

1 **ORDINANCE BILL NO. 15-18**

2 AN ORDINANCE RELATING TO EROSION PREVENTION AND CONTROL, CLEARING  
3 AND GRADING OF LAND, SIDEWALKS, LAND DIVISIONS, PLANNED UNIT  
4 DEVELOPMENTS, LAND USE PROCEDURES, AND FLOODPLAINS; AMENDING SRC  
5 75.020, 75.050, 78.180, 82.030, 205.035, 205.055, 210.030, 300.850, 601.005, 601.030, AND  
6 601.045; AND CREATING SRC 205.080.

7 *The City of Salem ordains as follows:*

8 **Section 1.** SRC 75.020 is amended to read:

9 **75.020. - Definitions.**

10 (a) Words and phrases defined in SRC chapter 111 shall have the meanings set forth therein,  
11 unless another definition is set forth in this section.

12 (b) The following words, terms and phrases, when used in this chapter, shall have the  
13 meanings ascribed to them in this section, except where the context clearly indicates a  
14 different meaning:

15 *Applicant* means the owner of real property or the owner's authorized agent, and any person  
16 who would be required to obtain an erosion control permit, but neglects or otherwise fails to do so.

17 *Approved* means having received official confirmation by the Director.

18 *Authorized agent* means the developer, contractor, engineer, builder, personal  
19 representative, or anyone designated by the owner to have control or supervision of a site  
20 involving a ground disturbing activity.

21 *Certified professional* means any person licensed as a civil engineer, architect, landscape  
22 architect, or landscape designer who is qualified, in the judgment of the Director, to design  
23 erosion prevention and sediment control plans or facilities; or any person certified by the State or  
24 the International Erosion Control Association as a certified professional in erosion and sediment  
25 control; or any person certified by other appropriate National association and who in the  
26 judgment of the Director has the knowledge, skills, and abilities to design erosion prevention and  
27 sediment control facilities.

28 *Clearing* means any activity that removes vegetative cover of land.

29 *Drainage course* means any land surface, ditch, waterway, or other feature which serves  
30 as a course for the transmission of surface water and stormwater.

1            *EPSC plan or erosion prevention and sediment control plan* means a set of plans  
2 indicating the specific measures and sequencing or phasing to be used to control erosion and  
3 sediment on a development or construction site during and after construction or other ground  
4 disturbing activities.

5            *Erosion* means the wearing away of the ground surface, or the movement, detachment or  
6 dislocation and transport of sediment including soil particles by the action of water or wind.

7            *Erosion control permit* means a permit issued by the City for the construction of facilities  
8 for the prevention or control of erosion, runoff, or sediment.

9            *Erosion prevention* means a measure that prevents or reduces the creation of sediment.

10           *Grading* means excavation or fill of material, including the resulting conditions, spoils, or  
11 byproducts.

12           *Ground disturbing activities* means any activity that exposes soil through the use of  
13 mechanical equipment, including, but not limited to, grading, excavating, filling, clearing, or  
14 working of land. Such disturbance may be permanent (i.e., gravel mining, farming, gardening,  
15 sports fields, etc.); or temporary or short-term duration such as construction, excavation, fill,  
16 grading, landscape installation, or other vegetative clearing activities.

17           *Perimeter control* means a barrier that prevents sediment from leaving a site by filtering  
18 runoff or diverting it to a sediment trap or basin.

19           *Public Works Design Standards* means the design standards and specifications adopted  
20 pursuant to SRC Chapter 20J and Chapter 802.

21           *Sediment* means finely divided loose material that can be suspended and transported in water  
22 or air and may originate from disturbed soil, landscaping, and construction activities or materials.

23           *Sediment control* means a measure that prevents or reduces the amount of eroded material  
24 leaving the site.

25           *Site* means a parcel of land or contiguous lots or parcels of land where ground disturbing  
26 activities are performed as a single unified operation.

27           *Slope* means an inclined earth surface, the inclination of which is expressed as the ratio of  
28 horizontal distance to vertical distance. Slopes are expressed as a percentage and measured  
29 across a horizontal rise and run calculation within any horizontal 25 foot distance.

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1           *Stabilization* means the use of practices that prevent, or reduce to the maximum extent  
2 practicable, exposed soil from eroding.

3           *Storm drainage system* means all conduits, ditches, gutters, catch basins, or any other  
4 facilities convenient or necessary to carry away and dispose of stormwater and subsurface  
5 drainage, surface water, or unpolluted surplus water.

6           *Visible and measurable erosion or sediment* means:

- 7           (1)     Deposits or tracking of mud, dirt, sediment, or similar material which exceeds  
8                   one-half cubic foot in volume, on public or private streets, adjacent property, or  
9                   into the storm drainage system or a drainage course, either by direct deposit,  
10                  dropping, discharge, or as a result of the action of erosion;
- 11           (2)     Evidence of concentrated flows of water over bare soils; turbid or sediment laden  
12                   flows; or evidence of on-site erosion such as rivulets on bare soil slopes, where  
13                   the flow of water is not filtered or captured before leaving the site; or
- 14           (3)     Earth slides, mud flows, earth sloughing, or other earth movement in excess of  
15                   one-half cubic foot in volume, which leaves the site.

16           *Waterway* means any river, stream, or creek within the City, designated by the Director.

17           *Wetland* means any area that is inundated or saturated by surface water or groundwater at  
18 a frequency and duration sufficient to support, and that under normal circumstances does  
19 support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

20    **Section 2.** SRC 75.050 is amended to read:

21    **75.050. - Erosion control permits.**

22    (a)     Except as provided in subsection (b) of this section, no person shall conduct ground disturbing  
23                   activities that cause or are likely to cause a temporary or permanent increase in the rate of soil  
24                   erosion from a site without first obtaining an erosion control permit from the Director.

25    (b)     Erosion control permits are not required for the following:

- 26           (1)     Home gardening and landscaping activities, unless the ground disturbing activity  
27                   meets either of the following criteria:
- 28                   (A)     The activity takes place within 50 feet of a waterway, and the work  
29                               involves the disturbance of more than 1,000 square feet of land surface at  
30                               one time; or

- 1 (B) The slope of the land exceeds 25 percent.
- 2 (2) Ground disturbing activities involving less than 25 cubic yards of material or
- 3 1,000 square feet of land surface at one time.
- 4 (3) Interior improvements to an existing structure.
- 5 (4) Activity for which there is no physical disturbance to the surface of the land.
- 6 (5) Ground disturbing activities conducted under a 1200-CA ~~1200-C~~ General Permit
- 7 issued by the Oregon Department of Environmental Quality in accordance with
- 8 the Phase I and Phase II Stormwater Regulations adopted by the Environmental
- 9 Protection Agency.
- 10 (6) Activities within the City which constitute a "farm use" or "accepted farming
- 11 practices" as those terms are defined or used in ORS ch. 215.
- 12 (7) Mining activities conducted under permits issued by the Oregon Department of
- 13 Geology and Mineral Industries.
- 14 (8) Routine maintenance of gravel roads, road shoulders, paths, parking lots, and
- 15 storage yards.
- 16 (9) Routine maintenance of sports fields or playgrounds surrounded by vegetative
- 17 ground cover or permanently installed curbing.
- 18 (c) An exception from the erosion control permit requirement does not exempt the applicant
- 19 from the performance responsibilities of SRC 75.030, 75.090 and 75.140, except to the
- 20 extent allowed under local, state, or federal permits issued for a specific site or purpose.
- 21 (d) Applicants for construction activity within the City subject to the 1200-C or 1200-CA
- 22 General Permit requirements must obtain the 1200-C or 1200-CA General Permit directly
- 23 from the Oregon Department of Environmental Quality and provide evidence of such to
- 24 the Director.

25 **Section 3.** SRC 78.180 is amended to read:

26 **78.180. - Requirements for new construction abutting improved streets.**

- 27 (a) Except as otherwise provided by SRC 78.192, every property owner whose property abuts
- 28 upon any street that has been improved with hard surface pavement and curbs, shall construct
- 29 a sidewalk and replace non-conforming portions of existing sidewalk in conformance
- 30 with conforming to the provisions of this chapter within one-hundred (100)~~100~~ days from the

1 completion of construction of any building located upon the property. For the purposes of  
2 this section, sidewalks shall be required along the entire length of the property abutting any  
3 improved street. As used in this section, the term "building" shall not include accessory  
4 buildings, as defined in SRC 111.005, in a residential zone.

5 (b) Whenever any property owner refuses to perform any duty imposed under this section, the  
6 Director shall issue a notice and order the property owner to satisfy such duty, and if the  
7 property owner fails to perform such duty within such time as the Director may have  
8 specified in the notice and order, then the Director shall proceed as provided in SRC 78.300.

9 **Section 4.** SRC 82.030 is amended to read:

10 **82.030. - Clearing and grading permit.**

11 (a) *Permit required.* Except as provided in subsection (b) of this section, a clearing and  
12 grading permit is required for any activity that involves ground disturbing activity  
13 exceeding two feet in depth or 25 cubic yards of volume, if:

- 14 (1) The ground disturbing activity involves more than 1,000 square feet;
- 15 (2) The ground disturbing activity is within 50 feet of a waterway as measured from  
16 top of bank;
- 17 (3) The ground disturbing activity is within 50 feet of the boundary of a wetland; or
- 18 (4) The ground disturbing activity will result in a finished grade slope steeper than  
19 two units horizontal to one unit vertical.

20 (b) *Permit exemptions.* A clearing and grading permit is not required for activities exempted  
21 by SRC 82.020(b), or for ground disturbing activities performed by, or under contract for,  
22 the City and conducted in an existing public right-of-way or easement. An exemption  
23 from permit requirements does not authorize work to be done in a manner inconsistent  
24 with the purpose of SRC 82.001~~that violates the provisions of this chapter~~ or in violation  
25 of any other laws or ordinances, except to the extent allowed under local, state, or federal  
26 permits issued for a specific site or purpose. If the Director becomes aware that the  
27 exempted activity is contrary to the purposes listed in SRC 82.001, the Director may halt  
28 or cause to modify the activity.

29 (c) *Submittal requirements.* An application for a clearing and grading permit shall include  
30 the following:

- 1 (1) Location of the property involved.
- 2 (2) Identification of the type of work proposed.
- 3 (3) Identification of soil type, if soil is to be excavated from one location and placed
- 4 as fill at another location.
- 5 (4) A grading plan, of a size and form and in the number of copies meeting the
- 6 standards established by the Director, containing the following:
- 7 (A) Property lines, dimensions, and orientation relative to north;
- 8 (B) Recorded property lines, easements, and right-of-way locations;
- 9 (C) Street and curblines locations and elevations, where applicable;
- 10 (D) Existing and finished grades for the subject property shown by at least
- 11 two-foot contour intervals and in sufficient detail to identify the nature and
- 12 extent of the work and demonstrate conformance with the requirements of
- 13 this chapter;
- 14 (E) Existing grade on adjoining properties in sufficient detail to identify how
- 15 grade changes will conform to the requirements of this chapter;
- 16 (F) Location of any buildings or structures on the property where the work is
- 17 to be performed and the location of any buildings or structures on land of
- 18 abutting owners that are within 15 feet of the property boundary, or which
- 19 may be affected by the proposed ground disturbing activity; and
- 20 (G) Intended methods of stormwater drainage, if applicable.
- 21 (5) The Director may require additional information on the grading plan view or
- 22 require cross-section views.
- 23 (6) The Director may require additional information on involved persons, such as the
- 24 name and address of the permittee, property owner, owner's engineer, certified
- 25 professional, contractor, and other persons associated with the work.
- 26 (7) A technical report, prepared by a certified professional, shall be submitted by the
- 27 applicant if the proposed activity cannot meet the excavation, fill, setback,
- 28 terracing, or drainage requirements of this chapter.
- 29 (d) *Criteria.* A clearing and grading permit shall be granted if the proposed ground disturbing
- 30 activity conforms to the requirements of this chapter.

1 (e) *Indemnification.* The permittee shall indemnify and hold the City, its agents, employees,  
2 and officers harmless from and shall process and defend at its own expense any and all  
3 claims, demands, or suits of whatsoever kind or nature brought against the City arising  
4 out of, or in connection with, or incident to, the execution of the permit or the permittee's  
5 performance or failure to perform any aspect of the permit.

6 **Section 5.** SRC 205.035 is amended to read:

7 **205.035. - Final plat.**

8 (a) *Applicability.* No final plat of a partition, subdivision, phased subdivision, manufactured  
9 dwelling park subdivision, or replat shall be recorded without receiving final plat  
10 approval as set forth in this section.

11 (b) *Procedure.* Final plats are exempt from the procedures of SRC chapter 300, and shall  
12 instead follow the procedures set forth in this section. Final plats shall be reviewed by the  
13 City prior to recording with county. Applications for final plat shall be submitted prior to  
14 expiration of tentative plan approval.

15 (c) *Criteria.* A final plat shall be approved if all of the following criteria are met:

16 (1) The final plat is in substantial conformance with the approved tentative plan or  
17 tentative replat.

18 (2) For phased subdivisions in commercial and industrial zones, unless the divergence  
19 from the tentative plan would require a modification of any condition of approval, the  
20 final plat for each phase may diverge from the tentative plan and still be in substantial  
21 conformance with the approved tentative plan for that phase if there is:

22 (A) A decrease or increase in the number of lots within the particular phase;

23 (B) A change in the location or width of public rights-of-way within the  
24 specific phase; provided, however, the change does not materially affect  
25 connectivity, does not increase or decrease the number of connections to  
26 streets set forth in the tentative plan, does not change the point of  
27 connection with existing or planned streets, and does not change the street  
28 designation from one classification to another;

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- (C) A change in the location or width of a public utility easement, so long as the change does not adversely affect connectivity with constructed or planned utilities;
  - (D) A decrease in the number of phases; or
  - (E) An increase or decrease in the area of a specific phase.
  - (F) If the approval of a final plat for a specific phase requires the change of a boundary of a subsequent phase, or a change to the conditions of approval, the tentative plan shall be modified to reflect the changes.
- (3) The final plat complies with all applicable provisions of ORS ch. 92;
  - (4) Conditions of approval imposed on the tentative plan or tentative replat have been met;
  - (5) The final plat dedicates, free and clear of all liens and encumbrances and without any reservation or restriction other than reversionary rights upon vacation, all City infrastructure, if such dedication is required by the UDC or as a condition of approval;
  - (6) Any easement to be granted to the City on the final plat conforms to the standards listed in SRC 205.080;
  - (7) The Public Works Director~~City Engineer~~ has certified that:
    - (A) All required City infrastructure and private improvements are completed and approved, ~~and, if applicable, the owner of the property subject to the final plat has entered into a fee in lieu of construction agreement pursuant to SRC 200.400 through 200.420;~~ or
    - (B) The owner of the property subject to the final plat has executed and filed with the City an improvement agreement, requiring all City infrastructure and private improvements to be completed within 18 months of the final plat approval, ~~and, if applicable, the owner of the property has entered into a fee in lieu of construction agreement pursuant to SRC 200.400 through 200.420.~~ The improvement agreement shall be accompanied by a performance guarantee as provided in SRC 110.100. Upon request, the improvement agreement shall be extended for an additional 18-month period if the performance guarantees are modified, if necessary, to reflect



1 any change in cost of construction. The improvement agreement shall state  
2 that, should all improvements not be completed within the term of the  
3 improvement agreement or its extension, the City may pursue any and all  
4 remedies available to it, including, but not limited to, those set forth in  
5 SRC 110.100;~~or~~

6 (C) If applicable, the owner has entered into a fee-in-lieu of construction  
7 agreement pursuant to SRC 200.400 through 200.420.

8 ~~(7) If applicable, the owner has entered into a fee in lieu of construction agreement pursuant to~~  
9 ~~SRC 200.400 through 200.420.~~

10 (d) *Approval or rejection of final plat.*

11 (1) If the Director finds that the final plat does not meet the approval criteria set forth  
12 in subsection (c) of this section, the Director shall notify the applicant of the  
13 deficiencies and afford the applicant opportunity to comply. Rejection of a final  
14 plat does not affect tentative plan or tentative replat approval.

15 (2) If the Director finds that the final plat meets the approval criteria set forth in  
16 subsection (c) of this section, the Director shall endorse approval on the final plat,  
17 and the applicant may process and record the final plat.

18 (e) *Recording of final plat.* The approved final plat shall be recorded within ten years of the  
19 effective date of the tentative plan or tentative replat approval. No building permits for  
20 development of lots or parcels shall be issued until the final plat is recorded.

21 (f) *Operation and maintenance of facilities and common property.* Where facilities and  
22 common property, including, but not limited to, private streets, parking areas, privately  
23 owned pedestrian walkways and bikeways, and landscape strips, are included within the  
24 development, the recorded covenants, conditions, and restrictions for the development  
25 shall include a provision that such facilities and common property be perpetually  
26 operated and maintained by a property owners' association. Each property owner shall be  
27 a member of the property owners' association. The association shall have the power to  
28 levy and assess against privately owned property in the development all necessary costs  
29 for operation and maintenance of such facilities and common property. The documents  
30 creating such association shall be approved by the Director.

1 (g) *Operation and maintenance of flag lot accessways.* Where a flag lot accessway serving  
2 more than one lot or parcel is included within a development, reciprocal and irrevocable  
3 access rights for all lots or parcels served by the flag lot accessway shall be included on  
4 the final plat and in the deeds for the individual lots or parcels. Maintenance of the flag  
5 lot accessway shall be shared between the owners of the properties served by the flag lot  
6 accessway and an agreement requiring maintenance of the flag lot accessway shall be  
7 recorded in the deeds for the individual lots or parcels.

8 (Prior Code, § 205.035; Ord. No. 31-13)

9 **Section 6.** SRC 205.055 is amended to read:

10 **205.055. - Property line adjustments.**

11 (a) *Applicability.* A property line adjustment is required to relocate or eliminate all or a  
12 portion of a common property line between two abutting units of land that were lawfully  
13 established, as defined by ORS 92.010(3)(a), or to incorporate into another unit of land,  
14 as provided by ORS 92.010(9)(e), excess right-of-way that was acquired for street or  
15 other right-of-way purposes and subsequently sold by a public body. Property line  
16 adjustments shall not be used to create an additional unit of land, or to create units of land  
17 that are non-conforming. No property line shall be relocated or eliminated without  
18 property line adjustment approval as set forth in this section.

19 (b) *Procedure type.* A property line adjustment is processed as a Type I procedure under  
20 SRC chapter 300.

21 (c) *Submittal requirements.* In addition to the submittal requirements for a Type I application  
22 under SRC chapter 300, an application for a property line adjustment shall include:

23 (1) A copy of recorded deeds for the existing units of land;

24 (2) A site plan, drawn to scale, indicating:

25 (A) The dimensions and areas of the units of land before and after the  
26 proposed property line adjustment;

27 (B) Setbacks, building separations, lot coverage, vehicular access, and public  
28 and private utilities;

29 (3) Proof of ownership including, but not limited to, a preliminary title report not older  
30 than 30 days for each affected property at the time the application is submitted;

- 1           (4) Any additional documents required to establish that the unit(s) of land were  
2           legally created;
- 3           (5) A copy of the ~~draft~~<sup>proposed</sup> property line adjustment deed(s), in a form approved  
4           by the Director, containing:
- 5           (A) The names of the owners;
- 6           (B) Legal descriptions of the adjusted property(ies) and the transacted  
7           property prepared and sealed by an Oregon-registered Professional Land  
8           Surveyor lines;
- 9           (C) References to original recorded deeds including the creation date and  
10          instrument used to lawfully establish each unit of land; and
- 11          (D) A pPlace for the signatures of all parties, along with proper notary  
12          acknowledgment.
- 13 (d) *Criteria.* A property line adjustment shall be approved if all of the following criteria are  
14 met:
- 15          (1) The property line adjustment will not create an additional unit of land;
- 16          (2) The property line adjustment will not create nonconforming units of land or  
17          nonconforming development, or increase the degree of nonconformity in existing  
18          units of land or existing development;
- 19          (3) The property line adjustment involves only units of land that were lawfully  
20          established, where the instruments creating the units of land have been properly  
21          recorded;
- 22          (4) The property line adjustment is not prohibited by any existing City land use approval,  
23          or previous condition of approval, affecting one or both of the units of land;
- 24          (5) The property line adjustment does not involve the relocation or elimination of any  
25          public easement or right-of-way; and
- 26          (6) The property line adjustment does not adversely affect the availability or access to  
27          public and private utilities or streets.
- 28 (e) *Multiple property line adjustments.* If more than three property line adjustment  
29 applications affecting the same unit of land are proposed within a six-month period, the  
30 property line adjustments shall be processed as follows:

1 (1) When the units of land are within a recorded plat, the property line adjustments  
2 affecting the units of land shall be by replat; and

3 (2) When the units of land are not within a recorded plat, the property line  
4 adjustments affecting the units of land shall be by partition.

5 (f) *Monumentation recording.*

6 (1) Property line adjustments shall be surveyed, ~~and~~ monumented, ~~and~~ recorded as  
7 required by state law. Prior to recording the record of survey map with the county:

8 (A) The City Surveyor shall review the final Property Line Adjustment deed  
9 document(s) and an updated preliminary title report, not older than 30  
10 days from the date of the review, and certify that it:

11 (i) Identifies the correct owners of each property;

12 (ii) Identifies the grantor and grantee in the correct manner;

13 (iii) Includes, when applicable, references to any easements of record;

14 (iv) Includes a legal description(s) that:

15 (aa) Accurately describes the adjusted property(ies) and the  
16 properties being conveyed;

17 (bb) Contains bearing and distance calls that mathematically  
18 close; and

19 (cc) Contain, when applicable, correct references to artificial  
20 and natural monuments along adjoining property(ies).

21 (v) Correctly represents the areas in each legal description; and

22 (vi) Complies with the requirements of state law.

23 (B) The applicant shall record the final property line adjustment deed(s)  
24 document; and

25 (C) The City Surveyor shall review the record of survey map to ensure:

26 (i) that the record of survey map conforms with the property line  
27 adjustment deeds; and

28 (ii) compliance with state law and this section.

29 ~~For property line adjustments involving units of land each greater than ten acres in size, the City~~  
30 ~~Surveyor may waive the survey and monumentation requirement for good cause shown by the~~

1 property owners, including, but not limited to, an intention by one of the property owners to  
2 further divide the property within the two years after the date of approval, or a demonstration  
3 that there are other recently established monuments nearby to which the adjusted property  
4 boundaries are tied.

5 (g) *Expiration; recording.*

6 (1) Property line adjustment approval shall expire as provided in SRC 300.850, unless  
7 the approved property line adjustment deed and record of survey map are recorded  
8 with a property line adjustment deed is recorded in the deed records of the county.

9 (2) Multiple property line adjustments processed according to subsection (e) of this  
10 section shall expire as provided in SRC 300.850 according to the expiration  
11 period specified for the required application.

12 (3) Evidence demonstrating that the approved property line adjustment deed and  
13 record of survey map, when required under subsection (f) of this section, have  
14 property line adjustment deed has been recorded with the county shall be provided  
15 to the Director.

16 (Prior Code, § 205.055; Ord. No. 31-13)

17 **Section 7.** The following is made part of and added to the Salem Revised Code as part of  
18 Chapter 205:

19 **205.080. – Easements created on plats.**

20 (a) Purpose. This section is intended to memorialize the terms and conditions applicable to  
21 public utility easements and easements granted, dedicated, or otherwise conveyed to the  
22 City of Salem on plats. The purpose of this section is to describe the rights attendant to a  
23 grant of an easement at law. This section should not be interpreted to restrict any existing  
24 right granted at law but not described herein.

25 (b) Applicability. All easements created for the benefit of the City or a public utility on any  
26 final plat shall conform to the standards set out in this section. The terms contained in  
27 this section shall be used to interpret all easements granted to the City of Salem or public  
28 utility on plats. The area within the easements identified on the plats is referred to as the  
29 easement area in this section.  
30

1 (c) Definitions.

2 (1) Public utility shall refer to any entity as described in SRC 35.010.

3 (2) Stormwater/stormwater utility shall refer to any storm drain or drainage facilities  
4 and appurtenances.

5 (3) Wastewater/wastewater utility shall refer to any sanitary sewer, sewage, or  
6 industrial waste facilities and appurtenances.

7 (4) Water/water utility shall refer to any domestic water facilities and appurtenances.

8 (d) Notation on plat. A notation shall be made on any final plat containing easements to be  
9 granted, dedicated, or otherwise conveyed to the City of Salem as follows: "All  
10 easements granted or conveyed to the City by this plat are to be governed by the terms  
11 and conditions found in SRC 205.080."

12 (e) General terms. The following terms are applicable to all easements governed by this  
13 Section.

14 (1) Indemnification. To the extent permitted by the Oregon Constitution and the  
15 Oregon Tort Claims Act, Grantee will indemnify and hold harmless Grantor, its  
16 heirs, and assigns, from claims for injury to person or property as a result of the  
17 negligence of Grantee, its agents, or employees in the use of the permanent  
18 easement, unless caused by Grantor's negligent or willful conduct or Grantor's  
19 failure to fulfill any duty owed to another.

20 (2) Restoration. Grantee, upon the initial construction and upon each and every  
21 occasion that the easement is used, shall restore the premises of Grantor, and any  
22 improvements disturbed by Grantee, to as good a condition as they were prior to  
23 any such installation or work, including the restoration of pavements, gravel  
24 areas, topsoil, and lawn.

25 (3) Hazardous substances. Grantee assumes no liability for any hazardous waste on  
26 or from this Property. Grantor, its successors and assigns, shall indemnify and  
27 hold harmless the Grantee, its officers, employees, and agents against any and all  
28 liabilities, damages, penalties, losses, claims, demands, actions, suits, and  
29 judgments (including attorney fees and costs), and any costs or expenses incurred  
30 resulting from the presence of hazardous waste onto or from the Easement Area,

1 including any and all costs associated with clean-up or remediation that may be  
2 required. This provision shall not apply to a release of hazardous waste onto or  
3 from the Easement Area caused by the officers, employees, or agents of Grantee.  
4 Any action taken pursuant to this provision shall not constitute an admission of  
5 liability or waiver of any defenses to liability. “Hazardous waste” has the same  
6 meaning as provided in Oregon Revised Statutes 466.005(7).

7 (4) No waiver or abandonment of Grantee’s rights. Failure of Grantee to exercise its  
8 rights under this Easement in the event of any breach of any term of this  
9 Easement by the Grantor shall not be deemed or construed to be a waiver by  
10 Grantee of such term or of any subsequent breach of the same or any other term of  
11 this Easement or of any of Grantee’s rights under this Easement. No delay or  
12 omission by Grantee in the exercise of any right or remedy upon any breach by  
13 the Grantor shall impair such right or remedy or be construed as a waiver. No  
14 delay by or failure of Grantee to exercise its rights under this Easement shall be  
15 construed as abandonment of the Easement by Grantee.

16 (5) Easement to run with the land. This easement, and the covenants and agreements  
17 contained in this Easement, shall run with the land and inure to the benefit of and  
18 be binding and obligatory upon the heirs, executors, administrators, successors,  
19 and assigns of the respective parties.

20 (f) Terms applicable to City and public utility easements. The following terms are  
21 applicable to all City and public utility easements governed by this Section.

22 (1) Rights granted to City and public utilities by easement. City easements and  
23 public utility easements governed by this subsection shall include the right,  
24 privilege, and authority of Grantee and such public utilities to:

25 (A) Excavate for, and to construct, build, install, lay, inspect, operate,  
26 maintain, repair, replace, add to, and remove underground wastewater,  
27 stormwater, or water pipelines; electric power, transmission, and supply  
28 cables; natural gas pipelines; and cable television and communication lines  
29 and make excavations therefor from time to time, in, under, and through the  
30 above-described premises, together with all appurtenances incident to or

1                   necessary for the above described facilities, including but not limited to  
2                   aboveground valve or junction boxes, fire hydrants, and manholes;

3                   (B) Authorize third parties to access and use the Easement Area for the  
4                   purpose of connecting to the City or public utility-owned facilities located  
5                   thereon;

6                   (C) Remove from the Easement Area any vegetation, buildings, structures,  
7                   fences, fill, or other materials or obstructions, or appurtenances attached to  
8                   or connected therewith, for any reason; and

9                   (D) The right of ingress and egress in, under, over, across, and through the  
10                  Easement Area at any and all times for any purpose. Grantor shall at all  
11                  times upon reasonable notice from Grantee remove any surface  
12                  obstructions or open gates which would otherwise prevent ingress or  
13                  egress by Grantee. Grantee shall not be responsible for costs associated  
14                  with the removal or replacement of surface obstructions placed in the  
15                  Easement Area by the Grantor.

16                  (2) Certain Grantor activities within easement prohibited. The Grantor is prohibited  
17                  from engaging in any activity within the Easement Area, or use of the Easement  
18                  Area, or allowing another to engage in or use the Easement Area, in any manner  
19                  inconsistent with the purposes of this easement or detrimental to the Grantee's use  
20                  of the easement, including but not limited to:

21                  (A) Excavation or the placement of fill or material that would serve as an  
22                  embankment in the Easement Area without the prior express written  
23                  consent of Grantee.

24                  (B) Placing, installing, or constructing any buildings, structures, fences, fill,  
25                  plantings, or other materials or obstructions without the prior express  
26                  written consent of Grantee.

27                  (C) Should such written consent be given, Grantee will set forth the conditions  
28                  under which such activity may take place, including a stipulation that all  
29                  risks of damage to the City, public infrastructure or public utility shall be  
30                  assumed by Grantor, its successors, or assigns.



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(3) Encroachments into City easements. The Director of Public Works is authorized to issue a permit to allow the owner of the property subject to the easement to encroach into a City easement at the property owner's risk and subject to the following conditions:

- (A) Proper plans and specifications for the proposed encroachment are submitted to the Public Works Department.
- (B) The encroachment complies with the applicable codes of the City with regard to structural safety, traffic, sanitation, and fire safety requirements.
- (C) The request is evaluated by the Director in regard to any adverse effect on adjoining property.
- (D) There is no interference with the use of the public street for roadway, sidewalk, existing or proposed utilities, and other authorized uses.
- (E) The encroachment will be maintained in good order.
- (F) The permit shall be revocable and when requested to do so by the Council or other public authority having jurisdiction, the owner will remove the encroachment at the owner's expense.
- (G) The owner will hold the City and all its officers harmless on account of the encroachment.
- (H) The form of the permit shall be approved by the City Attorney.
- (I) A fee for the permit shall be charged as prescribed by Council.

(g) Terms applicable to drainage easements. The following terms are applicable to all drainage easements governed by this Section:

- (1) Rights granted to City by easement. Drainage easements governed by this subsection shall include the right, privilege, and authority of Grantee to:
  - (A) Construct, build, excavate, install, patrol, operate, maintain, repair, replace, and inspect a drainage facility or facilities within said Easement Area, with all appurtenances incident thereto or necessary therewith, for the purpose of carrying, detaining, conveying, cleaning, or protecting water, and for similar uses in, under, over, across, and through the

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Easement Area. As used herein, drainage facility includes natural drainage facilities, constructed drainage facilities, and any combination thereof;

(B) Plant, install, establish, maintain, remove, and replace vegetation as necessary within the Easement Area;

(C) Remove from the Easement Area any vegetation, buildings, structures, fences, fill, or other materials or obstructions, or appurtenances attached to or connected therewith, for any reason; and

(D) The right of ingress and egress in, under, over, across, and through the Easement Area at any and all times for any purpose. Grantor shall at all times upon reasonable notice from Grantee remove any surface obstructions or open gates which would otherwise prevent ingress or egress by Grantee.

(2) Activities prohibited of Grantor by easement. The Grantor is prohibited from engaging in any activity within the Easement Area, or use of the Easement Area, or allowing another to engage in or use the Easement Area, in any manner inconsistent with the purposes of this Easement or detrimental to the Grantee's use of the Easement, including but not limited to:

(A) Excavation or the placement of fill or material that would serve as an embankment in the Easement Area without the prior express written consent of Grantee.

(B) Placing, installing, or constructing any buildings, structures, fences, fill, plantings, or other materials or obstructions without the prior express written consent of Grantee.

(C) Should such written consent be given, Grantee will set forth the conditions under which such activity may take place, including a stipulation that all risks of damage to the City infrastructure shall be assumed by Grantor, its successors, or assigns.

(h) Terms applicable to access easements. The following terms are applicable to all access easements governed by this section.

1           (1) Rights granted to City by easement. Access easements governed by this subsection  
2           shall include the right, privilege, and authority of Grantee to foot and vehicular  
3           ingress and egress over said above-described premises at any and all times for the  
4           purpose of initially constructing and subsequently inspecting, maintaining, or  
5           reconstructing facilities located within the limits of this permanent easement

6           (2) Duties imposed on Grantor by easement. Grantor shall at all times, upon  
7           reasonable notice from Grantee, remove any surface obstructions or open gates  
8           which would otherwise prevent the ingress or egress of vehicles to the Easement  
9           Area. Grantee shall not be responsible for costs associated with the removal or  
10          replacement of surface obstructions placed in the Easement Area.

11 **Section 8.** SRC 210.030 is amended to read:

12 **210.030. - Planned unit development final plan.**

13 (a) *Applicability.* No final plan of a PUD shall be recorded without receiving PUD final plan  
14 approval as set forth in this section. An application for PUD final plan approval must be  
15 submitted prior to expiration of PUD tentative plan approval.

16 (b) *Procedure type.* A PUD final plan is processed as a Type II procedure under SRC chapter 300.

17 (c) *Submittal requirements.* In addition to the submittal requirements for a Type II  
18 application under SRC chapter 300, an application for PUD final plan approval shall  
19 include the following:

20 (1) A PUD final plan, in a form acceptable for recording in the county deed records,  
21 containing the information required under this subsection (c). For PUD plans that  
22 include a land division, the PUD final plan shall include the information required  
23 under this subsection (c)(1), and shall be in the form required for final plats under  
24 SRC chapter 205 and ORS ch. 92.

25 (A) The location, layout, and widths of all streets and sidewalks, and whether  
26 they are public or private;

27 (B) The location, layout, surfacing, and landscaping of all off-street parking areas;

28 (C) The location of all easements;

29 (D) If approved in the PUD tentative plan, the location of any convenience  
30 service area, retail service area, or outdoor storage area;

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- (E) The location of any common open space and the particular uses to which the common open space will be put;
- (F) The location of areas proposed for parks, scenic ways, playgrounds, schools, public buildings, and other similar uses and whether such areas are public or private;
- (G) For each existing or proposed building or structure on the site, other than single family dwellings:
  - (i) The location and size of the building or structure;
  - (ii) The intended use of the building or structure, including, but not limited to, convenience service areas, retail service areas, and boat and recreational vehicle storage areas; and
  - (iii) The number of dwelling units in any residential building other than a single family dwelling.

- (2) If the PUD tentative plan included unique or innovative design concepts, a written description and drawings illustrating the concepts.
- (3) A copy of the articles of the home owners' association.
- (4) Evidence that conditions of approval established as part of PUD tentative plan approval have been met.

(d) *Criteria.* A PUD final plan shall be approved if the following criteria are met:

- (1) Substantial conformance.
  - (A) The PUD final plan is in substantial conformance with the PUD tentative plan. Substantial conformance for the following specific components of the PUD final plan exists when a comparison of the approved PUD tentative plan with the PUD final plan shows that:
    - (i) The number of dwelling units is within ten percent of the number of dwelling units shown on the PUD tentative plan, but in no case shall the number of dwelling units exceed the limits set forth this chapter;
    - (ii) Setbacks, and distances between main buildings, are within ten percent of those shown on the PUD tentative plan, but in no case

1 shall the setbacks and distances be reduced below the minimums  
2 set forth in this chapter;

3 (iii) Building sizes do not exceed the building sizes shown on the PUD  
4 tentative plan by more than ten percent.

5 (iv) Building locations do not depart by more than ten percent from the  
6 building locations shown on the tentative PUD plan;

7 (v) Common open space within the PUD final plan conforms to the  
8 following:

9 (aa) If the common open space is to be improved as a  
10 recreational amenity, the area designated as common open  
11 space has not been reduced by more than ten percent.

12 (bb) If the common open space is to be permanently set aside  
13 for passive and/or active recreational use, the area  
14 designated as common open space has not been reduced by  
15 more than ten percent.

16 (cc) If the common open space is to preserve significant natural  
17 feature, the area designated as common open space has not  
18 been reduced by more than five percent.

19 (dd) If the common open space is to preserve a significant  
20 cultural feature, the area designated as common open space  
21 is identical to that shown on the PUD tentative plan; and

22 (vi) If unique or innovative design concepts are employed, the final  
23 design conforms with the unique or innovative design concepts as  
24 approved in the PUD tentative plan.

25 (B) Nothing in subsection (d)(1)(A) of this section shall be deemed to prohibit  
26 a reduction in the number of dwelling units or an increase in the amount of  
27 common open space. If the PUD is constructed in phases, the number of  
28 dwelling units reduced in one phase shall not be used to increase the  
29 number of dwelling units in any subsequent phase; and an increase in  
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1 common open space in one phase shall not be used to reduce the amount  
2 of common open space in any subsequent phase.

3 (C) Notwithstanding the changes allowed under subsection (d)(1)(A) of this  
4 section, a PUD final plan is not in substantial conformance with the PUD  
5 tentative plan if the cumulative effect of the changes made pursuant to  
6 subsection (d)(1)(A) of this section results in a significant modification to  
7 the approved PUD tentative plan.

8 (2) Except as allowed under subsection (d)(1) of this section, the conditions of  
9 approval on the PUD tentative plan have been met.

10 (3) The articles of the home owners' association satisfy the standards set forth in SRC  
11 210.055(b).

12 (4) For planned unit developments with a land division, SRC 205.035(c)(6) has been  
13 met. If the PUD does not include a land division, the Public Works Director~~City~~  
14 ~~Engineer~~ has determined that each building or structure on the PUD final plan can  
15 be adequately served by the following city infrastructure and private  
16 improvements:

17 (A) A domestic water supply;

18 (B) A sanitary sewage disposal system;

19 (C) Streets improved to the extent that adequate paved access is provided to  
20 each building or structure;

21 (D) A stormwater discharge system; and

22 (E) Fire hydrants installed to fire code standards.

23 (5) The owner has entered into an improvement agreement with the City providing  
24 that any improvements required to be constructed which are not complete at the  
25 time of submission of the PUD final plan will be completed within 18 months of  
26 PUD final plan approval, and the owner has furnished sufficient performance  
27 security, as provided in SRC 110.100, to ensure completion of the improvements.  
28 The time within which the improvements must be completed may be extended for  
29 one additional six-month period, subject to prior written approval from the  
30 Director.

- 1 (6) If applicable, the applicant has executed a fee-in-lieu agreement pursuant to SRC  
2 200.400 through 200.420.
- 3 (e) *Approval or rejection of planned unit development final plan.* If the Planning  
4 Administrator finds that the PUD final plan does not satisfy the PUD final plan approval  
5 criteria, the Planning Administrator shall notify the applicant of the deficiencies and  
6 afford the applicant opportunity to modify the PUD final plan to eliminate the  
7 deficiencies. If the PUD final plan complies with the PUD final plan approval criteria, the  
8 Planning Administrator shall notify the applicant that the PUD final plan has been  
9 approved.
- 10 (f) *Recording of planned unit development final plan.* The approved PUD final plan shall be  
11 recorded within ten years of the effective date of the PUD tentative plan approval.

12 **Section 9.** SRC 300.850 is amended:

13 **300.850. - Expiration and extensions.**

- 14 (a) *Approval expiration and termination.*
- 15 (1) Unless a different period of time is established in the UDC or in the decision, all  
16 approvals of land use actions shall expire automatically upon the dates set forth in  
17 Table 300-3 unless one of the following has occurred:
- 18 (A) Development has commenced in compliance with the land use approval;  
19 (B) An extension has been granted pursuant to SRC 300.850(b); or  
20 (C) The land use approval has been revoked as provided under SRC 300.860  
21 or is otherwise invalidated by an administrative board or court of  
22 competent jurisdiction.
- 23 (2) Where the decision involves work for which a building permit is required, no  
24 exercise of the rights granted under the land use action shall be deemed to have  
25 commenced until a building permit has been issued. Unless otherwise extended,  
26 the approval of the land use action shall automatically expire if the approval has  
27 expired as set forth in Table 300-3, and all required building permits issued for  
28 the land use action have expired.
- 29 (b) *Extensions.*

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- 1 (1) Whenever the decision requires exercise of approval rights or satisfaction of  
2 conditions of approval within a particular period of time, the approval period may  
3 be extended for the times set forth in Table 300-3 through filing an application for  
4 extension prior to the expiration date.
- 5 (2) Classes.
  - 6 (A) *Class 1 extension.* A Class 1 extension is an extension that applies when  
7 there have been no changes to the standards and criteria used to approve  
8 the original application.
  - 9 (B) *Class 2 extension.* A Class 2 extension is an extension that applies when  
10 there have been changes to the standards and criteria used to approve the  
11 original application, but such changes to the standards and criteria would  
12 not require modification of the original approval.
- 13 (3) Procedure type.
  - 14 (A) A Class 1 extension is processed as a Type I procedure under SRC chapter 300.
  - 15 (B) A Class 2 extension is processed as a Type II procedure under SRC chapter 300.
- 16 (4) Criteria.
  - 17 (A) A Class 1 extension shall be granted if there have been no changes to the  
18 standards and criteria used to approve the original application.
  - 19 (B) A Class 2 extension shall be granted if there have been no changes to the  
20 standards and criteria used to approve the original application that would  
21 require modification of the original approval.
- 22 (5) Appeal and review.
  - 23 (A) The decision on a Class 1 extension may not be appealed, and is not  
24 subject to Council review.
  - 25 (B) The decision on a Class 2 extension may be appealed, and is subject to  
26 Council review pursuant to SRC 300.1050. The Review Authority for an  
27 appeal of a Class 2 extension shall be the Hearings Officer.
- 28 (6) While an application for extension is pending, no further action to develop the  
29 subject property or expand any use dependent upon the approval shall be taken  
30



subsequent to the expiration of the approval period; but existing established uses may continue during the time the extension request is pending.

- (7) The decision granting an extension shall revive all rights under the original approval as they existed prior to the expiration of the original approval period.

**TABLE 300-3. EXPIRATION AND EXTENSION OF APPROVALS**

<b>Procedure Type</b>	<b>Expiration Period <sup>1</sup></b>	<b>Extensions Allowed</b>	<b>Maximum Period for Each Extension <sup>2</sup></b>	<b>Limitations &amp; Qualifications</b>
<b>Type I</b>				
Class 1 design review	2 Years	2	2 Years	
Minor historic design review	2 Years	2	2 Years	
Sign permit (requiring building permit)	180 Days	1	90 Days	
Sign permits (all others)	90 Days	1	90 Days	
Class 1 site plan review	4 Years	None	N/A	If a valid building permit application is submitted, the site plan review approval shall remain valid until either the building permit or the site plan review approval expires, whichever occurs later.
Class 2 site plan review				
<u>Property Line Adjustment</u>	<u>2 years</u>	<u>None</u>	<u>N/A</u>	
All other Type I	No Expiration Period	N/A	N/A	
<b>Type II</b>				
Partition tentative plan; tentative replat	2 Years	4	2 Years	
Subdivision tentative plan	2 Years	4	2 Years	

1	Phased subdivision tentative plan (first phase)	2 Years	4	2 Years	
2					
3	Phased subdivision tentative plan (all other phases)	10 Years	None	N/A	
4					
5					
6	Class 3 site plan review	4 Years	None	N/A	If a valid building permit application is submitted, the site plan review approval shall remain valid until either the building permit or the site plan review approval expires, whichever occurs later.
7					
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12	All other Type II	2 Years	2	2 Years	
13	<b>Type III</b>				
14	Comprehensive plan map amendment (minor); zone change (quasi-judicial)	No Expiration Period	N/A	N/A	
15					
16					
17	Planned unit development tentative plan (with land division)	2 Years	4	2 Years	
18					
19	All other Type III	2 Years	2	2 Years	
20	<b>Type IV</b>				
21	All Type IV	No Expiration Period	N/A	N/A	
22					
23	<sup>1</sup> The expiration period is calculated from the effective date of the decision on the land use action or permit. If the decision is appealed to a body of competent jurisdiction, the expiration period shall be tolled until a final decision is issued on the appeal.				
24					
25					
26	<sup>2</sup> The extension period is calculated from the date of expiration of the approval.				
27					

**Section 10.** SRC 601.005 is amended to read:

**601.005. - Definitions.**

1 Unless specifically defined in this section, words, terms or phrases used in this chapter shall  
2 be interpreted so as to give them the meaning they have in common usage and to give this  
3 chapter its most reasonable application.

4 *Area of shallow flooding* means an area designated as an "AO" or "AH" zone on the flood  
5 insurance rate map (FIRM). In an area of shallow flooding, the base flood depths range from one  
6 to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and  
7 indeterminate, and velocity flow may be evident. AO is characterized as sheet flow and AH  
8 indicates ponding.

9 *A Zone* means areas with a one percent annual chance of flooding and a 26 percent  
10 chance of flooding over the life of a 30-year mortgage. Because detailed analyses are not  
11 performed for such areas; no depths or base flood elevations are shown within these zones.

12 *AE Zone* means the base floodplain where base flood elevations are provided.

13 *AH zone* means areas with a one percent annual chance of shallow flooding, usually in  
14 the form of a pond, with an average depth ranging from one to three feet. These areas have a 26  
15 percent chance of flooding over the life of a 30-year mortgage. Base flood elevations derived  
16 from detailed analyses are shown at selected intervals within these zones.

17 *AO zone* means river or stream flood hazard areas, and areas with a one percent or greater  
18 chance of shallow flooding each year, usually in the form of sheet flow, with an average depth  
19 ranging from one to three feet. These areas have a 26 percent chance of flooding over the life of a 30-  
20 year mortgage. Average flood depths derived from detailed analyses are shown within these zones.

21 *Base flood* means the flood having a one percent chance of being equaled or exceeded in  
22 any given year. Base flood also referred to as the "100-year flood."

23 *Basement* means any area of the building having its floor subgrade (below ground level)  
24 on all sides.

25 *Bridge* means a structure, including supports, erected over a depression or an obstruction  
26 such as a waterway, highway, or railway, and having a deck or passageway for transporting  
27 pedestrians, vehicles, or other moving loads, and having an opening measured along the center of  
28 the deck or passageway of more than 20 feet between undercroppings of abutments, or spring  
29 lines of arches, or extreme ends of openings for multiple boxes, and which includes multiple  
30

1 pipes where the clear distance between openings is less than half of the smallest contiguous  
2 opening.

3 *Change of use* means making different use of the land or water than that which existed on  
4 June 15, 1979. Change of use includes a change that requires construction or alterations of the  
5 land, water or other areas outside of existing buildings or structures which significantly alters or  
6 affects the land or water. For the purposes of this definition, an existing open storage area shall  
7 be considered a building. Change of use does not include:

- 8 (1) A change of use of a building or other structure which does not significantly alter  
9 or affect the land or water upon which it is situated.
- 10 (2) The completion of a structure for which a valid permit has been issued and under  
11 which permit substantial construction was undertaken by June 15, 1979.
- 12 (3) The sale of property.
- 13 (4) Minor landscaping which does not have an appreciable effect on flow  
14 characteristics of a waterway.
- 15 (5) Construction of driveways which do not involve significant earthwork or  
16 supporting structures that affect flow characteristics of a waterway.
- 17 (6) Minor modifications of existing structures for which no building permit is  
18 required.
- 19 (7) The construction or placement of such minor subsidiary structures or facilities  
20 that are usual and necessary for the use and enjoyment of existing improvements,  
21 except such structures or facilities specifically prohibited or regulated by this  
22 chapter.

23 *Crawlspace* is an enclosed area with the floor of the space at or above the lowest grade  
24 adjacent to the building and the height does not exceed 4 feet at any point as measured from the  
25 interior grade of the crawlspace to the top of the crawlspace foundation.

26 *Crawlspace, below-grade* means an enclosed area below the base flood elevation in  
27 which the interior grade is not more than two feet below the lowest adjacent exterior grade and  
28 the height does not exceed 4 feet any point as measured from the interior grade of the crawlspace  
29 to the top of the crawlspace foundation.

1            *Develop or development* means to bring about growth or availability; to construct, alter,  
2 or place a structure; to locate or place a manufacture dwelling or home; to conduct a mining,  
3 filling, grading, paving, drilling, dredging, or excavation operation; to make a physical change in  
4 the use or appearance of land; to partition or divide land into parcels; or to create or terminate  
5 rights of access.

6            *Enclosed area* means an area with two or more outside rigid walls and an affixed roof.  
7 Enclosed areas do not include the uncovered portion of a structure, roof canopy areas with only  
8 one wall, or areas below the finish floor that are separated by permeable surfaces such as lattice  
9 work, skirting, or insect screening.

10           *Existing manufactured home park or manufactured home subdivision* means a  
11 manufactured home park for which the construction of facilities to service the lot on or which the  
12 manufactured homes are to be affixed (including, at a minimum, the installation of utilities,  
13 either final site grading or the pouring of concrete pads, and the construction of streets) was  
14 completed prior to July 27, 1987.

15           *Expansion to an existing manufactured home park or manufactured home subdivision*  
16 means the preparation of additional sites by the construction of facilities to service the lots on  
17 which the manufactured homes are to be affixed (including the installation of utilities, either  
18 final site grading or pouring of concrete pads, or the construction of streets).

19           *Fish habitat enhancement* means the addition or modification of aquatic habitat  
20 components whose absence, scarcity, or condition has been determined by the Director to limit  
21 fish presence or abundance in the immediate project area, specific stream corridor, or watershed.

22           *Flood or flooding* means a general and temporary condition of partial or complete  
23 inundation of normally dry land areas from the overflow of inland waters or from the unusual  
24 and rapid accumulation of runoff of surface waters from any source.

25           *Flood insurance rate map* or *FIRM* means the official map, in paper or digital form, on  
26 which the Federal Insurance Administration, Federal Emergency Management Agency (FEMA)  
27 has delineated both the areas of special flood hazards and the risk premium zones applicable to  
28 the City, and includes the accompanying floodway and floodway fringe boundary maps  
29 accompanying the FIRM as a part of the flood insurance study.

1           *Flood insurance study* means the official report provided by the Federal Insurance  
2 Administration that includes flood profiles, the flood boundary-floodway map, and the water  
3 surface elevation of the base flood. The flood insurance study, and all subsequent amendments  
4 thereto or supplements thereof, is hereby adopted as a part of this chapter, and a copy thereof  
5 shall be kept on file in the office of the Director.

6           *Floodplain* means any land or water area which is subject to one percent flood probability  
7 along any waterway. The term "floodplain" includes the officially designated floodway,  
8 floodway fringe, areas of shallow flooding or special flood hazard area, as delineated on the  
9 FIRM, and interim flood hazard areas.

10           *Floodway* means the channel of a river or other waterway and the adjacent land areas that  
11 must be reserved in order to discharge the waters of a base flood without cumulatively increasing  
12 the water surface elevation by more than one foot. Areas designated as floodways are located  
13 within floodplains. The floodway is an extremely hazardous area due to the velocity of  
14 floodwaters which carry debris, potential projectiles, and have the potential to cause erosion. The  
15 floodway limits are as delineated on the FIRM, or located within interim flood hazard areas and  
16 designated as floodway by the Director pursuant to SRC 601.050.

17           *Floodway fringe* means the area of the 100-year floodplain lying outside of the floodway  
18 within interim flood hazard areas, and designated as floodway fringe by the Director pursuant to  
19 SRC 601.050.

20           *Floodproofing* means any combination of structural or nonstructural provisions, changes  
21 or adjustments to structures, land or a waterway for the reduction or elimination of flood damage  
22 to real property or any improvements thereon, water and sanitary facilities, structures, and their  
23 contents during a base flood.

24           *Intensification* means any additions which increase or expand the area, level or activity,  
25 or amount of an existing use; or any remodeling of the exterior of a structure that will  
26 substantially alter the appearance of the structure. As used in this definition, intensification does  
27 not include:

- 28           (1) Completion of a structure for which a valid permit has been issued and under  
29           which permit substantial construction was undertaken prior to June 15, 1979.

- 1           (2) Maintenance and repair usual and necessary for the continuance of an existing  
2           use.
- 3           (3) Reasonable emergency procedures necessary for the safety and protection of  
4           property.
- 5           (4) Seasonal increases in gravel mining operations.

6           *Interim flood hazard area* means an area of special flood hazard designated by the  
7 Director, but not designated as such on the FIRM. The interim flood hazard area is established on  
8 a waterway which does not have base floodwater surface elevations and floodway and floodway  
9 fringe boundaries established through a flood insurance study. An interim flood hazard area is an  
10 approximation of the floodplain. Minimally the interim flood hazard area shall include the area  
11 which would be designated as the floodway and floodway fringe if a flood insurance study were  
12 done.

13           *Lowest floor* means the lowest accessible floor of the lowest enclosed area (including  
14 basement)~~with an interior vertical clearance of greater than four feet.~~

15           *Manufactured home* means a building or structure, transportable in one or more sections,  
16 which is built on a permanent chassis and is designed for use with or without a permanent  
17 foundation when connected to the required utilities. For floodplain management purposes the  
18 term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles  
19 placed on a site for greater than 180 consecutive days. For insurance purposes, the term  
20 "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

21           *Manufactured home park* means a lot or parcel (or contiguous lots or parcels) of land  
22 divided into two or more manufactured home lots for sale or rent.

23           *New Construction* means structures for which the "start of construction" commenced on  
24 or after the effective date of this ordinance.

25           *Obstruction* means any dam, wall, wharf, embankment, levee, dike, pile, abutment,  
26 projection, excavation, channel rectification, bridge, conduit, culvert, building, wire, fence, rock,  
27 gravel, refuse, fill, structure, or matter in, along, across, or projecting into any channel,  
28 waterway, or floodplain which may impede, retard, or change the direction of the flow of water,  
29 either in itself or by catching or collecting debris carried by such water, or that is placed where  
30 the flow of water might carry the debris downstream and endanger life or damage property.

1           *Special flood hazard area* means the land in the floodplain subject to a one percent or  
2 greater chance of flooding in any given year, as designated by the most recent version of the  
3 FIRM. Designation on maps always includes the letters A or V.

4           *Recreational vehicle* means a vehicle which is:

5           (1)    Built on a single chassis;

6           (2)    Four-hundred (400) square feet or less in area when measured at the largest  
7                horizontal projection;

8           (3)    Designed to be self-propelled or permanently towable by a light duty vehicle; and

9           (4)    Designed primarily not for use as a permanent dwelling but as temporary living  
10               quarters for recreational, camping, travel, or seasonal use.

11           *Start of construction* means the date the building permit was issued, provided the actual  
12 start of construction, repair, reconstruction, placement or other improvement was commenced  
13 within 180 days of the permit date. The actual start of construction means either the date of the  
14 first permanent construction of a structure on a site, such as the pouring of slab or footings, the  
15 installation of piles, the construction of columns, or any work beyond excavation; or the date of  
16 the placement of a manufactured home on a foundation.

17           *Stream enhancement* means the modification of stream channel width, length, depth,  
18 alignment, location, profile, bank shape, or in-stream structures, for the purpose of improving  
19 ecological or habitat functions that have been determined by the Director to have been degraded  
20 or lost in the immediate project area, specific stream corridor, or watershed.

21           *Structure* means any building with two or more exterior rigid walls and a fully secured  
22 roof that is affixed to a permanent site, or any gas or liquid storage tank that is principally above  
23 ground.

24           *Substantial damage* means damage sustained by a structure whereby the cost of restoring  
25 the structure to its condition immediately prior to the damage would equal or exceed 50 percent  
26 of the market value of the structure before the damage occurred.

27           *Substantial improvement* means for the purposes of floodplain management only, and  
28 notwithstanding the provisions for nonconforming situations under SRC chapter 270, any repair,  
29 reconstruction, rehabilitation, addition, replacement, or other improvement of a structure, the  
30 cost of which equals or exceeds 50 percent of the market value of the structure before the "start



1 of construction" of the improvement. The term "substantial improvement" includes structures  
2 which have incurred "substantial damage," regardless of the actual repair work performed. The  
3 term "substantial improvement" does not include either:

- 4 (1) Any project or improvement of a structure to comply with existing state or local  
5 health, sanitary, or safety code specifications which are solely necessary to assure  
6 safe living conditions; or
- 7 (2) Any alteration of the structure listed in the National Register of Historic Places or  
8 the state inventory of historic places.

9 *Waterway* means any perennial river, stream, or creek within the City.

10 *Waterway centerline* means a line one-half the distance between the edges of the low  
11 flow channel of the waterway.

12 (Prior Code, § 601.005; Ord. No. 31-13; Ord. No. 17-15)

13 **Section 11.** SRC 601.030 is amended to read:

14 **601.030. - Firm adoption; amendments and revisions; interpretation of boundaries.**

- 15 (a) *Adoption.* The areas of special flood hazard identified by the Federal Insurance  
16 Administration in a scientific and engineering report entitled "The Flood Insurance Study  
17 for Marion County, Oregon and Incorporated Areas," dated January 2, 2003, with  
18 accompanying Flood Insurance Maps are hereby adopted by reference and declared to be  
19 a part of this ordinance.~~The FIRM and all amendments thereto are adopted as a part of~~  
20 ~~this chapter and shown on the Salem Zoning Map.~~
- 21 (b) *Amendments and revisions.* Amendments and revisions to the FIRM adopted by the  
22 Federal Insurance Administration shall be automatically incorporated into this chapter  
23 without further action and shall be shown on the Salem Zoning Map.
- 24 (c) *Interpretation of boundaries.*
  - 25 (1) The base flood elevation data furnished by the flood insurance study is fixed and  
26 shall not be appealed, interpreted or otherwise reexamined except under  
27 procedures established by the Federal Insurance Administration. The FIRM,  
28 however, is drawn to 1":800' scale, and is based upon contour maps showing  
29 ground elevation at ten foot intervals. For these reasons the boundaries shown on  
30 the FIRM are subject to interpretation based upon more detailed topographic data.

1 Where an applicant questions the precise location of the boundary, the Director  
2 shall make an interpretation thereof based upon elevations from Public Works  
3 aerial photographs and contour maps in conjunction with flood elevations shown  
4 on the FIRM, or such data furnished by the applicant as the Director finds to be  
5 persuasive.

6 (2) Any person aggrieved by the decision of the Director may appeal such decision to  
7 the Hearings Officer by filing written notice of appeal with the Planning  
8 Administrator within ten days of the date of the decision. The notice of appeal  
9 shall include a list of all property owners within the notification area prepared by  
10 a title insurance company. Notification, hearing, and further proceedings shall  
11 proceed as provided in SRC chapter 300 for appeals from administrative  
12 adjustments.

13 (d) *Copy to be kept by Director.* A copy of the FIRM, and any amendments or revisions  
14 thereto, shall be kept on file in the Office of the Director.

15 **Section 12.** SRC 601.045 is amended to read:

16 Within any FF (Floodway Fringe Area) or special flood hazard area, any of the following  
17 uses is permitted upon obtaining a floodplain development permit, and compliance with this  
18 chapter.

19 (a) All uses of land permitted in the underlying zone; provided, however, that any building,  
20 structure, manufactured home, or recreational vehicle associated therewith complies with  
21 subsections (b), (c), and (d) of this section.

22 (b) All structures, including manufactured homes ~~Structures, including manufactured homes,~~  
23 ~~as allowed in an underlying residential zone,~~ if:

24 ~~(1) The lowest floor elevation, including a basement, is no less than one foot above~~  
25 ~~the elevation of the base flood, unless base flood elevation data are not available,~~  
26 ~~in which case the structure shall be elevated as provided in SRC 601.095.~~

27 (1)(2) Electrical, heating, ventilation, plumbing, and air-conditioning equipment and  
28 other service facilities shall be designed or otherwise elevated or located so as to  
29 prevent water from entering or accumulating within the components during  
30 conditions of flooding.

- 1           (23) The structure is anchored to prevent flotation, collapse, or lateral movement as  
2           provided in SRC 601.100.
- 3           (34) The structure is located no closer than 15 feet to the waterway centerline, or ten  
4           feet to the top of a recognizable bank, whichever is greater, except that this  
5           provision shall not apply to the Willamette River floodplain.
- 6           (45) The structure is designed according to accepted engineering standards, certified  
7           by a registered engineer or architect, and approved by the building official as  
8           minimizing the likelihood of flood damage and rendering the structure and its  
9           utility equipment reasonably resistant to flood damage.
- 10          (56) Except as provided in subsection (b)(56)(A) and (B) of this section, enclosed  
11          areas of structures below the lowest floor that are subject to flooding are  
12          prohibited.
- 13                (A) Below-grade crawlspace construction is permitted in compliance with  
14                FEMA Technical Bulletin 11-01, including amendments or revisions  
15                thereto;
- 16                (B) Crawlspace and other enclosed areas are allowed only where the vertical  
17                interior clearance does not exceed four feet. Such enclosed areas shall be  
18                designed to automatically equalize hydrostatic flood forces on exterior  
19                walls by allowing for the entry and exit of floodwaters. Designs for  
20                meeting this requirement must be certified by a professional engineer or  
21                must meet or exceed the following minimum criteria:
- 22                    (i) A minimum of two openings having a total net area of not less than  
23                    one square inch for every square foot of enclosed area subject to  
24                    flooding shall be provided.
- 25                    (ii) The bottom of all openings shall be no higher than one foot above  
26                    grade.
- 27                    (iii) Openings may be equipped with screens, louvers, or other  
28                    coverings or devices provided that they permit the automatic entry  
29                    and exit of floodwaters.
- 30          (c) All structures, including manufactured homes in residential zones, if:

- 1           (1) The structure is in compliance with subsection (b) of this section; and
- 2           (2) The lowest floor elevation, including a basement, is no less than one foot above
- 3           the elevation of the base flood, unless base flood elevation data are not available,
- 4           in which case the structure shall be elevated as provided in SRC 601.095.

5 (d) All other buildings and structures not provided for in subsection (c) of this section, as  
6 allowed in the underlying use district, if:

- 7           (1) The structure is in compliance with subsection (b) of this section; and
- 8           (2) The lowest floor elevation, including a basement, is elevated:
  - 9               (A) One (1) foot above the base flood level; or
  - 10              (B) Where base flood data are not available, is elevated as provided for in
  - 11              SRC 601.095 and is anchored as provided for in SRC 601.100; or
  - 12              (C) Is floodproofed to be watertight up to one (1) foot above the base flood
  - 13              elevation or elevation as provided in SRC 601.095 as applicable, and
  - 14              anchored as provided in SRC 601.100; or
  - 15              (D) The structure is floodproofed by means of a dike or levee which does not
  - 16              increase the base flood elevation at any point by more than one (1) foot.

17 (e) Recreational vehicles, if:

- 18           (1) The vehicle is located on the site for fewer than one-hundred eighty (180)
- 19           consecutive days; and
- 20           (2) is either:
  - 21               (A) Fully licensed and ready for highway use, on its wheels or jacking system,
  - 22               attached to the site only by quick disconnect-type utilities and security
  - 23               devices, and has no permanently attached additions; or
  - 24               (B) In compliance with subsections (b) and (c) of this section.

25 **Section 13. Findings.** The amendments to SRC chapter 205, 300, and 601 are legislative land use  
26 amendments. Findings demonstrating compliance with the criteria applicable to those amendments  
27 are set forth in “Exhibit \_\_,” which is attached hereto and incorporated herein by reference.

28 **Section 14. Codification.** In preparing this ordinance for publication and distribution, the City  
29 Recorder shall not alter the sense, meaning, effect, or substance of this ordinance, but within  
30 such limitations, may:

- 1 (a) Renumber sections and parts of sections of the ordinance;
- 2 (b) Rearrange sections;
- 3 (c) Change reference numbers to agree with renumbered chapters, sections or other parts;
- 4 (d) Delete references to repealed sections;
- 5 (e) Substitute the proper subsection, section or chapter, or other division numbers;
- 6 (f) Change capitalization and spelling for the purpose of uniformity;
- 7 (g) Add headings for purposes of grouping like sections together for ease of reference; and
- 8 (h) Correct manifest clerical, grammatical, or typographical errors.

9 **Section 15. Severability.** Each section of this ordinance, and any part thereof, is severable, and  
10 if any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of  
11 this ordinance shall remain in full force and effect.

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PASSED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

ATTEST:

City Recorder

Approved by City Attorney: \_\_\_\_\_

Checked by: L.Misbach