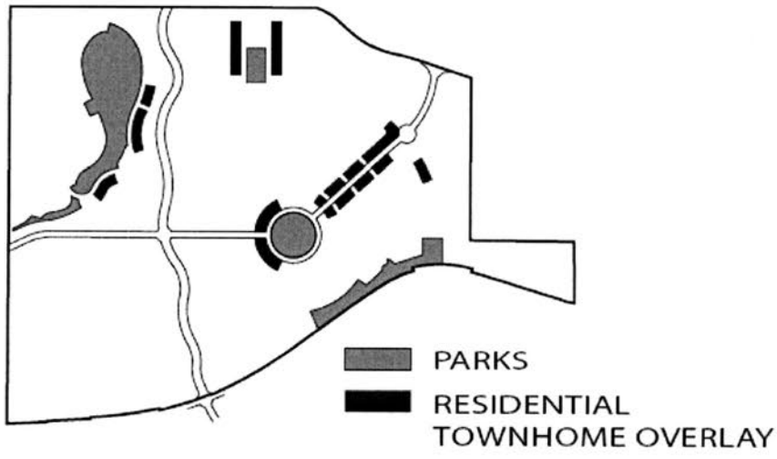
Patricia Stell, City Recorder

Exhibit A NS - 2131

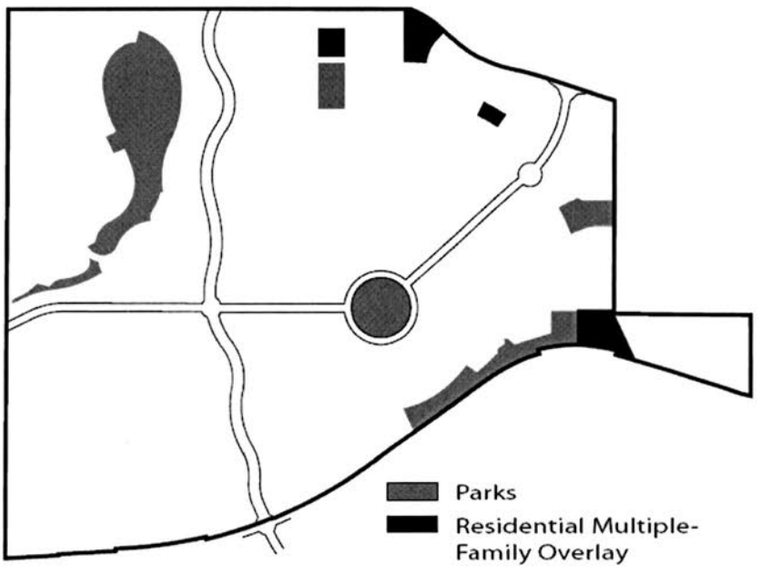
Existing Figure 2.7.320.B
Residential Townhome Overlay District



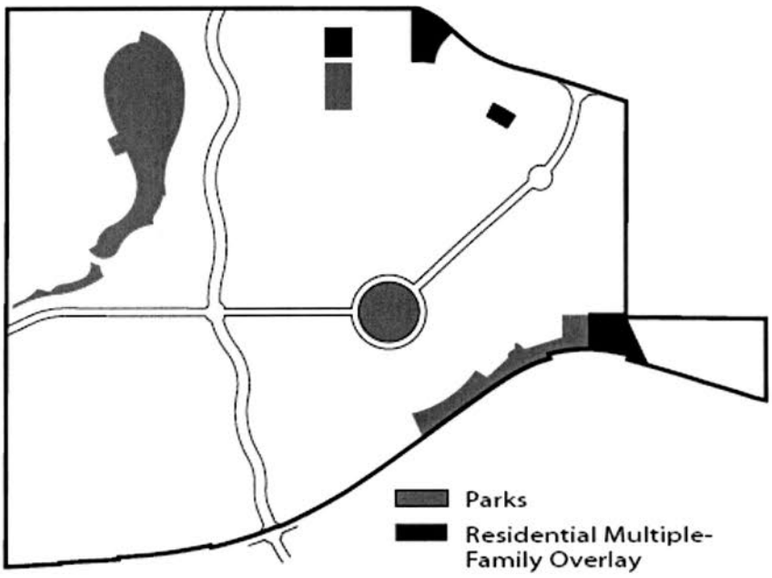
Proposed Figure 2.7.320.B
Residential Townhome Overlay District



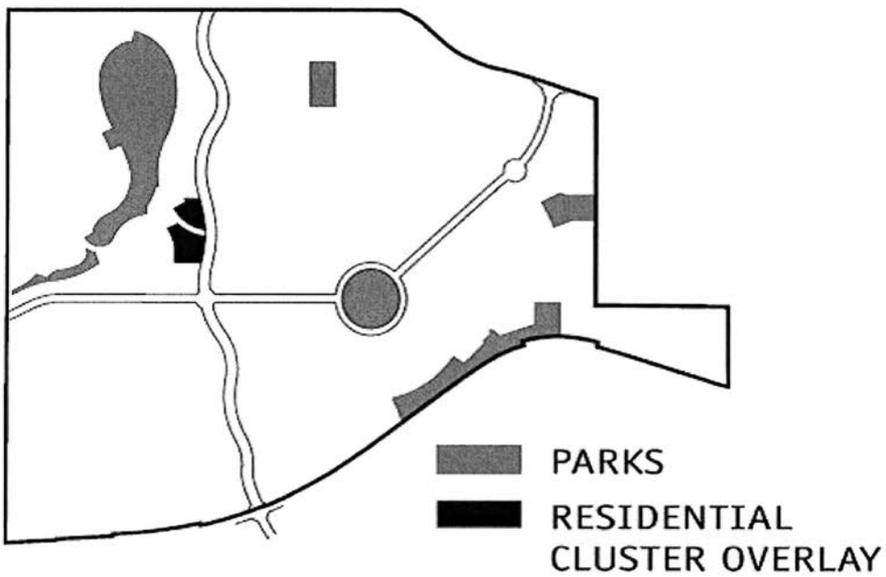
Existing Figure 2.7.320.C
Residential Multi-Family Overlay District



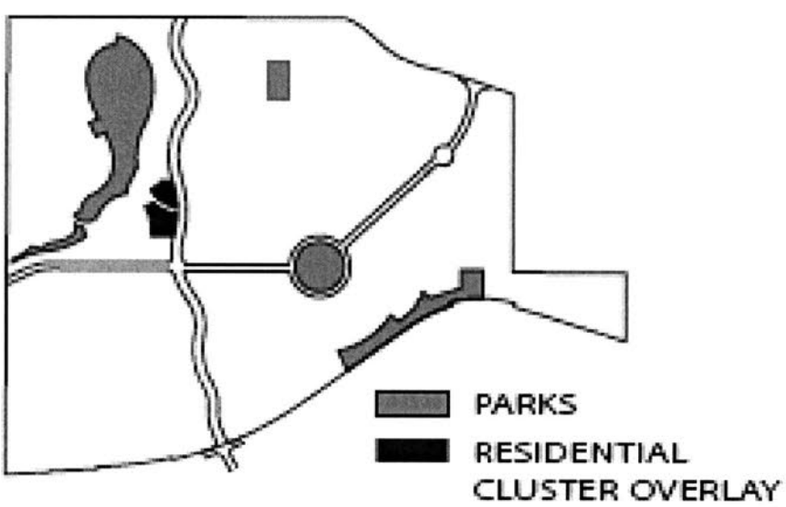
Proposed Figure 2.7.320.C
Residential Multi-Family Overlay District



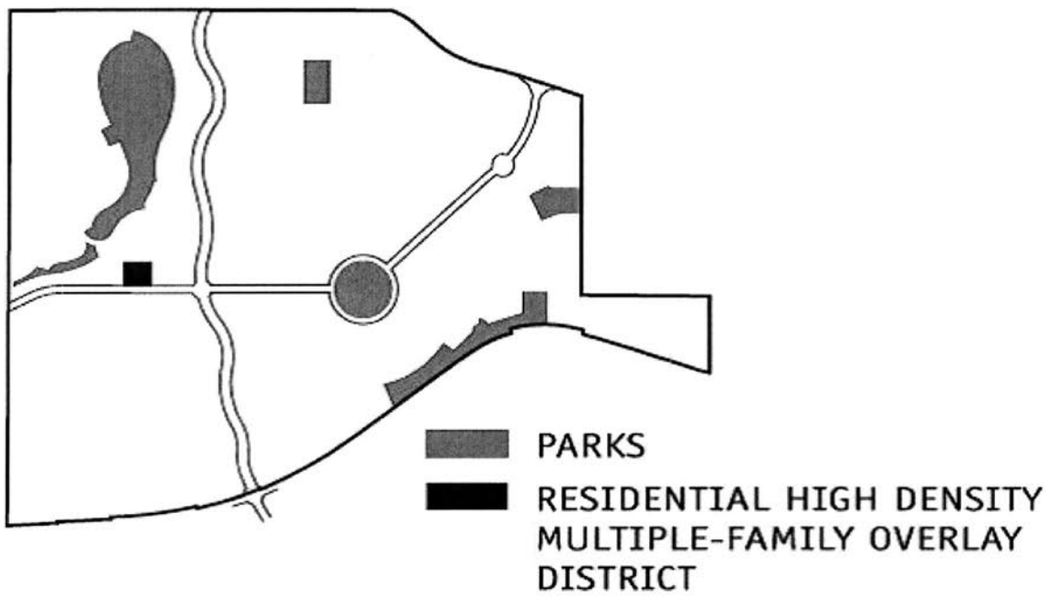
Existing Figure 2.7.320.D
Northwest Crossing Residential Cluster Overlay District



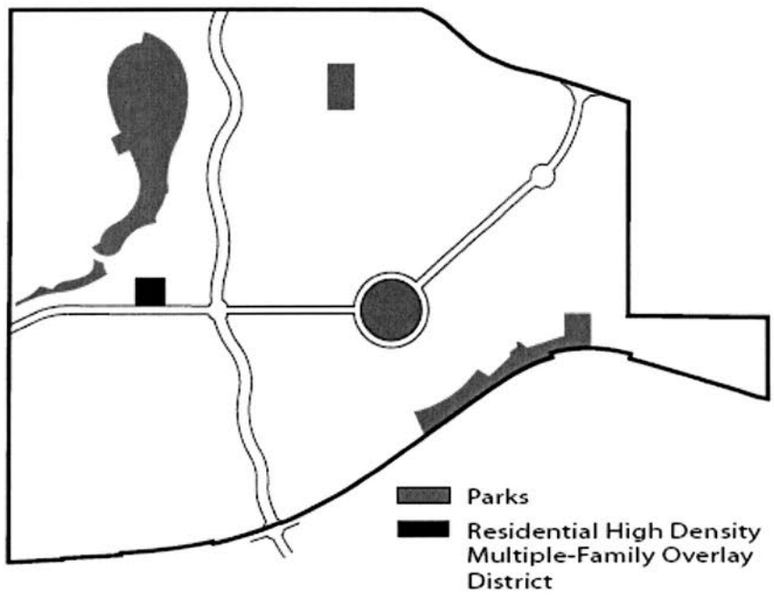
Proposed Figure 2.7.320.D
Northwest Crossing Residential Cluster Overlay District



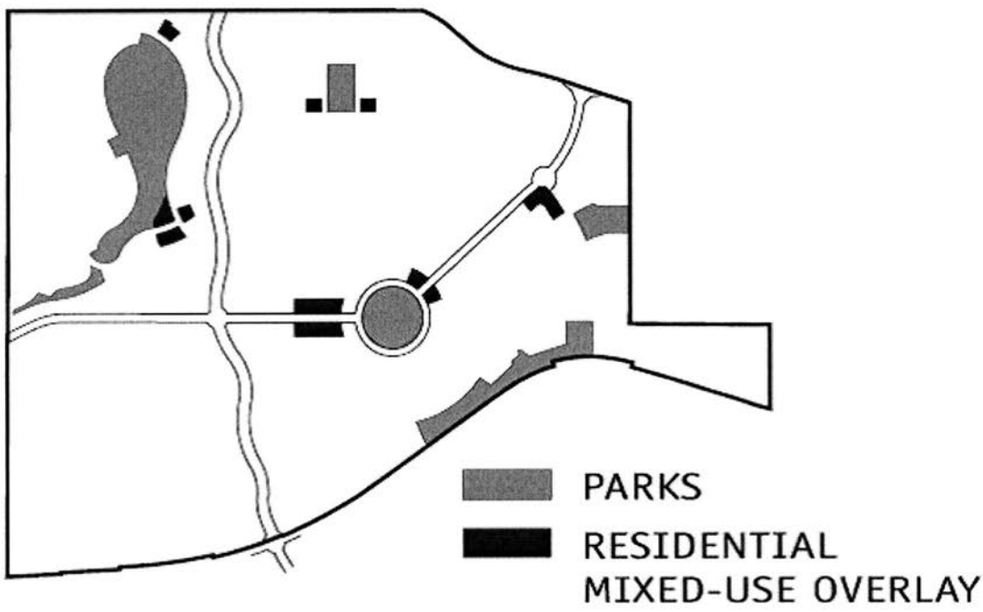
Existing Figure 2.7.320.E
Residential High Density Multi-family Overlay District



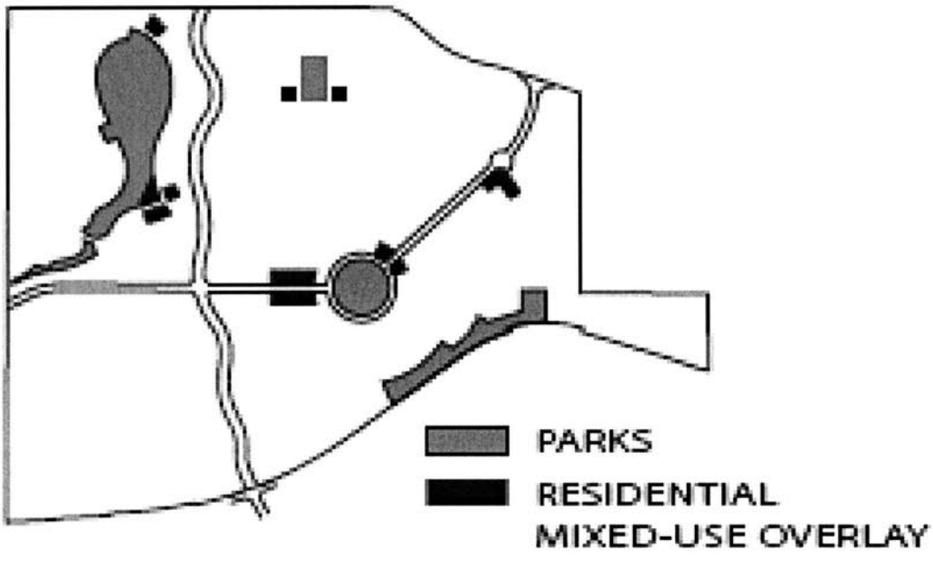
Proposed Figure 2.7.320.E
Residential High Density Multi-family Overlay District



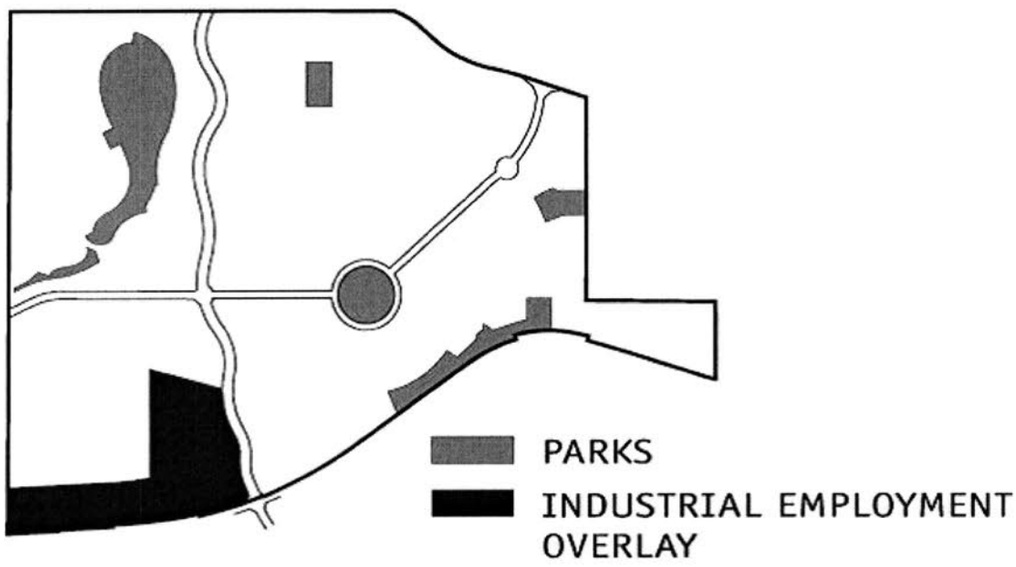
Existing Figure 2.7.320.F
Residential Mixed-Use Overlay District



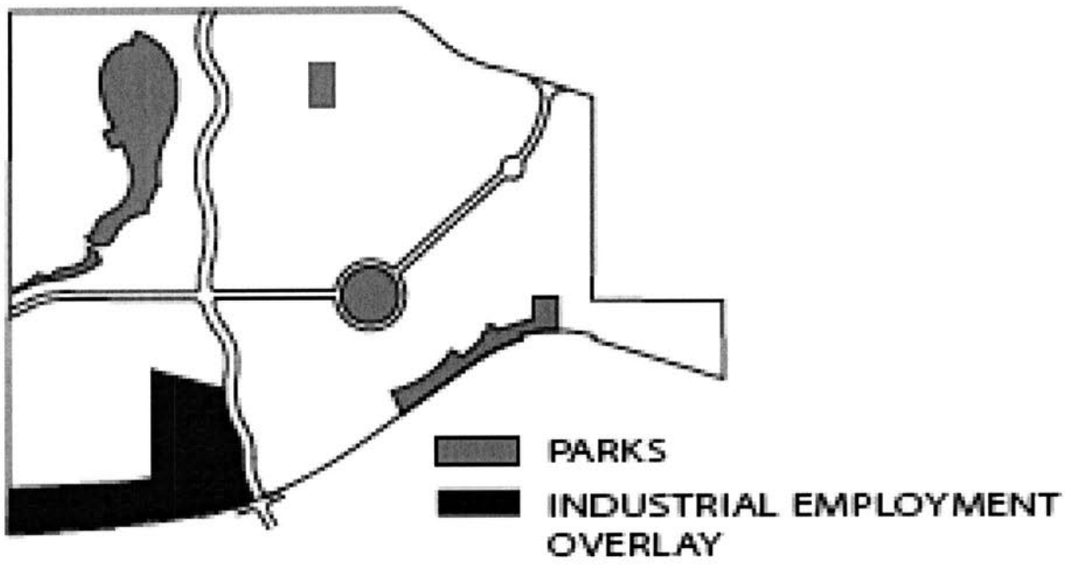
Proposed Figure 2.7.320.F
Residential Mixed-Use Overlay District



Existing Figure 2.7.320.L
Industrial Employment Overlay District



Proposed Figure 2.7.320.F
Industrial Employment Overlay District



Existing Figure 2.7.330.C
Northwest Crossing Overlay Districts

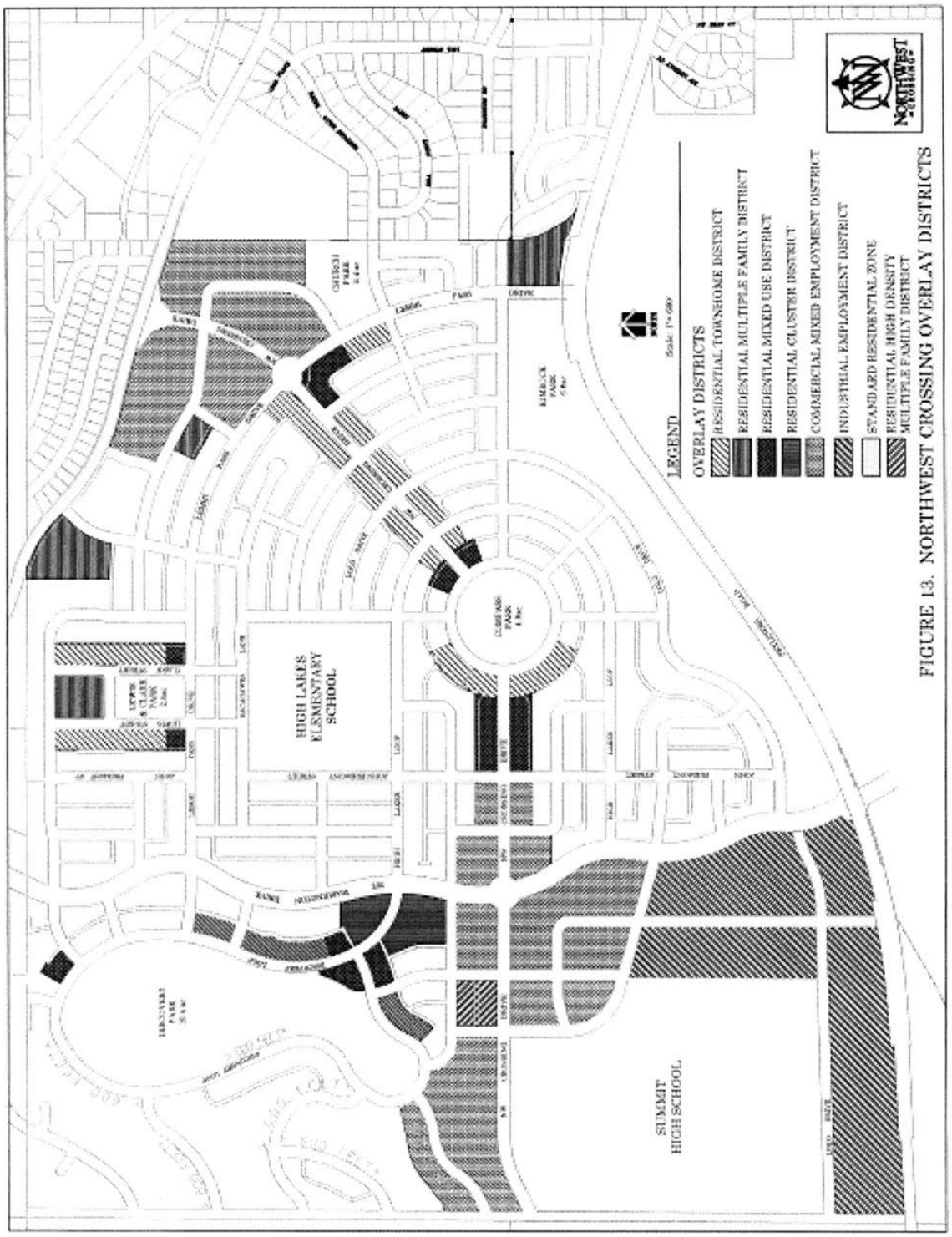


FIGURE 13. NORTHWEST CROSSING OVERLAY DISTRICTS

Proposed Figure 2.7.330.C
Northwest Crossing Overlay Districts

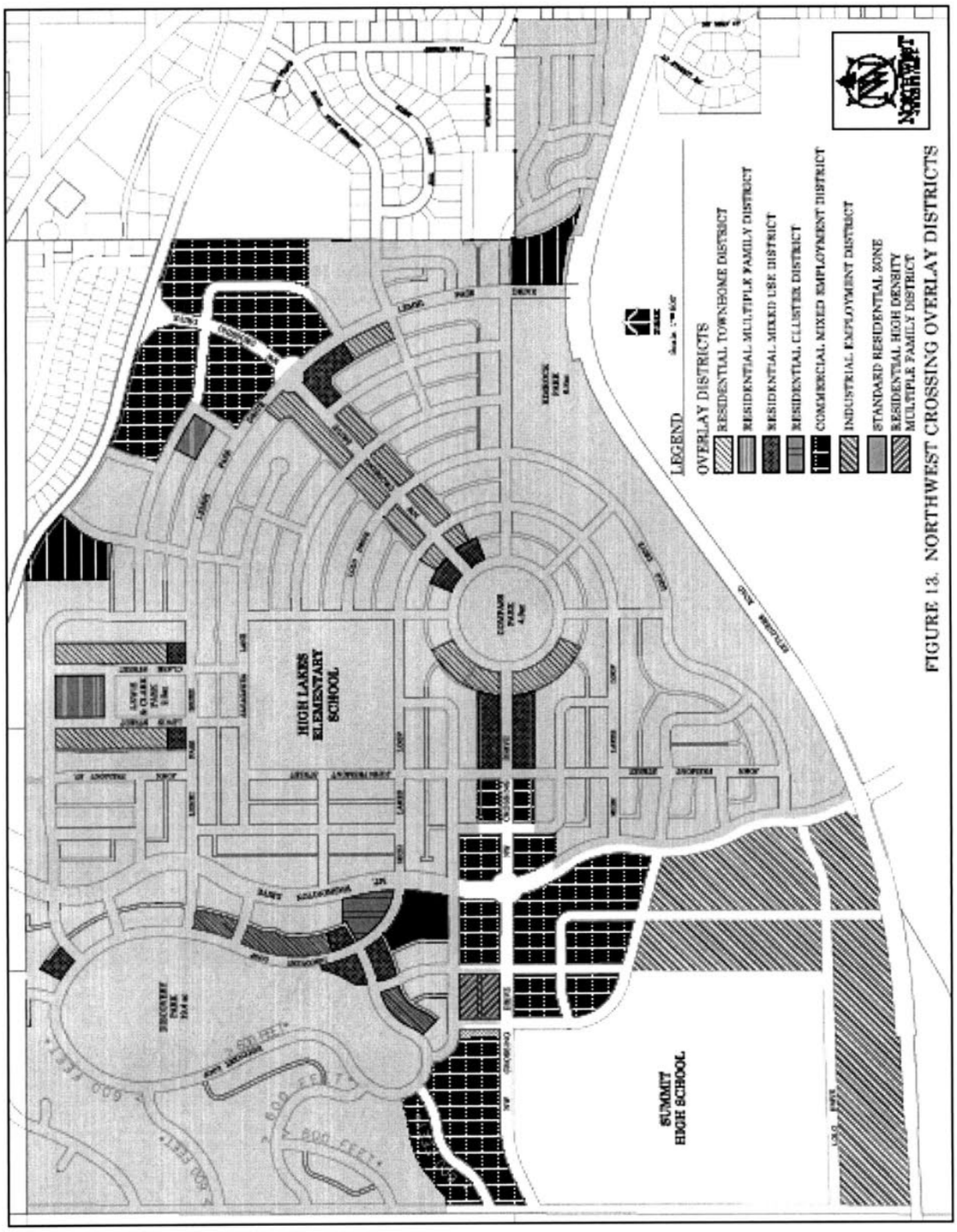


FIGURE 13. NORTHWEST CROSSING OVERLAY DISTRICTS

2.7.320 Districts

A. Applicability. The special standards of the NorthWest Crossing overlay districts shall supercede the standards of the underlying zone. Where no special standards are provided, the applicable standards of the underlying zone shall apply.

B. Urban Standard Residential District.

1. Purpose. The purpose of the Urban Standard Residential District is to implement the Urban Standard Residential Zone with flexibility to allow greater lot coverage to accommodate single-family houses on small lots. The Urban Standard Residential District in Northwest Crossing also is the base zone for the Residential Overlay Districts described in Sections B, C, D, E and F.

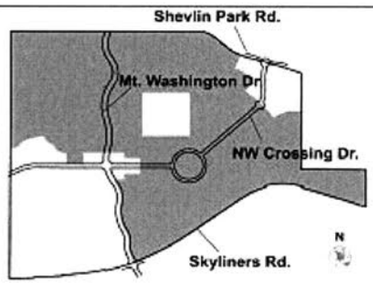


Figure 2.7.320.A
Urban Standard Residential District

2. Application of Residential Overlay Districts. The standards of the Urban Standard Residential Zone, as provided for in this section, shall apply to the land zoned as Urban Standard Residential.
Where a Residential Overlay District is shown, the special standards of the Overlay District shall apply to uses permitted by the Overlay District.

3. Uses Permitted.
   a. All uses permitted in the Urban Standard Residential Zone, except neighborhood commercial uses.
   b. Duplex on a lot identified as a duplex lot on an approved subdivision plat, subject to RS minimum lot size for a duplex.
   c. Notwithstanding subsection a, preschool use and child care facility use shall not be permitted on Tax Lot 311 of Deschutes County Assessor's Map 17-11-36 (more specifically described in Exhibit C of Ordinance NS-2131).
   d. Notwithstanding subsection a, the use of the approximately 100' wide set aside area on Tax Lot 311 of Deschutes County Assessor's Map 17-11-36 (more specifically described in Exhibit D of Ordinance NS-2131) shall be restricted to the following uses: neighborhood park, single family detached housing, accessory dwellings, Type 1 home occupation, accessory uses and structures.

4. Conditional Uses.
   a. Except for duplexes, which are allowed on identified duplex lots on approved subdivision plats, conditional uses permitted in the underlying Urban Standard Residential Zone are subject to a Conditional Use Permit and the provisions of Chapter 4.4.

5. Height Standards
   a. No building shall be erected, enlarged or structurally altered to exceed 30 feet in height without a Variance.

6. Lot Requirements.
   a. The lot requirements of the RS Zone shall apply to all permitted and conditional uses.
   b. Setbacks. The setback requirements of the RS Zone shall apply to all permitted and conditional uses.
   c. Lot Coverage.

i. On lots 6,000 square feet or greater, the maximum lot coverage for buildings shall be 35 percent.
ii. On lots that are less than 6,000 square feet, the maximum lot coverage for buildings shall be 50 percent.

7. Site Plan Review. A duplex located on a lot approved as a duplex lot on an approved subdivision plat is not subject to a site plan review under the provisions of Chapter 4.1, Land Use and Review Procedures.

8. **Special Partitioning Regulation. Notwithstanding other local regulations to the contrary, specifically including but not limited to block length, lot frontage, pedestrian and vehicle access and public improvement requirements, the approximately 100' wide set aside area on Tax Lot 311 of Deschutes County Assessor's Map 17-11-36 (more specifically described in Exhibit D of Ordinance NS-2131) may be partitioned once, without dedicating or extending Newport Hills Drive and without providing street, sidewalk, street tree, stormwater, or utility improvements to Newport Hills Drive, without dedicating a pedestrian easement or walkway across the 100' set aside area and without providing frontage for the lot on a public street. This Special Partitioning Regulation expires on December 31, 2011. Any other division of this land shall comply with all relevant code standards.**

Exhibit C NS - 2131

EXHIBIT "A"

A parcel of land located in the Northeast Quarter (NE ¼) of Section Thirty-six (36), Township Seventeen (17) South, Range Eleven (11) East of the Willamette Meridian, said parcel being more particularly described as follows.

Commencing at a 2-1/2 inch brass cap marking the North 1/16 corner on the East line of said Section 36; thence South 00°08'25" West, along said East line of Section 36, 200.95 feet to the **TRUE POINT OF BEGINNING**; thence continuing along said East line of Section 36, South 00°08'25" West, 332.63 feet; thence leaving said East line, North 90°00'00" West, 180.14 feet to a point of curvature; thence along the arc of 230.00 foot radius curve to the left, through a central angle of 20°56'39", an arc distance of 84.07 feet (the chord of which bears South 79°31'41" West, 83.61 feet) to a point of non-tangent curvature; thence along the arc of a 1,905.20 foot radius curve to the left, through a central angle of 07°53'58", an arc distance of 262.67 feet (the chord of which bears North 25°58'00" West, 262.46 feet) to a point of non-tangency; thence North 59°32'28" West, 17.97 feet to a point of curvature; thence along the arc of a 290.00 foot radius curve to the left, through a central angle of 29°10'38", an arc distance of 147.68 feet (the chord of which bears North 44°57'09" East, 146.09 feet) to a point of non-tangency; thence South 89°51'35" East, 259.38 feet to the Point of Beginning.

This tract of land contains 2.43 acres, more or less.

Exhibit D - NS-2131

ORDINANCE NO. NS-2132

AN ORDINANCE AMENDING THE BEND URBAN AREA GENERAL PLAN AND ZONING MAPS BY CHANGING THE PLAN DESIGNATION AND ZONING OF 3.6 ACRES OF LAND AT THE NORTHEAST CORNER OF THE BOND/WILSON ROUNDABOUT FROM INDUSTRIAL GENERAL (IG) AND MIXED RIVERFRONT (MR) TO MIXED EMPLOYMENT (ME).

Findings:

A. On June 26, 2009, Erik Gerding, 360 Bond, LLC, filed an application (PZ 09-183) for a Plan Amendment and Zone Change for 3.6 acres of land at the northeast corner of the Bond/Wilson roundabout, to change the zoning and general plan designation from Industrial General (IG) and Mixed Riverfront (MR) to Mixed Employment (ME).

B. The Hearings Officer held a duly noticed public hearing for the proposal on September 10, 2009. On September 23, 2009, the Hearings Officer issued a decision recommending that Council approve the requested Plan Amendment and Zone Change.

C. The City Council held a duly noticed public hearing on October 21, 2009. Based on the entire record, including all testimony, evidence and the recommendation of the Hearings Officer, the Council concluded that the application meets all criteria for approval and should be granted.

Based on these findings,

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council held a public hearing to consider the applicant's proposal and the Hearings Officer's findings and recommendation and found that the requested Plan Amendment and Zone Change is consistent with the criteria of the Bend Development Code Chapter 4.6. In addition to the findings listed above, the Bend City Council adopts the findings in Exhibit B.

Section 2. The Bend Urban Area General Plan and Zoning Maps are hereby amended by changing the plan designation and zoning of 3.6 acres of land at the northeast corner of the Bond/Wilson roundabout from Industrial General (IG) and Mixed Riverfront (MR) to Mixed Employment (ME) as shown in Exhibit A.

Read for the first time the 21st day of October, 2009.

Read for the second time the 4th day of November, 2009.

Placed upon its passage the 4th day of November, 2009.

YES: 6 NO: 0

Authenticated by the Mayor the 4th day of November, 2008.

Kathie Eckman

Kathie Eckman, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

EXHIBIT A

SW WILSON AVE
SW HILL ST
SW SCALEHOUSE CT
SW SCALEHOUSE LP
SW BOND ST
SW WILSON AVE
SW BOND ST
SW UPPER TERRACE DR
N
Zoning/Plan Designation
IG
MR
Subject Properties
Imagery acquired July 2008. Map prepared Oct 6, 2009.
PZ 09-183 Zone Change and Plan Amendment from Industrial General (IG) and Mixed Riverfront (MR) to Mixed Employment (ME).
0
250
500
Feet
BEND

EXHIBIT B

FINDINGS IN SUPPORT OF PZ 09-183

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE

Chapter 2.3, Mixed Use Districts

Section 2.3.100, Purpose

Table 2.3.200 Permitted Land Uses

FINDINGS: In 2007, the city granted conditional use approval for construction of the existing office building on the IG-zoned portion of the subject property (PZ 07-116). In 2008 the city approved a change-of-use site plan to change up to 10,787 square feet of floor area originally approved for the corporate headquarters/production business uses to general office use (PZ 08-454). In 2009 the applicant submitted another change-of-use site plan application that would allow the remaining portions of the building to be changed to general office (PZ 09-211). Approval of that application is pending approval of this requested plan amendment and zone change. The proposed use of the subject property would be permitted in the ME Zone. Other uses listed in Table 2.3.200 may be permitted on the subject property in the future, but may require a new change-of-use site plan approval and a change-of-occupancy building permit. These, in turn, may require additional analyses of sewer, water, and transportation system impacts.

Section 2.3.300, Development Standards

FINDINGS: The existing office building on the subject property exceeds the maximum building height in the ME Zone. However, the city granted conditional use approval to exceed height limit in the IG Zone (PZ 07-116). The applicant does not propose any increase in that height in conjunction with this plan amendment and zone change application. The existing building height would be a lawful nonconforming use in the proposed ME Zone. Any future modifications to the existing building which exceed the ME Zone height limitation or other applicable development standards would require conditional use approval in accordance with Chapter 5.2.200.

Section 2.3.400, Building Orientation

Section 2.3.500, Architectural Standards

FINDINGS: The record indicates compliance with these sections was reviewed through the applicant's 2007 site plan review for the existing building (PZ 07-116) and the building was found to meet them. Because the proposed plan amendment and zone change will not affect the size or appearance of the existing office building, these criteria are satisfied.

Chapter 4.6, Land Use District Map and Text Amendments

Section 4.6.300, Criteria for Quasi-Judicial Amendments

B. Criteria for Quasi-Judicial Amendments.

1. **Approval of the request is consistent with the relevant Statewide Planning Goals that are designated by the Planning Director or designee;**

FINDINGS: Compliance with the Statewide Planning Goals is discussed in the findings below.

***Goal 1, Citizen Involvement.* To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.**

The city's program to achieve this goal is codified in Chapter 4.1 of the Bend Development Code. The first step for citizen involvement is the public meeting required by Section 4.1.210(B). The record indicates the applicant conducted this meeting on

December 4, 2009. Notice of the meeting was provided to owners of record of property located within 250 of the subject property as well as the Southern Crossing Neighborhood Association. The record indicates no one attended the public meeting or submitted comments in response to the notice of the meeting. Section 4.1.315 of the development code ensures that citizens are informed in four different ways for Type III applications: published notice, posted notice, individual mailed notice and neighborhood association contact. These notices were provided for both the hearing before the Hearings Officer and the City Council hearing.

Goal 2, Land Use Planning. To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The city's development code establishes the process, and the general plan establishes the policy framework, for a decision on the subject plan amendment and zone change application.

Goal 3, Agricultural Lands

Goal 4, Forest Lands

Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces

Goals 3, 4, and 5 are not applicable because the subject property is not zoned for agriculture or forest use and does not have inventoried open spaces, scenic areas, historic resources, or natural resources.

Goal 6, Air, Water and Land Resources Quality

ds Goal 6 is not applicable to the subject plan amendment and zone change application because the proposed change will have no impacts on air, water or land resources.

Goal 7, Areas Subject to Natural Hazards

Goal 8, Recreational Needs

Goals 7 and 8 are not applicable to the subject plan amendment and zone change application because the subject property is not within an identified natural hazard area, nor within an area identified for recreational use.

Goal 9, Economic Development. To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Goal 9 and its implementing administrative rules require local governments to provide within the urban growth boundary (UGB) for "at least an adequate supply of sites of suitable sizes, types, locations and service levels for a variety of industrial and commercial uses consistent with plan policies." OAR 660-009-0015 requires the city to develop an inventory of "vacant and developed lands within the planning area designated for industrial or other employment uses." Additionally, OAR 660-009-010(4) provides:

> ***For a post-acknowledgement plan amendment under OAR chapter 660, division 18, that changes the plan designation of land in excess of two acres within an existing urban growth boundary from an industrial use designation to a non-industrial use designation, or an other employment use designation to any other use designation, a city or county must address all applicable planning requirements, and:***
>
> ***(a) Demonstrate that the proposed amendment is consistent with its most recent economic opportunities analysis and the parts of its acknowledged comprehensive plan which address the requirements of this division; or***
>
> ***(b) Amend its comprehensive plan to incorporate the proposed amendment, consistent with the requirements of this division; or***

(c) Adopt a combination of the above, consistent with the requirements of this division.

On January 5, 2009 the city adopted a series of ordinances which, among other things, expanded the city's UGB and amended its general plan. In addition, Ordinance No. 2112 adopted as Exhibit "L" the "City of Bend 2008 Economic Opportunities Analysis" ("2008 EOA"). The ordinances adopting the expanded UGB, including Ordinance No. 2112, have not yet been acknowledged by the Land Conservation and Development Commission (LCDC). However, ORS 197.625(3) provides in relevant part as follows:

(a) Prior to its acknowledgment, the adoption of a new comprehensive plan provision or land use regulation or an amendment to a comprehensive plan or land use regulation is effective at the time specified by the local government charter or ordinance and is applicable to land use decisions, expedited land use decisions and limited land use decisions if the amendment was adopted in substantial compliance with ORS 197.610 and 197.615 unless a stay is granted under ORS 197.845.

(b) Any approval of a land use decision, expedited land use decision or limited land use decision subject to an unacknowledged amendment to a comprehensive plan or land use regulation shall include findings of compliance with those land use goals applicable to the amendment.

Under this statute, the city's amendments to its comprehensive plan and UGB are effective and applicable to the subject application. This decision includes findings concerning the statewide land use planning goals applicable to this application. The proposal's compliance with the applicable provisions of the amended comprehensive plan are discussed in the findings below.

The IG-zoned portion of the subject property is more than two acres in size, and the MR-zoned portion is less than one acre in size. The Goal 9 administrative rules -- OAR 660-009-0010(4) – provide that where a comprehensive plan amendment changes the designation of land in excess of two acres within a UGB from an industrial use designation to a non-industrial use designation, or from another employment use designation to any other use designation, the city must demonstrate that the amendment is consistent with the most recent EOA and its comprehensive plan. The 2008 EOA, a copy of which is included in this record, provides that for purposes of calculating industrial land supply, the ME Zone is treated as an industrial zone (EOA page 108).

The city's decision to treat the ME Zone as an industrial zone for purpose of the EOA and the comprehensive plan was based in large part on the fact that there is considerable overlap between the uses permitted in these two zoning districts. For that reason, re-designating the subject property from IG to ME does not represent a change from an "industrial use designation to a non-industrial use designation" under OAR 660-009-010(4), and therefore the applicant is not required to make findings under that rule. And because the portion of the subject property currently designated MR is less than two acres in size, OAR 660-009-0010(4) also does not apply.

When the city expanded the UGB in 2009, it elected to employ a number of market choice factors in considering how much land to bring into the UGB (Findings in Support of UGB Expansion, pages 51-52). As a result of utilizing these market choice factors, the city determined the current supply of industrial land and mixed-use land within the UGB exceeds the minimum amount needed during the planning period. In other words, currently the city has a surplus of industrial and mixed use lands to meet the needs in the industrial, MR and ME zones within the planning period. Consequently, the applicant's proposed plan amendment and zone change from IG and MR to ME will not result in a deficit of industrial or MR lands within the UGB. For these reasons, the proposed plan amendment and zone change will not interfere with the city's ability to provide an adequate amount of employment lands during the planning period.

<u>Goal 10, Housing.</u> Provide for the Housing Needs of the citizens of the State.

The current IG zoning on the subject property does not allow residential uses, and the existing use of the subject property is not residential. Therefore, the proposed plan amendment and zone change will not remove land from the city's inventory of residential lands. On the contrary, the ME Zone allows a mix of uses including residential uses, although residential uses are not anticipated for this site.

Goal 11, Public Facilities and Services. ***To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.***

The subject property currently is served with adequate public facilities and services for the existing and proposed office uses, as discussed in detail in the zone change findings below.

Goal 12 Transportation. ***To provide and encourage a safe, convenient and economic transportation system.***

Goal 12 is implemented through the Transportation Planning Rule in OAR 660-012-0060 (TPR). In addition, Section 4.6.600 of the development code requires that the applicant demonstrate compliance with the TPR, which provides in relevant part:

(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

The transportation impact analysis (TIA) dated January 29, 2009, analyzes potential impacts to affected transportation facilities from the proposed plan amendment and zone change and compares vehicle trip generation predictions for uses permitted in the current IG and MR Zones with uses permitted in the proposed ME Zone. The TIA includes Table 3 summarizing these differences and showing that 80,000 square feet of office building space with uses permitted in the ME Zone could generate 1,040 more average daily vehicle trips (ADTs) than 80,000 square feet of office building space with uses permitted in the IG Zone. The TIA concludes this increase in ADTs would be dispersed more or less evenly in all directions, and would not exceed the capacity of affected streets and intersections because of the high level of function of these facilities, including Bond and Wilson and their roundabout intersection for which the applicant granted right-of-way and contributed funds for the costs of roundabout construction. For these reasons, the TIA concluded the proposed plan amendment and zone change would not significantly affect a transportation facility under the TPR.

Goal 13 Energy. To conserve energy.

This goal has minimal applicability to the subject plan amendment and zone change because the uses permitted in the ME Zone are not significantly different from those permitted in the IG and MR Zones and already in place on the subject property. However, the ME Zone does allow for a greater mix of uses, and the subject property's location at the intersection of designated collector and arterial streets may achieve greater efficiency by reducing vehicle trips in the area.

Goal 14 Urbanization. To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

The subject property is located within the Bend city limits and UGB.

Goal 15, Willamette River Greenway

Goal 16, Estuarine Resources

Goal 17, Coastal Shorelands

Goal 18, Beaches and Dunes

Goal 19, Ocean Resources

Goals 15 through 19 are not applicable to the subject plan amendment and zone change application because the subject property does not include any of these features or resources.

2. Approval of the request is consistent with the relevant policies of the Comprehensive Plan that are designated by the Planning Director or designee;

FINDINGS: The following goals and polices of the general plan are found to be applicable to the subject plan amendment and zone change application.

CHAPTER 1 – PLAN MANAGEMENT AND CITIZEN INVOLVEMENT

Policies
Urbanization of the Incorporated UGB

33. New developments shall pay to extend planned sewer, water, and transportation facilities to and through the property if the development occurs prior to the scheduled construction of those facilities shown in the city's capital improvement plan.

FINDINGS: The subject property is developed with a large office building, parking areas and landscaping. The record indicates that in conjunction with the previous land use approvals for this use the applicant made on-site transportation system improvements and contributed to the cost of constructing the adjacent Bond/Wilson intersection roundabout.

34. The city will encourage compact development and the integration of land uses within the Urban Growth Boundary to reduce trips, vehicle miles traveled, and facilitate non-automobile travel.

FINDINGS: This policy by its terms applies to the city and not to an applicant for a quasi-judicial plan amendment and zone change.

37. Improvements within the incorporated UGB shall conform to City standards and specifications.

FINDINGS: As discussed above, the subject property is developed with a large office building, parking areas and landscaping. The city's previous conditional use and site

plan approvals for this use required the applicant to construct and install improvements in compliance with the city's standards and specifications and the applicant has done so.

Citizen Involvement

FINDINGS: This policy by its terms applies to the city and not to an applicant for a quasi-judicial plan amendment and zone change.

CHAPTER 2: NATURAL FEATURES AND OPEN SPACE

Policies

Natural features and open space

9. ***Major rock outcrops, stands of trees, or other prominent natural features identified in the General Plan shall be preserved as a means of retaining the visual character and quality of the community.***

10. ***Natural tree cover shall be retained along streets in all developments to preserve the natural character of Central Oregon within the urban area as the community grows. Native trees may be substituted for required street trees when located within 10-feet of the right of way.***

11. ***All development shall preserve the natural ground cover outside the building footprint and parking area to the greatest extent practicable.***

FINDINGS: The subject property is developed with an office building, parking areas and landscaping. Where practical, the applicant preserved existing mature trees and natural ground cover as part of the site planning and development. There are no rock outcrops on the property.

12. ***The city shall require the preservation of mature trees within each development to the greatest extent practicable.***

FINDINGS: This policy by its terms applies to the city and not to an applicant for a quasi-judicial plan amendment and zone change.

CHAPTER 3: COMMUNITY CONNECTIONS

FINDINGS: The record indicates there are no historical features, cultural amenities, urban trails, park and recreation facilities, or educational facilities identified on or planned for the subject property.

CHAPTER 4: POPULATION AND DEMOGRAPHICS

FINDINGS: This chapter addresses population forecasts and other demographic information, and is not applicable to the applicant's proposal.

CHAPTER 5: HOUSING AND RESIDENTIAL LANDS

FINDINGS: This chapter of the general plan addresses housing needs, and therefore is not applicable to the applicant's proposal.

CHAPTER 6: THE ECONOMY AND LANDS FOR ECONOMIC GROWTH

Applicable Policies:

General Economic Land Policies and Anticipated Land Needs

2. ***The city shall place a higher priority on retaining industrial sites in the city's land base while also providing a variety of commercial sites.***

3. ***The City of Bend shall provide numerous sites in a variety of locations, types, and sizes to meet anticipated and unanticipated economic development***

opportunities. These locations shall be suitable from an economic standpoint and compatible with surrounding land uses.

4. ***The city shall provide at least a 20-year supply of economic, institutional, and associated open space lands to meet anticipated needs during the 20-year planning period as outlined in the 2008 EOA.***

5. ***The city shall seek opportunities to designate additional sites for employment use within the existing urban growth boundary prior to expanding the UGB.***

6. ***The city shall periodically review existing development and use patterns on industrial and commercial lands. The city may consider modifying General Plan and/or Zoning Map designations to make such designations consistent with existing development and use patterns.***

FINDINGS: These policies by their terms apply to the city and not to an applicant for a quasi-judicial plan amendment and zone change. In any case, as discussed in findings elsewhere in this decision, the applicant's proposal will not result in a reduction in the amount of industrial land in the city's inventory and is consistent with the 2008 EOA because it will allow a greater range of office uses as well as a mix of other service commercial uses consistent with the surrounding development pattern that includes a mixture of office, commercial and residential uses.

CHAPTER 7: TRANSPORTATION SYSTEMS

6.9.1 TRANSPORTATION AND LAND USE

POLICIES

3. ***The City shall consider facility needs for long-range transportation system corridor improvements for all modes, during the review of subdivisions, partitions, and individual site applications.***

6. ***The City shall implement mixed use zoning as one of the land use strategies to promote fewer vehicle trips and shorter trip lengths.***

7. ***The City shall be receptive to innovative development proposals, including zone changes, plan amendments, and text changes that promote alternatives to vehicular traffic and demonstrably reduce vehicle trips and trip lengths.***

6.9.3 TRANSPORTATION DEMAND MANAGEMENT

3. ***The City shall work with businesses, with more than 25 employees, to develop and implement a transportation demand management plan. These plans shall be designed to reduce peak hour traffic volumes by establishing trip reduction targets over five years.***

6.9.4 PEDESTRIAN AND BICYCLE SYSTEMS

5. ***The City shall develop safe and convenient bicycle and pedestrian circulation to major activity centers, including the downtown, schools, shopping areas and parks. East-west access to the downtown area needs particular emphasis across major obstacles, such as 3rd Street, the Bend Parkway and the railroad.***

6. ***The City shall facilitate easy and safe bicycle and pedestrian crossings of major collector and arterial streets. Intersections shall be designed to include pedestrian refuges or islands, curb extensions and other elements where needed for pedestrian safety. Also, bike lanes shall be extended to meet intersection crosswalks.***

FINDINGS: These policies by their terms apply to the city, or are aspirational only, and therefore apply to the city, not to an applicant, for a quasi-judicial plan amendment and zone change.

7. ***Bike lanes shall be included on all new and reconstructed arterials and major collectors, except where bikeways are authorized by the TSP.1 Bike lanes shall also be provided when practical on local streets within commercial and industrial areas.1 Bike lanes shall be added to existing arterial and major collector streets on a prioritized schedule. Specific effort shall be made to fill the gaps in the on-street bikeway system. An appropriate means of pedestrian and bicyclist signal actuation should be provided at all new or upgraded traffic signal installations.***

8. ***Property-tight (setback) sidewalks shall be required on both sides of all new streets except where extreme slopes, severe topographical constraints, or special circumstances exist.***

9. ***Landscape areas shall separate the edge of pavement and sidewalks on new and reconstructed roads to allow for water quality treatment and storage of snow.***

10. ***Sidewalks shall be added to all existing arterial and collector streets to fill the gaps in the pedestrian system.***

13. ***Bicycle and pedestrian facilities shall be designed and constructed to minimize conflicts between transportation modes.***

16. ***Bicycle parking facilities shall be provided at all new multifamily residential, commercial, industrial, recreational, and institutional facilities, major transit stops, all transit stations and park and ride lots. The City shall support a "Bikes on Transit" program and work to increase the number of bicyclists using transit when the transit system is established.***

25. ***Bicycle safety shall be promoted by providing striped bike lanes on arterial and collector streets. Bike lanes shall be free of hazardous obstacles such as sewer manhole covers, other utility covers and storm water grates.***

FINDINGS: The subject property is developed with a large office building, parking areas and landscaping. The features and elements of that development were reviewed and approved through the previous conditional use and site plan review proceedings. The applicant is not proposing any change to the existing development in conjunction with this application for a plan amendment and zone change. Therefore, these policies are not applicable to the applicant's proposal.

6.9.5 PUBLIC TRANSPORTATION SYSTEM

FINDINGS: This policy by its terms applies to the city and not to an application for a quasi-judicial plan amendment and zone change.

6.9.6 STREET SYSTEM

General:

1. ***Streets shall be located, designed and constructed to meet their planned function and provide space for adequate planting strips, storm water retention and treatment, snow storage, sidewalks, motor vehicle travel and bike lanes (where appropriate). Specific effort should be made to improve and enhance east-west circulation patterns for all modes of travel throughout the community.***

5. ***New development shall be supported by traffic impact analysis to assess these impacts and to help determine transportation system needs.***

FINDINGS: The surrounding streets were designed and improved in connection with the existing office development on the subject property and were found to comply with the city's standards and specifications. The applicant submitted a TIA as part of this plan amendment and zone change application, and the TIA states no additional

transportation facility improvements are required as a result of the proposed plan amendment and zone change.

7. The City shall be receptive to innovative development proposals, including zone changes, plan amendments, and text changes that promote alternatives to vehicular traffic and demonstrably reduce vehicle trips and trip lengths.

FINDINGS: This policy by its terms applies to the city and not to an applicant for a quasi-judicial plan amendment and zone change.

CHAPTER 8: PUBLIC FACILITIES AND SERVICES

POLICIES

Storm sewer

15. All public and private stormwater facilities shall be designed and operated in accordance with the City's Stormwater Master Plan and shall meet appropriate drainage quantity and quality requirements including, but not limited to, the requirements in the City's National Pollutant Discharge Elimination System MS4 Stormwater Permit, integrated Stormwater Management Plan, WPCF Underground Injection Control Permit and any applicable Total Maximum Daily Load requirements.

17. Low impact site designs shall be a required part of all new and re-development.

19. Development shall, to the extent practicable, contain and treat storm drainage on-site.

20. The use of disposal systems shall be coordinated with the Oregon Department of Environmental Quality and Water Resources Department to protect ground water and surface water quality.

FINDINGS: The record indicates stormwater facilities for development of the subject property were reviewed for compliance with the above requirements prior to issuance of building permits following the city's approval of a conditional use permit and site plan review. As a result, the existing development on the subject property contains all stormwater on site and in approved facilities. The applicant's proposed plan amendment and zone change will have no affect on stormwater management on the subject property.

23. The City shall require stormwater protection measures for all new development and redevelopment proposals during the planning, project review, and permitting processes.

FINDINGS: This policy by its terms applies to the city and not to an applicant for a quasi-judicial plan amendment and zone change.

Chapter 9 - Community Appearance

FINDINGS: This chapter primarily pertains to goals and policies for adopting standards and criteria which will enhance the appearance of the community and in general does not apply to applications for plan amendments and zone changes. However, the design review criteria for the ME Zone are more stringent than those of the current IG Zone on the subject property. Moreover, the development on the subject property was reviewed for compliance with the commercial design review criteria and standards as part of the previous site plan review.

Chapter 10 - Natural Forces

FINDINGS: This chapter sets goals and policies to guide future studies and the development of future standards and criteria. Therefore, these goals and policies are not applicable to the applicant's proposed plan amendment and zone change.

3. 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 concurrently with the development of the property;

FINDINGS: The subject property is presently provided with adequate public facilities, service and transportation networks to support the use as described below. .

1. Police Protection. The subject property is located within the Bend city limits and is served by the Bend Police Department.

2. Fire Protection. The subject property is located within the Bend city limits and is served by the Bend Fire Department. The record includes a fire flow analysis memorandum from the city's Engineering Division indicating there is adequate water flow for fire protection on the subject property.

3. Sewer and Water. The subject property currently is served by city sewer and water infrastructure and service that were improved and connected to the subject property as part of its previous development with the existing office building. The record includes a letter dated August 10, 2009 from the applicant's engineer, Terry Angle with Angle Consulting Engineering LLC, who conducted a wastewater system analysis for the applicant. Mr. Angle stated a change in use of the existing office building to general office use would not increase sanitary sewer flow, and likely would generate less flow than some permitted uses in the IG Zone. Future uses of the subject property that could generate greater sewer and/or water impact would require a new sewer and water analysis in conjunction with a new site plan change-of-use review.

4. Schools. The subject property is located within the boundaries of the Bend-La Pine School District. The proposed plan amendment and zone change will have no impact on school facilities and services because the subject property is developed with office uses.

4. Parks. The subject property is located within the boundaries of the Bend Metropolitan Park and Recreation District. The record indicates there are no parks planned in the general vicinity of the subject property, although there are several parks along the Deschutes River that are within walking distance of the subject property.

5. Transportation Facilities. The applicant submitted a TIA that concludes the proposed change in plan designation and zoning from IG and MR to ME will not significantly affect a transportation facility.

6. Stormwater Runoff. Stormwater runoff systems were addressed in the previous conditional use and site plan approvals, and there is an approved stormwater system in place on the subject property. The proposed plan amendment and zone change will not have any effect on stormwater runoff.

4. Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or land use district map regarding the property that is the subject of the application; and the provisions of Section 4.6.600; Transportation Planning Rule Compliance.

1. Mistake or Inconsistency with Comprehensive Plan.

FINDINGS: The IG and MR zoning of the subject property was not a mistake. The current zoning is consistent with the current plan designations on the property.

2. Change in the Neighborhood or Community.

FINDINGS: The applicant's burden of proof noted that the Old Mill District previously was a large industrial site with several sawmills. With the city's adoption of the MR Zone, the Old Mill district was developed with uses permitted in the MR Zone, and now the surrounding area is characterized by office, retail, and residential uses, with very few remaining industrial uses. The demand for office and retail space has grown as the city's population has grown and land suitable for office development has become scarce, resulting in a transition from industrial to non-industrial uses in the surrounding area.

At the public hearing in this matter, the Hearings Officer questioned whether the changes in the Old Mill District identified and relied upon by the applicant in support of its proposed plan amendment and zone change are merely those planned and contemplated with adoption of the MR Zone and redevelopment of former industrial lands. The applicant's attorney Steven Hultberg responded that two additional changes justify the applicant's proposal. First, Mr. Hultberg noted that when the city adopted amendments to its comprehensive plan and zoning ordinance in 2006 it imposed new restrictions on office uses in the IG Zone, limiting such uses to corporate headquarters/offices where co-located with a permitted or conditional use. Under the previous IG Zone provisions general office uses were conditional uses. Mr. Hultberg stated the applicant purchased the subject property with the intent of developing it with general office uses but was not able to do so before the code change. Second, Mr. Hultberg noted the city's 2008 EOA recognizes areas within the UGB that are in transition from industrial to non-industrial uses, including the Old Mill District.

Following the public hearing, Mr. Hultberg submitted a letter dated September 17, 2009 further addressing this approval criterion. Each of the four neighborhood/community changes identified by the applicant in Mr. Hultberg's September 17, 2009 letter is addressed in the findings below.

(a) Split Zoning. The subject property was platted as part of the Upper Terrace Phase II Subdivision after the MR Zone was adopted in 1995. The subject property's two subdivision lots became split-zoned as a result of this platting. The applicant also asserts the concurrent improvements to adjacent streets had the effect of leaving only a small portion of the subject property zoned MR and the majority zoned IG. The applicant argues the alleged lack of coordination between the subdivision platting and infrastructure and the designation of the MR Zone boundaries created a change in the neighborhood justifying the proposed plan amendment and zone change. The Hearings Officer disagreed, finding that when the plat for the Upper Terrace Phase II Subdivision was approved, the city and the former owner of the subdivision necessarily understood the relationship between the MR and IG Zone boundaries and the lot lines within the subdivision plat, and had the city believed the resulting split zoning would prevent appropriate development within the subdivision, it would have denied subdivision approval.

(b) Office Development in Area.

(c) Shift from Manufacturing to Service Industry. The applicant notes the city's 2008 EOA states the city's once-dominant natural resource and manufacturing base continues to make up a smaller and less crucial part of the city's economy, while professional and business services, educational and health services, retail trade and leisure and hospitality industries will comprise a larger part of the economy. The applicant argues this change is particularly evident in the city's historic industrial areas such as the Old Mill District, noting the EOA states at page 65:

> *"Bend has seen such redevelopment take place at the Old Mill District and to some degree in downtown; as other truly 'vintage' districts become obsolete, it may be appropriate to encourage their redevelopment."*

The applicant also argues that office uses "almost entirely surround the subject property" as a result of development of the Old Mill District and the MR Zone primarily with non-industrial uses, including the headquarters office of the Hooker Creek Construction Materials business on nearby IG-zoned land. It appears from this record that Hooker Creek's business is the only true general industrial use that remains in the Old Mill District, although there are several other IG-zoned parcels on the east side of the district near the Bend Parkway (U.S. Highway 97) that are developed with lighter industrial uses. The applicant also notes that there is considerable overlap in the uses permitted in the IG and ME Zones -- so much so that the city treated ME-zoned land as "industrial" land for purposes of its 2008 UGB amendment and EOA. The applicant argues the city-wide change from a manufacturing economic base to a more professional service base, recognized by the 2008 EOA and illustrated by the change in the neighborhood surrounding the subject property within the Old Mill District, constitutes a change in the neighborhood or community that justifies the proposed plan amendment and zone change.

The Hearings Officer agreed that the land on the easternmost side of the Old Mill district, including parcels surrounding the subject property, has lost virtually all of its industrial character due to the disappearance of industrial uses and conversion of such lands to non-industrial uses like office buildings. Therefore, these changes are sufficient to justify the proposed plan amendment and zone change to ME to better reflect the nature of the neighborhood.

(d) Development of ODS Building. The applicant argued that conversion of the subject property from an industrial site to a vacant parcel and then to a large office building is a change to the neighborhood warranting the proposed plan amendment and zone change. The Hearings Officer disagreed, noting that while there may be circumstances where it is appropriate to consider *the subject property* as the "neighborhood and community" for purposes of this approval criterion, this situation is not one of them. The applicant developed the subject property pursuant to the existing MR and IG Zone provisions, and may modify the uses within the office building under those same provisions.

Although not all of the applicant's reasoning for this criterion were found to be acceptable or relevant, the applicant demonstrated that a sufficient change has occurred in the neighborhood surrounding the subject property to justify the proposed plan amendment and zone change from MR and IG to ME.

3. <u>Compliance with Provisions of Section 4.6.600 and TPR.</u>

FINDINGS: Section 4.6.600 provides as follows:

> ***When a development application includes a proposed comprehensive plan amendment or land use district change, or both, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.***

The text of the TPR is set forth in previous findings. The applicant's TIA shows the proposed plan amendment and zone change will not significantly affect a transportation facility and will not require changes to the functional classification of existing or planned transportation facilities, or a change to the standards implementing the comprehensive plan. Based on the applicant's TIA, the proposed plan amendment and zone change is consistent with, and satisfies the requirements of, the TPR.

ORDINANCE NO. NS-2133

AN ORDINANCE AMENDING THE BEND URBAN AREA GENERAL PLAN AND ZONING MAPS BY REMOVING THE UPLAND AREA OF SPECIAL INTEREST (ASI) DESIGNATION FROM PARCEL 2 OF PARTITION PLAT NO. 2007-14 AS ADJUSTED BY LOT LINE ADJUSTMENT #07-483.

Findings:

A. On June 10, 2009, John Bradley d.b.a. Central Oregon Holdings, LLC, filed an application (PZ 09-166) for a General Plan Map Amendment and Zoning Map Amendment to reduce the size of an Upland Area of Special Interest (ASI Area 25).

B. The Hearings Officer held a duly noticed public hearing for the proposal on August 18, 2009. On October 5, 2009, the Hearings Officer issued a written recommendation that Council remove the Upland ASI designation from the applicant's property only.

C. The City Council held a duly noticed public hearing on October 21, 2009. Based on the entire record, including all testimony, evidence and the recommendation of the Hearings Officer, the Council concluded that the application meets all criteria for approval and should be granted.

Based on these findings,

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council held a public hearing to consider the applicant's proposal and the Hearings Officer's findings and recommendation and found that the requested General Plan Map Amendment and Zoning Map Amendment is consistent with the criteria of the Bend Development Code Chapter 4.6. In addition to the findings listed above, the Bend City Council adopts the findings in Exhibit B.

Section 2. The Bend Urban Area General Plan and Zoning Maps are hereby amended by remove the Upland ASI designation from the applicant's property only, as shown in Exhibit A.

Read for the first time the 21st day of October, 2009.

Read for the second time the 4th day of November, 2009.

Placed upon its passage the 4th day of November, 2009.

YES: 4 NO: 2

Authenticated by the Mayor the 4th day of November, 2009.

Kathie Eckman

Kathie Eckman, Mayor

ATTEST:

Patricia S Stell

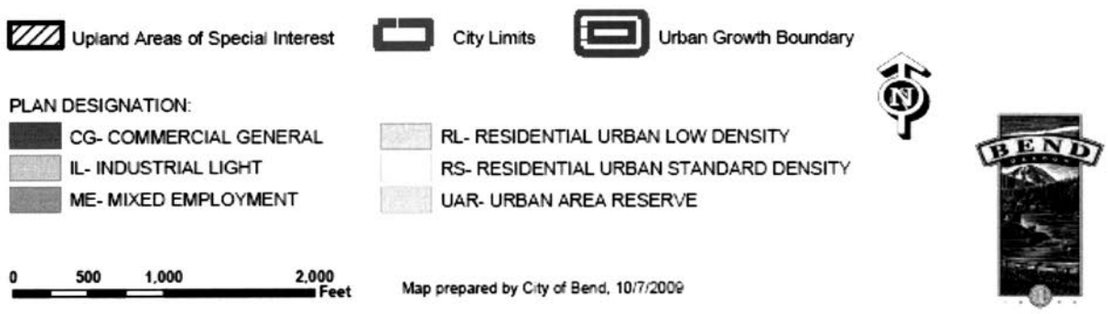
Patricia Stell, City of Bend Recorder

EXHIBIT A

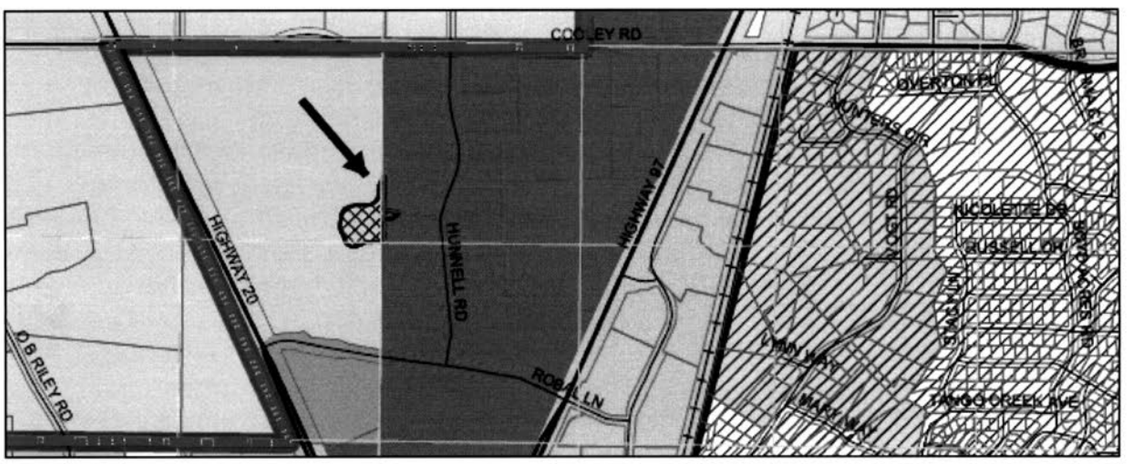
Existing General Plan Map

Proposed Amendment to General Plan Map

PZ 09-166 Proposed Change to Bend Urban Area General Plan Map (Upland ASI Modification)



Existing Zoning Map



Proposed Amendment to Zoning Map

PZ 09-166 Proposed Change to Bend Urban Area Zoning Map (Upland ASI Modification)

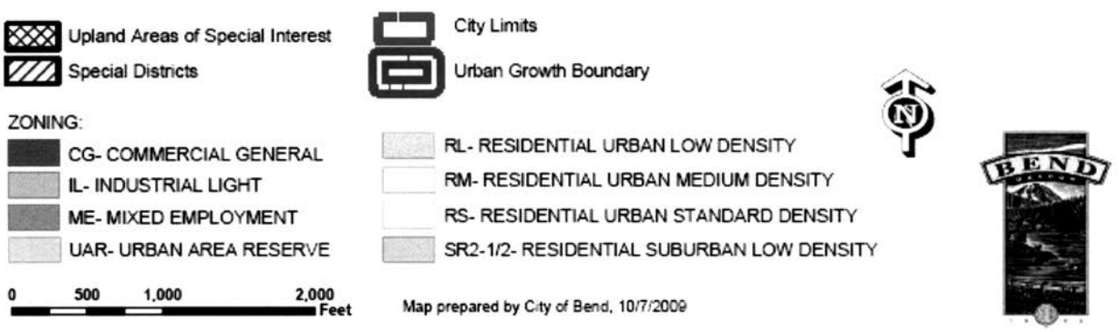


EXHIBIT B

CITY COUNCIL FINDINGS IN SUPPORT OF PZ 09-166

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE

Chapter 4.6 Land Use District Map and Text Amendments

4.6.300 Quasi-Judicial Amendments.

B. Criteria for Quasi-Judicial Amendments. The applicant shall submit a written narrative which explains how the approval criteria will be met. 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:

1. Approval of the request is consistent with the relevant Statewide Planning Goals that are designated by the Planning Director or designee;

FINDING: Oregon has 19 Statewide Planning Goals that express the State's land use policies. The City of Bend is required to adopt a comprehensive plan implementing those Statewide Planning Goals that are relevant to the jurisdiction. Once DLCD finds the comprehensive plan consistent with the Statewide Planning Goals, the agency acknowledges the plan. An acknowledged comprehensive plan generally controls local land use decisions made under the jurisdiction of that plan. The City of Bend has an acknowledged Comprehensive Plan. However, the City has adopted changes to the Comprehensive plan as part of the UGB proposal. These changes have not yet been acknowledged by DLCD.

The City Council adopts the following findings based on the newly adopted Comprehensive Plan language as the locally adopted regulation, and finds that the following goals are relevant to both the plan amendment and zone change.

1. Goal 1 – Citizen Involvement.

FINDING: The City provided notice to the owners of record of all properties within 250 feet of the property. A public hearing notice was published in the Bulletin. In addition, a public meeting was held that required the applicant to send notice of the proposal to the Boyd Acres Neighborhood Association and all property owners within 500 feet of the subject property. Public hearings were conducted on August 18 and October 21, 2009.

The City Council finds that the actions taken satisfy Statewide Planning Goal 1.

2. Goal 2 – Land Use Planning.

FINDING: Statewide Planning Goal 2 requires that the City establish a planning process and policy framework that will serve as a basis for all decisions and actions related to the use of land. It requires that the City assure an adequate factual base for its decisions and actions. The City of Bend has established both a comprehensive plan and development code, which will be used as a basis for making a decision on this plan amendment and zone change application.

3. Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces

FINDING: The Upland Area of Special Interest protects natural resources that have been mapped for protection by the City. The ASI designations implement Goal 5. They do this by adopting a rating system to determine whether properties should be protected in the City's development code. That system is found at BDC 2.7.700 G. The entire ASI, Area 25, was rated in 1999. A copy of that rating sheet is included in the Record. applicant provided information, including a site specific review of the subject property to argue that protection of the originally mapped ASI is no longer merited or in the public interest. The applicant originally requested a reduction of the ASI from 4.8 acres to 2.5 acres. Both Long Range Planning and the Traffic Engineering Department recommend removal of the ASI. The staff planner recommended the ASI be modified as proposed

by the applicant. At the hearing, the applicant stated that although they originally requested only a reduction in the ASI, they would concur with Long Range Planning and City Engineering. The City Council adopts the following findings regarding the rating categories:

EXISTING SITE USE: The existing site use of the ASI was originally rated as a 3. That means that the property falls between the two categories of having 'significant development' and 'minor development' affecting the site. Since 1999 when the property was rated, significant additional development has occurred around the subject property which negatively impacts the site and the value of the ASI. The properties directly to the north, north east, and east have developed with new large commercial uses. The new development in the area reduced the open space value by adding noise, light, traffic, and a commercial business environment to the area. Because it is vacant land surrounded by commercial development, there is a significant impact to this ASI designated area by transient people using it as a campground. For the subject property, the rating should be 0 to reflect the fact that development has occurred that "substantially reduces open space value."

HABITAT VALUE: The habitat value of the property was rated as a 3. That rating means that the property falls between the two categories of 'supports moderate diversity of bird and/or animal life' and 'limited habitat value'.

The presence of an irrigation canal in the western part of the ASI may have resulted in the initial rating. The area immediately adjacent to the canal has natural vegetation that is attractive to wildlife. Only a small portion of the canal is located on the subject property and the little habitat value offered by this area can be protected by canal setbacks and the stringent landscaping standards in the City Code. The Hearings Officer conducted a site visit and found limited bird and animal life on the subject property, likely due to the commercial development in the surrounding area.

Conversely, the majority of the subject property, unlike the canal area of the ASI, is used by transients as a camping ground and has almost no habitat value. The correct rating for the area of the ASI on the subject property, therefore, is a 2. This rating is applied to areas that have "limited habitat value."

TREES AND VEGETATION: The trees and vegetation value of the property was originally rated as a 3. This means the area falls between the rating of having 'some trees and other lower quality vegetation' and having 'little significant vegetation'. At the site visit, the Hearings Officer noted that the vegetation includes some Juniper trees and limited vegetation. However, the Hearings Officer noted no Ponderosa trees and also noted that the site had been denuded due to transient camping use and the grading of the site adjacent to the cell tower. The site should be rated a 2 to reflect the current condition of the site.

NATURAL FEATURES: The City applied a rating of 3 to the ASI in 1999 for natural features because it contained a large rock outcrop that is distinctive in the ASI. The rating description for this specific ASI states that "the Ridge" is the main natural feature of note. This "ridge" is the predominant portion of the ASI that is located on the adjacent property to the west. The City Council finds that the "ridge" is not significantly different from the remainder of the property zoned designated ASI. In fact, the main portion of the "ridge" has already been impacted by the cell tower. The City Council finds the subject property does not have natural features that are distinctive, and therefore should be rated a "2".

EXISTING/ANTICIPATED CONFLICTS WITH ADJACENT LAND USES: The original rating gave the subject property a 3 for conflicts with adjacent land uses. This rating puts the property between the two categories of 'slight conflicts' and 'moderate conflicts'. The rating demonstrates that there is traffic noise on the site as well as impacts from the golf driving range poles. Since the rating of the property in 1999, Hunnell Road has been connected from Robal to Cooley Road. The driving range has been redeveloped with a more intensive use as a car dealership. Additionally, Les Schawb, Sportsman Warehouse, and other commercial uses have been developed in the area. Moreover, this rating requires an analysis of "anticipated" conflicts, which have changed significantly since the ASI designation.

The property to the west is inside the City limits and is zoned Urban Area Reserve (UAR), but designated Mixed Employment (ME), and will likely be rezoned to correspond with that general plan designation. This property will be developed in the future as commercial, office, and a similar mix of uses that are allowed on the subject property. The adjacent property to the west has existing water rights and was irrigated pasture at the time the ASI designation was established. When developed, this irrigated pasture land will no longer exist and will further reduce the viability of the existing ASI on the subject property as a wildlife area. As a result of the above considerations, there is now more traffic noise and severe conflicts with adjacent land uses. The property rating for this criterion should be a 0.

WILDLIFE LINKAGES TO OTHER SITES: In 1999, the City applied a score of 2 to the subject ASI for providing minor wildlife linkages to other sites. It noted that there is some irrigated pasture to the west of the site. This rating was determined prior to Hunnell Road being developed, connecting Robal Road to Cooley Road and prior to the extensive commercial development of the area, both factors which further isolate this ASI from other wildlife areas. The new road connection alone has bisected the wildlife linkage that previously was unobstructed. Based on the new impacts from this bisected link and the commercial development, the rating of 2 for having minor connections should be reduced to a 0 for no connections.

SCENIC RESOURCES: The site received a rating of 3 in 1999 based on the presence of "good Cascade views to the west". The rating also noted that "the ridge with its juniper trees is attractive, but not striking." The significant commercial and transportation infrastructure development in the area has changed the scenic value dramatically. There are views in three directions of surrounding commercial development. Based on the increased impacts from commercial development since the evaluation was conducted, the subject property should have a rating of 2 for limited scenic value.

PUBLIC ACCESS: The area was given a rating of 2, low potential for use, for public access in 1999. It was noted that the site is not very accessible or visible from existing roads, trails, or neighborhoods. Since this evaluation, Hunnell Road has been developed along the easterly boundary of the subject property. This has increased visibility and vehicular access to the property. Unfortunately however, this together with increased commercial development in the area has caused the site to be used as a transient camp, garbage dump, site for drug use, and other undesirable uses. The City Council finds that the correct rating of the subject property is 0 for no potential for public use. The subject property is privately owned and is not near any public parks or open space areas.

TYPE OF WATER PRESENT: The subject ASI was originally rated 1 for presence of water. This rating is applied due to the presence of an irrigation canal along the north western portion of the property. This rating is still accurate.

SUMMARY:

Section 2.7.700 H

A site must have a rating of 20 to qualify for ASI protection. In 1999, the total score for the subject ASI was just 23. Many of the factors that merited a rating of 23 in 1999 have been destroyed or do not exist for the subject property. Based on the revised evaluation above, the total ASI score should be 9. The City's rating system considers property for inclusion in an ASI if it has a rating of 10 for the three criteria: Scenic Resources, Existing Site Use and Natural Features. The City's ASI protection ordinance says that if sites achieve a score of 10 on the three selected criteria, a complete review of all the above criteria is appropriate.

For these three items, the rankings based on existing conditions as discussed above, would score the subject property at 4. Therefore, under the applicable standards the ASI on the subject property would not be designated. Even using the original scoring for these three categories, the score was a 9, which still does not qualify the site for ASI designation. Based on this adopted scoring system, the subject property should be removed from ASI protection.

Although the applicant originally proposed modification rather than removal, the City Council finds that if the site does not qualify under protection, there is no reason to keep a portion of the ASI. The City Council finds that since the ASI no longer qualifies for protection, it should be removed entirely on the subject property. The City Council notes, however, that the remainder of ASI 25 on abutting properties not owned by the applicant are unaffected by this decision.

4. Goal 6 – Air, Water and Land Resources Quality.

FINDING: Goal 6 requires local governments to have comprehensive plans and ordinances consistent with state and federal regulations protecting air, water and land resources. The approval of the requested zone change and plan amendments will not prevent the City from achieving compliance with environmental regulations.

5. Goal 8 – Recreational Needs.

FINDING: The Bend Metropolitan Parks and Recreation District (BMPRD) has planned for the City of Bend's Goal 8 recreational needs. The adopted Areas of Special Interest were not established to provide for the City's recreational needs. Rather, they were created to preserve the natural character of the area, and to protect habitat for wildlife. Therefore, reducing the size of ASI Area 25 will not affect BMPRD's efforts to establish Goal 8 recreational opportunities within the City of Bend.

6. Goal 9 – Economic Development.

FINDING: Statewide Planning Goal 9 requires a local government to inventory areas suitable to serve industrial and commercial development and include such inventories in the City's Comprehensive Plan. This property is zoned and designated for industrial development. The removal of ASI protections will allow the subject property to be used for the use for which it was intended – as a commercial development parcel.

The City Council finds that removing the ASI will enhance the development potential of the property, thereby allowing greater use of the land for economic development purposes.

7. Goal 11 – Public Facilities and Services.

FINDING: Goal 11 is concerned with orderly and efficient provisions of public services. The subject property is located in a developed commercial area where urban services have been provided to serve the area. Thus, approval of this proposal is consistent with Goal 11.

8. Goal 12 – Transportation.

FINDING: Goal 12 is concerned with providing and encouraging a safe, convenient, and economic transportation system. The City's Traffic Engineer agrees with the City's Long Range Planning Division that ASI Area 25 presents access difficulties, based on the City's access management policies, Hunnell Road's designation as an arterial, and the Oregon Department of Transportation's plans for rerouting Hwy 20 and Hwy 97. The City's Traffic Engineer has commented that shared access and cross access easements will be needed to ensure the success and viability of future commercial ventures given the access restrictions to the highway and the arterial street system. Cooley, Robal, and Hunnell Roads will be severely access restricted due to their future heavy volumes and focused roles in handling traffic circulation when the Hwy 97/Hwy 20 refinements occur. Hwy 97 and Hwy 20 will not be usable for access.

The City's Traffic Engineer has recommended requiring the applicant to dedicate cross access and utility easements as cross access or shared access easements, and to present an access and circulation plan that can be assessed and considered by all abutting properties. The City's Traffic Engineer has further recommended requiring the applicant to dedicate another 10 feet of right-of-way for Hunnell Road, an arterial with 40 feet of right-of-way to centerline, which will eventually require 50 feet of right-of-way

to centerline. The City Council finds that no development is proposed at this time, so the recommendation for shared access and cross access easements is premature.

11. Goal 13 – Energy Conservation.

FINDING: Statewide Planning Goal 13 requires that land and uses developed on the land be managed to maximize the conservation of all forms of energy, based upon sound economic principles. The approval of the proposed plan and zone changes will not affect compliance with Goal 13.

2. Approval of the request is consistent with the relevant policies of the Comprehensive Plan that are designated by the Planning Director or designee;

APPLICABLE GENERAL PLAN POLICIES:

PREFACE

Future Plan updates

The General Plan is a document that changes over time to reflect new information and new directions for the future. Amendments or additions to the General Plan text, exhibits, and policies go through a public hearing and review process before being adopted by the governing bodies.

Changes and updates can be generated in at least six ways: * *

□ Changes proposed by individuals or other agencies. At any time an individual, corporation, or public agency can propose a change to the Plan text, land use map, other exhibits, or policies shall be considered as determined by the procedures ordinance. A person or agency proposing a change has the burden to demonstrate a public need and benefit for the change.

FINDING: The applicant is proposing to modify the resource overlay designation of the subject property by reducing the area of the ASI on the subject property. The zoning and plan designation on the subject property is CG and will not be changed with this application.

The above-quoted plan language discusses the need for the applicant to demonstrate the proposed plan amendment is justified by "a public need and benefit for the change." The City has found in previous land use decisions[1] that this language does not constitute an approval criterion. The City Council finds that this language is not an approval criterion. To the extent that it is necessary to make findings regarding the public need and benefit for the proposed change, the City Council makes the following finding.

There is a public need and benefit for the requested resource overlay modification in this case in order to allow the subject property to be used as commercial land. The subject property consists of 5.28 acres, with over 600 feet of frontage along Hunnell Road, a minor arterial. The existing [portion of] ASI [Area 25] on the property comprises 2.9 acres, located primarily in the center of the property. The City Council finds that removal of the entire ASI will increase the development potential of the subject property for its intended use.

The City's plan policies regarding the ASI designation makes it clear that the information on ASI designations and natural features shall be updated at least every three years. As discussed more fully herein, the intensive development of commercial big box type stores and transportation infrastructure in this area since the ASI designation has

13

[1] PZ 07-388

destroyed many of the features that rated the Area 25 for ASI protection. The information in the record serves the public benefit as the City can update the inventory for the Area 25 ASI.

The City Council finds that removal of the ASI will also potentially provide additional road connectivity at such time as the property is developed.

The City Council makes the following finds with regarding to the General Plan policies.

CHAPTER 1 – PLAN MANAGEMENT AND CITIZEN INVOLVEMENT

Development within the Urban Growth Boundary (Plan, page P 1-7)

5. **The city and county will encourage compact development and the integration of land uses within the Urban Growth Boundary to reduce trips, vehicle miles traveled, and facilitate non-automobile travel.**

FINDING: The site is located within the existing Bend urban area, between the two major transportation corridors to the west and east. This application will integrate higher density employment uses with the transportation corridor and surrounding commercial areas. Proximity to the transportation corridor will encourage trip chaining due to the variety of residential and commercial activities near the corridor.

The proposal is consistent with this plan policy.

CHAPTER 2: NATURAL FEATURES AND OPEN SPACE

GOALS

- **to preserve interesting and distinct geologic formations and areas of natural vegetation;**

- **to support the coordinated efforts of public agencies, private organizations and individuals to preserve and enhance the area's natural features and open space. BAGP 2-2.**

FINDING: The goals as listed above are the framework plan on which the text and policies within the comprehensive plan are based. The goals as listed above were addressed through the following policies, providing future direction to the City of Bend. As discussed above, the City has put several of the policies into action, adopting an ASI ordinance that provides development standards for properties that contain a recognized ASI. The adoption of the ordinance provides the Planning Division with the ability to administer standards with the development of property. The standards work to implement the policies and goals in chapter 2, maintaining the natural character of the area. The City Council finds that since the ASI no longer meets the criteria for preservation under the code, removing the ASI is still consistent with the Chapter 2 goal.

OVERVIEW

This chapter describes the many types of open space and natural features that add to the quality of life for our residents. * * * Which natural features have some intrinsic value, and how much land should be preserved, are questions that Bend area residents wrestle with as they seek to balance the value of growth and the value of preserving natural areas. BAGP 2-4.

FINDING: The above is an overview of this chapter of the BAGP. It does not provide approval criteria that can be used in the City's review of this application; however, the overview, like purpose statements in the City's zoning ordinance, provide meaning and help to interpret the goals and policies of this chapter. The application of this language to the present proposal demonstrates why the rock outcroppings on the subject property were not meant to be included in the ASI overlay zone and why the BAGP directs the City to modify the ASI overlay zoning on the subject property.

This above statement shows that overlay zones, such as the ASI overlay, attempt to create balance between preserving the natural character of Bend and allowing development. This balance allows development to occur in certain areas of the City and results in the removal and/or disturbance of some of the area's natural features while identifying other areas that are worthy of preservation at the expense of the development. To make that determination, the City uses a rating system embodied in Chapter 2.7.700, Sections G and H of the Development Code. The application of that rating system to the subject property addressed above shows that the proposed modification is consistent with the above purpose to protect significant features while allowing compatible development. The surrounding area has developed with intensive commercial and transportation infrastructure in a way that isolates the ASI from trails or natural habitat migration corridors. The intensive commercial development impacts the scenic views and open space values. As a result, the subject property is used as a homeless camp due to its easy access, lack of visibility at night, vacancy and lack of activity after commercial business hours. As discussed, the area available for development on the subject property not covered by the ASI is too small and oddly configured to support the commercial uses allowed in this zone. The present proposal protects the significant natural resource feature, the ridge, and the habitat value located along the canal, but allows development of the portion of the ASI area heavily impacted by the development of intensive commercial and transportation infrastructure. This balance is exactly the type of integration between growth and preservation of natural features the BAGP describes for the ASI areas.

> **"Areas of Special Interest" are designated on the Land Use Map because they have features typical of Central Oregon, or represent important wildlife areas. * * * The smaller, scattered Areas of Special Interest on the Plan Map * * *are not specifically inventoried with respect to size, quality, or importance. * * * Because these Areas of Special Interest are small and the scale of the Plan Map is large, the indication on the Map represents the approximate location of the area. More detailed contour maps have been developed and the sites inventoried to determine the specific boundaries of the Areas of Special Interest.**
>
> **Keeping these features relatively intact will help retain the natural character of Central Oregon as the community grows. BAGP 2-5.**

FINDING: Neither the zoning map, nor the BAGP map are a detailed contour map. No detailed contour maps have been officially adopted by the City. Thus, the BAGP map and the zoning map show only the approximate location of the ASI overlay zone. However, contour maps are used by the Planning Division in order to provide a clearer understanding of the ASI boundary.

As indicated in the development code the ASI boundary is determined by several factors topography, significant trees etc. The final determination for the ASI boundary is one that would be made in conjunction with a land use application or building permit.

POLICIES

Natural features and open space policies

1. **The City and Bend Metro Parks and Recreation will inventory and maintain a list of natural features and open space lands that are important to the community.**

FINDING: As discussed above, the City has taken action to satisfy the criterion by adopting an ASI ordinance, which included designation of several ASI's. For the reasons discussed throughout this application, the ASI should not be inventoried as a natural feature or open space on the subject property.

5. **Beginning no later than 1999 and every three years thereafter, the Bend City Council or its designee shall hold public hearings to receive information identifying Areas of Special Interest and natural features. The city and county shall use this information to update and clarify the designation of Areas of Special Interest and natural features on the Plan Map.**

FINDING: This policy makes it clear that the designation of ASI's and the mapping is intended to be inventoried at least every three years and ultimately revised over time. It has been almost eight years since the City addressed this issue in a legislative forum. Therefore, a reevaluation of the boundaries of ASI Area 25 is appropriate.

7. **Major rock outcrops, stands of trees, or other prominent natural features identified in the General Plan shall be preserved as a means of retaining the visual character and quality of the community.**

FINDING: The subject property does not contain a "major rock outcrop." The subject property, also, does not include a major stand of trees. As discussed above, areas of significant features are determined by a scoring system that was established by the ASI ordinance. Based on the scoring system the property would not qualify as an ASI any longer.

CHAPTER 6. THE ECONOMY AND LANDS FOR ECONOMIC GROWTH

POLICIES

General Economic Land Policies and Anticipated Land Needs

6. **The city shall periodically review existing development and use patterns on industrial and commercial lands. The city may consider modifying General Plan and/or Zoning Map designations to make such designations consistent with existing development and use patterns.**

FINDING: The subject property is zoned for commercial use. Based on existing development and use patterns in the vicinity of ASI Area 25, the ASI is no longer appropriate for preservation. Removal of the ASI will facilitate development on the subject property that is consistent with the surrounding commercial area.

3. **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 concurrently with the development of the property; and**

FINDING:

(1) Police Protection. Because the subject property is located within the Bend city limits it will be served by the Bend Police Department.

(2) Fire Protection. Because the subject property is located within the Bend city limits it will be served by the Bend Fire Department which will be able to provide fire protection satisfying the requirements of the fire code.

(3) Sewer and Water. The subject property currently is served by city sewer and water. The specific sewer and water facility requirements will be addressed at the time approval of a development proposal. However, given the type and density of current development on the subject property and surrounding properties the sewer and water facilities and services that meet the city's standards and specifications are adequate.

(5) Schools. The subject property is located within the boundaries of the Bend-La Pine School District and can be adequately served by the district.

(6) Parks. The subject property is located within the boundaries of the Bend Metropolitan Park and Recreation District and can be served by the district.

(7) Transportation Facilities. The subject property is bounded on the east by Hunnell Road, a minor arterial. Additionally the property is located between Cooley Road to the north and Robal Road to the south, both of these roads are minor arterials.

This criterion assumes that a change in use is being proposed by the zone change and plan amendment to a use that was not contemplated by the comprehensive plan and zoning ordinance. The criterion is intended to assure that new demands imposed by the new use can be accommodated by public facilities. In this case, the City's facilities plans assumed that this property would be developed with commercial uses. As a result, the removal of the ASI will have no impact on the assumptions used to develop the facilities plans or on public facilities. The property already has full utilities to the lot. Approval of this application does not change the base zoning classification of this property or the underlying comprehensive plan designation of it and, therefore, does not affect the public facilities, services and transportation networks needed to support a commercial use of the property. Also, all needed public facilities have been provided when the surrounding properties were developed. The subject property has been zoned for commercial use prior to its annexation into the City. When the City annexed this property and prepared the 1998 Comprehensive Plan, the adequacy of public facilities, services and transportation networks to support commercial use on this property was evaluated. This proposal does not change the level of services necessary to supply the subject property once development is proposed.

Impacts on public facilities, services, and transportation networks will be reviewed and the need for any mitigation will be evaluated at the time that a development application is submitted.

4. **Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or land use district map regarding the property that is the subject of the application; and the provisions of Section 4.6.600; Transportation Planning Rule Compliance.**

FINDING: This application can be approved because there is evidence of a change in the neighborhood or community surrounding the subject property such that the subject property should not be extensively encumbered by the existing ASI overlay designation. Changes in the neighborhood or community include:

1. Hunnell Road has been developed along the eastern edge of the property.
2. Adoption of General Plan amendments for the new Urban Growth Boundary.
3. Adoption of the 2008 Economic Opportunities Analysis finding a need for more employment lands. These findings include ways to more efficiently utilize the land within the existing city limits.
4. Redevelopment of the adjacent driving range with a commercial automobile dealership.

COMPLIANCE WITH THE TRANSPORTATION PLANNING RULE.

Section 4.6.300(B)(4) of the Development Code states that approval of a quasi-judicial plan amendment or zone change application shall be subject to the provisions of Section 4.6.600; Transportation Planning Rule Compliance.

Section 4.6.600 Transportation Planning Rule Compliance.

When a development application includes a proposed comprehensive plan amendment or land use district change, or both, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.

FINDING: This proposal does not have any affect on compliance with the Transportation Planning Rule as the City's TSP plan assumes that 100% of the property will be developed with commercial uses. In 1998, the City of Bend updated its General Plan. At that time, it determined that the planned development shown on the comprehensive plan map would comply with OAR 660-012-0060, the TPR. As a result, the change will not have any impact [on] plan assumptions regarding traffic and will not have any affect on the City's transportation system not accounted for in the City's TSP and comprehensive plan. As a result, the change requested will, as a legal matter, have no impact on the transportation facilities.

OAR 660-009-0025

Designation of Lands for Industrial and Other Employment Uses

Cities and counties must adopt measures adequate to implement policies adopted pursuant to OAR 660-009-0020. Appropriate implementing measures include amendments to plan and zone map designations, land use regulations, public facility plans, and transportation system plans.

(1) Identification of Needed Sites. The plan must identify the approximate number, acreage and site characteristics of sites needed to accommodate industrial and other employment uses to implement plan policies. Plans do not need to provide a different type of site for each industrial or other employment use. Compatible uses with similar site characteristics may be combined into broad site categories. Several broad site categories will provide for industrial and other employment uses likely to occur in most planning areas. Cities and counties may also designate mixed-use zones to meet multiple needs in a given location.

(2) Total Land Supply. Plans must designate serviceable land suitable to meet the site needs identified in section (1) of this rule. Except as provided for in section (5) of this rule, the total acreage of land designated must at least equal the total projected land needs for each industrial or other employment use category identified in the plan during the 20-year planning period.

FINDING: The removal of the ASI restrictions from the subject property will allow the property to develop with commercial uses, as intended by this Goal 9 rule. Based on the above changes, the applicant has demonstrated that the proposed amendment is justified.

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ORDINANCE NO. NS-2134

AN ORDINANCE AMENDING THE CITY OF BEND DEVELOPMENT CODE TO CREATE THE JUNIPER RIDGE OVERLAY ZONE AS A SPECIAL PLANNED DISTRICT IN CHAPTER 2.7 AND AMEND THE CORPORATE HEADQUARTERS DEFINITION IN CHAPTER 1.2, DECLARING AN EMERGENCY AND PRESCRIBING AN EFFECTIVE DATE OF NOVEMBER 18, 2009

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The applicant, the City of Bend, initiated a Development Code text amendment request on June 30, 2009.

Section 2. The application was submitted in accordance with Chapter 4.1 of the Bend Development Code. Timely and sufficient notices of two public hearings, pursuant to Section 4.1.510 of the Bend Development Code, have been provided.

Section 3. On October 12, 2009, the City of Bend Planning Commission conducted a public hearing to accept testimony on the request. Following its deliberations, the Planning Commission voted to recommend that the Bend City Council approve the requested text amendment creating Juniper Ridge Overlay Zone, Special Planned District with modifications. The Planning Division staff report and recommendation together with the testimony of the persons testifying at the hearing have been considered and are part of the record of this proceeding.

Section 4. On November 4, 2009 the Bend City Council conducted a public hearing, considered the testimony, the record, and the Planning Commission's Recommendation, and found that the request satisfies the applicable approval criteria Section 4.6.200 of the Development Code, goals and policies of the Bend Urban Area General Plan, and the applicable Statewide Planning Goals. This general finding is supported by the specific finding contained in the Planning Commission's Recommendation to the City Council; file number PZ 09-185.

Section 5. Chapter 2.7 of the Bend Development Code is hereby amended by adding Section 2.7.2000 Juniper Ridge Overlay Zone as shown in Exhibit A.

Section 6. Chapter 1.2 of the Bend Development Code is hereby amended by modifying the corporate headquarters definition and adding a regional corporate office definition as shown in Exhibit B.

Section 7. Because several land sales at the City owned Juniper Ridge site are dependent on this ordinance, its expeditious passage is necessary for the preservation of the peace, economic health and safety. Therefore, an emergency is declared to exist and this ordinance takes effect on November 18, 2009.

Read for the first time the 4th day of November, 2009.

Read for the second time the 18th day of November, 2009.

Placed into effect upon the 18th day of November, 2009.

YES: 6 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 18th day of November, 2009.

Kathie Eckman, Mayor

Attest:

Patricia S. Stell, City Recorder

Exhibit A – Ordinance NS-2134

2.7.2000 Juniper Ridge Overlay Zone

Sections:

2.7.2010 Purpose
2.7.2020 Implementation
2.7.2030 Employment Sub-District
2.7.2040 Town Center Sub-District - reserved
2.7.2050 Educational Sub-District - reserved
2.7.2060 Residential Sub-District - reserved

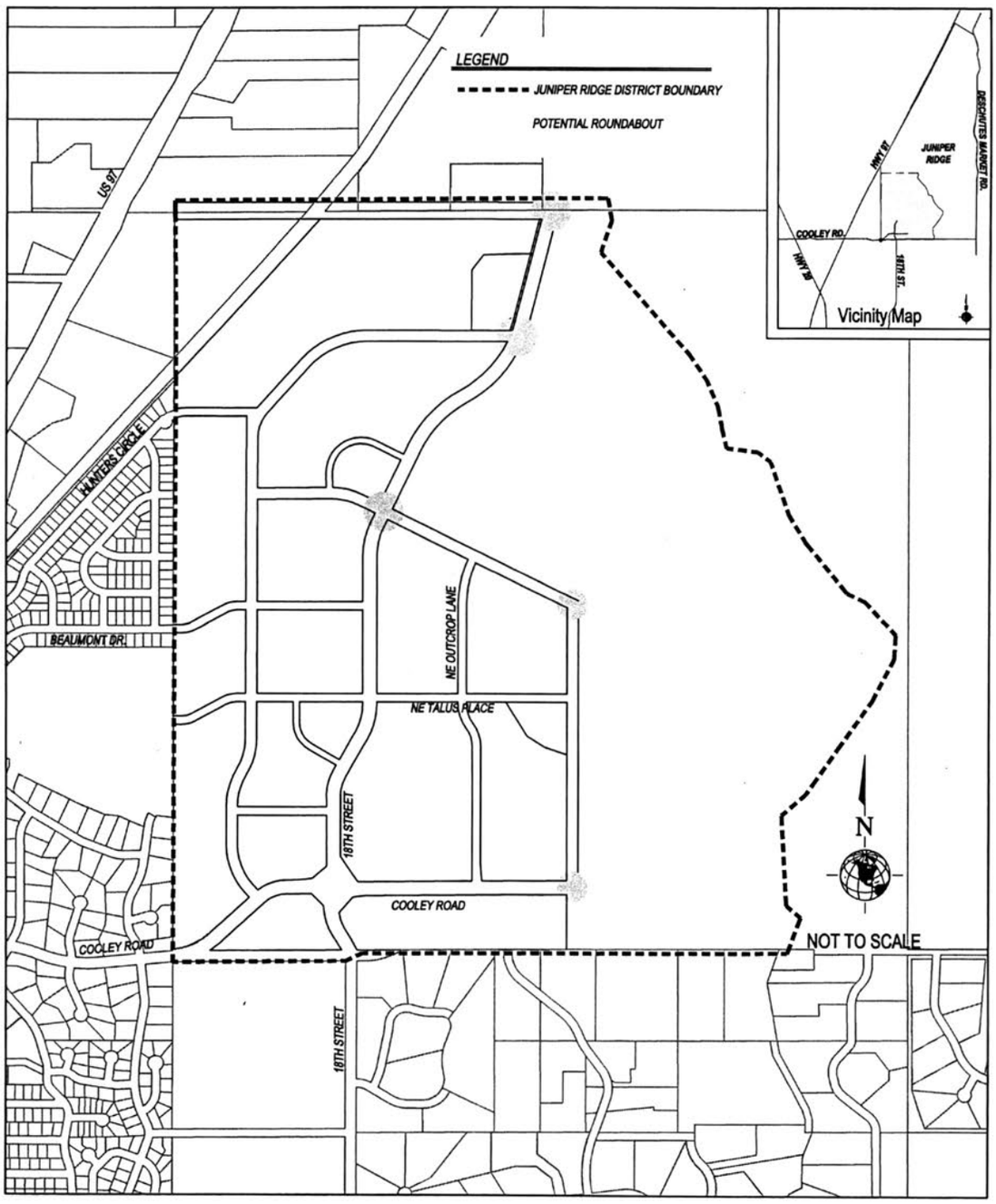
2.7.2010 Purpose

This chapter applies to all development within the Juniper Ridge Overlay Zone. The purpose of the Juniper Ridge Overlay Zone is to promote economical, sustainable, and reasonable growth in Juniper Ridge by creating unique overlay zoning sub-districts for residential, commercial, educational and industrial uses.

2.7.2020 Implementation

A. The Juniper Ridge Overlay Zone consists of the area within the dashed line shown on Figure 2.7.2020 - Juniper Ridge District Map.

Figure 2.7.2020
Juniper Ridge District Map



2.7.2030 Employment Sub-District

A. Purpose. The Juniper Ridge Employment Sub-District is a 320 acre area that is intended to promote economical, sustainable, and reasonable growth by allowing a mix of light industrial uses, offices for research and development, corporate and regional headquarters and accessory uses to serve the needs of these primary uses. The Employment Sub-District will:

- Provide a variety of employment opportunities
- Promote efficient use of the land
- Promote pedestrian and other multi-modal transportation options
- Ensure compatibility of uses within the development and with the surrounding areas

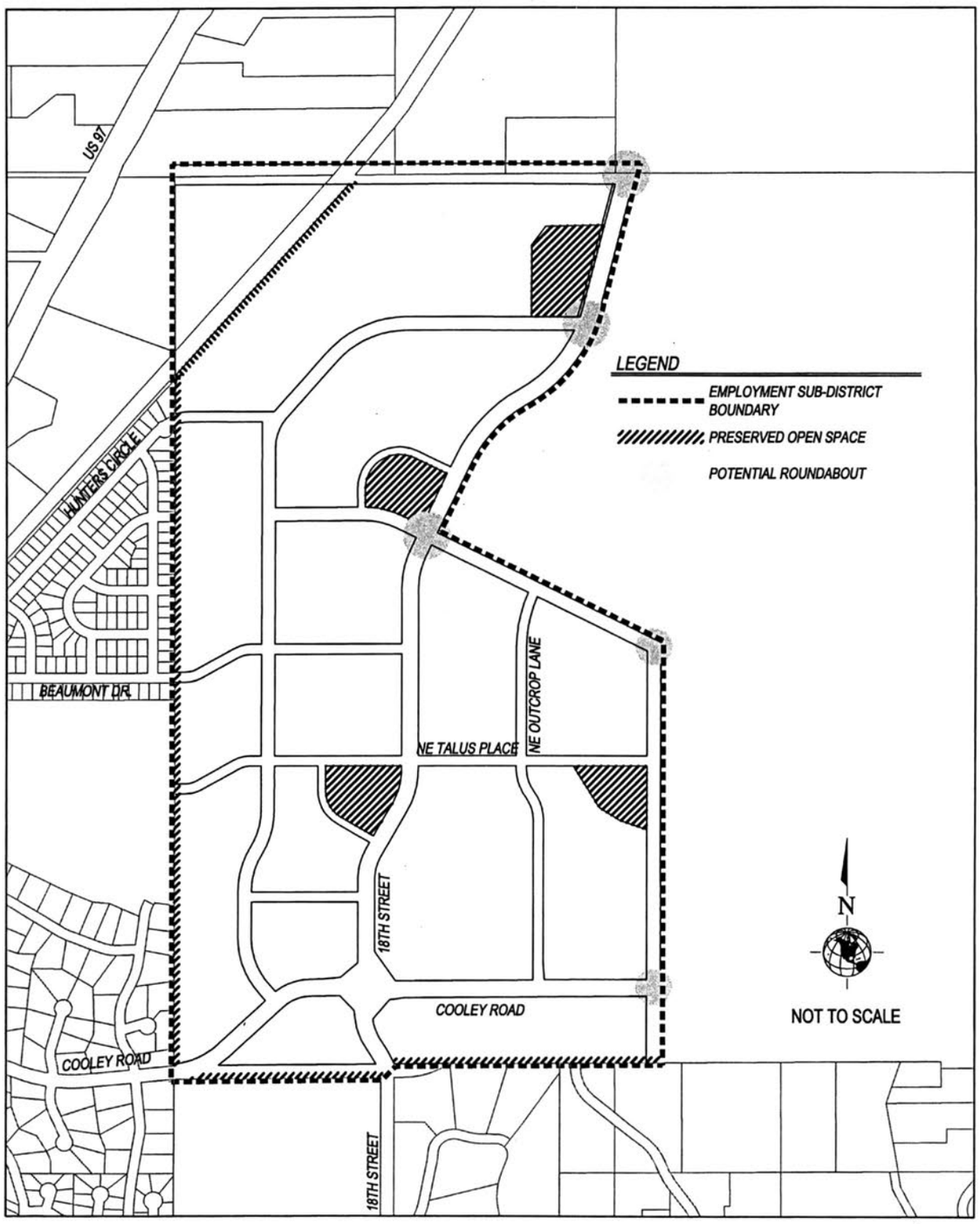
- Create an efficient, interconnected system of streets with standards appropriate to the intensity and type of adjacent use
- Create safe and attractive streetscapes that will meet emergency vehicle access requirements and enhance pedestrian and bicycle access

B. Applicability. The Employment Sub-District Overlay shall apply to all lands that are zoned Industrial Light (IL) and within the boundaries of the Juniper Ridge Overlay Zone depicted in Figure 2.7.2030.A. The standards of this section shall supersede those of the underlying zone unless no special standards within the sub-district are provided.

C. Infrastructure Implementation. Development within the Employment Sub-District shall not occur unless adequate public facilities are in place to serve the property prior to occupancy.

D. Transportation Management Association (TMA). A TMA organized to operate in a manner that is consistent with the Transportation Demand Management goals and policies in the City's Transportation System Plan and Section 4.7.500 will be developed for the Employment Sub-District. All site development review applications within the Employment Sub-District that are subject to review under Chapter 4.2 shall demonstrate conformance with Employment Sub-District TMA program requirements.

Figure 2.7.2030.A
Employment Sub-District Map



E. Permitted and Conditional Uses. The land uses listed in Table 2.7.2030.A are allowed in the Employment Sub District, subject to the provisions of this Chapter. Only land uses that are specifically listed in Table 2.7.2030.A, and land uses that are approved as "similar" to those in Table 2.7.2030.A may be allowed.

F. Limitations on Permitted Uses. Small scale personal and professional service uses shall be limited to an aggregate area total within the Employment Sub-district not to exceed 30,000 square feet.

G. Determination of Similar Land Uses. Similar use determinations shall be made in conformance with the procedures in Chapter 4.1.1400, Declaratory Ruling.

Table 2.7.2030.A Permitted Land Uses

Land Use	Employment Sub-District
Light manufacturing, fabrication, assembly and repair with incidental sales associated with a permitted use	**P**
Heavy manufacturing, assembly and processing of raw materials and recycling	**C**
Wholesale Distribution, Warehousing and Storage	**P**
Research and development facilities	**P**
Production Office (*e.g.,* IT support centers, biotechnology, software/hardware development, broadcast and production studios/facilities.)	**P**
Wholesale processing uses (*e.g.,* dry cleaning, laundry)	**C**
Food and beverage processing and packaging	**P**
Medical and dental laboratories	**P**
Small-scale personal and professional services • Within a freestanding or multi-tenant building, up to 2,500 square feet of gross floor area (*e.g.,* coffee shop / deli, dry cleaners, barber shops and salons, copy centers, banks, financial institutions, and similar uses)* shall be allowed • Within a freestanding or multi-tenant building, up to 10,000 square feet for child care, fitness center and similar uses shall be allowed when a site has frontage and/or direct access to an Arterial or Collector street	**P**
Corporate Headquarters/Regional Corporate Office	**P**
Trade, vocational technical, professional, business schools including university programs serving industrial needs	**P**
Professional consulting services.	**P**
Industrial and professional equipment and supply sales	**P**
Professional office accessory to a primary use, in the same building, up to 30% of the floor area of the primary use.	**P**
*Utility Facilities (*e.g.,* natural gas, electricity, telephone, cable, Telecommunication and similar facilities).	**P**
Public Park and Recreation Facility (not including private Open Space)	**C**

Key to Permitted Uses
P = Permitted; subject to Chapter 4.1
C =Conditional Use, subject to Chapter 4.4

* Special Standards in conformance with Section 2.4.800, Special Development Standards

H. Development Standards

Table 2.7.2030.B Development Standards

Maximum Building Height	65 feet
Minimum Front Yard Setback	10 feet
Maximum Front Setback on Primary Street Frontage	30 feet
Minimum Primary Street Frontage	50 feet
Minimum Side Yard Setback	10 feet (100 feet when abutting a Residential Zone)
Minimum Rear Yard Setback	15 feet (100 feet when abutting a Residential Zone)
Maximum Building Coverage	50 percent of total lot area

I. Additional Development Standards

1. **Off-Street Parking and Loading**. Off-street parking and loading spaces shall be provided as required in Chapter 3.3, Vehicle and Bicycle Parking. All off-street parking or loading areas and access drives shall be paved and continually maintained.

2. **Block Length and Perimeter**. Figure 2.7.2030.B depicts the interconnected, multi-modal transportation network for the Employment Sub-District. Therefore, the block length and perimeter standards of Section 3.1.200 are not applicable in the Employment Sub-District. If during development review it is determined that the street alignments shown in Figure 2.7.2030.B cannot be met due to topography, natural features or other development-related barriers, any development approval for such areas shall provide walkways or access ways in conformance with the provisions of Section 3.1.300, Pedestrian Access and Circulation.

3. **Parking and Loading Setback**. Where the Employment Sub-District abuts a residential zone, any off-street parking and loading areas shall be set back at least 30 feet from the abutting residential property line and the setback area shall be landscaped a minimum of 30 feet to provide a buffer along the adjoining residential property. Landscaping shall be maintained by the property owner and shall conform to the standards in Sections 3.2.200, Landscape Conservation and 3.2.300, New Landscaping.

4. **Maintenance of Undeveloped Property**. All undeveloped property on a developed site shall be either left in a natural state, or landscaped and continually maintained according to the requirements and standards in Sections 3.2.200, Landscape Conservation and 3.2.300, New Landscaping.

5. **Prohibition of Nuisance Activities**. All development shall be designed and constructed so that operation of the uses on the property will not create a nuisance or hazard on any adjacent property or right of way from noise, vibration, heat, glare, dust, or odorous, toxic or noxious matter.

6. **Parking and Circulation**. No vehicle circulation or parking except for access driveways shall be permitted within any minimum front yard setback area.

7. **Corner Lots and Through Lots**. For buildings on lots with more than one street frontage or through lots, the minimum front yard setback standards in Table 2.2.2030.B shall be applied to all street frontages. The maximum setback standard shall be applied to only one of the frontages. Where the abutting streets are of different classifications, the maximum setback standard shall be applied to the higher classification of street.

8. **Fencing.** Continuous lot perimeter fencing shall not be allowed within the Employment Sub-District. Architectural screen walls shall be used to screen service, loading, and exterior material and equipment storage areas, and may be used to screen other on-site amenities such as private patios and employee break areas. Non-decorative fencing may be used to screen areas not visible from rights of way or adjoining properties.

J. Employment Sub-District Street Alignments. Figure 2.7.2030.B, the Juniper Ridge Employment Sub-District Transportation Plan Map, depicts the conceptual alignment of the Sub-District transportation network. Precise street alignments shall be determined through the development review process. Alternate alignments may be approved in accordance with 2.7.2030.I.2, or if it is demonstrated through the development review process that equivalent or improved safety and circulation will be achieved. The final multi-use path alignment shall be established prior to either the associated land division or Site Development Review, whichever occurs first. To ensure consistency, amendments to street classifications in the TSP, are incorporated into Figure 2.7.2030.B, i.e. if the TSP is amended to reclassify a collector street as an arterial, Figure 2.7.2030.B is equally amended.

K. Employment Sub-District Street Cross Sections. Figures 2.7.2030.C.1 and 2.7.2030.C.2 depict the typical street cross-sections in the Employment Sub-District. Alternative cross sections that respond to site-specific circumstances may be approved by the City Engineer through the development review process.

L. Employment Sub-District Access Standards. Due to large block sizes and large lot sizes, multiple access points to each lot in the Employment Sub-District will be permitted, including accesses to higher order transportation facilities, as long as the standards of this section are met. The following access standards supersede the vehicular access management standards of Chapter 3.1.

1) Minimum Access Spacing
   a. Access points on local streets shall be a minimum of ten feet (10') apart as measured from edge of driveway to edge of driveway.
   b. Access points on Collector Streets shall be a minimum of three hundred feet (300') apart as measured from centerline of access to centerline of access.
   c. Access points on Arterial Streets shall be a minimum of three hundred feet (300') apart as measured from centerline of access to centerline of access.

2) Additional Access Standards
   a. Driveways onto arterials and collectors may have directional restrictions (i.e. right-in/right-out only) depending on the roadway's characteristics, including number of lanes, queuing at nearby intersections/driveways, and locations of signals or roundabouts, and locations of conflicting accesses.
   b. Directional restrictions will be determined by the City Engineer after a review of the Transportation Impact Analysis provided by the applicant.
   c. Crossing of the multi-use path by driveways shall not be allowed unless there are no other access options for the site. If allowed, a driveway access crossing a multi-use path shall be constructed to provide shared access to adjacent property, when applicable.
   d. Driveways shall not be located within 300 feet of an intersection.
   e. Only one access is permitted per street frontage (including shared access), however lots may have multiple street access points, so long as minimum access spacing requirements are met.
   f. The centerlines of driveways are required to align across arterials and collectors to minimize conflicting turning movements and allow for adequate turn storage.
   g. Shared access may be required, in order to comply with these access requirements. All access driveways on Local Truck Roads shall provide shared access to adjacent property to the extent practicable.

3) Exceptions to the Access Standards of this Section. Alternate access may be approved by the City Engineer if all of the following criteria are met:
   a. The minimum access spacing standards of this section cannot be met.
   b. Shared access with an adjoining property cannot be established.
   c. Access to the roadway at the proposed location is critical to the function of the development on the property.
   d. Operations and safety of the public road system is maintained for a minimum analysis period of 15 years as demonstrated in a Transportation Impact Analysis, including an assessment for the 95% queue. The queuing between the proposed driveway and an intersection shall not overlap.

e. On arterial and collector streets, directional turn restrictions are applied.
f. AASHTO intersection sight distances are available at the proposed access point.

Figure 2.7.2030.B
Employment Sub-District Transportation Plan Map

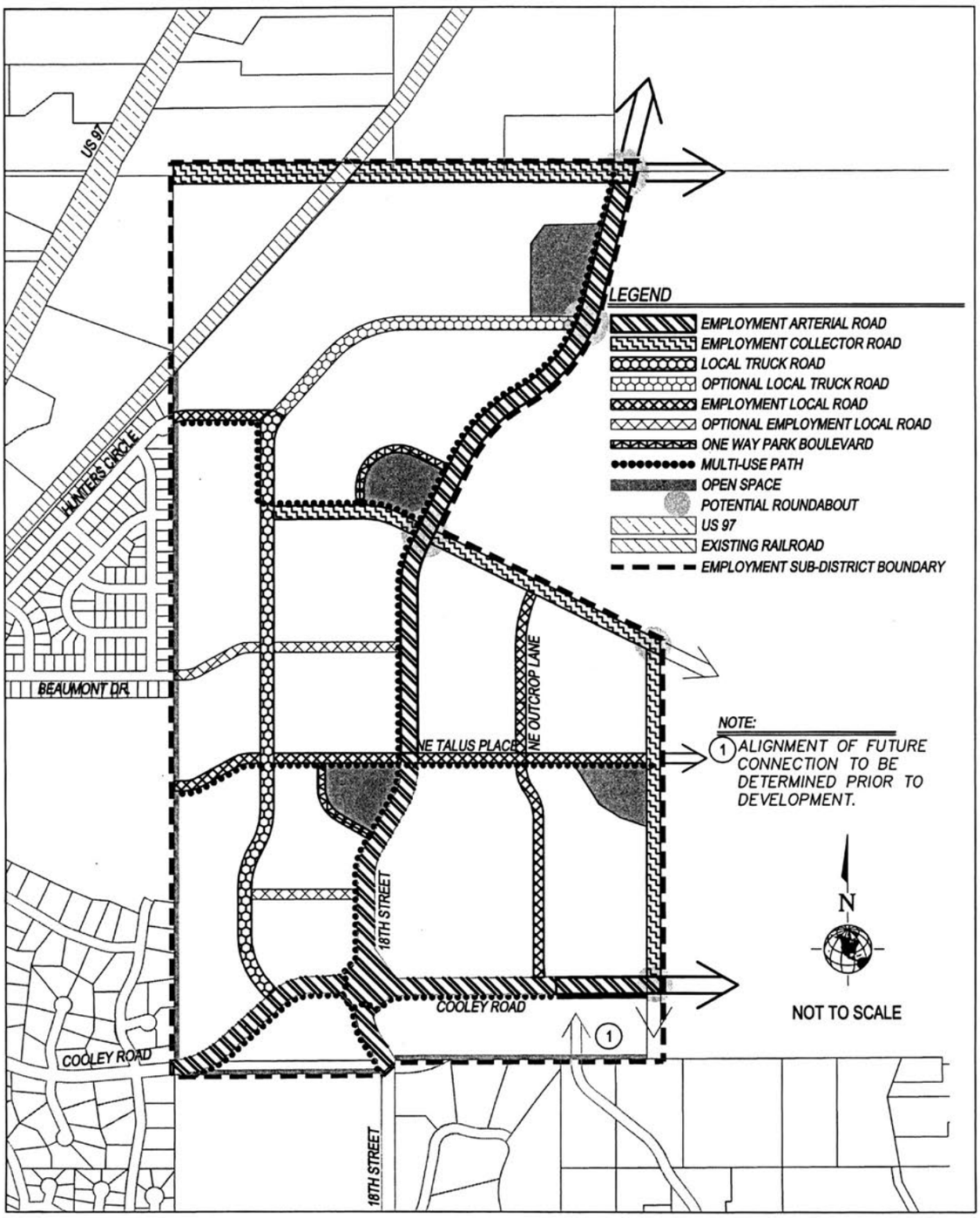
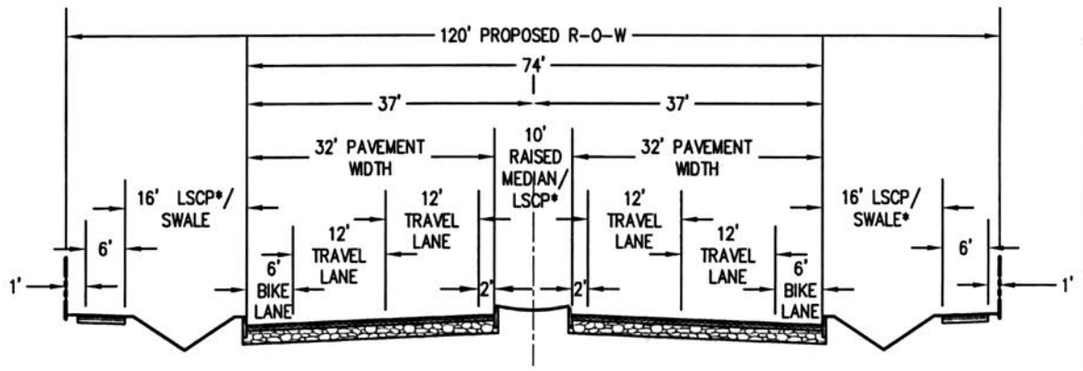
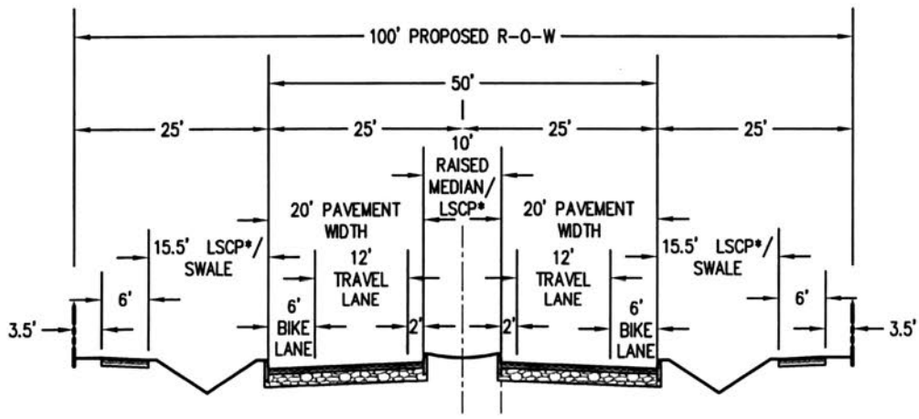


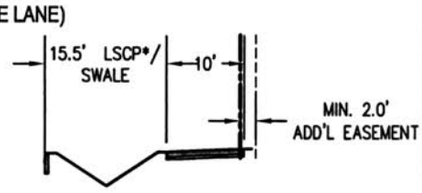
Figure 2.7.2030.C.1
Employment Sub-District Street Cross Sections



JUNIPER RIDGE EMPLOYMENT SUB-DISTRICT
EMPLOYMENT ARTERIAL ROAD (FIVE LANE)



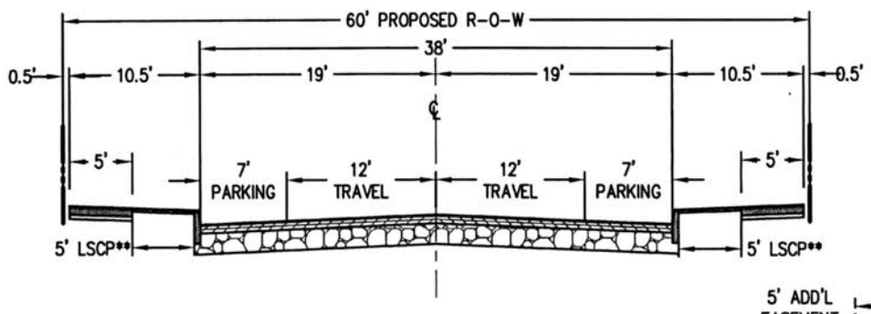
JUNIPER RIDGE EMPLOYMENT SUB-DISTRICT
EMPLOYMENT ARTERIAL ROAD (THREE LANE)



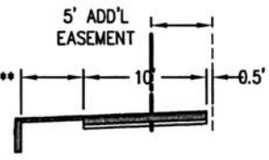
MULTI-USE PATH ON
EMPLOYMENT ARTERIAL ROAD

*LSCP = LANDSCAPE AREAS

Figure 2.7.2030.C.2
Employment Sub-District Street Cross Sections



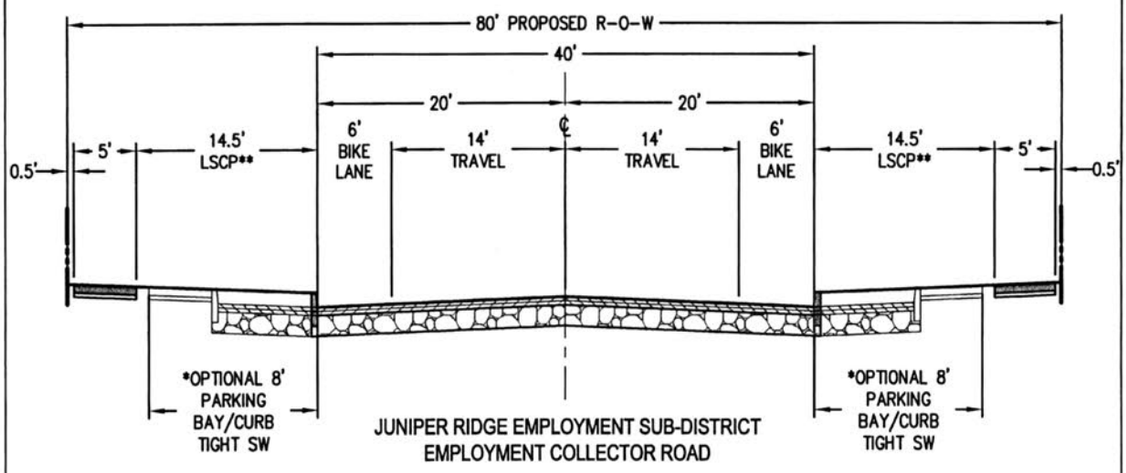
JUNIPER RIDGE EMPLOYMENT SUB-DISTRICT
EMPLOYMENT LOCAL ROAD



MULTI-USE PATH ON
EMPLOYMENT LOCAL ROAD

NOTE:

RESTRICT PARKING NEAR INTERSECTIONS TO PROVIDE ADEQUATE TRUCK TURNING AREAS

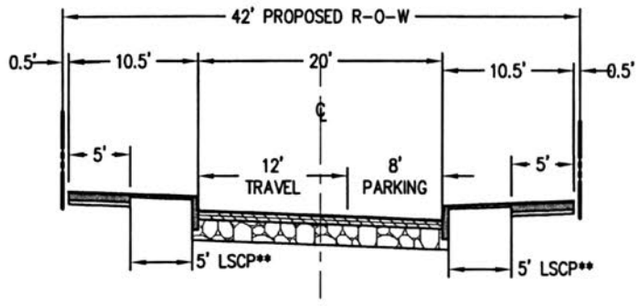


JUNIPER RIDGE EMPLOYMENT SUB-DISTRICT
EMPLOYMENT COLLECTOR ROAD

*ANY PROPOSED OPTIONAL PARKING MUST BE STAGGERED SO PARKING BAYS ARE LOCATED ONE SIDE OF ROAD ONLY.

**LSCP = LANDSCAPE AREAS

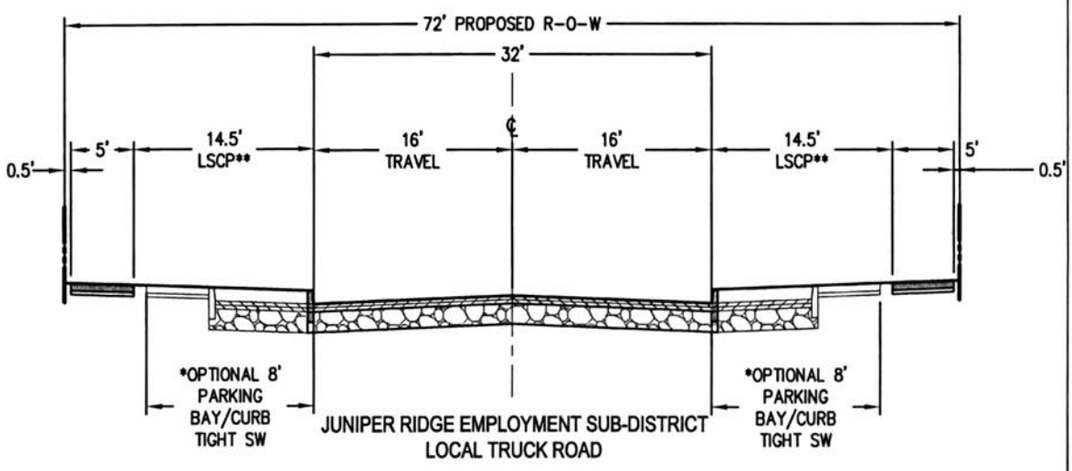
Figure 2.7.2030.C.3
Employment Sub-District Street Cross Sections



JUNIPER RIDGE EMPLOYMENT SUB-DISTRICT
ONE-WAY PARK BOULEVARD

NOTE:

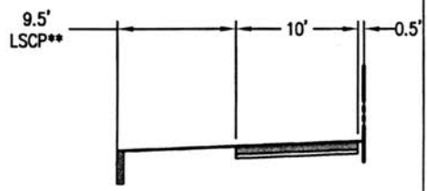
RESTRICT PARKING NEAR INTERSECTIONS TO PROVIDE ADEQUATE TRUCK TURNING AREAS



JUNIPER RIDGE EMPLOYMENT SUB-DISTRICT
LOCAL TRUCK ROAD

*ANY PROPOSED OPTIONAL PARKING MUST BE STAGGERED SO PARKING BAYS ARE LOCATED ONE SIDE OF ROAD ONLY.

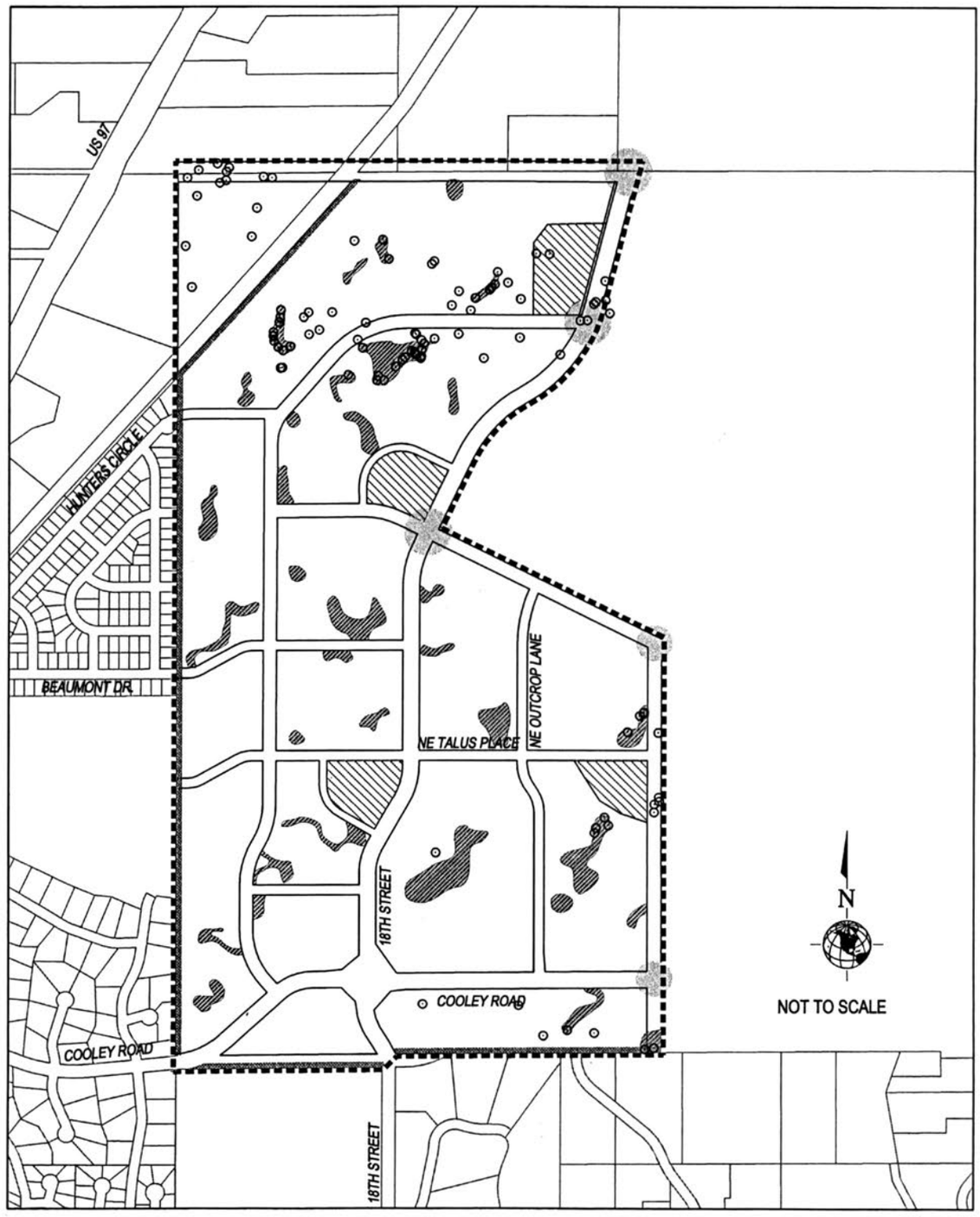
**LSCP = LANDSCAPE AREAS



MULTI-USE PATH ON
LOCAL TRUCK ROAD

M. Employment Sub-District Natural Resource Areas Significant Heritage trees, rock outcroppings, open spaces and buffer areas within the Employment Sub-District are identified in Figure 2.7.2030.D, Employment Sub-District Natural Resource Identification Map. All Open Space Areas and Open Space Buffers are required to be retained and no development will be allowed in these areas. Heritage trees and rock outcroppings identified in Figure 2.7.2030.D are mapped solely with the intention of providing guidance to development and site design, with the overall goal of preserving as many of these resources as is practicable. The City may allow one or more of the exceptions to development standards listed in Section 3.2.200.D if identified heritage trees and/or rock outcroppings in Figure 2.7.2030.D are preserved by a proposed development. The Heritage Trees identified Figure 2.7.2030.D are based upon the *Phase I: Juniper Ridge Ecological Site Assessment – Summary Report and Maps*, prepared by Gene Hickman and Matt Shinderman, 2007.

Figure 2.7.2030.D
Employment Sub-District Natural Resource Identification Map



2.7.2040 Town Center Sub-District – reserved for future
(This subsection shall be developed and codified at a future date to be determined)

2.7.2050 Educational Sub-District – reserved for future
(This subsection shall be developed and codified at a future date to be determined)

2.7.2060 Residential Sub-District – reserved for future
(This subsection shall be developed and codified at a future date to be determined)

Ordinance NS – 2134
Exhibit B

Corporate Headquarters means a building or portion of a building in which persons are employed in the management or direction of a business consisting of one or more **companies, or** divisions or groups of companies. ~~To be considered a corporate headquarters in an industrial zone, the office shall be directly associated with an industrial use on the same site or meet the applicable employee threshold and site size specified elsewhere in this Code. Corporate headquarters or regional headquarters may be permitted as part of a light manufacturing use. Corporate and regional headquarters may also stand alone provided the headquarter site is ten acres or more and the use shall have at least 100 or more employees at the time of occupancy.~~ **A Corporate Headquarters shall be directly associated with a permitted or conditional use on the same site, or may stand alone provided the site area is ten acres or more, and the facility is sized for at least 100 employees.**

Regional Corporate Office: a building or portion of a building in which persons are employed in the management or direction of a business consisting of one or more divisions or groups of companies. Commerce with the general public is not a normal function of a regional corporate office.

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2009-54460

$53.00

00706181200900544600030039

12/28/2009 03:53:38 PM

D-IPPS Cnt=1 Stn=2 TM
$10.00 $11.00 $16.00 $10.00 $6.00

Do not remove this page from original document.

Deschutes County Clerk

Certificate Page

If this instrument is being re-recorded, please complete the following statement, in accordance with ORS 205.244:

Re-recorded to correct [give reason] _____
previously recorded in Book _____ and Page _____,
or as Fee Number _____.

ORDINANCE NO. NS-2135

AN ORDINANCE VACATING A PORTION OF GEORGIA AVENUE AND LAVA ROAD

FINDINGS

A. Jim S. Guild, Petitioner, petitioned the Bend City Council to vacate the portion of Georgia Avenue and Lava Road described in Exhibit A.

B. The petition included sufficient consents from nearby landowners to comply with ORS 271.080.

C. The City published a notice of public hearing for the requested vacation in the *Bend Bulletin* on November 15, 2009 and November 22, 2009.

D. The City posted notice of the street vacation at or near each end of the proposed vacation and in at least two conspicuous places in the proposed vacation area on November 6, 2009.

E. The City Council held the hearing as noticed on December 2, 2009.

F. The City Council has considered written submissions, oral testimony from the hearing, and materials submitted by staff. The City Council concludes that all required procedures have been followed, that statutory standards have been met, that the public interest will not be prejudiced by the proposed vacation and that the property should be vacated.

G. Petitioner has provided value to the City in the form of labor, materials and equipment to build the Mary Jane Pocket Park in the amount of $36,062.67. Those contributions exceed the value of the property being vacated, which is $10,000.

Based on these findings,

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The portion of street described in Exhibit A is vacated. No charge or assessment is to be imposed on Petitioner or Petitioner's property, given the value of the improvements made by the petitioner to the adjacent Mary Jane Pocket Park. Petitioner shall pay City the cost of recording this ordinance with the County.

Section 2. The City Recorder shall cause a certified copy of this ordinance to be filed and recorded in the Office of the County Clerk of Deschutes County, Oregon on compliance with the condition imposed by Section 1.

Read for the first time the 2nd day of December, 2009.

Read for the second time the 16th day of December, 2009.

Placed for passage the 16th day of December, 2009.

Yes: 6 No: 0

Authenticated by the Mayor the 16th day of December, 2009.

Kathie Eckman

Kathie Eckman, Mayor

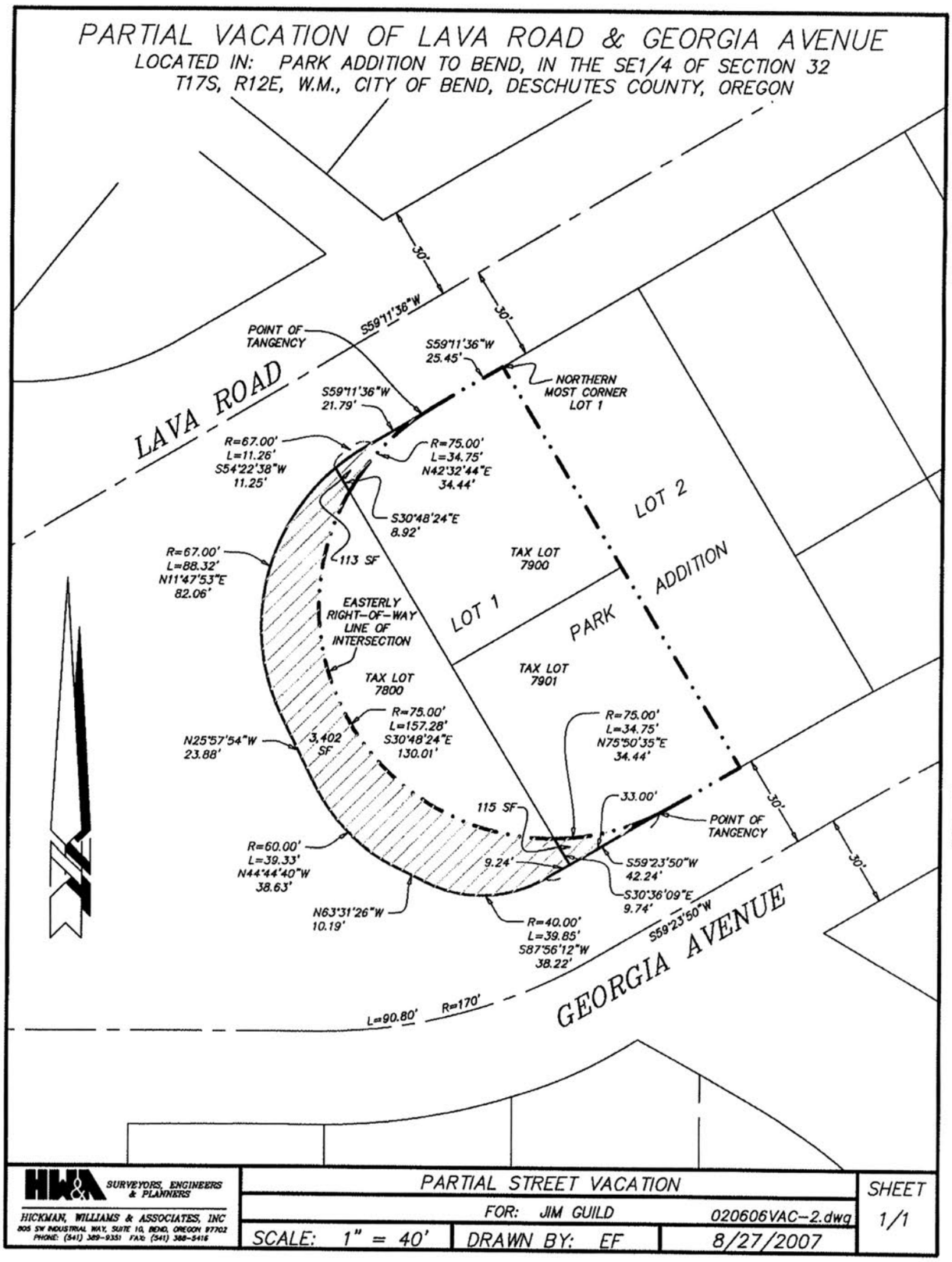
Attest:

Patricia S. Stell

Patty Stell, City Recorder

After recording return to:
City of Bend
710 NW Wall
Bend OR 97702

EXHIBIT A


PARTIAL VACATION OF LAVA ROAD & GEORGIA AVENUE
LOCATED IN: PARK ADDITION TO BEND, IN THE SE1/4 OF SECTION 32
T17S, R12E, W.M., CITY OF BEND, DESCHUTES COUNTY, OREGON
LAVA ROAD
GEORGIA AVENUE
POINT OF TANGENCY
S59°11'36"W
S59°11'36"W 25.45'
NORTHERN MOST CORNER LOT 1
S59°11'36"W 21.79'
R=67.00' L=11.26' S54°22'38"W 11.25'
R=75.00' L=34.75' N42°32'44"E 34.44'
S30°48'24"E 8.92'
R=67.00' L=88.32' N11°47'53"E 82.06'
113 SF
EASTERLY RIGHT-OF-WAY LINE OF INTERSECTION
TAX LOT 7900
TAX LOT 7901
TAX LOT 7800
LOT 1
LOT 2
PARK ADDITION
R=75.00' L=157.28' S30°48'24"E 130.01'
N25°57'54"W 23.88'
3,402 SF
R=75.00' L=34.75' N75°50'35"E 34.44'
33.00'
115 SF
POINT OF TANGENCY
R=60.00' L=39.33' N44°44'40"W 38.63'
9.24'
S59°23'50"W 42.24'
S30°36'09"E 9.74'
N63°31'26"W 10.19'
R=40.00' L=39.85' S87°56'12"W 38.22'
S59°23'50"W
30'
L=90.80' R=170'
HW&A SURVEYORS, ENGINEERS & PLANNERS
HICKMAN, WILLIAMS & ASSOCIATES, INC
805 SW INDUSTRIAL WAY, SUITE 10, BEND, OREGON 97702
PHONE: (541) 389-9351 FAX: (541) 388-5416
PARTIAL STREET VACATION
FOR: JIM GUILD
020606VAC-2.dwg
SHEET 1/1
SCALE: 1" = 40'
DRAWN BY: EF
8/27/2007

ORDINANCE NO. NS-2136

AN ORDINANCE AMENDING CHAPTER 9 – BUILDING CODE
TO EXTEND BUILDING APPLICATION EXPIRATION REQUIREMENTS

Findings

A. The current state of the economy has affected the ability of builders and property owners to proceed with or complete the construction of buildings that have received building permits on the schedule the originally contemplated.

B. Bend Code Sections 9.232 and 9.234 currently allow only one extension of a building permit. The building permit expiration in the Bend Code is not a requirement in the Uniform Building Codes and may cause an undue hardship upon Bend citizens with approved building applications awaiting improved economic conditions.

C. It is appropriate to allow time extensions for building permits if applicable building codes and land use standards have not changed.

Based on these findings,

THE CITY OF BEND ORDAINS AS FOLLOWS:

Bend Code Sections 9.232 and 9.234 are amended as follows, with ~~strikethrough~~ indicating material being deleted and ***bold italics*** indicating material being added:

9.232 Expiration of Plan Reviews

Applications for which no permit is issued within 180 days following the date of the application shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official. The building official may extend the time for action by the applicant for a period not exceeding 180 days on request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. ~~No application shall be extended more than once.~~ In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee.

9.234 Permit Expiration, Extension and Reinstatement

Every permit issued by the building official under the provisions of this code shall expire by limitation and become null and void if the building or work authorized is not commenced within the time limitations set forth in this section.

Every permit issued by the building official shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. The work shall not be considered suspended or abandoned where the permittee has pursued activities deemed by the building official to indicate the intent to start and complete the project. The building official may require the permittee to document these activities.

~~Every permit issued by the building official shall expire by limitation and become null and void 24 months after the date of permit issuance. If the building or work authorized by such permit has not received final inspection approval prior to the permit expiration date, all work shall stop until a new permit is obtained for the value of the work remaining unfinished.~~

~~EXCEPTION: At the time of permit issuance the building official may approve a period exceeding 24 months for completion of work when the permittee can demonstrate that the complexity or size of~~

~~the project makes completing the project within 24 months unreasonable.~~

Any permittee holding an unexpired permit may apply for an extension of the time within which work is to be completed under that permit when the permittee is unable to complete work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 180 days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented work from being completed. ~~No permit shall be extended more than once.~~ ***Extensions may be granted only if (i) the applicable building codes have not changed since the permit was issued and (ii) applicable land use standards have not changed since the land use approval or, for outright permitted uses, the date of the building permit application. Extensions may only be granted if the Building Official determines that the building project is likely to be completed within a reasonable time.***

Where a permit has expired, the permit can be reinstated and the work authorized by the original permit can be recommenced, provided the following are met:

(a) The Building Code under which the original permit was issued and other laws which are enforced by the code enforcement agency have not been amended in any manner which affects the work authorized by the original permit.

(b) No changes have been made or will be made in the original plans and specifications for such work.

(c) The original permit expired less than one year from the request to reinstate.

The building official can review and approve exceptions at the building official's discretion if the preceding criteria cannot be met.

The fee for a reinstated permit ***will be proportional to the amount of review and inspection required as compared to the amount required for a new application and permit.*** ~~shall be one-half the amount required for a new permit. Where the request for reinstatement does not comply with the preceding criteria, a new permit, at full permit fees, shall be required.~~

Read for the first time the 2nd day of December, 2009.

Read for the second time the 16th day of December, 2009.

Placed upon its passage the 16th day of December, 2009.

YES: 6 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 16th day of December, 2009.

Kathie Eckman

Kathie Eckman, Mayor

Attest:

Patty Steff

Patty Steff, City Recorder

ORDINANCE NO. NS-2137

AN ORDINANCE UPDATING THE CITY OF BEND'S SOLAR STANDARDS BY AMENDING CHAPTER 1.2, DEFINITIONS AND CHAPTER 3.5, OTHER DESIGN STANDARDS OF THE BEND DEVELOPMENT CODE, ORDINANCE NO. NS-2016.

Findings:

A. The City of Bend adopted its Development Code, Ordinance No. NS-2016, on July 5, 2006. Central Oregon LandWatch objected to the removal of provisions protecting solar access by allowing certain exemptions to the code. Specifically, the Oregon Department of Land Conservation and Development (DLCD) concluded that the exemptions in Section 3.5.400(D)(3) conflicted with Goal 13 and ORS 227.190. On January 10, 2007, DLCD remanded this section of the code, directed the City to demonstrate compliance with Goal 13 and ORS 227.190, and urged the City to work with the Oregon Department of Energy on this subject.

B. The Bend Planning Division sent a copy of the City's proposed amendments to its Solar Standards to the Oregon Department of Energy in June 2009, and received comments back in July 2009.

C. The Bend Planning Commission held a duly noticed public hearing on the proposed amendments on September 14, 2009, and the public hearing was continued to October 26, 2009. Following the public hearings, the Planning Commission refined the proposed amendments to address comments from developers, property owners, the Oregon Department of Energy, and DLCD.

D. The City Council held a duly noticed public hearing on December 2, 2009. Based on the entire record, including all testimony, evidence, and the recommendation of the Planning Commission, the Council concluded that the application meets all criteria for approval and should be granted.

Based on these findings,

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council held a public hearing to consider the proposed text amendments and the Planning Commission's recommendation and found that the proposed amendments to the Development Code are consistent with the applicable criteria in Chapter 4.6 of the Development Code. In addition to the findings listed above, the Bend City Council adopts the findings in Exhibit B.

Section 2. Chapters 1.2 and 3.5 of the Bend Development Code are hereby amended as shown in Exhibit A.

Read for the first time the 2nd day of December, 2009.

Read for the second time the 16th day of December, 2009.

Placed upon its passage the 16th day of December, 2009.

YES: 5 NO: 1

Authenticated by the Mayor the 16th day of December, 2009.

Kathie Eckman

Kathie Eckman, Mayor

ATTEST:

Patricia S. Stell

Patricia Stell, City of Bend Recorder

EXHIBIT A

City of Bend
Development Code
Tune-Up Package #2A:
Solar Standards

City Council 2nd Reading
December 16, 2009

Prepared by:
City of Bend Planning Division

Note:
Text in underlined typeface is proposed to be added.
Text in ~~strikethrough~~ typeface is proposed to be deleted.
*** Indicates where text from the existing code has been omitted because it will remain unchanged.

Chapter 1.2 Definitions

***

Exempt Vegetation means a tree or other plant that is shown by the sun chart accompanying a solar access permit application to cast existing shade on a protected area.

***

Northern Property Line means the northerly edge of the lot or parcel on which an applicant's structure is located, unless directly north of the lot or parcel is an unbuildable area, in which case northern lot line means the northerly edge of the unbuildable area.

North-South Lot Dimension means the length of a line beginning at the midpoint of the northern property line and extending a southerly direction perpendicular to the northern property line until it reaches a property boundary.

***

Solar Access means protection from shade for a specific area during specific hours and dates, but not including protection from shade cast by exempt vegetation.

Solar Access Permit means the instrument issued by the City which limits the size of non-exempt vegetation on certain lots in the vicinity of a recorded solar collector.

Solar Heating Hours means the hours and dates during which solar access is provided.

Solar Height Restriction means the allowable height of buildings, structures, and non-exempt vegetation on a property burdened by the solar access of another property.

***

Sun Chart means a photograph or photographs, taken in accordance with the guidelines of the Community Development Director, which plots the position of the sun during each hour of the day and each month of the year relative to a protected area. The sun chart shall contain at a minimum:

(a) Solar altitude in 10 degree increments;

(b) Solar azimuth measured from true south in 15 degree increments;

(c) If the solar collector is more than 20 feet wide, the southern skyline as seen from the two end points and from the center point of the lower edge of the protected area; or

(d) A clear delineation of the existing objects which cast shadows on the protected area, including hills, structures, and deciduous and evergreen vegetation.

Chapter 3.5 Other Design Standards

Sections:

3.5.100 Density Transfers
3.5.200 Outdoor Lighting Standards
3.5.300 Special Setbacks
3.5.400 Solar ~~Setback~~ Standards
3.5.500 Solar Access Permits

***

3.5.400 Solar ~~Setbacks~~ Standards

A. Purpose. Solar standards are utilized to create lot divisions, layouts and building configurations to help preserve access to sunlight to one and two family dwellings. ~~The purpose of this section is to provide as much solar access as feasible during the winter solar heating hours to existing or potential buildings by requiring all new structures to be constructed as far south on their lots as is feasible and necessary. To achieve compliance, this section requires setbacks based on the shadow that will be produced by a structure on the Winter Solstice, the shortest day of the year when the sun is at its lowest angle. The solar heating hours are a four hour period centered around the solar zenith. Since the sun will be at its lowest angle at either end of the solar heating period, the shadows produced two hours before and two hours after the solar zenith represent the worst case scenario. At these two times on the Winter Solstice, the sun is only 17 degrees above the horizon. The shadow lengths at these two times of day can be calculated using the solar calculator found in Table 3.5.400 at the end of this Section.~~

~~1. The shadow cast by an object two hours before and after the solar zenith on December 21 will be 29 degrees west of true north in the morning and 29 degrees east of true north in the afternoon. When measuring solar setbacks, the shadow length will be measured from the highest shade producing point of a structure along the 29 degree angles rather than due north. When measuring the setback, the two setback distances shall be averaged if they are different due to slopes or an angled lot line. A template for measuring these setbacks is attached.~~

~~2. The solar setback does not attempt to keep the shadow of a building from crossing a property line. Instead, it attempts to limit the height of the shadow at the north property line of the lot on which a building is located. The "south roof" protection standard limits the height of the shadow to 14 feet at the property line.~~

~~3. Solar setbacks shall only be measured to a north lot line. North lot lines are those on the northern edge of a lot with an angle of more than 45 degrees east or west of true north. Depending upon its configuration, it is possible for a lot to have more than one north lot line, or none. When a north lot line abuts a street or common area, the setback will be measured to the next lot line across the street or common area.~~

B. Solar Lot Standards. ~~Unless otherwise exempted, every new structure or addition to an existing structure shall meet the following standards except as provided in Section C below:~~

1. Applicability. Solar lot standards apply to the creation of lots within subdivisions in RS and RM zones.

2. Solar Lot Requirements. In RS and RM zones, at least 70% percent of the lots in a subdivision shall have a minimum north-south lot dimension of 80 feet or more.

3. Exceptions to the Solar Lot Requirements. A proposed subdivision shall qualify for an exception to Section 3.5.400(B)(2) if one or more of the following development constraints are present:

   a. Compliance with applicable street standards or public street plans requires a street configuration that prevents the lot from being oriented for solar access.

   b. An existing public easement or right-of-way prevents the lot from being oriented for solar access.

   c. There is a significant natural feature on the site that will continue to exist after the site is developed, and that prevents the lot from being oriented for solar access.

4. Exemptions to the Solar Lot Requirements. A proposed lot shall not be identified as a "solar lot" but shall be counted as a lot that satisfies Section 3.5.400(B)(2) when the lot satisfies (a), (b), (c) or (d) of this subsection.

   a. Slopes. The lot has an average slope of 15 percent or more in a direction greater than 45 degrees east or west of true south.

   b. Existing Off-Site Shade. The lot is within the shadow pattern of off-site features, such as but not limited to buildings, topography, or coniferous trees or broadleaf evergreens, which will remain after development occurs on the site from which the shade is originating.

      i. Shade from existing or approved off-site buildings or structures and from topographic features is assumed to remain after development of the site.

      ii. Shade from vacant developable areas off-site is assumed to be the shadow pattern that would result from the largest building allowed at the closest setback allowed on adjoining land, whether or not that building now exists.

      iii. Shade from coniferous trees or broadleaf evergreens is assumed to remain after development of the site if that vegetation is situated in a required setback; or part of a developed area, public park, or legally reserved open space; or part of landscaping or other features required pursuant to this code.

   c. Existing On-Site Shade. The site, or portion of the site for which the exemption is sought, complies with at least one of the following:

      i. The site is within the shadow pattern of on-site features such as, but not limited to, buildings and topography which will remain after the development occurs.

      ii. The site contains coniferous trees or broadleaf evergreens at least 30 feet tall

and more than 8 inches in diameter measured four feet above the ground which have a crown cover over at least 80 percent of the site or relevant portion. The applicant can show such crown cover exists using a scaled survey or an aerial photograph. If granted, the exemption shall be approved subject to the condition that the applicant shall preserve at least 50 percent of the non-solar friendly vegetation that causes the shade that warrants the exemption. The applicant shall file a note on the plat or documents in the office of the county recorder binding the applicant to comply with this requirement.

d. Housing Mix. The lot is designated for a housing type other than single-family detached dwellings in a proposed subdivision that identifies at least 10% of the lots for a housing type other than single-family detached dwellings.

~~1. All new structures or additions to existing structures shall meet the standard for south roof protection set forth in Table 3.5.400 .~~

~~**C. Exceptions**. The solar setback shall not apply if the applicant establishes:~~

~~1. That the structure cannot be located on the lot without violating the requirements contained in Table 3.5.400; and~~

~~2. That the structure is built with a highest shade producing point as far south as practicable; and~~

~~a. That the structure is a single family residence with a highest shade producing point less than or equal to 20 feet high; or, if not a single family residence;~~
~~b. That it is a permitted or conditional use for the lot with a highest shade producing point less than or equal to 20 feet high.~~

~~**D. Exemptions.** The governing body may exempt from the provisions of this section any area which it determines to be already substantially shaded due to heavy vegetation, steep north facing slopes, and any area or zone in which taller buildings are planned. As such, the following areas are hereby exempted from the standards of this section:~~

~~1. When there is already substantial shading due to existing vegetation. Substantial shading is defined in the code as a reduction of solar insolation of greater than 20%. There is no requirement that the existing vegetation has to be retained after development, only that it exists at the time of request for exemption. An applicant seeking an exemption under this provision shall provide a calculation and/or diagram illustrating that substantial shading as defined in the zoning code already occurs.~~

~~2. Steep north facing slopes are also grounds for an exemption. Slopes in any direction but south facing make solar setbacks nearly impossible to achieve. An exemption will be granted under this section for any slope in excess of 5% with an aspect that is up to 90 degrees east or west of true north.~~

~~3. It is likely that taller, multi-story buildings will be built on smaller single-family residential lots, in multi-family residential zones, and in zones which allow commercial, industrial, and similar uses as outright uses.~~
~~a. Except as noted herein, in the CN, CC, CL, CG, and CB commercial zones, the IP, IL, and IG industrial zones, MR, ME, PO and PF zones, all lots will be exempt from solar setbacks, except when their north lot line abuts single-family residential-zoned property (RS, RL, SR 2½, UAR-10), where the south roof setback will be applied (except as otherwise exempted).~~
~~b. In the RM, RM-10, and RH zones, all lots will be exempted except where the north lot line abuts an RS, RL, SR 2½, or UAR-10 zone.~~
~~c. In RS, RL, SR 2½, and UAR-10 zones, the City will exempt all lots less than 8,000 square feet in area, or 80 feet or less in average width on the north/south axis.~~
~~d. A structure shall be exempted from the provisions of this section if the structure will shade only a protected area in which solar uses are not feasible because the protected area is already substantially shaded at the time a request for exemption is made and approved.~~

C. Solar Setback Standards.

1. Applicability. These standards apply to all structures on RS and RM zoned lots, 5000 square feet or greater, with a minimum north-south lot dimension of 80 feet.

2. Solar Setback Requirements. Buildings shall be set back from the northern property line according to the standards in this section. When a northern property line abuts an alley, street, or common area, the setback will be measured to the next lot line across the

alley, street, or common area. An applicant for a development permit for a building subject to this section shall submit documentation that shows either the solar setback or how the structure qualifies for an exemption. If buildings on separate lots are attached or connected at a common lot line, the solar setback standards apply as if the buildings are a single building on a single lot composed of both lots.

a. Solar Setback for RS Zone. The solar setback of the shade point shall be greater than or equal to the following formula:

SSB = (2.5 X SPH) + (N divided by 2) - 85

Where:

SSB = Solar setback (the shortest horizontal distance between the shade point and the plane of the northern lot line).

SPH = Shade point height (Reduce this dimension by 3 feet if the shade point is a ridgeline between 45 degrees east or west of true north.)

N = North-south lot dimension. Maximum allowable "N" for purposes of calculating the solar setback shall be 90 feet.

The following table, which accurately applies the formula, can be used to determine compliance with the solar setback standard.

Table 3.5.400(A)

Solar Setback from Northern Lot Line for RS Zone [SSB] (All figures are in feet.)*			
Shade Point Height* [SPH]	**North-South Lot Dimension**		
	90 feet [N]	**85 feet [N]**	**80 feet [N]**
18 feet	5	2.5	0
20 feet	10	7.5	5
22 feet	15	12.5	10
24 feet	20	17.5	15
26 feet	25	22.5	20
28 feet	30	27.5	25
30 feet	35	32.5	30

*Solar Setback and Shade Point Height are usually measured from an eave or from a ridge line of a roof. See Figure 3.5.400(A), Measuring Shade Point Height.

b. Solar Setback for RM Zone. The solar setback of the shade point shall be greater than or equal to the following formula:

SSB = (2.5 X SPH) + (N divided by 2) - 100

Where:

SSB = Solar setback (the shortest horizontal distance between the shade point and the plane of the northern lot line).

SPH = Shade point height (Reduce this dimension by 3 feet if the shade point is a ridgeline between 45 degrees east or west of true north.)

N = North-south lot dimension. Maximum allowable "N" for purposes of calculating the solar setback shall be 90 feet.

The following table, which accurately applies the formula, can be used to determine compliance with the solar setback standard.

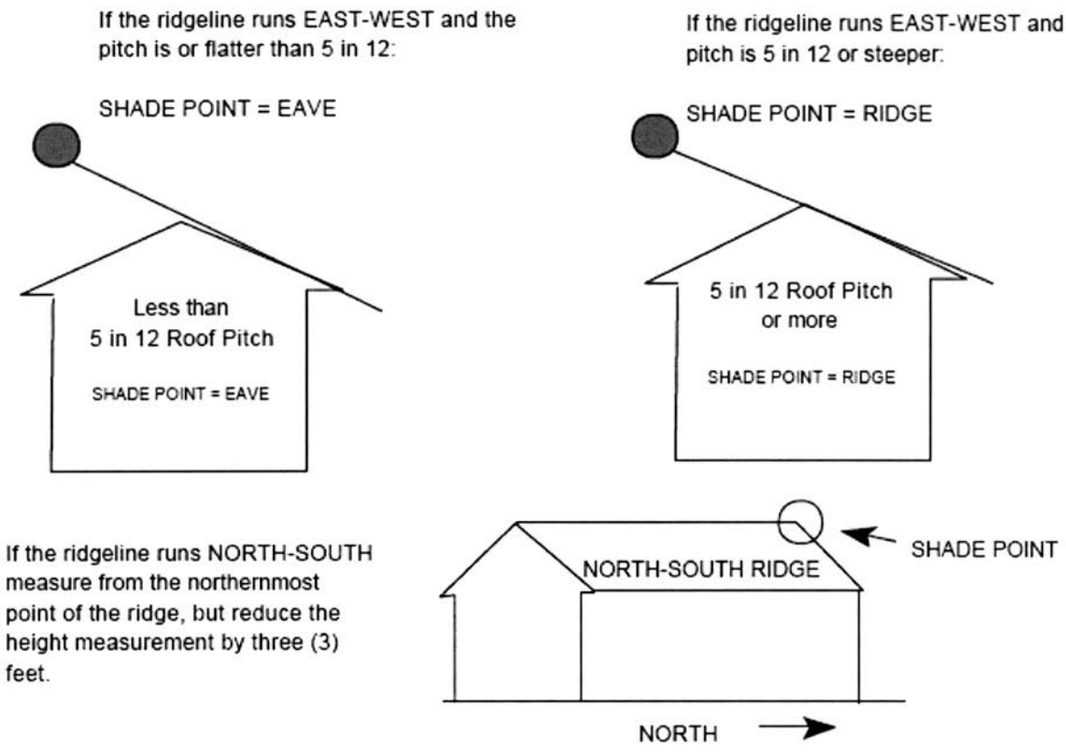
Table 3.5.400(B)

Solar Setback from Northern Lot Line for RM Zone [SSB] (All figures are in feet.)*			
Shade Point Height* [SPH]	**North-South Lot Dimension**		
	90 feet [N]	**85 feet [N]**	**80 feet [N]**
24 feet	5	2.5	0
26 feet	10	7.5	5
28 feet	15	12.5	10
30 feet	20	17.5	15
32 feet	25	22.5	20

Solar Setback from Northern Lot Line for RM Zone [SSB] (All figures are in feet.)*			
Shade Point Height* [SPH]	North-South Lot Dimension		
	90 feet [N]	85 feet [N]	80 feet [N]
34 feet	30	27.5	25
36 feet	35	32.5	30

*Solar Setback and Shade Point Height are usually measured from an eave or from a ridge line of a roof. See Figure 3.5.400(A), Measuring Shade Point Height.

Figure 3.5.400
Measuring Shade Point Height



3. Exemptions to Solar Setback Requirements. A building is exempt from the solar setback standards when any of the following conditions exist:

   a. Slopes. The lot on which the building is located has an average slope of 15 percent or more in a direction greater than 45 degrees east or west of true north.

   b. Existing Shade. The building will shade an area that is already completely shaded by one or more of the following:

      i. An existing or approved building or structure.
      ii. A topographic feature.
      iii. Coniferous trees or broadleaf evergreens that will remain after development of the site.

   c. Insignificant Benefit. The building will shade one or more of the following:

      i. A non-developable area, such as designated open space, a public utility easement, street or alley.
      ii. The wall of an unheated space, such as a garage, excluding solar greenhouses and other similar solar structures.
      ii. The wall of a non-residential structure.
      iii. No more than 20% of a south wall of an existing habitable dwelling.

   d. Master Planned Development Exemption. The lot is identified as being exempt from solar setback provisions through an approved Master Planned Development application where one or more of the following exists:

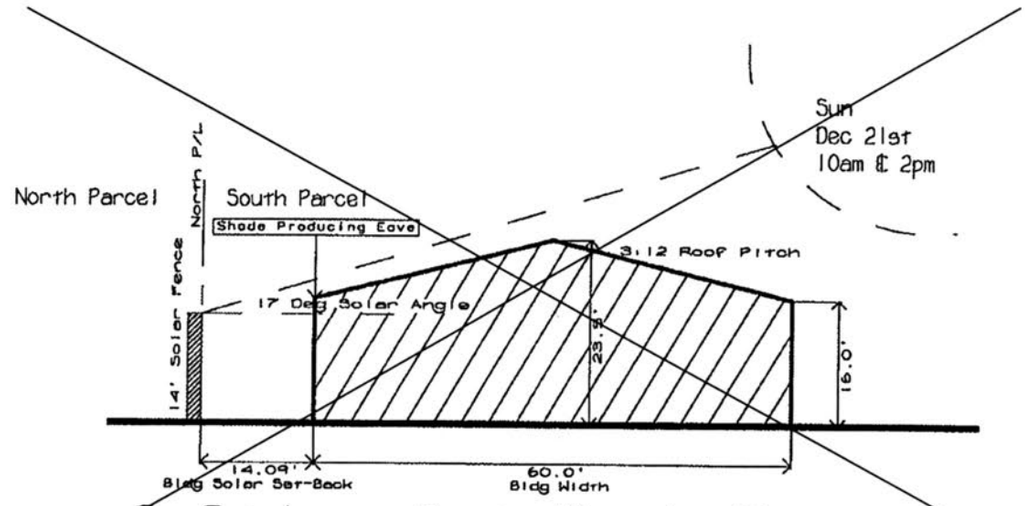
      i. The lot has been identified as being exempt from solar setback standards.
      ii. The proposed building locations and heights were approved.

~~**Table 3.5.400**~~
~~**Estimated Solar Setbacks**~~
~~**for South Roof Protection / 14-foot Fence (SR)**~~

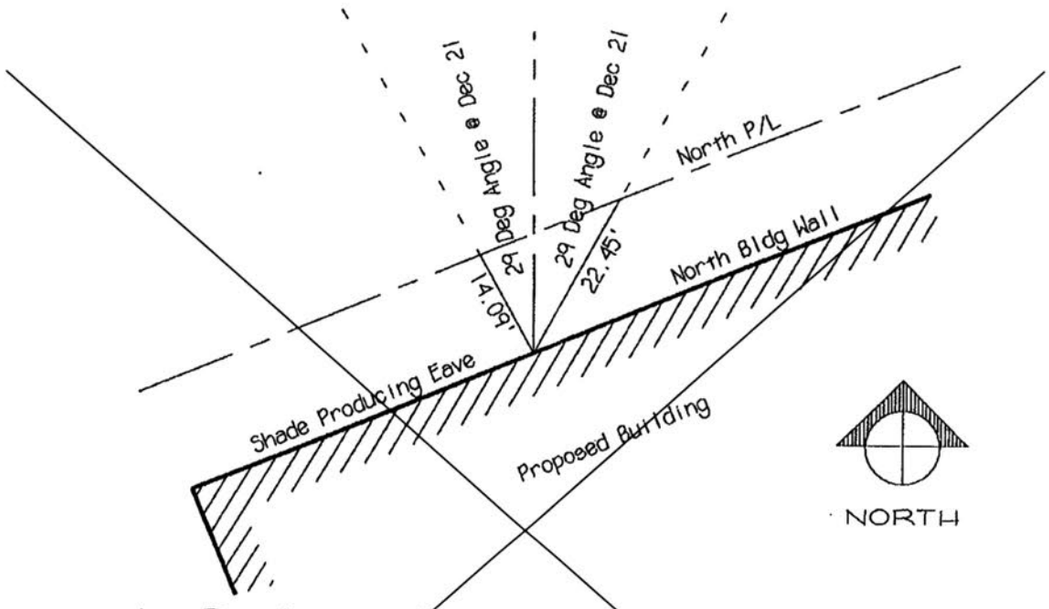
		Highest Shade Producing Point												
Roof Height		16'	18'	19'	20'	21'	22'	23'	24'	26'	27'	28'	29'	30'
North Facing Slope	15°	10.6	21.1		31.7		42.2		52.8	63.4		73.9		84.5
	10°	8.7	17.3		26.0		34.6		43.3	51.9		60.6		69.3
	5°	7.4	14.8		22.1		29.5		36.9	44.3		51.6		59.0
Level 0°		6.5	12.9	16.15	19.4	22.6	25.8	29.05	32.3	38.7	41.9	45.25	48.0	51.7
South Facing	5°	5.8	11.5		17.3		23.1		28.8	34.6		40.4		46.1
	10°	5.2	10.4		15.7		20.9		26.1	31.3		36.6		41.8

Slope	15º	4.8	9.6		14.4		19.1		23.9	28.7		33.5		38.3

These are solar setback lines calculated 29° east and west of north for a lot with no slope gradient of a slope gradient towards the north of south. Solar setbacks will vary if the property slopes in any direction. The building setback line, measured perpendicular from the north property line to the structure will normally be less than the solar setback distance indicated in the table above.



2-Solar Set-Back Section



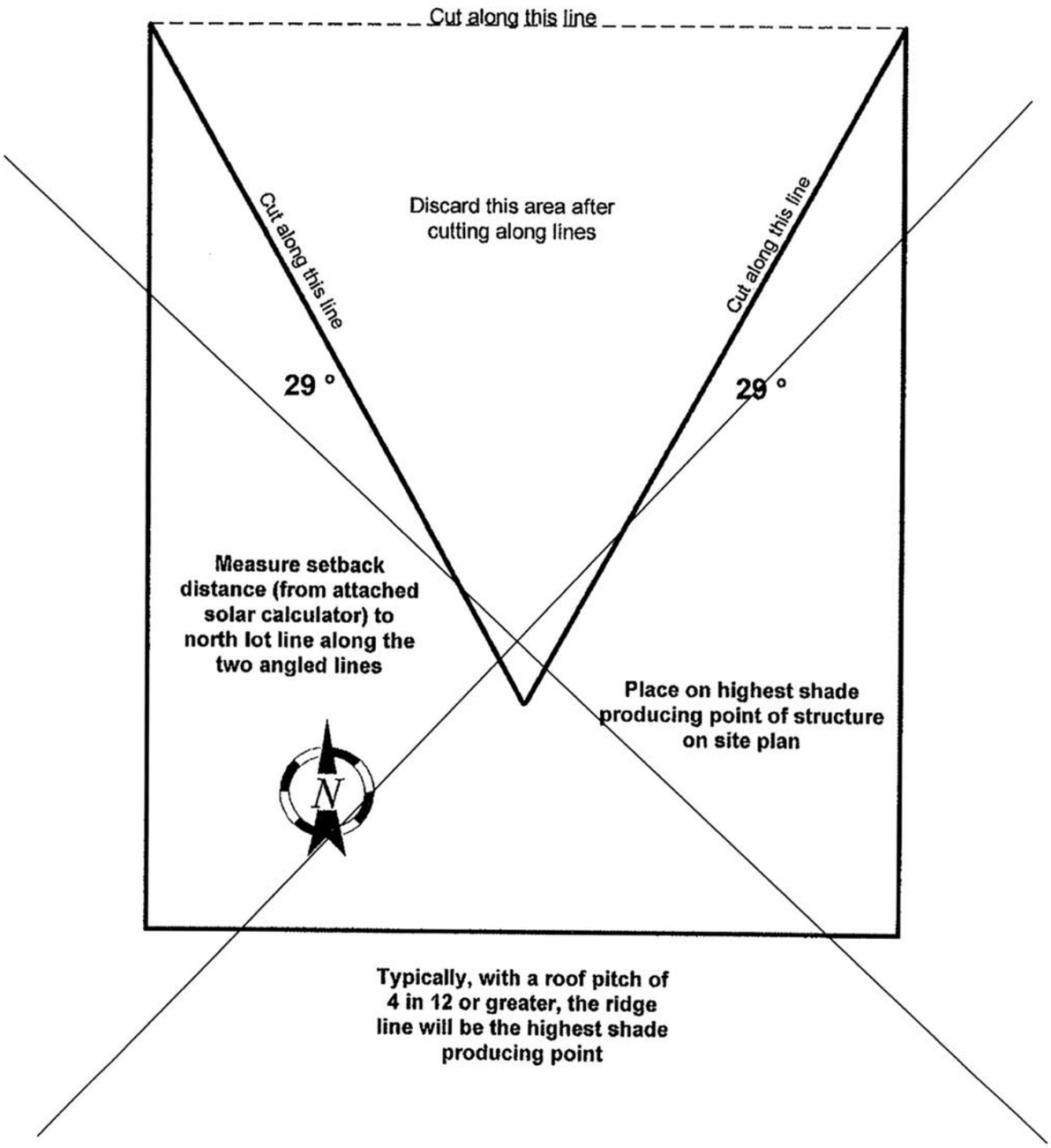
1-Solar Set-Back Plan

A

Solar Set-Back Plan & Sect

Scale 1" = 20'-0"

SOLAR SETBACK TEMPLATE



3.5.500 Solar Access Permits

A. Purpose. The purpose of this section is to provide and preserve solar access to productive solar collectors by establishing limitations for growth of vegetation ~~and building construction~~ on certain lots in the vicinity of a productive solar collector.

B. Applicability. Any owner may submit an application for a solar access permit to provide solar access for a productive solar collector located on the owner's real property.

1. The application for a solar access permit shall be on forms prescribed by the City and shall contain at a minimum:

   a. A legal description of the applicant's lot; including proof of ownership;
   b. Documentation to show that the solar collector is or will be a productive solar collector within 6 months of the application date;
   c. Descriptive drawings of the solar collector showing dimensions and location;
   d. A sun chart and statement of the solar heating hours for which solar access is sought;
   e. A statement that there is no reasonable alternative location for the solar collector that would result in a lesser burden on a neighboring lot;
   f. A statement that trimming the vegetation on the applicant's lot will not permit an alternative location that would lessen the burden on a neighboring lot.
   g. A list of all lots that are within 150 feet to the south, southeast, and southwest of the solar collector, including for each such lot the legal description; the owner of record and address; the exempt vegetation located on the lot; and any existing non-exempt vegetation likely to encroach on the protected area.
   h. A statement that none of the lots impacted are located on a north facing slope with a grade that exceeds, on average 15%;

2. The applicant shall provide a ~~plot plan~~ <u>map</u> drawn to scale showing the following information:

   a. The location of and delineating all exempt and non-exempt vegetation as shown on the sun chart photograph as well as any non-exempt vegetation not shown on the sun chart which may encroach on the protected area in the future;
   b. The exact site of the solar collector, it's height and orientation;
   c. An indication of true north;
   d. a survey of the lot

3. Approval criteria.

   a. The solar collector is or will be a productive solar collector. <u>For the purposes of this section, "productive solar collector" means a solar collector that provides no less than 10% of a building's total energy requirements or 50% of a building's annual water heating requirements.</u>
   b. The protected area to be created by the solar access permit is reasonably located.
   c. The applicant requests solar heating hours no greater than two hours before and after the solar zenith from September 22 to March 21, and three hours before and after the solar zenith from March 22 to September 21.
   d. The solar access provided by the permit would not burden any lot with a north facing slope with an average grade of 15% or greater or which is more than 150 feet from the solar collector.

   An applicant shall be denied if the applicant could trim vegetation on the subject property to permit an alternate location that would be less burdensome upon a neighboring lot.

C. Solar Access Permit Issuance and Recordation.

1. The City shall issue and acknowledge a solar access permit creating the solar access requested in the application or as modified by the City upon approval.

2. The applicant shall record, with the Deschutes County Clerk, the solar access permit in the chain of title of the subject lot and each of the neighboring lots identified in the permit and provide proof of recordation.

3. The solar access permit shall be prescribed by the City and shall contain at a minimum:

   a. A legal description of the applicant's lot and each neighboring lot to be burdened by the solar access created by the solar access permit;

b. A complete description of the solar access restrictions applicable to each neighboring lot, including the solar heating hours during which solar access is provided, and a sun chart showing the platted skyline, including vegetation ~~and structures~~ and a scaled drawing showing the size and location of the protected area and its orientation with respect to true south;
c. A reference to where the approved application may be obtained.

D. Obligation Created by Solar Access Permit. The owner of any lot burdened by a solar access permit shall trim any non-exempt vegetation ~~not exempted~~ on a burdened lot that shades the protected area created by the solar access permit, provided that there is no vegetation on the lot benefited by the solar access permit that also shades the protected area. ~~The cost of such trimming shall be borne by the owner of the benefited lot if the vegetation existed at the time of permit application as shown on the plot plan; and for all other vegetation equally by the owner of the burdened lot and the owner of the benefited lot, unless such owners agree otherwise.~~ Before any trimming is required, the permit holder must certify that the solar collector is still productive.

E. Termination of Solar Access Permit.

1. The Community Development Director shall terminate the solar access permit with respect to all or part of the neighboring lots burdened by the solar access permit if a petition for termination is submitted by the permit holder or the successor of interest, or the solar collector is shown to be unproductive for a period of one year or more.

2. The permit holder shall record the termination of the solar access permit with the Deschutes County Clerk and provide proof of recordation to the City.

EXHIBIT B

CITY COUNCIL FINDINGS IN SUPPORT OF PZ 09-159

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE

Chapter 4.6 Land Use District Map and Text Amendments

4.6.200 Legislative Amendments.

B. Criteria for Legislative Amendments. The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve or to deny an application for a Legislative Amendment shall be based on all of the following criteria:

1. The request is consistent with the applicable State land use law;

FINDING: The proposed amendments to Chapter 1.2, Definitions and Chapter 3.5, Other Design Standards of the Development Code are consistent with applicable State land use laws. In particular, the proposed amendments will satisfy Goal 13 (Energy Conservation) and ORS 227.190, as explained below.

Statewide Planning Goal 13 requires that land and uses developed on the land be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles. One of the Planning Guidelines for Goal 13 further states: *"Plans directed toward energy conservation within the planning area should consider as a major determinant the existing and potential capacity of the renewable energy sources to yield useful energy output. Renewable energy sources include water, sunshine, wind, geothermal heat and municipal, forest and farm waste. Whenever possible, land conservation and development actions provided for under such plans should utilize renewable energy sources."* Until now, the Bend Development Code did not include any solar lot standards for new subdivisions. The proposed text amendments will require at least 70% of all new lots in RS and RM zoned subdivisions to be "solar lots". This will help to ensure the supply of lots that are suitable for solar energy systems. The City Council also notes that originally, the proposed amendments included an exception to the City's solar lot requirements for subdivisions that provided at least 70% of the maximum allowed density. Based on comments from DLCD, this exception was deleted from the final version of the proposed amendments.

With regard to solar setbacks, the City Council notes that the remanded section of the Development Code exempted structures on all RM zoned lots except where the north lot line abuts a lot in a lower density residential zoning district, and it exempted structures on all RS zoned lots less than 8000 sq. ft. in area, or 80 feet or less in average width on the north-south axis. The City's new solar setbacks, which are easier to calculate than the old solar setbacks, will apply to all structures on RS and RM zoned lots, 5000 sq. ft. or larger, with a minimum north-south dimension of 80 feet. Therefore, uses developed in the RS and RM zones will be more closely managed and controlled to maximize the conservation of solar energy.

ORS 227.190(1) states as follows:

> City councils may adopt and implement solar access ordinances. The ordinances shall provide and protect to the extent feasible solar access to the south face of buildings during solar heating hours, taking into account latitude, topography, microclimate, existing development, existing vegetation and planned uses and densities. The city council shall consider for inclusion in any solar access ordinance, but not be limited to, standards for:
>
> (a) The orientation of new streets, lots and parcels;
>
> (b) The placement, height, bulk and orientation of new buildings;
>
> (c) The type and placement of new trees on public street rights of way and other public property; and

(d) Planned uses and densities to conserve energy, facilitate the use of solar energy, or both.

Based on the above statute, the City Council finds that cities are encouraged, but not required, to adopt solar access standards for new development. Bend's new solar standards will provide and protect to the extent feasible solar access to the south face of buildings during solar heating hours, taking into account the City's latitude, topography, microclimate, existing development, existing vegetation and planned uses and densities. The proposed text amendments include new standards for the layout of new streets, lots, and parcels. They also include solar setback requirements to regulate the placement, height, bulk, and orientation of new buildings in the RS and RM zones. The solar lot standards and solar setback requirements take into account the type and placement of new trees. The City Council finds that in commercial and industrial zones, and in higher density residential zones, solar setback requirements would work against the City's efforts to minimize the depletion of other non-renewable energy sources by maximizing density.

2. The request is consistent with the applicable Bend Area General Plan goals and policies;

FINDINGS: The "goals" established in the Bend Area General Plan express the desires of the residents of Bend as the City progresses into the future. The "goals" are generally carried out through "policies", which are statements of public policy.

Chapter 2 of the General Plan includes the following public policy:

13. The city and county shall continue to strongly support and promote the conservation of all forms of energy resources through cooperation with the Northwest Power Planning Council, Bonneville Power Administration programs, recycling, solar ordinances, energy-efficient building standards, and appropriate geothermal resources.

Chapter 10 of the General Plan states: *"Natural forces such as the quality of the air, the energy of the sun, and the power smoldering deep under the lava flows are characteristic of Central Oregon. The local governments and community residents must work together to ensure these natural forces are not diminished."* In support of this effort, Chapter 10 of the General Plan includes the following goal:

- to encourage energy conservation and the development of energy producing facilities that use renewable resources

Chapter 10 of the General Plan also states, *"The large number of sunny days makes this area particularly suitable for solar power, both passive and active systems. During the summer, 300-350 British Thermal Units (BTUs) of sunlight energy are delivered to each square foot of land in the area, but this level declines to 175-200 BTUs during the winter. Bend was one of the first cities in the state to adopt 'solar access' ordinances to provide good solar access during the winter solar heating hours so that homeowners can incorporate passive or active solar systems into their homes."*

The City Council finds that updating Bend's solar standards as recommended by the Planning Commission will help to preserve access to solar energy, consistent with the applicable goals and policies of the General Plan.

3. The applicant can demonstrate a public need or benefit for the proposed amendment.

FINDING: There is a public need and benefit for regulations that help to preserve access to solar energy and support the City's efforts to conserve all forms of energy.

4.6.600 Transportation Planning Rule Compliance.

When a development application includes a proposed comprehensive plan amendment or land use district change, or both, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.

FINDING: The City Council is adopting a text amendment to the Bend Development Code, a functional component of the comprehensive plan. The Bend Planning Division has analyzed the proposed text amendments and has found that none of the changes would cause a "significant effect" under ORS 660-012-0060.

CONCLUSIONS:

Based on the above Findings of Fact and Conclusions of Law, the City Council finds that the proposed Development Code text amendments can meet, with maintenance of a record, all applicable criteria for adoption.

ORDINANCE NO. NS-2138

AN ORDINANCE AMENDING THE BEND URBAN AREA GENERAL PLAN AND ZONING MAPS BY CHANGING THE PLAN DESIGNATION AND ZONING OF 7.3 ACRES OF LAND ON THE NORTH AND SOUTH SIDE OF WILSON AVENUE EAST OF BOND STREET FROM INDUSTRIAL GENERAL (IG) TO MIXED EMPLOYMENT (ME).

Findings:

A. On November 3, 2009, the applicant, River Bend Investors, filed an application (PZ 09-261) for a Plan Amendment and Zone Change for 7.3 acres of land on the north and south sides of Wilson Avenue east of Bond Street, to change the zoning and general plan designation from Industrial General (IG) to Mixed Employment (ME).

B. The Hearings Officer held a duly noticed public hearing for the proposal on December 22, 2009. On December 31, 2009, the Hearings Officer issued a decision recommending that Council approve the requested Plan Amendment and Zone Change.

C. The City Council held a duly noticed public hearing on January 20, 2010. Based on the entire record, including all testimony, evidence and the recommendation of the Hearings Officer, the Council concluded that the application meets all criteria for approval and should be granted.

Based on these findings,

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council held a public hearing to consider the applicant's proposal and the Hearings Officer's findings and recommendation and found that the requested Plan Amendment and Zone Change is consistent with the criteria of the Bend Development Code Chapter 4.6. In addition to the findings listed above, the Bend City Council adopts the findings in Exhibit B.

Section 2. The Bend Urban Area General Plan and Zoning Maps are hereby amended by changing the plan designation and zoning of 7.3 acres of land on the north and south sides of Wilson Avenue east of Bond Street from Industrial General (IG) to Mixed Employment (ME) as shown in Exhibit A.

Read for the first time the 20th day of January, 2010.

Read for the second time the 3rd day of February, 2010.

Placed upon its passage the 3rd day of February, 2010.

YES: 6 NO: 0

Authenticated by the Mayor the 3rd day of February, 2010.

Kathie Eckman

Kathie Eckman, Mayor

ATTEST:

Patricia S Stell

Patricia Stell, City of Bend Recorder

EXHIBIT A

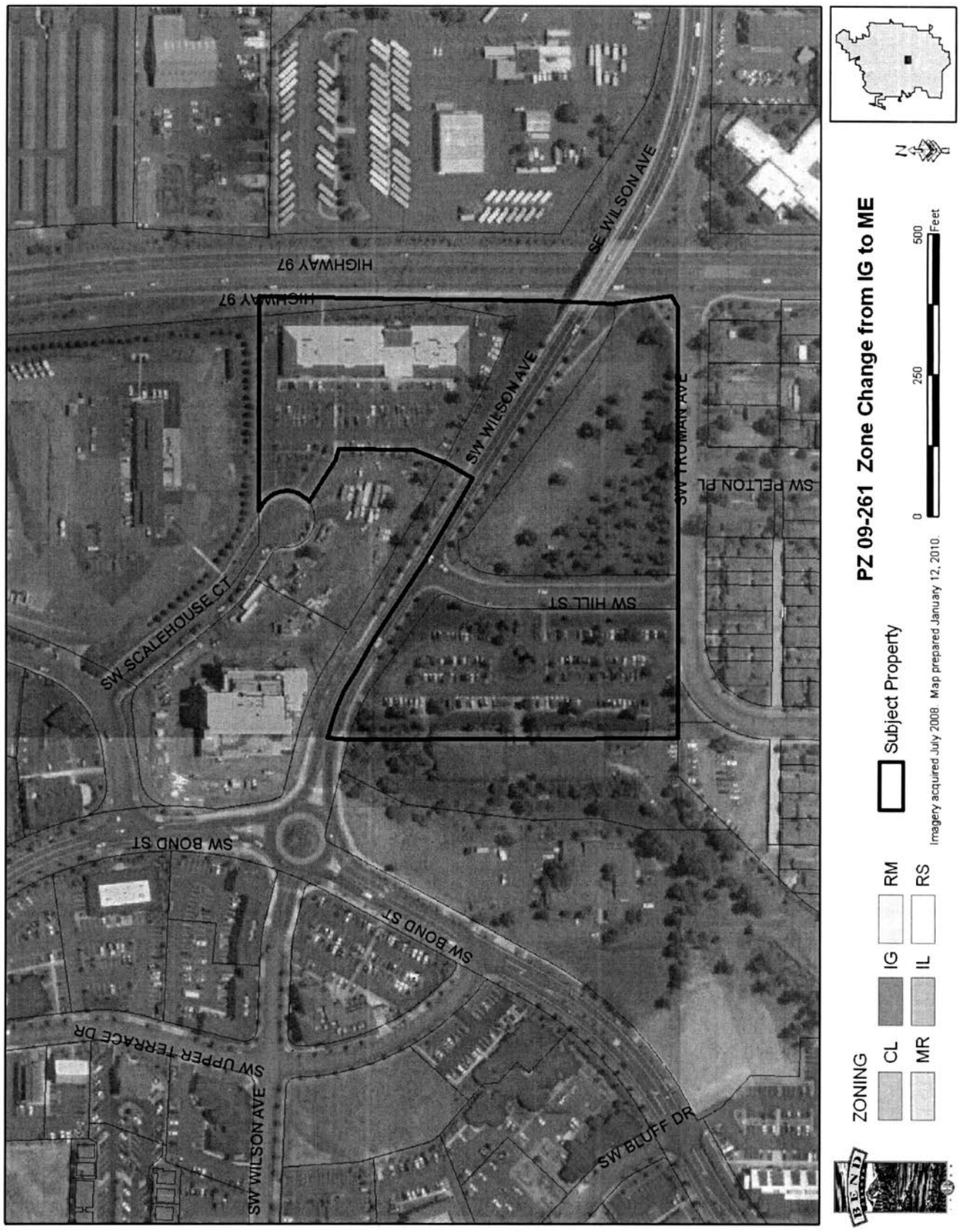

HIGHWAY 97
SE WILSON AVE
SW WILSON AVE
SW TRUMAN AVE
SW PELTON PL
SW HILL ST
SW SCALEHOUSE CT
SW BOND ST
SW UPPER TERRACE DR
SW WILSON AVE
SW BLUFF DR
PZ 09-261 Zone Change from IG to ME
Subject Property
Imagery acquired July 2008. Map prepared January 12, 2010.
0
250
500
Feet
N
ZONING
CL
IG
RM
MR
IL
RS
BEND

EXHIBIT B

FINDINGS IN SUPPORT OF PZ 09-261

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE

CHAPTER 4.6, LAND USE DISTRICT MAP AND TEXT AMENDMENTS

FINDING: This plan amendment and zone change application is a Type III quasi-judicial land use application. All applicable criteria and policies related to the request are addressed in the findings below and the applicant's burden of proof statement. The application follows the procedures identified in Chapter 4.1.500, Type II and III applications. In addition, all of the criteria identified in Chapter 4.6.300 are addressed below.

4.6.300 CRITERIA FOR QUASI-JUDICIAL AMENDMENTS

B. Criteria for Quasi-Judicial Amendments

1. **Approval of the request is consistent with the relevant Statewide Planning Goals that are designated by the Planning Director or designee;**

FINDING: The Statewide Planning Goals, along with findings of consistency, are listed below.

Goal 1, Citizen Involvement

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The City adopted a program in compliance with this Goal, codified in BDC Chapter 4.1. The first step for citizen involvement is the public meeting required by Section 4.1.210(B). The applicant conducted this meeting in September 2009. Notice of the meeting was provided to owners of record of property located within 500 of the subject property as well as the Southern Crossing Neighborhood Association and other Neighborhood Associations. Only one person attended the public meeting or submitted comments in response to the notice of the meeting. Under the development code, Type III land use procedures are noticed pursuant to Section 4.1.315 of the development code, which ensures that citizens are informed in four different ways about the public hearing: published notice, posted notice, individual mailed notice and neighborhood association contact.

Goal 2, Land Use Planning

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The city's development code establishes the process, and the general plan establishes the policy framework, for a decision on the subject plan amendment and zone change application. The staff prepares a recommendation report based upon established processes and policies. The Hearings Officer will consider this and other evidence at a public hearing, where written and oral evidence is received, and will then make a recommendation to the Bend City Council which will conduct a separate hearing and make a decision on the application

Goal 3, Agricultural Lands

Goal 4, Forest Lands

Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces

Goals 3, 4, and 5 are not applicable to the subject plan amendment and zone change application because the subject property is not zoned for agriculture or forest use and

does not have inventoried open spaces, scenic areas, historic resources, or natural resources.

Goal 6, Air, Water and Land Resources Quality

Goal 6 is not applicable to the subject plan amendment and zone change application because the proposed change will have no impacts on air, water or land resources.

Goal 7, Areas Subject to Natural Hazards

Goal 8, Recreational Needs

Goals 7 and 8 are not applicable to the subject plan amendment and zone change application because the subject property is not within an identified natural hazard area, nor within an area identified for recreational use.

Goal 9, Economic Development

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Goal 9 and the implementing rules require local governments to provide an adequate amount of commercial and industrial land within the Urban Growth Boundary. In Bend, this requirement is accomplished through the designation of adequate commercial, industrial land and mixed employment land in the General Plan. Statewide Land Use Planning Goal 9 requires that the City provided for "at least an adequate supply of sites of suitable sizes, types, locations and service levels for a variety of industrial and commercial uses consistent with plan policies." The administrative rules implementing Goal 9—specifically OAR 660-009-0015—require the City to develop an inventory of industrial and other employment lands of "vacant and developed lands within the planning area designated for industrial or other employment uses." Additionally, OAR 660-009-010(4) provides:

> ***For a post-acknowledgement plan amendment under OAR chapter 660, division 18, that changes the plan designation of land in excess of two acres within an existing urban growth boundary from an industrial use designation to a non-industrial use designation, or an other employment use designation to any other use designation, a city or county must address all applicable planning requirements, and:***
>
> ***(a) Demonstrate that the proposed amendment is consistent with its most recent economic opportunities analysis and the parts of its acknowledged comprehensive plan which address the requirements of this division; or***
>
> ***(b) Amend its comprehensive plan to incorporate the proposed amendment, consistent with the requirements of this division; or***
>
> ***(c) Adopt a combination of the above, consistent with the requirements of this division.***

The City's General Plan Map contains an Industrial designation for the subject property. The proposal to change the designation to the ME designation will continue to implement the goal by providing a more diverse economic and employment area. The proposed zone change and plan amendment will facilitate the continuation of a vibrant mixed use community within the Old Mill District. This is an economic benefit to the community.

On January 5, 2009 the city adopted a series of ordinances which, among other things, expanded the city's UGB and amended its general plan. In addition, Ordinance No. 2112 adopted as Exhibit "L" the "City of Bend 2008 Economic Opportunities Analysis" ("2008 EOA"). The ordinances adopting the expanded UGB, including Ordinance No. 2112, have not yet been acknowledged by the Land Conservation and Development Commission (LCDC). However, ORS 197.625(3) provides in relevant part as follows:

(a) Prior to its acknowledgment, the adoption of a new comprehensive plan provision or land use regulation or an amendment to a comprehensive plan or land use regulation is effective at the time specified by the local government charter or ordinance and is applicable to land use decisions, expedited land use decisions and limited land use decisions if the amendment was adopted in substantial compliance with ORS 197.610 and 197.615 unless a stay is granted under ORS 197.845.

(b) Any approval of a land use decision, expedited land use decision or limited land use decision subject to an unacknowledged amendment to a comprehensive plan or land use regulation shall include findings of compliance with those land use goals applicable to the amendment.

Under this statute, the city's amendments to its comprehensive plan and UGB are effective and applicable to the subject application. This decision includes findings concerning the statewide land use planning goals applicable to this application. The proposal's compliance with the applicable provisions of the amended comprehensive plan is discussed in the findings below.

The IG-zoned portion of the subject property is more than two acres in size. The Goal 9 administrative rules - OAR 660-009-0010(4) - provide that where a comprehensive plan amendment changes the designation of land in excess of two acres within a UGB from an industrial use designation to a non-industrial use designation, or from another employment use designation to any other use designation, the city must demonstrate that the amendment is consistent with the most recent EOA and its comprehensive plan. The 2008 EOA, a copy of which is included in this record, provides that for purposes of calculating industrial land supply, the ME Zone is treated as an industrial zone (EOA page 108).

The staff report in a similar and recent City approval, PZ09-183, states the city's decision to treat the ME Zone as an industrial zone for purpose of the EOA and the comprehensive plan was based in large part on the fact that there is considerable overlap between the uses permitted in these two zoning districts. For that reason, staff and the applicant (ODS) argued, and the Hearings Officer agreed, that re-designating the subject property from IG to ME did not represent a change from an "industrial use designation to a non-industrial use designation" under OAR 660-009-010(4), and therefore the applicant was not required to make findings under that rule. The same conclusion can be utilized for the subject application.

It should also be noted that Lots 10 and 12 are developed with relatively new structures which are unlikely to be demolished and redeveloped during the 20-year planning horizon. As these properties are neither vacant nor "developed" as those terms are defined by Goal 9, these properties are not part of the City's "total land supply." *See;* OAR 660-009-0005. Thus, the redesignation of these lots from IG to ME will have no impact on the supply of industrial land. With respect to Lot 11, it lies south of Wilson Avenue and is generally isolated from nearby industrial development. Moreover, given the residential development directly to the south of Lot 11, it is generally unsuitable for general industrial development. As the purpose statement of the ME zone indicates, the ME zone is intended to be a transition between existing urban environments. Thus, redesignation of Lot 11 will provide a transition between the general industrial uses to the north and the residential uses to the south.

When the city expanded the UGB in 2009, it elected to employ a number of market choice factors in considering how much land to bring into the UGB (Findings in Support of UGB Expansion, pages 51-52). As a result of utilizing these market choice factors, the city determined the current supply of industrial land and mixed-use land within the UGB exceeds the minimum amount needed during the planning period. In other words, currently the city has a surplus of industrial and mixed-use lands to meet the needs in the industrial, MR and ME zones within the planning period. Consequently, the applicant's proposal for plan amendment and zone change from IG to ME will not result in a deficit of industrial lands within the UGB. The proposed plan amendment and zone change will not interfere with the City's ability to provide an adequate amount of employment lands during the planning period.

Goal 10, Housing

Provide for the Housing Needs of the citizens of the State.

The current IG zoning on the subject property does not allow residential uses, and the existing use of the subject property is not residential. The proposal will not remove land from the city's inventory of residential lands. The IG zone does not permit housing other than caretaker housing, but the ME zone has the potential to permit additional housing when developed in a mixed-use setting. While it is unlikely that such development will occur on the developed portions of the subject properties, the potential is possible and is recognized here.

Goal 11, Public Facilities and Services

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

The site is currently served with adequate public facilities and services for the existing and proposed office uses, as shown in the analyses provided by the applicant's engineers for sewer, water, and transportation facilities serving the site. The concentration of economic and employment use in this core area of the City is consistent with the requirements of Goal 11. The applicant's proposal will continue the orderly and efficient use of existing City services and facilities.

Goal 12 Transportation

To provide and encourage a safe, convenient and economic transportation system.

Goal 12 is implemented through the Transportation Planning Rule, OAR 660-12. Additionally, Section 4.6.600 of the Bend Development Code requires the applicant to demonstrate compliance with the TPR (OAR 660-012-0060). The TPR provides:

> *(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:*
>
> *(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*
> *(b) Change standards implementing a functional classification system; or*
> *(c) As measured at the end of the planning period identified in the adopted transportation system plan:*
> *(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*
> *(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or*
> *(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.*

The TIA examines the current and proposed uses to determine compliance with the above criteria. Two of the three lots are developed with existing office/industrial uses and one is vacant. The TIA took a reasonable worst case scenario approach and determined the impact of theoretical uses upon the transportation system. This resulted in a significant impact. As such, the TPR allows that certain limitations be imposed upon the request for Plan amendment.

For example:

> *TPR Section 2(c): "Altering land use designations, densities, or design requirements to reduce demand for automobile travel needs through other modes." and Section 2(e): "providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management, or minor transportation improvements…"*

Through this option, the TIA was able to provide a proper mitigation technique.

The TIA calculated the number of trips that could be produced today from the current IG designation. Then, that figure was used to limit future ME development to producing no more trips than what would be allowed under the current IG designation.

The subject properties are part of the Old Mill District. The TIA that determined TPR compliance at the inception of the District is useful in this case too. For example, the Old Mill District is currently permitted to utilize a certain number of trips on the City system through a simple debiting calculation and monitoring process. This type of mechanism is often called a "trip cap." The subject application can utilize the same technique, which is in use today for the other lots within in the Old Mill District. When new development occurs within the subject area, the number of trips generated from the proposed site plan activity cannot exceed the number of trips that were available to the area, as calculated at the time of its former IG zoning. The attached Kittelson & Associates, Inc. TIA concludes the following:

> *Per the provisions summarized in Section 2 of OAR 660-012-0060, the rezone can occur with a restriction on the number of trips generated by future development on the site. This restriction equates to 113 weekday p.m. peak hour trips and would mitigate a significant impact on the transportation system. Further, this restriction on trip generation would restore the zoning to allow uses consistent with the zoning at the time of the Old Mill District Master Plan. Offices and other uses contemplated within the master plan would be retained and no changes to the master plan would be required. Therefore, the proposed zone change will not modify the findings or needs associated with the original OMD study and is consistent with the ongoing debiting process.*

The TIA analyzes potential impacts to affected transportation facilities from the proposed plan amendment and zone change and compares trip generation predictions for uses permitted in the current IG Zone with uses permitted in the proposed ME Zone. The TIA utilized a reasonable worst case scenario for redevelopment of the parcels using a floor area ratio analysis. This analysis showed that if the parcels were redeveloped under the reasonable worst case scenario they would create impacts requiring mitigation. The mitigation, in this case, is proposed to limit trip generation from the parcels to no more than 113 pm peak hour trips as monitored by the Old Mill District trip cap and debiting system; a system in operation today and approved by the City of Bend. This system will keep the trip generation for future uses in the ME zone consistent with the IG trip generations allowed for these sites today.
At its inception, and through additional modifications, the Old Mill District met the TPR and established a trip threshold which is managed by the City and applicant via a trip cap debit system. The TIA further shows that the site will be limited to the same number of pm peak hour trips as if it retained its IG zone/designation; 113 pm peak hour trips. Therefore, with the existing Old Mill District trip caps, the proposed plan amendment and zone change will not change the functional classification of existing or planned transportation facilities, will not require a change to the standards implementing the comprehensive plan, and will not significantly affect a transportation facility as measured at the end of the planning period identified in the adopted transportation system plan. Based on the applicant's TIA, the proposed plan amendment is consistent with, and satisfies the requirements of the TPR which implements this goal.

Goal 13 Energy

To conserve energy.

This goal has minimal applicability to the subject plan amendment and zone change because the uses permitted in the ME Zone are not significantly different from those permitted in the IG zone, some of which are already in place on the subject property. The applicant's proposal will facilitate the long term development and growth of economic and employment opportunities and related services in an area of the City that has long been devoted to the operation of the Old Mill District. The proposed zone change and plan amendment will potentially provide additional economic, office, employment and commercial service uses in an area that can be utilized by the surrounding residential area and other employment sites and thereby reduce vehicular trips on the City street system

Goal 14 Urbanization

To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

The subject property lies well within the boundary of the City's UGB in an area where urban levels of service are currently provided to the lots in the Old Mill District. Therefore, this goal is not applicable to the proposed plan amendment and zone change.

Goal 15, Willamette River Greenway; Goal 16, Estuarine Resources; Goal 17, Coastal Shorelands; Goal 18, Beaches and Dunes; Goal 19, Ocean Resources

Goals 15 through 19 are not applicable to the subject plan amendment and zone change application because the subject property does not include any of these features or resources.

2. Approval of the request is consistent with the relevant policies of the Comprehensive Plan that are designated by the Planning Director or designee;

FINDING: The Bend Area General Plan is the City's Comprehensive Plan. The subject application is consistent with the applicable plan goals and policies as identified below and in the applicant's burden of proof. Additionally, the Bend Development Code implements the goals and policies of the General plan and the existing uses are permitted outright in the ME zone and are consistent with the ME zoning provisions.

CHAPTER 1 – PLAN MANAGEMENT AND CITIZEN INVOLVEMENT

Policies

Urbanization of the Incorporated UGB

33. New developments shall pay to extend planned sewer, water, and transportation facilities to and through the property if the development occurs prior to the scheduled construction of those facilities shown in the city's capital improvement plan.

34. The city will encourage compact development and the integration of land uses within the Urban Growth Boundary to reduce trips, vehicle miles traveled, and facilitate non-automobile travel.

37. Improvements within the incorporated UGB shall conform to City standards and specifications.

Two of the lots under this request are currently developed. Conformance with requirements for provision of adequate public facilities including streets, sewer, and water to City standards and specifications are generally evaluated during the Site Plan review process, and SDCs were collected at the time building permits are issued. The site is surrounded by a variety of industrial, commercial, and residential uses with good access to streets and transit routes which help to reduce vehicle trips and miles traveled as well as facilitating non-automobile travel.

Citizen Involvement

46. The city will use other mechanisms, such as, but not limited to, meetings with neighborhood groups, planning commission hearings, design workshops, and public forums, to provide an opportunity for all the citizens of the area to participate in the planning process.

The policy by its terms applies to the city and not to an applicant for a quasi-judicial plan amendment and zone change. However, both the Site Plan review process and this plan amendment and zone change process include pre-application neighborhood meetings, as well as public notice and public hearings to ensure adequate opportunity for citizen participation in the planning process.

CHAPTER 2: NATURAL FEATURES AND OPEN SPACE

Policies

Natural features and open space

9. Major rock outcrops, stands of trees, or other prominent natural features identified in the General Plan shall be preserved as a means of retaining the visual character and quality of the community.

10. Natural tree cover shall be retained along streets in all developments to preserve the natural character of Central Oregon within the urban area as the community grows. Native trees may be substituted for required street trees when located within 10-feet of the right of way.

11. All development shall preserve the natural ground cover outside the building footprint and parking area to the greatest extent practicable.

12. The city shall require the preservation of mature trees within each development to the greatest extent practicable.

The subject properties are developed with office buildings, various parking areas, landscaping or are vacant. Throughout the development process the applicant has preserved existing mature trees and natural ground cover as part of the site planning and development where practical. There are no naturally occurring rock outcrops on the subject properties.

CHAPTER 3: COMMUNITY CONNECTIONS

The there are no historical features, cultural amenities, urban trails, park and recreation facilities, or educational facilities identified on or planned for the subject properties. Therefore, the goals and policies in Chapter 3 of the plan are not applicable to the applicant's proposal.

CHAPTER 4: POPULATION AND DEMOGRAPHICS

A major goal of the land use planning process is to ensure that there is sufficient land within the urban growth boundary for housing, for business and industry, for public services such as parks and schools, and an adequate transportation system to serve those needs.

This chapter of the general plan addresses population forecasts and other demographic information, and therefore is not applicable to the applicant's proposal.

CHAPTER 5: HOUSING AND RESIDENTIAL LANDS

This chapter deals with housing needs and is not applicable to the proposed plan amendment and zone change. Of note however, is that while the current IG zoning does not allow residential uses, the ME zone would allow for residential uses, although the existing development was not designed to accommodate housing, nor does the applicant anticipate future housing to be located on the site.

CHAPTER 6: THE ECONOMY AND LANDS FOR ECONOMIC GROWTH

Applicable Policies:

General Economic Land Policies and Anticipated Land Needs

2. ***The city shall place a higher priority on retaining industrial sites in the city's land base while also providing a variety of commercial sites.***

3. ***The City of Bend shall provide numerous sites in a variety of locations, types, and sizes to meet anticipated and unanticipated economic development opportunities. These locations shall be suitable from an economic standpoint and compatible with surrounding land uses.***

4. ***The city shall provide at least a 20-year supply of economic, institutional, and associated open space lands to meet anticipated needs during the 20-year planning period as outlined in the 2008 EOA.***

5. ***The city shall seek opportunities to designate additional sites for employment use within the existing urban growth boundary prior to expanding the UGB.***

6. ***The city shall periodically review existing development and use patterns on industrial and commercial lands. The city may consider modifying General Plan and/or Zoning Map designations to make such designations consistent with existing development and use patterns.***

These policies by their terms apply to the city and not to an applicant for a quasi-judicial plan amendment and zone change. In any case, as discussed in findings elsewhere in this submittal, the applicant's proposal will not result in a reduction in the amount of industrial land in the city's inventory and is consistent with the 2008 EOA because it will allow a greater range of office uses as well as a mix of other service commercial uses consistent with the surrounding development pattern in the Old Mill District and surrounding area that includes a mixture of office, commercial and residential uses.

The TRG and Integra sites have structures built upon them and these will likely be used for continued office and commercial/industrial service uses. However the opportunity to have greater flexibility as provided in the ME zone will assure that the buildings can be used for a mix of uses as needed, and more importantly, not excluding uses that are appropriate for the location of the lots and abutting uses.

The ME and IG zones allow for different ranges and intensities of industrial uses which are considered by the City EOA to serve as the base for future economic development over the planning horizon. The re-designation of the subject properties to the ME zone will permit a variety of industrial developments and other employment uses and thus, have very little impact if any upon the city's inventory of industrial and economic lands. Moreover, the physical location of the subject properties – near the parkway, existing neighborhoods, and other ME and MR lands – will allow the Truman Avenue property to develop with uses that are more conducive to the character of the abutting area. In contrast, developing the Truman site with only IG uses would not provide as many opportunities for compatible development with the surrounding area.

Providing flexibility, efficiency, and higher utilization of the current inventory of sites within the current UGB will also meet the intent of the above City policy. In addition, the applicant desires to continue a cohesive development mix in the Old Mill District and provide a greater range of uses for the subject properties than the current IG designation permits today. This is particularly important given that the TRG property is developed with a structure that could support an internal mix of uses versus the current single use. And, importantly, the Truman property will require a creative treatment given the abutting residential uses, design limitations due to the triangular shape of the lot, and existing slope easements for the Wilson Avenue overpass.

Short-term Supply of Economic Lands

8. ***Beginning in 2010 and every two years thereafter, the city shall:***

    a. ***Update the economic lands Buildable Lands Inventory to identify developed and vacant economic lands by General Plan designation;***

b. Estimate the acreage of vacant economic lands that qualify as competitive short-term supply;

These policies by their terms apply to the city and not to an applicant for a quasi-judicial plan amendment and zone change. However, the applicant's proposal does not change the inventory until the Truman property converts from vacant to a developed status. Because the parcels in this application are served with City infrastructure they are available for immediate development and are centrally located within the community. While not directly applicable to this application, this policy provides the City with a tool to continually evaluate its supply of employment lands throughout the planning period. To the extent that a short-term supply is noted, the City may engage in a process to fix any short-fall in short-term supply.

Industrial Development

9. Large-lot and specialty employment sites are important to the overall inventory of available economic land and shall be protected through the use of zoning, deed restrictions or other appropriate instruments to ensure that these sites will not be further subdivided prior to development.

12. As the supply of large commercial and industrial parcels is developed, the city shall consider designating alternative parcels within the existing inventory or seek to expand the UGB if the inventory of vacant lands drops below the identified need.

15. The community shall strive to diversify its industrial base.

19. Industrial areas shall be protected from incompatible commercial and residential uses.

22. Community efforts should be directed towards improving the general appearance of industrial areas so that they make a positive contribution to the environment of the community.

These policies by their terms apply to the city and not to an applicant for a quasi-judicial plan amendment and zone change. Nonetheless, the subject properties are currently developed with office buildings except for the Truman parcel. The Truman parcel is small at 2.76 acres – not a large parcel and one further constrained by various factors. The conversion of the property to an ME zone will not conflict with this industrial development policy because, as described above, the ME zone is part of the overall inventory of lands discussed within the City's EOA.

The vicinity near the subject properties, and the subject properties themselves, contain an existing mix of uses, some of which could be potentially incompatible with industrial development but have been designed and planned in a cohesive manner to reduce conflict. Two of the subject properties are developed with uses that were permitted at the time when the industrial zone allowed commercial office uses. The industrial area, in this case, is protected as much as possible from incompatible residential and commercial uses. The perimeter uses either contained an existing use or were new uses that were designed to take into consideration the industrial area which in itself contains a variety of uses. Moreover, the subject properties include a mix of office and industrial-designated uses.

Mixed Use Development

24. Mixed use development shall achieve the following purposes:

- ***a. provide a variety of employment opportunities and housing types;***
- ***b. foster pedestrian and other non-motor vehicle access within and to the site;***
- ***c. ensure compatibility of mixed-use development with the surrounding area and minimize off-site impacts associated with the development;***
- ***d. ensure the site planning, access, parking areas and building designs are functionally coordinated and aestheticaly pleasing; and***

e. preserve the natural conditions where the mixed use development is near identified Goal 5 resources, natural areas, open spaces, or waterways.

26. The city may designate other areas for mixed use development to encourage a variety of jobs and services close to residential areas.

These policies by their terms apply to the city, or are aspirational only, and therefore do not apply to an application for a quasi-judicial plan amendment and zone change. These policies are best implemented when looking at the area in which mixed-use development is proposed and the vicinity surrounding it rather than a single lot development. The Old Mill District and the immediate vicinity exemplify the above purposes. The subject properties lie within this district and the conversion to the ME zone will not diminish the goal to provide a mix of uses that adhere to the above objectives. Future development of the Truman Avenue parcel will also need to adhere to the same policy objectives.

New mixed use areas and new ME zones expand the opportunities to develop uses that support job creation and commercial services close to existing residents. The proposed ME designation will permit additional mixed-use development on the subject property, and the vacant Truman parcel. This area of the Old Mill District contains existing residential uses and abuts other residential neighborhoods. Thus, new mixed-use development on the vacant Truman parcel or within the existing buildings will serve to encourage a variety of jobs and services close to residential areas. The mixed use zone will be consistent with the approved Master Plan for Upper Terrace Phase II according to applicant's representatives.

CHAPTER 7: TRANSPORTATION SYSTEMS

6.9.1 TRANSPORTATION AND LAND USE

POLICIES

3. The City shall consider facility needs for long-range transportation system corridor improvements for all modes, during the review of subdivisions, partitions, and individual site applications.

6. The City shall implement mixed use zoning as one of the land use strategies to promote fewer vehicle trips and shorter trip lengths.

7. The City shall be receptive to innovative development proposals, including zone changes, plan amendments, and text changes that promote alternatives to vehicular traffic and demonstrably reduce vehicle trips and trip lengths.

These policies by their terms apply to the city, or are aspirational only, and therefore do not apply to an application for a quasi-judicial plan amendment and zone change. However, as described elsewhere, the Old Mill District is an innovative development and the conversion of the subject IG properties to a ME designation will encourage additional opportunities to reduce vehicle trips and trip lengths.

6.9.4 PEDESTRIAN AND BICYCLE SYSTEMS

5. The City shall develop safe and convenient bicycle and pedestrian circulation to major activity centers, including the downtown, schools, shopping areas and parks. East-west access to the downtown area needs particular emphasis across major obstacles, such as 3rd Street, the Bend Parkway and the railroad.

6. The City shall facilitate easy and safe bicycle and pedestrian crossings of major collector and arterial streets. Intersections shall be designed to include pedestrian refuges or islands, curb extensions and other elements where needed for pedestrian safety. Also, bike lanes shall be extended to meet intersection crosswalks.

7. Bike lanes shall be included on all new and reconstructed arterials and major collectors, except where bikeways are authorized by the TSP.1 Bike lanes

shall also be provided when practical on local streets within commercial and industrial areas.1 Bike lanes shall be added to existing arterial and major collector streets on a prioritized schedule. Specific effort shall be made to fill the gaps in the on-street bikeway system. An appropriate means of pedestrian and bicyclist signal actuation should be provided at all new or upgraded traffic signal installations.

8. ***Property-tight (setback) sidewalks shall be required on both sides of all new streets except where extreme slopes, severe topographical constraints, or special circumstances exist.***

9. ***Landscape areas shall separate the edge of pavement and sidewalks on new and reconstructed roads to allow for water quality treatment and storage of snow.***

10. ***Sidewalks shall be added to all existing arterial and collector streets to fill the gaps in the pedestrian system.***

13. ***Bicycle and pedestrian facilities shall be designed and constructed to minimize conflicts between transportation modes.***

16. ***Bicycle parking facilities shall be provided at all new multifamily residential, commercial, industrial, recreational, and institutional facilities, major transit stops, all transit stations and park and ride lots. The City shall support a "Bikes on Transit" program and work to increase the number of bicyclists using transit when the transit system is established.***

25. ***Bicycle safety shall be promoted by providing striped bike lanes on arterial and collector streets. Bike lanes shall be free of hazardous obstacles such as sewer manhole covers, other utility covers and storm water grates.***

These policies by their terms apply to the city, or are aspirational only, and therefore do not apply to an application for a quasi-judicial plan amendment and zone change. As described elsewhere in this Findings and Recommendation, the subject properties lie within the Old Mill District. As the District and other nearby properties have developed the City has required extensions of alternate mode facilities such as sidewalks, bike lanes, and other pedestrian amenities. The subject properties are developed with a large office building, various parking areas, landscaping, or are vacant. These properties abut improved arterial and collector streets containing bike lanes. The features and elements of the city approval for the developed lots were reviewed and approved through previous conditional use and site plan review proceedings. The vacant lot along Truman Avenue will undergo a future site plan and City review process at the time of development where this policy may be implemented

6.9.5 PUBLIC TRANSPORTATION SYSTEM

5. ***To accommodate a fixed-route transit system, land use ordinances and other regulations shall be implemented that establish pedestrian and transit-friendly design along potential or existing transit routes.***

This policy by its terms applies to the city and not to an application for a quasi-judicial plan amendment and zone change. Nonetheless, the Old Mill District includes several higher order roads accommodating transit routes and transit amenities.

6.9.6 STREET SYSTEM

General:

1. ***Streets shall be located, designed and constructed to meet their planned function and provide space for adequate planting strips, storm water retention and treatment, snow storage, sidewalks, motor vehicle travel and bike lanes (where appropriate). Specific effort should be made to improve and enhance east-west circulation patterns for all modes of travel throughout the community.***

5. ***New development shall be supported by traffic impact analysis to assess these impacts and to help determine transportation system needs.***

The surrounding streets in the Old Mill District were designed and improved in connection with previous developments and/or the existing office development on the subject properties. The streets comply with the city's standards and specifications. The applicant submitted a TIA which shows that no additional transportation facility improvements are warranted as a result of the proposed plan amendment and zone change.

7. ***The City shall be receptive to innovative development proposals, including zone changes, plan amendments, and text changes that promote alternatives to vehicular traffic and demonstrably reduce vehicle trips and trip lengths.***

This policy by its terms applies to the city and not to an application for a quasi-judicial plan amendment and zone change. However, in general, mixed use zones such as the proposed ME zoning allow a greater variety of uses which in generally promotes a reduction in vehicle trips and trip lengths by providing a variety of services nearby, often within walking distance. The proposed [plan amendment and zone change are in line with the above policy.

CHAPTER 8: PUBLIC FACILITIES AND SERVICES

<u>POLICIES</u>

Storm sewer

15. ***All public and private stormwater facilities shall be designed and operated in accordance with the City's Stormwater Master Plan and shall meet appropriate drainage quantity and quality requirements including, but not limited to, the requirements in the City's National Pollutant Discharge Elimination System MS4 Stormwater Permit, integrated Stormwater Management Plan, WPCF Underground Injection Control Permit and any applicable Total Maximum Daily Load requirements.***

17. ***Low impact site designs shall be a required part of all new and re-development.***

19. ***Development shall, to the extent practicable, contain and treat storm drainage on-site.***
20. ***The use of disposal systems shall be coordinated with the Oregon Department of Environmental Quality and Water Resources Department to protect ground water and surface water quality.***

23. ***The City shall require stormwater protection measures for all new development and redevelopment proposals during the planning, project review, and permitting processes.***

The stormwater facilities for development of the subject properties and adjacent streets were reviewed for compliance with the above requirements prior to issuance of building permits. As a result, the existing development on the subject properties contains all stormwater on site and in approved facilities. The future development of the Truman Avenue site will require City site plan review and approval which will require analysis of stormwater and drainage needs. The applicant's proposed plan amendment and zone change will have no affect on stormwater management on the subject property.

Chapter 9 - Community Appearance

This chapter primarily pertains to goals and policies for adopting standards and criteria which will enhance the appearance of the community and in general does not apply to applications for plan amendments and zone changes. The design review criteria for the ME Zone are more stringent than those of the current IG Zone on the subject property. Moreover, the existing development on the subject properties was reviewed for compliance with the site plan and other criteria/standards as part of the previous site plan reviews. Nonetheless, the Old Mill District is a well designed and maintained

development as evidenced by its landscape treatments, pedestrian and transit facilities, and overall arrangement of uses.

Chapter 10 - Natural Forces

This final chapter in the Bend Area General Plan provides discussion and data on natural forces — air quality, energy sources and conservation, and potential hazards such as flooding and land faults. Land use planning can have some influence on how future development impacts these natural forces. However, the effect of these forces on the growth and livability of the urban area is equally likely to be driven by factors that are beyond the physical and political control of the city or county.

This chapter sets goals and policies to guide future studies and the development of future standards and criteria. Therefore, these goals and policies are not applicable to the applicant's proposed plan amendment and zone change.

(Section 4.6.300(B) Criteria for Quasi-Judicial Amendments continued below.)

3. **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 concurrently with the development of the property;**

FINDING: Adequate urban infrastructure, including sewer, water, police and fire protection, schools and transportation facilities are provided to support the proposed plan amendment and zone change. Each of these facilities and services is discussed separately in the findings below.

Police Protection. The subject property is located within the Bend City limits and is served by the Bend Police Department.

Fire Protection. The subject property is located within the Bend City limits and is served by the Bend Fire Department.

Sewer and Water. The subject property is currently served by City sewer and water infrastructure. The applicant and its engineers have worked with the City to evaluate the sewer and water facilities that are currently available to serve the site and its expected users. The record contains a memo from Terry Angle noting that the City of Bend Collection System Master Plan (CSMP) attributes commercial sewer demand for the Old Mill Master Plan area, including the lots subject to this plan amendment and zone change request. As such, the plan amendment and zone change can be approved with the demonstrated sewer capacity for commercial uses having been attributed to the subject lots.

Comments from the City of Bend Engineering Division note that based on the CSMP, upgrades to the Old Mill Pump Station will be needed at some time in the future. The proposed zone change itself does not create new demand or impacts to the sewer system. However, with each subsequent site plan, change of use, or other development activity that could potentially introduce new sewer flow to the Old Mill Pump Station, a sewer analysis will be required to ensure the needed capacity exists and that the proposed development can be adequately served without compromising the pump station.

Schools. The subject property is located within the boundaries of the Bend-La Pine School District and can be adequately served by the district.

Parks. The subject property is located within the boundaries of the Bend Metropolitan Park and Recreation District and can be served by the district. There are no parks planned in the general vicinity of the site, although there are several parks along the river that are within walking distance.

Transportation Facilities. As discussed in previous findings, the applicant's TIA concludes that the proposed change in plan designation and zoning from IG to ME will

not significantly affect a transportation facility because the already established trip cap for the Old Mill District will be utilized.

Stormwater Runoff. There is an approved stormwater system in place for the existing development on the subject properties. The Truman Avenue parcel will be evaluated and required to supply stormwater mitigation at the time of site plan approval.

Based on the above findings, there are adequate public facilities to serve the properties as contemplated by the proposed zone change and text amendment.

4. Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or land use district map regarding the property that is the subject of the application; and the provisions of Section 4.6.600; Transportation Planning Rule Compliance.

1. Mistake or Inconsistency with Comprehensive Plan.

FINDING: The IG zoning of the subject property was not a mistake. The current zoning is consistent with the current plan designations on the property.

The City archive records show how the industrial lands in this area, before the construction of the Bend Parkway, operated in a cohesive fashion and contained a mix of industrial and commercial activities as intended by the General Plan in place at that time. After many years this industrial sector was bisected by the Bend Parkway and the Wilson Avenue Overpass which reduced the ability of area to retain its connection to other industrial areas and diminished its industrial character.

2. Change in the Neighborhood or Community.

There have been various physical changes in the neighborhood and community surrounding the subject property and change of circumstances affecting the subject properties. These issues are described below.

Conversion of Wood-based Heavy Industry to the new Old Mill District Mixed- use Zone. The Old Mill District encompasses a major portion of what was previously a large wood-based industrial site. The site was formerly zoned IG, General Industrial. While the big mills were in operation, the area was not a place that encouraged public access to the Deschutes River or through the vicinity due to the intense activity of the lumber mills, truck traffic, noise, particulate matter, and other issues related to sawmills and log storage. The city's adoption of the MR Zone permitted the mixed-use development of the Old Mill District. The Old Mill District retained the original IG zone designation on some properties and the new zone, MR, was applied to other areas. The subject IG zoned properties were included into the Old Mill District boundary. These factors, precipitated by the diminished lumber industry economy, virtually eliminated all activities related to the wood-based industries and jump-started a transition to office and commercial uses. As the Old Mill District IG zoned properties developed with office buildings it created a pattern of development that isolated the remaining vacant IG properties. The subject Truman Avenue parcel is an example where a property has been isolated; surrounded by developed residential lands, offices, and elevated roads.

The transition from an economy once heavily based on natural resources/manufacturing to an economy that meets demand for professional and business services, educational and health services, retail trade and leisure and hospitality industries is addressed in the city's 2008 EOA. Specifically, the EOA states at page 65:

> *"Bend has seen such redevelopment take place at the Old Mill District and to some degree in downtown; as other truly 'vintage' districts become obsolete, it may be appropriate to encourage their redevelopment."*

The factors described above constitute a change in the neighborhood or community. *Changes to City Regulations Limiting Office Uses in the Industrial Zones.* The Old Mill District master plan and other planning strategies were developed when the city code allowed greater flexibility with office development. The city adopted amendments to its comprehensive plan and zoning ordinance in 2006 when it imposed new restrictions on office uses in the IG Zone, limiting such uses to corporate headquarters/offices where

co-located with a permitted or conditional use. Under the previous IG Zone provisions general office uses were permitted as conditional uses. Today, two of the applicant's properties are developed with office uses, the other property is vacant. The recent adoption of a more restrictive code is a change in circumstance.

Plan Amendments/Zone Changes & Other Changes. The City's 2008 EOA recognizes there are areas within the UGB in transition from industrial to non-industrial uses, including the Old Mill District. Over the years, two of the applicant's parcels have developed with office buildings. Recently, the ODS building was constructed and by subsequent land use application, PZ 09-183, resulted in a zone change and plan amendment from IG to ME. This approval and other existing office developments near the applicant's IG zoned parcels essentially squeeze the applicant's IG zoned parcels into a small node along the Bend Parkway and across Wilson Avenue to the RM zoned lands to the south.

The parkway represents another change in the community. The Parkway was developed after the industrial area was established. As described above, the Parkway limits access and bisects the original IG zoned lands and other industrial areas. As a result, there are very few heavy industrial uses left in the IG zone, except for the Hooker Creek operation. The area is in transition to meet demand for office, retail, residential uses, and very light industrial uses. The applicant's request for ME zoning best suits the surrounding area, provides greater flexibility for the vacant lot, and a broader range of use for the office buildings.

The factors described above constitute changes to the neighborhood or community.

3. Compliance with Provisions of Section 4.6.600 and TPR.

Section 4.6.600 provides as follows:

> ***When a development application includes a proposed comprehensive plan amendment or land use district change, or both, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.***

As previously noted, the applicant's TIA shows that the proposed plan amendment and zone change, under a theoretical redevelopment scenario, could significantly affect a transportation facility. Solutions to mitigate this situation are permitted by the TPR.

The Old Mill District at its inception and through additional modifications has met the TPR and established a trip threshold which is managed by the City and applicant via the trip cap debit system. The applicant proposes to meet the TPR mitigation option described in TIA whereby the subject properties will be limited by the current trip cap debiting process established for Old Mill District under the existing IG zoning. The TIA shows that the site will be limited to the same number of pm peak hour trips as if it retained its IG zone/designation, or 113 pm peak hour trips. For this reason, the TIA concluded that the proposed plan amendment and zone change would not require changes to the functional classification of existing or planned transportation facilities, or a change to the standards implementing the comprehensive plan. Based on the analysis contained in the TIA, the proposed plan amendment and zone change is consistent with, and satisfies, the requirements of, the TPR.

ORDINANCE NO. NS-2139

AN ORDINANCE AMENDING CHAPTER 3.4, PUBLIC IMPROVEMENT STANDARDS OF THE BEND DEVELOPMENT CODE.

Findings:

A. The City of Bend adopted its Development Code on July 5, 2006. The City is currently in the process of updating its Construction Standards and Specifications. Adopting the proposed text amendments will clearly link the Development Code with the City's new Standards and Specifications. The proposed text amendments also enable the Review Authority to grant waivers or modifications of public improvement standards if certain criteria are met.

B. The Bend Planning Commission held a duly noticed public hearing on the proposed text amendments on December 14, 2009. Based upon the record and the evidence and testimony presented at the hearing, the Planning Commission voted to recommend that the City Council approve the proposed amendments.

C. The City Council held a duly noticed public hearing on January 20, 2010. Based on the entire record, including all testimony, evidence, and the recommendation of the Planning Commission, the Council concluded that the application meets the criteria for approval.

Based on these findings,

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council held a public hearing to consider the proposed text amendments and the Planning Commission's recommendation and found that the proposed amendments to the Development Code are consistent with the applicable criteria in Chapter 4.6 of the Development Code. In addition to the findings listed above, the Bend City Council adopts the findings in Exhibit B.

Section 2. Chapter 3.4 of the Bend Development Code is hereby amended as shown in Exhibit A.

Read for the first time the 20th day of January, 2010.

Read for the second time the 3rd day of February, 2010.

Placed upon its passage the 3rd day of February, 2010.

YES: 6 NO: 0

Authenticated by the Mayor the 3rd day of February, 2010.

Kathie Eckman

Kathie Eckman, Mayor

ATTEST:

Patricia S. Stell

Patricia Stell, City of Bend Recorder

EXHIBIT A

City of Bend
Development Code Tune-Up:
Chapter 3.4, Public Improvement Standards

City Council 2nd Reading
February 3, 2010

Prepared by:
City of Bend Planning Division

Note:
Text in underlined typeface is proposed to be added.
Text in ~~strikethrough~~ typeface is proposed to be deleted.
*** Indicates where text from the existing code has been omitted because it will remain unchanged.

Chapter 3.4 Public Improvement Standards

Sections:

3.4.100 Purpose and Authority
3.4.150 Waiver and Modification of Public Improvement Standards
3.4.200 Transportation Improvement Standards
3.4.300 Public Use Areas
3.4.400 Sanitary Sewer and Water Service Improvements
3.4.500 Storm Drainage Improvements
3.4.600 Utilities
3.4.700 Easements
3.4.800 Construction Plan Approval and Assurances
3.4.900 Installation
~~**3.4.1000 Street Improvement Standards**~~

3.4.100 Purpose and Authority.

A. **Purpose.** The purpose of this Chapter is to provide requirements for design and construction of public and private infrastructure including: Transportation facilities; sewer, water and other utilities; and drainage features and activities. One of the primary purposes of this Chapter is to provide standards for attractive and safe streets that can accommodate vehicle traffic from planned growth, and provide a range of transportation options, including options for driving, walking, bicycling, transit and other transportation modes. This Chapter is intended to guide development through the implementation of the City of Bend Standards and Specifications.

~~**B. City's Authority.** The City Engineer may, at his/her discretion, modify or waive the required content of this chapter when in his/her judgment special circumstances dictate such change, pursuant to Section 3.4.100(C), below.~~

B. **Public Improvements Needed for Development.** Development shall not occur unless the public improvements serving the development comply with the public facility requirements established or incorporated by this Chapter, unless compliance is exempted by this Code or unless the applicable standard is modified or waived under Section 3.4.150.

~~**C. When Standards Apply**. Unless otherwise provided, the standard specifications for construction, reconstruction or repair of transportation facilities, utilities and other public improvements within the City shall conform to this Chapter. No development shall occur unless the public improvements related to development comply with the public facility requirements established in this Chapter, unless specifically exempt or otherwise specified by a land use review and/or condition of approval from a land use action.~~

C. **Compliance with Standards.** All public improvements constructed as part of a development or to comply with a condition of development approval shall comply with all applicable standards, including but not limited to any standards and specifications adopted by the City applicable to public works or public improvements. The provisions of this Chapter prevail over any inconsistent standard or specification unless the applicable standard is modified or waived under Section 3.4.150.

~~**D. Standard Specifications**. The City has standard construction specifications consistent with the guidelines of this Chapter and application of engineering principles. They are incorporated in this code by reference as the City of Bend Standards and Specifications document. Where there are conflicts between this Ordinance and the City of Bend Standards and Specifications document, the Development Code shall prevail.~~

D. **Conditions of Development Approval.** No development shall occur unless required public facilities are in place or guaranteed. Improvements required to be constructed by the developer as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of development on public facilities and services. Findings in the development approval shall indicate how the required improvements are related to and roughly proportional to the impact. The City may deny an application if required public improvements are not in place, or the City may impose conditions of approval tying the timing of construction and/or occupancy of a proposed development to anticipated public improvements without requiring the applicant to construct the public improvements.

~~**E. Conditions of Development Approval**. No development shall occur unless required public facilities are in place or guaranteed, in conformance with the provisions of this Code. Improvements required as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of development on~~

~~public facilities and services. Findings in the development approval shall indicate how the required improvements are roughly proportional to the impact.~~

3.4.150 Waiver and Modification of Public Improvement Standards.

A. Authority to Grant Waiver or Modification. Waivers and/or modifications of the standards of this chapter and/or the City of Bend Standards and Specifications may be granted as part of a development approval only if the criteria of Subsection B are met.

B. Criteria. The Review Authority, after considering the recommendation of the City Engineer, may waive or modify the standards of this title and the City of Bend Standards and Specifications based on a determination that (1) the waiver or modification will not harm or will be beneficial to the public in general; (2) the waiver and modification are not inconsistent with the general purpose of ensuring adequate public facilities; and (3) one or more of the following conditions are met:

1. The modification or waiver is necessary to eliminate or reduce impacts on existing drainage patterns or natural features such as riparian areas, significant trees or vegetation, or steep slopes.

2. An existing structure such as a substantial retaining wall makes widening a street or right-of-way or required placement of lines impractical or undesirable.

3. Street access to an existing lot would be eliminated without the waiver or modification.

4. Building on an existing lot would be infeasible without the waiver or modification.

5. The standard is a street or right-of-way standard and existing structures on the same side of the block make future widening of the remainder of the street or right-of-way unlikely and the additional width on the project site would not be beneficial for sidewalks or parking without the extension for the rest of the block.

6. The modification or waiver is needed to allow development of, or street access to, the property because of topographical constraints.

7. The existing infrastructure (a) does not meet current standards, (b) is and will remain functionally equivalent to current standards, and (c) there is little likelihood that current standards will be met in the area.

8. The installation of the required improvements would likely cause unacceptable significant adverse environmental impacts and the waiver/modification would avoid such impacts.

9. There is insufficient right-of-way to allow a full width street cross section and additional right of way cannot be provided.

10. There is no street or right-of-way adjacent to the property and easement access has been obtained across private property.

11. Required street frontage improvements for individual single-family dwellings could best be accomplished by planned area-wide improvements at a future date.

12. The City has conflicting or inconsistent standards and the proposal would comply with one set of adopted standards. Standards are conflicting or inconsistent only when it is not possible to comply with both. In most situations, the more recently adopted standard should be followed and the older standard may be waived.

Any waiver or modification of applicable standards and specifications shall be the minimum needed to allow development, and maximization of the number of lots or parcels in a land division is not a reason to allow a waiver or modification.

C. Other Requirements Not Waived. Any waivers under this section do not exempt the developer from submitting plans which meet all other applicable specifications.

D. Application Requirements. The application for a waiver or modification shall be in writing submitted as part of a development application. The City Council may adopt a fee for a waiver/modification application by resolution. The application shall specify which requirement(s) of this chapter and/or the City of Bend Standards and Specifications are at issue and which of the condition(s) listed above are met. The application shall contain a statement explaining why the deviation from the required

standards is necessary and why the waiver or modification sought will not harm or will be beneficial to the general public.

E. Conditions. The City may impose a condition of approval requiring a signed agreement not to remonstrate against the formation of a local improvement district.

***

EXHIBIT B

CITY COUNCIL FINDINGS IN SUPPORT OF PZ 09-255

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE

Chapter 4.6 Land Use District Map and Text Amendments

4.6.200 Legislative Amendments.

B. Criteria for Legislative Amendments. The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve or to deny an application for a Legislative Amendment shall be based on all of the following criteria:

1. The request is consistent with the applicable State land use law;

FINDING: The proposed amendments to Chapter 3.4, Public Improvement Standards of the Development Code are consistent with applicable State land use laws. In particular, the proposed amendments will satisfy Goal 11 (Public Facilities and Services), as explained below.

Statewide Planning Goal 11 requires that public facilities and services in urban areas should be provided at levels necessary and suitable for urban uses. The City Council finds that adopting the proposed text amendments will clearly link the Development Code with the City's new Standards and Specifications. The text amendments will also enable the Review Authority to grant waivers or modifications of public improvement standards based upon a determination that (1) the waiver or modification will not harm or will be beneficial to the public in general; (2) the waiver and modification are not inconsistent with the general purpose of ensuring adequate public facilities; and (3) one or more specific conditions are met.

2. The request is consistent with the applicable Bend Area General Plan goals and policies;

FINDINGS: The "goals" established in the Bend Area General Plan express the desires of the residents of Bend as the City progresses into the future. The "goals" are generally carried out through "policies", which are statements of public policy. Chapter 8 of the General Plan includes the following goals related to public improvement standards:

- To have public and private utility systems provide adequate levels of service to the public at reasonable cost;
- For new development to pay its fair share of the cost of major facilities needed to support development;
- To ensure that public facilities and services will not have negative impacts on the environment or the community; and
- To locate and operate public buildings and other public facilities to best serve the needs of the residents.

The City Council finds that updating Chapter 3.4 as recommended by the Planning Commission will help to implement existing General Plan goals and policies related to public improvement standards.

3. The applicant can demonstrate a public need or benefit for the proposed amendment.

FINDING: There is a public need and benefit for development regulations that help to ensure that public facilities and services are provided at levels necessary and suitable for urban uses.

4.6.600 Transportation Planning Rule Compliance.

When a development application includes a proposed comprehensive plan amendment or land use district change, or both, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.

FINDING: The City Council is adopting a text amendment to the Bend Development Code, a functional component of the comprehensive plan. The Bend Planning Division has analyzed the proposed text amendments and has found that none of the changes would cause a "significant effect" under ORS 660-012-0060.

CONCLUSIONS:

Based on the above Findings of Fact and Conclusions of Law, the City Council finds that the proposed Development Code text amendments can meet, with maintenance of a record, all applicable criteria for adoption.

ORDINANCE NO. 2140

AN ORDINANCE UPDATING CHAPTER SIX TO BECOME TITLE VI – VEHICLES, TRAFFIC AND PARKINGOF THE BEND CODE, WHICH INCLUDES A 750-FOOT LIMITATION IN SECTION 6.25.020

Findings:

A. Chapter Six of the Bend Code has not received a complete review since 1982.

B. A staff review of Chapter Six, comprised of a multi-discipline team, evaluated the current language and made modifications to reflect current statutory requirements, court decisions, and relevance to current conditions.

C. The staff proposal includes reformatting the Code to allow greater flexibility for future changes to the Code by establishing a Title / Chapter / Section / Subsection structure.

D. The changes to the Code are in the best interests of the citizens of Bend.

The City of Bend ordains as follows:

Section 1. Bend Code Chapter 6 is amended to read as shown in the attached Exhibit A.

Section 2. The code amendments made by this ordinance supersede any inconsistent material in any previous ordinance or other enactment of the City.

Read for the first time the 21st day of April, 2010.

Read for the second time the 5th day of May, 2010.

Placed upon its passage the 5th day of May, 2010.

YES: 7 NO: 0

Authenticated by the Mayor the 5th day of May, 2010.

Kathie Eckman

Kathie Eckman, Mayor

Approved as to form:

Gary Firestone

Gary Firestone, Assistant City Attorney

ATTEST:

Patricia S Stell

Patricia Stell, City of Bend Recorder

Exhibit A

TITLE VI: VEHICLES, TRAFFIC, AND PARKING

CHAPTER 6.05 GENERAL PROVISIONS

6.05.000 Application of State Traffic Laws All persons shall comply with the Oregon Vehicle Code and Oregon Administrative Rules related to vehicles and traffic. Violations of this chapter may be tried as authorized by state law or as a civil infraction.

6.05.005 Forfeiture The City shall comply with State law when seeking forfeiture of a vehicle or other property. Forfeiture will be sought only when authorized by law.

6.05.010 Definitions The definitions in this section apply in this title. In addition, definitions contained in the Oregon Vehicle Code apply.

(1) Bus stop A space on the edge of a roadway designated by sign or curb marking for use by Bend Area Transit buses.

(2) Holiday New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day.

(3) Loading zone A space on the edge of a roadway designated by sign or green curb marking for loading or unloading passengers or materials.

(4) Motor vehicle Every vehicle that is self-propelled, including tractors, forklift trucks, motorcycles, road-building equipment, street-cleaning equipment, and any other vehicle capable of moving under its own power, even if the vehicle is exempt from licensing under the motor vehicle laws of Oregon.

(5) Parking facility Any property used for motor vehicle parking.

(6) Pedestrian A person on foot or using an assisted mobility device for use by persons with disabilities.

(7) Street Any City administered right of way developed for vehicular travel

(8) Traffic lane The area of a street used for movement of a single lane of traffic.

CHAPTER 6.10 ADMINISTRATION

6.10.000 Powers of Road Authority

(1) The City Manager is delegated the authority to take the following actions on a permanent or temporary basis and may further delegate the authority:

(A) Designate portions of rights of way where parking or standing is prohibited or restricted or which shall be used for bicycle lanes.

(B) Designate parking spaces and the type, hours and duration of parking permitted including valet parking.

(C) Designate through streets, one-way streets, truck routes, and streets where trucks and heavy

machinery are prohibited, except as needed to perform work or deliver or pick up materials.

(D) Designate locations for traffic control devices.

(E) Establish bus stops.

(F) Designate the location of loading zones.

(G) Provide appropriate signs and marking relating traffic, traffic control, pedestrians, crosswalks, school zones, and parking.

(H) Close or restrict the use of streets and sidewalks.

(2) The City Council delegates to the City Manager the authority to make all initial decisions relating to the exercise of the powers of a road authority under State law. The City Manager may further delegate the authority granted under this section.

(3) The delegation of road authority to the City Manager does not deprive the City Council of its power to act as the City's final road authority.

(4) The City Manager may issue permits or establish parking regulations or requirements that the City Manager determines are necessary for the effective utilization and regulation of parking within the city.

6.10.005 Review or Appeal of Decision or Action of City Manager
Any decision or action of the City Manager or designee in this chapter is subject to appeal to or review by the City Council.

(1) Any person affected by a decision or action of the City Manager or designee under this chapter may appeal the decision or action to the City Council by filing a written appeal with the City Recorder within 10 calendar days of the decision or action. In the event that the appellant had no reasonable basis for knowing of the decision or action, the appeal must be filed within 10 calendar days of the date the person knew or should have known of the decision or action.

(2) The City Manager or any Council member may initiate a review of any decision or action by the City Manager under Section 6.05.010 by placing the matter on the Council agenda.

(3) The Council may but is not required to give deference to the City Manager's decision in making its decision.

6.10.010 Retention of Authority by Council

(1) The Council may on its own initiative or at the request of the City Manager make an initial decision on a matter within the road authority of the City.

(2) If the Council makes a decision either as an initial decision or on appeal or review, that decision shall be binding on the City Manager and staff for a period of five years unless the Council decision is withdrawn.

(3) The City Council retains all its authority relating to the vacation of rights of way.

6.10.015 Standards City traffic regulations shall be based on:

(1) Traffic engineering principles and traffic investigations.

(2) Standards, limitations and rules promulgated by the Oregon Transportation Commission.

(3) Other recognized traffic control standards, including the Manual of Uniform Traffic Control Devices.

6.10.020 Authority of Police and Fire Officers and Others:

(1) It shall be the duty of police officers to enforce the provisions of this code.

(2) In the event of a fire or other public emergency, police and fire officers may direct traffic as conditions require, notwithstanding the provisions of this code.

(3) Parking violations may be enforced by an agent of the City authorized in writing by the Chief of Police to issue parking citations.

CHAPTER 6.15 TRAFFIC REGULATIONS

6.15.000 Crossing Private Property

(1) The operator of a vehicle shall not proceed from a street to another street by crossing private property. This provision shall not apply to stops on the property to procure or provide goods or services.

(2) A violation of this section is a Class C civil infraction.

6.15.005 Throwing Material From a Vehicle

(1) It is unlawful to throw, drop or otherwise discard any item from a vehicle onto any public right of way or premises open to the public.

(2) A violation of this section is a Class B Civil Infraction.

6.15.010 Obstructing Public Ways

1) Except as authorized in subsection 2, no unauthorized person shall obstruct a public way, including streets, alleys and sidewalks, by depositing or storing personal property or other material on public ways or by any other manner obstructing or interfering with public ways. Obstruction of a sidewalk is a violation, even if the adjacent street is not obstructed.

(2) Merchandise or equipment delivery is allowed for the time needed to accomplish the delivery, not to exceed 10 minutes, or between the hours of 8 P.M. and 11 A.M. Delivery authorized under this section shall minimize obstruction of public ways to the extent possible.

(3) An authorized obstruction of a public way between sunset and sunrise shall be illuminated by warning lights or reflective materials clearly visible 200 feet in all directions.

(4) No person shall use a public way for display or sale of goods except as authorized by the City.

(5) No person shall deposit garbage, earth, debris or rubbish of any kind on a public way, in the Deschutes River or any irrigation canals within the city unless authorized by the City.

(6) A violation of this section is a Class B civil infraction, A violation of subsection 2 may be cited as a parking violation.

6.15.015 Sidewalks

(1) No person shall ride, drive or operate a motor vehicle on or across a public sidewalk within the City except at driveway access points.

(2) This section shall not apply to motorized vehicles used for public safety, snow removal, maintenance and repair, or mobility devices used by persons with disabilities.

(3) A violation of this section is a Class A Civil Infraction.

6.15.020 Streets Prohibited to Trucks:

(1) When the use of a street is prohibited to trucks exceeding a specified weight, no person shall operate a truck on the street contrary to the prohibition except for the purpose of delivering or picking up materials or merchandise and then only by entering the street at the intersection nearest the destination of the vehicle and leaving by the shortest route.

(2) A violation of this section is a Class C civil infraction.

6.15.025 Removing Glass and Debris:

(1) A party to a vehicle crash or a person causing broken glass or other debris to be deposited on a street shall be responsible for the removal of glass or other debris from the street.

(2) A violation of this section is a Class C civil infraction.

CHAPTER 6.20 PARKING REGULATIONS

6.20.000 Method of Parking:

(1) Except as authorized by subsection 2, where parking spaces are marked on a street or City owned parking facility, no person shall stand or park a vehicle other than within a single marked space, both width and length, unless authorized by the City.

(2) In areas marked for parallel parking, oversized vehicles may use up to two parking spaces as needed for vehicle length.

(3) No vehicle shall park in an angled parking stall in a manner that causes them to drive into the oncoming traffic flow when exiting the parking stall.

(4) Vehicles parked parallel shall be parked in the direction of the traffic flow in the adjacent traffic lane.

6.20.005 Prohibited Parking ,Stopping or Standing on Public Right of Way

No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a peace officer or official traffic control device, under any of the following circumstances:

(1) A truck in excess of 12,000 pounds between the hours of 9:00 P.M. and 7:00 A.M. in front of or adjacent to a residence.

(2) A vehicle in or blocking an alley, except for a stop of not more than 15 consecutive minutes for loading or unloading persons or materials and

must display emergency flashers.

(3) A vehicle in violation of a sign placed by the City of Bend.

(4) Adjacent to a curb painted yellow by the City of Bend to designate No Parking at any time.

(5) Adjacent to a curb painted green by the City of Bend to designate a loading zone unless involved in the act of loading.

(6) Adjacent to a curb painted red by the City of Bend to designate a fire lane or special security area.

(7) Parking the vehicle for the primary purpose of displaying the vehicle for sale.

(8) Repairing or servicing the vehicle, except repairs necessitated by an emergency.

(9) Selling merchandise from the vehicle, except when authorized by the City.

(10) Storage for more than five calendar days.

(11) Parking of a vehicle with a vehicle registration that has been expired for more than 30 days.

(12) Adjacent to or within 10 feet of a fire hydrant

(13) On a sidewalk.

(14) Any other violation of State law.

6.20.010 Unlawful Parking of Vehicle for Sale at Private Parking Facility

(1) No person shall leave or park a vehicle at a private parking facility for the principal purpose of selling said vehicle if there is a sign displayed, that complies with subsection (2), below, in plain view at the facility.

(2) Signs prohibiting the parking of a vehicle for the purpose of sale posted after the effective date of this section shall state:

No Parking of Vehicles for Sale.
Bend Code Chapter 6

Signs posted under previous versions of this section shall remain effective.

(3) The provisions of this code section supplement all other remedies available to owners of parking facilities relating to unlawfully parked vehicles, including ORS 98.805 - 98.818.

6.20.015 Use of Loading Zone No person shall stand or park a vehicle for any purpose or length of time in a place designed as a loading zone when the hours applicable to that loading zone are in effect, except for loading or unloading persons or materials. When the hours applicable to the loading zone are in effect, the stop for loading and unloading shall not exceed the time limits posted. If no time limits are posted, use of the zone shall not exceed 30 minutes. Vehicles must display emergency flashers for duration of loading/unloading.

6.20.020 Unattended Vehicles When a police officer finds an unlocked motor vehicle parked or standing unattended with the ignition key in the vehicle, the officer is authorized to remove the key from the vehicle.

6.20.025 Downtown District

(1) The downtown district encompasses all streets, alleys, parking lots and sidewalks within the following boundary description:

Beginning at the North side of Newport Avenue and the Deschutes River, thence South along the Deschutes River from Newport Avenue to the South side of Franklin Avenue, thence East on Franklin Avenue to the West side of Broadway Street, thence south on Broadway Street to the South side of Louisiana Avenue, thence East on Louisiana Avenue from Broadway Street to the West side of Wall Street, thence South on Wall Street from Louisiana Avenue to the South side of Kansas Street, thence Easterly from Kansas and Wall Street through the Administrative School District property to the Southeast corner of the intersection of Kansas and Lave Street, thence Northeast on Lava Street to the North side of Franklin Avenue, thence East from the Northeast corner of Franklin Avenue and Lava Street to the West side of Division Avenue, thence North on the West side of Division to the South side of Greenwood Avenue, thence West on Greenwood Avenue to the Southeast corner of Greenwood Avenue and Harriman Street, thence North (across Greenwood Avenue) to the Northeast corner of Greenwood Avenue and Harriman Street, thence West to the Northeast corner of Greenwood Avenue and Bond Street to the Junction of Bond Street and Wall Street, crossing Wall Street to the West side of Wall Street and the Northwest corner of Wall Street and Vermont Place, thence West along the North side of Vermont Place to the Deschutes River, thence South to the Point of Beginning (as shown on Attached Exhibit A).

(2) Within the downtown district, the City Manager or designee shall cause each parking space in a street or within an off-street parking area to be clearly marked. The City Manager or designee shall determine the necessity for and the size and location of all parking spaces according to his or her reasonable determination of the safety, convenience and necessity of the public. Such markings may include markings to reserve one or more spaces exclusively for parking of motorbikes, motor scooters, motorcycles, bicycles, recreational vehicles, other oversized vehicles and any other legally operable vehicle and parking for persons with disabilities.

CHAPTER 6.25 PARKING CITATION AND OWNER RESPONSIBILITY

6.25.000 Illegally Parked Vehicle

(1) Parking citations shall be placed conspicuously on the vehicle. The registered owner of the vehicle shall be responsible for the citation unless the driver accepts responsibility.

(2) If parking is subject to a time limit, separate citations may be issued if the duration exceeds multiple increments of the posted time.

(3) Within ten days of the issuance of the parking citation:

(a) The required penalty must be paid;
(b) A written response contesting the ticket must be filed; or
(c) A written request for an in-person hearing must be filed.

(4) The citation shall state the penalties that may be imposed for failure to comply.

(5) The City Manager may appoint one or more persons to serve as hearings officers to review written responses and/or hold in-person hearings. If the City Manager does not appoint a hearings officer, the Municipal Court

Judge shall act as hearings officer.

6.25.005 Failure to Comply with Parking Citation

If section 6.25.000(3) is not complied with, the City or its designee shall provide written notice to the owner or lessee of the vehicle. The notice shall provide information related to additional charges, as established in the City's Fees and Charges Resolution.

(1) If the City has contracted the enforcement of parking violations that contractor or its agent may collect the delinquent fines, impose additional charges for the collection efforts undertaken, and may immobilize or impound the vehicle pursuant to Bend Code subsection 2 of this section. These additional collection charges shall be established in the City's Fees and Charges Resolution.

(2) A vehicle for which a citation has been issued and remains unpaid after becoming due may be immobilized or impounded. A vehicle that has been immobilized or impounded shall not be released until all outstanding penalties and charges have been paid to the City or its designee.

(3) No person other than an authorized City agent shall remove or attempt to remove an immobilizer device; and no person shall move or attempt to move an immobilized vehicle until the immobilizer device is removed.

(4) A violation of this subsection is a class A Civil Infraction.

6.25.010 Owner/Lessee Responsibility

The owner or lessee of a vehicle in violation of a parking restriction is responsible for the offense, but it shall be an affirmative defense that the vehicle was used without the owner's or lessee's consent.

6.25.015 Registered Owner Presumption

In a proceeding against a vehicle owner charging violation of a parking restriction, proof that the vehicle was registered to the defendant at the time of the violation shall constitute a rebuttable presumption that the defendant was the owner.

6.25.020 Extending Parking Time

Where maximum parking time limits are designated, movement of a vehicle to another time limited parking space within a 750 foot radius shall not extend the time limits for parking.

6.25.025 Illegal Issuance of a Parking Citation:

(1) Except as authorized by Oregon Revised Statutes, no person shall issue a parking citation unless authorized by the Chief of Police.

(2) A violation of this section is a Class B civil infraction.

6.25.030 Illegal Cancellation of Parking Citation:

(1) No person shall dismiss a parking citation in any manner, except when approved by the parking hearings officer or City validation program.

(2) An authorized agent of the City may reduce the penalty for parking in a space reserved for persons with disabilities if the citation recipient can provide a copy of a valid placard and proper identification. The reduction shall be no less than established in ORS 811.615 (7). The authority in this section may be exercised for up to five violations per person within one year.

(3) A violation of this section is a Class B civil infraction.

6.25.035 Improper Parking Citation Validation

(1) Any parking validation program shall be for over-time parking only.

(2) No person shall validate a parking citation in a manner inconsistent with the parking validation program.

(3) A violation of this subsection is a Class B civil infraction.

6.25.040 Fraudulent Use of a Parking Permit

(1) No person shall use a parking permit in a fraudulent manner, such as:
(A) Alteration or duplication of any kind of a City issued parking permit.

(B) Use of a permit belonging to another.

(2) A violation of this subsection is a Class B civil infraction.

6.25.045 Habitual Parking Offender

(1) The penalty for repeated parking violations within any 365 consecutive day period shall be increased as follows:

(A) Five to nine parking violations: 200% of the otherwise applicable penalty.

(B) Ten to fourteen parking violations: 300% of the otherwise applicable penalty.

(C) Fifteen or more parking violations: 400% of the otherwise applicable penalty.

CHAPTER 6.30 ENFORCEMENT:

6.30.000 Parking Penalties

(1) A violation of section 6.25, unless otherwise defined in the subsection, is punishable by a penalty in the amount established by the City Fee Resolution.

(2) Disabled parking violations are punishable by the amount established by Oregon State Law.

6.30.005 Removal (Towing) of Illegally Parked Vehicles

(1) The City may remove any illegally parked vehicle that is unattended or that is not removed after a request is made to the owner or person in charge of the vehicle.

(2) Except as provided in subsection 3, the City shall not remove any vehicle that was originally legally parked unless:

(A) The vehicle has remained illegally parked for a period three times longer than the time originally allowed for the vehicle to be parked,

(B) Removal is needed for street cleaning, snow removal or maintenance,

(C) The vehicle is obstructing traffic, or

(D) The vehicle has been parked for more than five days.

(3) Vehicles parked on a street that has been closed or scheduled for closure may be towed.

CHAPTER 6.35 BICYCLES

6.35.000 Bicycle Operating Rules Except for bicycles operated by on duty law enforcement personnel:

(1) Bicycles shall be parked so they do not obstruct a roadway, sidewalk, driveway or building entrance

(2) Bicycles shall not be ridden on a sidewalk in the Downtown District described in section 6.190 or in the Centennial Parking Garage.

(3) A violation of this section is a Class C civil infraction.

6.35.000 Registration The Police Department may provide a bicycle registering service for the purpose of returning lost or stolen bicycles.

6.35.005 Impounding Bicycles

(1) A bicycle left on public property for more than 24 hours may be impounded by the Police Department.

(2) If a bicycle impounded under this code is registered, or other means of determining its ownership exist, the police shall make a reasonable effort to notify the owner. No impounding fee shall be charged to the owner of a stolen bike.

(3) A bicycle impounded under this code and remaining unclaimed shall be disposed of in accordance with City procedures for disposal of abandoned or lost personal property.

(4) Except as provided in subsection (2), a fee established in the City's Fee Resolution shall be charged to the owner of a bicycle impounded under this section.

CHAPTER 6.40 SKATEBOARDS AND ROLLER SKATES

6.40.000 Roller-skates and Skateboards

(1) No person shall use roller-skates, skateboards, scooters or similar devices on the sidewalks in the Downtown District as defined in Bend Code 6.20.025 or in any parking facility owned by the City.

(2) A violation of any subsection of this section is a Class C civil infraction.

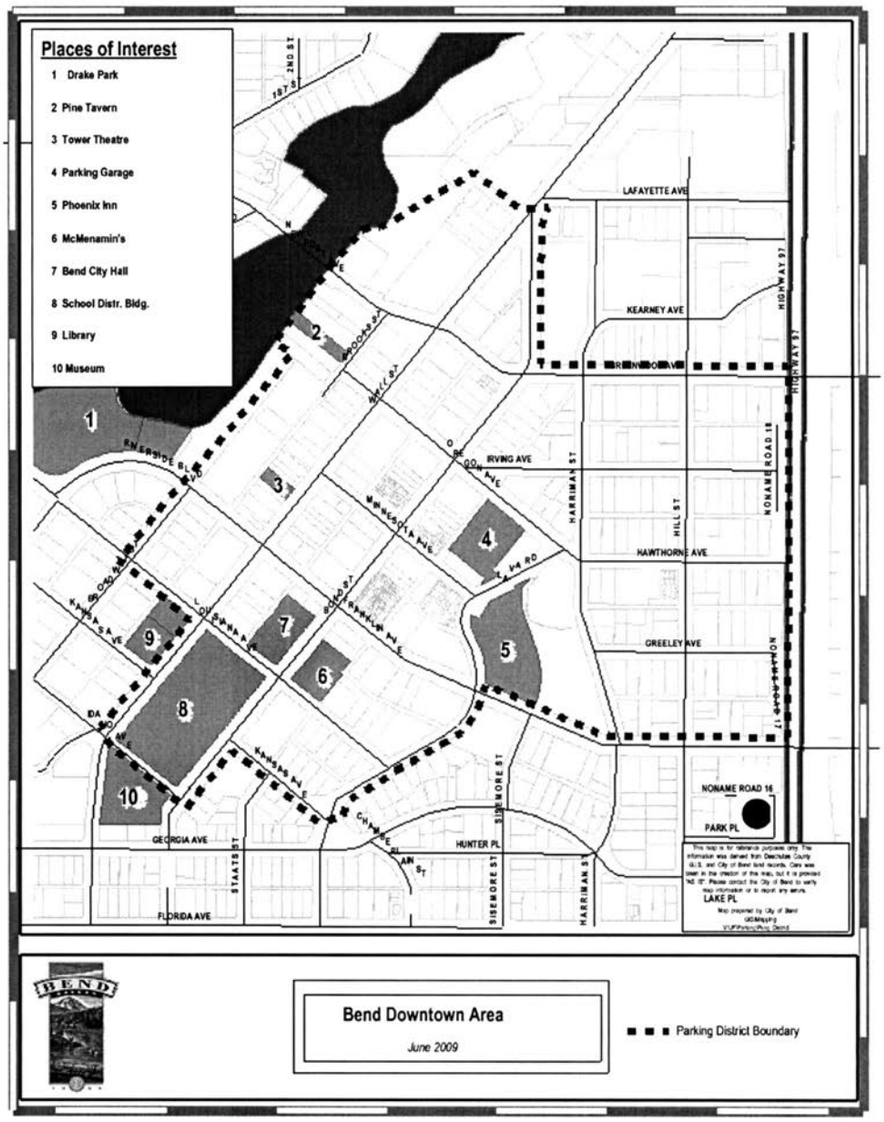

Places of Interest
1 Drake Park
2 Pine Tavern
3 Tower Theatre
4 Parking Garage
5 Phoenix Inn
6 McMenamin's
7 Bend City Hall
8 School Distr. Bldg.
9 Library
10 Museum
LAFAYETTE AVE
KEARNEY AVE
IRVING AVE
HAWTHORNE AVE
GREELEY AVE
NONAME ROAD 16
PARK PL
LAKE PL
HUNTER PL
GEORGIA AVE
FLORIDA AVE
HARRIMAN ST
HILL ST
SIDEMORE ST
STAATS ST
HIGHWAY 97
Bend Downtown Area
June 2009
Parking District Boundary

Exhibit A

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¶

TITLE VI: VEHICLES, TRAFFIC, AND PARKING

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Deleted: AND
Deleted: TRAFFIC CODE

CHAPTER 6.05 GENERAL PROVISIONS

6.05.000 Application of State Traffic Laws. All persons shall comply with the Oregon Vehicle Code and Oregon Administrative Rules related to vehicles and traffic. Violations of this chapter may be tried as authorized by state law or as a civil infraction.

Deleted: 6.010 Title. Section 6.010 to 6.900 of this code may be cited as the Bend Uniform Traffic Code.¶
¶
6.015

Deleted: . A violation of the provisions of

Deleted: in ORS Chapters 801 through 822

Deleted: ORS 476.715 is a municipal ordinance offense against the City of Bend. The provisions of ORS Chapter 153 shall be applicable to all actions filed in Bend Municipal Court which allege a violation of this section. Amendments to the chapters of ORS incorporated herein made by the 1983, 1985, 1987, 1989, 1991, 1993, 1995 and 1997 Legislatures shall be amendments to this section

6.05.005 Forfeiture The City shall comply with State law when seeking forfeiture of a vehicle or other property. Forfeiture will be sought only when authorized by law.

6.05.010 Definitions The definitions in this section apply in this title. In addition, definitions contained in the Oregon Vehicle Code apply.

(1) Bus stop A space on the edge of a roadway designated by sign or curb marking for use by Bend Area Transit buses.

(2) Holiday New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day.

(3) Loading zone A space on the edge of a roadway designated by sign or green curb marking for loading or unloading passengers or materials.

(4) Motor vehicle Every vehicle that is self-propelled, including tractors, forklift trucks, motorcycles, road-building equipment, street-cleaning equipment, and any other vehicle capable of moving under its own power, even if the vehicle is exempt from licensing under the motor vehicle laws of Oregon.

(5) Parking facility Any property used for motor vehicle parking.

(6) Pedestrian A person on foot or using an assisted mobility device for use by persons with disabilities.

(7) Street Any City administered right of way developed for vehicular travel

(8) Traffic lane The area of a street used for movement of a single lane of traffic.

Deleted: ¶
[Section 6.015 amended by Ord. NS-1391, passed November 16, 1983]¶
[Section 6.015 amended by Ord. NS-1423, passed October 16, 1985]¶
[Section 6.015 amended by Ord. NS-1429, passed February 19, 1986]¶
[Section 6.015 amended by Ord. NS-l463, passed September 16, 1987]¶
[Section 6.015 amended by Ord. NS-1493, passed July 5, 1989]¶
[Section 6.015 amended by Ord. NS-1504, passed January 17, 1990]¶
[Section 6.015 amended by Ord. NS-1546, passed August 21, 1991]¶
[Section 6.015 amended by Ord. NS-1605, passed November 3, 1993]¶
[Section 6.015 amended by Ord. NS-1641, passed October 18, 1995]¶
[Section 6.015 amended by ORD No. NS-1693, passed April 1, 1998]¶
¶
6.017 Certain Vehicles as Nuisances. The following motor vehicles are hereby declared to be nuisances and subject to forfeiture:¶
¶
(1) A motor vehicle operated by a person whose operator's license is suspended or revoked or in violation of a hardship or probationary permit in violation of the provisions of ORS 811.182; and¶
¶
(2) A motor vehicle operated by a person under the influence of intoxicants in violation of ORS 813.010, where the person has:¶
¶
(a) Participated in a driving under the influence of intoxicants diversion program as provided for by the Oregon Revised Statutes, or its statutory counterparts in any jurisdiction within ten years prior to arrest or citation; or ¶
Section Break (Next Page)
(b) Been convicted or forfeited bail or security within the previous ten years of:¶
¶
(A) Driving Under the Influence of Intoxicants under ORS 813.010 or its statutory counterpart in any jurisdiction; or¶
¶
(B) Any degree of murder, manslaughter, criminally negligent homicide or assault resulting from the operation of a motor vehicle, or ... [1]

CHAPTER 6.10 ADMINISTRATION

6.10.000 Powers of Road Authority

(1) The City Manager is delegated the authority to take the following actions on a permanent or temporary basis and may further delegate the authority:

(A) Designate portions of rights of way where parking or standing is prohibited or restricted or which shall be used for bicycle lanes.

(B) Designate parking spaces and the type, hours and duration of parking permitted including valet parking.

(C) Designate through streets, one-way streets, truck routes, and streets where trucks and heavy

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¶

machinery are prohibited, except as needed to perform work or deliver or pick up materials.

(D) Designate locations for traffic control devices.

(E) Establish bus stops.

(F) Designate the location of loading zones.

(G) Provide appropriate signs and marking relating traffic, traffic control, pedestrians, crosswalks, school zones, and parking.

(H) Close or restrict the use of streets and sidewalks.

(2) The City Council delegates to the City Manager the authority to make all initial decisions relating to the exercise of the powers of a road authority under State law. The City Manager may further delegate the authority granted under this section.

(3) The delegation of road authority to the City Manager does not deprive the City Council of its power to act as the City's final road authority.

(4) The City Manager may issue permits or establish parking regulations or requirements that the City Manager determines are necessary for the effective utilization and regulation of parking within the City.

6.10.005 Review or Appeal of Decision or Action of City Manager Any decision or action of the City Manager or designee in this chapter is subject to appeal to or review by the City Council.

(1) Any person affected by a decision or action of the City Manager or designee under this chapter may appeal the decision or action to the City Council by filing a written appeal with the City Recorder within 10 calendar days of the decision or action. In the event that the appellant had no reasonable basis for knowing of the decision or action, the appeal must be filed within 10 calendar days of the date the person knew or should have known of the decision or action.

(2) The City Manager or any Council member may initiate a review of any decision or action by the City Manager under Section 6.020 by placing the matter on the Council agenda.

(3) The Council may but is not required to give deference to the City Manager's decision in making its decision.

6.10.010 Retention of Authority by Council

(1) The Council may on its own initiative or at the request of the City Manager make an initial decision on a matter within the road authority of the City.

(2) If the Council makes a decision either as an initial decision or on appeal or review, that decision shall be binding on the City Manager and staff for a period of five years unless the Council decision is withdrawn.

(3) The City Council retains all its authority relating to the vacation of rights of way.

6.10.015 Standards City traffic regulations shall be based on:

(1) Traffic engineering principles and traffic investigations.

(2) Standards, limitations and rules promulgated by the Oregon Transportation Commission.

(3) Other recognized traffic control standards, including the Manual of Uniform Traffic Control Devices.

6.10.020 Authority of Police and Fire Officers and Others:

(1) It shall be the duty of police officers to enforce the provisions of this code.

(2) In the event of a fire or other public emergency, police and fire officers may direct traffic as conditions require, notwithstanding the provisions of this code.

(3) Parking violations may be enforced by an agent of the City authorized in writing by the Chief of Police to issue parking citations.

CHAPTER 6.15 TRAFFIC REGULATIONS

6.15.000 Crossing Private Property

(1) The operator of a vehicle shall not proceed from a street to another street by crossing private property. This provision shall not apply to stops on the property to procure or provide goods or services.

(2) A violation of this section is a Class C civil infraction.

6.15.005 Throwing Material From a Vehicle

(1) It is unlawful to throw, drop or otherwise discard any item from a vehicle onto any public right of way or premises open to the public.

(2) A violation of this section is a Class B Civil Infraction.

6.15.010 Obstructing Public Ways

1) Except as authorized in subsection 2, no unauthorized person shall obstruct a public way, including streets, alleys and sidewalks, by depositing or storing personal property or other material on public ways or by any other manner obstructing or interfering with public ways. Obstruction of a sidewalk is a violation, even if the adjacent street is not obstructed.

(2) Merchandise or equipment delivery is allowed for the time needed to accomplish the delivery, not to exceed 10 minutes, or between the hours of 8 P.M. and 11 A.M. Delivery authorized under this section shall minimize obstruction of public ways to the extent possible.

(3) An authorized obstruction of a public way between sunset and sunrise shall be illuminated by warning lights or reflective materials clearly visible 200 feet in all directions.

(4) No person shall use a public way for display or sale of goods except as authorized by the City.

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Deleted: GENERAL PROVISIONS

Deleted: 6.050 Exceeding the Maximum Speed Limit.

Deleted: ¶ (1) The municipal Judge may accept a plea to exceeding the maximum speed of any person charged with violating the basic rule (VBR).¶ ¶ (2) A violation under this section is a Class C traffic infraction.¶ ¶

Deleted: 052 Repairs.¶ ¶ (1) No person shall repair or attempt to repair a motor vehicle or any part thereof, except for emergency repair work, upon any street or public alley in the City of Bend.¶ ¶ (2) A violation of this section is a Class B civil infraction.¶ ¶ 6.055

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(5) No person shall deposit garbage, earth, debris or rubbish of any kind on a public way, in the Deschutes River or any irrigation canals within the City unless authorized by the City.

(6) A violation of this section is a Class B civil infraction. A violation of subsection 2 may be cited as a parking violation.

6.15.015 Sidewalks.

(1) No person shall ride, drive or operate a motor vehicle on or across a public sidewalk within the City except at driveway access points.

(2) This section shall not apply to motorized vehicles used for snow removal, maintenance and repair, or mobility devices used by persons with disabilities.

(3) A violation of this section is a Class A Civil Infraction.

6.15.020 Streets Prohibited to Trucks:

(1) When the use of a street is prohibited to trucks exceeding a specified weight, no person shall operate a truck on the street contrary to the prohibition except for the purpose of delivering or picking up materials or merchandise, and then only by entering the street at the intersection nearest the destination of the vehicle and leaving by the shortest route.

(2) A violation of this section is a Class C civil infraction.

6.15.025 Removing Glass and Debris:

(1) A party to a vehicle crash or a person causing broken glass or other debris to be deposited on a street shall be responsible for the removal of glass or other debris from the street.

(2) A violation of this section is a Class C civil infraction.

CHAPTER 6.20 PARKING REGULATIONS

6.20.000 Method of Parking:

(1) Except as authorized by subsection 2, where parking spaces are marked on a street or City owned parking facility, no person shall stand or park a vehicle other than within a single marked space, both width and length, unless authorized by the City.

(2) In areas marked for parallel parking, oversized vehicle may use up to two parking spaces as needed for vehicle length.

(3) No vehicle shall park in an angled parking stall in a manner that causes them to drive into the oncoming traffic flow when exiting the parking stall.

(4) Vehicles parked parallel shall be parked in the direction of the traffic flow in the adjacent traffic lane.

6.20.005 Prohibited Parking ,Stopping or Standing on Public Right of Way

No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a peace officer or official traffic control device, under any of the following circumstances:

Deleted: 6.910 BEND CODE 6.910¶ ¶

Deleted: , 1996.]¶ Section Break (Next Page) 6.060 Unlawful Riding.¶ ¶ (1) The operator of a vehicle

Deleted: not permit a passenger to and no passenger shall ride on a vehicle on a street except on a part of the vehicle designed or intended for

Deleted: use of passengers. This provision shall not apply to an employe engaged in

Deleted: necessary discharge of a duty or to a person riding within a truck body in space intended for merchandise

Deleted: (2) No person shall board or alight from a vehicle while the vehicle is in motion on a street

Deleted: (3) A violation of this section is a Class C traffic infraction.¶ ¶ 6.065 Damaging

Deleted: and Curbs.

Deleted: (1) The operator of a motor vehicle shall not drive onto a sidewalk or a roadside planting strip except to cross a permanent or temporary driveway.

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Deleted: Section Break (Next Page) 6.115 Funeral Processions.¶ ¶ (1) No permit shall be required for a funeral procession.¶ ¶ (2) A funeral procession shall proceed to the place of interment by the most direct route that is both legal and practical.¶ ¶ (3) The procession shall be accompanied by an adequate number of escort vehicles for traffic control.¶ ¶ (4) All motor vehicles in the procession shall be operated with their lights on.¶ ¶ PARKING REGULATIONS¶ ¶ ... [2]

Deleted: . In addition to those areas designated in the Oregon Vehic ... [3]

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Deleted: , whether attended or unattended

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Deleted: places

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¶

(1) A truck in excess of 12,000 pounds between the hours of 9:00 P.M. and 7:00 A.M. in front of or adjacent to a residence.

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Deleted: a.m

(2) A vehicle in or blocking an alley, except for a stop of not more than 15 consecutive minutes for loading or unloading persons or materials, and must display emergency flashers.

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(3) A vehicle in violation of a sign placed by the City of Bend.

Deleted: lawfully erected parking limitation

(4) Adjacent to a curb painted yellow by the City of Bend to designate No Parking at any time.

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¶
[Section 6.155 amended

(5) Adjacent to a curb painted green by the City of Bend to designate a loading zone unless involved in the act of loading.

Deleted: Ordinance No. NS-1492, passed June 7, 1989]

(6) Adjacent to a curb painted red by the City of Bend to designate a fire lane or special security area.

(7) Parking the vehicle for the primary purpose of displaying the vehicle for sale.

(8) Repairing or servicing the vehicle, except repairs necessitated by an emergency.

(9) Selling merchandise from the vehicle, except when authorized by the City.

(10) Storage for more than five calendar days.

(11) Parking of a vehicle with a vehicle registration that has been expired for more than 30 days.

(12) Adjacent to or within 10 feet of a fire hydrant

(13) On a sidewalk.

(14) Any other violation of State law.

6.20.010 Unlawful Parking of Vehicle for Sale at Private Parking Facility

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(1) No person shall leave or park a vehicle at a private parking facility for the principal purpose of selling said vehicle if there is a sign displayed, in plain view, at the facility, that complies with subsection (2), below.

(2) Signs prohibiting the parking of a vehicle for the purpose of sale posted after the effective date of this section shall state:

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No Parking of Vehicles for Sale.
Bend Code Chapter 6.

Deleted: Violators will be Prosecuted.¶

Signs posted under previous versions of this section shall remain effective.

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(3) The provisions of this code section supplement all other remedies available to owners of parking facilities relating to unlawfully parked vehicles, including ORS 98.805 - 98.818.

6.20.015 Use of Loading Zone No person shall stand or park a vehicle for any purpose or length of time in a place designed as a loading zone when the hours applicable to that loading zone are in effect, except for loading or unloading persons or

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materials. When the hours applicable to the loading zone are in effect, the stop for loading and unloading shall not exceed the time limits posted. If no time limits are posted, use of the zone shall not exceed 30 minutes.

6.20.020 Unattended Vehicles When a police officer finds an unlocked motor vehicle parked or standing unattended with the ignition key in the vehicle, the officer is authorized to remove the key from the vehicle

6.20.025 Downtown District

(1) The downtown district encompasses all streets, alleys, parking lots and sidewalks within the following boundary description:

Beginning at the North side of Newport Avenue and the Deschutes River, thence South along the Deschutes River from Newport Avenue to the South side of Franklin Avenue, thence East on Franklin Avenue to the West side of Broadway Street, thence south on Broadway Street to the South side of Louisiana Avenue, thence East on Louisiana Avenue from Broadway Street to the West side of Wall Street, thence South on Wall Street from Louisiana Avenue to the South side of Kansas Street, thence Easterly from Kansas and Wall Street through the Administrative School District property to the Southeast corner of the intersection of Kansas and Lave Street, thence Northeast on Lava Street to the North side of Franklin Avenue, thence East from the Northeast corner of Franklin Avenue and Lava Street to the West side of Division Avenue, thence North on the West side of Division to the South side of Greenwood Avenue, thence West on Greenwood Avenue to the Southeast corner of Greenwood Avenue and Harriman Street, thence North (across Greenwood Avenue) to the Northeast corner of Greenwood Avenue and Harriman Street, thence West to the Northeast corner of Greenwood Avenue and Bond Street to the Junction of Bond Street and Wall Street, crossing Wall Street to the West side of Wall Street and the Northwest corner of Wall Street and Vermont Place, thence West along the North side of Vermont Place to the Deschutes River, thence South to the Point of Beginning (as shown on Attached Exhibit A).

(2) Within the downtown district, the City Manager or designee shall cause each parking space in a street or within an off-street parking area to be clearly marked. The City Manager or designee shall determine the necessity for and the size and location of all parking spaces according to his or her reasonable determination of the safety, convenience and necessity of the public. Such markings may include markings to reserve one or more spaces exclusively for parking of motorbikes, motor scooters, motorcycles, bicycles, recreational vehicles, other oversized vehicles and any other legally operable vehicle and parking for persons with disabilities.

CHAPTER 6.25 PARKING CITATION AND OWNER RESPONSIBILITY

6.25.000 Illegally Parked Vehicle

(1) Parking citations shall be placed conspicuously on the vehicle. The registered owner of the vehicle shall be responsible for the citation unless the driver accepts responsibility.

(2) If parking is subject to a time limit, separate citations may be issued if the duration exceeds multiple increments of the posted time.

(3) Within ten days of the issuance of the parking citation:

(a) The required penalty must be paid;

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¶

Deleted: 6.160 Parking by Fire Plugs or a Bicycle Lane.

Deleted: (1) No person shall park a vehicle within prohibited areas adjacent to fire plugs or in designated bicycle lanes.

Deleted: (2) Unless the police officer issuing the citation witnesses the parking of the vehicle, a rebuttable presumption exists that a vehicle parked in violation of this section was parked by the registere owner of the vehicle and the citatio issued for the violation may be plac on the vehicle. If the parking of the vehicle is witnessed by the police officer, the operator of the vehicle is in violation of this section.

Deleted: [Section 6.160 amended by Ord NS-1848, passed November 20, 2002]

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6.165 Prohibited Parking. No operator shall park and no owner shall allow a vehicle to be parked on a street or other public rights of way, for the principal purpose of:¶
¶
(1) Displaying the vehicle for sale.¶
¶
(2) Repairing or servicing the vehicle, except repairs necessitated by an emergency.¶
¶
(3) Displaying advertising from the vehicle.¶
¶
(4) Selling merchandise from the vehicle, except when authorized.¶
¶
(5) Storage or as junkage or dead storage for more than forty-eight (48) hours.¶
¶
[Section 6.165(5) added by Ord. No. NS-1393, passed 12-21-83]¶
[Section 6.165 amended by Ord. No. NS-1979, passed July 20, 2005]¶
Section Break (Next Page)
6.170 Use of Loading Zone. No person shall stand or park a vehicl for any purpose or length of time i place designed as a loading zone when the hours applicable to that loading zone are in effect, except for loading or unloading persons or materials. When the hours applicable to the loading zone are in effect, the stop for loading and unloading shall not exceed the time limits posted. If no time limits are posted, use of the zone shall not exceed 30 minutes.¶
¶
6.175 Unattended Vehicles. When a police officer finds an unlocked motor vehicle parked or standing unattended with the ignition key in the vehicle, the officer is authorized to remove the key from the vehicle and deliver the key to the person in charge of the police station.¶
¶
6.180 Standing or Parking Busses and Taxicabs. The operator of a bus or taxicab shall not stand or park the vehicle on a street in a business district at a place other than a bus stop or taxicab stand, except that this provision shall not prevent the operator of a taxicab from temporarily stopping the taxicab outside a traffic lane while loading or unloading passengers if no parking spaces are readily available.¶
¶
... [4]

(b) A written response contesting the ticket must be filed; or
(c) A written request for an in-person hearing must be filed.

(4) The citation shall state the penalties that may be imposed for failure to comply.

6.25.005 Failure to Comply with Parking Citation

If section 6.25.000(3) is not complied with,, the City or its designee shall provide written notice to the owner or lessee of the vehicle. The notice shall provide information related to additional charges, as established in the City's Fees and Charges Resolution.

(1) If the City has contracted the enforcement of parking violations that contractor or its agent may collect the delinquent fines, impose additional charges for the collection efforts undertaken, and may immobilize or impound the vehicle pursuant to Bend Code subsection 2 of this section. These additional collection charges shall be established in the City's Fees and Charges Resolution.

(2) A vehicle for which a citation has been issued and remains unpaid after becoming due may be immobilized or impounded. A vehicle that has been immobilized or impounded shall not be released until all outstanding penalties and charges have been paid to the City, or its designee.

(3) No person other than an authorized City agent shall remove or attempt to remove an immobilizer device; and no person shall move or attempt to move an immobilized vehicle until the immobilizer device is removed. A violation of this subsection is a class A Civil Infraction.

6.25.010 Owner/Lessee Responsibility.

The owner or lessee of a vehicle in violation of a parking restriction is responsible for the offense, but it shall be an affirmative defense that the vehicle was used without the owner's or lessee's consent.

6.25.015 Registered Owner Presumption.

In a proceeding against a vehicle owner charging violation of a parking restriction, proof that the vehicle was registered to the defendant at the time of the violation shall constitute a rebuttable presumption that the defendant was the owner.

6.25.020 Extending Parking Time

Where maximum parking time limits are designated, movement of a vehicle to another time limited parking space within a 1,000 feet radius shall not extend the time limits for parking. 750 (p. still)

6.25.025 Illegal Issuance of a Parking Citation:

(1) Except as authorized by Oregon Revised Statutes, no person shall issue a parking citation unless authorized by the Chief of Police.

(2) A violation of this section is a Class B civil infraction.

6.25.030 Illegal Cancellation of Parking Citation:

(1) No person shall dismiss a parking citation in any manner, except when approved by the parking hearings officer or City validation program.

(2) An authorized agent of the City may reduce the penalty for parking in a space reserved for persons with disabilities if the citation recipient can provide a copy of a valid placard and proper identification. The reduction shall be no less than established in ORS 811.615 (7). The authority in this

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Deleted: established pursuant to Bend Code Section 1.800-806

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¶
6.300 Illegal Cancellation of Parking Citation:¶
¶
(1) No person shall dismiss a parking citation in any manner, except when approved by the municipal judge.¶
¶
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6.305

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¶

section may be exercised for up to five violations per person within one year.

(3) A violation of this section is a Class B civil infraction.

6.25.035 Improper Parking Citation Validation

(1) Any parking validation program shall be for over-time parking only.

(2) No person shall validate a parking citation in a manner inconsistent with the parking validation program.

(3) A violation of this subsection is a Class B civil infraction.

6.25.040 Fraudulent Use of a Parking Permit

(1) No person shall use a parking permit in a fraudulent manner, such as:

(A) Alteration or duplication of any kind of a City issued parking permit.

(B) Use of a permit belonging to another.

(2) A violation of this subsection is a Class B civil infraction.

6.25.045 Habitual Parking Offender

(1) The penalty for repeated parking violations within any 365 consecutive day period shall be increased as follows:

(A) Five to nine parking violations: 200% of the otherwise applicable penalty.

(B) Ten to fourteen parking violations: 300% of the otherwise applicable penalty.

(C) Fifteen or more parking violations: 400% of the otherwise applicable penalty.

CHAPTER 6.30 ENFORCEMENT:

6.30.000 Parking Penalties

(1) A violation of section 6.25, unless otherwise defined in the subsection, is punishable by a penalty in the amount established by the City Fee Resolution.

(2) Disabled parking violations are punishable by the amount established by Oregon State Law.

6.30.005 Removal (Towing) of Illegally Parked Vehicles

(1) The City may remove any illegally parked vehicle that is unattended or that is not removed after a request is made to the owner or person in charge of the vehicle.

(2) Except as provided in subsection 3, the City shall not remove any vehicle that was originally legally parked unless:

(A) The vehicle has remained illegally parked for a period three times longer than the time originally allowed for the vehicle to be parked,

(B) Removal is needed for street cleaning, snow removal or maintenance,

(C) The vehicle is obstructing traffic, or

(D) The vehicle has been parked for more than five days.

(3) Vehicles parked on a street that has been closed or scheduled for closure may be towed.

CHAPTER 6.35 BICYCLES

6.35.000 Bicycle Operating Rules Except for bicycles operated by on duty law enforcement personnel:

(1) Bicycles shall be parked so they do not obstruct a roadway, sidewalk, driveway or building entrance

(2) Bicycles shall not be ridden on a sidewalk in the Downtown District described in section 6.190 or in the Centennial Parking Garage.

(3) A violation of this section is a Class C civil infraction.

6.35.000 Registration The Police Department may provide a bicycle registering service for the purpose of returning lost or stolen bicycles.

6.35.005 Impounding Bicycles

(1) A bicycle left on public property for more than 24 hours may be impounded by the Police Department.

(2) If a bicycle impounded under this code is registered, or other means of determining its ownership exist, the police shall make a reasonable effort to notify the owner. No impounding fee shall be charged to the owner of a stolen bike.

(3) A bicycle impounded under this code and remaining unclaimed shall be disposed of in accordance with City procedures for disposal of abandoned or lost personal property.

(4) Except as provided in subsection (2), a fee established in the City's Fee Resolution shall be charged to the owner of a bicycle impounded under this section.

CHAPTER 6.40 SKATEBOARDS AND ROLLER SKATES

6.40.000 Roller-skates and Skateboards

(1) No person shall use roller-skates, skateboards, scooters or similar devices on the sidewalks in the Downtown District as defined in Bend Code 6.20.025 or in any parking facility owned by the City.

(2) A violation of any subsection of this section is a Class C civil infraction.

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¶

Deleted: No person shall leave a bicycle on public or private property without consent of the person in charge or the owner of the property.¶
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Deleted: (3) In addition to any citation issued, a bicycle parked in violation of this code may be immediately impounded by the Police Department.¶
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Deleted: (7) A violation of subsection (1) of this section is a Class C civil infraction.

Deleted: -Section Break (Next Page)-6.345 Rollerskates, Skateboards, Sleds, etc. No person shall:¶
¶
(1) Use streets for traveling on downhill skis, toboggans, sleds, or similar devices, except on a designated play street.¶
¶
(2) Use rollerskates, skateboards, coasters or similar devices in the downtown district as defined in Bend Code 6.910.¶
¶
<#>Use rollerskates, skateboards or coasters on any streets except to cross at a crosswalk or as authorized by the City.
¶

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[Section 6.350 repealed by Ord NS-1492 passed June 7, 1989]¶
[Section 6.345 (4) added by Ord NS-2121, passed April 1, 2009]¶
¶
Section Break (Next Page)
6.910 Downtown District.¶
¶
(1) There is hereby established a downtown district which shall encompass all streets, alleys, parking lots and sidewalks within the following boundary description:¶
¶
Beginning at the North side of Newport Avenue and the Deschutes River, thence South along the Deschutes River from Newport Avenue to the South side of Franklin Avenue, thence East on Franklin Avenue to the West side of Broadway Street, thence south on Broadway Street to the South side of Louisiana Avenue, thence East on Louisiana Avenue from Broadway Street to the West side of Wall Street, thence South on Wall Street from Louisiana Avneue to the South side of Kansas Street, thence Easterly from Kansas and Wall Street through the Administrative School District property to the Southeast corner of the intersection of Kansas and Lave Street, thence Northeast on Lava Street to the North side of Franklin Avenue, thence East from the Northeast corner of Franklin Av ... [7]

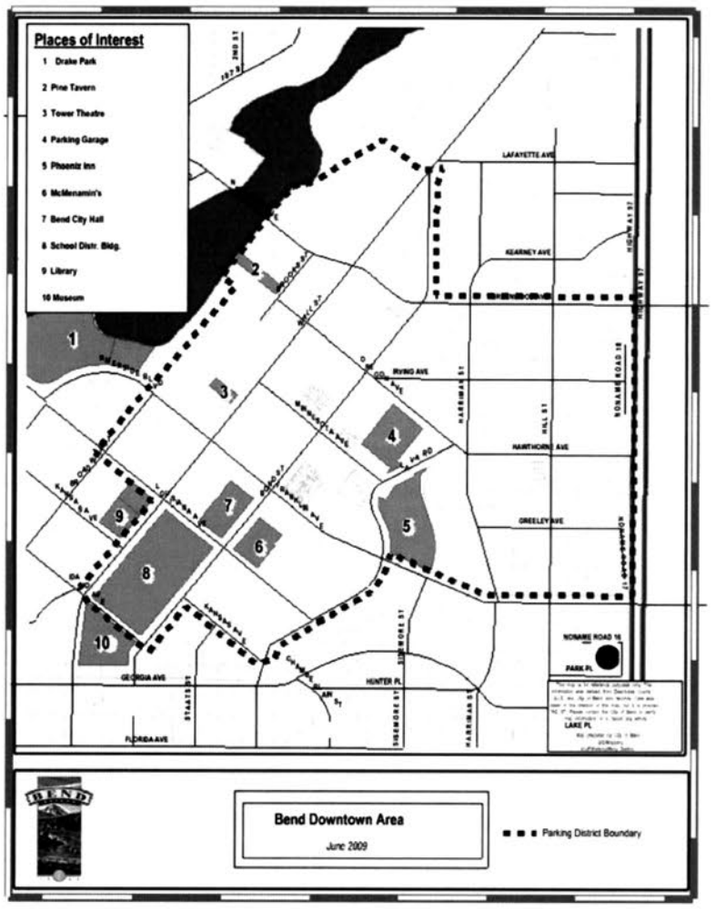

Exhibit A

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(2) Within the downtown district designated in subsection (1) of this ordinance, the City Manager or designee shall cause each parking space in a street or within an off-street parking area to be clearly marked. The City Manager or designee shall determine the necessity for and the size and location of all parking spaces according to his or her reasonable determination of the safety, convenience and necessity of the public. Such markings may include markings to reserve one or more spaces exclusively for parking of motorbikes, motor scooters, motorcycles, bicycles, recreational vehicles, other oversized vehicles and any other legally operable vehicle and handicapped parking.¶
¶
[Section 6.910 amended by Ord. NS-1424 passed December 4, 1985.]¶
[Section 6.910 - 6.915 amended by Ord. NS-1483 passed November 2, 1988.]¶
[Section 6.910 amended by Ord. NS-1492 passed June 7, 1989]¶
[Section 6.910 amended by Ord. NS-1655 passed June 5, 1996]¶
[Section 6.910 (3) and (4) deleted by Ord. NS-1655 passed June 5, 1996]¶
[Section 6.915 deleted by Ord. NS-1655 passed June 5, 1996]¶
[Section 6.910 amended by Ord. NS-1727 passed August 4, 1999]¶
[Section 6.990 Repealed by Ord NS-1848, passed November 20, 20 ... [8]

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ORDINANCE NO. NS-2141

AN ORDINANCE CREATING TITLE XIII – NUISANCES SUBJECT TO ABATEMENT TO THE BEND CODE AND DECLARING AN EMERGENCY

Findings:

A. Separating Nuisances Subject to Abatement into a new Title XIII will provide a more efficient and logical organization of the Bend Code

B. The new title is recommended by staff, which evaluated the current language and made modifications to reflect current statutory requirements, court decisions, and relevance to current conditions.

C. The new title is formatted to allow greater flexibility for future changes to the Code by establishing a Title / Chapter / Section / Subsection structure.

D. Creating Title XIII – Nuisances Subject to Abatement is in the best interests of the citizens of Bend.

The City of Bend ordains as follows:

Section 1. The Bend Code is amended by adding a new Title XIII to read as shown in the attached Exhibit A.

Section 2. The code amendments made by this ordinance supersede any inconsistent material in any previous ordinance or other enactment of the City.

Section 3. The code amendments adopted by this ordinance protect the public health, safety and welfare and it is therefore necessary and desirable that they take effect as soon as possible. Therefore an emergency is declared and this ordinance shall take effect immediately upon passage.

Read for the first time the 5th day of May, 2010.

Read for the second time the 19th day of May , 2010.

Placed upon its passage the 19th day of May, 2010.

YES: 6 NO: 0

Authenticated by the Mayor the 19th day of May, 2010.

Approved as to form:

Gary Firestone, Assistant City Attorney

Kathie Eckman, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

Appendix A

TITLE XIII NUISANCES SUBJECT TO ABATEMENT

Chapter 13.10 NUISANCES

13.10.005 Definitions For the purposes of Chapter, the following mean:

(1) Person in charge of property An agent, occupant, lessee, tenant, contract purchaser, or other person having possession or control of property or supervision of any construction project.

(2) Person responsible The person responsible for abating a nuisance shall include:

(A) The owner.

(B) The person in charge of property.

(C) The person who caused a nuisance to come into or continue in existence.

13.10.010 Continuing Violation. Each day that a nuisance continues to exist constitutes a separate violation, and a separate penalty may be assessed for each day the violation continues.

13.10.015 Attractive Nuisances

(1) No owner or person in charge of property shall permit on the property:

(A) Machinery, equipment, or other devices that are dangerous, accessible and pose a reasonable risk of injury to children.

(B) Lumber, logs or pilings placed or stored in a manner so as to be dangerous, accessible and pose a reasonable risk of injury to children.

(C) An excavation that remains open for an unreasonable length of time without proper barriers.

(D) A cistern, well, or any other similar type of hole that is dangerous, accessible, and poses a reasonable risk of injury to children.

(2) This section shall not apply to authorized construction projects with reasonable safeguards to prevent injury or death to children.

(3) A violation of this section is a Class A Civil Infraction.

CHAPTER 13.20 DERELICT STRUCTURES

13.20.005 Derelict Structures

(1) Definitions for Chapter 13.20. Definitions in the state structural, plumbing, electrical and mechanical codes apply to terms not defined in this section. The words "dwelling unit," "dwelling," "premises," "structure", or "building" shall be construed as though they were followed by the words "or any part thereof."

(A) Abandoned A structure is abandoned when it is an attractive nuisance or is used for unlawful activity.

(B) Boarded building An unoccupied building that has been secured against entry by material such as plywood, boards, or other similar material placed over openings that are designed for and/or are required for windows and doors, and which is visible off the premises and is not both lawful and customary to install on an occupied structure.

(C) Occupancy The purpose for which a building or portion thereof is used or intended to be used.

(D) Occupant Any person living or sleeping in a building; or having possession of a space within a building or premises.

(E) Owner Any legal owner or any person having charge, care or control of a premises.

(F) Partially Constructed A structure that has been left in a state of partial construction for more than six months or after the expiration of any building permit or that has not had a required permit inspection within any six month period.

(G) Person Any individual or entity.

(H) Pests Animals detrimental to humans or human concerns including but not limited to insects, rodents, rats or vermin.

(I) Premises An area of land including any structures on the land.

(J) Skilled Manner Executed in a manner that is generally plumb, level, square, in line, undamaged, without marring adjacent work and completed in conformance with generally accepted construction and maintenance practices.

(K) Unfit for Human Habitation A structure is unfit for human habitation whenever the City Manager finds that such structure is in disrepair, lacks maintenance, is unsanitary, is pest infested, contains filth and contamination, or lacks ventilation, illumination, sanitation or heating facilities to the extent that habitation would be injurious to the health and safety of the occupants.

(L) Unoccupied Not being used for a lawful occupancy.

13.20.010 Derelict Structures Prohibited No structure shall be occupied if it is:

(1) A boarded building,

(2) Partially constructed and abandoned,

(3) Unfit for human habitation, or

(4) An imminent hazard.

13.20.015 Closing of Structures The City Manager may order that a structure be vacated for violation of this chapter. The order shall be posted on the structure and shall contain the information required in this chapter.

13.20.020 Prohibited Habitation No person shall occupy or allow another to occupy, a structure if the City Manager has ordered vacation of the structure.

13.20.025 Removal of Order

(1) The City Manager shall authorize removal of the order when the violation has been eliminated.

(2) No person shall deface or remove a posted order authorized in this chapter without the approval of the City Manager.

13.20.030 Temporary Safeguards In case of an immediate danger to life or health, the City Manager may order boarding up of openings or other work to make a structure temporarily safe without following the procedures of this chapter.

13.20.035 Derelict Structure Registration The owner of a structure ordered vacated shall register the structure within 10 calendar days of the posting of the order by submitting a completed city registration form. The registration form shall include information relating to the location and ownership of the structure, the expected period of its vacancy, a plan for regular maintenance during the period of vacancy, and a plan for its re-occupancy and use, or its demolition. Any change in the information provided pursuant to this subsection shall be given to the City Manager within 30 days. When all violations have been corrected, the owner shall contact the City Manager or designee and request an inspection to determine compliance.

13.20.040 Derelict Structure Fees

(1) Every owner of a registered derelict structure shall pay a non-refundable quarterly fee for each derelict structure. The fee is for each calendar quarter or portion of a quarter. The fee for the current quarter shall be paid with the submission of the registration form. Any payment of the fee that is more than 30 days past due is subject to a penalty of $100. The fee per quarter shall be $250 or other higher amount set by Council resolution.

(2) Derelict structure fees shall be paid prior to the issuance of any permit for the demolition, alteration, or repair of a structure.

(3) The City may initiate a proceeding in Municipal Court to recover derelict structure registration fees that remain unpaid 90 days after they are due and to compel registration of derelict structures. The registration fee for a derelict structure that was not registered when registration was required shall be a year's worth of registration fees. A municipal court order requiring payment of the derelict structure fee shall be filed as a lien against the property in the City lien docket. This remedy is in addition to any other legal remedy available to the City.

13.20.045 Waiver of Derelict Structure Fees The City Manager may waive all or a portion of the fees imposed under this chapter, if the following conditions are met:

(1) All delinquent fees and penalties have been paid in full;

(2) A timetable for the repair or demolition of the structure has been submitted by the legal owner and approved by the manager;

(3) All appropriate permits have been obtained for the repair or demolition of the structure;

(4) The manager is satisfied that the repairs or demolition of the structure are being undertaken and will be prosecuted to completion in a timely fashion; and;

(5) The legal owner provides written authorization for the City to enforce all applicable trespass and illegal camping ordinances and laws.

13.20.050 Abatement by Demolition

(1) In addition to the abatement remedies provided for in this title, the City Manager may request a hearing before the Municipal Court for the purpose of seeking authority to order the demolition of a derelict structure.

(2) Upon receipt of a demolition request from the City Manager, the Municipal Court Clerk shall set the matter for prompt hearing before the Municipal Court and give the owner(s) and occupant(s) notice by personal delivery or certified mail of the date and time set for hearing. Notice shall also be posted on or near the derelict structure. Failure of the owner(s) or occupant(s) to receive such notice or an error in the name or address of an owner(s) or occupant(s) shall not render the notice void.

(3) The Municipal Court may authorize the demolition of the structure if the City shows by a preponderance of the evidence that demolition would be in the public interest. The burden of proof shall be upon the City.

(4) In determining whether a structure is so derelict as to require its owner to demolish the structure, the Municipal Court may consider the number and extent of the following factors: 1. Dilapidation; 2. Disrepair; 3. Structural defects noted by the Building Official; 4. Defects increasing the hazards of fire, accident or other calamity, such as parts standing or attached in such manner as to be likely to fall and cause damage or injury; 5. Uncleanliness; 6. Sanitary Facilities; 7. The presence of a public nuisance; and 8. The history of unlawful activity in or around the derelict structure.

13.20.055 Failure to Follow Order to Demolish

(1) Whenever a demolition is not commenced by the owner within 30 days after an order to demolish, the City Manager may file with the Municipal Court a request to authorize the City Manager to have the demolition performed and the cost of demolition assessed as a lien against the property where the structure is located.

(2) The Municipal Court Clerk shall set the request for prompt hearing, and cause notice of the hearing to be served via certified mail to the owner(s) and occupant(s). Failure of the owner(s) or occupant(s) to receive the notice or an error in the name or address of a owner(s) or occupant(s) shall not render the notice void.

(3) At the hearing, the owner(s) and occupant(s) shall have an opportunity to show cause why the demolition should not be performed and the cost assessed as a lien against the property.

(4) The cost of demolition and 20 percent charge for administrative overhead will be assessed in the manner provided in Chapter 13.20.050

CHAPTER 13.25 DISCARDED VEHICLES

13.25.005 Definitions For the purposes of this Chapter, "discarded" means any vehicle that is in one or more of the following conditions:

(1) Inoperable

(2) Wrecked

(3) Dismantled

(4) Partially dismantled

(5) Abandoned

(6) Junked

(7) Unlicensed

13.25.010 Discarded Vehicles

(1) Discarded vehicles may be considered to include major vehicle parts, including, but not limited to, bodies, engines, transmissions and rear ends.

(2) No person shall store or permit the storing of a discarded vehicle on private property for more than 72 hours unless it is completely enclosed within a building or in a space entirely enclosed and hidden by a fence or screen.

(3) A violation of this section is a Class B Civil Infraction.

13.30 VEGETATION

13.30.005 Flammable Vegetation

(1) It shall be the responsibility of every property owner and/or the person in charge of property within the city of Bend to reduce flammable or potentially flammable weeds, grass, vines, brush and other vegetation on the property by complying with the requirements of this ordinance. The purpose of the flammable vegetation reduction shall be to protect property by confining fire and preventing its spread to other properties.

(2) Every property owner and/or the person in charge of property shall reduce and maintain the reduction of flammable or potentially flammable vegetation on the property in the following manner:

(A) A reduction can be completed with a combination of trimming, cutting or removing flammable or potentially flammable weeds, grass, vines, brush and other combustible vegetation as close to the ground as is reasonably practicable given the nature of the terrain and the property, or by the application of an EPA approved herbicide.

(B) Any tax lot half acre (21780 sq. ft.) or less shall remove all flammable or potentially flammable weeds, grass, vines, brush, and other vegetation by trimming, cutting, removing, or by the application of an EPA approved herbicide.

(C) Any tax lot greater than half acre (21780 sq. ft.) shall establish and maintain a 20 ft. fuel break along the entire perimeter of the property, including all rights of way or easements. The fuel breaks shall be located along the boundaries of the property; and also around any structures, power poles, vehicles, trees or other improvements on the property that would be vulnerable to a fire hazard created by flammable weeds, grass, vines, brush and other combustible vegetation.

(D) The City may direct additional abatement for any situations not adequately covered by the fuel breaks described above.

(E) Flammable vegetation located in the right of way or easement shall be the responsibility of the adjacent property owner and/or the person in charge of the property.

(F) Accumulated waste vegetation shall be disposed of in a manner so as not to create a fire hazard or spread vegetation to other properties.

(3) A City approved vegetation management plan may be allowed as an alternative to section Chapter 13.20.005(2) A through C of this chapter.

(4) A violation of this ordinance shall be a Class A Civil Infraction. In addition noncompliance with the provisions of this ordinance shall be subject to the abatement procedures provided in Bend Code Title XIII

13.35.005 Invasive Noxious Weeds

(1) No person shall allow the growth of invasive noxious vegetable growth on the property they own within the Bend city limits.

(2) Invasive noxious weeds include, African rue, Buffaloburr, Common houndstongue, Dyers woad, False Brome, Hydrilla, Leafy spurge, Meadow Knapweed , Mediterranean sage, Medusahead rye, Musk thistle, Orange Hawkweed, Perrennial pepperweed , Purple loosestrife, Rush skeltonweed, Russian Knapweed, Saltcedar Tamarix, Scotch Thistle, Squarrose knapweed, Sulfur cinquefoil, Tansy ragwort, Whitetop hoary cress, and Wild carrot or any other weed identified in the Deschutes County Weed List.

(3) Property owners are responsible for removal of noxious vegetable growth

on public right of way adjacent to their property, excluding medians and roundabouts.

(4) Violation: A violation of this section is a Class C civil infraction.

CHAPTER 13.40 GRAFFITI

13.40.005 Graffiti Nuisance Property For the purposes of this code section, the following definitions apply:

(1) Abate To remove Graffiti from public view.

(2) Graffiti Any unauthorized markings of paint, ink, chalk, dye or other similar substance which is visible from premises open to the public and that have been placed upon any real or personal property such as buildings, fences, structures or the unauthorized etching or scratching of such described surfaces where the markings are visible from premises open to the public, such as public rights of way or other publicly owned property.

(3) Graffiti Nuisance Property Property to which graffiti has been applied, if the graffiti is visible from any public right of way, from any other public or private property, or from any premises open to the public, and if the graffiti has not been abated within 14 days of written notification of its existence.

(4) Property Any real property including land and that which is affixed, incidental or appurtenant to land, including, but not limited, to any premises, house, building, fence, or items of machinery, drop boxes, waste containers, utility poles and vaults, and post office collection boxes.

(5) Unauthorized Without consent of the owner, occupant or responsible party.

13.40.010 Procedure

(1) The City shall maintain a system for members of the public to report incidence of graffiti they observe on public and private property.

(2) The owner or occupant of any property in the city shall remove any graffiti from such property within 14 days of the graffiti's appearance.

(3) When the Chief of Police determines that property has become graffiti nuisance property, the chief shall:

(A) Notify the owner(s) of record and/or occupant in writing, via first class mail service, that the property has been determined to be graffiti nuisance property.

(B) The notice shall contain the following information:

(1) The street address and description sufficient for identification of the property.

(2) A statement that the property is graffiti nuisance property with a concise description of the conditions leading to those findings.

(3) An information sheet identifying any graffiti removal assistance programs available through the City or private contractors.

(4) A statement that the owner and/or occupant shall either remove the graffiti within 15 days from the date of the notice or describe in writing what steps have been, or will be taken to remedy the graffiti nuisance on the property.

(4) If the graffiti cannot be removed due to inclement weather, a waiver of the time restrictions may be authorized by the Chief of Police.

(5) Violation of this ordinance is a class "B" civil infraction. Each day after the initial citation is issued may be considered a separate violation. In addition, any person, firm, corporation or other entity not complying with this section shall be subject to the abatement procedures provided in this chapter.

13.45.005 Nuisances Affecting the Public Health No person shall cause or permit, on property owned or controlled by him or her, a nuisance affecting the public health. Nuisances affecting the public health include but are not limited to:

(1) An accumulation of debris, rubbish, manure and other refuse that is not removed within a reasonable time and that affects the health or livability of adjacent residents. All household or solid waste shall be managed in accordance with the following:

(A) All household waste shall be stored in leakproof containers with close-fitting covers.

(B) Every person who generates or produces wastes shall remove or have removed all putrescent wastes at least every seven day. More frequent removal may be required to protect the public health.

(C) Subsection (b) does not apply to waste removed through a City approve waste removal program that is less frequent than seven days.

(2) Stagnant water that affords a breeding place for mosquitoes and other insect pests.

(3) Pollution of a body of water, well, spring, stream or drainage ditch by sewage, industrial wastes or other substances placed in or near the water in a manner that will cause harmful material to pollute the water.

(4) Maintaining premises or keeping animals in such a state or condition as to cause an offensive odor or that are in an unsanitary condition.

(5) Drainage of liquid wastes from private premises.

(6) Septic tanks that are in an unsanitary condition or that cause an offensive odor.

(7) An abandoned refrigerator or other appliance with an air-tight door that has a space large enough that a child or infant may be enclosed. The City may remove any such appliance immediately.

(8) A violation of this section is a Class A Civil Infraction. Any person found by a judge to be in violation of subsection 1 of this section shall be required to utilize weekly trash service provided by an approved garbage service franchisee for at least one year.

13.50.005 Offensive Debris and Un-cleaned and Un-graded Property in the Central Business and Commercial Zoning Districts

(1) No person may place offensive debris or allow offensive debris to remain on public or private property in the Downtown CB zone or other commercial zoning districts more than 36 hours after the City Council makes a finding that the debris is substantially detrimental to commerce in that zoning district.

(2) No person may allow public or private property in the CB or other commercial zoning districts to remain in a state of disrepair for more than 36 hours after the City Council determines that the property is in a state of disrepair. Property is in a "state of disrepair" when it is un-cleaned or un-graded in such a manner that the City Council determines is substantially detrimental to commerce in that zoning district.

(3) Following any finding by the City Council as provided in Subsections 1 or 2 of this Section, the City will provide notice to the property owner to repair the offensive condition and may thereafter abate the offensive condition as a nuisance.

13.55.005 Surface Waters, Drainage

(1) No owner or person in charge of property shall permit water, ice or snow to fall from a building or structure or otherwise accumulate on a street or public sidewalk except as authorized by the City.

(2) The owner or person in charge of property shall install and maintain, in a proper state of repair adequate drainpipes or a drainage system so that overflow water accumulating on the roof or about the building is not carried across or onto the sidewalk.

(3) A violation of this section is a Class B Civil Infraction.

13.60.005 Unenumerated Nuisances

(1) The acts, conditions or objects specifically enumerated and defined in Title XIII are declared public nuisances and such acts, conditions or objects may be abated by any of the procedures set forth in Chapter 13.50.

(2) In addition to the nuisances specifically enumerated in this code, every other thing, substance or act which is determined by the City Council to be injurious or detrimental to the public health, safety or welfare of the city is declared a nuisance and may be abated as provided in this code.

CHAPTER 13.65 PROCEDURE FOR ABATEMENT

13.65.005 Notice

(1) If the City Manager is satisfied that a nuisance exists, the City Manager shall cause a notice to be posted on the premises or at the site of the nuisance, directing the person responsible to abate the nuisance.

(2) At the time of posting, the City Manager shall cause a copy of the notice to be forwarded by registered or certified mail, postage prepaid, to the person responsible at the last known address of such person.

(3) The notice to abate shall contain:

(A) A description of the real property, by street address or otherwise, on which the nuisance exists.

(B) A direction to abate the nuisance within 10 days from the date of the notice.

(C) A description of the nuisance.

(D) A statement that unless the nuisance is removed, the City may abate the nuisance and the cost of abatement will be charged to the person responsible.

(E) A statement that failure to abate a nuisance may warrant imposition of a fine.

(F) A statement that the person responsible may protest the order to abate by giving notice to the City of Bend Municipal Court within 10 days from the date of the notice.

(4) If the person responsible is not the owner, an additional notice shall be sent to the owner stating that the cost of abatement not paid by the person responsible may be assessed to and become a lien on the property.

(5) On completion of the posting and mailing, the persons posting and mailing shall execute and file certificates stating the date and place of the mailing and posting.

(6) An error in the name or address of the person responsible shall not make the notice void, and in such case the posted notice shall be sufficient.

13.65.010 Abatement by the Person Responsible

(1) Within 10 days after posting and mailing the notice, as provided in this chapter, the person responsible shall remove the nuisance or file a written request for a hearing with the Municipal Court.

(2) The hearing on the question of whether a nuisance exists shall be heard by the Municipal Court at the first available time following the person's request for a hearing before the Municipal Court.

(3) If the Municipal Court determines that a nuisance, in fact, exists, the person responsible shall abate the nuisance within 10 days after the Municipal Court decision.

13.65.015 Joint Responsibility If more than one person is responsible, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the City in abating the nuisance.

13.65.020 Abatement by the City

(1) If the nuisance has not been abated by the person responsible within 10 days of the date of posting the notice of the nuisance if no hearing is requested or within 10 days of the Municipal Court decision, the City Manager may cause the nuisance to be abated.

(2) The City may enter property to inspect and abate only with the permission of the owner or other person in charge of the property or pursuant to a judicially issued warrant. The Municipal Court Judge has the authority to issues warrants to enter and abate.

(3) The City Manager shall keep an accurate record of the expense incurred by the City in physically abating the nuisance and shall include in the record a charge of $150 or 20 percent of those expenses (whichever is greater) for administrative overhead.

13.65.025 Assessment of Costs

(1) The City Manager, by registered or certified mail, shall send to the person responsible a notice stating:

(A) The total cost of abatement, including the administrative overhead.

(B) That the cost as indicated will be assessed to and become a lien against the property, unless paid within 30 days from the date of the notice.

(C) That if the owner or person responsible objects to the cost of the abatement as indicated, a notice of objection may be filed with the administrator no more than 10 days from the date of the notice.

(2) If an objection to the cost of abatement is filed as provided in subsection (1), the Municipal Court shall hear and make a decision on the objections to the costs assessed.

(3) If the costs of the abatement are not paid within 30 days from the date of the notice or the date of the Municipal Court decision if an objection is filed, the costs of abatement shall be entered in the city lien docket and shall constitute a lien on the property from which the nuisance was removed or abated.

(4) The lien shall be enforced in the same manner as liens for street improvements are enforced and interest shall begin to run from the date of entry of the lien in the lien docket.

(5) An error in the name of the owner or person responsible shall not void the assessment, nor will a failure to receive the notice of the proposed assessment render the assessment void but it shall remain a valid lien against the property.

13.65.030 Summary Abatement The procedure provided in this chapter is not exclusive, but is in addition to procedures provided by other sections of the code. The Fire Chief, Fire Marshall, Chief of Police or the City Manager may proceed summarily to abate a health or other nuisance which unmistakably exists and which imminently endangers health or property.

13.65.035 Administrative Warrants Authorized The Bend Municipal Court shall have the authority to issue warrants authorizing any Bend Police Officer or City official authorized by the City Manager to enforce provisions of the Bend Code to make searches and seizures reasonably necessary to enforce any provision of the Bend Code pertaining to nuisances. Every warrant authorized by this section shall be supported by affidavit or sworn testimony establishing probable cause to believe that a nuisance violation has occurred. Searches and seizures authorized by this section may be executed by any City official authorized to apply for a warrant under this section. All searches and seizures authorized by this section shall be conducted according to requirements of Oregon Law relating to search warrants.

ORDINANCE NO. NS-2142

AN ORDINANCE UPDATING CHAPTER FIVE TO BECOME TITLE V – VIOLATIONS OF THE BEND CODE AND DECLARING AN EMERGENCY

Findings:

A. Chapter Five of the Bend Code has not received a complete review for over thirty years.

B. A staff review of Chapter Five, comprised of a multi-discipline team, evaluated the current language and made modifications to reflect current statutory requirements, court decisions, and relevance to current conditions.

C. The staff proposal includes reformatting the Code to allow greater flexibility for future changes to the Code by establishing a Title / Chapter / Section / Subsection structure.

D. The changes to the Code are in the best interests of the citizens of Bend.

The City of Bend ordains as follows:

Section 1. Bend Code Chapter 5 is amended to read as shown in the attached Exhibit A.

Section 2. The code amendments made by this ordinance supersede any inconsistent material in any previous ordinance or other enactment of the City.

Section 3. The code amendments adopted by this ordinance protect the public health, safety and welfare and it is necessary and desirable that they take effect as soon as possible. Therefore an emergency is declared and this ordinance shall take effect immediately upon passage.

Read for the first time the 5th day of May, 2010.

Read for the second time the 19th day of May , 2010.

Placed upon its passage the 19th day of May, 2010.

YES: 6 NO: 0

Authenticated by the Mayor the 19th day of May, 2010.

Approved as to form:

Gary Firestone, Assistant City Attorney

Kathie Eckman, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

Exhibit A
TITLE V - PUBLIC PROTECTION

CHAPTER 5.10 AIRPORT

5.10.000 Regulations Any person using the Bend Municipal Airport and its facilities shall do so in compliance with the City's Airport Regulations. For the purpose of this section, "Airport Regulations" includes any lawful order of the City Manager implementing a duly adopted regulation.

5.10.005 Violation A violation of this chapter is a Class B Civil Infraction. Any persons violating this section may be removed from the property as a trespasser following procedures required by state law.

CHAPTER 5.15 ALCOHOLIC LIQUOR

5.15.000 Definitions For purposes of this chapter, the following words and phrases mean:

(1) Alcoholic beverage Liquids containing more than one-half of one percent alcohol by volume intended or used for human consumption.

5.15.005 Drinking on Unlicensed Premises

(1) No person shall drink, or be in possession of an open container of alcoholic beverages in a public place or premises open to the public unless the place or premise has been licensed by the Oregon Liquor Control Commission to sell intoxicating liquor for consumption or on premises for which a permit has been issued by the City.

(2) Except when authorized by the Bend Metropolitan Park and Recreation District, no person shall drink, or be in possession of an open container of alcoholic beverages in a park under the control of Bend Metro Park and Recreation District without having first obtained an alcohol consumption permit referenced in Chapter 5.55.

(3) A violation of this section is a Class B Civil Infraction.

5.15.010 Prohibition of Possession or Consumption of Alcoholic Beverages on or in the Deschutes River

(1) No person may possess or consume any alcoholic beverage while on or in the Deschutes River within the city limits of Bend. This prohibition applies to both open and closed containers of alcoholic beverages but does not apply to persons crossing the river on a bridge.

(2) Violation of this section is a Class A Civil Infraction.

CHAPTER 5.20 ANIMALS

5.20.000 Definitions As used in this chapter, the following definitions apply:

(1) "Animal" means dogs, horses, cattle, sheep, goats, livestock or any animals generally found on a farm or considered an exotic pet, excluding domestic cats."

(2) "Dangerous Animal" means any animal that has been found, by the Municipal Court Judge to have:

(A) Without provocation, placed a person in reasonable fear of imminent physical injury; or

(B) Attacked a person or domestic animal without provocation; or

(C) Been trained for or used in animal fighting

(3) "Exotic Pet" means an animal, other than livestock kept and maintained as a pet excluding domestic dogs and cats, includes swine or pigs specifically bred as household pets as long as they are less than 18 inches measured at the shoulder and weigh less than 100 pounds.

(4) "Keeper" means, in addition to its ordinary meaning, a person, firm, association or corporation which is in possession of, in temporary control of, or who is responsible for the care of an animal. The term "Keeper" also means the parent or guardian of the owner of an animal, if the owner is under the age of 18 years and the owner resides with the parent or guardian on the date of the alleged violation.

(5) "Off Leash Area" means an area designated by the Bend City Council pursuant to Section 5.20.030 of the Bend Code as an area where dogs are not required to be leashed.

(6) "Owner" means a person, firm, association or corporation that owns an animal.

(7) "Physical injury" means impairment of physical condition or substantial pain.

(8) "Run at Large" means to be off the private premises where the animal is allowed to be by the person in charge of those premises and not under the complete, tethered control of the owner or keeper by adequate leash or bridle. Any animal in a vehicle shall not be considered to be "at large".

5.20.005 Exemption for Law Enforcement Animals. An animal owned by a law enforcement agency is exempt from the provisions of this Chapter, provided that the animal is under the care and control of a law enforcement officer.

5.20.010 Owner/Keeper Responsibility for Animal. The owner or keeper of an animal which violates the provisions of this chapter is responsible for the animal's acts and condition and the owner or keeper is subject to the penalties provided in Section 5.20.065 for the animal's violations of any provision of this chapter.

5.20.015 Animal Waste. It shall be unlawful for an owner or keeper of an animal to allow it to deposit solid waste matter on any property other than the property of the owner or keeper of the animal. It shall be a defense to this action if the owner or keeper of the animal promptly removes the solid waste deposited by the animal.

5.20.020 Dog Licensing

(1) Every dog within the city that has a set of permanent canine teeth shall be licensed. The license tag shall be attached to a collar worn by the dog. The owner and/or keeper of the dog shall be found in violation of this ordinance if the dog is not wearing its collar and tag or if the tag is not present on the dog's collar at any time.

(2) An owner or keeper of a dog within the city shall license the dog not later than 30 days after the person becomes the owner or keeper of the dog or establishes residence within the city.

(3) Licenses shall not be required for dogs owned by dealers, breeders or exhibitors if the dogs are kept in kennels exclusively for sale or exhibition purposes, or while such dogs are being transported by dealers, breeders, or exhibitors to and from a dog show or fair. Licenses are not required for dogs that are used as service animals for persons with disabilities. A companion or therapy animal is not a service animal unless the animal has been individually trained to perform one or more tasks for a person with disabilities and trained to behave in public.

5.20.025 **Animal at Large**. No animal shall run at large. The owner or keeper of an animal is responsible for an animal at large.

5.20.030 **Off Leash Areas.**

(1) The Bend City Council may, in its discretion, designate certain areas of public parks which are owned and operated by the Bend Metropolitan Parks and Recreation District (BMPRD) as areas where dogs are not required to be leashed, subject to the other provisions of this section.

(2) A designation of an area as an Off Leash Area by the Bend City Council shall not be effective unless the BMPRD Board provides prior written notice to the Bend Chief of Police. Owners must comply with the BMPRD regulations applicable to all off leash areas.

(3) The owner or keeper of a dog that is in an Off Leash Area must control the dog at all times. The owner or keeper of a dog shall not allow a dog to engage in fighting with other dogs, or harass, bark at, bite, threaten or injure a person or animal.

(4) If a dog or an owner or keeper is found to be in violation of this section, the dog may be excluded from the Off Leash Area for up to twenty-four hours. If a citation is issued for animal nuisance under Bend Code 5.20.040, the dog shall be excluded from all Off Leash Areas, pending a review of and determination on the citation by the Bend Municipal Court Judge. Returning an animal to an Off Leash Park after being excluded is a Class A civil infraction.

(5) Animals which have been designated as a Dangerous Animal under Bend Code 5.20.065(4) shall not be permitted in an Off Leash Area under any circumstances.

(6) Any owner or keeper of a dog shall be subject to a Class A civil penalty for violation of the terms and conditions of an Off Leash Area as provided in this section.

5.20.035 **Dangerous Animals** An animal may be designated as a Dangerous Animal by order of the Bend Municipal Court Judge. If an animal is designated as a Dangerous Animal, then the following restrictions shall apply to the animal:

(1) The owner or keeper of the dangerous animal shall cause the animal to be confined on the premises of the owner or keeper, either securely indoors or confined in a securely enclosed and locked pen or similar structure; such pen or structure must be securely constructed and must be adequate to ensure the confinement of the animal.

(2) No owner or keeper of a dangerous animal shall permit the animal to go beyond the premises of the person unless the animal is humanely muzzled and either securely leashed or otherwise securely restrained and led by a person physically capable of handling the animal.

(3) A requirement that the animal's owner or keeper post signs on the premises where the animal is kept indicating that the animal is a dangerous animal.

(4) If the animal designated as a dangerous animal is a dog, then the dog shall at all times be required to wear a special dog tag indicating that the dog is a dangerous animal and will be required to be micro-chipped. The owner shall be responsible for payment for the special tag and microchip.

(5) Dangerous animals are prohibited in all public parks.

5.20.040 **Animal Nuisances** An animal is a nuisance if it:

(1) Bites, injures or attacks a person without provocation;

(2) Places a person in fear of imminent physical injury, without provocation, said fear being reasonable under the circumstances;

(3) Injures or kills an animal or fowl belonging to a person other than the owner or keeper of the animal;

(4) Is trained for or used in animal fighting;

(5) Disturbs any person by frequent or prolonged noises;

(6) Chases vehicles or obstructs traffic;

(7) Chases people;

(8) Damages property belonging to a person other than the owner or keeper of the animal;

(9) Scatters garbage;

(10) Attends a special event as defined in Chapter 7.

(11) Its owner or keeper has failed to comply with Section 5.20.030(3) or off leash regulations at an Off Leash Area.

5.20.045 Impound

(1) An animal that has violated Bend Code 5.20.025, 5.20.040 or that lacks a required license may be seized and impounded by an officer of the Bend Police Department.

(2) If an officer of the Bend Police Department is unable to apprehend such animals without risking injury to the officer or other people, the officer may kill the animal if other means to control the animal are ineffective or likely to be.

(3) An impounded animal shall be placed in the animal shelter under contract with the City of Bend Police Department and shall be held by that animal shelter until the release has been authorized by the Bend Police Department, any citations issued to the animal's owner or keeper have been resolved by the court system or until the shelter has received a court order directing the shelter to release or humanely destroy the animal.

5.20.050 Unclaimed Animals

(1) If an animal has been impounded and no citations have been issued to an impounded animal's owner or keeper within three business days of the animal's impoundment, the animal may be handled according to Oregon law and the animal shelter's policies, rules and regulations, including humane destruction of the animal.

(2) If an animal has been impounded and one or more citations have been issued to the animal's owner or keeper, but the animal's owner or keeper does not make a personal or written appearance on the citation(s) in the Bend Municipal Court within the time required by the citation(s), then the Court may issue an order terminating the rights of the owner to the animal and requiring that the animal may be handled according to Oregon law and the animal shelter's policies, rules and regulations, including humane destruction of the animal. Prior to issuing a forfeiture order, the Court shall cause a written notice to be delivered or mailed to the owner or keeper of the animal. The notice shall advise the owner or keeper that the owner or keeper's rights to the impounded animal will be forfeited unless the owner

or keeper makes a personal appearance in the Bend Municipal Court within five business days of the date of the notice. The notice shall be mailed or delivered to the owner or keeper of the animal at the address shown on the citation or at any address provided to the Court by the animal's owner or keeper.

(3) If an animal has been impounded and the owner or keeper of the animal makes a first appearance in the Bend Municipal Court, but the owner or keeper later fails to appear as required by the Municipal Court, then the Court may proceed as provided in Section 5.20.050(2).

5.20.055 Warrant for Seizure of Animals

(1) Any member of the Bend Police Department, including community service officers, may apply to the Bend Municipal Court for a warrant authorizing the search for and seizure of any animal that has violated Bend Code 5.20.040. The Bend Municipal Court Judge may issue the warrant based on a prima facie case that the violation has occurred.

(2) Nothing in this section is intended to limit the search and seizure authority of City police officers otherwise provided by law.

5.20.060 Rabid Animals Management and disposition of rabid animals shall be as prescribed by Oregon Law.

5.20.065 Civil Penalties

(1) The following violation are Class A civil infractions:

(A) Owning or keeping an animal that is a nuisance under Section 5.20.040.

(B) Bend Code 5.20.070 violating an order terminating animal owner's rights.

(2) All other violations of this Chapter are Class B Civil infractions:

(3) Reimbursement of Impound Costs. The Bend Municipal Court Judge may order the owner or keeper of an animal that violates any provision of this Chapter to reimburse the City of Bend for any and all impound costs incurred by the City.

(4) Exclusion from Off Leash Areas. If an animal that is found in violation of the provisions of this Chapter and the violation occurred in an Off Leash Area, the Bend Municipal Court Judge may order that the animal be excluded from all Off Leash Areas.

5.20.070 Destruction of Animals

(1) If an animal has been found to have violated Bend Code 5.20.040(1), the Bend Municipal Court Judge shall enter an order terminating the animal owner's rights to the animal and/or requiring that the animal be humanely destroyed.

(2) If an animal has been found to have committed two or more violations of Bend Code 5.20.040(2), (3) or (4) within a five-year period, the Bend Municipal Court Judge shall enter an order terminating the animal owner's rights to the animal and/or requiring that the animal be humanely destroyed.

(3) If the Judge determines that an animal's violation of Bend Code 5.20.040 (1), (2), (3) or (4) was caused by the neglect, abuse or tormenting of the animal by its owner, the Judge may enter an order terminating the animal owner's rights to the animal and prohibiting the owner from owning or

possessing animals within the City of Bend. Further, if the Judge determines that the neglect, abuse or torment was the primary cause of the animal's violation of Bend Code 5.20.040 (1), (2), (3) or (4) then the Judge may allow the abused animal to be placed with an animal shelter for possible adoption. A person who violates an order entered pursuant to this subsection commits a Class A civil infraction.

(4) If the Bend Municipal Court Judge determines that an animal is unlikely to be a repeat offender of the provisions of this Chapter, then the Judge may suspend any orders in subsection (A) or (B) for a period of up to five years, subject to conditions, which may include:

(A) A requirement that neither the animal nor the animal's owner or keeper commit any further violations of this Chapter;

(B) A requirement that the animal's owner or keeper pay Court ordered fines resulting from the animal's violation of this code.

(C) A designation of the animal as a Dangerous Animal that is subject to the Dangerous Animal Restrictions described in Bend Code 5.20.035(4).

(D) A provision that allows law enforcement officers, upon a future violation of Sections 5.20.025, 5.20.035 or 5.20.040 by the animal, to take the animal into custody pending further review and order by the Bend Municipal Court Judge.

(E) Any other condition that the judge deems appropriate.

5.20.075 Undertaking on Appeal If an animal has been impounded and the owner or keeper has filed an appeal of an order of the Bend Municipal Court, then the owner or keeper of the animal must provide a bond, deposit or other security to assure payment of the cost incurred by the City for housing the animal pending appeal. The bond, deposit or other security shall be set in an amount not less than the cost of impounding the animal for six months at the rate charged the City by the animal shelter.

Chapter 5.25 EQUAL RIGHTS

5.25.005 Definitions

(1) Employer Any person who directly or through an agent, engages or uses the personal service of one or more employees, within the City of Bend, reserving the right to control the means by which such service is or will be performed.

(2) Gender Identity A person's actual or perceived sex, including a person's identity, appearance, expression, or behavior with respect to actual or perceived sex, whether or not that identity, appearance, expression or behavior is different from that traditionally associated with the person's sex at birth.

(3) Sexual Orientation Actual or perceived heterosexuality, homosexuality, or bisexuality.

(4) Any terms used but not defined in Chapter 5.710 are to be defined as in Oregon Revised Statutes, Chapter 659A.

5.25.010 Discrimination in Employment Prohibited

(1) It shall be unlawful to discriminate in employment on the basis of an individual's race, religion, color, sex, national origin, marital status, age (if the individual is 18 years of age or older), or physical or mental impairment by committing any of the acts made unlawful under the provisions of ORS 659A.030 and 659A.112.

(2) In addition, it shall be unlawful to discriminate in employment on the basis of an individual's sexual orientation or gender identity by committing against any such individual any of the acts already made unlawful under ORS 659A.030 when committed against the categories of persons listed therein.

5.25.015 Discrimination in Selling, Renting or Leasing Real Property Prohibited It is an unlawful real property transaction practice for any person to discriminate on the basis of race, religion, color, sex, marital status, familial status, domestic partnership, national origin, age, mental or physical disability, sexual orientation or gender identity by committing against any such individual any of the acts made unlawful under ORS 659A.145 or 659A.421.

5.25.020 Discrimination in Places of Public Accommodation Prohibited It is an unlawful public accommodation practice for a person to discriminate on the basis of an individual's race, religion, color, sex, marital status, familial status, domestic partnership, national origin, age, mental or physical disability, sexual orientation or gender identity by committing against any such individual any of the acts made unlawful under ORS 659A.142 or ORS 659A.400 to 659A.409.

5.25.025 Exceptions:

(1) The prohibitions in this ordinance do not apply to an organization whose primary purpose and function is religious.

(2) The housing prohibitions in this chapter do not apply to renting space in a single housing unit or to renting of space in a building which is owner occupied and which has fewer than four units.

(3) Nothing herein shall be construed to prevent an employer from enforcing an otherwise valid dress code.

5.25.030 Enforcement.

(1) Any person claiming to be aggrieved by an unlawful discriminatory act under the provisions of the equal rights ordinance may file a complaint with the Commissioner of the Bureau of Labor and Industries under procedures established in ORS 659A.820. The Commissioner shall have the same power to enforce the provisions of this equal rights ordinance as the Commissioner has to enforce alleged violations within the Commissioner's statutory authority.

(2) Any person claiming to be aggrieved by an unlawful discriminatory act under the provisions of the equal rights ordinance shall have a cause of action in any court of competent authority. Election of remedies and other procedural issues relating to the interplay between administrative proceedings and private rights of action shall be handled as provided for in ORS 659A.870 through 659A.880. The court may grant such relief as is provided in ORS 659A.885.

CHAPTER 5.30 FIRE REGULATIONS

5.30.000 Fireworks

(1) The use of fireworks shall conform to Oregon law.

(2) No person under the age of 18 may sell, keep possess, use, or explode any fireworks within the City.

(3) No person shall sell or provide fireworks to a person under the age of 18 years.

(4) The City may confiscate, destroy, remove, or have removed at the owner's expense, all stocks of fireworks in violation of this section, when necessary for the preservation of the public safety.

(5) Violation of this section is a Class A Civil Infraction for persons over the age of 18 and a Class C Civil Infraction for persons under the age of 18.

5.30.005 Open Burning Prohibited

(1) Except as authorized by this section, no person shall start or maintain an outdoor fire within the boundaries of the City of Bend for the following purposes:

(A) The burning of any refuse, garbage, or other waste products as described in the City of Bend Fire Department Outdoor Burning Regulations;

(B) The burning of any yard debris including but not limited to branches, leaves and pine needles;

(C) The burning of any construction or demolition waste;

(D) Field, ditch or weed burning.

(2) The following open burning is allowed subject to compliance with the provisions in the most recent fire code as adopted by the City of Bend and the Fire Department's Outdoor Burning Regulations:

(A) Fires initiated by the Fire Department for training purposes which are approved by the Oregon Department of Environmental Quality;

(B) Campfires, warming fires, cooking fires, outdoor fireplaces, outdoor kiln fires and other approved similar type fires that are not more than 3 feet in diameter;

(C) Cooking pits approved by the City of Bend Fire Department;

(D) Weed control by the City, County, or State within developed streets.

(3) A violation of this section is a Class B Civil Infraction.

CHAPTER 5.35 GENERAL INFRACTIONS

5.35.000 Diving and Ice Skating on Deschutes River

(1) No person shall operate a motor propelled boat on the Deschutes River within the limits of the City of Bend.

(2) Diving, jumping, or otherwise launching oneself or any other person or object off a bridge into a river or canal is prohibited. This prohibition does not apply to normal fishing activities.

(3) Ice skating on the Deschutes River is prohibited.

(4) No person shall place, leave or abandon a duck or goose along the banks of the Deschutes River or in any park along the Deschutes River.

(5) The prohibitions in this section do not apply to government employees in the commission of their duties or to others with the written permission of the City Manager.

(6) Violation of this section is a Class B Civil Infraction.

5.35.005 Curfew for Minors

(1) No minor under the age of 18 years shall be in or on a street, highway, park, alley, or other public place between the hours of 10:00 p.m. and 4:00 a.m. of the following morning if the following morning is that of a

school day in the Bend public school system, and between the hours of l2:00 a.m. and 4 a.m. on other days.

(2) No parent, guardian, or person having the care and custody of a minor under the age of 18 years shall allow the minor to be in or on any street, highway, park, alley or other public place in violation of subsection (1).

(3) Enforcement. Peace officers and other law enforcement officers may take or send the minor to the minor's residence and notify the parents, guardian or person having care and custody of the minor concerning the violation.

(4) Exceptions. This section shall not apply:

(A) If the minor is accompanied by a parent or legal guardian or other person 21 years of age or older and authorized by the parent or by law to have care and custody of the minor;

(B) If the minor is engaged in a lawful pursuit or activity which requires his presence in public places during the hours specified in this section;

(C) To minors in motor vehicles engaged in direct intrastate or interstate travel

(D) The minor is emancipated pursuant to ORS 419B.550 to ORS 419B.558

(5) A violation of this section is a Class B Civil Infraction.

5.35.010 Persons Confined in Vehicles

(1) No person, who has under their control or guidance a minor child, under eight years of age, or any other person who is incapable of exiting the vehicle by them self, shall at any time lock or confine, or permit to be locked or confined, or leave the person unattended in a vehicle for a period of time longer than 10 minutes. It is lawful for a peace officer, finding a person confined in violation of this section, to enter the vehicle and remove the person. The officer may, if necessary, break the doors or windows of the vehicle in order to save the life of the person or to save the person from mental or physical suffering.

(2) A violation of this section is a Class A Civil Infraction.

5.35.015 Public Urination or Defecation

(1) No person shall urinate or defecate in areas open to the public or in public view except in urinals and washrooms provided for that purpose.

(2) A violation of this section is a Class B Civil Infraction.

5.35.020 Snow and Ice. No owner or person in charge of property improved or unimproved, abutting a public sidewalk shall allow:

(1) Snow to remain on the sidewalk for a period longer than the first six hours of daylight after the snow has fallen or otherwise accumulated in commercial areas and one day in all other areas.

(2) Ice to remain on the sidewalk for more than six hours of daylight in commercial areas and one day in all other areas after the ice has formed unless the ice is covered with a suitable material to assure safe travel.

(3) A violation of this section is a Class B Civil Infraction for violation in all areas except for residential property. The penalty in residential areas is a C Civil Infraction.

5.35.025 Tobacco-use prohibited on City Campuses

(1) Definitions: The following definitions shall apply to this chapter:

(A) City Campuses Any City or Bend Urban Renewal Agency (BURA) owned/leased facility where official business is conducted. This includes the interior and exterior of City/BURA buildings including but not limited to City Hall, Public Works/Police, Fire Departments, Municipal Airport, Riverfront Plaza and Hawthorne Station site and the exterior of buildings from the edge of the building to the public sidewalk including parking lots. City Campuses do not include the public sidewalk within the public right of way and areas specified as a designated smoking area.

(B) Tobacco Product Any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, chewing tobacco, or any other form of tobacco which may be utilized for smoking, chewing, inhalation, or other means of ingestion.

(2) The City of Bend prohibits the use of tobacco products of any form throughout all City campuses.

(3) "Tobacco Free Campus" signs will be posted at all City campus entrances.

(4) Tobacco receptacles will be placed at the "Tobacco Free Campus" sign locations at entrances to City Campuses as a receptacle for tobacco products.

(5) Any City Police Officer, City Code Enforcement Officer, City Manager or his/her designated representative shall have the authority to request that City employees or members of the public discontinue use of tobacco products on City campuses. Any person who fails to discontinue the use of their tobacco products immediately upon request is required to immediately leave the City campus. Failure to comply with an order to discontinue tobacco use or leave a City campus constitutes Criminal Trespass in the Second Degree ORS 164.245.

(6) Violation of this section is a Class C Civil infraction.

5.35.030 Watershed Protection Area It shall be a Class A Civil infraction for any person, firm or corporation to impair the purity of the City's Bridge Creek water source. The following actions are prohibited:

(1) Causing pollution or causing or allowing any waste to be placed in a location where such wastes are likely to escape or be carried into the waters of Bridge Creek or the City's water distribution system.

(2) Engaging in any activity on the City's Bridge Creek watershed that will or may tend to reduce the water quality within the Bridge Creek watershed.

(3) Each day a violation continues shall constitute a separate offense.

(4) Any violation of this section shall also constitute a public nuisance and may be abated as provided by law.

CHAPTER 5.40 MAJOR INFRACTIONS

5.40.005 Acquisition and Retention of Articles Missing Serial Numbers

(1) No person shall knowingly buy, sell, receive, dispose of, conceal, or possess any item of value from which the manufacturer's nameplate, serial number or any other distinguishing number or identification mark has been intentionally removed, defaced, covered, altered or destroyed.

(2) It shall be an affirmative defense to a charge brought under Section (1) of this ordinance that the defendant is the owner of the property.

(3) The Bend Police Department shall treat the property described in subsection (1) as stolen Prior to being disposed of or being returned to the owner , the Police Department may attach an identification mark on the item.

(4) Subsection (1) does not apply if the identification has become illegible or unattached through normal wear.

(5) A violation of this section is a Class A civil infraction.

5.40.010 Civil Exclusion Zones Civil exclusion zones are designated to protect the public from those whose illegal conduct poses a threat to safety and welfare.

(1) Civil exclusion zones include, but are not limited to the following places:

(A) Public Places: The Breezeway between the western terminus of Minnesota Street to and through the Riverfront Plaza; and all publicly owned property from the eastern side of Brooks Alley to Drake Park between Franklin Avenue and Oregon Avenues.

(B) Public Parks: All public parks, including parks owned and/or managed by the Bend Metro Park and Recreation District or Oregon State Park and Recreation Department.

5.40.015 Civil Exclusion A person is subject to exclusion for a period of 90 days from entering or remaining in the area within 500 feet of a civil exclusion zone if that person has been cited to appear, arrested or otherwise taken into custody within a civil exclusion zone for:

(1) Any Assault, as defined by ORS 163.160 - 185 and 163.208,

(2) Menacing, as defined by ORS 163.190,

(3) Harassment, as defined by ORS 166.025,

(4) Disorderly Conduct, as defined by ORS 166.025,

(5) Recklessly endangering, as defined by ORS 163.195,

(6) Coercion, as defined by ORS 163.275,

(7) Any sexual offense, as defined by ORS 163.355 - 465,

(8) Endangering the Welfare of a Minor, as defined by ORS 163.575,

(9) Any offense under State law governing the possession, distribution, sale or manufacture of a controlled substances,

(10) Any offense under State law governing the possession, use, distribution or sale of alcoholic beverages,

(11) Possession or using a weapon in violation of ORS 166.180, 166.190, 166.220, 166,240, 166.250 or 166.272 or Bend Code Chapter 5.35.005,

(12) Being under the influence of intoxicating liquor or controlled substances, as defined by ORS 426,460.

(13) Any degree of criminal mischief, as defined by ORS 164.305 through 164.365.

(14) Possession of tobacco by a minor in violation of ORS 167.400

(15) Two or more citations for drinking at an unlicensed premise.

5.40.020 Exclusion Enforcement If a person excluded from a civil exclusion zone is found within the perimeter of the civil exclusion zone and its 500 foot protective buffer zone during the exclusion period, that person may be arrested for trespass in the second degree, as defined by ORS 164.245.

5.40.025 Issuance of Exclusion Notices The Chief of Police is designated as the person in charge of civil exclusion zones for the purpose of issuing exclusion notices in accordance with this ordinance. The Chief of Police may authorize employees of the Police Department to issue exclusion notices in accordance with this ordinance.

5.40.030 Procedure for Exclusion

(1) At the time a person is cited to appear, arrested or otherwise taken into custody within a civil exclusion zone for any of the offenses specified herein, the officer making such arrest may deliver to that person a written notice excluding that person from the civil exclusion zone and the area within 500 feet of the civil exclusion zone. Any exclusion notice shall not take effect until the sixth day after the notice is issued.

(2) The notice shall specify the area from which the person is excluded, the length of the exclusion, the penalty for entering the excluded area and contain information concerning the right to appeal the exclusion to the Judge of the Municipal Court.

(3) The person to whom the exclusion is issued shall sign a written acknowledgement of receipt of the notice. If that person refuses to sign the acknowledgement, the arresting officer shall make a written record of the refusal.

5.40.035 Appeal and Variance

(1) The person to whom an exclusion notice is issued shall have the right to an appeal from the issuance of the notice. The exclusion notice will notify the person of the right to appeal and process for appeal.

(A) An appeal of the exclusion must be filed, in writing, within 5 calendar days of the issuance of the notice. The appeal must be filed with the Municipal Court. A hearing on the appeal shall be held before the Judge of the Municipal Court within 20 calendar days of the appeal. The exclusion shall be stayed during the pendency of the appeal.

(B) The City shall have the burden to show by a preponderance of evidence that the exclusion was based upon the conduct proscribed by Section 5.60.020 chapter. Copies of documents in its control and which are intended to be used by the City at the hearing shall be made available to the appellant at least 2 days prior to the hearing.

(C) A determination by a court having jurisdiction of the matter, that the officer who issued the exclusion notice, at the time had probable cause to arrest the person to whom the exclusion notice was issued for the conduct described in Section 5.40.015, shall be prima facie evidence that the exclusion was based on conduct prohibited by those statutes.

(2) Any variances from the exclusion may be granted at any time during the exclusion period by the Chief of Police, or by the Municipal Court.

(3) The Chief of Police or the Municipal Court shall grant a variance to any person who can establish that he or she was a bona fide resident of the zone of exclusion prior to receipt of the exclusion notice. A variance may also be granted when, in the discretion of the Chief of Police or the

Municipal Court, the exclusion order is no longer necessary to preserve public safety.

(4) All variances shall be in writing, for a specific period of time and only to accommodate a specific purpose, all of which shall be stated on the variance.

(5) The person shall keep the variance on his or her person at all times the person is within the zone of exclusion.

(6) In the event a person is found to be outside the scope of the terms of the variance, the variance shall immediately become void and that person is subject to arrest for trespass.

(7) In the event a person holding a variance is arrested for trespass or any conduct prohibited in this chapter, while in the zone of exclusion, that person shall be ineligible for any new variances for a period of one year from the date of arrest.

5.40.040 Discharge of Weapons

(1) No person other than an authorized peace officer shall fire or discharge any gun or other weapon, including spring or air-actuated pellet guns, or a weapon which propels a projectile by use of a bow or sling, explosives, or jet or rocket propulsion.

(2) It shall be an affirmative defense to subsection (1) that the person was acting in defense of life or property and under circumstances that would warrant the use of deadly force under Oregon law.

(3) It shall be an affirmative defense to subsection (1) that the person was test firing or discharging the weapon, as a necessary part of the person's lawful business operations, at a firing range or while utilizing a bullet trap, under circumstances that did not present an unreasonable risk of harm to any person.

(4) A violation of this section is punishable as a Class A Civil Infraction.

5.40.045 Interfering with a Police Dog

(1) Definitions: For purposes of this code section, the following definitions applies:

(A) "Peace officer" means a municipal police officer, sheriff, constable, marshal, member of the Oregon State Police or investigator of the Criminal Justice Division of the Department of Justice and such other persons as may be designated by law.

(B) "Police dog" means a dog used in police work under the control of a peace officer.

(2) A person commits the offense of interfering with a police dog if the person intentionally or knowingly kills, disables, tortures, injures, torments, kicks, strikes, chokes, throws an object at or in any other way tampers or interferes with any police dog, knowing the dog to be a police dog, while the dog is being caged, kenneled, transported, exhibited, exercised or used in discharging or attempting to discharge any lawful duty or function as a police dog.

(3) A violation of this section is a Class A civil infraction.

5.40.050 Misrepresentation of City of Bend Affiliation

(1) No person or business shall market their business in any way that implies endorsement by or connection with the City of Bend.

(A) Use or depiction of Bend Police Department uniforms, vehicle(s), images or badges without approval of the Chief of Police is prohibited.

(B) No person shall create or use a uniform, vehicle or badge that is similar to those of the Bend Police Department in marketing a business.

(C) No unauthorized person shall take any action or represent themselves as being affiliated with the City of Bend.

(2) For purposes of this section, "City of Bend" means the governmental entity that is the City of Bend.

(3) A violation of this section is a Class A civil infraction.

5.40.055 Chronic Nuisance Property For the purposes of this code section, the following definitions apply:

(1) Chronic Nuisance Property Property upon which or within 200 feet of which any person associated with the property has three or more of the below listed offenses occur during any 30 day period as a result of three separate factual incidents that have been independently investigated by any law enforcement agency:

(A) All felony drug offenses as enumerated in ORS 475.840 to 475.980

(B) Assault, strangulation or menacing as defined in ORS 163.160 through 163.190.

(C) Harassment as defined in ORS 166.065 (1) (a).

(D) Disorderly conduct as defined in ORS 166.025.

(E) Alcohol violations as defined in ORS 471.410 (1), (2) and (3) and ORS 471.430(1) and (2)

(F) Intimidation as defined in ORS 166.155 through 166.165

(G) Public or private Indecency as defined in ORS 163.465 and 163.467

(H) Any Sexual offense as defined in ORS 163.305 through 163.445

(I) Theft as defined in ORS 164.015 through 164.140

(J) Prostitution or related offenses as defined in ORS 167.007, 167.012, and 167.017.

(K) Any attempt to commit as defined in ORS 161.405, or conspiracy to commit, as defined in ORS 161.455, any of the above offenses.

(L) Violation of the City of Bend noise ordinance Chapter 5.50

(M) Unlawful Discharge of a Weapon as defined in Bend Offense 5.40.045

(2) Control The ability to regulate, restrain, dominate, counteract or govern conduct that occurs on that property.

(3) Owner Any person, agent, firm or corporation having a legal or equitable interest in a property. Owner includes, but is not limited to:

(A) A mortgagee in possession in whom is vested:

(1) All or part of the legal title to the property; or

(2) All or part of the beneficial ownership and a right to present use and enjoyment of the premises; or

(3) An occupant who can control what occurs on that property.

(4) Permit To suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.

(5) Person Any natural person, agent, association, firm, limited liability company, partnership, corporation, or other entity capable of owning or using property in the City of Bend.

(6) Property Any real property including land and that which is affixed, incidental or appurtenant to land, including but not limited to any premises, room, house, building or structure or any separate part or portion thereof, whether permanent or not.

5.40.060 Remedy

(1) In the event a court determines property to be chronic nuisance property, the court may order that the property be closed and secured against all use and occupancy for a period of not less than 30, but not more than 180 days, or the court may employ any other remedy deemed by it to be appropriate to abate the nuisance.

(2) In addition to the remedies provided for in paragraph (a) above, the court may impose upon the owner of the property a civil penalty in any amount up to $100 a day, payable to the City, for each day the owner had actual knowledge that the property was chronic nuisance property and permitted the property to remain chronic nuisance property.

(3) In determining what remedy or remedies to employ, the court may consider evidence of other conduct which has occurred on the property.

5.40.065 Procedure When the Chief of Police believes in good faith that the property within the City of Bend has become chronic nuisance property, he/she shall:

(1) Notify the owner(s) of record in writing that the property has been determined to be chronic nuisance property. The notice shall contain the following information:

(A) The street address and a legal description sufficient for identification of the property.

(B) A statement that the Chief of Police has found the property to be chronic nuisance property with a concise description of the conditions leading to his/her findings.

(C) A statement that the owner shall have the opportunity to respond to the notice, within 15 days from the date of the notice, describing what steps the owner has taken or will take to remedy the chronic nuisance on the property.

(D) If the owner's response to the notice is not satisfactory to the Chief of Police, or if the owner does not respond, then another copy of the notice shall be served on the owner and their agent, if known, at least 10 days prior to the commencement of any judicial action by the City. Service shall be mailed certified mail, return receipt requested, postage prepaid, addressed to such person at the address of the property believed to be a chronic public nuisance property, and to such other address as shown on the tax rolls of the county in which the property is located or such other place which is believed to give the owner actual notice of the determination by the Chief of Police.

(E) A copy of the notice shall be served on the occupant of the property if that person is different than the owner and shall occur not less than 10 days prior to the commencement of any judicial proceedings and be made either personally or by mailing a copy of the notice by certified mail, return receipt requested, postage prepaid, to them at the property.

(F) A copy of the notice shall be posted at the property prior to the commencement of any judicial proceedings.

(G) The failure of any person or owner to receive actual notice of the determination by the Chief of Police shall not invalidate or otherwise affect the proceedings under this chapter.

5.40.070 <u>Commencement of Actions; Burdens of Proof; Defenses; Mitigation of Civil Penalty</u>

(1) In an action seeking the closure of a chronic nuisance property, the City shall have the initial burden of proof to show by a preponderance of the evidence that the property is chronic nuisance property.

(2) It is a defense to an action seeking the closure of chronic nuisance property that the owner of property at the time in question could not, in the exercise of reasonable care or diligence, determine that the property had become chronic nuisance property, or could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the finding that the property is chronic nuisance property.

(3) In an action seeking civil penalties pursuant to Section 5.45.015(2) the City shall have the initial burden of proof to show by a preponderance of the evidence that the conditions of that subsection are satisfied.

(4) In establishing the amount of any civil penalty requested, the court may consider any of the following factors, as they may be appropriate, and shall cite those found applicable:

(A) The actions taken by the owner(s) to mitigate or correct the problem at the property;

(B) Whether the problem at the property was repeated or continuous;

(C) The magnitude or gravity of the problem;

(D) The cooperativeness of the owner(s) with the City;

(E) The cost to the City of investigating and correcting or attempting to correct the condition;

(F) Any other factor deemed by the court to be relevant.

5.40.075 Closure During Pendency of Action; Emergency Closures
In the event that it is determined that the property is an immediate threat to the public safety and welfare, the City may apply to the court for such interim relief that is deemed by the City Attorney to be appropriate. In such an event the notification procedures set forth in Section 5.45.020 need not be complied with.

5.40.080 Enforcement of Closure Order; Costs; Civil Penalty

(1) In the event that a court finds that property constitutes chronic nuisance property as defined in this Chapter, the court may order the remedies set out in Section 5.45.015(1). In addition, in the event that it also finds that the owner had knowledge of activities or conditions at the property constituting a violation of this Chapter and nonetheless permitted the activities to occur, the court may utilize the penalties provided for in Section 5.45.015(2).

(2) The court may authorize the City to physically secure the property against use or occupancy in the event that the owner(s) fail to do so within the time specified by the Court. In the event that the City is authorized to secure the property, all costs reasonably incurred by the City to affect a closure shall be made an assessment lien upon the property.

(A) The City Department(s) affecting the closure shall prepare a statement of costs and the City shall submit that statement to the court for its review. If no objection to the statement is made within the period prescribed by Oregon Rules of Civil Procedure 68, a certified copy of the statement, including a legal description of the property, shall be entered in the City's lien docket.

(B) Liens imposed by this Chapter shall be collected in all respects as provided for street improvement liens, and shall bear interest at the rate of 9% per year from 10 days after the entry in the lien docket.

(C) Any person who is assessed the costs of closure and/or a civil penalty by the court shall be personally liable for the payment to the City.

5.40.085 Trespass to Vehicle

(1) A person commits trespass to a vehicle if, without having a right to do so or having reasonable grounds to believe to have such a right:

(A) Knowingly or intentionally climbs upon or enters the vehicle either bodily or with an instrument capable of damaging or removing property from the vehicle; or,

(B) Knowingly or intentionally tampers with the locks, latch mechanisms, hood release, engine, body, trim, undercarriage, running gear, fuel tank or fuel intake, antenna, electric or electronic equipment, wheels, steering mechanism, brakes, or any part of any such equipment.

(2) It is an affirmative defense to a prosecution under this section that the person engaged in the conduct described in order to prevent imminent damage to the vehicle, persons, animals or other property.

(3) A violation of the provisions of this section is a Class A misdemeanor.

CHAPTER 5.50 NOISE

5.50.000 Noise Regulations This section is adopted pursuant to the provisions of ORS 467.100 and the City of Bend Charter

5.50.005 Prohibition on Excessive Noises No person shall make, assist in

making, permit, continue, or permit the continuance of, any noise within the City of Bend in violation of this chapter. No person shall cause or permit any noise to emanate from property under that person's control in violation of this section.

5.50.010 Sound Measurement While sound measurements are not required for the enforcement of this section, should measurements be made, they shall be made with a sound level meter using the A weighting network on a Type I or Type II meter.

5.50.015 Definitions As used in this chapter:

(1) "dBA" means the sound pressure level in decibels measured using the A weighting network on a sound level meter.

(2) "Noise-Sensitive unit" shall include any building or portion of a building containing a residence, place of overnight accommodation, place of worship, day care center, hospital, school, or nursing care facility.

(3) "Plainly Audible" means any sound for which the information content of that sound is unambiguously communicated to the listener, such as, but not limited to, understandable spoken speech, comprehensible musical rhythms or vocal sounds.

(4) "Unnecessarily Loud" means any sound that interferes with normal spoken communication or that could reasonably disturb sleep.

(5) "Daytime" for subsection A of the noise limits section is anytime between the hours of 7:00 a.m. and 10:00 p.m.

(6) "Nighttime" for subsection A of the noise limits section is anytime not listed as a daytime.

5.50.020 Noise Limits

(1) The following are maximum allowable chronic or recurring noise limits anywhere when measured at the boundary of or within a property on which a noise sensitive unit, not the source of the sound, is located:

	Daytime	Nighttime
Residential	55 dBA	50 dBA
Commercial	60 dBA	55 dBA
Industrial	75 dBA	70 dBA

(2) It is prohibited to produce sound that is unnecessarily loud or plainly audible in a noise sensitive unit.

(3) The following are maximum allowable chronic or recurring noise limits when measured at the boundary of or within a property on which no noise sensitive unit is located, and the noise originates from outside the property:

(A) Seventy dBA at any time between 10:00 P.M. and 7:00 A.M. of the following day; or,

(B) Seventy-five dBA at any other time.

(4) If within a park, street or other public place, sound that is plainly audible outside a vehicle at a distance of 50 feet. The City Manager may designate areas of parks, streets or other public places as exempt from this restriction and may grant revocable permits to exceed this restriction.

5.50.025 Prohibited Noises

(1) The use of exhaust brakes (jake brakes), except in an emergency or except when used by a person operating an emergency services vehicle equipped with a muffled compression braking system, is prohibited at all times within the city, regardless of noise level.

(2) Except as provided in Section 5.50.035 Permits, the following acts are violations of this chapter if they exceed the noise limits specified in Section 5.50:

(A) The excessive sounding of any horn or signal device or any other device on any automobile, motorcycle, truck, bus or other vehicle while in motion, except as a danger signal.

(B) The operation of sound-producing devices such as, but not limited to, musical instruments, loudspeakers, amplifying devices, public address systems, electronic sound reproduction devices including those installed in or on vehicles that are unnecessarily loud. The ability to hear the sound plainly audible more than 50 feet from the source of the sound or property on which it is being produced is evidence of a violation of this section.

(C) The operation of any gong or siren upon any vehicle, other than police, fire or other emergency vehicle, except during sanctioned parades.

(D) The use of any automobile, motorcycle or other vehicle so out of repair, without a proper exhaust system, or in such a manner as to create loud or unnecessary sounds, grating, grinding, rattling or other noise.

(E) The use of any automobile, motorcycle, all-terrain vehicle or other vehicle outside of public rights-of-way where the use is unnecessarily loud unless the user has a permit issued under subsection 5.50.035 of this section allowing a person to operate outside of public rights-of-way and the noise falls within the terms of the permit.

(F) The operation of air conditioning or heating units, heat pumps, refrigeration units (including those mounted on vehicles), swimming pool or hot tub pumps, blower, power fan, internal combustion engine, electric motor, compressor or similar machinery that is not sufficiently muffled so as not to be unnecessarily loud.

(G) Constructing or repairing buildings, streets, etc. Constructing (including excavating), demolishing, altering or repairing a building, street, sidewalk, driveway, sewer or utility line during the hours of 10:00 p.m. and 7:00 a.m., except as provided in sections 5.50.030 and 5.50.035.

(H) Using, operating or permitting to be used or operated a mechanical or electrical loud speaker or sound amplifier, either stationary or mobile, for producing or reproducing sound that is cast on the public streets or other public property if it is unnecessarily loud and can be heard more than 50 feet from the source. This section does not prohibit the reasonable use of mechanical loud speakers or sound amplifiers as authorized by the Council or emergency announcements required by public safety. However, repetitive mechanically or electrically amplified sound shall not be allowed from 10:00 p.m. to 7:00 a.m. without authorization of the City Manager

(I) Any yelling, shouting, hooting, whistling, singing or other human-

produced noise that is unnecessarily loud.

(J) Any other action that creates or allows sound in excess of the level allowed by Section 5.50.020 Noise Limits.

5.50.030 Exceptions The following shall not be considered violations of this chapter, even if the sound limit specified in Section 5.50.020 Noise Limits is exceeded:

(1) Amplified or non-amplified sounds created by organized athletic or other group activities, when such activities are conducted on property generally used for such purposes, such as stadiums, parks, schools, and athletic fields, during normal hours for such events except during from 10:00 p.m. to 7:00 a.m.

(2) Sounds caused by emergency work, or by the ordinary and accepted use of emergency equipment, caused by a public or private agency, or upon public or private property.

(3) Sounds caused by bona fide use of emergency warning devices and alarm systems for no more than 15 minutes or while the emergency remains in effect. All audible alarms shall automatically silence themselves after 15 minutes.

(4) Sounds regulated by federal law, including, but not limited to, sounds caused by railroads, interstate motor carriers or aircraft.

(5) Sounds caused by regular vehicular traffic upon premises open to the public in compliance with state law. Regular vehicle traffic does not include a single vehicle that creates noise in excess of the standard set forth in this chapter.

(6) Sounds caused by air, electrical, or gas driven domestic tools, including, but not limited to, lawn mowers, lawn-edgers, chain saws radial arm, circular and table saws, drills, and/or other similar lawn or construction tools, except during the hours of 10:00 p.m. to 7:00 a.m.

(7) Sounds created by community events, such as parades, public fireworks displays, street fairs, and festivals that the City Manager has determined in writing to be community events for the purposes of this section, and any sounds created at a school sporting event, including amplified sounds. The city manager's decision shall be based on the anticipated number of participants or spectators, the location of the event and other factors the city manager determines to be appropriate under the circumstances.

(8) Sounds made by legal fireworks on the third of July, Fourth of July, between the hours of 7:00 A.M. and 11:00 P.M.

(9) Sounds made by City of Bend franchisees that provide solid waste removal.

(10) Sounds made by the removal of snow or ice from public or private property.

(11) Sounds made by the cleaning of or routine maintenance of City streets by City employees or agent

(12) Sounds made by the cleaning of commercial or industrial parking facilities or private roadways between the hours of 7:00 am and 2:00 am as long as the noise from the equipment does not exceed 65 dBA (decibels) at 50 feet from the edge of the property that is being cleaned.

(13) Sounds that are produced as a result of activity that would be a violation

for which a permit has been issued by the City Manager authorizing the activity.

(14) A violation of this section is a Class A Civil Infraction. Continued violation of this section shall constitute a separate violation.

5.50.035 Permits

(1) In cases of emergency or other public necessity, the City Manager may issue a permit allowing activities described in subsection 5.50.025 to take place at any hour. The permit may be for the duration of the permitted activity.

(2) The City Manager may also issue a permit for a concert or similar event allowing noise otherwise prohibited by this chapter, provided the concert or event is permitted under the applicable provisions of this code.

(3) Denial of permits by the City Manager may be appealed to the City Council within 15 days after denial. The date of a denial shall be the date a permit is orally denied or the date a written denial is made, whichever is later. Granting the permit may be appealed at any time by a person who resides or works within hearing of the noise generated as a result of the granting of the permit.

(4) Permits may include such restrictions or conditions necessary to safeguard the public peace.

CHAPTER 5.55 PARKS

5.55.000 Definitions For purposes of this chapter, the following mean:

(1) Public parks. All property owned or controlled by the City or by the Bend Metropolitan Park & Recreation District and operated for the public's recreational use.

(2) Person. A person, firm, or corporation, not including City or Bend Metropolitan Park & Recreation District personnel or their agents.

5.55.005 Violations

(1) Persons using public parks and other city property shall obey the following rules and regulations:

(A) No unauthorized person shall cut, remove or damage vegetation except property owners may engage in normal landscaping activities in adjacent rights of way.

(B) No person shall build a fire. Portable propane camp stoves and propane barbeques may be used in the parks only if in safe operating condition and only if operated in a safe manner and in such a way as to avoid damage to park property.

(C) No person shall camp except in areas designated for camping or in connection with activities authorized by the City or the District.

(D) No person shall damage or injure a building, installation, equipment or other property in public parks.

(E) No person shall sell merchandise or services, or operate a concession in public parks without permission of the Bend Metropolitan Park & Recreation District and shall possess, on their person, evidence of the permission.

(F) No person shall litter in the parks or city owned property. Garbage and refuse shall be deposited in proper receptacles provided for this purpose or carried off for disposal. Garbage and refuse shall not be brought to parks or city owned property.

(H) No person shall operate or park a motor vehicle except on roads or designated parking areas unless a special permit has been issued by the Park District.

(I) Except as authorized by the Park District, no person shall ride or lead a horse in a public park except on a designated bridle path, except with a special permit. Horses or other animals shall not be tied to a tree or shrub in such a manner as to cause damage to the tree or shrub.

(J) No person shall project items into the air that may harm parks or people, such as golf equipment, archery equipment, discus, javelin, or shot put in parks except as permitted by the Park District.

(K) Except as authorized by the Oregon Department of Fish and Wildlife or the Bend Metropolitan Park and Recreation District, no person shall feed, hunt, pursue, trap, kill, injure or disturb the habitat of a bird or animal.

(L) Except as authorized by State or Federal law, no person shall possess a loaded firearm in a park.

(M) No person shall dig up, deface or remove dirt, stones, rock or other substances nor make any excavation.

(N) No person shall erect signs, markers or instructions without city or District permission.

(O) No person shall wash clothing or materials or clean fish in streams or pools.

(P) No one may use any rolling device such as a bicycle, skateboard, scooter, inline skates, etc., in a manner that is likely to cause potential harm to other people, pets, wildlife or District property; or on sports fields, playgrounds, tennis courts, off-leash areas or in areas reserved for special events. This does not prohibit the use of rolling devices in designated areas.

(Q) All public parks and adjacent parking lots, with the exception of Brandis Square, shall be open from 5:00 a.m. until 10:00 p.m. and closed from 10:00 p.m. until 5:00 a.m. unless otherwise authorized. Transitory use shall be exempt.

(R) Alcohol use in parks is prohibited except when allowed by a permit issued by the Park District and or the Bend Police Department. The fee for an alcohol consumption permit when issued by the Bend Police Department shall be set by Council resolution. The permit must be available for inspection during the term of use.

(2) A violation of this section is a Class B Civil Infraction.

TITLE V - PUBLIC PROTECTION

CHAPTER 5.10 AIRPORT

5.10.000 Regulations Any person using the Bend Municipal Airport and its facilities shall do so in compliance with the City's Airport Regulations. For the purpose of this section, "Airport Regulations" includes any lawful order of the City Manager implementing a duly adopted regulation.

5.10.005 Violation A violation of this chapter is a Class B Civil Infraction. Any persons violating this section may be removed from the property as a trespasser following procedures required by state law.

CHAPTER 5.15 ALCOHOLIC LIQUOR

5.15.000 Definitions For purposes of this chapter, the following words and phrases mean:

(1) Alcoholic beverage Liquids containing more than one-half of one percent alcohol by volume intended or used for human consumption.

5.15.005 Drinking on Unlicensed Premises

(1) No person shall drink, or be in possession of an open container of alcoholic beverages in a public place or premises open to the public unless the place or premise has been licensed by the Oregon Liquor Control Commission to sell intoxicating liquor for consumption or on premises for which a permit has been issued by the City.

(2) Except when authorized by the by the Bend Metropolitan Park and Recreation District, no person shall drink, or be in possession of an open container of alcoholic beverages in a park under the control of Bend Metro Park and Recreation District without having first obtained an alcohol consumption permit referenced in Chapter 5.55.

(3) A violation of this section is a Class B Civil Infraction.

5.15.010 Prohibition of Possession or Consumption of Alcoholic Beverages on or in the Deschutes River

(1) No person may possess or consume any alcoholic beverage while on or in the Deschutes River within the city limits of Bend. This prohibition applies to both open and closed containers of alcoholic beverages but does not apply to persons crossing the river on a bridge.

(2) Violation of this section is a Class A Civil Infraction.

CHAPTER 5.20 ANIMALS

5.20.000 Definitions As used in this chapter, the following definitions apply:

(1) "Animal" means dogs, horses, cattle, sheep, goats, livestock or any animals generally found on a farm or considered an exotic pet, excluding domestic cats."

(2) "Dangerous Animal" means any animal that has been found, by the Municipal Court Judge to have:

(A) Without provocation, placed a person in reasonable fear of imminent physical injury; or

(B) Attacked a person or domestic animal without provocation; or

(C) Been trained for or used in animal fighting

(3) "Exotic Pet" means an animal, other than livestock kept and maintained as a pet excluding domestic dogs and cats, includes swine or pigs specifically bred as household pets as long as they are less than 18 inches measured at the shoulder and weigh less than 100 pounds.

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OFFENSES¶
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5.020 Application of the Oregon Criminal Code¶
5.025 Discharge of Weapons¶
5.030 Unlawful Assembly¶
5.035 False Certification¶
5.040 Gambling¶
5.045 Failure to Appear in the Third Degree¶
5.050 Watershed Protection Area¶
5.055 Deschutes River: Waterfowl Protection¶
5.060 Trespass to a Vehicle¶
5.070 Possession of a Throwing Star¶
5.075 Interfering with a Police Officer¶
5.077 Interfering with a Police Dog¶
5.080 Prohibition of Possession of Fireworks by Persons Under the Age of 18¶
¶
CIVIL INFRACTIONS¶
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5.100 Civil Infraction Procedure¶
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GENERAL INFRACTIONS¶
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5.110 Children Confined in Vehicles¶
5.120 Obstructing Public Ways¶
5.125 Sidewalks¶
5.130 Public Urination or Defecation¶
5.135 Curfew for Minors¶
¶
AIRPORT¶
¶
5.145 Airport Entry ¶
5.150 Regulations¶
5.155 Violations¶
¶
CONTROLLED SUBSTANCE¶
¶
5.160 Possession and Delivery of Controlled Substances¶
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ALCOHOLIC LIQUOR¶
¶
5.165 Definitions¶
5.170 Drinking on Unlicensed Premises¶
5.180 Intoxicated Person¶
5.185 Persons Not Allowed to Drink Alcoholic Liquor on Licensed Premises¶
5.200 Minors¶
5.205 Minors on Premises¶
5.210 Minors on Licensed Premises¶
5.215 Delivering or Selling Liquor by Minor¶
5.220 Consumption by Licensee¶
5.225 Bringing Alcoholic Liquor Upon Licensed Premises¶
5.235 Lawful Hours of Sale¶ ... [1]

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5.180 Intoxicated Person.¶
¶
(1) A person who is intoxicated in a public place may be taken or sent to his home or to a treatment facility by the police. However, if the intoxicated person is incapacitated, the person's health appears to be in immediate danger, or the police have reasonable cause to believe the person is dangerous to himself or herself or to any other person, the person sh ... [2]

(4) "Keeper" means, in addition to its ordinary meaning, a person, firm, association or corporation which is in possession of, in temporary control of, or who is responsible for the care of an animal. The term "Keeper" also means the parent or guardian of the owner of an animal, if the owner is under the age of 18 years and the owner resides with the parent or guardian on the date of the alleged violation.

(5) "Off Leash Area" means an area designated by the Bend City Council pursuant to Section 5.20.030 of the Bend Code as an area where dogs are not required to be leashed.

(6) "Owner" means a person, firm, association or corporation that owns an animal.

(7) "Physical injury" means impairment of physical condition or substantial pain.

(8) "Run at Large" means to be off the private premises where the animal is allowed to be by the person in charge of those premises and not under the complete, tethered control of the owner or keeper by adequate leash or bridle. Any animal in a vehicle shall not be considered to be "at large".

5.20.005 Exemption for Law Enforcement Animals. An animal owned by a law enforcement agency is exempt from the provisions of this Chapter, provided that the animal is under the care and control of a law enforcement officer.

5.20.010 Owner/Keeper Responsibility for Animal. The owner or keeper of an animal which violates the provisions of this chapter is responsible for the animal's acts and condition and the owner or keeper is subject to the penalties provided in Section 5.20.065 for the animal's violations of any provision of this chapter.

5.20.015 Animal Waste. It shall be unlawful for an owner or keeper of an animal to allow it to deposit solid waste matter on any property other than the property of the owner or keeper of the animal. It shall be a defense to this action if the owner or keeper of the animal promptly removes the solid waste deposited by the animal.

5.20.020 Dog Licensing

(1) Every dog within the city that has a set of permanent canine teeth shall be licensed. The license tag shall be attached to a collar worn by the dog. The owner and/or keeper of the dog shall be found in violation of this ordinance if the dog is not wearing its collar and tag or if the tag is not present on the dog's collar at any time.

(2) An owner or keeper of a dog within the city shall license the dog not later than 30 days after the person becomes the owner or keeper of the dog or establishes residence within the city.

(3) Licenses shall not be required for dogs owned by dealers, breeders or exhibitors if the dogs are kept in kennels exclusively for sale or exhibition purposes, or while such dogs are being transported by dealers, breeders, or exhibitors to and from a dog show or fair. Licenses are not required for dogs that are used as service animals for persons with disabilities. A companion or therapy animal is not a service animal unless the animal has been individually trained to perform one or more tasks for a person with disabilities and trained to behave in public.

5.20.025 Animal at Large. No animal shall run at large. The owner or keeper of an animal is responsible for an animal at large.

5.20.030 Off Leash Areas.

(1) The Bend City Council may, in its discretion, designate certain areas of public parks which are owned and operated by the Bend Metropolitan

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(1) . No licensee or licensee's employee shall consume alcoholic liquor upon the premises where employed or to be under the influence of alcoholic liquor while on duty.¶
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(2) . A violation of this section is a Class A Civil Infraction.¶
¶
5.225 Bringing Alcoholic Liquor Upon Licensed Premises.¶
¶
(1) . No licensee or agent or employe of a licensee, shall keep or knowingly permit to be kept, brought or consumed on the licensed premises alcoholic liquor not allowed to be sold or served upon the premises.¶
¶
(2) . A violation of this section is a Class C Civil Infraction.¶
¶
5.235 Lawful Hours of Sale.¶
¶
(1) . No package store licensee shall sell, dispense, deliver or permit the removal of alcoholic liquor from the licensed premises between the hours of 2:30 a.m. and 7:00 a.m.¶
¶
(2) . No retail malt, beverage, restaurant or dispenser licensee shall sell, dispense, deliver or allow the consumption of alcoholic liquor on licensed premises or permit the removal of alcoholic liquor from licensed premises between the hours of 2:30 a.m. and 7:00 a.m.¶
¶
(3) . A violation of this section is a Class B Civil Infraction.¶
¶
5.240 Statement of Age as Defense. If a written statement of age and the information pertaining to the evidence which was exhibited to the permittee or licensee at the time the statement was made that is entered in writing on the statement, are offered as evidence in any administrative or criminal prosecution for sale or service of alcoholic liquor to a person not having reached 21 years of age, the permittee or licensee shall be found to have committed no crime or other wrong unless it is demonstrated that a reasonable person would have determined that the identification exhibited was altered or did not accurately describe the person to whom the alcoholic liquor was sold or served.¶ ... [3]

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5.260 . Animal Waste. It

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Parks and Recreation District (BMPRD) as areas where dogs are not required to be leashed, subject to the other provisions of this section.

(2) A designation of an area as an Off Leash Area by the Bend City Council shall not be effective unless the BMPRD Board provides prior written notice to the Bend Chief of Police. Owners must comply with the BMPRD regulations applicable to all off leash areas.

(3) The owner or keeper of a dog that is in an Off Leash Area must control the dog at all times. The owner or keeper of a dog shall not allow a dog to engage in fighting with other dogs, or harass, bark at, bite, threaten or injure a person or animal.

(4) If a dog or an owner or keeper is found to be in violation of this section, the dog may be excluded from the Off Leash Area for up to twenty-four hours. If a citation is issued for animal nuisance under Bend Code 5.20.040, the dog shall be excluded from all Off Leash Areas, pending a review of and determination on the citation by the Bend Municipal Court Judge. Returning an animal to an Off Leash Park after being excluded is a Class A civil infraction.

(5) Animals which have been designated as a Dangerous Animal under Bend Code 5.20.065(4) shall not be permitted in an Off Leash Area under any circumstances.

(6) Any owner or keeper of a dog shall be subject to a Class A civil penalty for violation of the terms and conditions of an Off Leash Area as provided in this section.

5.20.035 Dangerous Animals An animal may be designated as a Dangerous Animal by order of the Bend Municipal Court Judge. If an animal is designated as a Dangerous Animal, then the following restrictions shall apply to the animal:

(1) The owner or keeper of the dangerous animal shall cause the animal to be confined on the premises of the owner or keeper, either securely indoors or confined in a securely enclosed and locked pen or similar structure; such pen or structure must be securely constructed and must be adequate to ensure the confinement of the animal.

(2) No owner or keeper of a dangerous animal shall permit the animal to go beyond the premises of the person unless the animal is humanely muzzled and either securely leashed or otherwise securely restrained and led by a person physically capable of handling the animal.

(3) A requirement that the animal's owner or keeper post signs on the premises where the animal is kept indicating that the animal is a dangerous animal.

(4) If the animal designated as a dangerous animal is a dog, then the dog shall at all times be required to wear a special dog tag indicating that the dog is a dangerous animal and will be required to be micro-chipped. The owner shall be responsible for payment for the special tag and microchip.

(5) Dangerous animals are prohibited in all public parks.

5.20.040 Animal Nuisances An animal is a nuisance if it:

(1) Bites, injures or attacks a person without provocation;

(2) Places a person in fear of imminent physical injury, without provocation, said fear being reasonable under the circumstances;

(3) Injures or kills an animal or fowl belonging to a person other than the owner or keeper of the animal;

(4) Is trained for or used in animal fighting;

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(2) . Bites, injures or attacks a person.¶
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(3) . Places a person in fear of imminent physical injury, without provocation, said fear being reasonable under the circumstances;¶
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(4) . Chases vehicles.¶
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(5) . Chases people.¶
¶
(6) . Damages property belonging to a person other than the owner or keeper of the animal.¶
¶
(7) . Injures or kills an animal or fowl belonging to a person other than the owner or keeper of the animal.¶
¶
(8) . Scatters garbage.¶
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(9) . The owner or keeper of an animal committing any of the acts set forth in this section is responsible for the animal's acts and is subject to a civil infraction citation.¶
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5.272 . Dangerous Animals.¶
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(2) . No owner or keeper of a dangerous animal shall suffer or permit such animal to go beyond the premises of such person unless such animal is

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Deleted: (1) . An animal that has violated Bend Code 5.252, 5.265, 5.270 or 5.272 or is unlicensed as required by law may be seized and impounded. If a member of the Bend Police Department is unable to apprehend such animals without risking injury to the officer or other people, the officer may kill the

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(2) . An animal impounded pursuant to subsection (1) of this section shall be held at the Humane Society of Central Oregon, S.P.C.A.¶
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(3) . Animals that have been impounded for violating Bend Code 5.270 (2), (3) or (7) or Bend Code 5.272 shall be held at the Humane Society until any citations issued to the animal's owner or keeper have been resolved by the court system or until the Society has received a court order directing the Society to release or humanely destroy the animal. If no citations have been issued to the impounded animal's owner or keeper within three days of the animal's impoundment or if the court has resolved the citations issued to the animal's owner or keeper and has not issued an order concerning the disposition of the animal, the animal may be humanely destroyed or handled according to Oregon law and Humane Society policies, rules and regulations.¶
¶
(4) . Animals that have been impounded for any violation of this Code or any other law, other than Bend Code 5.270 (2), (3) or (7) or 5.272, may be humanely destroyed or handled according to Oregon la ... [1]

(5) Disturbs any person by frequent or prolonged noises;

(6) Chases vehicles or obstructs traffic;

(7) Chases people;

(8) Damages property belonging to a person other than the owner or keeper of the animal;

(9) Scatters garbage;

(10) Attends a special event as defined in Chapter 7.

(11) Its owner or keeper has failed to comply with Section 5.20.030(3) or off leash regulations at an Off Leash Area.

5.20.045 Impound

(1) An animal that has violated Bend Code 5.20.025, 5.20.040 or that lacks a required license may be seized and impounded by an officer of the Bend Police Department.

(2) If an officer of the Bend Police Department is unable to apprehend such animals without risking injury to the officer or other people, the officer may kill the animal if other means to control the animal are ineffective or likely to be.

(3) An impounded animal shall be placed in the animal shelter under contract with the City of Bend Police Department and shall be held by that animal shelter until the release has been authorized by the Bend Police Department, any citations issued to the animal's owner or keeper have been resolved by the court system or until the shelter has received a court order directing the shelter to release or humanely destroy the animal.

5.20.050 Unclaimed Animals

(1) If an animal has been impounded and no citations have been issued to an impounded animal's owner or keeper within three business days of the animal's impoundment, the animal may be handled according to Oregon law and the animal shelter's policies, rules and regulations, including humane destruction of the animal.

(2) If an animal has been impounded and one or more citations have been issued to the animal's owner or keeper, but the animal's owner or keeper does not make a personal or written appearance on the citation(s) in the Bend Municipal Court within the time required by the citation(s), then the Court may issue an order terminating the rights of the owner to the animal and requiring that the animal may be handled according to Oregon law and the animal shelter's policies, rules and regulations, including humane destruction of the animal. Prior to issuing a forfeiture order, the Court shall cause a written notice to be delivered or mailed to the owner or keeper of the animal. The notice shall advise the owner or keeper that the owner or keeper's rights to the impounded animal will be forfeited unless the owner or keeper makes a personal appearance in the Bend Municipal Court within five business days of the date of the notice. The notice shall be mailed or delivered to the owner or keeper of the animal at the address shown on the citation or at any address provided to the Court by the animal's owner or keeper.

(3) If an animal has been impounded and the owner or keeper of the animal makes a first appearance in the Bend Municipal Court, but the owner or keeper later fails to appear as required by the Municipal Court, then the Court may proceed as provided in Section 5.20.050(2).

5.20.055 Warrant for Seizure of Animals

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(1) Any member of the Bend Police Department, including community service officers, may apply to the Bend Municipal Court for a warrant authorizing the search for and seizure of any animal that has violated Bend Code 5.20.040. The Bend Municipal Court Judge may issue the warrant based on a prima facie case that the violation has occurred.

(2) Nothing in this section is intended to limit the search and seizure authority of City police officers otherwise provided by law.

5.20.060 Rabid Animals Management and disposition of rabid animals shall be as prescribed by Oregon Law.

5.20.065 Civil Penalties

(1) The following violation are Class A civil infractions:

(A) Owning or keeping an animal that is a nuisance under Section 5.20.040.

(B) Bend Code 5.20.070 violating an order terminating animal owner's rights.

(2) All other violations of this Chapter are Class B Civil infractions:

(3) Reimbursement of Impound Costs. The Bend Municipal Court Judge may order the owner or keeper of an animal that violates any provision of this Chapter to reimburse the City of Bend for any and all impound costs incurred by the City.

(4) Exclusion from Off Leash Areas. If an animal that is found in violation of the provisions of this Chapter and the violation occurred in an Off Leash Area, the Bend Municipal Court Judge may order that the animal be excluded from all Off Leash Areas.

5.20.070 Destruction of Animals

(1) If an animal has been found to have violated Bend Code 5.20.040(1), the Bend Municipal Court Judge shall enter an order terminating the animal owner's rights to the animal and/or requiring that the animal be humanely destroyed.

(2) If an animal has been found to have committed two or more violations of Bend Code 5.20.040(2), (3) or (4) within a five-year period, the Bend Municipal Court Judge shall enter an order terminating the animal owner's rights to the animal and/or requiring that the animal be humanely destroyed.

(3) If the Judge determines that an animal's violation of Bend Code 5.20.040 (1), (2), (3) or (4) was caused by the neglect, abuse or tormenting of the animal by its owner, the Judge may enter an order terminating the animal owner's rights to the animal and prohibiting the owner from owning or possessing animals within the City of Bend. Further, if the Judge determines that the neglect, abuse or torment was the primary cause of the animal's violation of Bend Code 5.20.040 (1), (2), (3) or (4) then the Judge may allow the abused animal to be placed with an animal shelter for possible adoption. A person who violates an order entered pursuant to this subsection commits a Class A civil infraction.

(4) If the Bend Municipal Court Judge determines that an animal and that the animal is unlikely to be a repeat offender of the provisions of this Chapter, then the Judge may suspend any orders in subsection (A) or (B) for a period of up to five years, subject to conditions, which may include:

(A) A requirement that neither the animal nor the animal's owner or keeper commit any further violations of this Chapter;

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(B) A requirement that the animal's owner or keeper pay Court ordered fines resulting from the animal's violation of this code.

(C) A designation of the animal as a Dangerous Animal that is subject to the Dangerous Animal Restrictions described in Bend Code 5.20.035(4).

(D) A provision that allows law enforcement officers, upon a future violation of Sections 5.20.025, 5.20.035 or 5.20.040 by the animal, to take the animal into custody pending further review and order by the Bend Municipal Court Judge.

(E) Any other condition that the judge deems appropriate.

5.20.075 Undertaking on Appeal If an animal has been impounded and the owner or keeper has filed an appeal of an order of the Bend Municipal Court, then the owner or keeper of the animal must provide a bond, deposit or other security to assure payment of the cost incurred by the City for housing the animal pending appeal. The bond, deposit or other security shall be set in an amount not less than the cost of impounding the animal for six months at the rate charged the City by the animal shelter.

Chapter 5.25 EQUAL RIGHTS

5.25.005 Definitions

(1) Employer Any person who directly or through an agent, engages or uses the personal service of one or more employees, within the City of Bend, reserving the right to control the means by which such service is or will be performed.

(2) Gender Identity A person's actual or perceived sex, including a person's identity, appearance, expression, or behavior with respect to actual or perceived sex, whether or not that identity, appearance, expression or behavior is different from that traditionally associated with the person's sex at birth.

(3) Sexual Orientation Actual or perceived heterosexuality, homosexuality, or bisexuality.

(4) Any terms used but not defined in Chapter 5.710 are to be defined as in Oregon Revised Statutes, Chapter 659A.

5.25.010 Discrimination in Employment Prohibited

(1) It shall be unlawful to discriminate in employment on the basis of an individual's race, religion, color, sex, national origin, marital status, age (if the individual is 18 years of age or older), or physical or mental impairment by committing any of the acts made unlawful under the provisions of ORS 659A.030 and 659A.112.

(2) In addition, it shall be unlawful to discriminate in employment on the basis of an individual's sexual orientation or gender identity by committing against any such individual any of the acts already made unlawful under ORS 659A.030 when committed against the categories of persons listed therein.

5.25.015 Discrimination in Selling, Renting or Leasing Real Property Prohibited It is an unlawful real property transaction practice for any person to discriminate on the basis of race, religion, color, sex, marital status, familial status, domestic partnership, national origin, age, mental or physical disability, sexual orientation or gender identity by committing against any such individual any of the acts made unlawful under ORS 659A.145 or 659A.421.

5.25.020 Discrimination in Places of Public Accommodation Prohibited It is an unlawful public accommodation practice for a person to discriminate on the basis of an individual's race, religion, color, sex, marital status, familial status, domestic partnership, national origin, age, mental or physical disability, sexual

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Deleted: Section Break (Next Page) [Section 5.250 to 5.293 amended by Ord. No. NS-1449, passed 9-3-86]¶ [Section 5.292 amended by Ord. No. NS-1492, passed 6-7-89]¶ [Section 5.292 amended by Ord. No. NS-1854, passed 1-15-03]¶ [Section 5.280 and 5.285 amended by Ord. No. NS-2015, passed 6-21-06] Section Break (Next Page) FIRE REGULATIONS¶ ¶ 5.295 . Open Burning Prohibited.¶ ¶ (1) . Except as authorized by this section, no person shall start or maintain an outdoor fire within the boundaries of the City of Bend for the following purposes:¶ ¶ A. The burning of any refuse, garbage, or other waste products as described in the City of Bend Fire Department Outdoor Burning Regulations;¶ B. The burning of any yard debris including but not limited to branches, leaves and pine needles;¶ C. The burning of any construction or demolition waste;¶ D. Field, ditch or weed burning. ¶ ¶ (2) . Exception To Prohibition.

orientation or gender identity by committing against any such individual any of the acts made unlawful under ORS 659A.142 or ORS 659A.400 to 659A.409.

5.25.025 Exceptions:

(1) The prohibitions in this ordinance do not apply to an organization whose primary purpose and function is religious.

(2) The housing prohibitions in this chapter do not apply to renting space in a single housing unit or to renting of space in a building which is owner occupied and which has fewer than four units.

(3) Nothing herein shall be construed to prevent an employer from enforcing an otherwise valid dress code.

5.25.030 Enforcement.

(1) Any person claiming to be aggrieved by an unlawful discriminatory act under the provisions of the equal rights ordinance may file a complaint with the Commissioner of the Bureau of Labor and Industries under procedures established in ORS 659A.820. The Commissioner shall have the same power to enforce the provisions of this equal rights ordinance as the Commissioner has to enforce alleged violations within the Commissioner's statutory authority.

(2) Any person claiming to be aggrieved by an unlawful discriminatory act under the provisions of the equal rights ordinance shall have a cause of action in any court of competent. Election of remedies and other procedural issues relating to the interplay between administrative proceedings and private rights of action shall be handled as provided for in ORS 659A.870 through 659A.880. The court may grant such relief as is provided in ORS 659A.885.

CHAPTER 5.30 FIRE REGULATIONS

5.30.000 Fireworks

(1) The use of fireworks shall conform to Oregon law.

(2) No person under the age of 18 may sell, keep possess, use, or explode any fireworks within the City.

(3) No person shall sell or provide fireworks to a person under the age of 18 years.

(4) The City may confiscate, destroy, remove, or have removed at the owner's expense, all stocks of fireworks in violation of this section, when necessary for the preservation of the public safety.

(5) Violation of this section is a Class A Civil Infraction for persons over the age of 18 and a Class C Civil Infraction for persons under the age of 18.

5.30.005 Open Burning Prohibited

(1) Except as authorized by this section, no person shall start or maintain an outdoor fire within the boundaries of the City of Bend for the following purposes:

(A) The burning of any refuse, garbage, or other waste products as described in the City of Bend Fire Department Outdoor Burning Regulations;

(B) The burning of any yard debris including but not limited to branches, leaves and pine needles;

(C) The burning of any construction or demolition waste;

(D) Field, ditch or weed burning.

(2) The following open burning is allowed subject to compliance with the provisions in the most recent fire code as adopted by the City of Bend and the Fire Department's Outdoor Burning Regulations:

(A) Fires initiated by the Fire Department for training purposes which are approved by the Oregon Department of Environmental Quality;

(B) Campfires, warming fires, cooking fires, outdoor fireplaces, outdoor kiln fires and other approved similar type fires that are not more than 3 feet in diameter;

(C) Cooking pits approved by the City of Bend Fire Department;

(D) Weed control by the City, County, or State within developed streets.

(3) A violation of this section is a Class B Civil Infraction.

CHAPTER 5.35 GENERAL INFRACTIONS

5.35.000 Diving and Ice Skating on Deschutes River

(1) No person shall operate a motor propelled boat on the Deschutes River within the limits of the City of Bend.

(2) Diving, jumping, or otherwise launching oneself or any other person or object off a bridge into a river or canal is prohibited. This prohibition does not apply to normal fishing activities.

(3) Ice skating on the Deschutes River is prohibited.

(4) No person shall place, leave or abandon a duck or goose along the banks of the Deschutes River or in any park along the Deschutes River.

(5) The prohibitions in this section do not apply to government employees in the commission of their duties or to others with the written permission of the City Manager.

(6) Violation of this section is a Class B Civil Infraction.

5.35.005 Curfew for Minors

(1) No minor under the age of 18 years shall be in or on a street, highway, park, alley, or other public place between the hours of 10:00 p.m. and 4:00 a.m. of the following morning if the following morning is that of a school day in the Bend public school system, and between the hours of 12:00 a.m. and 4 a.m. on other days.

(2) No parent, guardian, or person having the care and custody of a minor under the age of 18 years shall allow the minor to be in or on any street, highway, park, alley or other public place in violation of subsection (1).

(3) Enforcement. Peace officers and other law enforcement officers may take or send the minor to the minor's residence and notify the parents, guardian or person having care and custody of the minor concerning the violation.

(4) Exceptions. This section shall not apply:

(A) If the minor is accompanied by a parent or legal guardian or other person 21 years of age or older and authorized by the parent or by law to have care and custody of the minor;

(B) If the minor is engaged in a lawful pursuit or activity which requires his presence in public places during the hours specified in this section;

(C) To minors in motor vehicles engaged in direct intrastate or interstate travel

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Deleted: [Section 5.295 (2) added by Ord. No. NS-1677 adopted 5/7/97]¶ [Section 5.295 amended by Ord. NS-2088, adopted 2/6/08]¶ [Section 5.295 (2)(D) removed by Ord. NS-2125, adopted 8/5/09]¶ ¶ **5.300 . Fire Control: Water Regulations.**¶ ¶ (1) . If in the opinion of the Fire Chief or designee it is necessary for fire fighting purposes to require temporary termination for outdoor water usage, the city may order such use temporarily prohibited.¶ ¶ (2) . A violation of this section shall be a Class A Civil Infraction.¶ ¶ -----Section Break (Next Page)----- **5.305 . Fireworks.** ¶ ¶ (1) . Article 78 of the *Oregon Uniform Fire Code*, 1996 Edition and ORS 480.110, 480.120, 480.130, 480.140(1), 480.150 and 480.170 are hereby incorporated by reference and made a part of the Bend Code, and shall apply to the use of fireworks within the City.¶ ¶ (2) . No Fireworks shall be used in the City of Bend except as authorized by the City.¶ ¶ (3) . A violation

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Deleted: . -----Section Break (Next Page)----- DESCHUTES RIVER¶ ¶ **5.310 . Boating, Diving, and Ice Skating.**¶ ¶ (1) . No unauthorized person shall operate a motor propelled boat on the Deschutes River within the limits of the City of Bend; or operate any boat, whether propelled or not, within 100 feet of the islands located immediately below the Tumalo Bridge in the Deschutes River.

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Deleted: to boats coming to or going from abutting properties, provided these boats do not unnecessarily disturb wildlife.

Deleted: ¶ (2) . No person shall dive from any bridge across the Deschutes River nor ice skate on the Deschutes River. ¶ ¶ (3) . No person shall place, leave or abandon a duck or goose along the banks of the Deschutes River or in any park along the Deschutes River.¶ ¶ (4) . No person shall engage in any commercial activity upon the Deschutes River within the City limits of Bend without permission from the Bend City Commission or a valid special event permit specifica[... [11]

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(D) The minor is emancipated pursuant to ORS 419B.550 to ORS 419B.558

(5) A violation of this section is a Class B Civil Infraction.

5.35.010 Persons Confined in Vehicles

Deleted: [Section 5.310 amended by Ord. No. NS-1384, passed 7-20-83]

Deleted: [Section 5.310 amended by Ord. No. NS-1436, passed 6-4-86]¶ [Section 5.310 amended by Ord. No. NS-1742, passed 4-5-00]¶ ¶ ¶ ~~~~~Section Break (Next Page)~~~~~ ---------- Page Break ---------- PARKS¶ ¶ 5.315

(1) No person, who has under their control or guidance a minor child, under eight years of age, or any other person who is incapable of exiting the vehicle by them self, shall at any time lock or confine, or permit to be locked or confined, or leave the person unattended in a vehicle for a period of time longer than 10 minutes. It is lawful for a peace officer, finding a person confined in violation of this section, to enter the vehicle and remove the person. The officer may, if necessary, break the doors or windows of the vehicle in order to save the life of the person or to save the person from mental or physical suffering.

(2) A violation of this section is a Class A Civil Infraction.

5.35.015 Public Urination or Defecation

(1) No person shall urinate or defecate in areas open to the public or in public view except in urinals and washrooms provided for that purpose.

(2) A violation of this section is a Class B Civil Infraction.

5.35.020 Snow and Ice. No owner or person in charge of property improved or unimproved, abutting a public sidewalk shall allow:

(1) Snow to remain on the sidewalk for a period longer than the first six hours of daylight after the snow has fallen or otherwise accumulated in commercial areas and one day in all other areas.

(2) Ice to remain on the sidewalk for more than six hours of daylight in commercial areas and one day in all other areas after the ice has formed unless the ice is covered with a suitable material to assure safe travel.

(3) A violation of this section is a Class B Civil Infraction for violation in all areas except for residential property. The penalty in residential areas is a C Civil Infraction.

5.35.025 Tobacco-use prohibited on City Campuses

(1) Definitions: The following definitions shall apply to this chapter:

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(A) City Campuses Any City or Bend Urban Renewal Agency (BURA) owned/leased facility where official business is conducted. This includes the interior and exterior of City/BURA buildings including but not limited to City Hall, Public Works/Police, Fire Departments, Municipal Airport, Riverfront Plaza and Hawthorne Station site and the exterior of buildings from the edge of the building to the public sidewalk including parking lots. City Campuses do not include the public sidewalk within the public right of way and areas specified as a designated smoking area.

(B) Tobacco Product Any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, chewing tobacco, or any other form of tobacco which may be utilized for smoking, chewing, inhalation, or other means of ingestion.

(2) The City of Bend prohibits the use of tobacco products of any form throughout all City campuses.

(3) "Tobacco Free Campus" signs will be posted at all City campus entrances.

(4) Tobacco receptacles will be placed at the "Tobacco Free Campus" sign locations at entrances to City Campuses as a receptacle for tobacco

products.

(5) Any City Police Officer, City Code Enforcement Officer, City Manager or his/her designated representative shall have the authority to request that City employees or members of the public discontinue use of tobacco products on City campuses. Any person who fails to discontinue the use of their tobacco products immediately upon request is required to immediately leave the City campus. Failure to comply with an order to discontinue tobacco use or leave a City campus constitutes Criminal Trespass in the Second Degree ORS 164.245.

(6) Violation of this section is a Class C Civil infraction.

5.35.030 Watershed Protection Area It shall be a Class A Civil infraction for any person, firm or corporation to impair the purity of the City's Bridge Creek water source. The following actions are prohibited:

(1) Causing pollution or causing or allowing any waste to be placed in a location where such wastes are likely to escape or be carried into the waters of Bridge Creek or the City's water distribution system.

(2) Engaging in any activity on the City's Bridge Creek watershed that will or may tend to reduce the water quality within the Bridge Creek watershed.

(3) Each day a violation continues shall constitute a separate offense.

(4) Any violation of this section shall also constitute a public nuisance and may be abated as provided by law.

CHAPTER 5.40 MAJOR INFRACTIONS

5.40.005 Acquisition and Retention of Articles Missing Serial Numbers

(1) No person shall knowingly buy, sell, receive, dispose of, conceal, or possess any item of value from which the manufacturer's nameplate, serial number or any other distinguishing number or identification mark has been intentionally removed, defaced, covered, altered or destroyed.

(2) It shall be an affirmative defense to a charge brought under Section (1) of this ordinance that the defendant is the owner of the property.

(3) The Bend Police Department shall treat the property described in subsection (1) as stolen Prior to being disposed of or being returned to the owner , the property shall have an identification mark permanently affixed to it.

(4) Subsection (1) does not apply if the identification has become illegible or unattached through normal wear.

(5) A violation of this section is a Class A civil infraction.

5.40.010 Civil Exclusion Zones Civil exclusion zones are designated to protect the public from those whose illegal conduct poses a threat to safety and welfare.

(1) Civil exclusion zones include, but are not limited to the following places:

(A) Public Places: The Breezeway between the western terminus of Minnesota Street to and through the Riverfront Plaza; and all publicly owned property from the eastern side of Brooks Alley to Drake Park between Franklin Avenue and Oregon Avenues.

(B) Public Parks: All public parks, including parks owned and/or managed by the Bend Metro Park and Recreation District.

5.40.015 Civil Exclusion A person is subject to exclusion for a period of 90 days from entering or remaining in the area within 500 feet of a civil exclusion zone if that person has been cited to appear, arrested or otherwise taken into custody within a civil exclusion zone for:

(1) Any Assault, as defined by ORS 163.160 - 185 and 163.208,

(2) Strangulation as defined by ORS 163.187

(3) Menacing, as defined by ORS 163.190,

(4) Harassment, as defined by ORS 166.025,

(5) Disorderly Conduct, as defined by ORS 166.025,

(6) Recklessly endangering, as defined by ORS 163.195,

(7) Coercion, as defined by ORS 163.275,

(8) Any sexual offense, as defined by ORS 163.355 - 467,

(9) Endangering the Welfare of a Minor, as defined by ORS 163.575,

(10) Any offense under State law governing the possession, distribution, sale or manufacture of a controlled substances,

(11) Any offense under State law governing the possession, use, distribution or sale of alcoholic beverages,

(12) Possession or using a weapon in violation of ORS 166.180, 166.190, 166.220, 166,240, 166.250 or 166.272 or Bend Code Chapter 5.35.005,

(13) Any degree of criminal mischief, as defined by ORS 164.305 through 164.365.

(14) Graffiti as defined in ORS 164.381-386

(15) Arson or Reckless Burning as defined in ORS 164.350-335

(16) Theft as defined in ORS 164.015-095

(17) Littering as defined in ORS 164.775-805

(18) Possession of tobacco by a minor in violation of ORS 167.400

(19) Two or more citations for drinking at an unlicensed premise.

5.40.020 Exclusion Enforcement If a person excluded from a civil exclusion zone is found within the perimeter of the civil exclusion zone and its 500 foot protective buffer zone during the exclusion period, that person may be arrested for trespass in the second degree, as defined by ORS 164.245.

5.40.025 Issuance of Exclusion Notices The Chief of Police is designated as the person in charge of civil exclusion zones for the purpose of issuing exclusion notices in accordance with this ordinance. The Chief of Police may authorize employees of the Police Department to issue exclusion notices in accordance with this ordinance.

5.40.030 Procedure for Exclusion

(1) At the time a person is cited to appear, arrested or otherwise taken into custody within a civil exclusion zone for any of the offenses specified herein, the officer making such arrest may deliver to that person a written notice excluding that person from the civil exclusion zone and the area within 500 feet of the civil exclusion zone. Any exclusion notice shall not take effect until the sixth day after the notice is issued.

(2) The notice shall specify the area from which the person is excluded, the length of the exclusion, the penalty for entering the excluded area and contain information concerning the right to appeal the exclusion to the Judge of the Municipal Court.

(3) The person to whom the exclusion is issued shall sign a written acknowledgement of receipt of the notice. If that person refuses to sign the acknowledgement, the arresting officer shall make a written record of the refusal.

5.40.035 Appeal and Variance

(1) The person to whom an exclusion notice is issued shall have the right to an appeal from the issuance of the notice. The exclusion notice will notify the person of the right to appeal and process for appeal.

(A) An appeal of the exclusion must be filed, in writing, within 5 calendar days of the issuance of the notice. The appeal must be filed with the Municipal Court. A hearing on the appeal shall be held before the Judge of the Municipal Court within 20 calendar days of the appeal. The exclusion shall be stayed during the pendency of the appeal.

(B) The City shall have the burden to show by a preponderance of evidence that the exclusion was based upon the conduct proscribed by Section 5.60.020 chapter. Copies of documents in its control and which are intended to be used by the City at the hearing shall be made available to the appellant at least 2 days prior to the hearing.

(C) A determination by a court having jurisdiction of the matter, that the officer who issued the exclusion notice, at the time had probable cause to arrest the person to whom the exclusion notice was issued for the conduct described in Section 5.40.015, shall be prima facie evidence that the exclusion was based on conduct prohibited by those statutes.

(2) Any variances from the exclusion may be granted at any time during the exclusion period by the Chief of Police, or by the Municipal Court.

(3) The Chief of Police or the Municipal Court shall grant a variance to any person who can establish that he or she was a bona fide resident of the zone of exclusion prior to receipt of the exclusion notice. A variance may also be granted when, in the discretion of the Chief of Police or the Municipal Court, the exclusion order is no longer necessary to preserve public safety.

(4) All variances shall be in writing, for a specific period of time and only to accommodate a specific purpose, all of which shall be stated on the variance.

(5) The person shall keep the variance on his or her person at all times the person is within the zone of exclusion.

(6) In the event a person is found to be outside the scope of the terms of the variance, the variance shall immediately become void and that person is subject to arrest for trespass.

(7) In the event a person holding a variance is arrested for trespass or any conduct prohibited in this chapter, while in the zone of exclusion, that person shall be ineligible for any new variances for a period of one year from the date of arrest.

5.40.040 Discharge of Weapons

(1) No person other than an authorized peace officer shall fire or discharge any gun or other weapon, including spring or air-actuated pellet guns, or a weapon which propels a projectile by use of a bow or sling, explosives, or jet or rocket propulsion.

(2) It shall be an affirmative defense to subsection (1) that the person was acting in defense of life or property and under circumstances that would warrant the use of deadly force under Oregon law.

(3) It shall be an affirmative defense to subsection (1) that the person was test firing or discharging the weapon, as a necessary part of the person's lawful business operations, at a firing range or while utilizing a bullet trap, under circumstances that did not present an unreasonable risk of harm to any person.

(4) A violation of this section is punishable as a Class A Civil Infraction.

5.40.045 Interfering with a Police Dog

(1) Definitions: For purposes of this code section, the following definitions applies:

(A) "Peace officer" means a municipal police officer, sheriff, constable, marshal, member of the Oregon State Police or investigator of the Criminal Justice Division of the Department of Justice and such other persons as may be designated by law.

(B) "Police dog" means a dog used in police work under the control of a peace officer.

(2) A person commits the offense of interfering with a police dog if the person intentionally or knowingly kills, disables, tortures, injures, torments, kicks, strikes, chokes, throws an object at or in any other way tampers or interferes with any police dog, knowing the dog to be a police dog, while the dog is being caged, kenneled, transported, exhibited, exercised or used in discharging or attempting to discharge any lawful duty or function as a police dog.

(3) A violation of this section is a Class A civil infraction.

5.40.050 Misrepresentation of City of Bend Affiliation

(1) No person or business shall market their business in any way that implies endorsement by or connection with the City of Bend.

(A) Use or depiction of Bend Police Department uniforms, vehicle(s), images or badges without approval of the Chief of Police is prohibited.

(B) No person shall create or use a uniform, vehicle or badge that is similar to those of the Bend Police Department in marketing a business.

(C) No unauthorized person shall take any action or represent themselves as being affiliated with the City of Bend.

(2) For purposes of this section, "City of Bend" means the governmental entity that is the City of Bend.

(3) A violation of this section is a Class A civil infraction.

5.40.055 Chronic Nuisance Property For the purposes of this code section, the following definitions apply:

(1) Chronic Nuisance Property Property upon which or within 200 feet of which any person associated with the property has three or more of the below listed offenses occur during any 30 day period as a result of three separate factual incidents that have been independently investigated by any law enforcement agency:

(A) All felony drug offenses as enumerated in ORS 475.840 to 475.980

(B) Assault, strangulation or menacing as defined in ORS 163.160 through 163.190.

(C) Harassment as defined in ORS 166.065 (1) (a).

(D) Disorderly conduct as defined in ORS 166.025.

(E) Alcohol violations as defined in ORS 471.410 (1), (2) and (3) and ORS 471.430(1) and (2)

(F) Intimidation as defined in ORS 166.155 through 166.165

(G) Public or private Indecency as defined in ORS 163.465 and 163.467

(H) Any Sexual offense as defined in ORS 163.305 through 163.445

(I) Theft as defined in ORS 164.015 through 164.140

(J) Prostitution or related offenses as defined in ORS 167.007, 167.012, and 167.017.

(K) Any attempt to commit as defined in ORS 161.405, or conspiracy to commit, as defined in ORS 161.455, any of the above offenses.

(L) Violation of the City of Bend noise ordinance Chapter 5.50

(M) Unlawful Discharge of a Weapon as defined in Bend Offense 5.40.045

(2) Control The ability to regulate, restrain, dominate, counteract or govern conduct that occurs on that property.

(3) Owner Any person, agent, firm or corporation having a legal or equitable interest in a property. Owner includes, but is not limited to:

(A) A mortgagee in possession in whom is vested:

(1) All or part of the legal title to the property; or

(2) All or part of the beneficial ownership and a right to present use and enjoyment of the premises; or

(3) An occupant who can control what occurs on that property.

(4) Permit To suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.

(5) Person Any natural person, agent, association, firm, limited liability company, partnership, corporation, or other entity capable of owning or using property in the City of Bend.

(6) Property Any real property including land and that which is affixed, incidental or appurtenant to land, including but not limited to any premises, room, house, building or structure or any separate part or portion thereof, whether permanent or not.

5.40.060 Remedy

(1) In the event a court determines property to be chronic nuisance property, the court may order that the property be closed and secured against all use and occupancy for a period of not less than 30, but not more than 180

days, or the court may employ any other remedy deemed by it to be appropriate to abate the nuisance.

(2) In addition to the remedies provided for in paragraph (a) above, the court may impose upon the owner of the property a civil penalty in any amount up to $100 a day, payable to the City, for each day the owner had actual knowledge that the property was chronic nuisance property and permitted the property to remain chronic nuisance property.

(3) In determining what remedy or remedies to employ, the court may consider evidence of other conduct which has occurred on the property.

5.40.065 Procedure When the Chief of Police believes in good faith that the property within the City of Bend has become chronic nuisance property, he/she shall:

(1) Notify the owner(s) of record in writing that the property has been determined to be chronic nuisance property. The notice shall contain the following information:

(A) The street address and a legal description sufficient for identification of the property.

(B) A statement that the Chief of Police has found the property to be chronic nuisance property with a concise description of the conditions leading to his/her findings.

(C) A statement that the owner shall have the opportunity to respond to the notice, within 15 days from the date of the notice, describing what steps the owner has taken or will take to remedy the chronic nuisance on the property.

(D) If the owner's response to the notice is not satisfactory to the Chief of Police, or if the owner does not respond, then another copy of the notice shall be served on the owner and their agent, if known, at least 10 days prior to the commencement of any judicial action by the City. Service shall be mailed certified mail, return receipt requested, postage prepaid, addressed to such person at the address of the property believed to be a chronic public nuisance property, and to such other address as shown on the tax rolls of the county in which the property is located or such other place which is believed to give the owner actual notice of the determination by the Chief of Police.

(E) A copy of the notice shall be served on the occupant of the property if that person is different than the owner and shall occur not less than 10 days prior to the commencement of any judicial proceedings and be made either personally or by mailing a copy of the notice by certified mail, return receipt requested, postage prepaid, to them at the property.

(F) A copy of the notice shall be posted at the property prior to the commencement of any judicial proceedings.

(G) The failure of any person or owner to receive actual notice of the determination by the Chief of Police shall not invalidate or otherwise affect the proceedings under this chapter.

5.40.070 Commencement of Actions; Burdens of Proof; Defenses; Mitigation of Civil Penalty

(1) In an action seeking the closure of a chronic nuisance property, the City shall have the initial burden of proof to show by a preponderance of the evidence that the property is chronic nuisance property.

(2) It is a defense to an action seeking the closure of chronic nuisance property that the owner of property at the time in question could not, in the exercise of reasonable care or diligence, determine that the property had become chronic nuisance property, or could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the finding that the property is chronic nuisance property.

(3) In an action seeking civil penalties pursuant to Section 5.45.015(2) the City shall have the initial burden of proof to show by a preponderance of the evidence that the conditions of that subsection are satisfied.

(4) In establishing the amount of any civil penalty requested, the court may consider any of the following factors, as they may be appropriate, and shall cite those found applicable:

(A) The actions taken by the owner(s) to mitigate or correct the problem at the property;

(B) Whether the problem at the property was repeated or continuous;

(C) The magnitude or gravity of the problem;

(D) The cooperativeness of the owner(s) with the City;

(E) The cost to the City of investigating and correcting or attempting to correct the condition;

(F) Any other factor deemed by the court to be relevant.

5.40.075 Closure During Pendency of Action; Emergency Closures

In the event that it is determined that the property is an immediate threat to the public safety and welfare, the City may apply to the court for such interim relief that is deemed by the City Attorney to be appropriate. In such an event the notification procedures set forth in Section 5.45.020 need not be complied with.

5.40.080 Enforcement of Closure Order; Costs; Civil Penalty

(1) In the event that a court finds that property constitutes chronic nuisance property as defined in this Chapter, the court may order the remedies set out in Section 5.45.015(1). In addition, in the event that it also finds that the owner had knowledge of activities or conditions at the property constituting a violation of this Chapter and nonetheless permitted the activities to occur, the court may utilize the penalties provided for in Section 5.45.015(2).

(2) The court may authorize the City to physically secure the property against use or occupancy in the event that the owner(s) fail to do so within the time specified by the Court. In the event that the City is authorized to secure the property, all costs reasonably incurred by the City to affect a closure shall be made an assessment lien upon the property.

(A) The City Department(s) affecting the closure shall prepare a statement of costs and the City shall submit that statement to the court for its review. If no objection to the statement is made within the period prescribed by Oregon Rules of Civil Procedure 68, a certified copy of the statement, including a legal description of the property, shall be entered in the City's lien docket.

(B) Liens imposed by this Chapter shall be collected in all respects as provided for street improvement liens, and shall bear interest at the rate of 9% per year from 10 days after the entry in the lien docket.

(C) Any person who is assessed the costs of closure and/or a civil penalty by the court shall be personally liable for the payment to the City.

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5.40.085 Trespass to Vehicle

(1) A person commits trespass to a vehicle if, without having a right to do so or having reasonable grounds to believe to have such a right:

(A) Knowingly or intentionally climbs upon or enters the vehicle either bodily or with an instrument capable of damaging or removing property from the vehicle; or,

(B) Knowingly or intentionally tampers with the locks, latch mechanisms, hood release, engine, body, trim, undercarriage, running gear, fuel tank or fuel intake, antenna, electric or electronic equipment, wheels, steering mechanism, brakes, or any part of any such equipment.

(2) It is an affirmative defense to a prosecution under this section that the person engaged in the conduct described in order to prevent imminent damage to the vehicle, persons, animals or other property.

(3) A violation of the provisions of this section is a Class A misdemeanor.

CHAPTER 5.50 NOISE

5.50.000 Noise Regulations This section is adopted pursuant to the provisions of ORS 467.100 and the City of Bend Charter

5.50.005 Prohibition on Excessive Noises No person shall make, assist in making, permit, continue, or permit the continuance of, any noise within the City of Bend in violation of this chapter. No person shall cause or permit any noise to emanate from property under that person's control in violation of this section.

5.50.010 Sound Measurement While sound measurements are not required for the enforcement of this section, should measurements be made, they shall be made with a sound level meter using the A weighting network on a Type I or Type II meter.

5.50.015 Definitions As used in this chapter:

(1) "dBA" means the sound pressure level in decibels measured using the A weighting network on a sound level meter.

(2) "Noise-Sensitive unit" shall include any building or portion of a building containing a residence, place of overnight accommodation, place of worship, day care center, hospital, school, or nursing care facility.

(3) "Plainly Audible" means any sound for which the information content of that sound is unambiguously communicated to the listener, such as, but not limited to, understandable spoken speech, comprehensible musical rhythms or vocal sounds.

(4) "Unnecessarily Loud" means any sound that interferes with normal spoken communication or that could reasonably disturb sleep.

(5) "Daytime" for subsection A of the noise limits section is anytime between the hours of 7:00 a.m. and 10:00 p.m.

(6) "Nighttime" for subsection A of the noise limits section is anytime not listed as a daytime.

5.50.020 Noise Limits

(1) The following are maximum allowable chronic or recurring noise limits anywhere when measured at the boundary of or within a property on which a noise sensitive unit, not the source of the sound, is located:

	Daytime	Nighttime

Residential	55 dBA	50 dBA
Commercial	60 dBA	55 dBA
Industrial	75 dBA	70 dBA

(2) It is prohibited to produce sound that is unnecessarily loud or plainly audible in a noise sensitive unit.

(3) The following are maximum allowable chronic or recurring noise limits when measured at the boundary of or within a property on which no noise sensitive unit is located, and the noise originates from outside the property:

(A) Seventy dBA at any time between 10:00 P.M. and 7:00 A.M. of the following day; or,

(B) Seventy-five dBA at any other time.

(4) If within a park, street or other public place, sound that is plainly audible outside a vehicle at a distance of 50 feet. The City Manager may designate areas of parks, streets or other public places as exempt from this restriction and may grant revocable permits to exceed this restriction.

5.50.025 Prohibited Noises

(1) The use of exhaust brakes (jake brakes), except in an emergency or except when used by a person operating an emergency services vehicle equipped with a muffled compression braking system, is prohibited at all times within the city, regardless of noise level.

(2) Except as provided in Section 5.50.035 Permits, the following acts are violations of this chapter if they exceed the noise limits specified in Section 5.50:

(A) The excessive sounding of any horn or signal device or any other device on any automobile, motorcycle, truck, bus or other vehicle while in motion, except as a danger signal.

(B) The operation of sound-producing devices such as, but not limited to, musical instruments, loudspeakers, amplifying devices, public address systems, electronic sound reproduction devices including those installed in or on vehicles that are unnecessarily loud. The ability to hear the sound plainly audible more than 50 feet from the source of the sound or property on which it is being produced is evidence of a violation of this section.

(C) The operation of any gong or siren upon any vehicle, other than police, fire or other emergency vehicle, except during sanctioned parades.

(D) The use of any automobile, motorcycle or other vehicle so out of repair, without a proper exhaust system, or in such a manner as to create loud or unnecessary sounds, grating, grinding, rattling or other noise.

(E) The use of any automobile, motorcycle, all-terrain vehicle or other vehicle outside of public rights-of-way where the use is unnecessarily loud unless the user has a permit issued under subsection 5.50.035 of this section allowing a person to operate outside of public rights-of-way and the noise falls within the terms of the permit.

(F) The operation of air conditioning or heating units, heat pumps, refrigeration units (including those mounted on vehicles), swimming pool or hot tub pumps, blower, power fan, internal combustion engine, electric motor, compressor or similar machinery that is not

sufficiently muffled so as not to be unnecessarily loud.

(G) Constructing or repairing buildings, streets, etc. Constructing (including excavating), demolishing, altering or repairing a building, street, sidewalk, driveway, sewer or utility line during the hours of 10:00 p.m. and 7:00 a.m., except as provided in sections 5.50.030 and 5.50.035.

(H) Using, operating or permitting to be used or operated a mechanical or electrical loud speaker or sound amplifier, either stationary or mobile, for producing or reproducing sound that is cast on the public streets or other public property if it is unnecessarily loud and can be heard more than 50 feet from the source. This section does not prohibit the reasonable use of mechanical loud speakers or sound amplifiers as authorized by the Council or emergency announcements required by public safety. However, repetitive mechanically or electrically amplified sound shall not be allowed from 10:00 p.m. to 7:00 a.m. without authorization of the City Manager

(I) Any yelling, shouting, hooting, whistling, singing or other human-produced noise that is unnecessarily loud.

(J) Any other action that creates or allows sound in excess of the level allowed by Section 5.50.020 Noise Limits.

5.50.030 Exceptions The following shall not be considered violations of this chapter, even if the sound limit specified in Section 5.50.020 Noise Limits is exceeded:

(1) Amplified or non-amplified sounds created by organized athletic or other group activities, when such activities are conducted on property generally used for such purposes, such as stadiums, parks, schools, and athletic fields, during normal hours for such events except during from 10:00 p.m. to 7:00 a.m.

(2) Sounds caused by emergency work, or by the ordinary and accepted use of emergency equipment, caused by a public or private agency, or upon public or private property.

(3) Sounds caused by bona fide use of emergency warning devices and alarm systems for no more than 15 minutes or while the emergency remains in effect. All audible alarms shall automatically silence themselves after 15 minutes.

(4) Sounds regulated by federal law, including, but not limited to, sounds caused by railroads, interstate motor carriers or aircraft.

(5) Sounds caused by regular vehicular traffic upon premises open to the public in compliance with state law. Regular vehicle traffic does not include a single vehicle that creates noise in excess of the standard set forth in this chapter.

(6) Sounds caused by air, electrical, or gas driven domestic tools, including, but not limited to, lawn mowers, lawn-edgers, chain saws radial arm, circular and table saws, drills, and/or other similar lawn or construction tools, except during the hours of 10:00 p.m. to 7:00 a.m.

(7) Sounds created by community events, such as parades, public fireworks displays, street fairs, and festivals that the City Manager has determined in writing to be community events for the purposes of this section, and any sounds created at a school sporting event, including amplified sounds. The city manager's decision shall be based on the anticipated number of participants or spectators, the location of the event and other factors the city manager determines to be appropriate under the circumstances.

(8) Sounds made by legal fireworks on the third of July, Fourth of July, between the hours of 7:00 A.M. and 11:00 P.M.

(9) Sounds made by City of Bend franchisees that provide solid waste removal.

(10) Sounds made by the removal of snow or ice from public or private property.

(11) Sounds made by the cleaning of or routine maintenance of City streets by City employees or agent

(12) Sounds made by the cleaning of commercial or industrial parking facilities or private roadways between the hours of 7:00 am and 2:00 am as long as the noise from the equipment does not exceed 65 dBA (decibels) at 50 feet from the edge of the property that is being cleaned.

(13) Sounds that are produced as a result of activity that would be a violation for which a permit has been issued by the City Manager authorizing the activity.

(14) A violation of this section is a Class A Civil Infraction. Continued violation of this section shall constitute a separate violation.

5.50.035 Permits

(1) In cases of emergency or other public necessity, the City Manager may issue a permit allowing activities described in subsection 5.50.025 to take place at any hour. The permit may be for the duration of the permitted activity.

(2) The City Manager may also issue a permit for a concert or similar event allowing noise otherwise prohibited by this chapter, provided the concert or event is permitted under the applicable provisions of this code.

(3) Denial of permits by the City Manager may be appealed to the City Council within 15 days after denial. The date of a denial shall be the date a permit is orally denied or the date a written denial is made, whichever is later. Granting the permit may be appealed at any time by a person who resides or works within hearing of the noise generated as a result of the granting of the permit.

(4) Permits may include such restrictions or conditions necessary to safeguard the public peace.

CHAPTER 5.55 PARKS

5.55.000 Definitions For purposes of this chapter, the following mean:

(1) Public parks. All property owned or controlled by the City or by the Bend Metropolitan Park & Recreation District and operated for the public's recreational use.

(2) Person. A person, firm, or corporation, not including City or Bend Metropolitan Park & Recreation District personnel or their agents.

5.55.005 Violations

(1) Persons using public parks and other city property shall obey the following rules and regulations:

(A) No unauthorized person shall cut, remove or damage vegetation except property owners may engage in normal landscaping activities in adjacent rights of way.

Deleted: City property. Other real property owned or controlled by the City either within or without the City limits; excluding maintained City streets.¶
¶
(3) .

Deleted: those acting with the authority or permission of the commission or the Bend Metropolitan Park & Recreation District

Deleted: 320

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Deleted: flowers, trees or trails.¶
¶
(b) . No person shall build a fire

Deleted: in a stove or fireplace provided. Fires shall not be left unattended

(B) No person shall build a fire. Portable propane camp stoves and propane barbeques may be used in the parks only if in safe operating condition and only if operated in a safe manner and in such a way as to avoid damage to park property.

(C) No person shall camp except in areas designated for camping or in connection with activities authorized by the City or the District.

(D) No person shall damage or injure a building, installation, equipment or other property in public parks.

(E) No person shall sell merchandise or services, or operate a concession in public parks without permission of the Bend Metropolitan Park & Recreation District and shall possess, on their person, evidence of the permission.

(F) No person shall litter in the parks or city owned property. Garbage and refuse shall be deposited in proper receptacles provided for this purpose or carried off for disposal. Garbage and refuse shall not be brought to parks or city owned property.

(H) No person shall operate or park a motor vehicle except on roads or designated parking areas unless a special permit has been issued by the Park District.

(I) Except as authorized by the Park District, no person shall ride or lead a horse in a public park except on a designated bridle path, except with a special permit. Horses or other animals shall not be tied to a tree or shrub in such a manner as to cause damage to the tree or shrub.

(J) No person shall project items into the air that may harm parks or people, such as golf equipment, archery equipment, discus, javelin, or shot put in parks except as permitted by the Park District.

(K) Except as authorized by the Oregon Department of Fish and Wildlife or the Bend Metropolitan Park and Recreation District, no person shall feed, hunt, pursue, trap, kill, injure or disturb the habitat of a bird or animal.

(L) Except as authorized by State or Federal law, no person shall possess a loaded firearm in a park.

(M) No person shall dig up, deface or remove dirt, stones, rock or other substances nor make any excavation.

(N) No person shall erect signs, markers or instructions without city or District permission.

(O) No person shall wash clothing or materials or clean fish in streams or pools.

(P) No one may use any rolling device such as a bicycle, skateboard, scooter, inline skates, etc., in a manner that is likely to cause potential harm to other people, pets, wildlife or District property; or on sports fields, playgrounds, tennis courts, off-leash areas or in areas reserved for special events. This does not prohibit the use of rolling devices in designated areas.

(Q) All public parks and adjacent parking lots, with the exception of Brandis Square, shall be open from 5:00 a.m. until 10:00 p.m. and closed from 10:00 p.m. until 5:00 a.m. unless otherwise authorized. Transitory use shall be exempt.

Deleted: 5.815 . . . . . BEND CODE 5.825

Deleted: every fire must be extinguished before its user leaves the park. Portable gas, gasoline, charcoal and oil camp stoves

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Deleted: g) . No person shall operate or park a motor vehicle with a gross weight exceeding five tons in a public park, except buses carrying passengers to the park.¶
¶
(h

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Deleted: (p) . Except as authorized by the City Commission or by the City Manager in accordance with the City policy on amplified sound, no person shall use any device that amplifies sound nor play a radio, tape recorder or record player in public parks or in vehicles parked on streets adjacent to public parks if the sound can be heard outside the vehicle. This regulation shall not apply to Vince Genna Stadium

Deleted: q) . Persons operating bicycles in public parks shall walk their bicycles on sidewalks that are marked by the Bend Metropolitan Park & Recreation District, "Walk Your Bike."¶
¶
(r

Deleted: It shall be unlawful to enter or remain in said parks and parking lots when the park or lot is closed. A person may, however, enter and remain in a closed parking lot for up to five minutes when going to and retrieving a vehicle lawfully parked in the closed parking lot during those hours when the lot was open. Vehicles lawfully parked in a parking lot adjacent to a public park while the lot is open may be left in the lot after the lot has closed. Additionally, a pedestrian may travel upon pa ... [12]

(R) Alcohol use in parks is prohibited except when allowed by a permit issued by the Park District and or the Bend Police Department. The fee for an alcohol consumption permit when issued by the Bend Police Department shall be set by Council resolution. The permit must be available for inspection during the term of use.

(2) A violation of this section is a Class B Civil Infraction.

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Deleted: Section Break (Next Page) (s) . No person shall consume an alcoholic beverage or possess an open container of an alcoholic beverage in a public park without first obtaining an alcohol consumption permit or special events permit which specifically allows alcohol consumption from the Bend Police Department.

Deleted: pursuant to Bend Code 1.800 - 1.806 and the permit shall be valid for a period of up to one day. The Chief of Police may prescribe the form of application required of applicants for permits and all applications shall be truthfully and completely filled out. No permit will be issued to a person who has previously violated any provision of Bend Code 5.320 within a period of one year preceding the date of the permit requested. Nothing provided in this section shall supersede the provisions of the City's special events ordinance

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(3) . Evidence of permission to engage in activities as required by Bend Code 5.320 (1) (e) shall include the name, address and phone number of the permittee, a specific description of the location where the activity is to be conducted, the date or period for which said activity is authorized and the signature of the authorizing Park & Recreation District official.¶
¶
[Section 5.320 amended by Ord. No. NS-1400, passed 7-18-84]¶
[Section 5.320 amended by Ord. No. NS-1401, passed 8-15-85]¶
[Section 5.320 amended by Ord. No. NS-1471, passed 3-16-88]¶
[Section 5.320 amended by Ord. No. NS-1485, passed 12-21-88]¶
Section Break (Next Page)
NUISANCES¶
¶
5.325 . **Definitions**. For the purposes of sections 5.330 to 5.425, the following mean:¶
¶
Person in charge of property. An agent, occupant, lessee, tenant, contract purchaser, or other person having possession or control of property or supervision of any construction project.¶
¶
Person responsible. The person responsible for abating a nuisance shall include:¶
¶
(1) . The owner.¶
¶
(2) . The person in charge of property as defined above.¶
¶
(3) . The person who caused a nuisance to come into or continue in existence.¶
¶
5.330 . **Nuisances Affecting the Public Health**. No person shall cause or permit, on property owned or controlled by him, a nuisance affecting the public health. The following are nuisances affecting the public health and may be abated as provided in sections 5.400 to 5.425.¶
¶
(1) . An open vault or privy constructed and maintained within the city, except those constructed or maintained in connection with construction projects in accordance with the State Health Division regulations.¶
¶
(2) . An accumulation of debris, rubbish, manure and other refuse that is not removed within a reasonable time and that affects the health or liveability of adjacent residents.¶
¶
... [13]

ORDINANCE NO. NS-2143

AN ORDINANCE AMENDING THE BEND CODE BY AMENDING SECTIONS 7.356(1) AND 7.378(1) RELATING TO FEE WAIVERS FOR SPECIAL EVENTS

Findings:

A. Bend Code Sections 7.350 to 7.399 regulates special events. Bend Code Section 7.356 requires that a permit be obtained for Special Events and requires payment of both an administrative fee and payment for anticipated costs the City will incur in connection with the event. Costs incurred by the City may include the provision of traffic barriers, litter cleanup, and the time for public safety and public works personnel.

B. In the past, some applicants for Special Events permits have asked Council to waive payment of Special Event permit fees. The current code provisions do not provide for a fee waiver. In the absence of code provisions authorizing the waiver, an ordinance is needed to waive the fee. This ordinance sets forth the policy factors for council to consider in administering waivers to ensure they are approved, limited or denied in a fair, nondiscriminatory and consistent manner.

C. The Council wishes to allow fee waivers by a standardized process outlined in the Bend Code.

Based on these findings, the City of Bend ordains as follows:

Section 1. Bend Code Section 7.356(1) is amended by adding new subsection (a) to read as follows:

(a) Applicants may request a full or partial waiver of the requirement to pay the Special Event permit fee. A request for a fee waiver must be submitted in writing with a Special Event permit application. Fee waivers shall be considered by the Council after a public hearing is held. The Council may in its discretion approve all, part, or none of a fee waiver request.

(b) The Council will consider the following factors in its review of a request for a fee waiver:

1. The benefit to the community from the event.
2. Positive publicity for the City from the event.
3 The City's cost of providing services for/to the event.
4. Whether there are revenues that can be used to offset the impact of the waiver on the general fund.
5. Whether the event promotes education, public health, or public safety.
6. Whether the event is operated by a non-profit organization.
7. Whether the event has in the past or is likely in the future to take action that, if taken by a governmental entity, would be unconstitutional. The City will not provide a Fee Waiver for any Special Event or entity that takes action in regard to the Special Event that, if taken by the City, would be unconstitutional.

Section 2. Bend Code Section 7.378(1) is amended to read as follows:

(1) The City Manager shall approve the assembly permit only if ~~after consideration, he or she~~ the City Manager finds:

(a) All city officials and departments have issued their approval pursuant to B.C. 7.358 to 7.368 and all other provisions of B.C. 7.350 to 7.396 have been complied with.

(b) The proposed activity and use will not unreasonably interfere with or detract from the promotion of public health, welfare, safety and recreation.

(c) The facilities desired have not been reserved for other use at the day and hour required in the application and the event will not conflict with another event for which a permit has already been issued.

(d) The conduct of the activity will not substantially interrupt the safe and orderly movement of traffic.

(e) The conduct of the activity will not require the diversion of so great a number of city personnel of the city to properly police the activity and the contiguous areas as to prevent normal police protection to the city.

(f) The conduct of the activity is not reasonably likely to cause injury to persons or property so as to incite violence, crime or disorderly conduct.

(g) The appropriate provisions of B.C. 7.374 have been complied with.

(h) If the proposed activity involves use of a park or park facility, that it will not unreasonably interfere with or detract from the general public enjoyment of the park and all required permits/permission from the Parks District have been granted.

(i) The required fees and a deposit for costs have been paid to the extent that payment has not been waived as provided in Section 5.356.

Section 3. All other provisions of the Bend Code, including other provisions of Sections 7.356 and 7.378 remain unchanged and in effect.

Read for the first time the 2nd day of June, 2010.

Read for the second time the 16th day of June, 2010.

Approved by roll call vote the 16th day of June, 2010.

YES: 7 NO: 0

Authenticated by the Mayor the 16th day of June, 2010.

Approved as to form:

Gary Firestone, Assistant City Attorney

Kathie Eckman, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

ORDINANCE NO. NS-2144

AN ORDINANCE AMENDING BEND CODE TITLE V, SECTION 5.10.040 THROUGH 5.40.010 THROUGH 5.40.015 RELATED TO CIVIL EXCLUSIONS

Findings:

A. Title V was adopted on May 19, 2010 to update the former Chapter Five of the Bend Code.

B. Upon further review, it has been determined by City Staff that some minor modifications were not incorporated into the final version presented to Council.

C. City staff have prepared this ordinance to amend NS-2142 to assure Title V reflect the final recommendation by staff.

Section 1. Bend Code Title V is amended to read as shown in the attached Exhibit A.

Section 2. The code amendments made by this ordinance supersede any inconsistent material in any previous ordinance or other enactment of the City.

Read for the first time the 2nd day of June, 2010.

Read for the second time the 16th day of June , 2010.

Placed upon its passage the 16th day of June, 2010.

YES: 6 NO: 1

Authenticated by the Mayor the 16th day of June, 2010.

Approved as to form:

Gary Firestone, Assistant City Attorney

Kathie Eckman, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

Exhibit A

5.40.010 Civil Exclusion Zones Civil exclusion zones are designated to protect the public from those whose illegal conduct poses a threat to safety and welfare.

(1) Civil exclusion zones include, but are not limited to the following places:

(A) Public Places: The Breezeway between the western terminus of Minnesota Street to and through the Riverfront

Plaza; and all publicly owned property from the eastern side of Brooks Alley to Drake Park between Franklin Avenue and Oregon Avenues.

(B) Public Parks: All public parks, including parks owned and/or managed by the Bend Metro Park and Recreation District ~~or Oregon State Park and Recreation Department.~~

5.40.015 Civil Exclusion A person is subject to exclusion for a period of 90 days from entering or remaining in the area within 500 feet of a civil exclusion zone if that person has been cited to appear, arrested or otherwise taken into custody within a civil exclusion zone for:

(1) Any Assault, as defined by ORS 163.160 - 185 and 163.208,

(2) Strangulation as defined by ORS 163.187

~~(2)~~**(3)** Menacing, as defined by ORS 163.190,

~~(3)~~**(4)** Harassment, as defined by ORS 166.025,

~~(4)~~**(5)** Disorderly Conduct, as defined by ORS 166.025,

~~(5)~~**(6)** Recklessly endangering, as defined by ORS 163.195,

~~(6)~~**(7)** Coercion, as defined by ORS 163.275,

~~(7)~~**(8)** Any sexual offense, as defined by ORS 163.355 - 465,

~~(8)~~**(9)** Endangering the Welfare of a Minor, as defined by ORS 163.575,

~~(9)~~**(10)** Any offense under State law governing the possession, distribution, sale or manufacture of a controlled substances,

~~(10)~~**(11)** Any offense under State law governing the possession, use, distribution or sale of alcoholic beverages,

~~(11)~~**(12)** Possession or using a weapon in violation of ORS 166.180, 166.190, 166.220, 166,240, 166.250 or 166.272 or Bend Code Chapter 5.35.005,

~~(12) Being under the influence of intoxicating liquor or controlled substances, as defined by ORS 426,460.~~

(13) Any degree of criminal mischief, as defined by ORS 164.305 through 164.365.

(14) Graffiti as defined in ORS 164.381-386

(15) Arson or Reckless Burning as defined in ORS 164.350-335

(16) Theft as defined in ORS 164.015-095

(17) Littering as defined in ORS 164.775-805

~~(14)~~**(18)** Possession of tobacco by a minor in violation of ORS 167.400

~~(15)~~**(19)** Two or more citations for drinking at an unlicensed premise.

ORDINANCE NO. NS-2145

AN ORDINANCE AMENDING THE BEND CODE BY DELETING SECTIONS 1.550 TO 1.557 AND ADDING NEW SECTIONS RELATING TO PUBLIC CONTRACTING

thru 1.560 - Per Gary Firestone

Findings:

A. Bend Code Sections 1.550 through 1.557 regulate public contracting in Bend. The State of Oregon has significantly amended the state statutes relating to public contracting since BC 1.550 through 1.557 were adopted.

B. The City Council functions as the Local Contract Review Board. Staff has recommended changes in the Code to allow the Council to more effectively exercise its functions as the Local Contract Review Board and to be more aware of City contracts and contracting processes.

C. The changes being proposed for the Bend Code provisions relating to public contracting have been discussed by affected City departments and are intended to clarify the scope of authority of city officials and to provide processes to maximize competition and selection of contracts that offer the best combination of financial benefit and highest quality product.

D. The City is in the process of reviewing and reorganizing the Bend Code. The proposed code amendments would not fit in the existing structure of the code, so the Council believes it is appropriate to leave it to the City Recorder to determine how the new code provisions should be added to the Bend Code.

Based on these findings, the City of Bend ordains as follows:

Section 1. Bend Code Sections 1.550 to 1.557 are deleted.

Section 2. The Bend Code is amended by adding the sections shown on the attached Exhibit A. The City Recorder is directed to incorporate those sections into the code in the manner that the City Recorder determines appropriate.

Section 3. All other provisions of the Bend Code remain unchanged and in effect.

Read for the first time the 2nd day of June, 2010.

Read for the second time the 16th day of June, 2010.

Approved by roll call vote the 16th day of June, 2010.

YES: 7 NO: 0

Authenticated by the Mayor the 16th day of June, 2010.

Approved as to form:

Gary Firestone, Assistant City Attorney

Kathie Eckman, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

EXHIBIT A – CODE LANGUAGE FOR PUBLIC CONTRACTING

PUBLIC CONTRACTS

1.550

.010 Local Contract Review Board and Delegation of Authority

A. The City Council shall act as the Local Contract Review Board and shall have all powers authorized by state law and the city charter.

B. The Contract Review Board may delegate its powers and responsibilities consistent with the Oregon Public Contracting Code, applicable rules, and the Bend Code.

C. The City Manager shall have all authority relating to public contracting except authority specifically reserved to the Contract Review Board by this Chapter.

D. Except as specifically provided to the contrary in this chapter, the City Manager may further delegate authority granted by Sections 1.550 to 1.560.

E. The Local Contract Review Board may adopt rules relating to public contracts and the public contracting process, including exemptions from formal competitive bidding or formal competitive proposal requirements.

F. As used in this chapter, "public contract" means any purchase, lease, or sale by the City of personal property, public improvements or services, including personal services. "Public contract" does not include collective bargaining agreements or other employment agreements between the City and its employees.

1.551

.020 Purpose and Policies

A. The purposes of public contracting law and this chapter are:

1. To obtain public improvements, goods and services that result in the best combination of high quality and low cost to the City.

2. To avoid favoritism in the award of contracts.

3. To use a process appropriate to the type and amount of the contract.

4. To encourage competitiveness among contractors.

5. To use a fair process for the sale of surplus personal property to maximize net proceeds to the City.

B. The following policies apply to public contracting:

1. The City shall comply and shall require all contractors to comply with Americans with Disabilities ("ADA") rules, regulations, & procedures, and will not discriminate on the basis of disability in its purchasing and contracting policies, practices, and procedures. Prospective contractors shall comply with the ADA in employment practices, and perform contractual obligations consistently with ADA federal requirements/regulations, state disability law, and applicable regulations.

2. Sustainability. The City recognizes that the actions it takes in its operations, maintenance, policies and planning efforts will have impacts on sustainability in our community. It is the City's policy to encourage implementation of sustainable purchasing. Sustainable practices incorporate three broad factors: environmental stewardship, life cycle costing and equal opportunities for every person impacted by a purchase. By including sustainability in purchasing decisions, The City can promote

practices that improve public and worker health, use economic resources responsibly, conserve natural resources, and reward environmentally conscious manufacturers while maintaining cost excellence and value standards. The City shall consider sustainability in soliciting and awarding contracts.

1.552

.030 Competitive Procurement

A. The City shall use a competitive procurement process in the award of all public contracts, except as exempted by state law or this subchapter. Personal service contracts may be awarded as provided in this section or in Section .040.

B. Competitive procurement includes:

1. Invitations to bid and requests for proposals in compliance with state law and applicable rules. A process that involves a prequalification stage followed by an invitation to bid or request for proposals is a competitive process, provided the prequalification stage includes public notice equivalent to that required for invitations to bid and requests for proposals.

2. For contracts of $100,000 or less in value, obtaining bids or proposals from at least three potential contractors (limited solicitation).

3. Awarding contracts under a federal or state master contract or purchase arrangement or program.

4. Awarding contracts on the same terms as an existing contract award by another governmental entity after a competitive procurement.

5. Awarding contracts for computer equipment, software and services based on obtaining bids or proposals from at least three potential contractors unless the City finds that fewer than three potential contractors provide the needed equipment, software or services.

C. The following contracts are exempt from competitive procurement;

1. Contracts exempted from competitive procurement by the Oregon Contracting Code.

2. Contracts under $5,000, which may be entered into by direct award.

3. Emergency contracts awarded in compliance with applicable statutes and rules. In the event the emergency is of a nature that requires immediate action to prevent damage to property or health (e.g., a major water line break or sewage overflow) the City Manager, or in the City Manager's absence, the Chief of Police, Fire Chief and/or Public Works Director may use all the means necessary to meet the emergency. Any emergency contract in excess of $100,000 shall be brought before the Contract Review Board for ratification at the next scheduled Council meeting.

4. Public Facility Improvement Agreements entered into between the City and a person responsible for carrying out conditions of approval of a City land use decision.

5. Purchases of used goods when the cost of the used goods is substantially below the cost of new goods, and the City has made a reasonable effort to obtain the best quality goods at the lowest price. The City shall maintain a written record of its efforts to obtain the best quality goods at the lowest price, including a list of quotes obtained from other vendors.

6. Any other contracts where the public interest would be promoted by exempting the contract from the competitive bidding process, provided that the Contract Review Board adheres to the Public Contracting Code

and the Model Rules in making the exemption.

D. The City may use competitive procurement even if a contract is exempt from competitive procurement requirements. An exemption from competitive procurement does not relieve the City of the obligation to take reasonable measures to ensure that procurements are consistent with the policy of obtaining the best combination of quality and price.

E. Contracts awarded by competitive bids shall be awarded based on the lowest "life cycle" costs to the City. Life cycle costs include both initial cost and cost of operating, repair, maintenance and replacement. Contracts awarded by competitive proposals shall be awarded to the responsible proposer that provides the best combination of price and quality, and shall consider cost on a "life cycle" basis.

F. A procurement may not be artificially divided or fragmented to qualify for direct award or limited solicitation. A series of contracts with the same contractor for substantially similar work without a significant time between the contracts will normally be considered a single contract for purposes of determining whether an appropriate competitive selection process was used.

1.553

.040 Personal Service Contracts

A. A personal service contract is appropriate for contracts for services where the individual qualifications and skills of the person providing the service are essential to the service. A personal service contract is awarded primarily on the basis of the contractor's qualifications including but not limited to criteria such as experience, training, knowledge, and expertise, technical skill, creativity, artistic ability, performance history, and demonstrated ability to exercise sound professional judgment. A personal service contract is not appropriate where price is the major factor and quality of service is only a minor factor and can be satisfied by compliance with minimum standards.

B. In addition to the selection procedures authorized by Section .030, personal service contract may be awarded by either of the following procedures:

1. Direct appointment of the contractor believed to be able to provide the best services, taking into consideration expertise, ability, experience and cost if:

   a. The fee for the contract will not exceed $10,000 in any 12-month period;

   b. The contract is for legal services or for an expert witness; or

   c. The City Manager has determined in writing that it is in the public interest to award the personal services contract without a competitive process and that the direct award will not promote favoritism or discourage competition and is otherwise consistent with the policies of this chapter;

   OR

2. By soliciting project specific scopes of work and costs from a list of potential contractors established by a request for proposal process. Lists of qualified contractors for certain types of professional services may be established for up to five years by a competitive request for proposal process. The City will annually review the performance of contractors on the list and may delist contractors for poor performance. The City will also provide an annual opportunity for contractors to be added to the list by an additional request for proposal process. A list of rates and costs will be required as part of the request for proposals process.

C. The following rules apply to solicitation of personal service contracts by competitive proposals. A request for qualifications may be used as the first step in a request for proposal process.

1. The City may arrange for any or all proposers to be interviewed for the assignment by an appropriate City employee or by an interview committee.

2. Following a review of the proposals and interview (if used), the City shall select the contractor based on the criteria stated in the solicitation document, which may include the following factors:

a. Specialized experience in the type of work to be performed.

b. Capacity and capability to perform the work, including any specialized services within the time limitations for the work.

c. Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable.

d. Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable.

e. Cost. Except when state or federal law or grant restrictions prohibit consideration of cost in selecting a contractor, the City shall consider cost as a factor in all contract awards, but cost shall not be the prime consideration in the selection of providers of professional services.

f. Any other factors relevant to the particular contract.

1.554

,050 Authority to Obligate the City

A. The City Manager may enter into a public contract that does not exceed $100,000 without specific Council approval, provided the obligation is part of an adopted budget and a record is made of the transaction that shows compliance with applicable law and regulations. The City Manager may not delegate more than $25,000 in contracting authority to any other position or department, but the authority of the City Manager under this section may be authorized by any person designated to act as City Manager in the City Manager's absence.

B. The City Manager may adopt forms, computer software, procedures, purchasing limits, change order standards and administrative policies for all City purchases. The City Manager may adopt purchasing policies dealing with ethics, sustainability, ADA compliance, conflicts of interest and other administrative matters consistent with this Chapter and applicable law.

C. All public contracts in excess of $100,000, and amendments in excess of $100,000, require approval of the Contract Review Board. The amount of the amendment is the total amount of cumulative amendments, but excluding subsequent phase costs authorized by subsection E. Contract approvals shall normally be placed on the consent agenda. Any contract approval removed from the consent agenda shall normally be reset for consideration at the next council meeting, with direction to staff to provide additional information or analysis. If the matter is reset to a later meeting, two Contract Review Board members shall be designated to work with staff to address the issues, and staff shall prepare a supplemental report to address the issues.

D. All public contracts shall include a maximum contract price, which may not be increased by more than 25% or $25,000, whichever is greater, for any single

change, or 50% or $50,000, whichever is greater, cumulatively, without approval of the City Manager. The City Manager's authority to approve increases may not be delegated except when the City Manager is absent from the City or otherwise unavailable for a week or longer. Changes in a contract will be permitted only when authorized by a written change order or amendment. Change orders that will increase the cost of a contract will be permitted only if there are unexpected conditions that could not have been discovered with normal diligence prior to execution of the contract, if a project cannot be completed as designed, or if the need for the change order is the result of an action or decision by the City.

E. It is expected that the City will anticipate future needs when soliciting contracts and will scope work broadly enough to avoid the need for contract revisions to add work that could have been anticipated prior to entering into the original contract. The City may contract for work in phases, with a contract amendment for each phase. If work is to be performed in phases, the maximum contract price need only be established for the first phase, with estimates for future phases included in the contract. The maximum contract price shall be established by contract amendment prior to the start of each subsequent phase. If the maximum contract price for a subsequent phase is more than 25% greater than the estimated cost for that phase or if no estimate for future phases was included in the original contract, a new competitive procedure is required, except for personal service contracts for professional services that include a provision for establishing the cost of subsequent phases based on a review by a neutral third party. Any contract with phases shall contain provisions allowing the City to terminate at the end of any phase. The City Manager may waive the requirement for a new competitive procedure based on a determination that the waiver is in the public interest, will result in cost savings to the City, and will not discourage competition.

1.555

.060 Purchasing from City Employees

A. The purchase of any supplies, materials, equipment, labor or services, including personal, professional, technical and expert services from any City employee, or any business with which a City employee is associated is discouraged but may be allowed subject to prior written approval by the City Manager and approval shall be based upon findings that:

1. The purchase will be at the least cost to the City;

2. The purchase will result in the most efficient method to accomplish the City's purpose;

3. The purchase could not lead to any alleged violations of the personnel rules;

4. The approval of the purchase could not lead to an adverse employer-employee relationship should the contract be unsatisfactorily performed; and

5. The purchase is in compliance with all applicable laws, regulations and City policies.

B. For purposes of this section "any business with which a City employee is associated" means any business of which the employee is a director, officer, owner or employee, or any business association in which the employee owns or has owned more than ten percent of the business within the preceding calendar year.

1.556

.070 Negotiation with Bidders

A. If all bids exceed the budget for the project or an engineer's cost estimate, the City may, prior to contract award, negotiate for a price within the project budget, including an amended project budget. Negotiations will begin with the lowest,

responsive and responsible bidder. If negotiations are not successful, the City may begin negotiations with the next lowest responsive, responsible bidder. Negotiations may include the inclusion of value engineering and other options to attempt to bring the project cost within the budgeted amount. A contract may not be awarded under this section if the responsibilities of the contractor are significantly changed from the description in the solicitation documents, as determined by the City Manager.

B. If the low bid is substantially below the budget for the project and the engineer's cost estimate, if any, the City may negotiate for additional work on the same project on the same terms as the bid.

1.557

.080 Model Contract Forms

A. City model contract forms will be used unless the City Manager or City Attorney authorizes use of an alternate form. Terms may be amended to take into account specific circumstances. Contracts shall include the following provisions:

1. A requirement that the contractor defend, indemnify, and hold harmless the City, its officers, agents and employees against and from any and all claims or demands for damages of any kind arising out of the contractor's performance under the contract.

2. A provision requiring the person or entity providing the service to obtain and maintain liability insurance coverage in at least the amount of the City's tort liability limits, naming the City as an additional named insured, during the life of the contract.

3. Contract provisions mandated by State and Federal law. These provisions may be incorporated by reference unless the law requiring the provision requires the provision to be set forth in full.

4. A maximum contract price. The City Manager may authorize contracts without a maximum contract price if the City Manager determines that there is no reasonable way to establish a maximum contract price and that it is in the best interest of the City to proceed with the contract. The authority granted by this section may not be delegated.

B. Public improvement contracts shall include provisions requiring compliance with any standards and specifications adopted by the City Council, the City Manager, the City Engineer and/or the Public Works Director. Compliance with adopted standards and specifications is required for all public improvements even if the standards and specifications are not referenced in the contract.

1.558

.090 Disposition of surplus personal property

A. Personal property owned by the City and under the dollar value of $5,000 may be declared surplus and disposed of with the approval of any department head or the City Manager. Personal property with a value of less than $25,000 may be disposed of only after being declared surplus by the City Manager. Personal property with a value greater than $25,000 may be declared surplus and disposed of only with the approval of the City Council or if beyond an adopted replacement schedule. No personal property shall be declared surplus if the property is usable and needed by any City department. The method of disposal will be determined based on condition, value, demand, and/or use. Personal property may be declared surplus if it is scheduled for replacement in an adopted budget or it is no longer necessary to provide City services.

B. When the current market value of an item is estimated to be more than $25,000, the personal property must be disposed of in a competitive process. The City at its discretion may choose between sealed written bids, a public auction, an

internet auction, or some other process that allows competitive bidding. If no bids are received or if a determination is made that the market value of the property exceeds the offer of the highest responsible bidder, all bids may be rejected, and the City may negotiate a sale subject to the following conditions:

1. An appraisal of the market value of the property is obtained and documented, and the negotiated sale price meets or exceeds the market value; or

2. The sale amount exceeds the highest bid received through the bidding or auction process.

C. The City may sell personal property whose value is estimated to be less than $25,000 by any means calculated to achieve the best net result to the City.

D. City employees who have participated in the process of declaring goods to be surplus may not purchase or otherwise acquire surplus goods from the City. Other City employees may not purchase or otherwise acquire surplus goods until the general public has a reasonable opportunity to bid on, purchase or otherwise acquire the goods. Departments may adopt additional rules relating to the acquisition of surplus goods by City employees.

E. The City may retain one or more agents to sell surplus personal property if the selection of the agent was conducted by a competitive request for proposal process.

F. The City may, with the approval of the City Manager and without a competitive process, transfer surplus personal property with or without remuneration to the following entities:

1. Another public agency;

2. Any sheltered workshop, work activity center or group care home which operates under contract or agreement with, or grant from, any state agency and which is certified to receive federal surplus property;

3. Any private, non-profit social or health service activity or entity; or

4. Any other recognized non-profit activity that is certified to receive federal surplus property.

G. The City may give away surplus personal property to the public at no charge on a first-come, first-served basis for property that it would otherwise pay to dispose of. A City employee may take property under this provision only after it has been available to the public for a reasonable period of time (15 minutes if widely publicized in advance, one working day if not publicized in advance).

H. The City may trade personal property owned by the City to other government agencies or to other entities provided the following conditions apply:

1. Trades to other government agencies must be approved in writing by the City Manager.

2. Trades of personal property with parties other than government agencies must proceed as follows:

   a. The market value of both the item to be given and the item to be received must be documented.

   b. The proposal to trade an item for another item must be made available to an adequate number of other potential traders to encourage competition.

c. The trade must be approved by the City Manager.

I. If the City is purchasing new goods or equipment to replace existing goods or equipment and the seller accepts trade-ins, the City may trade in the old equipment in order to get a reduction in the price of the new goods without going through any process for the sale of the used goods.

J. The City may dispose of surplus property that has no monetary value or that has a monetary value insufficient to cover the costs of a sale by disposing of the property as waste. Property that would otherwise be disposed of as waste may be made available to the public at no charge or at a minimal charge.

K. All personal property sold or otherwise disposed of by the City shall be sold as-is without any warranty of any kind. Goods sold through an auction or other third-party seller shall be provided along with a bill of sale or receipt disclaiming all warranties.

ORDINANCE NO. NS-2146

AN ORDINANCE AMENDING THE BEND CODE BY AMENDING SECTIONS 4.500 AND 4.506 RELATING TO SEWER LINES AND RESPONSIBILITY FOR MAINTENANCE AND REPAIRS

Findings:

A. Bend Code Chapter 4 Sanitation contains various provisions relating to sewer lines. The existing provisions clearly provide for property owner responsibility for installation of "building sewers" (also known as laterals) but do not explicitly state that the property owner is responsible for maintenance and repair of building sewers.

B. The City has reasonably relied on the definitions of "building sewer" and "public sewer" as well as provisions regarding responsibility for "public sewers" to conclude that property owners are responsible for maintenance and repair of building sewers. However, recently some property owners have challenged the City's interpretation and claimed that they are not responsible for maintenance and repair of portions of building sewers in rights-of-way.

C. Standard practice in most cities is that property owners are responsible for building sewers up to the point where the building sewer connects to a sewer main.

D. The changes being proposed in this ordinance are intended to clarify that the property owner is responsible for maintenance and repair of building sewers to the point that the building sewer connects with a public sewer main.

Based on these findings, the City of Bend ordains as follows:

Section 1. Bend Code Section 4.500(3) is amended as follows (additions are shown by **bold underlining** and deletions are shown by ~~strikethrough~~):

> "Building Sewer" means the ~~extension~~ sewer line extending from the building drain to the public sewer or other place of disposal. **Building sewers include not only sewer lines on private property, but lines within rights-of-way up to the point where the line connects with a sewer main. Building sewers are not part of the public sewer and are not owned by the City, even if located in rights-of-way.**

Section 2. Bend Code Section 4.500(12) is amended to read:

> "Public Sewer" means ~~a~~ **any** sewer **main** ~~in which all owners of abutting property have equal rights, and is~~ owned and controlled by the City of Bend. **A building sewer is not a sewer main and is not a public sewer.**

Section 3. The title of Bend Code Section 4.506 is amended to Read "Building Sewer, Connections and Responsibilities" and Bend Code Section 4.506 is amended by adding a new Section (11) to read as follows:

> **The owner of property served by a building sewer shall be responsible for maintenance and repair of the building sewer from its connection to the building drain to the point where the building sewer is connected to a City sewer main. This responsibility includes responsibility for any costs of maintenance or repair. In the event of any break, leak or other damage to a building sewer, the owner of the property served by**

the building sewer shall cause repairs to be made immediately to minimize any sewer spillage.

Section 4 A clean version of Sections 4.500 and 4.506, as amended, is shown on the attached Exhibit A.

Section 5. All other provisions of the Bend Code remain unchanged and in effect.

Read for the first time the 7th day of July, 2010.

Read for the second time the 21st day of July, 2010.

Approved by roll call vote the 21st day of July, 2010.

YES: 6 NO: 0

Authenticated by the Mayor the 21st day of July, 2010.

Approved as to form:

Gary Firestone, Legal Counsel

Kathie Eckman, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

EXHIBIT A

4.500 Definitions. Unless the context specifically indicates otherwise, the meaning of terms used in this ordinance shall be as follows:

(1) "Biochemical Oxygen Demand" (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at 20_ centigrade expressed in terms of weight and concentration (milligrams per liter (MG/1).

(2) "Building Drain" means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (1.5 meters) outside the inner face of the building wall.

(3) "Building Sewer" means the sewer line extending from the building drain to the public sewer or other place of disposal. Building sewers include not only sewer lines on private property, but lines within rights-of-way up to the point where the line connects with a sewer main. Building sewers are not part of the public sewer and are not owned by the City, even if located in rights-of-way.

(4) "City" means the City of Bend or the City Council of Bend.

(5) "Combined Sewer" means a sewer receiving both surface runoff and sewage.

(6) "Garbage" means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

(7) "Industrial Discharge" means the discharge or the introduction of domestic pollutants from any source. This includes partial domestic and partial nondomestic wastewater, regulated under section 307(b) or (c) of the Act, (33 U.S.C. 1317), into the City's collection and treatment system (including holding tank waste discharged into the system).

(8) "Natural Outlet" means any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

(9) "Person" means any individual, firm, company, association, society, corporation or group.

(10) "pH" means the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

(11) "Properly Shredded Garbage" means the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than 1.2 inches (1.27 centimeters) in any dimension.

(12) "Public Sewer" means any sewer main owned and controlled by the City of Bend. A building sewer is not a sewer main and is not a public sewer.

(13) "Sanitary Sewer" means a sewer which carries sewage and to which storm, surface and ground waters are not intentionally admitted.

(14) "Sewage" means a combination of the water-carried wastes from residences, business buildings, and institutions together with such ground, surface and storm waters as may be present.

(15) "Sewage Treatment Plant" means any arrangement of devices and structures used for treating sewage.

(16) "Sewage Works" means all facilities for collecting, pumping, treating and disposing of sewage.

(17) "Sewer" means a pipe or conduit for carrying sewage.

(18) "Slug" means any discharge of any wastewater which, in concentration of any given constituent or in quantity of flow, exceeds for any period of duration longer than 15 minutes more than five times the average 24 hour concentration or flows during normal operation.

(19) "Storm Drain" or Storm Sewer" means a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

(20) "Suspended Solids" means a total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.

(21) "Watercourse" means a channel in which a flow of water occurs, either continuously or intermittently.

4.506 Building Sewers and Connections.

(1) No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the City.

(2) The owner or his agent shall make application on a form furnished by the City of Bend. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the City.

(3) All costs and expenses incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

(4) A separate and independent building sewer shall be provided for each building.

(5) Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the City, to meet all requirements of this ordinance.

(6) The size, slope, alignment, materials of construction of a building sewer and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall conform to the requirements of the State Building and Plumbing Codes and applicable rules and regulations of the City of Bend. In the absence of code provisions or in amplification thereof, the "Standard Specifications for Public Works Construction" 1970, Oregon Chapter American Public Works Association shall apply.

(7) No person shall make connection of roof downspouts, exterior foundation drains, areaway drains or other sources of surface runoff or ground water to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

(8) The connection of the building sewer into the public sewer shall conform to the requirements of the State Building and Plumbing Codes and applicable rules and regulations of the City of Bend. All such connections shall be made gas tight and water tight. Any deviation from the prescribed procedures and material must be approved by the City before installation.

(9) The applicant for the building sewer permit shall notify the City when the building sewer is ready for inspection and connection to a public sewer. The connection shall be made under the supervision of the City.

(10) All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City of Bend.

(11) The owner of property served by a building sewer shall be responsible for maintenance and repair of the building sewer from its connection to the building drain to the point where the building sewer is connected to a City sewer main. This responsibility includes responsibility for any costs of maintenance or repair. In the event of any break, leak or other damage to a building sewer, the owner of the property served by the building sewer shall cause repairs to be made immediately to minimize any sewer spillage.

ORDINANCE NO. NS-2147

AN ORDINANCE AMENDING THE BEND CODE BY ADDING A NEW SECTION ON DEAD OR DECAYING TREES TO TITLE XIII OF THE BEND CODE AND DECLARING AN EMERGENCY

Findings:

A. Title XIII of the Bend Code was adopted to include provisions relating to nuisances in a single separate title. Most of the provisions in Title XIII originated from the former Chapter 5.

B. In the reorganization of the code, Subsection 3 of the former Section 5.355 Trees was inadvertently omitted from inclusion in either the new Title V or Title XIII.

C. Staff has recommended that the former Section 5.355(3) be reinstated and included in Title XIII.

D. Council agrees with the staff recommendation.

E. Dead and decaying trees pose a risk to human safety and to property and the lack of an effective code provision creates a safety risk.

Section 1. Bend Code Title XIII is amended by adding a new section to read as follows:

Trees.
(1) No owner or person in charge of property shall allow a dead or decaying tree to stand if it is a hazard to the public or to persons or property on or near the property.

(2) A violation of this section is a Class B Civil Infraction.

Section 2. All other provisions of the code remain in effect.

Section 3. The City Recorder is directed to include the additional section in an appropriate location in Bend Code Title XIII.

Section 4. This measure is necessary for the peach, health and safety of the city and shall take effect immediately on passage.

Read for the first time the 7th day of July, 2010.

Read for the second time the 21st day of July, 2010.

Approved by roll call vote the 21st day of July, 2010.

YES: 7 NO: 0

Authenticated by the Mayor the 21st day of July, 2010.

Approved as to form:

Gary Firestone, Legal Counsel

Kathie Eckman, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

ORDINANCE NO. NS-2148

AN ORDINANCE AMENDING THE BEND CODE BY AMENDING SECTIONS 12 AND 15 OF THE SIGN CODE RELATED TO MENU BOARDS

Findings:

A. The Bend Sign Code is included as part of Chapter 9 Buildings of the Bend Code.

B. While the Sign Code is not included in the Development Code, the City processes Sign Code amendments in the same way it processes Development Code amendments because the Sign Code implements portions of the Bend General Plan.

C. McDonald's USA submitted an application for a text amendment to the Sign Code, accompanied by the required fee. The requested text amendment is to allow more signs and sign area for "drive-up menu boards" and a change in how sign area is calculated.

C. Notice to DLCD of the amendment is not required because the amendment does not involve application of the statewide land use planning goals.

D. The City provided notice of the Planning Commission meeting and the City Council meeting as required by applicable state and City law.

E. The Planning Commission held a hearing and recommends approval of the text amendment with some changes to the language that do not affect the substance of applicant's request.

F. The text amendment is consistent with Bend General Plan Chapter 9, Policy #4. Other General Plan policies do not apply to the substance of the amendment.

G. The City has followed all applicable procedures in this Text Amendment process.

H. Applicant has met its burden of demonstrating the public need and benefit of the text amendment.

I. This ordinance is adopted by the Council after holding a public hearing and considering the application and all documentation and testimony in the record.

Based on these findings, The City of Bend ordains as follows:

Section 1. The application for a text amendment is approved, as modified.

Section 2. Section 12(1)(a) of the Sign Code is amended (new material shown by underlining) as follows:

Sign area, freestanding signs except menu boards. The sign area shall be the extreme outer dimension of the freestanding structure. The first 12 inches in vertical height of a supporting base are not calculated in the overall sign area; however, all remaining area above the 12 inch minimum base requirement shall be calculated, including air.

Menu Board Signs. The sign area shall be the extreme outer dimension of the freestanding structure. Measurement shall be edge of frame to edge of frame.

Section 3. Section 15(3)(b) is amended as follows (new material shown by underlining, deleted material shown by ~~strikethrough~~.

(b) Maximum number, area and height~~. Not more than two signs shall be displayed per business. When two signs are displayed the maximum sign area allowed for each separate sign is 20 square feet and 8 feet in height if freestanding. The maximum sign area for a single sign is 40 square feet.~~ One sign of up to 45 square feet in area and eight feet in height is allowed per drive-through lane for up to two drive-though lanes. One additional sign per site of up to 15 square feet in area and eight feet in height is permitted at the entry to the drive-through area. The signs allowed by this section shall be located on the left side and oriented to the drive-through lanes.

Section 4. All other provisions of the sign code remain in effect.

Read for the first time the 4th day of August, 2010.

Read for the second time the 18th day of August, 2010.

Approved by roll call vote the 18th day of August, 2010.

YES: 5 NO: 2

Authenticated by the Mayor the 18th day of August, 2010.

Approved as to form:

Gary Firestone

Gary Firestone, Legal Counsel

Kathie Eckman

Kathie Eckman, Mayor

ATTEST:

Patricia S. Stell

Patricia Stell, City of Bend Recorder

ORDINANCE NO. NS-2149

AN ORDINANCE AMENDING THE BEND CODE BY ADDING A NEW SECTION TO 1.807 RELATING TO FEE REDUCTIONS FOR CERTAIN SMALL BUSINESSES

Findings:

A. The City has received input from the business community that small businesses have suffered from the recent economic downturn.

B. Small businesses are particularly important to the Bend economy as they provide living wage jobs and provide innovative, diverse and needed economic development to the benefit of the entire community.

C. It is sometimes advantageous for small businesses to relocate within the City, but the cost of relocation can be a barrier to moving to a better location. City planning and building fees may be a part of the cost of relocation.

D. The City necessarily incurs costs for planning, building and engineering review associated with business relocation.

E. The City Council believes that it is in the public interest to lessen the burden on relocation of small businesses within the City in order to encourage the retention and/or expansion of existing small businesses, but without adversely affecting the budget for planning, building and engineering services.

F. The City Council therefore wishes to adopt a fee reduction for certain businesses and to reimburse budget funds that are affected by the discount by transfers from the general fund. This will be a pilot program, to be reassessed as to its use and effectiveness after one year.

Based on these findings, the City of Bend ordains as follows:

Section 1. The Bend Code is amended by adding a new Section 1.807 to read as follows:

1.807 Fee Reduction for Business Relocations Within City.

(1) The following definitions apply in this Section:

(a) Eligible business: An existing business (meaning a business in operation as of November 1, 2010) with fewer than 20 total full time equivalent employees.

(b) Relocate: To move from one business location in the City to another in the City.

(c) Relevant time period: November 1, 2010 through October 31, 2011.

(d) Specified fees: Building fees, planning fees and engineering fees. Specified fees do not include sign permit fees, system development charges, in-lieu of fees, fire prevention plan review fees, or the affordable housing surcharge.

(2) An eligible business that applies for planning approval or building permits within the relevant time period shall be provided a 50% discount on specified fees associated with the application, provided that the cap on total discounts under Subsection (3) has not been exhausted.

(3) The total discount to all businesses authorized by this section shall not exceed $50,000. If and when the total amount of discounts provided under this section reaches $50,000, no further discounts will be available. The discount shall be available on a first come, first served basis.

(4) Funds shall be transferred from the General Fund to fully compensate any fund affected by the discount authorized by this section.

Read for the first time the 1st day of September, 2010.

Read for the second time the 15th day of September, 2010.

Approved by roll call vote the 15th day of September, 2010.

YES: 6 NO: 2

Authenticated by the Mayor the 15th day of September, 2010.

Approved as to form:

Mary Winters, Legal Counsel

Kathie Eckman

Kathie Eckman, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

ORDINANCE NO. NS-2150

AN ORDINANCE AMENDING THE TEXT OF CHAPTERS 4.2 RELATED TO SITE PLAN AND DESIGN REVIEW REGULATIONS; AND 4.3 RELATED TO REGULATIONS FOR SUBDIVISIONS, PARTITIONS, REPLATS AND PROPERTY LINE ADJUSTMENTS; 1.2 AND 3.6 RELATED TO BEE KEEPING AND STANDARDS FOR KEEPING FARM ANIMALS; 3.4 AND 3.5 RELATED TO SPECIAL SETBACK STANDARDS IN THE BEND DEVELOPMENT CODE, ORDINANCE NO. NS-2016

Findings:

A. The City of Bend adopted its Development Code, Ordinance No. NS-2016, on July 5, 2006. On October 9, 2006, an attorney representing the Central Oregon Builders Association and Palmer Homes submitted objections to the Bend Periodic Work Task 3A submittal that was received by the Department of Land Conservation and Development (DLCD) on September 20, 2006. DLCD found that Section 4.3.300(D) of the Bend Development Code violated ORS 197.307(6) and ORS 197.195(1). A portion of this Ordinance includes changes to Section 4.3.300(D) that address this last remaining remand item from DLCD Order 001718.

B. The Bend Planning Commission held a duly noticed public hearing on the proposed amendments on June 28, 2010, and the public hearing was continued to July 12 and July 26, 2010. Following the public hearings, the Planning Commission refined the proposed amendments to address comments from interested citizens and local development professionals such as landscape architects and surveyors.

C. The City Council held a duly noticed public hearing on September 1, 2009. Based on the entire record, including all testimony, evidence, and the recommendation of the Planning Commission, the Council concluded that the application meets all criteria for approval and should be granted.

Based on these findings,

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council held a public hearing to consider the proposed text amendments and the Planning Commission's recommendation and found that the proposed amendments to the Development Code are consistent with the applicable criteria in Chapter 4.6 of the Development Code. In addition to the findings listed above, the Bend City Council adopts the findings in Exhibit B.

Section 2. Chapters 1.2, 3.4, 3.5, 3.6, 4.2 and 4.3 of the Bend Development Code (Ordinance NS-2016) are hereby amended as shown in Exhibit A.

Read for the first time the 1st day of September, 2010.

Read for the second time the 15th day of September, 2010.

Placed upon its passage the 15th day of September, 2010.

YES: 7 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 15th day of September, 2010.

Approved as to form:

Legal Counsel

Kathie Eckman, Mayor

Attest:

Patricia Stell, City of Bend Recorder

City of Bend
Development Code
Tune-Up Package #3

City Council Second Reading
September 15, 2010

Prepared by:
City of Bend Planning Division

Note:
Text in underlined typeface is proposed to be added.
Text in ~~strikethrough~~ typeface is proposed to be deleted.
Text in ***Bold Italic*** typeface is staff commentary.
*** Indicates where text from the existing code has been omitted.

Chapter 1.2 Definitions

***

Bee means any stage of development of the common domestic honey bee, Apis mellifera species.

***

Beekeeper means a person owning, possessing or controlling one or more colonies of bees.

***

Colony means a bee hive and its equipment and appurtenances, including one queen, bees, comb, honey, pollen and brood.

***

Dwelling, single-family attached ~~housing~~ means single-family dwellings on their own lots or parcels, sharing a common side-wall.

Dwelling, single-family detached ~~house~~ means a single family dwelling on its own lot or parcel that does not share a wall with any other building.

***

Hive means any Langstroth type structure with movable-frames intended for the housing of a bee colony. A hive typically consists of a cover, honey supers, brood chambers and a bottom board.

***

Table 1.2.100
Summary of Development Application Types

Development Application	Type I*	Type II*	Type III	Type IV
Change of Use – Site Conforms to All Existing Standards	X			
Condo Plat/Condo Change of Use	X			
Design Review CB Zone – Minor Façade Change	X			
Design Review – Minor Alteration	X			
Final Plat – Partition or Subdivision	X			
Home Occupation Type I (Minor)	X			
~~Keeping of Farm Animal Permit~~	~~X~~			
Lot of Record Verification	X			
Property Line Adjustment	X			
Site Plan – Mini (ADU, 2nd Dwelling)	X			
Site Plan Minor Alteration	X			
Temporary Use	X			
Vacation Home Rental	X			
Cemetery Subdivision		X		
Change of Use – Site Does Not Conform to All Existing Standards		X		
Conditional Use Permit		X		
Declaratory Ruling- Administrative Decision		X		
Design Review CB Zone – Track 1		X		
Design Review Deschutes River, Administrative		X		
Design Review for New Construction/Major Alterations		X		
Home Occupation Type II (Major)		X		
Partition (Tentative Plan)		X		
Planned Unit Development (PUD) Modification		X		
Residential Compatibility Exception, Administrative		X		
Site Plan Major Alteration		X		
Site Plan New Development		X		
Solar Access Permit		X		
Solar Shade Exemption		X		
Subdivision (Tentative Plan)		X		
Surface Mining Permit		X		
Temporary Permit		X		
Duplex or Triplex Review		X		
Variance (Class A, B, C)		X		
Declaratory Ruling – Hearings Officer or Planning Commission			X	
Design Review CB Zone – Track 2			X	
Deschutes River Design Review – Planning Commission Hearing			X	
Master Development Plan or Special Planned District			X	
MR Zone Review – Facilities or Master			X	
Residential Compatibility Exception, Hearings Officer			X	
River Setback Exception			X	
Zone Change			X	
General Plan Map Amendment				X
General Plan Text Amendment				X
Refinement Plan/Development Agreement per ORS Chapter 94				X
Urban Growth Boundary (UGB) Expansion				X

*Unless elevated by the Community Development Director as authorized in Chapter 4.1.

Chapter 3.4 Public Improvement Standards

Sections:

3.4.100 Purpose and Authority
3.4.150 Waiver and Modification of Public Improvement Standards
3.4.200 Transportation Improvement Standards
3.4.300 Public Use Areas
3.4.400 Sanitary Sewer and Water Service Improvements
3.4.500 Storm Drainage Improvements
3.4.600 Utilities
3.4.700 Easements
3.4.800 Construction Plan Approval and Assurances
3.4.900 Installation

***

3.4.200 Transportation Improvement Standards

***

I. Future Street Plan and Extension of Streets.

1. When a street plan has been developed and adopted by City Council along with an area plan, such as a Refinement Plan, that street plan shall guide the location and spacing of future streets pursuant to City of Bend Standards and Specifications.

2. When no adopted street plan exists for the site, a future street plan shall be filed by the applicant in conjunction with an application for a subdivision, in order to facilitate orderly development of the street system. The plan shall show the pattern of existing and proposed future streets from the boundaries of the proposed land division and shall include other parcels within not less than 400 feet of the site boundaries, and other developed streets or public rights-of-way or natural barriers surrounding and adjacent to the proposed land division. The street plan is not binding; rather it is intended to show potential future street extensions with future development.

***

J. Special Setbacks

1. Purpose. The purpose of this subsection is to ensure that adequate rights of way will be available for the appropriate street improvements as the city grows and that there will be no conflicts with the built environment.

2. Applicability. The special setback standards shall be applied to any lot or parcel that abuts a public right of way.

3. Setback.

   a. Unless waived under Section 3.4.150, all buildings or structures shall be set back from planned future rights of way the minimum distance established in the applicable zoning district.

   b. Unless waived under Section 3.4.150, the special setback from existing substandard width rights of way shall comply with Table F.

Table F: Special Setback Standards

Street Classification	Additional Setback from Centerline of Street

Local Street	30 feet
Collector	40 feet
Arterial (Principal, Major, Minor)	50 feet

NOTE: The additional setback line shall be an assumed property boundary for the purpose of sidewalk construction.

~~J~~K. Street Alignment and Connections.
***

~~K~~L. Sidewalks, Planter Strips, Bicycle Lanes.
***

~~L~~M. Intersection Angles.
***

~~M~~N. Existing Rights-of-Way.
***

~~N~~O. Cul-de-sacs.
***

~~O~~P. Grades and Curves.
***

~~P~~Q.
Curbs, Curb Cuts, Ramps, and Driveway Approaches.
***

~~Q~~R. Street Adjacent to Railroad Right-of-Way.
***

~~R~~S. Development Adjoining Arterial Streets.
***

~~S~~T. Alleys, Public or Private.
***

~~T~~U. Private Streets.
***

~~U~~V. Street Names.
***

~~V~~W. Survey Monuments.
***

~~W~~X. Street Signs.
***

~~X~~Y. Street Light Standards.
***

Chapter 3.5 Other Design Standards

Sections:

3.5.100 Density Transfers
3.5.200 Outdoor Lighting Standards
~~**3.5.300 Special Setbacks**~~
3.5.400 Solar Standards
3.5.500 Solar Access Permits

***

~~3.5.300 Special Setbacks~~

~~**A. Purpose.** The purpose of this section is to ensure that adequate right-of-way will be available for the appropriate street improvements as the city grows and that there will be no conflicts with the built environment.~~

~~**B. Applicability.** The following special setback standards shall be applied to any lot or parcel that abuts an arterial, collector or local street, in addition to the minimum setback required by the underlying zoning district.~~

~~Special Setback Standards~~

~~Street Classification~~	~~Additional Setback from Centerline of Street~~
~~Local Street~~	~~30 feet~~
~~Collector~~	~~40 feet~~
~~Arterial (Principal, Major, Minor)~~	~~50 feet~~

~~NOTE: The additional setback line shall be an assumed property boundary for the purpose of sidewalk construction.~~

***

Chapter 3.6 Special Standards for Certain Uses

Sections:

3.6.100 Purpose
3.6.200 Residential Uses
3.6.300 Non-residential Uses
3.6.400 Temporary Uses

***

3.6.300 Non-residential Uses

***

I. **Keeping Farm Animals.** The purpose of this section is to regulate the raising and breeding of farm animals on residential lots within the City of Bend. These activities are considered to be accessory uses ~~and require a Type I Permit~~ subject to the following standards.

1. Types of animals allowed.

   a. One (1) horse shall have a corral or pasture with a usable area of at least 1 acre ~~7,500 square feet~~; and for each additional horse, an additional ½ acre ~~5,000 square feet~~ is required.
   b. Cows, goats, sheep, swine or other livestock shall not be kept on any parcel or lot with an area less than 5 acres.
   c. No more than four (4) rabbits and/or chickens (hens only, no roosters) are permitted on parcels and lots ~~greater than 6,000~~ 5,000 square feet or greater.

2. Sanitation. Proper sanitation shall be maintained for all farm animals. Proper sanitation includes:

   a. Accumulation of waste prohibited
   b. Odors resulting from the keeping of farm animals prohibited beyond property lines, and
   c. Storing all farm animal food in rodent-proof containers.

3. Fencing: All fencing shall be designed and constructed to confine all farm animals within the owner's property.

4. Setbacks: All structures that house large farm animals shall be located a minimum of 25 feet from all existing adjacent residences and at least ~~lease~~ fifteen (15) feet from any interior or rear lot line.

***

P. **Beekeeping.** The purpose of this section is to regulate the keeping of common domestic bees on residential lots within the City of Bend. This activity is considered to be an accessory use subject to the following standards.

1. Location, Density, and Maintenance of Colonies.

   a. The number of colonies is limited to one (1) colony per legal lot of up to 5,000 sq. ft. of lot area, plus one (1) additional colony per each additional 5,000 sq. ft. of lot area, up to a maximum of eight (8) colonies regardless of lot size.

   b. Colonies shall be located in the side or rear yard , and set back no less than 10 feet from the nearest property line, and shall comply with the following provisions:

      i. The beehives are isolated from public access by a security fence; and
      ii. The beekeeper establishes and maintains a flyway barrier at least 6 feet in height consisting of a solid wall, solid fencing material, dense vegetation or combination thereof that is parallel to the property line and extends 10 feet beyond the colony in each direction so that all bees are forced to fly at an elevation of at least 6 feet above ground level over the property lines in the vicinity of the colony; or
      iii. The colony is situated 10 feet or more above the grade of the nearest adjoining property line.

c. Colonies shall be maintained in movable-frame hives with adequate space and management techniques to prevent overcrowding.

d. In any instance in which a colony exhibits aggressive behavior, the beekeeper must ensure that the colony is re-queened. Aggressive behavior is any instance in which unusual aggressive characteristics such as stinging or attacking without provocation occurs.

e. Every beekeeper shall maintain an adequate supply of water for the bees located close to each hive.

Chapter 4.2 Site Plan Review ~~Development~~ and Design Review

Sections:

4.2.100	**Purpose**
4.2.200	**Site Plan ~~Development~~ Review ~~Applicability and Procedures~~**
4.2.300	**Design Review ~~Applicability and Procedures~~**
4.2.400	**Minimum Development Standards**
4.2.4500	**Bonding and Assurances**
4.2.5600	**Development in Accordance With Permit Approval**

4.2.100 Purpose

The purpose of this Chapter is to:

- Provide rules, regulations and standards for efficient and effective administration of ~~site development review~~ Site Plan Review;
- Carry out the development pattern and plan of the City ~~and its~~ according to the General Plan policies;
- Promote the public health, safety and general welfare;
- Provide adequate light and air, prevent overcrowding of land, and facilitate adequate provision of public facilities and services ~~for transportation, water supply, sewage and drainage~~;
- Encourage the conservation of energy resources; and
- Encourage efficient use of land resources, full utilization of urban services, mixed uses, transportation options, and detailed, human-scaled design.

4.2.200 Site Plan ~~Development~~ Review ~~Applicability and Procedure~~.

A. Applicability. Except as exempted in Subsection B, Site Plan Review shall apply to all new uses, buildings, outdoor storage or sales areas and parking lots. Site Plan Review shall also be required for expansions of existing buildings or uses that exceed 50 percent of the gross area of the existing buildings and/or use or are 5,000 square feet or more in size. (For minor additions or expansions and/or changes of use, or for single family and duplex dwellings, see Section 4.2.400, Minimum Development Standards.)

B. Exemptions. Single family detached dwellings and duplexes on their own lots or parcels in the Urban Area Reserve (UAR), Suburban Low Density Residential (SR2½), Residential Urban Low Density (RL), and Residential Urban Standard Density (RS) zoning districts are exempt from Site Plan Review. Single family and duplex dwellings on their own lot or parcel in Residential Urban Medium Density (RM) or Residential Urban High Density (RH) zoning districts are exempt from Site Plan Review if the minimum density requirements of the district are met.

Duplexes must continue to meet the design standards of Section 3.6.200(H) which can be reviewed under a Type I duplex application. A full Site Plan application for duplexes isn't necessary.

~~**A. Applicability.** In all zones, Except for a single family unit on one lot, all new uses, buildings, outdoor storage or sales areas and parking lots shall be subject to the provisions of this section.~~

~~Site Development Review approval may not be required where a proposed alteration of an existing building does not exceed 10% or 1000 square feet, whichever is~~

~~greater, of the original structure unless the Planning Director finds the original structure or proposed alteration does not meet the requirements of this ordinance or other ordinances of the City of Bend. In the residential zones where duplexes and triplexes are allowed, such development may undergo a Type I review process if they meet minimum standards as set forth in subsection 3.6.200(H), Duplex and Triplex Development.~~ ***Rather than requiring a full Site Plan application to change from one permitted use to another in an existing building, Section 4.2.400 Minimum Development Standards was added to address such changes of use and smaller expansions.***

C. **Existing Development.** Existing lawfully developed sites that do not conform to the current ~~site development~~ standards of this Code are only required to meet ~~those~~ current standards on the portions of the site ~~development~~ affected by the proposed alteration or expansion. Any alterations to the site must meet current Code standards. ~~Development of such sites shall be in accordance with Section 5.2.~~ ***This section has proven to be awkward to apply – Section 5.2 requires a Conditional Use Permit for expansion, even if the expansion meets the current code.***

~~B~~D. **General Submission Requirements**. The applicant shall submit a Site Plan application in conformance with the provisions of Chapter 4.1, Procedures.

~~C~~E. ~~**Development Review**~~ **Information Requirements**. An application for ~~site development review~~ Site Plan Review shall include the following ~~additional~~ information, as deemed applicable by the Community Development ~~City Planning~~ Director based on the size, scale and complexity of the development.

1. ~~Site analysis~~ Existing site conditions map. At a minimum the ~~site analysis~~ existing site conditions map shall contain the following:

   a. The applicant's entire property and the surrounding property to a distance of 150 feet from the subject property ~~sufficient to determine the location of the development in the City, and the relationship between the proposed development site and adjacent property and development~~. Existing aerial photos may be used. The property boundaries, dimensions and gross area shall be identified;

   b. Topographic contour lines shown at ~~6-inch~~ one-foot intervals for slopes ~~5%~~ of 10 percent or less. For slopes greater than ~~5%,~~ 10 percent, contour lines shall be shown at ~~1-foot~~ two-foot intervals. ~~Identify s~~Slopes greater than 25% shall be identified.

   c. The location and width of all public and private streets, drives, sidewalks, pathways, rights-of-way, and easements on the site and adjoining the site for a distance of 150 feet. Existing aerial photos may be used;

   d. Potential natural hazard areas, including any areas identified as subject to a 100-year flood, areas subject to high water table, and areas mapped by the City, County, or State as having a potential for geologic hazards;

   e. Resource areas, including marsh and wetland areas, streams, surface mines, and wildlife habitat identified by the City or any natural resource regulatory agencies as requiring protection;

   f. ~~Site f~~Features, including existing structures, pavement, large rock outcroppings, ~~areas having unique views, and~~ drainage ways, canals and ditches both on the site and adjoining the site for a distance of 150 feet. Existing aerial photos may be used;

   g. The location, size and species of trees and other vegetation having a caliper (diameter) of six (6) inches or greater at four feet above grade;

   h. Locally or federally designated historic and cultural resources on the site and the adjacent parcels.

   i. North arrow, scale, names and addresses of all persons listed as owners on the most recently recorded deed;

   j. Name, address, email address and telephone number of project designer, engineer, surveyor, and/or planner, if applicable.

2. ~~Additional information, as determined by the City Planning Director. The City may require, at the applicant's expense, studies, reports or exhibits prepared by qualified professionals to address specific site features.~~ ***Moved to subsection 11, below.***

~~3~~2. Proposed site ~~development~~ plan. The site ~~development~~ plan shall contain the following information (as applicable):

a. The proposed development site, including boundaries, dimensions, and gross area;

b. Existing site features, including trees, identified on the site analysis map, if any, which are proposed to be retained or modified by the proposed development;

c. The location and dimensions of all existing and proposed structures, utilities, pavement and other improvements on the site and adjacent to the site for a distance of 150 feet. Setback dimensions for all existing and proposed buildings shall be provided on the site plan;

d. The location and dimensions of all site circulation for vehicles, pedestrians and bicycles including entrances and exits to the site, loading and service areas;

e. The location and dimensions of all vehicle parking areas (show striping for parking stalls and wheel stops (if applicable) and bicycle facilities;

~~f. Other information determined by the City Planning Director. The City may require studies, reports or exhibits prepared by qualified professionals to address specific site features (e.g., traffic, noise, environmental features, natural hazards, etc.), in conformance with this Code.~~ ***Redundant, covered in #11, below.***

g. The location, type and height of exterior lighting fixtures.

h. Locations of bus stops and other public or private transportation facilities. ***Moved from Design Review.***

4~~3~~. Deed restrictions. The applicant shall submit copies of all existing and proposed restrictions or covenants.

5~~4~~. Architectural drawings. The ~~City Planning~~ Community Development Director may request architectural drawings showing one or all of the following:

a. Building elevations (as determined by the ~~City Planning~~ Community Development Director) with building height and width dimensions;

b. Floor Plans

c. Building materials, colors and type;

d. The name, address and phone number of the architect or designer.

6~~5~~. Preliminary grading and drainage plan. A preliminary grading and drainage plan prepared by a registered professional engineer or registered landscape architect shall be required in conformance with the City's Grading Ordinance ~~#NS-1879~~. The preliminary grading plan shall show the location and extent to which grading will take place, indicating general changes to contour lines, slope ratios, slope stabilization proposals, and location and height of retaining walls, if proposed. ~~Surface water detention and treatment plans may also be required, in accordance with Section 3.4.500; Storm Drainage Improvements.~~

6. Surface water detention and treatment plan. A plan prepared by a registered professional engineer or registered landscape architect showing all drainage retention areas, catch basins, and storm piping prepared in accordance with Section 3.4.500; Storm Drainage Improvements shall be required.

7. Landscape plan. A landscape plan ~~may~~ shall be required, and at the direction of the ~~City Planning~~ Community Development Director shall show the following:

a. A planting schedule containing the ~~The~~ location, size, and species of the existing and proposed plant materials (at time of planting);

b. Existing and proposed building and pavement outlines;

c. Irrigation plans, ~~Specifications for~~ written soil specifications at time of planting, ~~irrigation if plantings are not drought-tolerant (may be automatic or other approved method of irrigation)~~ and anticipated plant installation timeline. ~~planting schedule~~;

~~d. The location, size, and species of the existing and proposed plant materials (at time of planting);~~

d.~~e.~~ The location of existing and proposed terraces, retaining walls, decks, patios, shelters, and play areas;

e. Existing and proposed abutting street right of way landscaping.

f. Other information as deemed appropriate by the ~~City Planning~~ Community Development Director. An arborist's report may be required for sites with mature trees that are protected under Chapter 3.2, Landscape, Street Trees, Fences and Walls of this Code.

8. Sign drawings. Depictions of proposed signs shall be ~~required~~ in conformance with the City's Sign Code. A separate sign permit will be required for all signs.

9. Narrative. Letter or narrative report documenting compliance with the ~~applicable~~ approval criteria contained in Section ~~(D)~~ (F) Approval Criteria, listed below.

10. Traffic Impact Study. A Traffic Impact Analysis shall be submitted if ~~as~~ required by Chapter 4.7.

11. Water and Sewer Capacity Analyses. These analyses are provided by the City upon request and payment of fee, if required.

12. Additional information. The Community Development Director may require, at the applicant's expense, studies, reports or exhibits prepared by qualified professionals to address specific site features or concerns.

~~D~~F. **Site Plan ~~Development~~ Approval Criteria**. Prior to issuance of building permits, the City shall approve, approve with conditions or ~~disapprove~~ deny the proposed ~~site development plan~~ Site Plan application ~~In approving the plan, the City shall find that all provisions of the ordinance are met. The~~ based on the following criteria ~~shall be considered~~:

1. The proposed land use is a permitted or conditional use in ~~by~~ the ~~underlying land use~~ zoning district;

2. The land use, building/yard setback, lot area, lot dimensions, density, lot coverage, building height and other applicable standards of the underlying ~~land use~~ zoning district are met;

3. The ~~minimum~~ applicable standards in Chapter 3 ~~Section 3.2.200; Landscape Conservation, Section 3.2.300; New Landscaping, 3.2.500; Fences and Walls and Chapter, 3.3; Vehicle and Bicycle Parking~~ are met;

4. All applicable building and fire code standards are or will be met.

5. All required public facilities have adequate capacity as determined by the City, to serve the proposed use.

6. The proposal complies with the standards of the zoning district in which the project is located and the standards of the zoning district that implements the General Plan designation of the subject property.

G. Final Site Plan. A Final Site Plan shall be submitted to the Community Development Department. The Final Site Plan shall depict the proposal as approved and shall incorporate all conditions of approval contained in the decision. No building or engineering permits will be issued until the Final Site Plan is approved.

H. Expiration of Approval. In accordance with Chapter 4.1, the land use approval shall lapse, and a new application shall be required, if a building permit has not been issued within the duration of Site Plan ~~Development Review~~ approval. ~~or if development of the site is in violation of the approved plan or other applicable codes.~~ ***(Section 4.1.1335 was recently amended to account for revocation of approvals for violation of the code or conditions of approval.)***

4.2.300 Design Review ~~Applicability and Procedures~~

A. **Applicability.** This section shall apply within ~~all commercial zoning districts including~~ the (CC) Convenience Commercial, (CL) Limited Commercial, (CG) General Commercial, (ME) Mixed Employment, (PF) Public Facilities, and (PO) Professional Office zones and to all non-industrial uses within the (IL) Light Industrial and (IG) General Industrial zones and shall apply to the following building types:

1. Multi-family housing;

2. Public and institutional buildings, except buildings which are not subject to ~~site development review~~ Site Plan Review; and

3. Commercial and mixed-use buildings subject to ~~site development review~~ Site Plan Review as follows:
   a. All new building construction
   b. Any exterior modifications to existing buildings
   c. All new parking lots
   d. All storage and display areas
   e. All new signage
   f. All building expansions except as exempted below ~~greater than 5,000 square feet~~.

~~This section shall not apply to the (CBD) Central Business District~~. ***Moved to top of section***

B. **~~Exceptions~~Exemptions.** The following activities or structures are not subject to Section 4.2.300; Design Review Applicability and Procedures:

1. Maintenance of the exterior of an existing structure such as re-painting, re-roofing or re-siding where similar materials and colors are used or materials and colors are used that comply with the provisions of this ordinance.

2. Interior remodeling or new tenant improvements.

3. Reconstruction of buildings subject to ~~Commercial~~ Design Review and considered to be non-conforming structures as determined in Chapter 5.2; Non-conforming Uses and Development.

4. Building expansions not exceeding 25% of the gross square footage of the original building and where the expansion does not exceed 5,000 square feet in area.

5. Parking lots. ~~lot expansions not exceeding 25% of the gross square footage of the original parking lot and where the total amount of parking does not exceed the parking allowed by the Zoning Ordinance by 50%.~~

6. Buildings that are subject to review by the Deschutes County Historical Landmarks Commission because they are listed in the Inventory of Historic sites ~~within~~ in the Bend Area General Plan, Exhibit "A", or ~~buildings~~ are listed in ~~designated on~~ the ~~Historic National Landmarks Register~~ National Register of Historic Places.

C. **General Submission Requirements**. The applicant shall submit an application in conformance with the provisions of Chapter 4.1; Land Use Review and Procedures. ~~In addition, the applicant shall attend a City of Bend Pre-application meeting prior to filing an application for Design Review.~~

D. **Design Review Information**. ~~In addition to the site development review information required in Section 4.2.300,~~ Information necessary to assess compliance with this Section is contained within the Site Plan Review submittal requirements. When Site Plan Review is not required under Section 4.2.200, an application for Design Review shall ~~also~~ include the following ~~additional~~ information, as deemed applicable by the ~~City Planning~~ Community Development Director based on the size, scale and complexity of the development: ~~as presented to the City at the pre-application conference:~~

1. Pedestrian and bicycle circulation areas, including sidewalks, internal pathways, pathway connections to adjacent properties, and any bicycle lanes or trails;

2. Loading and service areas for waste disposal, loading and delivery;

3. Outdoor recreation spaces, common areas, plazas, outdoor seating, street furniture, and similar improvements;

4. Location, type, and height of outdoor lighting;

~~5. Location of mail boxes, if known;~~

~~6. Locations of bus stops and other public or private transportation facilities;~~

~~7. Locations, sizes, and types of signs;~~

5 Architectural drawings. The Community Development Director may request architectural drawings showing one or all of the following:

a. Building elevations (as determined by the Community Development Director) with building height and width dimensions;

b. Floor Plans

c. Building materials, colors and type;

d. The name, address and phone number of the architect or designer.

E. Design Review Approval Criteria. The Review Authority shall ~~make written findings with respect to all of the following criteria when approving, approving with conditions, or denying~~ approve, approve with conditions, or deny an application for Design Review based upon all relevant design standards contained in Chapter 2 of this Code.

~~1. Design Standards. The application complies with all relevant design standards contained in Chapter 3 and 2. All of the following standards shall be met:~~

~~a. Chapter 3.1 - Access and Circulation;~~
~~b. Chapter 3.2 - Landscaping, Significant Vegetation, Street Trees, Fences and Walls;~~
~~c. Chapter 3.3 - Automobile and Bicycle Parking;~~
~~d. Chapter 3.4 - Public Facilities and Franchise Utilities;~~
~~e. Chapter 3.6 - Other Standards (Telecommunications Facilities, Solid Waste Storage, Environmental Performance, Signs), as applicable.~~ ***The standards of Chapter 3 are evaluated under Site Plan Review. The design elements of Chapter 2 are reviewed under Design Review.***

~~**F. Existing Development.** The applicant shall be required to upgrade any existing development that does not comply with the applicable land use district Development standards in conformance with Chapter 5.2; Non-Conforming Uses and Development;~~ ***Conflicts with 4.2.200C and with Chapter 5.2***

F. Final Design Plan. A Final Design Plan shall be submitted to the Community Development Department. The Final Design Plan shall depict the proposal as approved and shall incorporate all conditions of approval contained in the decision. No building permits will be issued until the Final Design Plan is approved.

4.2.400 Minimum Development Standards

A. Purpose. Minimum Development Standards (MDS) are intended to streamline development review for minor additions or expansions and/or changes in use, and for single family and duplex dwellings. MDS shall ensure compliance with specific appearance, transportation safety and utility standards specified in this Code.

B. Applicability. This section applies to developed properties that do not require Site Plan Review as specified in Section 4.2.200(A) where there is:

1. A building or use expansion of 50 percent or less than the existing building or use area or there are 5,000 square feet or less of additional building or use gross area, or

2. A change in use of a building or property that increases demand on public facilities and/or requires additional parking spaces, or

3. The construction of a single family or duplex dwelling in the RL, RS or RM district that does not have existing full utility and street frontage infrastructure.

C. Exception. Where the property is currently in compliance, and will remain in compliance, with all standards specified in Section 4.2.400(E) or (F), the MDS section shall not apply.

D. Review. MDS are reviewed under the Type I process, unless the Community Development Director finds that the proposed use should be reviewed under the Type II review process.

E. Applicable Commercial, Industrial, Multi-family and Institutional Standards. MDS applications under this subsection shall only be subject to the following Development Code standards:

1. Equipment, outdoor storage, manufacturing and service/delivery areas shall be screened as specified in Chapter 3.2.

2. Parking and vehicle circulation areas shall be paved and striped as specified in Chapter 3.3.

3. Bicycle parking shall be installed or upgraded to meet the standards specified in Chapter 3.3.

4. Access to the public right of way shall comply with Chapter 3.1 unless exempted by Section 5.2.100E.

5. New parking areas shall meet the landscaping requirements of Chapter 3.2.

6. Sidewalks shall be constructed along the frontage(s) of the site when an existing public sidewalk exists within 300 feet of the site along the same frontage abutting the subject property.

7. Public utilities shall be adequate to serve the proposal. Where existing utilities are to be replaced, or new utilities are to be installed, construction shall comply with this Code and with the City's Standards and Specifications.

F. Applicable Single Family and Duplex Dwelling Standards: MDS applications under this subsection shall only be subject to the following Development Code standards:

1. Where available, public water and sewer mains shall be extended through the length of the property frontage.

2. A full street and/or alley improvement shall be constructed along the frontages of the property when an improved street and/or alley has been built to the property line. The Community Development Director may grant a waiver of this requirement under Section 3.4.150. In such cases, an agreement to not remonstrate against the formation of a local improvement district shall be recorded against the property.

   a. For properties over one acre in size where future division of the property is allowable, street and/or alley improvements are not required if the any portion of the dwelling is located more than 300 feet from an improved street or alley. In such cases, an agreement to not remonstrate against the formation of a local improvement district shall be recorded against the property.

3. Sidewalks shall be extended through the site when an existing public sidewalk is within 600 feet along the same street frontage abutting the subject property. The Community Development Director may grant a waiver of this requirement under Section 3.4.150 if it is determined that there is little likelihood that a functioning network of sidewalks will be installed in the area. In such cases, an agreement to not remonstrate against the formation of a local improvement district shall be recorded against the property.

4.2.4500 Bonding and Assurances for All Developments.

A. Performance Bonds for Public Improvements. On all projects where public improvements are required, the City will allow concurrent construction of public and private improvements if the owner enters into a Site Plan Development Agreement stating that all private and public improvements shall be completed prior to certification of final occupancy. The City ~~shall~~ may require a bond or other adequate assurances in an amount not greater than ~~100%~~ 120 percent of the construction cost, as determined by the City, ~~or other adequate assurances~~ as a component of ~~condition of site development approval~~ the Site Plan Development Agreement in order to guarantee the public improvements.

B. Release of Performance Bonds. The bond or assurance shall be released when the ~~City Planning~~ Community Development Director finds the completed project conforms to the ~~site development approval~~ approved Site Plan, including all conditions of approval.

C. Warranty Bond. The developer shall file with the City a warranty bond executed by a surety company, or other financial security acceptable to the Community Development Director, to cover any public improvements constructed as part of the approved development. The

warranty period shall be one year beginning on the date of initial acceptance of the public improvements by the City. The bond shall guarantee the workmanship of the public improvements and shall be in the amount of twelve percent of the value of the improvements. The Warranty Bond shall be effective for no less than eighteen months.

D~~C~~. **Completion of Landscape Installation**. Landscaping shall be installed in accordance with the land use approval prior to issuance of an occupancy permit. A security equal to 120% of the cost of the landscaping as determined by the ~~City Planning~~ Community Development Director may be accepted if winter weather prevents installation of the approved landscaping. ~~or a qualified professional may be accepted at the discretion of the Director~~. The security shall assure ~~such~~ installation within six months after occupancy. If the installation of the landscaping is not completed within the six-month period, the security may be used by the City to complete the installation.

4.2.5~~6~~00 Development in Accordance With Permit Approval.

A. **Final Approvals**. Development shall not commence until the applicant has received all of the appropriate land use and development approvals ~~(i.e.,~~ including but not limited to: ~~site development review approval~~ Site Plan Approval ~~)~~, grading permits and building permits. Construction of public improvements shall not commence until the City has approved all required public improvement plans (e.g., utilities, streets, public land dedication, etc.). The City may require the applicant to enter into ~~a development~~ an agreement (e.g., for phased developments and developments with required off-site public improvements), and may require bonding or other assurances for improvements, in accordance with Section 4.2.500; Bonding and Assurances. ~~Site Development Plan Review and Site Design Review approvals shall be subject to all of the limitations found in Chapter 4.1; Land Use Review and Procedures.~~

B. **Phased Development**. Phasing of development may be approved with a Site Plan ~~Development~~ Review application, subject to the following standards and procedures:

1. A proposed phasing plan shall be submitted with the Site Plan ~~Development~~ Review application.

2. The ~~Review Authority~~ proposal shall ~~approve~~ include a time schedule for developing a site in phases, but in no case shall the total time period for all phases be greater than five years from the date of final approval without reapplying for Site Plan ~~development~~ Review.

3. Approval of a phased site development proposal requires satisfaction of all of the following criteria:

   a. The public facilities required to serve each phase are constructed in conjunction with or prior to each phase;

   b. The phased development shall not result in requiring the City or other property owners to construct public facilities that are required as part of the approved underlying development proposal; and

   c. An application for phasing may be approved after Site Plan ~~Development~~ Review approval as a modification to the approved plan, in accordance with Chapter 4.1; Land Use Review and Procedures.

[Section 4.2 amended by Ord. NS-2122, adopted June 3, 2009]

Chapter 4.3 Subdivisions, Partitions, Replats ~~Land Divisions~~ and Property Line Adjustments ~~Procedures~~

Sections:

4.3.100 **Purpose and Applicability**
4.3.200 **General Requirements**
4.3.300 **Tentative Plan ~~Approval Process~~**
4.3.400 **~~Submission of~~ Final Plat**
4.3.500 **Replats**
4.3.600 **Property Line Adjustments**

4.3.100 Purpose and Applicability

A. Purpose. The purpose of this chapter is to:

1. Provide rules, regulations and standards governing the review and approval of subdivisions, partitions, replats and property line adjustments~~., as defined below and in Chapter 1.2; Definitions:~~;

   ~~a. Subdivisions are the creation of four or more lots from one parent lot, parcel or tract, within one calendar year.~~

   ~~b. Partitions are the creation of two or three parcels within one calendar year.~~

   ~~c. Property line adjustment means the relocation or elimination of a common property line between abutting properties.~~ ***(Previously moved to Chapter 1.2)***

2. Carry out the City's development pattern, as envisioned by the Bend Area General Plan;
3. Encourage efficient use of land resources, full utilization of urban services, and transportation options;
4. Promote the public health, safety and general welfare through orderly and efficient urbanization;
5. Reduce ~~Lessen~~ or avoid traffic congestion, and secure safety from fire, flood, pollution and other dangers;
6. Provide adequate light and air, prevent overcrowding of land, provide open space opportunities, and facilitate adequate provision for transportation, water supply, sewage and drainage; and
7. Encourage the conservation of energy resources.

B. Applicability. Units of land shall only be created or reconfigured in conformance with the standards of this Chapter and Oregon Revised Statutes Chapter 92.

4.3.200 General Requirements

~~**A. Pre-application Meeting**. Prior to submitting a tentative plan, each applicant or his representative is required to meet with the Planning Division to review the proposal. The intent of this meeting is to advise the applicant of the requirements and standards of this ordinance~~.

A.~~B.~~ Application ~~Submission~~ Processes. ~~Any person proposing a land division or reconfiguration, or his authorized agent or representative, shall be approved with an application and filing fee for a land division or reconfiguration, tentative plan prepared by a licensed surveyor or engineer together with improvement plans and other supplementary material as may be required. A master development plan may also be required in accordance with subsection 4.3.200(C) below. The applicant must submit 15 copies of any plan required together with all required accompanying material to the Planning Division~~. The first step for all subdivisions, partitions and replats is the review of a tentative plan. Upon approval of a tentative plan, the applicant must submit engineered plans to the City for construction of any public improvements approved as part of the tentative plan. The construction plans shall be reviewed by the City for conformance with the City's Standards and Specifications. Upon approval of the construction plans, the applicant shall build the improvements or provide a financial security guaranteeing the future construction of the improvements. Upon completion of the infrastructure construction and fulfillment of any conditions of approval, the final step is the City's review and approval of a final plat and recordation of the final plat with Deschutes County.

~~C. **Informational Requirements**. The following information shall be shown on the tentative plan or provided in accompanying materials. No tentative plan shall be considered complete unless all such information is provided.~~

~~1. General information required:~~

~~a. Proposed or existing name of the land division.~~

~~b. Names, addresses and phone numbers of the owner of record, authorized agents or representatives, engineer or surveyor, and any assumed business names filed or to be filed with the Corporation Commission by the applicant.~~

~~c. Date of preparation, true north, scale, and gross area of the proposed subdivision.~~

~~d. Appropriate identification of the drawing as a tentative plan for a subdivision.~~

~~e. Location and tract designation sufficient to define its location and boundaries, and a legal description of the tract boundaries in relation to existing plats and streets.~~

~~f. Certified copy of the recorded instrument under which the applicant claims an ownership interest, or copy of a land sales contract which binds the applicant in the event of tentative approval.~~

~~g. A Title Report and/or a Subdivision Guarantee prepared within the previous ninety (90) days.~~

~~h. If a tract of land has water rights, the application shall be accompanied by a water rights division plan approved by the irrigation district or other water district holding the water rights, or when there is no such district, by the County Watermaster.~~

~~i. A letter or other written documentation from the Bend Metro Parks and Recreation District which indicates that the applicant has met with the District to discuss the proposed land division or reconfiguration and provide the District an opportunity to review the design for options to enhance existing parks and trails, and develop new parks and trails.~~

~~j. If a proposed subdivision contains more than 10 lots, the application shall be accompanied by a computer water analysis prepared by the City of Bend Engineering Division.~~

~~2. Existing Conditions. Information concerning existing on-site conditions and conditions within 300 feet of all property included in the proposed land division or reconfiguration:~~

~~a. Location, names, and widths of existing improved and unimproved streets and roads, bikeways, and access corridors.~~

~~b. Location of any existing features such as section lines, section corners, city and special district boundary lines, and survey monuments.~~

~~c. Location of existing structures, irrigation canals and ditches, pipelines, waterways, railroads, and any natural features such as rock outcroppings, designated wetlands, wooded areas, and natural hazards.~~

~~d. Location and direction of water courses, and the location of areas subject to flooding and high water tables, including areas lying below the100-year flood elevation as indicated on the most recent Flood Insurance Rate Maps as prepared by the Federal Emergency Management Agency.~~

~~e. Location, width, and use or purpose of any existing easement or right-of-way for utilities, bikeways, and access corridors within and adjacent to the proposed land division or reconfiguration.~~

~~f. Existing sanitary and storm sewer lines, water mains, septic facilities, culverts, and other underground and overhead utilities within and adjacent to the proposed land division or reconfiguration .~~

~~g. Contour lines related to City datum and having minimum intervals of two feet.~~

~~h. Bend Area General Plan and Zoning Map classification of lands within and adjacent to the proposed land division or reconfiguration .~~

~~i. Names and addresses of all property owners within 100 feet of the property.~~

~~3. Information concerning proposed land division or reconfiguration:~~

~~a. Location, names, width, typical improvements, cross sections, bridges, culverts, approximate grades, curve radii and centerline lengths and reserve strips of all~~

~~proposed streets, and the relationship to all existing and projected streets within 300 feet.~~

~~b. Location, width, and purpose of all proposed easements or rights-of-way for utilities, bikeways, and access corridors, and relationship to all existing easements and rights-of-way within 300 feet.~~

~~c. Location of at least one permanent bench mark within the existing or proposed land division boundary.~~

~~d. Location, approximate area, and dimensions of each lot, parcel, or designated unit of land and proposed lot or parcel numbers.~~

~~e. Location, approximate area, and dimensions of any lot, parcel, or unit of land proposed for public use, the use proposed, and plans for improvements or development thereof.~~

~~f. Proposed use, location, approximate area, and dimensions of any lot, parcel, or unit of land intended for nonresidential use within a residential land division.~~

~~g. Phasing – show phase lines on the tentative plan.~~

~~h. Source, method, and preliminary plans for domestic and other water supplies, sewage disposal, storm water disposal and other drainage facility plans, and all utilities.~~

~~i. Description and location of any proposed common area and community facility.~~

~~j. Proposed deed restrictions including access restrictions or protective covenants if such are proposed to be utilized.~~

~~k. Statement from each utility company proposed to serve the proposed land division or reconfiguration stating that each such company is able and willing to serve the proposed subdivision as set forth in the tentative plan, and the conditions and estimated costs of such service. Each utility purveyor shall be noted on the tentative plan.~~

~~l. Proposed fire protection system for the land division or reconfiguration, including fire hydrant locations and sizes of water mains.~~

~~m. Solar Access. Provide a statement relative to the solar access to be provided by the subdivision plan.~~

~~4. Future Subdivision. Where a tract is proposed to be divided into parcels, lots, or units of land of an acre or more, the Review Authority may require an arrangement of parcels, lots, units of land and streets such as to permit future subdivision in conformity to the street requirements and other requirements contained in this ordinance.~~
Moved to Section 4.3.300(B)

4.3.300 ~~Approval Process~~ Tentative Plan

A. Tentative Plan Process Proposed partitions, subdivisions and replats shall be processed as Type II applications in accordance with Section 4.1.400.

B.~~C.~~ Informational Requirements A tentative plan shall be prepared by a professional land surveyor, a registered professional engineer or a registered landscape architect and contain the ~~following~~ information listed below. ~~shall be shown on the tentative plan or~~ Some information may be omitted from the tentative plan if it is provided in accompanying materials. No tentative plan shall be considered complete unless all ~~such~~ the required information is provided.

from 4.3.200

1. General information required:

   a. Proposed or existing name of the ~~land division~~ subdivision.

   b. Names, addresses and phone numbers of the owner of record, authorized agents or representatives, engineer or surveyor, and any assumed business names filed or to be filed with the Corporation Division ~~Commission~~ by the applicant.

   c. Date of preparation, true north, scale, and gross area of the proposed subdivision, partition or replat.

   d. Appropriate identification of the drawing as a tentative plan for a subdivision, partition or replat.

   e. Location and tract designation sufficient to define its location and boundaries, and a legal description of the tract boundaries in relation to existing plats and streets.

f. Certified copy of the recorded instrument under which the applicant claims an ownership interest, or copy of a land sales contract which binds the applicant in the event of tentative approval.

g. A Title Report and/or a Subdivision Guarantee prepared within the previous ninety (90) days.

h. If a tract of land has water rights, the application shall be accompanied by a water rights division plan approved by the irrigation district or other water district holding the water rights, or when there is no such district, by the County Watermaster.

i. A letter or other written documentation from the Bend Metro Park ~~Parks~~ and Recreation District which indicates that the applicant has met with the District to discuss the proposed ~~land division or reconfiguration~~ subdivision, partition or replat and provide the District an opportunity to review the design for options to enhance existing parks and trails, and develop new parks and trails.

j. If ~~a proposed~~ an application is for a subdivision, ~~contains more than 10 lots,~~ the application shall be accompanied by a ~~computer~~ sewer and water analysis prepared by the City of Bend ~~Engineering Division~~.

2. Existing Conditions. Information concerning existing on-site conditions and conditions within 150 ~~300~~ feet of all property included in the proposed subdivision, partition or replat ~~land division or reconfiguration~~:

a. Location, names, and widths of existing improved and unimproved streets and roads, bikeways, and access corridors.

b. Location of any existing features such as section lines, section corners, city and special district boundary lines, and survey monuments.

c. Location of existing structures, irrigation canals and ditches, pipelines, waterways, railroads, and any natural features such as rock outcroppings, designated wetlands, wooded areas, and natural hazards.

d. Location and direction of water courses, and the location of areas subject to flooding and high water tables, including areas lying below the100-year flood elevation as indicated on the most recent Flood Insurance Rate Maps as prepared by the Federal Emergency Management Agency.

e. Location, width, and use or purpose of any existing easement or right-of-way for utilities, bikeways, and access corridors within and adjacent to the proposed ~~land division or reconfiguration~~ subdivision, partition or replat.

f. Existing sanitary and storm sewer lines, water mains, septic facilities, culverts, and other underground and overhead utilities within and adjacent to the proposed ~~land division or reconfiguration.~~ subdivision, partition or replat.

g. Topographic contour lines shown at one-foot intervals for slopes of 10 percent or less. For slopes greater than 10 percent, contour lines shall be shown at two-foot intervals. Slopes greater than 25% shall be identified. ~~Contour lines related to City datum and having minimum intervals of two feet~~. ***Made consistent with Chapter 4.2***

h. Bend Area General Plan and Zoning Map classification of lands within and adjacent to the proposed ~~land division or reconfiguration~~ subdivision, partition or replat.

~~i. Names and addresses of all property owners within 100 feet of the property.~~

3. Information concerning proposed subdivision, partition or replat. ~~land division or reconfiguration~~:

a. Location, names, width, typical improvements, cross sections, bridges, culverts, approximate grades, curve radii and centerline lengths and reserve strips of all proposed streets, and the relationship to all existing and projected streets within 150 ~~300~~ feet.

b. Location, width, and purpose of all proposed easements or rights-of-way for utilities, bikeways, and access corridors, and relationship to all existing easements and rights-of-way within 150 ~~300~~ feet.

c. Location of at least one permanent bench mark within the existing or proposed ~~land division~~ subdivision, partition or replat boundary.

d. Location, approximate area, and dimensions of each lot, parcel, or designated unit of land and proposed lot or parcel numbers.

e. Location, approximate area, and dimensions of any lot, parcel, or unit of land proposed for public use, the use proposed, and plans for improvements or development thereof.

f. Proposed use, location, approximate area, and dimensions of any lot, parcel, or unit of land intended for nonresidential use within a residential land division.

~~g. Phasing show phase lines on the tentative plan.~~ ***In phased tentative plan section.***

g ~~h~~. Source, method, and preliminary plans for domestic and other water supplies, sewage disposal, storm water disposal and other drainage facility plans and all other utilities.

h ~~i~~. Description and location of any proposed common area and community facility.

i ~~j~~. Proposed deed restrictions including access restrictions or protective covenants if such are proposed to be utilized.

j ~~k~~. Statement from each utility company proposed to serve the proposed land division or reconfiguration stating that each such company is able and willing to serve the proposed subdivision as set forth in the tentative plan, and the conditions and estimated costs of such service. Each utility purveyor shall be noted on the tentative plan.

k ~~l~~. Proposed fire protection system for the land division or reconfiguration, including fire hydrant locations and sizes of water mains.

l ~~m~~. Solar Access. Provide a statement relative to the solar access to be provided by the subdivision plan in accordance with Chapter 3.5.

4. Future Subdivision. Where a tract is proposed to be divided into parcels, lots, or units of land of an acre or more, the Review Authority may require an arrangement of parcels, lots, units of land and streets such as to permit future subdivision in conformity to the street requirements and other requirements contained in this Code ~~ordinance~~.

C.~~A.~~ Phased Tentative Plan An overall ~~development~~ tentative plan shall be submitted for ~~all developments affecting~~ land ~~under the same ownership~~ for which a phased subdivision ~~of the land development~~ is proposed ~~contemplated~~. The Review Authority shall review all phases of a phased ~~development~~ tentative plan at the same time ~~the tentative plan for the first phase of a phased subdivision is reviewed~~. The final plat for each phase shall be filed in accordance with the applicable provisions of Section 4.3.400(A) of this Code. The phased ~~development~~ tentative plan shall include, but not be limited to, the informational requirements of Section 4.3.2300(B); ~~General Requirements of this ordinance,~~ as well as the following elements:

1. Overall ~~development~~ tentative plan, including phase or unit sequence, and the schedule for initiation of improvements and projected completion date.

~~2. Show compliance with the Bend Area General Plan and implementing land use ordinances and policies.~~

2.~~3~~. Overall facility development phasing plan, including transportation and utility facilities plans that specify the traffic pattern plan for motor vehicles, bicycles, and pedestrians, water system plans, sewer system plans and utility plans.

3. ~~4.~~ Development and phasing plans for any common elements or facilities.

4. ~~5.~~ ~~The Review Authority may require a potential~~ Plan of development pattern for streets, bikeways, and access corridors for adjoining lands as required by the Review Authority. ~~to be submitted together with the phased tentative plan as part of the overall development plan.~~

~~5. The final plat for each phase shall be filed in accordance with the applicable provisions of Chapter IV of this Code.~~ **Moved to section C, above.**

~~**B. Approval of a Master Planned Development.** As an alternative to a phased tentative plan, a Master Planned Development plan may be submitted in conformance with Chapter 4.5. Any tentative plan submitted subsequently for the Master Planned Development area shall substantially conform to the approved Master Planned Development plan unless approved otherwise by the City.~~ ***Already a criterion of approval.***

D. ~~C.~~ Development Options. If the subject property and the surrounding area ~~is~~ are eligible for Mid-block Development, the proposed development plan design shall enable the future development of Mid-block Development, as allowed by Section 4.5.200, for the adjoining properties.

E. ~~D.~~ **~~Required Findings~~ Criteria For ~~Land Division or Reconfiguration~~ Subdivision, Partition or Replat Approval**. The Review Authority shall not approve a tentative plan for a proposed ~~land division~~ subdivision, partition or replat ~~reconfiguration~~ unless the Review Authority finds~~, in addition to other requirements and standards set forth in this ordinance~~, that the ~~land division~~ subdivision, partition or replat ~~reconfiguration as proposed or modified~~ will satisfy the ~~intent and requirements of this ordinance, and Bend Zoning Ordinance, and be in compliance with the Bend Area General Plan. Such findings shall include the following:~~ following criteria of approval:

~~1. No application for a new or reconfigured subdivision or partition shall be approved unless the following requirements are met:~~

1. ~~a.~~ The proposal ~~contributes to orderly development and land use patterns in the area, and~~ provides for the preservation of natural features and resources such as streams, lakes, natural vegetation, special terrain features, and other natural and historic resources to the maximum degree practicable. ~~as determined by the City of Bend~~.

2. The proposal allows for the development of adjacent property in accordance with the provisions of this Code.

3. The proposal meets all standards and requirements of this Code.

4. ~~b.~~ All required public facilities have adequate capacity, as determined by the City, to serve the proposed ~~land division~~ subdivision, partition or replat ~~reconfiguration. will not create excessive demand on public facilities and services required to serve the development.~~ ***Changed to read similarly to criterion #5 under Chapter 4.2, Site Plan Approval.***

5. ~~c.~~ The proposal ~~land division or reconfiguration~~ contributes to the orderly development of the Bend area transportation network of roads, bikeways, and pedestrian facilities, and allows for continuation and expansion of ~~does not conflict with~~ existing public access easements within or adjacent to the subdivision, partition or replat ~~land division~~.

~~d. The proposed land division or reconfiguration provides a variety of lot sizes in conformance with the following standards:~~

~~i. No more than 50% of the lots are the same size with a size differential of 10% or more except for zero lot line attached housing.~~

6. ~~e.~~ Each lot, parcel, or designated unit of land is suited for ~~the use~~ its intended use ~~or offered~~.

~~f. An approved water rights division plan.~~

~~g. If the land division or reconfiguration adjoins an SM or SMR zone, the existence and location of such zone shall be entered on the deed for the lots or parcels created by the land division or reconfiguration.~~ ***Moved to Section 4.3.300(H), below.***

~~h. The tentative plan for the proposed subdivision meets the requirements of ORS 92.090.~~

~~i. If the tentative plan is approved with phasing, the final plat for each phase shall be filed in accordance with the applicable provisions of Article IV of this ordinance.~~ ***Moved to Section 4.3.300(B).***

~~2. The Review Authority shall deny an application for partitioning when it appears the partitioning is part of a plan or scheme to create more than three (3) parcels without going through subdivision, or is part of a development pattern having the effect of creating more than three (3) parcels without subdividing.~~

7. ~~3. Additional Factors to be Considered. In addition to the requirements set forth in subsections one (1) and (2) of this section, the following additional factors shall be considered by the Review Authority when appropriate:~~

~~a.~~ That the placement ~~and availability~~ of utilities is in accordance with the adopted city standards.

8. ~~b.~~ The proposal meets the requirements of the ~~Safety from f~~ Fire Code, adopted flood protection standards, and other adopted standards intended to protect against natural hazards.

~~c. Adequate provision of public facilities and services.~~ ***Covered in #4, above.***

~~d. Possible affects on natural, scenic, and historical resources.~~ ***Covered in #1, above.***

~~e. Need for onsite or offsite improvements such as, but not limited to, access corridors, pedestrian facilities, and bikeways.~~ ***Covered in #5, above.***

~~f. Need for additional setback, screening, landscaping, and other requirements relative to the protection of adjoining and area land uses.~~ ***This should only come up if needed for a Conditional Use Permit.***

9. ~~g.~~ The proposal is in substantial conformance ~~Conformance~~ with ~~the~~ any applicable approved master development plan, master facilities plan, ~~and~~ refinement plan and/or special area plan.

10. The proposal complies with the standards of the zoning district in which the project is located and the standards of the zoning district that implements the General Plan designation of the subject property.

F. ~~E.~~ ~~Supplemental~~ Improvement Requirements For Partitions.

1. In the approval of a land partition, the Review Authority may require as a condition of approval any improvements that may be required for a subdivision under the provisions of this ordinance. All roads in partitions shall be dedicated to the public without reservation or restriction.

2. Easement Access. The Review Authority may require the applicant to improve an easement access serving two or more parcels according to the City's street standards.

G. ~~F.~~ Special Partitioning Regulations.

1. The partitioning of a tract of land in which not more than one (1) additional parcel is created and transferred to a public or semi-public agency for the purpose of a road, utility, railroad, electric substation, park, trail or canal right-of-way may be approved by the Review Authority without the parcel to be transferred meeting the minimum lot/parcel size standards of this Code and without the need for a variance. ~~proceeding through the land division process as outlined in this ordinance without proceeding through the tentative plan review process as specified in this ordinance. Such tracts may be smaller than the minimum lot and/or parcel size allowed in the zone in which the tract is located without need for variance.~~

H. ~~G.~~ ~~Land Divisions~~ Subdivisions, partitions, replats and property line adjustments within the Urban Holding Districts (UH-2 ½ and UH-10). The following standards shall apply to all ~~land divisions~~ subdivisions, partitions, replats and property line adjustments within the Urban Holding Districts (UH-2 ½ and UH-10) where development is permitted in conformance with Table 2.1.1100B. New residential development shall not exceed the allowed density of the zone as identified in Table 2.1.1100A.

1. Development Options. In order to preserve the urbanizable land within the Urban Holding zones to the greatest extent practical prior to master planning and/or rezoning, new development involving a ~~land division~~ subdivision, partition, replat or property line adjustment shall conform to the following development standards listed below.

   a. New ~~land partitions and~~ subdivisions, partitions and replats shall develop as a Cluster Development. "Cluster Development' is defined as a residential development pattern consisting of smaller lots not to exceed ½ acre in size, which abut one another and whereby one single family home is permitted on each lot consistent with the overall maximum density for the area of the original land division. The larger parent parcel is retained for re-development and the overall development after the property is re-zoned. Cluster development will allow for more efficient use of the land and preserve the greatest potential for redevelopment in the future.

   b. New lots and parcels or lots and/or parcels adjusted through property line adjustment in an Urban Holding Zone shall meet the lot requirements below:

Minimum Lot size:	15,000 sq ft.
Maximum Lot size:	½ acre
Minimum lot width:	60 feet
Minimum lot depth:	100 feet

Example: A 40 acre property in the UH-10 could be subdivided into 4 lots consistent with the allowed density. The Cluster Development provision will require the development of three (3) small lots with a maximum size of ½ acre and the remaining parent parcel. Cluster Development will allow one single family home to be constructed on each lot. The lots would be served with an on-site sewage disposal system.

a. A "shadow plat" or re-development plan is required prior to approval of the subdivision, partition or replat ~~land division~~.

b. No further land division can occur on the parent parcel until the property is re-zoned with an urban zoning designation and an approved development plan.

c. Exceptions:

i. Properties which are 20 acres or larger and have a Framework Plan designation for future economic use shall be permitted to apply for a two lot partition where the parcel size for one lot is a minimum of 5 acres. No further land division can occur on the parent parcel until the property is re-zoned with an urban zoning designation and an approved development plan.

I. Special Regulations for Lands Abutting the Surface Mining District. If the subdivision, partition or replat adjoins the SM zone, the existence and location of such zone shall be entered on plat for the lots or parcels created by the subdivision, partition or replat.

4.3.400 ~~Submission of the~~ Final Plat

A. Filing Time Period Requirements. Except as provided for ~~herein~~ in this Chapter, the applicant shall prepare and submit to the City, a final plat that is substantially in conformance with the approved tentative plan ~~as approved~~. Final plats shall be processed as Type I applications in accordance with Section 4.1.300.

~~**B. Submission Recordation of Final Plats**~~

1. If a tentative plan is approved for a single phased development, the final plat shall be filed with the City within ~~one (1) year~~ two years of the approval date of the tentative plan. A one-year extension may be approved in accordance with Section 4.1.1310.

2. If a tentative plan is approved for phased development, the final plat for the first phase shall be filed within ~~one (1) year~~ two years of the approval date ~~for~~ of the tentative plan.

3. The final plats for any subsequent phase shall be filed within three ~~(3)~~ years of the approved date for the tentative plan, unless a longer period of time is allowed through the tentative plan approval process. In no case shall the final plat be recorded more than five years from the date of the tentative approval.

4. If the applicant fails to file a final plat within the specified timelines, the tentative plan for those phases shall become null and void.

B. ~~C. Form of Final Plat~~ Submittal of the Final Plat Prior to recordation with Deschutes County, the final plat shall be submitted to the City for review in the form prescribed by state statute, the Deschutes County Surveyor and this Code ~~ordinance~~. ~~All plats and other writings or dedications made a part of such plats offered for recording shall be made in conformance with state statute, upon material that is 18 inches by 24 inches, suitable for binding and copying, have such characteristics of strength and permanency as may be required by the City. The plan shall be of such a scale, and the indication of the approvals thereof and of the dedication and affidavit of the surveyor, shall be of such size or type as will be clearly legible, but no part shall come nearer any edge of the sheet than one inch. The plat may contain as many sheets as necessary, but a fact sheet and index page shall be included for plats of two or more sheets.~~

C. ~~D.~~ Requirements of Survey and Plat of Land Division or Reconfiguration. Any final ~~subdivision~~ plat submitted shall meet the survey and monumentation requirements of the applicable Oregon Revised Statutes.

D. ~~E.~~ Information on the Final Plat. In addition to the requirements of the tentative plan approval or otherwise required by law, the following information shall be shown on the final plat:

1. Name of subdivision or partition.

2. Name of owner, applicant, and engineer or surveyor.

3. The date, scale, north point, legend, controlling topography such as bluffs, creeks and other bodies of water, and existing highways and railroads.

4. Legal description of the tract boundaries.

5. Reference points of existing surveys, identified, related to the plat by distances and bearings, and reference to a field book or map as follows:

   a. Stakes, monuments, or other evidences found in the ground and used to determine the boundaries of the subdivision, partition or replat.
   b. Adjoining corners of adjoining subdivisions, partitions or replats.
   c. Other monuments found or established in making the survey or required to be installed by provisions of this ordinance.
   d. The exact location and width of rights-of-way and easements intercepting the boundary of the tract.

6. Tract boundary lines, and street rights-of-way and center lines, with dimensions, bearing or deflecting angles, radii, arcs, points of curvature and tangent bearings. Normal high water lines for any river, creek~~, bay,~~ or other body of water. Tract boundaries and street bearings shall be shown to the nearest 0.01 feet. No ditto marks shall be used.

7. ~~Streets.~~ The width of the streets being dedicated and the curve data shall be based on the street center line. In addition to the center line dimensions, the radius and central angle shall be indicated together with the long chord distance and bearing.

8. ~~Easements.~~ Easements shall be noted by short dashed ~~fine dotted~~ lines, clearly identified and, if already of record, their recorded reference. If an easement is not of record, a statement of the easement shall be given. The width of the easement, its length and bearing, and sufficient ties to locate the easement with respect to the subdivision shall be shown. If the easement is being dedicated by the map, it shall be properly referenced in the owner's certificates of dedication.

9. ~~Lot and Parcel Numbers.~~ Lot and parcel numbers beginning with the number "1" and numbered consecutively.

10. ~~Public Lands.~~ Public lands, including strips and easements shall be clearly marked to distinguish it from lots intended for sale.

11. ~~Access Restrictions.~~ Limitations on rights of access to and from streets, lots, and other parcels of land.

12. ~~Area~~. The area of each lot, parcel or unit of land, if larger than one acre, to the nearest hundredth of an acre; and the area of each lot, parcel or unit of land less than one acre, to the nearest square foot.

13. ~~Certificates and Signatures.~~ Appropriate space for all signatures as specified by the Deschutes County Surveyor shall be included on the final plat. ~~The following certificates and signatures are required and shall be combined where appropriate:~~
    ~~a. A signature by each party having any record title interest in the land, consenting to the preparation and recording of the plat.~~
    ~~b. The seal and signature of the surveyor responsible for the survey and final map.~~
    ~~c. The signature of the County Surveyor.~~
    ~~d. The signature of the County Tax Assessor.~~
    ~~e. The signature of the County Tax Collector.~~
    ~~f. A signature of an authorized representative of the irrigation district, where applicable. All plans, plats or replats of land divisions located within the boundaries of an irrigation district, drainage district, water control district, district improvement company, or similar service district shall be submitted to the board of directors of the district or company and its approval thereof shall be indicated thereon by the board before City approval of such plan, plat, or replat of any subdivision. Except, that if the applicant is unable to obtain action or approval of any district or company within 45 days, the applicant shall notify the governing body in writing and thereafter the governing body shall serve notice on that district or company by certified mail advising the district or company that any objections to the plan, plat, or replat must be filed in writing with the governing body within 20 days. Failure of the district or company to respond shall be considered an approval of such plan, plat, or replat.~~
    ~~g. The signature of the City Engineer.~~
    ~~h. The signature of the City Planning Director.~~
    ~~i. A signature of approval by the Board of County Commissioners.~~
    ~~j. Other certificates or signatures that may be required by state regulations.~~

E. ~~**F.**~~ **Supplemental Information with the Final Plat.** The following data, if applicable, shall accompany the final plat.

1. Title Report. A preliminary title or subdivision guarantee report issued by a title insurance company in the name of the owner of the land, showing all parties whose consent is necessary and their interest in the premises; such report shall show evidence of a clear and marketable title and shall have been prepared within 30 days prior to submitting the final plat for review.

2. Survey Closure ~~Data~~ Sheets. A copy of the surveyor's survey closure sheets. ~~Sheets and drawings shall contain the following information:~~

   ~~a. Traverse data including the coordinates of the boundary of the subdivision and ties to section corners and donation land claim corners, and showing the error of closure, if any. A survey control work sheet may be substituted for this item.~~

   ~~b. The computation of distances, angles, and courses shown on the plat.~~

   ~~c. Ties to existing monuments, proposed monuments, adjacent subdivisions, street corners, and state highway stationing.~~

3. Deed Restrictions. A copy of any deed restrictions applicable to the subdivision, ~~or~~ partition or replat.

4. Homeowner's Association. A copy of any homeowner's association agreements proposed or required for the subdivision.

5. Dedications. A copy of any dedication requiring separate documents with specific reference to parks, playgrounds, etc.

6. Taxes. A list of all taxes and assessments on the tract which have become a lien on the land subdivided or partitioned.

~~7. Improvements. If grading, street improvements, sidewalks, pedestrian access corridors, bikeways, sewer or water facilities are required as a condition of approval of the final plat, the following shall be required to be submitted with final plat:~~

   ~~a. Improvement Plan in accordance with Chapter 3.4; Public Improvement Standards of this ordinance.~~
   ~~b. Plans and profiles of sanitary sewers, location of manholes, and drainage system.~~
   ~~c. Plans and profiles of the water distribution system showing pipe sizes and location of valves and fire hydrants.~~
   ~~d. Specifications for the construction of all utilities.~~
   ~~e. Grading plans and specifications as required for areas other than streets and ways.~~
   ~~f. Planting plans and specifications for street trees and other plantings in public areas.~~
   ~~g. Plans for improvements, design factors, or other provisions for fire protection or fire hazard reduction.~~

8. Subdivisions, partitions or replats adjoining SM ~~or SMR~~ Zones. Any final plat of which adjoins an SM ~~or SMR~~ zone must clearly show where such zone is located in relation to the subdivision boundaries. ***The SMR zone does not exist.***

9. Condominium Plats. Any final plat for a condominium shall be accompanied by a copy of the condominium declaration.

F. ~~G. Technical Review of Plat~~ Criteria for Final Plat Approval.

~~1. Ordinance Check.~~ Upon receipt by the Planning Division, the plat and other data shall be reviewed by the Review Authority to determine that the following criteria have been met:

1. The ~~land division~~ subdivision, partition or replat as shown is substantially the same as it appeared on the approved tentative plan, and ~~for compliance with provisions of this ordinance and other applicable laws.~~ all conditions of tentative plan approval have been or will be met.

~~2. Field Check. The City Engineer and Planning Director or their designated representatives may make such checks in the field as are desirable to verify that the map is sufficiently correct. The Engineer or Planning Director, or representatives thereof, may enter the property for this purpose.~~

~~3. Reimbursement. Expenses incurred by the City Engineer in the technical plat review shall be reimbursed by the applicant prior to final approval of the plat.~~

~~**H. Conditions of Plat Approval.**~~

~~1. The Review Authority shall determine whether the final plat conforms with the approved tentative plan and with these regulations. If the Review Authority does not approve the plat, the Review Authority shall advise the applicant of the changes or additions that must be made and shall afford the applicant an opportunity to make corrections. If the Review Authority determines that the plat conforms to all requirements the Review Authority shall recommend approval, provided supplemental documents and provisions for required improvements are satisfactory~~.

2. That the final plat contains the following elements: ~~No plat of a proposed land division or reconfiguration shall be approved unless:~~

   a. Streets and roads for public use are ~~to be~~ dedicated to the public without any reservation or restriction.
   b. Streets and roads held for private use and indicated on the tentative plan have been approved by the City.
   c. The plat contains provisions for dedication to the public of all streets, roads, bikeways, access corridors, parks, sewage disposal, and water supply system, if made a condition of the approval of the tentative plan.
   d. Explanations of all common improvements required as conditions of approval of the tentative plan ~~shall be~~ are recorded and referenced on the plat.
   ~~e. If the land division adjoins an SM or SMR zone, the existence and location of such zone shall be entered on the deeds for all lots or parcels created by the land division.~~

3. ~~No plat of a land division or reconfiguration shall be approved unless~~ That the developer has either constructed and had accepted by the City the required improvements or the developer has ~~executed an improvement agreement pursuant to the provisions of Section (E) above~~ filed with the City a financial security acceptable to the Community Development Director in accordance with Section J in lieu of constructing the improvements. ~~If the developer chooses to construct the improvements, he shall also file with the City a warranty bond executed by a surety company to cover the one (1) year warranty periods following acceptance by the City. Said bond shall be in the amount of twelve (12%) percent of the value of the improvements.~~ ***Some of this was moved to Subsection Q, below.***

G. ~~**K.**~~ **Final Plat Approval.** After the final plat has been ~~checked~~ reviewed and approved by the City ~~as provided in this article and when all signatures appear thereon, except those of the Planning Director, County Clerk, and Board of County Commissioners~~, and when all signatures as required by the Deschutes County Surveyor other than the Community Development Director, City Engineer and County Commissioner appear on the mylar, the Planning Manager ~~Director~~ and City Engineer shall ~~certify~~ sign the final plat mylar and return it to the applicant to file with Deschutes County. ~~and submit it to the Board of County Commissioners for final approval.~~

H. ~~**L.**~~ ~~**Filing**~~ **Recording of Plat.**

~~1. No plat shall have any force or effect until the same has been finally approved by the Board of County Commissioners. No title to any property described in any offer of dedication shall pass until the final plat has been filed~~. ***Moved to #3, below.***

1. ~~2.~~ Within 60 days of City approval, the applicant shall ~~file~~ submit the approved final plat~~, including an exact copy thereof as described in subsection four (4) of this section,~~ with the Deschutes County Clerk for recordation.

~~3. No plat shall be filed unless all ad valorem taxes and all special assessments fees or other charges required by law to be placed upon the tax roll, which have become a lien upon the land division or which will become a lien during the calendar year, have been paid.~~ ***This is a County requirement and enforcement item – it shouldn't be in the City's Code.***

2. ~~4. The applicant shall also submit with the final plat an exact photo mylar copy thereof. The engineer or surveyor who made the plat shall make an affidavit to indicate that the photocopy or tracing is an exact copy of the plat. The copy shall be filed with the County Recorder and shall be certified to him to be an exact copy and then shall be filed in the archives of the County, and be preserved by filing without folding.~~ The applicant shall provide exact copies of the recorded plat to the ~~County Assessor, County Sanitarian,~~ City Engineer and City Planning Division. ~~and appropriate postal and fire protection agencies. One original exact copy shall be filed with the City Engineer.~~

3. The plat shall not be in effect until it has been recorded with the Deschutes County Clerk .

I. ~~M.~~ **Errors in the Final Plat.** If an error in the final plat is discovered after the plat has been filed with the County Clerk, ~~said~~ the error shall be corrected by the filing of an affidavit of correction. ~~a correction plat which shall be submitted in the same manner as a final plat.~~

~~N. **Notice of Filing of Final Plat.** The applicant shall provide notice of the filing of the final plat to all parties who participated in the land use proceedings leading up to the filing of the final plat.~~ ***This is an antiquated provision – notice is provided to surrounding property owners of the tentative plan application, and notice of the tentative plan decision is mailed to parties of record. Type I proceedings on a plat don't have parties or opportunity to participate, so notice isn't warranted.***

~~I. **Improvement Agreement**~~

~~1. The developer may, in lieu of completion of the required improvements and repair to existing streets and facilities, request the City to approve an agreement between himself and the City specifying the schedule by which the required improvements and repairs shall be completed. Provided, however, any schedule of improvements agreed to shall not exceed one (1) year from the date the final plat is recorded. The agreement shall provide the follow information:~~

~~a. A list of all the contractors who will construct or complete the improvements and repairs required, and the cost of the project.~~
~~b. That the City may call upon the security filed to construct or complete the improvements and repairs if the schedule of improvements is not adhered to.~~
~~c. That the City shall recover the full cost and expense of any work performed by the City to complete construction of the improvements and repairs, including, but not limited to, attorneys' and engineering fees.~~
~~d. That a warranty period for such improvements shall be in effect for one (1) year following the completion and acceptance of the improvements. A form of surety shall be deposited with the City following acceptance of the improvements. Said form of surety shall be in the amount of twelve (12) percent of the value of the improvements and shall be for a minimum time period of eighteen (18) months.~~
~~e. That building permits will not be issued for construction on any lot or parcel within the land division until such time as all required improvements are completed, unless otherwise authorized by the City.~~

~~2. The City may reject an agreement authorized by this section for any reason the City deems sufficient.~~

J. ~~**Bond or Cash Deposit**~~ **Financial Security in Lieu of Construction.**

1. In lieu of completion of the required improvements, the developer may request the City approve a financial security between the developer and the City guaranteeing the construction of the required improvements and specifying the schedule by which the required improvements shall be completed. ~~The developer shall file, with any agreement specified in Section (I) above~~, The acceptance of financial security in lieu of construction is at the discretion of the Community Development Director. To assure ~~his full and faithful performance thereof, of~~ the construction of the required improvements, the developer shall ~~file~~ provide one of the following:

   a. A surety bond executed by a surety company authorized to transact business in the State of Oregon in a form approved by the City Attorney.
   b. A cash deposit ~~in a City account at an approved lending institution~~.
   c. An irrevocable standby letter of credit in a form approved by the City Attorney from a federally insured banking institution or savings & loan operating in Oregon that unconditionally promises to pay the funds pledged upon demand by the City. Such obligation must be unaffected by the financial status of the person who has obtained the letter of credit.
   d. ~~An "Assurance Provider" arrangement between the developer, the City and a federally insured financial institution which assures the City that funds to complete the performance of the developer's improvement agreement will be provided by the federally insured financial institution to the City in the event the developer does not complete performance of the improvement agreement. The form of the Assurance Provider arrangement, and the federally insured financial institution must be satisfactory to the City.~~ Other irrevocable financial security acceptable to the Community Development Director.

2. ~~Such assurance of full and faithful performance~~ The financial security shall be for 120% of the cost of the improvements and repairs as determined by the City.

3 If the developer fails to carry out the provisions of the agreement, the City shall call upon the bond, or letter of credit or cash deposit or ~~Assurance Provider arrangement~~ other financial security to finance any cost or expenses resulting from said failure. If the amount of the deposit, letter of credit or bond or ~~Assurance Provider arrangement~~ other financial security exceeds the cost and expense incurred by completing the improvements, the City shall release the remainder. If the amount of the deposit, letter of credit or bond or ~~Assurance Provider arrangement~~ other financial security is less than the cost and expense incurred by the City for the improvements and repairs, the developer shall be liable to the City for the difference.

K. Warranty Bond. Prior to final plat approval, the developer shall file with the City a warranty bond executed by a surety company, or other financial security acceptable to the Community Development Director, to cover a one-year warranty period beginning on the date of acceptance of the public improvements by the City. The bond shall guarantee the workmanship of the public improvements and shall be in the amount of twelve percent of the value of the improvements as determined by the City. The Warranty Bond shall be effective for no less than eighteen months.

4.3.500 Replats

A. Applicability

1. A replat is the act of platting the lots, parcels and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in a subdivision.

2. The relocation of a common boundary line between two lots/parcels within a recorded subdivision or partition shall not be considered a replat. A property line adjustment may occur in a platted subdivision or partition as provided for in Section 4.3.600.

B. Replat Process

1. A replat tentative plan and plat shall comply with the land division process specified in Sections 4.3.300 and 4.3.400 with the following exceptions:

   a. The word "Replat" shall be shown in the title block;
   b. The name or reference number of the previous plat and any additional recording information shall be retained in the title of the replat;
   c. Blocks, lots/parcels and portions thereof which are being replatted shall be identified where applicable; and
   d. Original plat information being deleted, abandoned or changed by the replat shall be shown lightly sketched or dotted on the drawing with a note of explanation.

4.3.~~5~~600 Property Line Adjustments

A. Applicability

1. The relocation or elimination of a common property line between abutting properties may be granted in accordance with the provisions of this section. The Property Line Adjustment provisions of this section shall not apply to:

   a. A property line adjustment that affects more than two abutting units of land.
   b. A property line adjustment that adjusts a property which was approved and/or created as open space, common area, private park, private road, or other ~~specifically required and/or designated~~ unit of land specifically required and/or designated by a previous land use approval.

B. Filing Procedures and Requirements.

1. Property line adjustments shall be processed as Type I applications in accordance with Section 4.1.300.

2. ~~1.~~ Any person proposing a Property Line Adjustment shall prepare and submit ~~two (2) copies of the documents hereinafter described,~~ an application in accordance with the prescribed procedures and the appropriate filing fee, to the Planning Division.

3. ~~2.~~ An application for a Property Line Adjustment shall be accompanied by the following materials:

a. A scale drawing prepared by a licensed surveyor or engineer showing the existing property lines, the proposed property lines, existing water, sewer and utility lines, and the footprint of all existing structures with setbacks to the existing and proposed property lines noted.
b. Legal descriptions for the existing properties and for the properties as adjusted.
~~c. A copy of the current property tax status from the County Tax Assessor. All taxes must be paid in full~~. ***This is a County issue to be tracked by the Assessor's Office prior to the County's approval of the plat.***
c~~d~~. A copy of the deed or other recorded instrument that signifies ownership of the affected properties.
d~~e~~. If the properties are not served by the City sewer system, provide documentation from the County Environmental Health Division which indicates that the proposed adjustment will be in compliance with all applicable requirements for sanitary septic systems when such systems exist on the properties affected by the adjustment.

C. ~~Requirements~~ Criteria for Tentative Approval.

1. No application for property line adjustment shall be approved unless the following ~~standards~~ criteria are met:

   a. The adjustment does not result in property sizes that are less than those established by the underlying zoning designation.
   b. Nonconforming properties that are less than the minimum size established for the zone shall not be further reduced in size.
   c. Existing structures shall not be made nonconforming with regard to setbacks, lot coverage or other requirements of the underlying zone, or this ordinance.
   d. Existing water and sewer service lines to the adjusted lots or parcels shall be in conformance with current City standards or shall be constructed to conform with current City standards.
   e. The applicant has submitted documentation from the Deschutes County Environmental Health Division that any existing ~~Existing~~ sanitary septic systems on the adjusted properties ~~shall~~ meet all requirements of the County Environmental Health Division.

D. Requirements for Final Approval.

1. In order to obtain final approval of a property line adjustment, the following requirements shall be completed within one (1) year of the tentative approval:

   a. New deeds or other instrument conveying ownership containing the legal descriptions for the adjusted properties shall be recorded with the County Clerk, if applicable.
   b. A survey drawing containing the stamp and signature of a licensed surveyor ~~or engineer~~ shall be recorded with the County Surveyor.
   ~~c. All property taxes on the adjusted properties shall be paid in full.~~
   c~~d~~. Verification of acceptance of water and sewer line construction to the adjusted properties by the City Engineering Division if applicable.
   ~~d. The applicant shall provide notice of the filing of the final plat to all parties who participated in the land use proceedings leading up to the filing of the final plat.~~ ***Property Line Adjustments are Type I proceedings – there are no participants except the applicant.***

[Chapter 4.3 amended by Ord. NS-2068, adopted August 15, 2007]
[Chapter 4.3 amended by Ord. NS-2113, adopted January 5, 2009]

ORDINANCE NO. NS-2151

AN ORDINANCE AMENDING THE BEND CODE BY AMENDING CHAPTER 5.20 ANIMALS

Findings:

A. Bend Code Chapter 5.20 Animals contains numerous provisions relating to Animals.

B. A large number of cases in Bend Municipal Court involve animals. Both the Judge and enforcement officers have asked for some changes to the code to clarify the authority of the judge and the scope of the regulations.

C. The Council agrees that the recommended changes will improve the code.

Based on these findings, the City of Bend ordains as follows:

Section 1. Bend Code Chapter 5.20 is revised to read as shown on the attached Exhibit A.

Section 2. All other provisions of the Bend Code remain unchanged and in effect.

Read for the first time the 6th day of October, 2010.

Read for the second time the 20th day of October, 2010.

Placed upon its passage the 20th day of October, 2010.

YES: 6 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 20th day of October, 2010.

Approved as to form:

Legal Counsel

Kathie Eckman, Mayor

Attest:

Patricia Stell, City of Bend Recorder

CHAPTER 5.20 ANIMALS

5.20.000 Definitions As used in this chapter, the following definitions apply:

(1) "Animal" means domestic and exotic pets and livestock.

(2) "Dangerous Animal" means any animal that has been found, by the Judge to have:

(A) Without provocation, placed a person in reasonable fear of imminent physical injury; or

(B) Attacked a person, domestic animal without provocation; or

(C) Been trained for or used in animal fighting

(3) "Exotic Pet" means an animal kept and maintained as a pet excluding dogs and domestic cats.

(4) "Judge" means a Bend Municipal Court Judge, including any pro-tem judges.

(5) "Keeper" means, in addition to its ordinary meaning, a person, firm, association or corporation which is in possession of, in temporary control of, or who is responsible for the care of an animal. The term "Keeper" also means the parent or guardian of the owner of an animal, if the owner is under the age of 18 years and the owner resides with the parent or guardian on the date of the alleged violation.(6) "Off Leash Area" means an area designated by the Bend City Council pursuant to Section 5.20.030 of the Bend Code as an area where dogs are not required to be leashed.

(7) "Owner" means a person, firm, association or corporation that owns an animal.

(8) "Physical injury" means impairment of physical condition or substantial pain.

(9) "Run at Large" means to be off the private premises where the animal is allowed to be by the person in charge of those premises and not under the complete, tethered control of the owner or keeper by adequate leash or bridle. Any animal in a vehicle shall not be considered to be "at large".

5.20.005 Exemption for Law Enforcement Animals. An animal owned by a law enforcement agency is exempt from the provisions of this Chapter, provided that the animal is under the care and control of a law enforcement officer.

5.20.010 Owner/Keeper Responsibility for Animal. The owner or keeper of an animal which violates the provisions of this chapter is responsible for the animal's acts and condition and the owner or keeper is subject to the penalties provided in Section 5.20.065 for the animal's violations of any provision of this chapter.

5.20.015 Animal Waste. It shall be unlawful for an owner or keeper of an animal other than a domestic cat to allow it to deposit solid waste matter on any property other than the property of the owner or keeper of the animal. It shall be a defense to this action if the owner or keeper of the animal promptly removes the solid waste deposited by the animal.

5.20.020 Dog Licensing

(1) Every dog within the city that has a set of permanent canine teeth shall be licensed. The license tag shall be attached to a collar worn by the dog. The owner and/or keeper of the dog shall be found in violation of this ordinance if the dog is not wearing its collar and tag or if the tag is not present on the dog's collar at any time.

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(2) An owner or keeper of a dog within the city shall license the dog not later than 30 days after the person becomes the owner or keeper of the dog or establishes residence within the city.

(3) Licenses shall not be required for dogs owned by dealers, breeders or exhibitors if the dogs are kept in kennels exclusively for sale or exhibition purposes, or while such dogs are being transported by dealers, breeders, or exhibitors to and from a dog show or fair. Licenses are not required for dogs that are used as service animals for persons with disabilities. A companion or therapy animal is not a service animal unless the animal has been individually trained to perform one or more tasks for a person with disabilities and trained to behave in public.

5.20.025 Animal at Large. No animal other than a domestic cat shall run at large. The owner or keeper of an animal is responsible for an animal at large.

5.20.030 Off Leash Areas.

(1) The Bend City Council may, in its discretion, designate certain areas of public parks which are owned and operated by the Bend Metropolitan Parks and Recreation District (BMPRD) as areas where dogs are not required to be leashed, subject to the other provisions of this section.

(2) A designation of an area as an Off Leash Area by the Bend City Council shall not be effective unless the BMPRD Board provides prior written notice to the Bend Chief of Police. Owners must comply with the BMPRD regulations applicable to all off leash areas.

(3) The owner or keeper of a dog that is in an Off Leash Area must control the dog at all times. The owner or keeper of a dog shall not allow a dog to engage in fighting with other dogs, or harass, bark at, bite, threaten or injure a person or animal.

(4) If a dog or an owner or keeper is found to be in violation of this section, the dog may be excluded from the Off Leash Area for up to twenty-four hours. If a citation is issued for animal nuisance under Bend Code 5.20.040, the dog shall be excluded from all Off Leash Areas, pending a review of and determination on the citation by the Judge. Returning an animal to an Off Leash Park after being excluded is a Class A civil infraction.

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(5) Animals which have been designated as a Dangerous Animal under Bend Code 5.20.065(4) shall not be permitted in an Off Leash Area under any circumstances.

(6) Any owner or keeper of a dog shall be subject to a Class A civil penalty for violation of the terms and conditions of an Off Leash Area as provided in this section.

5.20.035 Dangerous Animals An animal may be designated as a Dangerous Animal by order of the Judge. If an animal is designated as a Dangerous Animal, then the following restrictions shall apply to the animal:

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(1) The owner or keeper of the dangerous animal shall cause the animal to be confined on the premises of the owner or keeper, either securely indoors or confined in a securely enclosed and locked pen or similar structure; such pen or structure must be securely constructed and must be adequate to ensure the confinement of the animal.

(2) No owner or keeper of a dangerous animal shall permit the animal to go beyond the premises of the person unless the animal is humanely

muzzled and either securely leashed or otherwise securely restrained and led by a person physically capable of handling the animal.

(3) A requirement that the animal's owner or keeper post signs on the premises where the animal is kept indicating that the animal is a dangerous animal.

(4) If the animal designated as a dangerous animal is a dog, then the dog shall at all times be required to wear a special dog tag indicating that the dog is a dangerous animal and will be required to be micro-chipped. The owner shall be responsible for payment for the special tag and microchip.

(5) Dangerous animals are prohibited in all public parks.

5.20.040 Animal Nuisances

(1) An animal other than a domestic cat is a nuisance if it;

(A) Bites, injures or attacks a person without provocation;

(B) Places a person in reasonable fear of imminent physical injury, without provocation;

(C) Injures or kills an animal belonging to a person other than the owner or keeper of the animal;

(D) Is trained for or used in animal fighting;

(E) Disturbs any person by frequent or prolonged noises;

(F) Chases vehicles or obstructs traffic;

(G) Chases people;

(H) Damages property belonging to a person other than the owner or keeper of the animal;

(I) Scatters garbage;

(J) Attends a special event as defined in Chapter 7.

(K) Its owner or keeper has failed to comply with Section 5.20.030(3) or off leash regulations at an Off Leash Area.

(2) A domestic cat is a nuisance if it:

(A) Bites, injures or attacks a person without provocation;

(B) Places a person in fear of imminent physical injury, without provocation;

(C) Is trained for or used in animal fighting;

(D) Disturbs any person by frequent or prolonged noises;

(E) Attends a special event as defined in Chapter 7.

5.20.045 Impound

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(1) An animal that has violated Bend Code 5.20.025, 5.20.040 or that lacks a required license may be seized and impounded by an officer of the Bend Police Department.

(2) If an officer of the Bend Police Department is unable to apprehend such animals without risking injury to the officer or other people, the officer may kill the animal if other means to control the animal are ineffective or likely to be.

(3) An impounded animal shall be placed in the animal shelter under contract with the City of Bend Police Department and shall be held by that animal shelter until the release has been authorized by the Bend Police Department, any citations issued to the animal's owner or keeper have been resolved by the court system or until the shelter has received a court order directing the shelter to release or humanely destroy the animal.

5.20.050 Unclaimed Animals

(1) If an animal has been impounded and no citations have been issued to an impounded animal's owner or keeper within three business days of the animal's impoundment, the animal may be handled according to Oregon law and the animal shelter's policies, rules and regulations, including humane destruction of the animal.

(2) If an animal has been impounded and one or more citations have been issued to the animal's owner or keeper, but the animal's owner or keeper does not make a personal or written appearance on the citation(s) in the Bend Municipal Court within the time required by the citation(s), then the Court may issue an order terminating the rights of the owner to the animal and requiring that the animal may be handled according to Oregon law and the animal shelter's policies, rules and regulations, including humane destruction of the animal. Prior to issuing a forfeiture order, the Court shall cause a written notice to be delivered or mailed to the owner or keeper of the animal. The notice shall advise the owner or keeper that the owner or keeper's rights to the impounded animal will be forfeited unless the owner or keeper makes a personal appearance in the Bend Municipal Court within five business days of the date of the notice. The notice shall be mailed or delivered to the owner or keeper of the animal at the address shown on the citation or at any address provided to the Court by the animal's owner or keeper.

(3) If an animal has been impounded and the owner or keeper of the animal makes a first appearance in the Bend Municipal Court, but the owner or keeper later fails to appear as required by the Municipal Court, then the Court may proceed as provided in Section 5.20.050(2).

5.20.055 Warrant for Seizure of Animals

(1) Any member of the Bend Police Department, including community service officers, may apply to the Bend Municipal Court for a warrant authorizing the search for and seizure of any animal that has violated Bend Code 5.20.040. The Bend Municipal Court Judge may issue the warrant based on a prima facie case that the violation has occurred.

(2) Nothing in this section is intended to limit the search and seizure authority of City police officers otherwise provided by law.

5.20.060 Rabid Animals Management and disposition of rabid animals shall be as prescribed by Oregon Law.

5.20.065 Civil Penalties

(1) The following violation are Class A civil infractions:

(A) Owning or keeping an animal that is a nuisance under Section 5.20.040.

(B) Bend Code 5.20.070 violating an order terminating animal owner's rights.

(2) All other violations of this Chapter are Class B Civil infractions:

(3) Reimbursement of Impound Costs. The Bend Municipal Court Judge may order the owner or keeper of an animal that violates any provision of this Chapter to reimburse the City of Bend for any and all impound costs incurred by the City.

(4) Exclusion from Off Leash Areas. If an animal that is found in violation of the provisions of this Chapter and the violation occurred in an Off Leash Area, the Bend Municipal Court Judge may order that the animal be excluded from all Off Leash Areas.

5.20.070 Destruction of Animals/Termination of Owner Rights

(1) If an animal has been found to have violated Bend Code 5.20.040(1)(A) or 5.20.040(2)(A), the Judge shall enter an order terminating the animal owner's rights to the animal and/or requiring that the animal be humanely destroyed.

(2) If an animal has been found to have committed two or more violations of Bend Code 5.20.040(1)(B), (C), or (D) within a five-year period, the Judge shall enter an order terminating the animal owner's rights to the animal and/or requiring that the animal be humanely destroyed.

(3) The Judge may terminate an animal owner's right to the animal and direct that the animal be placed in an animal shelter for possible adoption and/or prohibit the owner from owning or possessing animals in the City if:

(A) The Judge determines that an animal's violation of Bend Code 5.20.040 (1)(A), (B), (C) or (D), or Bend Code 5.20.040(2)(A), (B) or (C) was caused by the neglect, abuse or tormenting of the animal by its owner or keeper.

(B) The animal or the owner of the animal has committed two or more violations of Bend Code 5.20.040 within a one-year period.

(C) In deciding whether to terminate an owner's rights to an animal under this section, the Judge shall consider the extent to which each violation was attributable to an action of the owner.

(D) Violation of an order issued under this section is a Class A civil infraction.

(4) If the Judge determines that an animal is unlikely to be a repeat offender of the provisions of this Chapter, then the Judge may suspend any orders in subsection (1), (2) or (3) for a period of up to five years, subject to conditions, which may include:

(A) A requirement that neither the animal nor the animal's owner or keeper commit any further violations of this Chapter;

(B) A requirement that the animal's owner or keeper pay Court ordered penalties resulting from the animal's violation of this code.

(C) A designation of the animal as a Dangerous Animal that is subject to the Dangerous Animal Restrictions described in Bend Code 5.20.035(4).

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(D) A provision that allows law enforcement officers, upon a future violation of Sections 5.20.025, 5.20.035 or 5.20.040 by the animal, to take the animal into custody pending further review and order by the Judge.

(E) Any other condition that the judge deems appropriate.

5.20.075 **Undertaking on Appeal** If an animal has been impounded and the owner or keeper has filed an appeal of an order of the Bend Municipal Court, then the owner or keeper of the animal must provide a bond, deposit or other security to assure payment of the cost incurred by the City for housing the animal pending appeal. The bond, deposit or other security shall be set in an amount not less than the cost of impounding the animal for six months at the rate charged the City by the animal shelter.

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