

14.38.001 OCEAN SHORELANDS OVERLAY ZONE*

14.38.010 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.

14.38.020 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.

14.38.030 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.

14.38.040 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 14.43.001, Procedural Requirements.**

14.38.050 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.

14.43.001 DREDGED MATERIAL DISPOSAL SITES*

14.39.010 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.

14.43.080 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 14.33.001, Conditional Uses, and Section 14.43.001, 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.

14.39.030 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.

14.43.080 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).)

14.40.001 PDR, PLANNED DESTINATION RESORT*

14.40.010 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.

14.40.020 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.

14.40.030 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.

14.40.040 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.

14.40.050 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:

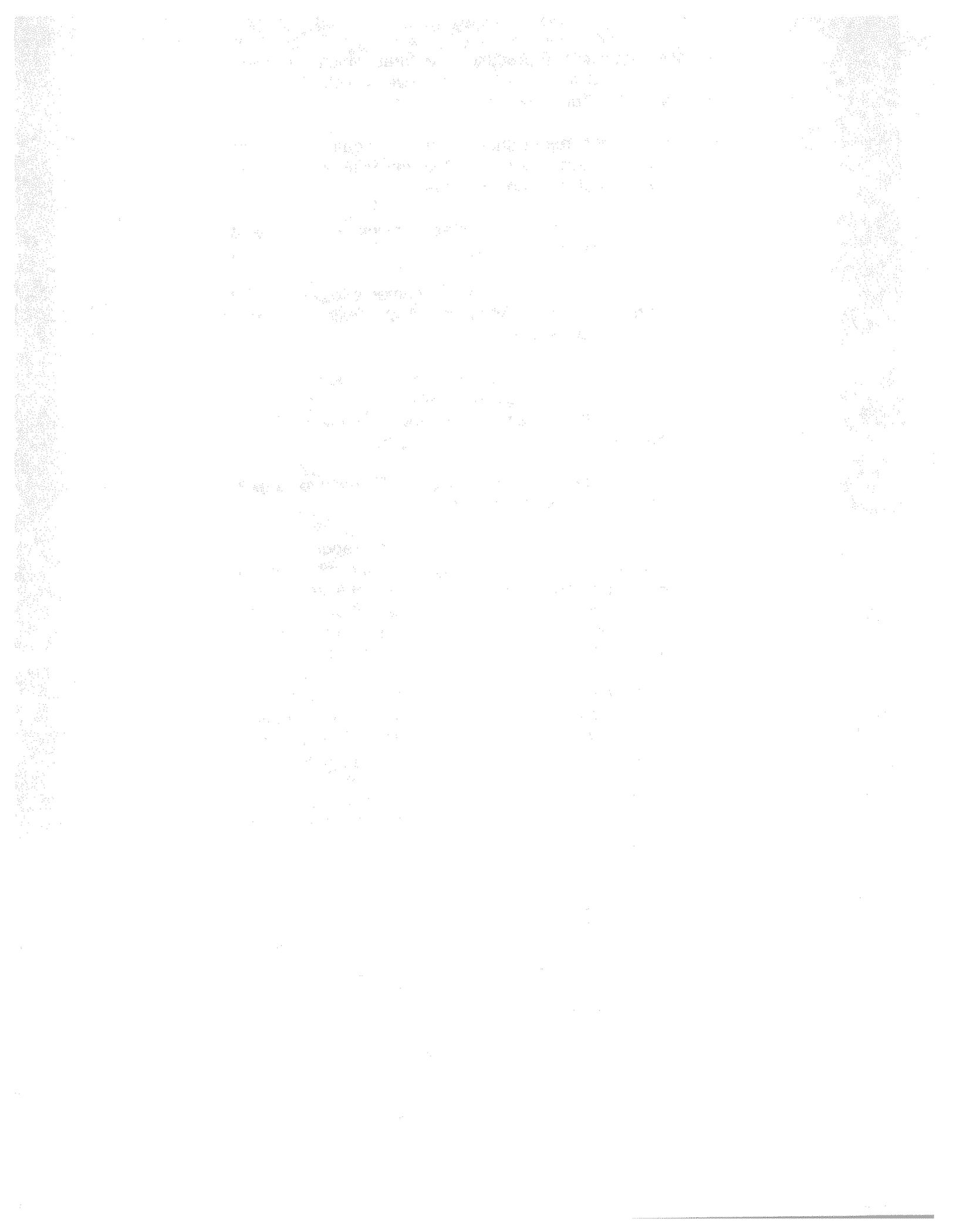
1. At least 150 separate rentable units for visitor-oriented lodging must be provided.
2. Visitor-oriented eating establishments for at least 100 persons and meeting rooms which provide seating for at least 100 persons.
3. The aggregate cost of developing the lodging facilities and the eating establishments 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 14.40.160(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 14.40.001 shall mean built, constructed, or modified land or pre-existing structures for such recreational purposes as set forth in Section 14.40.030(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 14.40.030(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 14.40.050(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 14.40.050(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.

14.40.060 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.

14.40.070 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 14.40.050(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 14.40.050(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 14.40.050(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.

14.40.080 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 14.40.030, 14.40.020, 14.40.050, and 14.40.070.
- D. The Planning Commission and City Council shall consider the CMP at their respective public hearings pursuant to Section 14.43.001, 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).

14.40.090 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.

14.40.100 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 14.40.050(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.

14.40.110 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 14.43.001.
- 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 14.40.030, 14.40.020, 14.40.050, and 14.40.070.
- 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 14.43.001) may appeal the decision of the Planning Commission in the manner provided in Section 14.43.001.* 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).)*

14.40.120 Procedure for Modification of an Approved Preliminary Development Plan.

- 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 14.43.001) may appeal the decision of the Planning Commission in the manner provided in Section 14.43.001.*

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

14.40.130 Procedure for Final Development Plan (FDP) Application.

- 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.

14.40.140 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 14.40.110.
- 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 14.43.001) may appeal the decision of the Planning Commission in the manner provided in Section 14.43.001.*

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

14.40.150 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.

14.40.160 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.

14.40.170 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.

14.41.001 ASSISTED LIVING FACILITIES IN R-2 ZONES*

14.41.010 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 14.33.001, Conditional Uses, and Section 14.43.001, 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).)*

14.41.020 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.

14.41.030 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.

14.42.001 SOUTH BEACH OPEN SPACE OVERLAY ZONE*

14.42.010 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.

14.42.020 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.

14.42.030 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.

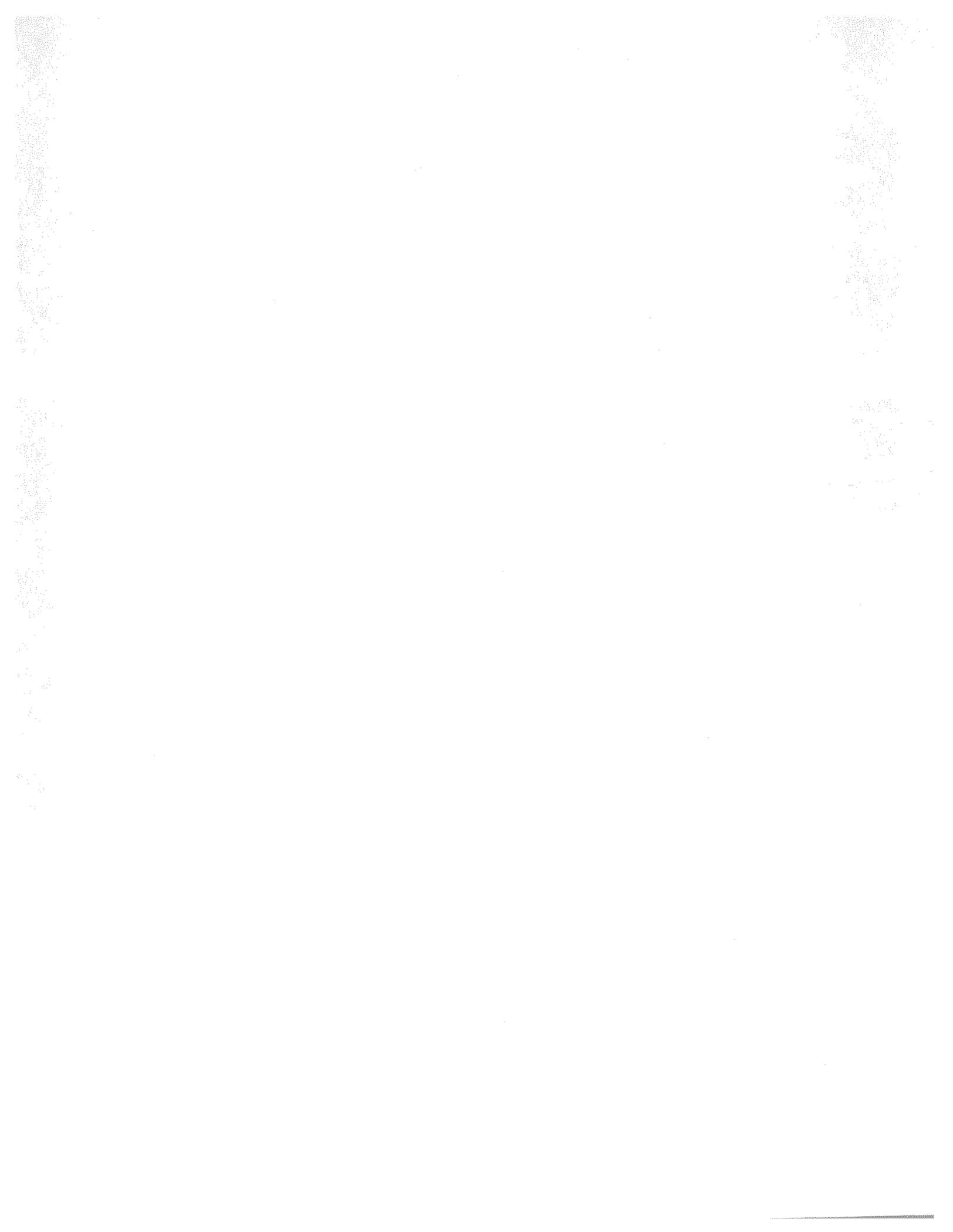
B. A weighing of the following factors:

- 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).)*

14.42.040 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.



14.43.001 PROCEDURAL REQUIREMENTS*

14.43.010 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.

14.43.020 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.

THE HISTORY OF THE UNITED STATES OF AMERICA

CHAPTER I
THE DISCOVERY OF AMERICA

THE first discovery of America was made by Christopher Columbus in 1492. He sailed from Spain in search of a westward route to the Indies. On October 12, 1492, he landed on the island of San Salvador in the West Indies.

After his discovery, Columbus made three more voyages to the Americas. He discovered the Gulf Stream, the Florida Current, and the Gulf of Mexico. He also discovered the island of Cuba and the continent of North America.

Columbus's discovery of America opened the way for European exploration and settlement. It led to the discovery of the Americas by other explorers, such as Amerigo Vesputi and John Cabot.

The discovery of America was a major event in world history. It led to the development of the Americas as a major world power. It also led to the discovery of the Americas by other explorers, such as Amerigo Vesputi and John Cabot.

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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).)

14.43.030 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 no 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.

14.43.080 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:

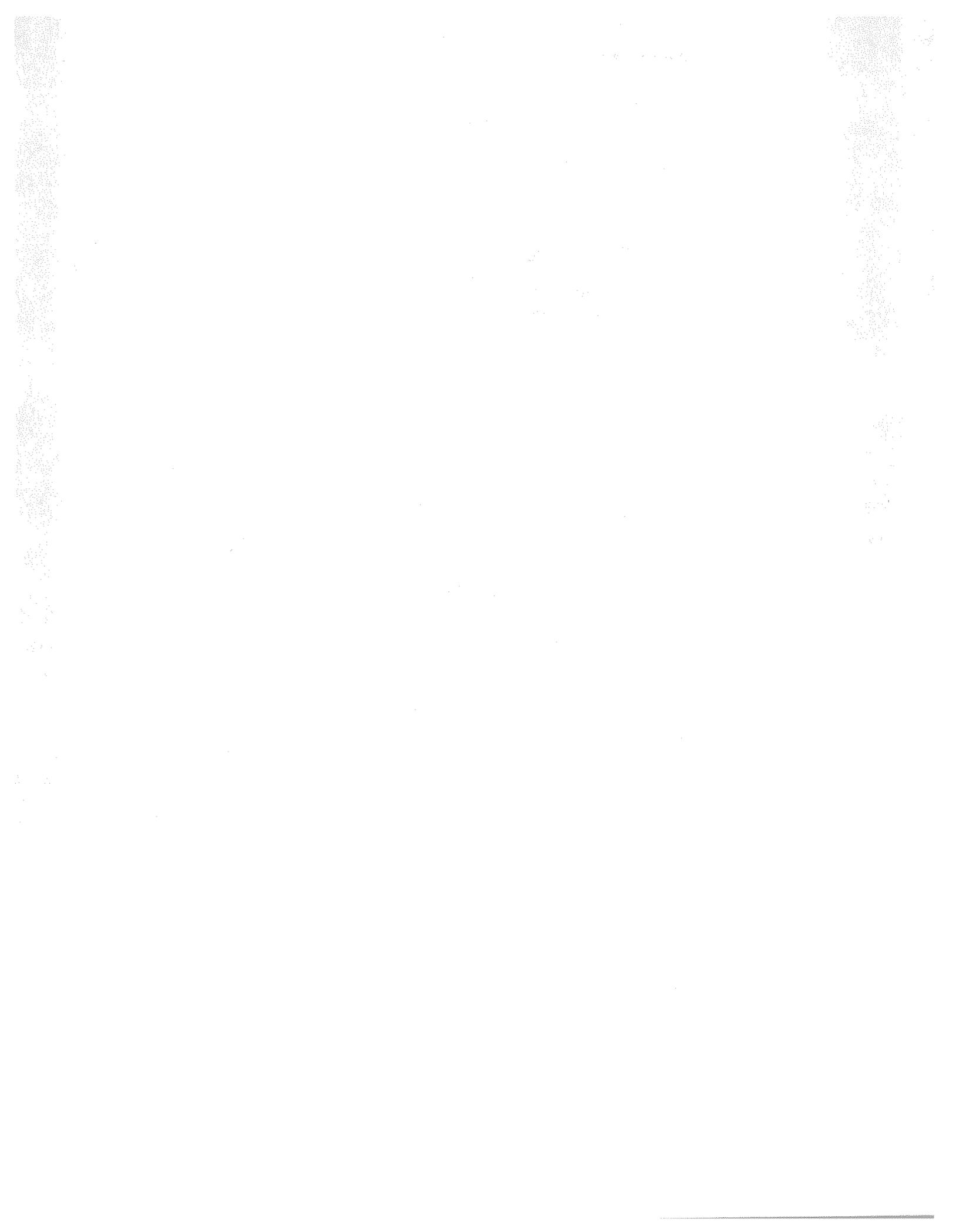
- A. Name and address of the applicant.
- B. Name and address of the property owner, if different and applicable.
- C. Legal description of the property, if applicable.
- D. A site plan drawn to scale, if applicable, which shows dimension, property lines, existing buildings, and/or the proposed development.
- 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.

14.43.050 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.

14.43.060 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).

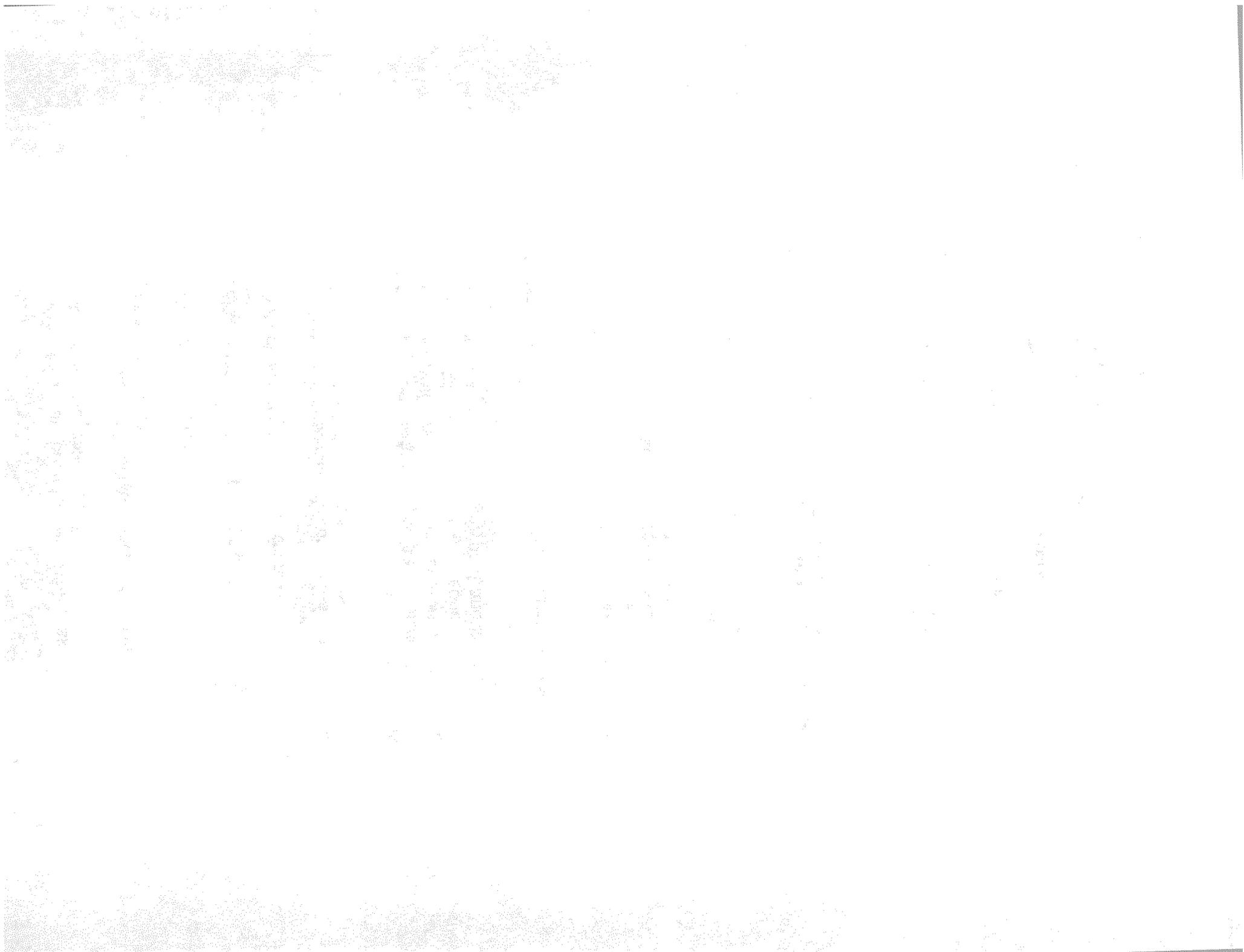
7. Staff contact information, including name, address, and phone number.
8. Date the notice is mailed.

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).

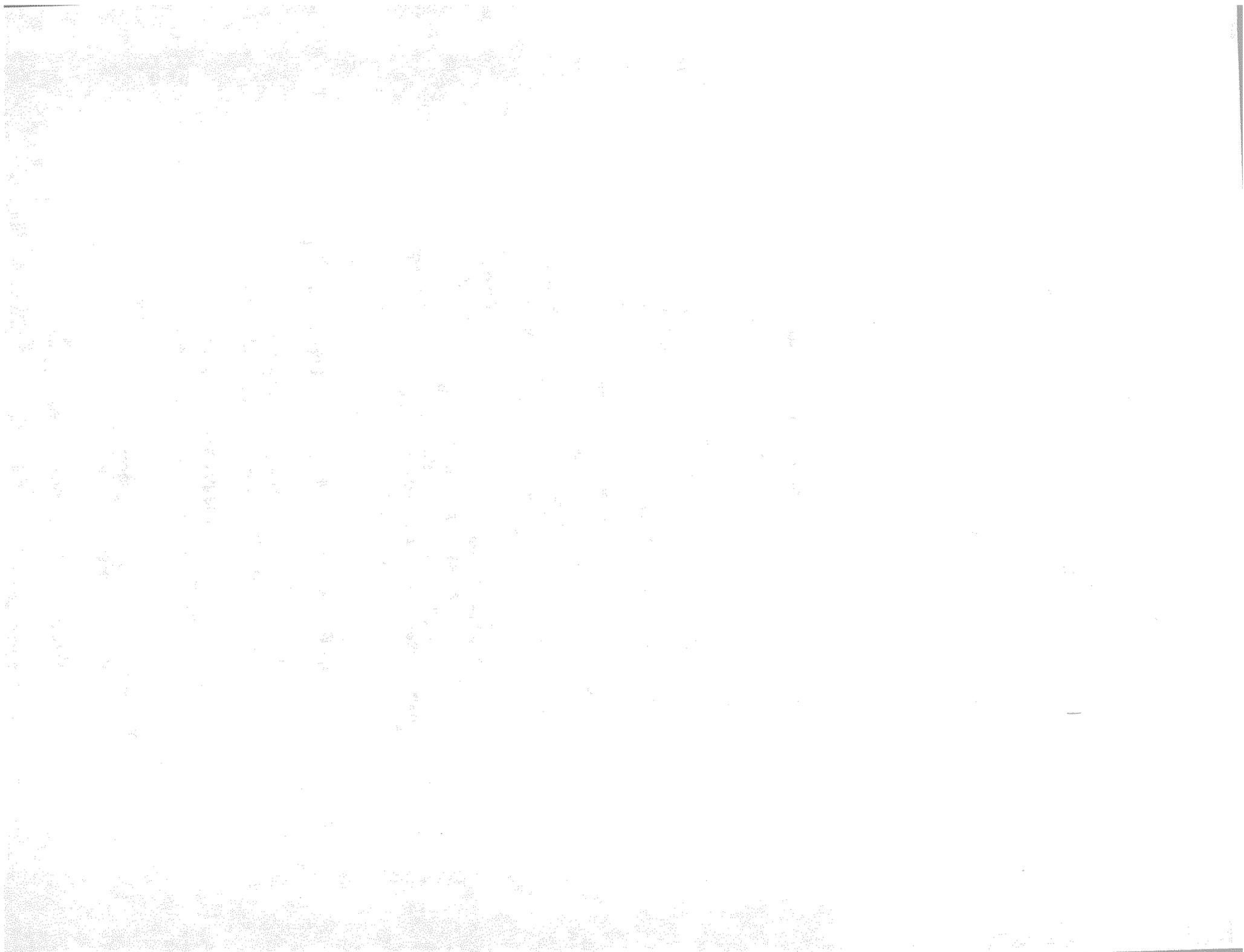
C. Mailing of Notice. Notices of hearings and actions shall be mailed by first class mail at least 14 days prior to the deadline for providing testimony for Type II decisions and at least 20 days prior to the public hearing for Type III and Type IV quasi-judicial actions. Notices shall be mailed to:

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.

14.43.070 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.

14.43.080 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

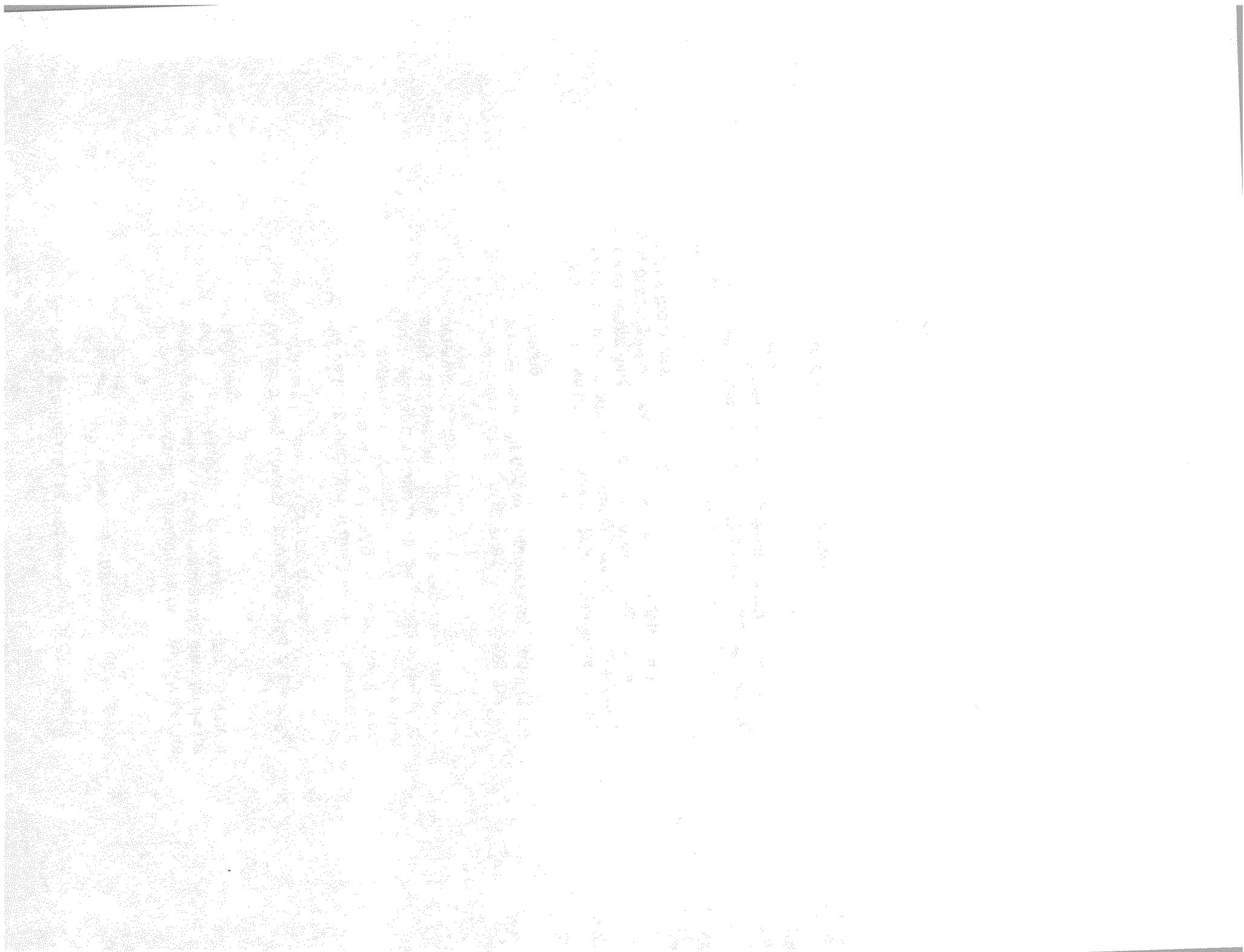
and make a decision.

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.

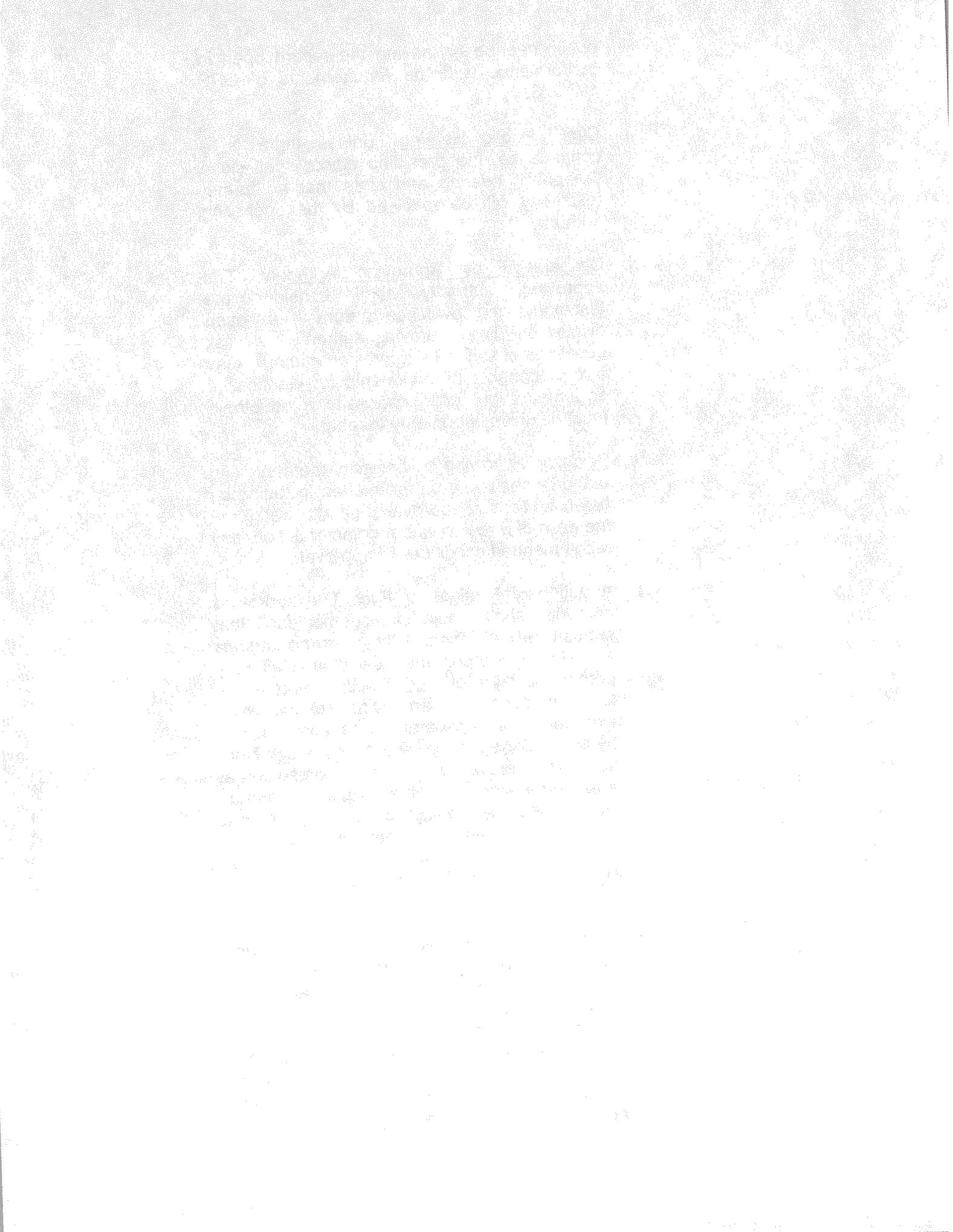
2. Conduct of Participants. Proceedings shall at all times be orderly and respectful. The presiding officer may refuse to recognize or may exclude from the hearing anyone who:
 - a. Is disorderly, abusive, or disruptive.
 - b. Takes part in or encourages audience demonstrations such as applause, cheering, 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 14.39.045); 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.

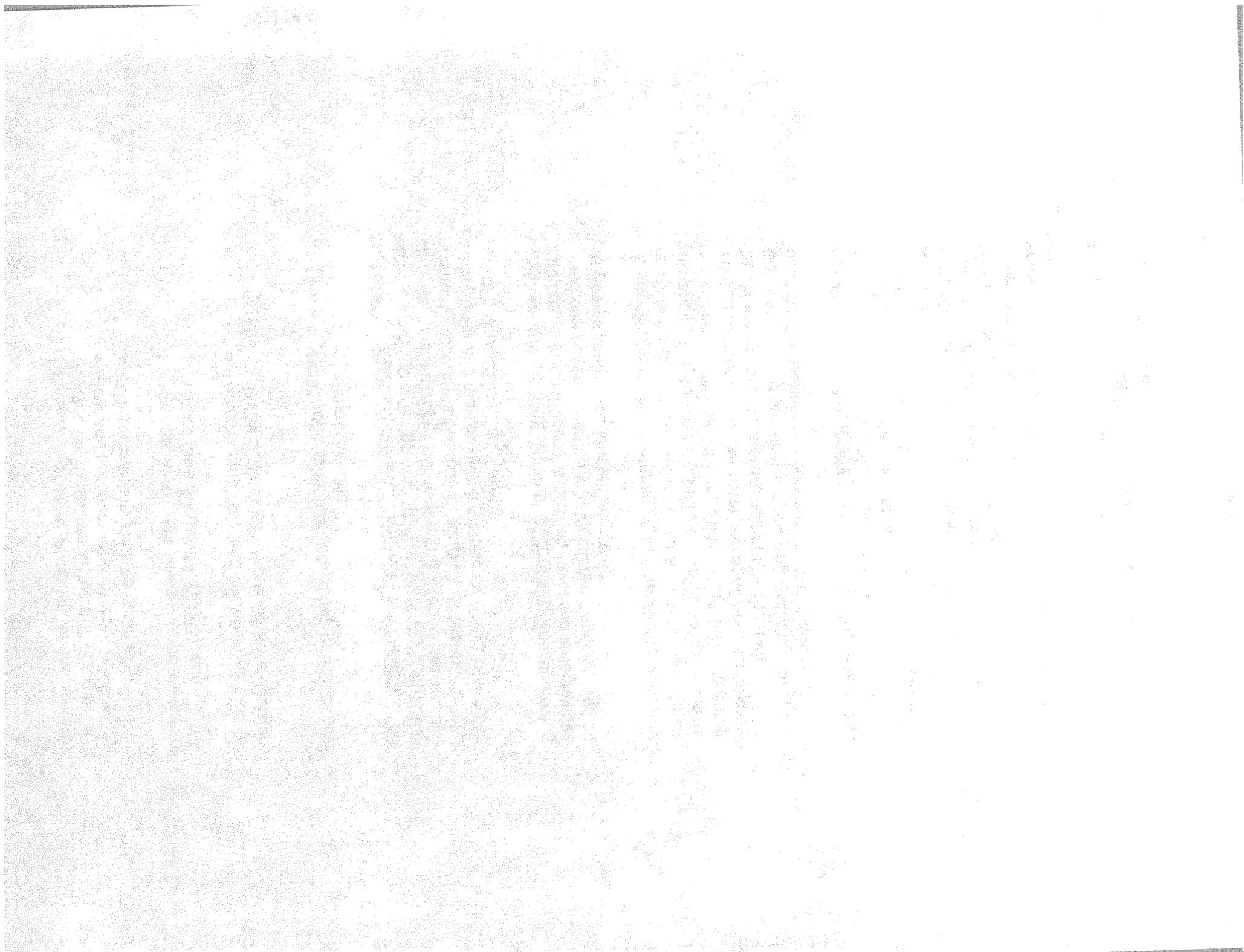
14.43.090 Public Hearings Procedures (Legislative). This section shall govern the conduct of legislative land use hearings. The following public hearing procedures are the minimum procedures for use in conduct of legislative land use hearings and may be supplemented by any duly adopted rules of procedure.

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 14.43.080(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 14.43.080(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 14.43.080(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.

14.43.100 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.

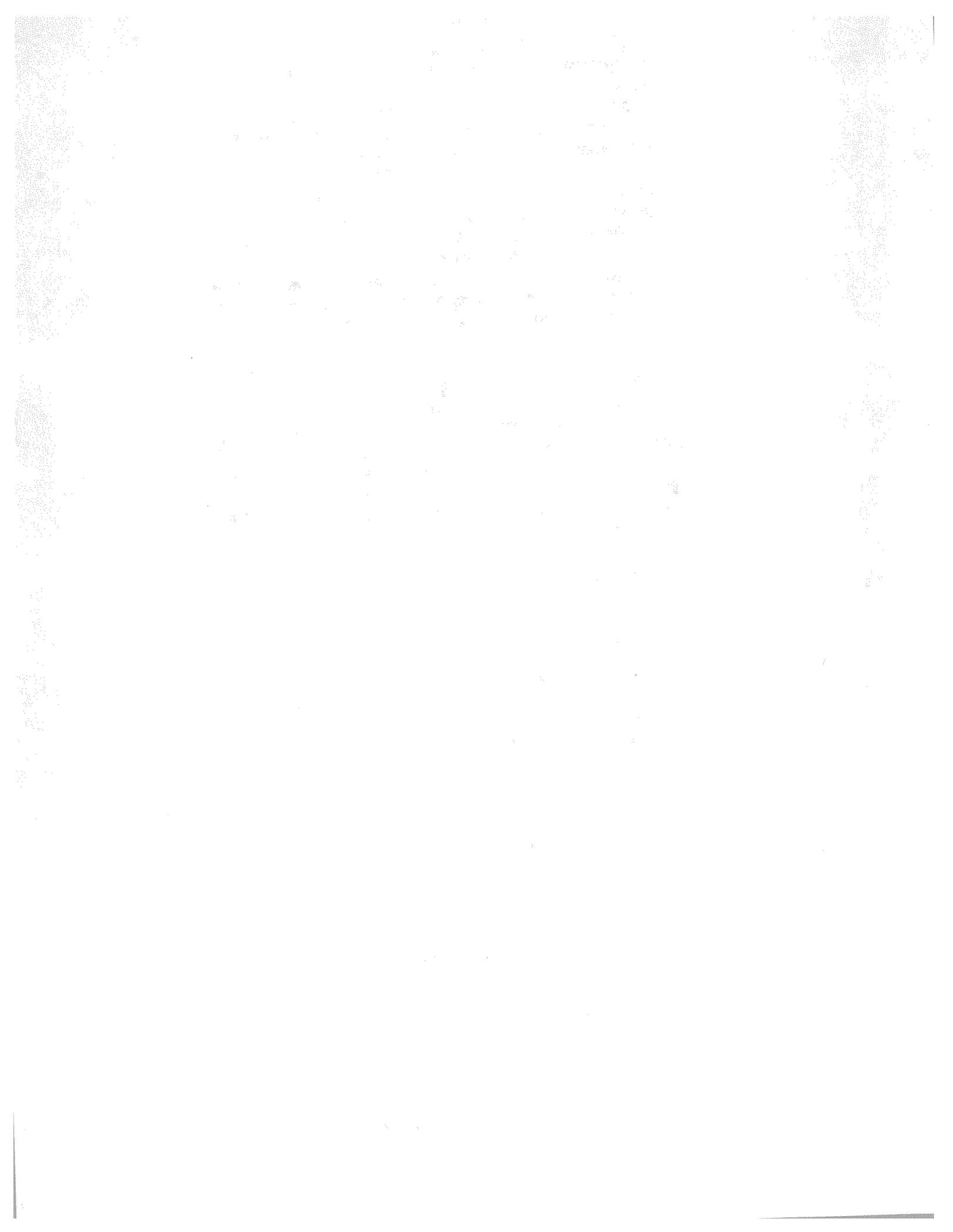
a. Where a land use decision was made without a public hearing, the appeal shall be heard de novo.

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.

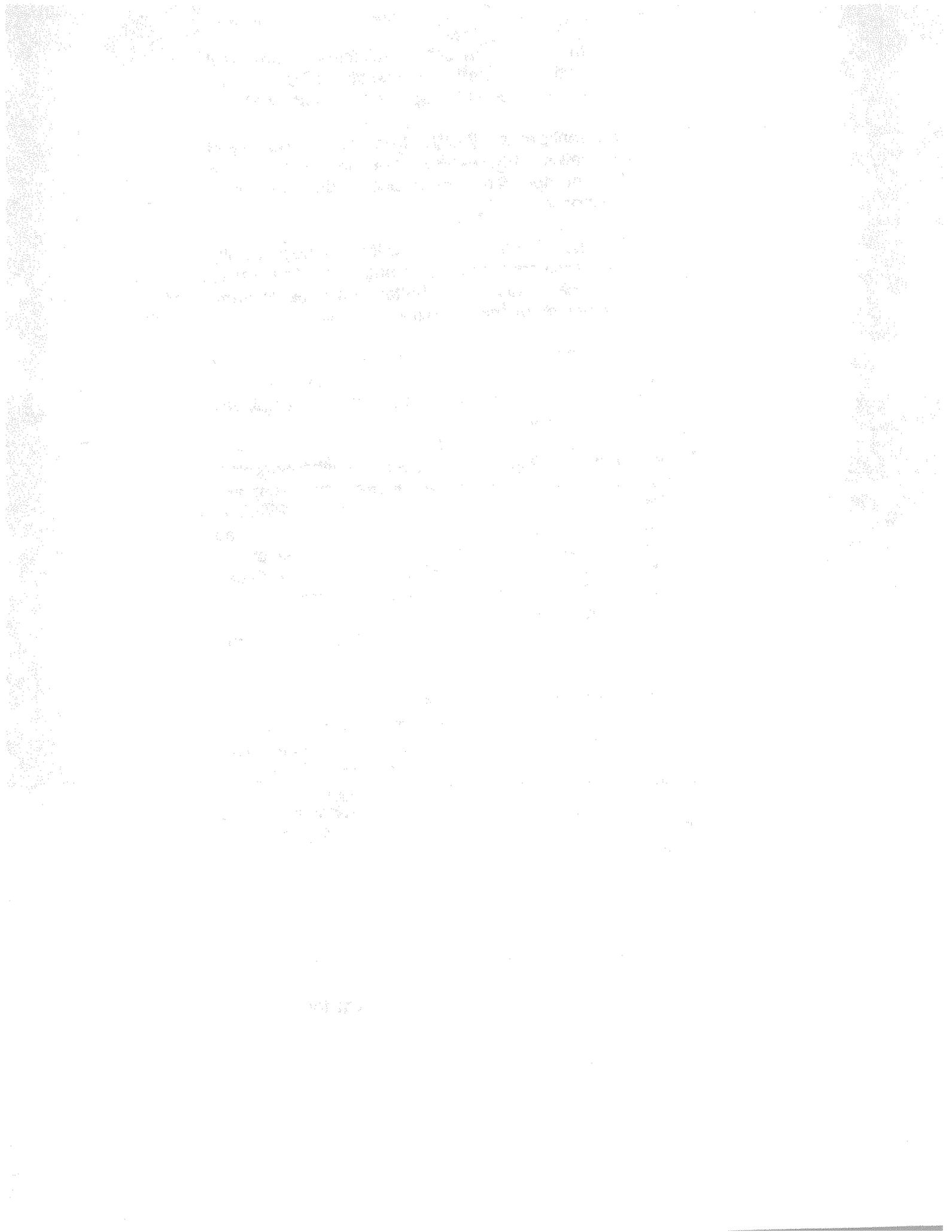
b. Following preparation of the record, a date for the on-the-record hearing shall be set by the Community Development Department, and notice of the date of the appeal hearing shall be given.

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.

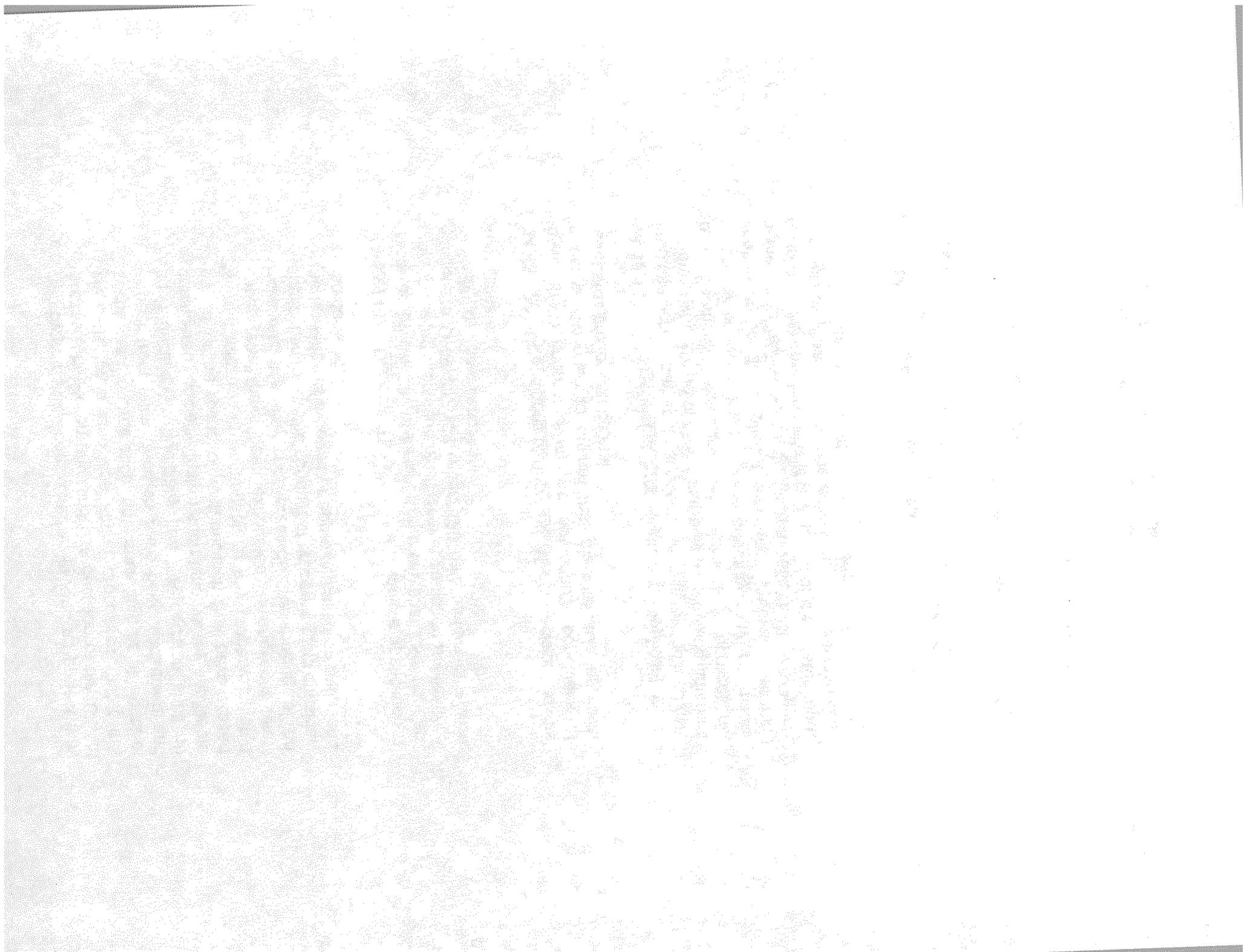
14.43.110 Decision Time. Once a complete application is received by the City of Newport, the city shall take final action, including resolution of all local appeals, on applications subject to ORS 227.178 within 120 days unless otherwise waived by the applicant in accordance with state requirements.

14.43.120 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.

14.43.130 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.

14.43.140 Expiration and Extension of Decision. Expiration or extension of all land use decisions shall be as follows:

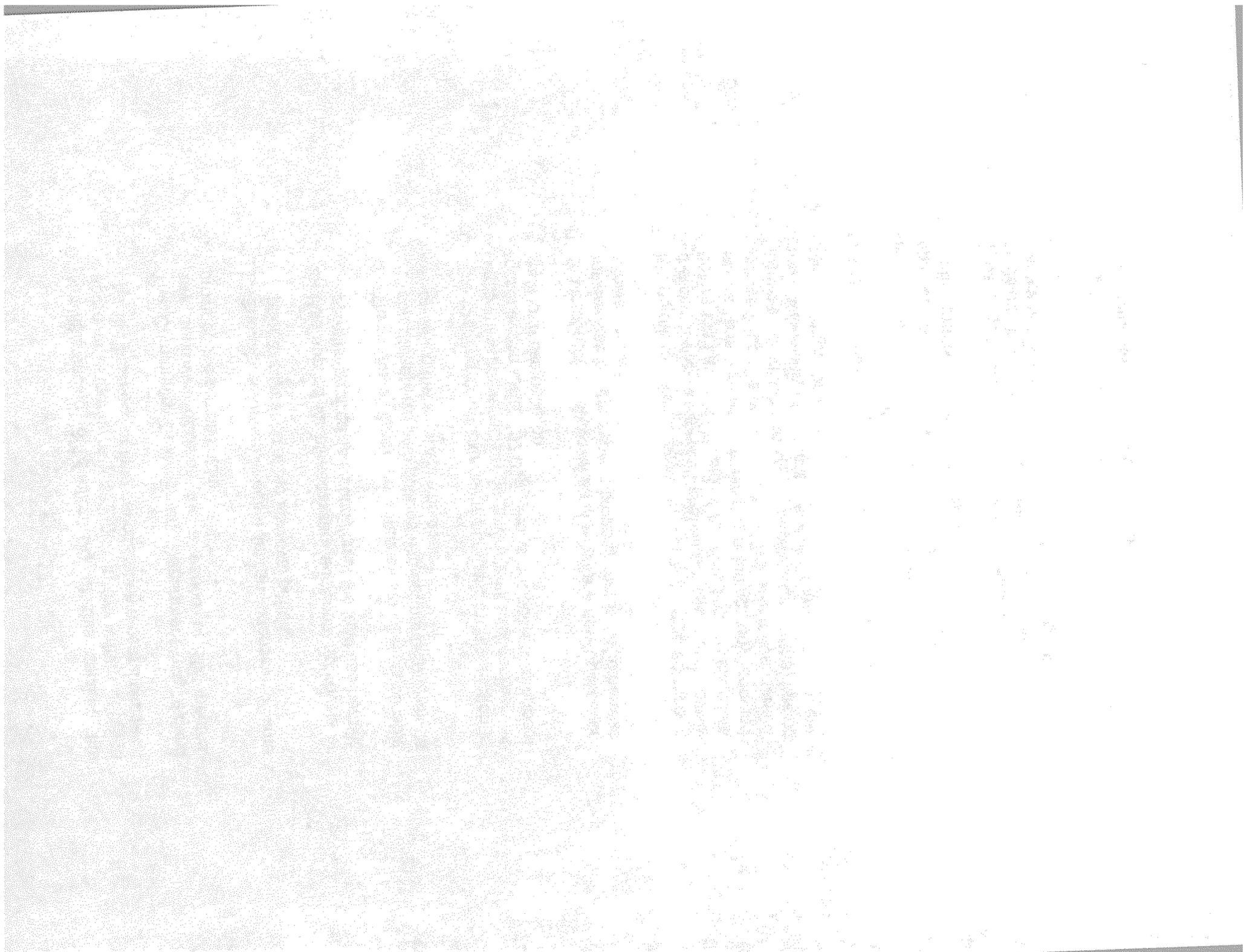
- A. All land use decisions shall be void if within eighteen (18) months of the date of the final decision:
 1. All necessary building permit(s) have not been issued, if required; or
 2. In cases where building permit(s) are not required, the authorized use has been established.



- 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).

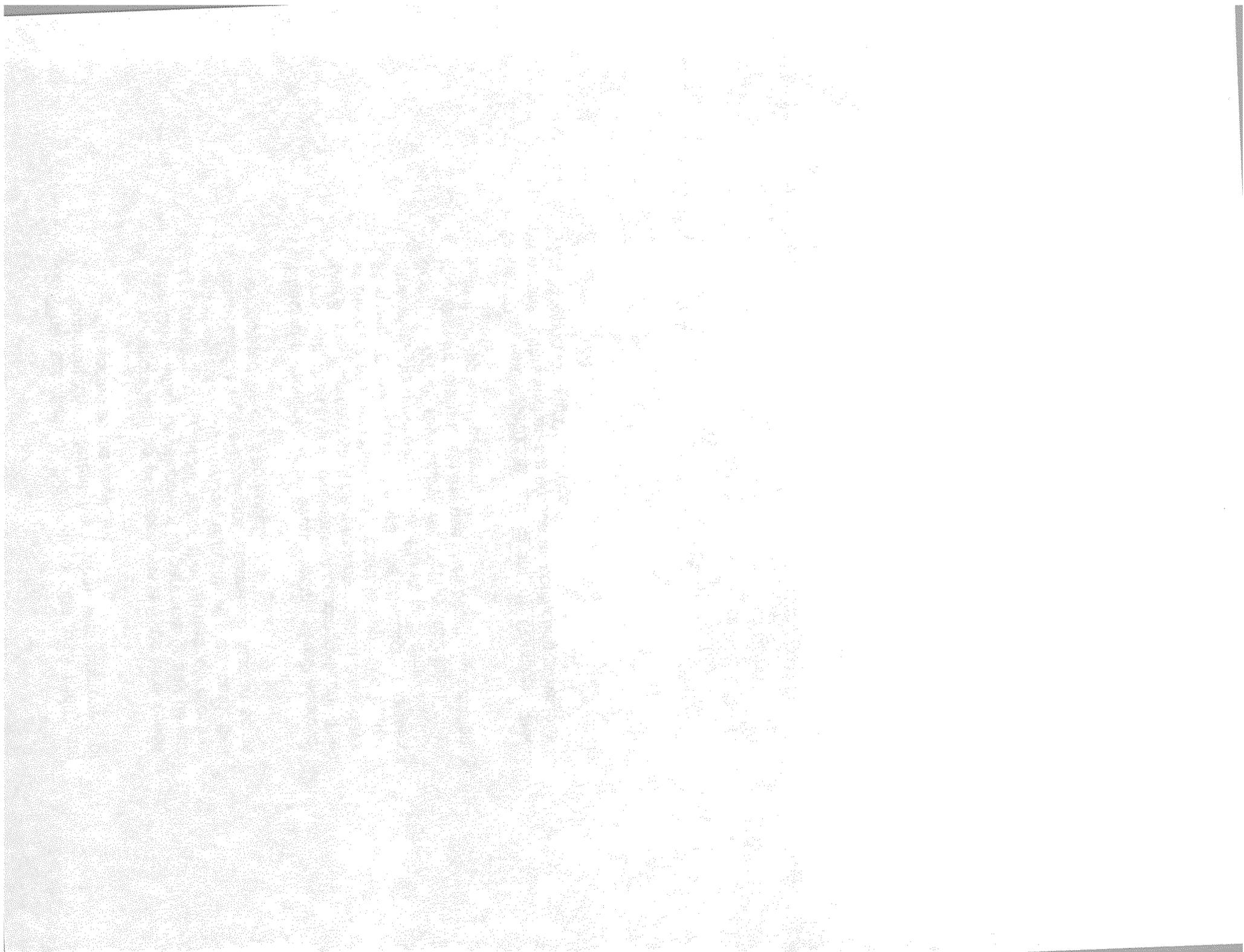
14.43.150 Revocation of Decisions. In the event an applicant, or the applicant's successor in interest, fails to fully comply with all conditions of approval or otherwise does not comply fully with the city's approval, the city may institute a revocation proceeding under this section.

- 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.

14.43.160 Applicability in the Event of Conflicts. The provisions of this section supersede all conflicting provisions in the Newport Zoning Ordinance.



14.44.001 COUNCIL REVIEW*

**14.45.001 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.

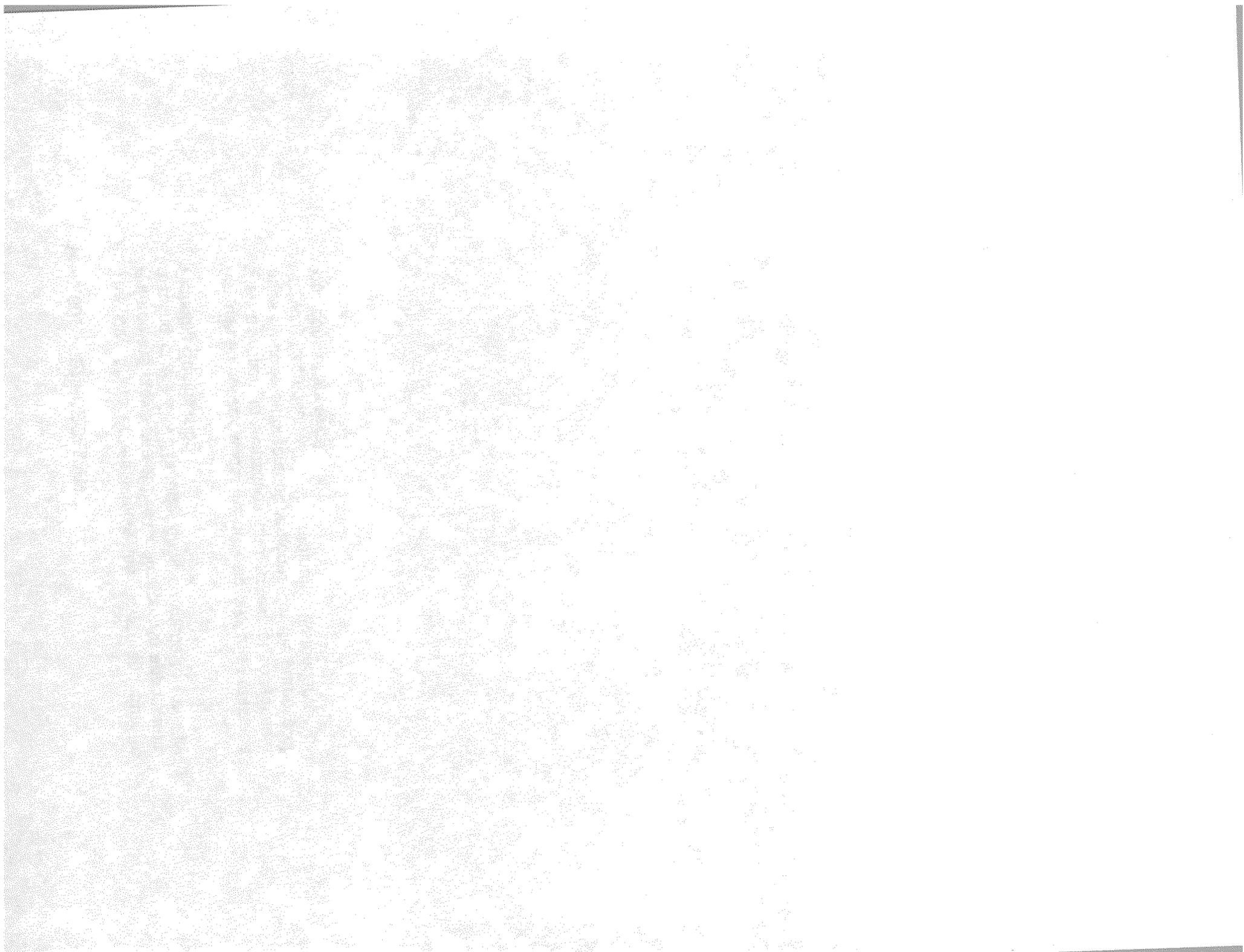
14.46.001

**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.

14.47.001 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.

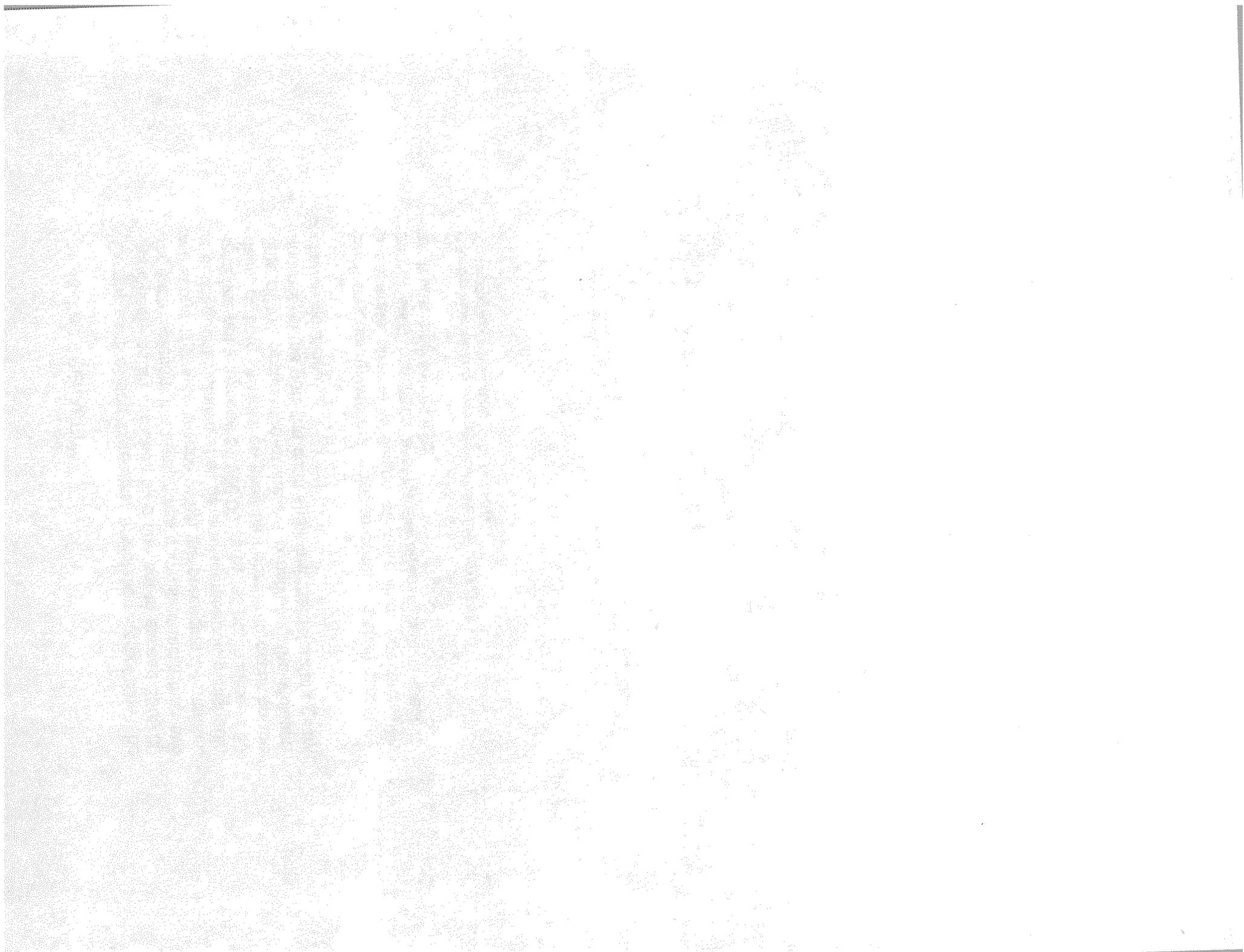


14.48.001 PENALTY**

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).)*



14.49.001 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.

14.50.001 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.

14.51.001 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.

