14.01.001 PURPOSE

The several purposes of this ordinance are: To implement the Comprehensive Plan; to encourage the most appropriate use of the land; to conserve and stabilize the value of property; to aid in the rendering of fire and police protection; to provide adequate open spaces for light and air; to lessen the congestion on streets; to allow for orderly growth in the city; to prevent undue concentration of population; to facilitate adequate provisions for community utilities and facilities such as water, sewerage, electrical distribution systems, transportation, schools, parks, and other public requirements; and, in general, to promote public health, safety, convenience, and general welfare. The standards and conditions contained herein have been reviewed and deemed consistent with Comprehensive Plan policies.*

14.01.010 DEFINITIONS

As used in this ordinance, the masculine includes the feminine and neuter, and the singular includes the plural. The following words and phrases, unless the context otherwise requires, shall mean:

Accessory Structure or Use.** A structure or use incidental and subordinate to the primary use of the property and which is located on the same lot or parcel as the primary use or is on a contiguous lot or parcel under the same ownership. Where an accessory building is attached to the main building in a substantial manner, as by a wall or roof, such accessory building shall be considered part of the main building.

Adult Recreation Facility. A facility or that portion of a facility that may have any uses allowed in family recreation facilities. In addition, card rooms, taverns, and bars are also adult recreation facilities. Social gambling, as defined by Oregon law and city ordinance, may occur. Alcoholic beverages may be sold and consumed.

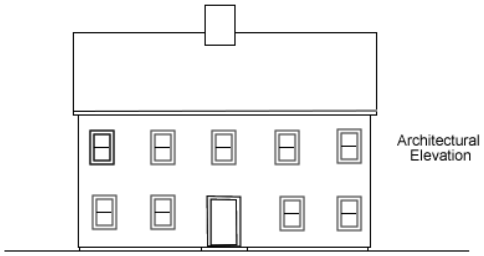
Alley. A narrow street 25 feet or less through a block primarily for vehicular service access to the back or side of properties otherwise abutting on another street. Frontage on said alley shall not be construed as satisfying the requirements of this Ordinance related to frontage on a dedicated street.

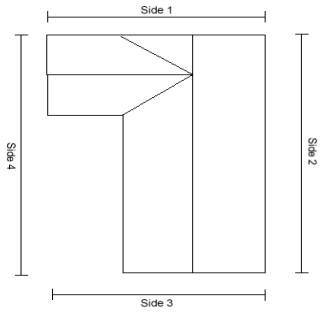
Apartment House. A residential structure having multiple residential living units where more than 50 percent of the units are rented for not less than 30 days at a time.

Applicant. A person who applies for a land use action or building permit. An applicant can be the owner of the property or someone who is representing the owner, such as a builder, developer, optional purchaser, consultant, or architect.

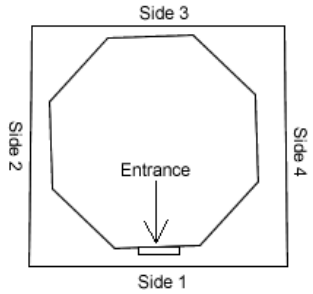
Architectural Elevation.*** A scale drawing of the four sides of a building, one each for the front, two sides and rear, from grade to the highest point of the building. The four sides shall show the entire perimeter of the building and shall be centered on each side. The four sides shall be at 90 degrees to each adjacent side.

(Last sentence added by Ordinance No. 1622 (10-7-91).*
***Definition amended by Ordinance No. 2011 (2-18-11).*
**** Definition added by Ordinance No. 1839 (10-1-01).)*





For a building with many sides or a non-rectangular shape, a rectangle shall be drawn around the outside of the building. Side 1 shall be centered on the entry to the building and each of the other three sides shall be 90 degrees to the adjacent side. Architectural elevations for use in the building height calculation shall be drawn for each side of the rectangle.



Assisted Living Facility.* A facility licensed by or under the authority of the Department of Human Resources (DHR) per Oregon Administrative Rule 411-56-000, which provides or coordinates a range of services for elderly and disabled persons in a home-like environment. An assisted living facility is required to provide each resident with a separate living unit with a lockable door to guarantee their privacy, dignity, and independence.

Automobile Service Station. A building or portion thereof and land used for dispensing automobile fuel, oil, and accessories. Automobile repairs may be made that do not produce an unreasonable or excessive amount of dust, odor, smoke, fumes, or noise. When the dispensing sale or offering for sale of motor fuels or oil is incidental to the conduct of a public garage, the premises shall be classified as a public garage.

Bed and Breakfast Facility.** A single-family dwelling or part thereof, where traveler's accommodations and breakfast are provided for a fee on a daily or weekly room rental basis, not to exceed 30 consecutive days.

(Definition added by Ordinance No. 1790 (7-6-98).*
*** Definition added by Ordinance No. 1447 (12-16-85); amended by Ordinance No. 1597 (4-15-91).)*

Boarding, Lodging, or Rooming House.* A building or portion thereof containing a single dwelling unit where a group of four or more unrelated persons may live but not more than 20 unrelated persons. A boarding, lodging, or rooming house may be occupied and managed by a family in addition to the four to twenty unrelated persons. Where such a facility has a majority of the residents residing for 30 days or longer, it shall be considered a residential use and a boarding house. If the majority of such occupancy is for less than 30 continuous days, the facility shall be considered transient and the same as a hostel. Where such a facility is occupied by more

than 20 unrelated persons, or where such a facility has more than one kitchen, it shall be considered a hotel or motel.

Building. A structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

Child Care Facility.** A day care provider who regularly provides day care to 12 or fewer children under the age of 13 in the provider's home in the family living quarters.

(Definition amended by Ordinance No. 1447 (12-16-85).*
*** Definition amended by Ordinance No. 1622 (10-7-91).)*

City. The City of Newport, Oregon.

Commission. The City Planning Commission of the City of Newport, Oregon.

Conditional Use. A use that may be permitted depending upon the individual circumstances. A conditional use permit will not be issued or shall be so conditioned so that neither the public nor neighboring property owners are unduly affected in an adverse way.

Condominiums. A form of ownership where buildings are subdivided into individual units such that each owner only owns his own unit and the air space occupied by it. The portion of land upon which the building is situated, the surrounding grounds, party walls, corridors, and services other than those within independent units (such as electrical, water, gas, sewer, etc.) become joint responsibilities of all the owners as tenants in common.

Court. An open, unoccupied space on the same lot with the building or buildings and which is bounded on two or more sides by such building or buildings. An open, unoccupied space bounded by one "L" shaped building, which is not a court but a yard.

Court Apartments. Multiple dwellings arranged around two or three sides of a court opening upon a street.

Day Care Facility.* Any facility that provides care, supervision, and guidance on a regular basis to more than 12 children under the age of 13 unaccompanied by a parent, guardian, or custodian during a part of the 24 hours of the day in a place other than the child's home, with or without compensation. A day care facility does not include any of the following:

A. A facility providing care that is primarily educational, unless provided to a preschool child for more than four (4) hours a day. Such facilities shall be considered a school.

B. A facility providing care that is primarily supervised training in a specific subject, including but not limited to dancing, drama, music, or religion. Such facilities shall be considered the same as a school.

C. A facility providing care that is primarily an incident of group athletic or social activities sponsored by or under the supervision of an organized club or hobby group.

D. A facility operated by a school district, political subdivision of the State of Oregon, Lincoln County, the City of Newport, or another governmental agency.

E. Day care facilities are subject to (1) the rules and regulations established by the State of Oregon Children's Services Division and (2) the following:

1. Compliance with the requirements of Section 14.29.005.

2. The provision of off-street parking at one (1) space per staff member.

3. A solid fence or hedge at least six (6) feet in height around the rear yard.

Dwelling, Duplex; or Dwelling, Two-Family. A detached building containing two dwelling units.

Dwelling, Triplex; or Dwelling, Three-Family. A detached building containing three dwelling units.

Dwelling, Fourplex; or Dwelling, Four-Family. A detached building containing four dwelling units.

Dwelling, Multi-Family. A building containing five or more dwelling units.

Dwelling, Single-Family. A detached building containing one dwelling unit.

(Entire section amended by Ordinance No. 1416 (1-7-85); entire section again amended by Ordinance No. 1622 (10-7-91).)*

Dwelling Unit. One or more rooms designed for occupancy by one family and not having more than one cooking facility.

Family.* An individual or two or more persons related by blood, marriage, adoption, or legal guardianship, or not more than five persons not related by blood, marriage, or adoption living together in a dwelling unit. A family is also five or fewer physically or mentally handicapped persons living as a single housekeeping unit in a dwelling.

Family Recreation Facility. A facility designed for active indoor recreation, including a billiard parlor, dance hall, bowling alley, skating rink, teen club or youth center, arcade, indoor swimming pool, indoor tennis court, miniature golf course, and similar uses. No alcoholic beverages may be consumed or sold, nor may gambling occur in a family recreation facility. A supervisory employee must be present at all times, and public restrooms must be provided.

Garage, Private. An accessory building detached or part of the main building including a carport which is intended for and used for storing the privately owned motor vehicles, boats, and trailers of the persons resident upon the premises and in which no business, service, or industry related to motor vehicles is carried on.

Garage, Public. A "public or commercial garage" is a building or part of a building or space used for business or commercial purposes used principally for the repair, equipping, and care of motor vehicles and where such vehicles may be parked or stored.

Geologic Hazards.** A geologic condition that is a potential danger to life and property which includes but is not limited to earthquakes, landslides, erosion, expansive soils, fault displacement, and subsidence.

Grade. The average of the finished exterior ground level at the corners of each architectural elevation of the building. In case an architectural elevation is parallel to and within five feet of a sidewalk or on top of a retaining structure, the grade for that one architectural elevation shall be measured at the sidewalk or base of the retaining structure.

Height of Building. The vertical distance from the "grade" to the highest point of the roof.

Home Occupation.*** An accessory use of a dwelling unit for gainful employment involving provision or sale of goods and/or services and the creation of handicrafts and artwork and is incidental to the primary use of the building or residence.

(Entire definition amended by Ordinance No. 1622 (10-7-91).*
*** Definition added by Ordinance No. 2017 (8-17-2011).*
*****Definition amended by Ordinance No. 1627 (1-21-92).)*

Hospital. An establishment which provides sleeping and eating facilities to persons receiving medical, obstetrical, or surgical care and nursing service on a continuous basis.

Hostel.* A single building containing a single dwelling unit where four or more (but not more than 20) unrelated individuals may live for not more than 30 continuous days. A hostel may be occupied and managed by a family in addition to the 4-20 persons renting facilities. If there are more than 20 persons at maximum occupancy, such a facility shall be considered a hotel or motel for the purposes of this Ordinance except for parking requirements. Hostels shall meet the requirements of the Uniform Building Code for maximum occupancy.

Hotel. A building in which lodging is provided for guests for compensation and contains a common entrance and where lodging rooms do not have an entrance opening directly to the outdoors (except for emergencies), with or without cooking facilities, and where more than 50 percent of the lodging rooms are for rent to transient guests for a continuous period of less than 30 days.

Junk Yard. Any property used by a business that deals in buying and selling old motor vehicles, old motor vehicle parts, abandoned automobiles, or machinery or parts thereof, or appliances or parts thereof, or iron, paper, or waste of discarded material.

Kennel. A lot or building in which four or more dogs, cats, or animals at least four months of age are kept. Any building containing more than one dwelling unit shall be considered a lot or building for the purposes of this item.

Land Use Action. The procedure by which the City of Newport makes a land use decision.

Land Use Decision.** A final decision or determination that concerns the adoption, amendment, or application of Statewide Planning Goals, a comprehensive plan provision, a land use regulation, or a new land use regulation, as defined in ORS 197.015.

(Definition added by Ordinance No. 1447 (12-16-85).*
*** Definition added by Ordinance No. 1622 (10-7-91).)*

Laundromat.* An establishment providing washing, drying, or

dry cleaning machines on the premises for rental use to the general public for family laundering or dry cleaning purposes.

(Definition amended by Ordinance No. 1356 (1-3-84).)*

Loading Space. An off-street space within a building or on the same lot with a building for the temporary parking of a commercial vehicle or truck while loading or unloading

Lot. A parcel or tract of land which is occupied or may be occupied by a structure or a use, together with yards and other open space.

Lot Area. The total horizontal area within the lot lines of a lot.

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

Lot, Corner, Reversed. A corner lot, the side street line of which is substantially a continuation of the front line of the first lot to its rear where the lot to the rear is of the prevailing yard pattern.

Lot Frontage. The front of a lot is the portion nearest the street. In no case shall the frontage (or front lot line) be less than 25 feet.

Lot, Interior. A lot other than a corner lot.

Lot, Through. A lot having frontage on two parallel or approximate parallel streets other than alleys.

Lot Line. The property line abounding a lot. Where the lot line extends below ordinary high tide, ORS 390.615 shall apply. Where the lot line extends below ordinary high water, ORS 274.025 shall apply.

Lot Line, Front. In the case of an interior lot, a straight line joining the foremost points of the side lot lines. The foremost points of the side lot, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without such rounding, and, in the case of a corner lot, all sides of a lot adjacent to streets other than alleys shall be considered frontage.

Lot Line, Rear. In the case of an interior lot, a straight line joining the rearmost points of the side lot lines, and in the case of an irregular, triangular, or other shaped lot, a line 10

feet in length within the lot, parallel to and at the maximum distance from the front lot line, and in the case of through lots, there will be no rear lot line. All corner lots shall have at least a 10 foot rear yard.

Lot Line, Side. Any lot line not a front or rear lot line.

Lot Measurements.

A. Depth of a lot is the mean horizontal distance between the front lot line and rear lot line of a lot. In the case of a corner lot, the lot depth is the greater of the mean horizontal distances between front lot lines and the respective lot lines opposite each other.

B. Width of a lot is the mean horizontal distance between side lot lines (of side and front lot lines for corner lots) perpendicular to the lot depth.

Lumber and Other Building Materials Dealer. Establishment engaged in selling lumber and a general line of building materials to the general public (see State Industrial Code 5211).

Lumber Yard. A place of storage in connection with the wholesaling of lumber by a manufacturer such as a planing mill, a sawmill, or a producer of mill work (see S.I.C. 24ll, 242l, 2426, 2429, and 243l).

Manufactured Dwelling.* A manufactured home, mobile home, or residential trailer.

Manufactured Dwelling Park.** Any place where four or more manufactured dwellings are located on a lot or parcel of land the primary purpose of which is to rent space and related facilities for a charge or fee or to offer space for free in connection with securing the trade or patronage of a person.

Manufactured Home.*** A structure constructed after June 15, 1976, for movement on the public highways that has sleeping, cooking, and plumbing facilities; that is intended for human occupancy; that is being used for residential purposes; and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction.

Mini-Storage. Individual small warehouse units.

Ministerial Action. A decision that does not require

interpretation or the exercise of policy or legal judgment in evaluating approval standards. The review of a ministerial action requires no notice to any party other than the applicant and agencies that the Community Development Director, or designee, determines may be affected by the decision. A ministerial action is not a land use decision, as defined in ORS 197.015, and is, therefore, not appealable through Oregon's quasi-judicial process.

Mobile Home.**** A structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities; that is intended for human occupancy; that is being used for residential purposes; and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law at the time of construction.

Motel. A building or group of buildings in which lodging is provided for guests for compensation, containing guest units with separate entrances from the building exterior, with or without cooking facilities, and where more than 40 percent of the lodging rooms are for rent to transient guests for a continuous period of less than 30 days.

Nonconforming Lot.***** A lot legally existing on the effective date of this Ordinance that does not meet the minimum area requirement of the district in which the lot is located.

(Definition added by Ordinance No. 1641 (8-3-92) and amended by Ordinance No. 2008 (12-2-2010).*
*** Definition added by Ordinance No. 2008 (12-2-2010).*
****Definition added by Ordinance No. 1641 (8-3-92) and amended by Ordinance No. 2008 (12-2-2010).*
*****Definition amended by Ordinance No. 1641 (8-3-92).*
****** Definition added by Ordinance No. 1996 (1-7-2010).)*

Nonconforming Structure or Use.* A legally established structure or use in existence at the time of enactment or amendment of the Zoning Code but not presently in compliance with the regulations of the zoning district in which it is located. A use approved under criteria that have been modified or are no longer in effect is considered nonconforming.

Nursing Home. A nursing home provides 24 hour direct medical, nursing, and other health services. Registered nurses, licensed practical nurses, and nurses' aides provide services prescribed by resident(s) physician(s). A nursing home is for those persons who need health supervision but not hospitalization. The emphasis of this use is on nursing care, but convalescent, restorative physical, occupational, speech, and respiratory therapies are also provided. The

level of care may also include specialized nursing services such as specialized nutrition, rehabilitation services and monitoring of unstable conditions. The term nursing home is also synonymous with the terms nursing facility and skilled nursing facility.

Open Porch. A roofed, open structure projecting from the outside wall of a building without window sash or any other form of permanent enclosure.

Parking Lot, Public. An open, off-street area used for the temporary parking of more than three automobiles and available for public use, with or without charge, or as an accommodation for clients and customers.

Person. Every natural person, firm partnership, association, or corporation.

Planned Development. The development of an area of land as a single entity for a number of dwelling units or a number of uses, according to a plan which does not correspond in lot size, bulk or type of dwelling, density, lot coverage, or required open space to the regulations otherwise required by the ordinance.

Pre-existing Time-Share Project. A time-share project the outstanding interests in which have already been created, or with respect to which a notice of intent (such as currently required by ORS 92.345 and/or ORS 9I.602) as required by law or any administrative regulations disclosing the nature and number of the interest to be created therein has been filed with the Real Estate Division of the State of Oregon on or prior to the effective date of the adoption of this Ordinance. Such a "preexisting time-share project" shall constitute a pre-existing, non-conforming use, to the extent that the same might otherwise constitute a prohibited use. However, such status as a "pre-existing time-share project" shall not authorize the creation of additional interests or the subdivision of any existing interests or the expansion of such project beyond that which existed or was so disclosed at or prior to the effective date of the adoption of this ordinance, except and unless the same shall conform and comply with all applicable requirements of this ordinance and any other applicable ordinances, regulations, or statutes.

Primary Structure or Use. A structure or use of chief importance or function on a site. A site may have more than one primary structure or use.

Public Facilities.** Sanitary sewer, water, streets (including

sidewalks), storm water, and electricity.

Recreational Vehicle (RV).*** A vehicle with or without motive power that is designed for human occupancy and to be used temporarily for recreational, seasonal, or emergency purposes and has a gross floor space of not more than 400 square feet in the setup mode.

Recreational Vehicle Park.**** A place where two or more recreational vehicles are located on a lot or parcel of land, the primary purpose of which is to rent space and related facilities for a charge or fee or to offer space for free in connection with securing the trade or patronage of a person.

(Definition amended by Ordinance No. 1996 (1-7-2010).*
*** Definition added by Ordinance No. 1991 (1-1-2010)*
**** Definition amended by Ordinance No. 1641 (8-3-92) and amended by Ordinance No. 2008 (12-2-2010).*
***** Definition amended by Ordinance No. 2008 (12-2-2010).)*

Recreational Vehicle Storage. Storage for more than two recreational vehicles. No occupancy allowed.

Residential Care Home. A residential facility, as defined in ORS 443.400, which provides residential care and/or treatment to five or fewer individuals, excluding caregivers, with mental or other developmental disabilities; mental, emotional, or behavioral disturbances; or alcohol or drug dependence. This definition includes the state definitions of "residential training home" and "residential treatment home."

Residential Facility.* A facility licensed by or under the authority of the Department of Human Services (DHS) as defined in ORS 443.400, which provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Required staff persons shall not be counted in the number of facility residents. This definition includes the state definitions of "residential care facility," "residential training facility," and "residential treatment facility."

Residential Trailer.** A structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities; that is intended for human occupancy; that is being used for residential purposes; and that was constructed before January 1, 1962.

(Definition added by Ordinance No. 1622 (10-7-91).*
*** Definition added by Ordinance No. 1641 (8-3-92) and amended by Ordinance No. 2008 (12-2-2010).)*

Residential Unit. An owner or renter occupied room or rooms

which are living quarters (excluding individual occupancy rooms in any motel or hotel), including any condominium unit, boarding house, and each unit of any apartment boarding house or similar improvement, which unit is used or designed to be used for occupancy by no more than one single family at one time (except for transient guests of occupants). If such unit is intended for or occupied by more than one family, the same shall constitute as many units as the number of families for which the same is intended to be or shall be occupied. For instance, if the unit is intended for or occupied by two families, the same shall constitute two units, and so forth.

A structure constructed as a motel or hotel may not be used except for transient residential purposes unless the property shall conform to all zoning, density, and other requirements for the construction of such structure as a residential use as such requirements shall exist at the time residential use is sought to be established.

If any residential unit shall constitute a "time-share interest" or be part of a "time-share project", as in this ordinance defined (except a pre-existing time-share project) the same shall not constitute a residential unit for the purpose of permitting the same to be located in zones R-1, R-2, or R-3, and such "time-share interests" shall be permitted only in such zones as the same shall be permitted outright or in such zones as the same shall be permitted as a conditional use, subject to application for and allowance of such a conditional use.

Any unit which is rented or offered for rent upon a tenancy less than a tenancy by the month (as, for instance, by the day or by the week) shall not be considered a residential unit for the purposes of this ordinance and shall not be permitted as a residential use but only as a hotel use or weekly rental, where allowed.

Setback. The minimum distance required between a specified object, such as a building and another point. Typically, a setback refers to the minimum distance from a building to a specified property line to provide a required yard.

Street. As defined in Section 13.05.005(J) of the Newport Subdivision Ordinance.

Structural Alteration. Any change to the supporting members of a building including foundation, bearing walls or partitions, columns, beams or girders, or any structural change in the

roof.

Structure. That which is built or constructed. An edifice or building or any kind of any piece of work artificially built up or composed of parts joined together in some manner and which require location on the ground or which is attached to something having a location on the ground.

Temporary Structures.* Trailers, mobile homes, prefabricated buildings, or other structures that can readily be moved or which are not attached in a permanent manner to a permanent foundation and are used for residential or business purposes.

Temporary Vending Carts.** A trailer or other vehicle that does not exceed 16 feet in length, has functional wheels, an axle for towing, is not attached in a permanent manner to a permanent foundation and is self contained for sanitary sewer. A temporary vending cart may be mobile (i.e. does not remain stationary for longer than a few hours), or remain stationary, as permitted by Section 2-2-29.027.

(Definition added by Ordinance No. 1644 (9-8-92).*
***Definition added by Ordinance No. 2001 (4-14-10).)*

Terrace. An open porch without a permanent roof and not over 30 inches in height (not requiring a railing according to the Uniform Building Code).

Time-Share Interest. Any interest, direct or indirect, in a time-share project. For the purposes of determining whether property, or any part thereof, has been divided into 11 or more undivided interests, and shall thereby constitute a time-share project, there shall be included in the determination of the number of such interests outstanding every person having any form of right, contractual or otherwise, pursuant to which the holder shall have the right to the use or possession of such portion of such real property or of any improvement thereon, including any interest in any lot, parcel, condominium or leasehold, whether or not such interest shall constitute an undivided interest in real property or whether the same shall be styled a membership, lease-hold, or other contractual agreement whereby a right to possession is created. For the purposes hereof, an interest held in common by more than one person or entity shall not be deemed to constitute more than one separate interest unless the holders thereof shall have the right, directly or indirectly, whether by written or oral agreement, to use, possess, or enjoy such interest at separate times, or by one of the common owners of such interests. Any interest held solely by a husband and wife as tenants by the entirety, or

which is held as joint tenants with right of survivorship solely by brothers and sisters or solely by husband and wife and their children shall be presumed to constitute but a single interest; interests held in common by other persons shall be presumed to constitute separate interests, which prescription may be rebutted by evidence that the holders of such interests have and enjoy a common right of possession, and do not have the right to possession or use of the premises at separate times or to the exclusion of other holders of such interest.

Time-Share Project. Any real property and/or improvements upon real property which are subject to any plan or arrangement such that the right to the use and possession of one or more dwelling units thereof shall have been divided into 11 or more interests whereby the holder of such an interest shall have a right to the possession of all or part of one part of the premises subject to such interest, to the exclusion of persons holding other interests therein during any period, whether annually recurring or not. "Time-share projects" shall include any premises any part of which shall be subject to agreements, whether written or oral, whereby 11 or more common owners shall divide the right to the use or possession of said premises such that each such owner shall have a period during which such owner shall have the right to the use of such premises to the exclusion of others, whether or not such right shall be expressly designated as a separate ownership interest, and shall also include all such real property and improvements or interests therein as any part of which may be owned or possessed by a single entity, such as a corporation or partnership, if such entity shall hold title in trust or otherwise subject to an agreement or arrangement whereby 11 or more possessory interests are created. "Time-share project" shall not include a tenancy in common, as such a tenancy exists at common law, if unmodified by any restrictive covenants or other agreement whereby such common tenants have or may claim or exercise the right to exclusive use, occupancy, or possession of the premises to the exclusion of other tenants as, for instance, where such tenants in common may hold property for business or investment purposes.

Town House. Buildings that are subdivided into individual units such that each owner owns his own unit and also has entitlement to the parcel of land upon which his unit is located.

Tourist. A person or group of people who are traveling for pleasure or are of a transient nature.

Use. The purpose for which land or a structure is designed, arranged, or intended, or for which it is occupied or maintained.

Weekly Rental. Any owner- or renter-occupied room or unit used as living quarters and which would constitute a permitted residential unit but for the fact that the same is offered for rent or rented by the week shall be a "weekly rental." No such residential unit may be permitted as a "weekly rental" unless the same shall be rented not more than 10 times in any calendar year and only upon condition that any sign used to announce the availability of such unit for such rental shall be attached to or suspended from such unit in accordance with all applicable codes and requirements and shall be not more than l.5 square feet in size.

Wetlands.* Wetlands are those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(Definition added by Ordinance No. 1622 (10-7-91).)*

Yard. An open space on a lot which is unobstructed by any building from the ground upward, except as otherwise provided in this ordinance. Yard depth is always measured horizontally and perpendicular to the respective lot line.

Yard, Front. A yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and a line parallel thereto on the lots. In the case of corner lots, front yards shall be required as shown in Illustration A and in Table A.

Yard, Rear. A yard extending across the width of the lot between the inner side yard lines, the depth of which is the minimum horizontal distance between the rear lot line and a line parallel thereto on the lot. In the case of through lots and reversed frontage corner lots, there will be no rear yard. In the case of corner lots with normal frontage, the rear yard shall extend from the inner side yard line of the side yard adjacent to the interior lot to the rear line of the lesser depth second front yard.

Yard, Side. A yard extending from the rear line of the required front yard to the rear lot line, the depth of which is the minimum horizontal distance between the side lot line and a line parallel thereto on the lot. In the case of through

lots, side yards shall extend from the rear lines of the front yards required. In the case of corner lots with normal frontage, there will be only one side yard adjacent to the interior lot. In the case of corner lots with reversed frontage, the yards remaining after the normal front yard and lesser depth second front yard have been established shall be considered to be side yards. The accompanying Illustration A indicates the location of yards on rectangular and non-rectangular lots.

14.01.020 ESTABLISHMENT OF ZONES *(2-1-2,010 of NZO)*

In order to carry out the purpose and provisions of this Code, the following zones are hereby established:

Zone	Abbreviated Designation
Low Density Residential	(R-1)
Low Density Residential	(R-2)
High Density Residential	(R-3)
High Density Residential	(R-4)
Retail Commercial	(C-1)
Tourist Commercial	(C-2)
Highway Commercial	(C-3)
Light Industrial	(I-1)
Medium Industrial	(I-2
Water Dependent	(W-1)
Water Related	(W-2)
Management Unit 1	(Mu-1)
Management Unit 2	(Mu-2)
Management Unit 3	(Mu-3)
Management Unit 4	(Mu-4)
Management Unit 5	(Mu-5)
Management Unit 6	(Mu-6)
Management Unit 7	(Mu-7)
Management Unit 8	(Mu-8)
Management Unit 9	(Mu-9)
Management Unit 10	(Mu-10)
Public Buildings and Structures	(P-1)
Public Recreation	(P-2)
Public Open Space	(P-3)
Mobile Homes	(M-H)

14.01.030 ESTABLISHMENT OF A ZONING MAP *(2-1-3.010 of NZO)*

A. The location and boundaries of the zones designated in Section 14.01.020 are hereby established as shown on the map entitled: "Zoning Map of the City of Newport", which, together with all explanatory matter thereon, is hereby adopted by reference and designed to be a part of this Code.

B. The Official Zoning Map shall be identified by the signature of the Mayor, attested by the City Recorder, and bearing the seal of the City under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 2-1-3 of Ordinance No. 1308 of

the City of Newport, Oregon", together with the date of the adoption of this Ordinance.

C. If, in accordance with the provisions of this Ordinance, changes are made in district boundaries portrayed on the Official Zoning Map, such changes shall be made on the Official Zoning Map promptly after the amendment has been approved by the City Council, together with the ordinance number and date of said change.*

D. Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map, which shall be located in the office of the City Recorder, shall be the final authority as to current zoning status of land and water areas, buildings, and other structures in the city.

E. Replacement of Official Zoning Map. In the event that the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions, the City Council may, by ordinance, adopt a new Official Zoning Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such corrections shall have the effect of amending the original zoning ordinance or any subsequent amendment thereof.

F. The new Official Zoning Map shall be identified by the signature of the Mayor, attested by the City Recorder, and bearing the seal of the City under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (date of adoption of map being replaced) as part of Ordinance No. _____ of the City of Newport, Oregon".

14.01.040 ZONE BOUNDARIES *(2-1-3.045 of NZO)*

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules may apply:

A. Boundaries indicated as approximately following the center line of streets, highways, or alleys shall be construed to follow such center lines.

B. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

C. Boundaries indicated as approximately following city limits shall be construed as following city limits.

D. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.

E. Boundaries indicated as following shore lines shall be construed to follow the mean higher high water line of such shore lines, and, in the event of change in the shore line, shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines. Areas below the mean higher high water or the line of non-aquatic vegetation in the estuarine area shall be considered to be in the estuarine management unit rather than the adjacent shore land zone.

(Amended by Ordinance No. 1656 (1-4-93).)*

F. Boundaries indicated as parallel to or extensions of geographic features indicated in Subsections A through E, above, shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the Map.

G. Where a zone boundary divides a lot between two zones, the entire lot shall be placed in the zone that accounts for a greater area of the lot by the adjustment of the boundaries, provided the boundary adjustment is a distance of less than 20 feet.

14.02.001 ZONING DISTRICTS*

14.02.005. Purpose. It is the intent and purpose of this section to establish zoning districts for the City of Newport and delineate uses for each district. Each zoning district is intended to service a general land use category that has common location, development, and use characteristics. The quantity and availability of lands within each zoning district shall be based on the community's need as determined by the Comprehensive Plan. Establishing the zoning districts also implements the General Land Use Plan Map as set forth in the Comprehensive Plan.

14.02..010. Establishment of Zoning Districts. This section separates the City of Newport into four (4) basic classifications and thirteen (13) use districts as follows:

A. Residential.

1. R-1 Low Density Single-Family Residential.
2. R-2 Medium Density Single-Family Residential.
3. R-3 Medium Density Multi-Family Residential.
4. R-4 High Density Multi-Family Residential.

B. Commercial.

1. C-1 Retail and Service Commercial.
2. C-2 Tourist Commercial.
3. C-3 Heavy Commercial.

C. Industrial.

1. I-1 Light Industrial.
2. I-2 Medium Industrial.
3. I-3 Heavy Industrial.

D. Water Related.

1. W-1 Water Dependent.
2. W-2 Water Related.

E. Public.

1. P-1 Public Structures.
2. P-2 Public Parks.
3. P-3 Public Open Space.

**Section 2-2-6.010 amended by Ordinance No. 1336 (7-5-83); Section 2-2-4 amended by Ordinance No. 1344 (11-7-83); Sections 2-2-1 and 2-2-6 amended by Ordinance No. 1356 (1-3-84); Sections 2-2-3, 2-2-4, 2-2-5, 2-2-6, and 2-2-7 amended by Ordinance No. 1447 (12-16-85); Section 2-2-6.015 amended by*

Ordinance No. 1468 (8-19-86); Section 2-2-4 amended by Ordinance No. 1526 (11-7-88); Section 2-2-2.010 amended by Ordinance No. 1565 (14.36.0010); Section 2-2-4 amended by Ordinance No. 1567 (14.36.0010); the above became obsolete when Sections 2-2-1 through 2-2-12 were totally amended by Ordinance No. 1575 (7-2-90); and then the entire Section was repealed and replaced by Ordinance No. 2022 (10-20-11).

14.02.020. City of Newport Zoning Map. The zoning districts established by this section are officially identified on the map entitled "City of Newport Zoning Map," by reference incorporated herein. Zoning district boundaries, as shown on the official map, shall be construed as follows:

A. City limit lines;

B. Platted lot lines or other property lines as shown on the Lincoln County Assessor's plat maps;

C. The centerline of streets, railroad tracks, or other public transportation routes;

D. The centerline of streams or other watercourses as measured at Mean Low Water. In the event of a natural change in location of the centerline of such watercourse, then the zoning district boundary shall be construed to moving with the channel centerline; and

E. The Mean Higher High Tide Line.

14.02.030 Intent of Zoning Districts. Each zoning district is intended to serve a general land use category that has common locations, development, and service characteristics. The following sections specify the intent of each zoning district:

R-1/"Low Density Single-Family Residential." The intent of the R-1 district is to provide for large lot residential development. This district should also be applied where environmental constraints such as topography, soils, geology, or flooding restrict the development potential of the land.

R-2/"Medium Density Single-Family Residential." The intent of this district is to provide for low density, smaller lot size residential development. It is also the ambition of this district to serve as a transitional area between the low density residential district and higher density residential districts.

R-3/"Medium Density Multi-Family Residential." This district is intended for medium density multi-family residential development. It is planned for areas that are able to accommodate the development of apartments. New R-3

zones should be near major streets, on relatively flat land, and near community or neighborhood activity centers.

R-4/"High Density Multi-Family Residential." This district is intended to provide for high density multi-family residential and some limited commercial development. New R-4 zones should be on major streets, on relatively flat land, and near commercial centers.

C-1/"Retail and Service Commercial." The intent of the C-1 district is to provide for retail and service commercial uses. It is also intended that these uses will supply personal services or goods to the average person and that a majority of the floor space will be devoted to that purpose. Manufacturing, processing, repair, storage, or warehousing is prohibited unless such activity is clearly incidental to the business and occupies less than 50% of the floor area.

C-2/"Tourist Commercial." The intent of this zone is to provide for tourist needs, as well as for the entertainment needs of permanent residents.

C-3/"Heavy Commercial." The intent of this zone is to provide for commercial uses that are frequently incompatible with retail and service commercial uses. This zone is also intended to provide uses that utilize more than 50% of the floor area for storage, repair, or compounding of products but do not constitute a nuisance because of noise, dust, vibration or fumes.

I-1/"Light Industrial." The intent of this zone is to provide for commercial and industrial uses that can be located near residential or commercial zones. Uses that are associated with excessive noise, dust, vibration, or fumes shall be prohibited.

I-2/"Medium Industrial." The intent of this zone is to provide areas suitable for industrial activities, including manufacturing, fabricating, processing, packing, storage, repairing, and wholesaling. This classification should be applied to industrial areas having good access to transportation facilities and not near residential zones.

I-3/"Heavy Industrial." The intent of this zone is to provide for industrial uses that involve production and processing activities generating noise, vibration, dust, and fumes. Typically, this zone requires good access to transportation, large lots, and segregation from other uses due to nuisances.

W-1/"Water-Dependent." The intent of the W-1 district is to protect areas of the Yaquina Bay Shorelands, as identified in the Newport Comprehensive Plan, for water-dependent uses. For purposes of this section, a water-dependent use is one which needs contact with or use of the water for water-borne transportation, recreation, energy production, or water supply. All uses in a W-1 district shall comply with the following standards:

A. Existing water-dependent uses or future water-dependent uses anticipated by the Comprehensive Plan shall not be preempted or restricted by non-water-dependent uses. In determining whether or not a use preempts or restricts a water-dependent use, the following shall be considered:

    1. Water-related uses accessory to and in conjunction with water-dependent uses.

    2. Temporary or mobile uses such as parking lots or temporary storage areas.

    3. Incidental and accessory non-water-dependent uses sharing an existing structure with a water-dependent use.

B. Applicable policies in the Yaquina Bay Estuary and Yaquina Bay Shoreland sections of the Comprehensive Plan shall be followed.

C. In determining whether a conditional use should be allowed, consideration shall be given to whether the site or portion thereof is within an area designated as especially suited for water-dependent or water-related uses in the Comprehensive Plan. If the property is within that area, then the site shall be protected for water-dependent and water-related recreational, commercial, and industrial uses.

W-2/"Water-Related." The intent of the W-2 district is to provide areas within and adjacent to the Yaquina Bay Shorelands for water-dependent, water-related, and other uses that are compatible or in conjunction with water-dependent and water-related uses. In determining whether or not a use is water-related, the following shall be uses:

A. The proposed use is directly associated with a water-dependent use by supplying materials or services, or by using projects of water-dependent uses; and

B. Location away from the water would result in a public loss in the quality of goods or services after considering economic, social, environmental, and energy effects.

All conditional uses in a W-2 district shall also comply with the following standard:

In areas considered to be historic, unique, or scenic, the proposed use shall be designed to maintain or enhance the historic, unique, or scenic quality.

14.02.040 Residential Uses. The following list sets forth the uses allowed within the residential land use classification. Uses not identified herein are not allowed.

"P" = Permitted uses.

"C" = Conditional uses; permitted subject to the approval of a conditional use permit.

"X" = Not allowed.

	R-1	R-2	R-3	R-4
A. Residential				
1. Single-family	P	P	P	P
2. Two-family	X	P	P	P
3. Multi-family	X	X	P	P
4. Manufactured Homes*	P	P	P	P
5. Mobile Home Park	X	P	P	P
B. Accessory Uses	P	P	P	P
C. Home Occupations	P	P	P	P
D. Community Services				
1. Parks	P	P	P	P
2. Publicly Owned Recreation Facilities	C	C	C	C
3. Libraries	C	C	C	C

* Subject to the siting criteria contained in Section 2-2-26.010.

4. Utility Substations	C	C	C	C
5. Public or Private Schools	C	C	C	P
6. Child Care Facilities	P	P	P	P
7. Day Care Facilities	C	C	C	C
8. Churches	C	C	C	C
9. Residential Care Homes	P	P	P	P
10. Nursing Homes	X	X	C	P
11. Bed and Breakfast Inns	X	X	C	C
12. Motels and Hotels	X	X	X	C
13. Professional Offices	X	X	X	C
14. Rooming and Boarding Houses	X	X	C	P
15. Beauty and Barber Shops	X	X	X	C
16. Colleges and Universities	C	C	C	C
17. Hospitals	X	X	X	P
18. Membership Organizations	X	X	X	P
19. Museums	X	X	X	P
20. Condominiums	X	P	P	P
21. Hostels	X	X	X	C
22. Golf Courses	C	C	C	X
23. Recreational Vehicle Parks	X	X	X	C
24. Necessary Public Utilities and Public Service Uses or Structures	C	C	C	C
25. Residential Facility*	X	X	P	P
26. Movie Theaters**	X	X	X	C
27. Assisted Living Facilities***	X	C	P	P

28. Bicycle Shop****	X	X	X	C

14.02.050 Commercial and Industrial Districts. The uses allowed within each commercial and industrial zoning district are classified into use categories on the basis of common functional, product, or physical characteristics.

** Added by Ordinance No. 1622 (10-7-91).*
*** Added by Ordinance No. 1680 (8-2-93).*
**** Added by Ordinance No. 1759 (1-21-97).*
***** Added by Ordinance No. 1861 (10-6-03).*
****** Amended by Ordinance No. 1989 (1-1-10).*

A. Application of Use Categories. Uses are to be assigned to the category whose "Characteristics" most closely describe the nature of the primary use. Developments may have more than one primary use. "Use Examples" are provided for each use category. The names of uses on the list are generic. They are based on the common meaning of the terms and not on what a specific use may call itself. For example, a use whose business name is "Wholesale Liquidation" but that sells mostly to consumers would be included in the Retail Sales and Service category rather than the Wholesale Sales category. This is because the actual activity on the site matches the description on the Retail Sales and Service category.

B. Interpretation. When a use's category is not clearly identifiable, the Community Development Director shall determine the applicable use category under a Type I decision-making process as provided by Section 14.26.010. The following factors are to be considered to determine what use category the use is in, and whether or not the activities constitute a primary use.

1. The description of the activity(ies) in relationship the characteristics of each use category;

2. The relative amount of site or floor space and equipment devoted to the activity;
3. Relative amount of sales from each activity;

4. The customer type for each activity;

5. The relative number of employees for each activity;

6. Hours of operation;

7. Building and site arrangement;

8. Vehicles used with the activity;

9. The relative number of vehicle trips generated by the activity;

10. Signs;

11. How the use advertises itself; and

12. Whether the activity would function independently of other activities on the site;

C. Commercial Use Categories

1. Office

a. Characteristics. Office uses are characterized by activities conducted in an office setting and generally focusing on business, government, professional, medical, or financial services. Traffic is primarily from employees with limited customer interactions.

b. Examples. Examples include financial businesses such as lenders, brokerage houses, bank headquarters; data processing; headquarters for professional service firms (lawyers, accountants, engineers, architects, etc.), sales offices; government offices; public utility offices; TV and radio studios; medical and dental clinics, and medical and dental labs.

c. Exceptions.

i. Offices that are part of and are located with a firm in another category are considered accessory to the firm's primary activity. Headquarters offices, when in conjunction with or adjacent to a primary use in another category, are considered part of the other category.

ii. Contractors and others who perform construction or similar services off-site are included in the Office category if equipment and materials are not stored on the site and fabrication, services, or similar work is not carried on at the site.

2. Retail Sales and Service

a. Characteristics. Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.

b. Examples. Examples include uses from the four subgroups listed below:

i. Sales-oriented, general retail: Stores selling, leasing, or renting consumer, home, and business goods including art, art supplies, bicycles, books, clothing, dry goods, electronic equipment, fabric, fuel, gifts, groceries, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationery, and videos; food sales. Sales oriented general retail includes the service but not repair of vehicles.

ii. Sales-oriented, bulk retail: Stores selling large consumer home and business goods, including appliances, furniture, hardware, home improvements, and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light and medium trucks, and other recreational vehicles.

iii. Personal service-oriented: Branch banks; urgency medical care; Laundromats; photographic studios; photocopy and blueprint services; printing, publishing and lithography; hair, tanning, and personal care services; tax preparers, accountants, engineers, architects, real estate agents, legal, financial services; art studios; art, dance, music, martial arts, and other recreational or cultural classes/schools; taxidermists; mortuaries; veterinarians; kennels limited to boarding and training with no breeding; and animal grooming.

iv. Entertainment-oriented: Restaurants (sit-down and drive through); cafes; delicatessens; taverns and bars; hotels, motels, recreational vehicles, and other temporary lodging with an average length of stay less than 30 days; athletic, exercise and health clubs or gyms; bowling alleys, skating rinks, game arcades;

pool halls; dance halls, studios, and schools; theaters; indoor firing ranges, miniature golf facilities, golf courses, and driving ranges.

v. Repair-oriented: Repair of TVs, bicycles, clocks, watches, shoes, guns, appliances and office equipment; photo or laundry drop off; quick printing; recycling drop-off; tailor; locksmith; and upholsterer.

c. Exceptions.

i. Lumber yards and other building material sales that sell primarily to contractors and do not have a retail orientation are classified as Wholesale Sales.

ii. The sale of landscape materials, including bark chips and compost not in conjunction with a primary retail use, is classified as Industrial Service.

iii. Repair and service of consumer motor vehicles, motorcycles, and light and medium trucks is classified as Vehicle Repair. Repair and service of industrial vehicles and equipment, and heavy trucks is classified as Industrial Service.

iv. Sales, rental, or leasing of heavy trucks and equipment is classified as Wholesale Sales.

v. When kennels are limited to boarding, with no breeding, the applicant may choose to classify the use as Retail Sales and Service.

vi. Uses where unoccupied recreational vehicles are offered for sale or lease, or are stored, are not included as a Recreational Vehicle Park

3. Major Event Entertainment

a. Characteristics. Major Event Entertainment uses are characterized by spectator or participatory entertainment and recreational activities, either indoors or outdoors, that draw large numbers of people to specific events or shows.

b. Examples. Examples include fairgrounds, sports complexes, ball fields, exhibition and meeting

areas, coliseums or stadiums, equestrian centers and animal arenas, outdoor amphitheaters and theme or water parks.

c. Exceptions.

i. Exhibition and meeting areas with less than 20,000 square feet of total event area are classified as Sales Oriented Retail Sales or Service.

ii. Banquet halls that are part of hotels or restaurants are accessory to those uses.

4. Self-Service Storage

a. Characteristics. Self-Service Storage uses provide separate storage areas for individual or business uses. The storage areas are designed to allow private access by the tenant for storing personal property.

b. Examples. Examples include single story and multistory facilities that provide individual storage areas for rent. These uses are also called mini warehouses.

c. Exceptions. A transfer and storage business where there are no individual storage areas or where employees are the primary movers of the goods to be stored or transferred is in the Warehouse and Freight Movement category.

5. Vehicle Repair

a. Characteristics. Firms servicing passenger vehicles, light and medium trucks and other consumer motor vehicles such as motorcycles, boats and recreational vehicles. Generally, the customer does not wait at the site while the service or repair is being performed.

b. Examples. Examples include vehicle repair, transmission or muffler shop, auto body shop, alignment shop, auto upholstery shop, auto detailing, and tire sales and mounting.

c. Exceptions.

i. Repair and service of industrial vehicles and equipment, and of heavy trucks; towing and vehicle storage; and vehicle wrecking and salvage are classified as Industrial Service.

6. Parking Facility

a. Characteristics. Parking facilities provide parking for vehicles as the primary use. The Parking Facility use category does not include parking that is required for a primary use. A fee may or may not be charged to park at a facility.

b. Examples. Short and long term fee parking facilities, commercial district shared parking lots, commercial shuttle parking, and park-and-ride lots.

c. Exceptions.

i. Required parking that is accessory to a use is not considered a Parking Facility.

D. Industrial Use Categories

1. Contractors and Industrial Service

a. Characteristics. Industrial Service firms are engaged in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products. Firms that service consumer goods do so by mainly providing centralized services for separate retail outlets. Contractors and building maintenance services and similar uses perform services off-site. Few customers, especially the general public, come to the site.

b. Examples. Examples include welding shops; machine shops; tool repair; electric motor repair; repair of scientific or professional instruments; sales, repair, storage, salvage or wrecking of heavy machinery, metal, and building materials; towing and vehicle storage; auto and truck salvage and wrecking; heavy truck servicing and repair; tire re-treading or recapping; truck stops; building, heating, plumbing or electrical contractors; printing, publishing and lithography; exterminators; recycling operations; janitorial and building maintenance services; fuel oil distributors; solid fuel yards; research and development laboratories;

dry-docks and the repair or dismantling of ships and barges; laundry, dry-cleaning, and carpet cleaning plants; and photofinishing laboratories.

c. Exceptions.

i. Contractors and others who perform Industrial Services off-site are included in the Office category, if equipment and materials are not stored at the site, and fabrication or similar work is not carried on at the site.

ii. Hotels, restaurants, and other services that are part of a truck stop are considered accessory to the truck stop.

2. Manufacturing and Production

a. Characteristics. Manufacturing and Production firms are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used. Products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site. Manufacturing and production activities within heavy commercial or light industrial areas are those that do not produce excessive noise, dust, vibration, or fumes.

b. Examples. Examples include uses from the two subgroups listed below:

i. Light Manufacturing: Industrial uses that do not generate excessive noise, dust, vibration or fumes, such that they can be located near residential and commercial zones without creating nuisance impacts. Uses include processing of food and related products where the materials and processing activities are wholly contained within a structure, such as bakery products, canned and preserved fruits and vegetables, sugar and confectionary products, and beverages; catering establishments; breweries, distilleries, and wineries; manufacture of apparel or other

fabricated products made from textiles, leather or similar materials; woodworking, including furniture and cabinet making; fabrication of metal products and fixtures; manufacture or assembly of machinery, equipment, or instruments, including industrial, commercial, and transportation equipment, household items, precision items, photographic, medical and optical goods, artwork, jewelry, and toys; manufacture of glass, glassware, and pressed or blown glass; pottery and related products; printing, publishing and lithography production; sign making; and movie production facilities.

ii. Heavy Manufacturing: Industrial uses that should not be located near residential areas due to noise, dust, vibration or fumes that may be generated by the activities. Uses include processing of food and related products where some portion of the materials are stored or processed outdoors, such as dairies, slaughter houses, or feed lots; leather tanning and finishing; weaving or production of textiles; lumber mills, pulp and paper mills, and other wood products manufacturing; production of chemicals, rubber, structural clay, concrete, gypsum, plaster, bone, plastic, or stone products; primary metal industries including blast furnaces, foundries, smelting, and rolling and finishing of metal products; production and refinement of fossil fuels; concrete batching; and asphalt mixing; and manufacturing of prefabricated structures, including mobile homes.

c. Exceptions.

i. Manufacturing of goods to be sold primarily on-site and to the general public is classified as Retail Sales and Service.

ii. Manufacture and production of goods from composting organic material is classified as Waste-Related uses.

3. Warehouse, Freight Movement, and Distribution

a. Characteristics. Warehouse, Freight Movement, and Distribution involves the storage, or movement of goods for themselves or other firms. Goods are

generally delivered to other firms or the final consumer, except for some will-call pickups. There is little on-site sales activity with the customer present.

b. Examples. Examples include separate warehouses used by retail stores such as furniture and appliance stores; household moving and general freight storage; cold storage plants, including frozen food lockers; storage of weapons and ammunition; major wholesale distribution centers; truck, marine, or air freight terminals; bus barns; parcel services; major post offices; grain terminals; and the stockpiling of sand, gravel, or other aggregate materials.

c. Exceptions.

i. Uses that involve the transfer or storage of solid or liquid wastes are classified as Waste and Recycling Related uses.

ii. Mini-warehouses are classified as Self-Service Storage uses.

5. Waste and Recycling Related

a. Characteristics. Uses that receive solid or liquid wastes from others for disposal on the site or transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods or energy from the decomposition of organic material. Waste related uses also include uses that receive hazardous wastes from others.

b. Examples. Examples include sanitary landfills, limited use landfills, waste composting, energy recovery plants, sewer treatment plants, portable sanitary collection equipment storage and pumping, and hazardous waste collection sites.

c. Exceptions.

i. Disposal of clean fill, as defined in OAR 340-093-0030, is considered fill, not a Waste and Recycling Related use.

ii. Sewer pipes that serve a development are considered a Basic Utility.

6. Wholesale Sales

    a. Characteristics. Wholesale Sales firms are involved in the sale, lease, or rent of products primarily intended for industrial, institutional, or commercial businesses. The uses emphasize on-site sales or order taking and often include display areas. Businesses may or may not be open to the general public, but sales to the general public are limited as a result of the way in which the firm operates. Products may be picked up on site or delivered to the customer.

    b. Examples. Examples include sale or rental of machinery, equipment, heavy trucks, building materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment, and store fixtures; mail order houses; and wholesalers of food, clothing, auto parts, building hardware, and office supplies.

    c. Exceptions.

        i. Firms that engage primarily in sales to the general public are classified as Retail Sales and Service.

        ii. Firms that engage in sales on a membership basis are classified as consideration of characteristics of the use.

        iii. Firms that are primarily storing goods with little on-site business activity are classified as Warehouse, Freight Movement, and Distribution.

7. Mining

    a. Characteristics. Include mining or extraction of mineral or aggregate resources from the ground for off-site use.

    b. Examples. Examples include sand and gravel extraction, excavation of rock, and mining of non-metallic minerals.

    c. Exceptions.

i. All other forms of mining or extraction of earth materials are prohibited.

E. Institutional and Civic Use Categories

1. Basic Utilities and Roads

a. Characteristics. Basic utilities and Roads are infrastructure services which need to be located in or near the area where the service is provided. Basic Utility and Road uses generally do not have regular employees at the site. Services may be public or privately provided.

b. Examples. Examples include water and sewer pump stations; sewage disposal and conveyance systems; electrical substations; water towers and reservoirs; water quality and flow control devices. Water conveyance systems; stormwater facilities and conveyance systems; telephone exchanges; suspended cable transportation systems; bus stops or turnarounds; local, collector and arterial roadways; and highway maintenance.

c. Exceptions.

i. Services where people are generally present, other than bus stops or turnarounds, are classified as Community Services or Offices.

ii. Utility offices where employees or customers are generally present are classified as Offices.

iii. Bus barns are classified as Warehouse and freight movement.

iv. Public or private passageways, including easements for the express purpose of transmitting or transporting electricity, gas, oil, water, sewage, communication signals, or other similar services on a regional level are classified as Utility Corridors.

2. Utility, Road and Transit Corridors

a. Characteristics. Utility, Road and Transit Corridors include public or private passageways, including easements for the express purpose of transmitting or transporting electricity, gas, oil, water, sewage, communication signals, or similar services on a

regional level. This category includes new or expanded regional roadways, and tracks and lines for the movement of trains.

b. Examples. Examples include highways, rail trunk and feeder lines; regional electrical transmission lines; and regional gas and oil pipelines.

c. Exceptions.

i. Highways, rail lines and utility corridors that are located within motor vehicle rights-of-way are not included.

3. Community Services

a. Characteristics. Public, non-profit or charitable organizations that provide local service to people of the community. Generally, they provide the service on-site or have employees at the site on a regular basis. Services are ongoing, not just for special events. Community centers or facilities that have membership provisions are open to the general public to join. Uses may include shelter or housing for periods of less than one month when operated by a public or non-profit agency. Uses may also provide special counseling, education, or training of a public, nonprofit or charitable nature.

b. Examples. Examples include libraries, museums, senior centers, community centers, publicly owned swimming pools, youth club facilities, hospices, police stations, fire and ambulance stations, drug and alcohol centers, social service facilities, mass shelters or short term housing when operated by a public or non-profit agency, soup kitchens, and surplus food distribution centers.

c. Exceptions.

i. Private lodges, clubs, and private commercial athletic or health clubs are classified as Entertainment and Recreation. Commercial museums (such as a wax museum) are in Retail Sales and Service.

4. Daycare

a. Characteristics. Daycare use includes day or evening care of more than 12 children under the

age of 13 outside of the children's homes, with or without compensation. Daycare uses also include the daytime care of teenagers or adults who need assistance or supervision.

b. Examples. Pre-schools, nursery schools, latch key programs, and adult daycare programs.

c. Exceptions.

i. Daycare use does not include care given by a "Child Care Facility" as defined by ORS 657A.250 if the care is given to 12 or fewer children at any one time including the children of the provider. Child care facilities are located in the provider's home and are permitted as a home occupation in non-residential districts.

5. Educational Institutions

a. Characteristics. Educational Institutions provide educational instruction to students. This category includes schools, colleges and other institutions of higher learning that offer courses of general or specialized study leading to a degree, and public and private schools at the primary, elementary, middle, junior, high, or high school level that provide state-mandated basic education. This category also includes trade schools and vocational schools that provide on-site training of trade skills.

b. Examples. Types of uses include universities, liberal arts colleges, community colleges, nursing and medical schools not accessory to a hospital, seminaries, public and private daytime schools, boarding schools, military academies, and trade/vocational schools.

c. Exceptions.

i. Preschools are classified as Daycare facilities.

6. Hospitals

a. Characteristics. Hospitals provide medical and surgical diagnosis and care to patients and offer overnight care. Hospitals tend to be on multiple blocks or in campus settings.

b. Examples. Examples include hospitals and medical complexes that include hospitals or emergency care facilities.

c. Exceptions.

i. Uses that provide exclusive care and planned treatment or training for psychiatric, alcohol, or drug problems, where patients are residents of the program, are "Residential Facilities" and permitted in R-3 and R-4 zoning districts.

ii. Medical clinics that provide care where patients are generally not kept overnight are classified as Office.

7. Courts, Jails, and Detention Facilities

a. Characteristics. Includes facilities designed to try, detain or incarcerate persons while being processed for arrest or detention by law enforcement. Inmates or detainees are under 24-hour supervision by sworn officers.

b. Examples. Examples include courts, prisons, jails, probation centers, juvenile detention homes.

c. Exceptions.

i. Uses that provide exclusive care and planned treatment or training for psychiatric, alcohol, or drug problems, where patients are residents of the program, are "Residential Facilities" and permitted in R-3 and R-4 zoning districts.

ii. Programs that provide transitional living experience for former offenders, such as halfway houses, where sworn officers do not supervise residents, are also "Residential Facilities" and permitted in R-3 and R-4 zoning districts.

8. Communication Facilities

a. Characteristics. Includes facilities designed to provide signals or messages through the use of electronic and telephone devices. Includes all equipment, machinery, structures (e.g. towers) or supporting elements necessary to produce signals.

b. Examples. Examples include broadcast towers, communication/cell towers, and point to point microwave towers.

c. Exceptions.

i. Receive only antennae are not included in this category.

ii. Radio and television studios are classified in the Office category

iii. Radio Frequency Transmission Facilities that are public safety facilities are classified as Basic Utilities.

14.02.060 Commercial and Industrial Uses. The following list sets forth the uses allowed within the commercial and industrial land use categories.

"P" = Permitted uses.

"C" = Conditional uses; allowed only after the issuance of a conditional use permit.

"X" = Not allowed.

	C-1	C-2*	C-3
	I-1	I-2	I-3
1. Office	P X	P P	P X
2.Retail Sales and Service	P	P X	
a.Sales-oriented, general retail	P	P	P
	P	P	C
b.Sales-oriented, bulk retail	C	X	P
	P	P	C
c.	Personal		Services
	P	C	P
	P	C	X
d.	Entertainment		
	P	P**	P
	P	C	X
e.	Repair-oriented		
	P	X	P
	P	P	X
3.	Major		Event
Entertainment	C	C	P
	P	C	X

4. Vehicle Repair
X X P
P P X
5. Self-Service Storage
X X P
P P X
6. Parking Facility
P P P
P P P
7. Contractors and Industrial Service
X X P
P P P

*Uses in excess of 2,000 square feet of gross floor area are Conditional Uses within the Historic Nye Beach Design Review District.

** Recreational Vehicle Parks are prohibited on C-2 zoned property within the Historic Nye Beach Design Review District.

8. Manufacturing and Production

a. Light Manufacturing
X X C
P P P

b. Heavy Manufacturing
X X X
X C P

9. Warehouse, Freight Movement, & Distribution
X X P
P P P

10. Wholesale Sales
X X P
P P P

11. Waste and Recycling Related
C C C
C C C

12. Basic Utilities and Roads
P P P
P P P

13. Utility, Road and Transit Corridors
C C C
C C C

14. Community Service P CP P C X

15. Daycare Facility
P C P
P P X

16. Educational Institutions

a. Elementary & Secondary Schools
C C C

X X X
b. College &
Universities P X P
X X X
c. Trade/Vocational
Schools/Other P X P
P P P
17. Hospitals C
C C X
X X
18. Courts, Jails, and
Detention Facilities X X P
C X X
19. Mining
a. Sand &
Gravel X X X
X C P
b. Crushed
Rock X X X
X X P
c. Non-Metallic
Minerals X X X
X C P
d. All Others
X X X
X X X
20. Communication
Facilities P X P
P P P

14.02.070 **<u>Water-dependent and Water-related Uses</u>.** The following list sets forth the uses allowed with the water-dependent and water-related land use classifications. Uses not identified herein are not allowed.

"P" = Permitted uses.

"C" = Conditional uses permitted subject to the approval of a conditional use permit.

"X" = Not allowed.

		W-1	W-2
1.	Aquaculture	P	P
2.	Boat Rentals, Sport Fishing and Charter Boat Services	P	P
3.	Docks, Wharves, Piers	P	P

4.	Dry Dock, Boat Repair, Marine Service, and Marine Railway Facilities	P	P	
5.	Fuel Facilities for Boats or Ships	P	P	
6.	Marinas and Port Facilities		P	P
7.	Seafood Processing and Packaging Plants	P	P	
8.	Terminal Facilities for Loading and Unloading Ships and Barges	P	P	
9.	Marine Research and Education Facilities of Observation, Sampling, Recording, or Experimentation on or Near The Water	P	P	
10.	Ice Production and Sales, Refrigeration Repair, and Cold Storage to Serve The Seafood Industry	C	P	
11.	Boat Building and Marine Equipment Manufacture	C	P	
12.	Parking Lots		C	P
13.	Warehouses		C	P
14.	Uses Allowed in the Adjacent Estuarine Management Unit	C	P	
15.	Water-dependent Uses That Meet the Intent of the W-1 District	C	P	
16.	Bait, Tackle, and Sporting Goods Stores Specializing in Water-related Merchandise	X	P	
17.	Seafood Markets		X	P
18.	Uses Permitted Outright in a C-2 District	X	C	
19.	Offices Not On The Ground Floor of an Existing Building	X	C	
20.	Residences Not On The Ground Floor of an Existing Building	X	C	

14.02.080 <u>**Uses in State Park Master Plans.**</u>* Where the W-1 and/or W-2 zones are applied to properties that are owned or

managed by the Oregon Parks and Recreation Department within a state park with a master plan that has been approved by the City of Newport, only those uses that are consistent with the City's approval of the master plan are permitted. Such uses are permitted through the applicable development review procedures set forth in this ordinance provided that the uses comply with the design standards in the master plan and with other applicable standards.

14.02.090 Public Uses. The following list sets forth the uses allowed within the public land use classification. Uses not identified herein are not allowed.

"P" = Permitted Uses.

"C" = Conditional uses; permitted subject to the approval of a conditional use permit.

"X" = Not allowed.

		P-1	P-2	P-3
1.	Public Parks	P	P	P
2.	Public Open Space	P	P	P
3.	Public Schools, Colleges, or Universities	P	X	X

*Added by Ordinance No. 1858 (9-2-03).

4.	Any Building or Structure Erected by a Governmental Entity	P	X	X
5.	Community Buildings	P	X	X
6.	Fairgrounds	P	X	X
7.	Public Cemeteries	P	P	X
8.	Water & Wastewater Treatment Plants	P	X	X
9.	Performing Arts Centers	P	X	X
10.	Visual Arts Centers	P	X	X
11.	Senior Centers	P	X	X
12.	Airport and Accessory Structures	P	X	X
13.	Public Golf Courses	P	P	X
14.	City Halls	P	X	X
15.	County Courthouses	P	X	X
16.	Jails and Juvenile Detention Facilities	P	X	X
17.	City or County Maintenance Facilities	P	X	X
18.	Publicly Owned			

Recreational Vehicle Parks	C	C	X				
19.	Public Museums			P	X	X	
20.	Public Restrooms			P	P	X	
21.	Recreation Equipment				P	P	X
22.	Post Office		P	X	X		
23.	Parking Lots		P	P	X		
24.	Public Hospitals			P	X	X	
25.	Trails, paths, bike paths,						
walkways, etc.	P	P	P				
26.	Water Storage Facilities				P	X	X
27.	Public Libraries			P	X	X	
28.	Fire Stations		P	X	X		
29.	Police Stations			P	X	X	
30.	Accessory Structures for						
Any of the Above	P	P	P				

14.02.090 <u>Uses in State Park Master Plans.</u>* Where the P-1, P-2, and/or P-3 zones are applied to properties that are owned or managed by the Oregon Parks and Recreation Department within a state park with a master plan that has been approved by the City of Newport, only those uses that are consistent with the City's approval of the master plan are permitted. Such uses are permitted through the applicable development review procedures set forth in this ordinance provided that the uses comply with the design standards in the master plan and with other applicable standards.

*Added by Ordinance No. 1858 (9-2-03).

14.03.001 MANAGEMENT UNIT DISTRICTS* *(2-2-13 of the NZO)*

14.03.005 PURPOSE

The purpose of the Management Unit Districts is to provide estuary area development guidance, to identify development, conservation, and natural management units, and to describe appropriate uses, activities, and structures.

14.03.010 DEFINITIONS**

Estuarine Enhancement. An action which results in a long term improvement of existing estuarine functional characteristics of processes that is not the result of a creation of restoration action.

Mitigation. The creation, restoration, or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats, species diversity, unique features, and water quality.

14.03.020 USES PERMITTED***

Consistent with the requirements of State Planning Goal 16, within each management unit certain uses and activities are permitted with standards, other are permitted conditionally, and some uses are not allowed. All uses which involve dredging, fill, structures, shoreline stabilization (except vegetative) or other alteration waterward of Mean Higher High Water (MHHW) or the line of non-aquatic vegetation are also subject to regulations at either the state level (State Removal/Fill Law, ORS 196.800196.990), federal level (Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act), or both. Certain other uses such as energy facility siting, aquaculture, and exploration for oil, gas, or geothermal energy are further regulated by additional state and federal agencies. Uses and activities are categorized as follows:

Permitted With Standards (P).**** Permitted only after a case-by-case review of the proposed use and issuance of an estuarine use permit in accordance with 14.03.070 of this section and a Type I Land Use Action decision process consistent with Section 14.39.001, Procedural

Requirements. A use which is permitted with standards shall require the following findings:

A. It complies with the applicable estuarine use standards of Sections 14.03.070 through 14.03.220.

B. It complies with all policies specific to the individual management unit set forth in the Comprehensive Plan and Section 14.01.001.

C. It is consistent with the resource capabilities of the area as defined by Section 14.03.080.

(Entire section largely amended by Ordinance No. 1344 (11-7-83); Amended to correct scrivener's errors by Ordinance No. 1790 (7-6-98).*
*** Added by Ordinance No. 1622 (10-7-91).*
**** Amended by Ordinance No. 1622 (10-7-91).*
***** Amended by Ordinance No. 1989 (1-1-10).)*

Newport Zoning Ordinance (No. 1308, as amended) Conditional (C).* Permitted only after a case-by-case review of the proposed use and issuance of a conditional use permit in accordance with the provisions of Section 14.30.005, Conditional Uses, and a Type III Land Use Action decision process consistent with Section 14.39.001, Procedural Requirements. A conditional use shall require the following findings:

A. It is compatible with the management objective and policies of the management classification.

B. It complies with the applicable estuarine use standards of Sections 14.03.070 through 14.03.220.

C. It complies with all policies specific to the individual management unit set forth in the Comprehensive Plan and Section 14.01.001.

D. It complies with any other special condition which may be attached during the review process.

E. It is consistent with the resource capabilities of the area as defined by Section 14.03.080.

F. The cumulative impacts of the proposed use have been considered.

Not Allowed (N). Not permitted. Activity or uses can only be allowed upon adoption of a plan amendment by the governing body.

14.03.030 APPLICATION OF STANDARDS**

The Estuarine Use Standards of Section 14.03.070 through 14.03.220 are to be applied to developments on a case-by-case basis through the Estuarine Use Review Procedure specified in Section 14.03.050. In all cases the specific nature and circumstances of the proposal will be reviewed against each applicable standard or criterion. Findings of fact will be developed relative to compliance with each applicable standard or criterion, based on an analysis of the proposal. An impact assessment shall be prepared for activities which could affect the estuary's physical processes or biological resources such as dredging, fill, in-water structures, riprap, log storage, application of pesticides and herbicides, water intake or withdrawal and effluent discharge, and flow-lane disposal of dredged material. The impact assessment need not be lengthy or complex, but it should enable reviewers to gain a clear understanding of the impacts to be expected. The assessment shall include information on:

A. The type and extent of alterations expected;

B. The type of resource(s) affected;

C. The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation, and other existing and potential uses of the estuary; and Newport Zoning Ordinance (No. 1308, as amended).

D. The methods which could be employed to avoid or minimize adverse impacts.

In the process of gathering necessary factual information for the application of standards and the preparation of the impact assessment, the Planning Department may consult with any agency or individual able to provide relevant technical expertise. Federal impact statements or assessments may be utilized to comply with this requirement if such statements are available.

(Amended by Ordinance No. 1989 (1-1-10).*
*** Amended by Ordinance No. 1622 (10-7-91).)*

14.03.040 APPLICATION INFORMATION*

The Planning Department may require an applicant to provide such information and technical analysis as may be needed to determine compliance with any and all applicable standards, including but not limited to the following:

A. Effects on physical characteristics such as: flushing and circulation; erosion and accretion patterns; and salinity, temperature, and dissolved oxygen characteristics.

B. Effects on biological characteristics such as: benthic habitats and communities; anadromous fish migration routes; fish and shellfish spawning and rearing areas; primary productivity; resting; feeding and nesting areas for migrating and residence shorebirds; wading birds and other wildfowl; riparian vegetation; and wildlife habitat.

C. Effects on other established uses in the area.

D. Alternative project designs and/or locations which have been considered.

E. Steps which have been taken to minimize or avoid adverse impacts.

14.03.050 REVIEW NOTICE**

The City of Newport shall notify the following agencies of use applications which may require their review: Oregon Department of Fish and Wildlife; Oregon Division of State Lands; Oregon Department of Land Conservation and Development; U.S. Fish and Wildlife Service; National Marine Fisheries Service; Environmental Protection Agency; and the U.S. Army Corps of Engineers. This notice will include a description of the use applied for, references to applicable policies and standards, and notification of comment and appeal period.

14.03.060 ESTUARINE USE REVIEW PROCEDURE***

The subsequent review procedure shall be followed for uses permitted with standards and conditional uses:

A. Upon receipt of an application or a public notice from a state or federal agency for a regulated activity, the Community Development Director shall review the proposed use or activity for consistency with applicable Estuarine Use Standards set forth in this Section and apply the appropriate Land Use decision process consistent with Section 14.39.001, Procedural Requirements. In cases where all applicable Estuarine Use Standards of Sections 14.03.070 through 14.03.220 have been met for a proposed.

Permitted (P) activity, a Type I Land Use Action decision

process shall be applied. In cases of a proposed Conditional (C) activity, a Type III Land Use Action decision process will apply in addition to the requirements for Conditional Uses provided by Section 14.30.005.

B. If the Planning Department or Commission finds that the proposed use or activity is consistent with all applicable Estuarine Use Standards, the Department shall notify the Division of State Lands to that effect prior to expiration of the public notice.

As a part of this review process, the Planning Department shall impose any conditions or restrictions necessary to insure compliance with applicable Estuarine Use Standards.

C. If the Planning Department or Commission finds that the proposed use or activity is inconsistent with any applicable Estuarine Use Standard, the Department shall notify both the Division of State Lands and the applicant prior to the expiration date of the public notice. This notification shall cite the standard(s) which has not been met and state with particularity the reasons for the inconsistency.

D. If the information contained in the public notice is not sufficient for the city to reach a decision on the consistency of the proposed use or activity, the department shall notify the applicant to that effect prior to the expiration date of the public notice. This notification shall cite the standard(s) needing to be addressed and state with particularity the information needed to arrive at a decision.

E. Any finding of consistency made through this review process may be subject to revocation by the City if it is ascertained that the application included any false information or if any conditions of approval have not been complied with or are not being maintained.

F. Any decision by the Planning Department or Planning Commission through this review process may be appealed in accordance with the provisions of Section 14.39.001of the Zoning Ordinance of the City of Newport.

(Amended by Ordinance No. 1622 (10-7-91).*
*** Amended by Ordinance No. 1622 (10-7-91).*
**** Amended by Ordinance No. 1622 (10-7-91); Amended by Ordinance No. 1989 (1-1-10).)*

14.03.070 ESTUARINE USE STANDARDS*

The following standards will be applied to all new uses, expansion of existing uses, and activities within Yaquina Bay. In addition to the standards set forth in this ordinance and the Comprehensive Plan, all uses and activities must further comply with all applicable state and federal regulations governing water quality, resource protection, and public health and safety.

14.03.080 RESOURCE CAPABILITY DETERMINATIONS**

Within the Natural and Conservation Management Units certain uses are allowed only if they are found to be consistent with the resource capabilities of the area and the purposes of the management unit. Those uses requiring a resource capability determination are so identified in the Permitted Use Matrix.

*(** Amended by Ordinance No. 1622 (10-7-91).*
*****Amended by Ordinance No. 1622 (10-7-91).)*

Natural Management Units: Within Natural Management Units, a use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity, and water quality are not significant or the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity, and values for scientific research and education. In this context, "protect" means to save or shield from loss, destruction, or injury or for future intended use.

Conservation Management Units: Within Conservation Management Units, a use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biologic productivity, and water quality are not significant or the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner which conserves long-term renewable resources, natural biologic productivity, recreational and aesthetic values, and aquaculture. In this context, "conserve" means to manage in a manner which avoids wasteful or destructive uses and provides for future availability.

14.03.090 Structures.* By definition, "structures" include all constructed, manmade facilities that extend into the estuary, whether fixed or floating. Not included are log rafts or new land created from submerged or submersible lands

(see "fill"). Structural types include:

Breakwater: An offshore barrier, sometimes connected to the shore at one or both ends to break the force of the waves. Used to protect harbors and marinas, breakwaters may be constructed of rock, concrete, or piling, or may be floating structures.

Bridge Crossing: A portion of a bridge spanning a waterway. Bridge crossings do not include support structures or fill located in the waterway or adjacent wetlands.

Bridge Crossing Support Structures: Piers, piling, and similar structures necessary to support a bridge span but not including fill for causeways or approaches.

Docks: A fixed or floating decked structure against which a boat may be berthed temporarily or indefinitely.

Dolphin: A group of piles driven together and tied together so that the group is capable of withstanding lateral forces from vessels or other floating objects.

Groin: A shore protection structure (usually perpendicular to the shoreline) constructed to reap littoral drift or retard erosion of the shoreline. Generally made of rock or other solid material.

Jetty: An artificial barrier used to change littoral drift to protect inlet entrances from excessive sedimentation or direct and confine the stream of tidal flow. Jetties are usually constructed at the mouth of a river or estuary to help deepen and stabilize a channel.

Minor Navigational Improvements: Alteration necessary to provide water access to existing or permitted uses in conservation management units, including dredging for access channels and for maintaining existing navigation but excluding fill and in water navigational structures other than floating breakwaters or similar permeable wave barriers.

Pier: A structure extending into the water from solid land generally to afford passage for persons or goods to and from vessels, but sometimes to provide recreational access to the estuary.

Pile Dike: Flow control structures analogous to groins but constructed from closely spaced pilings connected by timbers.

Piling: A long, slender stake or structural element of steel, concrete, or timber which is driven, jetted, or otherwise embedded into the bed of the estuary for the purpose of supporting a load.

Wharf: A structure built alongside a waterway for the purpose of receipt, discharge, and storage of goods and merchandise from vessels.

A. It is recognized that development of structures may have some adverse impacts thatare unavoidable; however, the siting and design of all structures shall be chosen to minimize these adverse impacts on aquatic life and habitats, flushing and circulation characteristics, and patterns of erosion and accretion.

B. Materials to be used for structures shall be clean and durable so as to allow long-term stability and minimize maintenance. Materials which could create water quality problems or which rapidly deteriorate are not permitted.

C. The development of structures shall be evaluated to determine potential conflicts with established water uses (e.g., navigation, recreation, aquaculture, etc.). Such conflicts shall be minimized.

D. Occupation of estuarine surface areas by structures shall be limited to the minimum area practical to accomplish the proposed purpose.

E. Where feasible, breakwaters of the floating type shall be preferred over those of solid construction.

F. Floating structures shall not be permitted in areas where they would regularly contact the bottom at low water (i.e., shall be located waterward of mean lower low water). Exceptions may be granted for structures of limited areas that are necessary as part of an overall approved project where grounding would not have significant adverse impacts.

G. Individual single purpose docks and piers for recreational and residential uses shall be permitted only when it has been demonstrated that there are no practical alternatives (e.g., mooring buoys, dry land storage, etc.). Community facilities or other structures common to several uses are encouraged at appropriate locations.

H. The size, shape, and orientation of a dock or pier shall be limited to that required for the intended uses.

I. Structures associated with the docking of water craft must comply with Section 14.03.130/"Marina and Port Facilities."

(Amended by Ordinance No. 1622 (10-7-91).)*

14.03.100 Dredging.* By definition, "dredging" involves the removal of sediment or other material from the estuary for the purpose of deepening a channel, mooring basin, or other navigation area. (This does not apply to dredging for clams.)

A. All dredging in the estuary shall be conducted in such a manner so as to minimize:

   1. Adverse short-term effects such as pollutant release, dissolved oxygen depletion, and disturbance of important biological communities.

   2. Adverse long-term effects such as loss of fishing habitat and tidelands, loss of flushing capacity, destabilization of bottom sediments, and biologically harmful changes in circulation patterns.

   3. Removal of material in wetlands and productive shallow submerged lands.

B. Dredging shall be permitted only:

   1. For navigation or navigational access;

   2. In conjunction with a permitted or conditionally permitted water-dependent use;

   3. If a need (i.e., a substantial public benefit) is demonstrated, and the use or alteration does not unreasonably interfere with public trust rights; and

   4. If no feasible alternative upland locations exist.

C. The effects of dredge activities in intertidal or tidal marsh areas shall be mitigated by creation, restoration, or enhancement of another area to insure that the integrity of the estuarine ecosystem is maintained. Dredging projects shall meet all requirements of ORS 196.800 through 196.990 (the State Removal Fill Law), Section 10 of the Rivers and Harbors Act of 1899, and other applicable state and federal laws. These requirements shall be enforced by state and federal agencies with

regulatory authority over dredging projects.

(Amended by Ordinance No. 1622 (10-7-91).)*

14.03.110 **Shoreline Stabilization**.* By definition, "shoreline stabilization" is the stabilization or protection from erosion of the banks of the estuary by vegetative or structural (riprap or bulkhead) means.

A. Shoreline stabilization procedures shall be confined to those areas where:

   1. Active erosion is occurring that threatens existing uses or structures; or

   2. New development or redevelopment, or water-dependent or water-related uses requires protection for maintaining the integrity of upland structures or facilities.

B. The following, in order, are the preferred methods of shoreline stabilization:

   1. Vegetative or other nonstructural.

   2. Vegetated riprap.

   3. Unvegetated riprap.

   4. Bulkheads (except that the use of bulkheads shall be limited to "development" and "conservation" management units).

   Structural shoreline stabilization methods shall be permitted only where the shoreline protection proposal demonstrates that a higher priority method is unreasonable.

C. Materials to be used must be cleaned and of a nonerosive quality that will allow long-term stability and minimize maintenance. Materials that could create water quality problems or which will rapidly deteriorate are not permitted.

D. Minor modifications of the bankline profile may be permitted on a case-by-case basis. These alterations shall be for the purpose of stabilizing the shoreline, not for the purpose of gaining additional upland area.

E. Shoreline stabilization structures shall be designed and

located so as to minimize adverse impacts on aquatic life and habitat, circulation and flushing characteristics, and patterns of erosion and accretion.

F. In addition to requirements identified in C-E above, cobble/pebble dynamic revetments permitted in Management Units 8 and 9-A may be permitted if:**

1. There is a demonstrated need to protect public facility uses; and

2. Land use management practices and nonstructural solutions are inadequate; and

3. The proposal is consistent with the applicable management unit as required by Goal 16.

(Amended by Ordinance No. 1622 (10-7-91).*
***Section Added by Ordinance No. 1905 (1-16-07).)*

G.*For the purposes of shoreline stabilization, a "cobble/pebble dynamic revetment" is defined as: "The use of naturally rounded pebbles or cobbles placed in front of property to be protected and designed to move under force of wave, currents, and tides. A cobble/pebble dynamic revetment represents a transitional strategy between conventional rip rap revetment of large stones and a beach nourishment project."

14.03.120 <u>Fill</u>.** By definition, "fill" is the placement of material in the estuary to create new shoreland area.

A. Fill shall be permitted only if required for navigation, a water-dependent use, or for a public improvement project for which there is a demonstrated need and for which no practical alternatives (e.g., construction on piling, an upland location, etc.) exist, and if the fill does not unreasonably interfere with public trust rights.

B. As far as possible, all fill projects shall be designed and placed so as to minimize adverse impacts on aquatic life and habitats, flushing and circulation characteristics, erosion and accretion patterns, navigation, and recreation.

C. Fill materials that would create water quality problems or that will rapidly deteriorate are not permitted.

D. When available from an authorized dredgeline project, dredged materials shall be preferred over upland materials for approved fill projects.

E. As an integral part of the fill process, new fills placed in the estuary shall be protected by approved methods of bank stabilization to prevent erosion.

F. The effects of fill activities in intertidal or tidal marsh areas shall be mitigated by creation, restoration, or enhancement of another area to insure that the integrity of the estuarine ecosystem is maintained. Fill projects shall meet all requirements of ORS 196.800 through 196.990 (the State Removal Fill Law), Section 10 of the Rivers and Harbors Act of 1899, and other applicable state and federal laws. These requirements shall be enforced by state and federal agencies with regulatory authority over fill projects.

14.03.130 Marina and Port Facilities.***

Definitions:

Marina. A small harbor, boat basin, or moorage facility providing dockage for recreational craft.

*(*Section Added by Ordinance No. 1905 (1-16-07).*
*** Amended by Ordinance No. 1622 (10-7-91).*
*****Amended by Ordinance No. 1622 (10-7-91).)*

Port Facilities. Facilities which accommodate and support commercial fishery and navigation activities, including terminal and boat basins and moorage for commercial vessels, barges, and ocean-going ships.

A. All structures, fills, dredging, or shoreline stabilization measures undertaken in conjunction with marina or port facility development must comply with applicable standards set forth in this Ordinance. Structures shall comply with Section 14.03.090; fills shall comply with Section 14.03.120; dredging shall comply with Section 14.03.100; and shoreline stabilization shall comply with Section 14.03.110.

B. Provisions must be made in the design of the marina or port facilities to insure adequate flushing for maintenance of water quality.

C. Open moorage shall be preferred over covered or enclosed moorage except for repair or construction facilities.

D. Multi-purpose and cooperative use of moorage parking, cargo handling, and storage facilities shall be

encouraged.

E. In the development of new port or marina facilities, maximum feasible public access shall be encouraged, consistent with security and safety requirements.

14.03.140 Aquaculture.* By definition, "aquaculture" is the raising, feeding, planting, and harvesting of fish, shellfish, or marine plants, including facilities necessary to engage in the use.

A. All structures located in conjunction with aquaculture operations shall be subject to the standards set forth in this ordinance for structures. All dredge and fill, shoreline stabilization, or other activities in conjunction with aquaculture activities shall be subject to the respective standards for those activities.

B. Water diversion structures or manmade spawning channels shall be constructed so as to maintain minimum required stream flows for aquatic life in the adjacent streams.

C. The potential impacts of introducing a new fish or shellfish species (or a race within a species) shall be carefully evaluated in light of existing aquatic life and potential fish and shellfish production in the stream, estuary, and ocean.

D. Aquaculture facilities shall be located far enough from any sanitary sewer outfalls to prevent any potential health hazard.

14.03.150 Mineral and Aggregate Extraction.** By definition, this extraction is the removal for economic use of minerals, petroleum resources, sand, gravel, or other materials from the estuary.

A. All mineral and aggregate removal projects shall be conducted in such a manner so as to minimize:

1. Adverse short-term effects such as pollutant release, dissolved oxygen depletion, excessive turbidity, and disturbance of important biological communities.

2. Adverse long-term effects such as loss of fish habitat and tidelands, loss of flushing capacity, destabilization of bottom sediments, and biographically harmful changes in circulation patterns.

B. Removal of aggregate materials from the estuary shall be allowed only after a clear demonstration that comparable materials are not available from local upland sources.

C. Unless part of an approved fill project, spoils and stockpiles shall be placed beyond the reach of high water and in such a manner that sediment will not enter or return to the waterway.

D. Riparian vegetation shall be retained to the optimum degree possible. Disturbed shoreline areas shall be revegetated.

*(*Amended by Ordinance No. 1622 (10-7-91).*
***Amended by Ordinance No. 1622 (10-7-91).)*

14.03.160 Dikes.* By definition, a "dike" is an earthen embankment or ridge constructed to restrain high water. New diking is the placement of dikes on an area that (1) has never been previously diked; or (2) has previously been diked but all of a substantial part of the area is presently subject to tidal inundation and tidal marsh has been established.

A. Existing functional dikes and tide gates may be maintained and repaired as necessary to fulfill their purpose as flood control structures.

B. New dikes in estuarine areas shall be allowed only:

   1. As part of an approved fill project, subject to the standards for fill; and

   2. If appropriate mitigation is undertaken in accordance with all relevant state and federal standards.

C. Dikes constructed to retain fill materials shall be considered fill and subject to standards for fill.

D. The outside face of new dikes shall be protected by approved shoreline stabilization procedures.

14.03.170 Outfalls.** By definition, an "outfall" is an outlet through which materials are discharged into the estuary. Outfalls include sanitary (sewer) discharges, storm drainage facilities, waste seawater discharges, and industrial waste discharges.

A. As applicable, the standards for dredging, shoreline stabilization, and placement of structures as set forth in this ordinance must be complied within the installation of

outfalls.

B. Sanitary outfalls shall not be allowed in poorly flushed areas of the estuary.

*(*Amended by Ordinance No. 1622 (10-7-91).*
***Amended by Ordinance No. 1564 (1-16-90); amended by Ordinance No. 1622 (10-7-91).)*

14.03.180 Submerged Crossings.* By definition, "submerged crossings" are power, telephone, water, sewer, gas, or other transmission lines that are constructed across the estuary, usually by embedding into the bottom of the estuary.

A. Trenching or other bottom disturbance undertaken in conjunction with installation of a submerged crossing shall conform to the standards for dredging as set forth in this ordinance.

B. Submerged crossings shall be designed and located so as to eliminate interference with present or future navigational activities.

C. Submerged crossings shall be designed and located so as to ensure sufficient burial or water depth to avoid damage to the crossing.

14.03.190 Restoration.** By definition, "restoration" is revitalizing, returning, or replacing original attributes and amenities such as natural biological productivity or cultural and aesthetic resources that have been diminished or lost by past alterations, activities, or catastrophic events. Estuarine restoration means to revitalize or reestablish functional characteristics and processes of the estuary diminished or lost by past alteration, activities, or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work began. Active restoration involves the use of specific remedial actions such as removing dikes, installing water treatment facilities, etc. Passive restoration is the use of natural processes, sequences, or timing to bring about restoration after the removal or reduction of adverse stresses.

A. Restoration in areas designated for development shall be undertaken only if it is likely that the project will not conflict with or be destroyed by existing or subsequent development.

B. All restoration projects shall be designed so as to minimize adverse impacts on aquatic life and habitats, flushing and circulation characteristics, erosion and accretion patterns, navigation, and recreation.

14.03.200 Excavation.*** By definition as used here, "excavation" is the process of digging out shorelands to create new estuarine surface area directly connected to other estuarine waters.

A. Creation of new estuarine surface area shall be allowed only for navigation, other water-dependent use, or restoration.

B. All excavation projects shall be designed and located so as to minimize adverse impacts on aquatic life and habitats, flushing and circulation characteristics, erosion and accretion patterns, navigation, and recreation.

C. Excavation of as much as is practical of the new water body shall be completed before it is connected to the estuary.

D. In the design of excavation projects, provision of public access to the estuary shall be encouraged to the extent compatible with the proposed use.

*(*Amended by Ordinance No. 1622 (10-7-91).*
***Amended by Ordinance No. 1622 (10-7-91).*
****Amended by Ordinance No. 1622 (10-7-91).)*

14.03.210 Dredged Material Disposal.* By definition, "dredged material disposal" is the deposition of dredged material in estuarine areas or shorelands.

A. Disposal of dredged materials should occur on the smallest possible land area in order to minimize the quantity of land that is disturbed. Clearing of land should occur in stages on an "as needed" basis.

B. Dikes surrounding disposal sites shall be well constructed and large enough to encourage proper "ponding" and to prevent the return of suspended sediments into the estuary.

C. The timing of disposal activities shall be coordinated with the Department of Environmental Quality and the Department of Fish and Wildlife to insure adequate protection of biologically important elements such as fish runs, spawning activity, etc. In general, disposal should occur during periods of adequate river flow to aid flushing

of suspended sediments.

D. Disposal sites that will receive materials with toxic characteristics shall be designed to include secondary cells in order to achieve good quality effluent. Discharge from the sites should be monitored to insure that adequate cell structures have been constructed and are functioning properly.

E. Revegetation of disposal sites shall occur as soon as is practical in order to stabilize the site and retard wind erosion.

F. Outfalls from dredged material disposal sites shall be located and designed so as to minimize adverse impacts on aquatic life and habitats and water quality.

G. General priorities for dredged material disposal sites shall be (in order of preference):

1. Upland or approved fill project sites.

2. Approved offshore disposal sites.

3. Aquatic areas.

*(*Amended by Ordinance No. 1622 (10-7-91).)*

H. Where flow lane disposal of dredged material is allowed, monitoring of the disposal is required to assure that estuarine sedimentation is consistent with the resource capabilities and purposes of affected natural and conservation management units.

The Yaquina Bay section of the Newport Comprehensive Plan (as amended) and the Yaquina Bay Dredged Material Disposal Plan (as amended) shall be referred to for specific disposal sites and policy requirements.

14.03.220 <u>Water Handling of Logs</u>.* By definition, water handling of logs is the combined process of log dumping, storage, transportation, millside handling, and take-out as logs are placed into the water and moved to a final processing site.

A. Water handling of logs shall be conducted in such a manner as to insure that violations of water quality standards do not result from such activities.

B. New free fall log dumps shall not be permitted. All new

log dumps and shipside unloading shall employ easy letdown devices.

C. The inventory of logs in the estuary for any purpose shall be the lowest practical number for the shortest practical time considering log availability and market conditions.

D. The inventory of logs in areas where grounding will occur shall be the lowest practical number for the shortest practical time considering log availability and market conditions.

E. The best practical bark and wood debris control, collection, and disposal methods shall be employed at log dumps, ship side unloading areas, raft building areas, and millside handling and takeout areas.

14.03.230 Temporary Alteration.** By definition, "temporary alteration" is dredging, filling, or another estuarine alteration occurring over a specified short period of time that is needed to facilitate a use allowed by the Comprehensive Plan and the Permitted Use Matrices. The provision for temporary alterations is intended to allow alterations to areas and resources that would otherwise be required to be preserved or conserved.

*(*Amended by Ordinance No. 1622 (10-7-91).*
***Amended by Ordinance No. 1622 (10-7-91).)*

A. Temporary alterations include:

1. Alterations necessary for federally authorized navigation projects (e.g., access to dredged material disposal sites by barge or pipeline and staging areas or dredging for jetting maintenance);

2. Alterations to establish mitigation sites, alterations for bridge construction or repair, and for drilling or other exploratory operations; and

3. Minor structures (such as blinds) necessary for research and educational observation.

B. Temporary alterations may not be for more than three (3) years.

C. Temporary alterations to require a resource capability determination to insure that:

1. The short-term damage to resources is consistent with resource capabilities of the area; and

2. The area and affected resources can be restored to their original condition.

14.04.001 MANAGEMENT UNIT SPECIAL POLICIES.* *(14.01.001 of NZO)*

14.04.010 Management Unit No. 1.

A. Management Unit 1 shall be managed to conserve shellfish beds, fish spawning and nursery areas, and other natural resources.

B. Improvements necessary for the maintenance and replacement of the Yaquina Bay Bridge shall be allowed.

C. Navigation improvements necessary for the maintenance of the harbor entrance and channel, including jetty maintenance, shall be allowed.

D. The algal bed within Management Unit 1 as defined by the Oregon Department of Fish and Wildlife Classification Map shall be preserved.

(Section 14.01.001 amended by Ordinance No. 1379 (5-21-84); section amended by Ordinance No. 1566 (14.36.0010); entire section added and/or amended by Ordinance No. 1622 (10-7-91).)*

14.04.020 Management Unit No. 2.

A. Management Unit 2 shall be managed to conserve shellfish beds, algal beds, fish spawning and nursery areas, and other natural resources.

B. Navigation improvements necessary for the maintenance of the harbor entrance and channel, including jetty maintenance, shall be allowed.

14.04.030 Management Unit No. 3.

A. Management Unit 3 shall be managed to conserve natural resources of importance.

B. Improvements necessary for the maintenance and replacement of the Yaquina Bay Bridge shall be allowed.

C. Navigation improvements necessary for the maintenance of the harbor entrance and channel, including jetty maintenance, shall be allowed.

D. Major clam beds are located within Management Unit 3. These clam beds shall be protected.

14.04.040 Management Unit No. 4.

A. Management Unit 4 shall be managed to protect and maintain the channel and turning basin for deep draft navigation.

B. Adverse impacts of mining, mineral extraction, or other dredging operations within Management Unit 4 on existing commercial clam harvest shall be minimized.

C.* Medium and deep draft port facilities shall be allowed subject to approval by the US Army Corps of Engineers.

*(*Added by Ordinance No. 1995 (1/6/10))*

14.04.050 Management Unit No. 5.

A. Management Unit No. 5 shall be managed to provide for the development of port facilities and other water-dependent uses and water-related and non-water-related uses in keeping with the scenic, historic, and unique characteristics of the area. Water-related and non-related development shall be consistent with the purpose of this unit and with adjacent shoreland designated as especially suited for water-dependent uses or designated for waterfront development.

B. Non-water-related uses may be conditionally permitted within the estuarine area adjacent to the old waterfront from Bay Street to John Moore Road, extending out to the pierhead line as established by the U.S. Army Corps of Engineers.

C. Experimental shellfish beds were introduced in Management Unit 5 in the 1940s and1950s. It is anticipated that these shellfish beds will be impacted by future development; however, adverse impacts on these beds shall be minimized as much as possible while meeting these development needs.

D. Due to the limited water surface area available and the need for direct land to water access, alternatives (such as mooring buoys or dry land storage) to docks and piers for commercial and industrial uses are not feasible in Unit 5. Multiple use facilities common to several users are encouraged where practical.

E. Tourist-related activities will be encouraged to locate on the landward side of S.W. Bay Boulevard. The bay side of Bay Boulevard should accommodate water-dependent and water-related types of uses. Some tourist-related

uses may locate on the water side, but only upon the issuance of a conditional use permit.

14.04.060 Management Unit No. 6.

A. Management Unit 6 shall be managed to conserve natural resources and to provide for uses like existing navigation and recreation activities.

B. Management Unit 6 will need to be disturbed for the placement of the submerged sewer and water lines, bridge footings, and the relocation of the breakwater. Care should be taken to return the disturbed areas to a condition consistent with the conservation classification. The shellfish beds south of the port breakwater are considered a resource of major importance.

14.04.070 Management Unit No. 7.

A. Management Unit 7 shall be managed to provide for water-dependent development compatible with existing uses and consistent with the purpose of the area.

B. Development of deep and medium draft port facilities shall be a permitted use only outside of the existing South Beach Marina boat basin.

C. Adverse impacts of future development on eelgrass beds, shellfish beds, and fish spawning and nursery areas shall be minimized, consistent with allowed development.

14.04.080 Management Unit No. 8.

A. Management Unit 8 shall be managed to conserve natural resources such as eelgrass and shellfish beds.

B. Navigational improvements found to be necessary for the maintenance of the deep water channel shall be provided.

C. Temporary moorages of log rafts in Management Unit 8 shall conform to the following standards:

1. Whenever feasible, individual logs shall be prohibited. Other activities may not be bundled, but they shall always be held in rafts.

2. The number of log rafts moored at any time shall be the lowest practical number for the shortest practical time, considering log supply and tidal cycles.

3. Water surface areas occupied by temporary moorage shall not at any time exceed seven (7) acres.

4. Dolphins shall be sited and moorage conducted so that log rafts will not ground at law water.

5. As much as practical, shipment and movements of logs shall be timed to minimize conflicts with recreational uses in the area.

D.* A cobble/pebble dynamic revetment for shoreline stabilization may be authorized in Management Unit 8 for protection of public facilities (such as the Hatfield Marine Science Center facilities).

14.04.090 Management Unit No. 9-A.

A. Management Unit 9-A shall be managed to preserve and protect natural resources and values. In order to maintain resource values, alterations in this unit should be kept to a minimum. Minor alterations that result in temporary disturbances such as limited dredging for submerged crossings would be consistent with resource values in this area; other more permanent alterations should be reviewed individually for consistency with the resource capabilities of the area.

B. Active restoration activities are limited to fish and wildlife habitat and water quality and estuarine enhancement.

C. Goal 16 exceptions have been taken for the waste seawater outfall for the Oregon Coast Aquarium and for increased storm water runoff through an existing drainage system.

D. The Idaho Point Marina and the channel that serves it may be maintained as allowed under the existing Army Corps of Engineers permit.

E. A cobble/pebble dynamic revetment for shoreline stabilization may be authorized in Management Unit 9-A for protection of public facilities (such as the Hatfield Marine Science Center facilities).**

*(*Policy Added by Ordinance No. 1905 (1-16-07).*
***Policy Added by Ordinance No. 1905 (1-16-07).)*

14.04.100 Management Unit No. 10-A.

A. Management Unit 10-A shall be managed to preserve

and protect natural resources and values. Permitted alterations should be limited to those that result in only temporary disturbances. More permanent alterations should be reviewed for consistency with the resource capabilities of the area.

B. Active restoration activities are limited to fish and wildlife habitat and water quality and estuarine enhancement.

14.04.110 Permitted Use Matrices. Each management unit district has a permitted use matrix. The Comprehensive Plan contains a description, classification, resource capabilities, management objectives, and special policies for each of the management units found in the Newport Comprehensive Plan. These sections should be read in conjunction with the Permitted Use Matrices.

The Permitted Use Matrices correspond to those in the Lincoln County Estuary Management Plan, except for non-water-related commercial uses in Management Unit 5. The commercial use category includes recreational uses. Only the Special Policies that would apply to a specific use appear on the Permitted Use Matrices. Other Special Policies which apply more widely to the particular management unit can be found in Section 14.04.001.

A use may be permitted with standards or conditionally permitted. In addition, a certain type of structure or alteration may or may not be permitted in conjunction with a permitted or conditional use. For example: In Management Unit No. 1 mining is permitted conditionally. In conjunction with mining, new dredging is permitted conditionally, and navigational aids are permitted with standards. Thus, new dredging activity would be reviewed by the Planning Commission for compliance with all standards. However, if navigational aids are found to be needed once mining activity has begun, those can be permitted with standards by staff without Planning Commission review.

14.05.001 MANUFACTURED DWELLINGS AND RECREATIONAL VEHICLES* *(2-2-26 of the NZO)*

14.05.010 Purpose. The purpose of this section is to provide criteria for the placement of manufactured dwellings and recreational vehicles within the City of Newport. It is also the purpose of this section to provide for dwelling units other than site-built structures.

14.05.020 Manufactured Dwellings on Individual Lots

A. In addition to the uses permitted in the underlying zone, a single manufactured dwelling may be placed on an individual lot or parcel in any residential district where single-family residences are allowed subject to the following provisions:

1. Conform to the definition of a manufactured dwelling in Section 14.01.010 of this Code.

2. Have the wheels and tongue or hitch removed.

3. Be placed on an excavated and backfilled foundation and enclosed at the perimeter such that the manufactured home is located not more than 12 inches above grade.

4. Have a pitched roof of at least two and one half feet for each 12 feet in width and be provided with gutters and down-spouts consistent with the standards contained in the current State of Oregon amended Council of American Building Officials.

5. Have exterior siding and roofing which, in color, material, and appearance, is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on adjacent dwellings as determined by the Building Official.

6. Have a garage or carport constructed of like materials if an adjacent lot or parcel is developed with a dwelling that has a garage or carport.

7. Be multisectional and enclose a space of not less than 1,000 square feet as determined by measurement of exterior dimensions of the unit. Space within accessory structures, extensions, or additions shall

not be included in calculating space.

8. Be connected to the public water system and an approved sewage disposal system.

9. Be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce heat loss to levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.010.

B. A manufactured dwelling constructed in accordance with current Federal Manufactured Home Construction and Safety Standards that does not meet criteria listed in subsection (A), may be approved by the Planning Commission as a Conditional Use pursuant to Section 14.30.005 of this Ordinance. Requests of this nature shall be reviewed under a Type III decision making process consistent with Section 14.39.001, Procedural Requirements.

(Entire section amended by Ordinance No. 1641 (8-3-92) and replaced in its entirety by Ordinance No. 2008 (12-2-2010).)*

14.05.030 Manufactured Dwelling Park Standards. Manufactured dwelling parks may only be allowed in the R-2, R-3, and R-4 zoning districts, subject to the development standards contained in this section.

14.05.040 Manufactured Dwelling Parks. Manufactured dwelling parks are permitted subject to the following:

A. Construction of the manufactured dwelling park and placement of manufactured dwellings shall comply with the Oregon Manufactured Dwelling and Park Specialty Code, 2002 Edition, as amended.

B. Streets within the manufactured dwelling park shall adhere to the standards outlined in Newport Municipal Code Chapter 13.05.040 where the construction or extension of such street is identified in the City of Newport Transportation System Plan.

C. The number of spaces for manufactured dwellings shall not exceed an average of six (6) per acre of the total area in the manufactured dwelling park.

D. Each space for a manufactured dwelling shall contain at least 5,000 square feet.

E. Any manufactured dwelling park authorized under this section shall have a contiguous area of not less than one (1) acre.

F. If the park provides spaces for 50 or more manufactured dwelling units, each vehicular way in the park shall be named and marked with signs that are similar in appearance to those used to identify public streets. A map of the vehicular ways shall be provided to the fire department for appropriate naming.

G. Public fire hydrants shall be provided within 250 feet of manufactured dwelling spaces or permanent structures within the park. If a manufactured dwelling space or permanent structure in the park is more than 250 feet from a public fire hydrant, the park shall have water supply mains designed to serve fire hydrants. Each hydrant within the park shall be located on a vehicular way and shall conform in design and capacity to the public hydrants in the city.

H. The manufactured dwelling park may have a community or recreation building and other similar amenities.

I. All dead end streets shall provide an adequate turn around for emergency vehicles.

14.05.050 Recreational Vehicles: General Provisions

A. Recreational vehicles may be stored on property within the City of Newport provided they are not used as a place of habitation while so stored.

B. Removal of the wheels or placement of a recreational vehicle on a permanent or temporary foundation shall not change the essential character of any recreational vehicle or change the requirements of this section.

C. It shall be unlawful for any person occupying or using any recreational vehicle within the City of Newport to discharge wastewater unless connected to a public sewer or an approved septic tank in accordance with the ordinances of the City of Newport relating thereof. All recreational vehicle parks within the City of Newport shall comply with the sanitary requirements of the City of Newport and the State of Oregon.

14.05.060 Recreational Vehicle Parks. Recreational vehicle parks are allowed conditionally in an R-4 zone and conditionally if publicly owned in the P-1 and P-2 zoning

districts (excluding those P-1 properties within the Historic Nye Beach Design Review District), subject to subsections A through D below and in accordance with Section 14.39.001, Procedural Requirements. Recreational vehicle parks are allowed outright in C-1, C-2, C-3, I-1, and I-2 zoning districts (excluding those C-2 properties within the Historic Nye Beach Design Review District), subject to the subsections A through D as follows:

A. The park complies with the standards contained in state statutes and the Oregon Administrative Rules.

B. The developer of the park obtains a permit from the state.

C. The developer provides a map of the park to the City Building Official.

D. The park complies with the following provisions (in case of overlap with a state requirement, the more restrictive of the two requirements shall apply):

1. The space provided for each recreational vehicle shall not be less than 600 square feet, exclusive of any space used for common areas (such as roadways, general use structures, walkways, parking spaces for vehicles other than recreational vehicles, and landscaped areas). The number of recreational vehicles shall be limited to a maximum of 22 per gross acre.

2. Roadways shall not be less than 30 feet in width if parking is permitted on the margin of the roadway or less than 20 feet in width if parking is not permitted on the edge of the roadway, they shall be paved with asphalt, concrete, or similar impervious surface and designed to permit easy access to each recreation vehicle space.

3. A space provided for a recreational vehicle shall be covered with crushed gravel or paved with asphalt, concrete, or similar material and be designed to provide run-off of surface water. The part of the space which is not occupied by the recreational vehicle, not intended as an access way to the recreation vehicle or part of an outdoor patio, need not be paved or covered with gravel provided the area is landscaped or otherwise treated to prevent dust or mud.

4. A recreational vehicle space shall be provided with piped potable water and sewage disposal service. A

recreational vehicle staying in the park shall be connected to the water and sewage service provided by the park if the vehicle has equipment needing such service.

5. A recreational vehicle space shall be provided with electrical service.

6. Trash receptacles for the disposal of solid waste materials shall be provided in convenient locations for the use of guests of the park and located in such number and be of such capacity that there is no uncovered accumulation of trash at any time.

7. The total number of off-street parking spaces in the park shall be provided in conformance with Section 14.13.030. Parking spaces shall be covered with crushed gravel or paved with asphalt, concrete, or similar material.

8. The park shall provide toilets, lavatories, and showers for each sex in the following ratios: For each 15 recreational vehicle spaces, or any fraction thereof, one toilet (up to 1/3 of the toilets may be urinals), one lavatory, and one shower for men; and one toilet, one lavatory, and one shower for women. The toilets and showers shall afford privacy, and the showers shall be provided with private dressing rooms. Facilities for each sex shall be located in separate buildings, or, if in the same building, shall be separated by a soundproof wall.

9. The park shall provide one utility building or room containing one clothes washing machine, and one clothes drying machine for each ten recreational vehicle spaces, or any fraction thereof.

10. Building spaces required by Subsection 9 and 10 of this section shall be lighted at all times of the night and day, shall be ventilated, shall be provided with heating facilities which shall maintain a room temperature of at least 62˚F, shall have floors of waterproof material, shall have sanitary ceilings, floor and wall surfaces, and shall be provided with adequate floor drains to permit easy cleaning.

11. Except for the access roadway into the park, the park shall be screened on all sides by a sight-obscuring hedge or fence not less than six feet in height unless modified through either the conditional use permit

process (if a conditional use permit is required for the RV park) or other applicable land use procedure. Reasons to modify the hedge or fence buffer required by this section may include, but are not limited to, the location of the RV park is such that adequate other screening or buffering is provided to adjacent properties (such as the presence of a grove or stand of trees), the location of the RV park within a larger park or development that does not require screening or has its own screening, or screening is not needed for portions not adjacent to other properties (such as when the RV park fronts a body of water). Modifications to the hedge or fence requirement of this subsection shall not act to modify the requirement for a solid wall or screening fence that may otherwise be required under Section 14.14.020 (Adjacent Yard Buffer) for non-residentially zoned property abutting a residentially zoned property.

12. Except for vehicles, there shall be no outside storage of materials or equipment belonging to the park or to any guest in the park.

13. Evidence shall be provided that the park will be eligible for a certificate of sanitation as required by state law.

14.06.001 RECREATIONAL VEHICLES* *(2-2-27 of the NZO)*

14.07.001 TRAILER COACHES AND TRAILER PARKS*
(Section 2-2-28 of the NZO)

14.08.001 TEMPORARY STRUCTURES PERMITS * *(2-2-29 of the NZO)*

14.08.010 Purpose. The purpose of this section is to provide some allowance for short-term uses that are truly temporary in nature, where no permanent improvements are made to the site, and the use can be terminated and removed immediately. Temporary activities include special events as defined in 9.80.010 of the Newport Municipal Code, temporary living quarters, construction trailers, leasing offices, vending carts, kiosks, storage buildings, and similar structures.

14.08.020 Special Events Structures. Placement of special events structures is regulated under Chapter 9.80 of the Newport Municipal Code.

14.08.030 Temporary Living Quarters. Notwithstanding any other restrictions and prohibitions in this code, a recreational vehicle may be used as a temporary living quarters subject to the following conditions:

A. The request for temporary living quarters must be in conjunction with a valid, active building permit.

B. The time limit shall be no longer than one (1) year from issuance. After the expiration of the time limit, the recreational vehicle used for the temporary living quarters must no longer be used for on-site living purposes.

C. The recreational vehicle used as the temporary living quarters must be self-contained for sanitary sewer.

D. Temporary living situations for non-residential projects may use a job shack or other such structure instead of a recreational vehicle as the living quarters and may have a portable toilet instead of a self-contained unit.

E. The location of the temporary living quarters on the site shall satisfy the vision clearance requirements as set forth in Section 14.13.001 of the zoning code.

F. Prior to the issuance of a temporary living quarters permit, the applicant shall sign an agreement that the applicant shall comply with the provisions of this subsection.

14.08.040 Temporary Structures for Other Than Special Events. Notwithstanding any other restrictions and prohibitions in this code, a temporary structure not

associated with a special event may be erected subject to the following:

A. The permit, if approved, shall be issued for a period not to exceed two (2) years. Upon like application and approval, the permit may be renewed for up to an additional (1) year.

B. Temporary structures are limited to commercially and industrially zoned properties.

C. No permanent changes will be made to the site in order to accommodate the temporary structure.

D. Permission is granted by the property owner.

E. Sanitary facilities will be made available to the site.

F. The structure does not interfere with the provision of parking for the permanent use on the site.

G. The structure satisfies the vision clearance requirements of the zoning code.

H. Approval is obtained from the City Building Official if the structure is to be erected for 180 days or longer.

I. For temporary structures that are to be placed in one location for 12 or more consecutive months, a bond or cash deposit for the amount required to remove the temporary structure, if not removed in the required time frame, shall be placed in an interest-bearing account in the name of the applicant and the City of Newport. Any bond or cash deposit must be in a form approved by the City Attorney.

(Section added by Ordinance No. 1644 (9-8-92); amended by Ordinance No. 1731 (10-16-95); and section amended in its entirety by Ordinance No. 2001 (4-4-10)*

14.08.050 Temporary Vending Carts. Notwithstanding any other restrictions and prohibitions in this code, a temporary vending cart, not associated with a special event, may be located within the City of Newport subject to the following:

A. Temporary vending carts may be located on commercially-zoned property that is at least ½ mile from a permanent eating and drinking establishment.

B. Temporary vending carts and any accessory improvements (such as seating) are limited to privately-

owned properties, and may encroach onto public property or public right-of-way only if the city consents to the encroachment as provided in Chapter 4.10 of the Newport Municipal Code.

C. The items available for sale from temporary vending carts are limited to food and beverages for immediate consumption. Requests to have a different item or service considered shall be submitted in writing to the City Manager, who shall determine if the item or service:

1. Can be vended from a regulation size temporary vending cart;

2. Not lead to or cause congestion or blocking of pedestrian traffic on the sidewalk;

3. Involve a short transaction period to complete the sale or render the service;

4. Not cause undue noise or offensive odors; and

5. Be easily carried by pedestrians.

D. A permit for a temporary vending cart, if approved, shall be issued for a period not to exceed two (2) years. Upon expiration of a permit, a temporary vending cart must immediately cease operation, and must be permanently removed within seven (7) days.

E. At least one trash and one recycling receptacle will be made available to the public.

F. The City of Newport receives a signed statement that the permittee shall hold harmless the City of Newport, its officers and employees, and shall indemnify the City of Newport, its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activities of the permittee. Permittee shall furnish and maintain public liability, products liability, and property damage insurance as will protect permittee, property owners, and City from all claims for damage to property or bodily injury, including death, which may arise from operations of the permittee. Such insurance shall provide coverage of not less than $1,000,000 per occurrence. Such insurance shall be without prejudice to coverage otherwise existing, and shall name as additional insured the City of Newport, their officers and employees, and shall further provide that the policy shall not terminate or be canceled prior to the completion of

the contract without 30 days written notice to the City Recorder of the City of Newport.

G. A bond or cash deposit for the amount required to remove the temporary vending cart, if not removed in the required time frame, shall be placed in an interest-bearing account in the name of the applicant and the City of Newport. Any bond or cash deposit must be in a form approved by the City Attorney.

14.08.060 **Permits Not Transferable Unless Approved.** Permits authorized by this section are not transferable to another person or location unless approved by the Community Development Director.

14.08.070 **Approval Authority.** Unless otherwise provided, placement of temporary structures is subject to review and approval by the Community Development Director as ministerial action.

14.08.080 **Application Submittal Requirements.** In addition to a land use application form with the information required in Section 14.39.040, applications for temporary structures shall include the following:

A. A site plan, drawn to scale, showing:

1. The proposed location of the temporary structure, seating areas, and amenities, as applicable.
2. Existing buildings.
3. Existing parking.
4. Access(es) to the parking areas.
5. Any additional structures, seating areas, and amenities associated with the temporary structure.
6. The location and size of trash receptacles.
7. Utilities.
8. Existing signs and signs associated with the temporary structure.
9. Temporary structure building elevations or photos.
10. The location of drive-up windows (if applicable).

B. A signed agreement stating that the applicant is aware of the limitations and conditions attached to the granting of the permit and agrees to abide by such limitations and conditions.

C. A description of the types of items sold or services rendered, if applicable.

D. A valid copy of all necessary permits required by State or local health authorities, and other required licenses or permits, such as business license or sign permit obtained by the applicant and maintained on site.

14.08.090 **Fire Marshal Inspection.** Prior to the issuance of any permit, the Fire Marshal shall inspect and approve any temporary structure to assure conformance with the provisions of the Fire Code.

14.08.100 **Construction Trailer Exemption.** Construction trailers located on the site upon which construction is to occur that are used during the course of the construction project are exempt from the process outlined in this section and may be permitted at the time of building permit approval provided said structures comply with the building code and the vision clearance requirements of the zoning code.

14.09.001 HEIGHT LIMITATIONS* *(2-3-1 of the NZO)*

14.09.010 Height Limitations. A building, structure, or portion thereof hereafter erected shall not exceed the height listed in Table A for the zone indicated except as provided for in Sections 14.09.020, General Exceptions to Building Height Limitations and 14.09.030, Special Exceptions to Building Height Limitations.

14.09.020 General Exceptions to Building Height Limitations.

A. The following types of structures or structural parts are not subject to the building height limitations of this Code as long as the square footage of said structure or structural part is no greater than 5% of the main building foot print as shown on the site plan, or 200 square feet, whichever is less: chimneys, cupolas, church spires, belfries, domes, transmission towers, smokestacks, flag poles, radio and television towers, elevator shafts, conveyors and mechanical equipment.

B. No structure or structural part excepted under Subsection (A) from the building height limitations of this Code, whether freestanding or attached to another structure or structural part, may exceed the maximum allowable height by more than 25% unless approved by the Planning Commission per section 14.09.030.

C. Stand alone antennas, cell towers, electrical transmission towers, telephone or electric line poles and other public utility types of structures or structural parts, where allowed by this Ordinance, are limited in height to 50 feet in R-1, R-2, R-3, R-4, W-1, W-2, W-3 and C-2 zones; 100 feet in the P-1, C-1 and C-3 zones; 150 feet in the I-1, I-2 and I-3 zones. A taller structure or structural part referenced under this subsection may be allowed upon the issuance of a conditional use permit per Section 14.30.005 of this Code.

D. No structure or structural part excepted under this section from the building height limitations of this Code may be used for human habitation.

14.09.030 Special Exceptions to Building Height Limitations. Any person seeking a special exception to the building height limitations of this Code shall do so by applying for an adjustment or variance as described in Section 14.29.005 of this Code, and consistent with Section

14.39.001, Procedural Requirements.**

*(*Amended by Ordinance No. 1839 (10-1-01).*
***Amended by Ordinance No. 1989 (1-1-10).)*

14.10.001 REQUIRED YARDS AND SETBACKS *(14.10.001 of the NZO)*

14.10.010 Required Yards. A building, or portion thereof, hereafter erected shall not intrude into the required yard listed in Table A for the zone indicated.

14.10.020 Required Recreation Areas. All multiple-family dwellings, condominiums, hotels, motels, mobile home parks, trailer parks, and recreational vehicle parks shall provide for each unit a minimum of 50 square feet of enclosed outdoor area landscaped or improved for recreation purposes exclusive of required yards such as a patio, deck, or terrace.

14.10.030 Garage Setback. The entrance to a garage or carport shall be set back at least 20 feet from the access street for all residential structures.

14.10.040 Yards for Group Buildings.

A. In case of group buildings on one lot, including institutions and dwellings, the yards on the boundary of the lots shall not be less than required for one building on one lot in the district in which the property is located.

B. The distance between group buildings on one lot shall be twice the width of the required side, front, or rear yards, except in the case of yard combinations that no yard be required to exceed 25 feet.

C. In the case of court apartments rearing on side yards, the required side yards shall be increased two feet in width for each dwelling unit rearing thereon.

D. No group dwelling court shall be less than 25 feet in width.

E. In the R-3 and R-4 zones where three or more commercial or residential dwelling units are in a continuous row on interior lots rearing on one side yard and fronting upon another side yard, the side yard on which the dwelling rears shall not be less than eight feet. The side yard on which the dwellings front shall not be less than 18 feet in width.

14.10.050 General Exceptions to Required Yard.

A. Front Yards.* In the event a front yard less than the minimum has been legally established on one or both of the adjacent lots, the minimum front yard for an interior lot may be reduced to the average of what has been established for the adjoining front yards.

B. Projections Into Yards. Every part of a required yard shall be open from the ground to the sky, unobstructed except for the following:

1. Accessory building in the rear yard as provided in Section 14.12.001.*

*(*Sentence amended by Ordinance No. 2011 (2-18-11).)*

2. Ordinary building projections such as cornices, eaves, belt courses, sills, or similar architectural features may project into side yards not more than 12 inches or into front and rear yards not more than 24 inches.

3. Chimneys may project into any required yard not more than 16 inches.

4. Uncovered balconies or fire escapes may project into any required yard not more than one foot.

5. Uncovered terraces may project or extend into a required front yard not more than five feet or into a required side yard not more than one foot or into a required court not more than six feet. The regulations contained in this paragraph shall not apply to paved parking or driveway areas at ground level.

C. Dwelling Units Above Stores. Yards are not required for dwellings above businesses unless the dwelling area exceeds 50% of the floor area of the business dwelling.

14.11.001 MINIMUM LOT SIZE *(2-3-3 of NZO)*

14.11.010 Minimum Size. All lots hereafter created within the City of Newport shall have a minimum lot area and width as listed in Table A for the zone indicated. It is not the intent of the Zoning Ordinance to deprive owners of substandard lots the use of their property. Substandard single lots lawfully created prior to the passage of this Zoning Ordinance shall not be prevented from being built upon solely because the lot does not comply with the minimum lot size requirements of this ordinance. However, the density standards shall apply to all partitioning or resubdivision of property in the future and to developments of over two dwelling units at one time.

14.11.020 General Exceptions to Lot Size Requirements. A residentially zoned lot having less width or less area than required under the terms of this ordinance that was of record prior to December 5, 1966, may be occupied by a one-family dwelling unit, provided all yard requirements (setbacks) are complied with. Substandard lots in R-3 and R-4 zones may be occupied by multi-family dwellings not exceeding the density limitations for that zone provided in Table A, as provided in Section 14.12.001 herein below, but only upon allowance of a conditional use in accordance with the provisions of Section 14.30.005, Conditional Uses, and Section 14.39.001, Procedural Requirements.*

14.12.001 DENSITY LIMITATIONS *(14.12.001 of the NZO)*

14.12.005.Density Limitations. A residential building structure or portion thereof hereafter erected shall not exceed the maximum living unit density listed in Table A, as hereinafter set forth, for the zone indicated, except in the case of a lot having less than is required and of record prior to December 5, 1966, which may be occupied by a single-family dwelling unit, providing other requirements of this ordinance are complied with, except to the extent that a higher density may specifically be allowed by any term or provision of this Ordinance.

(BY THIS REFERENCE, THERE IS INCLUDED HEREIN AND MADE A PART HEREOF, A TABLE OF DENSITY AND OTHER REQUIREMENTS, DESIGNATED "TABLE A".)

14.12.001
TABLE "A"

District	Minimum Lot Area (Sq. Ft.)	Minimum Width	Setback Requirements: Front/2nd Front[1]	Side	Rear	Lot Coverage In Percent	Maximum Building Height	Density In Sq. Ft. Per Unit
R-1/"Low Density Single-Family Residential"	7,500	65'	15' and 15' or 20' and 10'	5' & 8'	15'	54%	30'	7,500
R-2/"Medium Density Single-Family Residential"								
Duplex on interior lot	7,500	50	15' and 15'	5'	10'	57%	30'	3,750
Duplex on corner lot	5,000	50'	or	5'	10'	57%	30'	2,500
House	5,000	50'	20' and 10'	5'	10'	57%	30'	5,000
R-3/"Medium Density Multi-Family Residential"	5,000	50'	15' and 15' or 20' and 10'	5'	10'	60%	35'	1,250[2]
R-4/"High Density Multi-Family Residential"[3]	5,000	50'	15' and 15' or 20' and 10'	5'	10'	64%	35'	1,250
C-1/"Retail and Service Commercial"	5,000	0'	0'	0'	0'	85-90%*	50'*	n/a
C-2/"Tourist Commercial"	5,000	0'	0'	0'	0'	85-90%*	50'*	n/a
C-3/"Heavy Commercial"	5,000	0'	0'	0'	0'	85-90%*	50'*	n/a

[1] Front and second front yards shall equal a combined total of 30 feet. All garages shall be set back at least 20 feet from the access street.

[2] Amended by Ordinance No. 1642 (8-3-92).

[3] Density of hotels, motels, and nonresidential units shall be one unit per 750 square feet.

I-1/"Light Industrial"	5,000	0'	50' from Hwy. 101	0'	0'	85-90%*	50'*	n/a

I-2/"Medium Industrial"	20,000	0'	50' from Hwy. 101	0'	0'	85-90
I-3/"Heavy Industrial"	5 acres	0'	50' from Hwy. 101	0'	0'	85-90

* See Section 14.14.001 n/a - not applicable

14.12.001 (con't)
TABLE "A"

District	Minimum Lot Area (Sq. Ft.)	Minimum Width	Setback Requirements: Front/2nd Front	Side	Rear	Lot Cover In Per
W-1/"Water Dependent"	0	0'	0'	0'	0'	85-90
W-2/"Water Related"	0	0'	0'	0'	0'	85-90
MU-1 thru MU-10 (Management Units)	0	0'	0'	0'	0'	100%
P-1/"Public Structures"	0	0'	0'	0'	0'	100%
P-2/"Public Parks"	0	0'	0'	0'	0'	100%
P-3/"Public Open Space"	0	0'	0'	0'	0'	100%

(M-H)/"Mobile Home Overlay" For mobile homes on individual lots, see underlying zone; for mobile home parks, see ORS 446.100 and OAR 814-28-060.

* See Section 14.14.001 n/a - not applicable

Front and second yards shall equal a combined total of 30 feet. All garages shall be set back at least 20 feet from the access street.

14.13.001 PARKING, LOADING, AND ACCESS REQUIREMENTS* *(14.13.001 of the NZO)*

14.13.010 Purpose. The purpose of this section is to establish off-street parking and loading requirements, access standards, development standards for off-street parking lots, and to formulate special parking areas for specific areas of the City of Newport. It is also the purpose of this section to implement the Comprehensive Plan, enhance property values, and preserve the health, safety, and welfare of citizens of the City of Newport.

14.13.020 Definitions. For purposes of this section, the following definitions shall apply:

Access. The point of ingress and egress from a public street to an off-street parking lot or loading and unloading area.

Aisle. Lanes providing access to a parking space.

Gross Floor Area. The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.

Loading Space. A parking space for the loading and unloading of vehicles over 30 feet in length.

Parking Space. An area for the parking of a vehicle.

Site Plan. A map showing the layout of the building, parking, landscaping, setbacks, and any other pertinent information concerning the development of a site.

Use. Any new building, change of occupancy, or addition to an existing building.

14.13.030 Number of Parking Spaces Required. Off-street parking shall be provided and maintained as set forth in this section. Such off-street parking spaces shall be provided prior to issuance of a final building inspection, certificate of occupancy for a building, or occupancy, whichever occurs first. For any expansion, reconstruction, or change of use, the entire development shall satisfy the requirements of Section 14.13.050, Accessible Parking. Otherwise, for building expansions the additional required parking and access improvements shall be based on the expansion only and for reconstruction or change of type of use, credit shall be given to the old use so that the required parking shall be

based on the increase of the new use. Any use requiring any fraction of a space shall provide the entire space. In the case of mixed uses such as a restaurant or gift shop in a hotel, the total requirement shall be the sum of the requirements for the uses computed separately. Required parking shall be available for the parking of operable automobiles of residents, customers, or employees, and shall not be used for the storage of vehicles or materials or for the sale of merchandise. A site plan, drawn to scale, shall accompany a request for a land use or building permit. Such plan shall demonstrate how the parking requirements required by this section are met.

Parking shall be required at the following rate. All calculations shall be based on gross floor area unless otherwise stated.

*(*Section previously amended by Ordinance No. 1332 (5-23-83), Ordinance No.1447 (12-16-85), Ordinance No. 1462 (5-3-86), Ordinance No. 1548 (8-21-89), Ordinance No. 1638 (7-20-92), and Ordinance No. 1622 (10-7-91); section amended in its entirety by Ordinance No. 1780 (11-17-97); and amended in its entirety by Ordinance No. 2010 (1-6-2011).)*

1. General Office	1 space/600 sq. ft.
2. Post Office	1 space/250 sq. ft.
3. General Retail (e.g. shopping centers, apparel stores, discount stores, grocery stores, video arcade, etc.)	1 space/300 sq. ft.
4. Bulk Retail (e.g. hardware, garden center, car sales, tire stores, wholesale market, furniture stores, etc.)	1 space/600 sq. ft.
5. Building Materials and Lumber Store	1 space/1,000 sq. ft.
6. Nursery–Wholesale building	1 space/2,000 sq. ft. land + 1 space/1,000 sq. ft.
7. Eating and Drinking Establishments	1 space/150 sq. ft.
8. Service Station	1 space/pump
9. Service Station with	1 space/pump +

Convenience Store 1 space/200 sq. ft. of store space

10. Car Wash	1 space/washing module + 2 spaces
11. Bank	1 space/300 sq. ft.
12. Waterport/Marine Terminal	20 spaces/berth
13. General Aviation Airport	1 space/hangar + 1 space/300 sq. ft. of terminal
14. Truck Terminal	1 space/berth
15. Industrial	1.5 spaces/1,000 sq. ft.
16. Industrial Park	1.5 spaces/5,000 sq. ft.
17. Warehouse	1 space/2,000 sq. ft.
18. Mini-Warehouse	1 space/10 storage units
19. Single-Family Detached Residence (one space may be the driveway between garage and front property line)	2 spaces/dwelling
20. Duplex	1 space/dwelling
21. Apartment	1 space/unit for first four units + 1.5 spaces/unit for each Additional unit
22. Condominium (Residential)	1.5 spaces/unit
23. Elderly Housing Project	0.8 space/unit if over 16 Dwelling units
24. Congregate Care/Nursing Home	1 space/1,000 sq. ft.
25. Hotel/Motel	1 space/room + 1 space for the manager (if the hotel/motel contains other uses, the other uses Shall be calculated separately)

26. Park	2 spaces/acre
27. Athletic Field	20 spaces/acre
28. Recreational Vehicle Park	1 space/RV space + 1 space/10 RV spaces
29. Marina	1 space/5 slips or berths
30. Golf Course	4 spaces/hole
31. Theater	1 space/4 seats
32. Bowling Alley	4 spaces/alley
33. Elementary/Middle School	1.6 spaces/classroom
34. High School	4.5 spaces/classroom
35. Community College	10 spaces/classroom
36. Religious/Fraternal Organization	1space/4 seats in the main auditorium
37. Day Care Center	1space/4 persons of license occupancy
38. Hospital	1 space/bed
39. Assembly Occupancy	1 space/8 occupants (based on 1 occupant/15 square feet of Exposition/Meeting/ Assembly Room Conference Uses Not Elsewhere Specified

14.13.040 <u>Parking Requirements for Uses Not Specified</u>. The parking space requirements of buildings and uses not set forth above shall be determined by the Planning Director or designate. Such determination shall be based upon requirements for the most comparable building or use specified in Section 14.13.030 or a separate parking demand analysis prepared by the applicant and subject to a Type I decision making procedure as provided in Section 14.39.001, Procedural Requirements.

14.13.050 <u>Accessible Parking</u>. Parking areas shall meet all applicable accessible parking requirements of the Oregon

Structural Specialty Code to ensure adequate access for disabled persons.

14.13.060 Compact Spaces. For parking lots of four vehicles or more, 40% of the spaces may be compact spaces, as defined in Section 14.13.090(A). Each compact space must be marked with the word "Compacts" in letters that are at least six inches high.

14.13.070 Bicycle Parking. Bicycle parking facilities shall be provided as part of new multi-family residential developments of four units or more and new retail, office, and institutional developments.

A. The required minimum number of bicycle parking spaces is as follows:

Parking Spaces Required	Bike Spaces Required
1 to 4	0
5 to 25	1
26 to 50	2
51 to 100	3
Over 100	1/50

B. Bicycle parking for multiple uses (such as commercial shopping centers) may be clustered in one or several locations but must meet all other requirements for bicycle parking.

C. Each required bicycle parking space shall be at least two and a half by six feet. An access aisle at least five feet wide shall be provided and maintained beside or between each row of bicycle parking.

D. Bicycle parking facilities shall offer security in the form of either a lockable enclosure in which the bicycle can be stored or a stationary object (e.g., a "rack") upon which a bicycle can be locked.

E. Areas set aside for required bicycle parking must be clearly marked and reserved for bicycle parking only.

14.13.080 Shared Parking. The off-street parking requirements of two or more uses, structures, or parcels may be satisfied by the same parking lot or loading spaces used jointly to the extent that it can be shown by the owners or operators of the uses, structures, or parcels that their parking needs do not overlap. If the uses, structures, or parcels are

under separate ownership, the right to joint use of the parking space must be evidenced by a deed, lease, contract, or other appropriate written document to establish the joint use.

14.13.090 Parking Lot Standards. Parking lots shall comply with the following:

A. Size of Spaces. Standard parking spaces shall be nine (9) feet in width by 18 feet in length. Compact spaces may be 7.5 feet wide by 15 feet long. Wherever parking areas consist of spaces set aside for parallel parking, the dimensions of such parking space(s) shall be not less than eight (8) feet wide and 22 feet long. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles so long as the parking spaces so created contain within them the rectangular area required by this section.

B. Aisle Widths. Parking area aisle widths shall conform to the following table, which varies the width requirement according to the angle of parking:

Parking Angle					
Aisle Width	0°	30°	45°	60°	90°
One-Way Traffic	13	11	13	18	24
Two-Way Traffic	19	20	21	23	24

C. Surfacing.

1. All parking lots that are required to have more than five parking spaces shall be graded and surfaced with asphalt or concrete. Other material that will provide equivalent protection against potholes, erosion, and dust may be approved by the City Engineer if an equivalent level of stability is achieved.

2. Parking lots having less than five parking spaces are not required to have the type of surface material specified in subsection (1), above. However, such parking lot shall be graded and surfaced with crushed rock, gravel, or other suitable material as approved by the City Engineer. The perimeter of such parking lot shall be defined by brick, stones, railroad ties, or other such similar devices. Whenever such a parking lot

abuts a paved street, the driveway leading from such street to the parking lot shall be paved with concrete from the street to the property line of the parking lot.

3. Parking spaces in areas surfaced in accordance with subsection (1) shall be appropriately demarcated with painted lines or other markings.

D. Joint Use of Required Parking Spaces. One parking lot may contain required spaces for several different uses, but the required spaces assigned to one use may not be credited to any other use.

E. Satellite Parking.

1. If the number of off-street parking spaces required by this chapter cannot be provided on the same lot where the principal use is located, then spaces may be provided on adjacent or nearby lots in accordance with the provisions of this section. These off-site spaces are referred to as satellite parking spaces.

2. All such satellite parking spaces shall be located within 200 feet of the principal building or lot associated with such parking.

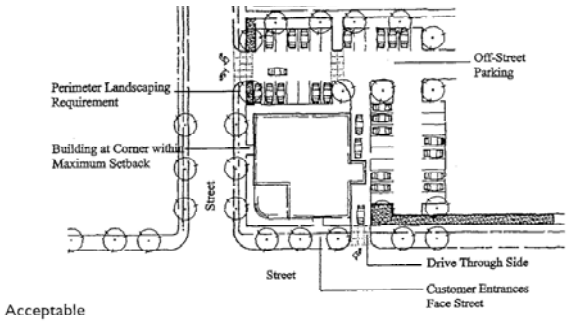
3. The applicant wishing to take advantage of the provisions of this section must present satisfactory written evidence that the permission of the owner or other person in charge of the satellite parking spaces to use such spaces has been obtained. The applicant must also sign an acknowledgement that the continuing validity of the use depends upon the continued ability to provide the requisite number of parking spaces.

4. Satellite parking spaces allowed in accordance with this subsection shall meet all the requirements contained in this section.

F. Lighting. Lighting from parking lots shall be so designed and located as to not glare onto neighboring residential properties. Such lighting shall be screened, shaded, or designed in such a way as to comply with the requirement contained in this section. This section is not intended to apply to public street lighting or to outdoor recreational uses such as ball fields, playing fields, and tennis courts.

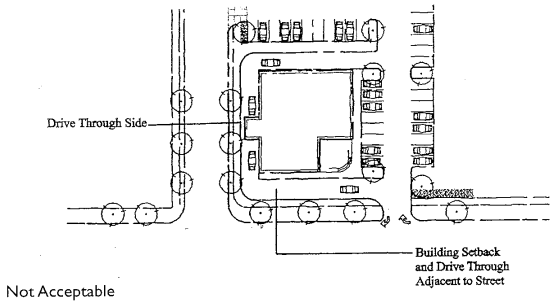
G. Drive-Up/Drive-In/Drive-Through Uses and Facilities. Drive- up or drive-through uses and facilities shall conform to the following standards, which are intended to calm traffic, and protect pedestrian comfort and safety (Figures 1 and 2).

Figure 1 – Drive-Up and Drive-Through Facilities



1. The drive-up/drive-through facility shall orient to an alley, driveway, or interior parking area, and not a street; and

2. None of the drive-up, drive-in or drive-through facilities (e.g., driveway queuing areas, windows, teller machines, service windows, kiosks, drop-boxes, or similar facilities) are located within 20 feet of a street and shall not be oriented to a street corner. (Walk-up only teller machines and kiosks may be oriented to a street or placed adjacent to a street corner); and



3. Drive-up/in queuing areas shall be designed so that vehicles do not obstruct a driveway, fire access lane, walkway, or public right-of-way.

14.13.100 Special Area Parking Requirements. These special areas are defined as follows:

A. Nye Beach. That area bounded by SW 2nd Street, NW 6th Street, NW and SW High Street, and the Pacific Ocean.

B. Bay Front. That area bounded by Yaquina Bay and the following streets: SE Fogarty, SE 5th and SE 13th, SW Canyon Way, SW 10th, SW Alder, SW 12th, SW Fall, SW 13th, and SW Bay.

C. City Center. That area bounded by SW Fall Street, SW 7th Street, SW Neff Street, SW Alder Street, SW 2nd Street, SW Nye Street, Olive Street, SE Benton Street,

and SW 10th Street.

Uses within a special area are not required to provide the parking required in this section. However, in lieu of providing that parking, the use shall be required to pay into a parking fund in an amount established by resolution of the City Council. The City Council may amend the resolution from time to time. The fee charged shall be based on a reasonable estimate on the cost of providing one surface parking space plus a proportionate share of other requirements such as driveways, aisles, and landscaping.

If a parking district authorized by the City Council is formed in all or part of the special area, the requirements for payment in lieu of providing parking may be waived upon adoption of a motion of the City Council.

14.10.110 Loading and Unloading Areas. Off-street loading and unloading areas shall be provided per this section.

A. Whenever the normal operation of any use requires that goods, merchandise, or equipment be routinely delivered to or shipped from that use, a sufficient off-street loading and unloading area must be provided in accordance with this subsection to accommodate the delivery or shipment operations in a safe and convenient manner.

B. The loading and unloading area must accommodate the numbers as set forth in Table A. At a minimum, a loading and unloading space must be 35 feet in length, 10 feet in width, and 14 feet in height. The following table indicates the number of spaces that, presumptively, satisfy the standard set forth in this subsection.

Table A

Square Footage of Building	Number of Loading Spaces
0-19,999	0
20,000-79,999	1
80,000-119,999	2
120,000+	3

C. Loading and unloading areas shall be located and designed so that vehicles intending to use them can

maneuver safely and conveniently to and from a public right-of-way or any parking space or parking lot aisle. No space for loading shall be so located that a vehicle using such loading space projects into any public right-of-way.

D. No area allocated to loading and unloading facilities may be used to satisfy the area requirements for off-street parking, nor shall any portion of any off-street parking area be used to satisfy the area requirements for loading and unloading facilities.

E. Whenever a change of use occurs after January 1, 1995, that does not involve any enlargement of a structure, and the loading area requirements of this section cannot be satisfied because there is insufficient area available on the lot that can practicably be used for loading and unloading, then the Planning Commission may waive the requirements of this section.

F. Whenever a loading and unloading facility is located adjacent to a residential zone, the loading and unloading facility shall be screened per Section 14.14.001.

14.13.120 Access.

A. Access to parking lots shall be from a public street or alley. Access to loading and unloading areas shall be from a public street, an alley, or a parking lot.

B. Access to nonresidential parking lots or loading and unloading areas shall not be through areas that are zoned residential.

C. All accesses shall be approved by the City Engineer or designate.

D. Driveway accesses onto Arterial streets shall be spaced a distance of 500 feet where practical, as measured from the center of driveway to center of driveway.

E, Each parcel or lot shall be limited to one driveway onto an Arterial street unless the spacing standard in (D) can be satisfied.

F. Access Consolidation. Accesses shall be consolidated unless demonstrated to be unfeasible as determined by the City Engineer.

14.13.130 Variances. Variances to this section may be

approved in accordance with provisions of Section 14.29.005, Adjustments and Variances, and a Type III Land Use Action decision process consistent with Section 14.39.001, Procedural Requirements.*

14.14.01 RESIDENTIAL USES IN NONRESIDENTIAL ZONING DISTRICTS* *(2-4-1 of NZO)*

14.11.010 Purpose. It is the intent of this section to regulate the placement of residences in nonresidential zoning districts.

14.11.020 Residential Uses in Nonresidential Zoning Districts. Residences shall be allowed either outright or conditionally in nonresidential zones as follows:

A. C-1 zones: Residences are prohibited at street grade. For floors other than street grade, residences are allowed subject to the issuance of a conditional use permit in accordance with the provisions of Section 14.30.005, Conditional Uses, and Section 14.39.001, Procedural Requirements.**

B. C-2 zones: It is the intent of this section to allow a mix of uses in the C-2 zoning district. However, in some areas the commercial use shall be the dominant use on the identified street level while residences or offices may be allowed on other levels. Therefore, C-2 zoned properties that have frontage on N.W. and S.W. Coast St., W. Olive Street, N.W. and S.W. Cliff St., N.W. Beach Drive and N.W. Third St., residences are prohibited at street grade. For floors other than street grade, residences are allowed subject to the issuance of a conditional use permit in accordance with the provisions of Section 14.30.005, Conditional Uses, and Section 14.39.001, Procedural Requirements.*** For commercial buildings in other areas within a C-2 zone, residences are prohibited at street grade. In all other instances, single-family residences are allowed outright. More than one residence per lot is allowed upon the issuance of a conditional use permit in accordance with the provisions of Section 14.30.005, Conditional Uses, and Section 14.39.001, Procedural Requirements.**** Where the Historic Nye Beach Design Review District specifies different requirements for residential uses in the C-2 zone by allowing a single-family residential use to be permitted outright if not located on the street grade floor for properties with identified frontage along N.W. and S.W. Coast Street, W. Olive Street, N.W. and S.W. Cliff St., N.W. Beach Drive and N.W. Third Street, by allowing a residence to be located on any floor of a bed and breakfast use, by allowing an existing single-family residence as of the date of adoption of Ordinance No. 1865 with frontage on the

above named streets and located on the street grade floor as a use permitted outright for the existing footprint of the use, and by allowing up to 5 multiple family dwelling units as a use permitted outright if located on a floor other than street grade for all C-2 zoned property within the District, the specified requirements shall supercede the requirements of this subsection.*****

C. C-3 zones: Same as the C-1 zone.

D. For all I zones: One residence for a caretaker or watchman as an accessory use is allowed as a permitted use.

E. W-2 zones: Same as the C-1 zone.

F. For all other nonresidential zones: Residences are prohibited.

(Entire section amended by Ordinance No. 1628 (2-18-92).*
***Amended by Ordinance No. 1989 (1-1-10).*
****Amended by Ordinance No. 1989 (1-1-10).*
*****Amended by Ordinance No. 1758 (1-21-97); Amended by Ordinance No. 1989 (1-1-10).*
******Amended by Ordinance No. 1865 (12-1-03).)*

14.12.001 ACCESSORY USES AND STRUCTURES*

14.12.010 Purpose. The provisions of this section are intended to establish the relationship between primary and accessory structures or uses and to specify development criteria for accessory structures or uses.

14.12.020 General Provisions.

A. Accessory uses and structures are those of a nature customarily incidental and subordinate to the primary use of a property. Typical accessory structures include detached garages, sheds, workshops, greenhouses, gazebos and similar structures not intended for habitation by people. The Community Development Director, or the Director's designee, shall determine if a proposed accessory use is customarily associated with, and subordinate to, a primary use and may at his/her discretion elect to defer the determination to the Planning Commission. A determination by the Planning Commission shall be processed as a code interpretation pursuant to Section 14.39.001, Procedural Requirements.

B. An accessory use or structure shall be subject to, and comply with, the same requirements that apply to the primary use except as provided in this section.

14.12.030 Accessory Use or Structure on a Separate Lot or Parcel. An accessory use or structure may be located on a lot or parcel that is separate from the primary use provided:

A. The lot or parcel upon which the accessory use or structure is to be located is contiguous to the property containing the primary use; and

B. The subject lots or parcels are under common ownership and within the same zone district; and

C. A deed restriction, in a form approved by the City, is recorded stating that the property on which the accessory use or structure is to be located cannot be sold or otherwise transferred separate from the lot or parcel containing the primary use. This restriction shall remain in effect until a primary use is situated on the same lot or parcel as the accessory building or the accessory building is removed.

14.12.040 Development Standards.

A. The maximum floor area of the accessory structure in a

residential zoning district shall not exceed1,500 square feet or 65% of the total floor area of the primary structure, whichever is less.

B. The maximum height of an accessory building in a residential zoning district shall not exceed that of the primary structure.

C. Accessory buildings shall not extend beyond the required front yard setback lines of adjacent lots or parcels.

D. Regardless of the setback requirements, a rear yard in a residential zone district may be reduced to five (5) feet for a one-story detached accessory building provided the structure does not exceed 625 square feet in size and 15 feet in height.

*(*Section replaced in its entirety by Ordinance No. 2011 (2-18-11))*

14.13.001 VISION CLEARANCE REQUIREMENT

14.13.010 Front Yard Vision Clearance. No fence or hedges of any kind shall exceed three and one-half feet in height in a required front yard or exceed three and one-half feet in height in a second front yard. On corner lots where the rear lines of the rear yards are contiguous, fences not over six feet in height, measured above the sidewalk grade, may be permitted on side streets not closer than 40 feet from the principal street. All trees growing or standing in the street right-of-way in the front or second front yard that overhang the sidewalk shall be trimmed to a height not less than eight feet above the sidewalk, and all trees that overhang the curb and street pavement shall be trimmed to a height of not less than 12 feet over such curb and street pavement. All trees and shrubbery shall be trimmed so as not to interfere with sight distance at intersections.

14.13.020 Vision Clearance for Corner Lots.

A. Establishment: A vision clearance area is hereby established for all zones and shall be maintained.

B. Definition: A vision clearance area for corner lots shall consist of a triangular area on a lot at the intersection of two streets or a street and a railroad, two sides of which are lot lines to a distance specified in these regulations. The third side of the triangle is a line across the corner of the lot joining the non-intersecting ends of the other two sides. Where the lot lines at intersections have rounded corners, the lot lines will be extended in a straight line to the point of intersection. The vision clearance area contains no plantings, walls, structures, or temporary or permanent obstructions exceeding three and one-half (3 l/2) feet in height measured from the top of the curb.

C. Measurement of Vision Clearance for Corner Lots: The following measurement shall establish clear vision areas.

Measurement Right-of-way Width	Street Width	Each Lot Line	
60 feet	36 feet	30 feet	Residential Only
50 feet	26 feet	40 feet	Residential Only
50 feet	28 feet	20 feet	Residential Only
Less than 50 feet and Commercial	28 feet or Less	20 feet	Residential

14.13.030 **Obstruction of Front Yards by Certain Vehicles Prohibited.** No boat, trailer, travel trailer, mobile trailer, truck, automobile, or other vehicle may be stored or parked in the required front yards for longer than seven consecutive days.

(SEE ORDINANCE NO. 763, SECTION 42, FOR OBSTRUCTION OF VISION CLEARANCE ON ANY STREET OR PUBLIC WAY.)

14.14.001 14.14.001 BETWEEN RESIDENTIAL AND NON-RESIDENTIAL ZONES

14.14.010 **Height Buffer.** Non-residential sites of districts abutting or having any portion located adjacent to any residential zone shall have a height limitation beginning at a height of ten feet at the property line abutting the residential zone and increasing at a slope of 1:2 for R-1 property, 1:1 for R-2 property, 2:1 for R-3 property, and 3:1 for R-4 property until intersecting the height limit otherwise established in that district.

14.14.020 **Adjacent Yard Buffer.** On any portion of a site in a non-residential zone that abuts a residential zone, a minimum interior yard of 10 feet planted and maintained as a landscaped screen shall be required.

14.14.030 **Separated Yard Buffer.** On any portion of a non-residential site that is opposite from a residential district and separated therefrom by a street, alley, creek, drainage facility, or other open area, a minimum yard of ten feet shall be required. The minimum yard shall be planted and maintained as a landscape screen (excluding areas required for access to the site).

14.15.001 LANDSCAPING REQUIREMENT*

14.15.010 Purpose. The purpose of this section is to provide for the installation, long-term maintenance and protection of trees, vegetation and other landscape elements within the City of Newport recognizing however, that development often times requires the removal of trees and other plant material. When removal is done, the purpose of this section is to require replacement that is attractive, well placed and enhances the overall appearance of the property and the City as a whole. It is further the purpose of this section to:

A. Aid in air purification and storm water runoff retardation;

B. Aid in the reduction of noise and glare;

C. Provide visual buffers;

D. Enhance the beauty of the City;

E. Improve property values;

F. Reduce erosion; and

G. To protect and enhance the natural beauty, environment and greenspace within the City of Newport to advance economic development, attract residents and promote tourism.

14.15.020 Definitions. For purposes of this section, the following definitions shall apply. Where no definition is given, the common usage of the word shall be used. If there is a conflict between the definitions contained in this section and the more general definitions contained in the definitions section of this Ordinance, this section shall apply.

A. Addition. An increase in the gross floor area.

B. Bay Front. The area of the City defined in the Bay Front Plan section of the City's Comprehensive Plan.

C. Buffer. The use of landscaping, or the use of landscaping along with berms or fences, that obscure the sight from an abutting property and uses, that at least partially and periodically obstructs view and noise. For purposes of this Section, the buffer does not count toward the

required landscaping.

(Entire section amended by Ordinance No. 1827 (9-7-00).)*

D. City Center. The area of the City defined in Section 14.13.001.050(3) of this Code.

E. Development. That which is done on a tax lot or parcel of property under one ownership pursuant to any permit issued by the City of Newport Department of Planning and Community Development.

F. Gross Floor Area. The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.

G. Hanging Basket. A basket of flowers or other plant material that is over a public right-of-way or private property and attached to a building, pole, wall, tree or other attachment. In no case shall a hanging basket be less than eight feet above a sidewalk or other pedestrian way or within two feet of a street or driveway.

H. Landscaped Area. That area within the boundaries of a given lot or other area authorized for landscaping purposes which is devoted to and consists of landscaping.

I. Landscaping. Material placed in a landscaped area including but not limited to grass, trees, shrubs, flowers, vines and other groundcover, native plant materials, planters, brick, stone, natural forms, water forms, aggregate and other landscape features, provided, however that the use of brick, stone, aggregate or other inorganic materials shall not predominate over the use of organic plant material. Landscaping does not include sidewalks, fences, walls, benches or other manufactured materials unless same is incidental to the total area of the landscaped area.

J. Landscaping Plan. A drawing to scale showing the location, types and density of landscaping.

K. Maintain or Maintenance. Any activity such as pruning, mulching, mowing, fertilizing, removal and replacement of dead vegetation and other similar acts that promote the life, growth, health or beauty of the landscape vegetation.

L. Nye Beach. The area of the City defined in the Historic Nye Beach Overlay District section of this Ordinance.

M. Planter. A decorative container for flowers, bushes, trees and other plant materials including but not limited to window boxes, planter boxes, flower pots and other containers.

N. Sight obscuring. Landscaping, berms, fences, walls or a combination of all those elements that completely blocks the ability to see through it.

O. Window or Planter Box. A decorative box, pot, or other container that contains flowers and other plant material that is placed immediately below a window, along a walkway or other location. In no case shall a window or planter box extend more than two feet or 20% of the distance from the building to the street curb into the public right-of-way, whichever is less.

14.15.030 Applicability. The provisions of this ordinance shall apply to all new development, additions to existing development or remodels, other than single family and two-family dwelling units.

14.15.040 General Requirements. The objective of this section is to encourage the planting and retention of existing trees and other vegetation to improve the appearance of off-street parking areas, yard areas and other vehicular use areas; to protect and preserve the appearance, character, and value of surrounding properties, and thereby promote the general welfare, safety and aesthetic quality of the City of Newport; to establish buffer strips between properties of different land uses in order to reduce the effects of sight and sound and other incompatibilities between abutting land uses; to insure that noise, glare and other distractions within one area does not adversely affect activity within the other area. Prior to the issuance of a building permit, landscaping plans showing compliance with this section are required.

A. No landscape plan submitted pursuant to this section shall be approved unless it conforms to the requirements of this ordinance.

B. Landscape plans shall be submitted for all development other than one and two-family residential. Said plans shall include dimensions and distances and clearly delineate the existing and proposed building, parking space, vehicular access and the location, size and description of all landscape areas and materials.

C. Landscaping shall not obstruct the view at the intersection of two or more streets or alleys; or at the intersection of a street and a driveway.

D. A guarantee of performance bond or escrow agreement shall be required in an amount to be determined by the Planning Director and approved by the City Attorney as to form to insure satisfactory completion of the landscaping plan as approved if the required landscaping is not installed prior to certificate of occupancy as required by the Building Code.

14.15.050 Landscaping Required for New Development, Exceptions. All new development, except for one and two family residences, shall be required to install landscaping per this section. For purposes of this section, new development shall mean construction upon a vacant lot or a lot that becomes vacant by virtue of the demolition of an existing building. Landscaping shall be provided as follows:

A. Area. Landscaping shall be ten percent of the total square footage of a lot or parcel.

B. Location. Landscaping shall be located along a street frontage or frontages.

C, Exceptions. The right-of-way between a curb and a property line, not counting any sidewalk, driveway or other hard surfaces, may be used and counted toward the required landscaping as long as it has been determined by the Planning Director that the right-of-way is not needed for future street expansion. A developer may also plant a street tree within the sidewalk and it shall count toward meeting landscaping requirements subject to approval by the Planning Director and the City Engineer. A window or planter box may also be used to meet landscaping requirements at a ratio of 1 to 1. If the developer chooses to exercise this option, he or she shall enter into an agreement that the landscaping in the right-of-way is to be maintained as landscaping.

D. Landscaping for Parking Lots. The purpose of this subsection is to break up large expanses of parking lots with landscaping. Therefore, all parking areas not abutting a landscaping area with 20 or more parking stalls shall comply with the following provisions:

1. Five percent of the parking area shall be dedicated to a landscaped area and areas.

2. In no cases shall a landscaped area required under this subsection be larger than 300 square feet. If more landscaping is required than the 300 square feet it shall be provided in separate landscaping areas.

The provisions of this subsection do not apply to areas for the storage and/or display of vehicles.

14.15.060 Landscaping Requirements for Additions and Remodels. For purposes of this section, addition means any development that increases the floor area of a building. Remodel is any work requiring a building permit. For additions and remodels, landscaping shall be provided as follows:

A. Area. If the subject development after completion complies with the requirements for new development, no additional landscaping is required. If the subject development does not comply with the requirement for new development, landscaping shall be installed so as follows:

1. For projects with a value of $50,000 or less, no additional landscaping is required.

2. For projects with a value of $50,001 to $100,000, the amount of landscaping shall be no less than 25% of that required for new development.

3. For projects with a value of $100,001 to $175,000, the amount of landscaping shall be no less than 50% of that required for new development.

4. For projects with a value of $175,001 to $300,000, the amount of landscaping shall be no less than 75% of that required for new development.

5. For projects with a value greater than $300,000, the amount of landscaping shall be 100% of that required for new development.

Values shall be based on year 2000 dollars and adjusted on July 1 of each year for inflation. The adjustment shall be based on the latest available Portland, Oregon Consumer Price Index.

For purposes of this section, the value shall be based on the amount placed on the application for a building permit. If the

Building Official determines that the value is below the actual value as calculated by the formulas developed by the State of Oregon Building Codes Division, the value on the permit shall be as determined by the Building Official. If there is a dispute as to the value, the matter shall be referred to the Planning Commission for resolution. The procedure used shall be the same as for a Type I variance contained in Section 14.29.005 of this Ordinance.

In the case where a second addition or remodel is commenced within one year of the first addition or remodel, the two projects shall be counted as one with regard to determining the above landscaping requirements.

B. Location. Landscaping shall be located along a street frontage or frontages.

C. Exceptions. The right-of-way between a sidewalk and a property line may be used and counted toward the required landscaping as long as it has been determined by the Planning Director that the right-of-way is not needed for future street expansion. If the developer chooses to exercise this option, he or she shall enter into an agreement that the landscaping in the right-of-way is to be maintained as landscaping. In addition, window boxes may be substituted for surface landscaping. The calculation shall be one square foot of window box accounts for three square feet of surface landscaping as required in Subsection A of this Section. A developer may also plant a street tree within the sidewalk and it shall count toward meeting landscaping requirements subject to approval by the Planning Director and the City Engineer.

14.15.070 Nye Beach.* Development in the Historic Nye Beach Design Review District shall follow the same landscaping requirements as Subsection 14.15.080 (City Center and Bay Front) of Section 14.15.001 if landscaping requirements are not specified elsewhere. If landscaping is required under a permit issued under the design review design guidelines or design standards, then the permit requirements shall be the applicable landscaping requirements. If the permit requirements specify landscaping requirements that are to be implemented in conjunction with, or in addition to, the landscape requirements of this section, then the landscaping requirements of the permit shall be implemented in conjunction with, or in addition to, the requirements of landscaping specified in Subsection 14.15.080 (City Center and Bay Front) of Section 14.15.001.

** Amended by Ordinance No. 1865 (12-1-03).*

14.15.080 City Center and Bay Front. Because the City Center and Bay Front areas were platted and built on very small lots and many of the existing buildings are located on or near the property lines, a strict area landscaping requirement is difficult to obtain and places an undue burden on the property owner. Those areas shall therefore be subject to this section rather than sections 14.31.040 and 14.31.050 of this ordinance.

A. New Development. The requirement for new development, defined as building on a vacant lot, shall be 10% of the lot area. In lieu of the 10%, hanging baskets or window/planter boxes may be substituted for surface landscaping, or any combination thereof. The calculation for square footage may be up to one square foot of hanging basket, planter box or window box for every three feet of otherwise required landscaping.

B. Additions. Landscaping shall be required at a rate of 10% of the area of the addition. In lieu of the 10%, hanging baskets or window/planter boxes may be substituted for surface landscaping, or any combination thereof. The calculation for square footage may be up to one square foot of hanging basket, planter box or window box for every three feet of otherwise required landscaping.

C. Remodels. Landscaping shall be required per section 14.31.050 except that in lieu of providing surface landscaping, window/planter boxes or hanging baskets may be substituted at a rate of one square foot of window/planter box or hanging basket for every ten square feet otherwise required.

14.15.090 Maintenance of Required Landscaping. Landscaping required by this section, whether existing prior to January 1, 1999 or not, shall be reasonably maintained based on the time of year and kept free of weeds and garbage. Failure to maintain required landscaping may be found to be a violation and subject to penalties contained in Section 14.45.001 of this Code.

14.15.100 Variances. Variances to the requirements of this section shall be subject to the processes and criteria contained in Section 14.29.005, Adjustments and Variances, and Section 14.39.001, Procedural Requirements.* As a condition of approval, the Planning Commission may require a bond to assure satisfactory completion of the required

landscaping. The Planning Commission may also approve, in lieu of providing a strict landscaping area, window or planter boxes in numbers and size to comply with the intent of this section or a reduction of up to 25% of the required landscaping when the Commission finds that the architectural character of the building is of such quality to justify the reduction. The Commission may also waive up to 25% of the area requirement if the developer puts in an automatic sprinkling system to water the landscaping. The required parking may be reduced up to 10% of the number ordinarily required by this Code if the parking spaces lost is put into landscaping. The site plan prepared by a registered surveyor as required by Sections 14.29.050 is not required for a variance under this Section. If there is a neighborhood design review process, that process supercedes the requirements in this section and, if the design review committee finds that the landscaping is consistent with their review, supercedes the need for a variance otherwise required by this Section.

*(*Amended by Ordinance No. 1989 (1-1-10).)*

14.16.001 FLOOD HAZARD AREA*

14.16.010. Purpose. It is the purpose of this Flood Hazard Area Section to regulate the use of those areas subject to periodic flooding, to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions.

14.16.020 Definitions. Words or phrases used in this Code shall be interpreted so as to give them the meaning they have in common usage and to give this Code its most reasonable application.

1. Appeal means a request for a review of the administrator's interpretation of any provision of Section 14.16.001 of this Code or a request for a variance.

2. Area of shallow flooding means a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one (1) to three (3) feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

3. Area of special flood hazard means the land in the flood plain subject to a 1% or greater chance of flooding in any given year. Designation on maps always includes the letters "A" or "V".

4. Base flood means the flood having a 1% change of being equaled or exceeded in any given year. This is also referred to as the "100-year flood". Designation on maps always includes the letters "A" or "V".

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

6. Below grade crawlspace means an enclosed area below the base flood elevation in which the interior grade is not more than two feet below the lowest adjacent exterior grade and the height, measured from the interior grade of the crawlspace to the top of the crawlspace foundation, does not exceed 4 feet at any point.

7. Breakaway walls means a wall that is not part of the structural support of the building and is intended - through its design and construction - to collapse under specific lateral loading forces without causing damage to the

elevated portion of the building or supporting foundation system.

8. Coastal high hazard area means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designed on a FIRM as Zones V1 - V30, VE, or V.

(Entire section amended by Ordinance No. 1987 (12-18-09).)*

9. Critical Facility means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

10. Development means any man-made change to improved or unimproved real estate, including - but not limited to - buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations or storage of equipment or materials located within the area of special flood hazard.

11. Elevated Building means for insurance purposes, a non-basement building that has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

12. Existing Manufactured Home Park or Subdivision means a manufactured home park subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of these floodplain management regulations.

13. Expansion of Manufactured Home Park or Subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

14. Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

A. The overflow in inland or tidal waters; and/or

B. The unusual and rapid accumulation of run-off of surface waters from any source.

15. Flood insurance rate map (FIRM) means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

16. Flood insurance study means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary Floodway Map, and the water surface elevation of the base flood.

17. Floodway means the channel of a river or other water-course and the adjacent areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

18. Lowest floor means the lowest floor of the lowest enclosed area (including the basement). An unfinished or flood-resistant enclosure, usable solely for the parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements found in 14.16.025.B.1.(b) of this Code.

19. Manufactured home means a structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. 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.

20. Manufactured home park or manufactured home subdivision means a parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale for which the construction of facilities for servicing the lot on which the manufactured home is to be affixed

(including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets).

21. Mean sea level (MSL) means the average height of the sea for all stages of the tide.

22. New construction means the structures for which the "start of construction" commenced on or after the effective date of this Zoning Ordinance.

23. New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of adopted floodplain management regulations.

24. Recreational vehicle means a vehicle which is:

    A. built on a single chassis;

    B. 400 square feet or less when measured at the largest horizontal projection;

    C. designed to be self-propelled or permanently towable by a light duty truck; and

    D. designed primarily not for uses as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

25. Start of construction includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site (such as the pouring of slab or footings, the installation of piles, the construction of piles, the construction of columns, or any work beyond the stage of excavation) or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation (such as clearing, grading, and filling), the installation of streets and/or walkways, excavation (for a basement, footings, piers, or foundation or the erection of temporary forms),

or the installation on the property of accessory buildings (such as garages or sheds not occupied as dwelling units or not part of the main structures). For substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

26. Structure means a walled and roofed building, including a gas or liquid storage tank that is principally above the ground.

27. Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

28. Substantial improvement means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either:

    A. before the improvement or repair is started; or

    B. if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either of the following:

        (1) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions; or

        (2) Any alteration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places.

29. State Building Code means the combined specialty codes.

30. Variance means a grant of relief from the requirements of

this Code that permits construction in a manner that would otherwise be prohibited by this Code.

31. Water dependent means a structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

14.16.030 General Provisions. The basis for establishing the areas of special flood hazard are the areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Lincoln County, Oregon and Incorporated Areas", dated December 18, 2009. The Flood Insurance Study (FIS) and accompanying Flood Insurance Rate Maps (FIRMs) are on file at the City of Newport City Hall in the Community Development Department and are hereby adopted by reference and declared to be part of this Code.

14.16.040 Administration.

A. Establishment of Building/Development Permit. A Building/Development Permit shall be required in conformance with the provisions of this Section. The permit shall be for all structures, including manufactured homes, as set forth in the "definitions", and for all other development, including fill and other activities as set forth in the definitions.

B. Application for Permit. Application shall be made on forms provided by the Community Development Department for this purpose and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

1. Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;

2. Elevation in relation to mean sea level of flood-proofing in any structure;

3. Certification by a registered professional engineer or architect that the flood-proofing methods for any nonresidential structure meet the flood-proofing

criteria in 14.16.025(B)(2); and

4. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

C. Duties and Responsibilities. The duties of the Building Official shall include, but not be limited to, permit review as follows:

1. Review all development permits to require that the permit requirements and conditions of this Code have been satisfied.

2. Review all development permits to require that all necessary permits have been obtained from those Federal, State, or local governmental agencies from which prior approval is required.

3. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Subsection 14.16.040(C)(1) are met.

D. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with this Section, the Building Official shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source, in order to administer Sections 14.16.050.(B) (Specific Standards) and 14.16.020(17) (Floodways).

E. Information to be obtained and maintained by the Building Official:

1. Where the base flood elevation data is provided through the Flood Insurance Study or required as in 14.06.040, the actual elevation, in relation to mean sea level, of the lowest floor (including the basement and below-grade crawlspaces) of all new or substantially improved structures in a flood hazard overlay zone shall be obtained and recorded.

2. For all new or substantially improved floodproofed structures in a flood hazard overlay zone:

a. Verify and record the actual elevation (in relation to mean sea level);

b. Maintain the floodproofing certifications required in 14.16.040(B)(3).

3. Maintain for public inspection all records pertaining to the provisions of this Code.

F. Alteration of Watercourses. The Building Official shall:

1. Notify Lincoln County, the Department of Land Conservation and Development, and other appropriate state and federal agencies prior to any alteration or relocation of a water course and submit evidence of such notification to the Federal Insurance

2. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

G. Interpretation of FIRM Boundaries. The Building Official shall make interpretations where needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 14.16.060, Appeals and Variance Procedures.

14.16.050 <u>Provisions for Flood Hazard Reduction</u>.

A. General Standards. In areas of special flood hazard as adopted by this ordinance (which may be illustrated on a zoning map as a Flood Hazard Overlay Zone (FH Zone)) the following provisions are required:

1. Anchoring.

a. All new construction and substantial improvements lateral movement of the structure.

b. All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that:

2. Over-the-top ties be provided at each end of the manufactured home, with two (2) additional ties per side at intermediate locations, and manufactured homes less than 50 feet long requiring one (1)

additional tie per side.

3. Frame ties are to be provided at each corner of the home with five (5) additional ties per side at intermediate points, and manufactured homes less than 50 feet long will require four (4) additional ties per side;

4. All components of the anchoring system are to be capable of carrying a force of 4,800 pounds; and

5. Additions to the manufactured home are to be similarly anchored.

    a. An alternative method of anchoring may involve a system designed to withstand the wind force of 90 miles an hour or greater.

Certification must be provided by a registered structural engineer to the Building Official that this standard has been met.

    b. All modular homes shall comply with the requirements of the applicable building code.

6. Construction Materials and Methods.

    a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

    b. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

    c. Electrical, heating, ventilation, plumbing, and air-conditioning equipment, and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

7. Utilities.

    a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

    b. New and replacement sanitary sewage systems

shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into the flood waters; and

c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding consistent with Department of Environmental Quality regulations.

8. Subdivision Proposals.

a. All subdivision proposals shall be consistent with the need to minimize flood damage.

b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

d. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments that contain at least 50 lots or five (5) acres (whichever is less).

9. Critical Facilities.

a. New critical facilities shall be located outside the limits of the Flood Hazard Overlay Zone, unless no feasible alternative site is available.

b. New critical facilities constructed within the Flood Hazard Overlay Zone shall have the lowest floor elevated three feet or to the height of the 500-year flood, whichever is higher.

c. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters.

d. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

10. Review of Building Permit Applications by Building Official. Where elevation data is not available, either through the Flood Insurance Study or from another authoritative source (14.16.040(D)), applications for building permits shall be reviewed to see that proposed construction will be reasonably safe from flooding. A determination of reasonable safety is a judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available for the area. Failure to elevate the lowest floor at least two (2) feet above grade in these zones may result in higher insurance rates.

B. Specific Standards. In all areas of special flood hazards (which may be illustrated on a zoning map as a FH Zone) adopted by this ordinance where base flood elevation data has been provided as set forth in this Section, the following provisions are required:

1. Residential Construction.

a. New construction or substantial improvement of any residential structures shall have the lowest floor, including the basement, elevated to a minimum of one (1) foot above the base flood elevation.

b. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

a. A minimum of two openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.

b. The bottom of all openings shall be no higher than one (1) foot above grade.

c. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

13. Nonresidential Construction. New construction or substantial improvement of any commercial, industrial or

other nonresidential structure shall either have the lowest floor (including the basement) elevated to one (1) foot above the base floor elevation or, together with attendant utility and sanitary facilities, shall:

a. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this Subsection based on their development and/or review of the structural design, specifications, and plans;

d. Nonresidential structures that are elevated, not flood-proofed, must meet the same standards for space below the lowest floor as described in 14.16.025(B)(1)(b); and

e. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one (1) foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one (1) foot below that level).

14. Manufactured Homes.

a. All manufactured homes to be placed or substantially improved on sites:

i. Outside of a manufactured home park or subdivision,

ii. In a new manufactured home park or subdivision,

iii. In an expansion to an existing manufactured home park or subdivision, or

iv. In an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as the result of a flood;

shall be elevated on a permanent foundation such that the finished floor of the manufactured home is elevated to a minimum 18 inches (46 cm) above the base flood elevation and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

b. Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH, and AE on the community's FIRM that are not subject to the above manufactured home provisions be elevated so that either:

   i. The finished floor of the manufactured home is elevated to a minimum of 18 inches (46 cm) above the base flood elevation, or

c. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

15. Crawlspace construction. Below grade crawlspace construction is permitted within the floodplain provided that applicable National Flood Insurance Program (NFIP) specifications, as found in FEMA Technical Bulletin 11-01, are met. More detail is provided by FEMA Technical Bulleting 11-01, including these specifications:

    a. The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in Subsection (b) below. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five (5) feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer. Other types of foundations are recommended for these areas.

b. The crawlspace is an enclosed area below the base flood elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than one (1) foot above the lowest adjacent exterior grade.

c. Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE.

d. Any building utility systems within the crawlspace must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.

e. The interior grade of a crawlspace below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade.

f. The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall, must not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.

g. There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles, or gravel or crushed stone drainage by gravity or mechanical means.

h. The velocity of floodwaters at the site should not

exceed five (5) feet per second for any crawlspace. For velocities in excess of five (5) feet per second, other foundation types should be used.

16. Floodways.

a. Located within areas of special flood hazards established in this Section are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

i. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during that occurrence of the base flood discharge.

b. If Subsection 14.16.025(C)(1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Subsection (14.16.025, "Provisions For Flood Hazard Reduction").

c. Projects for stream habitat restoration may be permitted in the floodway provided:

i. The project qualifies for a Department of the Army, Portland District Regional General Permit for Stream Habitat Restoration (NWP-2007-1023); and

d. A qualified professional (a Registered Professional Engineer; or staff of NRCS; the county; or fisheries, natural resources, or water resources agencies) has provided a feasibility analysis and certification that the project was designed to keep any rise in 100-year flood levels as close to zero as practically possible, given the goals of the project; and

e. No structures would be impacted by a potential rise in flood elevation; and

f. An agreement to monitor the project, correct problems, and ensure that flood carrying capacity remains unchanged is included as part of the local

approval.

g. New installation of manufactured dwellings is prohibited (2002 Oregon Manufactured Dwelling and Park Specialty Code). Manufactured dwellings may only be located in floodways according to one of the following conditions:

   i. If the manufactured dwelling already exists in the floodway, the placement was permitted at the time of the original installation, and the continued use is not a threat to life, health, property, or the general welfare of the public; or

   ii. A new manufactured dwelling is replacing an existing manufactured dwelling whose original placement was permitted at the time of installation, and the replacement home will not be a threat to life, health, property, or the general welfare of the public and meets the following criteria:

g. As required by 44 CFR Chapter 1, Subpart 60.3(d)(3), it must be demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the manufactured dwelling and any accessory buildings, accessory structures, or any property improvements (encroachments) will not result in any increase in flood levels during the occurrence of the base flood discharge;

h. The replacement manufactured dwelling and any accessory buildings or accessory structures
minimum of 18 inches (46 cm) above the BFE as identified on the Flood Insurance Rate Map;

   i. The replacement manufactured dwelling is placed and secured to a foundation support system designed by an Oregon professional engineer or architect and approved by the authority having jurisdiction;

j. The replacement manufactured dwelling, its foundation supports, and any accessory buildings, accessory structures, or property improvements (encroachments) do not displace water to the degree that it causes a rise in the water level or diverts water in a manner that causes erosion or damage to other properties;

k. The location of a replacement manufactured dwelling is allowed by the local planning department's ordinance; and

l. Any other requirements deemed necessary by the authority having jurisdiction.

17. In areas where a regulatory floodway has not been designated in a non-tidally influenced area, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-A30 or AE on the community FIRMs, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

18. Coastal High Hazard Area. Located within areas of special flood hazards established in Subsection 14.16.015 above are "Coastal High Hazard Areas", designated as Zones V1-V30, VE, and/or V. These areas have special flood hazards associated with high velocity waters from tidal surges and, therefore, in addition to meeting all provisions in this Ordinance and the State Building Code, the following provisions shall apply:

a. All new construction and substantial improvements in Zones V1 - V30 and VE (V if base flood elevation data is available) shall be elevated on pilings and columns so that:

b. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to at least one foot above the base flood elevation; and

c. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a 1% chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

d. A registered professional engineer or architect shall develop or review the structural design specifications

and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of (a) and (b) above.

e. Obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures in Zones V1 - V30 and VE, whether or not such structures contain a basement. The local administrator shall maintain a record of all such information.

f. All new construction shall be located landward of the reach of mean high tide.

g. Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this Section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls that exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

   i. Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and

   ii. The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). Maximum wind and water loading values to be used in this determination shall each have a 1% chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

h. If breakaway walls are utilized, such enclosed space shall be usable solely for parking of vehicles, building access, or storage. Such space shall not be used for human habitation.

i. Prohibit the use of fill for structural support of buildings.

j. Prohibit man-made alteration of sand dunes which would increase potential flood damage.

k. Recreational vehicles placed on sites within Zones V1-30, V, and VE on the community's FIRM shall either:

i. Be on the site for fewer than 180 consecutive days.

ii. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

iii. Meet the requirements of Section 14.16.020 (Administration) and (1) through (8) of this Subsection.

19. For construction of new essential and new special occupancy structures as defined in ORS 455.446 and 447, refer to the statutes which state that such structures may not be constructed in the Tsunami Inundation Zone. The Tsunami Inundation Zone inclues V, A, and potentially other flood zones. If an exception is granted pursuant to the statutes, then the Coastal High Hazard Area construction standards outlined in this subsection shall apply.

20. Areas of Shallow Flooding (AO Zone). In all areas of special flood hazards designated as areas of shallow flooding, the following provisions shall apply:

a. All new construction and substantial improvements of residential structures and manufactured homes within AO zones shall have the lowest floor (including basement) elevated above the highest adjacent grade to the building by one foot or more above the depth number specified on the FIRM or by at least two (2)

feet if no depth number is specified on the FIRM.

b. All new construction and substantial improvements of nonresidential structures within AO zones shall either:

i. Have the lowest floor (including the basement) elevated above the highest adjacent grade to the building by one foot or more above the depth number specified on the FIRM or by at least two (2) feet if no depth number is specified on the FIRM; or

ii. Together with attendant utility and sanitary facilities, be completely flood-proofed to or above the level designated in Subsection 14.16.025(B)(2) so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this Subsection are satisfied.

iii. Adequate drainage paths around structures on slopes shall be required to guide floodwaters around and away from proposed structures.

c. Crawlspace construction. Below-grade crawlspace construction is permitted within the floodplain provided that applicable National Flood Insurance Program (NFIP) specifications found in FEMA Bulletin TD-1101 are met.

14.16.060 Appeals and Variance Procedures.

A. The Planning Commission shall hear and decide appeals when it is alleged that there is an error in any interpretation, requirement, decision, or determination in the enforcement or administration of this Code. Such appeals shall be granted only if consistent with the standards of 44 CFR Chapter 60.6 of the rules and regulations of the National Flood Insurance Program (44 CFR Chapter 1, Subchapter B) as adopted through January 1, 2009.

B. Variances.

1. Variances shall be issued or denied in accordance

with the procedures for a Planning Commission level variance and subject to the following criteria:

a. There is a good and sufficient cause for the variance. Examples of good and sufficient cause include the reconstruction, rehabilitation or restoration of historic structures (that are listed in the National Register of Historic Places, state inventory of Historic Places, or that contribute to a historic district) or a functionally-dependent use (a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water). In considering this criterion, the Planning Commission shall consider:

b. The importance of the services provided by the facility to the community.

c. The necessity to the facility of a waterfront location, where applicable.

d. The availability of alternative locations for the use that are not subject to flooding.

e. The compatibility of the use with existing and anticipated development.

2. Failure to grant the variance would result in an exceptional hardship to the applicant based on exceptional, unusual, and/or peculiar circumstances of the property. For the reconstruction, rehabilitation or restoration of historic structures (that are listed in the National Register of Historic Places, state inventory of Historic Places, or that contribute to a historic district) or for functionally-dependent uses (a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water) only practical difficulties resulting from the failure to grant the variance rather than exceptional hardship are required.

3. The granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

4. The variance is the minimum necessary, considering

the flood hazard, to afford relief.

5. The applicant for an approved variance shall be notified in writing that approval of the variance will result in increased flood insurance purchase premium rates, up to $25 per $100 coverage.

14.17.001 GEOLOGIC HAZARDS OVERLAY*

14.17.010 Purpose. The purpose of this section is to promote the public health, safety, and general welfare by minimizing public and private losses due to earth movement hazards and limiting erosion and related environmental damage, consistent with Statewide Planning Goals 7 and 18, and the Natural Features Section of the Newport Comprehensive Plan.

14.17.020 Applicability of Geologic Hazards Regulations.

A, The following are areas of known geologic hazards or are potentially hazardous and are therefore subject to the requirements of Section 14.17.001:

1. Bluff or dune backed shoreline areas within high or active hazard zones identified in the Department of Geology and Mineral Industries (DOGAMI) Open File Report O-04-09 Evaluation of Coastal Erosion Hazard Zones along Dune and Bluff Backed Shorelines in Lincoln County, Oregon: Cascade Head to Seal Rock, Technical Report to Lincoln County, dated 2004.

2. Active or potential landslide areas, prehistoric landslides, or other landslide risk areas identified in the DOGAMI Open File Report O-04-09.

3. Any other documented geologic hazard area on file, at the time of inquiry, in the office of the City of Newport Community Development Department.

A "documented geologic hazard area" means a unit of land that is shown by reasonable written evidence to contain geological characteristics/conditions which are hazardous or potentially hazardous for the improvement thereof.

B. The DOGAMI Open File Report O-04-09 is not intended as a site specific analysis tool. The City will use DOGAMI Open File Report O-04-09 to identify when a Geologic Report is needed on property prior to development. A Geologic Report that applies to a specific property and that identifies a proposed development on the property as being in a different hazard zone than that identified in DOGAMI Open File Report O-04-09, shall control over DOGAMI Open File Report O-04-09 and shall establish the bluff or dune-backed shoreline hazard zone or landslide risk area that applies to that specific property. The time restriction set forth in subsection 14.17.030 shall not apply to such determinations.

C. In circumstances where a property owner establishes or a Geologic Report identifies that development, construction, or site clearing (including tree removal) will occur outside of a bluff or dune-backed shoreline hazard zone or landslide risk areas, as defined above, no further review is required under this Section 14.17.001.

D. If the results of a Geologic Report are substantially different than the hazard designations contained in DOGAMI Open File Report O-04-09 then the city shall provide notice to the Department of Geology and Mineral Industries (DOGAMI) and Department of Land Conservation and Development (DLCD). The agencies will have 14 days to provide comments and the city shall consider agency comments and determine whether or not it is appropriate to issue a Geologic Permit.

*(*Section amended by Ordinance No. 1601 (5-20-91) and then repealed and replaced in its entirety by Ordinance No. 2017 (8-17-2011).)*

14.17.030 Geologic Permit Required. All persons proposing development, construction, or site clearing (including tree removal) within a geologic hazard area as defined in 14.17.010 shall obtain a Geologic Permit. The Geologic Permit may be applied for prior to or in conjunction with a building permit, grading permit, or any other permit required by the city.

Unless otherwise provided by city ordinance or other provision of law, any Geologic Permit so issued shall be valid for the same period of time as a building permit issued under the Uniform Building Code then in effect.

14.17.040 Exemptions. The following activities are exempt from the provisions of this chapter:

A. Maintenance, repair, or alterations to existing structures that do not alter the building footprint or foundation;

B. An excavation which is less than two feet in depth, or which involves less than twenty-five cubic yards of volume;

C. Fill which is less than two feet in depth, or which involves less than twenty-five cubic yards of volume;

D. Exploratory excavations under the direction of a registered engineering geologist or geotechnical engineer;

E. Construction of structures for which a building permit is not required;

F. Removal of trees smaller than 8-inches dbh (diameter breast height);

G. Removal of trees larger than 8-inches dbh (diameter breast height) provided the canopy area of the trees that are removed in any one year period is less than twenty-five percent of the lot or parcel area;

H. Forest practices as defined by ORS 527 (the State Forest Practices Act) and approved by the state Department of Forestry;

I. Maintenance and reconstruction of public and private roads, streets, parking lots, driveways, and utility lines, provided the work does not extend outside the area previously disturbed;

J. Installation of utility lines not including electric substations; and

K. Emergency response activities intended to reduce or eliminate an immediate danger to life, property, or flood or fire hazard.

14.17.050 Application Submittal Requirements. In addition to a land use application form with the information required in Section 14.39.020, an application for a Geologic Permit shall include the following:

A. A site plan that illustrates areas of disturbance, ground topography (contours), roads and driveways, an outline of wooded or naturally vegetated areas, watercourses, erosion control measures, and trees with a diameter of at least 8-inches dbh (diameter breast height) proposed for removal; and

B. An estimate of depths and the extent of all proposed excavation and fill work; and

C. Identification of the bluff or dune-backed hazard zone or landslide hazard zone for the parcel or lot upon which development is to occur. In cases where properties are mapped with more than one hazard zone, a certified engineering geologist shall identify the hazard zone(s) within which development is proposed; and

D. A Geologic Report prepared by a certified engineering geologist, establishing that the site is suitable for the proposed development; and

E. An engineering report, prepared by a licensed civil engineer, geotechnical engineer, or certified engineering geologist (to the extent qualified), must be provided if engineering remediation is anticipated to make the site suitable for the proposed development.

14.17.060 Geologic Report Guidelines. Geologic Reports shall be prepared consistent with standard geologic practices employing generally accepted scientific and engineering principles and shall, at a minimum, contain the items outlined in the Oregon State Board of Geologist Examiners "Guidelines for Preparing Engineering Geologic Reports in Oregon," in use on the effective date of this section. Such reports shall address subsections 14.17.035 to 14.17.045, as applicable. For oceanfront property, reports shall also address the "Geological Report Guidelines for New Development on Oceanfront Properties," prepared by the Oregon Coastal Management Program of the Department of Land Conservation and Development, in use as of the effective date of this section. All Geologic Reports are valid as prima facie evidence of the information therein contained for a period of five (5) years. They are only valid for the development plan addressed in the report. The city assumes no responsibility for the quality or accuracy of such reports.

14.17.070 Construction Limitations within Geologic Hazard Areas.

A. New construction shall be limited to the recommendations, if any, contained in the Geologic Report; and

1. Property owners should consider use of construction techniques that will render new buildings readily moveable in the event they need to be relocated; and

2. Properties shall possess access of sufficient width and grade to permit new buildings to be relocated or dismantled and removed from the site.

14.17.080 Prohibited Development on Beaches and Foredunes. Construction of residential, commercial, or industrial buildings is prohibited on beaches, active foredunes, other foredunes that are conditionally stable and subject to ocean undercutting or wave overtopping, and interdune areas (deflation plains) that are subject to ocean flooding. Other development in these areas shall be permitted only if a certified engineering geologist determines that the development is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves and is designed

to minimize adverse environmental effects. Such a determination shall consider:

A. The type of use proposed and the adverse effects it might have on the site and adjacent areas;

B. Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;

C. Methods for protecting the surrounding area from any adverse effects of the development; and

D. Hazards to life, public and private property, and the natural environment that may be caused by the proposed use.

14.17.090 Erosion Control Measures. In addition to completing a Geologic Report, a certified engineering geologist shall address the following standards.

A. Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction;

B. Development plans shall minimize cut or fill operations so as to prevent off-site impacts;

C. Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;

D. Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;

E. Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;

F. Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching, seeding, planting, or armoring with rolled erosion control products, stone, or other similar methods;

G. All drainage provisions shall be designed to adequately carry existing and potential surface runoff from the twenty year

frequency storm to suitable drainageways such as storm drains, natural watercourses, or drainage swales. In no case shall runoff be directed in such a way that it significantly decreases the stability of known landslides or areas identified as unstable slopes prone to earth movement, either by erosion or increase of groundwater pressure.

H. Where drainage swales are used to divert surface waters, they shall be vegetated or protected as necessary to prevent offsite erosion and sediment transport;

I. Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not limited to:

1. Energy absorbing devices to reduce runoff water velocity;

2. Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;

3. Dispersal of water runoff from developed areas over large undisturbed areas;

J. Disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures; and

K. Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, site monitoring and clean-up activities.

14.17.100 **Storm water Retention Facilities Required.** For structures, driveways, parking areas, or other impervious surfaces in areas of 12% slope or greater, the release rate and sedimentation of storm water shall be controlled by the use of retention facilities as specified by the City Engineer. The retention facilities shall be designed for storms having a 20-year recurrence frequency. Storm waters shall be directed into a drainage with adequate capacity so as not to flood adjacent or downstream property.

14.17.110 **Approval Authority.** An application shall be processed and authorized using a Type I decision making

procedure.

14.17.120 Appeals of Geologic Permits. Any appeal from the issuance or denial of a Geologic Permit shall be filed within 15 calendar days of the date the city issues a final order as provided by Section 14.39.050. Appellants challenging substantive elements of a Geologic Report shall submit their own analysis prepared by a certified engineering geologist. Such report shall be provided within 30 days of the date the appeal is filed. A failure to submit a report within this timeframe is grounds for dismissal of the appeal.

14.17.130 Certification of Compliance. No development requiring a Geologic Report shall receive final approval (e.g. certificate of occupancy, final inspection, etc.) until the city receives a written statement by a certified engineering geologist indicating that all performance, mitigation, and monitoring measures contained in the report have been satisfied. If mitigation measures involve engineering solutions prepared by a licensed professional engineer, then the city must also receive an additional written statement of compliance by the design engineer.

14.17.140 Removal of Sedimentation. Whenever sedimentation is caused by stripping vegetation, grading, or other development, it shall be the responsibility of the person, corporation, or other entity causing such sedimentation to remove it from all adjoining surfaces and drainage systems and to return the affected areas to their original or equal condition prior to final approval of the project.

14.17.150 Applicability of Nonconforming Use Provisions.

A. A building or structure that is nonconforming under Section 14.28.001 of the Zoning Ordinance that is destroyed by fire, other casualty or natural disaster shall be subject to the casualty loss provisions contained in Section 14.28.001 of the Zoning Ordinance. Application of the provisions of this section to a property shall not have the effect of rendering it nonconforming.

B. A building or structure that conforms to the Zoning Ordinance that is destroyed by fire, other casualty or natural disaster may be replaced with a building or structure of up to the same size provided a Geologic Report is prepared by a certified engineering geologist. A Geologic Report prepared pursuant to this subsection shall adhere to the Geologic Report Guidelines outlined in subsection 14.17.030. All recommendations contained in the report shall be followed,

however the report need not establish that the site is suitable for development as required in subsection 14.17.025(D). An application filed under this subsection shall be processed and authorized as a ministerial action by the Community Development Department.

14.18.001 AIRPORT RESTRICTED AREA

14.18.010 Definitions. As used in this section, unless the context otherwise requires:

A. Airport means the Newport Municipal Airport.

B. Airport Elevation means 161 feet above mean sea level.

C. Airport Reference Point means the point established as the approximate geographic center of the airport landing area and so designated.

D. Approach Surface means a surface longitudinally centered on the extended runway center line, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in the Section. In plan, the perimeter of the approach surface coincides with the perimeter of the approach zone.

D. Conical Surface means a surface extending outward ad upward from the periphery of the horizontal surface at a slope of 10 to 1 for a horizontal distance of 4,000 feet.

E. Hazard To Air Navigation means an obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.

F. Height. For the purpose of determining the height limits in all zones set forth in this Code and shown on the Zoning Map, the datum shall be mean sea level elevation unless otherwise specified.

G. Horizontal Surface means a horizontal plane 150 feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.

H. Instrument Runway means a runway equipped or to be equipped with electronic or visual air navigation aids adequate to permit the landing of aircraft under restricted visibility conditions.

I. Larger Than Utility Runway means a runway that is

constructed for an intended to be used by propeller-driven aircraft of greater than 12,500 pounds maximum gross weight and jet-powered aircraft.

J. Obstruction. Any structure, growth, or other object, including a mobile object, that exceeds a limiting height set forth in this section.

K. Precision Instrument Runway (Runway 16-34) means a runway having an instrument approach procedure utilizing an Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other planning document.

L. Primary Surface means a surface longitudinally centered on a runway. When the runway has a specifically prepared hard surface, the primary surface extends 200 feet beyond each end of the runway. For military runways, or when the runway has no specially prepared hard surface (or planned hard surface), the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.

M. Runway means a defined area on an airport prepared for landing and takeoff of aircraft along is length.

N. Structure means an object, including a mobile object, constructed or installed, including - but without limitation - buildings, towers, cranes, smokestacks, earth formations, and overhead transmission lines.

O. Transitional Surfaces. These surfaces extend outward to 90° angles to the runway center line, and the runway centerline extends at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at 90° angles to the extended runway centerline.

P. Tree means any object of natural growth.

Q. Utility Runway (Runway 2-20) means a runway that is constructed for and intended to be used by propeller-driven

aircraft of 12,500 pounds maximum gross weigh and less.

R. Visual Runway (Runway 2-20) means a runway intended solely for the operation of aircraft using visual approach procedures.

14.18.020 Airport Zones. In order to carry out the provisions of this Code, there are hereby created and established certain zones that include all of the land lying within the Instrument Approach Zones, Non-Instrument Approach Zones, Transition Zones, Horizontal Zones, and Conical Zones. Such areas and zones are shown on the "Layout Plan" and "Approach and Clear Zone Plan" of the Newport Municipal Airport, consisting of three sheets prepared by George M. Baldwin & Associates (dated August 24, 1979), which is made part of this Ordinance. An area located in more than one of the following zones is considered to be only in the zone with the more restrictive height limitation. The various zones are hereby established and defined as follows:

A. Utility Runway Visual Approach Zones (both ends of Runway 2-20). The inner edge of this approach coincides with the width of the primary surface and is 250 feet wide. The approach zone expands outward uniformly to the width of 1,250 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

B. Runway Larger Than Utility Visual Approach Zone (Runway 34). The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 1,500 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the runway.

C. Precision Instrument Runway Approach Zone (Runway 16). The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 16,000 feet at a horizontal distance of 50,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

D. Transitional Zones. The transitional zones are the areas beneath the transitional surfaces.

E. Horizontal Zones. The horizontal zone is established by swinging arcs of 5,000 feet radii for all runways designated

utility or visual and 10,000 feet for all others from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal zone does not include the approach and transitional zones.

F. Conical Zone. The conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward there from a horizontal distance of 4,000 feet.

14.18.030 Airport Zone Height Limitations. Except as otherwise provided in this Code, no structure shall be erected, altered, or maintained, and no tree shall be allowed o grow in any zone created by this Code to a height in excess of the applicable height herein established for such zone. Such applicable height limitations are hereby established for each of the zones in question as follows:

A. Utility Runway Visual Approach Zone (Runway 2-20). Slopes 20 feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.

B. Runway Larger Than Utility Visual Approach Zone (Runway 34). Slopes 20 feet outward for each foot upward beginning at the end of an at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.

C. Precision Instrument Runway Approach Zone (Runway 16). Slopes 50 feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline; thence slopes upward 40 feet horizontally for each foot vertically to an additional horizontal distance of 40,000 feet along the extended runway centerline.

D. Transitional Zones. Slopes seven (7) feet outward for each foot upward beginning at the sides of an at the same elevation as the primary surface and the approach surface and extending to a height of 150 feet above the airport elevation, which is 100 feet above mean sea level. In addition to the foregoing, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and the same elevation as the approach surface and extending to where they intersect the

conical surface. Where the precision instrument runway approach zone projects beyond the conical zone, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and the same elevation as the approach surface and extending a horizontal distance of 5,000 feet at 90° angles to the extended runway centerline.

E. Horizontal Zone. Established at 150 feet above the airport elevation or at a height of 311 feet above mean sea level.

F. Conical Zone. Slopes 20 feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation.

G. Excepted Height Limitations. Nothing in this Ordinance shall be construed as prohibiting the construction or maintenance of any structure or growth of any tree to a height up to 35 feet above the surface of the land.

14.18.040 Use Restriction. Notwithstanding any other provisions of this Code, no use may be made of land or water within any zone established by this Code in such a manner as to crate electrical interference with navigational signals or radio communications between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

14.18.050 Nonconforming Uses

A. Regulations Not Retroactive. The regulations prescribed in this Code shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this Ordinance, or otherwise interfere with the continuance of a nonconforming use. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which has begun prior to the effective date of this Ordinance and is diligently prosecuted.

B. Marking and Lighting. Notwithstanding the preceding provision of this Section, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the City

Manager to indicate to the operators of aircraft in the vicinity of the airport and presence of such airport obstruction. Such markers and lights shall be installed, operated, and maintained at the expense of the City of Newport.

14.18.060 Permits

A. Future Uses. Except as specifically provided in paragraphs 1, 2, and 3, no material change shall be made in the use of land, no structure shall be erected or otherwise established, and no tree shall be planted in any zone hereby created unless a permit therefore shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure, or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted. No permit for a use inconsistent with the provisions of this Ordinance shall be granted unless a variance has been approved in accordance with Section 14.29.005, Adjustments and Variances, and Section 14.39.001, Procedural Requirements.*

1. In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than 50 feet of vertical height above the ground, except when, because of terrain, land contour, or topographic features, such tree or structure would extend above the height limits prescribed for such zones.

2. In areas lying within the limits of the approach zones but at a horizontal distance of not less than 4,200 feet from each end of the runway, no permit shall be required for any tree or structure less than 50 feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such approach zones.

3. In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than 50 feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour, or topographic features, would extend above the height limit prescribed for such transition zones.

Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, alteration of any structure, or growth of any tree in excess of any of the height limits established by this Ordinance except as set forth in 14.18.030 above.

*(*Amended by Ordinance No. 1989 (1-1-10).)*

B. Existing Uses. No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of this Code, or any amendments thereto, or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.

C. Nonconforming Uses Abandoned or Destroyed. Wherever the City Manager determines that a nonconforming tree or structure has been abandoned or more than 80% torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such tree or structure to exceed the applicable height limit or otherwise deviate from the zoning regulations.

D. Variances. Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use property not in accordance with the regulations prescribed in this Code may apply to the Planning Commission for a variance from such regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship, and relief granted will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this Code. Variances will be approved in accordance with Section 14.29.005, Adjustments and Variances, and consistent with Section 14.39.001, Procedural Requirements.* Additionally, no application for variance to the requirements of this Code may be considered by the Planning Commission unless a copy of the application has been furnished to the Airport Commission and Airport Manager for advice as to the aeronautical effects of this variance. If the Airport Manager and Airport Commission do not respond to the application within 30 days after receipt, the Planning Commission may act on its own to grant or deny said application.

*(*Sentence added by Ordinance No. 1989 (1-1-10).)*

E. Obstruction Marking and Lighting. Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this Code and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to install, operate, and maintain, at the owner's expense, such markings and lights as may be necessary. If deemed proper by the City Council, this condition may be modified to require the owner to permit the City of Newport, at its own expense, to install, operate, and maintain the necessary markings and lights.

14.18.070 Lane Uses Within Airport Zones. All structures and uses within the Airport Zones shall conform to the requirements of Federal Aviation Agency Regulation FAR-77, or successor, and to other federal and state laws regulating structural height, smoke, steam, or dust, and other hazards to flight, air navigation, or public health, safety and welfare.

Within the various airport zones, certain uses are compatible and certain uses are not because of possible negative effects on either the airport or the use. Such effects on the airport may include danger to property or life from accident, noise, and vibration. Because of these factors, the various underlying zones have been further restricted by the following airport zones:

14.18.080 Obstruction Zone. Includes all areas within conical surface area (14.18.010 to 14.18.060).

14.18.090 Approach Zone. To assure safety, uses in the approach safety zone shall not attract large groups of people. Places of public assembly are therefore prohibited. Most residential uses are also prohibited. Where residential development is already in place, low density is preferred. Retirement homes or other residential institutions are prohibited. While manufacturing is generally quite compatible, such uses are subject to the issuance of a conditional use permit in accordance with the provisions of Section 14.30.005, Conditional Uses, and Section 14.39.001, Procedural Requirements, and shall be reviewed for potential operations hazards, electrical interference, high intensity lighting, bird attractions, smoke, glare, or other interferences.* Transportation uses are generally compatible as are communications (except radio and television transmission) and utilities (except petroleum storage, electric power plants and lines, and solid waste disposal). Industrial and wholesale uses are generally compatible; however, retail establishments such as restaurants

and concentrated retail commercial developments which attract large numbers of people are prohibited. Offices and services are compatible, except rest homes and hospitals. Recreational uses are allowed subject to the issuance of a conditional use permit in accordance with the provisions of Section 14.30.005, Conditional Uses, and Section 14.39.001, Procedural Requirements, (excluding public assembly and other high intensity uses, which are prohibited).** Resource production, including agriculture and undeveloped land, is generally compatible. (Aggregate extraction – if it will result in ponding and other uses posing a bird strike hazard – is excluded.)

*(*Sentence Amended by Ordinance No. 1989 (1-1-10).*
***Sentence Amended by Ordinance No. 1989 (1-1-10).)*

14.18.100 Clear Zones. Clear zones are to be kept clear with no development. Agriculture that does not attract birds is compatible, but no structures are allowed. Above ground power lines are prohibited. Most other uses are excluded. Wherever possible, the clear zone should be free of any construction or obstacle and should be minimally used by people.

14.18.110 Moderate Noise Impact (Ldn 55-65) Zones. Schools, hospitals, nursing homes, theaters, auditoriums, residential developments, and other places of public assembly shall have noise insulation in accordance with the State of Oregon's Department of Environmental Quality (DEQ) standards and recommendations. Orientation of housing, screening with fences or berms, or other treatment shall be used to reduce awareness of the airport.*

14.18.120 Substantial Noise Impact (Ldn 65+) Zones. Retail, office, or service uses shall not be developed in this substantially impacted area except by conditional use where it can be shown that adequate noise insulation shall be provided and the use is necessary in that location. While motels or other transient lodging with appropriate insulation can be excluded in this zone, single and multi-family housing and mobile home parks are excluded. Schools, libraries, churches, hospitals, nursing homes, and other noise sensitive uses are also to be excluded. Though many recreational uses are compatible, these uses are conditional and shall be reviewed for noise sensitivity and appropriate measures taken. Non-noise sensitive industry, manufacturing, wholesaling, and warehousing, retailing, agriculture, forestry, fishing, mining, and open spaces are allowed uses. Uses mentioned as conditional in this section are allowed subject to the issuance of a conditional use permit in accordance with the provisions of Section 14.30.005, Conditional Uses, and Section 14.39.001, Procedural Requirements.**

*(*Amended by Ordinance No. 1344 (11-7-83).*
***Sentence Added by Ordinance No. 1989 (1-1-10).)*

14.18.110 Airport Development Zone

A. Purpose. The airport development zone is different from the other zones presented. The land in the immediate vicinity of the airport may be impacted by noise, safety hazards, pollution (not only from the aircraft but from autos accessing the facility), congestion, etc. The combination of these factors and others produce an environment that resembles an industrial setting. An airport requires an area for the growth of the facility, and many types of industry can receive considerable travel and transportation advantage if they are located in close proximity to the airport. The Newport Municipal Airport property is, therefore, set aside and designated as an "airport development zone" to serve these purposes.

B. If the airport development zone grows over time, it should expand in areas impacted by the airport rather than expanding perpendicular to the runway along access routes or other features. It should serve as an airport buffer and include areas receiving severe noise impacts.

C. Residential uses other than transient lodging and recreational uses including high concentrations of people are excluded from this zone. Other uses which are acceptable, providing they do not violate any other zones, are airport-related and include appropriate sound reduction measures. Conditional Uses under "E" of this section shall follow the provisions of Section 14.30.005, Conditional Uses, and shall be decided using the appropriate Land Use Action decision process as provided by Section 14.39.001, Procedural Requirements.*

*(*Sentence Added by Ordinance No. 1989 (1-1-10).)*

D. Permitted Uses.

1. Accessory buildings and uses whose immediate presence is necessary to the property's aviation function.

2. Aircraft runways and taxiways.

3. Aircraft hangars, storage and tiedown areas.

4. Aircraft sales, repair, and service facilities.

5. Air control facilities.

6. Fuel storage facilities.

7. Parking facilities.

8. Open land for aviation clear zone.

9. Agriculture, excluding the commercial raising of animals that would be adversely affected by aircraft passing overhead.

10. Landscape nurseries, cemeteries, or recreation areas which do not include buildings or structures.

11. Roadways, parking areas, and storage yards located in such a manner that vehicle light will not make it difficult for pilots to distinguish between landing lights and vehicle lights, or result in glare, or in any other way impair visibility in the vicinity of the landing approach.

12. Water impoundment (no closer than 5,000 feet from the airport).

13. Pipeline.

14. Underground utility wire.

E. Conditional Uses.

1. A structure or building accessory for a permitted use.

2. A single-family dwelling, or a commercial or industrial use if permitted in the primary zoning district (subject to Subsection F Limitations).

3. Buildings and uses of public works, public service, or utility nature (subject to Subsection F Limitations).

4. Game preserve or reservation.

5. Airport dependent or related industrial or commercial uses.*

*(*Added by Ordinance No. 1603 (6-17-91).)*

F. Limitations.

1. No place of public assembly shall be permitted in an airport approach district.

2. The height of any structure shall be limited by requirements prescribed by the Planning Commission or by any other local ordinance or regulation.

3. Whenever there is a conflict in height limitations prescribed by this Code or another pertinent ordinance, the lowest height limitation fixed shall govern. Provided, however, that the height of other limitations and restrictions here imposed shall not apply to such structures or uses customarily employed for aeronautical purposes.

4. Notwithstanding any other provisions of this Code, no use may be made of land or water within any zone established by this Code in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

14.19.001 HISTORIC BUILDINGS AND SITES

14.19.010 **Purpose.** The purpose of this Section is to assure that alteration, removal, conflicting uses, and energy and environmental consequences are carefully considered when such changes are proposed.

14.19.020 **Notice.** Notice of intent shall be published for two consecutive weeks in the News-Times or other local newspaper prior to a hearing by the Planning Commission.

14.19.030 **Hearing Required.** In addition to the provisions of this Section 14.19.001, the Planning Commission shall conduct a public hearing in accordance with the provisions of Section 14.30.005, Conditional Uses, and Section 14.39.001, Procedural Requirements.*

A. Any exterior alteration involving structural changes, or changes which would detract or destroy historic architectural features (such as changes in windows, doors, siding, or roofing) shall require a public hearing. Such hearing shall only be required for buildings or structures listed in the Comprehensive Plan as being significant historical resources which should be preserved. Painting of a structure or repair using materials which restore the building to its original character shall not require a public hearing. Interior alterations shall not require a public hearing unless such changes would be evident on the exterior of the structure.

B. Where such changes would have a negative effect on a significant historical resource, a delay of up to 60 days may be required by the Planning Commission so that alternative solutions may be examined.

14.19.040 **Alterations Prohibited.**** No changes shall be made if the Planning Commission determines that such changes would detract from or destroy historic buildings or architectural features of a building determined to be of substantial and significant architectural importance. (See Chapter 2, Physical and Historical Characteristics, of the Comprehensive Plan.)

*(*Amended by Ordinance No. 1989 (1-1-10).*
***Amended to correct scrivener's error by Ordinance No. 1790 (7-6-98).)*

14.20.001 BEACH AND SAND DUNE AREAS*

14.20.010 Purpose. The purpose of this section is to assure that the sensitive nature of beach and dune landforms is recognized and that development in these areas is designed so as to protect important natural values and reduce hazards to life and property.

14.20.015 Applicability. Compliance with the approval criteria contained in this section is required for development proposed within beach or dune areas identified on the Ocean Shorelands Map contained in the Comprehensive Plan.

14.20.020 Procedure for Review**

A. Applications for land use actions in beach and dune areas shall be accompanied by a site-specific report prepared by a qualified expert. Beach and dune site reports shall conform to the requirements set forth in Section 14.20.015.

B. Site reports for beach and dune areas shall be reviewed in accordance with the review requirements for the land use action being proposed (e.g. building permit, subdivision, etc.).

C. Upon acceptance of the application, the Community Development Department shall process the request in accordance with a Type II Land Use Action decision process consistent with Section 14.43.020.

14.20.030 Site Report Requirements. Site reports for land use actions in beach and dune areas shall, at a minimum, address the following considerations:

A. The type(s) of dune forms to be affected by the proposed development (e.g. active foredunes, interdune areas, older stabilized dunes, etc.).

B. The type of use proposed and the adverse effects it might have on the site and adjacent areas.

C. Hazards to life, public and private property, and the natural environment which may be caused by the proposed use.

D. Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation.

E. Methods employed to minimize adverse environmental effects on the site and surrounding area.

F. Methods employed to adequately protect the proposed development from geologic hazards, wind erosion, undercutting, ocean flooding, and storm waves.

14.20.040 Review Criteria.*** Development other than residential, commercial, or industrial may be allowed only if the following criteria are complied with:

A. The type of use proposed and the adverse effects it might have on the site and adjacent areas;

(Section amended by Ordinance No. 1344 (11-7-83).*
*** Amended to correct scrivener's error by Ordinance No. 1790 (7-6-98).*
**** Subsection added by Ordinance No. 1622 (10-7-91).)*

B. Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;

C. Methods for protecting the surrounding area from any adverse effects of the development;

D. Hazards to like, public and private property, and the natural environment which may be caused by the proposed use;

E. Is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding, and storm waves, or is of minimal value; and

F. Is designed to minimize adverse environmental effects.

14.21.001BED AND BREAKFAST FACILITIES*

14.21.010 Purpose. The purpose of this section is to provide for temporary traveler's accommodations and breakfast in the R-3 and R-4 zoning districts. It is also the intent of this section to require development criteria so as to minimize the impacts of bed and breakfast facilities on surrounding properties.

14.21.020 Standards. Bed and breakfast facilities shall comply with the following:

A. Parking requirements shall be one (1) space per guest room plus one (1) space for the residence. Parking shall be provided on-site, and it shall not be allowed in a required front yard.

B. The total number of guest rooms shall not exceed five (5).

C. The parking area shall be screened from adjoining properties by a sight-obscuring fence or hedge.

D. Outward modification of the structure or grounds may be made only if such changes are compatible with the character of the area or neighborhood.

E. One (1) on-premise sign is allowed. Such sign may be a wall sign or a pole/ground sign as defined in the City of Newport Sign Ordinance. The sign shall be limited to 10 square feet and shall not be internally illuminated. External illumination shall be so directed as to not shine directly onto any adjacent building. Pole/ground signs shall be no higher than five (5) feet in height and shall be so placed as to not create a problem with vision clearance at street intersections or at street and driveway intersections.

F. Along with the application for the conditional use permit, the applicant shall submit a site plan, drawn to scale, that clearly shows how the project complies with criteria A through E, above.

*(*This page added by Ordinance No. 1597 (4-15-91).)*

14.22.005 MAINTENANCE OF PUBLIC ACCESS*

14.22.010 Maintenance of Public Access. The city shall review, under ORS 271.080 - 271.230, proposals for the vacation of public easements or rights-of-way that provide access to or along the Yaquina Estuary or the Pacific Ocean. The city shall review, under ORS 271.300 - 271.360, proposals for the sale, exchange, or transfer of public ownership that provide access to or along the Yaquina Estuary or the Pacific Ocean.

Existing public ownerships, rights-of-way, and similar public easements that provide access to or along the estuary or the ocean shall be retained or replaced if they are sold, exchanged, or transferred. Rights-of-way may be vacated to permit redevelopment of existing developed shoreland areas, provided public access across the affected site is retained.

14.23.005 HOME OCCUPATIONS*

14.23.010 **Purpose.** The purpose of this section is to allow persons to conduct businesses out of their residences subject to the provisions of this section. It is the intent of this section to:

A. Ensure the compatibility of home occupations with other uses permitted in the residential districts;

B. Maintain and preserve the character of residential neighborhoods;

C. Provide peace, quiet, and domestic tranquility within all residential neighborhoods within the city, and provide freedom from excessive noise, excessive traffic, nuisance, fire hazard, and other possible effects of commercial uses being conducted in residential areas; and

D. Promote the efficient use of public services and facilities by assuring these services are provided to the residential population for which they were planned and constructed, rather than commercial uses.

14.23.020 **Permitted Uses.** It is not the intent of this section to specifically list all the uses that may qualify as a home occupation. Whether or not a use may be permitted as a home occupation shall be based upon the standards contained in Section 14.23.030 of this ordinance.

14.23.030 **Standards.** Home occupations shall comply with the following:

A. The home occupation, including storage, must be carried out in a dwelling and/or an accessory building provided there is no outward appearance of a business being operated on the premises.

B. The home occupation may be carried on only by the residents of the dwelling in question.

C. No alteration of the residential appearance of the premises will occur except that which is allowed in the underlying zoning district.

D. There shall be no display of products visible in any manner from the outside of the dwelling.

E. The home occupation, including storage, may occupy no more than 25% of the total gross floor area of the structure or

structures in which the home occupation is conducted.

F. Use or storage of hazardous substances is prohibited; except at the consumer commodity level.

G. Any activity that produces radio, TV, or other electronic interference; noise, glare, vibration, smoke, or odor beyond allowable levels as determined by local, state, or federal standards, or that can be detected beyond the property line; is prohibited.

H. The home occupation shall not include repair or assembly of vehicles or equipment with internal combustion engines (e.g. as autos, motorcycles, marine engines, lawn mowers, chain saws, etc.) or of large appliances (e.g. washing machines, dryers, refrigerators, etc.).

I. Visitors, customers, or deliveries shall not exceed that normally and reasonably occurring for a residence, including not more than two business visitors an hour and eight a day.

(This section added by Ordinance No. 1627 (1-21-92); and replaced in its entirety by Ordinance No. 2011 (2-18-11))*

14.23.040 Home Occupation Agreement. Any applicant for a home occupation must sign a Home Occupation Agreement. Such agreement shall be on a form provided by the city and shall, at a minimum, include the standards contained in Section 14.23.005.015. The application shall also provide a floor plan of all structures on the property where the home occupation is to be located. The site plan shall be drawn to scale and shall clearly delineate where the home occupation will be conducted.

14.23.050 Business License Required. A business license for the home occupation shall be obtained pursuant to Chapter 4.05 of the Newport Municipal Code.

14.23.060 Revocation. Standards listed in this section shall be construed as conditions of approval. Authorization of a home occupation may be revoked by the Planning Commission in the event conditions of approval are not met or the activities of the use, or use itself, are substantially different from what was represented by the applicant. The revocation process shall be as outlined in Section 14.39.001, Procedural Requirements.

14.24.005 IRON MOUNTAIN IMPACT AREA*

14.24.010 Purpose. The purpose of this section is to protect the operation of the Iron Mountain Quarry from adverse impacts of nearby development and to protect development within the area from adverse impacts from quarry operations, while recognizing that some impacts upon each use are unavoidable. It is also the intent of this section to implement the Comprehensive Plan as it relates to the Iron Mountain Rock Quarry.

14.24.020 Establishment of an Iron Mountain Impact Area Overlay Zone. An Iron Mountain Impact Area Overlay Zone is hereby established and applied to any area within the city limits that is within the impact area as defined in the city's Comprehensive Plan. All restrictions and criteria established by this section shall be complied with prior to the issuance of any building permit within the overlay zone. The Iron Mountain Impact Area shall be designated on the official Zoning Map with the symbol "(IMIA)" beside the symbol for the underlying zoning district.

14.24.030 Uses Permitted in an I-1/"Light Industrial" Zoning District.** The following uses are permitted subject to the criteria and standards of the underlying zone and the criteria and standards contained in Section 14.24.180 of this Code:

A. Forest Services.

B. Building Construction - General Contractors and Operative Builders.

C. Construction Other Than Building Contractors – General Contractors.

D. Construction - Special Trade Contractors.

E. Manufacturing of Apparel and Other Finished Products Made From Fabrics and Similar Materials.

F. Manufacturing of Furniture and Fixtures.

G. Printing, Publishing, and Allied Industries.

H. Local and Suburban Transit and Interurban Highway Passenger Transportation.

I. Motor Freight Transportation and Warehousing.

J. U.S. Postal Service.

K. Transportation by Air.

L. Transportation Services.

M. Wholesale Trade--Durable Goods.

N. Wholesale Trade--Nondurable Goods.

O. Automotive Repair, Services, and Garages.

P. Miscellaneous Repair Services.

Q. Bowling Alleys and Billiard and Pool Establishments.

(Added by Ordinance No. 1691 (11-5-93).*
*** Added by Ordinance No. 1775 (9-2-97).)*

14.24.040 Conditional Uses Permitted in an I-1/"Light Industrial" Zoning District.* The following uses are permitted subject to the criteria and standards of the underlying zone, the criteria and standards contained in Section 14.24.180 of this Code, and the issuance of a conditional use permit in accordance with the provisions of Section 14.30.005, Conditional Uses, and Section 14.39.001, Procedural Requirements.**

A. Manufacturing of Beverages.

B. Miscellaneous Manufacturing Industries.

C. Building Materials, Hardware, Garden Supplies, and Mobile Home Dealers.

D. Eating and Drinking Places.

E. Dance Halls, Studios, and Schools.

F. Commercial Sports.

G. Miscellaneous Amusement and Recreation Services.

H. Tobacco Manufacturing.

I. Manufacturing of Wood Containers.

J. Miscellaneous Services.

K. Leather and Leather Products.

L. Manufacturing of Fabricated Metal Products (Except Machinery and Transportation Equipment).

M. Manufacturing of Machinery (Except Electrical).

N. Manufacturing of Electric and Electronic Machinery, Equipment, and Supplies.

O. Manufacturing of Transportation Equipment.

P. Pipe Lines (Except Natural Gas).

Q. Electric, Gas, and Sanitary Services.

14.24.050 Uses Prohibited in an I-1/"Light Industrial" Zoning District.* ** Other uses not listed in Section 14.24.030 and 14.24.040 of this Code are prohibited.

14.24.060 Uses Permitted in an R-4/"High Density Multi-Family Residential" Zoning District.** ** The following uses are allowed subject to the criteria and standards of the underlying zone and the criteria and standards contained in Section 14.24.180 of this Code:

A. Dwellings, Including Accessory Buildings Such As Meeting Rooms and Recreational Areas.

B. Condominiums.

C. Mobile Home Parks.

D. Child Care Facilities.

E. Uses Related to Federal or State Subsidized Low Income Housing Projects, Including, but not limited to, Head Start, Tenants Associations, and the like.

(Added by Ordinance No. 1775 (9-2-97).*
***Amended by Ordinance No. 1989 (1-1-10).*
**** Added by Ordinance No. 1775 (9-2-97).*
***** Amended by Ordinance No. 1775 (9-2-97).)*

14.24.070 Uses Prohibited in an R-4/"High Density Multi-Family Residential" Zoning District.* The following uses are prohibited in the Iron Mountain Impact Area:

A. Hospitals.

B. Schools, Libraries, Colleges, Churches, Clubs, Lodge Halls, and Museums.

C. Motels, Hotels, and Time-Share Projects.

D. Bed and Breakfast Facilities.

E. Boarding, Lodging, or Rooming Houses.

F. Golf Courses.

G. Recreational Vehicle Parks.

H. Hostels.

I. Any other use not listed in the permitted list contained in Section 14.24.070 of this Code.

14.24.080 Uses in the Impact Area that are zoned I-2 or I-3.**

(Amended by Ordinance No. 1775 (9-2-97).*
*** Section Added by Ordinance No. 1878 (10-19-04))*

14.24.090 Uses Permitted Outright and Conditionally in an I-2/"Medium Industrial" Zoning District. The following land use categories authorized by the I-2 zoning in Section 14.03.070 (Commercial and Industrial Uses) either as uses permitted outright or conditionally may be allowed within the impact area subject to the underlying zone requirements and any applicable standard of Section 14.24.180 (Iron Mountain Impact Area Development Requirements), excluding the noise standards for residential development provided in Section 14.35.280(D):

A. Retail Sales and Service (sales-oriented, general, and bulk);

B. Retail Sales and Service (repair-oriented);

C. Vehicle Repair;

D. Self-Service Storage;

E. Parking Facility;

F. Contractors and Industrial Service;

G. Manufacturing and Production (light and heavy);

H. Warehouse, Freight Movement, and Distribution;

I. Wholesale Sales;

J. Waste and Recycling Related;

K. Basic Utilities and Roads;

L. Utility, Road, and Transit Corridors;

M. Community Service (post offices only);

N. Mining;

O. Communication Facilities.

14.24.100 Uses Permitted in an I-2/"Medium Industrial" Zoning District with Conditions for the IMIA. The following land use categories authorized by the I-2 zoning in Section 14.03.070 (Commercial and Industrial Uses) either as uses permitted outright or conditionally may be allowed within the impact area subject to the underlying zone requirements and any applicable standard of Section 14.24.180 (Iron Mountain Impact Area Development Requirements), including the noise standards for residential development provided in Section 14.24.180(D):

A. Office;

B. Retail Sales and Service (Personal Services);

C. Retail Sales and Service (Entertainment);

D. Day Care Facility;

E. Educational Institutions (Trade/Vocational Only).

14.24.130 Uses Permitted in an I-3/"Heavy Industrial" Zoning District. The following land use categories authorized by the I-2 zoning in Section 14.03.070 (Commercial and Industrial Uses) either as uses permitted outright or conditionally may be allowed within the impact area subject to the underlying zone requirements and any applicable standard of Section 14.24.180 (Iron Mountain Impact Area Development Requirements), excluding the noise standards for residential development provided in Section 14.24.180(D):

A. Retail Sales and Service (sales-oriented, general, and bulk);

B. Parking Facility;

C. Contractors and Industrial Service;

D. Manufacturing and Production (light and heavy);

E. Warehouse, Freight Movement, and Distribution;

F. Wholesale Sales;
G. Waste and Recycling Related;

H. Basic Utilities and Roads;

I. Utility, Road, and Transit Corridors;

J. Mining;

K. Communication Facilities.

14.24.140 Uses Permitted in an I-3/"Heavy Industrial" Zoning District with Conditions in the IMIA. The following land use categories authorized by the I-3 zoning in Section 14.03.070 (Commercial and Industrial Uses) either as uses permitted outright or conditionally may be allowed within the impact area subject to the underlying zone requirements and any applicable standard of Section 14.24.180 (Iron Mountain Impact Area Development Requirements), including the noise standards for residential development provided in Section 14.24.180(D):

A. Educational Institutions (trade/vocational only).

14.24.170 Change of Zone or Use in the Iron Mountain Impact Area. In order to approve any change of zone or use in the Iron Mountain Impact Area, the city shall amend the Comprehensive Plan to incorporate a revised analysis of the economic, social, environmental, and energy (ESEE) consequences on the Iron Mountain Quarry. A change of zone may require that the permitted use list in Section 14.24.070 be amended. Uses added to the permitted use list must be compatible with the intent and purpose of the Iron Mountain Impact Area Overlay Zone and the Comprehensive Plan.

14.24.180 Iron Mountain Impact Area Development Requirements. In addition to the criteria established in the

underlying zone, all development within the Iron Mountain Impact Area shall comply with the following requirements:

A. The minimum setback for dwelling structures shall be 50 feet from the property line between the Iron Mountain Quarry and its haul road and the structure, and 25 feet from the property line between the Oregon Department of Transportation (ODOT) stockpile site (Tax Lot 800) and the structure. Setbacks from other property lines shall be as required in the underlying zone.

B. All residential development shall install fences or walls or similar site-obscuring structures, including vegetative barriers such as hedgerows and the like, which shall be no less than six (6) feet in height, between living areas and the Iron Mountain Quarry, haul road, and stockpile site.

C. To the extent it is practicable, all developments shall retain existing vegetation within required setback areas between living areas and the Iron Mountain Quarry, haul road, and stockpile site to serve as visual screening, except for vegetation removed to accommodate required fencing or walls. Nothing set forth herein shall be construed so as to prevent a development from creating lawn areas, playground areas, or similar common areas outside the setback area which are designed to serve the development.

D. Noise Standards.

1. Except as provided in subsection (D)(4) of this section, residential developments shall be designed so that lawful mining, crushing, and processing activities at the Iron Mountain Quarry will not result in anticipated sound levels that violate applicable noise control regulations adopted by the Oregon Department of Environmental Quality (OAR Chapter 340, Division 35).

2. "Anticipated sound levels" refers to sound levels which would be produced by typical quarry operations conducted in compliance with the following:

a. The Department of Geology and Mineral Industries (DOGAMI) mining permit and application for the quarry;

b. ODOT's mining plans set forth in the ESEE

analysis adopted as part of the Comprehensive Plan;

c. Any ordinance or regulations adopted by Lincoln County;

d. Refraining from the use of explosives or rock drills before 7:00 A.M. and after 7:00 P.M.; and

e. Utilizing portable noise barriers to attenuate noise from rock drills and compressors, except where topographical features provide equal or better attenuation.

3. In view of the sporadic operation of the quarry, anticipated sound levels may be determined utilizing acoustical modeling techniques based on noise studies of typical aggregate plants.

4. The requirements set forth in subsection (D)(1) of this section shall not apply in the event the provisions of 24 CFR 51 subpart B or successor regulations apply to the development. In that case, the development shall provide evidence of compliance with such provisions which shall be deemed satisfactory compliance with this section.

E. The owner/developer of land in the Iron Mountain Impact Area shall record an easement in favor of the owner and operators of the Iron Mountain Quarry. The easement shall:

1. Identify the Iron Mountain Quarry, haul road, and stockpile site as lawful, preexisting uses of adjacent property described as Tax Lots 600, 700, and 800, Lincoln County Assessor's Map 10-11-20, and state that the quarry is identified as a protected aggregate resource site in the Lincoln County Comprehensive Plan.

2. Identify the Iron Mountain Quarry as an "existing industrial or commercial noise source" as defined by Oregon Department of Environmental Quality administrative rules.

3. Identify that mining and processing of rock and aggregate products for road construction projects occurs on adjacent property. Activities involving the mining and processing or rock and aggregate

products includes, but is not limited to, drilling, blasting, excavation, crushing, sorting, and transportation of these products off of the site on the preexisting haul road, and may include manufacture and transportation of asphaltic and Portland cement concrete.

4. State that the owner shall include notice in any rental or lease agreement to advise tenants and occupants of the existence of the quarry and the possibility of residents being disturbed by lawful mining, processing, and transportation activities at the Iron Mountain Quarry.

5. State that residents, tenants, and occupants agree that operations of the quarry are regulated by Lincoln County and agencies of the State of Oregon.

6. State that owners, tenants, and occupants agree not to object to or contest the terms of a permit issued by regulatory authorities for lawful operation at the Iron Mountain Quarry. Owners, tenants, and occupants agree not to initiate or seek any change of land use designation or permit modification which would limit or curtail lawful operation of the quarry.

7. State that the owner of the property grants to the owners and operators of the Iron Mountain quarry, their successors and assigns, an easement to create noise across the owner's property at levels not in excess of the noise standards referenced in this section.

8. State that owners, tenants, and occupants of the property agree to hold the owner and operators of the Iron Mountain Quarry, their successors and assigns, harmless from any claims, demands, and causes of action, of whatever nature, whether legal, equitable, or administrative, arising out of noise produced by the owner or operators of the Iron Mountain Quarry within the standards referenced in this section.

9. State that the owner releases the owners and operators of the Iron Mountain Quarry, their successors and assigns, from all claims of whatever nature, whether legal, equitable, or administrative, present or future, relating to noise produced by the owner or operators of the Iron Mountain Quarry within the standards referenced in this section.

10. State that the easement shall run with the land and bind the parties and their successors, and the tenants and occupants of the property.

11. State that the easement shall terminate when mining quarry is completed and the quarry has been reclaimed in accordance with state laws regulating reclamation.

14.24.190 Iron Mountain Impact Area Review Procedure. Permitted uses listed in Section 14.24.070 shall be reviewed as follows:

A. Applicants for permitted uses shall submit a site plan conforming to the requirements of Section 14.24.180 and other applicable sections of this Ordinance.

B. Applicants for permitted uses shall submit a report prepared by a registered engineer indicating that the development is designed and will be built to meet the standards of Section 14.24.180.

14.25.005 NON-CONFORMING USES IN R-1 ZONING DISTRICTS*

14.26.005 DESIGN REVIEW STANDARDS

14.26.010 Purpose. Design review districts may be adopted by the City of Newport in accordance with applicable procedures to ensure the continued livability of the community by implementing standards of design for both areas of new development and areas of redevelopment. Design review is an important exercise of the power of the City to regulate for the general welfare by focusing on how the built environment shapes the character of the community.

The Newport Comprehensive Plan identifies six potential urban design districts within the Newport Peninsula including the City Center District (and Highway 101 corridor), Waterfront District, Nye Beach District, Upland Residential District, East Olive District, and the Oceanfront Lodging/Residential District. Additionally, neighborhood plans may be adopted for other areas of Newport that include as an objective the implementation of design review to maintain and/or provide a flexible approach to development by offering two methods of design review from which an applicant can choose. One method of design review is under clear and objective design standards and procedures to allow development that is consistent with the standards to occur with certainty in a timely and cost effective manner. A second alternative method of design review is review under design guidelines, which area a more flexible process for proposals that are creative/innovative and meet the identified guidelines of the applicable design review district.

It is further the purpose of these standards to:

A. Preserve the beautiful natural setting and the orientation of development and public improvements in order to strengthen their relationship to that setting.

B. Enhance new and redeveloping architectural and landscape resources to preserve and strengthen the historic, scenic and/or identified neighborhood character and function of each setting.

C. Improve the vehicular and pedestrian networks in order to improve safety, efficiency, continuity, and relationships connecting Newport neighborhoods.

D. Strengthen Newport's economic vitality by improving its desirability through improved appearance, function, and efficiency.

E. Improve the built environment in order to strengthen the visual appearance and attractiveness of developed areas.

F. Implement the goals and objectives of the adopted neighborhood plans.

14.26.020 Definitions. The following words and phrases for the purposes of the design review ordinance shall have the following meanings:

A. "Community Development Director shall mean the Community Development Director/Planning Director or designate.

B. "Design guidelines" shall mean the mandatory general design criteria with which a project is required to be in compliance. The design guidelines are applicable for applications that do not meet the design standards.

C. "Design review" shall mean the process of applying design guidelines and/or design standards as applicable to a project.

D. "Design standards" shall mean the mandatory specific design criteria with which a project must demonstrate compliance. If the project does not meet the design standards, then the project is reviewed under the design guidelines.

E. "Footprint" shall mean the total square footage of the area within the perimeter of the building as measured around the foundation of a building.

F. "Gross floor area" shall mean the total square footage of floor area within the exterior walls of a building excluding crawl spaces and unenclosed porches/decks.

G. "Substantial reconstruction" shall mean the value of the exterior construction work requiring a building permit that is 25% or more of the real market value of an existing commercial structure and 35% or more of the real market value of an existing residential structure based on the value on the most current rolls of the Lincoln County Tax Assessor. Value of the work to be done shall be the valuation of the work as determined for the building permit on which the cost of the permit is based. In the case where one or more additional building permits

involving exterior work are applied for within one year of the date of issuance of the first building permit for exterior work, the value of the exterior construction work on the projects shall be counted as one project for the purposes of determining the percentage of exterior construction work value.

14.26.030 Council Review of Design Review Districts and Implementing Regulations

A. Within 10 years of the date of the adoption of an ordinance establishing a design review district and the implementing regulations, the City Council shall consider reviewing the proposed design review district and the implementing regulations by soliciting public comment on the design review district and the implementing regulations. The Council shall provide public notice that the Council is considering reviewing the proposed design review district and implementing regulations and shall accept public comment on whether or not to review the proposed design review district and the implementing regulations. Following the acceptance of public comment on reviewing the proposed design review district and implementing regulations, the Council shall decide whether or not to review the proposed design review district and implementing regulations. If the Council decides to review the proposed design review district and implementing regulations, the Council may proceed in a manner provided by the Comprehensive Plan, Zoning Ordinance, and/or state law for review of the design review district and implementing regulations. The ability to amend an ordinance relating to design review, without the above process, as provided by the Comprehensive Plan, Zoning Ordinance, and/or state law is not precluded by this section.

B. The following are the 10 year review dates for the established design review district:

   1. Historic Nye Beach Design Review District. For the Historic Nye Beach Design Review District, the process in Section 14.26.030(A) shall be initiated by the City Council by December 1, 2013.

14.26.040 Design Review Districts: Overlay Zones Established. The following:

A. Historic Nye Beach Design Review District. The Historic Nye Beach Design Review District Overlay Zone shall be

indicated on the Zoning Map of the City of Newport with the letters HNBO and is the area within the area described as follows:

Starting at the intersection of SW Hurbert St. and SW 2nd St.; thence west along SW 2nd St. to SW Dolphin St.; thence north along SW Dolphin St. to W Olive St.; thence west along W Olive St. to SW Elizabeth St.; thence south along SW Elizabeth St. to SW Surf St.; thence west along SW Surf St. to the Pacific Ocean; thence north along the Pacific Ocean to NW 12th St.; thence east on NW 12th St. to NW Spring St.; thence south along NW Spring St. to NW 10th St.; thence east along NW 10th St. to NW Hurbert St.; thence south along NW Hurbert St. and SW Hurbert St. to SW 2nd St. and the point of beginning.

The boundary of the area described shall be adjusted to also include Lot 6 of Block 19, OCEANVIEW.*

*(*Sentence added by Ordinance No. 1887 (11-7-05).)*

14.26.050 **Adoption of Design Review: Guidelines and Standards.** The document entitled "Newport Design Review: Guidelines and Standards" dated November 10, 2003, is hereby adopted by reference and made a part hereof. The guidelines and standards contained therein shall be the guidelines and standards applicable to the Historic Nye Beach Design Review District.

14.26.060 **Special Zoning Standards in Design Review Districts.** All zoning standards and requirements applicable under Ordinance No. 1308 (as amended) in the subject zoning district shall apply, except that the following additional zoning standards are applicable for the design review district as applicable in the underlying zoning designation and shall be modified for each district as specified.

A. Historic Nye Beach Design Review District:

1. No drive through windows are allowed.

2. Any building with any exterior dimension of 100 feet or more shall be required to obtain a Conditional Use permit as outlined in Section 14.30.005, Conditional Uses, and using a Type III Land Use Action decision process consistent with Section 14.39.001, Procedural Requirements.* If a structure with an exterior dimension of 100 feet or more existing on the date of passage of this ordinance is destroyed or

damaged by any cause, a conditional use permit under this subsection shall not be required for the replacement or rebuilding of the structure provided the replacement or rebuilding is within the footprint of the building prior to destruction or damage and the replacement or rebuilding does not exceed the exterior dimensions, including height, of the building as it existed prior to the destruction or damage. In addition to the criteria contained in Section 14.30.005.015(A), the proposed project shall be consistent with the design guidelines or standards established for the Historic Nye Beach Design Review District.

3. Commercial buildings with frontage on NW and SW Coast Street, W Olive Street, NW and SW Cliff Street, NW Beach Drive, and NW Third Street shall be set back from the property line fronting the street no more than 5 feet unless the development provides for a pedestrian oriented amenity (such as a courtyard, patio, or café with outdoor seating), compliance with the setback is precluded by topography or by easement, or a larger setback is authorized by the Planning Commission through the design review process.

4. All required yards and setbacks established in Section 14.10.001 (Required Yards and Setbacks) and Section 14.14.001 (Screening and Buffering between Residential and Non-Residential Zones) shall be reduced by 50%.

5. Residences associated with a bed and breakfast may be on any floor.

6. All applicants shall sign a waiver or remonstrance for future street and/or sidewalk improvement districts if said improvement is part of a plan adopted by the City Council.

7. For Tourist-Commercial (C-2) zoned property with frontage on NW and SW Coast Streets, W Olive Street, NW and SW Cliff Streets, NW Beach Drive, and NW Third Street, a single-family residence is allowed as a use permitted outright if located on a floor other than the street grade floor.

An existing single-family residence as of the date of passage of this ordinance with frontage on the above-named streets

and located on the street grade floor is allowed as a use permitted outright for the footprint of the structure existing at the date of passage of this ordinance. For all C-2 zoned property within the District, up to 5 multiple family dwelling units are allowed as a use permitted outright if located on a floor other than the street grade floor. As noted in Subsection (5) above, a residence associated with a bed and breakfast may be on any floor. This section modified Section 2-4-1.010(B) for properties within the Historic Nye Beach Design Review District.

*(*Amended by Ordinance No. 1989 (1-1-10).)*

1.* Additional residential use, including at the street grade, is permitted outright for C-2 property located south of NW 2nd Court and north of NW 6th Street that front NW and SW Coast Street, W. Olive Street, NW and/or SW Cliff Street, if the residential use complies with the following additional requirements:

a. The maximum density per residential unit is 1,250 square feet per unit.

b. The maximum building height is 35 feet.

c. The maximum lot coverage in structures is 64%. If the proposed residential use provides at least 1 actual off-street parking space for each residential unit in a below-grade parking structure (for the purposes of this section below-grade is defined to mean that 50% or more of the perimeter of the building is below-grade) located directly below the residential portion of the structure, the maximum lot coverage allowed is 90%.

d. Residential structures built on C-2 property located south of NW 2nd Court and north of NW 6th Street that front NW and SW Coast Street, W Olive Street, NW and/or SW Cliff Street, shall be required to meet the Design Standards and Design Guidelines for Single-Family, Two-Family, or Multiple-Family dwellings as applicable and contained in the Historical Nye Beach Overlay.

e. The residential use provides at minimum 1 actual off-street parking space for each residential unit.

f. At least one residential building per lot is set back from the property line abutting the street no more than 5 feet unless compliance with the setback is

precluded by topography or easement or a larger setback is authorized by the Planning Commission by variance or through the design review process.

2.**For C-2 zoned property with frontage on NW and SW Coast Street, W Olive Street, NW and SW Cliff Street, NW Beach Drive and/or NW Third Street, single-family residential use of a building that was either constructed for single-family residential use or has been previously used for a single-family residential use is permitted throughout the entire portion of the building.

*(*Subsection added by Ordinance No. 1946 (1-22-08).*
***Subsection added by Ordinance No. 1946 (1-22-08).)*

3. The following adjustments to the off-street parking requirements of Section 14.13.001 (Parking, Loading, and Access Requirements) are provided for uses within the District:

   a. Commercial uses within the area bounded by SW 2nd Street, NW 6th Street, NW and SW High Streets, and the Pacific Ocean are exempt from the requirement to provide off-street parking if the commercial use participates in a Council-approved parking district.

   b. Commercial uses outside of the area identified in Subsection (A) above shall have the first 1,000 square feet of gross floor area exempted from the off-street parking calculation.

   c. All uses within the District shall be allowed an on-street parking credit that shall reduce the required number of off-street parking spaces by one off-street parking space for everyone on-street parking space abutting the property subject to the following limitations:

      i. Each on-street parking space must be in compliance with the City of Newport standards for on-street parking spaces.

      ii. Each on-street parking space to be credited must be completely abutting the subject property. Only whole spaces qualify for the on-street parking credit.

      iii. On-street parking spaces credited for a specific use may not be used exclusively by that use, but

shall be available for general public use at all times. No signs or actions limiting general public use of on-street parking spaces are allowed except as authorized by the City of Newport.

9. The following adjustments to Section 14.11.010 (Minimum Size) and Section 14.12.005 (Table "A") are allowed within the District.

   a. The minimum lot area within both the R-4 and C-2 zones shall be 3,000 square feet.

   b. The minimum lot width for the R-4 zone shall be 30 feet.

10. The following adjustments to Section14.02.040 (Residential Uses) and Section 14.02.050 (Commercial and Industrial Uses) are applicable within the District:

   a. For Section 14.02.040 (Residential Uses), uses permitted outright in the C-2 zone including those uses identified in Subsection (B) below and that are not specified as a use permitted outright or conditionally in the R-4 matrix, are allowed in the R-4 zone subject to the issuance of a conditional use permit in accordance with the provisions of Section 14.30.005, Conditional Uses, and Section 14.26.090, Procedural Requirements, and subject to the limitation that the use not exceed a total of 1,000 square feet of gross floor area.* This provision does not preclude an application for a use as a home occupation under Section 14.23.005 (Home Occupations).

*(*Amended by Ordinance No. 1989 (1-1-10).)*

   b.* For Section 14.02.050 (Commercial and Industrial Uses), uses permitted outright in the C-2 zone are also permitted outright in the District provided the gross floor area is less than or equal to 2,000 square feet. Uses in excess of 2,000 square feet of gross floor area may be permitted in accordance with the provisions of Section 14.30.005, Conditional Uses, and Section 14.39.001, Procedural Requirements.

11. Recreational vehicle parks are not permitted within the C-2/"Tourist Commercial" and "P-1/"Public Structures" zone designations within the District.**

*(*Subsection amended by Ordinance No. 2022 (10-20-11).*
***Added by Ordinance No. 1886 (7-18-05).)*

14.26.050 <u>When Compliance with Design Review is Required.</u> Unless exempted by Section 14.26.040 (Design Review Districts), or the proposed development activity is subject to the provisions of Section 14.19.001 (Historic Buildings and Sites), the following development activities in an established design review district are required to obtain a design review permit under the design standards in an identified design review district or, in the alternative, to apply for a design review permit and to obtain approval under the design guidelines for that design review district:

A. The new construction, substantial reconstruction, or relocation from outside the design review district of a single-family residence.

B. The new construction, substantial reconstruction, or relocation from outside the design review district of a principle commercial or public/institutional building.

C. The new construction, substantial reconstruction, or relocation from outside the design review district of an accessory structure that:

    1. Contains more than 300 square feet of gross floor area, or

    2. Contains between 200 square feet and 300 square feet of gross floor area and is located within 20 feet of a public right-of-way.

D. The addition of more than 50% of gross floor area to an existing building or accessory structure or where the addition increases the footprint of the existing building by more than 1000 square feet. The 50% of gross floor area may come from either adding to the structure or from elevating the structure. If the sum of the gross floor area of the original accessory structure and the gross floor area of the proposed addition to the accessory structure would not require design review, then design review is not required.

14.26.070 <u>Review Authority, Approval, Appeal and Modification.</u>

A. Generally, the following are the initial review authorities for each type of application:

1. Planning Commission. For any project that requires design review under the design guidelines or in conjunction with a conditional use, a variance, or any other type of land use permit for which a Type III Land Use Action decision process is required, the Planning Commission shall be the review authority for both the design review permit and the land use permit if the applicant chooses to consolidate the applications into one request as allowed under Section 14.39.001, Procedural Requirements.*

2. Community Development Director. For any project that meets the design standards specified in the adopted design review criteria for a design review district, the Community Development Director is authorized to approve the application.

B. Approval Authority. For design review applications under design guidelines, the approving authority has the authority to approve, require modification(s) to the design and, if the findings justify, deny an application for design review based on the applicable design guidelines. Required modification(s) to the design shall only be specified if necessary to avoid a finding that the application does not meet the applicable design guidelines and shall be limited to only those modification(s) necessary to avoid a denial of the permit application.

C. Appeals. Appeals from a decision of the Community Development Director are made to the Planning Commission. Appeals from a decision of the Planning Commission are made to the City Council. Appeals are conducted in accordance with the zoning ordinance section on appeals found in Section 14.39.001, Procedural Requirements.** The appeal fees and appeal notice forms shall be those normally used for a land use appeal.

D. Modification of approved design. A modification of an approved design may be requested of the approving authority for any reason by an applicant. Applications for a modification shall be submitted and processed in the same manner as the original application.

1. If the requested modification is from an approval issued under design standards, the modification request shall be approved by the Community

Development Director if the modification also meets the design standards.

2. If the modification does not meet the design standards or if the modification is from an approval issued under the design guidelines, the modification shall be processed under the design review process for compliance with the applicable design guidelines. The Commission's authority is limited to a determination of whether or not the proposed modification is consistent with the applicable design review guidelines.

3. If the modification is of a design element specifically required as a condition of approval of a Planning Commission decision, the Planning Commission shall be the review authority. The Commission's review authority is limited to a determination of whether or not the proposed modification is consistent with the design guidelines and the reason for imposing the condition of approval. The request for modification shall be processed under the same procedure used for the initial application.

*(*Amended by Ordinance No. 1989 (1-1-10).*
***Amended by Ordinance No. 1989 (1-1-10).)*

14.26.080 Submittal Requirements.

A. The applicant for design review under the design standards shall follow the same procedure for a building permit application and shall submit information on the site plan and building plans to demonstrate compliance with the applicable criteria by clearly identifying the elements on the site plan and building plans as those elements provided to meet the design standards. Additionally, a written checklist of the design standards identifying the design elements used to comply with the design standards shall also be submitted.

B. The applicant for design review under the design guidelines shall submit a completed application and plans showing the following:

1. A completed and signed design review application including fee (if required) and a list of all names and addresses of property owners within 100 feet of the property as determined from the current rolls of the Lincoln County Assessor's Office.

2. A site plan, drawn to scale with:

a. Project name

b. Vicinity map

c. Scale (the scale shall be at least one inch equals fifty feet or larger)

d. North arrow

e. Date

f. Street names and locations of all existing and proposed streets within or on the boundary of the proposed development as applicable

g. Location of all parking areas and all parking spaces, ingress and egress to the site and on-site circulation.

h. A landscape plan showing the location, type and variety, size and any other pertinent features of the proposed landscaping and plantings for all multiple-family (more than 2 units), commercial, and public/institutional development

i. Location and general use of all buildings

j. Zoning

k. Dimensions of lots, structures, and other features

l. Any other feature required to be included on a site plan as identified by the requirements of a design review district

3. Exterior elevations of all buildings on the site as they will appear after development. Such plans shall indicate the material, texture, shape, and other design features of the building(s), including all mechanical devices.

4. A written set of proposed findings that explain how the project complies with the applicable design guidelines.

14.26.090 <u>Procedural Requirements.</u>

A. Procedural requirements for the Planning Commission as

the approving authority on consolidated applications shall be the same as for the land use application.

B. Procedural requirements for design review applications only (not consolidated with another land use application):

1. Upon the submittal of an application, the Community Development Director shall review the application and determine within five working days whether or not the application is complete. If all required submittals accompany the application, the application shall be accepted. If all required submittals do not accompany the application, the applicant shall be notified within 30 days of the incomplete application with a written explanation of what needs to be submitted in order to make it complete. The application shall be deemed complete upon receipt by the Community Development Department of all of the missing information, some of the missing information and written notice from the applicant that no other information will be provided, or written notice from the applicant that none of the missing information will be provided.

2. Upon acceptance of a complete application, the Community Development Director shall mail notice to the property owners within 100 feet of the subject property and any neighborhood or community association recognized by the City Council and whose boundaries include the site. Notice shall be required to be sent only to the chair of the association or any other person designated by the association. Notice does not have to be sent to each and every member of the association.

3. Persons subject to notice shall be given 14 days from the date the notices are mailed to make comment. Comments must be in writing and must be received by the Community Development Director by 5:00 P.M. on the 15th day. If the 15th day falls on a weekend or legal holiday, the deadline for comments shall be extended to 5:00 P.M. on the next business day.

4. After the comment period, the application shall be placed on the agenda for the Commission. The Commission shall review the application and all comments received during the comment period. The review process shall follow a Type III Land Use Action decision process consistent with Section 14.39.001,

Procedural Requirements.* If the Commission finds that the application complies with the criteria, then the application shall be approved. If the Commission finds that the application does not comply with the criteria, then they shall state where the application fails to meet the criteria and may attach conditions of approval necessary to obtain compliance with the criteria to the application so that the application can be approved. If the application cannot be made to comply, the Commission may deny the request. All decisions shall be in writing and shall have findings explaining the decision. Applications may be resubmitted at any time after a denial.

5. After a decision, the applicant and any person or association who made comment shall be notified of the decision. The notification shall contain an explanation of appeal rights.

14.26.100 Time Limit on Design Review Permit.

A. A design review permit shall be void after 18 months from the date the permit is final unless substantial construction has taken place. Substantial construction shall mean at least 25% of the value of the building or the work permitted (or if multiple buildings are proposed, then 25% of the value of the first building) has been completed. If the permit is issued in conjunction with another land use permit through a consolidated application procedure or in conjunction with a building permit, the time limit on the design review permit shall be the same as the time limit on the accompanying permit.

B. The time limit on a design review permit shall be extended only once for a period of 12 additional months if a request for an extension is submitted by the permit holder or authorized agent in writing to the Community Development Department of the City of Newport prior to the permit expiration date. The Community Development Director shall be the approval authority granting the extension. If the permit was issued in conjunction with another land use permit through a consolidated application procedure or in conjunction with a building permit, the design review permit shall be allowed an extension as allowed by the accompanying permit.

14.27.005 TOWNHOUSES*

14.27.010 Purpose. The purpose of this section is to allow for different ownership patterns by allowing townhouses in certain zones subject to specific development standards, to regulate the development of townhouses, and to outline specific development criteria and design parameters to protect public health, safety, and welfare.

14.27.020 Definitions. For the purposes of this section, the following definitions shall apply:

A. Parent Lot. The legal lot or lots in existence prior to the townhouse development.

B. Townhouse. A single-family dwelling in a row of at least two units in which each unit has its own front and rear access to the outside, no unit or portion thereof is located over another unit or portion thereof except for parking spaces or garages, each unit is separated from any other unit by one or more common walls, and each unit has its own underlying townhouse lot.

C. Townhouse Lot. The underlying real estate associated with a townhouse.

14.27.030 Zoning Districts Where Townhouses are Located. Townhouse are an outright permitted use in the R-2, R-3, and R-4 zoning districts subject to the standards contained in this section.

14.27.040 Density. The overall density of a townhouse development shall not exceed the density allowed in the underlying zoning district and shall be computed on the parent lot.

14.27.050 Number of Units in Building. No separate building in a townhouse development may exceed six townhouse units.

14.27.060 Development Standards. All townhouse developments shall meet the following:

A. Minimum lot size: None.**

B. Maximum parent lot coverage: Underlying zone.

C. Maximum height: Underlying zone.
D. Minimum outdoor open space or patio: 150 square feet per townhouse.

E. Minimum parking: 1.5 spaces per townhouse.***

F. Minimum parent lot frontage: 25 feet.

G. Minimum parent lot setback: Underlying zone.

H. Utilities: Each dwelling unit shall be served by separate utilities.

*(*Added by Ordinance No. 1783 (1-20-98).*
***Amended by Ordinance No. 1791 (7-6-98).*
****Parking may be on each lot or in a common parking lot, carport, or garage for one or more townhouses.)*

(Not to Scale)

Lot 1 = 2,000 Sq. Ft./Lot 2 = 1,500 Sq. Ft./Lot 3 = 1,500 Sq. Ft.

14.27.070 Access. The parent lot shall have a minimum of 25 feet of frontage onto a street. For purposes of this section, a street can be either a public or private way dedicated for street purposes. Townhouse lots are not required to have frontage on a street, but in no case may a townhouse lot be further than 100 feet from a street. For townhouse developments where frontage for townhouse lots is not provided, an adequate turnaround as determined by the Fire Marshal on the parent lot is required. In addition, townhouse lots with no frontage shall have a perpetual easement across any and all lots that have frontage and any intervening lot.

14.27.080 Deed Covenant and Maintenance Agreements. The developer of a townhouse development shall provide the city with copies of any deed restrictions, covenants and conditions, and any maintenance agreements to the Community Development Director prior to final plat approval. Such documents shall be approved by the City Attorney and Community Development Director to assure that adequate provisions are contained in those documents for maintenance of buildings, utilities, landscaping, parking areas, common areas, private streets or drives, and other items held in common.

14.27.090 Process. Townhouse developments are permitted in the R-2, R-3, and R-4 zoning districts as an outright permitted use. However, since a townhouse

development will require a segregation of lots, a partition or subdivision, as applicable, will be required with its appurtenant requirements as per the City of Newport Subdivision Ordinance (No. 1285, as amended).

14.27.100 Exception for Reconstruction or Repair of Non-Conforming Townhouse Developments. Nothing in this Ordinance shall be construed to prohibit the complete reconstruction or repair of a non-conforming townhouse development that was in existence on or before February 1, 1998, subject to the conditions and requirements in effect when the townhouse development originally occurred.

14.28.001 NONCONFORMING USES, LOTS, AND STRUCTURES*

14.28.010 Purpose. The purpose of this section is to establish policy and guidelines for the regulation of nonconforming uses, lots, and structures. It is further the purpose of this section to work towards bringing nonconforming uses, lots, and structures into compliance with this Ordinance, the Comprehensive Plan, and other applicable ordinances and regulations.

14.28.020 General Provisions.

A. For purposes of this section, the effective date of this ordinance is September 7, 1982, or the adoption date of any amendment if the amendment, rather than the ordinance originally adopted, creates a nonconforming situation.

B. A nonconforming use, as defined in this ordinance, may be continued and maintained at its lawful nature and extent.

C. Normal maintenance and repair of nonconforming structures is permitted.

D. Nonconforming uses or structures may be altered, expanded, or replaced as provided in subsections 14.28.070 and 14.28.040 after verification under 14.28.030.

E. An application to alter, expand, or replace a nonconforming use or structure may be processed and authorized under a Type II or Type III decision-making procedure as provided by Section 14.39.001, Procedural Requirements, in addition to the provisions of this section.

F. A nonconforming use may expand onto neighboring properties.

G. If a nonconforming use or structure is discontinued for a period of one year (12 continuous months) or more, further use of the property shall conform to the requirements of this ordinance.

(Portions of this section were amended by Ordinance No. 1426 (4-1-85); Amended in its entirety by Ordinance No. 1679 (7-19-93); Amended in its entirety by Ordinance No. 1996 (1-7-10).)*

14.28.030 Approval Authority. Upon receipt of an application, the Community Development Director or designate shall determine if an alteration, expansion, or replacement of a nonconforming use or structure qualifies for Type II or Type III review based on the standards established in this subsection. There shall be no appeal of the Director's determination as to the decision-making process, but the issue may be raised in any appeal from the final decision on the application.

A. An application shall be processed and authorized using a Type II decision-making procedure when characterized by the following.

   1. The request is to alter, expand, or replace a nonconforming single-family dwelling or structure accessory thereto; or

   2. Alteration or expansion of a nonconforming use or structure is necessary in order to satisfy health and safety or Americans with Disabilities Act (ADA) requirements.

B. All other applications for the alteration, expansion, or replacement of nonconforming uses or structures shall be processed and authorized using a Type III decision-making procedure.

14.28.040 Application Submittal Requirements. In addition to a land use application form with the information required in Section 14.39.020, the application shall include the following:

A. For requests involving structures that do not satisfy required setbacks, the site plan shall also show survey monuments along the property line(s) adjacent to the encroachment.

B. For requests involving structural work within required setbacks or construction that exceeds building height limitations, the application shall include exterior architectural elevations, drawn to scale, illustrating the proposed structure and adjoining finished ground elevations.

14.28.050 Nonconforming Lots.

A. When a nonconforming lot can be used in conformity with

all of the regulations applicable to the intended use, except that the lot is smaller than the required minimum set forth in this Ordinance, then the lot may be used as proposed just as if it were conforming.

B. This section applies only to undeveloped nonconforming lots. A lot is undeveloped if it has had no structures upon it from the effective date to the date of intended use.

14.28.060 Verification of Status of Nonconforming Use or Structure

A. Upon receiving an application to alter, expand, or replace a nonconforming use or structure, the approval authority shall determine that the use or structure is nonconforming. Such determination shall be based on findings that:

1. The use or structure was legally established at the time the Zoning Ordinance was enacted or amended; and

2. The use has not been discontinued for a continuous 12-month period.

The approval authority may require the applicant provide evidence that a use has been maintained over time. Evidence that a use has been maintained may include, but is not limited to, copies of utility bills, tax records, business licenses, advertisements, and telephone or trade listings.

B. The approval authority shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the approval authority shall consider:

1. Description of the use;

2. The types and quantities of goods or services provided and activities conducted;

3. The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;

4. The number, location, and size of physical improvements associated with the use;

5. The amount of land devoted to the use; and

6. Other factors the approval authority may determine appropriate to identify the nature and extent of the particular use.

7. A reduction of scope or intensity of any part of the use as determined under this subsection for a period of 12 months or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.

14.28.070 Alteration, Expansion, or Replacement of Nonconforming Uses or Structures.

A. After verification of the status of a nonconforming use pursuant to subsection 14.28.030, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the approval authority shall consider the factors listed below. Adverse impacts to one of the factors may, but shall not automatically, constitute greater adverse impact on the neighborhood.

1. The character and history of the use and of development in the surrounding area;

2. The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood;

3. Adequacy of infrastructure to accommodate the use. For the purpose of this subsection, infrastructure includes sewer, water, and streets;

4. The comparative numbers and kinds of vehicular trips to the site;

5. The comparative amount and nature of outside storage, loading, and parking;

6. The comparative visual appearance;

7. The comparative hours of operation;

8. The comparative effect on solar access and privacy;

9. Other factors which impact the character or needs of the neighborhood.

B. The approval authority must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of a nonconforming use or structure will have a greater adverse impact on the neighborhood.

C. To the extent there is a rational nexus, and the City can establish that needed improvements are roughly proportional to proposed development, an alteration, expansion, or replacement of a nonconforming use or structure shall be brought into compliance with provisions of the Zoning Ordinance that relate to:

1. Surfacing of parking areas and landscaping;

2. Exterior design of structures;

3. Outdoor displays, storage, and signage.

D. Nonconforming residences in nonresidential zones may be altered, expanded, or replaced without the procedure outlined in subsections (A) through (C), above, provided such alteration, expansion, or replacement complies with the siting criteria contained in the R-4 zoning district.

14.28.080 <u>Alteration, Expansion, or Replacement Due to Casualty Loss or Health, Safety and Related Standards</u>. Notwithstanding the provisions of subsection 14.28.035, after verification of the status of a nonconforming use, the approval authority may authorize the alteration, expansion, or replacement of a nonconforming use or structure based on findings that:

A. The alteration or replacement is made necessary by fire, other casualty or natural disaster, provided the restoration or replacement is “in-kind” and an application is submitted within one year from the date of occurrence, or;

B. The alteration, expansion, or replacement is necessary in order to satisfy health and safety or Americans with

Disabilities Act (ADA) requirements.

14.29.005 ADJUSTMENTS AND VARIANCES*

14.29.010 Purpose. The purpose of this section is to provide flexibility to numerical development standards in recognition of the wide variation in property size, configuration, and topography within the City of Newport and to allow reasonable and economically practical development of a property.

14.29.020 General Provisions.

A. Application for an Adjustment or Variance from a numerical standard including, but not limited to, size, height, or setback distance may be processed and authorized under a Type I or Type III decision-making procedure as provided by Section 14.39.001, Procedural Requirements, in addition to the provisions of this section.

B. No Adjustment or Variance from a numerical standard shall be allowed that would result in a use that is not allowed in the zoning district in which the property is located, or to increase densities in any residential zone.

C. In granting an Adjustment or Variance, the approval authority may attach conditions to the decision to mitigate adverse impacts which might result from the approval.

14.29.030 Approval Authority. Upon receipt of an application, the Community Development Director or designate shall determine if the request is to be processed as an Adjustment or as a Variance based on the standards established in this subsection. There shall be no appeal of the Director's determination as to the type of application and decision-making process, but the issue may be raised in any appeal from the final decision on the application.

A. A deviation of less than or equal to 10% of a numerical standard shall satisfy criteria for an Adjustment as determined by the Community Development Director using a Type I decision-making procedure.

B. A deviation of greater than 10%, but less than or equal to 40%, of a numerical standard shall satisfy criteria for an Adjustment as determined by the Planning Commission using a Type III decision-making procedure.

C. Deviations of greater than 40% from a numerical

standard shall satisfy criteria for a Variance as determined by the Planning Commission using a Type III decision-making procedure.

(Amended by Ordinance No. 1511 (1-18-88); amended by Ordinance No. 1828 (10-3-00); amended in its entirety by Ordinance No. 1992 (1-1-2010).)*

14.29.040 Application Submittal Requirements. In addition to a land use application form with the information required in Section 14.39.020, the petition shall include a site plan prepared by a registered surveyor that is drawn to scale and illustrates proposed development on the subject property.

A. For requests to deviate from required setbacks, the site plan shall also show survey monuments along the property line subject to the Adjustment or Variance.

B. For requests to deviate from building height limitations, the application shall include exterior architectural elevations, drawn to scale, illustrating the proposed structure and adjoining finished ground elevations.

14.29.050 Criteria for Approval of an Adjustment. The approval authority may grant an Adjustment using a Type I or Type III decision-making process when it finds that the application complies with the following criteria:

A. Granting the Adjustment will equally or better meet the purpose of the regulation to be modified; and

B. Any impacts resulting from the Adjustment are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage; and

C. The Adjustment will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access; and

D. If more than one Adjustment is being requested, the cumulative effect of the Adjustments results in a project which is still consistent with the overall purpose of the zoning district.

14.29.060 Criteria for Approval of a Variance. The

approval authority may grant a Variance using a Type III decision-making process when it finds that the application complies with the following criteria:

A. A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. The circumstance or condition may relate to:

   1. The size, shape, natural features, and topography of the property, or

   2. The location or size of existing physical improvements on the site, or

   3. The nature of the use compared to surrounding uses, or

   4. The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or zoning district, or

   5. A circumstance or condition that was not anticipated at the time the Code requirement was adopted.

   6. The list of examples in (1) through (5) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.

B. The circumstance or condition in "A" above is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.

C. There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.

D. Authorization of the Variance will not result in substantial adverse physical impacts to property in the vicinity or zoning district in which the property is located, or adversely affect the appropriate development of adjoining properties. Adverse physical impacts may include, but are not limited to, traffic beyond the carrying capacity of the street, unreasonable noise, dust, or loss of air quality. Geology is not a consideration because the Code contains a separate section addressing geologic

limitations.

E. The Variance will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access.

F. Any impacts resulting from the Variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.

14.30.005 CONDITIONAL USES*

14.30.010 Purpose. There are certain uses, which, due to the nature of their impacts on surrounding land uses and public facilities, require a case-by-case review and analysis. These are identified as "Conditional Uses." It is the purpose of this section to establish the terms, criteria, and procedures by which Conditional Uses may be permitted, enlarged, or altered. It is further the purpose of this section to supplement the other sections of this Code and the Comprehensive Plan. Nothing in this section guarantees that a Conditional Use permit will be issued.

14.30.020 General Provisions.

A. Application for approval of a Conditional Use may be processed and authorized under a Type II or a Type III decision making procedure as provided by Section 14.39.001, Procedural Requirements, as well as the provisions of this Section.

B. A Conditional Use permit shall be issued only for the specific use or uses, together with the limitations or conditions as determined by the approval authority.

C. The findings and conclusions made by the approval authority and the conditions, modifications, or restrictions of approval, if any, shall specifically address the relationship between the proposal and the approval criteria listed in subsection 14.30.005.025, in the underlying zoning district, and any applicable overlay zones.

D. An application shall be approved if it satisfies the applicable criteria or can be made to meet the criteria through imposition of reasonable conditions of approval. If findings or data or reasonable conditions cannot bring an application into compliance with the criteria, then the application shall be denied.

14.30.030 Approval Authority.

A. Application for approval of a Conditional Use shall be processed and authorized using a Type II decision-making procedure where specifically identified as eligible for Type II review elsewhere in this Code or when characterized by the following:

1. The proposed use generates less than 50 additional trips per day as determined in the document entitled Trip Generation, an informational report prepared by the Institute of Traffic Engineers; and

2. Involves a piece(s) of property that is less than one (1) acre in size. For an application involving a condominium unit, the determination of the size of the property is based on the condominium common property and not the individual unit.

B. All other applications for Conditional Uses shall be processed and authorized as a Type III decision-making procedure.

*(*Amended in its entirety by Ordinance No. 1704 (4-18-94); Amended in its entirety by Ordinance No. 1991 (1-1-2010).)*

14.30.040 Application Submittal Requirements. Requests for a Conditional Use permit shall be filed with the Community Development Department on forms prescribed for this purpose. In addition to a land use application form with the information required in Section 14.39.020, the petition shall be accompanied by:

A. A site plan drawn to scale showing the dimensions and arrangement of the proposed development on the applicant's lot; and

B. A signing plan (if applicable); and

C. Building elevations (if the building is existing, photographs documenting the building elevations are sufficient if no exterior changes are proposed); and

D. The applicant's proposed findings of fact; and

E. A list of affected property owners described in Section 14.39.060(C); and

F. For commercial activities that are conditional, a proposed plan of business operation.

14.30.050 Criteria for Approval of a Conditional Use. The approval authority must find that the application complies with the following criteria:

A. The public facilities can adequately accommodate the proposed use.

B. The request complies with the requirements of the underlying zone or overlay zone.

C. The proposed use does not have an adverse impact greater than existing uses on nearby properties, or impacts can be ameliorated through imposition of conditions of approval.

   For the purpose of this criterion, “adverse impact” is the potential adverse physical impact of a proposed Conditional Use including, but not limited to, traffic beyond the carrying capacity of the street, unreasonable noise, dust, or lost of air quality.

D. A proposed building or building modification is consistent with the overall development character of the area with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright.

14.31.005 PD, PLANNED DEVELOPMENTS*

14.31.010 Purpose. The purpose of the Planned Development Permit is to provide a greater flexibility in development of land than may be possible under a strict interpretation of the provisions of this Ordinance. It is intended to encourage variety in the development pattern of the community and provides an opportunity for innovative and creative land development. It is further intended to achieve economics in land development, maintenance, street systems, and utility networks while providing building groupings for privacy, usable and attractive open spaces, safe circulation, and the general well being of the inhabitants. The planned development option serves to encourage developing as one project tracts of land that are sufficiently large to allow a site design for a group of structures. Deviation from specific site development standards is allowable as long as the general purposes for the standards are achieved and the general provisions of the zoning regulations are observed.

14.31.020 Permitted Uses. An approved planned development permit may only include those uses permitted outright or conditionally in the underlying district, except that commercial uses as provided in the C-1/"Retail and Service Commercial" zone district may be permitted within residential zoned areas provided:

A. The area surrounding the proposed location of the commercial uses is deficient in support of commercial opportunities;

B. The proposed commercial development and uses will be primarily for the service and convenience of residents of the neighborhood; and

C. The proposed commercial development and uses must be consistent with the purpose and regulations of the C-1/"Retail and Service Commercial" zone district.

14.31.030 Accessory Uses in Planned Development. In addition to the accessory uses typical for the primary or conditional uses authorized, accessory uses approved as a part of a planned development may include the following uses:

A. Golf courses.

B. Private parks, lakes, or waterways.

C. Recreation areas.

D. Recreation buildings, clubhouses, or social halls.

E. Other accessory structures that the Planning Commission finds are designed to serve primarily the residents of the planned development and are compatible to the design of the planned development.

*(*Section amended in its entirety by Ordinance No. 2005 (July 7, 2010).)*

14.31.040 Preapplication Conference. Prior to actually filing the application with the city, the applicant shall meet with the Community Development Director and other city officials as may be necessary for preliminary staff review of the proposal.

14.31.050 Application Submission. An application for a planned development shall include a Preliminary Development Plan and Final Development Plan. Such plans may be submitted sequentially as separate applications, or they may be submitted at the same time for concurrent review. Submittal requirements for a Preliminary Development Plan are as described in Section 14.31.060. Submittal requirements for a Final Development Plan are as described in Section 14.31.090. Except as otherwise described in this Section, the procedure for review and approval of a planned development shall be in accordance with the provisions of Section 14.39.001, Procedural Requirements.

14.31.060 Submittal Requirements for Preliminary Development Plans. In addition to a land use application form with the information required in Section 14.39.020, an application for a Preliminary Development Plan shall include:

A. Nine (9) copies of the Preliminary Development Plan that include the following information:

1. A map showing street systems, lot or partition lines and other divisions of land for management, use, or allocation purposes, and status of street ownership.

2. Areas proposed to be conveyed, dedicated, or reserved for public streets, parks, parkways, playgrounds, school sites, public buildings, and similar public and semi-public uses, especially open spaces.

3. A plot plan for each building site and common open space area showing the approximate location of buildings, structures, and other improvements, indicating the open spaces around buildings and structures.

4. A narrative description in specific terms of the size and type of buildings, grading modifications, water supply, drainage, and sewage collection and disposal.

5. Elevation and perspective drawings of proposed structures.

6. A list of all variances to standards of this ordinance or any other city ordinance. All other standards for which variances have not been requested shall apply.

7. A development schedule indicating:

    a. The approximate date when construction of the project can be expected to begin.

    b. The stages in which the project will be built and the approximate date when construction of each stage can be expected to begin.

    c. The anticipated rate of development.

    d. The approximate dates when each stage in the development will be completed.

    e. The area, location, and degree of development of common open space that will be provided at each stage.

8. Agreements, provisions, or covenants that govern the use, maintenance, and continued protection of the planned development and any of its common open space areas.

9. The following plans and diagrams, insofar as the reviewing body finds that the planned development creates special problems of traffic, parking, landscaping, or economic feasibility:

    a. An off-street parking and loading plan.

    b. A circulation diagram indicating proposed

movement of vehicles, goods, bicycles, and pedestrians within the planned development and to and from thoroughfares. Any special engineering features and traffic regulation devices needed to facilitate or insure the safety of this circulation pattern shall be shown.

c. A landscaping and tree plan.

d. An economic feasibility report or market analysis.

10. The preliminary plan shall include enough information on the area surrounding the proposed development to show the relationship of the planned development to adjacent uses, both existing and proposed.

14.31.070 Criteria for Approval of a Preliminary Development Plan. The approval authority may approve an application for a Preliminary Development Plan when it finds that the application complies with the following criteria:

A. Size of the Planned Development Site.

1. A planned development shall be on a tract of land at least two acres in low-density residential areas, or;

2. A planned development may be allowed on any size tract of land in high- density residential areas if:

a. An unusual physical or topographic feature of importance to the people of the area or the community as a whole exists on the site or in the neighborhood that can be conserved and still leave the land owner equivalent use to the land by the use of a planned development.

b. The property or its neighborhood has a historical character of importance to the community that will be protected by the use of a planned development.

c. The property is adjacent to or across a street from property that has been developed or redeveloped under a planned development, and a planned development will contribute to the maintenance of the amenities and values of the neighboring development.

B. Dimensional and Bulk Standards.

1. The minimum lot area, width, frontage, and yard requirements otherwise applying to individual buildings in the zone in which a planned development is proposed do not apply within a planned development.

2. If the spacing between main buildings is not equivalent to the spacing that would be required between buildings similarly developed under this Code on separate parcels, other design features shall provide light, ventilation, and other characteristics equivalent to that obtained from the spacing standards.

3. Buildings, off-street parking and loading facilities, open space, landscaping, and screening shall provide protection outside the boundary lines of the development comparable to that otherwise required of development in the zone.

4. The maximum building height shall, in no event, exceed those building heights prescribed in the zone in which the planned development is proposed, except that a greater height may be approved if surrounding open space within the planned development, building setbacks, and other design features are used to avoid any adverse impact due to the greater height.

5. The building coverage for any planned development shall not exceed that which is permitted for other construction in the zone exclusive of public and private streets.

C. Project Density.

1. The planned development may result in a density in excess of the density otherwise permitted within the zone in which the planned development is to be constructed not to exceed 5%. An increase in density of over 5% but less than 10% can be permitted by the Planning Commission if the arrangement of yards and common open space is found to provide superior protection to existing or future development on adjacent property.

2. If the Planning Commission finds that any of the following conditions would be created by an increase in density permitted by this Section, it may either

prohibit any increase in density or limit the increase in density by an amount which is sufficient to avoid creation of any of these conditions:

a. Inconvenient or unsafe access to the planned development.

b. Traffic congestion in the streets that adjoin the planned development.

c. An excessive burden on sewerage, water supply, parks, recreational areas, schools, or other public facilities which serve or are proposed to serve the planned development.

D. Common Open Space.

1. No open areas may be accepted as common open space within a planned development unless it meets the following requirements:

a. The location, shape, size, and character of the common open space is suitable for the planned development.

b. The common open space is for amenity or recreational purposes, and the uses authorized are appropriate to the scale and character of the planned development, considering its size, density, expected population, topography, and the number and type of dwellings provided.

c. Common open space will be suitably improved for its intended use, except that common open space containing natural features worthy of preservation may be left unimproved. The buildings, structures, and improvements to be permitted in the common open space are appropriate to the uses that are authorized for the common open space.

d. The development schedule that is part of the development plan coordinates the improvement of the common open space and the construction of buildings and other structures in the common open space with the construction of residential dwellings in the planned development.

e. If buildings, structures, or other improvements are to be made in the common open space, the

developer shall provide a bond or other adequate assurance that the buildings, structures, and improvements will be completed. The City Manager shall release the bond or other assurances when the buildings, structures, and other improvements have been completed according to the development plan.

2. No common open space may be put to a use not specified in the Final Development Plan unless the Final Development Plan is first amended to permit the use. However, no change of use may be considered as a waiver of any of the covenants limiting the use of common open space areas, and all rights to enforce these covenants against any use permitted are expressly reserved.

3. If the common open space is not conveyed to a public agency, the covenants governing the use, improvement, and maintenance of the common open space shall authorize the city to enforce their provisions.

E. The planned development is an effective and unified treatment of the development possibilities on the project site while remaining consistent with the Comprehensive Plan and making appropriate provisions for the preservation of natural features such as streams and shorelines, wooded cover, and rough terrain.

F. The planned development will be compatible with the area surrounding the project site and with no greater demand on public facilities and services than other authorized uses for the land.

G. Financial assurance or bonding may be required to assure completion of the streets and utilities in the planned development prior to final approval as for a subdivision (see the Newport Subdivision Ordinance, Newport Municipal Code Chapter 13.05).

14.31.080 Approval of the Final Development Plan.

A. Within 12 months following the approval of the Preliminary Development Plan, the applicant shall file with the Planning Commission a Final Development Plan containing in final form the information required in the preliminary plan. At its discretion, the Planning Commission may extend for six months the period for the

filing of the Final Development Plan.

B. If the Community Development Director finds evidence of a major change in the approved Preliminary Development Plan, the Community Development Director shall advise the applicant to submit an application for amendment of the planned development. An amendment shall be considered in the same manner as an original application.

14.31.090 Submittal Requirements for a Final Development Plan. In addition to a land use application form with the information required in Section 14.39.020, an application for a Final Development Plan shall include:

A. The Final Development Plan may be submitted for any reasonably-sized portion of the area previously given preliminary approval for development. The Final Development Plan shall contain the following information:

1. Proposed land uses, building locations, and housing unit densities.

2. Proposed circulation patterns indicating the status of street ownership.

3. Proposed open space locations and uses.

4. Proposed grading and drainage patterns.

5. Proposed methods of water supply and sewage disposal.

14.31.100 Criteria for Approval of a Final Development Plan. The approval authority may approve an application for a Final Development Plan when it finds that the application complies with the following criteria:

A. The Final Development Plan must substantially conform to the land use and arterial street pattern as approved in the Preliminary Development Plan.

B. The proposed uses shall be compatible in terms of density and demand for public services with uses that would otherwise be allowed by the Comprehensive Plan.

C. Adequate services normally rendered by the city to its citizens must be available to the proposed development at the time of approval of the Final Development Plan.

The developer may be required to provide special or oversize facilities to serve the planned development.

D. Access shall be designed to cause minimum interference with traffic movement on abutting streets.

E. The plan shall provide for adequate landscaping and effective screening for off-street parking areas and for areas where nonresidential use or high-density residential use could be detrimental to residential areas.

F. The arrangement of buildings, parking areas, signs, and other facilities shall be designed and oriented to minimize noise and glare relative to adjoining property.

G. Artificial lighting, including illuminated signs and parking area lights, shall be so arranged and constructed as not to produce direct glare on adjacent property or otherwise interfere with the use and enjoyment of adjacent property.

H. The area around the development can be developed in substantial harmony with the proposed plan.

I. The plan can be completed within a reasonable period of time.

J. The streets are adequate to serve the anticipated traffic.

K. Proposed utility and drainage facilities are adequate for the population densities and type of development proposed.

L. Land shown on the Final Development Plan as common open space shall be conveyed under one of the following options:

1. To a public agency that agrees to maintain the common open space and any buildings, structures, or other improvements that have been placed on it.

2. To an association of owners or tenants, created as a non-profit corporation under the laws of the State, which shall adopt and impose a declaration of covenants and restrictions on the common open space that is acceptable to the Planning Commission as providing for the continuing care of the space. Such an association shall be formed and continued for the purpose of maintaining the common open space.

M. The Final Development Plan complies with the requirements and standards of the Preliminary Development Plan.

N. No building shall be erected in a planned development district except within an area contained in an approved Final Development Plan, and no construction shall be undertaken in that area except in compliance with the provisions of said plan. All features required in the Final Development Plan shall be installed and retained indefinitely or until approval has been received from the Planning Commission or Community Development Director for modification.

14.31.110 Procedure for Modification of a Planned Development

A. A minor change in the Preliminary or Final Development Plan may be approved by the Community Development Director. A minor change is any change that is not within the description of a major change as provided in the following subparts B and C of this Section.

B. A major change in a Preliminary or Final Development Plan that includes a change from a more restricted use to a less restricted use, or a change in the location, width, or size of a collector or major thoroughfare street, or in the location or specifications for utilities that is likely to materially affect future street or utility plans of the City may be approved only by the Commission after public hearing.

C. A major change in a Preliminary or Final Development Plan that includes any change in the character of the development or any increase in the intensity or density of the land use or in the location or amount of land devoted to specific land uses or any change in the location, width, or size of a collector or major thoroughfare street, or that substantially changes the location or specification for utilities but which will not materially affect future street or utility plans of the city may be approved by the Commission after public hearing.

D. In considering any request for a change in a Preliminary or Final Development Plan, the Planning Commission shall apply the same standards as are provided in this Article for the approval of Preliminary or Final Development Plans. The Planning Commission may

approve, reject, modify, or attach special conditions to a request for modification of a Preliminary or Final Development Plan. The Community Development Director in his reasonable discretion shall determine whether each request for modification of a Preliminary or Final Development Plan is a minor or major change within the remaining of subparts A, B, or C of this Section and shall determine or refer each request appropriately.

14.31.120 Control of the Development After Completion. The Final Development Plan shall continue to control the planned development after it is finished, and the following shall apply:

A. The Community Development Director, in issuing a certificate of completion of the planned development, shall note the issuance on the recorded Final Development Plan.

B. After the certificate of completion has been issued, the use of the land and the construction, modification, or alteration of a building or structure within the planned development shall be governed by the approved Final Development Plan.

C. After the certificate of completion has been issued, no change shall be made in development contrary to the approved Final Development Plan without approval of an amendment to the plan except as follows:

   1. Minor modification of existing buildings or structures may be authorized by the Planning Commission if they are consistent with the purposes and intent of the final plan and do not increase the cubic footage of a building or structure.

   2. A building or structure that is totally or substantially destroyed may be reconstructed without approval of an amended planned development if it is in compliance with the purpose and intent of the Final Development Plan.

D. An amendment to a completed planned development may be approved if it is required for the continued success of the planned development, if it is appropriate because of changes in conditions that have occurred since the Final Development Plan was approved, or because there have been changes in the development policy of the community as reflected by the

Comprehensive Plan or related land use regulations.

E. No modification or amendment to a completed planned development is to be considered as a waiver of the covenants limiting the use of the land, buildings, structures, and improvements within the area of the planned development. All rights to enforce these covenants against any change permitted by this Section are expressly reserved.

14.31.130 Appeal. In the event that a dispute arises between the Planning Commission and the developer as to any provisions of the Final Development Plan, either party may appeal to the City Council, in accordance with the process outlined in Section 14.39.001. Should the developer appeal, a fee for an appeal in an amount set by the City shall be paid.

14.32.005 AMENDMENTS TO THE ZONING ORDINANCE

14.32.010 General. Whenever the public necessity and the general welfare require, the City Council of the City of Newport may, on its own motion, or on petition, or on recommendation of the City Planning Commission, (after said Planning Commission and City Council gives public notice and holds public hearings), amend, supplement, or change the regulations or the districts of this ordinance herein established.

14.32.020 Initiation of Amendment. An amendment, supplement, or change in this ordinance may be initiated by:

A. A motion of the City Council.

B. A motion by the City Planning Commission.

C. A petition of the property owner or authorized representative to either the Planning Commission or the City Council.

D. Referral to the Planning Commission. All requests for amendments, supplements, or changes in this ordinance shall, whether initiated with the City Council or otherwise, first be referred to the City Planning Commission.

14.32.030 Filing of Zone Change Petitions. Request for approval of a zoning text or zoning map change shall be filed with the City Manager and shall be upon forms prescribed for the purpose.

14.32.040 Record of Amendments. The City Recorder shall maintain a record of amendments to the text and map of this ordinance in a form convenient for the use of the public.

14.33.001 ANNEXATIONS*

14.33.010 Purpose. It is the purpose of this section to establish and define annexation terms, criteria, and procedures for when a request is made of the city to annex territory. It is further the purpose of this section to implement the Comprehensive Plan. This section does not apply to city initiated annexations pursuant to ORS Chapter 222.

14.33.020 Definitions. For purposes of this section, the following definitions shall apply:

A. Annexation. The incorporation of county property into the corporate limits of the City of Newport.

B. Consent. A signed document by those agreeing to be annexed.

C. Contiguous. Touching and having a common boundary or point of intersection or separated only by a public right-of-way, stream, lake, bay, or other body of water.

D. Electorate. A person living in an area proposed for annexation and registered to vote in Lincoln County.

E. Owner. An individual, firm, association, syndicate, partnership, or corporation having legal title to land, or is under contract to purchase land, as indicated in the records of the Lincoln County Tax Assessor.

14.33.030 Filing of Application. Requests for annexation shall be filed with the Planning Director on forms prescribed for that purpose. The application shall be accompanied by:

A. The consents of more than half of the owners of land who also own more than half of the land and more than half of the assessed value; or

B. The consents of more than half the owners and more than half the electorate in the territory to be annexed.

14.33.040 Criteria. The sole criteria for annexations are:

A. The required consents have been filed with the city; and

B. The territory to be annexed is within the acknowledged urban growth boundary (UGB); and

C. The territory to be annexed is contiguous to the existing

city limits.

(Amended in its entirety by Ordinance No. 1752 (9-16-96).)*

14.33.050 **Review and Procedure.** Upon receipt of an application for annexation, the Planning Director shall determine within five (5) days whether or not the application is complete. If the application is found to be incomplete, the Planning Director shall return the application to the applicant along with an explanation of why the application is incomplete. The applicant shall have 30 days to submit the necessary materials to complete the application. If the necessary materials are not submitted within the 30 days period, the application shall be considered withdrawn. If the application is found to be complete, it shall be accepted.

After acceptance, the application shall be placed on the agenda of the Planning Commission for a public hearing for their review and recommendation, including a recommendation for an appropriate zoning designation, to the City Council. After the Planning Commission review and recommendation, the proposal shall be forwarded to the City Council for a public hearing. Notice and other procedural requirements for both the Planning Commission and City Council hearings shall be as contained in Section 14.39.001 of this Ordinance and Chapter 222 of the Oregon Revised Statutes.

14.33.060 **Zoning Upon Annexation.** The City Council shall determine at the time of annexation during the public hearings the appropriate zoning designation for the property to be annexed. The zoning shall be incorporated into the ordinance annexing the property and shall become effective at the same time the annexation is effective. Such zoning designation shall be in conformity with the Comprehensive Plan.

14.34.001 OCEAN SHORELANDS OVERLAY ZONE*

14.34.010 Purpose. It is the purpose of this section to recognize the value of the natural resources as identified on the Ocean Shorelands Map contained in the Comprehensive Plan and not addressed by other sections of this Ordinance, more specifically, significant habitat, park and outstanding natural areas, and public access points. This section, in conjunction with the various underlying zones, implements the Natural Features policies contained in the City of Newport Comprehensive Plan.

14.34.020 Definitions. For purposes of this section, the following definitions shall apply:

A. Natural Resources: A significant habitat, park, and outstanding natural area or public access point as inventoried on the Ocean Shorelands Map contained in the Comprehensive Plan.

B. Ocean Shorelands: Land with the Ocean Shorelands Boundary as shown on the Ocean Shorelands Map in the Comprehensive Plan.

C. Planning Director: The Planning Director for the City of Newport or designate.

14.34.030 Permitted Uses. Any permitted use or conditional use authorized in the underlying zone may be permitted, subject to the applicable provisions of this Ordinance and the additional provisions of this overlay zone.

14.34.040 Procedure. Upon receipt of a request for a land use action or a building permit for property within the Ocean Shorelands, the Planning Director shall determine which natural resource is applicable. Applicants requesting approval of land use actions or building permits within areas subject to the provisions of this section shall submit, along with any application, a detailed site plan and written statement demonstrating how the proposed activities will conform to applicable standards in the section.

Upon acceptance of the application, the Community Development Department shall process the request in accordance with a Type II Land Use Action decision process consistent with Section 14.39.001, Procedural Requirements.**

14.34.050 Standards for Review. The following standards

for the applicable natural resource shall be used in considering the findings required in Section 2-5-7.040:

A. Significant Habitat.

1. No residential, commercial, or industrial development shall be allowed within the boundaries of a significant habitat.

(Section added by Ordinance No. 1344 (11-7-83); completely revised by Ordinance No. 1681 (8-16-93).*
***Amended by Ordinance No. 1989 (1-1-10).)*

2. Development proposed adjacent to a significant habitat shall be located no closer than 50 feet from the habitat area.

3. Low intensity structural developments such as hiking trails, platforms for wildlife viewing, or similar types of educational, scientific, or recreational uses may be permitted within the boundaries of the significant habitat or the 50 foot setback area under the following conditions:

   a. Such development shall not act as a barrier to fish or wildlife.

   b. Such development shall not result in major disturbances or displacement of fish or wildlife.

   c. Such development shall not alter a water course.

   d. Such development shall not result in a permanent destruction of wetland vegetation.

B. Park and Outstanding Natural Area.

1. Residential, commercial, or industrial development is prohibited within a Park and Outstanding Natural Area boundary.

2. Development proposed adjacent to a Park and Outstanding Natural Area shall be located no closer than twenty-five (25) feet from the Park and Outstanding Natural Area.

3. The setback area required in (2), above, shall comply with the following:

   a. Natural vegetation shall be maintained whenever

possible.

b. If natural vegetation cannot be maintained, it shall be replaced within one year after issuance of a final occupancy permit. A bond may be required by the Planning Director to cover the cost of such replacement.

C. Public Access Points. Public access points shall be retained or replaced if sold, exchanged, or transferred.

14.35.001 DREDGED MATERIAL DISPOSAL SITES*

14.35.010 Purpose. The purpose of this section is to provide a procedure for review of development proposals on dredged material disposal sites within the Newport Urban Growth Boundary (as identified in the amended Yaquina Bay and River Dredged Material Disposal Plan) to ensure that an adequate number of sites are maintained to meet projected dredging needs.

14.35.020 Information Required. Any person proposing development on an identified dredged material disposal site that would preclude its use for dredged material disposal shall submit a conditional use application in accordance with the provisions of Section 14.30.005, Conditional Uses, and Section 14.39.001, Procedural Requirements.** The application shall set forth the intended use of the property and any alternative disposal sites or methods (with appropriate documents) considered by the applicant.

14.35.030 Special Notice Requirement. In lieu of the standard notice requirement for conditional use applications, the following requirement shall apply:

The city shall notify the port district and public agencies which participated in the Yaquina Bay Task Force of the proposal in writing at least 14 days prior to the conditional use hearing.

14.35.040 Standards. Following the conditional use hearing, the city shall make findings and determine if adequate alternative disposal sites are available to meet projected needs. The city's decision shall be based on information in the amended Yaquina Bay and River Dredged Material Disposal Plan and the Yaquina Bay Resource Inventory, as well as information submitted by the applicant, port district, or state and federal agencies.

If the city determines that adequate alternative disposal sites are available to meet projected needs, the city may approve or deny the development and may impose conditions consistent with city zoning and other city requirements. The city's Comprehensive Plan shall be amended to designate any new identified alternative sites, increase in capacity of these sites, or deletion of existing sites.

If it is determined that these sites are still required, the development request shall be denied.

*(*Section amended by Ordinance No. 1344 (11-7-83).*

***Amended by Ordinance No. 1989 (1-1-10).)*

14.36.001 PDR, PLANNED DESTINATION RESORT*

14.36.010 Applicability of Planned Destination Resort Regulations. The City of Newport Comprehensive Plan recognizes that lands designated "Destination Resort" shall be subject to and implemented by a Planned Destination Resort ("PDR") overlay zone. The requirements set forth in this section shall be applicable to all destination resort lands and, except where otherwise provided, are in addition to the applicable underlying zones. Application of the PDR overlay zone to specific properties is accomplished through Comprehensive Plan and Zoning Map amendments. Approval of a map amendment for a site signifies its suitability for development as a destination resort subject to the requirements of this section.

14.36.020 Purpose. The purpose of the PDR overlay zone is to enhance and diversify the recreational opportunities in the City of Newport through the development of destination resorts that complement the natural and cultural attractiveness of the area without significant adverse affect to environmental and natural features, cultural or historic resources and their settings, and other significant resources. The PDR overlay zone provides for the development of destination resorts as recreational developments which provide visitor-oriented accommodations and recreational facilities for resort visitors and residents, consistent with the Comprehensive Plan.

It is the intent of this section to establish procedures and standards for developing large scale destination resorts while ensuring that all applicable land use requirements are achieved and available resources are used productively and efficiently.

14.36.030 Uses Permitted Outright. The following uses shall be permitted outright provided they are part of, and are intended to serve persons at, a destination resort pursuant to this section, and are approved in a final development plan.

A. Visitor-oriented accommodations designed to provide for the needs of visitors of the resort:

    1. Overnight lodging, including lodges, hotels, motels, bed and breakfast facilities, time share units and similar transient lodging facilities;

    2. Convention and conference facilities and meeting rooms;

3. Retreat centers;

4. Restaurants, lounges, and similar eating and drinking establishments; and

5. Other visitor oriented accommodations compatible with the purposes of this section.

(Entire section added by Ordinance No. 1507 (12-21-87); amended to correct scrivener's errors by Ordinance No. 1790 (7-6-98))*

B. Developed recreational facilities designed to provide for the needs of visitors and residents of the resort:

1. Golf courses and clubhouses;

2. Indoor and outdoor swimming pools;

3. Indoor and outdoor tennis courts;

4. Recreational and health facilities;

5. Marinas, docks, and boating facilities;

6. Equestrian facilities;

7. Shelters for ocean side activities;

8. Wildlife observation shelters;

9. Theaters;

10. Adult recreation facilities;

11. Family recreation facilities;

12. Fishing facilities; and

13. Walkways, bike paths, jogging paths, equestrian trails;

14. Other recreational facilities compatible with the purposes of this section.

C. Residential dwellings:

1. Single-family dwellings;

2. Duplexes, triplexes, fourplexes, and multi-family dwellings;

3. Condominiums;

4. Town houses;

5. Time-share projects; and

6. Other residential dwellings compatible with the purposes of this section.

D. Commercial services and specialty shops designed to provide for the visitors of the resort:

1. Specialty shops, including but not limited to delis, clothing stores, book stores, and specialty food shops;

2. Gift shops;

3. Barber shops/beauty salons;

4. Automobile service stations;

5. Craft and art studios and galleries;

6. Real estate offices;

7. Grocery stores; and

8. Other commercial services which provide for the needs of resort visitors and are compatible with the purposes of this section.

E. Open space areas:

1. Wildlife observation areas;

2. Parks;

3. Lakes;

4. Golf courses; and

5. Any land which is not part of the area for or accessory to visitor-oriented accommodations, developed recreational facilities and residential dwelling.

6. Other open space areas compatible with the purposes of this section.

F. Facilities necessary for public safety and utility service within the destination resort or the city, notwithstanding any limiting provision of this subsection to the contrary.

G. Other uses permitted in the underlying zone compatible with the purposes of this section.

14.36.040 Accessory Uses in Planned Destination Resorts. The following accessory uses shall be permitted provided they are ancillary to the destination resort:

A. Transportation-related facilities;

B. Emergency medical facilities;

C. Storage structures and areas;

D. Kennels as a service for resort guests only;

E. Heliports providing service to the destination resort only, if determined not to interfere with aeronautical operations at the Newport Municipal Airport; and

F. Other accessory uses necessary to accomplish the purposes of this section.

14.36.050 General Requirements. The following requirements shall govern uses and development in a PDR zone:

A. The value of important natural features (INF) shall be preserved.

1. The necessary habitat of threatened or endangered species shall be protected so as not to diminish the necessary features of that habitat. These areas shall be designated as "INF-no change," and no construction or alteration shall be permitted in these areas which would adversely impact the value of the features.

2. The overall value of other important natural features on the site, such as streams, rivers, riparian vegetation within 100 feet of streams and rivers, and significant wetlands shall be maintained; or, if altered, the developer shall indicate how the overall values are maintained even with construction, alteration,or post-construction activities.

These areas shall be designated as "INF-protected". Construction or alteration in an "INF-protected" area shall be permitted only if the developer files a general description with the city Planning Department showing how the overall values of these "INF-protected" features are to be maintained.

This section is not intended to insure complete in-kind replacement for "INF-protected" features which are altered but is intended to insure that the overall values of these "INF-protected" features are maintained.

B. A destination resort shall in the first phase provide for, and shall include as part of the first PDP and FDP, the following minimum requirements:

1. At least 150 separate rentable units for visitor-oriented lodging must be provided.

2. Visitor-oriented eating establishments for at least 100 persons and meeting rooms which provide seating for at least 100 persons.

3. The aggregate cost of developing the lodging facilities and the eating establishments and meeting rooms required in subsections (1) and (2) shall be at least four (4) million dollars (in 1987 dollars).

4. At least $2 million dollars (in 1987 dollars) shall be spent on developed recreational facilities.

5. The facilities and accommodations required by this section must be physically provided or financially assured pursuant to 14.36.160(B) of this section prior to closure of sales, rental, or lease of any residential dwellings or lots, except that the developer may sell undeveloped land for purposes of construction of residential dwellings other than single-family dwellings, duplexes, and triplexes, provided however that no residential dwelling may be occupied until the facilities and accommodations are either physically provided or financially assured as required above.

"Developed recreational facilities" as used in this Section 14.36.001 shall mean built, constructed, or modified land or pre-existing structures for such recreational purposes as set forth in Section 14.36.015(B).

"1987 Dollars" as used in this subsection shall be the

construction cost index set forth in the October 29, 1987, issue of Construction Weekly magazine, which had a construction cost value of 4448.09. The construction cost in future years shall be adjusted in accordance with this index to determine compliance with this subsection.

C. A destination resort shall, cumulatively for all approved FDP's, meet the following minimum requirements:

1. At least 50% of the sum total of the acreage for all approved FDPs, including previously approved FDPs, of the entire destination resort site must be dedicated to permanent open space, excluding yards, streets and parking areas.

2. Individually owned residential units shall not exceed two such units for each unit of visitor-oriented overnight lodging. Individually owned units may be considered visitor-oriented lodging if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through one or more central reservation and check-in service(s).

D. The commercial uses permitted in Section 14.36.015(D) shall be limited in type, location, number, dimensions, and scale (both individually and cumulatively) to that necessary to serve the needs of resort visitors. A commercial use is necessary to serve the needs of visitors if:

1. Its primary purpose is to provide goods or services that are typically provided to overnight or other short-term visitors to the resort, or the use is necessary for operation, maintenance, or promotion of the destination resort; and

2. That the use is oriented to the resort and is located away from or screened from highways or other major through roadways.

E. Phasing. A destination resort authorized pursuant to this section may be developed in phases. If a proposed resort is to be developed in phases, each phase shall be described in the manner required by the preliminary development plan. Each individual phase shall meet the following requirements:

1. Each phase, together with previously completed phases, if any, shall be capable of operating in a

manner consistent with the intent and purpose of this section.

2. All phases of the destination resort taken cumulatively shall meet the minimum requirements of Section 14.36.025(C).

3. Each phase may include two or more distinct non-contiguous areas within the destination resort.

F. PDR Density. Maximum allowable PDR residential density shall not exceed 75% of the gross density allowed by the underlying residential zoning designation. Only those areas designated "residential" in the CMP shall be considered when calculating the maximum number of allowable residential units.

G. Dimensional Standards. The minimum lot area, width, frontage and yard requirements and building heights otherwise applying to residential dwellings in the underlying zone(s) do not apply within a planned destination resort. The Planning Commission shall require conditions, covenants, and restrictions for the planned destination resort that govern the minimum lot area, width, frontage and yard requirements, and building heights within the resort.

H. Applicability of Other City Ordinances. Provisions of this section shall take precedence over other city ordinances that would otherwise disallow certain uses or activities authorized by this section upon a finding by the City Council that it is compatible with the purposes of the destination resort. The finding shall specifically designate the affected ordinance(s) or portions thereof.

I. All subsequent development of any property zoned PDR shall be in substantial conformance with the applicable CMP.

J. No building permit or building occupancy permit shall be issued for any structure or use to be located within "Destination Resort" lands unless the structure and use complies with the requirements of the FDP and Section 14.36.025(D).

K. No structure or use shall be permitted within an area designated as "buffer area" in the CMP, except to the extent as permitted in the CMP. The "buffer area" shall contain natural vegetation, fences, berms, and

landscaped areas as indicated in the applicable PDP.

14.36.060 Application Submission. The authorization and development of a planned destination resort pursuant to this section shall be submitted in three steps: A conceptual master plan (CMP) application, a preliminary development plan (PDP) application for each phase of development, and a final development plan (FDP) application for each phase of development.

14.36.070 Procedure for Conceptual Master Plan (CMP) Application. The CMP provides the framework for development of the destination resort and is intended to ensure that the destination resort meets, or will cumulatively meet, the requirements of this section, whether developed all in one FDP or throughout the build-out period.

A. The CMP application shall include:

1. Illustrations and graphics identifying:

   a. The location and total number of acres to be developed as a planned destination resort;

   b. The subject area and all land uses adjacent to the subject area;

   c. The topographic character of the site;

   d. Types and general location of proposed development uses, including residential and commercial uses;

   e. Major geographic features;

   f. Proposed methods of access to the development, identifying the main vehicular circulation system within the resort and an indication of whether streets will be public or private;

   g. Major pedestrian, equestrian, and bicycle trail systems;

   h. Important natural features of the site, including habitat of threatened or endangered species, streams, rivers, and significant wetlands and riparian vegetation within 100 feet of streams, rivers and significant wetlands.

The areas designated as important natural features should be clearly illustrated and labeled either "INF-no change" or "INF-protected." (See Section 14.36.025(A) for development restrictions relating to areas designated as important natural features.)

i. The location and number of acres reserved as open space, buffer area, or common area. Areas designated as "open space", "buffer area" or "common area" should be clearly illustrated and labeled as such; and

j. Proposed overall density.

2. An explanation of:

a. The natural characteristics of the site and surrounding areas, including a description of resources and the effect of the destination resort on the resources; methods employed to mitigate adverse impacts on natural resources or to overcome site limitations; analysis of how the overall values of the natural features of the site will be preserved, enhanced or utilized in the design concept for the destination resort; and a proposed resource protection plan to ensure that important natural feature values will be protected and maintained in compliance with 14.36.025(A). Resources to be addressed include:

i. Compatibility of soil composition for proposed development(s) and potential erosion hazard;

ii. Geology, including areas of potential instability;

iii. Slope and general topography;

iv. Drainage patterns, including major drainage ways;

v. Areas subject to flooding;

vi. Other hazards or development constraints;

vii. Vegetation;

viii. Water areas, including streams, lakes, ponds, and wetlands;

ix. Fish and wildlife habitats; and

x. Important natural features.

b. How the proposed destination resort will meet the minimum requirements of Section 14.36.025(B) and (C);

c. Design guidelines and development standards defining visual and aesthetic parameters for:

i. Building character;

ii. Landscape character;

iii. Preservation and removal of vegetation; and

iv. Siting of buildings.

d. Proposed method of providing all utility systems, including the location and sizing of the utility systems;

e. Proposed order and schedule for phasing, if any, of development;

f. How the destination resort has been sited or designed to avoid or minimize adverse effects or conflicts on adjacent lands. The application shall identify the surrounding uses and potential conflicts between the destination resort and adjacent uses within 200 feet of the boundaries of the CMP. The application shall explain how any proposed buffer area will avoid or minimize adverse effects or conflicts; and

g. Proposed method of provision of emergency medical facilities or services and public safety facilities or services.

3. Proposed covenants, conditions, and restrictions (CC&R's) which shall include, at a minimum, provisions for:

a. Use, improvement and maintenance of all common open space areas which may be accomplished through a homeowners or business owners association;

b. The availability of private security patrol;

c. Architectural control over all residential dwellings and the establishment of residential design review committee;

d. Limitations on the nature and extent of individual business advertising so that all commercial uses are publicized as an integral part of the resort and are oriented toward the resort;

e. Dimensional standards for all residential dwellings; and

f. The ability of the city to enforce those provisions of the CC&R's which are designated as a requirement for approval of the CMP and which may not be amended without City Council approval. Such designated portions of the CC&R's shall be considered a part of the zoning requirements of this section, and non-enforcement shall not result in waiver of the right to subsequently enforce.

14.36.080 Procedure for Approval of the CMP.

A. The applicant shall submit 25 copies of the CMP to the Planning Director, Planning Commission, and City Council for study.

B. Within 30 days of receipt of the CMP application, the Planning Director must determine if the application is complete. If the application is incomplete, the Planning Director shall notify the applicant which portion of the application is incomplete. The applicant shall be given 30 days within which to submit any additional information necessary to complete the application.

C. An applicant's proposed CMP may be approved only if the CMP and the land uses proposed therein comply with the requirements of this section, including but not limited to Subsections 14.36.015, 14.36.020, 14.36.025, and 14.36.035.

D. The Planning Commission and City Council shall consider the CMP at their respective public hearings pursuant to Section 14.39.001, Procedural Requirements, except that notice shall be published at least once a week for two successive weeks prior to each hearing.*

E. The Planning Commission shall recommend to the City Council approval, disapproval, or modification and approval of the CMP and attach any conditions it finds are necessary to carry out the purposes of this section.

F. The City Council must take final action on the CMP application within 120 days after the CMP application is complete.

G. Approval of the CMP by the City Council shall give the applicant the right to proceed with submission of the preliminary development plan.

H. An applicant may submit an application for the CMP and an application for a preliminary development plan for the first phase of the development at the same time, and the Planning Commission and City Council may consider both at a public hearing pursuant to the procedures of this section.

*(*Amended by Ordinance No. 1989 (1-1-10).*

14.36.090 Procedure for Modification of a Conceptual Master Plan

A. Any substantial as determined by the Planning Director, proposed to an change approved CMP shall be considered in the same manner as the original CMP. An insubstantial change may be approved by the Planning Director. Substantial change to an approved CMP, as used in this section, means an alteration in the type, scale, location, phasing, or other characteristics of the proposed development such that the findings of fact upon which the original approval was based would be materially affected. The Planning Director shall provide written notice by mail to the members of the City Council as to the nature of the proposed change, and the decision of the Planning Director as to whether the change is substantial, or whether the Director has referred the issue to the Planning Commission, as provided in Subsection (B) below.

B. The Planning Director may refer to the Planning Commission the decision as to whether a change in the CMP is substantial. The Planning Commission shall render a determination on all such referrals unless the City Council, within 14 days from the date of the notice by the Planning Director, in the manner provided below, elects to review the Planning Director's decision to refer

the issue to the Planning Commission. The Planning Director shall notify by mail the members of the City Council as to the decision of the Planning Commission.

C. The decision of the Planning Director or the Planning Commission shall be final, unless within 14 days a majority of the City Council members then present and voting elect to have the issue considered by the City Council. In such event, the City Council shall thereafter consider the issue at a public meeting. The developer shall be notified of the date, time, and place of the public meeting, and the developer shall have an opportunity to submit written or oral testimony on the issue at the public meeting.

14.36.100 Procedure for Preliminary Development Plan (PDP) Application. A PDP shall be provided for each development phase of the destination resort. Completion of construction of a phase shall not be a prerequisite to approval of subsequent PDP's.

A. The PDP application shall include:

1. Identification of the area to be included within the phase. A phase may include two or more distinct, non-contiguous areas within the destination resort.

2. Text or graphics explaining and illustrating:

a. How the phase complies with the CMP and contributes to the cumulative, integrated destination resort;

b. The use, location, size, and design or proposed alteration, if permitted, of all important natural feature values (both "INF-no change" and "INF-protect"), "open space", "buffer areas" and "common areas" included in the phase;

c. The use and general location of all buildings, other than residential dwellings, and the proposed density of residential development by location;

d. Preliminary location of all sewer, water, storm drainage, and other utility facilities, and the materials, specifications and construction methods for the water and waste water systems;

e. Preliminary location and widths of all roads,

streets, parking, pedestrian ways, equestrian trails, and bike paths;

f. Methods to be employed to buffer and mitigate the potential adverse effects on adjacent resource uses and properties;

g. Building elevations of visitor-oriented accommodations, recreational facilities, and commercial services sufficient to demonstrate the architectural character of the proposed development; and

h. How all commercial uses meet the requirements of 14.36.025(D), and the size or floor area of the commercial uses.

i. Preliminary location of any emergency medical facilities and public safety facilities.

B. When a phase includes a residential subdivision, a preliminary subdivision plat consistent with the requirements set forth in the Subdivision Ordinance shall be submitted with the PDP, and the procedures of this PDR Section shall be applicable.

14.36.110 Procedure for Approval of PDP.

A. Each PDP application shall be submitted to the Planning Director, who shall, within 30 days of its receipt, determine whether the application is complete. If the application is incomplete, the Planning Director shall notify the applicant which portions of the PDP application are incomplete. The applicant shall be given 30 days within which to submit any missing information.

B. The Planning Commission shall consider each PDP at a public hearing pursuant to Section 14.39.001.

C. An applicant's proposed PDP may be approved only if the PDP and the land uses proposed therein substantially comply with the approved CMP and comply with the requirements of this section, including but not limited to Subsections 14.36.015, 14.36.020, 14.36.025, and 14.36.035.

D. The Planning Commission shall approve, disapprove, or modify and approve the PDP and attach any conditions it finds are necessary to carry out the purposes of this

section.

E. The Planning Commission must take final action on each PDP application within 120 days after the PDP application is complete.

F. Planning Commission approval of a PDP shall give the applicant the right to proceed with submission of an FDP for that approved phase.

G. Any person having standing (as defined in Section 14.39.001) may appeal the decision of the Planning Commission in the manner provided in Section 14.39.001.* A majority of the City Council present and voting at a regular or special City Council meeting within 14 days from the date of the decision by the Planning Commission may elect to review the decision of the Planning Commission. Review of the Planning Commission's decision by the City Council shall not be considered an appeal, and no appeal fee shall be required.

*(*Amended by Ordinance No. 1989 (1-1-10).)*

14.36.120 <u>Procedure for Modification of an Approved Preliminary Development Plan</u>.

A. Any substantial change, as determined by the Planning Director, proposed to an approved PDP shall be considered in the same manner as the original PDP. An insubstantial change to the PDP may be approved by the Planning Director. Substantial change to an approved PDP as used in this section means:

1. A change from a more restricted use to a less restricted use;

2. A substantial change in the location, width, or size of a major street;

3. Any increase in the intensity or density of a land use or a substantial change in the location or amount of land devoted to specific land use;

4. Any substantial change in the location or maintenance costs of utilities or streets that would materially affect future street or utility plans of the city; or

5. Any other change that would result in a change in the character of the development.

The Planning Director shall provide written notice by mail to the members of the City Council as to the nature of the proposed change, and the decision of the Planning Director as to whether the change is substantial, or whether the Director has referred the issue to the Planning Commission, as provided in Subsection (B) below.

B. The Planning Director may refer to the Planning Commission the decision as to whether a change in the PDP is substantial. The Planning Commission shall render a determination on all such referrals unless the City Council, within 14 days from the date of the notice by the Planning Director in the manner provided below, elects to review the Planning Director's decision to refer the issue to the Planning Commission. The Planning Director shall notify by mail the members of the City Council as to the decision of the Planning Commission.

C. The decision of the Planning Director or the Planning Commission shall be final, unless within 14 days a majority of the City Council members then present and voting elect to have the issue considered by the City Council. Review of the Planning Commission's decision by the City Council shall not be considered an appeal, and no appeal fee shall be required. In such event, the City Council shall thereafter consider the issue at a public meeting. The developer shall be notified of the date, time, and place of the public meeting, and the developer shall have an opportunity to submit written or oral testimony on the issue at the public meeting.

D. Any person having standing (as defined in Section 14.39.001) may appeal the decision of the Planning Commission in the manner provided in Section 14.39.001.*

*(*Amended by Ordinance No. 1989 (1-1-10).)*

14.36.130 <u>Procedure for Final Development Plan (FDP) Application</u>.

A. Within one year following the approval of each PDP, the applicant shall file with the Planning Commission an FDP containing, in final form, the information required in the PDP. In its discretion (at the request of the applicant) and for a good cause, the Planning Commission may extend for six (6) months the period for filing of the FDP.

B. When a phase includes a residential subdivision, a final

subdivision plat consistent with the requirements set forth in the Subdivision Ordinance shall be submitted with the FDP, and the procedures of this section shall be applicable.

14.36.140 Procedure for Approval of an FDP.

A. If the Planning Director, in his/her reasonable discretion, finds evidence of a substantial change from the PDP, the Planning Director shall advise the Applicant to submit an application for amendment of the PDP in accordance with Section 14.36.055.

B. The Planning Commission shall determine whether the FDP is consistent with the PDP, whether all areas which are either protected or limited from development as shown on the PDP are appropriately mapped, and may approve, disapprove, or modify and approve the FDP, and may attach any reasonable conditions to an FDP.

C. The decision of the Planning Commission shall be final, unless within 14 days a majority of the City Council members then present and voting elect to have the issue considered by the City Council. Review of the Planning Commission's decision by the City Council shall not be considered an appeal, and no appeal fee shall be required. In such event, the City Council shall thereafter consider the issue at a public meeting. The developer shall be notified of the date, time, and place of the public meeting, and the developer shall have an opportunity to submit written or oral testimony on the issue at the public meeting.

D. Any person having standing (as defined in Section 14.39.001) may appeal the decision of the Planning Commission in the manner provided in Section 14.39.001.*

*(*Amended by Ordinance No. 1989 (1-1-10).)*

14.36.150 Administration of the Final Development Plan. No building permits shall be issued except within an area contained in an approved FDP, and no construction shall be undertaken in that area except in compliance with the provisions of the FDP. The following requirements shall apply to the administration of a FDP:

A. The building official, in reviewing plans submitted for building permits, shall note the issuance on the FDP.

B. After the building permits have been issued, the use of the land and the construction, modification, or alteration of buildings or structures within the destination resort shall be governed by the approved FDP.

C. No change shall be made in development contrary to the approved FDP without approval of an amendment to the plan except as follows and as determined by the Planning Director:

1. Insubstantial modifications of existing buildings or structures, or in the location of buildings or structures, are allowed if they are consistent with the purposes and intent of the FDP.

2. A building or structure that is totally or substantially destroyed may be reconstructed without a final development plan amendment if it is in compliance with the purpose and intent of the FDP.

D. An amendment to an FDP may be approved if it is required for the continued success of the destination resort, if it is appropriate because of conditions that have occurred since the FDP was approved, or because there have been changes in the development policy of the city as reflected by the Comprehensive Plan or related land use regulations, provided that the amendment is consistent with the purpose and general requirements of this section.

14.36.160 Provision of Streets, Utilities, Developed Recreational Facilities, and Visitor-Oriented Accommodations

A. The Planning Commission shall assure that streets, utilities, developed recreational facilities, and visitor-oriented accommodations required by the FDP are physically provided or are guaranteed through surety bonding or substantial financial assurances prior to closure of sale of individual lots or units.

B. Financial assurance or bonding to assure completion of the streets and utilities, developed recreational facilities, and visitor-oriented accommodations in the FDP may be required pursuant to procedures of Section 3-6-1 of the Newport Subdivision Ordinance.

14.36.170 Expiration. If substantial construction of an FDP has not taken place within one year from the effective

date of an FDP, the approval shall expire and be void. The Planning Commission may grant extensions to the deadline for substantial construction of an approved FDP.

14.37.001 ASSISTED LIVING FACILITIES IN R-2 ZONES*

14.37.010 Applicability. The requirements for an assisted living facility in an R-2 zone set forth in this section are in addition to the provisions of Section 14.30.005, Conditional Uses, and Section 14.39.001, Procedural Requirements.**

For the purpose of this section, an assisted living facility is defined in Section 14.01.010 "Definitions" of this Ordinance.

*(*Added by Ordinance No. 1759 (1-21-97).*
***Amended by Ordinance No. 1989 (1-1-10).)*

14.37.020 Purpose. The purpose of this section is to provide for assisted living facilities in the R-2 zoning districts. It is also the intent of this section to require development criteria so as to minimize the impacts of assisted living facilities on surrounding properties.

14.37.030 Standards. Assisted living facilities in an R-2 zone shall comply with the following:

A. The minimum lot size shall be two (2) acres.

B. Parking requirements shall be 0.8 spaces per unit, or greater, as may be required by the reviewing body to meet the needs of the proposal. Parking shall be provided on-site, and it shall not be allowed in a required front yard.

C. The total number of units shall not exceed one (1) unit per 3,750 square feet of lot area.

D. The parking area shall be screened from adjoining properties by a sight-obscuring fence or landscaping.

E. Outward modification of the structure or grounds may be made only if such changes are compatible with the character of the neighborhood.

F. One (1) on-premise sign is allowed. Such sign may be a wall sign or a pole/ground sign as defined in the City of Newport Sign Ordinance. The sign shall be limited to 10 square feet and shall not be internally illuminated. External illumination shall be so directed as to not shine directly onto any adjacent building. Pole/ground signs shall be no higher than five (5) feet in height and shall be so placed as to not create a vision clearance at street intersections or at street and driveway intersections.

G. An assisted living facility in an R-2 zone shall comply with the width, frontage, lot coverage, and building height requirements of the R-2 zone.

H. Buildings, structures, or portions thereof shall comply with the required yards and setbacks of the R-2 zone, except that side and rear setbacks shall be a minimum of one (1) foot per unit, and all setbacks shall additionally be increased by one (1) foot for every foot by which the building exceeds a height of 25 feet.

I. Landscaping and screening, which may include vegetated berms, shall provide protection outside the boundary lines of the parcel comparable to that otherwise required of development in the R-2 zone.

J. Along with the application for the conditional use permit, the applicant shall submit a landscaping plan (showing tree and plant locations, species, and size, as well as the parking layout), elevations (showing materials to be used for siding and roofing), and a site plan. All of these shall be drawn to scale and shall demonstrate how the project complies with criteria A through I, above.

K. Deliveries of food and the like to an assisted living facility in an R-2 zone shall be allowed only during the hours between 8:00 A.M. and 5:00 P.M.

14.38.001 SOUTH BEACH OPEN SPACE OVERLAY ZONE*

14.38.010 Purpose. The South Beach Open Space Overlay Zone (indicated by the letters "SBOS" on the City of Newport Zoning Map) is intended to implement the South Beach Neighborhood Land Use Plan's Policy No. 4 to encourage the private maintenance of open space in the South Beach neighborhood and the use of ORS 308A tax incentives for private property owners maintaining open space.

14.38.020 Procedure. The consideration of the designation of property with the South Beach Open Space Overlay Zone shall be processed in the same manner as an amendment to the Comprehensive Plan.

14.38.030 Criteria. A determination of whether or not to apply the South Beach Open Space Overlay Zone shall be based on the following criteria:

A. Suitability of the land for the open space zone designation in consideration of any one of the following factors:

   1. The land is designated by the Newport Comprehensive Plan as open space land or potential open space land; or,

   2. The preservation of the land area in its present use would:

      a. Conserve and enhance natural or scenic resources; or,

      b. Protect air or streams or water supply; or,

      c. Promote conservation of soils, wetlands, beaches, or tidal marshes; or,

      d. Conserve landscaped areas, such as public or private golf courses, which reduce air pollution and enhance the value of abutting or neighboring property; or,

      e. Enhance the value to the public or abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries, or other open space; or,

f. Enhance recreation opportunities; or,
g. Preserve historic sites; or,

h. Promote orderly urban or suburban development; or,

i. Retain in their natural state tracts of land, on such conditions as may be reasonably required by the City Council.

B. A weighing of the following factors:

1. The projected costs and other consequences of extending urban services to the affected property;

2. The value of preserving the property as open space;

3. The projected costs and other consequences of extending urban services beyond the affected lot or parcel; and,

4. The projected costs and other consequences, including the projected costs of extending urban services, of expanding the urban growth boundary in other areas if necessary to compensate for any reduction in available buildable lands.

*(*Entire section added by Ordinance No. 1900 (12-4-06).)*

14.38.040 Uses Permitted. Uses permitted outright within the South Beach Open Space Overlay Zone include:

A. Uses existing at the time the open space designation is applied.

B. Low intensity recreational, educational, or scientific uses (including such uses as hiking/bicycle pathways/trails, wildlife viewing platforms, monitoring stations, and other similar types of uses).

C. Public or private utility infrastructure.

14.39.001 PROCEDURAL REQUIREMENTS*

14.39.010 Purpose. The purpose of this section is to designate and define the responsibilities of the approving authorities and to set forth the procedural requirements for land use actions requiring public notice before or after the decision.

14.39.020 Description of land use actions/decision-making procedures. The following is a description of four general types of land use actions/decision-making procedures utilized for land use and limited land use decisions within the City of Newport:

A. Type I Land Use Actions. Type I decisions are generally made by the Community Development Director without public notice prior to the decision and without a public hearing. A notice of the decision and opportunity to appeal is provided. Type I decisions involve limited administrative discretion. An example of a Type I action is an estuarine review. An appeal of a Type I decision is heard by the Planning Commission.

B. Type II Land Use Actions. Type II decisions are generally made by the Community Development Director with public notice and an opportunity to comment but without a public hearing. Type II decisions involve administrative discretion in the application of criteria but usually involve land use actions with limited impacts or involve limited land use decisions. Examples of Type II actions include Conditional Use Permits that generate less than 50 vehicle trips per day and involve property that is less than an acre in size, Property Line Adjustments, Minor Partitions, and Minor Replats. An appeal of a Type II decision by the Community Development Director is heard by the Planning Commission, and an appeal of a Type II decision by the Planning Commission is heard by the City Council.

C. Type III Land Use Actions. Type III decisions are considered quasi-judicial land use actions and generally are made by the Planning Commission after public notice and a public hearing. Type III decisions generally use discretionary criteria or involve land use actions with larger impacts than those reviewed under a Type I or Type II procedure. Examples of Type III actions include Conditional Use Permits that generate more than 50 trips per day, variances, preliminary and final planned development applications, interpretation requests, and

tentative subdivision plat applications. An appeal of a Type III permit decision is heard by the City Council.

D. Type IV Land Use Actions. Type IV decisions are made by the City Council as either quasi-judicial or legislative decisions involving land use action such as urban growth boundary amendments, Comprehensive Plan map/text amendments, Zoning map/text amendments, annexation requests, planned destination resorts conceptual master plans, and street/plat vacations for which an ordinance must be adopted by the City Council. Most Type IV decisions require a public hearing and recommendation by the Planning Commission prior to the City Council public hearing.

(Entire section amended by Ordinance No. 1989 (1-1-10).)*

14.39.030 Approving Authorities. The approving authority for the various land use actions shall be as follows:

A. City Council. A public hearing before the Council is required for all land use actions identified below. Items with an "*" require a public hearing and recommendation from the Planning Commission prior to a City Council hearing.

1. Annexations*.

2. Comprehensive Plan amendments (text or map)*.

3. Planned destination resorts--conceptual master plans*.

4. Urban growth boundary amendments*.

5. Vacations (plat or street)*.

6. Withdrawals of territory (public hearing required).

7. Zone Ordinance amendments (text or map)*.

8. Any other land use action defined in ordinance as a Type IV decision*.

9. Any land use action seeking to modify any action or conditions on actions above previously approved by the City Council where mo other modification process is identified.

10. Appeals of a Planning Commission action.

B. Planning Commission. A public hearing before the Commission is required for all land use actions identified below. Items with an "*" are subject to Planning Commission review as defined in the section of the ordinance containing the standards for that particular type of land use action. Planning Commission decisions may be appealed to the City Council.

1. Conditional use permits*.

2. Nonconforming use changes or expansions*.

3. Planned destination resorts - preliminary and final development plans*.

4. Planned developments.

5. Subdivisions (tentative subdivision plat).

6. Variances.

7. Adjustments*.

8. Design review*.

9. Interpretations of provisions of the Comprehensive Plan or Zoning Ordinance that require factual, policy, or legal discretion.

10. Any land use action defined as a Type III decision.

11. Any land use action defined as a Type II decision for which the Planning Commission is the initial approving authority.

12. Any land use action seeking to modify any action or conditions on actions above previously approved by the Planning Commission where no other modification process is identified.

13. Appeal of the Community Development Director decision under a Type I or Type II decision.

C. Community Development Director. Land use actions decided by the Director are identified below. A public hearing is not required prior to a decision being rendered. Items with an "*" are subject to Director review as defined in the section of the ordinance containing the standards

for that particular type of land use action. Decisions made by the Community Development Director may be appealed to the Planning Commission.

1. Conditional use permits*.

2. Partitions, minor.

3. Replats, minor.

4. Estuarine review.

5. Adjustments*.

6. Nonconforming use changes or expansions*.

7. Design review*.

8. Ocean shorelands review.

9. Any land use action defined as a Type I or Type II decision for which the Community Development Director is the initial approving authority.

10. Any land use action seeking to modify any action or conditions on actions above previously approved by the Community Development Director where no other modification process is identified.

14.39.040 Application for a Land Use Action. All requests for land use actions shall be on forms prescribed by the city. The Community Development Department prepares the application forms and, from time to time, amends the forms as the need arises. At a minimum, the application shall require the following:

A. Name and address of the applicant.

B. Name and address of the property owner, if different and applicable.

C. Legal description of the property, if applicable.

D. A site plan drawn to scale, if applicable, which shows dimension, property lines, existing buildings, and/or the proposed development.

E. A Lincoln County Assessor's map showing the subject property and the notification area, if applicable.

F. Street address of the subject property, if applicable.

G. Names and addresses of property owners within the notification area, if applicable, as shown in the records of the county assessor.

H. Signature blocks for the applicant and property owner, if different and applicable.

I. Comprehensive plan and zoning designation of the subject property, if applicable.

J. Findings of fact and other information that support the request and address all the applicable criteria.

K. A current list of the site addresses of any structure in the area proposed to be annexed, if applicable.

L. Any other information as identified by ordinance for the applicable type of land use action.

14.39.050 **Submittal of Applications.** A property owner, any person with the written approval of the property owner, or the city manager, may apply for a land use action. All documents or evidence in the file on an application shall be available to the public.

A. Not later than 30 calendar days after receipt, the Community Development Director or designate shall determine whether or not the applicant is complete and notify the applicant in writing of what information is missing and allow the applicant to submit the missing information. If the Community Development Director or designate does not make a determination of an incomplete application within 30 days after receipt, the application is deemed complete. Complete applications shall be accepted and processed. If an application is deemed incomplete, the application shall be deemed complete upon receipt by the Community Development Department of:

1. All of the missing information;

2. Some of the missing information and written notice that no other information will be provided; or

3. Written notice that none of the missing information will be provided.

B. The completeness determination is not a review of the merit of the application and a positive completeness determination is not a conclusion that the application can be approved.

C. On the 181st calendar day after first being submitted, the application shall be void if the applicant has been notified of the missing information as required under subsection A above and has not submitted:

1. All of the missing information;

2. Some of the missing information and written notice that no other information will be provided; or

3. Written notice that none of the missing information will be provided.

D. For applications subject to ORS 227.178, if the application was complete when first submitted, or if the applicant submits the requested information within 180 calendar days of the date the application was first submitted, approval or denial of the application shall be based on the standards and criteria that were applicable at the time the application was first submitted.

E. For applications subject to ORS 227.178, the 120 day rule as specified in ORS 227.178 shall be applicable.

14.39.060 **Notice.** The notification requirements in general for the various types of land use actions are identified below. The applicant shall provide city staff with the required names and addresses for notice. Notice of hearings to individual property owners is not required for Type IV legislative actions unless required by state law, such as ORS 227.186 (notice to owners whose property is rezoned). These notification requirements are in addition to any other notice requirements imposed by state law or city ordinance.

A. Information Required in all Notices of Actions and Hearings:

1. Name of applicant and property owner (if different), and file number.

2. Location of property (if applicable).

3. Date, time, and location for public hearing (for all

hearings).

4. A brief summary of the nature and substance of the application or decision.

5. A list of applicable Newport Ordinance and/or Comprehensive Plan standards and where the applicable criteria may be found.

6. A statement that relevant information (decision, staff report, application or other materials) may be reviewed and providing information about where and when they can be reviewed, and a statement that copies are available at cost).

7. Staff contact information, including name, address, and phone number.

8. Date the notice is mailed.

B. Information Required in Specific Notices:

1. Date of decision (for Type I actions).

2. A statement describing the process and the deadline for filing comments (for Type II actions).

3. A statement that the failure to raise an issue with sufficient specificity to allow the decision maker an opportunity to respond to the issue precludes raising the issue on appeal, including an appeal to the Land Use Board of Appeals (for Type II and III and quasi-judicial Type IV actions).

4. Date, time, and location of the hearing (all hearing notices).

5. A statement that the staff report will be available for view at no cost and that copies will be available at a reasonable cost at least seven days before the hearing (Type III and Type IV quasi-judicial actions).

6. A general description of the hearing process, including the process for submitting written materials (Type III and IV decisions).

7. An explanation of the use or uses that could be authorized by the decision (Type IV decisions).

C. Mailing of Notice. Notices of hearings and actions shall be mailed by first class mail at least 14 days prior to the deadline for providing testimony for Type II decisions and at least 20 days prior to the public hearing for Type III and Type IV quasi-judicial actions. Notices shall be mailed to:

1. The applicant and property owner (if different).

2. Any affected public agency or public/private utility.

3. Any person who has requested notice of the hearing or action in writing.

4. Any officially recognized neighborhood association whose boundaries include the subject property.

5. Record owners of property (as specified in the most recent Lincoln County Assessor's property tax assessment roll):

   a. Within 200 feet of the subject property (Type I, Type II, and Type III actions).

   b. Within 300 feet of the subject property (Type IV quasi-judicial actions).

D. Written Notice for Rezoning of Mobile Home or Manufactured Dwelling Park. If an application would change the zone of property that includes all or part of a mobile home or manufactured dwelling park, written notice by first class mail shall be given to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days, but not more than 40 days, before the date of the first hearing on the application.

E. Written Notice to Airport Owners. Notice of a public hearing on a zone use application shall also be provided to the owner of an airport, defined by the Department of Transportation as a "public use airport," if:

1. The name and address of the airport owner has been provided by the Aeronautics Division of the Department of Transportation to the City Community (Planning) Department; and

2. The property subject to the zone use hearing is:

   a. Within 5,000 feet of the side or end of a runway of

an airport determined by the Department of Transportation to be a "visual airport," or

b. Within 10,000 feet of the side or end of the runway of an airport determined by the Department of Transportation to be an "instrument airport."

3. Notice of a zone use hearing need not be provided if the permit or zone change would only allow a structure less than 35 feet in height, and the property is located outside of the runway "approach surface" as defined by the Department of Transportation.

F. Published Notice. Notice of each Type III and Type IV hearing shall be published at least once in a newspaper of general circulation in the city at least 5 days, and no more than 14 days, prior to the date set for public hearing.

14.39.070 Staff Reports. Staff reports on any quasi-judicial land use action shall be available for public inspection at least seven (7) days prior to the date set for public hearing, and copies will be provided at the city's rate for photocopies.

14.39.080 Hearings Procedures (Quasi-Judicial/Limited Land Use). This section shall govern the conduct of quasi-judicial/limited land use hearings. The following public hearing procedures are the minimum procedures for use in conduct of quasi-judicial and limited land use hearings and may be supplemented by any duly adopted rules of procedure.

A. Nature and General Conduct of Hearing. The approving authority, in conducting a hearing involving a land use action, is acting in a quasi-judicial capacity, and all hearings shall be conducted accordingly. Parties to the hearing are entitled to an opportunity to be heard, to present and rebut evidence, and to have a decision based on evidence supported by findings of fact and supporting information. Testimony shall be made with sufficient specificity so as to afford the approving authority and other parties an adequate opportunity to respond to each issue.

B. Disqualification, Ex Parte Contacts, Bias, Challenges to Participation. Proponents and opponents are entitled to an impartial tribunal that judge land use actions. A proponent or opponent may, therefore, challenge the

qualifications of a member of the approving authority to participate in the meeting or decision. A challenge must state with sufficient specificity the facts relied upon by the submitting party relating the person's bias, prejudgment, personal interest, or other facts from which the party has concluded that the member of the approving authority may be unable to participate and make a decision in an impartial manner. Challenges shall be incorporated into the record of the meeting.

1. Disqualification. No member of the approving authority shall participate in discussion of an application or vote on an application for any land use action when any of the following conditions exist:

    a. Any of the following have a direct or substantial financial interest in the proposal: members of the approving authority or a member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, or household, or there is an actual conflict of interest under state law.

    b. The land use action involves a business in which the member is directly associated or has served within the past two (2) years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.

    c. The member owns property within the area entitled to receive notice of the action.

    d. For any other reason, the member has determined that participation in the decision cannot be in an impartial manner.

2. Disclosure of Potential Conflict of Interest. Even if an approval authority member chooses to participate, the member shall disclose any potential conflict of interest as required by state law.

3. Ex parte Contacts. In quasi-judicial matters, approving authority members shall reveal any ex parte contacts, including site visits. Parties to a hearing shall have the right to rebut the substance of an ex parte contact.

4. Challenges. Any person may challenge the participation of a member of the approving authority in a decision-making process. A challenge must state

with sufficient specificity the factual and legal basis of the reasons for the challenge.

5. Rights of Disqualified Members of the Approving Authority. An abstaining or disqualified member of the approving authority shall be counted if present for purposes of forming a quorum. A member who represents personal interest at a meeting may do so only by abstaining from voting on the proposal, vacating the seat on the approving authority, and physically joining the audience, and by making full disclosure of his or her status and position at the time of addressing the approving authority.

6. Requalification of Disqualified Members of the Approving Authority. If all members of the approving authority abstain or are disqualified, all members present, after stating their reasons for abstention or disqualification, shall by doing so be requalified unless prohibited by state law and proceed to hear the issues and make a decision.

7. Participation in Decision by Absent Member of Approving Authority. A member of the approving authority absent during the presentation of evidence in a land use action meeting may not participate in the deliberations or final decision regarding the matter of the meeting unless the member has reviewed all the evidence in the record to date, including audio tapes of prior meetings.

8. Failure to Achieve Meeting Quorum. In the event an approving authority is not able to achieve a quorum for a meeting at which there is scheduled a consideration of a land use action, the land use action shall be automatically set over to the next regularly-scheduled approving authority meeting. In the event that an approving authority other than the City Council is unable to achieve quorum for two consecutive meetings, the land use action shall be scheduled for a public hearing before the next level of approving authority and shall be renoticed and a new public hearing held.

9. Failure to Make a Final Decision on a Quasi-Judicial Land Use Action, Limited Land Use Action, or on Appeal. In the event an approving authority other than the City Council is not able to make a final decision on a quasi-judicial land use action within three meetings

after the hearing or record is closed, the land use action shall be scheduled for a public hearing before the next level of approving authority and shall be renoticed and a new public or appeal hearing held. In the event that an approving authority other than the City Council becomes deadlocked through an even split in the approving authority such that a decision cannot be made, the approving authority shall forward the land use action to the next higher review authority for a new public or appeal hearing.

C. Public Hearing. This subsection shall govern the conduct of all public hearings.

1. Nature of Hearing. All parties participating in a public hearing shall have an opportunity to be heard, to present and rebut evidence, to have the proceedings recorded, and to have a decision rendered in accordance with the facts on record and the law. The presiding officer of the approving authority shall have authority to:

a. Regulate the course and decorum of the meeting.

b. Dispose of procedural requests and similar matters.

c. Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentation, questions, and rebuttal testimony.

d. Question any person appearing, and allow other members to question any such person.

e. Waive the application of any rule herein where the circumstances of the hearing indicate that it would be expedient and proper to do so, provided that such waiver does not act to prejudice or deny any party substantial rights as provided herein or otherwise by law.

f. Take such other action as authorized by the approving authority to appropriately conduct the hearing.

A ruling of the presiding officer may be challenged by any member of that approving authority present at the hearing. The challenge must be seconded. A ruling may be reversed

by a majority of the members present and voting. A tie vote upholds the presiding officer's decision.

2. Conduct of Participants. Proceedings shall at all times be orderly and respectful. The presiding officer may refuse to recognize or may exclude from the hearing anyone who:

    a. Is disorderly, abusive, or disruptive.

    b. Takes part in or encourages audience demonstrations such as applause, cheering, display of signs, or other conduct disruptive to the hearing.

    c. Testifies without first receiving recognition from the presiding officer.

    d. Presents irrelevant, immaterial, or repetitious evidence.

3. Order of Procedure. The hearing shall proceed in the following manner:

    a. Open Public Hearing. The presiding officer shall open the public hearing and announce the nature and purpose of the hearing, identify the applicant, describe the general nature of the proposal, and state (or defer to staff to state) the applicable substantive criteria by which the application is being judged. The presiding officer shall also state that testimony and evidence must be directed toward the applicable criteria. In addition, for quasi-judicial land use actions or limited land use actions, the presiding officer shall state that failure to raise an issue with sufficient specificity to afford the approving authority and the parties an opportunity to respond to the issue precludes an appeal based on that issue, including to the Land Use Board of Appeals.

    b. Call for Abstentions. The presiding officer shall call for any conflicts of interest, and, if applicable, ex parte contacts, or site visits by members of the approving authority.

    c. Call for Objections. The presiding officer shall call for any objections to the approving authority hearing the matter before it.

d. Staff Report. Staff present a staff report and any recommendations.

e. Proponents' Presentation. The presiding officer shall call for testimony from the applicant and from any person supporting the application.

f. Opponents' Presentation. The presiding officer shall call for testimony from any person objecting to the application.

g. Rebuttal by Applicant. The presiding officer shall call for rebuttal from the applicant in response to evidence or issues raised by the opponents.

h. Continuance. Review authorities may continue a public hearing or leave a record open to allow for additional testimony. In a quasi-judicial or limited land use action, prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments, or testimony regarding the application. If the request is made prior to the conclusion of the initial evidentiary hearing, the review authority shall grant the request by either continuing the public hearing or leaving the record open in conformance with the requirements of ORS 197.763.

i. Close Public Hearing. Unless there is a continuance, the presiding officer shall close the public hearing and state that no further testimony will be received by the approving authority.

j. Deliberation by Approving Authority. The approving authority shall consider the testimony and evidence before it in open discussion. The approving authority may ask questions of staff. The approving authority may ask proponents or opponents for clarification on a matter; but if they choose to do so, others must be given opportunity to rebut.

k. Decision. Following deliberation, the approving authority shall vote on the matter, including on any conditions of approval to be attached (or in the case of a review and recommendation, any

recommended conditions of approval).

l. Adoption of Findings of Fact. The approving authority shall adopt findings of fact that support their decision. If there are no findings available to support their decision, staff may prepare findings of fact to be presented at a future meeting. The approving authority may also call for the preparation of findings of fact by the proponent or opponent, or any combination, including staff, of each to be presented at a future meeting. The approving authority may also request that findings of fact be presented at a future meeting other than the next regularly-scheduled meeting. For hearings that are for a review and recommendation only, no findings of fact are required.

m. Final Decision. The decision of the approving authority is final when reduced to writing and signed by the presiding officer of the approving authority. Final decisions shall be by order unless an ordinance is required for the decision. Appeal periods shall begin from the date the final decision is signed. For hearings that are for a review and recommendation only, no final order is required.

n. Notice of Decision. A notice of the decision (except for those made for the purpose of a review and recommendation only) made by the approving authority shall be given to:

i. Anyone who has made appearance of record (see Section 14.39.001.045); and

ii. Anyone who has filed a written request for notice of the approving authority's decision; and

iii. Anyone who has requested notice of any appeal hearing.

14.39.090 Public Hearings Procedures (Legislative). This section shall govern the conduct of legislative land use hearings. The following public hearing procedures are the minimum procedures for use in conduct of legislative land use hearings and may be supplemented by any duly adopted rules of procedure.

A. Nature and General Conduct of Hearing. The approving authority, in conducting a hearing involving a legislative land use action, is acting in a legislative capacity, and all hearings shall be conducted accordingly.

B. Disqualification. No member of the approving authority shall participate in discussion of an application or vote on an application for any land use action when there exists an actual conflict of interest under state law. Potential conflicts of interest under state law shall be disclosed by members of the approving authority. An abstaining or disqualified member of the approving authority shall be counted if present for purposes of forming a quorum.

C. Failure to Achieve Meeting Quorum. In the event an approving authority is not able to achieve a quorum for a meeting at which there is scheduled a consideration of a land use action, the land use action shall be automatically set over to the next regularly-scheduled approving authority meeting. In the event that an approving authority other than the City Council is unable to achieve quorum for two consecutive meetings, the land use action shall be scheduled for a public hearing before the next level of approving authority and shall be renoticed and a new public hearing held.

D. Public Hearing. The public hearing process identified above in 14.39.040(C) for quasi-judicial/limited land use hearings shall be utilized with the following modifications noted for the legislative hearing process to the following subsections of 14.39.040(C)(3):

1. Final Decision. The decision of the approving authority is final when reduced to writing and signed by the presiding officer of the approving authority. Final decisions shall be by order unless an ordinance is required for the decision. Appeal periods shall begin from the date the final decision is signed. For hearings that are for a review and recommendation only, no final order is required. Unless required by law to do so, the approving authority is not obligated to adopt a final order or ordinance if the approving authority chooses not to adopt a legislative amendment.

2. Notice of Decision. A notice of the decision (except for those made for the purpose of a review and recommendation only) made by the approving authority shall be given to:

a. Anyone who has made appearance of record (see Section 14.39.001.040(B)) and submitted a written request for a notice of decision; and

b. Anyone who has filed a written request for notice of the approving authority's decision.

c. The Department of Land Conservation and Development as required for a post acknowledgement plan amendment.

14.39.100 Appeals. Any person with standing may appeal a decision of the approving authority. No person shall have standing to appeal unless the person made an appearance of record in the initial proceeding prior to the close of the public comment period, public hearing, or close of the record. All appeals shall be made no later than 15 calendar days after the date the final order is signed. "Appearance of record" shall mean either appearance in person or in writing. City Council decisions may be appealed to the Oregon Land Use Board of Appeals as provided by state law.

A. Appeal Document. All appeals shall be signed by the appellant or authorized agent and shall contain:

1. An identification of the decision sought to be reviewed, including the date of the decision.

2. A statement demonstrating that the appellant has standing to appeal.

3. A statement of the specific grounds which the appellant relies on as the basis for the appeal. If the appellant contends that the findings of fact made by the approving authority are incorrect or incomplete, the application shall specify the factual matters omitted or disputed. If the appellant contends that the decision is contrary to city code, an ordinance statute, or other law, the appeal shall identify the city code, an ordinance, statute, or other legal provision, and state how the applicable provision has been violated. For appeals of a quasi-judicial or limited land use action, a statement demonstrating that the appeal issues were raised with sufficient specificity in the hearing below.

B. Scope of Review. Unless the appeal is heard de novo, the appeal of a decision by a person with standing shall be limited to the specific issues raised during the hearing

from which the decision is being appealed. Approving authorities may hear appeals on the record of the initial hearing (if a previous hearing was held) or de novo. An appeal from a land use action that had a previous hearing shall be held on the record unless the approving authority determines that a de novo hearing is warranted.

1. When de novo hearing is warranted.

    a. Where a land use decision was made without a public hearing, the appeal shall be heard de novo.

    b. Where a land use decision was made following a public hearing, the approving authority may consider holding the appeal de novo for any of the following reasons:

        i. (The appellant(s) have documented as part of a petition to appeal a significant procedural error that resulted in a substantive harm to their ability to participate in the initial hearing that could be cured by a subsequent de novo hearing.

        ii. The appeal of the decision is part of a package of land use requests submitted by the applicant that include other land use requests that will be considered in a new public hearing before the review authority, and it would be more efficient to conduct the appeal de novo in conjunction with the hearings for the other land use requests.

        iii. A significant number of appeals have been filed such that the efficiency of the appeal process would be better served through a de novo hearing.

2. Procedure for determining when de novo hearing is warranted on appeal from a land use decision made following a public hearing:

    a. Following the end of the appeal period for which an appeal has been filed with a request for a de novo hearing, the matter of the de novo appeal hearing request shall be scheduled at the next available approving authority meeting for consideration.

b. The appeal authority shall review the submitted request for de novo hearing along with any staff and applicant (if other than appellant) input on the matter and make a decision.

C. Notice of Appeal. Notice of the appeal hearing shall be given to the applicant, the applicant's authorized agent (if any), and to interested persons. Interested persons are:

1. Anyone who has made appearance of record.

2. Anyone who has filed a written request for notice of the approving authority's decision; and

3. Anyone who has requested notice of any appeal hearing.

D. Appeal Hearings. The following is a minimum set of procedures for appeal hearings and may be supplemented by any duly adopted rules of procedure:

1. Appeal hearings on the record shall be conducted as follows:

a. A record of hearing shall be prepared by the Community Development Department containing the written material involving the approval through the filing of the appeal. A transcript of the hearing shall be prepared and included with the record.

b. Following preparation of the record, a date for the on-the-record hearing shall be set by the Community Development Department, and notice of the date of the appeal hearing shall be given.

c. The appellant(s) shall have seven calendar days from the date the record is available to supplement the petition for appeal by identifying items in the record in support of the appeal ("support brief").

d. The applicant(s) (if other than the appellant) and city staff shall have seven calendar days from the date the appellant support brief is due to respond ("response brief").

e. The appeal hearing will allow for comments by city staff, argument from appellant(s), applicant(s) (if other than appellant), rebuttal, and questions and deliberation by the approving authority.

2. De novo appeal hearings may be held by the appeals approving authority. In cases of a de novo hearing, the same procedure shall be used as was employed in the initial hearing.

3. Ability for City Council to deny appeal without hearing. The City Council may deny an appeal from a Planning Commission decision where the Planning Commission has held a de novo hearing following an appeal of a decision of the Community Development Director for land use actions subject to the 120-day rule in ORS 227.178. If the City Council votes to deny an appeal, the Council shall adopt the Planning Commission Final Order as the final decision of the City.

E. Appeals Decision. Upon review of the appeal, the appeals approving authority may, by final order, affirm, reverse, or modify in whole or part the initial decision. When the appeals approving authority modifies or reverses a decision of the initial approving authority, the final order shall set forth findings and reasons for the change. The appeals approving authority may also remand the matter back to the initial approving authority for further consideration or clarification. A notice of the decision made by the approving authority shall be given to:

1. Anyone who has made appearance of record; and

2. Anyone who has filed a written request for notice of the approving authority's decision; and

3. Anyone who has requested notice of any appeal hearing.

F. Judicial Finality. No permit shall be issued, no permit or approval shall be considered valid, and no project may proceed, based on any land use decision of the City of Newport for a land use action processed under this section of the Ordinance, until such time as all rights of appeal from such decision have been exhausted and such decision is "judicially final." A decision shall be considered judicially final at such time as any applicable period for the appeal of such decision shall have expired without initiation of an appeal, or any properly initiated appeal shall have been exhausted, whichever is later. However, this shall not preclude the making of an

application for, or the conduct of proceedings to consider, the issuance of a permit or approval based on such land use decision.

14.39.110 Decision Time. Once a complete application is received by the City of Newport, the city shall take final action, including resolution of all local appeals, on applications subject to ORS 227.178 within 120 days unless otherwise waived by the applicant in accordance with state requirements.

14.39.120 Conditions of Approval. All city decision makers have the authority to impose reasonable conditions of approval designed to ensure that all applicable approval standards are, or can be met.

14.39.130 Consolidated Procedure. Any applicant for a land use action may apply at one time for all related land use actions. Where different land use actions requiring different review authorities are submitted, decisions on applications made by a lower level review authority may be made contingent on the applicant receiving approval from the higher level review authority. Alternatively, the higher level reviewing authority may take action on all of the related land use actions. Fees for land use actions that are consolidated are set forth as established by resolution of the City Council for land use fees.

14.39.140 Expiration and Extension of Decision. Expiration or extension of all land use decisions shall be as follows:

A. All land use decisions shall be void if within eighteen (18) months of the date of the final decision:

    1. All necessary building permit(s) have not been issued, if required; or

    2. In cases where building permit(s) are not required, the authorized use has been established.

B. Notwithstanding Subsection (A) of this section, the approval authority may set forth in the written decision specific instances or time periods when a permit expires.

C. The Community Development Department may extend any approved decision for a period of six months; provided the permit holder

1. Submits a written request for an extension of time prior to expiration of the approval period;

2. Has applied for all necessary additional approvals or permits required as a condition of the land use permit;

3. There have been no changes to the applicable comprehensive plan policies and ordinance provisions on which the approval was based.

D. The granting of an extension pursuant to this section is an administrative action, is not a land use decision as described in ORS 197.015, and is not subject to appeal as a land use decision.

E. Expiration of an approval shall require a new application for any use on the subject property that is not otherwise allowed outright.

F. If a permit decision is appealed beyond the jurisdiction of the city, the expiration period shall not begin until review before the Land Use Board of Appeals and the appellate courts has been completed, including any remand proceedings before the city. The expiration period provided for in this section will begin to run on the date of final disposition of the case (the date when an appeal may no longer be filed).

14.39.150 Revocation of Decisions. In the event an applicant, or the applicant's successor in interest, fails to fully comply with all conditions of approval or otherwise does not comply fully with the city's approval, the city may institute a revocation proceeding under this section.

A. Type I, Type II, and Type III decisions may be revoked or modified if the Planning Commission determines a substantial likelihood that any of the following situations exists:

1. One or more conditions of the approval have not been implemented or have been violated: or

2. The activities of the use, or the use itself, are substantially different from what was approved or represented by the applicant.

B. A revocation shall be processed as a Type III decision. The Community Development Department or any private complaining party shall have the burden of proving,

based on substantial evidence in the whole record, that the applicant or the applicant's successor has in some way violated the city's approval.

C. Effect of revocation. In the event that the permit approval is revoked, the use or development becomes illegal. The use or development shall be terminated within thirty days of the date the revocation final order is approved by the Planning Commission, unless the decision provides otherwise. In the event the Planning Commission's decision on a revocation request is appealed, the requirement to terminate the use shall be stayed pending a final, unappealed decision.

14.39.160 **Applicability in the Event of Conflicts.** The provisions of this section supersede all conflicting provisions in the Newport Zoning Ordinance.

14.41.001 COUNCIL REVIEW*

14.42.001 APPLICABILITY OF THE PROVISIONS OF THIS ORDINANCE

The rules, requirements, and provisions of this Ordinance are in addition and not in lieu of any prior ordinance, resolution, rule, requirement, or procedure previously adopted by the City of Newport except as may have been expressly repealed, provided, however, that the provisions of this Ordinance shall be controlling in cases where there may be conflicting provisions.

14.43.001 COMPLIANCE WITH ORDINANCE PROVISIONS

No structure or lot shall hereafter be used or occupied, and no structure or part thereof shall be erected, moved, reconstructed, extended, enlarged, or altered contrary to the provisions of this Ordinance.

14.44.001 ENFORCEMENT*

A. The City Manager shall have the power and duty to enforce the provisions of this Ordinance. An appeal from a ruling of the City Manager shall be made to the City Planning Commission.

B. Any use authorized under the provisions of this ordinance shall be open to inspection and review at reasonable times by code enforcement personnel for the purpose of verifying compliance with ordinance standards or conditions of approval.

14.45.001 PENALTY**

Except as provided hereafter, a violation hereof shall be punishable as an infraction by a fine not to exceed $500.00 for each violation. If a person has committed more than two violations of this Ordinance within the preceding 24 months, a subsequent violation shall be a misdemeanor, punishable by a fine not to exceed $1,000.00, or by jail not to exceed 60 days, or both. A violation shall be deemed to occur on the date of the occurrence of the act constituting the violation and not on the date the court shall find the defendant guilty of such violation.

Each day during which a violation continues shall constitute a separate offense. Violation of more than one provision hereof shall constitute a separate offense with respect to each provision so violated.

*(*Section replaced in its entirety by Ordinance No. 2011 (2-18-11).*
*** Amended by Ordinance No. 1484 (3-16-87).)*

14.46.001 INTERPRETATION

The provisions of this Ordinance shall be held to be the minimum requirements for the promotion of the public safety, health, morals, or general welfare. It is not intended by this Ordinance to interfere with or abrogate or annul any easements, covenants, or other agreements between parties. Where this Ordinance imposes a greater restriction upon the use of buildings or premises, or upon the heights of buildings, or requires larger yards and open spaces than are required in other ordinances, codes, regulations, easements, covenants, or agreements, the provisions of this Ordinance shall govern.

14.47.001 SEVERABILITY

The provisions of this Ordinance are hereby declared to be severable. If any section, sentence, clause, or phrase of this Ordinance is adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

14.48.001 FEES

Zoning and planning fees shall be fixed by the City Council by resolution and shall be reviewed annually. Zoning and planning fees shall be paid upon submission of application of petition and shall not be refundable.