



Happy Valley Municipal Code: Land Development Code Effective June 16, 2022

ARTICLE 16.6 ADMINISTRATION OF LAND USE AND DEVELOPMENT

Chapter 16.61 TYPES OF REVIEW PROCEDURES

16.61.010 Purpose and applicability of review procedures.

A. Purpose. This chapter sets forth the provisions, conditions, procedures and fees administering the adopted Happy Valley Comprehensive Plan and Land Development Code. This chapter establishes decision-making procedures that enable the City, the applicant and the public to reasonably review applications and participate in the local decision-making process in a timely and effective way. Table 16.61.010-1 provides a key for determining the review procedure and the decision-making body for specific applications and decisions.

B. Review Procedures. All land use and development permit applications and approvals described in Title 16, except building permits and final plat reviews, shall be decided by using the procedures contained in this chapter. The procedure “type” assigned to an application governs the decision-making process for that permit or approval. There are eight types of permit/approval procedures: Types I, II, II-DR, III-PC, III-PC/CC, III-DRB, III-HO and IV. These procedures are described in subsections 1 through 6 below. Table 16.61.010 lists all of the City’s land use and development approvals and the required review procedure(s).

1. Type I Procedure (Administrative). A Type I decision is made by the Planning Official or designee, without public notice and without a public hearing. The Type I procedure is used when there are clear and objective approval criteria and applying City standards and criteria does not require the use of discretion.
2. Type II Procedure (Administrative). A Type II decision is made by the Planning Official or person designated by the Planning Official following public notice. Appeal of a Type II decision is heard by the Hearings Officer.
3. Type II-DR Procedure (Administrative). A Type II-DR decision is made by the Planning Official or person designated by the Planning Official following public notice. Appeal of a Type II-DR decision is heard by the Hearings Officer (with assistance from contract architect).
4. Type III-PC Procedure (Quasi-Judicial). A Type III-PC decision is made by the Planning Commission after a public hearing, with appeals reviewed by the City Council.
5. Type III-PC/CC Procedure (Quasi-Judicial). A Type III-PC/CC decision (e.g., Land Use/Comprehensive Plan Map Amendments under the City’s “one-map” system twenty (20) acres or above) is considered initially by the Planning Commission which makes a recommendation to the City Council.

6. Type III-DRB and Type III-HO Procedures (Quasi-Judicial). A Type III-DRB decision is made by the Design Review Board after a public hearing. A Type III-HO decision is made by the Hearings Officer. Appeal of a Type III-DRB or Type III-HO decision is heard by the City Council.

7. Type IV Procedure (Legislative). Type IV procedures apply to legislative matters. Legislative matters involve the creation, revision, or large-scale implementation of public policy initiated by the City (e.g., adoption of Comprehensive Plan amendments, adoption of ancillary documents to the Comprehensive Plan, land use regulations, government initiated changes to the Comprehensive Plan map/land use district map, etc.). Except for an expedited annexation, a Type IV decision is considered initially by the Planning Commission which makes a recommendation to the City Council. The final decision is made by the City Council.

C. Official Action. All officials, departments, commissions and employees of the City vested with the authority to make decisions regarding the Comprehensive Plan and Land Development Code, or issue permits, certificates or licenses, shall adhere to and require conformance with all applicable sections of all plans, codes and regulations with regard to land use in the City.

D. Interpretation of this Chapter. In interpreting and applying the provisions of this chapter, they shall be construed as the minimum requirement for all promotion of the public safety, health, peace and general welfare. It is not intended by this chapter to interfere with or annul any other covenants or agreements between private parties. However, from the effective date of this Land Development Code, all divisions and development of land shall conform to this chapter. When this chapter imposes a greater restriction upon the use of buildings or premises or upon the height of buildings, or requires larger space than is imposed or required by other codes, ordinances, rules, regulations, covenants or agreements, the provisions of this chapter shall govern.

E. Conditional Approval. The following limitations apply to conditional approval of an application for a land use or limited land use permit:

1. Conditions shall be fulfilled within the time limits set forth in the approval.
2. The review authority may impose such conditions as it deems necessary to ensure compliance with the Comprehensive Plan, Land Development Code and other applicable review criteria including conditions necessary to insure the construction of transportation facilities described in the transportation system plan.
3. A request for modifications of conditions may, at the City's discretion, be processed as a new land use action.
4. The City may require a guarantee or agreement, or both, between the City and the owner, and any contract purchasers.
5. The City may refuse to grant approval for a development on land if a prior permit of any kind on the same land has not been complied with.
6. Unless otherwise noted in the conditions of approval, the applicant or its successors and assigns shall bear the entire expense of compliance with the conditions imposed.
7. The City may delay surface work (except for surveying and staking) on land if the City finds a danger of uncontrollable erosion exists, in the City's opinion, that cannot be adequately controlled by present erosion control methods. No surface work other than surveying and staking on land having slopes of more than fifteen (15) percent shall be permitted during the months of November through April, inclusive.

F. Legislative Comment. The City has experienced land washouts, flooding of downhill sites, turbidity of streams and damage to downhill properties as a result of surface work on land during heavy precipitation and during the months of November through April despite the best of erosion control measures. The City does not want to unreasonably delay development, but finds that controls on surface work are necessary in an effort to prevent the conditions described in this legislative comment. The City further notes that it has adopted the most recent iteration of the “Erosion Prevention and Sediment Control Plan Technical Guidance Handbook” produced by Clackamas County. These erosion control measures represent latest efforts for erosion control, and although they have been applied in Happy Valley there have still been erosion control problems.

G. Noncompliance. A violation of the provisions of this chapter or failure to comply with any conditions of approval are subject to the enforcement and violations provisions provided in Sections 16.13.010 and 16.13.020. The City may withhold a certificate of occupancy until such time as the use or development is consistent with this chapter, including any conditions of approval required to assure compliance with this chapter.

Table 16.61.010-1 Summary of Approvals by Type of Review Procedure

Approvals ¹	Review Procedures	Applicable Regulations
Access Permit (public street)	Type I	Chapters 16.41, 16.62, 16.63; Engineering Standards
Annexation (non-expedited)	Type III-PC	Chapter 16.67
Annexation (expedited)	Type IV	Chapter 16.67
Code Interpretation	Type I	Chapter 16.68
Comprehensive Plan Map/Land Use District Map Amendment	Less than 20 acres (applicant initiated): Type III-PC 20 acres or above (applicant initiated): Type III-PC-CC City initiated: Type IV	Chapter 16.67, Comprehensive Plan
Conditional Use Permit	Type III-PC	Chapter 16.64
Design Review—Minor	Type I	Chapter 16.62 ²
Design Review—Minor	Type II-PO	Chapter 16.62 ²
Design Review—Minor	Type II-HO	Chapter 16.62 ²
Design Review—Major	Type III-DRB	Chapter 16.62 ²
Flood Plain Development Permit	Type I	Building Code
Home Occupation Permit	Type III-HO	Section 16.69.020
Land Use Review	Type I	Chapter 16.62, Building Code
Lot Line Adjustments and Lot Consolidations, including Re-Plat	Type I	Chapter 16.63
Lot of Record Determination	Type I	Chapter 16.72

Approvals ¹	Review Procedures	Applicable Regulations
Master Planned Development	Type III-PC	Chapter 16.65
Modification to Approval		Chapter 16.66
Minor	Type I/II	
Major	Type II/III-HO	
Environmental Review Permit	Type II	Chapters 16.32, 16.34, and 16.35
Nonconforming Use or Development Confirmation	Type I	Chapter 16.72
Partition	Type II	Chapter 16.63
Planned Unit Development (4—9 lots)	Type II	Chapter 16.63
Planned Unit Development (10—49 lots)	Type III-HO	Chapter 16.63
Planned Unit Development (50 lots or larger)	Type III-PC	Chapter 16.63
Plat or Easement Vacation or Re-Plat	Type I	Chapter 16.63
Sign Permit	Type I	Chapter 16.45
Public Right-of-Way Vacation	Type IV	Chapter 16.63
Subdivision (4—9 lots)	Type II	Chapter 16.63
Subdivision (10—49 lots)	Type III-HO	Chapter 16.63
Subdivision (50 lots or larger)	Type III-PC	Chapter 16.63
Temporary Use Permit	Type I	Section 16.69.010
Text Amendment	Type III-PC/CC/IV	Chapter 16.67
Tree Removal		
Class A	Type I	Section 16.42.050
Class B	Type I	Section 16.42.050
Variance		
Class A	Type I	Section 16.71.030
Class B	Type II	Section 16.71.040
Class C	Type III-PC	Section 16.71.050
NOTES:		
¹ The applicant may be required to obtain approvals from other agencies, such as a road authority or sewer district for some types of approvals. The City notifies agencies of applications that may affect their facilities or services.		
² For an explanation of the design benchmarks delineating these types of reviews, see Table 16.62.020-1.		

16.61.020 Type I procedure (administrative).

A. Application Requirements.

1. Application Forms. Type I applications shall be made on forms provided by the Planning Official or designee.
2. Application Requirements. Type I applications shall:
 - a. Include the information requested on the application form;
 - b. Address the criteria in sufficient detail for review and action; and
 - c. Be filed with the required fee.

B. Administrative Decision Requirements. The Planning Official or designee's decision shall address all of the approval criteria, including applicable requirements of any road authority. Based on the criteria and the facts contained within the record, the Planning Official or designee shall approve or deny the requested permit or action. A written record of the decision shall be provided to the applicant and kept on file at City Hall.

C. Final Decision. A Type I decision is the final decision of the City. It cannot be appealed to City officials.

D. Effective Date. A Type I decision is final on the date it is made.

16.61.030 Type II procedure (administrative).

A. Pre-application Conference. A pre-application conference is required for a Type II review. Pre-application conference requirements and procedures are described in Section 16.61.060.

B. Application Requirements.

1. Application Forms. Type II applications shall be made on forms provided by the Planning Official or designee.
2. Submittal Information. The application shall:
 - a. Include the information requested on the application form;
 - b. Be filed with three copies of a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision making. Note: additional information may be required under the specific application requirements for each approval, e.g., Chapters 16.62 (Land Use Review), 16.63 (Land Divisions), 16.66 (Modifications), 16.68 (Code Interpretations), and 16.69 (Miscellaneous Permits);
 - c. Be accompanied by the required fee; and
 - d. Include one set of mailing labels for all real property owners of record who will receive a notice of the application as required in Section 16.61.040. The records of the Clackamas County Assessor's Office are the official records for determining ownership. The applicant shall prepare the public notice mailing list. The applicant shall use the most current County real property assessment records to produce the notice list. The City shall mail the notice of application.

C. Notice of Application for Type II Administrative Decision.

1. Before making a Type II Administrative Decision, the Planning Official or designee shall mail notice to:

- a. All property owners of record within three hundred (300) feet of the subject site;
 - b. The owner of property within six hundred (600) feet of the subject site who submits a written request for notice;
 - c. All City-recognized neighborhood groups or associations whose boundaries include the site;
 - d. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies; and
 - e. Clackamas County, METRO, and the Oregon Department of Transportation when the proposed development abuts or affects agency's transportation facility.
2. At the request of the applicant, notice shall be provided to the Oregon Department of Land Conservation and Development.
3. The purpose of the notice is to give nearby property owners and other interested people the opportunity to submit written comments about the application before the Type II decision is made. The goal of this notice is to invite people to participate early in the decision-making process.
4. Notice of a pending Type II administrative decision shall:
- a. Provide a twenty-one (21) day period for submitting written comments before a decision is made on the permit;
 - b. List the relevant approval criteria by name and number of code sections;
 - c. State the place, date and time the comments are due, and the person to whom the comments should be addressed;
 - d. Include the name and telephone number of a contact person regarding the administrative decision;
 - e. Describe the proposal and identify the specific permits or approvals requested;
 - f. Describe the street address or other easily understandable reference to the location of the site;
 - g. State that if any person fails to address the relevant approval criteria with enough detail, they may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue. Only comments on the relevant approval criteria are considered relevant evidence;
 - h. State that all evidence relied upon by the Planning Official or designee to make this decision is in the public record, available for public review. Copies of this evidence can be obtained at a reasonable cost from the City;
 - i. State that after the comment period closes, the Planning Official or designee shall issue a Type II administrative decision, and that the decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice;
 - j. Contain the following notice: "Notice to mortgagee, lien holder, vendor, or seller: The City of Happy Valley Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

D. Administrative Decision Requirements. A Type II written decision shall address all of the relevant approval criteria and standards. Based upon the criteria, standards and the evidence in the record, the Planning Official or designee shall approve, approve with conditions, or deny the application. Alternatively, the Planning Official or the applicant may refer the application to the Hearings Officer for a public hearing, in which case the review shall follow the Type III procedures in Section 16.61.040, including payment of all applicable fees.

E. Notice of Decision.

1. Within five days after the Planning Official or designee signs the decision, a notice of decision shall be sent by mail to:
 - a. The applicant and all owners or contract purchasers of record of the site that is the subject of the application;
 - b. Any person who submits a written request to receive notice, or provides comments during the application-review period;
 - c. Any City-recognized neighborhood group or association whose boundaries include the site; and
 - d. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City, and other agencies that were notified or provided comments during the application review period.
2. The Planning Official or designee shall cause an affidavit of mailing the notice to be prepared and made a part of the file. The affidavit shall show the date the notice was mailed and shall demonstrate that the notice was mailed to the parties above and was mailed within the time required by law.
3. The Type II notice of decision shall contain:
 - a. A description of the applicant's proposal and the City's decision on the proposal (i.e., may be a summary);
 - b. The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area, where applicable;
 - c. A statement of where the City's decision can be obtained;
 - d. The date the decision shall become final, unless appealed;
 - e. A statement that all persons entitled to notice may appeal the decision; and
 - f. A statement briefly explaining how to file an appeal, the deadline for filing an appeal, and where to obtain further information concerning the appeal process.
4. Posted Notice. In addition to any other notice, the applicant shall post the property subject to the application with at least one sign for every three hundred (300) feet of frontage. The sign shall be purchased from the City. Such sign shall remain continuously posted from at least fourteen (14) days prior to the end of the public written comment period or public hearing date, until the day after the final decision. A notarized statement of posting shall be submitted to the City recorder prior to the final decision. Failure to post the sign may result in invalidating the final decision.

F. Final Decision and Effective Date. A Type II administrative decision is final for purposes of appeal, when it is mailed by the City. A Type II administrative decision is effective on the day after the appeal period expires. If an appeal is filed, the decision is effective when the appeal is decided.

G. Appeal. A Type II administrative decision may be appealed to the Hearings Officer as follows:

1. Who May Appeal. The following people have legal standing to appeal a Type II administrative decision:
 - a. The applicant or owner of the subject property;
 - b. Any person who was entitled to written notice of the Type II administrative decision;
 - c. Any other person who participated in the proceeding by submitting written comments.
2. Appeal Filing Procedure.
 - a. Notice of Appeal. Any person with standing to appeal, as provided in subsection (G)(1), above, may appeal a Type II administrative decision by filing a notice of appeal according to the following procedures;
 - b. Time for Filing. A notice of appeal shall be filed with the Planning Official or designee within ten (10) days of the date the notice of decision was mailed;
 - c. Content of Notice of Appeal. The notice of appeal shall contain:
 - i. An identification of the decision being appealed, including the date of the decision;
 - ii. A statement demonstrating the person filing the notice of appeal has standing to appeal;
 - iii. A statement explaining the specific issues being raised on appeal;
 - iv. If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period;
 - v. Filing fee.
3. Scope of Appeal. Appeal of a Type II administrative decision shall be heard de novo before the Hearings Officer. The appeal is not limited to the record that was before the Planning Official. The Hearings Officer shall allow additional evidence, testimony or argument concerning any relevant standard, criterion, condition, or issue.
4. Appeal Procedures. The notice, hearing procedures and decision process for a Type III decision shall be used for Type II administrative appeals, as provided in Section 16.61.040.
5. Further Appeal to City Council. The Hearings Officer's decision on appeal of a Type II administrative decision is the City's final decision unless appealed to City Council. An appeal to City Council shall follow the same notice and hearing procedures as the hearing before the Hearings Officer. The City Council's decision is final and effective on the date it is mailed by the City.

16.61.035 Type II-DR procedure (administrative).

- A. Procedures. Except as noted below, Type II-DR applications shall follow the same procedures as Type II applications.
- B. Initial Appeal. A Type II-DR administrative decision may be appealed to the Design Review Board using the appeal procedures as for an appeal of a Type II decision.
- C. Appeal to the City Council. The Design Review Board's decision on appeal of a Type II-DR administrative decision is the City's final decision unless appealed to City Council. An appeal to the City Council shall follow the appeal procedures as an appeal of a Type II decision. The City Council's decision is final and effective on the date it is mailed by the City. Appeal of a Type II-DR decision shall not be heard de novo before the City Council. The appeal is limited to the record that was before the Design Review Board. The City Council shall not allow additional evidence, testimony or argument concerning any relevant standard, criterion, condition, or issue. In limited circumstances involving the need to correct information or include information inadvertently omitted from the record by the City, the record may be re-opened by a vote of the City Council. In such limited circumstances, the City Council shall determine the scope to which the record shall be reopened.

16.61.040 Type III-HO, Type III-PC and Type III-PC/CC procedure (quasi-judicial).

- A. Type III-HO, Type III-PC and Type III-PC/CC procedures apply to all quasi-judicial decisions that involve the use of discretion and include but are not limited to: non-expedited annexations; own-initiated Comprehensive Plan map/land use district map amendments or text amendments; minor Design Review; home occupation permits; Class C variances; major modifications; master plans; planned unit developments; expedited subdivisions; and conditional use permits. With the exception of an expedited annexation or Comprehensive Plan map/land use district map amendments, the public hearing for these applications occur before either the Planning Commission, Design Review Board or Hearings Officer as specified in Table 16.61.010-1.
 - 1. An expedited annexation is processed as an ordinance pursuant to the City's Municipal Code. The City Council makes the final decision. The City Council is the only local review authority and shall decide whether to approve, approve with conditions or deny an expedited annexation request.
 - 2. For a master plan that is combined with a Comprehensive Plan map/land use district map amendment, the Planning Commission shall make a recommendation to the City Council. The City Council is the final review authority.
- B. Pre-application Conference. A pre-application conference is required for all Type III applications. The requirements and procedures for a pre-application conference are described in Section 16.61.060(C).
- C. Application Requirements.
 - 1. Application Forms. Type III applications shall be made on forms provided by the Planning Official or designee; if a Type II application is referred to a Type III hearing, either voluntarily by the applicant or staff, or upon appeal, no new application is required.
 - 2. Submittal Information. When a Type III application is required, it shall:
 - a. Include the information requested on the application form;

- b. Be filed with three copies of a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision-making. Note: additional information may be required under the specific application requirements for each approval, e.g., Chapters 16.62 (Land Use Review), 16.63 (Land Divisions), 16.66 (Modifications), 16.68 (Code Interpretations), and 16.69 (Miscellaneous Permits);
- c. Be accompanied by the required fee; and
- d. Include one set of pre-addressed mailing labels for all real property owners of record who will receive a notice of the application as required in Subsection 16.61.040(D). The records of the Clackamas County Assessor's Office are the official records for determining ownership. The applicant shall prepare the public notice mailing list. The applicant shall use the most current County real property assessment records to produce the notice list. The City shall mail the notice of application.

3. Statement of Disclosure. All applications for annexations, Comprehensive Plan map/zoning map amendments, text amendments, variances, conditional use permits, subdivisions, planned unit developments, etc. and all appeals shall be accompanied by a statement of ownership or interest disclosure.

D. Notice of Hearing.

1. Mailed Notice. The City shall mail notice of a Type II or Type III hearing to the record owner of real property as shown in the records of the Clackamas County Assessor's Office. Notice of a Type III hearing or Type II appeal hearing shall be given by the Planning Official or designee in the following manner:

- a. At least twenty-one (21) days before the hearing date, notice shall be mailed to:
 - i. The applicant and all owners or contract purchasers of record of the property that is the subject of the application;
 - ii. All property owners of record within three hundred (300) feet of the subject site;
 - iii. An owner of real property within six hundred (600) feet of the subject site who submits a written request for notice;
 - iv. Clackamas County, Clackamas Fire District No. 1 or its successor in interest, Sunrise Water Authority, Clackamas River Water or its successor in interest, school districts, public or private utility districts or agencies and any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies;
 - v. The road authority, and rail authority and owner, when the proposed development abuts or affects their transportation facility;
 - vi. The owner of an airport in the vicinity shall be notified in accordance with ORS 227.175 when the application proposes a zone change;
 - vii. Any neighborhood or community organization recognized by the City Council and whose boundaries include the property proposed for development;
 - viii. For an appeal, the applicant, the appellant and all persons who provided testimony in the original decision;

- ix. For a land use district change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175; and
 - x. For expedited annexations, all interested and necessary parties, as defined by the Metro Code, shall be notified by mail.
- b. The Planning Official or designee shall have an affidavit of notice be prepared and made a part of the file. The affidavit shall state the date that the notice was mailed to the persons who must receive notice.
 - c. At least fourteen (14) business days before the hearing, notice of the hearing shall be printed in a newspaper of general circulation in the City. The newspaper's affidavit of publication of the notice shall be made part of the administrative record.
2. Posted Notice. In addition to any other notice, the applicant shall post the property subject to the application with at least one sign for every three hundred (300) feet of frontage. The sign shall be purchased from the City. Such sign shall remain continuously posted from at least fourteen (14) days prior to the end of the public written comment period. A notarized statement of posting shall be submitted to the Planning Official or designee prior to the public hearing.
3. Content of Notice. Notice of appeal of a Type II administrative decision or notice of a Type III hearing to be mailed and published pursuant to subsection (D)(1) above shall contain the following information:
- a. The nature of the application and the proposed land use or uses that could be authorized for the property;
 - b. The applicable criteria and standards from the development code(s) that apply to the application;
 - c. The street address or other easily understood geographical reference to the subject property;
 - d. The date, time, and location of the public hearing;
 - e. A statement that the failure to raise an issue in person, or by letter at the hearing, or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue, means that an appeal based on that issue cannot be filed with the State Land Use Board of Appeals;
 - f. The name of a City representative to contact and the telephone number where additional information on the application may be obtained;
 - g. A statement that a copy of the application, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards can be reviewed at Happy Valley City Hall at no cost and that copies shall be provided at a reasonable cost;
 - h. A statement that a copy of the City's staff report and recommendation to the hearings body shall be available for review at no cost at least seven days before the hearing, and that a copy shall be provided on request at a reasonable cost;
 - i. A general explanation of the requirements to submit testimony, and the procedure for conducting public hearings; and
 - j. The following notice: "Notice to mortgagee, lien holder, vendor, or seller: The City of City of Happy Valley Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

E. Conduct of the Public Hearing.

1. At the commencement of the hearing, the review body shall state:
 - a. The applicable approval criteria and standards that apply to the application or appeal;
 - b. That testimony and evidence shall concern the approval criteria described in the staff report, or other criteria in the Comprehensive Plan or land use regulations that the person testifying believes to apply to the decision and that the applicant must raise any constitutional objections on the record (or they cannot be raised on appeal);
 - c. That failure to raise an issue with sufficient detail to give the hearings body and the parties an opportunity to respond to the issue, means that no appeal may be made to the City Council or State Land Use Board of Appeals on that issue;
 - d. Before the conclusion of the initial evidentiary hearing, any participant may ask for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing. The hearings body shall grant the request by scheduling a date to finish the hearing (a “continuance”), or by leaving the record open for additional written evidence or testimony;
 - e. The City shall allow the applicant at least seven days after the record is closed to all other persons to submit final written arguments in support of the application, unless the applicant expressly waives this right. The applicant’s final submittal may not include any new evidence.
2. If the review body grants a continuance, the hearing shall be continued to a date, time, and place at least seven days after the date of the prior hearing. An opportunity shall be provided at the subsequent hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the second hearing, any person may request, before the conclusion of the second hearing, that the record be left open for at least seven days, so that they can submit additional written evidence or testimony in response to the new written evidence.
3. If the review body leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days after the hearing. Any participant may ask the City in writing for an opportunity to respond to new evidence submitted during the period that the record was left open. If such a request is filed, the review body shall reopen the record.
 - a. When the review body reopens the record to admit new evidence or testimony, any person may raise new issues that relate to that new evidence or testimony.
 - b. An extension of the hearing or record granted pursuant to Subsection 16.61.040(E) is subject to the limitations of ORS 227.178 (“120-day rule”), unless the continuance or extension is requested or agreed to by the applicant.
 - c. The record shall contain all testimony, evidence and argument that is submitted to the City and that the hearings body has not rejected.
 - d. In making its decision, the hearings body may take notice of facts not in the hearing record (e.g., local, state, or Federal regulations; previous City decisions; case law). The review authority must announce its intention to take notice of such facts in its deliberations, and allow persons who previously participated in the hearing to request the

hearing record be reopened, if necessary, to present evidence concerning the noticed facts.

4. Participants in the appeal of a Type II administrative decision or participants in a Type III hearing are entitled to an impartial review and decision.

a. At the beginning of the public hearing, a member of the review body shall disclose the substance of any ex parte contacts (as defined in Subsection 16.61.040(E)(9) below). The member shall state whether the contact has impaired the member's impartiality or ability to vote on the matter and shall participate or abstain accordingly.

b. A member of the review body shall not participate in any proceeding in which the member, or any of the following, has a direct or substantial financial interest: the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the hearing where the action is being taken.

c. Disqualification of a member of the review body due to ex parte contacts, bias or a conflict of interest may be ordered by a majority of the members present and voting. The member who is the subject of the motion may not vote on the motion to disqualify.

d. If, due to abstaining or disqualification, a quorum of the Planning Commission is not obtainable, the City Council shall be the review body. If all members of the City Council abstain or are disqualified, a quorum of those City Council members present who declare their reasons for abstention or disqualification shall be re-qualified to make a decision.

e. Any member of the public may raise conflict of interest issues prior to or during the hearing and the member of the hearings body shall reply in accordance with this section.

5. Ex Parte Communications.

a. Members of the review body shall not:

i. Communicate directly or indirectly with any applicant, appellant, other party to the proceedings, or representative of a party about any issue involved in a hearing without giving notice as provided in subsection C above;

ii. Take official notice of any communication, report, or other materials outside the record prepared by the proponents or opponents in connection with the particular case, unless all participants are given the opportunity to respond.

b. A decision or action of the review body shall not be invalid due to ex parte contacts or bias resulting from ex parte contacts, if the person receiving contact:

i. Places in the record the substance of any written or oral ex parte communications concerning the decision or action; and

ii. Makes a public announcement of the content of the communication and of all participants' right to dispute the substance of the communication made. This announcement shall be made at the first hearing following the communication during which action shall be considered or taken on the subject of the communication.

- c. A communication between City staff and the review body is not considered an ex parte contact.
- 6. Presenting and Receiving Evidence.
 - a. The review body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious or irrelevant testimony or evidence;
 - b. Oral testimony shall not be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing, only as provided in Subsection 16.61.040(E);
 - c. Members of the review body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.
- F. The Decision Process.
 - 1. Basis for Decision. Approval or denial of an appeal of a Type II administrative decision or of a Type III application shall be based on standards and criteria in this Development Code. The standards and criteria shall relate approval or denial of a discretionary development permit application to the development regulations and, when appropriate, to the Comprehensive Plan for the area in which the development would occur and to the development regulations and Comprehensive Plan for the City as a whole.
 - 2. Findings and Conclusions. Approval or denial shall be based upon the criteria and standards considered relevant to the decision. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts.
 - 3. Form of Decision. The review body shall issue a final written order containing the findings and conclusions stated in subsection (F)(2). The order shall either approve, approve with conditions or deny the application. The review body may also issue appropriate intermediate rulings when more than one permit or decision is required.
 - 4. Decision-Making Time Limits. The final order for a Type II administrative appeal or Type III application shall be filed with the Planning Official or designee within ten (10) business days after the close of the public record.
 - 5. Notice of Decision. Written notice of a Type II administrative appeal decision or a Type III application decision shall be mailed to the applicant and to all participants of record within ten (10) business days after the hearings body decision. Failure of a person to receive mailed notice shall not invalidate the decision provided a good faith attempt was made to mail the notice.
 - 6. Final Decision and Effective Date. The decision of the hearings body on any Type II appeal or any Type III application is final for purposes of appeal on the date it is mailed by the City. The decision is effective on the day after the appeal period expires. If an appeal is filed, the decision becomes effective on the day after the appeal is decided by the City Council.
- G. Appeal. A Type III decision may be appealed to the City Council as follows.
 - 1. Who May Appeal. The following people may appeal a Type III decision:
 - a. The applicant or owner of the subject property;

- b. Any person who was entitled to written notice of the Type III decision;
 - c. Staff or any other person who participated or appeared in the proceeding by either written or oral communication.
2. Appeal Filing Procedure.
- a. Notice of Appeal. A person may appeal a Type III decision by filing a notice of appeal according to the following procedures;
 - b. Time for Filing. A notice of appeal shall be filed with the Planning Official or designee within fourteen (14) days of the date the notice of decision was mailed;
 - c. Content of Notice of Appeal. The notice of appeal shall contain:
 - i. An identification of the decision being appealed, including the date of the decision;
 - ii. A statement demonstrating the person filing the notice of appeal has standing to appeal;
 - iii. A statement specifying the issues being raised on appeal;
 - iv. If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period;
 - v. The filing fee.
3. Scope of Appeal. Appeal of Type III decisions shall not be heard de novo before the City Council. The appeal is limited to the record that was before the review body. The City Council shall not allow additional evidence, testimony or argument concerning any relevant standard, criterion, condition, or issue. In limited circumstances involving the need to correct information or include information inadvertently omitted from the record by the City, the record may be re-opened by a vote of the City Council. In such limited circumstances, the City Council shall determine the scope to which the record shall be reopened.
4. Appeal Procedures. The notification and hearings procedures for Type III applications on appeal to the City Council shall be the same as for the initial hearing.
5. Further Appeal of the City Council's Decision. The decision of the City Council on an appeal is final and effective on the date it is signed on behalf of the City Council. The City Council's decision may be appealed to the State Land Use Board of Appeals as provided by law.

16.61.045 Type III-DR procedure (quasi-judicial).

- A. Procedures. Except as noted below, Type III-DR applications shall follow the same procedures as Type III applications. For a Type III-DRB hearing, if sufficient members of the Design Review Board abstain or are disqualified such that the Board cannot achieve a quorum, the City Council shall be the hearing body. If sufficient members of the City Council abstain or are disqualified such that the Council cannot achieve a quorum, a quorum of those City Council members present who declare their reasons for abstention or disqualification shall make the decision. For a Type III-HO hearing, if the Hearings Officer has a conflict or otherwise cannot participate in the hearing, the hearing shall be conducted by an alternate Hearings Officer.

B. Appeal. A Type III-DR quasi-judicial decision may be appealed to the City Council using the appeal procedures as for an appeal of a Type III decision.

16.61.050 Type IV procedure (legislative).

A. Pre-Application Conference. A pre-application conference is required for all Type IV applications initiated by a party other than the City of Happy Valley. The requirements and procedures for a pre-application conference are described in Section 16.61.060(C).

B. Application Requirements.

1. Application Forms. Type IV applications shall be made on forms provided by the Planning Official or designee.
2. Submittal Information. The application shall contain:
 - a. The information requested on the application form;
 - b. A map and/or plan addressing the appropriate criteria and standards in sufficient detail for review and decision (as applicable);
 - c. The required fee; and
 - d. Three copies of a letter or narrative statement that explains how the application satisfies each and all of the relevant approval criteria and standards.

C. Notice of Hearing.

1. Required Hearings. A minimum of two hearings, one before the Planning Commission and one before the City Council, are required for all Type IV applications.
2. Notification Requirements. Notice of public hearings for the request shall be given by the Planning Official or designee in the following manner:
 - a. At least twenty (20) days, but not more than forty (40) days, before the date of the first hearing on an ordinance that proposes to amend the Comprehensive Plan or any element thereof, or to adopt an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.186 and mailed to:
 - i. The record owner of real property as shown on the County tax roll that will be rezoned in order to implement the ordinance (including owners of property subject to a Comprehensive Plan amendment shall be notified if a zone change would be required to implement the proposed Comprehensive Plan amendment);
 - ii. Any affected governmental agency;
 - iii. The owner of real property as shown on the County tax roll within six hundred (600) feet of the area to be rezoned who submits a written request for notice;
 - iv. For a zone change affecting a manufactured home or mobilehome park, all mailing addresses within the park, in accordance with ORS 227.175;
 - v. The owner of an airport shall be notified of a proposed zone change in accordance with ORS 227.175.
 - b. At least ten (10) days before the scheduled Planning Commission public hearing date, and fourteen (14) days before the City Council hearing date, public notice shall be published in a newspaper of general circulation in the City.

- c. The Planning Official or designee shall:
 - i. For each mailing of notice, file an affidavit of mailing in the record as provided by subsection (C)(1)(a) of this section; and
 - ii. For each published notice, file in the record the affidavit of publication in a newspaper that is required in subsection (C)(1)(b) of this section.
 - d. The Oregon Department of Land Conservation and Development (DLCD) shall be notified in writing of proposed Comprehensive Plan and Development Code amendments at least thirty-five (35) days before the first public hearing at which public testimony or new evidence will be received. The notice to DLCD shall include a DLCD Certificate of Mailing.
 - e. Notifications for annexation shall follow the provisions of this chapter.
3. Content of Notices. The mailed and published notices shall include the following information:
- a. The number and title of the file containing the application, and the address and telephone number of the Planning Official or designee's office where additional information about the application can be obtained;
 - b. The proposed site location;
 - c. A description of the proposed site and the proposal in enough detail for people to determine what change is proposed, and the place where all relevant materials and information may be obtained or reviewed;
 - d. The time(s), place(s), and date(s) of the public hearing(s); a statement that public oral or written testimony is invited; and a statement that the hearing will be held under this title and rules of procedure adopted by the Council and available at City Hall; and
 - e. Each mailed notice required by Section 16.61.050(C) shall contain the following statement: "Notice to mortgagee, lien holder, vendor, or seller: The City of Happy Valley Land Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."
4. Failure to Receive Notice. The failure of any person to receive notice shall not invalidate the action, providing:
- a. Personal notice is deemed given where the notice is deposited with the United States Postal Service;
 - b. Published notice is deemed given on the date it is published.
- D. Hearing Process and Procedure.
- 1. Unless otherwise provided in the rules of procedure adopted by the City Council:
 - a. The presiding officer of the Planning Commission and of the City Council shall have the authority to:
 - i. Regulate the course, sequence, and decorum of the hearing;
 - ii. Direct procedural requirements or similar matters; and
 - iii. Impose reasonable time limits for oral presentations.
 - b. No person shall address the Commission or the Council without:

- i. Receiving recognition from the presiding officer; and
 - ii. Stating their full name and address.
- c. Disruptive conduct such as applause, cheering, or display of signs shall be cause for expulsion of a person or persons from the hearing, termination or continuation of the hearing, or other appropriate action determined by the presiding officer.
- 2. Unless otherwise provided in the rules of procedures adopted by the Council, the presiding officer of the Planning Commission, Design Review Board and of the Council shall conduct the hearing as follows:
 - a. The presiding officer shall begin the hearing with a statement of the nature of the matter before the body, a general summary of the procedures, a summary of the standards for decision-making, and whether the decision which will be made is a recommendation to the City Council or the final decision of the Council;
 - b. The Planning Official or designee's report and other applicable staff reports shall be presented;
 - c. The public shall be invited to testify;
 - d. The public hearing may be continued to allow additional testimony or it may be closed; and
 - e. The body's deliberation may include questions to the staff, comments from the staff, and inquiries directed to any person present.
- E. Continuation of the Public Hearing. The Planning Commission or the City Council may continue any hearing, and no additional notice of hearing shall be required if the matter is continued to a specified place, date, and time.
- F. Decision-Making Criteria. The recommendation by the Planning Commission and the decision by the City Council shall be based on the following factors:
 - 1. Approval of the request is consistent with the Statewide planning goals;
 - 2. Approval of the request is consistent with the Comprehensive Plan and any pertinent ancillary documents or plans adopted by the City; and
 - 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.
- G. Approval Process and Authority.
 - 1. The Planning Commission shall:
 - a. After notice and a public hearing, vote on and prepare a recommendation to the City Council to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative; and
 - b. Within fourteen (14) business days of determining a recommendation, the presiding officer shall sign the written recommendation, and it shall be filed with the Planning Official or designee.
 - 2. Any member of the Planning Commission who votes in opposition to the Planning Commission's majority recommendation may file a written statement of opposition with the

Planning Official or designee before the Council public hearing on the proposal. The Planning Official or designee shall send a copy to each Council member and place a copy in the record;

3. If the Planning Commission fails to adopt a recommendation to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative proposal within sixty (60) days of its first public hearing on the proposed change, the Planning Official or designee shall:

- a. Report the failure together with the proposed change to the City Council; and
- b. Provide notice and put the matter on the City Council's agenda for the City Council to hold a public hearing make a decision. No further action shall be taken by the Commission.

4. The City Council shall:

- a. Approve, approve with modifications, approve with conditions, deny, or adopt an alternative to an application for legislative change, or remand the application to the Planning Commission for rehearing and reconsideration on all or part of the application;
- b. Consider the recommendation of the Planning Commission; however, the City Council is not bound by the Commission's recommendation; and
- c. Act by ordinance, which shall be signed by the Mayor after the Council's adoption of the ordinance.

H. Vote Required for a Legislative Change.

1. A vote by a majority of the qualified voting members of the Planning Commission present is required for a recommendation for approval, approval with modifications, approval with conditions, denial or adoption of an alternative.
2. A vote by a majority of the qualified members of the City Council present is required to decide any motion made on the proposal.

I. Notice of Decision. Notice of a Type IV decision shall be mailed to the applicant, all participants of record, and the Department of Land Conservation and Development, within five business days after the City Council decision is filed with the Planning Official or designee. The City shall also provide notice to all persons as required by other applicable laws.

J. Final Decision and Effective Date. A Type IV decision, if approved, shall take effect and shall become final as specified in the enacting ordinance, or if not approved, upon mailing of the notice of decision to the applicant.

K. Record of the Public Hearing.

1. A verbatim record of the proceeding shall be made by stenographic, mechanical, or electronic means. It is not necessary to transcribe an electronic record. The minutes and other evidence presented as a part of the hearing shall be part of the record.
2. All exhibits received and displayed shall be marked to provide identification and shall be part of the record.
3. The official record shall include:
 - a. All materials considered by the hearings body;
 - b. All materials submitted by the Planning Official or designee to the hearings body regarding the application;

- c. The verbatim record made by the stenographic, mechanical, or electronic means; the minutes of the hearing; and other documents considered;
- d. The final ordinance;
- e. All correspondence; and
- f. A copy of the notices that were given as required by this chapter.

16.61.060 General provisions—120-day rule; time computation; pre-application conferences; acceptance and review; planning official’s duties, amended applications; re-submittal; reconsiderations.

A. 120-day Rule. The City shall take final action on Type I—III applications, including resolution of all appeals, within one hundred twenty (120) days from the date the application is deemed complete, unless the applicant requests an extension in writing. Any exceptions to this rule shall conform to the provisions of ORS 227.178.

B. Time Computation. In computing any period of time prescribed or allowed by this chapter, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or legal holiday, including Sunday, in which event, the period runs until the end of the next day which is not a Saturday or legal holiday.

C. Pre-application Conference.

1. Participants. When a pre-application conference is required, the applicant shall meet with the Planning Official or his/her designee(s) and other parties as appropriate.

2. Submittal Requirements. At the time of the pre-application conference, the developer applicant shall submit sketches, drawings, plans and descriptions as may be necessary to convey the following information to staff. This information shall be presented informally and shall not be used for the purposes of making any decisions or obtaining any commitment from the City, or the applicant.

- a. Proposed land use and densities;
- b. Building types;
- c. Circulation pattern;
- d. Open space and recreation facilities;
- e. Existing features, both natural and manmade;
- f. Available services and facilities, including sanitary and storm sewers, water, natural gas, mass transit, schools, police protection, fire protection and other pertinent and appropriate services and facilities;
- g. Land dedication or fees in lieu of dedication.

3. Information Provided. Based on the information provided by the applicant, the Planning Official or designee at the pre-application conference shall:

- a. Reasonably identify the Comprehensive Plan/Zoning Map designations/districts applicable to the proposal;

- b. Cite the ordinance provisions, including substantive and procedural requirements applicable to the proposal;
 - c. Provide available technical data and assistance that will aid the applicant;
 - d. Identify other governmental policies and regulations that relate to the application; and
 - e. Reasonably identify other opportunities or constraints concerning the application.
 - 4. Disclaimer. Failure of the Planning Official or designee to provide any of the information required by this subsection C shall not constitute a waiver of any of the standards, criteria or requirements for the application.
 - 5. Changes in the Law. Due to possible changes in Federal, State, regional, and local law, the applicant is responsible for ensuring that the application complies with all applicable laws on the day the application is deemed complete.
- D. Acceptance and Review of Applications.
- 1. Initiation of Applications.
 - a. Applications for approval under this chapter may be initiated by:
 - i. Order of City Council;
 - ii. Resolution of the Planning Commission;
 - iii. The Planning Official or designee;
 - iv. A record owner of property (person(s) whose name is on the most recently recorded deed), or contract purchaser with written permission from the record owner.
 - b. Any person authorized to submit an application for approval may be represented by an agent authorized in writing to make the application on their behalf.
 - 2. Consolidation of Proceedings. When an applicant applies for more than one type of land use or development permit (e.g., Type II and III) for the same one or more parcels of land, the proceedings may be consolidated for review and decision at the discretion of the City.
 - a. For Type I—III applications, if more than one approval authority would be required to decide the applications if submitted separately, a consolidated decision shall be made by the approval authority with jurisdiction over one of the applications in the following order: the City Council, the Planning Commission, Hearings Officer or the Planning Official or designee. When proceedings are consolidated:
 - i. The notice shall identify each application to be decided;
 - ii. An application that is dependent on approval of a higher ranking application shall follow the higher-ranking decisions. For example, a Comprehensive Plan map amendment/zone change must proceed a subdivision or PUD approval; and
 - iii. Combined findings and decisions may be made on each application.
 - b. Type II-DR appeals and Type III applications shall be heard by the Planning Commission, Hearings Officer or Design Review Board (as applicable); however, when an applicant applies for more than one type of land use or development permit (e.g., Type III and III-DR) for the same one or more parcels of land, the proceedings for review and

decision shall be processed consecutively, with the non-design review applications occurring first. For example, a Type III conditional use permit before the Hearings Officer shall precede a Type III-DR development application.

3. Check for acceptance and completeness. In reviewing an application for completeness, the following procedure shall be used:

a. Acceptance. When an application is received by the City, the Planning Official or designee shall immediately determine whether the following essential items are present. If the following items are not present, the application shall not be accepted and shall be immediately returned to the applicant:

- i. The required form;
- ii. The required fee;
- iii. The signature of the applicant on the required form and signed written authorization of the property owner of record if the applicant is not the owner.

b. Completeness.

i. Review and Notification. After the application is accepted, the Planning Official or designee shall review the application for completeness. If the application is incomplete, the Planning Official or designee shall notify the applicant in writing of exactly what information is missing within thirty (30) days of receipt of the application and allow the applicant one hundred eighty (180) days from first submittal, to submit the missing information, or to submit a refusal statement;

ii. Application Deemed Complete for Review. In accordance with the application submittal requirements of this chapter, the application shall be deemed complete upon the receipt by the Planning Official or designee of all required information. The applicant shall have the option of withdrawing the application, or refusing to submit information requested by the Planning Official or designee in Section 16.61.060(D)(3)(b)(1), above. For the refusal to be valid, the refusal shall be made in writing and received by the Planning Official or designee no later than fourteen (14) days after the date on the Planning Official or designee's letter of incompleteness. If the applicant refuses in writing to submit the missing information, the application shall be deemed complete on the 31st day after the Planning Official or designee first accepted the application.

iii. Standards and Criteria that Apply to the Application. Approval or denial of the application shall be based upon the standards and criteria that were applicable at the time it was first accepted.

iv. Coordinated Review. The City shall also submit the application for review and comment to the City Engineer, road authority, and other applicable County, State, and Federal review agencies.

4. Changes or Additions to the Application During the Review Period. Once an application is deemed complete:

a. All documents and other evidence relied upon by the applicant shall be submitted to the Planning Official or designee at least seven days before the notice of action or hearing is mailed, if possible. Documents or other evidence submitted after that date shall be

received by Planning Official or designee, and transmitted to the hearings body, but may be too late to include with the staff report and evaluation.

b. When documents or other evidence are submitted by the applicant during the review period but after the application is deemed complete, the assigned review person or body shall determine whether or not the new documents or other evidence submitted by the applicant significantly change the application.

c. If the assigned reviewer determines that the new documents or other evidence significantly change the application, the reviewer shall include a written determination that a significant change in the application has occurred as part of the decision. In the alternate, the reviewer may inform the applicant either in writing, or orally at a public hearing, that such changes may constitute a significant change (see “d”, below), and allow the applicant to withdraw the new materials submitted, in order to avoid a determination of significant change.

d. If the applicant’s new materials are determined to constitute a significant change in an application that was previously deemed complete, the City shall take one of the following actions, at the choice of the applicant:

i. Continue to process the existing application and allow the applicant to submit a new second application with the proposed significant changes. Both the old and the new applications will proceed, but each will be deemed complete on different dates and may therefore be subject to different criteria and standards and different decision dates;

ii. Suspend the existing application and allow the applicant to submit a new application with the proposed significant changes. Before the existing application can be suspended, the applicant must consent in writing to waive the 120-day rule (Section 16.61.060(A) above) on the existing application. If the applicant does not consent, the City shall not select this option;

iii. Reject the new documents or other evidence that has been determined to constitute a significant change, and continue to process the existing application without considering the materials that would constitute a significant change. The City will complete its decision-making process without considering the new evidence.

e. If a new application is submitted by the applicant, that application shall be subject to a separate check for acceptance and completeness and will be subject to the standards and criteria in effect at the time the new application is accepted.

E. Planning Official’s Duties. The Planning Official or designee shall:

1. Prepare application forms based on the criteria and standards in applicable state law, the City’s Comprehensive Plan, and implementing ordinance provisions;

2. Accept all development applications that comply with Section 16.61.060;

3. Prepare a staff report that summarizes the application(s) and applicable decision criteria, and provides findings of conformance and/or nonconformance with the criteria. The staff report may also provide a recommended decision of: approval, denial, or approval with specific conditions that ensure conformance with the approval criteria;

4. Prepare a notice of the proposed decision:
 - a. In the case of an application subject to a Type I—III review process, the Planning Official or designee shall make the staff report and/or decision and all case-file materials available at the time that the notice of the decision is issued,
 - b. In the case of an application subject to a public hearing, the Planning Official or designee shall make the staff report available to the public at least seven days prior to the scheduled hearing date, and make the case-file materials available when notice of the hearing is mailed, as provided by this title;
 5. Administer the hearings process;
 6. File notice of the final decision in the City's records and mail a copy of the notice of the final decision to the applicant, all persons who provided comments or testimony, persons who requested copies of the notice; and any other persons entitled to notice by law;
 7. Maintain and preserve the file for each application for the time period required by law. The file shall include, as applicable, a list of persons required to be given notice and a copy of the notice given; the affidavits of notice, the application and all supporting information; the staff report; the final decision including the findings, conclusions and conditions, if any; all correspondence; minutes of any meeting at which the application was considered; and any other exhibit, information or documentation which was considered by the decision-maker(s) on the application; and
 8. Administer the appeals and review process.
- F. Amended Decision Process.
1. The purpose of an amended decision process is to allow the Planning Official or designee to correct typographical errors, rectify inadvertent omissions and/or make other minor changes that do not materially alter the decision.
 2. The Planning Official or designee may issue an amended decision after the notice of final decision has been issued but before the appeal period has expired. If such a decision is amended, the decision shall be issued within fourteen (14) business days after the original decision would have become final, but in no event beyond the one hundred twenty (120) day period required by state law. A new ten (10) day appeal period shall begin on the day the amended decision is issued.
 3. Notice of an amended decision shall be given using the same mailing and distribution list as for the original decision notice.
 4. Modifications to approved plans or conditions of approval requested by the applicant shall follow the procedures in Chapter 16.66. All other changes to decisions that are not modifications under Chapter 16.66 follow the appeal process.
- G. Re-submittal of Application Following Denial. An application that has been denied, or an application that was denied and on appeal or review has not been reversed by a higher authority, including the Land Use Board of Appeals, the Land Conservation and Development Commission or the courts, may not be resubmitted as the same or a substantially similar proposal for the same land for a period of at least twelve (12) months from the date the final City action is made denying the application, unless there is substantial change in the facts or a change in City policy that would change the outcome, as determined by the Planning Official or designee.

H. Appeal Process. An appeal shall be to a de novo hearing using the Type III procedure described in Section 16.61.040. The appeal shall not be limited to the application materials, evidence or specific issues raised in the proceeding below. The Hearings Officer, Planning Commission or City Council may allow additional evidence, testimony, or argument concerning any standard, criterion, condition, or issue relevant to the original application.

I. Reconsideration of Permit Approvals.

1. Purpose. The ability to reconsider publicly a land use or limited land use approval provides an opportunity to determine if the use or development is in compliance with this chapter. It also allows for clarification of prior land use approvals. As part of this reconsideration, the ability to add new conditions or revoke the approval provides a strong enforcement mechanism and/or an opportunity to improve the terms of the development.
2. Situations When Permit Approvals May Be Reconsidered. All quasi-judicial land use and limited land use approvals and master plans, except plan amendments and zone changes, and those uses that become conditional uses or nonconforming uses due to a change of zoning regulations, mapping or annexation, may be reconsidered upon a request by the City Manager to the City Council. A decision may be reconsidered by the City Council if there is evidence of any of the following:
 - a. One or more conditions of the approval have not been implemented or have been violated;
 - b. The activities of the use, or the use itself, are substantially different from what was approved;
 - c. The use is subject to the conditional use or nonconforming use regulations, has not been subject to a conditional use or nonconforming use review, and has substantially changed its activities. or substantially increased the intensity of its operations since it became a conditional use or a nonconforming use;
 - d. When the City and the applicant agree that the approval terms and/or conditions can be improved; and
 - e. Reconsideration will not cause the City to violate the deadline for a final local decision (i.e., the “120-day” deadline), including any extensions requested by the applicant.
3. Initiating the Reconsideration. The City Manager and designee may initiate a reconsideration if there is substantial evidence that one of the situations described applies to the use or development. The evidence relied on shall be made part of the record. The reconsideration may be initiated any time after thirty (30) days have passed from the first notice of violation pursuant to subparagraphs (a), (b) and (c) in the preceding paragraph.
4. Procedure for Reconsideration by Review Authority.
 - a. After initiation, the reconsideration is processed using the public hearings procedure. An application does not have to be submitted, a preapplication conference is not required, and a fee shall not be charged.
 - b. The review authority shall be the City Council.
 - c. Notice.

i. The property owner, applicant or operator of the site shall be notified that the reconsideration process has been initiated. This notice shall be mailed at least twenty (20) days prior to the scheduled hearing. Written comments from the property owner, applicant, or operator shall be received fifteen (15) days prior to the public hearing date to be included in the staff report.

ii. Additional Public Notice. In addition to people who are mailed notice pursuant to the public hearing procedure requirements, people who have complained or otherwise provided comment or input in writing about the use or development shall also be mailed notice of the hearing.

5. Possible Actions at the Reconsideration Hearing. Depending on the situation, the review authority may take any of the actions described below. The review authority may not approve the new use or one more intense than originally approved unless the possibility of this change has been stated in the public notice:

a. Uses or development which are alleged to have not fulfilled conditions or are alleged to be different from what was approved or which violate conditions are subject to the following actions:

i. The review authority may find that the use or development is complying with the conditions of the approval. In this case, the use or development is allowed to continue.

ii. The review authority may find that the use or development does not fully comply with the conditions of approval, but that the violations are not substantial enough to warrant revocation, and that the use can comply with the original approval criteria if the conditions are met. In this case, the review authority may modify the existing conditions, add new conditions to ensure compliance with the approval criteria, and refer the case to the City Manager for enforcement of the existing conditions.

iii. The review authority may revoke the approval if it finds that there are substantial violations of conditions or failure to implement conditions of prior land use decisions, such that the original approval criteria for the use or development are not being met.

b. Where the City Manager and the applicant convince the review authority that the development terms can be improved and the review authority so finds, the review authority may modify the terms of development approval.

J. Reconsideration of Conditional and Nonconforming Uses. Conditional uses and nonconforming uses that have not been subject to a land use review by the City are subject to the following actions:

1. The review authority may find that the use and its activities, including its intensity, are consistent with what was on the site at the time it became a conditional or nonconforming use. In this case, the use may continue.

2. The review authority may find that the use and its activities are substantially different from what was on the site at the time it became a conditional use or nonconforming use and that the differences do not comply with the current approval criteria for the site. In this case,

the review authority may apply conditions or restrictions or require an application for a development permit to ensure that the differences comply with the approval criteria.

K. **Enforcement of Revocation.** In the event that the land use or limited land use approval is revoked, the use or development becomes illegal. The use or development shall be terminated within thirty (30) days of the date the revocation final order is signed by the City Council, unless the decision provides otherwise. Revocation actions are appealable pursuant to land use decision appeals. The filing of an appeal shall stay the revocation action but not any other action taken by the City.

L. **Use of New Regulations or Mapping.** Applications shall not be accepted for building permits or land use reviews based on plan amendments, zone changes or land use regulations that have been approved but are not yet effective. However, preapplication conferences may be requested and held.

M. **Prior Conditions of Land Use Approvals.**

1. **Incorporating Prior Conditions of Land Use Actions.** Over time, there are instances when uses or development previously approved with conditions are subject to new zoning regulations. This may result from a change of the content of zoning regulations or from legislative zone changes including annexation rezonings. This subsection addresses situations where a use or development was approved with conditions as a part of a land use or limited land use review under zoning regulations that no longer apply to the site. The regulations stated below apply to all prior conditions of approval unless the conditions of approval or the ordinance adopting the conditions specifically refer to the situations outlined below and provide for the continuance of the conditions. In that instance, the conditions of approval will continue to apply.

2. **Zone Changes.** If a site is subject to conditions as the result of a zone change, the conditions continue to apply if the site is rezoned to a comparable zone as part of an annexation rezoning or as part of a legislative remapping.

3. **Conditional Uses.**

a. **An Allowed Conditional Use.** If a use was an approved conditional use under the prior regulations, and is a conditional use under the new regulations pertaining to the site, any conditions of approval shall continue to apply.

b. **Use Allowed Outright.** If the use is a permitted use, the conditions of approval shall continue to apply.

c. **Use No Longer Allowed.** If the use was a conditional use without an expiration date and is no longer allowed, it becomes a nonconforming use under the new regulations, and shall continue to meet the conditions, as well as the nonconforming use regulations.

4. **Variances.** If the variance was to a standard or regulation which is now allowed, and the development on the site conforms with the current regulations, then the prior variance conditions of approval no longer apply.

5. **Other Land Use Actions.** If the use or development was approved with conditions under a review which is no longer in effect on the site, the conditions continue to apply.

16.61.070 Special procedures.

A. Expedited Land Divisions. An expedited land division (“ELD”) shall be defined and may be used as provided under ORS 197.360 through 197.380.

1. Selection. An applicant who wishes to use an ELD procedure for a partition, subdivision or planned development instead of the regular procedure type assigned to it, must request the use of the ELD in writing at the time the application is filed, or forfeit the right to use it.

2. Review Procedure and approval criteria. All applications for expedited land divisions shall comply with ORS 197.360 through 197.380, the Happy Valley Comprehensive Plan, zoning designation, and submittal requirements in 16.61.030.B.2. ORS 197.360 through ORS 197.380 details the criteria, application and notice requirements, and action and appeal procedures for expedited land divisions.

a. For an ELD to be considered for a townhome, duplex, triplex, quadplex or cottage development, the proposed division must demonstrate how it complies with the following:

- i. The parent lot is zoned for residential use and is within the urban growth boundary.
- ii. The parent lot is solely for the purpose of residential use, including recreational or open space uses accessory to residential use.

b. The land division will not provide for dwellings or accessory buildings to be located on land that is within the following overlay zones:

- i. Steep Slopes Development Overlay Zone (LDC 16.32)
- ii. Historic Properties Overlay Zone (LDC 16.33)
- iii. Natural Resources Overlay Zone (LDC 16.34)
- iv. Flood Management Overlay Zone (LDC 16.35)

c. The land division satisfies minimum street or other right-of-way connectivity standards established by the City’s Transportation System Plan, Engineering Design Manual, and the Land Development Code.

d. The land division will result in development that either:

- v. Creates enough lots or parcels to allow building residential units at 80 percent or more of the maximum net density permitted by the zoning designation of the site; or
- vi. All dwellings will be sold or rented to households with incomes below 120 percent of the median family income for Clackamas County. A copy of a deed restriction or other legal mechanism approved by the Director shall be submitted.

3. Appeal Procedure. An appeal of an ELD shall follow the procedures in ORS 197.375.

Where the City has not otherwise appointed a hearings officer (referee) for such appeals, and the City Attorney is a Contractor (not a City employee), the City Attorney shall serve as the referee for ELD appeals.

B. Middle Housing Land Division. A middle housing land division (“MHL”) is the creation of multiple lots or parcels from a single parent lot on which a middle housing type (duplex, triplex, quadplex, townhouse, cottage cluster) is developed or proposed, which results in an individual lot for each of the middle housing units. The MHL process follows the procedures defined by ORS 197.360(1). The MHL criteria and process is as follows:

1. Submittal. Applicants may not submit an application for a MHL if permits for middle housing have been submitted to the Building Division and have not been issued. New middle housing permits may not be submitted for sites with an active MHL review until the final plat is recorded.

2. Approval Criteria. The applicant for a MHL shall demonstrate that the application meets of the following criteria:

- a. Existing Compliance. The middle housing development complies with the Oregon Residential Specialty Code and applicable LDC middle housing regulations. To

- demonstrate compliance with this criterion, the applicant shall submit building permits demonstrating that existing or proposed structures comply with the Oregon Residential Specialty Code and LDC middle housing regulations.
- b. Separate Utility Connections. Separate utility service connections for public water, sewer, and stormwater will be provided for each dwelling unit.
 - c. Easements. Easements will be provided as necessary for each dwelling unit per 16.63.060.C on the site for:
 - i. Locating, accessing, replacing, and servicing all utilities;
 - ii. Pedestrian access from each dwelling unit to a private or public road;
 - iii. Any common use areas or shared building elements;
 - iv. Any dedicated driveways or parking;
 - v. Any dedicated common area.
 - d. One Dwelling Unit per Lot. Exactly one dwelling unit will be located on each resulting lot or parcel (child lot), except for lots, parcels, or tracts used as common areas, on which no dwelling units will be permitted.
 - e. Comply with Building Code. Buildings or structures on a child lot will comply with applicable Building Code provisions relating to new property lines.
 - f. Notwithstanding the creation of new child lots, structures or building located on the newly created lots will comply with the Oregon Residential Specialty Code.
 - g. Frontage improvements. Where a resulting child lot abuts a street that does not meet City standards, street frontage improvements will be constructed and, if necessary, additional right-of-way will be dedicated, pursuant LDC 16.63.060(D).
3. Preliminary Plat Submittal. In addition to the items listed in LDC 16.63.060 and 16.61.030.B.2, an application for a MHDL shall include the following:
- a. A description of the manner in which the proposed division complies with each of the provisions of subsection 2 of this section, including copies of building permits or permit applications and other evidence necessary to demonstrate:
 - i. How buildings or structures on a resulting child lot will comply with applicable building codes provisions related to new property lines; and
 - ii. Notwithstanding the creation of new lots, how structures or buildings located on the newly created child lots will comply with the Oregon Residential Specialty Code.
 - b. In addition to the items listed in LDC 16.63.060, copies of a plat showing the following details:
 - i. Separate utility connections for each dwelling unit, demonstrating compliance with approval criterion LDC 16.61.070.B.2.b.
 - ii. Existing or proposed easements necessary for each dwelling unit on the plan, demonstrating compliance with the criterion LDC 16.63.060.C.
 - c. Copies of all required easements in a form approved by the City Attorney.
4. Preliminary Plat Conditions of Approval.
- a. The preliminary plat for a MHLD shall:
 - i. Prohibit further division of the resulting child lots.
 - ii. Require that a notation appear on the final plat indicating:
 - The approval was given under ORS Chapter 92.
 - The type of middle housing approved on the subject site and noting that this middle housing type shall not altered by the middle housing land division.
 - Accessory dwelling units are not permitted on child lots resulting from a middle housing land division.
 - b. The City shall not attach conditions of approval that a child lot require driveways, vehicle access, parking, or minimum or maximum street frontage.

C. Preliminary Plat Procedures for Expedited and Middle Housing Land Division. Unless the applicant requests to use the procedure set forth in LDC 16.63.040, the City shall use the following procedure for an expedited land division (ELD), as described in ORS 197.360, or a middle housing land division (MHLD).

1. Completeness Review.

- a. If the application for an ELD or MHLD is incomplete, the City shall notify the applicant of the missing information within 21 days of receiving an application. The application shall be deemed complete on the date the applicant submits the requested information or refuses in writing to submit it.
- b. If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

2. Notice of Application.

- a. On receipt of a complete application, written notice shall be provided to owners of property within 100 feet of the entire contiguous site for which the application is made and to any City Council-recognized neighborhood association(s) whose boundaries include the site. Notice shall also be provided to any agency responsible for providing public services or facilities to the subject site. The notification list shall be compiled from the most recent property tax assessment roll. For purposes of appeal to the referee under ORS 197.375, this requirement shall be deemed met when the local government can provide an affidavit or other certification that such notice was given.
 - b. The notice shall include the following:
 - i. The deadline for submitting written comments;
 - ii. A statement of issues that may provide the basis for an appeal to the referee must be raised in writing prior to the expiration of the comment period; and
 - iii. A statement that issues must be raised with sufficient specificity to enable the local government to respond to the issue.
 - iv. The applicable criteria for the decision.
 - v. The place, date, and time that comments are due.
 - vi. A time and place where copies of all evidence submitted by the applicant will be available for review.
 - vii. The street address or other easily understood geographical reference to the subject property.
 - viii. The name and telephone number of a local government contact.
 - ix. A brief summary of the local decision-making process for the land division decision being made.
3. There shall be a minimum 14-day period to allow for submission of written comments prior to the Planning Official's decision.
 4. There shall be no public hearing on the application.
 5. The Planning Official shall make a decision on the application within 63 days of receiving a completed application.
 6. The Planning Official's decision shall be based on applicable elements of the Happy Valley Municipal Code and Comprehensive Plan. An approval may include conditions to ensure that the application meets applicable land use regulations.
 7. Notice of the decision shall be provided to the applicant and to those who received notice under subsection 2 within 63 days of the date of a completed application. The notice of decision shall include:
 - a. A summary statement explaining the determination; and
 - b. An explanation of appeal rights under ORS 197.375
 8. Failure to approve or deny application within specified time.

- a. After seven days' notice to the applicant, the City Council may, at a regularly scheduled public meeting, take action to extend the 63-day time period to a date certain for one or more applications for an expedited land division prior to the expiration of the 63-day period, based on a determination that an unexpected or extraordinary increase in applications makes action within 63 days impracticable. In no case shall an extension be to a date more than 120 days after the application was deemed complete. Upon approval of an extension, the provisions of ORS 197.360 to 197.380, including the mandamus remedy provided by subsection (a), shall remain applicable to the expedited land division, except that the extended period shall be substituted for the 63-day period wherever applicable.
 - b. The decision to approve or deny an extension under subsection b of this section is not a land use decision or limited land use decision.
- 9. A decision may be appealed within 14 days of the mailing of the decision notice by the applicant or a person or organization who file written comments within the time period described in LDC 16.61.070.C.3. The appeal must include the appeal application and a \$300 deposit for costs.
- 10. An appeal shall be based solely on one or more of the allegations:
 - a. The decision violates the substantive provisions of the applicable land use regulations;
 - b. The decision is unconstitutional;
 - c. The application was not eligible for review under LDC 16.61.070(B) (Middle Housing Land Division) and should be reviewed as a land use decision or limited land use decision.
 - d. The appellant's substantive rights were substantially prejudiced by a procedural error.
- 11. The City shall appoint a referee to decide the appeal decision and the appointed referee shall comply with ORS 197.375(3) through (6) when issuing a decision. The referee may not be a City employee or official.
- D. Final Plat Requirements for Expedited and Middle Housing Land Divisions
 - 1. Expedited Land Division (ELD) – Final Plan Review Criteria. Approval of a final plat for an ELD shall be consistent with the review criteria for Land Divisions and Property Line Adjustments (LDC 16.63.080).
 - 2. Middle Housing Land Division (MHL D) – Final Plan Review Criteria. Approval of a final plat for a MHL D will be granted if the review body finds the applicant has met the following criteria:
 - a. The final plat substantially conforms to the preliminary plat.
 - b. Conditions of approval attached to the preliminary plat have been satisfied.
 - c. All proposed improvements required to satisfy applicable standards of the LDC have been constructed.
 - 3. Final Plat Submittal. An application for an ELD or MHL D final plat shall include the items listed in LDC 16.63.080.

16.61.080 Neighborhood meetings.

Applicants filing Type II or Type III applications are encouraged to meet with adjacent property owners and neighborhood representatives prior to submitting their application to the City in order to solicit input and exchange information about the proposed development. Applicants are encouraged to hold a neighborhood meeting with a recognized neighborhood or community organization. If no organization exists, then the applicant may hold a meeting with adjacent property owners who will receive public notice (a minimum three hundred (300) foot radius from subject property).

16.61.090 Traffic impact studies.

The purpose of this section of the code is to assist in determining which road authorities participate in land use decisions, and to implement Section 660-012-0045(2)(e) of the State Transportation Planning Rule that requires the City to adopt a process to apply conditions to development proposals in order to minimize impacts and protect transportation facilities. This chapter establishes the standards for when a proposal must be reviewed for potential traffic impacts; when a traffic impact study must be submitted with a development application in order to determine whether conditions are needed to minimize impacts to and protect transportation facilities; what must be in a traffic impact study; and who is qualified to prepare the study.

A. When a Traffic Impact Study is Required. The City or other road authority with jurisdiction may require a traffic impact study (TIS) as part of an application for development, a change in use, or a change in access. A TIS shall be required when a land use application involves one or more of the following actions:

1. A change in zoning or a plan amendment designation;
2. Any proposed development or land use action that a road authority states may have operational or safety concerns along its facility(ies);
3. An increase in site traffic volume generation. Increase in site traffic volume generation shall be subject to the City's transportation impact study guidelines;
4. An increase in peak hour volume of a particular movement to and from the State highway by twenty (20) percent or more;
5. An increase in use of adjacent streets by vehicles exceeding the twenty thousand (20,000) pound gross vehicle weights by ten (10) vehicles or more per day;
6. The location of the access driveway does not meet minimum sight distance requirements, or is located where vehicles entering or leaving the property are restricted, or such vehicles queue or hesitate on the State highway, creating a safety hazard; and,
7. A change in internal traffic patterns that may cause safety problems, such as back up onto a street or greater potential for traffic accidents.

B. Traffic Impact Study Preparation. A traffic impact study shall be prepared by a professional engineer in accordance with the requirements of the road authority. If the road authority is the Oregon Department of Transportation (ODOT), consult ODOT's regional development review planner and OAR 734-051-180.

Chapter 16.62 LAND USE REVIEW AND DESIGN REVIEW

16.62.010 Purpose.

The purpose of this chapter is to:

- A. Provide rules, regulations and standards for efficient and effective administration of land use and site development review;
- B. Implement the development patterns described in the City's Land Development Code and Comprehensive Plan;
- C. Promote the public health, safety and general welfare;
- D. Provide for adequate transportation, water supply, sewage, fire protection, pollution control, surface water management, and protection against natural hazards;

- E. Encourage the conservation of energy resources; and
- F. Encourage efficient use of land resources, full utilization of urban services, mixed uses, transportation options, and detailed, human-scaled design.

16.62.020 Review types and applicability.

A. Review Types.

1. Type I land use review/minor design review is conducted by the Planning Official or designee without a public hearing. See Chapter 16.61 for review procedure. It applies to changes in land use and developments that do not require a conditional use permit or Type II/Type III minor/major site design review approval. Type I land use review/minor design review is designed to ensure compliance with clear and objective land use and development standards of the land use district, such as lot area, building setbacks and orientation, lot coverage, maximum building height, design standards and other objective provisions of Article 16.2. The Type I land use review/minor design review is accommodated by the Planning Official or designee's review of building permit and site plan materials.
2. As specified in Table 16.62.020-1, minor design review is conducted by either the Planning Official or designee as either a Type I or a Type II decision or as a Type III decision by the Hearings Officer in a public hearing (Type III-HO). Architectural review comments are provided by a contracted, licensed, professional architect. See Chapter 16.61 for review procedure. A Type III-HO review in particular is intended for moderately sized, more complex developments that require more detailed review of the proposed design and the exercise of both objective and subjective decision making in the design review process. When a land use application is received, the Planning Official shall determine the appropriate design review process.
3. Major design review is conducted by the Design Review Board (Type III-DRB) at a public hearing. Major design review is intended for larger, significantly more complex developments that require more detailed review of the proposed design and the exercise of both objective and subjective decision making in the design review process as specified in Table 16.62.020-1.

B. Applicability. Type I land use review/minor design review or Type II minor/major design review is required for all new development and modification to an existing development as described in Table 16.62.020-1 below. Land uses and developments that exceed the thresholds for Type I land use review/minor design review require either Type II minor or Type III minor/major design review. The Planning Official shall determine the required review procedure at the time the application is received.

Table 16.62.020-1 Land Use and Minor and Major Design Review

Review by the Planning Official or designee is demarked with "PO"; review by the Hearings Officer with "HO"; and review by the Design Review Board with "DRB."

Proposed Activity	Type I Land Use Review/ Minor Design Review	Type II Minor Design Review	Type III Minor/Major Design Review
Change in Occupancy or Use			
Creation of single-family attached, duplex, triplex, quadplex, or cottage cluster housing through internal conversion of, or addition to, existing dwellings ¹	PO		
Change in occupancy from one type of land use to a similar land use	PO		
A change in use of a structure from residential to commercial or industrial		PO	HO
New Construction			
Single-family detached dwelling (including manufactured home on its own lot), single-family attached dwellings (townhomes), duplexes, triplexes, quadplexes, cottage clusters	PO		
Multifamily residential developments made up of a total of 30 attached dwelling units or less		PO	
Residential developments made up of a total of 31 to 60 attached dwelling units			HO
Residential developments made up of 61 attached dwelling units or more			DRB
Nonresidential development up to 5,000 square feet (structures only) in size		PO	
Nonresidential development between 5,001 and 14,999 square feet (structures only) in size			HO
Nonresidential development greater than 15,000 square feet (structures only) in size			DRB
Nonresidential and Multifamily Additions and Remodeling			
Nonresidential or multifamily building additions or substantial exterior remodeling up to 20 percent of existing gross floor area or building height, except that the following shall require minor design review: Enlarging or extending a nonconforming use	PO		
Increases the building footprint or height Modifies more than 25 percent of the façade or, if the property abuts property zoned for residential use, modifies any portion of the façade visible from the residentially zoned property			

Proposed Activity	Type I Land Use Review/ Minor Design Review	Type II Minor Design Review	Type III Minor/Major Design Review
Expansion or substantial exterior remodeling of existing nonresidential or multifamily development greater than 20 percent of the building's gross floor area or existing building height		PO	HO
A tenant improvement including re-painting of more than 50 percent of the total façade	PO		
Other Activities			
Minor modifications to development approvals as defined by Chapter 16.66		PO	
Any proposed development that has a valid conditional use permit. Major modifications to a development with a conditional use permit shall require review and approval in accordance with Chapter 16.64, Conditional Use Permits	PO		
Temporary uses requiring a permit under Chapter 16.69	PO		
Mobile food unit sites (see Section 16.69.030 for thresholds)	PO	PO	HO/DRB
Accessory structures and accessory parking	PO		
Development and land uses that are part of a previously approved design review or conditional use permit application	PO		
Public improvements required by a condition of approval (e.g., transportation facilities and improvements, parks, trails, and similar improvements, as determined by the Planning Official)	PO		
Dredging, filling, grading, paving, construction of retaining walls over 12 feet in height, excavation or drilling operations located within the City that significantly impact an existing or potential design review application as determined by the Planning Official		PO	
Dredging, filling, grading, paving, construction of retaining walls over 4 feet in height, excavation or drilling operations located within the City that minimally impact an existing or potential design review application as determined by the Planning Official	PO		
Notes: ¹ The following applies to conversion of any housing type to single-family attached, duplex, triplex, quadplex or cottage cluster housing: <ul style="list-style-type: none"> - The converted housing type is a permitted use in the underlying zone. - With the exception of minimum parking requirements, the conversion does not create a non-conforming use or increase non-conformance with applicable development or design standards. - With the exception of conversions to cottage clusters, middle housing conversions are exempt from additional residential design standards found in Article 16.4. 			

Proposed Activity	Type I Land Use Review/ Minor Design Review	Type II Minor Design Review	Type III Minor/Major Design Review
<ul style="list-style-type: none"> - Separate utility connections are provided or available for the additional unit(s), either on the side or front of the house. 			

C. Exemptions.

1. Regular maintenance, repair and replacement of materials (e.g., roof, siding, awnings, etc.), parking resurfacing and similar maintenance and repair shall be exempt from review.
2. A building expansion that is solely designed and constructed to:
 - a. Provide accessibility for the disabled;
 - b. Provide for energy conservation (e.g., addition of an entry vestibule);
 - c. Provide for screened recycling or trash storage; or
 - d. Relocate or screen visible exterior mechanical equipment so that such equipment is no longer visible.

16.62.030 Design review.

A. Design Review Board—Appointment, Term Limits and Membership. The City Council shall appoint a Design Review Board to serve as expert professional advisors to aid in the review of certain development applications as provided in Chapter 2.16 (Volunteer Committees) of the Happy Valley Municipal Code.

B. Time Limits. Design review approval expires after two years unless substantial construction on the site has begun, as determined by the City. The Planning Official or designee may extend an approval for an additional period not to exceed one year based on the following:

1. No changes are made to the original site design review plan;
2. The applicant demonstrates the ability and intent to initiate construction on the site within the one-year extension period; and
3. The applicant demonstrates that failure to obtain building permits and substantially begin construction within the two-year approval period was beyond the applicant's control. An application for an extension shall be filed with the applicable fee prior to the expiration of the approval.

C. Design Review Application Requirements. In order to be deemed complete, a design review application shall contain all of the following plans and elements, unless specifically waived by the Planning Official or designee:

1. Submittal requirements for minor and major design review:
 - a. Existing conditions plan;
 - b. Site plan;
 - c. Landscape plan;

- d. Grading plan;
- e. Color architectural elevations;
- f. Site photographs;
- g. Building materials exhibit;
- h. Lighting plan;
- i. Signage plan (if available);
- j. Refuse/recycling facility elevations;
- k. Narrative;
- l. Additional requirements as determined by the Planning Official.

D. Design Review Plans—Information Requirements. Design review plans shall include the following:

- 1. Electronic copies of all documents formatted to be able to be printed at “full size” (twenty-four (24) by thirty-six (36) inches) and “one-half size” (eleven (11) by seventeen (17) inches) and maintain a standard engineering or architectural scale at printed size. Three copies of full-size plans printed to a standard engineering or architectural scale. Larger-sized copies are allowed at the discretion of the City;
- 2. Twenty (20) copies of one-half size plans printed to a standard engineering or architectural scale for utilization in soliciting comments by City staff and relevant service providers, as well as the number of plan sets corresponding to the number of mailed notice recipients within a three hundred (300) foot radius of the greater subject site;
- 3. Drawings shall be at a scale sufficiently large enough to enable all features of the design to be clearly discerned;
- 4. All plans should have a north arrow, title, scale and date of plan.

E. Existing Conditions Plan. This element of design review shall indicate the following site characteristics:

- 1. Assessor’s tax map and tax lot number;
- 2. Boundary dimensions and area of the site;
- 3. Location of all existing structures, including their distances from the property line;
- 4. The location and names of all existing streets within or on the boundary of the development;
- 5. Location and species of trees greater than six inches in diameter when measured four and one-half feet above the natural grade and an indication of which trees are to be removed;
- 6. On sites that contain slopes greater than fifteen (15) percent, potential geologic hazards or unique natural features including environmental zones or overlays that may affect the proposed development, along with contours mapped at five-foot intervals;
- 7. Natural drainageways and other significant natural features such as wetlands, riparian corridors, and protected water features;
- 8. All buildings, roads, retaining walls, curb cuts, and other manmade features;

9. Topographical survey to include structures and natural features (wetlands, riparian corridors and their buffers) on adjoining property within two hundred (200) feet of the site; and
 10. A survey of the subject property by a licensed land surveyor clearly delineating property boundaries shall be provided and shall be accurate as to current state of property.
- F. Site Plan. This element of the design review plan shall indicate the following:
1. Area of the site covered by the structures described in this subsection and their percentage of the site;
 2. All external dimensions of proposed buildings and structures;
 3. Parking and circulation areas including their dimensions;
 4. Service areas for such uses as the loading and delivery of goods;
 5. Locations, purpose, and dimensions of easements;
 6. Pedestrian circulation;
 7. The location of mechanical equipment, garbage disposal areas, utility appurtenance, and similar structures;
 8. Exterior lighting, including the type and intensity, are to be illustrated;
 9. Provisions for handicapped persons;
 10. Other site elements, which will assist in the evaluation of site development;
 11. The location and names of all existing streets within or on the boundary.
 - a. A block on the plans stating the following:
 - i. For commercial and nonresidential development:
 - (A) The square footage contained in the area proposed to be developed;
 - (B) The percentage of the lot covered by:
 - (1) Structures,
 - (2) Parking areas,
 - (3) Recreation areas,
 - (4) Landscaping,
 - (5) Other impervious surface areas needed to measure lot coverage.
 - ii. For residential development:
 - (A) The total square footage in the development;
 - (B) The number of dwelling units in the development (include the units by the number of bedrooms in each unit, e.g., ten (10) one-bed-room, twenty-five (25) two-bedrooms, etc.);
 - (C) The percentage of the lot covered by:
 - (1) Structures,
 - (2) Parking areas,
 - (3) Recreation areas,
 - (4) Landscaping,

(5) Other impervious surface areas needed to measure lot coverage.

G. Landscape Plan. This element of the design review plan should indicate the following:

1. Landscape plans shall be prepared by a licensed landscape architect;
2. Locations of buildings and structures, including pathways, driveways and parking areas;
3. Location of areas to be landscaped;
4. Private and shared outdoor recreation areas;
5. List of plant materials, including genus, species, common name, sizing, quantity and spacing;
6. Pertinent landscape features including walls, retaining walls, berms, fences and fountains;
7. A note on the plan indicating that an irrigation system will be installed to maintain the landscape materials and the method of irrigation;
8. The size, species, and locations of plant materials to be retained or placed on the site;
9. The locations and design details of walkways, plazas, courtyards, and similar seating areas including related street furniture and permanent outdoor equipment including sculpture;
10. The location and design details of proposed fencing, retaining walls, and trash collection areas; and
11. A proposed plan for the maintenance of the landscape plan including the replacement of plants as may be needed to preserve the visual integrity of the site.

H. Grading Plan. This element of design review shall indicate the following: grading and drainage plans including spot elevations and contours at close enough intervals to easily convey the slope of the site.

I. Architectural Elevations. This element of the design review plan shall indicate the following: color exterior elevations, showing finish materials, windows, doors, light fixtures, stairways, balconies, decks, and architectural details. These elevations shall be provided for every exterior wall surface including those that are completely or partially concealed from view by overlapping portions of the structure. Existing and finished grades at the center of all walls shall be shown with elevation of floors indicated and a dimension showing compliance with height limitations.

J. Site Photographs. This element of the design review plan shall indicate the following:

1. Photographs depicting the site and its relationship to adjoining sites;
2. Current aerial photos accurately depicting existing conditions.

K. Building Materials Exhibit. This element of the design review plan shall include a written description and photographic representation of the following: the color and texture of finish materials and color ranges of siding and other façade treatment, roofing, windows and trim.

L. Lighting Plan. This element of the design review plan shall indicate the following:

1. Illustrate the type of exterior wall light fixtures including the lamp types with manufacturer's specification sheet and the levels of illumination that they provide;
2. Location and type of street and parking lot light fixtures including the lamp types along with manufacturers specification sheet and the levels of illumination that they provide;

3. A comprehensive graphic plan showing the location, size, material, and method of illumination of all monument signs. Individual signs shall go through the sign permit process outlined in Chapter 16.45 of this title; and
4. The location, type, and intensity and manufacturer's specification sheet of light proposed to illuminate outdoor areas.

M. Additional Requirements.

1. The City may require the following in addition to the materials cited in Chapter 16.66. This determination will be made as part of the pre-application conference process.
2. Additional information that may be required includes, but is not limited to:
 - a. Traffic impact analysis, completed pursuant to Section 16.61.090;
 - b. Architectural models;
 - c. Natural resource assessment, consistent with the requirements of Chapter 16.34;
3. Other information as requested by the Planning Official or designee.

N. Narrative. A design review narrative shall be provided that addresses each of the applicable standards and criteria in Section 16.62.030(O) and the following Sections 16.50.080, Construction plan approval—Bonding and assurances and 16.62.030, Design Review.

O. General Design Review Criteria.

1. Applicability. The following criteria apply to design review projects except for single-family detached, single-family attached (townhome), duplex, triplex, quadplex, and cottage cluster residential development.
2. Relationship to Other Standards. The criteria of this section apply in addition to other standards of this title. Where requirements conflict with standards in other sections of this title, the standards of this section shall govern; except that Happy Valley Style Design Review standards in Chapter 16.46 shall supersede, and where applicable, the multifamily standards in Section 16.44.010 shall supersede.
3. Criteria.
 - a. The proposed development preserves significant natural features such as natural drainageways, wetlands, and trees outside the construction area as defined in Section 16.42.050, to the maximum extent feasible, and conforms to the provisions of Sections 16.35.050 and 16.35.020.
 - b. Phased projects shall be designed to the greatest degree possible so that each phase, in and of itself, is complete in its functional, traffic, parking, visual, drainage and landscaping aspects.
 - c. Where appropriate, the design includes a parking and circulation system that includes a pedestrian and vehicular orientation including separate service area(s) for delivery of goods.
 - d. The location, size, shape, height and spatial and visual arrangement of the uses and structures are compatible, with the consideration given to increased setbacks, building heights, shared parking, common driveways and other similar considerations.
 - e. That there is desirable, efficient and functional interrelationship among buildings, building entrances, existing and proposed transit stops, transit facilities and routes,

parking, loading area, circulation, open spaces, landscaping and related activities and uses on the site.

- f. Utilize landscaping in parking areas to direct and control vehicular movement patterns, screen headlights from adjacent properties and streets, and lessen the visual dominance of pavement coverage.
- g. The proposed development meets all other applicable provisions of this Land Development Code.
- h. The proposed development can be adequately served by Level 1 services.
- i. Provide safe pathways for pedestrians to move from parking areas to building entrances.
- j. All building exterior improvements approved through the design review process shall be continually maintained including necessary painting and repair so as to remain substantially similar to the original approval through the design review process.
- k. A landscape plan shall be approved consistent with design standards in Chapter 16.42 in a manner that will assure the maintenance and visual integrity of the site.
- l. All plans shall comply with the purpose statement in Section 16.62.010.

16.62.040 Development in accordance with permit approval—Modifications—Permit expiration.

Development shall not commence until the applicant has received all of the appropriate land use and development approvals, including construction plan approval and any applicable bonding or posting of securities. 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 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 16.50.080 Construction Plan Approval, Bonding and Assurances. Land Use Review and Design Review approval is subject to all of the following standards and limitations.

- A. Modifications to Approved Plans and Developments. Minor modification of an approved plan or existing development, as defined in Chapter 16.66, shall be processed as a Type I procedure. A major modification, as defined in Chapter 16.66, shall be processed as a Type III-HO or Type III-DRB procedure and requires design review by the review body that issued the original decision.
- B. Approval Period. A decision to approve a minor or major modification expires two years from the date of approval if:
 - 1. A public improvement plan or building permit application for the project has not been submitted within two years of approval; or
 - 2. Construction on the site is in violation of the approved plan.
- C. Phased Development. Phasing of development may be approved with the design review application, subject to the following standards and procedures:
 - 1. A phasing plan shall be submitted with a design review and/or subdivision application.

2. A decision to approve the application shall include a phasing schedule for developing the site in phases, but in no case shall the total time period for all phases be greater than seven years from the date of approval without reapplying for design review.
3. An application for phased development must satisfy all of the following criteria:
 - a. The public facilities required to serve each phase are constructed in conjunction with or prior to the phase;
 - b. The development and occupancy of any phase that is dependent on the use of temporary public facilities requires approval by the City Engineer, Building Official and any applicable service provider. Temporary facilities shall be approved only upon City receipt of bonding or other assurances to cover the cost of required public improvements in accordance with Section 16.50.080. A temporary public facility is any facility not constructed to the applicable City or district standard as determined by the City Engineer;
 - c. The phased development shall not result in requiring the City or other property owners to construct public facilities that were required as part of the approved development proposal; and
 - d. An application for phasing may be approved after design review or subdivision approval as a modification to the approved plan, in accordance with the procedures for a minor modification (Chapter 16.66). As determined by the Planning Official, if significant impacts will occur due to the proposed phasing, the application may be processed as a major modification.

Chapter 16.63 LAND DIVISIONS AND PROPERTY LINE ADJUSTMENTS

16.63.010 Purpose.

The purpose of this chapter is to:

- A. Provide rules, regulations and standards governing the approval of subdivisions, partitions and lot line adjustments, as defined below and in Chapter 16.12:
 1. Subdivisions are the creation of four or more lots from one parent lot, parcel or tract, within one calendar year,
 2. Partitions are the creation of three or fewer lots within one calendar year,
 3. Lot line adjustments are modifications to lot lines or parcel boundaries that do not result in the creation of new lots (includes consolidation of lots);
- B. Carry out the City's development pattern, as envisioned by the City's Comprehensive Plan; this title and adopted master plans;
- C. Encourage efficient use of land resources, full utilization of urban services, and transportation options;
- D. Promote the public health, safety and general welfare through orderly and efficient urbanization;
- E. Provide adequate light and air, prevent overcrowding of land, and provide for adequate transportation, water supply, sewage, fire protection, pollution control, surface water management, and protection against natural hazards; and

- F. Encourage the conservation of energy resources.

16.63.020 General requirements.

A. Subdivision and Partition Approval Through Two-step Process. Applications for subdivision or partition approval shall be processed by means of a preliminary plat evaluation and a final plat evaluation, according to the following two steps:

1. The preliminary plat must be approved before the final plat can be submitted for approval consideration; and
2. The final plat must include all conditions of approval of the preliminary plat.

B. The following conditions, regulations and restrictions shall apply to all methods of development:

1. No person shall dispose of, transfer, sell or agree, offer or negotiate to sell any lot in any subdivision until the final plat of the subdivision has been acknowledged and recorded with the Clackamas County Clerk's office.
2. No person shall dispose of, transfer, sell or agree, offer or negotiate to sell any lot in any subdivision by reference to or exhibition or other use of a plat of such subdivision before the final plat for such subdivision has been so recorded.
3. A person may offer or negotiate to sell any parcel in a partition prior to approval of the tentative plan for the partition, but no person may dispose of, transfer, sell, or agree to sell any parcel in a partition prior to such approval.
4. All planned unit developments (PUDs), subdivisions, master plans and partitions which are developed pursuant to this Development Code must also be in conformance with the Happy Valley Comprehensive Plan and this title.
5. Building permits that are requested for lots which are not in conformance to this title shall not be issued unless the lot is a pre-existing lot of record prior to the enactment of this title.
6. All subdivisions, master plans and partitions using subsurface sewerage disposal methods shall be developed pursuant to the appropriate State, County and City regulations.
7. Any parcel or tract to be developed using the facilities of a community sewerage agency shall be developed pursuant to the appropriate City and agency regulations.

C. Compliance With ORS Chapter 92. All subdivision and partition proposals shall conform to state regulations in Oregon Revised Statute (ORS) Chapter 92, Subdivisions and Partitions.

D. Future Re-division Plan. When subdividing or partitioning tracts into large lots (i.e., greater than two times or two hundred (200) percent the minimum lot size allowed by the underlying land use district), the City shall require that the lots be of such size, shape, and orientation as to facilitate future re-division in accordance with the requirements of the land use district and this Code. A re-division plan shall be submitted for large lots identifying:

1. Potential future lot division(s), consistent with the density and lot size standards of Article 16.2;
2. Potential street right-of-way alignments to serve future development of the property and connect to adjacent properties, including existing or planned rights-of-way;

3. A disclaimer that the plan is a conceptual plan intended to show potential future development. It shall not be binding on the City or property owners, except as may be required through conditions of land division approval. For example, dedication and improvement of rights-of-way within the future plan area may be required to provide needed secondary access and circulation.

E. Lot Size Averaging. Single-family residential lot size may be averaged to allow lots less than the minimum lot size in residential districts, as provided by Section 16.63.030, Flexible Lot Size, or through approval of a master planned development under Chapter 16.65.

F. Density Calculations. Density calculation is the means by which density for any lot or parcel is determined and the lot or parcel ultimately developed in a more efficient and land conscious manner. This portion of the Land Development Code provides the method for calculating the overall density for any site that may contain both constrained land, partially constrained land and unconstrained land. The minimum and maximum number of dwelling units permitted on a site is limited by both the number of units allowed by the applicable zoning district(s) and the amount of buildable land. The need to provide infrastructure and the presence of easements for major utilities corridor also impacts the number of units permitted on a site. The shared outdoor recreation areas requirements of Section 16.42.080 shall not affect the density calculations.

As outlined in Table 16.63.020-1, Density Calculations, Steps 1 through 4 establish the maximum number of potential dwelling units allowed on a site given the zoning districts and/or overlay districts. However, if site constraints are present, there may not be enough buildable land (capacity) for all of the potential dwelling units to be constructed on site. Steps 5 through 8 establish capacity in terms of the number of dwelling units that can physically be built on a site given site constraints and available buildable land. If, as a result of constrained land or partially constrained land, the total number of dwelling units generated is more than the capacity of the site, the site may qualify for density transfer pursuant to subsection (F)(2).

1. For the purposes of calculating density, land shall be categorized as follows:
 - a. Constrained land, which includes any land designated as:
 - i. Conservation slope areas (slopes twenty-five (25) percent and greater) as defined in Chapter 16.32.
 - ii. Potentially hazardous analysis areas (lands within twenty-five (25) feet of the top or toe of slopes of conservation slope areas) as defined in Chapter 16.32 that are identified by a certified geotechnical engineer.
 - iii. DOGAMI potentially rapidly moving landslide hazard areas, as defined in Chapter 16.32.
 - iv. Water quality resource areas, as defined in Section 16.34.060.
 - b. Partially constrained land, which includes any land designated as follows:
 - i. High and moderate value habitat conservation areas, as defined in Section 16.34.020(D)(2).
 - ii. Transition slope area as defined in Chapter 16.32.
 - c. Unconstrained Land, which includes any land not designated as constrained land or partially constrained land.

Table 16.63.020-1 Maximum Potential Number of Dwelling Units based on Zoning

Step 1: Calculate land area by category.	
For the total gross area of the parcel identify the square footage of land in each of the following categories:	1a = gross area of the parcel
	1b = unconstrained land within each zoning district ($1a - (1c + 1d)$)
	1c = constrained land
	1d = partially constrained land ($1e + 1f + 1g$)
	1e = transition slope area (TSA)
	1f = high value habitat conservation area (high HCA)
	1g = moderate value habitat conservation area (moderate HCA)
Step 2: Establish number of potential residential units from constrained and partially constrained land (if any).	
Density for constrained land and partially constrained land is calculated at 2 dwelling units per acre.	2a = $((1c + 1d) / 43,560) \times 2$
Step 3: Establish number of potential residential units from unconstrained land.	
a. For each zoning district identify land needed for infrastructure:	3a = the square footage of land needed for infrastructure
20% of the acreage for public-rights-of-way, or remove right-of-way square footage from actual layout;* plus Any land required for stormwater treatment and detention facilities that will be placed in a separate tract.	
*NOTE: In the case of a partition, where the City is requiring the dedication of right-of-way along an existing roadway, the dedicated right-of-way shall not be included in the calculation for the purposes of calculating density and satisfying minimum lot size.	
b. Subtract land needed for infrastructure from unconstrained land to establish net acres.	3b = $1b - 3a$
c. Density within the land use districts may be expressed as either a minimum lot size or as a maximum number of units per net acre. Therefore, the potential number of dwelling units can be calculated in one of two ways depending on the structure of the base zone. For each zoning district, calculate the appropriate number of units.	3c = $(3b / 43,560) / \text{base zone density}$ <p align="center">or</p> $3b / \text{base zone minimum lot size}$

Step 4: Establish number of potential residential units.	
<p>The total potential dwelling units that can be generated by a parcel includes the number of units produced by the constrained and partially constrained land (2a) and the unconstrained land (3c). Any existing dwelling units within the parcel shall be subtracted from the total to determine the number of additional allowable units.</p> <p>NOTE: Unit percentages above the midway mark between two numbers (for example, 6.6 units) are rounded up to the next unit number (i.e., seven units). Unit percentages below the midway mark (i.e., 6.4 units) are rounded down to the next unit number (i.e., six units).</p>	$4a = 2 + 3c$
Step 5: Identify the capacity of unconstrained land.	
For each zoning district:	
a. Identify any land that is within the easement of a major utility corridor, but which is otherwise unconstrained or partially unconstrained	$5a$ = the square footage of land within major utility corridors
b. Subtract land within major utility corridors from net acres (3b).	$5b = 3b - 5a$
<p>c. Density within the land use districts may be expressed as either a minimum lot size or as a maximum number of units per acre.</p> <p>Therefore, the potential number of dwelling units can be calculated in one of two ways depending on the structure of the base zone. For each zoning district, calculate the appropriate number of units.</p>	$5c = (5b / 43,560) \times \text{base zone density}$ or $5b / \text{base zone minimum lot size}$
d. With the use of density transfers pursuant to Section 16.63.020(F)(2), the maximum capacity of the buildable portion of unconstrained land is 175% of the density permitted by the underlying zoning district.	$5d = 5c \times 175\%$
Step 6: Identify the capacity of transition slope area (TSA).	
For all land designated as TSA, use the methodology below to determine how much is buildable and how many dwelling units could be accommodated within the buildable area.	
a. Determine the percentage of constrained and partially constrained land on the site.	$6a\% = (1c + 1d) / 1a \times 100$

b. Determine the percentage of TSA that is buildable based on the sliding scale below.		6b% = % of TSA that is buildable based on the sliding scale
% of the parcel that is constrained or partially constrained (5a)	% of TSA that is buildable	
0 to 19.99%,	30%	
20 to 49.99%	40%	
≥ 50%	50%	
c. Determine the square footage of TSA (1e) that is buildable.		6c = 1e x 6b
d. The capacity of the buildable portion of TSAs is 2.0 dwelling units per acre.		6d = (6c/43,560) x 2.0
e. With the use of density transfers pursuant to Section 16.63.020.F.2, the maximum capacity of the buildable portion of TSAs can be increased to 3.5 dwelling units per acre. NOTE: 3.5 du/ac equals 175% of the base density of 2 du/ac.		6e = (6c/43,560) x 3.5
Step 7: Identify the capacity of habitat conservation areas (HCA).		
For all land designated as high or moderate HCA, use the methodology below to determine how much is buildable and how many dwelling units could be accommodated within the buildable area. Determine the square footage of high HCA (1f) and moderate HCA (1g) that is buildable:		
a. High HCA = 10% buildable;		7a = 1f x 10%
b. Moderate HCA = 15% buildable.		7b = 1g x 15%
c. The capacity of the buildable portion of HCAs is 2.0 dwelling units per acre.		7c = ((7a + 7b)/43,560) x 2.0
d. With the use of density transfers pursuant to Section 16.63.020(F)(2), the maximum capacity of the buildable portion of high and moderate HCAs can be increased to 3.5 dwelling units per acre.		7d = ((7a + 7b)/43,560) x 3.5
NOTE: 3.5 du/ac equals 175% of the base density of 2 du/ac.		
Step 8: Identify total capacity and potential for density transfer.		

Total number of dwelling units generated by the zoning on the site	4a
The capacity of the parcel without consideration of any potential density transfer is the sum of the capacity in dwelling units from the buildable portions of unconstrained (5c), TSA (6d) and HCA (7c) lands	8a = 5c + 6d + 7c
The capacity of the parcel including all potential density transfers is the sum of the capacity in dwelling units from the buildable portions of unconstrained (5d), TSA (6e) and HCA (7d) lands. This represents the total number of units that can be built on the site if density transfers are available pursuant to Section 16.63.020(F)(2)	8b = 5d + 6e + 7d
Minimum density represents the minimum number of dwelling units required to be built on a parcel of land. It is based on 80% of the capacity of the buildable unconstrained land (5c). There is no minimum density requirement for constrained or partially constrained lands	8c = 5c x 80%
Number of dwelling units that can be transferred TO the site (if qualified)	8d = 8b – 8a
Number of dwelling units that can be transferred FROM the site (if qualified)	8e = 4a – 8c
Number of dwelling units that can be transferred FROM the site after full use of density transfer within the site	8f = 4a - 8b
Step 9: Calculate the net developable area, for purposes of FAR and open space calculations.	9a = 3b – 1c

2. Density and Open Space Transfer Limitation. Density and open space transfers may occur through the following processes:

- a. Through the PUD process, development may be clustered on-site in order to avoid constrained or partially constrained land. In addition, density transfer may occur between separate parcels when one parcel contains constrained or partially constrained land, provided the following provisions have been fulfilled:
 - i. The parcels are under common ownership and are contiguous; or
 - ii. The parcels are not under common ownership and are contiguous, but a written agreement to transfer has been executed, notarized, recorded and provided to the City; and
 - iii. The scope of the proposed development project includes all affected properties.

iv. All density calculation actions shall be made part of the property deed for which the action occurred and will be recorded on behalf of the City to insure public notification of the transfer of development rights, and shall be calculated per the provisions for density transfer found within this title; and

v. The resulting development on the parcel or portion of the parcel receiving the transfer may not exceed one hundred seventy-five (175) percent of the maximum density allowed within the underlying zoning district(s) for that buildable area. Due to the need for differentiation in lot sizes necessary to accommodate said density transfer (potentially falling below the minimum lot size found within the underlying development district(s)), a land use application proposing subdivision of land involving a proposed or recorded density or open space transfer shall be processed under the provisions for Planned Unit Developments (PUDs) pursuant to Section 16.63.140.

b. In scenarios not involving a comprehensive plan map amendment/zone change; master plan or PUD application(s), transfer of residential density or general open space requirements associated with the existing Comprehensive Plan Map designation/zoning district from commonly owned residential lands (from one lot of record or parcel to another) via a proposed purchase and sale agreement, lot line adjustment, deed restriction or other transfer mechanism is permitted, provided the following provisions have been fulfilled:

i. The parcels are under common ownership; or

ii. The parcels are not under common ownership and are contiguous, but a written agreement to transfer has been executed, notarized, recorded and provided to the City; and

iii. The scope of the proposed purchase and sale agreement, lot line adjustment, deed restriction or other transfer mechanism includes all affected properties; and

iv. A proposed open space transfer does not include area designated as a significant natural resource as defined within Chapter 16.34; and

v. A proposed open space transfer does not reduce the total open space requirement for the transferring property or properties to less than five percent of the greater subject contiguous area; and

vi. The scope of the proposed purchase and sale agreement, lot line adjustment, deed restriction or other transfer mechanism includes a recorded covenant against the receiving property in favor of the sending property providing that any person with an ownership interest in the sending property shall be entitled to use any open space in the receiving property. The covenant shall name the City of Happy Valley as a beneficiary for purposes of enforcing said covenant; and

vii. Without regard to the proposed transfer mechanism, the proposed density or open space transfer shall be processed at least through a Type II procedure (administrative) per the requirements of Section 16.61.030.

G. Temporary Sales Office. A temporary sales office in conjunction with a subdivision may be approved as set forth in Section 16.69.010, Temporary use permits.

H. Minimize Flood Damage. All subdivisions and partitions shall be designed based on the need to minimize the risk of flood damage. No new building lots shall be created entirely within a floodway. All new lots shall be buildable without requiring development within the floodway and, where possible, allow building outside of the flood fringe. Development in a 100-year floodplain shall comply with the National Flood Insurance Program and State Building Code requirements, including elevating structures above the base flood elevation. The applicant shall be responsible for obtaining floodplain development permit from the NFIP and local jurisdiction.

I. Determination of Base Flood Elevation. Where a development site consists of five or more acres or fifty (50) or more lots, and is located in or near areas prone to inundation for which the base flood elevation has not been mapped, the applicant shall have the base flood elevation it shall be prepared by a qualified professional as part of the land division application.

J. Need for Adequate Utilities. All lots created through land division shall have adequate public utilities and facilities such as sewer, gas, electrical, and water systems. These systems shall be located and constructed to prevent or minimize flood damage, and to avoid impairment of the system and contamination from them during flooding.

K. Need for Adequate Drainage. All subdivision and partition proposals shall have adequate surface water drainage facilities that reduce exposure to flood damage and improve water quality. Water quality or quantity control improvements may be required.

L. Floodplain, Park, and Open Space Dedications. Where land filling and/or development is allowed within or adjacent to regulatory floodplain and the Comprehensive Plan designates the subject floodplain for park, open space, or trail use, the City may require the dedication of sufficient open land area for a greenway and/or trail adjoining or within the floodplain for transportation, storm drainage/water quality, or park purposes in the public interest. When practicable, this area shall include portions at a suitable elevation for the construction of a multi-use pathway in accordance with the City's adopted trails plan or pedestrian and bikeway plans, as applicable. The City shall evaluate individual development proposals and determine whether the dedication of land is justified based on the development's impact to the park and/or trail system, or stormwater management requirements, consistent with Sections 16.50.030 and 16.50.060, and assist in obtaining any floodplain permit that may be required.

M. Lands Subject to Hazardous Conditions. Any land area within the City which has been determined to be unbuildable pursuant to the City's Comprehensive Plan and Development Code shall be developed for building purposes only when adequate methods for mitigating the hazards are submitted, reviewed and approved by all appropriate agencies. The appropriate agencies, including the City Engineer, shall use as their review and approval criteria the pertinent sections of the applicable codes, ordinances, laws, statutes, administrative policies and rules, and other applicable documents. Land areas determined not to be buildable may be utilized to help complete or fulfill a requirement for the provision of open space, if a maintenance agreement is provided by the property owner and approved by the City Engineer.

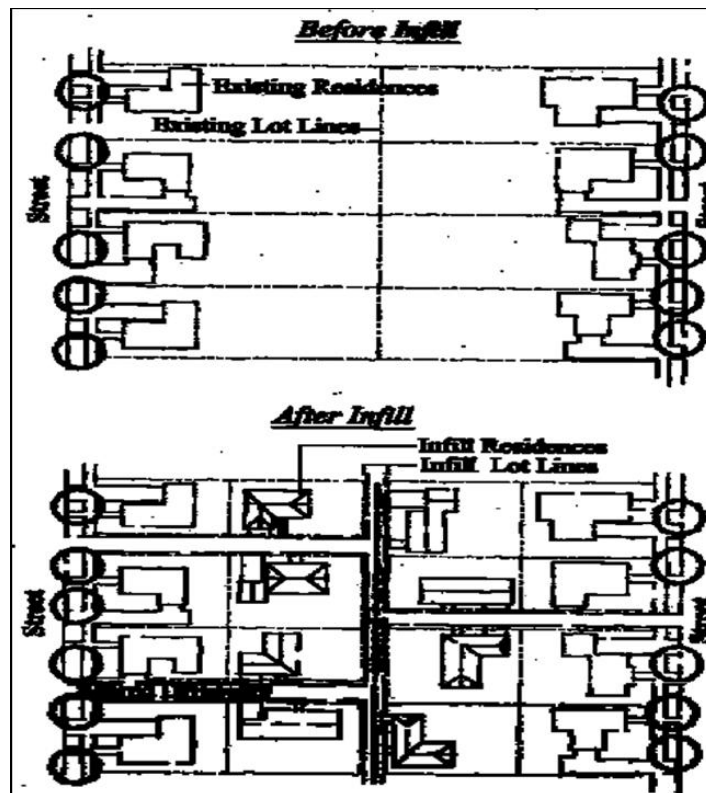
16.63.030 Flexible lot size—Flag lots—Lots accessed by mid-block lanes.

A. Flexible Lot Size. To allow creativity and flexibility in subdivision design and to address physical constraints, such as topography, existing development, significant trees and other natural and built features, the approval body may grant a ten (10) percent modification to the lot area and/or

lot dimension (width/depth) standards in Chapter 16.22, provided that: the overall density of the subdivision does not exceed the allowable density of the district; the minimum lot size for single-family detached lots is not less than five thousand (5,000) square feet within eighty (80) percent of the net developable area of the subject development (and within the twenty (20) percent remainder area, lot sizes may decrease by a maximum of ten (10) percent); and the approval body finds that granting the modification allows for a greater variety of housing types or it improves development compatibility with natural features or adjacent land uses. In addition, the approval body may require that standard size lots be placed at the perimeter of the development where the abutting lots are standard size or larger; except that this provision shall not apply where the abutting lots are larger than twenty thousand (20,000) square feet.

B. Mid-block Lanes. Lots may be developed without frontage onto a public street when lot access is provided by mid-block lanes, as shown below. Mid-block lanes or shared driveways, as illustrated in Figure 16.63.030-1, may be required when practicable to provide connectivity between infill developments. Mid-block lanes with access easements for adjoining properties may be allowed as an alternative to requiring through streets where block lengths do not necessitate a through street. The lanes shall meet the standards for alleys, pursuant to Chapter 16.41, Section 16.50.030, and the specific standards in the Happy Valley Transportation Plan, and the standards under subsections C through F.

Figure 16.63.030-1 Mid-block Infill



C. Flag Lots. Flag lots may be created only when a through street or mid-block lanes cannot be extended to serve abutting uses or future development. A flag lot driveway ("flag pole") may serve no more than two dwelling units, including accessory dwellings and dwellings on individual lots,

unless Uniform Fire Code (UFC) standards are met for more units. When UFC standards are met, the maximum number of dwellings shall be four. A drive serving more than one lot shall have a reciprocal access and maintenance easement recorded for all lots. No fence, structure or other obstacle shall be placed within the drive area. The Fire Marshal may require an emergency turnaround. Fire sprinklers may also be required for buildings that cannot be fully served by fire hydrants (i.e., due to distance from hydrant or insufficient fire flow). The required minimum lot area is the same as that required by the development district in which the lot is located. When calculating lot area, only the flag portion of the lot is counted, not the flag pole.

D. Driveway and Lane Width. The minimum paved width of all shared drives and lanes shall be twelve (12) feet within a twenty (20) foot easement, and may serve up to two dwelling units, or as required by the Uniform Fire Code.

E. Easement and Improvement of Drive Lane. The developer or property owner shall record a twenty (20) foot easement benefiting all properties that are to receive vehicle access. All drive lanes shall be improved with an all weather surface approved by the City. Recording of easements or separate tracts, as applicable, shall be so indicated on the face of the subdivision or partition plat.

F. Maximum Drive Lane Length. The maximum drive lane length is subject to requirements of Clackamas Fire District No. 1.

G. Future Street Plans. Building placement and alignment of shared drives shall be designed so that future street connections can be made as surrounding properties develop (i.e., as shown in the Figure 16.63.030-1).

16.63.040 Preliminary plat approval process.

A. Review of Preliminary Plat. Review of a preliminary plat that creates two or three parcels (partition) or four to nine lots (subdivision) shall be processed using a Type II procedure under Section 16.61.030. A preliminary plat that creates ten (10) or more lots (subdivision) shall be processed using a Type III procedure under Section 16.61.040. All preliminary plats shall be reviewed using the approval criteria described in Section 16.63.060. A preliminary subdivision application may be reviewed concurrently with an application for a master planned development under Chapter 16.65.

B. Review of Final Plat. Review of a final plat for a subdivision or partition shall be processed using the approval criteria in Section 16.63.080 and do not require a Land Use Review pursuant to ORS 197.015.

C. Preliminary Plat Approval Period. Preliminary plat approval shall be effective for a period of two years from the date of approval. The preliminary plat shall lapse if a final plat has not been submitted within the two-year period.

D. Modifications and Extensions. The applicant may request changes to the approved preliminary plat or conditions of approval following the procedures and criteria provided in Chapter 16.66, Modifications. The Planning Official shall, upon written request by the applicant and payment of the required fee, grant three consecutive written extensions of the approval period not to exceed one year each; provided that the applicant demonstrates that:

1. Any changes to the preliminary plat follow the procedures in Chapter 16.66;

2. The applicant has submitted written intent to file a final plat within the one-year extension period;
 3. An extension of time will not delay or prevent the extension of infrastructure or easements necessary for abutting or connected developments, and will not delay or prevent the lawful development of abutting properties; and
 4. The extension request is made prior to the expiration of the original approved plan.
- E. Phased Development.
1. The City may approve a time schedule for developing a subdivision in phases, but in no case shall the actual construction time period (i.e., for required public improvements, utilities, streets) for any partition or subdivision phase be more than seven years without reapplying for preliminary plat approval.
 2. The criteria for approving a phased land division proposal are:
 - a. Public facilities shall be constructed in conjunction with or prior to each phase;
 - b. The development and occupancy of any phase dependent on the use of temporary public facilities shall require approval by the City Engineer, Building Official and any applicable service provider. Temporary facilities shall be approved only upon City receipt of bonding or other assurances to cover the cost of required permanent public improvements, in accordance with Section 16.50.080. A temporary public facility is any facility not constructed to the applicable City or district standard;
 - c. The phased development shall not result in requiring the City or a third party (e.g., owners of lots) to construct public facilities that were required as part of the approved development proposal; and
 - d. The proposed time schedule for phased development approval shall be reviewed concurrently with the preliminary plat application, and the decision may be appealed in the same manner as the preliminary plat.

16.63.050 Preliminary plat submission requirements.

- A. General Submission Requirements.
1. Partitions.
 - a. Document Requirements. For all partitions (three or fewer parcels), the application shall contain all of the information required for a Type II procedure under Section 16.61.030. In addition, electronic copies of all documents formatted to be able to be printed at “full size” (twenty-four (24) by thirty-six (36) inches) and “one-half size” (eleven (11) by seventeen (17) inches) and maintain a standard engineering scale at printed size. Three copies of full-size plans and twenty (20) copies of one-half size plans printed to a standard engineering scale for utilization in soliciting comments by City staff and relevant service providers, as well as the number of plan sets corresponding to the number of mailed notice recipients within a three hundred (300) foot radius of the greater subject site.
 - b. Neighborhood Circulation Plan. All partition proposals shall include neighborhood circulation plans that conceptualize future street plans and lot patterns to undeveloped

parcels within five hundred (500) feet of the subject site. Circulation plans shall address future vehicular/bicycle/pedestrian transportation systems including bike lanes, sidewalks, bicycle/pedestrian paths, and destination points. A circulation plan is conceptual in that its adoption does not establish a precise alignment. An applicant for a partition is required to submit a circulation plan unless the applicant demonstrates to the Planning Official (or designee) one of the following:

- i. An existing street or proposed new street need not continue beyond the land to be divided in order to complete or extend an appropriate street system or to provide access to adjacent parcels within five hundred (500) feet of the proposed development; or
- ii. The proposed street layout is consistent with a street pattern adopted as part of the City's transportation system plan, or a previously adopted circulation plan.

2. Subdivisions—Document Requirements. For all subdivisions (four or more lots), the application shall contain all of the information required for a Type II procedure under Section 16.61.030. In addition, electronic copies of all documents formatted to be able to be printed at “full size” (twenty-four (24) by thirty-six (36) inches) and “one-half size” (eleven (11) by seventeen (17) inches) and maintain a standard engineering scale at printed size. Three copies of full-size plans and twenty (20) copies of one-half size plans printed to a standard engineering scale for utilization in soliciting comments by City staff and relevant service providers, as well as the number of plan sets corresponding to the number of mailed notice recipients within a three hundred (300) foot radius of the greater subject site. The total information packet shall include the information in subsections a through h, below:

- a. Public Facilities and Services Impact Study. The impact study shall quantify and assess the effect of the development on public facilities and services. The City shall advise as to the scope of the study during the required pre-application conference (Section 16.61.060(C)). The study shall address, at a minimum, the transportation system, including pedestrian ways and bikeways, the drainage system, the parks system, the water system, and the sewer system. For each public facility system and type of impact, the study shall propose improvements necessary to meet City standards and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users and shall include a discussion of the system's capacity to serve the additional development, and of the need for annexation into any service district;
- b. Traffic Impact Study. Traffic impact studies shall conform to the standards and procedures in Section 16.61.090.
- c. Stormwater and Drainage Plans. Hydrologic consideration shall include the effect upon the watershed in which the project is located, the effect upon the immediate area's stormwater drainage pattern of flow, the impact of the proposed development upon downstream area, and the effect upon the groundwater supply.
- d. Geotechnical Analysis. Geotechnical considerations shall include the erosion potential, stability, bearing qualities of the soil, and geologic formations; soil permeability and infiltration rates; and the soil quality for the proposed use.
- e. Wetland and Riparian Corridor Analysis. Vegetation and wildlife considerations shall include: wildlife habitat, wetland areas, rare or endangered animal or plant species, unique vegetation communities, areas subject to low revegetation, trees over six inches in

diameter at four feet height, other significant vegetation, and areas of educational potential. The impact of the proposed development on the above considerations both on the site and on adjacent properties shall be assessed, and proposed measures for mitigating any adverse impacts shall be described.

f. Neighborhood Circulation Plan. All subdivision and PUD proposals shall include neighborhood circulation plans that conceptualize future street plans and lot patterns to undeveloped parcels within five hundred (500) feet of the subject site. Circulation plans address future vehicular/bicycle/pedestrian transportation systems including bike lanes, sidewalks, bicycle/pedestrian paths, and destination points. A circulation plan is conceptual in that its adoption does not establish a precise alignment. An applicant for a subdivision or PUD is required to submit a circulation plan unless the applicant demonstrates to the Planning Official (or designee) one of the following:

- i. An existing street or proposed new street need not continue beyond the land to be divided in order to complete or extend an appropriate street system or to provide access to adjacent parcels within five hundred (500) feet of the proposed development; or
- ii. The proposed street layout is consistent with a street pattern adopted as part of the City's transportation system plan, or a previously adopted circulation plan.

g. The developer shall submit a narrative which includes a description of how the project complies with the City Comprehensive Plan and land development ordinances and with all of the preliminary plat conditions of approval set by the City Planning Commission.

h. Bylaw Requirements. If a homeowners association is required, two copies of the preliminary draft, their contracts and/or bylaws, shall be submitted with the preliminary subdivision plat or planned unit development plan.

B. Preliminary Plat Information. In addition to the general information described in subsection A above, the preliminary plat application shall consist of drawings and supplementary written material (i.e., on forms and/or in a written narrative) adequate to provide the following information:

1. General Information.

- a. Name of subdivision (not required for partitions). This name must not duplicate the name of another subdivision in Clackamas County (please check with County Surveyor);
- b. Date, north arrow, and scale of drawing;
- c. Location of the development sufficient to define its location in the City, boundaries, and a legal description of the site;
- d. A title block including the names, addresses and telephone numbers of the owners of the subject property and, as applicable, the designer, and engineer and surveyor if any, and the date of the survey if submitted; and
- e. Identification of the drawing as a "preliminary plat."

2. Site Analysis.

- a. Streets. Location, name, present width of all streets, alleys and rights-of-way on and abutting the site;

- b. Easements. Width, location and purpose of all existing easements of record on and abutting the site;
 - c. Utilities. Location and identity of all utilities on and abutting the site. If water mains and sewers are not on or abutting the site, indicate the direction and distance to the nearest one and show how utilities will be brought to standards;
 - d. Topographic survey data shown by contour lines at five-foot vertical intervals for ground slopes fifteen (15) percent and greater, and at two-foot intervals for ground slopes of less than fifteen (15) percent or as required by the City. Survey data must be provided for the subject property and the surrounding area up to a distance of two hundred (200) feet from the property lines. Survey data shall be related to some established benchmark or other datum approved by the County Surveyor. This requirement may be waived for partitions when grades, on average, are less than six percent;
 - e. The location and elevation of the closest benchmark(s) within or adjacent to the site (i.e., for surveying purposes);
 - f. Potential natural hazard areas, including any floodplains, areas subject to high water table, landslide areas, and areas having a high erosion potential;
 - g. Natural resource areas, including wetland areas, streams, wildlife habitat, and other areas identified by the City or natural resource regulatory agencies as requiring protection. (See also Article 16.3 and relevant portions of the Comprehensive Plan.);
 - h. Site features, including existing structures, pavement, large rock outcroppings, areas having unique views, and drainageways, canals and ditches;
 - i. Designated historic and cultural resources on the site and adjacent parcels or lots;
 - j. The location, size and species of trees having a caliper (diameter) of six inches or greater at four feet above grade in conformance with Chapter 16.42;
 - k. North arrow and scale;
 - l. Name and address of project designer, if applicable; and
 - m. Other information, as deemed appropriate by the Planning Official. The City may require studies or exhibits prepared by qualified professionals to address specific site features and code requirements.
3. Proposed Improvements.
- a. Public and Private Streets, Tracts, Driveways, Open Space and park Land; Location, Names, Right-of-Way Dimensions, Approximate Radius of Street Curves; and Approximate Finished Street Centerline Grades. All streets and tracts that are being held for private use and all reservations and restrictions relating to such private tracts shall be identified;
 - b. Easements. Location, width and purpose of all proposed easements;
 - c. Lots and Private Tracts (e.g., Private Open Space, Common Area, or Street). Approximate dimensions, area calculation (e.g., in square feet), and identification numbers for all proposed lots and tracts;

- d. Proposed uses of the property, including all areas proposed to be dedicated to the public or reserved as open space for the purpose of surface water management, recreation, or other use; potential location of future buildings;
- e. Proposed improvements, as required by Article 16.4 (Community Design Standards), and timing of improvements (e.g., in the case of streets, sidewalks, street trees, utilities, etc.);
- f. Preliminary location of development showing those future buildings can meet siting and dimensional standards of the district;
- g. The proposed source of domestic water;
- h. The proposed method of sewage disposal;
- i. Proposed method of surface water drainage and treatment if required;
- j. The approximate location and identity of other utilities, including the locations of street lighting fixtures;
- k. Proposed railroad crossing or modifications to an existing crossing, if any, and evidence of contact with the affected railroad and the Oregon Department of Transportation Rail Division regarding proposed railroad crossing(s);
- l. Changes to navigable streams, or other watercourses. Status of public access to these areas shall be shown on the preliminary plat, as applicable;
- m. Identification of the base flood elevation for development of more than two lots or one-half acre, whichever is less. Written evidence of initiation of a Federal Emergency Management Agency (FEMA) floodplain map amendment shall be required when development is proposed to modify a designated 100-year floodplain. FEMA approval of the amendment shall be a condition of City land use approval;
- n. Evidence of contact with/from the road authority for any development requiring access to its facility(ies); and
- o. Evidence of written notice to the applicable natural resource regulatory agency(ies) for any development within or adjacent to jurisdictional wetlands and other sensitive lands (see Article 16.3).
- p. Upon the discretion of the Planning Official or designee, the applicant may be required to provide a building footprint analysis, demonstrating that proposed lots may accommodate a typical building footprint common to the Happy Valley area, that conforms with the underlying lot setbacks.

16.63.060 Approval criteria—Preliminary plat.

- A. General Approval Criteria. The City may approve, approve with conditions or deny a preliminary plat based on the following approval criteria:
 - 1. The proposed preliminary plat complies with the applicable Development Code sections and all other applicable ordinances and regulations. At a minimum, the provisions of this article, and the applicable chapters and sections of Article 16.2 (Land Use Districts), Article 16.3 (Specific Area Plan Districts and Overlay Zones), and Article 16.4 (Community Design

Standards) shall apply. Where a variance is necessary to receive preliminary plat approval, the application shall also comply with the relevant sections of Article 16.7;

2. The proposed plat name is not already recorded for another subdivision, and satisfies the provisions of ORS Chapter 92;
3. The proposed streets, roads, sidewalks, bicycle lanes, pathways, utilities, and surface water management facilities are laid out so as to conform or transition to the plats of subdivisions and maps of major partitions already approved for adjoining property as to width, general direction and in all other respects. All proposed public improvements and dedications are identified on the preliminary plat;
4. All proposed private common areas and improvements (e.g., homeowner association property) are identified on the preliminary plat;
5. Evidence that any required State and Federal permits have been obtained, or shall be obtained before approval of the final plat;
6. Evidence that improvements or conditions required by the City, road authority, Clackamas County, special districts, utilities, and/or other service providers, as applicable to the project, have been or can be met; and
7. If any part of the site is located within a specific area plan district, overlay zone, or previously approved master planned development, it shall conform to the applicable regulations and/or conditions.

B. Layout and Design of Streets, Blocks and Lots. All proposed blocks, lots and parcels conform to the specific requirements below:

1. All lots shall comply with the lot area, setback, and dimensional requirements of the applicable land use district (Article 16.2) and Section 16.50.030, Transportation standards, with the exception of lots created specifically for the purposes of fee acquisition in conjunction with either public or private utility projects, which may be any size.
2. Setbacks shall be as required by the applicable land use district (Article 16.2).
3. Each lot shall conform to the standards of Chapter 16.41, Access and Circulation.
4. Landscape or other screening may be required to maintain privacy for abutting uses. See Article 16.2, Land Use Districts, and Chapter 16.42, Landscaping.
5. In conformance with the Uniform Fire Code, a twenty (20) foot width fire apparatus access drive shall be provided to serve all portions of a building that are located more than one hundred fifty (150) feet from a public right-of-way, private street or approved access drive. See Chapter 16.41, Access and Circulation.
6. Where a common drive is to be provided to serve more than one lot, a reciprocal easement which will ensure access and maintenance rights shall be recorded with the approved subdivision or partition plat.
7. All applicable engineering design standards for streets, utilities, surface water management, and easements shall be met.
8. All cuts and fills shall comply with the standards and provisions in Section 16.50.100.

C. Easement Provisions. The following shall govern the location, improvement and layout of easements:

1. Utilities. Easements for utilities shall be provided on side and rear lot lines where deemed necessary by the appropriate service providers. Insofar as possible, easements shall be continuous, aligned from block to block within the development and compatible with adjoining existing developments. All easements shall not be less than five feet in width.
2. Unusual Facilities. Easements for unusual facilities such as high voltage electric transmission lines, drainage canals or pondage areas shall be of such width as is determined adequate by the responsible agency, including any necessary maintenance roads. These shall be fully designated upon the final plat or map, as to their use, purpose and ownership.
3. Watercourses. Where a development is traversed or bounded by a watercourse, drainageway, wasteway, channel or stream, there shall be provided a stormwater easement or drainage right-of-way conforming substantially to the line of such watercourse, drainageway, channel or stream and of such width for construction, maintenance and control as will be adequate for the purpose as required by the responsible agency. For those developments which are bounded by a stream, stream bank easements shall be required for pedestrian paths. The width of watercourse easements shall be determined by the City and the developer using Chapter 16.50 and the Happy Valley drainage study as guides to the establishment of such easements.
4. Conservation. There shall be provided within any subdivision or planned unit development which borders or has within its boundaries a lake, pond, wetland or perennial stream, a conservation easement of thirty (30) feet in width along both sides of the lake or stream within which building construction shall not be allowed. The dimension shall be measured from the known or documented high water mark. The conservation easement shall be held by the homeowner's association, if any, or dedicated to the City. Necessary maintenance shall be provided by the grantor of the easement.

D. Minimum Improvement Standards.

1. All new street improvements shall conform with the adopted minimum installation, material and construction standards for all public street improvements pursuant to Chapter 16.50, the Happy Valley Transportation System Plan, and the City's Engineering Design Standards Details Manual.
2. All new streets within proposed subdivisions and PUDs shall be developed as City streets regardless of the size of the total development or the average lot size within the development; such developments may have private streets developed within them as approved by the City and pursuant to the criteria of Section 16.50.030; and
 - a. It shall clearly state on the final plat all the reservations and restrictions relating to such private streets;
 - b. A private street shall provide access to no more than five dwelling units;
 - c. Private streets may not constitute the total length of roads within a planned unit development;

- d. To insure maintenance of such private roads there shall be established within the organization of any land division a legal and permanent procedure to insure said maintenance. Such procedure shall be prepared by the developer and/or property owner and approved by the City.
3. All streets within all proposed partitions, subdivisions and planned unit developments shall be a continuation of a County road or City street. A private street may serve a partition if the extension of a public street is not possible, but must meet the private street standards as described in subsection (D)(2) of this section. All new streets shall be compatible with and in accordance with the City's existing street development pattern and the adopted transportation plan.
- E. County Surveyor's Requirements. The Clackamas County Surveyor shall require that all surveying and monumentation be pursuant to the appropriate State statutes.
- F. Conditions of Approval.
 1. The City may attach such conditions as are necessary to carry out provisions of this Code, and other applicable ordinances and regulations, and may require reserve strips be granted to the City for the purpose of controlling access to adjoining undeveloped properties. See Chapter 16.50 (Public Facilities).
 2. As a condition of any approval, a waiver of remonstrance against the formation of a local improvement district for the construction, improvement or extension of Level I and Level II services which benefit the property owner shall be required by the City.
 3. In situations where this Code requires the dedication of real property to the City, the City shall either: (a) include in the written decision evidence that shows that the required property dedication is directly related to and roughly proportional to the projected impacts of the development on public facilities and services, or (b) delete the dedication as a condition of approval.

16.63.070 Variances authorized.

Variances to the standards of this chapter shall be processed in accordance with Chapter 16.71, Variances. Applications for variances shall be submitted at the same time an application for land division or lot line adjustment is submitted, and the applications shall be reviewed together.

16.63.080 Final plat submission requirements and approval criteria.

- A. Submission Requirements. Final plats shall be reviewed and approved by the City prior to recording with Clackamas County. The applicant shall submit the final plat within two years of the approval of the preliminary plat as provided by Section 16.63.040. Specific information about the format and size of the plat, number of copies and other detailed information can be obtained from the Planning Official.
- B. Approval Criteria. The Planning Official and City Engineer shall review the final plat and shall approve or deny the final plat based on findings regarding compliance with the following criteria:

1. The final plat is consistent in design (e.g., number, area, dimensions of lots, easements, tracts, right-of-way) with the approved preliminary plat, and all conditions of approval have been satisfied;
2. All public improvements required by the preliminary plat have been installed and approved by the City Engineer or appropriate service provider (e.g., road authority). Alternatively, if eighty (80) percent of the required public improvements are complete, and the developer has provided a performance guarantee for the incomplete work in accordance with Section 16.63.100;
3. The streets and roads for public use are dedicated without reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public utilities;
4. The streets and roads held for private uses have been approved by the City as conforming to the preliminary plat;
5. The plat and deed contain a dedication to the public of all public improvements, including, but not limited to, streets, public pathways and trails, access reserve strips, parks, sewage disposal storm drainage and water supply systems;
6. The applicant has provided copies of all recorded homeowners association covenants, conditions and restrictions (CC&Rs); deed restrictions; private easements and agreements (e.g., for access, common areas, parking, etc.); and other recorded documents pertaining to common improvements recorded and referenced on the plat;
7. The plat complies with the applicable sections of this Code (i.e., there have been no changes in land use or development resulting in a Code violation since preliminary plat approval);
8. Certification by the City or service district, as applicable, that water and sanitary sewer service is available to every lot depicted on the plat; or bond, contract or other assurance has been provided by the subdivider/partitioner to the City that such services will be installed in accordance with Chapter 16.50, Public Facilities, and the bond requirements of Section 16.63.100. The amount of the bond, contract or other assurance by the subdivider/partitioner shall be determined by a registered professional engineer, subject to review and approval by the City;
9. The plat contains an affidavit by the surveyor who surveyed the land, represented on the plat to the effect the land was correctly surveyed and marked with proper monuments as provided by ORS Chapter 92, indicating the initial point of the survey, and giving the dimensions and kind of such monument and its reference to some corner established by the U.S. Geological Survey, or giving two or more permanent objects for identifying its location.

16.63.090 Public improvements required.

Before City approval is certified on the final plat, all required public improvements shall be installed, inspected, and approved. Alternatively, if eighty (80) percent of the required public improvements are complete, the subdivider/partitioner shall provide a performance guarantee for the incomplete work, in accordance with Section 16.63.100.

16.63.100 Performance guarantee.

Performance Guarantee Required. When a performance guarantee is required under Section 16.63.090, the subdivider/partitioner shall file an assurance of performance with the City pursuant to Section 16.50.080.

16.63.110 Filing and recording.

- A. Filing Plat with County. Within sixty (60) days of the City approval of the final plat, the applicant shall submit the final plat to Clackamas County for signatures of County officials as required by ORS Chapter 92.
- B. Proof of Recording. Upon final recording with the County, the applicant shall submit to the City a mylar copy and three paper copies of all sheets of the recorded final plat. This shall occur prior to the issuance of building permits for the newly created lots.
- C. Prerequisites to Recording the Plat.
 - 1. No plat shall be recorded unless all ad valorem taxes and all special assessments, fees, or other charges required by law to be placed on the tax roll have been paid in the manner provided by ORS Chapter 92;
 - 2. No plat shall be recorded until it is approved by the County Surveyor in the manner provided by ORS Chapter 92.

16.63.120 Re-platting and vacation of plats.

- A. Re-platting and Vacations. Any plat or portion thereof may be re-platted or vacated upon receiving an application signed by all of the owners as appearing on the deed.
- B. Procedure. All applications for a re-plat or vacation of a plat shall be processed in accordance with the procedures and standards for a plat vacation, street vacation, property line adjustment (including “re-plat”) (See Chapter 16.61, Types of Review Procedures). The road authority(ies) shall be notified of all applications for re-plats and street vacations. All street vacations shall also conform to the ORS Chapter 271.
- C. Basis for Denial. A re-plat or vacation application may be denied if it abridges or destroys any public right in any of its public uses, improvements, streets or alleys; or if it fails to meet any applicable criteria.
- D. Recording of Vacations. All approved plat vacations shall be recorded in accordance with Section 16.63.110 and the following procedures:
 - 1. Once recorded, a re-plat or vacation shall operate to eliminate the force and effect of the plat prior to vacation; and
 - 2. Vacations shall also divest all public rights in the streets, alleys and public grounds, and all dedications described on the plat.
- E. After Sale of Lots. When lots have been sold, the plat may be vacated only in the manner herein, and provided that all of the owners of lots within the platted area consent in writing to the plat vacation.

F. Street Requirement. Except as prohibited by law (e.g., ORS 92.837, Manufactured Home Park), in approving a right-of-way vacation or re-plat, the City may require dedication of access ways, paths or trails as a condition of the vacation of any public easement or right-of-way, in order to establish or maintain a safe, convenient and direct pedestrian and bicycle circulation system. Such requirements shall be coordinated with the applicable road authority.

16.63.130 Planned unit development.

A. Purpose. This section of the Code serves to specify the purposes, objectives, procedures, standards, requirements, conditions and other information necessary to accomplish a planned unit development (PUD). The purpose and intent of this section is to allow an alternative to the traditional subdivision that encourages conservation of natural features by relating design to the existing landscape; through the efficient use of land and public services (particularly, but not limited to situations where the existence of slopes, drainageways, or other natural features may preclude traditional subdivision design); and the creation of public and private common open space.

B. Objectives. The following, though not requirements, are the objectives of the PUD portion of this chapter and shall be utilized to realize the inherent advantages of coordinated, flexible, comprehensive, long-range planning of such development:

1. To provide more desirable living environments by preserving the natural character of open field, stands of trees, brooks, ponds, floodplains, hills and similar natural assets;
2. To encourage, with regard to residential use, the provision of open space and the development of recreational facilities in a generally central location and within reasonable distance of all living units;
3. To encourage developers to use a more creative and flexible approach in the development of living areas within the City;
4. To provide for more efficient and aesthetic use of open areas;
5. To encourage variety in the physical development pattern of the community by providing a variety and mixture of housing types and siting as well as the design of access and circulation.

C. Area of Applicability. PUDs may be established in residential, commercial or industrial districts on parcels of land, which are suitable for and of sufficient size to be planned and developed in a manner consistent with the purposes and objectives of this section.

D. All residential developments shall be developed as PUDs pursuant to the provisions in Section 16.63.130 whenever one or more of the following criteria apply:

1. Any site larger than two acres where a minimum of ten (10) percent of the site contains environmentally constrained areas subject to Chapters 16.35 and/or Sections 16.34.010 through 16.34.080;
2. All properties, either individual tax lots or contiguous lots under common ownership, consisting of fifty (50) or more acres on which are proposed to be developed more than one hundred (100) units;
3. Any development in a residential district proposing more than four manufactured homes or multifamily housing;

4. Any development utilizing density transfer pursuant to the provisions of Chapter 16.63.
- E. Necessity for Application. For the purpose of considering any planned unit development, the developer may apply to the City at any time after the pre-application conference and review, using such forms as may be provided for the processing of a preliminary planned unit development. If the planned unit development includes a subdivision, one form for both purposes will be satisfactory.
- F. Filing Requirements.
 1. These requirements shall be the same as found in Section 16.63.050.
 2. At the time of formal application, the developer shall submit the following plan elements in detailed graphic form:
 - a. Proposed land use and densities (see Section 16.63.020(F) for density and calculations);
 - b. Building types and densities;
 - c. Circulation pattern;
 - d. Parks, playgrounds, open space, land dedication and easements;
 - e. Existing natural features;
 - f. Related land maps (topography, etc.);
 - g. Location, arrangement, etc. of auto parking;
 - h. Preliminary renderings of typical buildings;
 - i. Preliminary tree planting schedule;
 - j. Preliminary landscape plan in accordance with the requirements of Chapter 16.42.
 3. At the time of formal application, the developer shall submit the following program elements in detailed written form:
 - a. Proposed ownership pattern;
 - b. Operation and maintenance proposal;
 - c. Waste disposal facilities;
 - d. Lighting;
 - e. Water supply;
 - f. Tables illustrating acres for dwellings, off-street parking, streets, parks, playgrounds, dedicated lands, open space, schools and percentages of the gross and net development areas for each;
 - g. Tables illustrating overall density, density by dwelling types and details of any density bonus or calculations;
 - h. Preliminary documents providing for maintenance of open space and dedication of public spaces, development rights, easements, drainageways and land dedications or fees in lieu thereof;
 - i. General time table of development;
 - j. Qualifications of Proposed Design Team. All master plans for residential and neighborhood planned unit developments shall be prepared by professionals qualified in at least two of the four following: (i) a licensed architect, (ii) a registered professional

engineer, (iii) a registered landscape architect, or (iv) a member of the American Planning Association;

k. Proof of authorization for the agent to act on the landowner's behalf, if appropriate, on a form supplied by the City, with all signatures notarized;

l. Stages of development and construction.

G. Distribution of Preliminary Subdivision Plats or Planned Unit Development Plans. As found in Section 16.63.050.

H. Approval Criteria.

1. The preliminary plat approval criteria as described in Section 16.63.030;

2. In considering the preliminary planned unit development proposal, the Planning Commission shall apply the following additional criteria when making a determination:

a. Density.

i. The number of dwelling units permitted in a development is based on the net development area which is determined by subtracting twenty (20) percent of the gross development area and dividing by the minimum lot area per dwelling unit as required by the development district,

ii. Where any site contains more than one development district within its project boundaries, any density calculations shall be applied in the same proportion as that of the development district which are represented in the project area,

iii. In any planned unit development, the total siting of density as calculated through Section 16.63.020(F) in any steep slopes and natural resource overlay area shall not exceed the net density of the applicable district.

b. Open Space.

i. All planned unit developments shall have a minimum of twenty (20) percent of the development's gross land area dedicated to public or commonly held open space and/or recreational area. The extent to which any type of open space satisfies the total open space requirement shall be in the sole discretion of the City. This twenty (20) percent requirement does not affect the density calculation.

(A) Publicly dedicated open space must be adequate to carry out the Happy Valley Parks Master Plan, at the determination of the City. In all other instances, lands which are least suitable for development and/or which offer the greatest natural habitat potential should be given the highest priority for dedication as open space. Dedicated open space shall be suitable for linkage through a network of trails, bike paths, and greenways.

(B) Considering the existing and planned public parks within the City, publicly dedicated open spaces within any PUD should focus on activities not otherwise available or planned for in existing and planned public parks.

ii. Land area to be used for scenic, landscaping or open recreational purposes within the development shall not include streets, rights-of-way, driveways or parking spaces.

iii. All open space areas shall be improved, preserved and maintained as a natural area and/or recreation area. All proposed open space areas that are identified as significant natural resources by the City's significant wetlands and riparian corridors map, the urban forestry plan tree inventory, or any other ordinance of the City, shall be enhanced, preserved and maintained as natural areas. Prior to preliminary plat approval, the applicant shall submit a landscape plan showing the required elements detailed below in the corresponding subsections (H)(2)(c) (Natural Area) and (H)(2)(d) (Recreational Area) for approval by the review body. Landscape plans shall incorporate existing natural features wherever possible.

iv. All trees in open space areas, except hazard trees and trees in utility or access easements, over six inches in diameter at breast height (DBH) shall be retained on the site regardless of proposed use and incorporated into the required landscape plan. Open space areas shall provide assurance to the City for one hundred twenty-five (125) percent of the estimated cost of the open space project through a bond, escrow account or certified letter of credit. Open space areas shall be completed as shown in the approved plans and inspected and approved by the City prior to final approval ("walk-through") of the infrastructure improvements, or shall be provided for by financial guarantee. The City will require a maintenance bond or other financial guarantee for the open space improvements which will be held for two years after improvements are made to ensure plant survival. Plants that do not survive shall be replaced by the applicant during the first two years after the open space is improved. The applicant may obtain park system development charge credits for open space areas that are improved according to this section and then dedicated to the City if located within the Happy Valley Parks Master Plan. The City reserves the right to refuse offers of dedication.

v. For all natural features on the site, including streams, intermittent streams, ponds and/or wetlands, the applicant shall obtain verification from the appropriate State and Federal agencies of jurisdiction over the feature. If a State and/or Federal agency claims jurisdiction over a natural feature on the site, and where the requirements of this chapter conflict with the requirements of the regulatory agency(s), the most stringent requirements shall apply.

c. Natural Area. The required landscape plan for a natural area shall be prepared by a certified professional biologist, ecologist and/or landscape architect and include:

i. Clearly defined methods for improving and protecting native vegetation and habitat on the site and mitigating the impacts of the proposed PUD;

ii. Planting of native plants that are on the City native plant list (see Happy Valley Plant List, Appendix A) and of the same ecosystem type that existed on the site prior to initial development disturbances;

iii. All proposed open space areas that are included in the City's urban forestry plan tree inventory shall incorporate the management suggestions from the plan for that area;

iv. Plantings shall include a mix of at least three species each of groundcover, shrubs and trees. Plantings adjacent to significant water features shall be designed to provide shade for the water feature;

- v. Plantings shall be of a sufficient quantity to provide structurally diverse vegetation on the site;
- vi. Native vegetation shall be verified by the professional preparing the plan to cover at least seventy (70) percent of the site in five years. Plantings shall be arranged to replicate natural conditions, using methods such as clustering where appropriate. Exceptions to seventy (70) percent cover requirement may be granted by the review body if the applicant submits substantial evidence to convince the review body that the site cannot achieve this level of cover;
- vii. A plan for removal of harmful or invasive species, as identified in the Nuisance or Prohibited Plants sections of the Happy Valley Plant List (Appendix A), on the site detailing specific treatments, timing and long-term maintenance to rid the site of invasive species. All invasive species on the site shall be removed prior to dedication of the site to the homeowner's association or the City. The use of herbicides for controlling harmful and invasive species should be minimized. The following best management practices are required where herbicide application is deemed necessary by the professional preparing the landscape plans:
 - (A) If herbicides, pesticides and/or fertilizers are proposed, an evaluation of application methods, effects on target and nontarget species, and the potential impacts to aquatic and terrestrial systems shall be included in the plan. Consider persistence, soil/water mobility, toxicity and plant uptake when selecting appropriate chemicals,
 - (B) Treatments for the control or removal of invasive plants in riparian/wetland areas shall be limited to hand or wick applications by qualified personnel,
 - (C) Apply chemicals during calm, dry weather to avoid transport from target areas by wind and/or water. Avoid applications where irrigation water may wash chemicals from target areas,
 - (D) Maintain unsprayed buffer areas near aquatic habitats and other sensitive areas. A minimum two hundred (200) foot radius, no-spray buffers shall be maintained around all known populations of sensitive, threatened and endangered plant and animal species,
 - (E) Application shall not occur in the vicinity of wetlands or ponds from January through June to minimize the potential for adverse impacts to amphibians during the breeding and egg development periods;
- viii. A detailed map showing the natural area, the proposed improvements on the site, and the site's connections to other wildlife habitat areas as determined by a certified wildlife biologist. If there are no existing connections, detail methods for providing connections. Exceptions to this requirement may be granted by the review body if the applicant submits substantial evidence to the review body that the site has no opportunity for connectivity;
- ix. A three-year irrigation plan for new plantings detailing available irrigation facilities or other watering methods that will be used to serve the site. The applicant

shall water the new plantings using a timed irrigation system or other watering method during the months of June through September;

x. If a passive recreational facility is proposed, a plan for the facility including methods for installing the facility with minimal impact on the natural area. The professional preparing the plan shall considering buffers for streams and wetlands, erosion, and removal of trees when locating the passive recreational facility. Areas with significant natural resources may require permits from state and/or Federal regulatory agencies to install such facilities. All trails and pathways shall conform to the City's transportation system plan;

xi. A ten (10) year maintenance plan for the open space with cost projections to be provided to the future owners of the property (the homeowner's association or Happy Valley). If the open space is dedicated to the homeowner's association, the codes, covenants, and restrictions of the PUD shall include a provision requiring the homeowner's association to abide by the approved ten (10) year maintenance plan or submit an alternative plan to the Planning Official or designee for approval. If the open space is dedicated to the City, the City Public Works Department agrees to abide by the ten (10) year maintenance plan or provide an alternative plan for approval by the Planning Official or designee.

d. Recreational Area. Proposed recreational uses may be passive or active. The recreational use shall be approved by the review body and shall conform with the Happy Valley Parks Master Plan, as appropriate, and the City's Transportation System Plan. Passive recreational facilities proposed in a natural area are subject to the requirements of the Natural Area (subsection (I)(b)(5)(A) of this section). Active recreational facilities in a recreational area are subject to the criteria of this subsection and shall not abut arterial roadways or include non-active spaces such as stormwater detention facilities. Recreational facilities located near an arterial roadway shall be separated by a minimum distance of twenty (20) feet, to include landscaping per subsection (I)(2)(d)(i) and a minimum six-foot tall solid wood fence. The required landscape plan for a recreational area shall be prepared by a certified professional landscape architect or other qualified professional and shall include:

i. Planting plans to include a mix of at least three species each of groundcover, shrubs, and trees. Plantings shall not include any plants on the City's nuisance plant list (see Happy Valley Plant List, Appendix A). Plantings shall provide for at least fifty (50) percent groundcover of the site and shall provide for at least twenty (20) percent of the site being planted with a mix of trees and shrubs. Use of native plant species is encouraged;

ii. A plan for removal of harmful or invasive species, as identified by in the nuisance or prohibited plants sections of the Happy Valley Plant List (Appendix A), on the site detailing specific treatments, timing, and long-term maintenance to rid the site of invasive species. All harmful or invasive species on the site shall be removed prior to dedication of the site to the homeowner's association or the City. The use of herbicides for controlling harmful and invasive species should be minimized. The following best management practices are required where herbicide application is deemed necessary by the professional preparing the landscape plans:

- (A) If herbicides, pesticides and/or fertilizers are proposed, an evaluation of application methods, effects on target and nontarget species, and the potential impacts to aquatic and terrestrial systems shall be included in the plan. Consider persistence, soil/water mobility, toxicity and plant uptake when selecting appropriate chemicals,
 - (B) Treatments for the control or removal of invasive plants in riparian/wetland areas shall be limited to hand or wick applications by qualified personnel,
 - (C) Apply chemicals during calm, dry weather to avoid transport from target areas by wind and/or water. Avoid applications where irrigation water may wash chemicals from target areas,
 - (D) Maintain unsprayed buffer areas near aquatic habitats and other sensitive areas. A minimum two hundred (200) foot radius, no-spray buffers shall be maintained around all known populations of sensitive, threatened and endangered plant and animal species,
 - (E) Application shall not occur in the vicinity of wetlands or ponds from January through June to minimize the potential for adverse impacts to amphibians during the breeding and egg development periods;
- iii. A description of the recreational use provided and a plan for installing the associated capital improvements to provide the recreational use. Plans shall include facilities for pedestrian access to the use and around the site. All pedestrian connections shall conform to the City's transportation system plan;
 - iv. Plans for an irrigation and drainage system to serve the site. Timed irrigation systems and drainage systems shall be installed prior to landscaping the site;
 - v. A ten (10) year maintenance plan for the open space with cost projections to be provided to the future owners of the property (the homeowner's association or Happy Valley). If the open space is dedicated to the homeowner's association, the codes, covenants, and restrictions of the PUD shall include a provision requiring the homeowner's association to abide by the approved ten (10) year maintenance plan or submit an alternative plan to the Planning Official or designee for approval. If the open space is dedicated to the City, the City Public Works Department agrees to abide by the ten (10) year maintenance plan or provide an alternative plan to be approved by the Planning Official or designee;
 - vi. The applicant shall submit a landscape plan for any proposed detention facility. The landscape plan shall include a mixture of native plants, trees and shrubs suitable to the environment of the facility, with the intention of screening and buffering the facility from surrounding residences and providing shade to the interior of the facility. An irrigation system shall be installed to water plants in the detention facility during the months of June through September;
 - vii. Open space tracts shall be recorded as tracts on the final plat. For the assurance of permanent open space, the applicant shall record all open space tracts as permanent open space on the final plat.

e. Lot Size and Dimensions. Minimum area, width, depth, frontage and setback requirements may be less than development district minimums if in accordance with the general development plan, except that the garage of any structure shall not be located less than twenty (20) feet from a public right-of-way and minimum lot size for single-family detached lots shall not be less than five thousand (5,000) square feet within eighty (80) percent of the net developable area of the subject development. Within the twenty (20) percent remainder area, lot sizes may decrease by a maximum of ten (10) percent. Lots which are located on the perimeter of a proposed development in all residential zones which are adjacent to lots in an R-10, R-15, R-20, or R-40 zone upon which are constructed single-family dwellings, may not be less than seventy-five (75) percent of the average lot area per unit of the immediately abutting lots, or the development district minimum lot size of the subject parcel, whichever is less. If adjacent lands are undeveloped or minimum densities on the subject parcel cannot be met due to natural resource protection requirements, this provision does not apply. All PUD development involving clustered development due to natural resource constraints or involving attached housing shall be subject to a perimeter setback equal to the minimum rear, interior side or street side yard setback of the adjacent residential district, as applicable.

f. Staging.

i. Applicant can elect to proceed with the development in successive stages and steps (schedule must be included in the general development plan). Each stage must be eighty (80) percent complete within itself before the successive stage may be commenced.

ii. The review body shall require development to proceed in stages if Level I facilities serving the site are not adequate to permit full development of the project at any given time. Full development must be staged to be commensurate with the full and adequate provision of Level I facilities and services.

I. Minimum Design Standards. As pursuant to Section 16.63.060(B).

J. Minimum Improvement Standards. As pursuant to Section 16.63.060(D).

K. Final Procedure—Planned Unit Development.

1. As pursuant to Section 16.63.080;

2. Changes and Modifications.

a. Major Changes. Major changes in the approved PUD shall be considered the same as a new petition and shall be made in accordance with the procedures specified in this section.

b. Minor Changes. Minor changes in the general plan may be approved by the Planning Official or designee or designee following the administrative decision process provided that such changes:

i. Do not increase residential or employment densities;

ii. Do not change boundaries;

iii. Do not change any use;

iv. Do not change the location or amount of land devoted to specific land uses.

Such changes may include minor shifting of the location of buildings, setbacks, proposed streets, public or private ways, utility easements, recreation facilities, public open spaces, etc. For quantifiable changes, a general threshold of ten (10) percent shall be used in determining if a proposed change is minor in nature. For example, ten (10) percent of a required yard, ten (10) percent of lot size, etc.

L. Density Calculations.

1. Purpose. Density calculation is the means by which density for any parcel may be determined and ultimately within that parcel in a more efficient and land conscious manner. This portion of the Land Development Code provides the method for calculating the overall density for any given parcel of land which may contain both buildable and unbuildable areas.
2. Benefit. The following benefits may accrue to the property developer and the City from density calculations:
 - a. The minimal extension of services within a cluster as opposed to the entire parcel;
 - b. Overall reduced development costs and the resultant lower housing prices;
 - c. Greater ease of maintenance of services and facilities;
 - d. Energy savings;
 - e. Open space;
 - f. Greater efficiency of land use;
 - g. Protection of slope and resource areas, such as drainageways and creek channels, and hazard areas.
3. Procedure. Density calculations shall be determined by the procedures in Section 16.63.020(F).

16.63.140 Property line adjustments.

A property line adjustment is the modification of lot boundaries, when no lot is created or removed. The application submission and approval process is as follows:

- A. Submission Requirements. All applications for property line adjustment shall be made on forms provided by the City and shall include information required for a Type I application, as governed by Section 16.61.020. The application shall include a preliminary lot line map drawn to scale identifying all existing and proposed lot lines and dimensions; footprints and dimensions of existing structures (including accessory structures); location and dimensions of driveways and public and private streets within or abutting the subject lots; location of natural resource areas and significant trees; existing fences and walls; and any other information deemed necessary by the Planning Official or designee for ensuring compliance with City codes.
- B. Approval Process.
 1. Decision-Making Process. Property line adjustments shall be reviewed by means of a Type I procedure, as governed by Section 16.61.020, using approval criteria contained in Subsection 16.63.140(C) below. The road authority(ies) shall be notified of lot line adjustments that may affect property access or traffic volumes or operations on their facilities.

2. Time Limit on Approval. The property line adjustment approval shall be effective for a period of one year from the date of approval, during which time it must be recorded.
 3. Lapsing of Approval. The property line adjustment approval shall lapse if:
 - a. The property line adjustment is not recorded within the time limit in Section 16.63.140(B)(2);
 - b. The property line adjustment has been improperly recorded with Clackamas County without the satisfactory completion of all conditions attached to the approval; or
 - c. The final recording is a departure from the approved plan.
- C. Approval Criteria. The Planning Official or designee shall approve or deny a request for a property line adjustment in writing based on all of the following criteria:
1. State Law. All property line adjustments shall be consistent with ORS 92.192.
 2. Parcel Creation. No additional parcel or lot is created or removed by the lot line adjustment.
 3. Lot Standards. All lots and parcels conform to the applicable lot standards of the land use district (Article 16.2) including lot area, dimensions, setbacks, and coverage, and no resulting lot is wholly comprised of a flood hazard area or jurisdictional wetland. If a lot is nonconforming as to any development standard, it shall not be made even less conforming by the property line adjustment.
 4. Access and Road Authority Standards. All lots and parcels conform to the standards or requirements of Chapter 16.41 Access and Circulation, and all applicable road authority requirements are met. If a lot is nonconforming to any City or road authority standard, it shall not be made even less conforming by the property line adjustment.
 5. Any adjustment or removal of a property line or public easement involving a parcel in a recorded partition plat or lot line in a recorded subdivision shall be performed by means of the “re-plat” process specified in ORS 92.180 to 92.190, subject to final review and approval by the Clackamas County Surveyor (see Chapter 16.61, Types of Review Procedures).
- D. Recording Property Line Adjustments.
1. Recording. Upon the City’s approval of the proposed property line adjustment, the applicant shall record the property line adjustment with Clackamas County within one year of approval (or the decision expires), and submit a copy of the recorded survey map and deeds to the City, to be filed with the approved application.
 2. Time Limit. The applicant shall submit a copy of the recorded property line adjustment survey map and deeds to the City within fifteen (15) days of recording and prior to the issuance of any building permits on the re-configured lots.
- E. Extension. The City shall, upon written request by the applicant and payment of the required fee, grant a written extension of the approval period not to exceed one year provided that:
1. No changes are made to the original property line adjustment as approved by the City;
 2. The applicant can show intent of recording the approved plan within the one-year extension period;

3. There have been no changes in the applicable Code or plan provisions on which the approval was based. In the case where the property line adjustment conflicts with a Code change, the extension shall be denied; and
4. The extension request is made before expiration of the original approved plan.

Chapter 16.64 CONDITIONAL USE PERMITS

16.64.010 Purpose.

There are certain uses, which, due to the nature of their impacts on surrounding land uses and public facilities, require a case-by-case review and analysis. These are identified as “conditional uses” in Article 16.2, Land Use Districts. The purpose of Chapter 16.64 is to provide standards and procedures under which a conditional use may be permitted, enlarged or altered if the site is appropriate and if other appropriate conditions of approval can be met.

16.64.020 Approvals process.

- A. Initial Application. An application for a new conditional use shall be processed as a Type III-PC procedure (Section 16.61.040). The application shall meet submission requirements in Section 16.64.030, and the approval criteria contained in Section 16.64.040.
- B. Modification of Approved or Existing Conditional Use. Modifications to approved or existing conditional uses shall be processed in accordance with Chapter 16.66, Modifications.

16.64.030 Application submission requirements.

In addition to the submission requirements required in Chapter 16.61, an application for conditional use approval must include the following information in subsections A through H, as applicable. For a description of each item, please refer to Section 16.62.030, Design Review:

- A. Existing site conditions;
- B. Site plan;
- C. Preliminary grading plan;
- D. A landscape plan;
- E. Architectural drawings of all structures;
- F. Drawings of all proposed signs;
- G. A copy of all existing and proposed restrictions or covenants;
- H. Narrative report or letter documenting compliance with all applicable approval criteria in Section 16.64.040.

16.64.040 Criteria, standards and conditions of approval.

The City shall approve, approve with conditions, or deny an application for a conditional use or to enlarge or alter a conditional use based on findings of fact with respect to each of the standards and criteria in subsections A through C.

A. Use Criteria.

1. The site size, dimensions, location, topography and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust, visibility, safety, and aesthetic considerations;
2. The negative impacts of the proposed use on adjacent properties and on the public can be mitigated through application of other Code standards, or other reasonable conditions of approval; and
3. All required public facilities have adequate capacity to serve the proposal.

B. Site Design Standards. The design review approval criteria (Section 16.62.030) shall be met.

C. Conditions of Approval. The City may impose conditions that are found necessary to ensure that the use is compatible with other uses in the vicinity, and that the negative impact of the proposed use on the surrounding uses and public facilities is minimized. These conditions include, but are not limited to, the following:

1. Limiting the hours, days, place and/or manner of operation;
2. Requiring site or architectural design features which minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor and/or dust;
3. Requiring larger setback areas, lot area, and/or lot depth or width;
4. Limiting the building or structure height, size or lot coverage, and/or location on the site;
5. Designating the size, number, location and/or design of vehicle access points or parking areas;
6. Requiring street right-of-way to be dedicated and street(s), sidewalks, curbs, planting strips, pathways, or trails to be improved;
7. Requiring landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas;
8. Limiting the number, size, location, height and/or lighting of signs;
9. Limiting or setting standards for the location, design, and/or intensity of outdoor lighting;
10. Requiring berms, screening or landscaping and the establishment of standards for their installation and maintenance;
11. Requiring and designating the size, height, location and/or materials for fences;
12. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or nature resource lands;
13. Requiring the dedication of sufficient land to the public, and/or construction of pedestrian/bicycle pathways in accordance with the adopted plans, or requiring the recording of a local improvement district non-remonstrance agreement for the same. Dedication of land and construction shall conform to the provisions of Chapter 16.41, and Chapter 16.42 in particular.

16.64.050 Additional development standards.

- A. Concurrent Variance Application(s). A conditional use permit shall not grant variances to regulations otherwise prescribed by the Development Code. Variance application(s) may be filed in conjunction with the conditional use application, and both applications may be reviewed at the same hearing.
- B. Additional Development Standards. Development standards for specific uses are contained in Article 16.2, Land Use Districts.

Chapter 16.65 MASTER PLANNED DEVELOPMENTS

16.65.010 Purpose.

The purposes of this section are to:

- A. Implement the Comprehensive Plan and applicable land use district(s) by providing a means for master planning large development sites;
- B. Encourage innovative planning that results in projects that benefit the community (i.e., through compatible mixed use development, improved protection of open spaces, transportation options and consistent application of standards in phased developments);
- C. Preserve to the greatest extent possible the existing landscape features and amenities that may not otherwise be protected through conventional development;
- D. Facilitate the review of multi-phased developments that are intended to be constructed over a three- to seven-year period and ensure that individual phases will be coordinated with each other over the duration of the final master plan;
- E. Ensure that a full range of public facilities and services are available or will be provided for the proposed phased development and to plan the extension of necessary public infrastructure in a timely and efficient manner;
- F. Determine specific land uses, a range of minimum to maximum square footage of nonresidential uses and a range of minimum to maximum densities of residential uses, the arrangement of uses, and the location of public facilities and transportation systems;
- G. Identify, during the public review process, potential impacts, including, but not limited to, noise, shading, glare, utility capacity and traffic and consider alternatives for mitigating these impacts to affected properties and/or public facilities;
- H. Provide the property owner with the assurance needed over the long term to plan for and execute the proposed development.

16.65.020 Applicability.

- A. A master plan prepared in accordance with this chapter is required for the following:
 - 1. A quasi-judicial application to rezone sites (twenty (20) acres and larger). A preliminary master plan may be submitted for review concurrently with the zone change application or at a later date; however, in no case shall a change to the official zoning map become effective until a final master plan has been approved and effective for the site.

2. Master plans within these areas shall encourage mixed use developments which will provide commercial retail and office employment opportunities, and compact residential neighborhoods close to the commercial services within the City.
 3. Development within the Regional Center Mixed Use (RC-MU) zone.
 4. Developments within the Mixed Commercial Center (MCC) zone involving twenty (20) acres or more of land.
- B. An applicant may elect to develop a project as a master planned development in compliance with the requirements of this chapter provided the site is at least twenty (20) acres in size. A site may be within any zone or combination of zones and the master plan may allow any combination of uses permitted by the underlying zone or zones within applicable mapped zoning district boundaries.

16.65.030 Review and approvals process.

- A. Review Steps. There are two required steps to master plan approval, which may be reviewed individually or combined into one package for concurrent review:
1. The approval of a preliminary master plan; and
 2. The approval of a final master plan.
- B. Approval Process.
1. The preliminary master plan shall be reviewed using the Type III-PC procedure in Section 16.61.040, the submission requirements in Section 16.65.050, and the approval criteria in Section 16.65.060.
 2. The final master plan shall be reviewed using the Type II procedure in Section 16.61.030, to ensure substantial compliance with the approved preliminary plan and the criteria in Section 16.65.090.
- C. The preliminary master plan may be reviewed concurrently with other applications including a comprehensive plan/zoning map amendment, preliminary land division, specific area plans, land use district map and text amendments.
- D. A land division (final plat), design review, conditional use permit or variance application that implements the various phases of proposed development shall not be submitted concurrently with the preliminary master plan. These applications may be submitted after final master plan approval becomes effective, as described in Section 16.65.100.
- E. A neighborhood meeting is required prior to submittal of a preliminary master plan application. In order to provide the opportunity for early citizen involvement in the master plan review process, the applicant shall provide notice and invite citizen participation by initiating a neighborhood meeting. The meeting shall be scheduled after the pre-application meeting and prior to the formal submittal of a preliminary master plan application. The applicant shall be responsible for scheduling and organizing the meeting, arranging the meeting place, notice and all related costs. The notice shall provide a brief description of the proposal and shall be mailed to those property owners and residents within three hundred (300) feet of the proposed master plan. The meeting may be held in any public or private building capable of accommodating the proceeding. The building selected should be in the vicinity of the proposed development. The applicant shall submit a summary of the questions raised and responses made at this meeting with the preliminary master plan application as required in Section 16.65.050.

16.65.040 Modification of district standards (Article 16.2) and community design standards (Article 16.4).

The district standards in Article 16.2 and design standards of Article 16.4 may be modified through the master plan approval without the need for variances, except that the following standards within Articles 16.2 and 16.4 shall not be modified:

- A. Public improvement standards and engineering design criteria shall not be modified without variance to such standards approved by the City Engineer. The City may grant such variances concurrently with other planned development approvals;
- B. Residential densities, as allowed under the Comprehensive Plan; and
- C. Industrial and commercial uses, if not otherwise allowed in a residential district, shall not be allowed in a residential district master plan.

16.65.050 Preliminary master plan submission.

A. General Submission Requirements. The applicant shall submit an application containing all of the general information required for a Type III-PC procedure, as governed by Section 16.61.040. In addition, the applicant shall submit the following:

- 1. A statement of planning objectives to be achieved by the planned development through the particular approach proposed by the applicant. This statement should include a description of the character of the proposed development and the rationale behind the assumptions and choices made by the applicant;
- 2. The proposed number of residential units and/or square footage of commercial, industrial and/or public uses and the density or intensity of proposed uses, including applicable Floor Area Ratios (FARs);
- 3. Narrative report or letter documenting compliance with the applicable approval criteria contained in Section 16.65.060;
- 4. Special studies prepared by qualified professionals may be required by the Planning Official, Planning Commission or City Council to determine potential traffic, geologic, noise, environmental, natural resource and other impacts, and required mitigation.

B. Additional Information. In addition to the general information described in subsection A above, the concept plan, data, and narrative shall include the following exhibits and information:

- 1. Existing conditions map, as defined in Section 16.62.030, Design review application submission requirements;
- 2. A vicinity map drawn to scale depicting existing bus stops, streets, driveways, pedestrian and bicycle connections, fire hydrants and other transportation/fire access issues within three hundred (300) feet of the proposed master plan site;
- 3. Proposed site plan identifying land uses, building envelopes, pedestrian, bicycle and vehicular circulation and access, parking areas, open space, utility connections, boundaries of existing and proposed land use districts and other information necessary to convey the general development plan;

4. Grading concept and stormwater management plan including existing and proposed elevations, site grades and contours, general drainage patterns and discharge locations, and the estimated size and location of stormwater management systems components;
5. Landscape concept (e.g., shows retention of existing vegetation and general planting areas);
6. Architectural concept (e.g., information sufficient to describe architectural styles, building heights, and general materials);
7. Sign concept plan (e.g., locations, general size, style and materials of signs);
8. A public right-of-way/easement/public place map depicting the reservation, dedication, or use of the proposed master plan site for public purposes, including, but not limited to: rights-of-way showing the name and location of all existing and proposed public and private streets within or on the boundary of the proposed master plan site, the right-of-way and paving dimensions, and the ownership and maintenance status, if applicable, and the location, width and construction material of all existing and proposed sidewalks; pedestrian access ways and trails; proposed easements; existing easements; parks; open spaces, including plazas; transit facilities; and school sites;
9. A Traffic Impact Study, as specified in Section 16.61.090, the scope of which shall be established by the City's Traffic Engineer;
10. A Phasing Plan. The phasing plan shall illustrate the proposed location of buildings, streets, utilities and landscaping. Phasing shall progress in a sequence that provides street connectivity between the various phases and accommodates other required public improvements such as wastewater facilities, stormwater management, electricity and water. The phasing plan shall consist of maps and a narrative with an overall schedule or description of on-/off-site phasing including, but not limited to: the type, location and timing of proposed uses, building locations; proposed public facilities including on-/off-site streets and traffic signals or other traffic control devices and utilities with the designation of construction and maintenance responsibility; estimated start/completion dates with a proposed type of financial guarantee, including, but not limited to, a bond, letter of credit, joint deposit or other security in a form acceptable to the City, submitted by the property owner, a future buyer and/or a developer, to ensure planned infrastructure improvements will occur with each phase, if necessary, or when required by the City, affected local agency or the State (the formal submittal of a required guarantee typically occurs during the final master plan review process and/or development implementation); a statement of the applicant's intentions with regard to the future selling or leasing (if known at the time of preliminary master plan submittal) of all or portions of the proposed development (where a residential subdivision is proposed, the statement shall also include the applicant's intentions whether the applicant or others will construct the homes); and the relationship of pedestrian and bicycle connectivity and open space requirements to the proposed phasing;
11. Neighborhood Meeting Summary. The applicant shall submit a summary of issues raised at the neighborhood meeting as specified in Section 16.65.030(D);
12. A copy of all proposed and any existing covenants, conditions, and restrictions that may control development, if applicable; and

13. Annexation. A general schedule of proposed annexation consistent with the phasing plan, if applicable.

16.65.060 Preliminary master plan approval criteria.

The City shall make findings that all of the following criteria are satisfied when approving or approving with conditions, the preliminary master plan. The City shall make findings that not all of the criteria are not satisfied when denying an application:

- A. Comprehensive Plan. All relevant provisions of the Comprehensive Plan are met;
- B. Articles 16.2, 16.3 and 16.4 Standards. All of the land use, development, and design standards contained in Articles 16.2, 16.3 and 16.4 are met, except as may be modified in Section 16.65.040;
- C. Open Space. A residential master plan shall contain a minimum of twenty (20) percent useable open space and a nonresidential master plan shall contain a minimum of ten (10) percent useable open space. A mixed-use master plan shall contain a percentage of open space based on the proportional amount of gross site area used for residential and nonresidential uses. This requirement may be satisfied by Section 16.63.130, if part of a planned unit development. Public open space shall be integral to the master plan. Plans shall emphasize public gathering places such as community centers, plazas, neighborhood parks, trails, and other publicly accessible spaces that integrate land use and transportation and contribute toward a sense of place. Where public or common private open space is designated, the following standards apply:
 - 1. The open space area shall be shown on the final plan and recorded with the final plat or separate instrument, and
 - 2. The open space shall be conveyed in accordance with one of the following methods:
 - a. By dedication to the City as publicly owned and maintained open space. Open space proposed for dedication to the City must be within the Happy Valley Parks Master Plan and capital improvement plan and acceptable to the City with regard to the size, shape, location, improvement, environmental condition (i.e., the applicant may be required to provide a level one environmental assessment), and budgetary and maintenance abilities, or
 - b. By leasing or conveying title (including beneficial ownership) to a corporation, home association or other legal entity;
- D. Transportation System Capacity. With the addition of traffic from the proposed development, there is either sufficient capacity in the City's existing transportation system to accommodate the development proposed in all future phases or there will be adequate capacity by the time each phase of development is completed. Adopted State and/or local mobility standards, as applicable, shall be used to determine transportation system capacity;
- E. Circulation and Parking. Circulation and parking have been designed to facilitate traffic safety and avoid congestion and to provide bicycle and pedestrian connectivity within the property and to nearby transit stops and public areas;
- F. Public Utilities. Existing public utilities either have sufficient capacity to support the proposed development in all future phases adequately, or there will be adequate capacity available by the time each phase of development is completed;

G. Physical Features. Physical features, including, but not limited to slopes subject to the City's Steep Slopes Development Overlay, areas with susceptibility to flooding, significant clusters of trees and shrubs, riparian, wildlife, and wetland resources subject to the City's Natural Resource Overlay Zone, rock outcroppings and open spaces and areas of historic and/or archaeological significance will be preserved to the extent feasible;

H. Phasing Plan. The Phasing Plan demonstrates that the construction of required public facilities shall occur in a logical sequence, either in conjunction with, or prior to each phase, or that there are appropriate financial guarantees to ensure the phased public facilities construction will occur;

I. Compatibility with Adjacent Uses. The proposed preliminary master plan contains design elements including, but not limited to landscaping/screening, parking/traffic management, and multi-modal transportation that limit and/or mitigate identified conflicts between the site and adjacent uses;

J. Planned Mixed Use Areas. The following list provides a list of objectives of the master plan portion of this title and shall be utilized as general guidelines when evaluating master plans:

1. To provide for a desirable urban living and working environment with a compact urban form, and a mixture of uses,
2. To provide for the protection of natural resources, while meeting the employment and population targets set by the Metro Urban Growth Management Functional Plan for the City of Happy Valley,
3. To encourage developers to use a more creative and flexible approach in the development of commercial and residential areas within the City,
4. To provide a process that allows creativity and flexibility.

16.65.070 Administrative procedures.

A. Preliminary Master Plan—Conditions. The City may attach conditions to a preliminary master plan that the City deems necessary to ensure compliance with the approval criteria in Section 16.65.060 and all other applicable provisions of this Code. All conditions shall be satisfied prior to final master plan approval. Certain conditions may require an adequate financial guarantee in a form acceptable to the City to ensure compliance.

B. Time Limit. Within two years after the date of approval of the preliminary master plan, the applicant or the applicant's successor shall prepare and file with the City a final master plan, in conformance with Section 16.65.080.

C. Extension. The City may, upon written request by the applicant and payment of the required fee, grant a written extension of the approval period not to exceed one year provided that:

1. No changes have been made on the preliminary master plan as approved;
2. The applicant can show intent of applying for final master plan review within the one-year extension period;
3. There have been no material changes to the applicable elements of the City's Comprehensive Plan and Land Development Code provisions on which the approval was based; and
4. The extension request is made before expiration of the original approval period.

16.65.080 Final master plan submission requirements.

The final master plan shall illustrate the location of proposed buildings, streets, utilities, parking and landscape areas. The final master plan shall incorporate all conditions of approval. The final master plan application shall include:

- A. A narrative that lists the conditions of approval, explains how each condition is met and references the applicable preliminary master plan maps and diagrams or plan sheets that required revision as a condition of approval;
- B. The specific maps, diagrams, plan sheets or other documents referenced above that have been revised and/or demonstrate conformance with the preliminary master plan approval; and
- C. Any other information that may be required by the City.

16.65.090 Final master plan approval criteria.

The City may approve the final master plan upon finding that the final plan conforms to the preliminary master plan and required conditions of approval. Minor changes to the approved preliminary master plan may be approved with the final master plan, when the approval body finds that the modification(s) is/are consistent with the criteria in subsections A through G below. Changes exceeding those in subsections A through G below, must be reviewed as major modifications under Section 16.66.030.

- A. Increased residential densities (overall or reallocated between development phases) by no more than twenty (20) percent, provided such increase conforms to the Comprehensive Plan and underlying district;
- B. Increase in lot coverage or impervious surface (overall or reallocated between development phases) by no more than fifteen (15) percent over that which is approved;
- C. Reduction in open space or landscaping by no more than ten (10) percent provided the minimum open space requirements in Section 16.65.060(C) are still met;
- D. Increase in overall automobile parking spaces by no more than ten (10) percent;
- E. Land Use. No change in land use shall be permitted without a major modification to the concept plan;
- F. Proposals to add or increase lot coverage within natural resource areas or areas subject to a potential hazard shall require a major modification to the concept plan;
- G. Major changes in the location of buildings, proposed streets, parking lot configuration, utility easements, and landscaping or other site improvements shall require a major modification pursuant to Chapter 16.66. “Major” in this subsection means by more than one hundred (100) feet, or fifteen (15) percent, relative to setbacks; and
- H. Other substantial modifications not listed in subsections A through G above, shall require approval of a major modification, in conformance with Chapter 16.66.

16.65.100 Final master plan—Effective date.

- A. Effective Date.

1. Final master plan approval is effective on the date of recordation of the memorandum of final master plan approval.
 2. The final master plan shall remain in effect for not more than seven years unless modified as specified in Section 16.65.120.
- B. Once the final master plan effective date is established, all persons and parties, and their successors, heirs or assigns, who have or will have any interest in the real property within the final master plan boundary, shall be bound by the terms and conditions of approval of the final master plan and the provisions of this section. Notice of the final master plan effective date will be mailed to the applicant.

16.65.110 Final master plan—Phasing implementation.

- A. A land division, land use review, design review, conditional use permit or variance application may not be submitted until the final master plan is final.
- B. The approved final master plan shall be the basis evaluating all phases of proposed development, including a land division, land use review, design review, conditional use permit or variance application.

16.65.120 Final master plan—Modifications.

- A. Proposed final master plan modifications shall be reviewed in accordance with Chapter 16.66 Modifications to Approved Plans and Conditions of Approval.
- B. An applicant may also request an extension of the final master plan time limit beyond the maximum approved time limit of seven years. In no case shall the extension exceed fifteen (15) years from the date of final master plan approval as specified in Section 16.65.100(A). An extension request shall be filed in writing with the City at least sixty (60) days prior to the expiration of the initial seven-year period or any subsequently approved extensions. The time line extension may be granted provided the applicant has made reasonable progress in the implementation of the final master plan and public services and facilities remain available. A request for a time extension shall be processed as minor modifications in accordance with Section 16.66.040.

Chapter 16.66 MODIFICATIONS TO APPROVED PLANS AND CONDITIONS OF APPROVAL

16.66.010 Purpose.

The purpose of this chapter is to provide an efficient process for modifying land use decisions and approved development plans, in recognition of the cost and complexity of land development and the need to conserve City resources. (Ord. 389 § 1(Exh. A), 2009)

16.66.020 Applicability.

- A. This chapter applies to all development applications approved through the provisions of Article 16.6, including:
1. Land use review approvals;
 2. Site design review approvals;

3. Subdivisions, partitions, and property line adjustments;
 4. Conditional use permits;
 5. Master planned developments; and
 6. Conditions of approval on any of the above permit types.
- B. This chapter does not apply to Comprehensive Plan amendments, land use district changes, text amendments, annexations, temporary use permits, or other permits not listed in subsection A.

16.66.030 Major modifications.

- A. Major Modification Defined. A major modification(s) is required if one or more of the changes listed below is proposed:
1. A change in land use;
 2. An increase in density by more than ten (10) percent, provided the resulting density does not exceed that allowed by the land use district;
 3. A change in setbacks or lot coverage by more than ten (10) percent, provided the resulting setback or lot coverage does not exceed that allowed by the land use district;
 4. A change in the type and/or location of access-ways, drives or parking areas affecting off-site traffic;
 5. An increase in the floor area proposed for nonresidential use by more than fifteen (15) percent where previously specified;
 6. A reduction of more than ten (10) percent of the area reserved for common open space; or
 7. Change to a condition of approval, or a change similar to subsections (A)(1) through (6), that may have a detrimental impact on adjoining properties, as determined by the Planning Official.
- B. Major Modification Applications—Approval Criteria. An applicant may request a major modification using a Type II or Type III-HO or -PC review procedure, as follows:
1. An application for a major application shall include the application form, filing fee and narrative, and a site plan using the same plan format as in the original approval. The Planning Official may require other relevant information, as necessary, to evaluate the request.
 2. The application shall be subject to the same review procedure (Type II or III-HO), decision making body, and approval criteria used for the initial project approval, except that adding a conditional use to an approved project shall be reviewed using a Type III-HO procedure.
 3. The scope of review shall be limited to the modification request. For example, a request to modify a parking lot shall require site design review only for the proposed parking lot and any changes to associated access, circulation, pathways, lighting, trees, and landscaping. Notice shall be provided in accordance with Chapter 16.61.
 4. The decision-making body shall approve, deny, or approve with conditions an application for major modification based on written findings on the criteria.

5. An application for a major modification shall be reviewed under the criteria in effect on the date the application for the major modification is submitted.

16.66.040 Minor modifications.

- A. Minor Modification. Any modification to a land use decision or approved development plan that is not within the description of a major modification as provided in Section 16.66.030(A), is deemed a minor modification.
- B. Minor Modification Review Procedure. An application for a minor modification shall be reviewed by the Planning Official using a Type I or a Type II review procedure under Section 16.61.020 or 16.61.030. The Planning Official is responsible for determining the appropriate review procedure based on the following criteria:
 1. Minor modifications that involve only clear and objective code standards may be reviewed using a Type I procedure;
 2. Minor modifications that involve one or more discretionary standards shall be reviewed through Type II procedure; and
 3. When the code is unclear on whether the application should be a Type I or Type II review, a Type II procedure shall be used.
- C. Minor Modification Applications. An application for minor modification shall include an application form, filing fee and narrative, and a site plan using the same plan format as in the original approval. The Planning Official may require other relevant information, as necessary, to evaluate the request.
- D. Minor Modification Approval Criteria. The Planning Official shall approve, deny, or approve with conditions an application for minor modification based on written findings that the modification is in compliance with all applicable requirements of the Development Code that applied to the original application for the development or use, and any applicable conditions of approval on the original decision.

Chapter 16.67 COMPREHENSIVE PLAN MAP, SPECIFIC AREA PLANS, LAND USE DISTRICT MAP AND TEXT AMENDMENTS

16.67.010 Purpose.

The purpose of this chapter is to provide standards and procedures for legislative and quasi-judicial amendments to the City's Comprehensive Plan and ancillary documents, specific area plans, the land use district map and this title (Land Development Code). These will be referred to as "map and text amendments." Amendments may be necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes, or to address changes in the law.

16.67.015 Initiation of a plan amendment.

- A. Any change in the text, map or implementing ordinances of adopted Happy Valley land use regulations may be initiated by the City, any resident of the City, property owners or authorized agent. A change in the text may be initiated by as few as one person desiring a revision in the wording, scope, direction or organization of the plan. A change in the map which involves

properties and/or district boundaries must be initiated by at least seventy-five (75) percent of the property owners or authorized agents who own or represent at least seventy-five (75) percent of the land area involved in the petition of change. The City may, for the purposes of revising or updating plans to comply with statewide goals, legal guidelines or other necessary criteria, initiate a change in the map or text of any plan and this Land Development Code at any time.

B. Amendments to the Land Development Code. An amendment to any chapter or section of this title for the purpose of adding or deleting words or subjects, broadening or narrowing scope, providing direction, clarification or improvement of the Development Code may be initiated by any person or persons, including the City itself. See Sections 16.67.020 and 16.67.030 of this chapter.

16.67.020 Legislative amendments.

Legislative amendments are policy decisions made by City Council. Except in the case of expedited annexation, they are reviewed using the Type IV procedure in Section 16.61.050 and shall conform to the Transportation Planning Rule provisions in Section 16.67.060, as applicable.

16.67.030 Quasi-judicial amendments.

A. Applicability of Quasi-Judicial Amendments. Quasi-judicial amendments are those that involve the application of adopted policy to a specific development application or Code revision, and not the adoption of new policy (i.e., through legislative decisions). Quasi-judicial Comprehensive Plan map/district map amendments shall follow the Type IV procedure, as governed by Section 16.61.040, using standards of approval in Section 16.67.030(C). The approval authority shall be as follows:

1. The Planning Commission shall make a recommendation to the City Council on an application for all other Comprehensive Plan map/land use district plan map amendments. The City Council shall decide such applications.
2. The City Council shall be the review authority for annexations that involve the legislative conversion of existing Clackamas County Comprehensive Plan designations/zoning districts to City Comprehensive Plan designation/zoning districts, per the provisions of Section 16.67.070.

B. Filing requirements.

1. In order to have a complete application for any proposed text amendment, the applicant shall submit the necessary application forms, and a narrative addressing applicable Comprehensive Plan objectives and policies, as well as the review criteria within Section 16.40.041.
2. In order to have a complete application for a proposed Comprehensive Plan map/zoning map or specific area map amendment, the applicant shall submit:
 - a. The necessary application forms, and a narrative addressing applicable Comprehensive Plan goals and policies, as well as the review criteria within Section 16.61.040;
 - b. A conceptual development plan illustrating a proposed street system, lot pattern, neighborhood circulation plan within a five hundred (500) foot radius of the subject site, and any natural resource or steep slopes areas;

c. A traffic study prepared by a professional, Oregon-licensed traffic engineer. If a master plan that requires a full traffic impact analysis is required for a Comprehensive Plan map amendment/land use district map, a subsequent master plan may satisfy this provision, as determined by the Planning Official.

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

1. Approval of the request is consistent with the Statewide Planning Goals, applicable Oregon Administrative Rules (OAR), Oregon Revised Statutes (ORS), and the Metro Functional Plan; and
2. Approval of the request is consistent with the applicable goals and policies of the City's Comprehensive Plan; and
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 in the planning period; and
4. The change is in the public interest with regard to neighborhood or community conditions, or corrects a mistake or inconsistency in the Comprehensive Plan or land use district map regarding the property which is the subject of the application; and
5. When an application includes a proposed Comprehensive Plan map amendment/land use district map amendment, the proposal shall be reviewed to determine whether it conforms to Oregon Administrative Rule (OAR) 660-012-0060 (the Transportation Planning Rule – TPR). If a master plan that requires a full traffic impact analysis is required for a Comprehensive Plan map amendment/land use district map, a subsequent master plan may satisfy this provision, as determined by the Planning Official.

16.67.040 Conditions of approval for quasi-judicial amendments.

A quasi-judicial decision may be for denial, approval, or approval with conditions; conditions shall be based on applicable regulations and factual evidence in the record. Legislative amendments may only be approved or denied.

16.67.050 Record of amendments.

The records of the Comprehensive Plan and Land Development Code and all amendments to them shall be officially held within the office of the City Recorder. All amendments to text and/or official map shall be approved or rejected by the City Council and acknowledged by the mayor and attested by the City Recorder. Each action that changes a district boundary shall be included on a new official map and approved by the Mayor and attested by the City Recorder and filed in the office of the City Recorder and will be correct and binding in all cases.

The City Recorder shall maintain a record of amendments to the text of this Code and the land use districts map in a format convenient for public use.

16.67.060 Transportation planning rule compliance.

A. Review of Applications for Effect on Transportation Facilities. When a development application includes a proposed Comprehensive Plan amendment or land use district change, 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 Transportation Planning Rule – TPR) and the traffic impact study provisions of Section 16.61.090. “Significant” means the proposal would:

1. Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors). This would occur, for example, when a proposal causes future traffic to exceed the levels associated with a “collector” street classification, requiring a change in the classification to an “arterial” street, as identified by the City’s Transportation System Plan (“TSP”); or
2. Change the standards implementing a functional classification system; or
3. As measured at the end of the planning period identified in the TSP, allow types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility; or
4. Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP; or
5. 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.

B. Amendments That Affect Transportation Facilities. Except as provided in subsection C, amendments to the Comprehensive Plan and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility (identified in the TSP). This shall be accomplished by one of the following:

1. Adopting measures that demonstrate that allowed land uses are consistent with the planned function of the transportation facility; or
2. Amending the TSP to provide transportation facilities, improvements, or services adequate to support the proposed land uses; such amendments shall include a funding plan to ensure the facility, improvement, or service will be provided by the end of the planning period; or
3. Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation; or
4. Amending the planned function, capacity or performance standards of the transportation facility; or
5. Providing other measures as a condition of development or through a development agreement or similar funding method, specifying when such measures will be provided.

C. Exceptions. Amendments to the Comprehensive Plan or land use regulations with a significant effect on a transportation facility, where the facility is already performing below the minimum acceptable performance standard identified in the TSP, may be approved when all of the following criteria are met:

1. The amendment does not include property located in an interchange area, as defined under applicable law;
2. The currently planned facilities, improvements or services are not adequate to achieve the standard;
3. Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development; and
4. The road authority provides a written statement that the proposed funding and timing for the proposed development mitigation are sufficient to avoid further degradation to the facility.

16.67.070 Annexations.

A. Except as provided in subsection B of this section, when the City Council approves the annexation of unincorporated territory from using the expedited annexation process, the ordinance approving the annexation shall amend the City's Comprehensive Plan map/zoning map to reflect the conversion from the County designation/zone to a corresponding City designation/zone, as shown in Table 16.67.070-1 below. For non-expedited annexations, a concurrent Comprehensive Plan/Zoning Map Amendment is required to be filed as a Type III-PC decision consistent with the requirements of Section 16.61.040.

Table 16.67.070-1 Land Designation Conversion Table

Clackamas County Zone	City of Happy Valley Zone
Urban/Rural Residential	
R-2.5	SFA
R-5	R-5
R-7	R-7
R-8.5	R-8.5
R-10	R-10
R-15	R-15
R-20	R-20
MR-1	MUR-M1
MR-2	MUR-M2
HDR	MUR-M3
RA-2	R-15
FU-10	FU-10*
RRFF-5	RRFF-5**
FF-10	FF-10**

Natural Resources	
EFU	EFU**
Commercial	
NC	MUE
C-2	MCC
C-3	MCC
RCC	MCC
RCO	MUC
OC	CCC
RCHD	MUR-M2
RTL	MUC
OA	MUC
PMU-6	RCMU
Industrial	
LI	IC
GI	IC
BP	EC
Special Districts	
OSM	IPU
Sunnyside Village	
VR-4/5	R-5
VR-5/7	R-5
VCS	IPU
VA	MUR-M1
VO	VO
VTH	VTH

* Annexation of this zoning district (outside of properties annexed from the former City of Damascus) would require the creation of a new Comprehensive Plan designation/zoning district within the City that would be determined by the Planning Official based on surrounding Comprehensive Plan designations/zoning districts and a Transportation Planning Rule-compliant Traffic Impact Analysis.

** Clackamas County rural residential and farm zones that are annexed within the City of Happy Valley retain these designations/districts, which are administered by the City via the applicable auspices (for example, yard setbacks) of the Clackamas County ZDO until receiving urban zoning per an adopted urban Comprehensive Plan.

B. When an unincorporated territory within the East Happy Valley Comprehensive Plan area, Aldridge Road Comprehensive Plan area, or the Rock Creek Mixed Employment Comprehensive Plan area is annexed to the City, the ordinance approving the annexation shall apply the applicable zoning designation in the Happy Valley Comprehensive Plan pursuant to the applicable requirements of the Land Development Code.

C. For any proposed annexation to the City, application shall be made directly to the City of Happy Valley on the appropriate forms and accompanied by the required fee, if any. Upon receipt of the form, the City shall schedule a public hearing before the Planning Commission (non-expedited) or City Council (expedited). The City may utilize any lawful annexation process under State, regional or local law, including the expedited annexation process established in the Metro Code. An expedited annexation process shall be sent directly to the City Council for review. Expedited annexations shall be processed as an ordinance pursuant to the City of Happy Valley Charter.

Chapter 16.68 CODE INTERPRETATIONS

16.68.010 Purpose.

Some terms or phrases within the Code may have two or more reasonable meanings. This section provides a process for resolving differences in the interpretation of the Code text.

A. In interpreting and applying the provisions of this title, they shall be construed as the minimum requirement for the promotion of the public safety, health, and peace and general welfare. It is not intended by this title to interfere with or annul any other covenants or agreements between private parties. However, from the effective date of this Land Development Code, all divisions and development of land shall conform to this title. When this title imposes a greater restriction upon the use of buildings or premises or upon the height of the buildings, or requires larger space than is imposed or required by other codes, ordinances, rules, regulations, covenants or agreements, the provisions of this title shall govern.

B. No specific interpretation of this title where clear or objective standards may not exist, or any other discretionary conditions or requirements authorized by this title shall be applied either individually or collectively to deny any application which otherwise meets all stated standards contained in this title. Neither shall any discretionary conditions or requirements be applied to either individually or collectively provide an adverse or negative impact on cost and development time nor to prevent the maximum potential, residential densities or housing types which are permitted by the Comprehensive Plan or this title.

16.68.020 Code interpretation procedure.

A. Requests. A request for a Code interpretation shall be made by application to the Planning Official.

B. Decision to Issue Interpretation. The Planning Official shall advise the person making the inquiry in writing within fourteen (14) days after the request is made whether the Planning Official will make the interpretation.

C. Written Interpretation. If the City decides to issue an interpretation, it shall require the applicable fee and will be in writing and mailed or delivered to the person requesting the interpretation and any other person who specifically requested the interpretation. The written

interpretation shall be issued within fourteen (14) days from the date of notification that an interpretation will be made (subsection B). The decision shall become effective fourteen (14) days later.

D. Type I Procedure. Code interpretations shall be made using a Type I procedure under Section 16.61.020.

E. Interpretations on File. The City shall keep on file a record of all Code interpretations.

Chapter 16.69 MISCELLANEOUS PERMITS

16.69.010 Temporary use permits.

Temporary uses are characterized by their short-term or seasonal nature and by the fact that permanent improvements are not made to the site. Temporary uses include, but are not limited to: construction trailers, leasing offices, temporary carnivals and fairs, temporary art and music festivals, parking lot sales, retail warehouse sales, and seasonal sales such as Christmas tree sales and vegetable stands. Mobile food/beverage units are subject to Section 16.69.030. Six types of temporary uses require permit approval:

A. Seasonal and Special Events. These types of uses occur only once in a calendar year and for a period no longer than ninety (90) days. Using the Type I review process, the City shall approve, approve with conditions or deny a temporary use permit based on findings that all of the following criteria are satisfied:

1. The use is permitted in the underlying land use district and does not violate any conditions of approval for the property (e.g., prior development permit approval);
2. The applicant has proof of the property owner's permission to place the use on his/her property;
3. No parking will be utilized by customers and employees of the temporary use which is needed by the property owner to meet his or her minimum parking requirements;
4. The use provides adequate vision clearance, and shall not obstruct pedestrian access on public streets;
5. Ingress and egress are safe and adequate when combined with the other uses of the property;
6. The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare or lights that affect an adjoining use in a manner which other uses allowed outright in the district do not affect the adjoining use;
7. The use is adequately served by sewer or septic system and water, if applicable (the applicant shall be responsible for obtaining any related permits); and
8. An extension of sixty (60) days may be obtained if determined appropriate by the City Administrator.

B. Short-Term Outdoor Special Events. These types of events occur for a period no longer than three days and nights. Events that occur annually within the City limits may be reviewed as a conditional use in accordance with Chapter 16.64 of this title. Other events shall be reviewed administratively. The City shall approve, approve with conditions or deny a short term outdoor special event temporary use permit based on findings that all of the following criteria are satisfied:

1. The use is held primarily outdoors and will continue for no longer than seventy-two (72) consecutive hours, plus a reasonable time period for setting up before the event, and cleaning up after the event;
2. The conditional use permit application does not violate any conditions of approval for the property (e.g., prior development permit approval);
3. Adequate water and sanitary facilities are provided;
4. Adequate refuse storage and disposal facilities are provided;
5. Adequate food services are provided;
6. Adequate emergency medical facilities and communication systems are provided;
7. Adequate fire protection is provided;
8. Adequate security personnel are provided; and
9. Adequate pedestrian, bicycle and vehicle access are provided.

C. Temporary Sales Office (Non-Model Home). Using the Type I review process, the City may approve, approve with conditions or deny an application for the use of any real property within the City as a temporary sales office or offices for the purpose of facilitating the sale of real property, in any subdivision or tract of land within the City, but for no other purpose, based on the following criteria:

1. Temporary Sales Office.
 - a. The temporary sales office shall be located within the boundaries of the subdivision or tract of land in which the real property is to be sold;
 - b. The property to be used for a temporary sales office shall not be permanently improved for that purpose;
 - c. The length of time that the temporary building will be used does not exceed twelve (12) months, and if a temporary building exceeds this time frame, the applicant shall be required to remove the building, or renew the temporary use permit;
 - d. The temporary sales office is required to conform to the setbacks of the underlying development district, shall provide skirting, and shall obtain all necessary permits, including building, electrical and plumbing, as applicable; and
 - e. The temporary sales office is required to provide a minimum of two temporary off-street parking spaces, to be constructed of compacted gravel or similar pervious surface, or an impervious surface, not subject to stormwater management provisions for stormwater retention/detention/water quality for the period of the temporary use.

D. Temporary Building (Commercial/ Industrial). Using the Type I review process, the City may approve, approve with conditions or deny an application for a temporary trailer or prefabricated building for use on any real commercial or industrial property within the City as a temporary commercial or industrial office or space associated with the primary use on the property, but for no other purpose, based on the following criteria:

1. The temporary trailer or building shall be located within the boundaries of the parcel of land on which it is located;
2. The primary use on the property to be used for a temporary trailer is already developed;

3. Ingress and egress are safe and adequate when combined with the other uses of the property;
 4. There is adequate parking for the customers or users of the temporary use pursuant to applicable parking requirements;
 5. The use will not result in vehicular congestion on streets;
 6. The use will pose no hazard to pedestrians in the area of the use;
 7. The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare or lights that affect an adjoining use in a manner which other uses allowed outright in the district do not affect the adjoining use;
 8. The building complies with applicable building codes;
 9. The use can be adequately served by sewer and water, if necessary. (The applicant shall be responsible for obtaining any related permits);
 10. The length of time that the temporary building will be used does not exceed twelve (12) months, and if a temporary building exceeds this time frame, the applicant shall be required to remove the building, or renew the temporary use permit;
 11. Adequate landscaping, buffering or other method to assure the structure is visually consistent with conditions surrounding the site; and
 12. The temporary building is required to provide a minimum of two temporary off-street parking spaces, to be constructed of compacted gravel or similar pervious surface, or an impervious surface, not subject to stormwater management provisions for stormwater retention/detention/water quality for the period of the temporary use.
- E. Temporary Building (Construction Site). Using the administrative review process, the City may approve, approve with conditions or deny an application for a temporary trailer or prefabricated building for use on any construction site within the City based on following criteria:
1. The temporary construction site building shall be located within the boundaries of the subdivision or tract of land in which the real property is to be sold;
 2. The property to be used for a temporary construction site building shall not be permanently improved for that purpose;
 3. The length of time that the temporary construction site building will be used does not exceed twelve (12) months, and if a temporary building exceeds this time frame, the applicant shall be required to remove the building, or renew the temporary use permit;
 4. The temporary construction site building is required to conform to the setbacks of the underlying development district; shall provide skirting; and shall obtain all necessary permits, including building, electrical and plumbing, as applicable; and
 5. The temporary construction site building is required to provide a minimum of two temporary off-street parking spaces, to be constructed of compacted gravel or similar pervious surface, or an impervious surface.
- F. Temporary Exterior Storage. Using the administrative review process, the Planning Official may approve, approve with conditions or deny an application for temporary exterior storage of structures, equipment or materials based on following criteria:

1. The property to be used for temporary storage shall not be permanently improved for that purpose;
2. The length of time that the site will be used for storage does not exceed six months (a single six-month extension may be granted by the Planning Official by submittal of a time extension application). If the temporary use exceeds this time frame, the applicant shall be required to remove the stored materials, or renew the temporary use permit;
3. The areas used for storage are required to conform to the setbacks of the underlying development district;
4. The areas used for storage shall be screened from view from public streets;
5. No on-site sales will be conducted;
6. Dust and erosion control measures have been taken to ensure there will be no impact to air and water quality from dust and mud on the site or on adjacent streets from vehicles entering and leaving the site. During the length of the project, the site must be enclosed or protected in a manner to prevent on-site erosion and to prevent sediment from leaving the site;
7. The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare or lights that affect an adjoining use in a manner which other uses allowed outright in the district do not affect the adjoining use;
8. Temporary gravel parking lots may be constructed that are not subject to stormwater management provisions for stormwater retention/detention/water quality for the period of the temporary use. At the end of the temporary use, the gravel shall be removed and the site must be prepared and seeded with a mixture of one hundred (100) percent perennial rye grass to create a low maintenance vegetative groundcover. An exception to this requirement is sites that have compacted gravel or paving prior to the start of the project. In these cases, the portion of the site that has compacted gravel or paving may remain in compacted gravel or paving. All other portions of the site must be seeded as provided above.

16.69.020 Home occupation permits.

A. Purpose. The purpose of this section is to encourage those who are engaged in small commercial ventures which could not necessarily be sustained if it were necessary to lease commercial quarters or which, by the nature of the venture, are appropriate in scale and impact to be operated within a residence. Home occupations are encouraged for their contribution in reducing the number of vehicle trips often generated by conventional businesses. In addition, the purpose of this section is to establish approval criteria and standards to ensure that home occupations are conducted as lawful uses which are subordinate to the residential use of the property and are conducted in a manner that is not detrimental or disruptive in terms of appearance or operation to neighboring properties and residents. More than one business activity constituting two or more home offices shall be allowed on one property only if the multiple home offices meet all required limitations associated with outside volunteers or employees; clients or customers per day; and, the combined floor space of the business activities does not exceed the limitation of space imposed in subsection (B)(6)(g). Each business activity shall also have separate City business license.

B. Exemptions. Exemptions from the provisions of this chapter are:

1. Short-term personal or fundraising sales (such as a garage sale or the sale of an individual personal item, fruit, drink or dessert sales by individuals, including minors, or similar sales) from a residence. The maximum duration of garage/yard sales is three consecutive days and/or ten (10) days total in a calendar year;
2. For-profit production of produce or other food products grown on the premises. This may include temporary or seasonal sale of produce or other food products grown on the premises;
3. Hobbies which do not result in payment to those engaged in such activity;
4. Proven nonconforming home occupations as pursuant to Chapter 16.72 (Nonconforming Uses, Structures and Lots);
5. Residential care homes that are protected by the Federal Fair Housing Act, and may have characteristics of a home occupation permit are exempt from the home occupation permit process due to State and Federal law;
6. Home offices that are undertaken only by the principal occupant(s) of a residential property that include the following characteristics:
 - a. No outside volunteers or employees to be engaged in the business activity other than the persons principally residing on the premises,
 - b. No exterior signs which identify the property as a business location,
 - c. No more than three clients or customers to visit the premises per day for any reason,
 - d. No exterior storage of materials,
 - e. No deliveries shall be made to the residence other than by traditional small-scale means normally found in a residential area, such as the United States Postal Service, UPS, Federal Express, messenger services, etc. There shall be no commercial vehicle deliveries during the hours of 10:00 p.m. to 7:00 a.m.,
 - f. No offensive noise, vibration, smoke, dust, odors, heat or glare noticeable at or beyond the property line resulting from the operation,
 - g. No utilization of more than fifty (50) percent of the combined residence and accessory structure gross floor area. The indoor storage of materials or products shall not exceed the limitations imposed by the provisions of the building, fire, health and housing codes,
 - h. No change in the most current Oregon Residential Specialty Code occupancy classification of the dwelling unit or any portion of the dwelling unit, including the garage,
 - i. No home office shall require any on- or off-street parking other than that normally required for a residence. In addition, no commercial vehicles (as defined in Section 16.12.030) of any kind shall be utilized in conjunction with a home office;
7. Licensed Daycare Providers. A licensed daycare provider must meet the definition as detailed in Section 16.12.130. Licensed daycare providers are allowed the following home occupation exceptions:
 - a. Home-occupation compliant signage may be placed in the front yard setback,
 - b. Home-occupation business hours are unlimited,

c. Home-occupation daily customer/client visits are limited to that provided by the licensed daycare providers Oregon Revised Statute license limitations, and

d. Any other exception as mandated under applicable federal or state law.

Any home office that exceeds the parameters of these provisions, as determined by the Planning Official based on answers to the home occupation permit questionnaire, site visits, or other evidence, shall be required to apply for a home occupation permit.

C. Nonconforming Uses. Ongoing home occupations may be granted nonconforming status provided that they were:

1. Permitted under County authority prior to annexation to the City and have been in continuous operation since initial approval;
2. Permitted under City authority prior to 1983 and have since been in continuous operation.

D. Governing Regulations. Nonconforming home occupations will be regulated as a nonconforming situation, pursuant to the following:

1. A nonconforming situation may continue until the use is expanded or altered so as to increase the level of noncompliance with this title;
2. The burden of proving a home occupation's nonconforming status rests with the property owner or tenant;
3. Violations. Home occupations without City or County approval which cannot prove nonconforming status shall be considered in violation of this chapter and shall cease until the appropriate approvals have been granted.

E. Prohibited Home Occupations. The following uses are not allowed as home occupations:

1. Auto-body repair and painting;
2. On-going mechanical repair conducted outside of an entirely enclosed building;
3. Junk and salvage operations;
4. Storage and/or sale of fireworks;
5. Ambulance service;
6. Animal hospital or veterinary services;
7. Any activity involving on-site retail sales is prohibited, except that the sale of items that are incidental to a permitted home occupation is allowed. For example, the sale of lesson books or sheet music from music teachers, art or craft supplies from arts or crafts instructors, computer software from computer consultants, and similar incidental items for sale by home business are allowed;
8. Marijuana production, processing, wholesaling and retailing.

F. Home Occupations Defined. A separate home occupation permit and/or fee are required for each property on which a home occupation is undertaken. For the purposes of this section, "home" refers to the residential location, including a single-family dwelling unit, accessory dwelling unit, garage, accessory structure, multifamily unit, condominium unit, etc. In addition to the general criteria outlined in subsection E of this section, home occupations shall observe the following additional standards.

Property on which a home occupation is located may show evidence that a business is being conducted from the premises. Therefore, the following is allowed for home occupations:

1. One non-illuminated sign, not exceeding one and one-half square feet, which shall be attached to the residence or accessory structure or placed in a window;
2. No more than three outside volunteers or employees who are not a principal resident of the premises;
3. No more than six daily customers or clients. Customers and clients may not visit the business between the hours of 10:00 p.m. and 8:00 a.m. and shall not generate excessive traffic or monopolize on-street parking (the generation of excessive traffic or monopolization of on-street parking shall be at the sole discretion of the Planning Official or designee). For properties over one acre in size, with the provision of adequately screened off-street parking, the number of daily customers may be increased to no more than ten (10) daily customers or clients;
4. For residential properties under two acres in size, storage of materials, goods, and equipment, including no more than two commercial vehicles associated with the home occupation and utilized for commercial purposes, shall be screened entirely from view from any adjacent public right-of-way. Storage shall not exceed twenty-five (25) percent of the total lot area and shall not occur within the front yard setback. For residential properties over two acres in size, storage of materials, goods, and equipment, including no more than four commercial vehicles associated with the Class B home occupation and utilized for commercial purposes, shall be screened entirely from view from any adjacent public right-of-way;
5. Off-Street Parking. Two on-site parking spaces shall be provided for the home occupation in addition to those spaces already required for the dwelling. No more than two customer vehicles may visit the home occupation at any one time and these must use the legal, designated parking spaces outside. For properties over one acre in size, with the provision of adequately screened off-street parking, the number of customer vehicles may be increased to no more than five vehicles at any one time;
6. Kennels, animal boarding, and commercial animal breeding activities, though the minimum land area (either by lease or ownership) associated with the Class B home occupation that includes these uses shall equal one acre of land, and the total number of animals boarded at any one time shall not exceed twenty-five (25);
7. Change of the Oregon Residential Specialty occupancy classification of the dwelling unit or any portion of the dwelling unit, including the garage. For example, in the installation of a commercial kitchen or commercial appliances.

G. Permit Procedures for Home Occupations.

1. Home Occupation Permit. A home occupation permit will be processed using the Type III-HO quasi-judicial procedure, pursuant to the requirements of Chapter 16.61 (Types of Review Procedures).
2. Conditions of Approval. The City may impose conditions of approval on a home occupation permit to ensure compliance with the requirements of this chapter. These conditions may include, but are not limited to, the following:
 - a. Limiting the hours, days, place and manner of operation;

- b. Requiring site and building design features which minimize environmental impacts such as noise, vibration, air pollution, glare, odor and dust;
- c. Requiring additional building setbacks, and increased lot area, depth or width;
- d. Limiting the building area and outdoor storage used by the home occupation and restricting the location of the use on the site in relationship to adjoining uses;
- e. Designating the size, number, location and design of vehicle access points;
- f. Requiring street right-of-way to be free at all times of vehicles associated with the home occupation;
- g. Requiring landscaping, buffering and/or screening, of the home occupation from adjoining uses and establishing standards for the continued maintenance of these improvements;
- h. Requiring storm drainage improvements, and surfacing of parking and loading areas;
- i. Limiting the extent and type of interior or exterior building remodeling necessary to accommodate the home occupation;
- j. Limiting or setting standards for the location and intensity of outdoor lighting;
- k. Requiring and designating the size, height and location of fences and materials used for their construction;
- l. Requiring the protection and preservation of existing trees, and other vegetation, watercourses, slopes, wildlife habitat areas and drainage areas;
- m. Limiting the type and number of vehicles or equipment to be parked or stored on the site;
- n. Any other limitations which the review authority considers to be necessary or desirable to make the use comply with this section; and
- o. Any limitations or conditions imposed by the City's service providers, including, but not limited to, Sunrise Water Authority, Clackamas Fire District #1, CCSD#1, CCSD#5, etc.

H. Revocation and Expiration of Home Occupation Permits. Grounds for Revocation. The Planning Official or designee may:

- 1. Revoke a home occupation approval if the conditions of approval have not been or are not being complied with and the home occupation is otherwise being conducted in a manner contrary to this chapter.
- 2. The Planning Official or designee shall approve the use as it exists, revoke the home occupation permit, or compel measures to be taken to ensure compatibility with the neighborhood and conformance with this section after reviewing a complaint. Complaints may be originated by the City of Happy Valley or the public. Complaints from the public shall clearly state the objection to the home occupation, such as:
 - a. Generation of excessive traffic;
 - b. Exclusive use of on-street parking spaces;
 - c. Other offensive activities not compatible with a residential neighborhood.

3. Cessation of Home Occupation Pending Review. If it is determined by the Planning Official or designee in exercise of reasonable discretion, that the home occupation in question will affect public health and safety, the use may be ordered to cease pending Planning Commission review and/or exhaustion of all appeals.
 4. Waiting Period for Reapplication. When a home occupation permit has been revoked due to violation of these standards, a minimum period of one year shall elapse before another application for a home occupation on the subject parcel will be considered.
 5. Invalidation of Permit. A home occupation permit shall become invalid if the applicant moves his or her residence.
- I. Business License Required. Besides meeting the requirements of this section, the business or commercial use of any home for a home office or home occupation must be supported by an active City business license. No business license will be issued for a home office or home occupation until:
1. The person wishing to engage in a home office answers the questions within the home occupation permit questionnaire and is determined to be exempt from the home occupation permit process; or
 2. The applicant for a home occupation has been approved and the application certifies that the home occupation will be operated in strict compliance with the provisions of this chapter and the conditions of approval.

16.69.030 Mobile food unit sites.

- A. Purpose. Mobile food units, which are defined in OAR 333-150-0000, can provide opportunities to enliven under-utilized parking lots, allow individual entrepreneurship at a small scale, and provide unique eating establishments for the public. The purpose of this section is to allow for mobile food unit sites or “cart pods” where mobile food units (carts) can be parked on a long term basis. As with temporary uses, permanent site improvements may not be required; however, the standards and permit processes of this section are intended to ensure that mobile food unit sites are conducted as lawful uses and in a manner that is not detrimental or disruptive in terms of appearance or operation to neighboring properties and residents.
- B. Exemptions. The following are exempt from provisions of this section:
1. Locations where mobile food units stop for less than two hours in any twenty-four (24) hour period.
 2. Locations where mobile food units are stored when not in operation are exempt from the provisions of this section; however, the storage of commercial vehicles may be subject to other requirements of the LDC.
 3. Mobile food units and other mobile vending units that are operated as part of an approved farmer’s market.
- C. Mobile Food Unit Site Standards. The following standards apply to mobile food unit sites.
1. Zoning. Mobile food unit sites are not permitted in residential zones, but are permitted, as restricted, within the commercial and industrial district use tables found within this title.
 2. Accessory Items and Structures. Trash receptacles for customer use shall be maintained no more than ten (10) feet from the mobile food units. Portable accessory items, such as picnic

tables, are permitted. With Type II approval, new accessory structures may be constructed, as follows:

- a. A maximum of two restroom structures, provided that the combined square footage does not exceed two hundred (200);
 - b. A maximum of two storage buildings, provided that the combined square footage does not exceed two hundred (200);
 - c. One trash enclosure; and
 - d. Outdoor seating areas, which may have roofs, floors, and railings, but no walls (e.g., decks, picnic shelters), provided that the square footage does not exceed two hundred (200) square feet per mobile vending unit and that no single structure exceeds two hundred (200) square feet.
3. Signs. Signs are restricted to “A-Frame” signs only, permitted pursuant to Chapter 16.45.
4. Minimum Setbacks and Separation Distance. All mobile food units on the site shall be located a minimum of:
 - a. Five feet from any structure or other mobile food unit;
 - b. Ten (10) feet from any front lot line; and
 - c. Five feet from any side or rear lot line, except if such lot line abuts a residential district the minimum setback shall be twenty (20) feet.
5. Screening. If the mobile food unit site is located less than twenty (20) feet from a residential zoning district, the residential property shall be screened from the mobile food unit site, which may be a portion of a property including the mobile food unit, seating, queuing, etc., abutting the residential zoning district and may not necessarily extend to the shared property line. Required screening:
 - a. May be provided by an existing, continuous, sight-obscuring structure, fence, or hedge;
 - b. If new, shall be a continuous, sight-obscuring vegetative screen; or if fencing is utilized as screening, shall be stained cedar or ornate metal. Chain-link fencing with slats shall not qualify as acceptable screening material; and
 - c. Shall have a minimum height of six feet.
6. Setback from Vehicular and Pedestrian Use Areas. Windows and doors used for service to customers shall be located a minimum of ten (10) feet from loading areas, driveways, on-site circulation drives, and parking lot aisles, and a minimum of five feet from bicycle parking spaces and walkways.
7. Obstruction of Vehicular and Pedestrian Use Areas and Landscape Areas. No mobile food unit or associated element, such as aboveground power cords, seating areas, trash receptacles, signs, and customer queuing areas, shall occupy bicycle parking spaces, loading areas, or walkways. Mobile vending units shall not occupy landscaping areas approved as part of a prior design review or other land use application. However, occupying existing on-site automobile parking spaces is permitted, provided that such spaces are not simultaneously used for parking or required to meet minimum parking requirements on the site.

8. **Surfacing.** All mobile food units shall be placed on an existing hard-surfaced area, and any associated parking, loading, and maneuvering areas for vehicles shall be on existing hard-surfaced areas, unless a permeable parking, loading, or maneuvering area surface was authorized as part of a previously implemented design review approval for the site.
9. **Driveway Access.** No new or modified driveway access is permitted.
10. **Intersection Sight Distance and Roadside Clear Zones.** The mobile food unit and any attachments or accessory items shall comply with the intersection sight distance and roadside clear zone standards of the City of Happy Valley Engineering Standards.
11. **Lighting.** Outdoor lighting shall be required per this title if not already provided by an existing use.
12. **Utilities.** To the extent that utilities are desired by the applicant or required by applicable regulations, mobile vending units shall have self-contained utilities, or if on-site utility connections are proposed, such utilities shall be installed underground, except where prohibited by the utility district or company. Notwithstanding this requirement:
 - a. If allowed by the utility district or company and any applicable Oregon Specialty Code, aboveground utility connections are permitted, when a mobile vending unit will remain on the subject property for no more than one hundred twenty (120) days in a calendar year. For the purpose of this exception:
 - i. If a mobile vending unit is replaced by another, the number of days shall be calculated by adding the days spent on-site by each unit.
 - ii. If a mobile vending unit spends any portion of a day on the subject property, it shall count as one day.
 - b. If allowed by the utility district or company and the Oregon Electrical Specialty Code, aboveground power cords are permitted to connect the mobile vending unit to an approved electricity source.
 - c. If allowed by the utility district or company and the Oregon Plumbing Specialty Code, aboveground hoses are permitted to connect the mobile vending unit to an approved water source.
13. **Sanitation Facilities.** For four carts or less, portable toilets and hand-washing facilities are permitted but may not drain to the surface. For five carts or more, utilization of existing restrooms within an existing building may be utilized, or if new, permanent restrooms shall be constructed.
14. **Sewage Disposal.** Subsurface sewage disposal is prohibited.
15. **Central Pavilions.** Subject to subsection (E)(3), outdoor seating areas, which may have roofs, floors, walls, railings, etc. are permitted, provided that the combined square footage does not exceed two hundred (200) square feet per mobile vending unit and that no single structure exceeds five thousand (5,000) square feet in size.
16. **Vendor Parking.** For any mobile food unit site requiring a Type II Design Review approval, vendor parking shall be provided in addition to the off-street parking requirements of Section 16.43.030 (Automobile parking standards) at the rate of one parking stall per mobile food unit. Vendor parking may be satisfied by the provision of off-site, shared parking agreements.

- D. Mobile Food Units. The following standards apply to each mobile food unit on the site.
1. Attachments. Attachments to the mobile vending unit, such as awnings or canopies, are permitted only if they are supported entirely by the unit and do not touch the ground. Neither the mobile food unit nor any item relating to the unit shall lean against or hang from any structure or utility pole. No structure shall be attached to the mobile food unit.
 2. Accessory Storage. Except as specifically allowed by subsection C, items relating to the mobile food unit shall be stored in, on, or under the unit.
 3. Interior Seating or Vending. Customer seating or vending inside the mobile food unit is prohibited.
 4. Skirting. Skirting shall be placed around the perimeter of the mobile vending unit.
 5. Drive-Thru Service. A mobile food unit may include drive-thru service only if drive-thru service is allowed as a primary or accessory use in the zoning district in which the subject property is located. Drive-thru service shall be subject to the related provisions of this title.
 6. Other Licenses Required. Besides meeting the requirements of this section, the operator of a mobile food unit must have an active City business license and must comply with the permit requirements of Clackamas County Environmental Health Department.
- E. Permit Procedures. Mobile food unit site permits will be processed as follows:
1. Type I. Up to two carts on one site with no accessory structures other than trashcans and portable accessory items, such as picnic tables may be reviewed in accordance with Section 16.61.020 Type I procedure (administrative).
 2. Type II. Up to four carts on one site and/or new accessory structures constructed in accordance with subsection (C)(2) of this section may be reviewed in accordance with Section 16.61.035 Type II-DR procedure (administrative).
 3. Five or more carts on one site and/or improvements or new accessory structures other than those permitted through Type I or Type II approval requires design review approval in accordance with Section 16.61.045 Type III-DR procedure (quasi-judicial). New structures greater than two hundred (200) square feet in size shall be subject to the Happy Valley Style Appendix "B."
- F. Submittal Requirements. An application for a mobile food unit site permit shall include the following:
1. A completed application form on a form provided by the Planning Official;
 2. Information sufficient to address the standards in subsection C; and
 3. A site plan of the subject property drawn to scale and including:
 - a. The lot lines,
 - b. The location of existing structures,
 - c. The proposed boundaries of the mobile food unit site. Within the boundaries of the mobile food unit site, the location of all mobile food units, seating areas, and any accessory items or structures shall be shown,
 - d. The proposed distance between the mobile vending unit site and adjacent lot lines, as well as the proposed separation distance between units and between units and other on-site structures,

- e. The type and location of any proposed on-site utility connections for mobile food units,
- f. The location of existing loading areas, driveways, on-site circulation drives, parking lot aisles, bicycle and automobile parking spaces, and walkways,
- g. The orientation of service windows and doors on the mobile food units and location of queuing areas,
- h. The location of existing landscaping, and
- i. The dimensions, height, and location of proposed A-Frame signs.

G. Conditions of Approval. The approval body may impose conditions upon the approval of a mobile food unit site permit to ensure compliance with the requirements of this chapter. These conditions may include, but are not limited to, the following:

- 1. Further limiting the hours, days, place and manner of operation;
- 2. Requiring site and building design features which minimize environmental impacts such as noise, glare, and odor;
- 3. Requiring additional building setbacks;
- 4. Further limiting the building area and outdoor storage used by the mobile food unit site and restricting the location of the use on the site in relationship to adjoining uses;
- 5. Designating the size, number, location and design of vehicle access points;
- 6. Requiring landscaping, buffering and/or screening, of the mobile food unit site from adjoining uses and establishing standards for the continued maintenance of these improvements;
- 7. Requiring storm drainage improvements, and surfacing of parking and loading areas;
- 8. Limiting or setting standards for the location and intensity of outdoor lighting;
- 9. Requiring and designating the size, height and location of fences and materials used for their construction;
- 10. Requiring the protection and preservation of existing trees, and other vegetation, watercourses, slopes, wildlife habitat areas and drainage areas;
- 11. Limiting the type and number of vehicles or equipment to be parked or stored on the site;
- 12. Any other limitations which the staff considers to be necessary or desirable to make the use comply with this section; and
- 13. Any limitations or conditions imposed by the City's service providers, including but not limited to Sunrise Water Authority, Clackamas River Water, Clackamas Fire District #1, CCSD#1, CCSD#5, etc.

H. Approval Period and Time Extension. Unless listed as a permitted use in the underlying zone, a mobile food unit site approval is valid for four years from the date of the final written decision. If the City's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented, or the approval will become void. "Implemented" means all necessary development permits shall be obtained and maintained for the approved development. At the end of any four-year period, the applicant may apply for another four-year permit by filing a new, Type II application.

- I. Grounds for Revocation. The Planning Official or designee may:
1. Revoke a mobile food unit site permit approval if the conditions of approval have not been or are not being complied with and the mobile food unit site is otherwise being conducted in a manner contrary to this chapter.
 2. The Planning Official or designee shall approve the use as it exists, revoke the mobile food unit site permit, or compel measures to be taken to ensure compatibility with the neighborhood and conformance with this section after reviewing a complaint. Complaints may be originated by the City of Happy Valley or the public. Complaints from the public shall clearly state the objection to the mobile food unit site, such as:
 - a. Generation of excessive traffic;
 - b. Generation of excessive noise or litter;
 - c. Other offensive activities not compatible with the surrounding area.
 3. Waiting Period for Reapplication. When a mobile food unit site permit has been revoked due to violation of these standards, a minimum period of one year shall elapse before another application for a mobile food unit site on the subject parcel will be considered.