



**CITY OF TROUTDALE  
PLANNING AND COMMUNITY DEVELOPMENT  
STAFF SUMMARY**

**MEDICAL AND RECREATIONAL MARIJUANA FACILITY  
TEXT AMENDMENTS**

**OVERVIEW**

During the 2013 Special Session, the Oregon legislature passed HB 3460 which allows for the establishment and licensing of medical marijuana facilities. The bill prompted the Oregon Health Authority to formulate administrative rules governing the licensing of medical marijuana facilities. The Oregon Health Authority began accepting applications for medical marijuana facilities in March of 2014. During the 2014 Regular Session, the Oregon Legislature passed SB 1531, which limits the ability of cities and counties to regulate medical marijuana facilities to the time, place and manner in which a facility may dispense medical marijuana. The City Council adopted Ordinance 821 in April of 2014, effectively prohibiting medical marijuana facilities and marijuana retail premises in the City. Ordinance 821 automatically expires and is deemed to be repealed at 11:59:59pm on April 30, 2015, unless sooner repealed or extended by City Council ordinance.

Oregon voters approved Ballot Measure 91 in the November 2014 election. Ballot Measure 91 legalizes the sale and use of marijuana for recreational purposes. While rules governing the sale and use of marijuana are being developed by the Oregon Liquor Control Commission and are not expected until sometime in 2016, it is recommended the ordinance establishing regulations as to the placement of medical marijuana facilities be extended to recreational marijuana as the intent is the same; providing for a safe separation between places where children congregate and the marijuana facility. Therefore, the proposed language addresses both recreational and medical marijuana. The League of Oregon Cities has prepared a report on Measure 91 and what it means for local governments. For more information, please see Attachment 3 or visit [www.orcities.org](http://www.orcities.org).

**PROCEDURE**

Text amendments to the Troutdale Development Code (TDC) require a Type IV legislative procedure in accordance with TDC Chapter 15 Amendments (Attachment 1). The Planning Commission will evaluate the proposed amendments based on approval criteria and provide a recommendation to the City Council.

**PROPOSED TEXT AMENDMENTS**

Per OAR 333-008-1110, registered medical marijuana facilities must be located in an area that is zoned by the local governing agency for commercial, industrial or mixed use or as agricultural land. The proposed text amendments to the Development Code would allow these facilities as conditional uses in the General Commercial (GC), Light Industrial (LI) and General Industrial (GI) districts. They also allow recreational marijuana in the General Commercial zone in the same locations as medical marijuana. The proposed text amendments add a definition of marijuana facilities to the Definitions section of Chapter 1 of the Development Code and add language to the GC, LI and GI districts. Conditional Use permits are a Type III procedure requiring approval from the Planning Commission as outlined in Troutdale Development Code 6.300.

**LOCATION**

HB 3460 regulates the location of medical marijuana facilities in Oregon. The facilities are not to be located within 1,000 feet of real property which is the site of a public or private school or within 1,000 feet of another medical marijuana facility. See Attachment 2 to view the 1,000 foot buffer for schools and parks applied to the City of Troutdale.

## ORDINANCE NO. 8XX

**AN ORDINANCE AMENDING CHAPTERS 1.020, 3.123, 3.163 AND 3.173 OF THE TROUTDALE DEVELOPMENT CODE BY ALLOWING MEDICAL MARIJUANA AND RECREATIONAL MARIJUANA FACILITIES AS A CONDITIONAL USE IN THE GENERAL COMMERCIAL DISTRICT; AND MEDICAL MARIJUANA FACILITIES AS A CONDITIONAL USE IN THE GENERAL INDUSTRIAL AND LIGHT INDUSTRIAL DISTRICTS.**

1. **WHEREAS**, during the 2013 Special Session, the Oregon legislature passed HB 3460, which allows for the establishment and licensing of medical marijuana facilities; and
2. **WHEREAS**, the Oregon Health Authority has formulated administrative rules governing the licensing of medical marijuana facilities and began accepting applications for their operation on March 3, 2014; and
3. **WHEREAS**, during the 2014 Regular Session, the Oregon Legislature passed SB 1531, which limits the ability of cities and counties to regulate medical marijuana facilities to the time, place and manner in which a facility may dispense medical marijuana; and
4. **WHEREAS**, Ordinance 821 adopted by City Council on April 22, 2014, effectively prohibits medical marijuana facilities and marijuana retail premises in the City; and
5. **WHEREAS**, Ordinance 821 automatically expires and is deemed to be repealed at 11:59:59pm on April 30, 2015, unless sooner repealed or extended by City Council ordinance;
6. **WHEREAS**, medical marijuana facilities are not defined in the Troutdale Development Code (TDC); and
7. **WHEREAS**, Chapters 3.123, 3.163 and 3.173 of the TDC specifies those uses requiring a Conditional Use Permit review prior to approval in the City's General Commercial (GC), Light Industrial (LI), and General Industrial (GI) Zoning Districts; and
8. **WHEREAS**, the addition of medical marijuana facilities as a conditional use in the GC, LI, and GI zones will only apply if the Troutdale City Council repeals Ordinance 821; and
9. **WHEREAS**, if the Council repeals Ordinance 821 in the future, medical marijuana facilities (licensed and authorized under state law) will be permitted as a conditional use in the GC, LI, and GI Zoning districts and no other zone; and
10. **WHEREAS**, the Oregon voters approved the Oregon Legalized Marijuana Initiative, Measure 91, in the November 2014 election; and
11. **WHEREAS**, the ballot measure charges the Oregon Liquor Control Commission (OLCC) to promulgate rules on the legal growing, sale, and use of marijuana; and
12. **WHEREAS**, the new rules are not expected before 2016 and there is a need at this time to establish place and distance rules for the establishment of businesses selling marijuana in advance of the OLCC rules.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE:**

- **Section 1.** Chapter 1.020 General Definitions of the TDC shall be amended as set forth in the attached Exhibit A.
  - **Section 2.** Chapter 3.123 of the TDC shall be amended as set forth in the attached Exhibit A.
  - **Section 3.** Chapter 3.163 of the TDC shall be amended as set forth in the attached Exhibit A.
  - **Section 4.** Chapter 3.173 of the TDC shall be amended as set forth in the attached Exhibit A.
  - **Section 5.** A medical marijuana facility and/or marijuana retail premises will only exist as a conditional use in the GC, GI and LI zoning districts and no other zoning district if the Troutdale City Council repeals Ordinance 821. Therefore, the amendments in Section 1 through 4 of this ordinance will only be effective if Ordinance 821 is repealed and the amendments will not be codified until that time.
  - **Section 6.** This ordinance is effective upon and from 30 days after its enactment by the Council.
- 

**EXHIBIT A**

**1.020 GENERAL DEFINITIONS**

.79 May. As used in this code, MAY is permissive and SHALL is mandatory.

~~.80 Medical Marijuana Facilities. A facility registered with the Oregon Health Authority under ORS 475.314 and OAR 333-008-1050 to:~~

- ~~Accept the transfer of usable marijuana and immature marijuana plants from a registry identification cardholder, the designated primary caregiver of a registry identification cardholder, or a person responsible for a marijuana grow site to the medical marijuana facility; or~~
- ~~Transfer usable marijuana and immature marijuana plants to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder.~~

~~81. Recreational Marijuana Facilities. A retail establishment licensed by the Oregon Liquor Control Commission to sell marijuana and allow consumption of marijuana within its premises.~~

~~.80-82. Mixed-Use Development. The development of a tract of land, building, or structure with a variety of uses, such as, but not limited to, residential, office, manufacturing, retail, public, or entertainment, in a compact urban form. See Dwelling, Mixed-Use.~~

## GENERAL COMMERCIAL DISTRICT

**3.123 Conditional Uses.** The following uses and their accessory uses are permitted as conditional uses in the GC district:

- A. Wholesale distribution outlets, including warehousing.
  - B. Off-street parking, and storage of truck tractors and/or semi-trailers.
  - C. Heliport landings.
  - D. Outdoor stadiums and race tracks.
  - E. Automobile and trailer sales areas.
  - F. Community service uses.
  - G. Utility facilities, major.
  - H. **Medical Marijuana and Recreational Marijuana Facilities licensed and authorized under state law, when not located within 1,000 feet of real property which is the site of a public or private school or a public park. For purposes of this subsection, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet in every direction from any point on the boundary line of the real property comprising an existing public or private school or public park. This buffer shall not apply to new schools or parks located within 1,000 feet of an existing Medical Marijuana or Recreational Marijuana Facility.**
  - H-1. Other uses similar in nature to those listed above. [Adopted by Ord. 550, ef. 9/25/90]
- 

## LIGHT INDUSTRIAL DISTRICT

**3.163 Conditional Uses.** The following uses and their accessory uses are permitted as conditional uses within a LI district:

- A. Heliports accessory to permitted or approved conditional uses.
- B. Retail, wholesale, and discount sales and services, including restaurants, banks, dry-cleaners, and similar establishments, with or without drive-up or drive-through window service, subject to the provisions of subsection 3.165(E) of this chapter.
- C. Community service uses.
- D. Utility facilities, major.
- E. Automobile, truck, trailer, heavy equipment, recreational vehicle, boat and manufactured home sales, rentals, and repair shops.

F. Card-lock fueling stations, truck stops, service stations, tire shops, and oil change facilities.

G. Motels or hotels, including banquet rooms, conference, or convention centers.

H. Commercial sports complexes including, but not limited to, health clubs, tennis courts, aquatic centers, skating rinks, and similar facilities.

I. Child care facilities, kindergartens, and similar facilities.

J. Medical Marijuana Facilities licensed and authorized under state law, when not located within 1,000 feet of real property which is the site of a public or private school or a public park. For purposes of this subsection, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet in every direction from any point on the boundary line of the real property comprising an existing public or private school or public park. This buffer shall not apply to new schools or parks located within 1,000 feet of an existing Medical Marijuana Facility.

J.K. Other uses similar in nature to those listed above. [Adopted by Ord. 550, ef. 9/25/90; Amended by Ord. 660, ef. 5/28/98; Amended by Ord. 724, ef. 11/8/02; Amended by Ord. 792, ef. 9/25/08]

---

## **GENERAL INDUSTRIAL DISTRICT**

**3.173 Conditional Uses.** The following uses and their accessory uses are permitted as conditional uses within the GI district:

A. Child care facilities, kindergartens, and similar facilities.

B. Community service uses.

C. Concrete or asphalt manufacturing plants.

D. Sanitary landfills, recycling centers, and transfer stations.

E. Sewage treatment plants and lagoons.

F. Telecommunication towers and poles.

G. Junk yards.

I. Residential dwelling/hangar mixed uses when the hangars are served by a taxiway with direct access to the Troutdale Airport Runway. The use shall be subject to the following requirements:

1. Approval from the Port of Portland.

2. Approval from the Federal Aviation Administration.

3. No separate accessory structures are allowed.

I. Heliports accessory to permitted or approved conditional uses.

J. Commercial sports complexes including, but not limited to, health clubs, tennis courts, aquatic centers, skating rinks, and similar facilities.

K. Commercial uses within industrial flex-space buildings, subject to the provisions of subsection 3.175(D) of this chapter.

L. Processing facilities whose principal use involves the rendering of fats, the slaughtering of fish or meat, or the fermentation of foods such as sauerkraut, vinegar, and yeast.

M. The manufacturing or storing of toxic or hazardous materials when done in compliance with federal and state regulations.

N. Medical Marijuana Facilities licensed and authorized under state law, when not located within 1,000 feet of real property which is the site of a public or private school or a public park. For purposes of this subsection, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet in every direction from any point on the boundary line of the real property comprising an existing public or private school or public park. This buffer shall not apply to new schools or parks located within 1,000 feet of an existing Medical Marijuana Facility.

N. O. Other uses similar in nature to those listed above. [Adopted by Ord. 550, ef. 9/25/90; Amended by Ord. 660, ef. 5/28/98; Amended by Ord. 724, ef. 11/8/02; Amended by Ord. 792, ef. 9/25/08]



## CHAPTER 15 - AMENDMENTS

## 15.000 GENERAL

15.010 Action under This Code.

- A. Amendments to the Comprehensive Land Use Plan text, Comprehensive Land Use Plan Map, Development Code text, and Zoning District Map shall be processed as a Type IV legislative or quasi-judicial procedure.
- B. Amendments to the Comprehensive Land Use Plan and Development Code text shall be processed as a legislative procedure. These types of amendments may be initiated in any one of the following ways:
  - 1. By motion of the City Council.
  - 2. By motion of the Planning Commission.
  - 3. Private citizens or groups may recommend specific Comprehensive Land Use Plan or Development Code text changes to either the City Council or Planning Commission, but may not initiate a change to either text.
- C. Amendments to the Comprehensive Land Use Plan or Zoning District Maps involving more than four separate ownerships, or more than 15 acres of land, shall be processed as a legislative procedure. These types of map amendments may be initiated in any one of the following ways:
  - 1. By motion of the City Council.
  - 2. By motion of the Planning Commission.
  - 3. By property owners or persons purchasing property under contract filing an application with the City.
- D. Amendments to the Comprehensive Land Use Plan or Zoning District Maps involving four or fewer separate ownerships, or 15 or less acres of land, shall be processed as a quasi-judicial procedure. These types of map amendments may be initiated in any one of the following ways:
  - 1. By motion of the City Council.
  - 2. By motion of the Planning Commission.
  - 3. By property owners or persons purchasing property under contract filing an application with the City.
- E. Amendments may be considered at any time, and may follow or be in conjunction with other amendments. [Adopted by Ord. 550, ef. 9/25/90; Amended by Ord. 638, ef. 2/23/96]

15.020 Hearing Notice.

- A. Legislative Type IV Procedure. Notice of a hearing on a legislative decision need not include a mailing to property owners or posting of property. Where such mailing or posting is omitted, the Director shall prepare a notice program designed to reach persons believed to have a particular interest, and to provide the general public with a reasonable opportunity to be aware of the hearings on the proposal.
- B. Quasi-Judicial Type IV Procedure. Notice of a hearing on a quasi-judicial decision shall include a mailing to property owners and a posting of property affected by the decision. Notice shall be in conformance to Chapter 16, Public Deliberations and Hearings, of this code and applicable state law. [Adopted by Ord. 550, ef. 9/25/90; Amended by Ord. 638, ef. 2/23/96]

15.030 Arguments on Policy. In addition to matters pertaining to compliance with criteria and consistency with the Comprehensive Land Use Plan, a person may provide information and opinion regarding the desirable policy of the City relevant to the proposed legislative matter. [Adopted by Ord. 550, ef. 9/25/90]

15.040 Information at Planning Commission Hearing. The Planning Commission shall afford an interested person the opportunity to submit written recommendations and comments in advance of the hearing and this information shall be available for public inspection. At the hearing, written recommendations and other information will be received and oral statements will be permitted. [Adopted by Ord. 550, ef. 9/25/90]

15.050 Planning Commission Recommendation. In preparing its recommendation, the Planning Commission shall evaluate the proposal based on the following criteria:

- A. Approval Criteria - Text Amendment. The following criteria shall be used to review and decide amendments to the text of the Comprehensive Land Use Plan or Development Code:
  - 1. For Comprehensive Land Use Plan text amendments, compliance with the Statewide Land Use Goals and related administrative rules. [Amended by Ord. 819, ef. 4/11/2014]
  - 2. Public need is best satisfied by this particular change.
  - 3. The change will not adversely affect the health, safety, and welfare of the community.
  - 4. In the case of Development Code amendments, the particular change does not conflict with applicable Comprehensive Land Use Plan goals or policies.
- B. Approval Criteria – Comprehensive Land Use Plan Map Amendment. The following criteria shall be used to review and decide both legislative and quasi-judicial Comprehensive Land Use Plan Map amendments:
  - 1. Compliance with applicable Statewide Land Use Planning Goals and related Oregon Administrative Rules. [Amended by Ord. No. 819, ef. 4/11/2014]

2. Consistency with the applicable goals and policies of the Comprehensive Land Use Plan.
  3. The Plan does not provide adequate areas in appropriate locations for uses allowed in the proposed land use designation, and the addition of this property to the inventory of lands so designated is consistent with projected needs for such lands.
  4. The Plan provides more than the projected need for lands in the existing land use designation.
  5. Uses allowed in the proposed designation will not significantly adversely affect existing or planned uses on adjacent lands.
  6. Public facilities and services necessary to support uses allowed in the proposed designation are available, or are likely to be available in the near future. The applicant shall demonstrate compliance with the Transportation Planning Rule, specifically by addressing whether the proposed amendment creates a significant effect on the transportation system pursuant to OAR 660-012-0060. If required, a traffic impact analysis shall be prepared pursuant to the requirements in section 2.150 of this code. [Amended by Ord. No. 819, ef. 4/11/2014]
- C. Approval Criteria - Zoning District Map Amendment. The following criteria shall be used to review and determine both legislative and quasi-judicial Zoning District Map amendments:
1. The proposed zone is appropriate for the Comprehensive Land Use Plan land use designation on the property, and is consistent with the description and policies for the applicable Comprehensive Land Use Plan land use classification.
  2. The uses permitted in the proposed zone can be accommodated on the proposed site without exceeding its physical capacity.
  3. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property. The applicant shall demonstrate compliance with the Transportation Planning Rule, specifically by addressing whether the proposed amendment has a significant effect on the transportation system pursuant to OAR 660-012-0060. If required, a traffic impact analysis shall be prepared pursuant to the requirements in section 2.150 of this code. [Amended by Ord. No. 819, ef. 4/11/2014]
  4. The amendment will not interfere with the livability, development, or value of other land in the vicinity of site-specific proposals when weighed against the public interest in granting the proposed amendment.

5. The amendment will not be detrimental to the general interest of the community. [Adopted by Ord. 550, ef. 9/25/90; Amended by Ord. 638, ef. 2/23/96]

15.060 City Council Action.

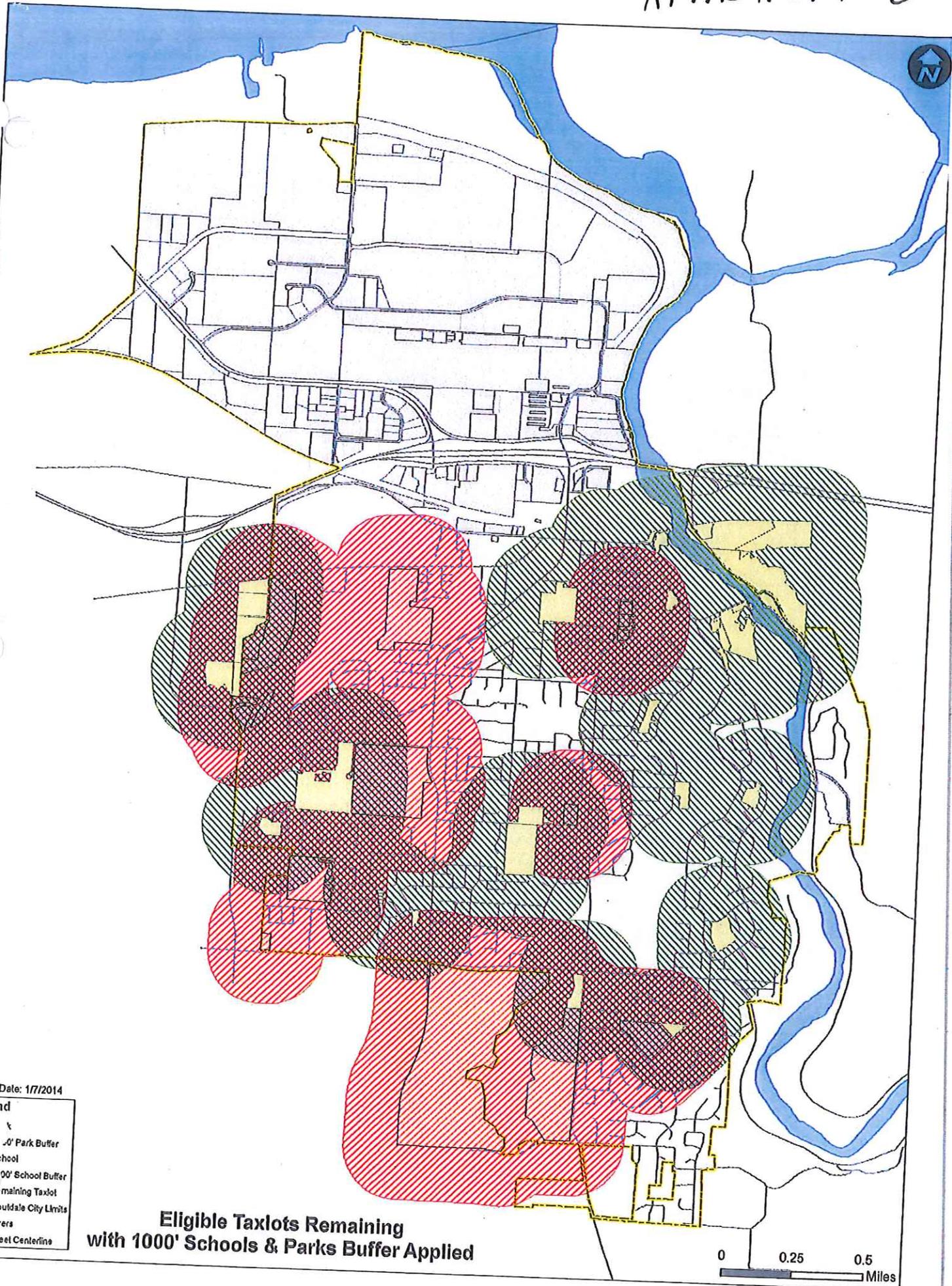
- A. The City Council may limit the nature of the information it will receive at a hearing and may establish separate rules for consideration of each of the following:
  1. Compliance with the Comprehensive Land Use Plan.
  2. Appropriateness of the legislative process.
  3. Recommended action by the Commission including any policy changes or refinements proposed.
- B. After confirming, amending, or reversing the recommendations of the Planning Commission, the City Council may take any of the following steps:
  1. Enact or defeat an ordinance on all or part of the proposal under consideration. In taking this step, it shall not be necessary to segregate incidental results that might have been possible to accomplish by administrative action.
  2. If the ordinance is defeated, but some or all of the proposal is found appropriate for administrative processing, the City Council may either act on the matter by the appropriate administrative procedure or refer the matter to the Planning Commission for such action. Unless different notice would be required under the provisions of this code for the Type II, III, or IV administrative action, no further hearing is necessary for the City Council to take administrative action. If different notice is appropriate, or if the matter is referred to the Planning Commission for a decision or recommendation, an additional hearing shall be held.
  3. Refer some or all of the proposal back to the Planning Commission for further consideration. If such referral is subsequently returned, no further hearing need be conducted if the proposal is processed under the City procedure for ordinance enactment.
- C. The City Council may take final action on a proposed amendment to the Zoning District Map by order rather than by ordinance. [Adopted by Ord. 550, ef. 9/25/90; Amended by Ord. 653, ef. 9/12/97]

15.130 Limitation on Reapplication. No application of a property owner for a Development Code text, Zoning District Map, Comprehensive Land Use Plan text, or Map amendment shall be considered within the one-year period immediately following a denial of a request for the same property. The hearing body may permit a new application upon making a determination that there is new evidence or a change in circumstances. [Adopted by Ord. 550, ef. 9/25/90]

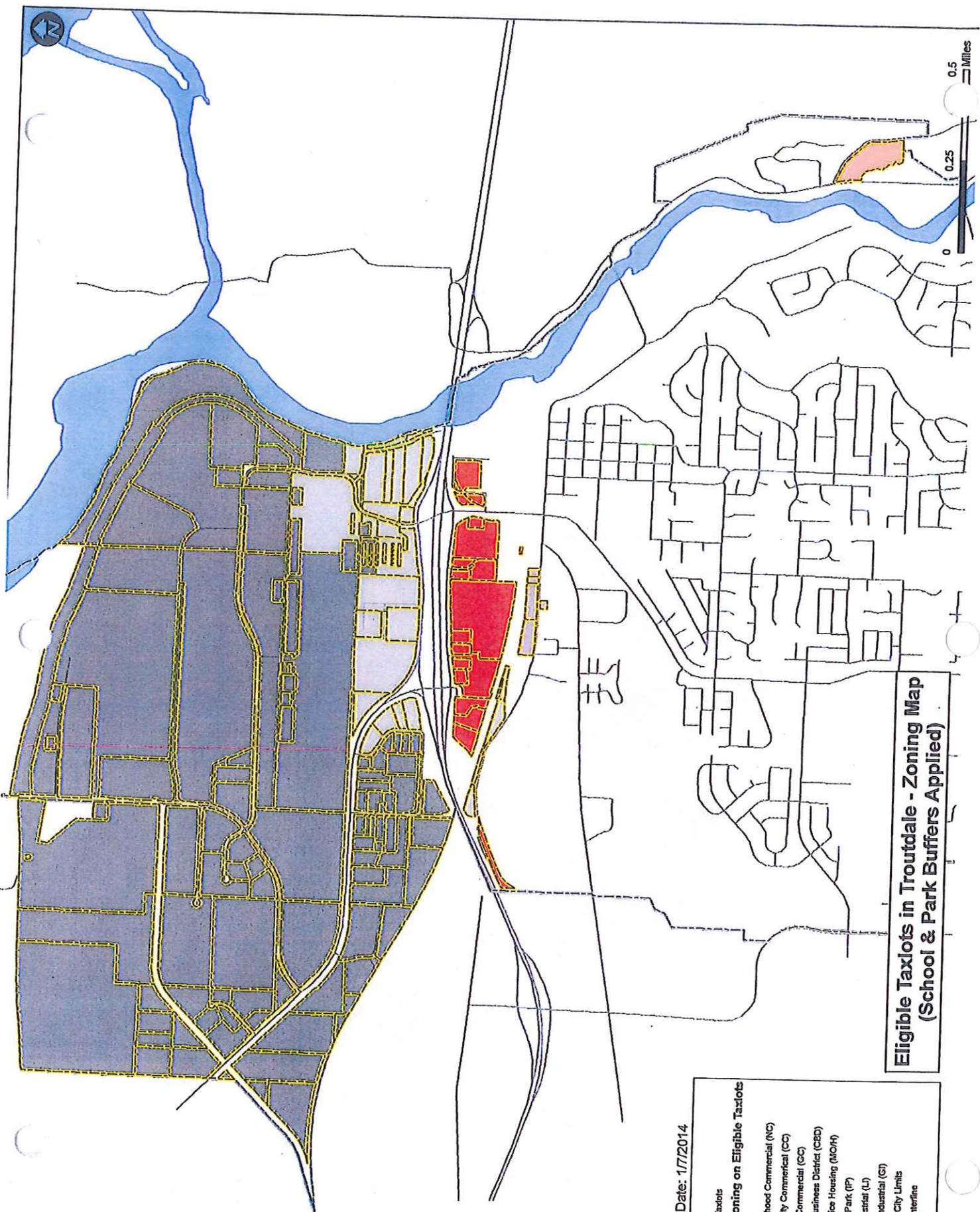
15.140 Effective Date of Text and Map Amendments. All text and map amendments shall take effect 30 days after the date of approval, unless an emergency is declared or a decision is appealed. [Adopted by Ord. 550, ef. 9/25/90]

- 15.150 Updating the Comprehensive Land Use Plan Map and Zoning District Map. It shall be the responsibility of the Director to keep these maps and to make necessary alterations to keep maps up-to-date and current. A copy of all maps, as adopted on or prior to the effective date of this code, shall be retained for reference. Alterations shall be made within 30 days of the effective date of an action authorized by this code that alters a boundary of a zoning district or plan designation, or changes the zoning or plan designation on a parcel or parcels. If a discrepancy is found between the map and a record of the action, the record of the action shall prevail. [Adopted by Ord. 550, ef. 9/25/90]
- 15.160 Notice of Amendments under Type IV Legislative Procedures.
- A. The City Council shall conduct a hearing to review all land use regulations and Plan amendments as required by OAR Chapter 660, Division 18, Plan and Land Use Regulation Amendment Review Rules.
  - B. The hearing shall occur not less than 45 days after notice of the hearing and a copy of the proposal under consideration has been delivered to the Director of the State Department of Land Conservation and Development. The proposal shall contain the text and any supplemental information that City officials believe necessary to inform the Director of the effect of the proposal.
  - C. Upon adoption of a Development Code text, Zoning District Map, Comprehensive Land Use Plan text, or Comprehensive Land Use Plan Map amendment, a copy of the text and/or map together with appropriate findings of fact, shall be mailed or otherwise submitted to the Director of the State Department of Land Conservation and Development within five working days after the City Council has taken final action, including adoption of any necessary documentation. If the adopted text differs in substance from the text and/or map submitted previously, the nature of the changes shall be described and submitted with the text.
  - D. Participants in the proceedings leading to a land use plan or code amendment who make a written request to receive notice shall be sent notice within five working days of the final decision. The notice shall include the date of the decision, describe the action taken, and list procedures for reviewing and submitting written objections to the findings and/or decision made. [Adopted by Ord. 550, ef. 9/25/90]

THIS PAGE INTENTIONALLY LEFT BLANK



TROUTDALE



Print Date: 1/7/2014

**Legend**

- Eligible Taxlots
- Troutdale Zoning on Eligible Taxlots

**ZONECODE**

- Neighborhood Commercial (NC)
- Community Commercial (CC)
- General Commercial (GC)
- Central Business District (CBD)
- Mixed Office Housing (MOH)
- Industrial Park (IP)
- Light Industrial (LI)
- General Industrial (GI)
- Troutdale City Limits
- Street Centerline
- Rivers

**Eligible Taxlots in Troutdale - Zoning Map  
(School & Park Buffers Applied)**

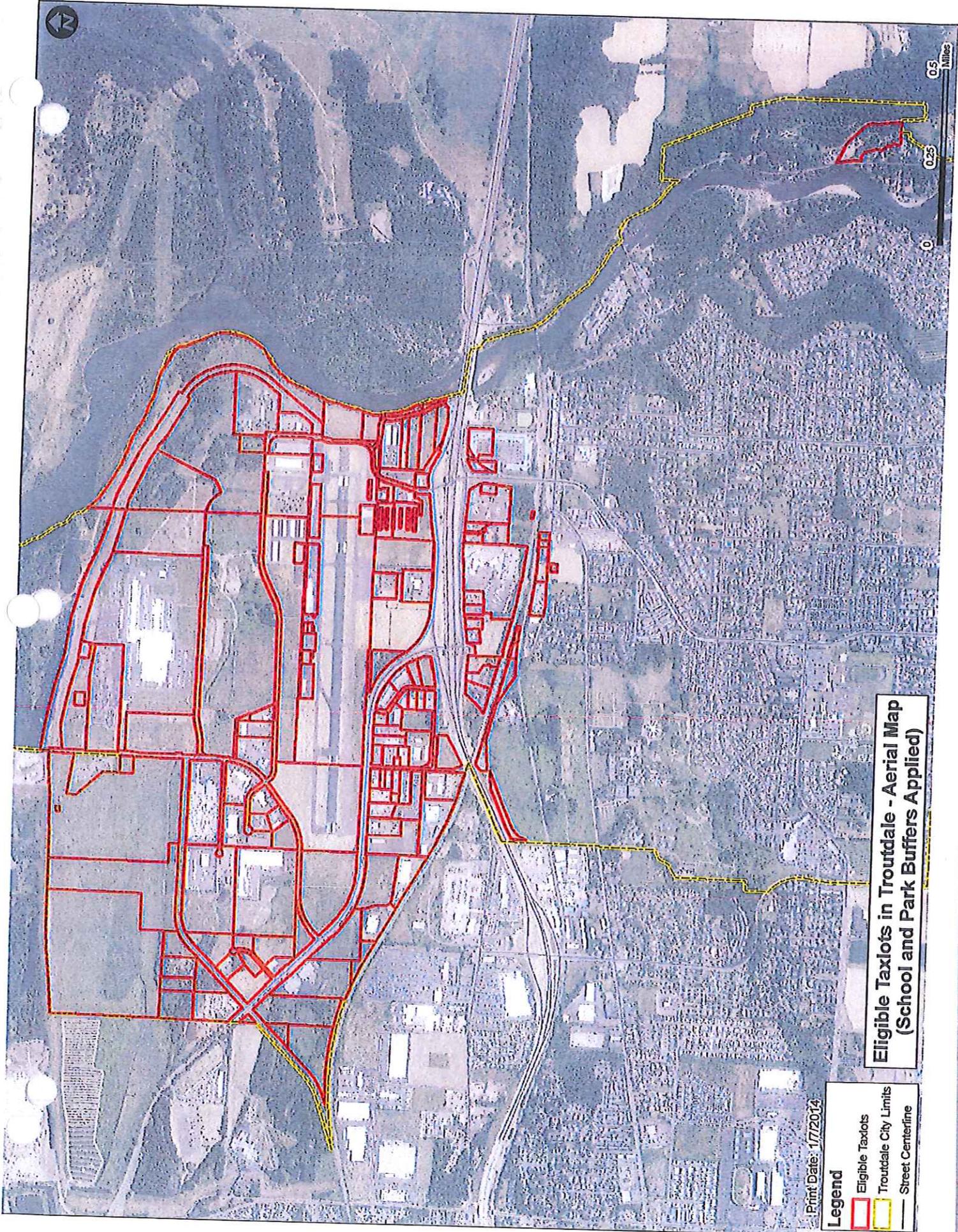


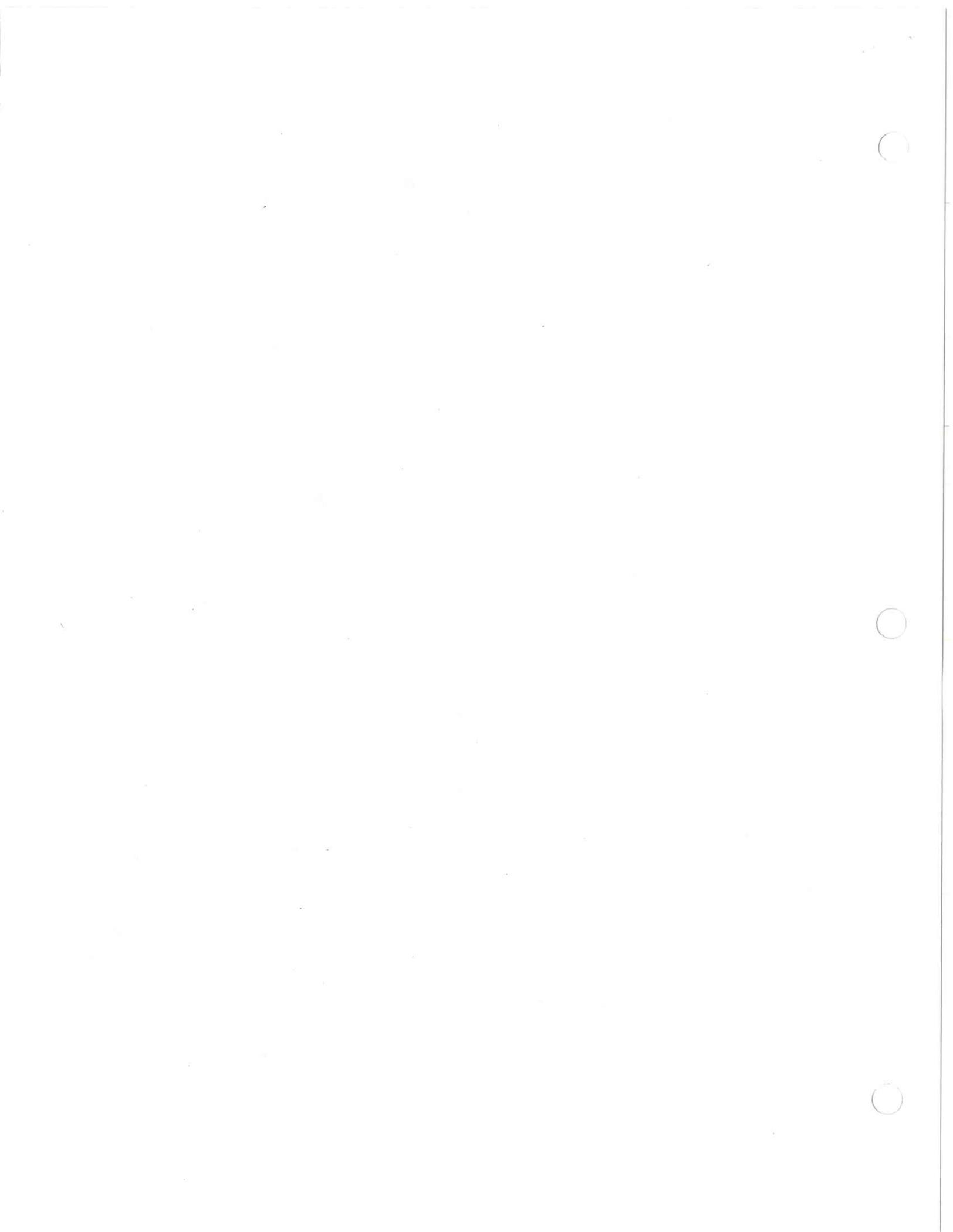
0.5  
0.25  
0  
Miles

**Eligible Taxlots in Troutdale - Aerial Map  
(School and Park Buffers Applied)**

- Legend**
- Eligible Taxlots
  - Troutdale City Limits
  - Street Centerline

Print Date: 1/7/2014





## What Measure 91 Means for Local Governments

Measure 91's provisions relating to personal production, possession and delivery do not become operative until July 1, 2015, and the OLCC business licensing provisions begin to operate in January of 2016, giving local governments time to consider how to approach this new law. Although Measure 91 aims to create a comprehensive regulatory framework for recreational marijuana, it leaves room for cities and counties to exercise some local control.

- **Licensing:** Although the measure does not provide a formal channel for local governments to weigh in on licensing applications, cities and counties may play an important role in providing information to the OLCC about local conditions that could impact the decision to grant or deny a license – that is, whether there are sufficient licensed premises in the locality and whether the license is demanded by public interest or convenience in the locality. In addition, as the OLCC engages in rule-making, or should the Legislature consider reform legislation in the wake of Measure 91's passage, the League will work to include provisions in the law that allow local governments to weigh in.
- **Regulation of Facilities:** In addition to the restrictions provided in the measure, local governments can impose reasonable time, place and manner restrictions on the nuisance aspects of businesses selling marijuana to consumers. In addition, those businesses are also likely to be subject to other general local government regulations, such as business license requirements, land use and development regulations, and the imposition of economic improvement district fees. When developing time, place and manner restrictions, local governments might consider how a local ordinance currently regulates the time, place and manner of retail liquor stores and should work closely with their legal counsel.
- **The Local Option:** Through the local initiative process, local governments can prohibit licensees from operating within their boundaries. However, because any election on such a petition must occur at "the next statewide general election," local governments will not have the opportunity to prohibit the operation of licensed producers, processors, wholesalers or retailers until November 2016 (and it is unclear under the text of the measure whether local governments will have the opportunity to vote on similar initiatives after November 2016). Meanwhile, the OLCC must start accepting license applications on or before January 4, 2016 (nearly a year before the local opt-out election can occur). The League intends to seek corrective legislation that would prohibit the issuance of a license where a jurisdiction is considering an opt-out.
- **State Tax Revenues:** Until July 1, 2017, all cities and counties will receive some tax revenue generated by Measure 91 that exceeds the expenses associated with the measure. After that time, however, only cities and counties with licensees – producers, processors, wholesalers and retailers – will receive any portion of state tax revenues.

Additionally, the revenues are intended to “assist local law enforcement in performing its duties under [the measure.]” Because the measure’s provisions relating to home use are likely to have an impact on law enforcement statewide, including jurisdictions that might lack a licensee, and given the ambiguity in the measure’s apparent restriction on the use of tax revenues, the League intends to pursue corrective legislation that would ensure more adequate and unrestricted funding for local governments.

- **Local Taxes:** Before Measure 91 passed, more than 60 cities and at least four counties imposed or had considered imposing a tax on marijuana. Several legal arguments have been suggested to support the imposition of a local tax. Some have argued that federal law overrides Measure 91’s attempt to preempt local regulation and taxation. Others argue that Measure 91 only preempts local governments from imposing a tax *after* the measure’s passage, and the measure’s attempt to repeal inconsistent charter provisions and ordinances violates home rule and rules relating to retroactive legislation. It is uncertain how a court might rule on those or other arguments. Nonetheless, some jurisdictions have adopted taxes with the hope that the Legislature, recognizing the inadequacy of the revenue sharing provisions within the measure, might grandfather in preexisting taxes. Because of the range of possible legal interpretations, local governments interested in enacting a tax on marijuana, or wondering about the validity of existing taxes on marijuana, should consult their legal counsel.
- **Employee Drug Testing:** Measure 91 purports to not disturb existing employment laws. In addition, under *Emerald Steel v. Bureau of Labor and Industries*, the Oregon Supreme Court held that federal law preempted an employee’s rights under the Oregon Medical Marijuana Act to the use of medical marijuana in the workplace. Consequently, it seems that an employer could take the appropriate adverse employment action against an employee (in accordance with any collective bargaining agreement) who was found to be using marijuana or tested positive for marijuana use in violation of the employer’s policies. Nonetheless, a local government considering discipline of an employee who engaged in marijuana use after July 1, 2015 should seek the advice of legal counsel, and Citycounty Insurance Services’ pre-loss program, if insured by CIS.



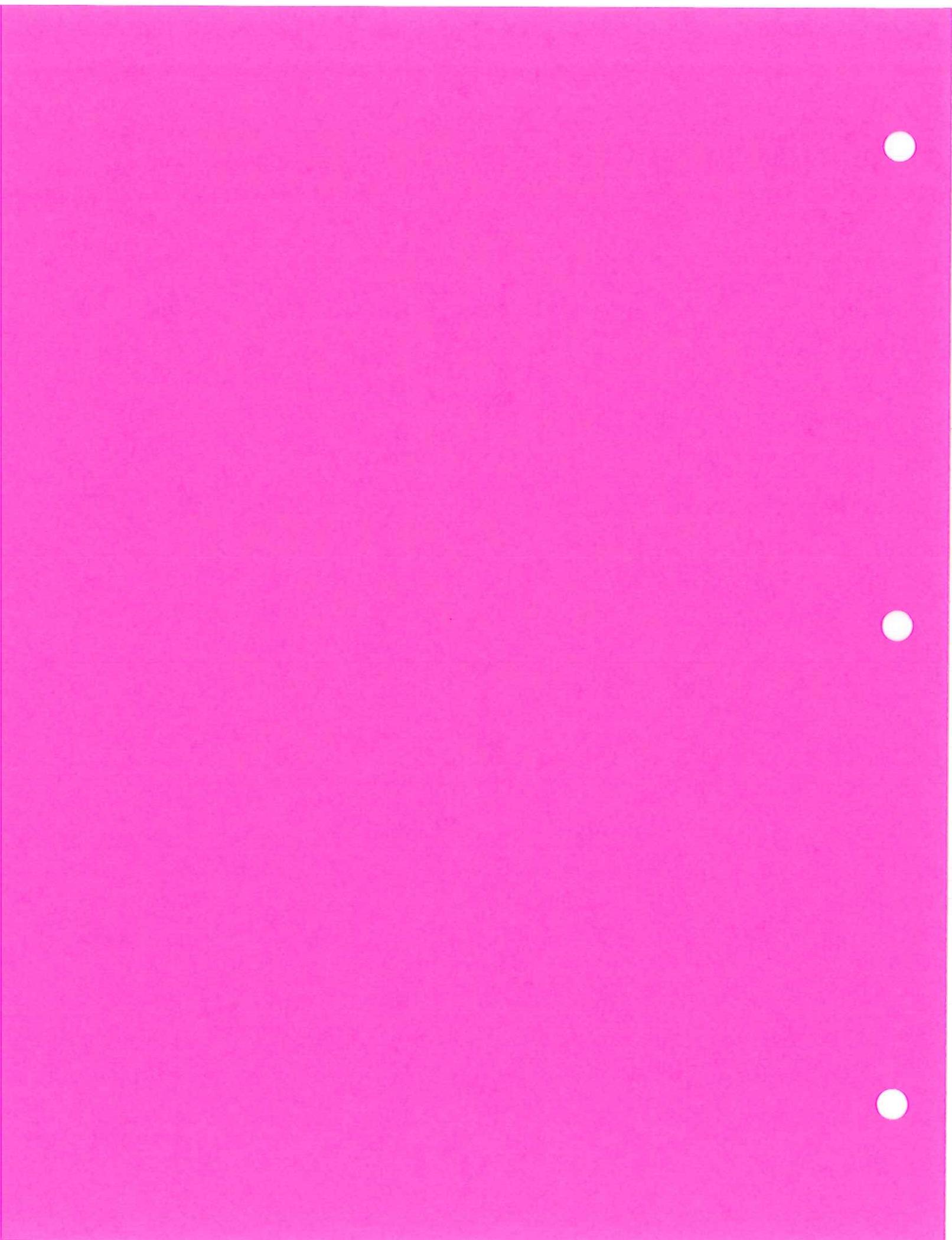
# Measure 91 Timeline & Important Dates

Voters approve Measure 91	<b>November 4, 2014</b>				
General provisions go into effect	<b>December 4, 2014</b>				
Measure 91's provisions regarding personal production, possession and use go into effect.  People 21 years of age and older can possess certain amounts of recreational marijuana for personal use.	<b>July 1, 2015</b>		The OLCC must begin accepting applications for producer, processor, wholesale and retail licenses.		
				Cities and counties may vote on initiative petitions to prohibit producers, processors, wholesalers and retailers from operating within the city or county.	<b>November 8, 2016</b>
				Tax revenue sharing goes from being distributed to cities and counties based on population to being distributed based on the number of licenses issued.	<b>July 1, 2017</b>



DEVELOPMENT  
CODE  
AMENDMENTS  
MEMO

(PLEASE BRING YOUR  
COPY OF THE  
DEVELOPMENT CODE TO  
THE PC MEETING)



## MEMORANDUM

**TO:** Troutdale Planning Commission  
**FROM:** John Morgan, Planning Director  
**SUBJECT:** Troutdale Development Code Analysis - Refinement  
**DATE:** January 14, 2015

### I. INTRODUCTION

The Troutdale Planning Commission previously reviewed an analysis of the current Development Code and directed City staff to return with specific edits to the document. This memorandum contains the requested material for the first five chapters of the Development Code.

The document contains three types of changes which are outlined below:

1. If a chapter, section, subsection, or similar is to be eliminated, replaced or moved to another Chapter, **this recommendation will be noted in bold.**
2. Language that is to be eliminated ~~will be stricken~~. Note: in some cases comments will suggest eliminating existing language and replacing with new language. Instead of showing the stricken material, this will be noted with underlined and italicized commentary followed by the replacement new language.
3. New or replacement language **will be in red.**

Please note this is a general assessment of recommended language changes. Final adoption will likely require changes to numbering, formatting and the like. The revisions correspond to the Chapters and sections identified in the initial analysis memorandum. To help with the review, the previous issue is identified, followed by the suggested action or language. Finally, in retrospect, some earlier suggested changes were reconsidered on second reading and eliminated from consideration.

### II. RECOMMENDED REVISIONS

- A. Chapter 1 - Introductory Provisions. This Chapter is dominated by definitions. Suggested revisions are noted below.
1. Section 1.016 - Readability in this section could be improved by breaking up the single paragraph into subsections (with no change to the language). This helps with identifying areas of specific concern. Suggested revision:

1.016 Applicability. This code applies to all property within the incorporated limits of the City of Troutdale as well as to:

- A. Property outside the incorporated city limits but within the City's urban planning area that is subject to that Intergovernmental Agreement transferring land use planning responsibility from Multnomah County to the City of Troutdale, except for those incorporated properties located east of the ordinary high water line of the west bank of the Sandy River, which are within the boundaries of the Columbia River Gorge National Scenic Area (NSA).
- B. Property located within both the incorporated limits of the City and the National Scenic Area shall be subject only to the regulations of Chapters 4.600 (Flood management Area), 5.600 (Erosion Control and Water Quality Standards) and 5.800 (Stormwater Management) of this code, but are also subject to land use review by the Multnomah County Planning Department. [Adopted by Ord. 796, ef. 6/11/09]

- 2. Section 1.020 - The definitions are currently numbered. *The Commission may wish to simply alphabetize the definitions as renumbering can get confusing when definitions are deleted or added.*

As this section usually includes interpretation guidelines, the revised introductory section would read as follows:

1.020 General Definitions. As used in this code, ~~the following words and phrases shall have the following meanings:~~ words used in the present tense include the future tense while words in the plural include the singular, and all words used in the singular include the plural unless the context clearly indicates to the contrary. All words used in the masculine gender include the feminine gender. The word "shall" is mandatory and the word "may" is permissive. The word "structure" includes the word "building". The words "land", "property", "site", "lot", "parcel" and "premise" are used interchangeably unless the context clearly indicates to the contrary. The words "proposal", "application", and "request" are used interchangeably unless the context clearly indicates to the contrary. The word "lot" includes the word "parcel" unless the context clearly indicates to the contrary. Where words are not defined in this Code, the following sources shall be consulted: State statute, and any dictionary of common usage, all of which shall be interpreted by context.

- 3. The following changes are recommended regarding individual definitions:

- a. Bed & Breakfast – There are B&B regulations elsewhere in the Code, it would be helpful to define a B&B. Proposed language:

Bed & Breakfast. A structure designed for and occupied as a single-family dwelling, in which travelers are lodged for sleeping purposes and a morning meal provided, and for which compensation of any kind is paid. A Bed and Breakfast Facility is not a hotel, motel, boarding house or rooming house.

- b. Building, Height of – This definition conflicts with the common definition in the Uniform Building Code which measure the height at the midpoint of the roof. **Replace current definition** with following:

Building, Height of. The height of a building is the vertical distance from grade plane to the average height of the highest roof surface. A grade plane is a reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six feet from the building, between the building and a point six feet from the building.

- c. City – A definition for City is common:

City: The City of Troutdale, Oregon.

- d. Day Care, Family Provider – Current definition includes regulatory requirements. Definitions should not, as a matter of course, include regulations in the definition itself – these are best left to the applicable Code section. Proposed revisions:

Day Care, Family Provider. A day care facility providing care in the provider's home in the family living quarters for six or fewer children full-time, with up to four additional full- or part-time children when school is not in session during the regular school year. During the summer when school is not in session, there may be up to four additional part-time children of any age in care, and shall be in care no more than four hours per day. There shall be no more than ten children at any given time, including the provider's children.

- e. Dwelling, Accessory Residential – Like B&B, there is a separate Code section related to these types of dwellings. The following definition would be helpful:

Dwelling Accessory Residential. A complete separate residential unit, including facilities for cooking and sanitation, provided either

as a separate structure on the same lot or as part of a primary single-family residence.

- f. Dwellings –There are two essential types of dwelling units: those that contain the underlying land as part of the unit and those that do not. For example, a single family detached home includes the underlying land. Anything beyond that home – and located on a single parcel – is considered a type of multi-family dwelling. Multi-family dwellings may include a duplex (two units), triplex (three units) or more. What is confusing with the Code is that duplexes and triplexes can include either a combination of units on a single property or units located on individual lots. If they are on individual lots these are considered single family homes, most likely attached at a common wall or zero lot-line - these are not multi-family homes.

To simplify the types of dwellings, it is recommended the Commission **replace definitions from “.38” to “.43”** with the following:

Dwelling, Condominium. A type of residential development offering individual ownership of dwellings and common ownership of open spaces and other facilities.

Dwelling, Duplex. A building with two dwelling units designed for and occupied by not more than 2 families living independently of each other.

Dwelling, Multi-Family. A building or portion thereof designed for occupancy by 3 or more families living independently of each other, with the number of families in residence not exceeding the number of dwelling units provided.

Dwelling, Single-Family (Attached). A dwelling that is designed or used exclusively for the occupancy of one family that is attached to one or more separately owned dwellings by common vertical walls. This definition includes but is not limited to townhouses and row-houses.

Dwelling, Single-Family (Detached). A detached building, or manufactured dwelling, other than a mobile home or trailer house, designed for and occupied by not more than one family, that is not attached to any other dwelling and is surrounded by open space and yards.

Dwelling, Triplex. A building with three dwelling units designed for and occupied by not more than 3 families living independently of each other.

- g. Fence – The Commission may wish to add a definition for fence. Again, the definition should not include design standards.

Fence. An accessory structure that serves as an enclosure, barrier or screen that is not part of a building.

Fence, Sight-Obscuring. A fence that substantially screens an area or object including.

- h. Four-plex – **Recommended this definition be eliminated.**

- i. Gallery – A retail business selling works of art.

- j. Home Occupation – The current definition does not define the activity and actually establishes a development standard. It is recommended the **current definition be replaced** with the following:

Home Occupation. A lawful occupation carried on in a dwelling by a resident of the dwelling, where the occupation is secondary to the main use of the property as a residence. Generally, Home Occupations are small commercial ventures that could not necessarily be sustained if it were necessary to lease commercial quarters or that, by the nature of the venture, are appropriate in scale and impact to be operated within a residence.

- k. Lot, Corner – The intersection of two streets may not result in a corner lot if they greatly exceed 90 degrees. It is suggested the **current language be replaced** with the following:

Lot Corner. A lot at least two adjacent sides of which abut streets other than alleys provided the angle of intersection of the adjacent streets does not exceed 135 degrees.

- l. Lot Line Adjustment – Consistent with ORS Chapter 92 these are defined as a “property line adjustments” recognizing not all involved properties are necessarily lots. It is suggested the **current language be replaced** with the following:

Property Line Adjustment. The relocation or elimination of a common boundary line between two lots or parcels.

- m. **Manufactured Home Manufactured Dwelling** – The last part of the definition should be placed in Section 1.040 regarding flood plain definitions. The appropriate section is **highlighted**.

Manufactured Home or Manufactured Dwelling. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use as a dwelling with or without a permanent foundation when connected to the required utilities. To qualify as a manufactured home, the structure shall have been manufactured after June 15, 1976 and must bear an insignia issued by a state or federal agency indicating that the structure complies with all applicable construction standards of the U.S. Department of Housing and Urban Development. **For flood plain management purposes, the term “manufactured home” also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term “manufactured home” does not include park trailers, travel trailers, and other similar vehicles.**

- n. **Mixed Use Development** – The reference to Dwelling, Mixed Use is not required. **This definition can be eliminated.**

- o. **Permitted** – A definition for “permitted” would be appropriate.

Permitted Land Use. **A Permitted Land Use is a use for which a Building Permit is issued after a determination that all setbacks and other lot and building site requirements are satisfied.**

- p. **Single-Family Dwelling or Single Family Residence** – Again note, a single family home can be either detached or attached. **This definition can be eliminated.**

- q. **Street, Public** – The width dimension is a standard and not appropriate for a definition. The suggested revision:

Street, Public. A thoroughfare or right-of-way acquired for use by the public which affords a principal means of access to abutting property ~~not less than 16 feet in width.~~

- r. Studio. **A location where an art form is created or practiced, such as an artist or dance studio. Includes small-scale production of artwork for sale in a gallery or other retail location. Also includes light fabrication or manufacturing of individual pieces of art including welding, riveting, and use of a kiln, glass furnace, or foundry when such heat producing facilities comply with all building code requirements and crucibles do not exceed one gallon in size.**

- s. Subdivision – Based on ORS Chapter 92, the lots are specifically created within a calendar year.

Subdivision. Creation of four or more lots **within a calendar year**.

- 4. Vegetation Corridor and Slope District and Water Quality and Flood Management Definitions – In addition, under “Substantial Improvements” you may wish to define or clarify the term “market value” to avoid confusion. Suggested revision:

Substantial Improvement.

- a. There are three occasions when work on an existing building is considered a substantial improvement.
  - 1. Any improvement of a structure, the cost of which exceeds 50% of the market value of the structure.
  - 2. Reconstruction or repair of a building, that exceeds 50% of the market value of the structure before it was damaged.
  - 3. Additions to an existing structure when the addition increases the market value of a structure by more than 50% or the floor area by more than 20%.
  - 4. Unless other evidence is provided to the satisfaction of the Director, “market value” shall be based on the latest market, not assessed, value of the structure as determined by Multnomah County.**
- 5. Sections 1.070 and 1.080 – Normally, issues on scope and consistency are included at the beginning of a chapter and it is suggested these subsections be located before definitions.

**1.070**17 Scope and Compliance. A parcel of land may be used, developed by land division, or otherwise, and a structure may be used or developed by construction, reconstruction, alteration, occupancy, or otherwise, only as permitted by this code. The requirements of this code apply to the person undertaking a development or the user of a development, and to the person’s successors in interest. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 1.060 by Ord. 607, ef. 8/11/94]

**1.080**18 Consistency with Plan and Laws. Actions initiated under this code shall be consistent with the adopted Comprehensive Land Use Plan of the City of Troutdale and with applicable state and federal laws and

regulations as these plans, laws, and regulations may now or hereafter provide. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 1.070 by Ord. 607, ef. 8/11/94]

6. **Add Airport Landing Field Definitions to this Chapter using FAA language**

C. Chapter 2 - Procedures for Decision Making.

1. Section 2.000 – This Section could be clarified to note a Type IV application may also be quasi-judicial – e.g., plan amendment and/or zone change on an individual property. Suggested revision:

Type IV Procedure  
(Complex or subjective decisions)

Possible significant effect on some persons or broad effect on a number of persons (i.e., either quasi-judicial or legislative)

2. Often a development may require multiple applications such as a partition, conditional and variance. Language could be included to allow, as an option, a combined application. Further, if combined, this application would be reviewed at the highest Type level. For example, if a combined application included Type I, II and III requests, it would be reviewed as a Type III application. Suggested changes to Section 2.020:

2.020 Coordination of Permit Procedure. The Director shall be responsible for the coordination of the permit application and decision-making procedure, and shall issue any necessary permits to an applicant whose application and proposed development is in compliance with the provisions of this code. Sufficient information shall be submitted to resolve all determinations that require furnishing notice to persons other than the applicant. In the case of a Type II or III procedure, an applicant may defer submission of details demonstrating compliance with standards where such detail is not relevant to the approval under those procedures. Before issuing any permits, the Director shall be provided with the detail required to establish full compliance with the requirements of this code. **Combined applications reviewing a single project are permitted but shall be reviewed as the highest Type level.**

3. Section 2.030 – There is quite a bit of discretion granted the Director regarding pre-application conferences. To ensure consistency, it may be appropriate to require conferences for major projects (e.g., subdivisions) and allow conferences for other uses at the applicant's discretion. Also conference note keeping and a written summary may create legal issues

for the Department. It is suggested the conference should be an opportunity to have a frank discussion on a proposed development; a frank assessment may not be possible if the particulars become available as part of a public records request. Suggested changes:

2.030 Pre-Application Conference. A pre-application conference shall be required for all Type III applications and Type IV quasi-judicial applications. For other applications, an applicant or authorized representative shall may request or the Director suggest that the Director arrange a pre-application conference, unless the Director determines that the conference is not needed. The conference shall be held within 30 days of the request. The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of the code, provide for an exchange of information regarding applicable elements of the Comprehensive Land Use Plan and development requirements, arrange such technical and design assistance which will aid the applicant, and to otherwise identify policies and regulations that create opportunities or pose significant constraints for the proposed development. The Director, if requested by the applicant, shall provide the applicant with a written summary of the conference within ten days of the conference. The summary should include confirmation of the procedures to be used to process the application, a list of materials to be submitted, and the criteria and standards which may apply to the approval of the application. [Adopted by Ord. 550, ef. 9/25/90; Amended by Ord. 791, ef. 2/21/08]

4. Section 2.040 – It is not clear if this section applies generally to all applications or possibly to a pre-application conference. It is assumed the former but clarification is helpful. Suggested revision:

2.040 Application Materials. An A land use application shall consist of the materials specified in this section, plus any other materials required by this code.

This Section also requires the applicant to submit a list of affected property owners. To avoid notice issues, it may be better for the City to provide an adjacent owners list instead of the applicant. Suggested language:

- E. List of affected property owners supplied by the City shall include the following:

5. Section 2.050 – Consistent with State law, the local government has 30-days in which to determine completeness, not 15-days. Suggested revision:

- A. Application materials shall be submitted to the Director who shall have the date of submission indicated on the land use application form. Within ~~45~~ 30 working days from the date of submission, the Director shall determine and shall notify the applicant in writing whether an application is complete. If the Director determines that the application is incomplete or otherwise does not conform to the provisions of this code, the Director shall notify the applicant in writing of what information is missing, and shall allow the applicant to submit the missing information.
6. Section 2.110 – The last two sentences allow the Commission to place conditions as part of a Type III approval. While true, the conditions must also be consistent with recent US Supreme Court decisions regarding nexus and rough proportionality. Suggested revision:
- A. Under the Type III procedure, an application is scheduled for public hearing pursuant to Chapter 16, Public Deliberations and Hearings, of this code before the Planning Commission which may approve, approve with conditions, or deny an application. The form of notice and persons to receive notice are as required by the relevant sections of this code. At the public hearing, the staff, applicant, and interested persons may present information relevant to the criteria and standards pertinent to the proposal, giving reasons why the application should or should not be approved, or proposing modifications and the reasons the person believes the modifications are necessary for approval. The Planning Commission may attach certain development or use conditions beyond those warranted for compliance with the standards in granting an approval if the Planning Commission determines the conditions are necessary to avoid imposing burdensome public service obligations on the City, to mitigate detrimental effects to others where such mitigation is consistent with an established policy of the City **and conforming to applicable legal requirements**, and to otherwise fulfill the criteria for approval. If the application is approved, the Director will issue any necessary permits when the applicant has complied with the conditions set forth in the final order and other requirements of this code.
7. Section 2.120 – Subsection “B.” includes the phrase “failed to act”. In a Type IV review the Commission cannot “fail to act” but is obligated to arrive at a recommendation, whether for or against. Further, the Council is obligated to conduct a hearing on Type IV requests. Suggested revisions:

- B. ~~If the Planning Commission has recommended against a legislative proposal, or has failed to act on a legislative proposal, the City Council may terminate further consideration of the proposal by a majority vote of the Council. For a proposal on which the Planning Commission has made a favorable recommendation, and for other proposals that have not been terminated, the~~ The City Council shall conduct a public hearing pursuant to Chapter 16, Public Deliberations and Hearings, of this code. The Director shall set a date for the hearing. The form of notice and persons to receive notice are as required by the relevant sections of this code. At the public hearing, the staff shall review the report of the Planning Commission and provide other pertinent information. Interested persons shall be given the opportunity to present new testimony and information relevant to the proposal that was not heard before the Planning Commission, make final arguments why the matter should or should not be approved and, if approved, the nature of the provisions to be contained in approving action.
8. Section 2.140 – **For consistency and easy reference, the provisions for an expedited land review should be moved to Chapter 7 - Land Divisions.**
9. Section 2.150 – The list of applicable situations helps define when a TIA is required. The City Engineer should be allotted some discretion to avoid unnecessary costs of delays for an applicant. Suggested changes:
- A. Applicability. The City or other road authority with jurisdiction may require a Traffic Impact Analysis (TIA) as part of an application for development, a change in use, or a change in access. **Unless otherwise waived by the responsible road authority,** A a TIA shall be required where a change of use or a development would involve one or more of the following:
- D. Chapter 3 (Zoning Districts) – There are a number of general changes that apply to all or nearly all zoned. These are reviewed below:
- As previously discussed, it was suggested the Commission reconsider how dwellings are currently defined. Proposed revisions were presented under the “Definition” section. Revisions to the various zones effectively apply those definitions.
  - Each zone containing residential uses establishes minimum density requirements and includes an example to help calculate. This does not prevent the placement of a single home on an extremely large parcel, effectively limiting further development. Originally, it was suggested the City consider a “shadow plat” to maintain development options. In

retrospect, the Commission should discuss the legality of such a change with Legal Counsel.

- Also previously noted, the authority to divide land is not included in the zones. This should be added to each zone.
- Each residential zone includes provisions for manufactured homes located on individual lots. This is repeated in each zone where the use is allowed. It may be simpler to place these provisions in Chapter 5 (new Section 5.120) and have the applicable zone reference the material.

1. Section 3.010 - Single Family Residential (R-20)

- a. Section 3.012.A – This line also effectively allows manufactured homes on individual lots. For clarity, the section containing the design standards could be referenced (also see Section 3.104.F, below).

3.012 Permitted Uses. The following uses and their accessory uses are permitted in the R-20 district:

- A. Single-family detached dwellings, **including manufactured homes on individual lots per Section 5.120.**
  - I. **Property line adjustments, partitioning and the subdividing or property pursuant to provisions in Chapter 7.**

2. Section 3.020 Single Family Residential R-10

- a. Section 3.022.A – Same comment as per Section 3.012.A.

3.022 Permitted Uses. The following uses and their accessory uses are permitted in the R-10 district:

- A. Single-family detached, **attached** and zero lot line dwellings, **including manufactured homes on individual lots per Section 5.120.**
  - I. **Property line adjustments, partitioning and the subdividing or property pursuant to provisions in Chapter 7.**

3. Section 3.030 Single Family Residential R-7

- a. Section 3.032.A – Same comment as per Section 3.012.A.

3.032 Permitted Uses. The following uses and their accessory uses are permitted in the R-7 district:

- A. Single-family detached, **attached** and zero lot line dwellings, **including manufactured homes on individual lots per Section 5.120.**
  - J. **Property line adjustments, partitioning and the subdividing or property pursuant to provisions in Chapter 7.**
- b. Section 3.034.A.1 – Consistent with previous comments on dwellings, the Commission may wish to allow two attached homes on 5,000 square foot lots each. This is similar in size to a duplex located on a single 10,000 square foot lot.

3.034 Lot Size, Dimensional, and Density Standards.

- A. Lot Size, Width, Depth, and Frontage.
  - 1. Minimum lot size: 7,000 square feet for a single-family detached and 5,000 square feet for zero lot line **and attached single-family dwellings** ~~and for each unit of a duplex dwelling on separate lots;~~ 10,000 square feet ~~for duplex dwellings on the same lot.~~

4. Section 3.040 Single Family Residential (R-5)

- a. Section 3.042 – Given the residential density, allowing a family day care in the zone is appropriate. Add the following under 3.042.A:

- J. **Family day care.**
- K. **Property line adjustments, partitioning and the subdividing or property pursuant to provisions in Chapter 7.**

- b. Section 3.042.A – Same comment as per Section 3.012.A.

3.042 Permitted Uses. The following uses and their accessory uses are permitted in the R-5 district:

- A. Single-family detached, **attached** and zero lot line dwellings, **including manufactured homes on individual lots per Section 5.120.**

- c. Section 3.042.B – Given the higher density, a duplex (single property) may be appropriate on a 7,500 square foot lot.  
Suggested change:
  - B. ~~Duplex dwellings when each dwelling unit is situated on an adjoining but separate lot of record.~~
- d. Section 3.044.A.1 – Suggested changes would be 5,000 for a single family home; 3,500 square feet for attached dwellings and 7,500 square feet for a duplex (single property).

3.044 Lot Size, Dimensional, and Density Standards.

A. Lot Size, Width, Depth, and Frontage.

- 1. Minimum lot size: 5,000 square feet for single-family detached; **3,500 square feet for attached single family dwellings**, and zero lot line dwellings, and non-residential uses; ~~4,000~~ **7,500** square feet for each unit of a duplex dwelling.

- 5. 3.050 Attached Residential (R-4) – Given earlier comments, the Commission may want to consider whether this zone is necessary, and unless there is, **it is recommended this zone be eliminated and any existing R-4 zoned properties be re-zoned to an appropriate zone.**

6. Section 3.060 Apartment Residential (A-2)

- a. Section 3.062.A and B., and, Section 3.063.A. and B – It appears this zone encourages multi-family use and actively discourages single family homes (and attached homes) by requiring a conditional use. The difficulty is figuring what possible negative impacts generated by a single family home would need to be mitigated through the conditional use process. Stating that, it may be the case the zone's structure is designed to meet specific housing needs established in the Comprehensive Plan. If that is the case, then the restriction is plausible, in fact it may be better to simply not allow single family homes under any circumstances. With that, the suggested changes include:

3.062 Permitted Uses. The following uses and their accessory uses are permitted in the A-2 district:

- A. Multiple-family dwellings (apartments), **including duplexes and triplexes.**

- ~~B.~~ Attached, duplex, and triplex dwellings when the dwellings are on the same lot.
- ~~GB.~~ Residential facilities (ORS 197.660[1]; ORS 443.400-443.460).
- ~~DC.~~ Parks and playgrounds.
- ~~ED.~~ Utility facilities, minor.
- ~~FE.~~ Bed and breakfast inns subject to the provisions of chapter 5.500, Bed and Breakfast Inn, of this code.
- ~~GF.~~ Other uses similar in nature to those listed above. [Adopted by Ord. 550, ef. 9/25/90; Amended by Ord. 653, ef. 9/12/97; Amended by Ord. 716, ef. 5/9/02]
- G. Property line adjustments, partitioning and the subdividing or property pursuant to provisions in Chapter 7.**

3.063 Conditional Uses. The following uses and their accessory uses are permitted as conditional uses in the A-2 district:

- ~~A.~~ Single family detached and zero lot line dwellings.
- ~~B.~~ Attached, duplex, and triplex dwellings when the dwellings are on separate lots.
- ~~GA.~~ Residential homes (ORS 197.660[2]; ORS 443.400-443.825).
- ~~DB.~~ Day care centers.
- ~~EC.~~ Congregate housing, subject to the provisions of chapter 4.400, Congregate Housing, of this code.
- ~~FD.~~ Golf courses (excluding miniature golf courses or driving ranges).
- ~~GE.~~ Professional offices or clinics on arterial or collector streets.
- ~~HF.~~ Nursing homes.
- ~~IG.~~ Boarding, lodging, or rooming houses.
- ~~JH.~~ Community service uses.

KI. Utility facilities, major.

LJ. Other uses similar in nature to those listed above. [Adopted by Ord. 550, ef. 9/25/90; Amended by Ord. 716, ef. 5/9/02]

b. Section 3.064.B – The standards in this section will need to be examined depending on the action taken in the previous commentary. Overall though, the minimum sizes are aggressive and lend themselves well to higher density development. One note, based on this section a triplex (single property) is required to have 9,000 square feet of area – this also applies to a four dwelling units on a single lot. You may wish to change the “4-14” density to read 2,500 square feet for each unit over 3 (instead of 4).

<i>DENSITY STANDARDS</i>		
<b>Type of Residential Use</b>	<i>Minimum Lot Area</i>	<b>Maximum Lot Coverage</b>
Single-family detached and zero-lot-line dwellings	3,500 square feet per unit	<i>None</i>
Duplex, triplex and attached dwellings	3,000 square feet per unit when the dwellings are all on one lot. 3,000 square feet for duplexes and the end unit of triplex and attached dwellings on separate lots. 1,800 square feet for the interior units of triplex and attached dwellings on separate lots.	None for units on individual lots; 40% for others
<b>Multiple-Family Dwellings</b>	<i>Minimum Lot Area</i>	<b>Maximum Lot Coverage</b>
4-14	9,000 square feet plus 2,500 square feet for each unit over 3 4	45%
15-37	41,000 square feet plus 2,000 square feet for each unit over 15	50%
38-94	87,000 square feet plus 1,500 square feet for each unit over 38	50%
95-155	172,500 square feet plus 1,000 square feet for each unit over 95	55%
Over 155	1,500 square feet per unit	55%

7. 3.100 Neighborhood Commercial (NC) – The zone is a good mix of residential opportunities and supporting commercial activities.

- a. Section 3.104.A – Establishment of a grocery store or convenience store requires a conditional use permit. These uses would appear to be a natural for the zone and the Commission may wish to allow them outright. Proposed changes:

3.103 Permitted Uses. The following uses and their accessory uses are permitted in the NC district, provided they are conducted wholly within a completely enclosed building, except off-street parking and loading:

- A. Retail establishments, not to exceed 60,000 square feet of gross floor area per building or business including, but not limited to, barber or beauty shops, shoe repair stores, dressmaking or tailoring shops, photography studios, florist shops, book or stationary stores, gift shops, **grocery stores and convenience stores without gasoline pumps** and art supply stores.
- H. **Property line adjustments, partitioning and the subdividing or property pursuant to provisions in Chapter 7.**

3.104 Conditional Uses. The following uses and their accessory uses are permitted as conditional uses in the NC District:

- ~~A. Grocery stores and convenience stores without gasoline pumps.~~
- BA.** Community service uses.
- ~~B.~~ Utility facilities, major.
- ~~C.~~ Other uses similar in nature to those listed above.  
[Adopted by Ord. 550, ef. 9/25/90; Amended by Ord. 770, ef. 2/23/06]

- b. Section 3.106.C – A parking reduction was considered given the potential for walking (or bicycling) to access neighborhood commercial activities. However, given these facilities may be up to 60,000 square feet in area, this would not appear appropriate unless smaller buildings (and parcel area) were required.

8. Section 3.110 Community Commercial (CC) – The City may wish to consider allowing apartments above the first floor of commercial buildings. This provides additional housing opportunities, an expanded customer

base and may help in financing and developing property. Suggested language:

3.113 Permitted Uses. The following uses and their accessory uses are permitted in the CC district:

- A. Any use permitted in the Neighborhood Commercial (NC) district except for single-family detached dwellings, duplex, triplex, attached **single family**, and ~~multiple family~~ dwellings. **Dwelling units shall be permitted above the first floor of a commercial building.**
- M. **Property line adjustments, partitioning and the subdividing or property pursuant to provisions in Chapter 7.**

9. Section 3.120 General Commercial (GC)

a. Section 3.122.A – As with the CC zone, possibly allow apartments above the first floor for the reasons noted. Suggested language:

3.122 Permitted Uses. The following uses and their accessory uses are permitted in the GC district:

- A. Any use permitted in the NC or CC district except for single-family detached dwellings, duplex, triplex, attached **single family**, and ~~multiple family~~ dwellings, and except that retail stores or businesses are not limited to 60,000 square feet of gross floor area. **Dwelling units shall be permitted above the first floor of a commercial building.**
- G. **Property line adjustments, partitioning and the subdividing or property pursuant to provisions in Chapter 7.**

b. Section 3.122.D – This section provides considerable discretion to the Director, effectively permitting a land use decision without substantive findings. Everything beyond the second “uses” should be eliminated. Suggested revisions:

- D. Accessory uses customarily incidental to any of the above uses when located on the same lot, ~~provided that such uses, operations, or products are not objectionable due to odor, dust, smoke, noise, vibration, or similar causes.~~

10. Section 3.130 Central Business District (CBD)

- a. Section 3.132.A – Unlike the previous commercial zones, this section allows apartments in the zone; however, they must be in conjunction with a commercial use. That is a rare situation and difficult to enforce. Simply allowing apartments above the first floor provides greater opportunities and certainly easier to enforce. Suggested revisions:

3.132 Permitted Uses. The following uses are permitted in the CBD:

A. ~~Apartment Dwelling units in conjunction with commercial uses, provided that they are built above or below the street level floor.~~

M. **Property line adjustments, partitioning and the subdividing or property pursuant to provisions in Chapter 7.**

- b. Section 3.132.B – The downtown area is probably the single most valuable area within a community. The Commission may wish to consider the appropriateness of allowing attached single family homes in the zone.

~~B. Attached, duplex, and triplex dwellings either on the same lot or separate lots. (Note: also see item "e." below.)~~

- c. Section 3.132.H – The Commission may want to consider the reasoning behind the 15,000 square foot limitation in this Section.

~~H. Retail stores with 15,000 square feet or less of gross floor area.~~

- d. Section 3.132.L – This section allows B&Bs but not hotels/motels. A hotel/motel can be a great addition to a downtown, especially if tied into nearby restaurants or entertainment.

M. **Hotels and motels.**

- e. Section 3.133.E – A grocery or convenience store makes sense in a downtown area as well. It provides a place to obtain food without spending time at a restaurant. **Replace** item "B." with the following:

B. **Grocery or convenience stores.**

- f. Section 3.135 – Normally, landscaping is not required in a downtown zone. There may be an historical reason for these

requirements but the Commission should consider whether they remain necessary. Suggested revisions:

3.135 Landscaping Requirements. ~~Areas not built upon or containing parking shall be landscaped in accordance with Chapter 11, Landscaping and Screening, of this code. Otherwise, landscaping is not required. A minimum of five percent of the lot area shall be landscaped in accordance with Chapter 11, Landscaping and Screening, of this code, except that no minimum landscaping is required for the area between Historic Columbia River Highway and 2<sup>nd</sup> Street extended west to its intersection with 257<sup>th</sup> Avenue from 257<sup>th</sup> Avenue to the SE Sandy Street right-of-way. [Adopted by Ord. 658, ef. 3/12/98; Repealed and readopted by Ord. 661, ef. 7/23/98; Amended by Ord. 731, ef. 6/26/03; Amended by Ord 770, ef. 2/23/06]~~

- g. Section 3.136.D – Parking is not required for commercial uses yet is required for residential uses. This creates an undue burden on an owner seeking to add residential units to a commercial building. Overnight parking on the street does not diminish customer access to commercial activities. It is suggested no off-street parking be required within this zone. Suggested revisions:

D. Off-Street Parking and Loading.

1. ~~No off street parking and loading shall be required for non-residential uses.~~ **Off-street parking and loading shall not be required.**
2. ~~A minimum of two parking spaces per unit is required for residential uses, except that apartment units in conjunction with commercial uses are required to have a minimum of one parking space per apartment unit.~~
3. When parking is provided, the parking shall conform to the standards of Chapter 9, Off-Street Parking and Loading, of this code. When conflicts exist between this section and Chapter 9, Off-Street Parking and Loading, of this code, this section shall apply.

11. Section 3.140 Mixed Office/Housing District (MO/H) – Given the location of the zone, the zone appears designed to allow greater residential development in support of the downtown with less intensive commercial

uses. This is appropriate and likely reflects the development pattern within the area.

- a. Section 3.142.C – “Personal service” applies to such business as a barbershop. It may be helpful to provide a definition or examples. Suggested language:

- C. Personal service **uses, such as barber shops or salons**, a maximum gross floor area of 2,000 square feet and provided in conjunction with residential development. The maximum square footage shall be considered a use limitation.

- P. Property line adjustments, partitioning and the subdividing or property pursuant to provisions in Chapter 7.**

- b. Section 3.142.F – Consistent with previous changes, revise housing allowances within the zone:

- F. Attached **or zero lot-line single family homes**, duplex, and triplex dwellings ~~either on the same lot or on separate lots.~~

- c. Section 3.142.H – Like the downtown, apartments in conjunction with a commercial use is a rare situation and difficult to enforce. Simply allowing apartments is a suitable alternative.

- ~~H. Apartment units in conjunction with a commercial use.~~  
**Dwelling units located above the first floor of a commercial building.**

- d. Section 3.142.L – Where single family homes are allowed – regardless of being attached or detached – residential homes must be permitted. Language change:

- L. Residential **homes and** facilities.

## 12. 3.150 Industrial Park (IP)

- a. Section 3.152 – Since all activity occurs indoors, there does not appear to be any reason to restrict manufacturing activities (see also change to Section 3.153.H). Suggested revisions:

- C. Assembly **or limited manufacturing uses** ~~of electrical appliances, electronic instruments and devices, computer components and peripherals, and personal communication service devices.~~

J. Property line adjustments, partitioning and the subdividing or property pursuant to provisions in Chapter 7.

b. Section 3.153.H – Assembly of electronic instruments is permitted but it appears other assembly type businesses require a conditional use. The Commission may want to consider whether this segregation is necessary, especially as all assembly must be conducted wholly within a building. **This section could be eliminated.**

c. Section 3.154.A.2 – The maximum lot coverage leaves a lot of space “on the table”. Increasing it to 60% still provides sufficient amounts of open space to maintain a “park” like development. Suggested change:

2. Maximum lot coverage: ~~50~~60% of the site.

d. Section 3.154.D – By creating one 50-acre lot from a larger parcel, an owner is subsequently allowed re-divide it into smaller parcels, negating the potential to maintain a large parcel. The only exception is for enormously large parcels that might yield more than one 50-acre parcel. The restrictions were likely designed as a method of maintaining larger industrial parcels. The Commission may wish to examine whether this is still necessary or whether existing provisions in the Comprehensive Plan require this to occur.

If neither situation applies, it is suggested to lift the restriction and allow the marketplace to determine appropriate sized parcels. There is a trade-off: Troutdale may not land the large employer; conversely, having a multitude of smaller businesses likely improves economic stability.

D. Lot Area. **There shall be no minimum lot size in the Industrial Park zone. Delete all remaining language.**

13. 3.162 Light Industrial (LI)

a. Section 3.162.A – This section restricts activities involving toxic or hazardous materials. How this is determined (and defined) would be appropriate. Suggested revisions:

3.162 Permitted Uses. The following uses and their accessory uses are permitted in the LI district:

A. Secondary manufacturing, except any use having the primary function of storing, utilizing, or manufacturing

toxic or hazardous materials as defined by the Department of Environmental Quality.

Q. Property line adjustments, partitioning and the subdividing or property pursuant to provisions in Chapter 7.

b. Section 3.162.B – While the restriction is understandable, the Commission may want staff assurance a process is in place to prevent these types of firms from opening. However, there is one concern: bread, wine and beer production are effectively prohibited as they involve yeast . . . . Proposed revisions:

B. Processing facilities, except any principal use involving the rendering of fats, the slaughtering of fish or meat, or the fermenting of foods such as sauerkraut, vinegar, or yeast. This limitation shall not apply to the processing or manufacturing of beer, wine, bread, jam, and similar items.

c. Section 3.162.J – This section allows a caretaker dwelling. The type of dwelling may need to be defined and at a minimum the dwelling should be associated with an existing use. Suggested language:

J. One caretaker residence in conjunction with an existing industrial use. The dwelling shall be limited to a mobile or manufactured home.

d. Section 3.164.C – This section involves land divisions. Comments and suggested revisions are similar to Section 3.154.D., i.e, no minimum lot size.

14. 3.170 General Industrial (GI)

a. Section 3.172.A and B – These two items should be reversed and “secondary” manufacturing included along with primary manufacturing - at least for clarity. Also add provisions for land divisions:

K. Property line adjustments, partitioning and the subdividing or property pursuant to provisions in Chapter 7.

b. Section 3.174.C – This section involves land divisions. Comments and suggested revisions are similar to Section 3.154.D., i.e, no minimum lot size.

15. 3.180 Open Space (OS)

- a. Section 3.184.D and E – Parks and playgrounds often include ball fields and tennis courts. The Commission may wish to consider moving these two items to Section 3.183. Required revisions:

3.183 Permitted Uses. The following uses and their accessory uses are permitted in the OS district:

- A. Parks or playgrounds, **including ancillary tennis courts and ball fields.**

3.184 Conditional Uses. The following uses and their accessory uses are permitted as conditional uses in the OS district:

A. Boat ramps.

B. Swimming facilities.

C. Community gardens.

~~D. Ball fields.~~

~~E. Tennis courts.~~

~~F~~D. Community service uses.

~~G~~E. Utility facilities, major.

~~H~~F. Other uses similar in nature to those listed above.  
[Adopted by Ord. 550, ef. 9/25/90; Amended by Ord. 716, ef. 5/9/02]

- E. Chapter 4 Zoning District Overlays. As a general comment, the page numbering system in the Chapter for Sections 4.200 and 4.300 will need to be corrected to conform to the rest of the Chapter.

1. 4.000 Aggregate Resource (AR)

- a. Section 4.011 – This Section is probably unnecessary as the Comprehensive Plan justifies the need. **Eliminate Section 4.011, renumbering remaining Sections accordingly.**
- b. Section 4.012 and Section 4.013 – These sections are somewhat confusing. Section 4.012 lists permitted activities in the AR overlay;

however, Section 4.013 list approval criteria. The inference is the criteria are needed to establish the AR overlay zone on specific properties, but this is not clear. If this is the case, then the criteria are actually part of a Type IV review process. Note, there is nothing wrong with the criteria; it is a matter of clarifying when they are applied. Suggested revisions:

4.013 Approval Criteria. ~~The~~ **When establishing the Aggregate Resource Overlay Zone in individual properties, the Planning Commission shall proceed with a Type IV application and shall find that:**

2. 4.200 Historic Landmark Protection – Overall, the material is consistent with other historic preservation ordinances. A few points for the Commission to consider before proceeding with any changes:
  - The definitions in this section should also be located in Chapter 2, similar to the airport and flood related definitions.
  - Section 4.210 identifies a Historical Landmarks Commission that has enforcement authority. This should be clarified as to the extent of this authority.
  - Section 4.240, the Landmarks Commission has the authority to review historic land use applications - is this a group separate from the Commission? This should be clarified.

Possible amendments will depend on how the Commission responds to these matters.

3. 4.300 Vegetation Corridor and Slope District (VECO)
  - a. Section 4.313,A – This section identifies an “Administrative Review” to process permits within the district. To clarify the review type the following revision is suggested:

4.313 Approval Procedures. Permits are required for all uses within this district:

    - A. Administrative Review. A **Type I** site development application shall be obtained for uses listed in subsection 4.312(A) of this chapter not requiring a building, plumbing, electrical, or right-of-way permit.
  - b. Section 4.314.B.1 – The section requires a report from a professional. It may be appropriate to identify what type of

professional is acceptable to the City to avoid unnecessary delays and expense. Suggested revision:

- B. A hydrology, geology, and soils report of the site in accordance with the following:
  - 1. Prepared by a **qualified**, licensed professional, **such as a geotechnical engineer**, and certified by the same.
  
- 4. 4.400 Congregate Housing – This overlay zone is somewhat confusing as to purpose. A variety of congregate care facilities are specifically identified within various zones in Chapter 3 and some of the requirements (Section 4.415) may be in conflict with State regulations. **For these reasons, it is suggested this Section be eliminated.**
  
- 5. 4.500 Planned Development – A “planned development” is generally a set of regulations to encourage creative development and which may also include a land division component. As an overlay zone, establishment of its use requires a Type IV application and review to create the zone. Based on provisions in this section, four public hearings are required to approve a planned development. This process effectively creates expensive time barriers to achieving “variety and creativity in the development pattern of the community” It is strongly recommended the Commission process this type of development as a Type III application and place the design and process requirements in Chapter 5.
  - a. Section 4.513.B – This section allows the Commission to consider the application of a planned development on parcels containing less than 4-acres. How this is determined, and under what criteria, is not identified. Effectively, an applicant can spend the time and money to apply for a 3-acre planned development only to be rejected by the Commission based on size. To be fair with the applicant of a small parcel, a separate hearing or review should be held before a planned development submittal is made. Alternatively, stick to a minimum acreage or eliminate the minimum requirement entirely.
  
  - B. Minimum Site Size. A Planned Development shall be established on a parcel of land that is suitable for the proposed development, and shall not be established on less than **four two** acres of contiguous land, ~~unless the Planning Commission finds that property of less than four acres is suitable as a Planned Development by virtue of its unique character, topography, or landscaping features, or by virtue of its qualifying as an isolated problem area as determined~~

by the Planning Commission. [Adopted by Ord. 550, ef. 9/25/90; Amended by Ord. 716, ef. 5/9/02]

- b. Section 4.515 – As noted previously, it is recommended this be treated as a design option under Chapter 5 and processed as a Type III application.

4.515 Procedure. An application for a Planned Development shall be a Type ~~IV~~ III quasi-judicial procedure. [Adopted by Ord. 550, ef. 9/25/90]

- c. Section 4.516 – If this is to be processed as a Type III application, then pursuant to provisions in ORS 197, references to the Comprehensive Plan need to be eliminated. Suggested revisions:

4.516 Approval Criteria. An application may be approved, approved with conditions, or denied based upon substantial conformance with the following criteria:

- A. The proposed development ~~complies with the Comprehensive Land Use Plan~~ and is compatible with the surrounding area or its proposed future use.

- d. Section 4.517 – This section outlines the review process. If this is changed to a Type III action, the Commission, as part of their consideration of the “tentative” plan, could then determine whether the review of the “general” plan requires a Type I, II or III process. This recognizes smaller projects may not require a public hearing to consider the final development details. These revisions should help streamline the process while still allowing for public input. Suggested revisions:

4.517 Planned Development Process Outline.

- A. Pre-Application Conference.
- B. Submittal of Tentative Plan.
  - 1. Tentative plan sketch.
  - 2. Program narrative.
  - 3. Supplemental data.
  - 4. Payment of fees.

5. Submission of property ownership list.
- C. Acceptance of application or return for completion of supplemental data.
  - D. Review of tentative plan by Director, staff, and affected agencies.
  - E. Referral to Planning Commission with staff recommendations.
  - F. Recommended approval, approval with conditions, or denial by Planning Commission at a scheduled public hearing. **If approved determine appropriate review Type (I, II or III) for the general plan.**
  - ~~G. Submission of tentative plan and program to City Council with recommended action.~~
  - HG.** Submission of general plan and program. Review by staff to check for compliance with tentative plan approval and any conditions required.
  - IH.** **Proceed with appropriate level of review as determined by the Planning Commission in item "F."** ~~Referral to Planning Commission with staff recommendations.~~
  - JI.** **Approve or approve with conditions consistent with review level.** ~~Recommended approval, or approval with modifications/conditions, by the Planning Commission at a scheduled public hearing.~~
  - ~~K. Submission of general plan and program to City Council for action.~~
  - LJ.** Submission of final plan and program to the Planning Division for review of compliance with approved general plan.
  - MK.** Subdivision of property and dedication of streets, if necessary.
  - NL.** Recordation of public site dedications and development rights prior to issuance of any building permits. [Adopted by Ord. 550, ef. 9/25/90]

- e. Section 4.519 – If processed as a Type III, the Comprehensive Plan cannot be used as part of the decision criteria.
    - 11. Applicant's statement of how the proposed Planned Development complies with the applicable **code requirements** ~~Comprehensive Land Use Plan~~ policies.
  - f. If processed as a Type III application, Section 4.521.E **can be eliminated in its entirety.**
6. 4.700 Town Center – If the Commission agrees with changes regarding detached and attached single family homes, and multi-family development, appropriate and corresponding changes will need to be made to this overlay zone. *This will be more of a housekeeping measure to ensure consistency.*
7. 4.800 Limited Use Overlay Zone – The previous memorandum suggested the Commission may also wish to consider the addition of a “Limited Use Overlay Zone”. This type of overlay allows zone changes for specific uses but restricts other uses in the new zone by requiring conditional use approval for their establishment. For example, a General Commercial zone change may be appropriate to establish a new grocery store. However, other uses allowed in the zone (service stations) may not be compatible with the residential development pattern. Establishing the service station would then require a conditional use. Suggested language:

#### 4.800 Limited Use Overlay Zone (LU-OZ)

##### A. Purpose

The Limited Use Overlay Zone may only be applied when a zoning map amendment is requested by an applicant. The purpose of the Limited Use Overlay Zone is to reduce the list of permitted uses in a land use zone to those that are suitable for a particular location. Land use zones permit a number of uses that may be considered compatible in terms of the type and intensity of activity on adjacent properties. However, on a particular property certain permitted uses may conflict with adjacent land uses. Rather than deny appropriate permitted uses because the proposed land use zone would permit an objectionable use, the Limited Use Overlay can be used to identify the appropriate uses and require a conditional use permit for other uses normally permitted in the zone. It is the intent that the maximum number of acceptable uses be permitted so that the use of the property is not unnecessarily limited.

B. Requirements

When the Limited Use Overlay Zone is applied, the uses permitted in the underlying land use zone shall be limited to those permitted uses specifically referenced in the ordinance adopting the Limited Use Overlay Zone. Until the Overlay Zone has been removed or amended, the only permitted uses in the zone shall be those specifically referenced in the adopting ordinance. Uses that would otherwise be permitted may only be allowed if a Conditional Use permit is approved.

C. Procedures

1. The Limited Use Overlay Zone is applied at the time the underlying zone is being changed.
2. Notice of a Zoning map amendment shall include a statement that the Planning Commission may impose a LU-OZ as a condition of zone amendment.

D. Criteria

The ordinance adopting the overlay zone shall include findings showing that:

1. No zone has a list of permitted uses where all uses would be appropriate.
2. The proposed zone is the best suited to accommodate the desired uses.
3. It is necessary to limit the uses permitted in the proposed zone.
4. The maximum number of acceptable uses in the zone have been identified and will be permitted.

E. Adoption

The ordinance adopting the overlay zone shall by section reference, or by name, identify those permitted uses in the zone that will remain permitted uses. A permitted use description may be segmented to require a conditional use for distinct uses that may not be compatible.

F. Official Zoning Map

The official Zoning Map shall be amended to show an "-(LU-OZ)" suffix on any parcel where the Limited Use Overlay Zone has been applied.

G. Development Provisions

Development of property located within the LU-OZ shall comply with all applicable procedures or development requirements contained in this Development Code. Compliance with these provisions is not waived, altered or otherwise modified by the LU-OZ designation.

F. Chapter 5 Other Issues and Procedures.

1. 5.000 Other Permit and Determination Issues

- a. Section 5.010.A – As the uniform building code changes, so does the requirements for when a permit is required. For this reason, it is suggested the UBC simply be referenced instead of repeating the minimum standards. Otherwise, the Development Code must be amended every time the UBC is revised. Suggested language:
  - A. Building Permit – When Required. ~~A building permit is required for any accessory structure over 200 square feet in floor area or over ten feet in height as the term "height" is defined in the Building Code.~~ **The need for a building permit will be subject to the requirements of the adopted Uniform Building Code.** The building permit application will be evaluated for compliance with the regulatory requirements of this section.
- b. Section 5.010.B – If a building permit is not required the Code still requires a development permit. This section leaves to question how they are processed. It is suggested that unless a building permit is required, the City not be involved with issuing a "development permits". **It is recommended this Section be eliminated with the remaining sections renumbered accordingly.**
- c. Section 5.020.A – This section seems to allow reductions in setbacks without a variance, which is contrary to Code requirements. It is also likely time-consuming to investigate and enforce. **For this reason it is recommended this provision be**

**eliminated with the remaining sections renumbered accordingly.**

- d. Section 5.020.B.1 – Certain encroachments are allowed into a yard setback. It is recommended the setback be identified as the “required” setback established by Code.
  - 1. Architectural appendages including, but not limited to, bay windows, planters, awnings, eaves, or other similar features may project into **required** front and rear yard setbacks no more than five feet, and into side yard setbacks no more than 2½ feet. Architectural appendages may project no more than 18 inches into inactive easements along side and rear property lines, provided required building setbacks standards are met, or a variance to the setback standard has been approved. In no case shall any architectural appendage encroach on an active easement of record. An active easement is an easement containing one or more public utilities. An inactive easement contains no public utilities within it.
  
- e. Section 5.050.A – The Commission may wish to consider limitation on fencing materials. This is not critical but will avoid a witnessed situation whereby someone welded together abandoned car hoods to form a fence. Proposed new Subsection:
  - 7. **Material. Fences shall be constructed of wood, brick, masonry cement, chain link, plastic, wrought-iron or similar residential-type materials. The use of barbed wire, electric fences, sheet metal or other non-residential materials shall be prohibited.**
  
- f. Section 5.060 – This section requires reviews or development permits for decks. The type or level of review should be clarified to ensure consistency. Suggested language:
  - A. **Decks not high enough to require a building permit but at least 24 inches in height** require a **Type I** development permit to ensure that no encroachment onto easements of record, violation of required setbacks, or violation of other provisions of this code occur.
  
- g. Section 5.080 – The Commission may wish to consider to what extent they wish to allow agricultural uses in the City. It is one thing to raise a few chickens but quite another to have a feedlot. While a Type I review there are no decision criteria. **Experience indicates**

**the desire to keep farm animals in urban areas fluctuates. For this reason, is recommended this be eliminated and established as part of the municipal code to allow for greater flexibility. The remaining sections will be renumbered accordingly.**

- h. Section 5.090 – The section requires an application for street side sales but does not identify the process (or Type). Further, denials of a permit are appealed according to other Municipal Code provisions. **For this reason, is recommended this be eliminated and established as part of the municipal code to allow for greater flexibility. The remaining sections will be renumbered accordingly.**

2. 5.100 Home Occupations

- a. Section 5.130B – This section prohibits customer contact at the home. This may be overly restrictive for such common home occupations as photographers and dress-makers. Limited contact by appointment only, with no more than one client at a time, would appear reasonable. Suggested language:
  - B. Customer and client contact shall be primarily by telephone, mail, or in their homes and places of business **or by appointment at the premises of the home occupation**, ~~and not on the premises of the home occupation.~~ No **retail** sale of merchandise shall be made on the premises.
- b. Sections 5.170, 5.180, 5.190 – These provisions refer to residential homes and facilities, and as such, operations is governed by state law. State provisions require wherever single family homes are allowed, a community must allow residential homes; residential facilities must be allowed wherever multifamily homes are permitted. The Planning Commission has no authority to require a conditional use application, unless a residential facility is being placed in a residential zone that only allows single family homes. **These three sections should therefore be eliminated.**

3. 5.300 Nonconforming Use

- a. Section 5.310 - The expansion of a nonconforming use requires a Type III hearing before the Commission. The expansion limits seem relatively minor so that a Type I or Type II process should be sufficient. Further expansion may be reasonable so that a Type application would be more appropriate than a zone change. Suggested revisions:

5.310 Expansion of a Nonconforming Use. A nonconforming use may be expanded by up to 20% in floor area of each structure or, in those cases not involving structures, up to ten percent in land area, provided the Planning Director approves ~~Planning Commission~~ ~~approves the expansion pursuant to a Type III I~~ procedure. Expansion of a use beyond either of these limitations shall require **Planning Commission approval pursuant to a Type III application** a zoning map amendment or zoning district text amendment that ~~permits the use~~. The provisions of this section shall not apply within any overlay district which specifically prohibits the expansion of a nonconforming use. In approving a nonconforming use expansion, the **Planning Director and** Planning Commission may attach reasonable conditions, restrictions, or safeguards to mitigate potential adverse impacts which may result by reason of the approved nonconforming use expansion. [Adopted by Ord. 705, ef. 5/10/01]

- b. Sections 5.320 and 5.325 – When nonconforming uses are damaged beyond repair it is common to require the use be eliminated and replaced with a conforming use or activity. The most common situation is a single family home located in a commercial or industrial zone.

However, the reality is most nonconforming uses remain functional, and current regulations may wind up penalizing a conscientious owner. Using the above example (and given current rules) an owner may not be able to sell a nonconforming single family home, as no bank will provide a loan to a potential buyer unless the home can be replaced if destroyed. As a result, there is no incentive for an owner to maintain the property, resulting in deteriorated and unsafe housing conditions.

As an alternative, the Commission may wish to consider allowing replacement of a nonconforming use provided a building permit is obtained within one year of the uses' destruction. Suggested language:

5.320 Reconstruction of a Damaged Nonconforming Use. A nonconforming use, or a structure containing a nonconforming use, that has been damaged by any cause may be reconstructed provided **a building permit to reconstruct the structure is obtained within one year of the destruction and further the reconstruction is completed within one year of commencing construction** ~~if the reconstruction costs are less than 75% of the real market value as indicated by the records of the County Assessor. Reconstruction costs~~

~~shall be based on the cost to restore the use or structure to meet current building code and development code standards, not simply the cost to reconstruct the use or structure to the condition it existed in prior to it being damaged. Reconstruction is subject to review under a Type II procedure. Reconstruction shall begin within 12 months of the date the damage was done and shall be completed within 12 months of the date the reconstruction began. If reconstruction does not occur within these timeframes, the nonconforming use shall be considered terminated and shall not be reestablished. [Adopted by Ord. 705, ef. 5/10/01]~~

~~5.325 Destruction of a Nonconforming Use. When a nonconforming use, or a structure containing a nonconforming use, is damaged by any cause to an extent the reconstruction costs would equal or exceed 75% of the real market value as indicated by the records of the County Assessor, the nonconforming use or structure containing the nonconforming use shall be considered terminated and shall not be reestablished. Reconstruction costs shall be based on the cost to restore the use or structure to meet current building code and development code standards, not simply the cost to restore the use or structure to the condition it existed in prior to it being destroyed. [Adopted by Ord. 705, ef. 5/10/01]~~

- c. Section 5.335 – The Commission may wish to consider nonconforming expansion as a Type I action instead of requiring a public hearing. Opposition to a request could always be heard by the Commission on appeal.

5.335 Expansion of a Nonconforming Structure or Development. A structure conforming as to use but nonconforming as to height, setback, or similar dimensional standards, or development of property conforming as to use, but nonconforming as to parking, landscaping, architectural features, or similar standards, may be expanded provided the expansion does not increase the degree of nonconformity. A land use permit not otherwise required by this code is not required to expand a nonconforming structure or development if the expansion does not increase the degree of nonconformity. Expansion of a nonconforming structure or development which increases the degree of nonconformity is prohibited unless **approved through a Type I application procedure** the Planning Commission approves the expansion pursuant to a Type III procedure. In approving

the expansion of a nonconforming structure or development, the **Planning Director** ~~Planning Commission~~ may attach reasonable conditions, restrictions, or safeguards to mitigate potential adverse impacts which may result by reason of the approved nonconforming structure or development. [Adopted by Ord. 705, ef. 5/10/01]

- d. Sections 5.345 and 5.350 – Comments as per Section 5.320 and 5.325.
4. 5.400 Concept Development Plan and Specific Site Plan Requirements for MPMU Designations
- a. Section 5.410 – There is no definition of an “MPMU”. There is confusion as to what the letters represent, how this really differs from a planned development and why there is a need for a Type IV review. Some clarification would be appropriate.
  - b. Section 5.420.A – This section introduces a Citizens Advisory Committee. Without understanding the purpose of the MPMU, this appears to be an additional review layer with no particular benefit or significant role different from that of the Commission.

All subsequent sections address the application process, which is very similar to the planned development requirements. This calls into question as to whether a separate category is necessary. **Unless there is a critical need to maintain the undefined MPMU, it is suggested this Section be eliminated in its entirety.**

5. 5.500 Bed and Breakfast Inn – The Commission may wish to consider prohibition on wedding receptions and limitations on food (breakfast only and associated snacks). Anyone can have a wedding reception at their residence, but a B&B has the potential to hold a reception on a weekly basis. Suggested language:
- L. **Food service shall be limited to breakfast and snacks; the serving of lunch or dinner shall be prohibited.**
  - M. **The use of a bed and breakfast facility, not located in a commercial zone, for public events, wedding receptions and similar activities shall be prohibited.**
6. 5.600 Erosion Control and Water Quality Standards – It is suggested that the purpose and intent of this section can best be enforced through public works standards separate from the land use code. Public works

standards can be continually updated to meet changing needs and do not require the three to six months needed to process a Development Code amendment. At a minimum this section can reference the public works standards and require conformity to those standards. Otherwise, the technical aspects are best left to the appropriate department. **Therefore, it is recommended this Section be eliminated and incorporated into existing public works design and construction standards.**

7. 5.900 Manufactured Home Parks – Normally, the individual zone will determine whether a park is allowed. However, Section 5.920 does make it easier to reference. Otherwise, the regulations appear consistent with most jurisdictions.
8. 5.1000 Accessory Residential Units
  - a. Section 5.1030.A – The regulations are very restrictive regarding where these may be located, effectively eliminating pre-July 27, 2000 property not established as a subdivision. There may have been an historical reason for this, but the Commission may wish to consider allowing the use in all residential zones, regardless of when the parcel was created. Suggested changes:

5.1030 Standards for Accessory Residential Units. Accessory residential units shall comply with the following standards:

    - A. An accessory residential unit shall only be allowed in conjunction with a detached single-family dwelling with a gross floor area of at least 1,800 square feet ~~on a lot within a subdivision recorded after July 27, 2000.~~
9. 5.1100 Public Improvements – The Commission may wish to consider this a “catch-all” section for public improvement requirements regarding erosion control, water quality, storm water, sanitary sewer and water. Again, reference to public works standards is all that is required. Otherwise, the dollar amount should be excluded as it does not indicate how determined (or verified) and may exclude projects that do require public scrutiny. Suggested language:

5.1120 Applicability. These standards apply to any land division ~~or development~~ requiring public improvements and any other development requiring public improvements valued at \$10,000 or more.
10. **As previously noted, place standards for manufactured homes on individual lots within a new Section 5.120.**

### III. SUMMARY

Most of the proposed changes are relatively minor. The biggest revision concerns new definitions housing and applying the housing types to the appropriate zones. You will also note the number of revisions that reduced procedural complexity. For example, instead of the Planning Commission reviewing minor expansions of nonconforming uses, this would now be reviewed at the staff level as a Type I application.

It is important to note however, that these are basic “bare-bones” suggestions. Altering one section often affects others sections in ways that are not readily apparent. This will require continual refinement of the document. For example, housing types and zones will likely need further refinement to ensure consistency and avoid conflicts. It was also suggested materials be cross-referenced to assist the public and staff; this can only be done when the document is in near final form. At this juncture, the Planning Commission provides guidance on the direction, philosophy and general content of the Code - the full flavor of the changes will become apparent only with a final, revised document.