

Article 6 Exceptions and Variances

SECTION 6.1 - NONCONFORMING USES.

- (1) A nonconforming use or structure may be continued but may not be altered or expanded. The expansion of a nonconforming use to a portion of a structure which was arranged or designed for the nonconforming use at the time of passage of this ordinance is not an enlargement or expansion of a nonconforming use. A nonconforming structure which conforms with respect to use may be altered or expanded if the alteration or expansion does not cause the structure to deviate further from the standards of this ordinance. A nonconforming use that does not conform with respect to use, may be reconstructed, altered, replaced in the same location as long as the construction does not cause the structure to deviate any further from the standards of this ordinance than the original structure.
- (2) If a nonconforming use is discontinued for a period of one year, further use of the property shall conform to this ordinance.
- (3) If a nonconforming use is replaced by another use, the new use shall conform to this ordinance.
- (4) Nothing contained in this ordinance shall require any change in the plans, construction, alteration or designated use of a structure for which a permit has been issued by the City and construction has commenced prior to the adoption of this ordinance provided the structure, if nonconforming or intended for a nonconforming use, is completed and in use within two years from the time the permit is issued.

SECTION 6.2 - GENERAL EXCEPTIONS TO BUILDING HEIGHT LIMITATIONS.

Vertical projections such as chimneys, spires, domes, elevator shaft housing, towers, aeriols, firepoles and similar objects not used for human occupancy are not subject to the building height limitations of this ordinance.

SECTION 6.3 - PROJECTIONS FROM BUILDINGS. Architectural features such as cornices, eaves, canopies, sunshades, gutters, chimneys, and flues shall not project more than 24 inches into a required yard setback area.

SECTION 6.4 - AUTHORIZATION TO GRANT OR DENY VARIANCES. The City Council may authorize a variance from the requirements of this ordinance where it can be shown that owing to special and unusual circumstances related to a specific lot, strict application of the ordinance would cause an undue or unnecessary hardship. In granting a variance, the City Council may attach conditions which it finds necessary to protect the best interests of the surrounding property or vicinity and otherwise achieve the purposes of this ordinance.

SECTION 6.5 - CIRCUMSTANCES FOR GRANTING A VARIANCE. A variance may be granted only in the event that all of the following circumstances exist.

- (1) Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, topography or other circumstances over which the owners of property since enactment of this ordinance have had no control.
- (2) The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess.
- (3) The variance would not be materially detrimental to the purposes of this ordinance, or to property in the same zone or vicinity in which the property is located, or otherwise conflict with the objectives of any City plan or policy.
- (4) The variance requested is the minimum variance which would alleviate the hardship.

SECTION 6.6 - VARIANCE STANDARDS FOR CITY TRANSPORTATION FACILITIES.

- (1) The granting of the variation shall be in harmony with the purpose and intent of these regulations and shall not be considered until every feasible option for meeting access standards is explored.
- (2) Applicants for a variance from these standards must provide proof of unique or special conditions that make strict application of the provisions impractical. Applicants shall include proof that:
 - (A) Indirect or restricted access cannot be obtained;
 - (B) No engineering or construction solutions can be applied to mitigate the condition; and
 - (C) No alternative access is available from a street with a lower functional classification than the primary roadway.
- (3) No variance shall be granted where such hardship is self-created.

SECTION 6.7 - PROCEDURE FOR GRANTING A VARIANCE.

- (1) APPLICATION FOR A VARIANCE. A property owner may initiate a request for a variance by filing an application with the City Recorder.

- (2) PUBLIC HEARING ON A VARIANCE. Before the City Council may act on a request for a variance, it shall hold a public hearing.
- (3) NOTIFICATION OF DECISION. Within 10 days after a decision has been rendered by the City Council with reference to a request for a variance, the City Recorder shall provide the applicant with the notice of the decision of the City Council.
- (4) TIME LIMIT FOR A PERMIT FOR A VARIANCE. Authorization for a variance shall be void after six (6) months, unless substantial construction pursuant thereto has taken place. However, the City Council may, at its discretion, extend the authorization for an additional six (6) months on request.

Article 7 Amendments

SECTION 7.1 - FORMS OF AMENDMENTS. An amendment to this ordinance may take the following forms.

- (1) Amendment to the text. (Legislative Revision)
- (2) Amendment to the Map. (Legislative Revision or Quasi-Judicial Change)

SECTION 7.2 - LEGISLATIVE REVISIONS.

- (1) Proposed amendments to this ordinance shall be deemed legislative revisions if:
 - (A) The proposed amendment involves the text of this ordinance, and/or
 - (B) The proposed amendment involves the map, when such an amendment would have widespread and significant impact beyond the immediate area of the proposed amendment.
- (2) Legislative revisions shall be initiated by:
 - (A) A resolution of a majority of the City Council
 - (B) The request of the City Attorney,
 - (C) The request of the City Planner.

SECTION 7.3 - QUASI-JUDICIAL CHANGES.

- (1) A proposed amendment to this ordinance shall be deemed a quasi-judicial change if the proposed amendment involves the Zoning map and does not have widespread and significant impact beyond the immediate area of the proposed amendment.
- (2) Quasi-judicial changes may be initiated by property owners or contract purchaser or his or their authorized agent.
- (3) In case of a controversy as to whether an amendment be deemed a legislative or quasi-judicial matter, the decision of the City Council shall be final.

SECTION 7.4 – AMENDMENTS AFFECTING TRANSPORTATION FACILITIES.

- (1) A plan or land use regulation amendment significantly affects a transportation facility if it:
 - (A) Changes the functional classification of an existing or planned transportation facility;
 - (B) Changes standards implementing a functional classification system;
 - (C) Allows types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility; or
 - (D) Would reduce the level of service of the facility below the minimum acceptable level identified in the Transportation System Plan.
- (2) 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 Transportation System Plan. This shall be accomplished by one of the following:
 - (A) Limiting allowed land uses to be consistent with the planned function of the transportation facility.
 - (B) Amending the Transportation System Plan to ensure that existing, improved, or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the Transportation Planning Rule. or,
 - (C) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

SECTION 7.5 - AMENDMENT HEARINGS. The City Council shall conduct a public hearing on a proposed amendment at the earliest possible meeting after it is submitted in accordance with the public hearing procedures under Section 8.5 of Article 8. Text and map amendments shall also be submitted to the Department of Land Conservation and Development 45 days prior to the date set for final hearing except as provided for under ORS 197.610.

- (1) The following criteria must be followed in deciding upon a quasi-judicial proceeding.
 - (A) The burden in all land use proceedings is upon the applicant, whether a zone change, conditional use or variance is the subject of the hearing.

(B) The requested zone change or conditional use must be justified by proof that:

1. The change is in conformance with the Comprehensive Plan and also the goals and policies of the Plan.
 2. The showing of public need for the rezoning and whether that public need is best served by changing the zoning classification on that property under consideration.
 3. The public need is best served by changing the classification of the subject site in question as compared with other available property.
 4. The potential impact upon the area resulting from the change has been considered.
- (2) The courts will require a "graduated burden of proof" depending upon the drastic nature of the proposed rezoning.
- (3) Procedural Process of a quasi-judicial hearing.
- (A) Parties at a rezoning hearing must have an opportunity to be heard, to present and rebut evidence.
 - (B) There must be a record which will support the findings made by the City Council.
 - (C) There must be no pre-hearing contacts on the subject of the hearing.

SECTION 7.6 - FINAL ACTION. Except as provided for under ORS 227.178, the City Council shall take final action on conditional use permits and variances, including the resolution of all appeals to the City Council under ORS 227.180, within 120 days from the date a complete application is submitted to the City. Within 30 days of receipt of an application, the City will review the application to determine whether it is complete. The applicant will be notified of any missing materials within the 30 day period. The 120 day time period will commence on the date the application is complete.

SECTION 7.7 - NOTIFICATION OF DECISION. Within 5 working days after a final decision on an amendment to the comprehensive plan, zoning ordinance text or plan/zone map, the City Recorder shall provide the applicant and the Department of Land Conservation and Development a complete copy of the City Council decision. Within 5 working days after a final decision, the City shall also provide notice of the decision to all persons who participated in the local proceedings and requested in writing that they be given notice. The notice shall meet the requirements of ORS 197.615.

SECTION 7.8 - LIMITATION OF REAPPLICATIONS. No application of a property owner for an amendment to a zone boundary shall be considered by the City Council within the one year period immediately following a previous denial of such request, except the City Council may permit a new application if, in the opinion of the City Council, new evidence or a change of circumstances warrant it.

SECTION 7.9 - RECORD OF AMENDMENTS. The Recorder shall maintain records of amendments to this ordinance.