



**ORDINANCE NO. 2023-05**

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**AN ORDINANCE REPEALING NEHALEM CITY CODE CHAPTERS 156 (SUBDIVISIONS) AND CHAPTER 157 (ZONING) AND REPLACING THEM WITH A NEW DEVELOPMENT ORDINANCE CODIFIED IN NEHALEM CITY CODE CHAPTER 157**

**WHEREAS**, Oregon statutes and administrative rules require every municipality to adopt land use regulations implementing the adopted Comprehensive Plan and in conformance with Statewide Planning Goals, in coordination with other affected units of government; and

**WHEREAS**, the City's first zoning regulations were adopted in 1980 and have been revised periodically since that time with the most recent comprehensive revision occurring in 2010; and

**WHEREAS**, through the current revisions, the City seeks to combine its subdivision regulations as well as its zoning and development standards into a single land development chapter within the City Code; and

**WHEREAS**, changes in Oregon laws have encouraged cities amend their regulations to permit a greater range of housing middle housing choices in areas previously reserved for single family residential development to respond to the existing housing crises affecting the state; and

**WHEREAS**, by combining the existing Medium Density Residential zones into a single new Mixed Density Residential zone, duplex units can be allowed outright within areas formerly zoned R-1, but the development authorizations for all of the other Medium Density Residential zones will remain unchanged; and

**WHEREAS**, if adopted through Ordinance 2023-06, the City will have adopted a new Transportation System Plan, which is implemented within the proposed Development Ordinance; and

**WHEREAS**, after holding a number of work sessions to consider these amendments, the Planning Commission held a public hearing on July 20, 2023, where it considered testimony from the public and affected stakeholders, and then left the record open and took additional testimony on August 16, 2023; and

**WHEREAS**, the notice of the first public hearing on the draft Development Ordinance was sent to the Oregon Department of Land Conservation and Development on June 13, 2023; and

**WHEREAS**, on August 16, 2023, after holding a public hearing, the Planning Commission recommended adoption of the new Land Development Ordinance to the City Council; and

**WHEREAS**, the City Council held a public hearing to review and adopt the new Land Development Ordinance on September 11, 2023.

**NOW, THEREFORE, THE CITY OF NEHALEM ORDAINS AS FOLLOWS:**

**Section 1.** Nehalem City Code Chapters 156 (Subdivisions) and Chapter 157 (Zoning) are repealed in their entirety and fully replaced with the Nehalem Development Ordinance to be codified as Chapter 157 of the Nehalem City Code, which is attached hereto as Exhibit "A" and associated Zone Map attached hereto as Exhibit "B."


**Section 2.** In support of this decision, the City Council adopts the findings attached hereto as Exhibit "C".

**PASSED AND ADOPTED** by the City Council on this 9th day of October 2023; and

**APPROVED** by the Mayor this 9<sup>th</sup> day of October 2023.

  
\_\_\_\_\_  
Phil Chick, Mayor

**Attested:**

  
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Lori Longfellow, City Manager/Recorder

**First Reading on September 11, 2023:**

Ayes: 2  
Nays: 1  
Abstentions: 0  
Absent: 0

**Second Reading on October 9, 2023:**

Ayes: 4  
Nays: 0  
Abstentions: —  
Absent: —

**Adopted: October 9, 2023**

Ayes: 4  
Nays: 0  
Abstentions: —  
Absent: —

Exhibits:

- Exhibit A – Nehalem Development Ordinance
- Exhibit B – Zone Map
- Exhibit C – Findings

# NEHALEM DEVELOPMENT ORDINANCE

NEHALEM CITY COUNCIL  
ADOPTION

October 2023

NEHALEM DEVELOPMENT ORDINANCE  
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ARTICLE I – GENERAL PROVISIONS

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## 157.101 PURPOSE AND SCOPE

### **157.01.01 Authority**

The State of Oregon in ORS 203.035 has delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City of Nehalem does ordain as follows.

### **157.01.02 Title**

This document shall be known as the **Nehalem Development Ordinance** and may be referred to as the "Development Ordinance"; the "Ordinance"; or, as the "Chapter." This shall also apply to the regulations contained herein this Title.

### **157.01.03 Purpose**

This Ordinance is enacted to:

- (A) Implement the goals and policies of the City of Nehalem Comprehensive Land Use Plan;
- (B) To promote appropriate uses of land and orderly development of the city;
- (C) To facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
- (D) To protect land uses from geologic hazards, pollution, flood and other dangers;
- (E) To provide adequate light, air quality and provisions for fire protection; and
- (F) In general, to promote the public health, safety, convenience, and welfare.

### **157.101.04 Conformance Required**

- (A) No building or other structure shall be erected, reconstructed, altered, enlarged, or moved; nor shall any building, structure or land be used for any purpose except as specifically (or by necessary implication) authorized by this chapter. No lot shall be reduced in area to be smaller than the allowable minimum lot sizes authorized by this chapter, and if already less, the area shall not be further reduced.
- (B) Issuance of building permits, property divisions and other uses of land authorized by this chapter shall require written certification by the City Manager/Recorder that the proposal is consistent with the provisions of this Ordinance and other applicable City regulations. Per local Intergovernmental Agency agreements, certifications may be required to obtain building, water, and sewer services from applicable local agencies.



**157.101.05 Administration**

The Development Ordinance shall be administered by the City Manager of the City of Nehalem. Unless otherwise specifically prohibited by Charter, the City Manager is granted the authority to delegate his/her duties under this Ordinance.

Land outside the city limits, but located within the Urban Growth Boundary, shall be subject to the provisions in the Nehalem Development Ordinance, and, administered by Tillamook County subject to provisions in the City/County Intergovernmental Agreement.

**157.101.06 Violations and Enforcement**

- (A) Enforcement. It shall be the duty of the City Manager, or other designated agents of the city, to enforce this Ordinance. All officials, employees, and contract employees of the City of Nehalem who have the authority to issue permits shall comply with the provisions of this Ordinance and shall not issue or approve any permit, certificate or license for any use, building, or purpose, which violates or fails to comply with conditions or standards imposed by this Ordinance. Any permit, certificate or license issued in conflict with the provisions of this Ordinance, intentionally or otherwise, may be void subject to the enforcement provisions in Section 92.17 of the Nehalem City Code.
  
- (B) Penalties. Upon failure to comply with any provision of this Ordinance, or with any restrictions or conditions imposed hereunder, the Council may withhold any further permits and may withhold or withdraw City utility services until correction is made. Notwithstanding any such action taken by the Council, any person, firm, or corporation who violates, disobeys, omits, neglects, or refuses to comply with any of the provisions of the Ordinance, or who resists the enforcement of such provisions, shall be subject to civil penalties as proscribed in Section 92.17 of the Nehalem City Code for each offense. Each day that a violation is allowed to exist shall constitute a separate offense. Nothing herein contained shall prevent the City of Nehalem from taking such other lawful actions as are necessary to prevent or remedy any violation.

**157.101.07 Interpretation**

- (A) In the interpretation and application of this Chapter, all provisions shall be:
  - 1. Considered as minimum requirements;
  - 2. Liberally construed in favor of the governing body; and
  - 3. Deemed neither to limit nor repeal any other powers granted under state statutes.
  
- (B) When a certain provision of the Development Ordinance conflicts with another provision of this Ordinance, or is unclear, the correct interpretation of the Ordinance shall be determined by the Nehalem Planning Commission, or the

Nehalem City Council and consistent with provisions with the Nehalem-Tillamook County Intergovernmental Agreement. Such interpretations shall be recorded and available for future reference.

#### **157.101.08 Effect on Other Public and Private Regulations and Restrictions**

This Chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Chapter and another ordinance, Oregon Specialty Codes easement covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. Further, it is not the intent of this Ordinance to enforce deed restrictions, covenants, and similar legal instruments.

#### **157.101.09 Conflicting Regulations**

All other Ordinances, ordinances or parts of Ordinances or ordinances in conflict herewith are hereby repealed.

#### **157.101.10 Severability and Validity**

The sections and divisions of this Chapter are hereby declared severable. The invalidity of any one section or division shall not affect the validity of the remaining sections or divisions.

#### **157.101.11 Fees**

- (A) Purpose. Fees are for the purpose of defraying administrative costs. Fees shall be established by City Council Ordinance or regulation.
- (B) General Provisions:
  - 1. Payment. Fees shall be payable at the time of application and shall be as set forth by Resolution of the City Council. There shall be no fee required for an application initiated by the Planning Commission or the City Council.
  - 2. Failure to Pay. The failure to submit the required fee with an application or notice of appeal, including return of checks unpaid or other failure of consideration, shall be a defect and result in an incomplete application or rejection of the appeal.
  - 3. Refunds. Fees are not refundable unless the application is withdrawn prior to the notification of the application or hearing.
  - 4. Fee Reduction. The City Council may reduce or waive the fees upon showing of just cause to do so.

## 157.102 DEFINITIONS

### 157.102.01 Grammatical Interpretation

- (A) Interpretation. Words used in the masculine include the feminine, and feminine the masculine. Words used in the present tense include the future, the singular number includes the plural, and the word "shall" be mandatory and not directory. Where terms or words are not defined, they shall have their ordinarily accepted meanings within the context of their use.
- (B) Headings. If there is any conflict or inconsistency between the heading of an article, section or paragraph of this Ordinance and the context thereof, the said heading shall not be deemed to affect the scope, meaning or intent of such context.
- (C) General and Specific Terms. The definitions in this Section include those that apply to the entire Development Ordinance and those terms that apply to specific Sections. If appropriate to aid the interpretation or administration of this Chapter, general terms may apply to the specific Sections, and terms in specific Sections may apply to the remainder of the Ordinance. Terms used in specific sections are identified as follows:

<b>(Flood)</b>	Floodplain Overlay Zone; Section 157.210
<b>(Estuary)</b>	Estuary Zones; Sections 157.301 and 157.302
<b>(Sign)</b>	Signs; Section 157.409

### 157.102.02 Definitions

The following words and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Chapter, except in those instances where the context clearly shows a different meaning.

**Abutting**. Sharing all or part of a common property line. for the purpose of determining **abutting** property, intervening public and private ways and watercourses do not break the continuity of **abutting** properties.

**Access**. The way or means by which pedestrians, bicycles, and vehicles shall have safe, adequate, and usable ingress and egress to property.

- (1) **Alternate**. Property access by a means other than the proposed approach or access connection. it may include an existing public right-of-way, another location on the subject street or highway, an easement across adjoining property, a different street, a service road, a local road, or an alley, and may be in the form of a single or joint approach.
- (2) **Control**. Where the right of access between a property abutting the highway and the highway has been acquired by a roadway authority, or eliminated by law, pursuant to access or approach spacing standards.

- (3) **Easement.** An access conveyed for the purpose of providing vehicle, bicycle, and/or pedestrian access from a public street to a lot or parcel across intervening property under separate ownership from the parcel being provided access. A cross access easement is an easement providing vehicular access between two or more separate sites, so that the driver need not enter the public street system between sites.
- (4) **Point.** A connection providing for the movement of vehicles between a lot or parcel and a public roadway.
- (5) **Reasonable.** Access that does not require excessive out-of-direction travel or pose a safety hazard.
- (6) **Spacing/Intersection Spacing.** The minimum required distance from an intersection of a public or private street to the nearest driveway or other access connection.
- (7) **Way.** A walkway or multi-use path connecting two rights-of-way to one another where no vehicle connection is made.

**Access Management.** Regulation of access to streets, roads, and highways from abutting property and public and private roads and driveways.

**Accessory Structure.** A subordinate building or portion of a main building, the use of which is incidental to that of the main building or to the use of the land but does not include dwellings or living quarters.

**Accessory Dwelling Unit.** An interior, attached, or detached residential structure that is used in connection with, or that is accessory to, a single-family dwelling.

**Accessory Use.** A use incidental, appropriate, and subordinate to the main use of the parcel, lot, or building.

**Accessway.** An unobstructed way or required width containing a paved drive or roadway, which provides vehicular access within a development.

**Adjacent.** In near, or close, proximity.

**Adequate Access.** Direct routes of travel between destinations.

**Adequate Area.** Space sufficient to provide all required public services to standards defined in this code.

**Adverse.** Acting against or contrary to, as to cause harmful interference or conflict.

**Adverse Impact.** An impact that is detrimental to or contrary to the desired effect or so opposed as to cause harmful interference. A negative effect that is detrimental to the public welfare or injurious to people, property, or the community environment.

**Accretion (Estuary).** Growth by external addition; the build-up of land along a beach or shore by the gradual deposition of airborne or waterborne and sediment or other material.

**Active Restoration (Estuary).** The use of specific positive remedial actions, such as removing fills, dredging of shoaled navigation channels, installing water treatment facilities or rebuilding deteriorated urban waterfront areas.

**Activity (Estuary).** A development action generally taken in conjunction with a use, and which makes a use possible; activities do not in and of themselves result in a specific use of land or water area, often several activities (e.g., dredging, piling, filling) may occur with a single use (e.g., port facility). Most activities take place in conjunction with a wide variety of uses. (See also **regulated activity**.)

**Adult Foster Home.** As defined by OAR 411-360-0020; means any home in which residential care and services are provided in a home-like environment for compensation to five or fewer adults who are not related to the provider by blood, marriage, or adoption. An adult foster home does not include any house, institution, hotel, or other similar living situation that supplies room or board only, if no individual thereof requires any element of care.

**Aesthetic (Estuary).** Values derived from sensory experiences including vision, smell, and hearing; values relating to harmony, as in landscape features, rather than strictly economic or utilitarian values; the aggregate of qualities that give pleasure to the sense or exalt the mind or spirit.

**Aggregate (Estuary).** A material such as gravel composed of mineral crystals of one or more kinds of mineral or rock fragments.

**Altered or Alteration.** Any change or repair, which is intended to prolong the life of a supporting component of a building, such as bearing walls, columns, beams, or girders; or any excavation, grading, or contouring of land, which changes the topography, slope, and/or drainage flow from natural conditions.

**Anadromous Fish (Estuary).** Oceanic or estuarine fish species that enter fresh water to spawn.

**Apartment.** A building or structure designed to house three or more dwelling units, also known as multi-family dwelling.

**Appeal.** A request for review of a Planning Commission, staff and/or City Council decision or interpretation of any provision of these ordinances.

**Approval Authority.** The person or body authorized to make application decisions.

**Aquaculture (Estuary).** The propagation, planting, feeding, or growing and harvesting of fish, shellfish, plankton, or aquatic plants.

**Aquaculture Facility (Estuary).** A structure which is built, installed, or established as a means to engage in aquaculture: fish release and recapture facilities in association with

facilities for growing fish or shellfish and tanks for cultivation of fish or shellfish are included within this category.

**Aquatic Areas (Estuary).** Estuarine waters, intertidal areas, tidal wetlands, and submerged lands. the upper limit of aquatic areas is the line of non-aquatic vegetation or, where such a line cannot be accurately determined, the mean higher high-water line in tidal areas or ordinary high water (OHW) in non-tidal areas.

**Aquatic Habitat (Estuary).** Pertaining to aquatic areas; growing in aquatic areas; living in or frequenting the margins of aquatic areas, as do aquatic plants and waterfowl.

**Area of Shallow Flooding (Flood).** A designated AO zone on a community's flood insurance rate map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. such flooding is characterized by ponding or sheet flow.

**Area of Special Flood Hazard (Flood).** The land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year. Designations on maps always include the letters "A" or "V".

**Automobile Wrecking Yard.** A building or lot used for dismantling or disassembling of motor vehicles or trailers, or the storage, sale, or dumping of dismantled, partially dismantled, obsolete, or wrecked vehicles, or their parts.

**Awning.** Any stationary structure, permanent or demountable, used in conjunction with a manufactured home or trailer, other than window awning, for the purpose of providing shelter from the sun and rain, and having a roof with supports and not more than one wall or storage cabinet substituting for a wall.

**Avulsion (Estuary).** A tearing away or separation by the force of water; land that is separated from adjacent lands or properties by the action of a stream or river cutting through the land to form a new streambed.

**Bank-line or Stream Alteration (Estuary).** Realignment of a stream bank or the entire stream, either within or outside of its normal high-water boundaries.

**Base Flood (Flood).** A flood having a 1% chance of being equaled or exceeded in any given year. Also referred to as the **100-year flood**.

**Basement.** A portion of a building which has less than one-half or more of its height measured from finished floor to finished ceiling below the average elevation of the adjoining grade.

**Basement (Flood).** An area of a building having its floor subgrade (below ground level) on all sides.

**Beach Nourishment (Estuary).** A program in which sand, dredge spoils or other materials are deliberately deposited in a place calculated to result in beneficial beach accretion.

**Bed and Breakfast Facility.** A building or premises used for the provision of lodging and meals, usually breakfast.

**Bicycle Facilities.** Improvements that provide for the needs of bicyclists, including bikeways and bicycle parking.

**Bikeway.** The general term for the four basic types of bikeways:

**Bikes Lanes.** A hard surfaced or paved facility, either separated physically from a road or separated by paint stripes, and which is designated specifically for use by bicyclists.

- (1) **Cycle Track.** A hard surfaced or paved facility separated physically from a road or street, and which is designated specifically for two-way use by bicyclists.
- (2) **Shoulder Bikeways.** Where bicyclists travel within the roadway's paved shoulder.
- (3) **Shared Bikeways.** Where bicyclists and motor vehicles share the travel lane.
- (4) **Multi-Use Paths.** Paths that are separated from vehicular traffic. They are two-way pathways used by pedestrians, bicyclists, and joggers.

**Biocide (Estuary).** Any chemical designed to kill living organisms; examples include insecticides, herbicides and/or fungicides.

**Biological Oxygen Demand (BOD) (Estuary).** A measure of the amount of dissolved oxygen required in biochemical processes to oxidize waste in water.

**Biological Productivity (Estuary).** The amount of living material produced in each area (or volume of water) in a given amount of time. This may be subdivided into primary production (amount of green plant production) and secondary production (amount of animal consumer production).

**Block.** A tract of land bound on four sides by streets or bounded by streets and other such features as the city limits or physical barriers such as bodies of water or canyons.

**Boarding, Lodging or Rooming House.** A residential structure where not more than 15 people, not including members of the family occupying such a structure, provide compensation for lodging and meals.

**Breakwater (Estuary).** An offshore structure of rock, steel, concrete or piling designed to protect a beach or harbor from the force of waves and currents. They may be either attached to the bottom or maybe floating structures.

**Buffers or Buffering.** Distance, landscaping, walls, berms, or other measures used to physically separate one land use from another.

**Buffer (Estuary).** A limited use area separating a developed or intensively used area from a protected area.

**Buildable Area.** For siting structures on a parcel, the area thereon exclusive of all applicable setbacks or areas within restrictive overlay zones contained in this chapter. For purposes of calculating the allowable number of dwellings on a lot or parcel, the area thereof, exclusive of the following: road or utility easements, narrow strips of land provided for access from a street to a flag lot, areas within all estuary zones, and channels within the ordinary high-water lines of streams that are at least 15 feet wide. This definition shall not apply to erosion control structures or structures otherwise allowed within applicable overlay zones.

**Building.** Any structure enclosed with walls, excluding canvas or fabric, including windows and doors, having a roof and permanent foundation, conforming to the design and construction requirements of the Oregon Residential Structural Specialty Code, built, and maintained for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind. Trailers, with or without wheels, shall not be considered as buildings, except that manufactured homes sited in accordance with standards in this Code shall be considered a building.

**Building Height.** The vertical distance from the average elevation of the finished grade to the highest point of the coping of a flat roof, deck line of a mansard roof, or to the middle height between the eaves and ridge of a pitch or hip roof. If a building is divided into units or segments by means of masonry walls or firewalls and parapets, each unit shall be calculated separately relative to building height. Further, by definition, building height does not include architectural and building features exempt from height restrictions.

**Building Inspector.** A designated person with duties and authority to enforce all building codes and the provisions of this Code.

**Building Line.** A line that is adjacent to the front side of a main building parallel to the front lot line.

**Building Official.** An individual empowered by the City Council to administer and enforce building regulations.

**Bulkhead (Estuary).** A vertical wall of steel, timber, concrete or piling (a type of seawall).

**Buoy (Estuary).** A distinctively marked and shaped anchored float, sometimes carrying a light, whistle, or bell, which marks a channel or obstruction.

**Cabana.** A stationary, light-weight structure which may be prefabricated, or demountable, with two or more walls, used adjacent to and in conjunction with a manufactured home to provide additional living space meant to be moved with the home.

**Camping unit.** Any tent or recreation vehicle located in a campground as temporary living quarters for recreation, education, or vacation purposes.



**Campsite.** Any plot of ground within a campground intended for the exclusive occupancy by a camping unit or units.

**Capacity.** Maximum holding or service ability, as used for transportation, utilities, parks, and other public facilities. See also, definition of "Occupancy" in applicable building codes.

**Carpool.** Two or more people commuting in a single vehicle.

**Carport.** A stationary structure consisting of a roof with its supports and not more than one wall or storage cabinet substituting for a wall and used for covering a vehicle parking space.

**Cemetery.** Land used or intended to be used for the burial of the dead, and dedicated for cemetery purposes, including a columbarium, crematory, mausoleum, or mortuary, when operated in conjunction with and within the boundary of such cemetery.

**Change of Use.** Change in the primary type of use on a site as defined and administered by the Building Official.

**City.** The City of Nehalem, Oregon.

**City Council or Council.** The legally elected City Council of the City of Nehalem, Oregon.

**City Manager.** The City Manager employed by the City Council of the City of Nehalem, Oregon, or his/her designee.

**City Planner/Director.** Individual employed or contracted by the City of Nehalem and designated by the City Manager to administer the Nehalem Development Ordinance.

**Clear-Vision Area.** A triangular area on a lot at the intersection of two streets or a street and a railroad. Two sides are lines measured from the corner intersection of the right-of-way lines for a specific distance. The third side of the triangle is a line across the corner of the lot joining the ends of the other two sides. Where the lines at the intersections have rounded corners the right-of-way lines will be extended in a straight line to a point of intersection.

**Clinic.** A facility for examination and treatment of human ailments by a group of physicians, dentists, or other licensed practitioners on an out-patient basis and not involving overnight housing of patients.

**Clinic, Large Animal.** A business establishment in which veterinary services are rendered to large animals including livestock on an outpatient basis with no overnight boarding.

**Clinic, Small Animal.** A business establishment in which veterinary services are rendered to small domestic pets on an outpatient basis with no overnight boarding.

**Club.** A facility owned or operated for a social, fraternal, religious, educational, or recreational purpose, to which membership is required for participation and which is neither operated primarily for profit nor to render a service which is customarily carried on by a business.

**Commission.** The City of Nehalem Planning Commission.

**Community Center.** A facility owned and operated by a governmental agency or a non-profit community organization which is open to any resident of the neighborhood in which the facility is located or to any resident of the City or surrounding area, provided that the primary purpose of the facility is for assembly, and provided further that no permanent or temporary commercial eating or drinking facilities shall be operated on the premises.

**Comprehensive Plan.** The Comprehensive Plan of the City of Nehalem, Oregon.

**Coastal Lakes (Estuary).** Lakes in the coastal zone that are created by a dune formation or that have a hydrologic surface or subsurface connection with salt water.

**Communication Facilities (Estuary).** Electrical distribution lines and line support structures.

**Conditional Use.** A use of land that generally conforms to the types and nature of the uses permitted by right in a zone, but because of potential adverse on-site and/or off-site impacts, requires the review and discretionary approval of the planning commission according to the provisions within this chapter.

**Condominium.** With respect to property located within the state:

- (1) the land, if any, whether leasehold or in fee simple and whether contiguous or non-contiguous;
- (2) any buildings, improvements, and structures on the property; and
- (3) any easements, rights and appurtenances belonging to the property, which are submitted to the provisions of ORS 100.005 to 100.625.

**Contiguous.** Sharing all or part of a common boundary.

**County Assessor.** The County Assessor of Tillamook County, Oregon.

**Curb Line.** The line indicating the edge of the vehicular roadway within the overall right-of-way.

**Critical Facility (Flood).** A facility for which even a slight chance of flooding might be too great. **Critical Facilities** include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

**Current (Estuary).** Mass of water moving in a certain direction. there are surface currents, bottom currents and mid-water currents that do not necessarily move in the same direction or with the same velocity.

**Cut.** Any act by which earth, sand, gravel, rock, or any other similar material is excavated or removed from a site or parcel of land and includes the conditions resulting there from.

**Day Care Center or Child Care Facility.** Any facility that provides childcare to children including a day nursery, nursery school group, group child care home, child care center, family child care home or similar unit operating under any name, but not including:

- (1) facility providing care that is primarily educational, unless provided to a preschool child for more than four hours a day;
- (2) facility providing care that is primarily supervised training in a specific subject, including, but not limited to, dancing, drama, music or religion;
- (3) facility providing care that is primarily an incident of group athletic or social activities sponsored by or under the supervision of an organized club or hobby group;
- (4) facility operated by a school district as defined in ORS 332.002, political subdivision of the state or a governmental agency;
- (5) residential facility licensed under ORS 443.400 to 443.455; and
- (6) babysitters.

**Deck.** An open, unroofed porch or platform extending from a house or other building.

**Declarant.** The person who files a declaration under ORS 92.075.

**Declaration.** The instrument described in ORS 92.075 by which the subdivision or partition plat was created.

**Dedication.** The designation of land by its owner for any public use as reflected on a subdivision or partition plat, deed, or other recording with the County. The term may also be used for dedications to a private homeowners' association.

**Density.** The number of residential dwelling units per acre of land.

- (1) **Gross density** is calculated based on the total property acreage of each tax lot multiplied by the allowed units per acre.
- (2) **Net density** is calculated on the total acres, minus any floodplain, dedicated right-of-way, or other proposed or required dedications or allocations of land to uses other than the allowed residential units, except garages and other typical residential accessory uses.

**Department of Land Conservation and Development (DLCD).** State agency responsible for administering the state-wide land use program.

**Development.** The act, process or result of developing, which means to bring about growth or availability; to construct or alter a structure; to conduct a mining operation; to make a change in the use or appearance of land; to divide land into parcels; or to create or terminate rights to access.

**Development (Flood).** Any human-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling,

grading, paving, excavation, or drilling operations located within the area of special flood hazard.

**Dike (Estuary).**

- (1) A wall or mound-built around a low-lying area to prevent flooding or to contain dredge material. a **dike** is considered new when placed on an area that has never previously been diked. maintenance and repair refer to:
  - (a) existing serviceable and dikes (including those that allow some seasonable inundation); and
  - (b) those that have been damaged by flooding, erosion, tide gate failure and the like.
- (2) A **temporary dike** is one that is established in an emergency for the purposes of flood protection in the interest of safety or welfare of the public and is removed within 60 days of construction.

**Discretionary.** A permit action or decision that involves substantial judgment or discretion.

**Dissolved Oxygen (Estuary).** The amount of oxygen dissolved in water.

**Ditching (Estuary).** The digging of a long narrow excavation in the earth for drainage of surface waters or for irrigation. **Ditching** does not include alteration of a natural watercourse.

**Diversity (Estuary).** The number of species in a given area or volume of water, or the variety of species present in a biological community.

**Dock (Estuary).** A pier, piling or secured floatation platform for marine craft tie-up in association with one or more private residences.

**Dolphin (Estuary).** A group of pilings held together by a steel cable.

**Dredged Material Disposal (DMD) (Estuary).** The deposition of material obtained from dredging. (also see **Fill**.)

**Dredged Material Disposal Settling Pond (Estuary).** An impoundment for run-off water from a dredged material disposal site. **Settling ponds** allow suspended particles in runoff water to settle out before the runoff water enters an aquatic area.

**Dredged Material Disposal (DMD) Site (Estuary).** An area identified in the Tillamook/Nehalem bay dredged material disposal plan element of the county comprehensive plan as a potential site for the disposal of dredged material, subject to state and federal permit requirements.

**Dredging (Estuary).** The removal of sediment or other inorganic material from a stream, river, or coastal lake, or from estuarine waters, intertidal areas and tidal wetlands.

**Dredging for On-site Maintenance (Estuary).** Dredging for the purpose of maintaining the functional operation of an existing structure or facility. **Dredging for on-site maintenance**

is confined to the same geographic area as the existing structure or facility and is the minimum necessary to maintain the functional operation of a structure or facility.

**Dredging Maintenance (Estuary).** dredging for the purpose of maintaining access by water to an existing structure or facility.

**Driveway.** A private way used by vehicles and pedestrians to gain access from an approved public access or right-of-way onto a lot or parcel of land.

**Dwelling, Multi-family** - A building or portion thereof, located on a single lot or parcel, designed for occupancy by three or more families living independently of each other, with the number of families in residence not exceeding the number of dwelling units provided.

**Dwelling, Single-family** - A detached building or manufactured home located on a separate single lot or parcel, designed for, and occupied by not more than one family and containing one dwelling unit, excluding tents, teepees, yurts, travel trailers and other similar uses.

**Dwelling, Single-family Attached** - Two or more single-family dwelling units with common end walls, each dwelling unit located on a separate single lot or parcel.

**Dwelling, Two-family (Duplex)** - A building designed for and containing two attached residential dwelling units on the same lot or parcel, neither of which meets the definition of an accessory dwelling unit.

**Dwelling Unit** - A building or portion thereof designed with one or more rooms for residential purposes by not more than one family and including a kitchen and bathroom. A recreational vehicle is not a Dwelling Unit. The term excludes tents, teepees, yurts, travel trailers and other similar uses.

**Easement.** The grant of a right of use for a specific purpose over, through or on a parcel of land.

**Ecology (Estuary).** The study of the interrelationships among organisms and their physical, chemical, and biological environments.

**Eelgrass (Estuary).** A true seed-producing, blade-like marine plant which forms beds on estuary bottoms.

**Elevated Building (Flood).** For insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

**Encroachment.** Advancement of a surrounding or adjacent use or structure onto another property, right-of-way, or a natural resource or hazard.

**Energy Facility (Estuary).** Equipment or a piece of equipment designed to generate energy. solar collectors, wave, wind and tidal power generators and low-head hydroelectric dams are included within this category.

**Entrance Channel (Estuary).** the portion of a waterway exposed to wave surge from the open sea, and which provides protected access or opening to the main channel.

**Erosion (Estuary).** The wearing a way of land by any of several agents or due to gravity. **Erosion** may be caused by the action of water or wind, or through any of several types of mass movement including slump, debris slide, rock-fall, soil creep and the like.

**Erosion Control Structure (Estuary).** Any structure designed to prevent or reduce erosion of land, including structural methods of shoreline stabilization such as riprap, groins, or bulkheads.

**Estuarine Waters (Estuary).** Channel areas below mean lower low water, subtidal areas.

**Estuary (Estuary).**

- (1) a body of water semi-enclosed by land, connected with the open ocean, and within which salt water is usually diluted by freshwater derived from the land. The **estuary** includes:
  - (a) estuarine water;
  - (b) intertidal areas;
  - (c) tidal wetlands; and
  - (d) submerged lands.
- (2) **Estuaries** extend upstream to the head of tidewater.

**Estuary Planning Boundary (Estuary).** The management boundary around each of the estuaries of the county within which estuary zones are located. The **estuary planning boundary** includes estuarine waters, intertidal areas, and tidal wetlands up to mean higher high water (MHHW) or the line of non-aquatic vegetation (whichever is most landward). The **estuary planning boundary** extends upstream in coastal streams and rivers to the head of tidewater.

**Existing Structure or Facility (Estuary).** A structure or facility which is in current use or good repair as of the date of adoption of this chapter (including structures or facilities which are in conformance with the requirements of this chapter and non-conforming structures or facilities established prior to 10-7-1977) or dikes established prior to 10-7-1977 which have been damaged by flooding, erosion, or tide gate failure.

**Facility (Estuary).** A group or combination of structures that is built, installed, or established to serve a particular purpose.

**Facing.** Directly opposite, across from.

**Family.** One or more persons related by blood, marriage, adoption or guardianship or similar circumstance; and not more than five additional persons not so related,

occupying a dwelling unit and living as a single household unit. This includes the occupants of an adult foster home and a foster family home.

**Fence, Sight-obscuring.** A fence or evergreen planting arranged in such a way as to obstruct vision.

**Federal Emergency Management Agency (FEMA).** The federal organization responsible for administering the National Flood Insurance Program.

**Fill.** Any act by which earth, sand, gravel, rock, or any other similar material is deposited, placed, pulled, or transported to raise the land to a higher level or grade.

**Fill (Estuary).** The placement by humans of soil, sediment, dredged materials or other materials which result in the replacement of an aquatic area with dry lands; a change in the bottom elevation of a waterbody (in estuarine waters, intertidal areas or tidal wetlands); an increase in the elevation of land (on shorelands). The placement of riprap or manure spreading is excluded from this category.

**Flag.** A piece of cloth or other flexible material attached to a staff, cord, bracket, or structure.

**Flood or Flooding (Flood).**

- (1) A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - a. The overflow of inland or tidal waters; the unusual and rapid accumulation of runoff of surface waters from any source.
  - b. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (1) a., of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- (2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tide surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (1)a., of this definition.

**Flood Control Structure (Estuary).** Any structure designed to prevent or reduce flooding of land, such as a dike or tide gates.

**Flood Insurance Rate Map (FIRM) (Flood).** An official map of a community, on which the federal insurance administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a digital flood insurance rate map (DFIRM).

**Flood Insurance Study (Flood).** An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

**Floodway (Flood).** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**Floor Area.** The area of the building, exclusive of porches and exterior stairs, which shall extend to the exterior faces of all walls. Floor area shall include all levels within a structure, including mezzanines and additional stories above the first floor, and including basements improved for regular human occupancy. Within a residential structure, the floor area does not include garages or carports.

**Floor Elevation.** The height above mean sea level of the first floor of a building that is not a basement.

**Floor, Habitable.** Any floor area intended to be used for residential living purposes, which includes working, sleeping, eating, cooking, or recreating, or a combination thereof. A floor area used only for storage purposes is not a "habitable floor."

**Flushing Capacity (Estuary).** The relative rate at which the water of an estuary or a portion of an estuary is replaced. The flushing rate is usually expressed as the time required for one complete replacement. important measurement for estimating sewage and other discharge dilution and dispersion, and the exchange of oxygen, seawater, plankton and the like between the estuary and the ocean.

**Frontage.** That portion of a lot or parcel which abuts a public street.

**Garage, Private.** A detached accessory building or portion of a main building for the parking of automobiles of the occupants of the premises.

**Garage, Public.** A building other than a private garage used for the care, repair, parking, or storage of automobiles.

**Grade.** The average elevation of the existing ground at the centers of all walls of a building.

**Grade (Sign).** The curb line or in the absence of a curb line, the edges of the street pavement of the primary access street frontage for all freestanding signs. For signs mounted on a building, the **grade** shall be the sidewalk, street or ground directly below said sign.

**Groin (Estuary).** A dam for sand; a structure built at right angles to the beach to interrupt longshore sand movement (littoral drift) and trap sand to stabilize or widen a beach.



**Habitat (Estuary).** The place of residence of a species, sometimes characterized by the dominant vegetation, or the grain size of the sediment.

**Half-Story.** Means that part of any building wholly or partly within the roof frame and not occupying more than two-thirds of the floor area immediately below it.

**Herbicide (Estuary).** Any chemical that is designed to kill plants. Such chemicals may act through the soil to kill seeds or be applied directly to foliage.

**Height of Sign (Sign).** The vertical distance of a sign, including any supporting structure, measured from the grade to the highest point of the sign or sign structure.

**High Intensity Recreation (Estuary).** Recreation that requires specially built facilities or occurs in such density or form that is required or results in a modification of the area or resource. Examples include: campgrounds, golf courses, marinas, docks and moorages, and commercial off-road vehicle use areas.

**Home Occupation.** A lawful occupation profession, or craft, carried on solely by the resident of a dwelling as a secondary use, which no assistants are employed, no commodities are sold other than services, public contact is by appointment only, and there is no display, advertisement, or sign board except such signs as by this title may be permitted in the zone. Home occupations may include such activities as dressmaking, lawyer, notary public, public accountant, artist, writer, teacher, musician, home office of a physician, dentist, or other practitioner of the healing arts, or practices of any art or craft of a nature to be conveniently, unobtrusively, and inoffensively pursued in a family dwelling and continually conforms to the criteria set forth in this Chapter.

**Hotel or Motel.** Any building or portion thereof designed or used to offer guest rooms or suites for temporary lodging, with or without meals, for compensation but excluding any institution in which human beings are housed or detained under legal restraint.

**Houseboat.** A floating structure, without a means of self-propulsion, which is primarily for occupancy as a single-family dwelling which is constructed on a floatation system that is designed and constructed as a boat and which is directly connected to electrical, sanitary sewer, and/or potable water supply.

**House of Worship.** A permanently located building primarily used for religious worship. This definition shall also include accessory buildings for related religious activities and residences as allowed by state law.

**Hydrographic Characteristics (Estuary).** The description of the oceans, estuaries, rivers, and lakes. specifically, the measurement of flow and investigation of the behavior of bodies of water and the surveying, sounding, and charting of bodies of water including the determination of bottom contours and the position of channels and shoals.

**Impervious Area.** An area with minimal infiltration of surface water into the underlying soil and shall include pavement, such as concrete, asphalt, gravel, roadways, structures, and roofs or other similar surfaces that limit water penetration.

**Impoundment (Estuary).** A body of water formed by impounding (the collection of water in a reservoir).

**Integrity (Estuary).** The quality or state of being complete and functionally unimpaired; the wholeness or entirety of a body or system including its parts, materials, and processes. The integrity of an ecosystem emphasizes the interrelatedness of all parts and the unity of its whole.

**Interested Person.** A person who has legal standing in a land use decision who may appeal a decision by virtue of their participation in the public hearing process for that decision.

**Intersection.** An at-grade connection of a public or private approach road to the highway.

**Intertidal (Estuary).** Between the tides, here considered to be that area between the mean lower low water (MLLW) and mean higher high water (MHHW).

**Jackson Turbidity Unity (JTU) (Estuary).** The standard unit used in measuring the turbidity of a water sample; designed in terms of the depth of water to which a candle flame can be clearly distinguished. The **Jackson candle turbidity meter** is the standard measuring instrument which compares the amount of light penetrating a given water sample with that penetrating a standard sample.

**Jetty (Estuary).** A large navigational structure made of rock or concrete that is generally used to stabilize channels and improve scour at the mouth of an estuary.

**Junk Yards.** The use of property for the storage of salvage materials, including scrap metals or other scrap materials, or for the dismantling or "wrecking" of automobiles or other vehicles or machinery, whether such uses are conducted as a business for profit or otherwise.

**Kennel.** Any premises where four or more dogs, cats, or other small animals or any combination thereof, are kept commercially or permitted to remain for compensation, propagation, training, or sale, except not including a veterinary clinic or hospital. These restrictions apply only to accommodating or housing pets on a commercial basis and not to the keeping of animals as household pets.

**Landscaping.** Features include planting, groundcover, shrubs and trees, paving materials, and site retentionment.

**Land Division.** Any partition or subdivision of a lot or parcel.

**Land Use.** The activity or activities that occur on a piece of land. Activities may be individually identified as primary or accessory uses.

**Land Use Decision.** A final decision or determination made by the City of Nehalem that concerns the adoption, amendment, or application of the Statewide Planning Goals, the Comprehensive Plan, or any land use regulation (i.e., this Code) where the decision requires the interpretation or exercise of policy or legal judgment. Decisions requiring Quasi-Judicial review by the City are considered Land Use Decisions. Decisions subject to Administrative review are considered Limited Land Use Decisions, pursuant to ORS 197.015.

**Land Conservation and Development Commission (LCDC).** The state Commission which oversees the Department of Land Conservation and Development.

**Legislative Process.** A process that leads to the adoption of rules or policies that have broad implications for a large geographic area or for the community.

**Light Industry.** A business having noise, dust, odor, light, traffic, and hazard impacts that are similar to those experienced in general business areas.

**Line, Property.** A line, or a description thereof, that is recorded in the office of the county clerk, and which serves to distinguish a lot or parcel from surrounding properties.

**Line, Street.** A property line between a lot, tract, or parcel of land and an adjacent street or private way.

**Line of Non-aquatic Vegetation (Estuary).** The water-ward limit of shoreland areas, or where such a line cannot be determined, mean higher high water.

**Littoral (Estuary).** Of or pertaining to the shore, especially of the sea. coastal.

**Littoral Drift (Estuary).** The movement of sand by littoral (long-shore) currents in a direction parallel to the beach along the shore.

**Loading Space.** An off-street space or berth on the same lot with a building, or contiguous to a group of buildings, used for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and which abuts upon a street, alley, or other appropriate means of access.

**Long-shore Current (Estuary).** A current, created by waves, which moves parallel to and against the shore, particularly in shallow water and which is most noticeable in the surf or breaker zone. littoral current.

**Lot.** A unit of land created by a subdivision as defined in ORS 92.010 in compliance with all applicable zoning and subdivision codes; or created by deed or land sales contract if there were no applicable zoning, subdivision, or partitioning codes, exclusive of units of land created solely to establish a separate tax account. Such lots may consist of a single lot of record; a portion of a lot of record; or a combination thereof. Lots created judicially may be considered legal lots only if established as part of a formal judicial decree or settlement.

**Lot Area.** The total horizontal area within the lot line of a lot exclusive of streets and easements of access to other property.

**Lot, Corner.** A lot abutting upon two or more streets at their intersection, or upon two parts of the same street, such streets or parts of the same street forming an interior angle of less than 135 degrees within the lot lines.

**Lot Coverage.** The portion of a lot or parcel of land which is covered with buildings, parking and maneuvering area, patios, decks, covered or paved storage areas or another impervious surface.

**Lot, Depth.** The average horizontal distance between the front lot line and the rear lot line.

**Lot, Flag.** A lot created which is behind a lot fronting on a street and which is connected to that street by a driveway located on a narrow strip of land. The strip of land may be a portion of the lot behind the street-fronting lot, or an access easement over the street-fronting lot.

**Lot, Interior.** A non-corner lot.

**Lot Line.** The property line of a lot.

**Lot Line, Front.** The line separating a lot from a street or private way, other than an alley. on a corner lot, the front is the shortest property line along a street or private way other than an alley. In the case of a through lot or a corner lot with equal lines abutting streets, the **front lot line** is the side from which primary vehicular access is attained.

**Lot Line, Rear.** The lot line which is opposite and most distant from the front lot line. in the case of an irregular, triangular or other shaped lot, a line ten feet in length within the lot parallel to and at a maximum distance from the front lot line.

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

**Lot Line, Street Side.** Any lot line along a street or private way (not an alley), other than the front lot line.

**Lot, Size.** The total area of a lot or parcel measured in a horizontal plane within the property lines, exclusive of public and private roads.

**Lot, Through.** An interior lot abutting two streets.

**Lot of Record.** A legally created lot held in separate ownership as shown on the records of the County prior to the time of the passage of an ordinance or regulation establishing a new zoning district, or new standards within an existing district, within which it is located regardless of lot's compliance with standards of the new regulation.

**Lot Width.** The average horizontal distance between the side lot lines, ordinarily measured parallel to the front lot line.

**Low Intensity (Estuary).** Refers to a use or activity that does not require developed facilities and which can be accommodated without significant adverse impact to the area or resource.

**Low Intensity Recreation (Estuary).** Recreation that does not require developed facilities and can be accommodated without change to the area or resource. examples include boating, hunting, hiking, wildlife photography, beachcombing, and picnicking.

**Low Water Bridge (Estuary).** A temporary bridge, generally constructed of logs and planking, which is placed over minor streams and sloughs in early summer when water flow is very low or intermittent. the bridges are removed when fall freshets occur. **Low water bridges** involve less than 50 cubic yards of fill and are generally constructed of logs and planking.

**Lowest Floor (Flood).** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's **lowest floor**; provided that, such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter found in Section 157.210 of this chapter.

**Main Channel (Estuary).** The part of the waterway that extends upstream from the entrance channel into the estuary proper and which may be maintained by dredging. The **main channel** does not include auxiliary channels or waterways.

**Maintain.** To cause or allow to continue in existence. When the context indicates, the word shall mean to preserve and care for a structure, improvement, condition, or area to such an extent that it remains attractive, safe, and presentable and carries out the purpose for which it was installed, constructed, or required.

**Maintenance (Estuary).** The work of keeping an existing structure or facility in good working order or in conformance with current building or engineering codes. **Maintenance work** is confined to the same geographic area as the existing structure or facility and does not result in an increase in floor area or surface area. replacement of bridge crossing support structures and bridge approach ramps may be considered a form of **maintenance**, if the resulting bridge support structure or ramp is the minimum size necessary to accommodate the same number of traffic lanes as exist on that portion of the highway.

**Manufactured Dwelling.**

- (1) A residential trailer, a structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed before 1-1-1962.

- (2) A mobile house, a structure constructed for movement on the public highways, that is intended for human occupancy, is being used for residential purposes and was constructed between 1-1-1962 and 6-16-1976; and meets the construction requirements of the state mobile home law in effect at the time of construction; and
- (3) A manufactured home, a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy; is being used for residential purposes and was constructed in accordance with federal manufactured housing construction and safety standards regulations in effect at the time of construction.

**Manufactured Dwelling Park.** Any place where two or more manufactured homes are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership; the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing trade or patronage of such person.

**Manufactured Home (Flood).** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities.

- (1) For floodplain management purposes, the term **manufactured home** also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days.
- (2) For insurance purposes, the term **manufactured home** does not include park trailers, travel trailers and other similar vehicles.

**Manufactured Home Accessory Building or Structure.** Any awning, portable, demountable or permanent cabana, ramada, carport, porch, skirting or steps established for use of the occupant of the manufactured home, and which are designed or intended to be attached to and which depend, in whole or in part, upon the manufactured home for structural support.

**Manufactured Home Subdivision.** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Marijuana Cultivation.** A location where marijuana is produced or cultivated for use by a medical marijuana qualifying patient including within a building, structure or premises used for the cultivation or storage of medical marijuana that is physically separate and off site from a medical marijuana dispensary.

**Marijuana Infusion.** A facility or business that incorporates medical marijuana (cannabis) by means of cooking, blending, or incorporation into consumable and/or edible goods.

**Marijuana, Medical.** All parts of the genus cannabis, whether growing or not, and the seed of such plants that may be administered to treat or alleviate a qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

**Marijuana, Medical Marijuana Facility.** A facility registered with the Oregon Health Authority under ORS [475.314](#) and ORS [333-008-1050](#) to:

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

**Marijuana, Medical Marijuana Qualifying Patient.** A registry identification cardholder (person who has been diagnosed by a physician as having a debilitating medical condition) as further defined by ORS 475.302(3) or the designated primary caregiver of the cardholder as defined by ORS 475.302(5).

**Marijuana, Recreational Marijuana Retailer.** A retail establishment licensed by the Oregon Liquor Control Commission to sell marijuana and allow consumption of marijuana within its premises.

**Marinas (Estuary).** Publicly owned or privately owned commercial facilities which provide berthing, launching, storage, supplies and a variety of services of recreational, commercial fishing and charter fishing marine craft. **Marinas** are differentiated from moorages by their larger scale, the provision of significant accessory landslide services and/or the use of solid breakwater (rock, bulkheading and the like).

**Mean Higher High Water (MHHW) (Estuary).** A determined average elevation of a set of tide planes defined in Oregon 26, US Department of Commerce Environment Science Services Administration Coast and Geodetic Survey tidal benchmark for the lower Nehalem River.

**Mean Lower Low Water (MLLW) (Estuary).** The average height of the lower tides observed over a specific time interval.

**Minimum Safety Standards.** Those standards prescribed by the uniform building ordinance, uniform fire ordinance, state of Oregon, locally adopted ordinances or any other regulation or rule adopted and/or recognized by the city that pertains to the safety of persons and/or property.

**Mini-Storage Warehouse.** An area or areas located within an enclosed building or structure used only in connection with residential land use for the storage of nonflammable or non-explosive materials.

**Minor Navigational Improvement (Estuary).** A navigational improvement of such limited size or scale that it can be accomplished without significant adverse impacts to an area or its resources. examples are the installation of navigational aids or floating breakwaters, snag removal and dredging of less than 50 cubic yards for which state and federal permits are not required. Other dredging or fill actions which require state or federal permits may be included within this category upon a determination by the Department

of State Lands or the US Army Corps of Engineers that the action is consistent with the resource capabilities and purposes of a given area.

**Mitigation Sites (Estuary).** An area identified in the mitigation/restoration plan element of the county comprehensive plan as a potential site for estuarine creation, restoration or enhancement, subject to applicable state and federal standards.

**Mixed-use Development.** Development that contains both residential and commercial or public/institutional uses all within the same structure. **Mixed-use development** may be “vertical” (residential above the ground floor) or “horizontal” (residential on the ground floor).

**Mobile Home.** A vehicle or structure constructed for movement on the public highways, that has sleeping, cooking, and plumbing facilities, is intended for residential occupancy, and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of the Oregon Mobile Home law in effect at the time of construction. For City zoning standards, the term does not include travel trailers and other similar recreational vehicles, nor does it include Accessory Dwelling Units as defined by the Oregon Building Codes Division.

**Mobile Home Space.** A plot of land within a manufactured or mobile home park designed for the placement of one mobile home.

**Modular Home.** A structure for residential use that has sleeping, cooking, and plumbing facilities, and is constructed off-site in compliance with the Uniform Building Code (Oregon State Structural Code) and designed to be transported to a site for installation and/or assembly of modular components to form a permanent structure.

**Moorage (Estuary).** A publicly owned or privately-owned pier, piling or secured float or floats or marine craft tie-up which is operated as a commercial use or in association with a commercial use or a light industrial facility. **Moorages** contain less than 25 berths and have minimal shore-side services and no solid breakwater. (see also **Dock** and **Marina**.)

**Mooring Buoy (Estuary).** A device of buoyant material which is attached by guideline to the shoreland, or anchored to the bed of an estuary, river, stream, or coastal lake and is used for marine craft tie-up in association with one or more private residences. floating docks are not included within this category.

**Natural Estuaries (Estuary).** Estuaries lacking maintained jetties or channels, and which are usually little developed for residential, commercial or industrial uses. They may have altered shorelines; provided that, these altered shorelines are not adjacent to an urban area. Shorelands around **natural estuaries** are generally for agricultural, forest, recreation, and other rural uses (Sand Lake).

**Navigation Aid (Estuary).** A beacon, buoy, or channel marker.

**Navigational Improvement (Estuary).** Any structure or action that serves to increase the ability of a navigable waterway to provide passage to marine craft. Examples are the



installation of navigational structures or aids, or activities such as dredging. (see also **Minor Navigational Improvement**.)

**Navigational Structures (Estuary).** Structures such as pile dikes, groins, jetties, dolphins, or breakwaters that are installed to help maintain navigation channels or protect marinas and harbors by controlling water flow, wave action or sand improvement.

**Nearby Uses.** Activities or uses within one quarter mile of a development which can be reasonably expected to be used by pedestrians and within one mile of a development which can reasonably expected to be used by bicyclists.

**Neighborhood Activity Centers.** Schools, parks, and other similar sites.

**New Construction.** Structures for which construction was initiated on or after the effective date of this Code.

**New Construction (Flood).** Structures for which the start of construction commenced on or after the effective date of this Ordinance.

**Non-Conforming Site Conditions.** A legally established site that does not conform to the landscaping, parking, or other site development standards of the zone in which it is located.

**Non-Conforming Structure.** A legally established building or other structure that does not conform with the height, setback, lot area, lot coverage, or other standards for structures within the zone it is located.

**Non-Conforming Use.** A use of land or a building or structure which lawfully existed at the time of the adoption of this Code, or any amendment thereto, but which does not conform to the regulations imposed by this code or such amendments thereto.

**Non-point Source (Estuary).** A source of pollution that does not come from a point source. The four major types of **non-point source** pollution in the estuary area are: agricultural, urban, forestry and stream bank runoff.

**Nursing Home.** Any home, place, or institution which operates and maintains facilities providing convalescent or nursing care, or both, for period exceeding 24 hours for two or more ill or infirm patients not related to the nursing home manager, or owner, by blood or marriage. Convalescent care may include, but is not limited to, the procedures commonly employed in nursing and caring for the sick and includes rest homes and convalescent homes but does not include a boarding home for the aged, a retirement home, hotel, hospital, or a chiropractic facility licensed under the ORS.

**Occupancy.** The purpose for which a building, or part of a building, is used or intended to be used.

**Official Zoning Map.** The map established by adoption, and occasionally amended by the City Council on which plan locations, particularly of streets, are indicated with detail and exactness so as to furnish the basis for property acquisition, building restrictions, building permits, zoning, or other uses or activities, the original of which shall be kept on file in the office of the City Manager.

**Open Space.** Land that is not covered by buildings, paving, or other hard surfaces, unless such hard surfaces are part of an approved landscape plan, and such land is intended to remain open for visual and/or active or passive recreational use.

**Ordinary High-water Line (OHWL) (Estuary).** A line delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, such as: a clear, natural line impressed on the bank; shelving; changes in character of the soil; change from predominately aquatic to predominately terrestrial vegetation; or the presence of organic litter or debris.

**Off-premises Sign (Sign).** A sign which advertises a business or activity other than that which is conducted or takes place on the premises or property upon which the sign is located.

**Owner.** The owner of the title to real property, or the contract purchaser of real property of record, as shown on the last available complete tax assessment roll. **Owner** shall also mean any agent with written authority of the owner.

**Parcel.** A single unit of land that is created by a partitioning of land.

**Parking Area, Private.** An open area, building, or structure, other than a street or alley, used for the parking of the automobiles of residents and guests of a building.

**Parking Area, Public.** An open area, building, or structure, other than a private parking area, street, or alley, used for the parking of automobiles and other motor vehicles, including trucks less than 12,000 pounds gross vehicle weight and available for use by persons patronizing a particular building, establishment, or area.

**Parking Space.** A durable, dustless, concrete, or asphalt paved and marked surface area, but excluding paved area necessary for access and maneuvering into and out of the space. The following are not considered parking spaces for the purposes of OAR 660-12-045(5)(c): park and ride lots, handicapped parking, and parking for carpools and vanpools.

**Partition.** To divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year. "Partition" does not include:

- (1) Divisions of land resulting from lien foreclosures, divisions of land resulting from contracts for the sale of real property, and divisions of land resulting from the creation of cemetery lots; or
- (2) Any adjustment of a lot line by the relocation of a common boundary where an additional parcel is not created and where the existing parcel reduced in size by

- the adjustment is not reduced below the minimum lot size established by any applicable zoning regulation; or
- (3) A sale or grant by a person to a public agency or public body for state highway, county road, or other right-of-way purposes provided that such road or right-of-way complies with the applicable comprehensive plan and ORS 215.213 (2)(q) to (s) and 215.283 (2)(p) to (r).

**Partition, Serial.** A series of partitions of land resulting in the creation of four or more parcels over a period of more than one calendar year.

**Passive Restoration (Estuary).** The use of natural processes, sequences and timing that occurs after removal or reduction of adverse stresses without other specific positive remedial action.

**Pathway.** A pedestrian facility that is entirely separate from the roadway and generally serves as an on-site pedestrian system within a development or park.

**Pedestrian Connection.** A continuous, unobstructed, reasonably direct route intended and suitable for pedestrian use between two points. Pedestrian connections include but are not limited to sidewalks, walkways, accessways, stairways, and pedestrian bridges.

**Pedestrian Way.** A right-of-way for pedestrian traffic.

**Permittee.** The person who is proposing to use or develop property for which use, or development, requires a permit or the person who is using the property or development subject to a permit issued for the property.

**Performance Standards (Estuary).** A specific measure for control of human use or activity.

**Person.** Every natural person, firm, partnership, association, social or fraternal organization, corporation, trust, estate, receiver, syndicate, branch of government or any group or combination acting as a unit.

**Pesticide (Estuary).** Any chemical that is used to control pests.

**Pets.** Dogs or cats, excluding large or exotic varieties normally located in the wild or displayed by zoological societies; birds, excluding poultry; turtles, fish, lizards, non-poisonous reptiles and snakes, and rodents when contained and housed within a residence and not present in sufficient numbers as to constitute a nuisance to neighbors or to constitute a business.

**Pier (Estuary).** A structure extending out into the water generally supported with piling and generally used to afford convenient passage for persons and goods to and from vessels alongside the pier. sometimes synonymous with **wharf**.

**Pile Dike (Estuary).** A flow control structure that is used primarily in riverine systems and is made of closely spaced piling connected by timbers; usually it is perpendicular to the shore. **Pile dikes** are constructed to increase scour in the navigation channel and/or

control shoreline erosion by interrupting sand transport and encouraging sedimentation in the sheltered lee of the pile dike. **Pile dikes** are generally constructed in groups and may require fill between individual pilings.

**Piling (Estuary).** A long, slender column of wood, steel or reinforced concrete driven, jettied, or otherwise embedded on and into the ground or into the bed of rivers or estuaries for the purpose of supporting piers and docks, floating structures, vessels, log rafts or other structures or loads.

**Plan Map.** An officially adopted map of the City, including urban growth boundary, showing land use designations and other graphic information which is part of the City's Comprehensive Plan.

**Planned Road or Street.** A highway, road, street, or alley identified in an adopted corridor plan, comprehensive plan, or transportation system plan in accordance with administrative procedures of OAR 660-012 and ORS Chapter 197, but that has not been constructed.

**Planter Strip.** A landscape area for street trees and other plantings within the public right-of-way, usually a continuous planter area between the street and a sidewalk.

**Planned Unit Development.** A type of development of a site which, as a single project, is based on a design which incorporates all elements of land, structures, and uses in conformance with the applicable standards of this Code.

**Planning Commission.** The Planning Commission of the City of Nehalem, Oregon as established in the Nehalem Municipal Code and appointed by the City Council.

**Plat.** A map, diagram, drawing, re-plat, or other writing containing all the descriptions, locations, specifications, dedications, provisions, and information concerning a subdivision, condominium division, or land partition.

- (1) **A tentative plat** is one that is prepared for review and considered by the City for compliance with development regulation standards.
- (2) **A final plat** is one that is prepared for recordation with the County after the City has approved the tentative plat. A final plat must substantially conform to the specifications as approved for the tentative plat.

**Point Source (Estuary).** Point source pollutants are those collected and discharged from discernible, confined, and discrete conveyances such as pipes and discharge canals.

**Practicable (Estuary).** Capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors such as environment, cost, or technology.

**Primary Use.** The principal purpose for which property is used or occupied.

**Priority Dredged Material Disposal (DMD) Sites (Estuary).** Sites that may not be developed or used in a manner that would preclude their ultimate use as **DMD sites**. An amendment

to the County Comprehensive Plan and Zoning Maps must be taken to remove a **DMD site** from this category.

**Priority Mitigation Sites (Estuary).** Sites that may not be developed or used in a manner that would preclude their ultimate use as mitigation sites. An amendment to the County Comprehensive Plan and Zoning Maps must be made to remove a **mitigation site** from this category.

**Private Way.** A thoroughfare reserved for use by an identifiable set of people.

**Professional-Type Service.** Shall include activities of professional quality and requiring special training such as those offered by a physician, surgeon, dentist, lawyer, architect, engineer, planner, or accountant, of which may or may not require a license issued by the State of Oregon.

**Property (or Lot) Boundary.** The division line between two units of land.

**Property (or Lot) Boundary Adjustment.** The relocation of a common property line between two abutting properties.

**Protection.** Saving or shielding from loss, destruction, or injury or for future intended use.

**Public Facilities and Services.** Projects, activities, and facilities which are necessary for the public health, safety, and welfare.

**Public Need.** A community desire or preference that produces, when satisfied, a net effect that is a direct benefit to the public at large.

**Public Park or Recreation.** Recreation developments which provide for picnicking, swimming, fishing, riding, or other similar activities (excludes hunting), but which exclude overnight camper or recreational vehicle use and outdoor commercial amusements such as miniature golf courses and go-cart tracks.

**Quasi-Judicial Process.** A process that leads to a decision on a land use or development application involving a single property or small group of properties. The process involves application of existing laws and regulations, or imposition of specific new regulations limited to the properties included in the application.

**Recreation (Estuary).** Enjoyable active and passive leisure time activities.

**Recreational Facility (Estuary).** A structure that is built, installed, or established as an aid to recreation. Temporary or easily removable structures such as picnic tables are not considered as **recreational facilities**.

**Recreational Vehicle.**

- (1) A vehicle which is:
  - (a) built on a single chassis;

- (b) four hundred square feet or less when measured at the largest horizontal projection;
  - (c) designed to be self-propelled or permanently towable by a light duty truck; and
  - (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- (2) **Recreational vehicle** includes the following.
- (a) **Camper.** a structure containing a floor that is designed to be temporarily mounted upon a motor vehicle, and which is designed to provide facilities for temporary human habitation.
  - (b) **Motor home.** a motor vehicle with a permanently attached camper, or that is originally designed, reconstructed, or permanently altered to provide facilities for temporary human habitation.
  - (c) **Travel trailer.** a trailer that is capable of being used for temporary human habitation, is not more than eight feet wide, and except in the case of a tent trailer, has four permanent walls when it is in the usual travel position.
  - (d) **Self-contained recreational vehicle.** a vehicle that contains a factory-equipped, onboard system for the storage and disposal of gray water and sewage.

**Regulated Activity (Estuary).** The following actions involving alterations to estuary aquatic areas which are generally undertaken in conjunction with offshore uses, and for which state and federal permits are required: fill; dredging, dredged material disposal; in-water log storage; and out-fall installation.

**Repair (Estuary).** To restore an existing structure or facility to sound condition after damage or injury.

**Repair Work** is confined to the same geographic area as the existing structure or facility and does not result in an increase in floor area or surface area.

**Residential Accessory Dwelling.** A secondary dwelling unit, with or without kitchen and bathroom facilities, on the same lot as a single-family dwelling and being of substantially the same exterior design as the single-family unit, whether attached or detached. This definition includes guesthouse.

**Residential Home.** a home licensed by or under the authority of the Department of Human Resources under ORS 443.400 to 443.825 which provides residential care alone or in conjunction with training or treatment or a combination thereof for five or fewer individuals who need not be related. staff persons required to meet Department of Human Resources licensing requirements shall not be counted in the number of home residents, and need not be related to each other or to any resident of the **residential home**.

**Residential Facility.** A facility licensed by or under the authority of the Department of Human Resources under ORS 443.400 to 443.460 which provides residential care alone or in conjunction with training or treatment or a combination thereof for six to 15 who need not be related. staff persons required to meet Department of Human Resources licensing

requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the **residential facility**.

**Resource Capability (Estuary).** the measure of an area, or the biological communities within an area to withstand alteration. A use or activity considered to be consistent with the **resource capabilities** of an area if the level of use proposed can be accommodated without producing significant adverse impacts to biological productivity or to the quality of air, land, and water resources within the area.

**Restoration (Estuary).** Replacing or restoring original attributes or amenities such as natural biological productivity and aesthetic or cultural resources that have been diminished or lost by past alterations, activities, or catastrophic events.

**Retaining Wall.** A structure that holds back any material (usually earth) and prevents it from sliding or eroding away.

**Revetment (Estuary).** A structure with armors. the slope face of a dune or bluff with one or more layers of rock (riprap) or concrete.

**Riparian (Estuary).** Of, pertaining to, or living on the narrow zone adjacent to a river, estuary, lake or other watercourse.

**Riprap (Estuary).** A facing layer of material (usually stone) placed on an embankment to prevent erosion, scour or sloughing.

**Roadway.** The portion of a right-of-way that is improved for motor vehicle and bicycle travel, subject to applicable state motor vehicle licensing requirements. Roadway includes vehicle travel lanes and on-street parking areas. Roadway does not include area devoted to curbs, parking strips, or sidewalks.

**Roadway Authority.** The City or other agency with jurisdiction over a road or street.

**Rural Shoreland (Estuary).** Shoreland areas that are outside of the urban growth boundary off an incorporated or unincorporated community.

**Salt Marsh (Estuary).** A tidal wetland which has poorly drained soil; poorly aerated soil; varying concentrations of salt; and whose dominant plants are salt-tolerant aquatic or semi-aquatic emergent species such as sedges, rushes, and some grasses. **Salt marshes** typically develop on mud or sand flats that have attained an elevation near main sea level and often occur behind sand spits at river mouths and along shallow bays.

**Sanitary Landfill (Estuary).** A system for final disposal of solid waste on land, in which the waste is spread and compacted on an inclined, minimized working face in a series of cells and a daily cover of earth is provided so that no hazard or insult to the environment results.

**School, Elementary, Junior High, or High School.** A public, private, or parochial institution offering instruction in the several branches of learning and study in accordance with the rules and regulations of the State Department of Education.

**School, Trade, or Commercial.** A building where the instruction is given to pupils for a fee in money or otherwise which fee is the principal reason for the existence of the school.

**Seawall (Estuary).** A solid barricade built at the water's edge to protect the shore and to prevent inland flooding.

**Sedimentation (Estuary).** The settling or deposition of sediments (e.g., eroded soils) that are suspended within or being transported by water.

**Semi-Public Use.** A structure or use intended or used for a semi-public purpose by a church, lodge, club, or any other non-profit organization.

**Senior Housing.** Housing specifically designed for, and occupied by, individuals 55 years of age and older. Housing arrangements may include independent living (apartments), assisted living including nursing, rehabilitation care, and continuing care facilities and communities.

**Service Station.** A lot used primarily for the retail sales of motor vehicle fuels and lubricants for delivery on premises, and minor automobile repair and service.

**Setback.** A linear distance perpendicular to a lot line that describes the depth of a lot or parcel that shall not be occupied by a structure, unless specifically provided for in this chapter.

**Setback (Estuary).** A distance measured in feet from a property line, zone boundary, ordinary high-water line, mean higher high-water line or other boundary within which development is not permitted.

**Shallow-draft Development Estuary (Estuary).** An estuary with maintained jetties and a main channel maintained by dredging at 22-feet or less (Tillamook Bay, Nehalem Bay).

**Shared Driveway.** A driveway used to access two or more parcels.

**Shared Parking.** Required parking facilities for two or more uses, structures, or lots or parcels, which are satisfied jointly with the same facilities.

**Shoal (Estuary).** A build-up of waterborne or airborne sand, sediment or other material within an estuary, stream or river channel that causes a reduction in water channel depth.

**Shopping Center.** Three or more retail or service establishments on a single unit of land.

**Shoreland (Estuary).** Land shown on the county zoning maps that is contiguous with the ocean, to estuaries, and to coastal lakes.



**Shoreline Stabilization (Estuary).** The protection of the banks of tidal or non-tidal streams or rivers, estuarine waters, or coastal lakes from flooding or erosion by vegetative means; or by structural means such as riprap, groins, bulkheads, or dikes.

**Short-term Rentals.** A building or group of buildings, residential in nature, containing less than six dwelling units that are intended and/or designed to be used; or which are used, rented or hired out for transient lodging purposes.

**Sidewalk.** A publicly or privately paved pedestrian walkway within or adjacent to a street right-of-way or private street.

**Sign (Sign).** Any object, structure, symbol, display, banner, streamer, or other like thing, with or without lettering, which is intended to or does identify or attract attention to any privately owned property or premises, is intended to or does inform the public of sales, retails, leases or other activities or facts or is intended to or does express a belief or opinion.

**Sign, A-frame (Sign).** A sign not supported by a structure in the ground nor attached to or erected against a structure; capable of being moved.

**Sign, Advertising (Sign).** A sign which directs attention to a business, product, activity, or service which is not necessarily conducted, sold or offered upon the premises where the sign is located.

**Sign, Incidental (Sign).** Signs displayed strictly for the direction and safety of the public, such as to identify restrooms, public telephones, parking areas, entrances or exits.

**Sign, Informational (Sign).** Signs whose purpose is to give pertinent information concerning services afforded by the business, such as menus, business hours, sales, OLCC regulations, credit cards accepted and the like.

**Sign, Principal (Sign).** A sign identifying the principal name or use of a business or property.

**Site Development.** Any human-caused change to improved or unimproved property, including, but not limited to, land surface mining, grading, filling, excavating, tree cutting, clearing, construction, installation, or alteration of a building or other structure, paving, landscaping, establishment, or termination of an access or outdoor storage on the land.

**Site Plan or Development Plan.** A drawing or graphic depiction or plan, prepared to scale, showing accurately and with complete scaled dimensioning, all existing and proposed uses, buildings, paving, and landscaping proposed for a specific parcel of land.

**Slope (Estuary).** The inclined surface of a hill, mountain, dune, or any part of the surface of the earth. the angle at which such surfaces deviate from the horizontal.

**Solid Waste (Estuary).** All putrescible and non-putrescible wastes including, but not limited to, garbage; rubbish; refuse; ashes; waste paper; cardboard; sewage sludge; septic tank and cesspool pumping; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded appliances, manure, vegetable or animal solid or semisolid wastes; but not including environmentally hazardous wastes; materials used for fertilizer or for other productive purposes; or fill material.

**Stake (Estuary).** A piece of wood, pipe or other material driven into land or into the bed of an estuary, river, stream or coastal lake as a marker or support. **Stakes** differ from piling in that their installation does not require pile drivers or other heavy equipment.

**Standards.** Rules governing the size, dimensions, shape or orientation of a lot or parcel, or the placement of buildings or activities thereon.

**Start of Construction (Flood).** Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The **actual start** means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include the excavation for a basement, footing piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the **actual start of construction** means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Story.** The portion of a building between the finished surface of any floor and the next floor above, that is at least six feet above grade; the top story shall be the topmost living space.

**Stream.** A water body with a distinct channel and flow.

**Street or Road.** A public thoroughfare or right-of-way dedicated, deeded, or condemned for use as such which affords the principal means of access to abutting property including avenue, place, way, drive, lane, boulevard, highway, or road.

- (1) **Alley.** A narrow street through a block used primarily for access by service vehicles to the back or side of properties fronting on another street.
- (2) **Arterial.** A street used primarily for through traffic external to the City. Arterials are interested by collector streets and typically have limited direct access to abutting properties.
- (3) **Collector.** A street used to some extent for through traffic and for local circulation and access to abutting properties.

- (4) **Cul-de-sac (dead-end).** A short street with one end open to traffic and the other terminated by a vehicle turn-around.
- (5) **Frontage.** A minor street parallel to and adjacent to an arterial or major collector street intended to provide access to abutting properties and providing protection from through traffic.
- (6) **Half-Street.** A portion of the standard full width of a street, usually along the edge of a development where the remaining portion of the street could be provided in another development. A half-street improvement could include up to one half the total design width, plus sufficient additional width past the centerline to ensure proper design and construction of the centerline crown, as defined by the City Engineer.
- (7) **Limited Access Street.** A means of access to property that is limited by law for public roads or by posting by an owner for private roads.
- (8) **Local.** A street used exclusively for access to abutting properties.
- (9) **Stub Street.** A temporary street ending where the street will be extended through adjacent property in the future, as those properties develop. Not a permanent street-end or dead-end street.
- (10) **Through Street.** A street that connects to other streets at both ends or is planned to do so in the future, pursuant to a comprehensive plan, transportation system plan, access management plan, or land use approval.

**Structural Alteration.** Any change to the supporting members of a structure including foundations, bearing walls or partitions, columns, beams, girders, or any structural change in the roof or in the exterior walls.

**Structure.** Anything constructed or installed or portable, the use of which requires a location on a parcel of land.

**Structure (Flood).** For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

**Subdivide Land.** To divide land into four or more lots within a calendar year, or to affect a subdivision of land, as defined below.

**Subdivision.** Either an act of subdividing land, or an area or tract subdivided as defined in this Code. A subdivision means the division of land into more than three lots within a calendar year.

**Substantial Development.** Receipt of a valid public works permit or building permit for construction activities, other than a grading permit, is deemed to constitute "substantial development."

**Substantial Damage (Flood).** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

**Substantial Improvement (Flood).** Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage” regardless of the actual repair work performed. The term does not, however, include either: (1) any project for improvement of a structure to correct existing violations or state or local health, sanitary, or safety ordinance specifications which have been identified by the local ordinance enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a “historic structure”; provided, that the alteration will not preclude the structure's continued designation as a “historic structure.”

**Substantial Improvement (Flood).** Any repair, reconstruction, or improvement of a structure; the cost of which equals or exceeds 50% of the market value of the structure either:

- (1) Before the improvement or repair is started; or
- (2) If the structure has been damaged and is being restored before the damage occurred. For the purposes of this definition, **substantial improvement** is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences; whether or not that alteration affects the external dimensions of the structure.

**Support Structure (Estuary).** A structure designed to hold up or serve as a foundation for something. examples are pilings, piers, trestles or culverts in association with bridge crossings for roads and railroads, or poles in association with power or telephone lines.

**Tidal Prism (Estuary).** The total amount of seawater that flows into a bay or estuary and out again with the movement of the tide.

**Tidal Wetlands (Estuary).** all areas between mean high water (MHW) and the line of non-aquatic vegetation. This includes both saltwater wetlands (salt marshes) and freshwater wetlands (bogs, fresh marshes and swamps) with unrestricted tidal influence.

**Tide Gate (Estuary).** A water-control structure placed across a channel to stop the flow of water at high tides. **Tide gates** allow drainage of diked areas while preventing their inundation by the tides.

**Topography (Estuary).** The configuration of a surface including its relief and the position of its natural and human-made features.

**Townhouse.** A single-family dwelling unit constructed in a row of attached units separated by property lines and with open space on at least two sides. Also defined as single-family attached dwelling.

**Transient Lodging.** A room or suite of rooms which is occupied not as a principal residence:

- (1) by persons for periods of less than 30 consecutive days; or

- (2) with which the services normally offered by hotels is provided, including, but not limited to, maid and linen service, a front desk and similar services, regardless of the length of occupancy of a person.

**Transportation Facilities.** A physical facility used to move people and goods from one place to another (i.e., streets, sidewalks, pathways, bike lanes, transit stations, bus stops, rail, airports, helipads, etcetera.)

**Transportation Improvements.** Facility improvements include, but are not limited to:

- (1) Normal operation, maintenance, repair, and preservation activities associated with existing transportation facilities.
- (2) Installation of culverts, pathways, medians, fencing, guardrails, lighting, and similar types of improvements within the existing right-of-way.
- (3) Projects specifically identified in the City's adopted Transportation System Plan.
- (4) Landscaping as part of a transportation facility.
- (5) Measures necessary for the safety and protection of property or the public.
- (6) Construction of a street or road as part of an approved subdivision or partition consistent with the City's adopted Transportation System Plan.
- (7) Construction of a street or road as part of an approved subdivision or land partition approved in accordance with the applicable land division ordinance.

**Tributary Stream (Estuary).** A stream feeding a larger stream or lake.

**Turbidity (Estuary).** Reduction in water clarity resulting from the presence of suspended matter (e.g., sediment, detritus, and plankton). **Turbidity** may decrease phytoplankton productivity, clog the gills of aquatic animals and smother sessile-benthic animals and eggs.

**Type 1 Restoration (Estuary).** Active or passive restoration for the purpose of improvement or return to a former or original condition; the natural biological productivity and functioning of an estuarine ecosystem. This may serve as mitigation for dredge or fill in intertidal areas.

**Type 2 Restoration (Estuary).** Active or passive restoration for the purpose of bringing back to a former or original condition the cultural, historic, economic or navigation features of an estuary.

**Urban or Urbanizable Land.**

- (1) **Urban Areas** are those places which must have an incorporated city. such areas may include lands adjacent to and outside the incorporated city and may also:
  - (a) have concentrations of persons who generally reside and work in the area; and
  - (b) have supporting public facilities and services.
- (2) **Urbanizable Lands** are those lands within the urban growth boundary, and which are identified and:
  - (a) are determined to be necessary and suitable for future urban uses;
  - (b) can be served by urban services and facilities; and
  - (c) are needed for the expansion of an urban area.

**Urban Growth Boundary (UGB).** A line established by the state and contained within a city's comprehensive plan, which distinguishes urbanizable land adjacent to an incorporated city from surrounding rural land.

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

**Utilities.** Any water, gas, sewer, storm drainage, electrical, telephone, or communication service, and all persons, companies, and agencies supplying the same.

**Utilities (Estuary).** Water, sewer, and gas lines; storm water and sewer outfalls; potable water treatment plants; sewage treatment plants; power lines and substations; electrical transmission lines and line support structures; antennas and microwave receivers. Industrial outfalls and industrial wastewater treatment plants are excluded from this category.

**Utility Facilities.** Structures, pipes, or transmission lines which provide the public with electricity, gas, heat, steam, communication, water, sewage collection or other similar services.

**Vacations.** A procedure to revert public lands, including a right-of-way, easements, and other public places, to adjoining private property ownerships.

**Variance.** A grant of relief from one or more of the standards contained within this chapter.

**Warehouse.** A place for the safekeeping of goods and materials necessary for the proper functioning of an industrial or commercial enterprise. Also, a facility designed and intended to be used for the rental of storage units to individuals for the safekeeping of personal items.

**Water-dependent (Estuary).** Uses and activities which can be carried out only on, in or adjacent to water because the water location or access is needed for one of the following:

- (1) water-borne transportation (navigation, moorage, fueling and servicing of ships or boats; terminal and transfer facilities resource and material receiving and shipping);
- (2) recreation (active or passive such as viewing and walking);
- (3) a source of water (energy production, cooling of industrial equipment or wastewater, other industrial processes, aquaculture operations); and
- (4) marine research or education (viewing, sampling, recording information, conducting experiments, teaching).

**Water Related (Estuary).** Uses and activities that do not require direct water access (are not water-dependent), but which:

- (1) Provide goods and/or services that are directly associated with other water-dependent uses (supplying materials to, or using products of, or water-dependent uses); and
- (2) If not located near the water, would experience a public loss of quality in the goods and services offered (evaluation of public loss of quality shall involve a subjective consideration of economic, social, and environmental consequences of the use).

**Watershed (Estuary).** The region draining into a river, river system or body of water.

**Wetland Areas.** Defined as those areas that are inundated or saturated often enough to support a prevalence of vegetation adapted for life in standing water or saturated soil. Wetlands include swamps, bogs, marshes, and similar areas.

**Wetlands-Jurisdictional.** A wetland subject to rules and regulations identified in Section 404 of the US Clean Water Act and Oregon's Fill and Removal statute.

**Wharf (Estuary).** A structure built beside a waterway (estuary, river, stream, or coastal lake) for the purpose of receiving and discharging cargo, passengers and the like. A **wharf** does not include new land created on submersible or submerged land by artificial fill or deposits.

**Yard.** Any open space on the same lot with a building or group of buildings, which is unoccupied and unobstructed by any structure from the ground upward to the sky, other than by landscaping or a permitted fence, and except for the projections as permitted in this Code.

- (1) **Front Yard.** An exterior yard facing a street. For corner lots, the property line facing the garage or carport.
- (2) **Rear Yard.** A yard opposite the Front Yard.
- (3) **Side Yard.** A yard that is not a Front Yard or Rear Yard.
- (4) **Street Facing Side Yard.** An exterior Side Yard facing a street that is not a Front Yard. For corner lots, usually the largest street facing dimension of the property.
- (5) **Exterior Yard.** A yard area abutting a street right-of-way created by a setback line.
- (6) **Interior Yard.** A yard area adjacent to a property line created by a setback line that may be either a Side Yard or Rear Yard abutting another property.

**Zero Setback.** A property line having no setback therefore permitting building locations on the property line and may equally divide a common wall between buildings on adjacent properties.

CHAPTER 157  
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## 157.201 CLASSIFICATION OF ZONES

### **157.201.01 Mapping of Zones**

- (A) Zoning Maps. The boundaries of zoning districts within the City Limits are shown upon the maps entitled "City of Nehalem Zoning Map." The boundaries of zoning districts within the Urban Growth Boundary, but outside the City Limits, are shown on the "Tillamook County Zoning Map."
- (B) City Zoning Map. The official "Zoning Map" shall be maintained on file in the office of the City Manager as long as this Ordinance remains in effect. Amendments thereto shall be endorsed on the map with the number of the ordinance by which the change was made. Failure to revise the map shall not affect the validity of any zone change.

### **157.201.02 Zones**

For the purposes of implementing of the Nehalem Comprehensive Plan, the following zoning zones are hereby established:

<b>Zone</b>	<b>Map Symbol</b>
Low Density Residential, Agricultural, Forestry and Recreational Zone	A1
Low Density Residential Zone	RL
Mixed Density Residential Zone	RM
Marine Residential Zone	MR
Commercial Zone	C
Light Industrial Zone	LI
Public Lands Zone	P
Flood Hazard Overlay Zone	FHO
Estuary Zones	See Article III

### **157.201.03 Location of Zone Boundaries**

- (A) Boundaries. The boundaries of zoning districts within the city limits are shown upon the maps entitled "City of Nehalem Zoning Map". The boundaries of zoning districts within the urban growth boundary, but outside the city limits, are shown on the "Tillamook County Zoning Map".
- (B) Boundary Resolution. The City Council shall resolve any dispute over the exact location of a zoning zone boundary. In interpreting the location of such boundaries on the Nehalem Zoning Map, the City Council shall rely on the following guidelines for the location of zoning zone boundaries; property lines; lot lines; center lines of streets, alleys, or streams; City boundaries; notations on the Nehalem Zoning Map; or other planning criteria determined appropriate by the City Council.

## 157.202 GENERAL PROVISIONS AND ORGANIZATION

### **157.202.01 Permitted Uses - All Zones**

The following uses and activities are permitted in all zones identified in Article II:

- (A) Placement and maintenance of underground or above ground wires, cables, pipes, guys, support structures, pump stations, drains, and detention basins within rights-of-ways by public agencies and utility companies for telephone, TV cable, or electrical power transmission, or transmission of natural gas, petroleum products, geothermal water, water, wastewater, sewage, and rainwater.
- (B) Surfaced travel lanes, curbs, gutters, drainage ditches, sidewalks, transit stops, landscaping, and related structures and facilities located within rights-of-ways controlled by a public agency.
- (C) Expansion of public right-of-way and widening or adding improvements within the right-of-way, provided the right-of-way is not expanded to more width than prescribed for the street in the Transportation System Plan segment of the Comprehensive Plan.

### **157.202.02 Uses - General**

- (A) Types of Uses. Within each zone, uses are classified as follows:
  - 1. Permitted – These uses are allowed outright and subject only to development standards, and in some cases, a building permit. For example, a single-family home is permitted in the RL zone. Dimensional requirements establish minimum building setbacks, maximum building height and overall lot coverage. Compliance with these standards is reviewed when a building permit is submitted.
  - 2. Special Permitted – These uses are also permitted. However, in addition to the development standards of the underlying zone there are added (i.e., special) requirements that apply. For example, siting a manufactured dwelling on a lot or parcel in the in the RL zone is permitted. However, the referenced Section identifies additional special requirements regarding type of structure, size, foundation and so forth.
  - 3. Conditional Use – These uses are considered generally compatible with other uses allowed in the underlying zone, but due to the potential for creating adverse impacts, the requested use must be reviewed and approved by the Planning Commission. The assumption is the use can be allowed, provided reasonable conditions can be established to minimize adverse impacts. Other Sections may also be referenced which establish specific development requirements. Some conditional uses may have additional special requirements that apply to their use.
- (B) Interpretation of Uses. Where a use is not defined in Chapter 157.101.02, the words of this Development Ordinance describing such use are to be given their ordinarily

accepted meaning, except where the context in which they are used otherwise clearly requires an alternative interpretation.

- (C) Prohibited Uses. A use not specifically identified as permitted, special permitted or conditionally permitted within a zone, or otherwise allowed through interpretation, shall be considered a prohibited use. This prohibition does not apply to uses and activities clearly incidental, accessory, customary, and common to the primary use of the property.

### **157.202.03 Organization of the Zoning Sections**

Except for the Flood Hazard Overlay zone, each individual zoning Section is organized as follows:

- (A) Purpose – Introduces the rationale for the zone.
- (B) Permitted Uses – Identified permitted uses are found in this section.
- (C) Special Permitted Uses – Identified special permitted uses are found in this section.
- (D) Conditional Uses - Identified conditionally permitted uses are found in this section.
- (E) Dimensional Standards – Standards related to development within the zone are found in this section, including lot dimension requirements, setbacks standards, maximum building height and so forth.
- (F) Development Standards – Additional standards that may apply to specific are referenced in this section. For example, requirements for parking, signs, development next to the shoreline and so forth.

### **157.202.04 Prohibited Uses**

The following uses are prohibited regardless of the underlying zone:

- (A) The use of private property for the burial of human remains, and, family burial grounds.
- (B) Commercial feed lots, dairies, and auction yards for livestock.
- (C) Rendering plants, slaughterhouses, and meat packing plants.

## 157.203 LOW-DENSITY RESIDENTIAL, AGRICULTURAL, FORESTRY AND RECREATION – A1 ZONE

### **157.203.01 Purpose**

The Low-Density Residential, Agricultural, Forestry and Recreation Zone, identified by the symbol "A1", is established to provide for residential development in areas with natural and recreational values.

### **157.203.02 Permitted Use**

In an A1 Zone, the following uses and their accessory uses are permitted outright:

- (A) Single-family dwellings.
- (B) Duplexes or two-family housing.
- (C) Residential home, rest home and nursing home, hospital, sanitarium.
- (D) Farm use, except for prohibited uses in Section 157.202.04.
- (E) Forestry.
- (F) Small and large animal clinics.
- (G) Roadside stand for farm produce grown on the premises.
- (H) Golf course, except driving range or miniature course.
- (I) Temporary real estate sales office in a legally recorded subdivision.
- (J) House of worship or community meeting hall.
- (K) Public or private school or college.
- (L) Utility substation.
- (M) Cemetery.
- (N) Governmental structure such as a fire station or library; but excluding a storage or repair type of facility.
- (O) Radio or television transmitter tower.

**157.203.03 Special Uses**

The following uses, when developed under the special development requirements, are permitted in the A1 zone:

- (A) Property line adjustments, subject to provisions in Section 157.502.
- (B) Partitions, subject to provisions in Section 157.404.
- (C) Subdivisions subject to provisions in Section 157.404.
- (D) Manufactured homes on individual lots, subject to provisions in Section 157.422.
- (E) Home occupations, subject to provisions in Section 157.426.
- (F) Residential accessory structures, subject to provisions in Section 157.425.
- (G) Accessory dwelling units subject to provisions in Section 157.421.
- (H) A recreation vehicle used during the construction of a permitted use for which a building permit has been issued, subject to provisions in Section 157.427.

**157.203.04 Conditional uses**

In the A1 Zone, the following conditional uses and their accessory uses are permitted subject to provisions in Section 157.507 of this Chapter:

- (A) Activities related to processing forest, agricultural and other products derived from permitted uses where proximity to such land use resources is required, and appropriate urban industrial areas are not nearby.
- (B) Resort-type residential use, commercial riding stable and overnight camper or recreation vehicle park facility; including incidental commercial and service activities such as eating accommodations, the sale of bait, tackle, groceries and the smoking and canning of fish.
- (C) Park and publicly owned recreation area.
- (D) Airport.
- (E) Recreation vehicle-park, subject to provisions in Section 157.424.
- (F) Sanitary disposal of garbage and other waste material.
- (G) Sewage treatment plant.

**157.203.05 Dimensional Standards**

Unless otherwise required by this Chapter, the following minimum dimensional standards shall be required for all development in the A1 zone:

- (A) The minimum lot size shall be 20,000 square feet.
- (B) The minimum lot width shall be 60 feet; except on a corner lot, it shall be 65 feet.
- (C) The minimum lot depth shall be 85 feet.
- (D) The minimum front yard shall be 20 feet.
- (E) The minimum side yard shall be five feet; except on the street side of a corner lot, it shall be 15 feet.
- (F) The minimum rear yard shall be 20 feet; except on a corner lot, it may be five feet.
- (G) The maximum building height:
  1. Agricultural buildings – 70-feet.
  2. The maximum height for all other structures shall be 35 feet.
  3. Higher structures may be permitted by as part of a Type III land use application and review.
- (H) Maximum Lot Coverage – 50%.
- (I) There are no restrictions on the location of livestock.

**157.203.06 Development Standards**

All development in the A1 Zone shall comply with the applicable provisions of this Chapter. The following references establish additional development requirements:

- (A) Off-street Parking. Parking, driveway and loading improvements shall comply with provisions in Section 157.403.
- (B) Signs. Signs in the A1 zone shall conform to the standards contained in Section 157.409.
- (C) Yards and Lots. Yards and lots shall conform to provisions contained in Section 157.443.
- (D) Fencing. Fences shall conform to provisions contained in Section 157.444.
- (E) Buffers Adjacent to the EFU Zone. Property adjacent to EFU zoned land shall be subject to provisions in Section 157.442.
- (F) Other. A property owner is advised other regulations may apply for property in the floodplain (Section 157.210) and geological hazard areas (Section 157.440). In addition, new uses and significant expansions may be subject to a Site Development Review (Section 157.508).

## 157.204 LOW DENSITY RESIDENTIAL – RL ZONE

### **157.204.01 Purpose**

The Low-Density Residential area, designated by the primary symbol “RL”, is established to provide for orderly residential development in areas with physical limitations or unique natural values.

### **157.204.02 Permitted Use**

In a RL Zone, the following uses and their accessory uses are permitted outright:

- (A) Single-family housing.
- (B) Duplexes or two-family housing.
- (C) Tri-plex (three-units) and four-plex (four units) housing (only with public sewer service).
- (D) Park and publicly owned recreation area.
- (E) Residential home and residential facilities.

### **157.204.03 Special Uses**

The following uses, when developed under the special development requirements, are permitted in the RL zone:

- (A) Property line adjustments, subject to provisions in Section 157.502.
- (B) Partitions, subject to provisions in Section 157.404.
- (C) Subdivisions, subject to provisions in Section 157.404.
- (D) Planned Developments, subject to provisions in Section 157.405.
- (E) Cottage cluster development, subject to provisions of Section 157.406.
- (F) Single family attached home, subject to provisions in Section 157.421.
- (G) Manufactured homes on individual lots, subject to provisions in Section 157.422.
- (H) Home occupations, subject to provisions in Section 157.426.
- (I) Residential accessory structures, subject to provisions in Section 157.425.
- (J) Short-term rentals; subject to the provisions of Ordinance 2023-02, Short Term Rental Operating License Regulations.
- (K) Accessory dwelling units subject to provisions in Section 157.421.



- (L) Recreational vehicle as a temporary residence during construction, subject to provisions in Section 157.427.

**157.204.04 Conditional uses**

In the RL Zone, the following conditional uses and their accessory uses are permitted subject to provisions in Section 157.507 of this Chapter:

- (A) Cemetery.
- (B) House of worship or community meeting hall.
- (C) Public utility structures, such as a utility substation.
- (D) Nursery.
- (E) Golf course.
- (F) Bed and breakfast; subject to provisions in Section 157.429; and boarding and rooming houses.
- (G) Hotels, motels and similar facilities.
- (H) Resort motel including related facilities such as restaurant, gift shop, meeting rooms, developed recreation facilities and the like.
- (I) Government structure.
- (J) Radio or television transmitting tower.
- (K) Schools and day care centers.

**157.204.05 Dimensional Standards**

Unless otherwise required by this Chapter, the following minimum dimensional standards shall be required for all development in the RL zone:

- (A) The minimum lot size shall be 10,000 square feet for a single-family home and duplex. Each additional unit shall require 5,000 square feet for an additional unit.
- (B) The minimum lot width shall be 60 feet; except on a corner lot, it shall be 75 feet.
- (C) The minimum lot depth shall be 100 feet.
- (D) The minimum front yard shall be 15 feet.
- (E) The minimum side yard shall be five feet; except on the street side of a corner lot, it shall be 15 feet.
- (F) The minimum rear yard shall be 20 feet; except a corner lot may be five feet.

- (G) The maximum building height shall be 30-feet; except that, building heights of up to 35 feet may be authorized for conditional uses as part of the conditional use review and approval process.
- (H) Maximum Lot Coverage – 50%; except 60% for single-family and duplex homes.
- (I) Dimensional standards for Planned Developments shall comply with provisions in Section 157.405.

**157.204.06 Development Standards**

All development in the RL Zone shall comply with the applicable provisions of this Chapter. The following references additional development requirements:

- (A) Off-street Parking. Parking, driveway and loading improvements shall comply with provisions in Section 157.403.
- (B) Signs. Signs in the RL zone shall conform to the standards contained in Section 157.409.
- (C) Yards and Lots. Yards and lots shall conform to provisions contained in Section 157.443.
- (D) Fencing. Fences shall conform to provisions contained in Section 157.444.
- (E) Shoreline and Aquatic Area. Development shall be in accordance with the provisions in Section 157.441.
- (C) Buffers Adjacent to the EFU Zone. Property adjacent to EFU zoned land shall be subject to provisions in Section 157.442.
- (D) Exterior Lighting. Any exterior lighting, including lights attached to a building, shall not shine directly on adjacent residential property.
- (E) Other. A property owner is advised other regulations may apply for property in the floodplain (Section 157.210) and geological hazard areas (Section 157.440). In addition, new uses and significant expansions may be subject to a Site Development Review (Section 157.508).

## 157.205 MIXED DENSITY RESIDENTIAL – RM ZONE

### **157.205.01 Purpose**

The Medium-Density Residential area, designated by the symbol "RM", is established to provide a variety of residential housing types and other uses that are, or can be, compatible with residential development.

### **157.205.02 Permitted Use**

In a RM Zone, the following uses and their accessory uses are permitted outright:

- (A) Single-family housing.
- (B) Duplexes or two-family housing.
- (C) Multi-family housing (only with public sewer service).
- (D) Residential home and residential facility.
- (E) Park and publicly owned recreation area.

### **157.205.03 Special Uses**

The following uses, when developed under the special development requirements, are permitted in the RM zone:

- (A) Property line adjustments, subject to provisions in Section 157.502.
- (B) Partitions, subject to provisions in Section 157.404.
- (F) Subdivisions, subject to provisions in Section 157.404.
- (G) Planned Developments, subject to provisions of Section 157.405.
- (H) Cottage cluster development, subject to provisions of Section 157.406.
- (I) Single family attached home, subject to provisions in Section 157.421.
- (J) Manufactured homes on individual lots, subject to provisions in Section 157.422.
- (K) Home occupations, subject to provisions in Section 157.426.
- (L) Residential accessory structures, subject to provisions in Section 157.425.
- (J) Short-term rentals; subject to the provisions of Ordinance 2023-02, Short Term Rental Operating License Regulations.
- (K) Accessory dwelling units subject to provisions in Section 157.421.

- (L) Recreational vehicle as temporary residence during construction, subject to provisions in Section 157.427.

**157.205.04 Conditional Uses**

In the RM Zone, the following conditional uses and their accessory uses are permitted provided a public sewer is available to serve the facilities. In addition, subject to provisions in Section 157.507 of this Chapter:

- (A) House of worship or community meeting hall.
- (B) Golf course, private parks.
- (C) Hotels, resorts, motels; including related facilities such as restaurant, gift shop, meeting rooms, recreation facilities and similar uses.
- (D) Bed and breakfast enterprise, subject to provisions in Section 157.429; boarding, lodging or rooming house.
- (E) Manufactured dwelling park, subject to provisions in 157.423.
- (F) Recreational vehicle park, subject to provisions in 157.424.
- (G) Clinics.
- (H) Plant nursery.
- (I) Government structure.
- (J) Public utility structures, such as a utility substation.
- (K) Radio or television transmitting tower.
- (L) Schools and day care centers.
- (M) Public and private schools, colleges.
- (N) Cemetery.
- (O) Nursing home, assisted living facility, care home and similar types of facilities.

**157.205.05 Dimensional Standards**

Unless otherwise required by this Chapter, the following minimum dimensional standards shall be required for all development in the RM zone:

- (A) Minimum Lot Size
  - 1. Single Family Home
    - a. Attached – 4,000 square feet.
    - b. Detached – 5,000 square feet.

2. Duplex – 5,000 square feet.
  3. Multi-family – 10,000 square feet for the first three units, 2,500 square feet for each additional unit.
  4. Manufactured Home Park – 1.0 acre
  5. RV Park – 2.0 acres.
  6. Non-Residential Uses – Sufficient area to comply with setback, parking landscaping and other development standards. Inability to comply with this provision shall not form the basis for a variance request.
- (B) Minimum Lot Dimensions:
1. Lot Width - 40 feet; corner lot - 60 feet along each street frontage.
  2. Lot Depth – 85 feet.
- (C) Minimum Setback (Residential):
1. Front Yard – 15 feet.
  2. Street Side Yard – 15 feet.
  3. Side Yard – 5 feet minimum; 12-feet both sides combined.
  4. Rear Yard – 15-feet; corner lot may be 10-feet.
- (D) Minimum Setback (Non-Residential):
1. Front Yard – 15 feet.
  2. Street Side Yard – 15 feet.
  3. Side Yard – 10 feet minimum plus one additional foot for each foot that the building height exceeds 20-feet.
  4. Rear Yard – 15-feet; corner lot may be 10-feet.
- (E) Maximum Building Height - The maximum building height shall be 30-feet; except that, building heights of up to 35 feet may be authorized for conditional uses as part of the conditional use review and approval process.
- (F) Maximum Lot Coverage:
1. Single Family Home
    - a. Attached – 70%
    - b. Detached – 60%
  2. Duplex – 60%
  3. Multi-family – 60%
- (G) Dimensional standards for Planned Developments shall comply with provisions in Section 157.405; dimension standards for Cottage Cluster Developments shall comply with provisions in Section 157.406.

**157.205.06 Development Standards**

All development in the RM Zone shall comply with the applicable provisions of this Chapter. The following references additional development requirements:

- (A) Off-street Parking. Parking, driveway and loading improvements shall comply with provisions in Section 157.403.

- (B) Signs. Signs in the RM zone shall conform to the standards contained in Section 157.409.
- (C) Yards and Lots. Yards and lots shall conform to provisions contained in Section 157.443.
- (D) Fencing. Fences shall conform to provisions contained in 157.444.
- (E) Shoreline and Aquatic Area. Development shall be in accordance with the provisions in Section 157.441.
- (F) Buffers Adjacent to the EFU Zone. Property adjacent to EFU zoned land shall be subject to provisions in Section 157.442.
- (G) Exterior Lighting. Any exterior lighting, including lights attached to a building, shall not shine directly on adjacent residential property.
- (H) Other. A property owner is advised other regulations may apply for property in the floodplain (Section 157.210) and geological hazard areas (Section 157.440). In addition, new uses and significant expansions may be subject to a Site Development Review (Section 157.508).

## 157.206 MARINE RESIDENTIAL – MR ZONE

### **157.206.01 Purpose**

The Marine Residential Zone, designated by the symbol "MR", is established along the waterfront to provide for a mixture of residential and marine-oriented commercial uses. Further, all uses identified in the MR Zone shall meet at least one of the following criteria:

- (A) The use is a water-dependent use, which means that it can only be carried out on, in or adjacent to water and the water location or access is needed for:
  - 1. Waterborne transportation;
  - 2. Recreation;
  - 3. Source of water; and/or
  - 4. Marine research or education.
- (B) The use does not require filling or dredging of the estuary; and
- (C) The use is approved by the city as a Planned Development.

### **157.206.02 Permitted Use**

In a MR Zone, the following uses and their accessory uses are permitted outright:

- (A) Single-family housing or duplex, except manufactured home housing.
- (B) Residential homes.
- (C) Marine research and/or marine-related educational activities.
- (D) Navigational aids.
- (E) Ship and boat building and repair.
- (F) Marinas and/or marine operations and shipping activities, in existing locations.
- (G) Restaurant in conjunction with a marina.
- (H) Low-intensity water-dependent recreation facilities and public access points.
- (I) Shoreline stabilization.

### **157.206.03 Special Uses**

The following uses, when developed under the special development requirements, are permitted in the MR zone:

- (A) Property line adjustments, subject to provisions in 157.502.
- (B) Partitions, subject to provisions in Section 157.404.

- (C) Subdivisions, subject to provisions in Section 157.404.
- (D) Home occupations for existing homes, subject to provisions in Section 157.426.
- (E) Residential accessory structures, subject to provisions in Section 157.425.
- (F) Short-term rentals; subject to the provisions of Ordinance 2023-02, Short Term Rental Operating License Regulations.
- (G) Accessory dwelling units subject to provisions in Section 157.421.
- (H) Recreational vehicle as temporary residence during construction, subject to provisions in Section 157.427.

**157.206.04 Conditional uses**

The following conditional uses and the accessory uses and activities are permitted in an MR Zone, subject to Section 157.507 of this Chapter:

- (A) Marinas, port marine facilities and shipping activities in new locations.
- (B) Aquaculture.
- (C) Permanent recreation facilities including boat ramps, boat docks and moorages, gazebos, public restrooms, fences, walkways and other developed recreation facilities.
- (D) Motel/hotel in conjunction with a connecting marine facility.

**157.206.05 Dimensional Standards**

Unless otherwise required by this Chapter, the following minimum dimensional standards shall be required for all development in the MR zone:

- (A) The minimum lot size shall be 5,000 square feet.
- (B) Non-Residential Uses – Sufficient area to comply with setback, parking landscaping and other development standards. Inability to comply with this provision shall not form the basis for a variance request.
- (C) The minimum lot width shall be 50 feet, except on a corner lot it shall be 60 feet.
- (D) The minimum lot depth shall be 100 feet.
- (E) The minimum front yard shall be 15 feet.
- (F) The minimum side yard shall be five feet, except on the street side of a corner lot it shall be 15 feet.



- (G) Maximum Building Height - The maximum building height shall be 30-feet; except that, building heights of up to 35 feet may be authorized for conditional uses as part of the conditional use review and approval process.
- (H) Maximum Lot Coverage – 60% for single family homes and duplexes; 70% for all remaining uses.

**157.206.06 Development Standards**

All development in the MR Zone shall comply with the applicable provisions of this Chapter. The following references additional development requirements:

- (A) Off-street Parking. Parking, driveway and loading improvements shall comply with provisions in Section 157.403.
- (B) Signs. Signs in the MR zone shall conform to the standards contained in Section 157.409.
- (C) Yards and Lots. Yards and lots shall conform to provisions contained in Section 157.443.
- (D) Fencing. Fences shall conform to provisions contained in Section 157.444.
- (E) Shoreline and Aquatic Area. Development shall be in accordance with the provisions in Section 157.441.
- (F) Buffers Adjacent to the EFU Zone. Property adjacent to EFU zoned land shall be subject to provisions in Section 157.442.
- (G) Screening. When a commercial use contains outdoor storage and/or abuts a residential use, the commercial use shall be screened with a sight-obscuring fence, wall, or hedge subject to provisions in Section 157.444.
- (H) Exterior Lighting. Any exterior lighting, including lights attached to a building, shall not shine directly on adjacent residential property.
- (I) Other. A property owner is advised other regulations may apply for property in the floodplain (Section 157.210) and geological hazard areas (Section 157.440). In addition, new uses and significant expansions may be subject to a Site Development Review (Section 157.508).

## 157.207 COMMERCIAL – C ZONE

### **157.207.01 Purpose**

The Commercial Zoned Area, designated by the primary symbol "C", is established to provide for city center commercial uses.

### **157.207.02 Permitted Use**

In a C Zone, the following uses and their accessory uses and activities are permitted outright:

- (A) Restaurants or lounges that do not include an automobile-oriented use and/or facility.
- (B) Financial institutions, professional offices, medical offices (clinics).
- (C) Retail trade establishment, other than automobile-oriented uses and facilities, and the outdoor storage of materials.
- (D) Park and publicly owned recreation area.
- (E) Shoreline stabilization.

### **157.207.03 Special Uses**

The following uses, when developed under the special development requirements, are permitted in the C zone:

- (A) Property line adjustments, subject to provisions in 157.502.
- (B) Mixed-use residential and commercial developments, subject to provisions in Section 157.420.
- (C) Partitions, subject to provisions in Section 157.404.
- (D) Subdivisions, subject to provisions in Section 157.404.
- (E) Home occupations, subject to provisions in Section 157.426.
- (F) Short-term rentals for pre-existing dwelling units, subject to provisions in Section 157.428.
- (G) Affordable Housing, subject to provisions in Section 157.421.

### **157.207.04 Conditional uses**

In the C Zone, the following conditional uses are permitted subject to provisions in Section 157.507 of this Chapter:

- (A) Automobile-oriented uses and facilities, such as restaurants and coffee kiosks and including financial institutions with drive-up facilities, subject to provisions in 157.430.
- (B) Health facilities, other than a clinic.
- (C) Government structure or facility such as a fire station.
- (D) Hotel or motel developments.
- (E) Light manufacturing, subject to provisions in Section 157.207.06(I), and wholesale trade establishments.
- (F) Warehousing, storage, or outdoor storage of materials.
- (G) Recreational vehicle parks, subject to provisions in Section 157.424.
- (H) Recreation facilities including boat ramps, boat docks and moorages, gazebos, restrooms, fences, walkways, and other developed recreation facilities.
- (I) Medical marijuana and recreational marijuana facilities licensed and authorized under state law in accordance and subject to provisions in Section 157.507.07.

**157.207.05 Dimensional Standards**

Unless otherwise required by this Chapter, the following minimum dimensional standards shall be required for all development in the C zone:

- (A) Minimum Lot Size
  - 1. Mixed Use Development – 5,000 square feet per unit.
  - 2. Non-Residential Uses – Sufficient area to comply with setback, parking landscaping and other development standards. Inability to comply with this provision shall not form the basis for a variance request.
- (B) Minimum Lot Dimensions:
  - 1. Lot Width - 40 feet; corner lot - 60 feet along each street frontage.
  - 2. Lot Depth – 85 feet.
- (C) Minimum Setback (Non-Residential):
  - 1. Front Yard – 15 feet.
  - 2. Street Side Yard – 15 feet.
  - 3. Side Yard – 10 feet minimum plus one additional foot for each foot that the building height exceeds 20-feet.
  - 4. Rear Yard – 15-feet; corner lot may be 10-feet.
- (D) Building Height - Maximum height shall be 35 feet (37 feet within the Flood Hazard Overlay Zone) for a commercial and/or mixed-use structure, except east of U.S. Highway 101 at H Street or Seventh Street/North Fork Road, where it shall be 26 feet above the base flood elevation.

- (E) Maximum Lot Coverage – 80%.

**157.207.06 Development Standards**

All development in the C zone shall comply with the applicable provisions of this Ordinance. The following references additional development requirements:

- (A) Off-street Parking. Parking, driveway and loading improvements shall comply with provisions in Section 157.403.
- (B) Signs. Signs in the A1 zone shall conform to the standards contained in Section 157.409.
- (C) Yards and Lots. Yards and lots shall conform to provisions contained in Section 157.443.
- (D) Fencing. Fences shall conform to provisions contained in Section 157.444.
- (E) Shoreline and Aquatic Area. Development shall be in accordance with the provisions in Section 157.441.
- (F) Buffers Adjacent to the EFU Zone. Property adjacent to EFU zoned land shall be subject to provisions in Section 157.442.
- (G) Screening. When a commercial use contains outdoor storage and/or abuts a residential use, the commercial use shall be screened with a sight-obscuring fence, wall, or hedge subject to provisions in Section 157.444.
- (H) Exterior Lighting. Any exterior lighting, including lights attached to a building, shall not shine directly on adjacent residential property.
- (I) Light Manufacturing. In addition to other applicable standards, this activity shall conform to the following standards which are intended to protect the pedestrian-friendly, storefront character of the Commercial Zone.
  - 1. *Retail or service use required*. Light manufacturing is allowed only when it is in conjunction with a permitted retail or service use and does not exceed 70% of the gross floor area.
  - 2. *Location*. The light manufacture use shall be enclosed within a building; or shall be located within a rear yard not adjacent to a street.
- (J) Other. A property owner is advised other regulations may apply for property in the floodplain (Section 157.210) and geological hazard areas (Section 157.440). In addition, new uses and significant expansions may be subject to a Site Development Review (Section 157.508).

## 157.208 LIGHT INDUSTRIAL – LM ZONE

### **157.208.01 Purpose**

The intent of the LM Zone is to accommodate commercial activities requiring large sites and industrial activities that have impacts of such a nature that do not preclude the use of surrounding properties for legal purposes. Site size, location and the nature of nearby uses are especially important in locating the zone.

### **157.208.02 Permitted Use**

In the LM Zone, the following uses and their accessory uses are permitted outright; subject to all applicable supplementary regulations contained in the chapter:

- (A) Light industries such as printing; research and testing; plastics molding; fabrication and assembly of instruments, light equipment, electronics, appliances and specialty wood products; and other similar industrial uses; provided that, such industrial uses: shall not allow emission of, nor impact on adjacent properties from radioactive or other toxic materials;
- (B) Commercial service activities requiring large outdoor storage space including the sale and repair of cars, trucks, farm equipment, heavy machinery and marine craft; the storage of construction, plumbing, heating, paving, dredging equipment, electrical and painting materials; and parking for trucks as part of a construction or shipping operation;
- (C) Warehousing, wholesaling and product distribution centers;
- (D) Interim uses prior to industrial or commercial development, including:
  - 1. Farm uses, including aquaculture;
  - 2. Forest uses, including log and equipment storage and the primary processing of forest products; and
  - 3. Outdoor recreation uses.
- (E) Forest uses and farm uses, including aquaculture.

### **157.208.03 Special Uses**

The following uses, when developed under the special development requirements, are permitted in the LM zone:

- (A) Property line adjustments, subject to provisions in Section 157.502.
- (B) Partitions, subject to provisions in Section 157.404.
- (C) Subdivisions, subject to provisions in Section 157.404.
- (D) Recreational vehicles used during the construction of a use for which a building permit has been issued, subject to provisions in Section 157.427.

- (E) Affordable Housing, subject to provisions in Section 157.421.

**157.208.04 Conditional uses**

In the LM Zone, the following uses and their accessory uses are permitted subject to provisions in Section 157.507 of this Chapter:

- (A) Fire and ambulance stations.
- (B) Utility substation and power transmission lines.
- (C) Towers for communications, wind energy conversion systems or structures having similar impacts.
- (D) Energy generation systems.
- (E) Water supply and treatment facilities and sewage treatment plants.
- (F) Mobile home manufacturing, recreational vehicle manufacturing or boat manufacturing facilities.

**157.208.05 Dimensional Standards**

Land development in the LM Zone shall conform to the following standards unless more restrictive supplemental regulations apply.

- (A) Minimum Lot Area - Sufficient area to comply with setback, parking landscaping and other development standards. Inability to comply with this provision shall not form the basis for a variance request.
- (B) Setbacks - The minimum yard adjacent to a residential use or zone shall be 20 feet. For structures exceeding 20 feet in height, one additional foot for each foot that the building height exceeds 20-feet.
- (C) Building Height - Maximum height shall be 40 feet. Higher structures may be permitted during a Type III Variance application and review.
- (D) Maximum Lot Coverage – 80%.

**157.208.06 Development Standards**

All development in the LM Zone shall comply with the applicable provisions of this Chapter. The following references additional development requirements:

- (A) Off-street Parking. Parking, driveway and loading improvements shall comply with provisions in Section 157.403.
- (B) Signs. Signs in the LM zone shall conform to the standards contained in Section 157.409.

- (C) Yards and Lots. Yards and lots shall conform to provisions contained in Section 157.443.
- (D) Fencing. Fences shall conform to provisions contained in Section 157.444.
- (E) Shoreline and Aquatic Area. Development shall be in accordance with the provisions in Section 157.441.
- (F) Buffers Adjacent to the EFU Zone. Property adjacent to EFU zoned land shall be subject to provisions in Section 157.442.
- (G) Screening. When a commercial use contains outdoor storage and/or abuts a residential use, the commercial use shall be screened with a sight-obscuring fence, wall, or hedge subject to provisions in Section 157.444.
- (H) Exterior Lighting. Any exterior lighting, including lights attached to a building, shall not shine directly on adjacent residential property.
- (I) Other. A property owner is advised other regulations may apply for property in the floodplain (Section 157.210) and geological hazard areas (Section 157.440). In addition, new uses and significant expansions may be subject to a Site Development Review (Section 157.508).

## 157.209 PUBLIC LANDS – P ZONE

### **157.209.01 Purpose**

The Public Lands Zone, designated by the primary symbol “P”, is established to be applied to lands publicly owned.

### **157.209.02 Permitted Use**

In a P Zone, the following uses and their accessory uses are permitted outright:

- (A) Parks.
- (B) Playfield.
- (C) Wayside areas.

### **157.209.03 Special Uses**

The following uses, when developed under the special development requirements, are permitted in the P zone:

- (A) Property line adjustments, subject to provisions in 157.502.
- (C) Partitions, subject to provisions in 157.404.
- (C) Affordable Housing, subject to provisions in Section 157.421.

### **157.209.04 Conditional uses**

In a P Zone, the following conditional uses are permitted subject to provisions in Section 157.507 of this Chapter:

- (A) Schools (all types).
- (B) Hospitals.
- (C) Community meeting halls.
- (D) Public utility buildings.
- (E) Other government and public buildings.

### **157.209.05 Dimensional Standards**

Unless otherwise required by this Chapter, the following minimum dimensional standards shall be required for all development in the P zone:

- (A) Minimum Lot Size – Sufficient area to comply with setback, parking landscaping and other development standards. Inability to comply with this provision shall not form the basis for a variance request.



- (B) Minimum Setback:
  - 1. Front Yard – 15 feet.
  - 2. Street Side Yard – 15 feet.
  - 3. Side Yard – 10 feet minimum plus one additional foot for each foot the building height exceeds 20-feet.
  - 4. Rear Yard – 15-feet.
- (C) The maximum building height shall be 35 feet.
- (D) Maximum Lot Coverage – 75%.

**157.209.06 Development Standards**

All development in the P Zone shall comply with the applicable provisions of this Chapter. The following references additional development requirements:

- (A) Off-street Parking. Parking, driveway and loading improvements shall comply with provisions in Section 157.403.
- (B) Signs. Signs in the P zone shall conform to the standards contained in Section 157.409.
- (C) Yards and Lots. Yards and lots shall conform to provisions contained in Section 157.443.
- (D) Fencing. Fences shall conform to provisions contained in Section 157.444.
- (E) Shoreline and Aquatic Area. Development shall be in accordance with the provisions in Section 157.441.
- (F) Buffers Adjacent to the EFU Zone. Property adjacent to EFU zoned land shall be subject to provisions in Section 157.442.
- (G) Screening. When a commercial use contains outdoor storage and/or abuts a residential use, the commercial use shall be screened with a sight-obscuring fence, wall, or hedge subject to provisions in Section 157.444.
- (H) Exterior Lighting. Any exterior lighting, including lights attached to a building, shall not shine directly on adjacent residential property.
- (I) Other. A property owner is advised other regulations may apply for property in the floodplain (Section 157.210) and geological hazard areas (Section 157.440). In addition, new uses and significant expansions may be subject to a Site Development Review (Section 157.508).

## 157.210 FLOOD HAZARD OVERLAY – FHO ZONE

### **157.210.01 Statement of Purpose**

It is the purpose of this Chapter to promote the public health, safety and general welfare; and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (A) Protect human life and health;
- (B) Minimize expenditure of public money and costly flood control projects;
- (C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (D) Minimize prolonged business interruptions;
- (E) Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; streets and bridges located in areas of special flood hazard;
- (F) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (G) Ensure that potential buyers are notified that property is in an area of special flood hazard; and
- (H) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

### **157.210.02 Definitions**

For the purpose of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**Area of Shallow Flooding.** A designated AO zone on a community's flood insurance rate map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. such flooding is characterized by ponding or sheet flow.

**Area of Special Flood Hazard.** The land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year. Designations on maps always include the letters "A" or "V".

**Base Flood.** The flood having a 1% chance of being equaled or exceeded in any given year. Also referred to as the **100-year flood**.

**Basement.** Any area of a building having its floor subgrade (below ground level) on all sides.

**Development.** Any human-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

**Elevated Building.** For insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

**Flood or Flooding.**

- (1) A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - a. The overflow of inland or tidal waters; the unusual and rapid accumulation of runoff of surface waters from any source.
  - b. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (1)a., of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- (2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tide surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (1)a., of this definition.

**Flood Insurance Rate Map (FIRM).** The official map of a community, on which the Federal Insurance Administrator has delineated both the areas of special hazard and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

**Flood Insurance Study.** An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

**Floodway.** The channel of a river or other watercourse and the adjacent land areas that must be reserved to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**Lowest Floor.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's **lowest floor**; provided that, such enclosure is not built so as to render the structure in

violation of the applicable non-elevation design requirements of this Chapter found in Section 157.210.06.

**Manufactured Home.** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities.

- (1) For floodplain management purposes, the term **manufactured home** also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days.
- (2) For insurance purposes, the term **manufactured home** does not include park trailers, travel trailers and other similar vehicles.

**New Construction.** Structures for which the start of construction commenced on or after the effective date of this Chapter.

**Start of Construction.** Includes substantial improvement and means the date the building permit was issued; provided that, the actual **start of construction**, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual **start** means either the first placement of permanent construction of a structure on a site, such as pouring of slab or footings; the installation of piles; the construction of columns; or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation; such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundation or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

**Structure.** For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

**Substantial Damage.** Damage to any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

**Substantial Improvement.** Any repair, reconstruction, or improvement of a structure; the cost of which equals or exceeds 50% of the market value of the structure either:

- (1) Before the improvement or repair is started; or
- (2) If the structure has been damaged and is being restored before the damage occurred. For the purposes of this definition, **substantial improvement** is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences; whether or not that alteration affects the external dimensions of the structure.

### **157.210.03 General Provisions**

- (A) Lands to Which This Chapter Applies. This Chapter shall apply to all areas of special flood hazards within the jurisdiction of the City of Nehalem.
- (B) Basis for Establishing the Areas of Special Flood Hazard. The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Tillamook County and incorporated areas" dated September 28, 2018, with accompanying flood insurance maps (**Flood Insurance Rate Maps 41057C0207F and 41057C0209F**), is hereby adopted by reference and declared to be part of this Chapter. The Flood Insurance Study is on file at Nehalem City Hall, 35900 8th Street, Nehalem, Oregon.

### **157.210.04 Warning and Disclaimer of Liability**

The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by manmade or natural causes. This Chapter does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damage. This Chapter shall not create liability on the part of the City of Nehalem or any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made hereunder.

### **157.210.05 Administration**

- (A) Establishment of Development permit; Development Permit Required.
  - 1. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 157.210.03(B) of this Chapter.
  - 2. The permit shall be for all structures including manufactured homes, as set forth in Section 157.210.02 of this Chapter, and for all development including fill and other activities, also as set forth in Section 157.210.02 of this Chapter.
- (B) Designation of the City Manager. The City Manager is hereby appointed to administer and implement this Chapter by granting or denying development permit applications in accordance with its provisions.
- (C) Duties and Responsibilities of the City Manager. Duties of the City Manager shall include, but not be limited to:
  - 1. Permit review.
    - (a) Review all development permits to determine that the permit requirements of the Chapter have been satisfied;

- (b) Review all development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required; and
  - (c) Review all development permits to determine if the proposed development is in the floodway. If located in the floodway, ensure that the encroachment provisions of Section 157.210.06 (C) of this Chapter are met.
- 2. Use of other base flood data. When base flood elevation data has not been provided in accordance with Section 157.210.03(B) of this Chapter, the City Manager shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source; in order to administer 157.210.06 (B) and (C) of this Chapter.
- 3. Information to be Obtained and Maintained.
  - (a) Where base flood elevation data is provided through the Flood Insurance Study or required as herein, obtain, and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new substantially improved structures, and whether the structure contains a basement.
  - (b) For all new or substantially improved flood-proofed structures:
    - i. Verify and record the actual elevation (in relation to mean sea level);
    - ii. Maintain the flood-proofing certifications; and
    - iii. Maintain for public inspection all records pertaining to the provisions of this Chapter.
- 4. Alteration of Watercourses.
  - (a) Notify adjacent communities and the Department of Land Conservation and Development prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration; and
  - (b) Require that maintenance is provided within the altered or relocated portion of the said watercourses so that the flood carrying capacity is not diminished.
- 5. Interpretation of FIRM Boundaries.
  - (a) Make interpretations, where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions); and
  - (b) The person contesting the location of the boundary shall be given reasonable opportunity to appeal the interpretation. Such appeals shall be granted consistent with the standards of § 60.6 of the Rules and Regulations of the National Flood Insurance Program (44 C.F.R. parts 59 through 76). (Ord. 80-2, passed 06/14/2010; Ord. 2013-01, passed 08/12/2013)

**157.210.06 Provisions for Flood Hazard Reduction**

- (A) General standards. In all areas of special flood hazards, the following provisions are required.

1. Anchoring.
  - (a) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
  - (b) All manufactured commercial structures and homes must likewise be anchored to prevent flotation, collapse or lateral movement and shall be installed using methods and practices that minimize flood damage.
  - (c) Anchoring methods may include, but are not limited to, the use of over-the-top or frame ties to ground anchors. (Reference FEMA's Manufactured Home Installation in Flood Hazard Areas guidebook for additional techniques).
2. Construction Materials and Methods.
  - (a) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
  - (b) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
  - (c) Electrical, heating, ventilation, air-conditioning, plumbing, duct systems, and other equipment and service facilities shall be elevated at least two feet above base flood elevation. In addition, electrical, heating, ventilation, air-conditioning, plumbing, duct systems, and other equipment and service facilities shall meet all of the requirements of this section if replaced as part of a substantial improvement, and/or reconstructed due to substantial damage.
- (3) Utilities. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
  - (a) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
  - (b) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (4) Subdivision Proposals.
  - (a) All subdivision proposals shall be consistent with the need to minimize flood damage.
  - (b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
  - (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
  - (d) Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or five acres, whichever is less.
- (5) Review of Building Permits.

- (a) Where elevation data is not available either through the Flood Insurance Study or from another authoritative source Section 157.210.05(C) of this Chapter), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes the use of historical data, high water marks, photographs of past flooding and the like, where available.
  - (b) Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.
- (B) Specific standards. In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 157.210.03(B) and Section 157.210.05(C) of this Chapter, the following provisions are required.
- (1) Residential Construction.
    - (a) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated at least two feet above base flood elevation.
    - (b) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria.
      - i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
      - ii. The bottom of all openings shall be no higher than one foot above grade.
      - iii. Openings may be equipped with screens, louvers or other coverings or devices provided that they permit the automatic entry and exit of flood waters.
  - (2) Non-residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have either the lowest floor, including basement, elevated to at least two (2) feet above the base flood elevation; or together with the attendant utility and sanitary facilities, shall:
    - (a) Be flood-proofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
    - (b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
    - (c) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this division (B) based on their development and/or review of the structural design, specifications and plans. Such certification shall be provided to the official as set forth in Section 157.210.05(C) of this Chapter.



- (d) Non-residential structures that are elevated, but not flood-proofed, must meet the same standards for space below the lowest floor as described in division (B)(1)(b) above.
  - (e) Applicants flood-proofing non-residential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the flood-proofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).
3. Manufactured Commercial Structures and Homes. All manufactured commercial structures and homes to be placed or substantially improved within Zones AI-A30 and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at least two feet above base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of divisions (A)(1)(b) and (A)(1)(c) above. Electrical crossover connections shall be a minimum of 12 inches above the base flood elevation. Crossover ducts are allowed below BFE but shall be constructed to prevent floodwaters from entering or accumulating within system components. This may require an engineer's certification. Manufactured dwellings placed on solid foundation walls shall be constructed with flood openings that comply with 5.1-2 of the Oregon model Chapter. Within Zones AI-A30 and AE without a designated floodway, new development shall not be permitted unless it is demonstrated that the cumulative effect of all past and projected development will not increase the BFE by more than one foot.
  4. Height Measurements. For all construction in a FHO – Flood Hazard Overlay Zone, all building height restrictions shall be calculated as starting two feet above the base flood elevation.
  5. Recreational Vehicles. Recreational vehicles placed on sites are required to either:
    - (a) Be on the site for fewer than 180 consecutive days;
    - (b) Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
    - (c) Meet the requirements of division (B)(3) above and the elevation and anchoring requirements for manufactured homes.
  6. Critical Facility. Construction of new critical facilities shall be, to the extent possible, located outside the limits of the special flood hazard area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated at least three feet above BFE or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Flood-proofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into flood waters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

(C) Floodways.

1. Located within areas of special flood hazard established in Section 157.210.03(B) of this Chapter are areas designated as floodways.
2. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions apply:
  - (a) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of base flood discharge; and
  - (b) If division (C)(2)(a) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this section.
  - (c) Within six months the city shall notify FEMA of changes in the base flood elevation by submitting technical or scientific data so insurance and floodplain management can be based on current data per 44 CFR 60.3(b) and 65.3 and Oregon Model Chapter 4.3-5.

CHAPTER 157  
ARTICLE III – ESTUARY ZONES AND REGULATIONS

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## 157.301 ESTUARY ZONES

### **157.301.01 Introduction and Agency Coordination**

The purpose of this Section is to address both permitted and regulated activities in the City's estuary zones. While the City is responsible for ensuring compliance with local planning regulations, this action is not done within a vacuum but is part of a coordinated process involving state and federal agencies. Therefore, permits from these affected agencies are also required before development may occur. The two lead agencies involved in this process are the Oregon Department of State Lands and the U.S. Army Corps of Engineers. Other agencies – including State Department of Fish and Wildlife; State Department of Land Conservation and Development; State Department of Economic Development; U.S. Fish and Wildlife Service; National Marine Fisheries Service; and, the Environmental Protection Agency – may also require permits either separately or in conjunction with the two lead agencies.

While the City will assist to the best of its ability to identify the affected agencies, the responsibility is up to the applicant. Therefore, the City shall require an applicant to submit proposed plans to the appropriate agency noted above prior to applying with the City. This will allow the applicant to obtain preliminary agency input and modify plans, as needed, to address agency concerns.

### **157.301.02 Use Priorities and Uses Permitted Outright**

- (A) Intent. Estuary Zones shall be applied to all estuarine waters, intertidal areas, submerged and submersible lands and tidal lands up to the line of non-aquatic vegetation landward of the mean higher high water (MHHW) line.
- (B) General Use Priorities and Areas Included.
1. General priorities, from highest to lowest, for uses within all estuary zones shall be applied to all estuarine waters, intertidal areas, submerged and submersible lands and tidal lands up the line of non-aquatic vegetation landward of the mean higher high water (MHHW) line:
    - (a) Uses that maintain the integrity of the estuarine ecosystem;
    - (b) Water-dependent uses requiring an estuarine location, as consistent with the overall state estuarine classification;
    - (c) Water-dependent uses that do not degrade or reduce the natural estuarine resources and values; and
    - (d) Non-dependent, non-related uses which do not alter, reduce, or degrade the estuarine resources and values.
  2. The application of a particular type of estuary zone within a given estuary is dependent upon the classification of the estuary under LCDC Rule No. O.A.R. 660-17-010, and the criteria outlined in individual zone descriptions in Sections 157.301.03 to 157.301.05 of this Chapter.
  3. Estuary classification/permitted zones: Estuary Development "ED", Estuary Conservation 1 "EC1", Estuary Conservation 2 "EC2" and Estuary Natural "EN".

(C) Uses Permitted Outright. The following uses are permitted outright within all estuary zones identified in Article III:

1. Maintenance and repair of existing structures or facilities not involving a regulated activity (see Section 157.302.01 of this chapter.) For this chapter, **Existing Structures or Facilities** are defined as structures or facilities in current use or good repair as of the date of adoption of this chapter (including structures or facilities which are in conformance with the requirements of this chapter and non-conforming structures or facilities established prior to October 7, 1977).
2. Dike maintenance and repair for:
  - (a) Existing serviceable dikes (including those that allow some seasonal inundation);
  - (b) Other:
    - (1) Dikes that have been damaged by flooding, erosion, or tide gate failure where the property has reverted to estuarine habitat, it has been in agricultural use for three of the last five years and reversion to estuarine habitat has not occurred more than five years prior.
    - (2) The city will rely on the U.S. Army Corps of Engineers and the Division of State Lands to determine whether an area has reverted to estuarine habitat.
    - (3) For the purpose of this division (C)(2), **Agricultural Use** means maintaining agricultural improvements and using the area for pasture several months of the year or harvesting this area once a year.
3. Low-intensity, water-dependent recreation, including, but not limited to, fishing, crabbing, clamming, wildlife observation, swimming and hunting;
4. Low-intensity marine research and education;
5. Grazing of livestock;
6. Fencing; provided that, it is not placed across publicly owned intertidal areas so as to restrict public access to, or recreational boating access across said lands and intertidal areas; and
7. Passive restoration.

(D) Table of Estuary Zones and Uses. The following table identifies permitted, conditional use and regulated activities in the three Estuary zones. Individual zoning Sections identify specific development requirements.

- |            |  |
|------------|--|
| <b>EC1</b> | Estuary Conservation Zone 1(157.301.04)  |
| <b>EC2</b> | Estuary Conservation Zone 2 (157.301.05)   |
| <b>ED</b>  | Estuary Development Zone (157.301.06)  |
| <b>PS</b>  | Permitted with Standards: Subject to procedures in Section 157.301.02 and the standards in Section 157.302.02. |
| <b>CU</b>  | Conditional Use: Subject to provisions and requirements in Section 157.507 (Conditional Use).                  |
| <b>RA</b>  | Regulated Activity: Subject to procedures in Section 157.302.01 and the standards in Section 157.302.02.       |

<b>ACTIVITY</b>	<b>ESTUARY ZONE</b>	<b>EC1</b>	<b>EC2</b>	<b>ED</b>
Maintenance and repair of existing structures or facilities involving a regulated activity		<b>PS</b>	<b>PS</b>	<b>PS</b>
Navigational aids		<b>PS</b>	<b>PS</b>	
Navigational structures and navigational aids				<b>PS</b>
Vegetative shoreline stabilization		<b>PS</b>	<b>PS</b>	<b>PS</b>
Structural shoreline stabilization, limited to riprap		<b>PS</b>	<b>PS</b>	<b>PS</b>
Boat dock in conjunction with one or more private residences: (a) Single-purpose private docks shall be limited to a maximum of 500 square feet in size; and (b) Larger docks may be permitted subject to the conditional use		<b>PS</b>	<b>PS</b>	
Water intake facilities for out-bay aquaculture requiring dredge or fill			<b>PS</b>	
Tide gate installation in existing functional dikes adjacent to EC1 Zones		<b>PS</b>		
Tide gate installation in existing functional dikes adjacent to EC2 Zones			<b>PS</b>	
Tide gate installation in existing functional dikes adjacent to ED zones				<b>PS</b>
Water, sewer, gas or communication lines		<b>PS</b>	<b>PS</b>	<b>PS</b>
Electrical distribution lines and line support structures		<b>PS</b>	<b>PS</b>	<b>PS</b>
Active restoration and estuarine enhancement		<b>PS</b>	<b>PS</b>	<b>PS</b>
Temporary dikes for emergency flood protection		<b>PS</b>	<b>PS</b>	<b>PS</b>
Temporary low-water bridge		<b>PS</b>	<b>PS</b>	<b>PS</b>
Temporary alterations				<b>PS</b>
Signs subject to Section 157.408 of this Chapter		<b>PS</b>	<b>PS</b>	<b>PS</b>
Aquaculture and water-dependent portions of aquaculture facilities not requiring dredge or fill other than incidental dredging for harvest of benthic species or removal of in-water structures such as stakes or racks		<b>PS</b>	<b>PS</b>	
Aquaculture and water-dependent portions of aquaculture facilities				<b>PS</b>
Bridge crossings and crossing support structures		<b>PS</b>		
Bridge crossing support structures			<b>PS</b>	<b>PS</b>
Boat ramps for public use where no dredging or fill for navigational access is needed		<b>PS</b>	<b>PS</b>	
Water intake structures for out-bay aquaculture		<b>PS</b>		
Water-dependent portions of aquaculture facilities that require dredge or fill		<b>CU</b>	<b>CU</b>	
Water-dependent public recreational facilities including: (a) Boat ramps; and (b) Docks, moorages and marinas for recreational marine craft (including seaplanes).				<b>PS</b>
Accessory uses or accessory structures in conjunction with a permitted with standards use listed above in this subchapter; limited in size to a maximum of 10% of the lot or parcel size				<b>PS</b>
Water-dependent recreational facilities, including: (a) boat ramps requiring dredging of fill for navigational access; (b) community boat docks in conjunction with a subdivision or planned development; and (c) public or commercial docks and moorages for recreational marine craft (including seaplanes), and accessory uses not		<b>CU</b>	<b>CU</b>	

requiring the use of fill or the occupation of additional estuarine surface area			
Water-dependent commercial facilities not requiring the use of dredging or fill; including moorages, docks, and marinas for commercial marine craft (including seaplanes) and accessory uses not requiring the use of fill or the occupation of additional estuarine surface area		<b>CU</b>	
Water-dependent commercial uses, including docks, moorages, and marinas for commercial marine (including seaplanes)			<b>PS</b>
Water-dependent industrial facilities not requiring the use of dredging or fill, including: (a) Piers, wharves and other terminal and transfer facilities for passengers or water-borne commerce such as fish, shellfish, timber or timber products, machinery or equipment; (b) Water intake and discharge structures; and (c) Water access structures or facilities that require access to a water body as part of the manufacturing, assembly, fabrication or repair of marine craft or marine equipment due to the size of the craft or equipment		<b>CU</b>	<b>PS</b>
<i>Other water-dependent uses not requiring the use of fill. A use is determined to be water-dependent when it can only be carried out on, in or adjacent to water and the location or access is needed for: (a) Water-borne transportation; (b) Recreation; and (c) A source of water (such as energy production, cooling of industrial equipment or waste water or other industrial processes).</i>		<b>CU</b>	
Other water-dependent when it can only be conducted on, in or adjacent to water; and the location or access is needed for: (a) Water-borne transportation; (b) Recreation; and (c) A source of water (such as energy production, cooling of industrial equipment or waste water, or other industrial processes).			<b>PS</b>
<i>Water-related uses not requiring the use of fill. A use is determined to be water-related when the use:</i> (a) Provides goods and/or services that are directly associated with water-dependent uses (supplying materials to, or using products of, water-dependent uses); and (b) If not located near the water, would experience a public loss of quality in the goods and services offered. Evaluation of public loss of quality will involve a subjective consideration of economic, social and environmental consequences of the use.			<b>CU</b>
Water-related uses can include, but are not limited to, the following: (a) Water-related industrial uses such as: (1) Fish or shellfish processing plants; or (2) Warehousing and/or other storage areas for marine equipment or water-borne commerce. (b) Water-related commercial uses, such as: (1) Fish or shellfish retail or wholesale outlet; (2) Marine craft or marine equipment sales establishments; (3) Charter fishing offices; (4) Sport fish cleaning, smoking or canning establishments;			<b>CU</b>

<p>(5) Retail trade facilities in which the majority of products are products such as ice, bait, tackle, nautical charts, gasoline or other products incidental to or used in conjunction with a water-dependent use; and</p> <p>(6) Restaurants which provide a view of the waterfront, and which are in conjunction with water-dependent or other water-related uses; such as a seafood processing plant or a charter office.</p> <p>(c) Non-water dependent and non-water-dependent uses not requiring the use of fill;</p> <p>(d) Accessory uses or accessory structures in conjunction with a conditional use listed in this section, limited in size to a maximum of 10% of the lot or parcel size;</p> <p>(e) Storm water and sewer outfalls;</p> <p>(f) Water-related, non-dependent, or non-related uses requiring the use of fill; provided that a Goal 16 exception has been approved and included as an amendment to the Tillamook County Comprehensive Plan; and</p> <p>(g) Boat docks on parcels without residences.</p>			
<p>New dike construction if:</p> <p>(a) Required for a water-dependent use for which a substantial public benefit is demonstrated; the use or alteration does not unreasonably interfere with public trust rights and for which no practicable upland locations exist; and</p> <p>(b) Adverse impacts are avoided or minimized to be consistent with the resource capabilities and purposes of the area.</p>			<b>PS</b>
Storm water and treated sewage outfalls	<b>CU</b>	<b>CU</b>	
Bulkheads for structural shoreline stabilization	<b>CU</b>	<b>CU</b>	
Temporary alterations	<b>CU</b>	<b>CU</b>	
Minor navigational improvements	<b>CU</b>	<b>CU</b>	
Navigational structures limited to floating breakwaters		<b>CU</b>	
Houseboats, per 157.301.06	<b>CU</b>	<b>CU</b>	
Regulated activities in association with on-site maintenance and repair of existing structures or facilities			<b>RA</b>
<p>Regulated activities in association with on-site maintenance and repair of existing structures or facilities, limited to:</p> <p>(a) Dredging for on-site maintenance of:</p> <p>(1) Drainage tiles;</p> <p>(2) Drainage ditches;</p> <p>(3) Tide gates;</p> <p>(4) Bridge crossing support structures;</p> <p>(5) Water, sewer, gas or communication lines;</p> <p>(6) Electrical distribution lines; and</p> <p>(7) Outfalls.</p> <p>(b) Fill or riprap for on-site maintenance of:</p> <p>(1) Dikes; and</p> <p>(2) Bridge crossing support structures or other land transportation facilities.</p> <p>(c) Replacement of pilings.</p>	<b>RA</b>		
<p>Regulated activities in association with on-site maintenance and repair of existing structures or facilities, limited to:</p> <p>(a) Dredging for on-site maintenance of:</p>		<b>RA</b>	



<ul style="list-style-type: none"> <li>(1) Drainage tiles;</li> <li>(2) Drainage ditches;</li> <li>(3) Tide gates;</li> <li>(4) Bridge crossing support structures;</li> <li>(5) Water, sewer, gas or communication lines;</li> <li>(6) Electrical distribution lines; and</li> <li>(7) Outfalls.</li> </ul> <p>(b) Fill or riprap for on-site maintenance of:</p> <ul style="list-style-type: none"> <li>(1) Dikes;</li> <li>(2) Bridge crossing support structures or other land transportation facilities; and</li> <li>(3) Shoreline stabilization structures.</li> </ul>			
<p>Piling installation for:</p> <ul style="list-style-type: none"> <li>(a) Water-dependent recreational facilities;</li> <li>(b) Aquaculture facilities;</li> <li>(c) Navigational aids; and</li> <li>(d) Bridge crossing support structures.</li> </ul>	<b>RA</b>		
<p>Piling and dolphin installation in conjunction with a permitted with standards or conditional uses within this zone;</p>			<b>RA</b>
<p>Piling installation for:</p> <ul style="list-style-type: none"> <li>(a) Water-dependent industrial, commercial or recreational facilities;</li> <li>(b) Water dependent portions of aquaculture facilities or aquaculture operations;</li> <li>(c) Navigational aids;</li> <li>(d) Bulkheads; and</li> <li>(e) Bridge crossing support structures.</li> </ul>		<b>RA</b>	
<p>Riprap for structural shoreline stabilization or protection of utility lines</p>	<b>RA</b>	<b>RA</b>	<b>RA</b>
<p>Dredging for:</p> <ul style="list-style-type: none"> <li>(a) Bridge crossing support structure installation;</li> <li>(b) Storm water or treated sewage outfall installation;</li> <li>(c) Tide gate installation in existing functional dikes adjacent to EC1 Zones;</li> <li>(d) Water, sewer, gas or communication line installation;</li> <li>(e) Water intake facilities;</li> <li>(f) Electrical distribution line installation.</li> </ul>	<b>RA</b>		
<p>Dredging for:</p> <ul style="list-style-type: none"> <li>(a) Maintenance of existing facilities;</li> <li>(b) Minor navigational improvements;</li> <li>(c) Water-dependent recreational facilities;</li> <li>(d) Water-dependent portions of aquaculture facilities;</li> <li>(e) Bridge crossing support structure installation;</li> <li>(f) Outfall installation;</li> <li>(g) Water, sewer, gas and communication line installation;</li> <li>(h) Electrical distribution line installation;</li> <li>(i) Tide gate installation in existing functional dikes adjacent to EC2 Zones; and</li> <li>(j) Boat ramps.</li> </ul>		<b>RA</b>	
<p>Dredging for:</p> <ul style="list-style-type: none"> <li>(a) Navigational improvements;</li> <li>(b) Maintenance dredging of existing facilities;</li> <li>(c) Water-dependent uses;</li> </ul>			<b>RA</b>

(d) Water-dependent portions of aquaculture facilities or aquaculture operations; (e) Bridge crossing support structure installation; (f) Water, sewer, gas or communication line installation; (g) Outfall installation; (h) Electrical distribution line installation; and (i) Tide gate installation in existing functional dikes adjacent to ED Zones.			
Dredged material disposal in an approved DMD site or in conjunction with an approved fill project; subject to state and federal permit requirements for dredged material disposal			<b>RA</b>
Flow-land disposal of dredged material, subject to state and federal permit requirements			<b>RA</b>
Fill for: (a) Bridge crossing support structures; (b) Structural shoreline stabilization; (c) Boat ramps; and (d) Bridge approaches where a goal exception has been taken and included as an amendment to the County Comprehensive Plan	<b>RA</b>		
Fill for: (a) Bridge crossing support structures; (b) Structural shoreline stabilization; (c) Water-dependent recreational facilities; (d) Water-dependent portions of aquaculture facilities; (e) Boat ramps; (f) Regulated activities in conjunction with an approved active restoration or estuarine enhancement project; (g) Incidental dredging for harvest of benthic species or removal of in-water structures such as stakes or racks; and (h) Regulated activities in conjunction with temporary alterations.		<b>RA</b>	
Fill for: (a) Water-dependent uses; (b) Water-dependent portions of aquaculture facilities; (c) Navigational structures or navigational improvements; (d) Structural shoreline stabilization; (e) Bridge crossing support structures; (f) Water-related or non-water-dependent uses in areas where Goal 16 exceptions have been taken; and (g) New dike construction.			<b>RA</b>
Regulated activities in conjunction with an approved active restoration or estuarine enhancement project	<b>RA</b>		<b>RA</b>
Incidental dredging for harvest of benthic species or removal of in-water structures such as stakes or racks	<b>RA</b>		<b>RA</b>
Regulated activities in conjunction with temporary alterations	<b>RA</b>		<b>RA</b>

**157.301.03 Definitions**

For this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**Accretion.** Growth by external addition; the build-up of land along a beach or shore by the gradual deposition of airborne or waterborne and sediment or other material.

**Active Restoration.** The use of specific positive remedial actions, such as removing fills, dredging of shoaled navigation channels, installing water treatment facilities, or rebuilding deteriorated urban waterfront areas.

**Activity.** A development action generally taken in conjunction with a use, and which makes a use possible: activities do not in and of themselves result in a specific use of land or water area: often several activities (e.g., dredging, piling, filling) may occur with a single use (e.g., port facility). Most activities take place in conjunction with a wide variety of uses. (See also **Regulated Activity**.)

**Aesthetic.** Values derived from sensory experiences including vision, smell, and hearing; values relating to harmony, as in landscape features, rather than strictly economic or utilitarian values; the aggregate of qualities that give pleasure to the sense or exalt the mind or spirit.

**Aggregate.** A material such as gravel composed of mineral crystals of one or more kinds of mineral or rock fragments.

**Anadromous Fish.** Oceanic or estuarine fish species that enter fresh water to spawn.

**Aquaculture.** The propagation, planting, feeding, or growing and harvesting of fish, shellfish, plankton, or aquatic plants.

**Aquaculture Facility.** A structure which is built, installed, or established as a means to engage in aquaculture: fish release and recapture facilities in association with facilities for growing fish or shellfish and tanks for cultivation of fish or shellfish are included within this category.

**Aquatic Areas.** Estuarine waters, intertidal areas, tidal wetlands, and submerged lands. The upper limit of aquatic areas is the line of non-aquatic vegetation or, where such a line cannot be accurately determined, the mean higher high-water line in tidal areas or ordinary high water (OHW) in non-tidal areas.

**Aquatic Habitat.** Pertaining to aquatic areas; growing in aquatic areas; living in or frequenting the margins of aquatic areas, as do aquatic plants and waterfowl.

**Avulsion.** A tearing away or separation by the force of water; land that is separated from adjacent lands or properties by the action of a stream or river cutting through the land to form a new streambed.

**Bank-line or Stream Alteration.** Realignment of a stream bank or the entire stream, either within or outside of its normal high-water boundaries.

**Beach Nourishment.** A program in which sand, dredge spoils or other materials are deliberately deposited in a place calculated to result in beneficial beach accretion.

**Biocide.** Any chemical designed to kill living organisms; examples include insecticides, herbicides and/or fungicides.

**Biological Oxygen Demand (BOD).** A measure of the amount of dissolved oxygen required in biochemical processes to oxidize waste in water.

**Biological Productivity.** The amount of living material produced in a given area (or volume of water) in a given amount of time. This may be subdivided into primary production (amount of green plant production) and secondary production (amount of animal consumer production).

**Breakwater.** An offshore structure of rock, steel, concrete or piling designed to protect a beach or harbor from the force of waves and currents. They may be either attached to the bottom or maybe floating structures.

**Buffer.** A limited use area separating a developed or intensively used area from a protected area.

**Bulkhead.** A vertical wall of steel, timber, concrete or piling (a type of seawall).

**Buoy.** A distinctively marked and shaped anchored float, sometimes carrying a light, whistle or bell, which marks a channel or obstruction.

**Coastal Lakes.** Lakes in the coastal zone that are created by a dune formation or that have a hydrologic surface or subsurface connection with salt water.

**Communication Facilities.** Electrical distribution lines and line support structures.

**Current.** Mass of water moving in a certain direction. There are surface currents, bottom currents and mid-water currents that do not necessarily move in the same direction or with the same velocity.

**Dike.**

1. A wall or mound-built around a low-lying area to prevent flooding or to contain dredge material. A **dike** is considered new when placed on an area that has never previously been diked. Maintenance and repair refer to:
  - (a) Existing serviceable and dikes (including those that allow some seasonable inundation); and
  - (b) Those that have been damaged by flooding, erosion, tide gate failure and the like.
2. A **temporary dike** is one that is established in an emergency situation for the purposes of flood protection in the interest of safety or welfare of the public and is removed within 60 days of construction.

**Dissolved Oxygen.** The amount of oxygen dissolved in water.

**Ditching.** The digging of a long narrow excavation in the earth for drainage of surface waters or for irrigation. **Ditching** does not include alteration of a natural watercourse.

**Diversity.** The number of species in a given area or volume of water, or the variety of species present in a biological community.

**Dock.** A pier, piling or secured floatation platform for marine craft tie-up in association with one or more private residences.

**Dolphin.** A group of pilings held together by a steel cable.

**Dredged Material Disposal (DMD).** The deposition of material obtained from dredging. (Also see **Fill**.)

**Dredged Material Disposal Settling Pond.** An impoundment for run-off water from a dredged material disposal site. **Settling ponds** allow suspended particles in runoff water to settle out before the runoff water enters an aquatic area.

**Dredged Material Disposal (DMD) Site.** An area identified in the Tillamook/Nehalem Bay dredged material disposal plan element of the County Comprehensive Plan as a potential site for the disposal of dredged material, subject to state and federal permit requirements.

**Dredging.** The removal of sediment or other inorganic material from a stream, river or coastal lake, or from estuarine waters, intertidal areas and tidal wetlands.

**Dredging for On-site Maintenance.** Dredging for the purpose of maintaining the functional operation of an existing structure or facility. **Dredging for on-site maintenance** is confined to the same geographic area as the existing structure or facility and is the minimum necessary to maintain the functional operation of a structure or facility.

**Dredging Maintenance.** Dredging for the purpose of maintaining access to water to an existing structure or facility.

**Ecology.** The study of the interrelationships among organisms and their physical, chemical and biological environments.

**Eelgrass.** A true seed-producing, blade-like marine plant which forms beds on estuary bottoms.

**Energy Facility.** Equipment or a piece of equipment designed to generate energy. Solar collectors, wave, wind and tidal power generators and low-head hydroelectric dams are included within this category.

**Entrance Channel.** The portion of a waterway exposed to wave surge from the open sea, and which provides protected access or opening to the main channel.

**Erosion.** The wearing away of land by any of several agents or due to gravity. **Erosion** may be caused by the action of water or wind, or through any of several types of mass movement including slump, debris slide, rock-fall, soil creep and the like.

**Erosion Control Structure.** Any structure designed to prevent or reduce erosion of land, including structural methods of shoreline stabilization such as riprap, groins or bulkheads.

**Estuarine Waters.** Channel areas below mean lower low water, subtidal areas.

**Estuary.**

1. A body of water semi-enclosed by land, connected with the open ocean, and within which salt water is usually diluted by freshwater derived from the land. The **Estuary** includes:
  - (a) Estuarine water;
  - (b) Intertidal areas;
  - (c) Tidal wetlands; and
  - (d) Submerged lands.
2. **Estuaries** extend upstream to the head of tidewater.

**Estuary Planning Boundary.** The management boundary around each of the estuaries of the county within which estuary zones are located. The **estuary planning boundary** includes estuarine waters, intertidal areas and tidal wetlands up to mean higher high water (MHHW) or the line of non-aquatic vegetation (whichever is most landward). The **estuary planning boundary** extends upstream in coastal streams and rivers to the head of tidewater.

**Existing Structure or Facility.** A structure or facility which is in current use or good repair as of the date of adoption of this chapter (including structures or facilities which are in conformance with the requirements of this chapter and non-conforming structures or facilities established prior to 10-7-1977) or dikes established prior to 10-7-1977 which have been damaged by flooding, erosion or tide gate failure.

**Facility.** A group or combination of structures that is built, installed or established to serve a particular purpose.

**Fill.** The placement by humans of soil, sediment, dredged materials or other materials which result in the replacement of an aquatic area with dry lands; a change in the bottom elevation of a waterbody (in estuarine waters, intertidal areas or tidal wetlands); an increase in the elevation of land (on shorelands). The placement of riprap or manure spreading is excluded from this category.

**Flood Control Structure.** Any structure designed to prevent or reduce flooding of land, such as a dike or tide gates.

**Flushing Capacity.** The relative rate at which the water of an estuary or a portion of an estuary is replaced. The flushing rate is usually expressed as the time required for one complete replacement. Important measurements for estimating sewage and other

discharge dilution and dispersion, and the exchange of oxygen, seawater, plankton and the like between the estuary and the ocean.

**Groin.** A dam for sand; a structure built at right angles to the beach to interrupt longshore sand movement (littoral drift) and trap sand in order to stabilize or widen a beach.

**Habitat.** The place of residence of a species, sometimes characterized by the dominant vegetation, or the grain size of the sediment.

**Herbicide.** Any chemical that is designed to kill plants. Such chemicals may act through the soil to kill seeds or be applied directly to foliage.

**High Intensity Recreation.** Recreation that requires specially built facilities or occurs in such density or form that is required or results in a modification of the area or resource. Examples include campgrounds, golf courses, marinas, docks and moorages, and commercial off-road vehicle use areas.

**Houseboat.** A floating structure, without a means of self-propulsion, which is primarily for occupancy as a single-family dwelling which is constructed on a floatation system that is designed and constructed as a boat and which is directly connected to electrical, sanitary sewer, and/or potable water supply.

**Hydrographic Characteristics.** The description of the oceans, estuaries, rivers and lakes. Specifically, the measurement of flow and investigation of the behavior of bodies of water and the surveying, sounding and charting of bodies of water including the determination of bottom contours and the position of channels and shoals.

**Impoundment.** A body of water formed by impounding (the collection of water in a reservoir).

**Integrity.** The quality or state of being complete and functionally unimpaired; the wholeness or entirety of a body or system including its parts, materials and processes. The integrity of an ecosystem emphasizes the interrelatedness of all parts and the unity of its whole.

**Intertidal.** Between the tides, here considered to be that area between the mean lower low water (MLLW) and mean higher high water (MHHW).

**Jackson Turbidity Unity (JTU).** The standard unit used in measuring the turbidity of a water sample; designed in terms of the depth of water to which a candle flame can be clearly distinguished. The **Jackson candle turbidity meter** is the standard measuring instrument which compares the amount of light penetrating a given water sample with that penetrating a standard sample.

**Jetty.** A large navigational structure made of rock or concrete that is generally used to stabilize channels and improve scour at the mouth of an estuary.

**Littoral.** Of, or pertaining to, the shore, especially of the sea. Coastal.

**Littoral Drift.** The movement of sand by littoral (long-shore) currents in a direction parallel to the beach along the shore.

**Long-Shore Current.** A current, created by waves, which moves parallel to and against the shore, particularly in shallow water and which is most noticeable in the surf or breaker zone. Littoral current.

**Low Intensity.** Refers to a use or activity that does not require developed facilities and which can be accommodated without significant adverse impact to the area or resource.

**Low Intensity Recreation.** Recreation that does not require developed facilities and can be accommodated without change to the area or resource. Examples include boating, hunting, hiking, wildlife photography, beachcombing, and picnicking.

**Low Water Bridge.** A temporary bridge, generally constructed of logs and planking, which is placed over minor streams and sloughs in early summer when water flow is very low or intermittent. The bridges are removed when fall freshets occur. **Low water bridges** involve less than 50 cubic yards of fill and are generally constructed of logs and planking.

**Main Channel.** The part of the waterway that extends upstream from the entrance channel into the estuary proper. All or segments of the **main channel** may be maintained by dredging. The **main channel** does not include auxiliary channels or waterways.

**Maintenance.** The work of keeping an existing structure or facility in good working order or in conformance with current building or engineering codes. **Maintenance work** is confined to the same geographic area as the existing structure or facility and does not result in an increase in floor area or surface area. Replacement of bridge crossing support structures and bridge approach ramps may be considered a form of **maintenance**, if the resulting bridge support structure or ramp is the minimum size necessary to accommodate the same number of traffic lanes as exist on that portion of the highway.

**Marinas.** Publicly owned or privately owned commercial facilities which provide berthing, launching, storage, supplies, and a variety of services of recreational, commercial fishing and charter fishing marine craft. **Marinas** are differentiated from moorages by their larger scale, the provision of significant accessory landside services and/or the use of solid breakwater (rock, bulkheading and the like).

**Mean Higher High Water (MHHW).** A determined average elevation of a set of tide planes defined in Oregon 26, U.S. Department of Commerce Environment Science Services Administration Coast and Geodetic Survey Tidal Benchmark for the Lower Nehalem River.

**Mean Lower Low Water (MLLW).** The average height of the lower tides observed over a specific time interval.

**Minor Navigational Improvement.** A navigational improvement of such limited size or scale that it can be accomplished without significant adverse impacts to an area or its



resources. Examples are the installation of navigational aids or floating breakwaters, snag removal and dredging of less than 50 cubic yards for which state and federal permits are not required. Other dredging or fill actions which require state or federal permits may be included within this category upon a determination by the Division of State Lands or the U.S. Army Corps of Engineers that the action is consistent with the resource capabilities and purposes of a given area.

**Mitigation Sites.** An area identified in the Mitigation/Restoration Plan element of the County Comprehensive Plan as a potential site for estuarine creation, restoration or enhancement, subject to applicable state and federal standards.

**Moorage.** A publicly owned or privately-owned pier, piling or secured float or floats or marine craft tie-up which is operated as a commercial use or in association with a commercial use or a light industrial facility. **Moorages** contain less than 25 berths and have minimal shore-side services and no solid breakwater. (See also **Dock** and **Marina**.)

**Mooring Buoy.** A device of buoyant material which is attached by guideline to the shoreland, or anchored to the bed of an estuary, river, stream or coastal lake and is used for marine craft tie-up in association with one or more private residences. Floating docks are not included within this category.

**Natural Estuaries.** Estuaries lacking maintained jetties or channels, and which are usually little developed for residential, commercial or industrial uses. They may have altered shorelines; provided that, these altered shorelines are not adjacent to an urban area. Shorelands around **natural estuaries** are generally for agricultural, forest, recreation and other rural uses (Sand Lake).

**Navigation Aid.** A beacon, buoy, or channel marker.

**Navigational Improvement.** Any structure or action that serves to increase the ability of a navigable waterway to provide passage to marine craft. Examples are the installation of navigational structures or aids, or activities such as dredging. (See also **Minor Navigational Improvement**.)

**Navigational Structures.** Structures such as pile dikes, groins, jetties, dolphins, or breakwaters that are installed to help maintain navigation channels or protect marinas and harbors by controlling water flow, wave action or sand improvement.

**Non-point Source.** A source of pollution that does not come from a point source. The four major types of **non-point source** pollution in the estuary area are: agricultural, urban, forestry and stream bank runoff.

**Ordinary High-Water Line (OHWL).** A line delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, such as: a clear, natural line impressed on the bank; shelving; changes in character of the soil; change from predominately aquatic to predominately terrestrial vegetation; or the presence of organic litter or debris.

**Passive Restoration.** The use of natural processes, sequences and timing that occurs after removal or reduction of adverse stresses without other specific positive remedial action.

**Performance Standards.** A specific measure for control of human use or activity.

**Pesticide.** Any chemical that is used to control pests.

**Pier.** A structure extending out into the water generally supported with piling and generally used to afford convenient passage for persons and goods to and from vessels alongside the pier. Sometimes synonymous with **wharf**.

**Pile Dike.** A flow control structure that is used primarily in riverine systems and is made of closely spaced piling connected by timbers; usually it is perpendicular to the shore. **Pile dikes** are constructed to increase scour in the navigation channel and/or control shoreline erosion by interrupting sand transport and encouraging sedimentation in the sheltered lee of the pile dike. **Pile dikes** are generally constructed in groups and may require fill between individual pilings.

**Piling.** A long, slender column of wood, steel or reinforced concrete driven, jetted, or otherwise embedded on and into the ground or into the bed of rivers or estuaries for the purpose of supporting piers and docks, floating structures, vessels, or other structures or loads.

**Point Source.** Point source pollutants are those collected and discharged from discernible, confined, and discrete conveyances such as pipes and discharge canals.

**Practicable.** Capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors such as environment, cost or technology.

**Priority Dredged Material Disposal (DMD) Sites.** Sites that may not be developed or used in a manner that would preclude their ultimate use as **DMD sites**. An amendment to the County Comprehensive Plan and zoning maps must be taken to remove a **DMD site** from this category.

**Priority Mitigation Sites.** Sites that may not be developed or used in a manner that would preclude their ultimate use as mitigation sites. An amendment to the County Comprehensive Plan and zoning maps must be taken to remove a **mitigation site** from this category.

**Protection.** Saving or shielding from loss, destruction, or injury or for future intended use.

**Public Need.** A community desire or preference that produces, when satisfied, a net effect that is a direct benefit to the public at large.

**Recreation.** Enjoyable active and passive leisure time activities.

**Recreational Facility.** A structure that is built, installed, or established as an aid to recreation. Temporary or easily removable structures such as picnic tables are not considered as **recreational facilities**.

**Regulated Activity.** The following actions involving alterations to estuary aquatic areas which are generally undertaken in conjunction with offshore uses, and for which state and federal permits are required: fill; dredging, dredged material disposal; and out-fall installation.

**Repair.** To restore an existing structure or facility to sound condition after damage or injury. **Repair work** is confined to the same geographic area as the existing structure or facility and does not result in an increase in floor area or surface area.

**Resource Capability.** The measure of an area, or the biological communities within an area to withstand alteration. A use or activity is considered to be consistent with the **resource capabilities** of an area if the level of use proposed can be accommodated without producing significant adverse impacts to biological productivity or to the quality of air, land and water resources within the area.

**Restoration.** Replacing or restoring original attributes or amenities such as natural biological productivity and aesthetic or cultural resources that have been diminished or lost by past alterations, activities or catastrophic events.

**Revetment.** A structure with armors. The slope face of a dune or bluff with one or more layers of rock (riprap) or concrete.

**Riparian.** Of, or pertaining to, or living on the narrow zone adjacent to a river, estuary, lake or other watercourse.

**Riprap.** A facing layer of material (usually stone) placed on an embankment to prevent erosion, scour or sloughing.

**Rural Shoreland.** Shoreland areas that are outside of the urban growth boundary off an incorporated or unincorporated community.

**Salt Marsh.** A tidal wetland which has poorly drained soil; poorly aerated soil; varying concentrations of salt; and whose dominant plants are salt-tolerant aquatic or semi-aquatic emergent species such as sedges, rushes, and some grasses. **Salt marshes** typically develop on mud or sand flats that have attained an elevation near main sea level and often occur behind sand spits at river mouths and along shallow bays.

**Sanitary Landfill.** A system for final disposal of solid waste on land, in which the waste is spread and compacted on an inclined, minimized working face in a series of cells and a daily cover of earth is provided so that no hazard or insult to the environment results.

**Seawall.** A solid barricade built at the water's edge to protect the shore and to prevent inland flooding.

**Sedimentation.** The settling or deposition of sediments (e.g., eroded soils) that are suspended within or being transported by water.

**Setback.** A distance measured in feet from a property line, zone boundary, ordinary high-water line, mean higher high-water line or other boundary within which development is not permitted.

**Shallow-Draft Development Estuary.** An estuary with maintained jetties and a main channel maintained by dredging at 22 feet or less (Tillamook Bay, Nehalem Bay).

**Shoal.** A build-up of waterborne or airborne sand, sediment or other material within an estuary, stream or river channel that causes a reduction in water channel depth.

**Shoreland.** Land shown on the county zoning maps that is contiguous with the ocean, to estuaries and to coastal lakes.

**Shoreline Stabilization.** The protection of the banks of tidal or non-tidal streams or rivers, estuarine waters or coastal lakes from flooding or erosion by vegetative means; or by structural means such as riprap, groins, bulkheads, or dikes.

**Slope.** The inclined surface of a hill, mountain, dune, or any part of the surface of the earth. The angle at which such surfaces deviate from the horizontal.

**Solid Waste.** All putrescible and non-putrescible wastes including, but not limited to, garbage; rubbish; refuse; ashes; waste paper; cardboard; sewage sludge; septic tank and cesspool pumping; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded appliances, manure, vegetable or animal solid or semisolid wastes; but not including environmentally hazardous wastes; materials used for fertilizer or for other productive purposes; or fill material.

**Stake.** A piece of wood, pipe or other material driven into land or into the bed of an estuary, river, stream or coastal lake as a marker or support. **Stakes** differ from piling in that their installation does not require pile drivers or other heavy equipment.

**Support Structure.** A structure designed to hold up or serve as a foundation for something. Examples are pilings, piers, trestles, or culverts in association with bridge crossings for roads and railroads, or poles in association with power or telephone lines.

**Tidal Prism.** The total amount of seawater that flows into a bay or estuary and out again with the movement of the tide.

**Tidal Wetlands.** All areas between mean high water (MHW) and the line of non-aquatic vegetation. This includes both saltwater wetlands (salt marshes) and freshwater wetlands (bogs, fresh marshes and swamps) with unrestricted tidal influence.

**Tide Gate.** A water-control structure placed across a channel to stop the flow of water at high tides. **Tide gates** allow drainage of diked areas while preventing their inundation by the tides.

**Topography.** The configuration of a surface including its relief and the position of its natural and human-made features.

**Tributary Stream.** A stream feeding a larger stream or lake.

**Turbidity.** Reduction in water clarity resulting from the presence of suspended matter (e.g., sediment, detritus, and plankton). **Turbidity** may decrease phytoplankton productivity, clog the gills of aquatic animals, and smother sessile-benthic animals and eggs.

**Type 1 Restoration.** Active or passive restoration for the purpose of improvement or return to a former or original condition; the natural biological productivity and functioning of an estuarine ecosystem. This may serve as mitigation for dredge or fill in intertidal areas.

**Type 2 Restoration.** Active or passive restoration for the purpose of bringing back to a former or original condition the cultural, historic, economic or navigation features of an estuary.

**Utilities.** Water, sewer and gas lines; storm water and sewer outfalls; potable water treatment plants; sewage treatment plants; power lines and substations; electrical transmission lines and line support structures; antennas and microwave receivers. Industrial outfalls and industrial wastewater treatment plants are excluded from this category.

**Water-Dependent.** Uses and activities which can be carried out only on, in or adjacent to water because the water location or access is needed for one of the following:

1. Water-borne transportation (navigation, moorage, fueling and servicing of ships or boats; terminal and transfer facilities resource and material receiving and shipping);
2. Recreation (active or passive such as viewing and walking);
3. A source of water (energy production, cooling of industrial equipment or wastewater, other industrial processes, aquaculture operations); and
4. Marine research or education (viewing, sampling, recording information, conducting experiments, teaching).

**Water Related.** Uses and activities that do not require direct water access (are not water-dependent), but which:

1. Provide goods and/or services that are directly associated with other water-dependent uses (supplying materials to, or using products of, or water-dependent uses); and
2. If not located near the water, would experience a public loss of quality in the goods and services offered (evaluation of public loss of quality shall involve a subjective consideration of economic, social and environmental consequences of the use).

**Watershed.** The region draining into a river, river system or body of water.

**Wharf.** A structure built beside a waterway (estuary, river, stream or coastal lake) for the purpose of receiving and discharging cargo, passengers and the like. A **wharf** does not include new land created on submersible or submerged land by artificial fill or deposits. (Ord. 80-2, passed 06/14/2010)

#### **157.301.04 Estuary Conservation 1 Zone (EC1)**

- (A) Purpose and Areas Included. The purpose of the EC1 Zone is to:
1. Provide for long-term use of areas that support or have the potential to support valuable biological resources.
  2. Provide for long-term maintenance and enhancement of biological productivity.
  3. Provide for the long-term maintenance of the aesthetic values of estuarine areas in order to promote or enhance the low-intensity recreational use of estuarine areas adjacent to rural or agricultural shorelands.
  4. Except where a goal exception has been taken in the County Comprehensive Plan, the EC1 Zone includes the following areas within development and conservation estuaries:
    - (a) Tracts of tidal marshes, tide-flats, seagrass and algae beds that are smaller or have less biological importance than those included in EN or ECA Zones;
    - (b) Productive recreational or commercial shellfish and fishing areas;
    - (c) Areas that are partially altered and adjacent to existing development of moderate intensity that do not possess the resource characteristics of natural or development management units; and
    - (d) Areas with potential for shellfish culture (excluding platted oyster beds in Tillamook Bay).
- (B) Uses Permitted with Standards. The following uses are permitted subject to the procedure of Section 157.302.01 and the standards in Section 157.302.02 of this Chapter:
1. Maintenance and repair of existing structures or facilities involving a regulated activity;
  2. Navigational aids;
  3. Vegetative shoreline stabilization;
  4. Structural shoreline stabilization, limited to riprap;
  5. Boat dock in conjunction with one or more private residences:
    - (a) Single-purpose private docks shall be limited to a maximum of 500 square feet in size; and
    - (b) Larger docks may be permitted subject to the conditional use provisions of Section 157.507;
  6. Tide gate installation in existing functional dikes adjacent to EC1 Zones;
  7. Water, sewer, gas or communication lines;
  8. Electrical distribution lines and line support structures;
  9. Active restoration and estuarine enhancement;
  10. Temporary dikes for emergency flood protection;

11. Temporary low-water bridge;
12. Signs subject to Section 157.408 of this Chapter;
13. Aquaculture and water-dependent portions of aquaculture facilities not requiring dredge or fill other than incidental dredging for harvest of benthic species or removal of in-water structures such as stakes or racks;
14. Bridge crossings and crossing support structures;
15. Boat ramps for public use where no dredging or fill for navigational access is needed; and
16. Water intake structures for out-bay aquaculture.

(C) Uses Permitted Conditionally. The following uses may be permitted subject to the procedures and requirements of Section 157.507 of this Chapter:

1. Water-dependent portions of aquaculture facilities that require dredge or fill.
2. Water-dependent recreational facilities, including:
  - (a) Boat ramps requiring dredging or fill for navigational access;
  - (b) Community boat docks in conjunction with a subdivision or planned development; and
  - (c) Public or commercial docks and moorages for recreational marine craft (including seaplanes), and accessory uses not requiring the use of fill or the occupation of additional estuarine surface area.
3. Storm water and treated sewage outfalls;
4. Bulkheads for structural shoreline stabilization;
5. Temporary alterations; and
6. Minor navigational improvements.
7. Houseboats, subject to provisions in Section 157.301.06.

(D) Regulated Activities. The following regulated activities are permitted subject to the procedures in Section 157.302.01 and the standards of Section 157.302.02 of this Chapter:

1. Regulated activities in association with on-site maintenance and repair of existing structures or facilities, limited to:
  - (a) Dredging for on-site maintenance of:
    - (1) Drainage tiles;
    - (2) Drainage ditches;
    - (3) Tide gates;
    - (4) Bridge crossing support structures;
    - (5) Water, sewer, gas or communication lines;
    - (6) Electrical distribution lines; and
    - (7) Outfalls.
  - (b) Fill or riprap for on-site maintenance of:
    - (1) Dikes; and
    - (2) Bridge crossing support structures or other land transportation facilities.
  - (c) Replacement of pilings.
2. Piling installation for:
  - (a) Water-dependent recreational facilities;
  - (b) Aquaculture facilities;

- (c) Navigational aids; and
- (d) Bridge crossing support structures.
- 3. Riprap for structural shoreline stabilization or protection of utility lines;
- 4. Dredging for:
  - (a) Bridge crossing support structure installation;
  - (b) Storm water or treated sewage outfall installation;
  - (c) Tide gate installation in existing functional dikes adjacent to EC1 Zones;
  - (d) Water, sewer, gas or communication line installation;
  - (e) Water intake facilities;
  - (f) Electrical distribution line installation; and
- 5. Fill for:
  - (a) Bridge crossing support structures;
  - (b) Structural shoreline stabilization;
  - (c) Boat ramps; and
  - (d) Bridge approaches where a goal exception has been taken and included as an amendment to the County Comprehensive Plan (Ord. 33).
- 6. Regulated activities in conjunction with an approved active restoration or estuarine enhancement project;
- 7. Incidental dredging for harvest of benthic species or removal of in-water structures such as stakes or racks; and
- 8. Regulated activities in conjunction with temporary alterations.

**157.301.05 Estuary Conservation 2 Zone (EC2)**

- (A) Purpose and Areas Included. The purpose of the EC2 Zone is to:
  - 1. Provide long-term use of renewable resources that do not require major alterations of the estuary except for purposes of restoration;
  - 2. Other than minor navigational improvements, aquaculture facilities and water-dependent recreational facilities; provide for new water-dependent industrial and commercial uses only where dredging and filling are not necessary and where consistent with the resource capabilities of the area and purposes of the management unit; and
  - 3. Except where a goal exception has been taken, the EC2 Zone includes the following areas within development and conservation estuaries:
    - (a) Tracts of significant habitat not qualifying for EC1 designation;
    - (b) Areas containing existing water-dependent facilities that require periodic dredging to maintain water access;
    - (c) Partially altered estuarine areas or estuarine areas adjacent to existing water-dependent development that do not otherwise qualify for EC1 or ED designations; and
    - (d) Subtidal navigable areas that are adjacent to urbanized areas, which do not qualify for ECA or EC1 designations and are not Federally authorized and maintained navigation channels.



(B) Uses Permitted with Standards. The following uses are permitted subject to the procedure of Section 157.302.01 and the standards in Section 157.302.02 of this chapter:

1. Maintenance and repair of existing structures or facilities involving a regulated activity;
2. Navigational aids;
3. Vegetative shoreline stabilization;
4. Structural shoreline stabilization, limited to riprap;
5. Boat dock in conjunction with one or more private residences:
  - (a) Single-purpose private docks shall be limited to a maximum of 500 square feet in size; and
  - (b) Larger docks may be permitted subject to the conditional use provisions of Section 157.507 of this Chapter.
6. Aquaculture and water-dependent portions of aquaculture facilities not requiring dredging or fill other than incidental dredging for harvest of benthic species or removable in-water structures such as stakes or racks;
7. Water intake facilities for out-bay aquaculture requiring dredge or fill;
8. Tide gate installation in existing functional dikes adjacent to EC2 Zones;
9. Water, sewer, gas or communication lines;
10. Electrical distribution lines and line support structures;
11. Temporary dikes for emergency flood protection;
12. Active restoration and estuarine enhancement;
13. Temporary low water bridges;
14. Signs subject to Section 157.408 of this chapter;
15. Boat ramps for public use where no dredging or fill for navigational access is needed; and
16. Bridge crossing support structures.

(C) Uses Permitted Conditionally. The following uses may be permitted subject to the procedures and requirements of Section 157.507 of this Chapter:

1. Water-dependent recreational facilities, including:
  - (a) Boat ramps that require dredging or fill for navigational access;
  - (b) Community boat docks in conjunction with a subdivision or planned development; and
  - (c) Public or commercial docks, moorages and marinas; recreational marine craft (including seaplanes) and accessory uses not requiring the use of fill or the occupation of additional estuarine surface area.
2. Water-dependent commercial facilities not requiring the use of dredging or fill; including moorages, docks and marinas for commercial marine craft (including seaplanes) and accessory uses not requiring the use of fill or the occupation of additional estuarine surface area;
3. Water-dependent industrial facilities not requiring the use of dredging or fill, including:
  - (a) Piers, wharves and other terminal and transfer facilities for passengers or water-borne commerce such as fish, shellfish, timber or timber products, machinery, or equipment;
  - (b) Water intake and discharge structures; and

- (c) Water access structures or facilities that require access to a water body as part of the manufacturing, assembly, fabrication or repair of marine craft or marine equipment due to the size of the craft or equipment.
  - 4. *Other water-dependent uses not requiring the use of fill.* A use is determined to be water-dependent when it can only be carried out on, in or adjacent to water and the location or access is needed for:
    - (a) Water-borne transportation;
    - (b) Recreation; and
    - (c) A source of water (such as energy production, cooling of industrial equipment or wastewater or other industrial processes).
  - 5. Navigational structures limited to floating breakwaters;
  - 6. Storm water and treated sewage outfalls;
  - 7. Bulkheads for structural shoreline stabilization;
  - 8. Temporary alterations;
  - 9. Minor navigational improvements; and
  - 10. Water-dependent portion of aquaculture facilities requiring dredging or fill.
  - 11. Houseboats, subject to provisions in Section 157.301.06.
- (D) Regulated Activities. The following regulated activities are permitted subject to the procedures in Section 157.302.01 and the standards of Section 157.302.02 of this Chapter:
- 1. Regulated activities in association with on-site maintenance and repair of existing structures or facilities, limited to:
    - (a) Dredging for on-site maintenance of:
      - (1) Drainage tiles;
      - (2) Drainage ditches;
      - (3) Tide gates;
      - (4) Bridge crossing support structures;
      - (5) Water, sewer, gas or communication lines;
      - (6) Electrical distribution lines; and
      - (7) Outfalls.
    - (b) Fill or riprap for on-site maintenance of:
      - (1) Dikes;
      - (2) Bridge crossing support structures or other land transportation facilities; and
      - (3) Shoreline stabilization structures.
  - 2. Piling installation for:
    - (a) Water-dependent industrial, commercial or recreational facilities;
    - (b) Water dependent portions of aquaculture facilities or aquaculture operations;
    - (c) Navigational aids;
    - (d) Bulkheads; and
    - (e) Bridge crossing support structures.
  - 3. Dredging for:
    - (a) Maintenance of existing facilities;
    - (b) Minor navigational improvements;
    - (c) Water-dependent recreational facilities;

- (d) Water-dependent portions of aquaculture facilities;
  - (f) Bridge crossing support structure installation;
  - (g) Outfall installation;
  - (h) Water, sewer, gas and communication line installation;
  - (i) Electrical distribution line installation;
  - (j) Tide gate installation in existing functional dikes adjacent to EC2 Zones; and
  - (k) Boat ramps.
4. Riprap for structural shoreline stabilization protection of utility lines allowed by the zone; and
  5. Fill for:
    - (a) Bridge crossing support structures;
    - (b) Structural shoreline stabilization;
    - (c) Water-dependent recreational facilities;
    - (d) Water-dependent portions of aquaculture facilities;
    - (e) Boat ramps;
    - (f) Regulated activities in conjunction with an approved active restoration or estuarine enhancement project;
    - (g) Incidental dredging for harvest of benthic species or removal of in-water structures such as stakes or racks; and
    - (h) Regulated activities in conjunction with temporary alterations.

**157.301.06 Estuary Development Zone (ED)**

(A) Purpose and Areas Included.

1. Provide for long-term maintenance, enhancement, expansion or creation of structures or facilities for navigational and other water-dependent commercial, industrial or recreation uses;
2. Provide for the expansion or creation of other commercial, industrial or recreational facilities; subject to the general use priorities outlined within this section; and
3. The ED Zone includes the following areas within development estuaries:
  - (a) Areas that contain public facilities that are utilized for shipping, handling or storage of water-borne commerce or for moorage or fueling of marine craft;
  - (b) Subtidal channel areas adjacent or in proximity to the shoreline which are currently used or needed for shallow-draft navigation (including authorized maintained channels and turning basis);
  - (c) Areas of minimum biologic significance needed for uses requiring alteration of the estuary not included in EC1 or EC2 Zones; and
  - (d) Where an acknowledged Goal 16 exception has been taken, areas of biologic significance which are potentially suitable for commercial, recreational or industrial development due to their proximity to subtidal channels, developed or developable shorelands or developed estuarine areas, and to the availability of services.

- (B) Uses Permitted with Standards. The following uses are permitted subject to the procedure of Section 157.302.01 standards in Section 157.302.02 of this Chapter:
1. Maintenance and repair of existing structures or facilities involving a regulated activity;
  2. Navigational structures and navigational aids;
  3. Water-dependent commercial uses, including docks, moorages and marinas for commercial marine (including seaplanes);
  4. Water-dependent industrial uses, including:
    - (a) Piers, wharves and other terminal and transfer facilities for passengers or water-borne commerce such as fish, shellfish, timber and timber products, machinery or equipment;
    - (b) Water intake and discharge structures; and
    - (c) Water access structures or facilities which require access to a water body as part of the manufacturing, assembly or fabrication or repair of marine craft or marine equipment due to the size of the craft or equipment.
  5. Water-dependent public recreational facilities including:
    - (a) Boat ramps; and
    - (b) Docks, moorages and marinas for recreational marine craft (including seaplanes).
  6. Aquaculture and water-dependent portions of aquaculture facilities;
  7. Other water-dependent when it can only be conducted on, in or adjacent to water; and the location or access is needed for:
    - (a) Water-borne transportation;
    - (b) Recreation; and
    - (c) A source of water (such as energy production, cooling of industrial equipment or waste water, or other industrial processes).
  8. Accessory uses or accessory structures in conjunction with a permitted with standards use listed above in this subchapter; limited in size to a maximum of 10% of the lot or parcel size;
  9. Vegetative shoreline stabilization;
  10. Structural shoreline stabilization;
  11. Tide gate installation in existing functional dikes adjacent to ED zones;
  12. Water, sewer, gas or communication lines;
  13. Electrical distribution lines and line support structures;
  14. Temporary dikes for emergency flood protection;
  15. New dike construction if:
    - (a) Required for a water-dependent use for which a substantial public benefit is demonstrated; the use or alteration does not unreasonably interfere with public trust rights and for which no practicable upland locations exist; and
    - (b) Adverse impacts are avoided or minimized to be consistent with the resource capabilities and purposes of the area.
  16. Temporary low water bridges;
  17. Signs subject to Section 157.408 of this Chapter;
  18. Temporary alterations;
  19. Active restoration or estuarine enhancement; and
  20. Bridge crossing support structures.

- (C) Uses Permitted Conditionally. The following uses may be permitted subject to the procedures of Section 157.302.01 and Section 157.507 of this Chapter; the standards in Section 157.302.02 of this Chapter; and, only after a finding that the proposed facility does not preclude or unduly conflict with water-dependent use on the site or in adjacent water-dependent development shorelands; and is consistent with the resources capabilities of the area:
1. *Water-related uses not requiring the use of fill.* A use is determined to be water-related when the use:
    - (a) Provides goods and/or services that are directly associated with water-dependent uses (supplying materials to, or using products of, water-dependent uses); and
    - (b) If not located near the water, would experience a public loss of quality in the goods and services offered. Evaluation of public loss of quality will involve a subjective consideration of economic, social and environmental consequences of the use.
  2. Water-related uses can include, but are not limited to, the following:
    - (a) Water-related industrial uses such as:
      - (1) Fish or shellfish processing plants; or
      - (2) Warehousing and/or other storage areas for marine equipment or water-borne commerce.
    - (b) Water-related commercial uses, such as:
      - (1) Fish or shellfish retail or wholesale outlet;
      - (2) Marine craft or marine equipment sales establishments;
      - (3) Charter fishing offices;
      - (4) Sport fish cleaning, smoking or canning establishments;
      - (5) Retail trade facilities in which the majority of products are products such as ice, bait, tackle, nautical charts, gasoline or other products incidental to or used in conjunction with a water-dependent use; and
      - (6) Restaurants which provide a view of the waterfront and which are in conjunction with water-dependent or other water-related uses; such as a seafood processing plant or a charter office.
    - (c) Non-water dependent and non-water-dependent uses not requiring the use of fill;
    - (d) Accessory uses or accessory structures in conjunction with a conditional use listed in this section, limited in size to a maximum of 10% of the lot or parcel size;
    - (e) Storm water and sewer outfalls;
    - (f) Water-related, non-dependent or non-related uses requiring the use of fill; provided that a Goal 16 exception has been approved and included as an amendment to the County Comprehensive Plan; and
    - (g) Boat docks on parcels without residences.

- (D) Regulated Activities. The following regulated activities are permitted subject to the procedures in Section 157.302.01 and the standards of Section 157.302.02 of this Chapter:
1. Regulated activities in association with on-site maintenance and repair of existing structures or facilities;
  2. Dredging for:
    - (a) Navigational improvements;
    - (b) Maintenance dredging of existing facilities;
    - (c) Water-dependent uses;
    - (d) Water-dependent portions of aquaculture facilities or aquaculture operations;
    - (f) Bridge crossing support structure installation;
    - (g) Water, sewer, gas or communication line installation;
    - (h) Outfall installation;
    - (i) Electrical distribution line installation; and
    - (j) Tide gate installation in existing functional dikes adjacent to ED Zones.
  3. Fill for:
    - (a) Water-dependent uses;
    - (b) Water-dependent portions of aquaculture facilities;
    - (c) Navigational structures or navigational improvements;
    - (d) Structural shoreline stabilization;
    - (e) Bridge crossing support structures;
    - (f) Water-related or non-water-dependent uses in areas where Goal 16 exceptions have been taken; and
    - (g) New dike construction.
  4. Piling and dolphin installation in conjunction with a permitted with standards or conditional uses within this zone;
  5. Riprap for structural shoreline stabilization or protection of utility lines allowed by this zone;
  6. Dredged material disposal in an approved DMD site or in conjunction with an approved fill project; subject to state and federal permit requirements for dredged material disposal;
  7. Flow-land disposal of dredged material, subject to state and federal permit requirements;
  8. Regulated activities in conjunction with an approved active restoration or estuarine enhancement project;
  9. Incidental dredging for harvest of benthic species or removal or in-water structures such as stakes or racks; and
  10. Regulated activities in conjunction with temporary alternatives.

#### **157.301.07 Houseboats**

Where identified under Section 157.301, in addition to the conditional use provisions in Section 157.507, houseboats shall be subject to the following requirements:

- (A) The houseboat shall conform to the definitional requirements in Section 157.301.02, shall be connected to public water and sanitary sewer systems.

- (B) The houseboat shall be moored in place, with access to the houseboat via pier, dock or river embankment.
- (C) At least one off-street parking spaces shall be required and conform with location, dimension and improvement provisions in Section 157.403.
- (D) The applicant shall provide evidence the houseboat complies with the applicable building code (or other applicable code) provisions.
- (E) The applicant shall provide evidence of Division of State Land and/or Army Corps of Engineer approvals for any improvements to moor the boat.

## 157.302 ESTUARY REGULATED ACTIVITIES AND STANDARDS

### **157.302.01 Review of Regulated Activities**

- (A) Purpose. The purpose of this section is to provide an assessment process and criteria for local review and comment on state and federal permit applications that could potentially alter the integrity of the estuarine ecosystem.
- (B) Regulated Activities. Regulated activities are those actions which require state and/or federal permits and include the following:
1. Fill (either in excess of 50 cubic yards or fill if less than 50 cubic yards requires a Section 10 or Section 404 permit from the U.S. Army Corps of Engineers);
  2. Dredging (either dredging in excess of 50 cubic yards within a 12-month period; or dredging if less than 50 cubic yards which requires a Section 10 permit from the U.S. Army Corps of Engineers);
  3. Dredged material disposal;
  4. Piling and/or dolphin installation;
  5. Shoreline stabilization, bank-line or streamline alteration involving fill or dredging in excess of 50 cubic yards; and
- (C) Procedure for Reviewing Regulated Activities. Review of state and federal permit notices is a function of the Planning Commission.
1. Planning Commission review procedures shall comply with provisions in Section 157.525.
  2. Regulated activities and any associated use or uses as a whole shall be reviewed according to the requirements of the zone(s) in which the proposed uses and activities are to be located, standards relevant to the proposed uses and activities, an impact assessment (division (E) below), resource capability and purpose determinations where applicable (division (F) below), requirements for degradations or reductions of estuarine natural values where applicable (division (G) below) and comments from state and federal agencies having responsibility for permit review (division (H) below).
  3. Based on this review, the Planning Commission will decide whether the proposed uses and activities comply with this chapter and will forward this decision to the appropriate permitting agencies and the permit applicant prior to the final date set for comments. Decisions of the Planning Commission may be appealed (division (I) below).
- (D) Zone Requirements.
- (1) Uses and activities shall be allowed only if they are allowed in the zones in which they are to be located. Accessory uses proposed for adjacent upland areas must be allowed in the upland zones in which they are to be located.
  - (2) Uses that are permitted with standards must comply with the standards of Section 157.302.02 of this chapter.



- (3) Uses listed as conditional uses shall be reviewed according to the procedures of Section 157.507 of this Chapter and the standards of Section 157.302.02 of this chapter.
- (4) If a conditional use review is required, the Planning Commission shall notify the applicant and state and federal permitting agencies and shall request an extension of the comment period.

(E) Impact Assessments.

1. The Planning Commission shall, with the assistance of affected state and federal agencies, develop impact assessments for regulated activities. Federal environmental impact statements or assessments may be substituted if made available to the Planning Commission.
2. The following considerations must be addressed in the impact assessment:
  - (a) The type and extent of alterations expected;
  - (b) The type of resource(s) affected including, but not limited to, aquatic life and habitats, riparian vegetation, water quality and hydraulic characteristics;
  - (c) The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary;
  - (d) The methods that could be employed to avoid or minimize adverse impacts;
  - (e) Navigation and public access to the water; impacts on present and/or anticipated use; and
  - (f) Engineering of structures; ability to withstand expected forces.

(F) Requirements for Resource Capability Determinations.

1. Uses and activities for which a resource capability determination is required by Section 157.302.02 of this chapter shall be allowed only if they are found to be consistent with the resource capabilities of the management unit(s) and the purposes of the zone(s) in which they are to be located.
2. An activity will be found to be consistent with the resource capability of a management unit (as described in Section 2 of the Estuarine Resources Element of the County Comprehensive Plan) when either:
  - (a) The impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant; or
  - (b) The resources of the area can assimilate the use and activity and their effects; and continue to function in a manner consistent with the purposes of the zone. The resource capability determination shall be based on information generated by the impact assessment.

(G) Significant Degradations or Reductions of Estuarine Natural Values.

1. Significant degradations or reductions of estuarine natural values include dredging, fill and other activities that will cause significant offsite impacts as determined by the impact assessment (division (E) above).
2. Dredging and fill must comply with the standards in division (E) above and this division (G).

3. Other reductions and degradations of estuarine natural values shall be allowed only if:
  - (a) A need (i.e., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights;
  - (b) No feasible alternative upland locations exist; and
  - (c) Adverse impacts are minimized as much as feasible.

(H) Reviewing Agency Comments.

1. In the review of regulated activities, the Planning Commission shall notify the following agencies:
  - (a) State Department of Fish and Wildlife;
  - (b) State Department of State Lands;
  - (c) State Department of Land Conservation and Development;
  - (d) State Department of Economic Development;
  - (e) U.S. Fish and Wildlife Service;
  - (f) National Marine Fisheries Service;
  - (g) Environmental Protection Agency; and
  - (h) U.S. Army Corps of Engineers.

*(NOTE: Agency comments may impact the Planning Commission's final decision. Therefore, the City shall require an applicant to submit proposed plans to the appropriate agency noted above prior to submitting an application with the City. This will allow the applicant to obtain preliminary agency input and modify plans, as needed, to address agency concerns.)*

2. Notice will be mailed within seven days of receipt of the state or federal permit notice.
  - (a) The notice will include permit reference, identification of the local decisions to be made, references to applicable policies and standards and notification of comment and appeal periods.
  - (b) The Planning Commission shall consider any comments received no later than seven days before the closing date for comments on the state or federal permit notice.

(I) Appeals.

1. Planning Commission decisions on regulated activities may be appealed to the City Council pursuant to provisions in Section 157.523 of this Chapter.
2. If the decision of the Planning Commission is appealed, the City shall notify the appropriate state and federal permitting agencies and shall request an extension to the comment period to allow for the local appeals process.

**157.302.02 Estuary Development Standards**

(A) Aquaculture Facilities. Aquaculture facilities in estuary zones shall be subject to the following standards.

1. Evidence shall be provided by the applicant and findings made by the county that aquaculture facilities do not prevent access to navigation

channels and that obstruction of access to publicly owned lands and recreational use areas are minimized.

2. Aquaculture facilities should be designed to minimize their visual impact (view obstruction). Whenever feasible, submerged structures are preferred over floating structures.
  3. In the design and construction of aquaculture facilities, reclamation and reuse of wastewater should be considered.
  4. Water diversion structures or human-made spawning channels shall be constructed to maintain required stream flows for aquatic life in adjacent streams and avoid significant reduction and acceleration of average water flow in an associated marsh. Water quality policies shall apply.
  5. Shellfish culture facilities shall either be located more than 2,000 feet away from sanitary sewer outfalls so that there will be no potential health hazard; or shall make provisions for purification of water used in the aquaculture operation.
  6. Water discharge from an aquaculture facility shall meet all federal and state water quality standards and any conditions attached to a waste discharge permit. Water quality policies shall apply.
  7. All state and federal laws governing environmental quality, resource protection, public health and safety, and engineering standards shall be met in the design, siting, construction and operation of aquaculture facilities. This determination shall be made by the State Department of Fish and Wildlife or other state or federal agencies with regulatory authority over aquaculture facilities.
  8. Aquaculture facilities in Estuary Conservation (EC) Zones and Estuary Development (ED) Zones shall be permitted only if evidence can be provided by the applicant and findings made by the county that:
    - (a) Aquaculture facilities in EC zones will require a resource capability determination where dredging, fill or other alterations of the estuary is needed, other than incidental dredging for harvest of benthic species or removal of in-water structures; and
    - (b) Aquaculture facilities in ED Zones will not preclude the provision or maintenance of navigation or other needs for commercial and industrial water-dependent uses and will not preempt the use of shorelands especially suited for water-dependent development.
  9. Leasing of publicly owned estuarine waters, intertidal areas or tidal wetlands for aquaculture shall be subject to the requirements of the Division of State Lands.
  10. Dredge, fill, shoreline stabilization, piling/dolphin installation or other activities in conjunction with an aquaculture facility shall be subject to the respective standards for these activities.
- (B) Diking. Siting, design, construction, maintenance or expansion of dikes in estuary zones shall be subject to the following standards.
1. Diking policy requirements in the Tillamook County Comprehensive Plan shall be met.

2. Proposals for new dike construction or dike maintenance or repair shall be accompanied by a brief statement from the local soil and water conservation service or a certified engineer stating that:
  - (a) The project is in conformance with good engineering practices and any applicable rules and regulations set forth by the State Division of State Lands and the U.S. Army Corps of Engineers;
  - (b) Provides for suitable erosion protection for the dike face; and
  - (c) Will produce no appreciable flood and erosion potential upstream or downstream of the proposed project.
3. When temporary dikes are constructed in intertidal areas or tidal wetlands, notice must be given to the Department of State Lands within 24 hours following the start of such activity and their approval for continuation of the project must be obtained. Intertidal areas and tidal wetlands shall be restored by the sponsor of the dike to pre-dike conditions after the removal of temporary dikes.
4. Fill shoreline stabilization or other activities in conjunction with dike construction, maintenance or repair shall be subject to the respective standards for these activities.
5. Repair and maintenance of existing dikes, and construction of new dikes involving fill in intertidal areas and tidal wetlands are subject to the requirements of the State Fill and Removal Law and the Clean Water Act of 1972 (Pub. Law No. 95-217) (applies to fill only).
6. Dikes shall not be used (or established) for vehicle access.

(C) Docks and Moorages.

1. Siting, design, construction, maintenance or expansion of new docks and moorages in estuary zones;
2. Water-Dependent Development (WDD) Shoreland Zones or other areas within the Shoreland Overlay Zone shall be subject to the following standards.
  - (a) Docks and moorages policy requirements in the Tillamook County Comprehensive Plan shall be met. It is advised the County be contacted prior to application submittal.
  - (b) When new construction or expansion of docks and moorages is proposed, evidence shall be provided by the applicant and findings made by the county that:
    - (1) The size of the facility is the minimum necessary to accommodate the number and size of boats using the facility.
      - a. The maximum size limit for a single-purpose dock (excluding walkways) shall be 500 square feet.
      - b. Larger docks may be permitted subject to the conditional use provisions of Section 157.507 of this chapter.
    - (2) Alternatives such as dry-land storage, launching ramps or mooring buoys are impractical.
3. To ensure that consideration is given to the beneficial economic and social impacts of moorages on local communities, proposals for new or

- expanded moorages should include statements on the impacts to local communities derived from increases in employment or increases in commercial or recreational activity;
4. Open pile piers or secured floats shall be used for dock construction. Piers and floats shall extend no further out into the water than is needed to provide navigational access;
  5. Floating docks shall be designed so that they do not rest on the bottom at low water;
  6. Single-purpose docks shall be permitted if evidence is provided by the applicant and findings made by the county that cooperative use facilities (marinas or community docks or mooring buoys) are unavailable, impractical or will not satisfy the need;
  7. Covered or enclosed moorages shall be limited to not more than 30% (in number) of the total moorage spaces of a given moorage;
  8. To avoid contamination of estuarine waters, intertidal areas or tidal wetlands, public docks and moorages should provide enclosed facilities on shorelands for public dumping of oil and emptying of holding tanks;
  9. When docks and moorages are proposed in EC1 or EC2 zones, evidence shall be presented by the applicant and findings made by the county that the proposed dock or moorage is consistent with the resource capabilities of the area and the long-term use of renewable resource and does not constitute a major alteration to other estuaries. In assessing the resource capabilities of an area, consideration shall be given to the size or intensity of the proposed facility, and its location with respect to adjacent resources;
  10. Docks and moorages in Water-Dependent Development (WDD) Shoreland Zones or other areas within the Shoreland Overlay Zone shall be subject to shoreland development standards;
  11. Moorages with a capacity greater than 25 boats shall be subject to shallow draft port facility and marina standards; and
  12. Dredging, fill, piling/dolphin installation, shoreline stabilization or other activities in conjunction with the construction of docks and moorages shall be subject to the respective standards for these activities.

(D) Dredged Material Disposal. Dredged material disposal in estuary zones, Water-Dependent Development (WDD) Shoreland Zones or other areas within the Shoreland Overlay Zone shall be subject to the following standards.

1. Dredged material disposal shall occur only in approved dredged material disposal sites, or for fill of development sites that have received applicable local, state and federal permits. All dredged material disposal policy requirements and fill standards shall apply.
2. State and federal water quality standards shall be met during all phases of dredged material disposal. Water quality policies shall apply.
3. The timing of dredged material disposal shall be coordinated with state and federal resource agencies to ensure adequate protection of wildlife habitat, bird nesting areas, fish runs and fish spawning activity and to minimize interference with fishing activities.

4. Ocean disposal of dredged materials shall be permitted only in an ocean disposal site approved by the U.S. Army Corps of Engineers and the Environmental Protection Agency.
5. With regard to in-water disposal in the river, estuary and ocean:
  - (a) Consideration shall be given to the need for the proposed disposal and the availability and desirability of alternate sites and methods of disposal that might be less damaging to the environment;
  - (b) The physical and chemical characteristics of the dredged materials should be compared with those of the disposal site; consideration should be given to matching the dredged material to the capabilities of the site; and
  - (c) In-water disposal requires an EPA and/or DEQ water quality certification or a short-term exemption. Polluted materials that cannot meet EPA and/or DEQ requirements for ocean disposal shall be disposed of on non-aquatic sites designed to properly settle out all pollutants prior to discharge back into the aquatic system.
6. Flow-lane disposal of dredged materials shall be monitored to assure that estuarine sedimentation is consistent with the resource capabilities and purposes of affected natural and conservative management units.
7. Ocean disposal of dredged materials shall be conducted to ensure that U.S. Army Corps of Engineers and EPA standards are met and that:
  - (a) The amount of materials deposited at a site will not seriously impact local ocean resources;
  - (b) Interference with sport and commercial fishing is minimized;
  - (c) Disposal is confined to the authorized disposal site; and
  - (d) The sediment transport of the materials after disposal will not return to the bar or the estuary. The U.S. Army Corps of Engineers and the EPA shall make this determination during their review of permit applications for ocean disposal of dredged materials.
8. Disposal of dredged materials on ocean beaches for purposes of beach nourishment shall be conducted to ensure that:
  - (a) The volume and frequency of dredged material disposal is controlled to avoid excessive fluctuations in beach profile. A stable beach profile shall be maintained as nearly as possible;
  - (b) Adverse impacts on benthic productivity, native plants and wildlife within; and downstream of the disposal site shall be avoided or minimized. Care shall be taken to ensure that erosion or smothering of productive habitat areas does not occur; and
  - (c) The dredged material is uncontaminated and composed predominantly of sand with a particle size compatible with material on the receiving shores.
9. Land disposal of dredged materials shall be conducted to ensure that the integrity of estuarine water, streams, underground springs and waterways are maintained.
  - (a) U.S. Army Corps of Engineers guidelines for design of containment areas at dredged material disposal sites shall be followed. The Corps shall be responsible for determining that these guidelines have been met.

- (b) All surface water runoff from disposed dredged materials shall be controlled and shall enter the waterway or estuary directly through an approved outfall. Outfalls shall be designed so that effluent is routed as directly as practicable to the main channel or deep water for dilution.
  - (c) When necessary, dikes shall be constructed around land dredged material disposal sites.
  - (d) Dredged material disposal settling ponds shall be designed to maintain at least one foot of standing water at all times to encourage proper settling of suspended solids. Secondary dredged material disposal settling ponds may be necessary to ensure the proper treatment of overflow waters, particularly in areas used for disposal of spoils containing toxic materials.
  - (e) Runoff from disposed dredged materials must pass over an appropriately designed and operated weir. Weir design and size shall be dependent upon the size of the disposal site and the physical and chemical characteristics of the dredged materials.
10. The final height and slope after each use of a land dredged material site shall be such that:
    - (a) The site does not enlarge itself by sloughing and erosion at the expense of adjacent aquatic areas;
    - (b) Loss of material from the site during storms and freshets is minimized; and
    - (c) Interference with the view from nearby residences, scenic viewpoints and parks is avoided.
  11. Re-vegetation of land disposal sites shall occur as soon as is practicable in order to retard water induced erosion and to restore agricultural or wildlife habitat value to the site. Native species or non-native species approved by the Soil Conservation Service shall be used; reference shall be made to the Inter-Agency Seeding Manual prepared by the Soil Conservation Service.
  12. Disposal of dredged material should occur on the smallest practicable land area consistent with the use of the property and the characteristics of the dredged material.
    - (a) Clearing of land should occur in stages on an as-needed basis.
    - (b) Reuse of existing disposal sites is preferred over creation of new sites to minimize the total land area covered by dredged material.
  13. Before dredged materials are disposed on land areas for use as fill in approved fill projects, a determination shall be made that the structural characteristics of the material are suitable for this use.
  15. The use of agricultural lands for dredged material disposal shall occur only when the sponsor of the dredging project can demonstrate that the soils can be restored to agricultural productivity after disposal use is completed. In cases where this demonstration cannot be made, an exception to the agricultural lands goal must be taken and included as an amendment to the Comprehensive Plan prior to the use of the site for dredged material disposal.
  15. Dredging project proposals shall provide at least a five-year program for disposal of dredging material; consistent with the standards listed above.

Disposal programs shall provide a mechanism for establishing stockpile sites of fill material suitable for use in approved fill projects.

- (E) Dredging in Estuarine Waters, Intertidal Areas or Tidal Wetlands. These standards shall apply only to dredging in excess of 50 cubic yards within a 12-month period or dredging of 50 cubic yards or less which requires a Section 10 permit from the U.S. Army Corps of Engineers.
1. When dredging in estuarine waters, intertidal areas or tidal wetlands is proposed, evidence shall be provided by the applicant and findings made by the county that:
    - (a) The dredging is necessary for navigation or other water dependent uses that require an estuarine location; or is specifically allowed by the management unit or zone;
    - (b) A need (i.e., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights;
    - (c) If no feasible alternative upland locations exist; and
    - (d) If adverse impacts are minimized.
  2. Dredging projects shall meet all requirements of the State Fill and Removal Law, § 10 of the Rivers and Harbors Act of 1899, and other applicable state and federal laws. These requirements shall be enforced by state and federal agencies with regulatory authority over dredging projects.
  3. Existing water quality, quantity and rate of flow shall be maintained or improved.
    - (a) Minimum stream flow requirements shall be maintained.
    - (b) Water quality policies shall apply.
  4. Flushing capacity of estuaries shall be maintained. A hydrologic report from a professional registered hydrologist or engineer may be required by the Planning Department to ensure that this standard has been met.
  5. Dredging shall be timed in order to minimize the effects of sedimentation and turbidity and to minimize impacts on fish, shellfish, and recreational and commercial fishery activities. The work periods specified in the Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources (ODFW, 2008) shall be followed unless approval of alternative work periods has been obtained from the State Department of Fish and Wildlife.
  6. Evidence shall be provided by the applicant and findings made by the county that projects requiring dredging are sited and designed so that initial and maintenance dredging are minimized.
  7. Dredging proposals shall provide at least a five-year program for disposal of dredged materials. Programs for disposal of dredged material shall be consistent with dredged material disposal standards.
  8. Dredging proposals requiring mitigation shall include a mitigation plan consistent with mitigation standards.
  9. New dredging projects shall not be allowed in areas where insufficient data are available to assess the relative biological value. Under these circumstances, the applicant may arrange to provide the necessary information with the technical assistance of state and federal resource agencies.



10. When dredging for the purpose of on-site maintenance of existing facilities is proposed, evidence shall be presented by the applicant and findings made by the county that:
  - (a) The dredging is necessary to maintain proper operation of the facility;
  - (b) The amount of dredging proposed is confined to the geographic area of the existing facility and is the minimum amount necessary to fulfill the need; and
  - (c) In cases where dredging or ditching for the purpose of tide gate or land drainage network maintenance is proposed, this finding requirement may be met by a brief statement from the local soil and water conservation service stating that:
    - (1) Dredging or ditching is necessary to maintain proper operation of the tide gate and/or the associated land drainage network behind the dike; and/or
    - (2) The amount of dredging or ditching proposed is confined to the geographic area of the tide gate or drainage network and is the minimum amount necessary to fulfill the need.
11. Excavation to create new water surface area shall be subject to the standards listed above and to the following standards.
  - (a) Provision shall be made for stabilization of new bank lines prior to the connection of the new water body to existing water bodies. Excavation of as much as is practical of the new water body shall be completed before it is connected to existing water bodies.
  - (b) Toxic substances or other pollutants shall not leak into the water as a result of the excavation.
  - (c) Erosion of adjacent shoreland areas and excessive sedimentation and turbidity in adjacent aquatic areas shall be avoided.
  - (d) Excavation shall occur at a time that will minimize its impact on aquatic life.
  - (e) Excavated materials shall not be disposed of in estuarine waters, intertidal areas or tidal wetlands, except as part of an approved fill project subject to fill standards.
12. Dredging for the purpose of bank line or stream alteration (i.e., realignment of a stream bank or the entire stream, either within or without its normal high-water boundaries) shall be subject to the standards listed above and to the following standards.
  - (a) Alignments should make maximum use of natural or existing deep-water channels; provided that, pockets of stagnant water are not created.
  - (b) Erosion of adjacent shoreland areas and excessive sedimentation and turbidity in adjacent aquatic areas shall be avoided.
  - (c) Temporary stabilization (mulching or sodding), sediment basis or other performance equivalent structures may be required at the discretion of the City or affected agency.
  - (d) Provision shall be made for stabilization of new bank lines. Shoreline stabilization standards shall apply.

- (e) Adverse impacts on fish spawning, feeding, migration and transit routes and wildlife habitat shall be evaluated and minimized.
- 13. An impact assessment shall be conducted during local, state and federal review of permit applications for dredging in estuarine waters, intertidal areas or tidal wetlands.
  - (a) The impact assessment shall follow the procedures outlined in Section 157.302.01 of this chapter.
  - (b) Identified adverse impacts shall be minimized to be consistent with the resource capabilities and purposes of the area.

(F) Energy Facilities and Utilities.

- 1. Siting, design, construction, maintenance or expansion of energy facilities and utilities in estuary zones shall be subject to the following standards.
  - (a) When new energy facilities and utilities are proposed within estuarine waters, intertidal areas or tidal wetlands, evidence shall be provided by the applicant and findings made by the county that:
    - i. A need (i.e., a substantial public benefit) exists and the use or alteration does not unreasonably interfere with public trust rights;
    - ii. Alternative non-aquatic locations are unavailable or impractical; and
    - iii. Dredging, fill and other adverse impacts are avoided or minimized.
  - (b) Electrical or communication transmission lines shall be located underground or along existing rights-of-way unless economically infeasible.
  - (c) Above-ground utilities shall be located to have the least adverse effect on visual and other aesthetic characteristics of the area. Interference with public use and public access to the estuary shall be minimized.
  - (d) Whenever practicable, new utility lines and crossings within estuarine waters, intertidal areas or tidal wetlands shall follow the same corridors as existing lines and crossings.
  - (e) Water discharge into estuarine waters, intertidal areas and tidal wetlands from an energy facility or utility shall meet EPA and DEQ standards and shall not produce increases in temperature in the receiving waters which would have adverse impacts on aquatic life. Water quality policies shall apply.
  - (f) When storm water and sewer outfalls are proposed in EC1 and EC2 Zones, evidence shall be provided by the applicant and findings made by the county that the proposed use is consistent with the resource capabilities of the area and the long-term use of renewable resources, and does not cause a major alteration of the estuary.
  - (g) When new energy facilities and utilities are proposed in ED Zones, evidence shall be provided by the applicant and findings made by the county that the proposed facility will not preclude the provision

or maintenance of navigation and other public, commercial and industrial water dependent uses.

- (h) Storm water and sewer outfalls shall go out to channels or areas where flushing will be adequate and shall not empty onto tide flats or intertidal wetlands.
  - (1) Effluent from outfalls must meet EPA and DEQ water quality standards.
  - (2) Water quality policies shall apply.
- (i) Dredge, fill, shoreline stabilization or other activities in conjunction with construction of energy facilities or utilities shall be subject to the respective standards for these activities.
- (j) Energy facilities and utilities shall be sited so that they do not and will not require structural shoreline stabilization methods.

(G) Fill in Estuarine Waters, Intertidal Areas and Tidal Wetlands. These standards shall apply only to dredging in excess of 50 cubic yards within a 12-month period or dredging of 50 cubic yards or less which requires a Section 10 or 404 permit from the U.S. Army Corps of Engineers:

1. When fill in estuarine waters, intertidal areas or tidal wetlands is proposed, evidence shall be provided by the applicant and findings made by the county that:
  - (a) The fill is necessary for navigation or other water-dependent uses that require an estuarine location; or is specifically allowed by the management unit or zone;
  - (b) A need (i.e., substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights;
  - (c) If no feasible alternative upland locations exist; and
  - (d) If adverse impacts are minimized.
2. When fill for the purpose of on-site maintenance of existing facilities is proposed, evidence shall be provided by the applicant and findings made by the county that:
  - (a) There are no alternative to fill to maintain proper operation of the facility; and
  - (b) The amount of fill proposed is confined to the geographic area of the existing facility and is the minimum amount necessary to fulfill the need.
3. Where existing public access is reduced, suitable access, as part of the development project, shall be provided.
4. The fill shall be placed at a time that will minimize sedimentation and turbidity. The work periods specified in the Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources (ODFW, 2008) shall be followed unless approval of alternative work periods has been obtained from the ODFW.
5. Only non-polluted materials may be used for fill. Materials that would create water quality problems are not permitted.
6. The perimeters of the fill shall be provided with erosion prevention measures, consistent with shoreline stabilization standards.

7. Fills shall be placed so that adjacent or nearby property is not adversely impacted by increased erosion, shoaling or flooding produced by changes in littoral drift or other changes in water circulation patterns. An affidavit from a professional registered engineer or hydrologist may be required by the Planning Department as a result of the impact assessment required in Section 157.302.01 of this chapter.
8. Fill proposals requiring mitigation shall include a mitigation plan consistent with mitigation standards.
9. Fill in estuarine waters, intertidal areas and tidal wetlands shall be subject to the requirements of the State Fill and Removal Law, the Rivers and Harbors Act of 1899, the Clean Water Act of 1977 (Pub. Law No. 95-217); and other applicable state and federal laws. These requirements shall be enforced by state and federal agencies with regulatory authority over fill projects.
10. An impact assessment shall be conducted during the local, state and federal review of permit applications for fill in estuarine waters, intertidal areas or tidal wetlands according to the provisions outlined in Section 157.302.01 of this chapter. Identified adverse impacts shall be minimized to be consistent with the resource capabilities and purposes of the area.

(H) Forestry and the Forest Products Industry. The following standards shall apply to forestry in estuary zones.

1. Timber propagation and harvest on commercial forest lands shall be subject to the State Forest Practices Act and administration rules for forest lands as defined in O.R.S. 527, 610, 527.730 and 527.990. The State Department of Forestry shall be responsible for determining that these standards have been met.

(I) Industrial and Commercial Uses in Estuarine Waters, Intertidal Areas and Tidal Wetlands. Siting, design, construction, maintenance or expansion of industrial and commercial uses within estuary zones shall be subject to the following standards.

1. Evidence shall be provided by the applicant and findings made by the county that:
  - (a) The amount of estuarine surface occupied is the minimum required to meet the need;
  - (b) Provision has been made for public access, viewpoints and recreational use; consistent with safety and security considerations;
  - (c) Multipurpose and cooperative use of piers, wharves, parking areas or handling and storage facilities has been provided for or is impracticable;
  - (d) Floating structures are designed so as not to rest on the bottom at low water and are protected against currents and waves;
  - (e) Alteration of productive intertidal areas and tidal marshes have been avoided or minimized; and
  - (f) Adverse impacts on the following have been avoided or minimized to be consistent with the resource capabilities and purposes of the area:
    - i. Water quality;

- ii. Hydrographic characteristics;
  - iii. Aquatic life and habitat;
  - iv. Bird and wildlife habitat; and
  - v. Fish transit and migration routes.
2. Removal of riparian vegetation shall be permitted only if direct access to water is required in conjunction with a water dependent use. Replacement of riparian vegetation or enhancement of existing riparian vegetation shall be required where consistent with water-dependent use to enhance attractiveness or assist in bank stabilization.
  3. Visual access to the water shall not be impaired by the placement of signs.
    - (a) When feasible, signs shall be constructed on or against buildings to minimize visual obstruction of the shoreline and water bodies.
    - (b) Off-premise outdoor advertising signs shall not be allowed within estuarine waters, intertidal areas or tidal wetlands.
  4. The design and construction of new industrial and commercial facilities should consider reclamation and reuse of wastewater.
  5. Provision for the prevention and control of contaminants from entering the water shall be made. A contingency plan to provide for containment and clean-up of spills of contaminants shall be provided.
  6. Industrial outfalls, sewer outfalls and storm water outfalls shall go out to channels or areas where flushing will be adequate and shall not empty onto tide flats or salt marshes.
    - (a) Effluent from outfalls must meet EPA and DEQ water quality standards.
    - (b) Water quality policies shall apply.
  7. When water-dependent industrial and commercial uses are proposed in EC2 Zones, evidence shall be provided by the applicant and findings made by the county that the proposed use is consistent with the resource capabilities of the area and the long-term use of renewable resources and would not cause a major alteration of the estuary.
  8. When water-related or non-dependent, non-related industrial or commercial uses are proposed in ED Zones, evidence must be presented that:
    - (a) The use will not preclude the provision or maintenance of navigation and other needed public, commercial and industrial water-dependent uses;
    - (b) The use will not preempt the use of shorelands especially suited for water-dependent development; and
    - (c) Non-water dependent and non-water-related uses which permanently alter estuarine resources and values shall include evidence of the public benefits derived from the project, which shall include:
      - i. The beneficial economic impacts to local communities derived from the increases in employment; and/or
      - ii. Indirect economic impacts generated by increases in commercial, industrial or recreational activity within the area.
  9. All state and federal laws governing the use, handling, storage, treatment and disposal of toxic materials, petroleum, wastewater and organic wastes

and other state and federal laws governing environmental quality, resource protection or public health and safety shall be met. This determination shall be made by appropriate state or federal agencies with regulatory authority.

10. Dredging, fill, piling/dolphin installation, shoreline stabilization, disposal of dredged material or other activities in conjunction with industrial and commercial uses shall be subject to the respective standards for these activities.

(J) Land Transportation Facilities. Siting, design, construction and maintenance of bridges, roads or railroads in estuary zones shall be subject to the following standards.

1. Proposals for new county or state highways, or for railroads, shall provide an evaluation of the proposed project on the following:
  - (a) Land use patterns;
  - (b) Energy use;
  - (c) Air and water quality;
  - (d) Estuarine habitat, functions and processes;
  - (e) Existing transportation facilities; and
  - (f) Physical and visual access to estuaries and shorelands.
2. Evidence shall be provided by the applicant and findings made by the county that the siting, design, construction and maintenance of land transportation facilities would be conducted to avoid mass soil wasting or excessive surface erosion.
3. Land transportation facility proposals shall include a rehabilitation plan specifying the method and timing of necessary site rehabilitation. Site rehabilitation plans shall provide for replacement of riparian vegetation.
4. Vegetated buffer strips shall be maintained, whenever practicable, along roadways to manage storm drainage runoff.
5. When culverts are used in association with bridge crossing, spring line natural bottom culverts preferred over box culverts.
6. All bridge crossings and culverts shall be positioned and maintained to allow fish passage, avoid interference with anadromous fish runs and to prevent any constriction of natural streams which would result in increases in flood or erosion potential. When culverts are used, no fill shall be allowed in streams, rivers and estuaries.
7. When land transportation facilities are proposed in ED Zones, evidence shall be presented by the applicant and findings made by the county that the proposed use will not preclude the provision or maintenance of navigation and other needed public, commercial and industrial water-dependent uses.
8. Dredging, fill, piling/dolphin installation, shoreline stabilization, dredged material disposal or other activities in conjunction with land transportation facilities shall be subject to the respective standards for these activities.

(K) Mitigation. Mitigation projects in estuary zones, Water-Dependent Development (WDD) Shoreland Zones or other areas within the Shoreland Overlay Zone shall be subject to the following standards.

1. Mitigation for dredge or fill within intertidal areas or tidal wetlands shall be required by the Director of the Division of State Lands. The suitability of a mitigation proposal for a given proposed project shall be determined by the Director of the Division of State Lands, according to the procedure established in Administrative Rule 85-245 (Ch. 141).
  2. Mitigation projects shall go into effect prior to or at the same time as the development project.
  3. Mitigation projects in Water-Dependent Development (WDD) Shoreland Zones or other areas within the Shoreland Overlay Zone shall be subject to shoreland development standards.
- (L) Navigational Structures and Navigational Aids. Navigational structures and aids in estuary zones shall be subject to the following standards.
1. When navigational structures are proposed, evidence shall be provided by the applicant and findings made by the county that:
    - (a) The amount of estuarine surface area occupied is the minimum necessary to accomplish the proposed use;
    - (b) The project will not interfere with the normal public use of fishery, recreation or water resources;
    - (c) The proposed project will not adversely impact adjacent or nearby property through increased erosion, shoaling or flooding produced by changes in littoral drift or other changes in water circulation patterns. An affidavit from a professional registered engineer or hydrologist may be required by the Planning Department as a result of the impact assessment required in Section 157.302.01 of this chapter; and
    - (d) Non-structural solutions are unavailable, impractical or do not meet the need.
  2. When floating breakwaters are proposed in EC1 and/or EC2 Zones, evidence shall be provided by the applicant and findings made by the county that the proposed use is consistent with the resource capabilities of the area and the long-term use of renewable resources, and does not cause a major alteration of the estuary.
  3. Navigational structures shall meet all applicable U.S. Army Corps of Engineers engineering standards. The Corps shall be responsible for determining that these engineering standards have been met.
  4. An impact assessment shall be conducted during local, state and federal review of permit applications for navigational structures.
    - (a) The impact assessment shall follow the procedures outlined in Section 157.302.01 of this chapter.
    - (b) Identified adverse impacts shall be minimized to be consistent with the resource capabilities and purpose of the area.
  5. Dredging, fill or other activities in conjunction with navigational structures and navigational aids shall be subject to the respective standards for these activities.
- (M) Piling/Dolphin Installation. Piling/dolphin installation in estuary zones shall be subject to the following standards.

1. When piling or dolphin installation is proposed, evidence shall be provided by the applicant and findings made by the county that:
    - (a) The amount of estuarine surface area occupied is the minimum necessary to accomplish the proposed use;
    - (b) The project will not unduly interfere with the normal public use of fishery, recreation or water resources; and
    - (c) The proposed project will not adversely impact adjacent or nearby property through increased erosion, shoaling or flooding produced by changes in littoral drift or other changes in water circulation patterns. An affidavit from a professional registered engineer or hydrologist may be required by the Planning Department as a result of the impact assessment required in Section 157.302.01 of this chapter.
  2. When new piling or dolphin installation is proposed in the EC1 and/or EC2 Zones, evidence shall be provided by the applicant and findings made by the county that the project is consistent with the resource capabilities of the area and the purposes of the management area.
  3. When proposals for new piling or dolphin installation in conjunction with a non-water-dependent or non-water-related use within ED Zones are made, evidence shall be presented by the applicant and findings made by the county that the project is consistent with the maintenance of navigation and other needed public, commercial and/or industrial water-dependent uses.
  4. Piling/dolphin replacement and new installation shall meet all applicable U.S. Army Corps of Engineers engineering standards and permit requirements. The Corps shall be responsible for determining that these engineering standards and permit requirements have been met.
  5. An impact assessment shall be conducted during local, state and federal review of permit applications for piling/dolphin installation.
    - (a) The impact assessment shall follow the procedure outlined in Section 157.302.01 of this chapter.
    - (b) Identified adverse impacts shall be minimized to be consistent with the resource capabilities and purposes of the area.
- (N) Restoration and Enhancement. Restoration and enhancement projects in estuary zones, water-dependent development shoreland zones or other areas within the Shoreland Overlay Zone shall be subject to the following standards.
1. Restoration and enhancement policy requirements in the County Comprehensive Plan shall be met.
  2. Proposals for restoration projects shall present evidence that:
    - (a) The restored area is a shallow subtidal, intertidal or tidal marsh area after alteration work is performed;
    - (b) The restored area may not have been a functioning part of the estuarine system when alteration work begins; and
    - (c) The restored area is revitalizing, returning or replacing original attributes and amenities that have been diminished or lost by past alterations, activities or catastrophic events.
  3. Estuarine enhancement project proposals shall identify:



- (a) The original conditions to be enhanced;
  - (b) The cause of the loss or degradation; and
  - (c) The location and extent of actions necessary to achieve the enhancement objective.
4. Estuarine enhancement project proposals shall present evidence that the project will result in an overall improvement in the cultural, historic, economic or navigational features of an estuary which will outweigh any adverse impacts.
  5. When active restoration or enhancement projects are proposed in EC1 or EC2 Zones, evidence shall be provided by the applicant and findings made by the county that the proposed use is consistent with the resource capabilities of the area and the long-term use of renewable resources, and does not cause a major alteration of the estuary.
  6. When passive or active restoration or enhancement projects are proposed in ED Zones, evidence shall be provided by the applicant and findings made by the county that the project will not interfere with the provision or maintenance of navigation and other public, commercial and industrial water-dependent uses; and will not interfere with the use of adjacent shorelands especially suited for water-dependent development.
  7. When active restoration projects are proposed in Water-Dependent Development (WDD) Shoreland Zones, evidence shall be provided by the applicant and findings made by the county that the proposed project does not preclude or conflict with existing or reasonable potential water-dependent use on the site or in the vicinity. Shoreland development standards shall apply.
  8. Dredge, fill, shoreline stabilization, shoreland development, installation of energy facilities or utilities, dredged material disposal and other uses and activities proposed as part of a restoration or enhancement project shall be subject to their respective standards for these uses and activities.
  9. Restoration and enhancement projects in Water-Dependent Development (WDD) Shoreland Zones or other areas within the Shoreland Overlay Zone shall be subject to Shoreland Development Standards.
- (O) Shallow Draft Port Facilities and Marinas. Siting, design, construction and maintenance of shallow draft port facilities and marinas in estuary zones shall be subject to the following standards.
1. Evidence shall be provided by the applicant and findings made by the county that:
    - (a) Facilities have been sited and designed to minimize initial and maintenance dredging;
    - (b) Dry land boat storage has been provided for, or is impracticable;
    - (c) Provision has been made for public access, viewpoints and recreational use, consistent with safety and security considerations;
    - (d) Multi-purpose and cooperative use of piers, wharves, parking areas and cargo handling and storage has been provided for, or is impracticable;
    - (e) Floating structures are designed so as not to rest on the bottom at low water and are protected against currents and waves;

- (f) The amount of water surface occupied is the minimum required to meet the need;
  - (g) Provision has been made for maintenance of riparian vegetation except where direct access to water is required;
  - (h) Natural or human-made protection from wind, waves, storm or tidal currents or ship wakes has been provided for; and
  - (i) Adverse impacts on the following have been avoided or minimized to be consistent with the resource capabilities and purposes of the area:
    - i. Navigation;
    - ii. Water quality;
    - iii. Hydrographic characteristics;
    - iv. Natural processes of erosion and sedimentation; and
    - v. Aquatic life and habitat.
2. Marina access channels shall be designed to maximize water circulation and avoid dead spots.
    - (a) Dead-end channels or confined basins should be avoided.
    - (b) Demonstration shall be made that state and federal clean water standards can be maintained.
    - (c) A field study of water circulation patterns may be required by the Planning Department as a result of the impact assessment required in Section 157.302.01 of this chapter.
  3. Safe navigation access to port facilities and marinas shall be provided and maintained.
  4. Covered or enclosed moorages shall be limited to not more than 50% (in number) of the total moorage spaces of a given port facility or marina.
  5. The following provisions for the prevention and control of contaminants from entering the water shall be made.
    - (a) Enclosed shoreland facilities for public dumping of oil and emptying of holding tanks shall be provided.
    - (b) A contingency plan to provide for containment and clean-up of spills of contaminants shall be provided.
  6. Proposals for expansion or creation of port or marina facilities shall be accomplished by a demonstration of the public benefits derived from the project which shall include:
    - (a) Information on why the capacity of existing facilities is inadequate;
    - (b) The beneficial economic impacts to local communities derived from increases in employment; and/or
    - (c) Indirect economic impacts generated by increases in commercial, industrial or recreational activity within the area.
  7. All state and federal laws governing the use, handling, storage, treatment and disposal of toxic materials, petroleum, wastewater and organic wastes and other state and federal laws governing environment quality, resource protection or public health and safety shall be met. This determination shall be made by appropriate state or federal agencies with regulatory authority.
  8. When marina expansion or development is proposed in EC2 Zone, evidence shall be provided by the applicant and findings made by the

county that the project is consistent with the resource capabilities of the area and the long-term use of renewable resources and does not cause a major alteration of the estuary.

9. Dredge, fill, piling/dolphin installation, navigational structures, shoreline stabilization or other activities in conjunction with expansion or creation of new port facilities and marinas shall be subject to the respective standards for these activities.

(P) Shoreline Stabilization. Shoreline stabilization projects in estuary zones, Water-Dependent Development (WDD) Shoreland Zones or other areas within the Shoreland Overlay Zone shall be subject to the following standards.

1. Within estuarine waters, intertidal areas and tidal wetlands and along Water-Dependent Development zones and other shoreland areas; general priorities for shoreline stabilization for erosion control are, from highest to lowest:
  - (a) Proper maintenance of existing riparian vegetation;
  - (b) Vegetated riprap;
  - (c) Non-vegetated riprap; and
  - (d) Groins, bulkheads or other structural methods. Shoreline protection proposals shall include justification for the use of a lower priority method over a higher priority method.
2. Vegetative shoreline stabilization shall use native species or non-native species approved by the soil conservation service. Reference shall be made to the Interagency Seeding Manual prepared by the soil conservation service.
3. When structural shoreline stabilization methods are proposed, evidence shall be presented by the applicant and findings made by the county that:
  - (a) Flooding or erosion is threatening an established use on a subject property or a need (i.e., a substantial public benefit) is demonstrated in conjunction with navigation or a water dependent use;
  - (b) Land use management practices or non-structural solutions are inappropriate or will not meet the need;
  - (c) The proposed structural stabilization method is the minimum size needed to accomplish the desired stabilization;
  - (d) The proposed project will not restrict existing public access to publicly owned lands or interfere with navigation or the normal public use of fishery, recreation or water resources; and
  - (e) The proposed project will not adversely impact adjacent aquatic areas or nearby property through increased erosion, sedimentation, shoaling or flooding produced by changes in littoral drift or other changes in water circulation patterns.
    - i. An affidavit from a professional registered engineer, hydrologist or geologist may be required by the Planning Department as a result of the impact assessment required in Section 157.302.01 of this chapter.
    - ii. A brief statement from the local soil and water conservation service may serve as evidence that divisions (Q)(1) and (Q)(2) above have been met.

4. Shoreline stabilization projects shall be timed to minimize impacts on aquatic life.
5. Proposals for riprap shall include evidence that the rock to be used will be effective and provide justification for use of a slope steeper than one and one-half feet horizontal to one foot vertical.
6. When bulkheads are proposed, evidence shall be provided by the applicant and findings made by the county that the other forms of structural stabilization are inappropriate or will not meet the need.
  - (a) Bulkheads should be designed to be permeable to ground water and runoff.
  - (b) Fill policies and standards shall apply to bulkhead projects that involve fill within estuarine waters, intertidal areas or tidal wetlands.
7. When structural shoreline stabilization is proposed in the EC1 and/or EC2 Zones, evidence shall be presented by the applicant and findings made by the county that the project is consistent with the resource capabilities of the area and the long-term use of renewable resources and does not cause a major alteration of the estuary.
8. When structural shoreline stabilization is proposed in ED Zones, evidence shall be presented by the applicant and findings made by the county that the project is consistent with the maintenance of navigation and other needed public, commercial and industrial water-dependent uses.
9. Structural stabilization along ocean shorelands west of the Beach Zone line shall be subject to the requirements of the State Department of Transportation Ocean Shore permit and regulatory program.
10. An impact assessment shall be conducted during local, state and federal review of permit applications for structural shoreline stabilization seaward of the line of non-aquatic vegetation or the mean higher high water (MHHW) line.
  - (a) The impact assessment shall follow the procedure outlined in Section 157.302.01 of this chapter.
  - (b) Identified adverse impacts shall be avoided or minimized to be consistent with the resource capabilities and purposes of the area.

CHAPTER 157  
ARTICLE IV – DEVELOPMENT REQUIREMENTS

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## 157.401 GENERAL PROVISIONS

### **157.401.01 Purpose**

The purpose of this Article is to:

- (A) Carry out the Comprehensive Plan with respect to development standards and policies. Ensure that natural features of the landscape, such as landforms, natural drainage-ways, trees, and wooded areas, are preserved as much as possible and protected during construction.
- (B) Promote and maintain healthy environments and minimize development impacts upon surrounding properties and neighborhoods.

### **157.401.02 Application of Standards**

- (A) Application. The standards set forth in this Article shall apply to single family dwellings, duplexes, multi-family dwellings, land divisions, commercial and industrial projects.
- (B) Alternatives to Standards. The application of these standards to a particular development shall be modified as follows:
  - 1. Development standards which are unique to a particular use, or special use, shall be set forth within the zone or in this Section.
  - 2. Those development standards which are unique to a particular zone shall be set forth in the Section governing that zone.
- (C) Organization. This Article is organized as follows:
  - 1. Standards that apply to all zones, such as street standards or sign regulations, are in Sections 157.402 to 157.419.
  - 2. Standards that apply to specific development or activities, such as a residential accessory building or bed and breakfast establishment, are in Sections 157.420 to 157.439.
  - 3. General standards that apply to a variety of developments or uses, such as fences or construction in geologically sensitive areas, are found in Section 157.430 to 157.459.

### **157.401.03 Application of Public Facility Standards**

Standards for the provision and utilization of public facilities or services available within the City of Nehalem shall apply to all land developments in accordance with the requirements of the City Public Works Department and City Engineer. No development permit shall be approved unless the required improvements are provided prior to occupancy or operation, or unless future provision is assured through a bond, deposit, agreement, or similar instrument approved by the City.

## 157.402 STREET STANDARDS

### **157.402.01 Purpose**

- (A) To provide for safe, efficient, convenient multi-modal movement in the City of Nehalem.
- (B) To provide adequate access to all proposed developments in the City of Nehalem.
- (C) To provide adequate area in all public rights-of-way for sidewalks, bikeways, sanitary sewers, storm sewers, water lines, natural gas lines, power lines, and other utilities commonly and appropriately placed in such rights-of-way.

### **157.402.02 General Provisions**

#### (A) General

- 1. The location, width and grade of streets shall be considered in their relation to existing and planned streets, to topographical conditions, to public convenience and safety and to the proposed use of land to be served by the streets.
- 2. The street system shall assure an adequate traffic circulation system with intersection angles, grades, tangents, and curves appropriate for the traffic to be carried considering the terrain.
- 3. Where location is not shown in a development plan, the arrangement of streets shall either:
  - (a) Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or
  - (b) Conform to a plan for the neighborhood adopted by the City to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical.

#### (B) Minimum rights-of-way widths.

- 1. Street rights-of-way and improvements shall be the widths and standards listed in the Minimum Right-of-Way Widths Table below.
- 2. The width of a required right-of-way shall be determined by the city based upon, but not limited to, the following factors:
  - (a) Street classification, if any, listed within the Comprehensive Plan, Transportation System Plan and/or this chapter;
  - (b) Anticipated traffic generation;
  - (c) On-street parking needs;
  - (d) Sidewalk and bikeway requirements based on anticipated level of use;
  - (e) Requirements for placement of utilities;
  - (f) Street lighting;
  - (g) Minimize drainage, slope and sensitive lands impacts, as identified within Section 157.406 of this chapter;

- (h) Safety and comfort for motorists, bicyclists and pedestrians;
  - (i) Access needs for emergency vehicles;
  - (j) Street furnishings (e.g., benches, lighting, bus shelters) when provided;
  - (k) Transition between different street widths (i.e., existing streets and new streets), as applicable; and
  - (l) Other relevant criteria.
3. Right-of-way classifications, as used herein, shall be construed to mean the following:
- (a) *Arterial street.* Carries most of the traffic through or into the city; provides access to the most intensive areas of the city;
  - (b) *Collector street.* Distributes traffic from arterial streets into residential streets and are intermediate in size, between arterial and residential streets;
  - (c) *Residential street.* Serves as direct access to abutting properties and are not intended to provide through traffic movements as do arterial and collector streets;
  - (d) *Private street.* Street that is not intended, nor shall become a public street with no possibility of through traffic and with adequate turnarounds; and
  - (e) *Driveway.* A private lane that shall not serve more than two residential units. Additional units may require the conversion of the driveway to a private or public street.

	Applicability	Right of Way	Travel Lanes	Min. Lane Width	Center Lane Turn	On-street Parking	Bike Facility	Sidewalk	Planter/ Buffer (one side)
Principal Arterial	TSP Map Vol. 3 Figure 6		2	11-12 feet	11 feet	7-8 feet	5-6 feet	8 feet	n/a
Principal Arterial with Pedestrian Facilities	TSP Map Vol. 3 Table 6		2	12 feet	11 feet	7 feet	n/a	8 feet (one side)	4 (planter) 1 (buffer)
Principal Arterial with Bike Facilities	TSP Map Vol. 3 Figure 12		2	10 feet	n/a	n/a	6 feet	n/a	n/a
Major Collector	TSP Map Vol. 3 Figure 7		2	10 feet	n/a	8 feet	n/a	n/a	n/a
Major Collector with Greenway cross-section	TSP Map Vol. 3 Figure 7		1	16 feet	n/a	n/a	Sharrow	n/a	n/a

Local	TSP Map Vol. 3 Figure 8		1	16 feet	n/a	n/a	n/a	n/a	n/a
	Apply	ROW	Lanes	Width			Bike	Side walk	Planting
Local with Pedestrian Cross Section	TSP Map Vol. 3 Figure 10		1	16 feet	n/a	n/a	n/a	6 feet (one side)	n/a
Local with Greenway cross-section	TSP Map Vol. 3 Figure 13		1	16 feet	n/a	n/a	Sharrow	n/a	n/a

(C) Alignment.

1. As far as is practical, streets other than minor streets shall be in alignment with existing streets by continuations of the centerlines thereof.
2. Staggered street alignment resulting in "T" intersections shall leave a minimum distance of 150 feet between the centerlines of streets having approximately the same direction.

(D) Future Street Extension.

- (1) Cul-de-sac and dead-end streets are prohibited unless street continuation is precluded by one or more of the following barriers:
  - (a) Topography (steep slopes greater than 25%)
  - (b) Highway right-of-way
  - (c) Pre-existing development patterns preclude street connections
  - (d) Regulated streams, wetlands, waterways, coastal resources, or other sensitive habitat
- (2) Reserve strips including street plugs may be required to preserve the objective of street extensions.
- (3) Where cul-de-sacs and dead-end streets are permitted, they should not exceed three hundred (300) feet in length, except in cases where physical barriers are present.
- (4) The cul-de-sac or dead-end street shall provide, or not preclude the opportunity to later install, a pedestrian and bicycle access way between it and adjacent developable lands.

(E) Intersection Angles.

1. Streets shall intersect at angles as near to right angles as practical except where topography requires a lesser angle; but in no case shall the acute angle be less than 80 degrees, unless there is a special intersection design, or the corner radius is increased to allow for safe turning.
2. An arterial or collector street intersecting with another street shall have at least one hundred (100) feet of tangent adjacent to the intersection unless topography or other unusual circumstances requires a lesser distance.
3. Other streets, except alleys, shall have at least fifty (50) feet of tangent adjacent to the intersection unless topography or other unusual circumstances requires a lesser distance.

4. Intersections which contain an acute angle of less than 80 degrees, or which include an arterial street shall have a minimum corner radius sufficient to allow for a roadway radius of 20-feet and maintain a uniform width between the roadway and the right-of-way line.
  5. Unless otherwise modified per Section 157.402.03, the intersection of more than two streets at any one point will not be approved.
- (F) Existing Streets. Whenever existing streets adjacent to or within a tract are of inadequate width, additional right-of-way shall be provided at the time of the land division.
- (G) Half Streets.
1. Half streets shall be prohibited, except where essential to the reasonable development of the subdivision or partitions if they are in conformity with the other requirements of these regulations when the Planning Commission finds it will be practical to require the dedication of the other half when the adjoining property is divided.
  2. Whenever a half street is adjacent to a tract to be divided, the other half of the street shall be platted within the tract.
  3. Reserve strips may be required to preserve the objectives of half streets.
- (H) Grades and Curves.
1. Grades shall not exceed 6% on arterials, 10% on collector streets or 12% on other streets.
  2. Centerline radii of curves shall be no less than 300 feet on major arterials, 200 feet on secondary arterials or 100 feet on other streets and shall be to an even ten feet.
  3. Where existing conditions, particularly the topography, make it otherwise impractical to provide buildable sites, the Planning Commission may accept steeper grades and sharper curves.
  4. In flat areas, allowance shall be made for finished street grades having a minimum slope of at least 0.5%.
- (I) Street Names. The City shall approve all street names for conformance with the established pattern and to avoid duplication and confusion.
- (J) Private Streets.
1. The design and improvement of any private street shall be subject to all requirements prescribed by this chapter for public streets.
  2. Private streets shall be named in per provisions in item (I) above.
  3. Provision for the maintenance of a private street shall be provided in the form of a maintenance agreement, homeowners association, or similar instrument acceptable to the City. The applicable document shall be recorded against the deed record of each lot or parcel, and if appropriate, placed on the final plat.

4. A turn-around shall be required for any private street which is the sole access, and which is either more than 150-feet or which serves more than one dwelling. Turn-arounds shall comply with the design provisions of the applicable fire district.
- (K) Private Access Easement. A private access easement created as the result of an approved land division shall conform to the following:
1. No more than two dwelling units shall have their sole access to the easement. Easements serving more than two homes shall comply with provisions for a private street.
  2. The minimum easement width shall be 20-feet with a minimum paved width of 16-feet.
  3. The maximum length shall be 200-feet
  4. The surface width noted in (K)(2) above shall be improved with either asphalt or concrete for the entire length of the private access easement.
  5. Provision for the maintenance of a private access driveway shall be provided in the form of a maintenance agreement, homeowners association, or similar instrument acceptable to the City. The applicable document shall be recorded against the deed record of each parcel, and if appropriate, placed on the final partitioning plat.
  6. A turn-around shall be required for any access easement which is the sole access, and which is either in excess of 150 feet or which serves more than one dwelling. Turn-arounds shall comply with the design provisions of the applicable fire district.
  7. All private access easements shall be designated as fire lanes and signed for "no parking."

**157.402.03 Modification of Right-of-Way and Improvement Width**

The City may allow modification to the public street standards of Section 157.402.02 when **both** items (A) and (B) of the following criteria are satisfied:

- (A) The modification is necessary to provide design flexibility in instances where:
1. Unusual topographic conditions require a reduced width or grade separation of improved surfaces;
  2. Parcel shape or configuration precludes accessing a development with a street which meets the full standards of this Chapter; or
  3. A modification is necessary to preserve trees or other natural features determined by the City to be significant to the aesthetic character of the area.
- (B) Modification of the standards of Section 157.402.02 shall only be approved if the City finds that the specific design proposed provides adequate vehicular access based on anticipated traffic volumes.

**157.402.04 Construction Specifications**

Construction specifications for all public streets shall comply with the criteria of the most recently adopted standards of the City of Nehalem.

### **157.402.05 Sidewalks**

Public sidewalk improvements are required for all property development in the City of Nehalem.

- (A) Sidewalks may be deferred:
  - 1. At the discretion of the City where future road or utility improvements are planned and expected to be completed within 10 years.
  - 2. On property where a new dwelling is being constructed, there are no sidewalks existing on properties on either side, and no elevations or profiles have been established for future street or sidewalk improvements along the adjacent or the subject property's frontage.
- (B) Sidewalks shall be constructed within the street right-of-way. Sidewalk easements shall only be accepted where the City Engineer determines that full right-of-way acquisition is impractical.
- (C) Sidewalks shall connect to and align with existing sidewalks. Sidewalks may transition to another alignment as part of the approval process.
- (D) Sidewalks width and location, including placement of any landscape strip, shall comply with the requirements of the City Public Works Department and City Engineer.
- (E) Planter strips and the remaining right-of-way shall be landscaped and maintained as part of the front yard of abutting properties. Maintenance of sidewalks and planters shall be the continuing obligation of the abutting property owner.
- (F) Mid-block Sidewalks. The City may require mid-block sidewalks for long blocks or to provide access to schools, parks shopping centers, public transportation stops, or other community services.

### **157.402.06 Bikeways**

Bikeways are required along Arterial and Collector streets, consistent with adopted Transportation System Plan. Bikeway improvements shall comply with the requirements of the City Public Works Department and City Engineer. Developments adjoining existing or proposed bikeways shall include provisions for connection and extension of such bikeways through dedication of easements or rights-of-way.

### **157.402.07 Lots and Parcels Served by Private Streets or Easements**

The following shall apply to all lots and parcels that are accessed by either a private street or private access easement:

- (A) Lot and Parcel Size. The easement containing the private street or access easement shall be excluded from the lot or parcel size calculation.

- (B) Setbacks. The line fronting along a private street or access easement shall be considered a property line. Setbacks to the garage and home shall be measured from this easement line.
- (C) Lot Depth and Width. Where required by the underlying zone, the lot width shall be measured along the easement boundary and the lot depth shall be measured from the easement boundary to the rear lot line.

**157.402.08 Traffic Impact Analysis**

The purpose of this subsection is to coordinate the review of land use applications with roadway authorities and to implement Section 660-012-00452(e) of the state Transportation Planning Rule, which requires the City to adopt a process to apply conditions to development proposals in order to minimize impacts and protect transportation facilities. The following provisions also establish when a proposal must be reviewed for potential traffic impacts; when a Traffic Impact Analysis must be submitted with a development application in order to determine whether conditions are needed to minimize impacts to and protect transportation facilities; the required contents of a Traffic Impact Analysis; and who is qualified to prepare the analysis.

- (A) When a Traffic Impact Analysis is Required. The City or other road authority with jurisdiction may require a Traffic Impact Analysis (TIA) as part of an application for development, a change in use, or a change in access. A TIA shall be required where a change of use or a development would involve one or more of the following:
  - 1. A change in zoning or a plan amendment designation;
  - 2. Operational or safety concerns documented in writing by a road authority;
  - 3. An increase in site traffic volume generation by 300 Average Daily Trips (ADT) or more;
  - 4. An increase in peak hour volume of a particular movement to and from a street or highway by 20 percent or more;
  - 5. An increase in the use of adjacent streets by vehicles exceeding the 20,000-pound gross vehicle weights by 10 vehicles or more per day;
  - 6. Existing or proposed approaches or access connections that do not meet minimum spacing or sight distance requirements or are located where vehicles entering or leaving the property are restricted, or such vehicles are likely to queue or hesitate at an approach or access connection, creating a safety hazard; **or**
  - 7. A TIA required by ODOT pursuant to OAR 734-051.
- (B) Traffic Impact Analysis Preparation. A professional engineer registered by the State of Oregon, in accordance with the requirements of the road authority, shall prepare the Traffic Impact Analysis.
- (C) The TIA shall be reviewed according to the following criteria:
  - 1. The analysis complies with the content requirements set forth by the City and/or other road authorities as appropriate;
  - 2. The study demonstrates that adequate transportation facilities exist to serve



the proposed land use action or identifies mitigation measures that resolve identified traffic safety problems in a manner that is satisfactory to the road authority;

3. For affected City facilities, the study demonstrates that the project meets mobility and other applicable performance standards established in the ZO and TSP, and includes identification of multi-modal solutions used to meet these standards, as needed; and
  4. Proposed design and construction of transportation improvements are in accordance with the design standards and the access spacing standards specified in the ZO and TSP.
- (D) Conditions of Approval.
1. The City may deny, approve, or approve a proposal with conditions necessary to meet operational and safety standards; provide the necessary right-of-way for planned improvements; and require construction of improvements to ensure consistency with the future planned transportation system.
  2. Construction of off-site improvements, including those related to bicycle and pedestrian facilities, may be required to mitigate impacts resulting from development that relate to capacity deficiencies and public safety; and/or to upgrade or construct public facilities to City standards.
  3. Where the existing transportation system is shown to be impacted by the proposed use, improvements such as paving; curbing; installation of or contribution to traffic signals; and/or construction of sidewalks, bikeways, access ways, paths, or streets that serve the proposed use may be required.
  4. Improvements required as a condition of development approval, when not voluntarily provided by the applicant, shall be roughly proportional to the impact of the development on transportation facilities. Findings in the development approval shall indicate how the required improvements directly relate to and are roughly proportional to the impact of development.

## 157.403 OFF-STREET PARKING AND LOADING

### **157.403.01 Purpose**

The purpose of this Chapter is to provide adequate areas for the parking, maneuvering, loading, and unloading of vehicles for all land use in the City of Nehalem.

### **157.403.02 Scope**

- (A) Application. Except as modified or restricted elsewhere within this Chapter, the provisions of this Chapter shall apply to the following types of development:
1. Any new building or structure erected after the effective date of this Chapter.
  2. The construction or provision of additional floor area, seating capacity, or other expansion of an existing building or structure.
- (B) Change of Use Exception. A change in the use of an existing building or structure to another use identified in the zone shall not require additional parking spaces or off-street loading areas, if according to the parking space requirements, the new use requires no more than 150% of the same amount of parking as the prior use.

### **157.403.03 Location**

Off-street parking and loading areas shall be provided on the same lot with the main building or structure or use except that:

- (A) Alternate Location - Residential. In residential zones, automobile parking for dwellings and other uses permitted in a residential zone may be located on another lot if such lot is within 200 feet of the lot containing the main building, structure, or use. In no case shall the parking requirements at the off-site location be reduced, unless otherwise approved as joint-use parking.
- (B) Alternate Location - Non-Residential. In non-residential zones, parking may be located off the site of the main building, structure or use if it is within 500-feet of such site. In no case shall the parking requirements at the off-site location be reduced, unless otherwise approved as joint-use parking.

### **157.403.04 Joint Use**

Parking areas may be used for a loading area during those times when the parking area is not needed or used. Parking areas may be shared between uses where hours of operation or use are staggered such that peak demand periods do not occur simultaneously. The requirements of this Section may be reduced accordingly. Such joint use shall not be approved unless satisfactory evidence is presented by a recorded deed, lease, contract, or similar written instrument establishing the joint use.

### **157.403.05 General Provisions Off-Street Parking and Loading**

- (A) Parking Required. The provision and maintenance of off-street parking and loading space is a continuing obligation of the property owner. No building permit

shall be issued until plans are presented that show property that is and will remain available for exclusive use as off-street parking and loading space. The subsequent use of property for which the building permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by this Chapter.

- (B) Interpretation of Parking Requirements. Requirements for types of buildings and uses not specifically listed herein shall be determined by the City Manager or designee based upon the requirements of comparable uses listed and expectations of parking and loading need.
- (C) Multiple Use Facilities. In the event several uses occupy a single structure or parcel of land, the total requirements for off-street parking shall be the sum of the requirements of the uses computed separately, unless a reduction is approved for shared parking pursuant to Section 157.403.04.
- (D) Storage Prohibited. Required parking spaces shall be available for the parking of operable passenger automobiles of residents, customers, patrons, and employees only, and shall not be used for storage of vehicles or materials.
- (E) Parking Adjacent to Residential Areas. Except for parking to serve dwelling uses, non-residential parking and loading areas adjacent to or within residential zones or uses shall be designed to minimize disturbances of residents by the erection between the uses of a sight-obscuring fence or wall of not less than five, or more than six, feet in height, except where vision clearance is required.
- (F) Parking Spaces on Boundaries. Parking spaces along the outer boundaries of a lot shall be contained by a curb or bumper rail at least four inches high and set back a minimum of four and one-half feet from the property line.
- (G) Lighting. Any light used to illuminate a parking or loading area shall be arranged to be directed entirely onto the loading or parking area, shall be deflected away from any residential use and shall not cast a glare or reflection onto moving vehicles on public rights-of-way.
- (H) Driveway Required. Groups of more than four parking spaces shall be served by a driveway so that no backing movements or other maneuvering within a street, other than an alley, will be required.
- (I) Loading. Commercial or industrial buildings between 10,000 to 25,000 square feet in area shall require a loading space. This initial loading space may incorporate the parking area. One additional space shall be required for each additional 25,000 square feet of gross floor area, or any portion thereof. The minimum loading space dimensions shall be 12-feet wide, 30-feet long, and 14-feet high.

**157.403.06 Vehicle Parking Standards.**

- (A) Minimum Requirements. The minimum number of required off-street vehicle parking spaces shall be determined based solely on the standards contained within this section. Off-street parking spaces may include spaces in garages, carports, parking lots and/or driveways if vehicles are not parked in a vehicle travel lane, public rights-of-way, pathways, or landscaped areas.
- (B) Calculation. All minimum parking requirements that result in a fractional number shall be rounded up to the next whole number for a fractional space of "0.5" or greater; and rounded down for a fractional space of less than "0.5".
- (C) Availability of Facilities Signage. Owners of off-street parking facilities may post a sign indicating that all parking on the site is available only for residents, customers and/or employees, as applicable.
- (D) Maximum Number of Parking Spaces.
  - 1. The number of parking spaces provided by any particular use in ground surface parking lots shall not exceed the required minimum number of spaces provided by this subchapter by more than 50%.
  - 2. Spaces provided on-street, or within the building footprint of structures, such as in rooftop or under-structure parking, or in multi-level parking above or below surface lots, may not apply towards the maximum number of allowable spaces.
  - 3. Parking spaces provided through "shared parking" also do not apply toward the maximum number.
- (E) Bicycle Spaces. When provided, bicycle parking development shall comply with the following requirements:
  - 1. Space Size. Each bicycle parking space shall be a minimum of six feet long and two feet wide and be accessible by a minimum five-foot aisle.
  - 2. Location. All bicycle parking shall be within 100-feet of a building entrance(s) and located within a well-lit area. Any long-term bicycle parking spaces shall be sheltered from precipitation.
- (F) Parking Space Requirements. Unless otherwise modified by other provisions in this Code, the following parking space requirements shall apply:

	Land Use Activity	Vehicle Spaces	Bicycle Spaces	Measurement
1.	1 and 2 family dwellings	2 spaces total	0	None
2.	Multi-family dwellings (3 or more units)	Studio – 1 space 1 bedroom – 1.5 spaces/unit 2-bedroom – 1.75 spaces/unit 3+ bedroom – 2 spaces/unit	0.25	Per dwelling unit

	<b>Land Use Activity</b>	<b>Vehicle Spaces</b>	<b>Bicycle Spaces</b>	<b>Measurement</b>
3.	Hotel, motel, boarding house	1 space per guest room plus 1 space for the office	1	Per 20 guest rooms
4.	Club, lodge	Spaces sufficient to meet the combined minimum requirements of the uses being conducted, such as restaurant, auditorium, etc.	2	Per 20 vehicle spaces
5.	Hospital	2 spaces per bed	0.5	Per 5 beds
6.	Nursing home, assisted living	Greater of 1 space per three beds or 1 space per apartment unit	0.5	Per 5 beds
7.	Churches, auditorium, stadium, theater Chapel/mortuary	1 space per 4 seats, or, every 8 feet of bench length, or, 36 sq. ft. of area w/o fixed seats	1	Per 20 vehicle spaces
8.	Preschool, kindergarten, elementary, junior high	Greater of 1.5 spaces per classroom or auditorium requirements in "7."	2	Per classroom
9.	High school	Greater of 1.5 spaces per classroom, plus one space per 10 students; or auditorium requirements in "7."	1	Per classroom
10.	Colleges, trade schools	Greater of 1.5 spaces per classroom, plus one space per 5 students, plus requirements for on-campus housing	1	Per classroom
11.	Bowling alley, miniature golf	Alley - 1 space per 100 sq. ft. Golf - 1 space per 4 holes	1	Per 20 vehicle spaces
12.	Retail store, except as provided in "13."	1 space per 350 sq. ft.	1	Per 20 vehicle spaces
13.	Service or repair shop, retail store handling exclusively bulky merchandise such as automobiles or furniture	Furniture, appliance - 1 space per 750 sq. ft. of gross floor area Auto and boat sales, nurseries, other bulk uses – 1 space per 1,000 sq. ft. of first 10,000 sq. ft. of gross land area; 1 space for each additional 5,000 sq. ft.	1	Per 30 vehicle spaces
14.	Public or private office building; bank; medical and dental clinic	General - 1 space per 500 sq. ft. of gross floor area, Medical - 1 space per 350 sq. ft. of gross floor area	1	Per 20 vehicle spaces
15.	Eating and drinking establishments	Lesser of 1 space per 4 seats, or, 1 space per 100 sq. ft. of gross leasable floor area	1	Per 20 vehicle spaces
16.	Industrial	Lesser of 1 space per two employees on largest shift or 1 space per 700 sq. ft. of gross	1	Per 20 vehicle spaces

	Land Use Activity	Vehicle Spaces	Bicycle Spaces	Measurement
		floor area; plus, one space per company vehicle.		
17.	Warehousing	Greater of 1 space per two employees or 1 space per 1,000 sq. ft. of gross floor area; plus, one space per company vehicle.	1	Per 20 vehicle spaces
18.	Public utilities	1 space per two employees on largest shift (minimum 2 spaces); plus, one space per company vehicle.	1	Per 20 vehicle spaces

- (I) Landscaping. All parking lots designed to accommodate 10 or more vehicles shall be developed with at least 10% of the area in plantings or other landscaping.
1. Such landscaping shall be located in defined planting areas evenly distributed throughout the parking area.
  2. Required planting areas shall have a width of not less than three feet.
  3. Required landscaping shall be maintained at all times.
- (J) Parking Exemption for the Commercial Zone. Commercial zoned property within the City limits of Nehalem, and located adjacent to US Highway 101, shall be exempt from the off-street vehicle and bicycle parking standards in Section 157.403.06. Existing developments containing off-street vehicle and bicycle parking shall not be required to maintain those spaces. If vehicle parking or bicycle parking is provided, it shall comply with provisions in Section 157.403.05 and Section 157.403.07.

**157.403.07 Parking and Loading Area Development Requirements**

- (A) Surfacing. All driveways, parking, and loading areas shall have a durable hard surface of asphaltic cement or concrete. Surface improvements shall conform to the following:
1. Paving Improvements. Paving shall comply with the requirements of the City Public Works Department and City Engineer and may include permeable pavement acceptable to the City Engineer.
  2. Timing. Unless modified by a variance, site development review, or bonded per City requirements, all driveways and off-street parking and loading areas shall be improved prior to occupancy of the primary structure.
  3. Surfacing Options for Industrial Zone. The City Engineer may allow the use of a graveled parking area in the industrial zones, provided all customer and employee parking areas are paved, surface drainage is addressed per Engineering Standards, and at least 20-feet of each access driveway connecting with a public street is paved.
- (B) Parking Stalls and Aisle Dimensions. All off-street parking stalls shall conform to city standards for surfacing, storm water management and striping (where

applicable). Standard parking spaces shall conform to the following table; compact spaces shall be limited to 20% of the required parking:

<b>Minimum Parking Space and Aisle Dimensions</b>						
<b>Angle</b>	<b>Type</b>	<b>Width</b>	<b>Curb Length</b>	<b>1-Way Aisle Width</b>	<b>2-Way Aisle Width</b>	<b>Stall Depth</b>
Parallel	Standard	8'	22'6"	12'	24'	8'
	Compact	7'6"	19'6"	12'	24'	7'6"
30-degree	Standard	9'	18'	12'	24'	17'
	Compact	7'6"	15'	12'	24'	14'
45-degree	Standard	9'	12'6"	12'	24'	19'
	Compact	7'6"	10'6"	12'	24'	16'
60-degree	Standard	9'	10'6"	18'	24'	20'
	Compact	7'6"	8'6"	15'	24'	16'6"
90-degree	Standard	9'	9'	24'	24'	19'
	Compact	7'6"	7'6"	22'	24'	15'

(C) Accessible Person Parking Spaces.

1. Accessible parking shall be provided in the amounts required by ORS 447.233 and administered through the building code regulations. All required striping displays and/or signs shall be in conformance with ADA standards.
2. Accessible parking is included in the minimum number of required parking spaces in Section 157.403.06 of this chapter. Accessible parking, including minimum requirements, shall comply with the adopted City Building Code requirements. This requirement does not apply to single-family detached dwellings.

**157.403.08 Pedestrian Walkways**

For commercial, multi-family, and light industrial development, and parking areas with five or more off-street spaces, pedestrian access and circulation is required to provide safe, reasonably direct, and convenient access for pedestrians.

- (A) A pedestrian walkway system shall extend throughout the development site and connect to any existing adjacent sidewalks, parking areas, or transit facilities, and to all future phases of the development, as applicable.
- (B) Walkways within developments shall provide safe, reasonably direct, and convenient connections between primary building entrances and all adjacent parking areas, recreational areas, playgrounds, and public rights-of-way conforming to the following standards:
- (C) The walkway is reasonably direct. A walkway is reasonably direct when it follows a route that does not deviate unnecessarily from a straight line, or it does not involve a significant amount of out-of-direction travel.

- (D) The walkway is designed primarily for pedestrian safety and convenience, meaning it is reasonably free from hazards and provides a reasonably smooth and consistent surface and direct route of travel between destinations. The City may require landscape buffering between walkways and adjacent parking lots or driveways to mitigate safety concerns.
- (E) The walkway network connects to all primary building entrances, consistent with the building design standards of Chapter 3.2 and, where required, Americans with Disabilities Act (ADA) requirements.
- (F) Where a walkway abuts a driveway or street it shall be raised six inches and curbed along the edge of the driveway or street. Alternatively, the City may approve a walkway abutting a driveway at the same grade as the driveway if the walkway is physically separated from all vehicle-maneuvering areas. An example of such separation is a row of bollards (designed for use in parking areas) with adequate minimum spacing between them to prevent vehicles from entering the walkway.
- (G) Where a walkway crosses a parking area or driveway ("crosswalk"), it shall be clearly marked with contrasting paving materials (e.g., pavers, light-color concrete inlay between asphalt, or similar contrasting material). The crosswalk may be part of a speed table to improve driver-visibility of pedestrians.
- (H) Walkways, including access ways required for subdivisions pursuant to Chapter 4.3, shall be constructed of concrete, asphalt, brick or masonry pavers, or other durable surface, as approved by the City Engineer, and not less than five feet wide. Multi-use paths (i.e., designed for shared use by bicyclists and pedestrians) shall be concrete or asphalt and shall conform to the transportation standards of Section 3.6.020.
- (I) Walkway surfaces may be concrete, asphalt, brick or masonry pavers, or other City-approved durable surface meeting ADA requirements. Walkways shall be not less than four feet in width. The City may also require six foot wide, or wider, concrete sidewalks in other developments where pedestrian traffic warrants walkways wider than four feet.
- (J) Multi-use pathways, where approved, shall be [10-12] feet wide and constructed of asphalt or concrete.
- (K) Bicycle and pedestrian access and connectivity shall be provided wherever a bus/transit stop is located on or adjacent to the subject property or subdivision.



## 157.404 LAND DIVISIONS

### **157.404.01 Purpose**

The purpose of this Chapter is to provide for the orderly, safe, and efficient division of land within the City.

### **157.404.02 Scope**

The provisions of this Chapter shall apply to all land divisions within the City of Nehalem. No person shall subdivide, expedited land divide, or partition an area or tract of land without compliance with the provisions of this Chapter. The following shall determine the appropriate process and design standards:

- (A) Partition. A land division creating two or three parcels within a calendar year shall be processed as a Partition and subject to the design and improvement standards for a Partition.
- (B) Subdivision. A land division creating four or more lots within a calendar year shall be processed as a Subdivision and subject to the design and improvement standards for a Subdivision.
- (C) Serial Partition. If a Partition results in the creation of a large parcel that can be subsequently divided so that there is the potential to create more than three parcels from the original, the request shall be processed as a Subdivision and subject to the design and improvement standards for a Subdivision.
- (D) Property Line Adjustments. Property line adjustments do not divide land but adjust boundaries between properties or consolidate property by eliminating a boundary. Specific requirements are contained in Section 157.502.
- (E) Planned Developments and Cottage Cluster Development. Both a planned development and cottage cluster development can divide property but allow greater flexibility in such design factors as lot size, street width, and specific amenity requirements. Requirements for a Planned Development are found in Section 157.405; provisions for a Cottage Cluster Development are found in Section 157.406.

### **157.404.03 Standards for Lots or Parcels**

The following standards shall apply to all Partitions and Subdivisions.

- (A) Minimum Lot Area. The minimum lot area shall conform to the requirements of the applicable zone in which the parcel is located. Access easements, or the access strip to a flag lot, shall not be included in the calculation of lot area for purposes of determining compliance with any minimum lot size provision of this Chapter.
- (B) Minimum frontage. Every lot shall abut a street, other than an alley, for at least 20-feet.

(C) Access and Spacing. Access and spacing standards for streets in Nehalem shall conform to the following access management spacing standards as indicated below.

<u>Functional Class</u>	<u>Maximum Block Length</u>	<u>Minimum Block Length</u>	<u>Minimum Driveway Spacing</u>	<u>Minimum Intersection Set Back</u>
Collector	1,000 feet	200 feet	100 feet	150 feet

(D) Access and Spacing for Highway 101 and Arterials. Access and spacing standards for Highway 101 within the City, and arterials shall conform to the Oregon Highway Plan (OHP) access management spacing standards as indicated below.

<b>Roadway</b>	<b>Speed Limit</b>	<b>Spacing Standard (rural)</b>	<b>Spacing Standard (urban)</b>
U.S. 101	55 or higher	1,320 feet	1,320 feet
	50	1,100 feet	1,100 feet
	40 & 45	990 feet	800 feet
	30 & 35	770 feet	500 feet
	25 & lower	550 feet	350 feet

(E) Private Street Access. Residential lots or parcels may be accessed by a private street developed in accordance with the provisions of Section 157.403 when it is determined that a public street access is:

1. Infeasible due to parcel shape, terrain, or location of existing structures; and
2. Unnecessary to provide for the future development of adjoining property.

(F) Flag Lots. Flag lots (or parcels) shall be subject to the following development standards:

1. The access strip shall be a minimum of 20-feet in width. The improved surface shall be a minimum of 14-feet in width.
2. The access strip shall not be included in the lot area calculation.
3. If the length of the access strip exceeds 150 feet, the parcel or lot shall include a turn-around area in compliance with local fire district requirements.

(G) Through Lots. Through lots shall be avoided except where essential to provide separation of residential development from traffic arteries, adjacent non-residential activities, or to overcome specific disadvantages of topography. Screening or buffering may be required during the application review.

(H) Lot Side Lines. The side lines of lots, as far as practicable, shall run at right angles to the public street, private street, or private access easement upon which the lot or parcel faces.

(G) Utility Easements. Utility easements shall be provided on lot areas where necessary to accommodate public utilities. Easement width shall conform to the requirements of the City Public Works Department and City Engineer.

**157.404.04 Standards for Subdivisions – Blocks and Traffic**

- (A) General. The length, width, and shape of blocks shall be designed to provide adequate building sites for the use contemplated; consideration of needs for convenient access, circulation, control, and safety of street traffic - including pedestrian and bicyclist - and recognition of limitations and opportunities of topography.
- (B) Sizes. Blocks shall not exceed 1,000 feet in between street lines with a preferred length of 500-feet. Exceptions are permitted for blocks adjacent to arterial streets, or if the previous development pattern or topographical conditions justify a greater length. The recommended minimum distance between collector street intersections with arterial streets is 1,800 feet.
- (C) Traffic Circulation. The subdivision shall be laid out to provide safe, convenient, and direct vehicle, bicycle, and pedestrian access to nearby residential areas; neighborhood activity centers (e.g., schools and parks); shopping areas; and employment centers; and provide safe, convenient, and direct traffic circulation. At a minimum, "nearby" means the distance from the subdivision boundary – 1/4 mile for pedestrians and one mile for bicyclists.
- (D) Connectivity. To achieve the objective in 157.404.04(C) Traffic Circulation above, the City shall require the following:
  - 1. Stub-End Streets: Where the potential exists for additional residential development on adjacent property.
  - 2. Accessways: Public accessways to provide a safe, efficient, and direct connection to cul-de-sac streets, to pass through oddly shaped or blocks longer than 600-feet, to provide for networks of public paths creating access to nearby residential areas, neighborhood activity centers (e.g., schools and parks); shopping areas; and employment centers.
- (E) Collector and Arterial Connections. Accessway, bikeway, or sidewalk connections with adjoining arterial and collector streets shall be provided if any portion of the site's arterial or collector street frontage is over 600-feet from either a subdivision access street or other accessway. The placement of an accessway may be modified or eliminated if natural features (e.g., adverse topography, streams, wetlands) preclude such a connection.
- (F) Streets. Street design shall comply with provisions in 157.402 as well as the requirements of the City Public Works Department and City Engineer.

**157.404.05 Improvement Requirements - Partition**

During the review of Partition proposals, the City shall require, as a condition of approval, the following improvements:

- (A) Private Access. Where included, private driveways serving flag lots or private easements shall be surfaced per the requirements of this Chapter.

- (B) Street Frontage Improvements. The following improvements shall be required:
1. Consistent with the adopted transportation plans, sufficient land shall be dedicated to establish the appropriate right-of-way width.
  2. If the street frontage of the subject property is less than or equal to 250 feet and does not connect to existing improvements, the applicant shall enter into a non-remonstrance agreement acceptable to the City of Nehalem. This agreement shall stipulate that the applicant, or future property owner, will agree to participate in right-of-way improvements. The agreement may include provisions for the following: street paving, curbing, sidewalks, water lines, storm sewer facilities, and sanitary sewer facilities. The agreement shall be recorded at the County Clerk's Office at the time of the recording of the final plat.
  3. If the street frontage of the subject property exceeds 250 feet, or extends an existing dedicated right-of-way, the applicant shall improve the following:
    - (i) Public streets upon which the property fronts to public standards including surfacing from center line to curb, installation of curbing, storm sewers, sanitary sewers, water lines, and other necessary public utilities per adopted master plans. In some cases, surfacing additional road width may be required.
    - (ii) Sidewalks, meeting City standards, along public street frontage: Sidewalk construction may be deferred until such time a building permit is issued.
    - (iii) The installation of storm sewers, sanitary sewers, water lines and other utilities necessary to serve parcels accessing the new street.
- (C) Public Facilities. Sewer, water, and storm drainage facilities may be required on and adjacent to the project. The developer shall submit engineering plans or facility improvement plans for water and storm sewer to the City for review. Sanitary sewer plans shall be submitted to the Nehalem Bay Water Agency. The plans shall address the required improvements contained in this Article, and any conditions of approval, and shall conform with applicable engineering requirements. Improvement work shall not commence until plans are approved by the City and/or Nehalem Bay Water Agency.
- (D) Completion Requirements. All required improvements shall be completed prior to recording the final partition plat and the issuance of any building permits for the subject property. Alternatively, improvements required under this Section may be assured through a performance bond or other instrument acceptable to the City (or Nehalem Bay Water Agency) prior to the approval of the final plat of the Partition.

#### **157.404.06 Improvement Requirements - Subdivision**

- (A) Improvements. The following improvements shall be required for all Subdivisions:
1. Frontage Improvements. Half-street improvements designed to

- requirements of the City Public Works Department and City Engineer shall be required for all public streets on which a proposed Subdivision fronts. Additional frontage improvements shall include sidewalks, curbing, storm sewer, water lines, other public utilities as necessary, and such other improvements as the City shall determine to be reasonably necessary to serve the development or the immediate neighborhood. Sanitary sewer shall also be installed per requirements of the Nehalem Bay Water Agency.
2. Project Streets. Streets within the Subdivision shall be constructed to the requirements of the City Public Works Department and City Engineer.
  3. Monuments. Monuments shall be established as required by the Engineering Design Standards.
  4. Surface Drainage and Storm Sewer System. Drainage facilities shall be provided within the Subdivision and to connect the Subdivision drainage to drainageways or to storm sewers outside the Subdivision. Design of drainage within the Subdivision shall be constructed in accordance with the requirements of the City Public Works Department and City Engineer.
  5. Sanitary Sewers. Sanitary sewer shall be installed to serve the Subdivision and to connect the Subdivision to existing mains both on and off the property being subdivided conforming to Nehalem Bay Wastewater Agency requirements. The Agency may require that the developer construct sewage lines of a size in excess of that necessary to adequately service the development in question, where such facilities are or will be necessary to serve the entire area within which the development is located when the area is ultimately developed. The Agency may also require that the construction take place as an assessment project with such arrangement with the developer as is desirable to assure his share of the construction.
  6. Water System. Water lines with valves and fire hydrants serving the Subdivision and connecting the Subdivision to the City mains shall be installed in conformance with the requirements of the City Public Works Department and City Engineer. The design shall take into account provisions for extension beyond the Subdivision to adequately grid the City system and to serve the area within which the development is located when the area is fully developed. However, the City will not expect the developer to pay for the extra cost of mains exceeding eight inches in size.
  7. Sidewalks. Sidewalks shall be installed along both sides of each public street and in any pedestrian ways within the Subdivision. This improvement may be deferred until prior to occupancy of a dwelling.
  8. Streetlights. The installation of streetlights is required at locations, and of a type, approved by the City.
  9. Street Signs. The installation of street name signs and traffic control signs is required at locations determined to be appropriate by the City and shall be of a type approved by the City.
  10. Other Requirements:
    - (a) Curb cuts and driveway installations are not required of the developer at the time of development, but if installed, shall be approved by the City and installed per the requirements of the City

Public Works Department and City Engineer.

- (b) Street tree planting is not required of the developer, but, if planted, shall be according to City standards and of a species compatible with the width of the planting strip and underground facilities.
  - 11. Bicycle improvements. Improvements for bicycle lanes and other bicycle facilities (signs, parking, etc.) shall be installed along collector or arterial streets.
  - 12. Transit access improvements. Improvements for bicycle and pedestrian access and connectivity shall be provided wherever a bus/transit stop is located on or adjacent to the subject property or subdivision.
- (B) Completion of Improvements. All improvements required under this Chapter shall be completed to City standards or assured through a performance bond or other instrument acceptable to the City Attorney, prior to the approval of the Final Plat of the Subdivision. In no case shall the bond exceed 5% of the remaining project improvements as determined by the City Engineer. Completion of improvements for sanitary sewer shall comply with provisions of the Nehalem Bay Water Agency.

#### **157.404.07 Improvement Procedures**

In addition to the requirements of the City Public Works Department and City Engineer, improvements installed by a developer for any land division, either as a requirement of these regulations or the developer's option, shall conform to the requirements of this Chapter, the improvement standards and specifications adopted by the City, and shall be installed in accordance with the following procedures:

- (A) Approval Required. Improvement work shall not begin until plans are approved by the City and/or the Nehalem Bay Water Agency. All plans shall be prepared in accordance with requirements of the City and Agency.
- (B) Notification. Improvement work shall not begin until the City has been notified in advance; and, if work has been discontinued for any reason, it shall not be resumed until the City has been notified.
- (C) Inspections. Improvements shall be constructed under the inspection and to the satisfaction of the City Engineer or his/her designee. The City may require changes in typical street sections and improvements if unusual conditions arise during construction to warrant such changes. Nehalem Bay Water Agency shall conduct inspections of sanitary sewer improvements, in coordination with the City.
- (D) Installation of Utilities. All underground utilities, sanitary sewers, and storm drains installed by the developer shall be constructed prior to the surfacing of the streets. Stubs for service connections for underground utilities and sanitary sewers shall be placed to a length eliminating the necessity for disturbing the street improvements when service connections are made.
- (E) As-Built Drawings. A map or plan showing all public improvements as built shall be filed with the City of Nehalem upon completion of the improvements.

**157.404.08 Expedited Land Division**

When an expedited land division for residential use only is requested by an applicant, the City shall use the procedures for expedited land divisions specified under ORS 197.365 in lieu of the procedures described in Chapter 157.504 or Section 157.510 if the application complies with the conditions and standards of ORS 197.360 through 197.380.

## 157.405 PLANNED DEVELOPMENT

### **157.405.01 Purpose**

The purpose of Planned Development regulations is to encourage and allow more creative and imaginative design of land developments than is possible under the design standards of underlying zones. Planned Developments are intended to allow substantial flexibility in planning and designing a development. This flexibility often is in the form of relief from compliance with conventional zoning ordinance site and design requirements. This flexibility must result in a development that is better planned, has more amenities, and ultimately more desirable to live in than one produced in accordance with typical subdivision controls.

While greater density or more lenient siting requirements may be granted, the Planned Development should have features not normally required of traditional developments. This requires greater scrutiny on the part of the City to assess a proposal. To realize these aims and enable thorough analysis of a Planned Development, more information is demanded about the proposal than would be required if development were being pursued under conventional subdivision requirements.

### **157.405.02 Objectives**

Through proper planning and design, each Planned Development should include features which further, and comply, the following objectives:

- (A) To design developments that are architecturally and environmentally innovative, and that achieve better use of land than is possible through strict application of standard zoning and subdivision controls.
- (B) To encourage land development that, to the extent possible, preserves natural vegetation, respects natural topographic and geologic conditions, and refrains from adversely affecting flooding, soil, drainage, and other natural conditions.
- (C) To combine and coordinate architectural styles, building forms, and structural/visual relationships within an environment that allows mixing of different land uses in an innovative and functionally efficient manner.
- (D) To supply abundant, accessible, and suitably located open and recreation space.
- (E) To ensure that development occurs at proper locations, away from environmentally sensitive areas, and on land physically suited to construction.
- (F) To enable land developments to be completely compatible and congruous with adjacent and nearby land developments.

### **157.405.03 Ownership**

The site of the Planned Development may be under single ownership and/or unified control. Further, nothing in these provisions shall prohibit the creation of condominium ownership pursuant to the applicable regulations in the Oregon Revised Statutes.



#### **157.405.04 Uses Permitted**

In a Planned Development only the following uses are permitted:

- (A) Residential Uses.
- (B) Recreational facilities including, but not limited to, tennis courts, swimming pools, and playgrounds.
- (C) Open space.
- (D) Schools, libraries, community halls, and houses of worship.
- (E) Offices, buildings, and facilities required for the operation, administration, and maintenance of any Planned Development and for recreation purposes, such as golf courses, recreation rooms, and vehicle storage areas.
- (F) Commercial uses identified as permitted uses in the Commercial Zone provided:
  - 1. Commercial establishments shall be designed to be an integral part of the general plan of development for the Planned Development and provide facilities related to the needs of the prospective residents.
  - 2. Commercial establishments and their parking areas shall not occupy more than 0.5 acre per 50 dwelling units.
  - 3. Commercial establishments will be located, designed, and operated to efficiently serve frequent trade and to serve the needs of persons residing in the Planned Developments.
  - 4. Commercial establishments will not, by reason of their location, construction, or operation, have adverse effects on residential uses within or adjoining the district, or create traffic congestion or hazards to vehicular or pedestrian traffic.

#### **157.405.05 Development Requirements**

Planned Developments shall comply with the following requirements:

- (A) Relationship to Standards of the Underlying Zoning District. In cases of conflict between standards of the underlying zone and the Planned Development provisions, the Planned Development provisions shall apply.
- (B) Minimum Site Area. There is no minimum area requirement.
- (C) Site Adaptation. To the maximum extent possible, the plan and design of the development shall assure that natural or unique features of the land and environment is preserved.
- (D) Residential Density. The development density shall be determined in accordance with the following procedures:
  - 1. Determine total gross site area (GSA).
  - 2. Multiply the G.S.A. by .85 to determine the Net Site Area (NSA).

3. Deduct from the NSA any proposed commercial areas or nonresidential uses to determine Net Developable Site Area (NDSA). Open space areas and hillside areas which will be in open space areas are not required to be deducted.
  4. Determine maximum density of development in accordance by multiplying the NDSA by 7 units per acre in the RL zone and 10 units per acre in the RM zone.
- (E) Lot Area. Except as otherwise required by these provisions, the minimum lot area, width, frontage, and yard requirements otherwise applying to individual buildings in the zone in which a Planned Development is proposed do not apply within a Planned Development.
- (F) Lot Arrangement. All residential buildings shall be located adjacent to an open space area, recreational area, or recreational facility. If direct access to these areas is not provided for each residential building, then a walkway or sidewalk accessing such facilities shall be located no more than 200-feet from any residential building.
- (G) Housing Types. There are no restrictions as to housing types, provided multiple family units shall be limited to no more than 30% of the total units.
- (H) Structure Setback Provisions. Yard setbacks for lots on the perimeter of the project shall be a minimum of 20 feet. Detached and attached structures (where applicable) on individual lots shall maintain a minimum front, side, or rear yard setback of five feet. A minimum yard setback of 20 feet shall be required for any garage structure whose opening faces onto a public street. Otherwise, minimum setbacks of the underlying zone do not apply.
- (I) Common Open Space. At least 20% of the gross acreage shall be devoted to open space, outdoor recreational areas, or recreational facilities. At least one-half of the designated open space shall contain slopes less than 10%. Open space may include pedestrian access routes, bicycle trails, natural or landscaped buffer areas, recreational facilities and buildings, and similar areas reserved for common use. Streets and on-street parking spaces shall not be considered open space.

If buildings, structures, or other improvements are to be made in the common open space, the developer shall provide a bond or other adequate assurance that the buildings, structures, and improvements will be completed. The City shall release the bond or other assurances when the buildings, structures, and other improvements have been completed according to the development plan.

- (J) Circulation.
1. Roads and pedestrian and bikeway paths shall be an integrated system designed to provide efficient and safe circulation to all users. Pedestrian/bikeway paths shall be integrated into the open space areas.

2. Pedestrian/bikeways shall be clearly signed and have adequate crossing facilities where warranted.
- (K) Off-Street Parking. Off-street parking requirements shall be as specified in Section 157.403 of this Chapter. Parking may be provided on each lot or in clustered parking areas. Additional off-street parking for guests and recreational vehicles may be required if warranted by reduced lot sizes and/or potential traffic volumes.
- (L) Utilities. In addition to other requirements set forth here, the following shall apply:
1. All sewer provisions shall be approved by the Nehalem Bay Wastewater Agency and all water provisions shall be approved by the City before construction of such improvements.
  2. All utility services shall be placed underground.
  3. Provisions shall be made for fire prevention, including service water lines, fire hydrant location, and emergency access for fire-fighting equipment.
  4. Provision shall be made for control of site stormwater drainage following the most recently adopted City Engineering Standards.
- (M) Homeowners' Association. A non-profit incorporated homeowners association, or an alternative acceptable to the City, shall be required for improving, operating, and maintaining common facilities, including open space, drives, service and parking areas, and recreation areas. The following shall be observed in the formation of a homeowners' association:
1. A homeowners' association shall be set up before approval of the final plat, or any portion thereof.
  2. Membership shall be mandatory for each homeowner and successive buyers.
  3. The open space restrictions shall be in perpetuity.
  4. The homeowners' association shall be responsible for liability insurance, applicable taxes, and the maintenance of recreational and other facilities.
  5. Homeowners shall pay their pro-rated share of the cost, or the assessment, levied by the association and shall become a lien on the property.
  6. The association shall be able to adjust the assessment as needed.
  7. No change in open space use or dissolution of homeowners' association shall occur without a public hearing before the Planning Commission and approval by the City Council.
  8. The property, all lots and owners thereof, the association, and all members thereof, shall be subject to the Oregon Planned Community Act, ORS 94.550.

#### **157.405.06 Conditions of Approval**

The City may impose reasonable conditions upon its approval. Such conditions may include those necessary to ensure public services and facilities are available to serve the proposed development; to protect the natural environment and conserve natural resources; to ensure compatibility with adjacent uses of land; to ensure compliance with the design standards contained within this Section; and, to ensure the Planned Development will be developed as approved by the City.

**157.405.07 Modification of an Approved Planned Development**

- (A) A new application and review shall be required if any one of the following changes is proposed to an approved Planned Development site plan:
  - 1. An increase or decrease in the number of dwelling units by more than 5%.
  - 2. A decrease in the open space or recreational space by more than 5%.
  
- (B) The application shall follow provisions in Section 157.510.

## 157.406 COTTAGE CLUSTER DEVELOPMENTS

### **157.406.01 Purpose**

This Chapter establishes standards for cottage cluster development as an alternative development type that provides usable common open space in residential development; allows for a mix of housing types both detached as well as attached; promotes interaction and safety through design; ensures compatibility with surrounding neighborhoods; and provides opportunities for creative infill development. It is intended to be a flexible development alternative like a planned development, whereby many of the standards of the underlying zone do not apply in consideration for the provision of open space and other unique design features. Cottage cluster takes the concept one step further by establishing specific residential design standards. Cottage cluster development projects include the following design principles:

- (A) Shared Open Space and Active Commons. The shared common space binds the cottage development together and gives it vitality. Residents surrounding this space share in its management, care and oversight, thereby enhancing a sense of security and identity.
- (B) Common Buildings. An advantage of living in a cottage development is being able to have shared buildings such as a tool shed, outdoor barbeque, or picnic shelter or a multipurpose room.
- (C) Adequate Parking. Parking areas should be screened from adjacent parcels and adjoining public streets. Locating parking areas away from the homes can allow more flexible use of a site, limit the dominance of garages and driveways, decrease the amount of hard surface, and allow more light into homes.
- (D) Front Porches. The front porch is a key element in fostering neighborly connections. Its placement, size, relation to the interior and the public space are important to creating strong community connections.
- (E) Smaller, High-Quality, Well-Designed Dwellings. Smaller, high-quality houses, together with the common open area and cottage development elements, help ensure the intensity of development is compatible with the surrounding neighborhood.

### **157.406.02 Permitted Building Types Within Cottage Cluster Developments**

- (A) Cottage cluster development cottages.
- (B) Two-unit structures.
- (C) Community Building with common areas but excluding commercial uses.
- (D) Accessory Structures.

- (E) Shared accessory structures, including parking and storage buildings, but excluded from the common area.

**157.406.03 Site Requirements**

(A) Ownership. Ownership may be a common lot, fee simple lots with a homeowner's association holding common areas, or condominium ownership of the whole development. Any development meeting the definition of a "Planned Development" or "Condominium" per state statute shall comply with all applicable provisions of state law. If condominium ownership, common areas shall be designated as 'general common elements' and private yard spaces shall be designated as 'limited common elements' for purposes of ORS Chapter 100 Condominium Law.

(B) Development Standards

1. The parent parcel shall be at least 30,000 square feet. The parent parcel may be divided into individual cottage lots and shared common areas consistent with the city's regulations.
2. Cottage lots. There is no minimum lot size for the individual cottage lots.
3. Density. The planned development density standards shall apply.
4. There is no minimum lot width or depth for the individual cottage lots.
5. There is no maximum lot coverage for the individual cottage lots.
6. Minimum setbacks are as follows:

Front	15-feet
Side	5-feet
Rear	10-feet
Street-side	10-feet
Garage Entrance	20-feet

7. Interior units on a common lot or separate lots shall be spaced at least 10 feet apart. If individual lots are created, the applicant may create an attached lot line configuration between units to maximize usable private area and provide privacy.

(C) Lot/Cottage Arrangement

1. Cottage cluster developments shall contain a minimum of four cottages and no more than allowed in the underlying zone by density.
2. Cottages shall be arranged around a common open space, and each cottage shall have frontage on the common open space.
3. Units along the public right-of-way should have their primary entrance facing the public right-of-way.
4. A community building may be provided adjacent to or at the edge of the central common area as part of the cottage development.

(D) Private and Common Space.

1. Common Space.

- (a) Common space is a defining characteristic of a cottage housing development. A minimum of 400 square feet of common open space per unit shall be provided.
  - (b) The common space shall include a sidewalk or walk connecting to each cottage front entrance facing the common area.
2. Private Space. A minimum of 250 square feet of usable private open space shall be supplied adjacent to each unit.

(E) Frontage, Access, Parking, and Vehicular Circulation.

1. The parent parcel shall have frontage on a public street.
2. If individual lots are created within the development, each lot shall abut a common area, but is not required to have public street frontage. Access to individual units will meet city and fire district standards.
3. A minimum of two off-street parking spaces per unit shall be provided.
4. Parking and/or garage structures shall be located behind or to the side of the residential area and open space.
5. Parking areas, shared parking structures, and garages shall be screened from public streets by landscaping or architectural screening.
6. If the property has frontage on a public alley, access and parking may be provided from the alley.
7. If individual lots are created, parking and access shall be provided in a common area with access easement.

(F) Screening and Landscaping. To ensure that cottage developments do not create adverse visual impacts for residents of both the cottage development and adjacent properties the following requirements shall be adhered to:

1. Where feasible, cottage developments should be designed to retain existing significant trees (at least twelve inches in diameter measured at 4-feet in height) that do not pose a safety hazard.
2. Landscaping located in common open spaces shall be designed to allow for easy access and use of the space by all residents, and to facilitate maintenance needs.
3. Boundaries between cottage developments and neighboring properties shall be screened with landscaping and fencing as identified in (G)2., below, in order to reduce the appearance of bulk or intrusion onto adjacent properties or may be otherwise treated through increased building setbacks or architectural techniques to meet the intent of this section. Additional screening and buffering may be required to help mitigate any compatibility issues between the cottage cluster development and adjacent properties.

(G) Fences.

1. No fence taller than 3 feet in height shall be located between the front wall of a cottage or community building and the common open space.

2. A 6-foot-high sight obscuring fence shall be placed along the property line adjacent to any residential single-family use. Additional vegetation may augment the fencing.

(H) Utilities.

1. Streets. Street improvements shall be required for all cottage cluster developments that contain 4 or more dwelling units. Street improvements may include street widening, curbs, gutters, and sidewalks. All street improvements shall follow the current standards of the City of Nehalem Department of Public Works.
2. Water. An individual water meter servicing each dwelling unit will be required unless there is an ownership association, or the property is under a single ownership in which case a single water meter servicing an individual building or multiple units is allowed. All water system improvements shall follow the requirements of the City Public Works Department/City Engineer.
3. Sewer. Service laterals may be extended from a sewer main in the public right-of-way. Sewer mains may be extended in the driving and circulation areas in a public utility easement, with service laterals to individual units. Private sewer laterals may be extended across common areas but shall not cross individual building lots. All sanitary sewer design and construction shall follow Nehalem Bay Wastewater Agency requirements.
4. Gas/Electric/Phone/Cable/Utility Pedestals. These utility services may be extended from the public right-of-way across common areas to individual lots or extended in a utility easement to individual lots.
5. Trash Storage. Any areas where communal trash and recycling are stored shall be screened by a sight-obscuring fence and/or vegetation. In addition, a trash and recycling plan will be required.
6. Mailboxes. Mailboxes are subject to post office requirements.
7. Storm water. The development of the property shall comply with all city regulations regarding storm water drainage including on-site detention and water quality requirements. All storm water system improvements shall follow the current Design Standards and Construction Standards of the City of Nehalem Department of Public Works.

- (I) Addressing. All units within the cottage cluster development shall be addressed consistent with city standards.

**157.406.04 Building Requirements**

(A) Cottages.

1. Building footprint. Cottages shall have a maximum building footprint of 1,000 square feet. An attached one-car garage is not included in this maximum but shall not exceed 300 square feet per unit.
2. Porches. Attached, covered porches are required and shall have minimum depth of 6 feet and shall be a significant feature of the structure.
3. Other design requirements. Cottages shall contain a variety of designs that include articulation of facades; changes in materials, texture, color, and



window treatments; and other architectural features so all units do not appear identical. Cottage development structures shall provide for exterior architectural elements that are consistent with traditional northwest cottage design and small home craftsmanship design elements. Roofs of cottage developments shall have eaves to efficiently shed rain and provide protection for exterior walls.

4. Height. Cottages shall comply with the height limitation of 25 feet and are limited to a maximum of a single story plus a loft.
5. Street facing facades. The street facing facades of cottages in a cottage development shall avoid blank walls. This shall be avoided by including design features such as windows, changes in building material, entryway, porches or similar features.

(B) Two-Unit Structures

1. Attached two-unit structures are allowed and must be similar in appearance to detached cottages.
2. Attached two-unit structures shall have only one primary shared entry facing the common open space.
3. Exclusive of shared entryway, the maximum building footprint per unit shall be 1,000 square feet.

(C) Community Buildings.

1. A community building shall be of similar scale, design, and height as the cottages.
2. Commercial uses are prohibited in the community building.

(D) Accessory Structures.

1. Accessory structures such as garages, carports, storage or tool sheds shall not exceed 300 square feet per unit, or 600 square feet per accessory structure that is shared by two or more dwelling units.
2. The design of accessory structures must be similar or compatible with that of the cottages in the development.

(E) Existing Dwellings on the Site. Existing dwellings may be incorporated into the development as a residence or community building and may be nonconforming to standards. Noncompliance may not be increased.

(F) Renovation and Expansion.

1. Renovations shall be in keeping with the size and architectural character of the new development.
2. A covenant restricting increases in unit size beyond the maximum allowed by this Section shall be recorded against the property.

**157.406.05 Process**

Cottage cluster development applications shall be processed per the planned development requirements in Section 157.510.

## 157.407 STORM DRAINAGE AND GRADING

### **157.407.01 Purpose**

To provide for the drainage of surface water from all residential, commercial, and industrial development; to minimize erosion; to reduce degradation of water quality due to sediments and pollutants in storm water runoff.

### **157.407.02 Scope**

The provisions of this Chapter shall apply to all partitions, subdivisions, multi-family developments, commercial developments, and industrial development, and to the reconstruction or expansion of such developments.

### **157.407.03 Plan for Storm Drainage and Erosion Control**

It is the obligation of the property owner to provide proper drainage and protect all runoff and drainage ways from disruption or contamination. On-site and off-site drainage improvements may be required. Property owners shall provide proper drainage and shall not direct drainage across another property except within a continuous drainage way. Paving and catch basin outflows may require detention cells and/or discharge permits. Maintaining proper drainage is a continuing obligation of the property owner.

No construction of any facilities in a development shall be permitted until a storm drainage and erosion control plan, designed in accordance with the most recently adopted City standards, for the project is prepared by an engineer registered in the State of Oregon and is approved by the City. This plan shall contain at a minimum:

- (A) The methods to be used to minimize the amount of runoff, siltation, and pollution created from the development both during and after construction.
- (B) Plans for the construction of storm sewers, open drainage channels, and other facilities which depict line sizes, profiles, construction specifications, calculations and other such information as is necessary for the City to review the adequacy of the storm drainage plans.

### **157.407.04 General Standards**

- (A) Design Standards. All development shall be planned, designed, constructed, and maintained to:
  1. Protect and preserve existing natural drainage channels to the maximum practicable extent;
  2. Protect development from flood hazards;
  3. Provide a system by which water within the development will be controlled without causing damage or harm to the natural environment, or to property or persons within the drainage basin;
  4. Assure that waters drained from the development are free of pollutants, through such construction and drainage techniques as sedimentation ponds, reseeding, phasing of grading, and water quality facilities;

5. Assure that waters are drained from the development in such a manner that will not cause erosion to any greater extent than would occur in the absence of development;
  6. Avoid placement of surface detention or retention facilities in road rights-of-way.
- (B) Public Easements. In the event a development or any part thereof is traversed by any water course, channel, stream or creek, gulch, or other natural drainage channel, adequate easements for storm drainage purposes shall be provided to the City. This shall not imply maintenance by the City.
- (C) Obstruction of Channel. Channel obstructions are not allowed except as approved for the creation of detention or retention facilities approved under provisions of this Chapter and in compliance with City standards.
- (C) Conveyance of Flows. All new development within the City shall make provisions for the continuation or appropriate projection of existing storm sewer lines or drainage ways serving surrounding areas. Drainage extensions may be required through the interior of a property to be developed where the City determines that the extension is needed to facilitate upstream flows.
- (D) City Inspection. Prior to acceptance of a storm sewer system by the City, the storm sewers shall be flushed and inspected. All costs shall be borne by the developer.

**157.407.05 Grading**

- (A) Grading permits are required for the following activities and shall be subject to the requirements of the City Public Works Department and City Engineer.
1. Grading in excess of 50 cubic yards;
  2. Grading potentially impacting, riparian areas, drainageways, flood hazard areas;
  3. Grading that could possibly impact adjacent properties;
  4. Grading proposed over public storm drains, sanitary sewers, or water lines;
  5. Grading requiring tree removal;
  6. Other areas with potential impacts as determined by the City;
  7. Land partitions and subdivisions.
- (B) If the approved grading activity is associated with a building permit, a final grading inspection shall be required prior to issuance of certificate of occupancy.
- (C) NDPE Permit Required. A National Pollutant Discharge Elimination System (NPDES) permit must be obtained from the Department of Environmental Quality (DEQ) for construction activities (including clearing, grading, and excavation) that disturbs one or more acres of land.

## 157.408 UTILITY LINES AND FACILITIES

### **157.408.01 Purpose**

To provide adequate services and facilities appropriate to the scale and type of development.

### **157.408.02 Standards**

- (A) Design and Location. The location, design, installation, and maintenance of all utility lines and facilities shall be conducted with minimum site disturbances.
- (B) Private Utilities. All development which has a need for electricity, gas, and communications services shall install them per the requirements of the district or company serving the development. Except where otherwise prohibited by the utility district or company, all such facilities shall be underground.
- (C) Water Service. All development which has a need for public water shall install the facilities per the requirements of the City. Installation of the facilities shall be coordinated with the extension of sanitary sewer and storm drainage facilities.
- (D) Sanitary Sewer. All development which has a need for public sanitary sewers shall install the facilities per the requirements of the Nehalem Bay Wastewater Agency. Installation of such facilities shall be coordinated with the extension of necessary water services and storm drainage facilities.
- (E) Streetlights. When required, the installation of streetlights shall be per the requirements of the City Engineering Standards and the requirements of the utility company serving the development.
- (F) Easements, General. Easements shall be provided along property lines as required by the City, special districts, and utility companies. Easements for special purpose uses shall be of a width appropriate by the responsible agency. Such easements shall be designated on the final plat of all subdivisions and partitions.

### **157.408.03 Public Facility Improvements**

- (A) Except for sanitary sewers, all public facility improvements shall be designed and constructed in compliance with the requirements of the City Public Works Department and City Engineer. The City Engineer (or designee) shall determine compliance with these standards. These standards are considered requirements and may not be altered per provisions in this Development Ordinance.
- (B) Sanitary sewer facility improvements shall be designed and constructed in compliance with Nehalem Bay Wastewater Agency requirements. The Agency shall determine compliance with these standards. These standards are considered requirements and may not be altered per provisions in this Development Ordinance.

## 157.409 SIGNS

### **157.409.01 Purpose**

The purpose of this Chapter is to provide equitable rights, reduce conflicts, promote traffic and pedestrian safety, increase the aesthetic value and economic viability of the city, all by classifying and regulating the location, size, type and number of signs and related matters, in a content-neutral manner.

### **157.409.02 Definitions**

For the purposes of this Section, the following definitions shall apply:

**Alteration or Altered.** Any change in the size, shape, method of illumination, position, location, construction, or supporting structure of a sign. A change in sign copy or sign face alone shall not be considered an alteration.

**Canopy Sign.** A sign hanging from a canopy or eave, at any angle relative to the adjacent wall.

**Flashing Sign.** A sign any part of which pulsates or blinks on and off, except time and temperature signs and message signs allowed by conditional use.

**Free-Standing Sign.** A sign supported by one or more uprights, poles or braces placed in or upon the ground, or a sign supported by any structure primarily for the display and support of the sign.

**Grade.** The curb line or in the absence of a curb line, the edges of the street pavement of the primary access street frontage for all freestanding signs. For signs mounted on a building, the **grade** shall be the sidewalk, street or ground directly below said sign.

**Height.** Height is measured from the grade of the curb line lowest to the base of the sign to the highest point of the sign. In the absence of a curb line, the edge of the street pavement shall be used. In the absence of street pavement, the ground level shall be used to measure the height.

**Incidental Signs.** A sign which is normally incidental to the allowed use of the property but can contain any message or content. Such signs can be used for, but are not limited to, nameplate signs, warning or prohibition signs, and directional signs not otherwise allowed.

**Message Sign.** A sign which can change its message electronically including, but not limited to, signs displaying time and temperature.

**Multi-faced Sign.** A sign which has two or more identical sign faces, contained in a single sign structure.

**Mural.** A covering of the surface area of a wall with paint or other artistic medium, that creates a pictorial or abstract design and usually without advertising or commercial

symbolism - such as logos or trademarks - or any representation of a product or business, except to identify the artist.

**Nonconforming Sign.** Any sign which lawfully exists prior to the effective date of this Chapter but which due to the adopted requirements, no longer complies with the height, area and placement regulations or other provisions of these regulations.

**Off-premises Sign.** A sign which advertises a business or activity other than that which is conducted or takes place on the premises or property upon which the sign is located.

**Owner.** The owner or lessee of the sign. If the owner or lessee of the sign cannot be determined, then "owner" means owner or purchaser of the land on which the sign is placed.

**Projecting Signs.** A sign projecting from a structure, the face of which is not parallel to the wall on which it is mounted.

**Roof Line.** Either the eaves of the roof, or, the top of the parapet, at the exterior wall. A "mansard roof" is below the top of a parapet and is considered a wall for sign purposes.

**Roof Sign.** A sign, or any portion of which, is displayed above the highest point of the roof, whether or not such sign also is a wall sign.

**Rotating/Revolving Sign.** A sign, all or a portion of which, moves in some manner.

**Sign.** Any writing, including letter, word, or numeral; pictorial presentation, including illustration or decoration; emblem, symbol or trademark; flag, including banner or pennant; or any other device, figure or similar thing which is a structure or any part thereof, or is attached to, painted on, or in any other manner represented on a building, structure or device; and is used to announce, direct attention to, or advertise; and is visible from any public right-of-way.

**Sign, A-frame.** A sign not supported by a structure in the ground nor attached to or erected against a structure; capable of being moved.

**Sign Area.** The area of a sign shall be the entire area within any type of perimeter or border which encloses the outer limits of any writing, representation, emblem, figure, or character. If the sign is enclosed in a frame or cabinet, the area is based on the inner dimensions of the frame or cabinet surrounding the sign face. When a sign is on a base material and attached without a frame, such as a wood board or plexiglass panel, the dimensions of the base material are to be used. The area of a sign having no such perimeter, border, or base material shall be computed by enclosing the entire area within a parallelogram or a triangle of the smallest size sufficient to cover the entire message of the sign and computing the area of the parallelogram or a triangle. For the purpose of computing the number of signs, all writing included within such a border shall be considered one sign, except for multi-faced signs on a single sign structure, which shall

be counted as one sign per structure. The area of multi-faced signs shall be calculated by including only one-half the total area of all sign faces.

**Sign Face.** Surface of a sign containing the message. The sign face shall be measured as in the definition for "Sign Area."

**Sign Structure.** The supports, uprights, braces, framework and other structural components of the sign.

**Temporary Sign.** A sign not permanently affixed to a structure on a property. These signs primarily include, but are not limited to, canvas, cloth, paper banners, or posters hung on a building wall or on a permanent pole such as on a free-standing sign support.

**Wall Sign.** A sign attached to, erected against, or painted on a wall of a building or structure, with the exposed face of the sign in a plane approximately parallel to the face of said wall.

### **157.409.03 Review Procedures**

- (A) Permit Required. Unless otherwise authorized by provisions in this Section, sign permits shall be required for all residential, commercial, industrial and public/semi-public uses. No property owner, lessee or contractor shall construct or alter any sign without first obtaining a valid sign permit.
- (B) Current Signs. Owners of conforming or nonconforming signs existing as of the date of adoption of this Ordinance are not required to obtain a permit.
- (C) Application Requirements. An application for a sign permit shall be made on a form provided by the City. The application shall include, at a minimum, a sketch drawn to scale showing the proposed sign, identifying existing signs on the premises, the sign's location and graphic design and other information established by the City to process the request.
- (D) Permit Issuance. The City shall issue a permit for a sign unless the sign is in violation of the provisions of these or other provisions of the Nehalem Development Ordinance. Sign permits mistakenly issued in violation of these or other provisions of the Development Ordinance are void. The City may revoke a sign permit if it finds there was a material and misleading false statement of fact in the application for the permit.

### **157.409.04 General Provisions**

- (A) Conflicting Standards. Signs shall be allowed subject to the provisions of this Section, except when these provisions conflict with the specific standards for signs in the subject district.

- (B) Signs Subject to State Approval. All signs visible to the traveling public from State highways are subject to the regulations and permit requirements of the Highway Division of the Oregon Department of Transportation. Where the regulations of the State and City differ, the more restrictive regulations shall govern.
- (C) Design, Construction, and Maintenance. All signs shall be designed, constructed, and maintained according to the following standards:
1. All signs shall comply with the applicable provisions of the Uniform Building Code in effect at the time of the sign permit application and all other applicable structural, electrical and other similar regulations. The issuance of a sign permit under these regulations does not relieve the applicant of complying with all other permit requirements.
  2. Except for banners, flags, temporary signs, and window signs conforming in all respects with the requirements of these regulations, all signs shall be constructed of permanent materials and shall be permanently attached to the ground, a building, or other structure by direct attachment to a rigid wall, frame, or structure.
  3. All signs shall be maintained in a good structural condition and readable at all times.
  4. The owner shall be responsible for its erection and maintenance and its compliance with the provisions of these regulations or other laws regulating signs.
- (D) Holiday Displays. Nothing in these regulations shall prohibit holiday displays.

#### **157.409.05 Nonconforming Signs**

- (A) Alteration of Nonconforming Sign Faces. When a nonconforming sign face is damaged or destroyed by fire, flood, wind, or similar calamity, such sign face may be restored to its original condition within 180-days of such calamity. However, a sign structure or support mechanism so damaged shall not be replaced except in conformance with the provisions of these regulations.
- (B) Permits for Properties with Nonconforming Signs. No permits shall be issued for new or altered signs unless all signs of the individual property or business follow these regulations.

#### **157.409.06 Signs Generally Permitted**

The following signs and sign work are permitted in all zones. No permit shall be required, and the sign shall not be included when determining compliance with total allowed area:

- (A) Painting, change of sign face or copy and maintenance of signs legally existing on the effective date of this Ordinance. If structural changes are made, the sign shall conform in all respects with these regulations.



- (B) Signs posted by or under governmental authority including legal notices, traffic, danger, no trespassing, emergency and signs related to public services or safety.
- (C) Incidental signs that do not exceed six square feet in area.
- (D) Flags on permanent flag poles which are designed to allow raising and lowering of the flags.
- (E) Signs within a building.
- (F) Signs painted or hung on the inside of windows. Interior neon signs which are visible from the outside of a business within the Commercial (C), Light-Manufacturing (LM) or Marine-Residential (MR) Zones are allowed, and may flash or otherwise move as long as sign doesn't use strobe lights or other lights or flashing that imitate strobe lights.
- (G) One residential name plate not exceeding four square feet in area.
- (H) Murals for commercial and industrial uses. Otherwise, only that portion of the mural considered advertising shall be included in the sign area calculation. The calculation shall be per provisions in the "sign area" definition.
- (I) Temporary signs placed on private property used in conjunction with political campaigns and elections. Political signs shall be removed within 14 days after the election.
- (J) Signs on athletic fields and scoreboards intended for on-premises viewing.
- (K) Garage and/or yard sales not to exceed six square feet in area. All such signs shall not be placed more than one day prior to the sale and must be removed within one day after the sale.

**157.409.07 Prohibited Signs**

The following signs are prohibited in all zones:

- (C) Balloons or similar types of tethered objects.
- (B) Portable signs, except where allowed as a part of a permitted temporary business or otherwise permitted by the Municipal Code.
- (C) Roof signs.
- (D) Signs that emit odor, visible matter, or sound; however, an intercom system for customers remaining in their vehicles, such as used in banks shall be allowed.
- (E) Signs that use or employ side guy lines of any type.

- (F) Signs that obstruct any fire escape, required exit, window or door opening used as a means of egress.
- (G) Signs closer than 36-inches horizontally or vertically from any overhead power line or public utility guy wire.
- (H) Private signs that project into or over driveways and public rights-of-ways, except signs under a canopy that project over a public sidewalk and the bottom of the sign is at least 8-feet above the sidewalk.
- (I) Signs that obstruct a required vision clearance area, obstruct a vehicle driver's view of official traffic control signs, or which present a traffic hazard.
- (J) Signs that interfere with, imitate, or resemble any official traffic control sign, signal or device, emergency lights, or appear to direct traffic.
- (K) Signs or supporting structure placed, installed or maintained on a pole, post, utility pole or placed on its own stake within any public or private right-of-way, alley or driveway, city-owned or leased property, public or private sidewalks or walkways open to public use. This prohibition does not apply to signs owned, installed and/or maintained by the city, county, state or federal government.
- (L) Electronic message signs.

**157.409.08 Signs Allowed – Maximum Area**

- (A) The signs listed within this section are permitted outright, subject to the requirements of Subsection 157.409.03. Each sign type is restricted to the maximum size listed, in addition to any other applicable provision of this chapter or other applicable regulation or law.
- (B) The following requirements shall apply to all zones except the Commercial (C) Zone [see item "(C)" below].
  - 1. Maximum aggregate area of all signs shall not exceed 32 square feet. If a single property contains more than one separate identifiable business or use that are not interrelated, this sign area limitation shall apply to each individual business or use.
  - 2. In addition to item "1." above, one additional sign not to exceed 16 square feet in area shall be permitted for the following:
    - (a) Informational signs;
    - (b) Temporary community event signs.
      - i. All such signs must be placed on the same premises as the event. However, such signs may be placed on other private property, with permission, if they are put up and taken down on the same day as the event and are not placed within a right-of-way, sidewalk, driveway or public parking space.
      - ii. Signs shall not be placed more than 30 days prior to the event

- and must be removed within one day after the event.
        - iii. These restrictions shall not apply to signs owned/used by the city or to other signs mounted on the city's Gateway Signs as approved and installed by the city itself.
      - (c) Bulletin boards or window space allowing free public access to advertise community events and/or the non-commercial sale of items;
      - (d) Real estate, open house or off-premises open house (maximum of two) signs displayed while the property is for sale;
      - (e) Public memorial tablets, cornerstones or plaques.
- (C) The following requirements shall apply to the Commercial (C) Zone located within City Limits:
1. The maximum allowable aggregate sign area shall not exceed 32 square feet per side for exterior signs and 16 square feet for interior signs visible from the exterior. Where a lesser amount is the maximum permitted by some other provision of this chapter, in which case that lesser amount shall prevail. In calculating the area of signs, all faces of multi-faced signs shall be included; not to exceed 64 square feet in aggregate.
  2. In addition to item "1." above, one additional sign not to exceed 16 square feet in area shall be permitted for the following:
    - (a) Informational signs;
    - (b) Temporary community event signs.
      - i. All such signs must be placed on the same premises as the event. However, such signs may be placed on other private property, with permission, if they are put up and taken down on the same day as the event and are not placed within a right-of-way, sidewalk, driveway or public parking space.
      - ii. Signs shall not be placed more than 30 days prior to the event and must be removed within one day after the event.
      - iii. These restrictions shall not apply to signs owned/used by the city or to other signs mounted on the city's Gateway Signs as approved and installed by the city itself.
    - (c) Bulletin boards or window space allowing free public access to advertise community events and/or the non-commercial sale of items;
    - (d) Real estate, open house or off-premises open house (maximum of two) signs displayed while the property is for sale;
    - (e) Public memorial tablets, cornerstones or plaques.
- (D) The following requirements shall apply to the Commercial (C) Zone located outside the City Limits:
1. Maximum allowable aggregate sign area shall be 200 square feet, per side for exterior signs and 16 square feet for interior signs visible from the exterior. In calculating the area of signs, one face of a multi-faced sign shall be included in computing the sign area.
  2. If a single property contains more than one separate identifiable business

or use that are not interrelated, these sign area limitations shall apply to each individual business or use.

3. In addition to item "1." above, one additional sign not to exceed 16 square feet in area shall be permitted for the following:
  - (a) Informational signs;
  - (b) Temporary community event signs.
    - i. All such signs must be placed on the same premises as the event. However, such signs may be placed on other private property, with permission, if they are put up and taken down on the same day as the event and are not placed within a right-of-way, sidewalk, driveway or public parking space.
    - ii. Signs shall not be placed more than 30 days prior to the event and must be removed within one day after the event.
    - iii. These restrictions shall not apply to signs owned/used by the city or to other signs mounted on the city's Gateway Signs as approved and installed by the city itself.
  - (c) Bulletin boards or window space allowing free public access to advertise community events and/or the non-commercial sale of items;
  - (d) Real estate, open house or off-premises open house (maximum of two) signs displayed while the property is for sale;
  - (e) Public memorial tablets, cornerstones or plaques.

- (E) A-frame signs shall only be allowed within the Commercial (C), Light Manufacturing (LM) and Marine Residential (MR) Zones. Only one A-frame, a maximum of 16 square feet in total area, is allowed per parcel of land.
  1. The use of an A-frame shall only be placed on the same private property.
  2. A-frame signs shall only be displayed during normal business hours or while the event, if applicable, is open to the public.
  3. A-frame signs shall be secured against susceptibility to flooding, wind or other weather events.
  4. A-frame signs owned or used by the city to advertise a community event, emergency or traffic information, or such other information that the city determines is in the public interest shall be exempt from this Subsection.

#### **157.409.09 Off-premises Signs (Billboard)**

- (A) The approval of off-premises signs shall be by the City Planning Commission (or the County if outside of city limits).
- (B) In addition to any other applicable provision of this Chapter or other rule or law, off-premises signs will be allowed only by demonstration of all of the following:
  1. Necessity of the sign to identify the business, use or event; or to provide directions;
  2. Determination (solely made by the Planning Commission or if the issue is appealed, the City Council) that the sign is aesthetically appropriate to its surroundings and does not constitute a safety hazard or detracts from

- neighboring properties;
3. It is located only within the Commercial (C) Zone and is no closer than 15 feet to a public or private right-of-way or street;
  4. That the permitting of the sign will not be detrimental to the public's health, safety or welfare or be materially injurious to properties or facilities in the near vicinity;
  5. Does not exceed 32 square feet in size or contain lettering exceeding 12 inches in size; and
  6. If the sign is proposed to be located along State Highway 101, evidence of an approved sign permit issued by the State Department of Transportation as required. Applications for off-premises signs will not be processed until evidence is provided that ODOT has either approved the applicant's off-premises placement along Highway 101 or that a sign permit isn't required by them. Approval by ODOT for the placement of an off-premises sign shall not be in lieu of nor constitute approval by the city or county for such signs.

(C) Applications must be made in writing and in addition to the above, must also include:

1. The name, address and telephone number of the owner of the property and the owner of the proposed sign (if different);
2. A signed and dated letter of the property owner approving of the proposed placement of the off-premises sign, if the property owner will not be the owner of the proposed sign;
3. A non-refundable fee shall be submitted; for applications for off-premises signs outside of city limits, the fee shall be that set by the county;
4. A drawing, to scale, of the proposed sign indicating dimensions, colors, materials, letter size, lighting and proposed location on a property or building as well as the supporting structure; A-frame signs shall not be allowed nor used as off-premises signs; and
5. The size and dimensions of any other sign located on the subject property and/or building.

(D) The application process shall be a quasi-judicial land use hearing and follow the procedures found in Section 157.525 of this chapter, including all notification requirements of the applicant(s) and city. If the proposed location of an off-premises sign is outside of city limits but within the city's UGB, the county shall proscribe the application process to be used.

(E) Specific Prohibitions. No sign shall be permitted that:

1. Is larger than the size allowed for that particular sign or use, as listed within this subchapter;
2. If attached or unattached to any structure, projects or extends above 24 feet from adjacent grade, including the framing or structure used to support or display the sign itself;
3. Is placed, installed or maintained within any public or private right-of-way, alley or driveway, city-owned or leased property, public or private sidewalks or walkways open to public use. These provisions shall not apply

- to signs owned, installed and/or maintained by the city, county, state or federal government;
4. Overhangs in any manner public or private rights-of-way or walkways, whether it be a sidewalk, street, alley or other place where the public has access when the same:
    - a. Would project closer than 12 inches to a curb edge;
    - b. Would be less than eight feet at its lowest point above a walkway surface; or
    - c. Would be less than 16 feet at its lowest point above a public or private street.
  5. Is located so as to substantially detract from a motorist's view of vehicular or pedestrian traffic, or would otherwise constitute a threat to the public's health, safety or welfare, or imitates or intends to imitate a legal traffic-control device or light;
  6. Directs light towards the ground, adjacent properties or a public or private right-of-way or street;
  7. Uses luminescent, fluorescent or phosphorescent paints or materials;
  8. Is flashing, moving, animated or reflective; is used as an electronic message or electronic reader board sign where messages can be modified, scrolled, flashed or otherwise changed electronically; or is a fixed light source like neon or operated as a spotlight or searchlight. Exception: time, date and/or temperature signs or parts of signs containing the same; and
  9. Is attached to, placed or painted upon any vehicle or trailer placed on or adjacent to any public or private right-of-way, unless the vehicle or trailer is used for transport in the normal day-to-day operation of the business or for other incidental travel.

**157.409.10 Variances - Signs**

Any allowance for signs not complying with the standards set forth in these regulations shall be by variance. Variances to Section 157.408 shall be processed according to the variance procedures in Section 157.506 but shall be subject to the following criteria:

- (A) There are unique circumstances of conditions of the lot, building, or traffic pattern such that the existing sign regulations create an undue hardship;
- (B) The granting of the variance compensates for those circumstances in a manner equitable with other property owners and is thus not a special privilege to the business. The variance requested shall be the minimum necessary to compensate for those conditions and achieve the purpose of this Chapter;
- (C) The granting of the variance shall not decrease traffic safety nor detrimentally affect any other identified items of public welfare;
- (D) The variance will not result in a special advertising advantage in relation to neighboring businesses or businesses of a similar nature. The desire to match standard sign sizes (for example, franchise store signs) shall not be listed or considered as a reason for a variance; and

- (E) The variance request shall not be the result of a self-imposed condition or hardship.

**157.409.11 City Gateway Signs**

- (A) Permitted Advertising, General. Advertising may be allowed on the Nehalem Gateway signs for community events that occur within the incorporated city limits, or as the City Manager may otherwise consider appropriate within the purpose of this Ordinance.
- (B) Other Permitted Advertisements. Messages and signs not specifically related to an event, or as otherwise supported herein, may be allowed on the Gateway signs only after approval of the City Manager. Such signs may include, but are not limited to, the following:
1. Messages that promote and support local merchants;
  2. Messages celebrating nationally recognized holidays, events, special occasions; and
  3. Congratulatory messages for local groups or citizens
- (C) Prohibited Advertising. The following types of advertising and/or signs will not be allowed under any circumstance:
1. Any advertisement or posting of a political nature including but not limited to: campaign and/or candidate signs; signs about political parties; signs related to ballot initiatives.
  2. Any advertisement or sign of a commercial or private nature not seen as a community event (e.g., yard sales, commercial advertising; weddings);
  3. Any advertisement or posting that a reasonable person may determine to be disparaging of any individual or group; offensive or otherwise derogatory in nature; and
  4. Any advertisement or posting that the City Manager may deem inappropriate for display.
- (D) Sign Placement, Removal, Disposal, Damage.
1. Placement:
    - a. Individuals and/or organizations that wish to place advertisements and/or signs on the Nehalem Gateway signs must deliver two identical signs to the office of the City Manager no earlier than 45 days before the date that the event is to take place. Individuals and/or organizations are encouraged to have a “pre-application meeting” with the City Manager prior to any sign construction to ensure that those signs will meet the intent of this subchapter.
    - b. City personnel shall place all advertisements and/or signs on the Nehalem Gateway signs within two working days after the City Manager or designee has reviewed and found each sign to comply with this subchapter.
    - c. If a conflict arises in the scheduling of advertisements and/or signs of two or more events, the advertisement and/or sign of each event shall be placed in sequential order by the dates upon which they

- occur.
- d. Only one advertisement and/or sign related to any one event shall be placed on each Gateway sign on the same corresponding side (right or left of each sign). At no time will a single event be allowed to place two related signs on a single Gateway sign.
  - e. The city will not pay for, reimburse or otherwise provide compensation for any advertisement and/or sign that was created by an individual or organization for their specific event or for any other message not specifically approved of by the City Manager beforehand. However, non-event specific advertisements, messages and/or signs may be donated to or created by the city. Donations of signs, materials and/or labor to create non-event specific advertisements, displays and/or messages should be documented by letter and approved of by the City Manager before the donation will become finalized.
2. Removal:
- a. City personnel shall remove event signs and place them at City Hall on the next business day after the related event has occurred.
  - b. At no time shall anyone, other than authorized city personnel, be allowed to remove or otherwise move advertisements and/or signs once they've been placed on the Gateway Signs, unless the City Manager or his or her designee has granted express written permission to do so.
  - c. A representative or acting agent of the organization or individual whose signs were placed must take possession of said signs within ten working days after the event has occurred.
  - d. Signs not directly tied to a specific, approved event will be removed by city personnel as is necessary and appropriate to allow the advertising and/or display of an event as contained herein.
3. Disposal:
- a. Any sign that remains in the possession of the City after ten working days after an event has occurred may become the property of the city. The city shall not be responsible for the storage and upkeep of any sign belonging to another individual or organization.
  - b. The city may recycle said signs to provide to another organization or individual for the advertising of a future community event or use them to display other messages as contained herein.
  - c. No reimbursement for materials and/or time will be paid to any individual or organization whose sign is disposed of per this subchapter.
4. The city does not warrant, claim, insure or otherwise take responsibility for any advertisement and/or sign that may be dislodged, discolored, disfigured or otherwise damaged due to natural and/or human causes.

(E) Sign Construction.

1. All advertising and/or signs to be placed on the Nehalem Gateway signs shall be constructed of wood and be fully weatherproofed to prevent



- warping, fading and/or paint-runs.
2. The dimensions of each sign shall be built to the exact dimensions of the template boards found at City Hall.
  3. All advertising and/or signs shall use colors found within the ovals of the Nehalem Gateway signs and be used in such a manner to increase their visibility to passers-by without detracting from the Gateway signs themselves.
  4. Lettering should be appropriate and of a size that easily identifies the purpose of the advertising/sign itself.
- (F) Variance Prohibited. Sign variance provisions in Section 157.409.09 shall not apply to provisions and regulations contained in Subsection 157.409.10 (A) to (E).

## 157.420 MIXED USE DEVELOPMENT PROVISIONS

### **157.420.01 Purpose**

The purpose of this Section is to establish provisions for mixing residential and commercial activities. By doing so, the City is able conserve the community's supply of commercial land for commercial uses; provide for designs which are compatible with a storefront character; and avoid or minimize impacts associated with traffic and parking.

### **157.420.02 Regulations**

Where residential and commercial activities are allowed in the same zone, the following provisions shall apply:

- (A) Mixed-use Development Allowance.
  - 1. New residential uses shall be permitted only when part of a mixed-use development (residential with commercial or public/institutional use).
  - 2. Both "vertical" mixed-use (housing above the ground floor) and "horizontal" (housing on the ground floor) developments are allowed.
  
- (B) Limitation on Street-Level Housing.
  - 1. No street frontage may be occupied by residential uses. For parcels with street access at more than one level (e.g., sloping sites with two street frontages), the limitation on residential building space shall apply to all street frontages.
  - 2. This standard is intended to reserve storefront space for commercial uses and public/institutional uses; it does not limit residential uses above the street level on upper stories or behind street-level storefronts.
  
- (C) Parking. Mixed use structures on Commercial zoned property within the City limits of Nehalem, and located adjacent to US Highway 101, shall be exempt from the off-street vehicle and bicycle parking requirements. If provided, improvements shall comply with provisions in Section 157.403.06(J).
  
- (D) Other Requirements. Unless otherwise modified by provisions in the Section, mixed development shall comply with the provisions of the underlying zone.

## 157.421 SPECIAL RESIDENTIAL DWELLINGS

### **157.421.01 Accessory Dwelling Units**

Where permitted, an accessory dwelling unit may be sited on a lot with an existing or under-construction single-family home, shall conform to all building code requirements, and shall meet the following use and development standards:

- (A) Location. The accessory dwelling unit, if freestanding, shall be located within the front, side or rear yard and physically separated from the primary residence by a minimum distance of six feet. A covered walkway which contains no habitable space may connect the two buildings without violation of the setback requirements.
- (B) Number. Only one accessory dwelling unit shall be permitted per lot or parcel.
- (C) Design. All accessory dwelling units shall be connected to domestic sewer and water. A separate address may be required for the residence.
- (D) Area. The floor area of a detached accessory dwelling unit or an addition to an existing residence to add an accessory dwelling unit shall not exceed 75% of the floor area of the primary residence or 800 square feet, whichever is less. An accessory dwelling unit created by a remodel of an existing residence may not occupy more than one floor of the residence regardless of size.
- (E) Setbacks. For a detached accessory dwelling unit, the minimum front yard setback shall be 15 feet; the minimum rear yard setback shall be 10 feet; and the minimum side yard setback shall be five feet.
- (F) Height. The maximum height of a freestanding accessory dwelling unit shall be 25 feet but in no case shall the height exceed the height of the primary residence. Accessory dwelling units built within or as additions to the primary dwelling unit or over detached garages shall not exceed the maximum height of the zone.
- (G) Lot Coverage. The impervious surface associated with the accessory dwelling unit, including the unit and driveways, parking, walkways, and patios, is counted toward the maximum lot coverage for the lot.
- (H) Short Term Rentals. Short term rentals may be located within an accessory dwelling unit, provided they are in compliance with provisions of Ordinance 2023-02, Short Term Rental Operating License Regulations.

### **157.421.02 Attached Dwellings**

Attached dwelling units are single family homes on individual platted lots that are attached to a similar unit on one or two sides. Where permitted as a special use, attached dwelling units shall meet the following use and development standards:

- (A) Permitted Development. Any number of attached dwellings may be built contiguous with one or both sides of a separate platted lot with one dwelling per lot.
- (B) Setbacks.
  1. Zero side yard units shall comply with the setback requirements for the front yard, rear yard, and yard adjacent to a street in the applicable zone.
  2. Interior side yard requirements of the applicable zone shall be met when any part of an exterior wall faces, but is not contiguous to, a side lot line. Otherwise, the interior side yard requirements shall not apply.
- (C) Building Separation. Buildings on adjacent properties, but not attached to each other, shall be separated by a distance of at least 10 feet.
- (D) Accessory Buildings. One accessory building shall be permitted for each attached dwelling subject to provisions in Section 157.425.

**157.421.03 Affordable Housing**

- (A) Purpose. To implement Oregon State Legislature Bills SB 8 and HB 2008, as well as enhance affordable housing opportunities in Nehalem and open opportunities for affordable housing on land not currently zoned for residential development.
- (B) Applicability
  1. All land in the City of Nehalem currently zoned C-1 and P may be developed for affordable housing without a zone change application or process provided all conditions of this section and state law are met.
  2. All land in the City of Nehalem currently zoned I may be developed for affordable housing without a zone change application and only if the property is: (a) publicly owned;(b) adjacent to lands zoned for residential uses or schools; and (c) not specifically designated for heavy industrial uses.
  3. The land is owned by religious organizations or government agencies; or non-profit organizations with housing development as their primary goal/purpose.
  4. The project shall develop affordable housing for those individuals or households with a combined annual income at or below 60% of the most recent Tillamook County median income.
- (C) Application Requirements
  1. Application shall be made on forms prescribed by the City and shall demonstrate that all state and Residential Medium Density (RM) Zone

requirements are met. The following exceptions apply to the RM zone requirements:

- a. Density may increase by 150 percent of the existing density.
  - b. Structures may be increased in height by 24 additional feet.
2. The parcel(s) proposed for affordable housing development shall not contain slopes greater than 25%, be located within the City's 100-year floodplain or be identified as hazardous land.
  3. The site, when developed, shall meet all state and county requirements for public safety, health, and habitability, and as well as city utility, street, and water drainage requirements.
- (D) Affordable Housing shall be administered through the Site Design Review process contained in Article V.

## 157.422 MANUFACTURED HOMES ON INDIVIDUAL LOTS

### **157.422.01 Scope**

The provisions of this Chapter apply to all manufactured homes sited on individual lots in the City of Nehalem. Manufactured homes sited in approved mobile/manufactured home parks or manufactured home subdivisions are not affected by provisions in this Section.

### **157.422.02 General Standards**

Where manufactured homes are permitted on individual lots, the following general standards shall apply. These standards are in addition to the minimum lot area, setback, and height standards of the underlying zone.

- (A) Size. The manufactured home shall be multi-sectional (single-wide" homes are prohibited) and have at least 1,000 square feet of gross floor area.
- (B) Performance Standards. The exterior thermal envelope must meet the standards specified by State law for single family dwellings, as defined in ORS 455.010.
- (C) Removal of Towing Equipment. All towing hitches, wheels, running lights, and other towing related equipment shall be removed within 30 days after installation of the manufactured home.
- (D) Foundations. The manufactured home shall be placed on an excavated and back filled foundation with no more than 12 inches of enclosing material exposed above grade. Where the building site has a sloped grade, no more than 12 inches of the inclosing material shall be exposed on the uphill side of the home. If the home is placed on a basement, the 12-inch limitation shall not apply. The 12-inch limitation shall not apply if the requirements of the Flood Hazard District mandate that the home be elevated more than 12 inches above grade. The foundation shall meet building code and Flood Hazard Area (if applicable) standards. The base of the manufactured home shall be enclosed continuously at the perimeter with either concrete, concrete block, brick, stone, or a combination thereof.
- (E) Utilities. The manufactured home shall be provided with storm drainage, sanitary sewer, electric, telephone, and potable water utility services with easements dedicated where necessary to provide such services. All such utilities shall be located underground unless waived by the City Building Official where underground service would require an exception to local prevalent conditions. Manufactured homes shall not be occupied purposes unless connected to local water, sewer, and electrical systems.
- (F) Historical Sites. No manufactured home shall be located on property containing a historic landmark, or on a lot or parcel immediately adjacent to property containing a historic landmark. For this Chapter, a historic landmark is property designated by the Nehalem Comprehensive Plan as containing a significant historical resource.

- (G) Roofing. The manufactured home must have a composition asphalt, fiberglass, shake, or tile roof with a nominal pitch of four feet in height for each twelve 12 feet in width.
- (H) Exterior Siding and Finish. The exterior siding of the manufactured home must have the same appearance as materials commonly used on residential dwellings.
- (I) Garage/Carport. A garage or carport of like material and color of the manufactured home is required. The garage shall be placed on the property prior to occupancy of the manufactured home.
- (J) Off-Street Parking. Parking and improvements shall be as specified in Section 157.403.

## 157.423 MANUFACTURED DWELLING PARKS

### **157.423.01 Development Standards**

Oregon Revised Statutes (ORS), Chapter 446 and Oregon Administrative Rules (OAR), Chapter 918, and Chapter 10 of the Oregon Manufactured Dwelling and Park Specialty Code (OMDS) specify the standards and regulations for Manufactured Dwelling Parks in the State of Oregon.

- (A) Permitted Housing. Only Class "A" manufactured dwellings are permitted in Manufactured Dwelling Parks adjacent to areas that are predominantly developed with single family residential dwellings. Class "A" or "B" manufactured dwellings are permitted in all other Manufactured Dwelling Parks. No manufactured dwelling shall be more than 10 years of age at time of placement.
- (B) Minimum Site Area. The minimum area for a park shall be one acre.
- (C) Density. Maximum density of the park shall not exceed seven units per gross acre.
- (D) Access. Manufactured Dwelling Park access shall occur from a public Collector or Arterial street.
- (E) Permitted Uses. Manufactured Dwelling Parks may contain manufactured dwellings and accessory structures, community laundry and recreation facilities, and other common buildings for use by park residents only; storage area for boats, campers, recreational vehicles enclosed by a site-obscuring fence for use by park residents only; and one residence other than a manufactured dwelling for the use of a caretaker or a manager responsible for maintaining or operating the park.
- (F) Conditions. Upon granting site plan approval for a manufactured dwelling park, the Planning Commission may require establishment of deed covenants, conditions, and restrictions (CC&Rs) or other conditions including but not limited to any of the following where such are deemed necessary for the mitigation of adverse impacts on an adjacent area:
  - 1. Limit the type of units to be installed.
  - 2. Additional landscaping or screening on the park boundary.
  - 3. Increased setbacks from park boundaries.
- (G) Improvement Standards. Park standards shall conform to the Oregon Manufactured Dwelling and Park Specialty Code within the Park boundary and shall conform to City Standards when abutting public streets.
- (H) Streets. Public streets located within the Park and the first 100 feet of private Park streets connecting to a public street shall conform to City standards. Other private streets within the Park shall be no less than 30 feet in paved width per Table 10-C of the OMDS.



- (I) Perimeter Setbacks. Distance of a manufactured dwelling or accessory structure from an exterior park boundary shall be 20 feet.
- (J) Landscaping. All common areas within a Manufactured Dwelling Park shall be landscaped and maintained by the Park owner in conformance with an approved landscape and irrigation plan submitted as part of the application. This plan shall be drawn to scale. The plan will show the location of existing trees, vegetation proposed to be removed, vegetation proposed to be retained, the location and design of landscaped areas, the varieties and sizes of trees and plant materials to be planted, contour lines indicating any earth sculpting to be used, approved vegetated post-construction stormwater quality facilities within the landscape area, and other pertinent landscape information.

At a minimum, all common areas within a Manufactured Dwelling Park, exclusive of required buffer areas, buildings, and streets, shall be landscaped and maintained in accordance with the following minimum standards per each 1,000 square feet of open area.

- 1. One 10-foot tree or two trees at least five feet in height.
- 2. Three shrubs or perennials.
- 3. The remaining area must be landscaped in an attractive ground cover.
- 4. Long expanses of fences or walls along public streets shall be designed to prevent visual monotony through the use of offsets, landscaping, and change in materials. Fencing closer than 15 feet to the public right-of-way shall be subject to the zoning district's restrictions on front yard fencing. Landscaping shall include street trees within a public right-of-way per adopted street tree regulations of the City.

- (K) Perimeter Property Screening. The entire perimeter of the Manufactured Dwelling Park shall be screened except for driveways and clear vision areas. The following minimum standards shall apply:
  - 1. One row of evergreen shrubs shall be planted which will grow to form a continuous hedge at least six feet in height and be at least 80% opaque, as seen from a perpendicular line of sight, within two years of planting; or
  - 2. A minimum of a six-foot high wood fence or masonry wall shall be constructed, measured as provided in Section 157.444, providing a uniform sight obscuring screen; or
  - 3. An earth berm combined with evergreen plantings or wood fence, or masonry wall shall be provided which shall form a sight and noise buffer at least six feet in height.
  - 4. The remaining area is treated with attractive, living ground cover (i.e., lawn, ivy, evergreen shrubs, etc.).
- (L) Utilities. All Manufactured Dwelling Parks must provide each lot or space with storm drainage, municipal sanitary sewer, electric, telephone, and municipal water, with easements dedicated where necessary to provide such services. All such utilities shall be located underground. Utilities shall be connected following state requirements and the manufacturer's specifications.

## 157.424 RECREATIONAL VEHICLE PARK STANDARDS

### **157.424.01 Purpose**

Oregon Revised Statutes Chapter 446 and Oregon Administrative Rules Chapter 918, Division 650 specify the standards and regulations for Recreational Vehicle (RV) use in the State of Oregon. Approved RV parks shall comply with the State of Oregon Standards and the standards of this Section:

- (A) Minimum Site Area. The minimum area for an RV park shall be one acre.
- (B) Vehicle Space and Pad. The space provided for each recreational vehicle shall be at least 2,100 square feet. At least two spaces shall be provided. The recreational vehicle pad shall be covered with crushed gravel or paved with asphalt, concrete or similar material and be designed to provide runoff of surface water. Each RV space shall be provided with electrical service, piped potable water, and sewage disposal service. All RVs with service connections staying in the Park shall be connected to these services.
- (C) Separation. All recreational vehicles and structures shall be located at least 25 feet from all park property lines.
- (D) Screening. Except for access roadways into the park, the park shall be screened on all sides by a sight-obscuring hedge or fence not less than six feet in height.
- (E) Streets. Streets which are to be dedicated to the city, if any, shall be dimensioned and improved per Section 157.402 of this chapter.
  - 1. For other streets, required rights-of-way shall be as follows.
    - (a) Minor one-way streets serving less than 20 spaces shall be 25 feet.
    - (b) Minor two-way streets serving less than 40 spaces shall be 30 feet.
    - (c) Streets serving 40 or more spaces shall be 40 feet.
  - 2. Connection to a two-way, public street shall be provided.
  - 3. Aside from the standards set forth above, private streets shall conform to the design and improvement standards of Section 157.402 of this chapter.
- (F) Parking Spaces. In addition to the RV pad, the total number of parking spaces shall be equal to 1.25 spaces per RV space. All parking spaces shall be paved.
- (G) Maintenance. The Park shall be always maintained in a neat appearance. There shall be no outside storage of materials or equipment. Trash receptacles shall be provided at convenient locations and in adequate number and capacity.
- (H) Duration. No recreational vehicle shall remain in the park for more than 30 days in a 60-day period.
- (I) Signs. Signs are limited to one identification sign with a maximum area on one side of 24 square feet and limited to eight feet in height above the ground. Such signs may be indirectly illuminated.

- (J) Utility Building. The Park shall provide one utility building or room containing three clothes washing machines, one clothes drying machine, and 50 square feet of space for each 50 recreational vehicle spaces.

**157.424.02 Design and Submission Requirements**

- (A) Design. The applicant for proposed for Recreational Vehicle Parks shall certify in writing that the services of a registered architect, landscape architect, or registered engineer licensed by the State of Oregon have been used in the design and development of the project.
- (B) Plot Plans Required. The Site Plan Review application for a new or expansion of an existing RV Park shall contain the following information in addition to that required in Section 157.508 for Site Development Reviews:
1. Name and type of Park, address, owner, design team members, scale, date, and north point of plan.
  2. Plot plan of park boundaries and the location, dimensions, and number of RV spaces. Number each space and show that planned spaces can reasonably accommodate a variety of RV types.
  3. Location and dimensions of existing and proposed structures, together with the usage and approximate location of all entrances, heights, and gross floor areas.
  4. Location and dimensions of roads, accessways, parking, loading facilities, garbage receptacles, and walkways.
  5. Extent, location, arrangement, and proposed improvements of all open space, landscaping, fences, and walls.
  6. Location of lighting fixtures for park spaces and grounds.
  7. Location and area of recreation spaces and buildings in square feet.
  8. Locations where park water, sewer, drainage, and utility systems connect to City systems.
  9. Location of existing and proposed fire and irrigation hydrants.
  10. Enlarged plot plan of a typical RV space, showing location of the stand, patio, storage space, accessory structures, parking, sidewalk, utility connections, and landscaping.

## 157.425 RESIDENTIAL ACCESSORY STRUCTURES

### **157.425.01 Single Family and Duplex Residences**

Residential accessory structures for attached or detached single family homes and duplexes, excluding Accessory Dwelling Units as defined in Section 157.421, shall comply with all requirements for a principal structure, except where specifically modified by this section. Accessory structures shall not be used for human habitation and shall comply with the following standards:

- (A) Dimensions and Design Requirements. Residential accessory structures shall be subject to the following requirements:

<b>Residential Accessory Structures Standards</b>				
<b>Structure Size #1.</b>	<b>Exterior Finish</b>	<b>Location on Property</b>	<b>Setbacks (side and rear)</b>	<b>Maximum Height*</b>
Up to 200 sf	No Requirements	Side or Rear Yard	3 feet	10 feet
200-1,000 sf	#2.	Side or Rear Yard	10 feet	15 feet
Over 1,000 sf	#2.	Side or Rear Yard	10 feet	20 feet
<i>* Measured from the roof line.</i>				
Notes:				
#1. Up to 10,000 square feet of lot size, maximum accessory structure size is 1,000 square feet; over 10,000 square feet of lot size, the structure may be increased an additional 100 square feet for each 1,000 square feet of lot size.				
#2. For any accessory structure located on a lot of 1.0 acre or less, the exterior siding shall have the same general materials as the primary dwelling. Otherwise, there are no restrictions.				

- (B) Setbacks. Accessory structures shall comply with the following setbacks:
1. Front and/or Street Side Yard: Follow requirements of underlying zone.
  2. Side Yard: see table in (A).
  3. Rear Yard: see table in (A).
  4. Accessory structures shall be detached from all other buildings by at least six feet.
- (C) Lot and Yard Coverage. Total lot coverage standards as required per the underlying zone also apply to all accessory structures, including those not requiring a building permit. Accessory structures shall not occupy more than 30% of the required yard area.
- (D) Multiple Accessory Structures. There shall be no limit to the number of structures, provided the structures in combination comply with the area coverage requirements. When there is more than one accessory structure within a yard, all provisions in this Chapter shall apply and shall be based on the total square footage of all accessory structures within the yard.

- (D) Prohibited Structures. The use of metal shipping containers or semi-truck trailers as an accessory structure shall be prohibited.
- (E) Sales. No sales shall be made from an accessory structure unless it has been approved as a Home Occupation.

**157.425.02 Multi-Family Developments**

There shall be no limit to the size, number, or location of accessory structures for multi-family developments, provided the accessory structures shall comply with all setbacks, height restrictions, and other dimensional and design requirements for the primary structure(s) and lot coverage requirements. All accessory structures shall be of like exterior materials, finish, and color as the primary structure(s).

## 157.426 HOME OCCUPATIONS

### **157.426.01 Purpose**

In residential zones, home occupations are allowed to promote a local economic base consistent with the character of the city and are characterized by the following:

- (A) Allowable uses include light manufacturing, crafts and small-scale services which have negligible impact on the neighborhood in terms of traffic generation, noise, appearance and operating hours.
- (B) Activities are to be allowed on an implied contractual basis, with the primary stipulation that approval can be revoked for violation of standards.

### **157.426.02 General Standards**

All home occupations shall meet the following standards and/or conditions in addition to all other applicable ordinance requirements:

- (A) It is operated by the resident/owner of the property upon which the activity is located within the residence or accessory structure(s);
- (B) It will employ no more than four full- or part-time persons, including the resident/owner, **within the residence or accessory structure; no limit to the number of employees working permanently off-site of the residence containing the home occupation;**
- (C) There shall be no activities that give the outward appearance or manifest the characteristics of a retail business, such as:
  - 1. Signs other than those permitted under Section 157.409 of this chapter;
  - 2. Advertising of the dwelling as a business location;
  - 3. More than six customers daily entering the business premises;
  - 4. More than two customer vehicles at a time;
  - 5. Noise that adversely affects neighbors;
  - 6. Obnoxious odors;
  - 7. Hazardous activities; and
  - 8. Other adverse off-site impacts.
- (D) It will not interfere with existing users on nearby land or with other uses permitted in the zone in which the property is located;
- (E) The existence of a home occupation shall not be used as justification for a zone change or Comprehensive Plan amendment;
- (F) Signs shall conform to Section 157.409 of this chapter;
- (G) Uses involving the delivery of materials shall be limited to between 8:00 a.m. and 6:00 p.m. daily;

- (H) The use shall be architecturally and aesthetically compatible with the surrounding residential area and the existing structure(s) on the site;
- (I) There shall be no outdoor storage of materials or equipment;
- (J) Noise generated by the home occupation shall be limited to two decibels (2dBs) measured 20 feet from the outside of the building or half the distance to the nearest structure, whichever is less; and
- (K) Machinery operations shall be limited to the hours of 8:00 a.m. and 5:00 p.m. daily.

**157.426.03 Non-Compliance**

Any home occupation which does not comply with the requirement of this Section and the provisions of the underlying zone shall be a violation of this Ordinance and shall be subject to the penalties and remedies of this Chapter.

## 157.427 TEMPORARY USES

### **157.427.01 Purpose**

The purpose of these regulations is to provide standards for the establishment of temporary businesses and similar uses within the City of Nehalem.

### **157.427.01 Temporary RV Permits for Construction**

The City Manager may grant a permit for the occupation of a camping vehicle or recreation vehicle during the construction of a permanent residence.

- (A) A permit will not be issued until a city building permit has been obtained.
- (B) Permits are good for one year and may be renewed at the discretion of the City Manager for no more than one added year.

### **157.427.03 Other Temporary Uses**

The City Manager may grant a permit for the following temporary use, subject to the following limitations and requirements:

- (A) Tree and Fireworks. Christmas tree or fireworks sales are permitted subject to the following:
  1. The sales shall be limited to commercial or industrial zones, except that sales may occur on those properties containing public or semi-public uses, such as schools or churches, regardless of the underlying zone.
  2. The business may be operated from a vehicle, temporary structure, or a vacant building.
  3. The activity is located on the same lot for no more than 90 days in any calendar year.
  4. The required parking for the primary uses on the same lot is not reduced below Chapter requirements.
  5. The use does not block driveways, driveway entrances, or parking aisles.
  6. The activity conforms to all signage requirements in Section 157.409.
  7. The activity conforms to all applicable setback requirements.
  8. The operator of a temporary use shall obtain all permits required by other agencies including those required for the sale of fireworks.
  9. Temporary uses in Residential zones shall not operate beyond 8:00 PM.
- (B) Temporary Construction Facilities. Mobile offices, temporary power equipment, and temporary structures used by personnel and to store equipment during construction, provided the structures are located on the construction site and not used as dwellings. There is no restriction as to zoning.
- (C) Yard Sales and Auctions. Yard sales or auctions in any zone, provided there are not more than four sales in a calendar year, with each sale not to exceed three consecutive days. Merchandise and signs shall remain on private property. This Section does not limit the number of times, or duration, that public agencies may



conduct sales or auctions regarding agency land, equipment, supplies, or other materials.

- (D) Additional Permitted Temporary Uses. The City Council may, by resolution, authorize additional permitted temporary uses during a specific event or festival and set forth reasonable types of uses, appropriate zones for such uses, and any time restrictions the Council finds necessary to protect the health, safety, and welfare of the public.

## 157.428 BED AND BREAKFAST ESTABLISHMENTS

### **157.428.01 Purpose**

The purpose of this Chapter is to provide development guidelines and operating requirements for a bed and breakfast establishment within the City.

### **157.428.02 General Land Use Provisions**

The following general development provisions shall apply:

- (A) Location. The establishment shall be located along, or within 300 feet, of a collector or arterial street.
- (B) Rooms. The bed and breakfast establishment shall be limited to a maximum of two guest rooms in the RL zone and four guest rooms in the RM zone.
- (C) Room Restrictions. No guest room shall be located within a basement.
- (D) Building Modification. The guest rooms used by the establishment shall be part of the primary residence and not specifically constructed for rental purposes. In no case shall the residential character be changed or altered to accommodate an establishment.
- (E) Parking. In addition to the parking requirements for the residence, one additional parking space shall be required for each guest room. The parking space(s) shall comply with the following improvement provisions:
  - 1. No parking shall be permitted within the designated front yard setback.
  - 2. Parking located within the side yard or rear yards shall be screened from adjacent residential zoned property shall be screened. Screening shall be provided by a six-foot sight-obscuring wood or chain-link fence or vegetative hedge.
- (F) Signs. Signs shall be limited to one non-illuminated wall-mounted sign not to exceed eight square feet in area.

### **157.428.03 Operational Requirements**

The following shall continually apply to the operation of the establishment:

- (A) Owner/Operator. The establishment shall be maintained and operated solely by the on-premises owner of the residence containing the bed and breakfast.
- (B) Retail Activity. No retail or other sales shall be allowed unless clearly incidental and directly related to the conduct of the establishment (e.g., coffee cups or t-shirts with the business logo).
- (C) Receptions. The establishment shall not be used by the public or paying guests for the hosting of receptions, weddings, private parties, or similar functions.

- (D) Meals. Meals shall be limited to breakfast and snacks and shall be served only to overnight guests. The operator shall be responsible for obtaining necessary food service permits.
- (E) Safety. The improvements, maintenance, and operation of the establishment shall continually follow applicable building code, fire safety, and health regulations.

## 157.429 AUTOMOBILE ORIENTED USES AND FACILITIES

### **157.429.01 Intent**

Automobile-oriented use means automobiles and/or other motor vehicles are an integral part of the use.

### **157.429.02 Vehicle Repair, Sales, Rental and Storage**

Business that repair, sell, rent, store or service automobiles, trucks, motorcycles, buses, recreational vehicles, boats, construction equipment and similar vehicles and equipment are permitted when:

- (A) The use is wholly contained within an enclosed building; and
- (B) The use does not exceed 20,000 square feet (indoor and outdoor) or 200 feet of street frontage (on any single street), whichever is less.

### **157.429.03 Drive-up, Drive-in and Drive-through Facilities**

Drive-up, drive-in and drive-through facilities (e.g., associated with restaurants, banks and similar uses) are permitted only when accessory to a primary commercial "walk-in" use, and shall conform to all of the following standards:

- (A) The facility receives access from an alley or driveway.
- (B) None of the drive-up, drive-in or drive-through facilities (e.g., driveway queuing areas, window, teller machines, service windows, drop-boxes and similar facilities) are located within 20 feet of a street and shall not be oriented to a street. Walk-up only teller machines and kiosks are exempted from this requirement.
- (C) The facility is subordinate to a primary permitted use. **Subordinate** means all components of the facility, in total, occupy less street frontage than the primary commercial or public/institutional building.
- (D) No more than one drive-up, drive-in, or drive-through facility shall be permitted on one block, or for a distance of 300 linear feet along the same street frontage, whichever is less.

## 157.440 GEOLOGICAL HAZARDS

### **157.440.01 Application**

The following are geologic hazard areas to which the standards of this section apply:

- (A) Active landslides identified in State Department of Geology and Mineral Industries (DOGMI) Bulletins 74 and 79;
- (B) Inactive landslides, landslide topography and mass movement topography, identified by the Department of Geology and Mineral Industries Statewide Landslide Information Database for Oregon (SLIDO).
- (C) Areas prone to mudflows identified in DOGMI Bulletin 79;
- (D) Brallier peat soils identified in Soil Survey, Tillamook Area, Oregon (USDA, Soil Conservation Service, 1964) and the unpublished Soil Conservation Service soils survey for coastal Tillamook County; or
- (E) Other locally known areas of geologic hazard based on evidence of past occurrences.

### **157.440.02 Development Standards**

All development within geologic hazard areas shall comply with the following standards.

- (A) Vegetation removal shall be the minimum necessary to accommodate the use.
- (B) Temporary measures shall be taken to control runoff and erosion of soils during construction. Such measures include temporary stabilization (mulching or sodding), sediment basins or other performance equivalent structures required by the city.
- (C) Exposed areas shall be planted in permanent cover as soon as possible after construction.
- (D) Storm water shall be directed into drainages with adequate capacity so as not to flood adjacent downstream properties. Finished grades should preferably be designed to direct water flows along natural drainage courses.
- (E) Additional requirements contained in a geologic report required by this section shall be followed.

### **157.440.03 Geological Report**

- (A) A geologic hazard report is required prior to approval of planned developments, subdivisions and partitions governed by Section 157.404, building permits and manufactured home permits occurring in areas identified in Subsection 157.440.02 above.

- (B) A report prepared for a subdivision, planned development or partition pursuant to the requirements of this section, may be used to satisfy these requirements for subsequent building, mobile home or manufactured home permits; providing that, the original report provided recommendations on building placement and construction and that these recommendations are followed.
- (C) The geologic hazard report shall be prepared by a geologist, engineer, engineering geologist or other person having professional experience analyzing the relevant geologic hazards.
1. Structural recommendations must be stamped by a registered professional engineer.
  2. The boundaries of the study area shall be determined by the city.
  3. It shall be prepared in a format easily understood by a "lay-person" and shall include plan and sectional diagrams of the area showing property boundaries and the geographic information required by division (F) below.
- (D) The geologic hazard analysis shall include the following:
1. In landslide areas [157.440.01 (A) and (B)]:
    - (a) Soils and bedrock type;
    - (b) Slope;
    - (c) Orientation of bedding planes in relation to the dip of the surface slope;
    - (d) Soil depth;
    - (e) Other relevant soils engineering data;
    - (f) Water drainage patterns; and
    - (g) Identification of visible landslide activity in the immediate area.
  2. In areas prone to mudflow [157.440.01 (C)]:
    - (a) History of mud or debris flow; and
    - (b) Areas likely to be affected by future mudflow.
  3. In Brallier peat soils (157.440.01 (D)):
    - (a) Boring log or other similar measure;
    - (b) Bearing capacity; and
    - (c) Drainage patterns.
- (E) The geologic hazards report shall recommend development standards that will protect development on the property and surrounding properties. These should include standards for:
1. Development density (when more than one use is possible);
  2. Locations for structures and roads;
  3. Land grading practices, including standards for cuts and fills;
  4. Vegetation removal and re-vegetation practices;
  5. Foundation design (if special design is necessary);
  6. Road design (if applicable); and
  7. Management of storm water runoff during and after construction.

- (F) The geologic hazard report shall include the following summary findings and conclusions:
1. The type of use proposed and the adverse effects it might have on adjacent areas;
  2. Hazards to life, public and private property, and the natural environment which may be caused by the proposed use;
  3. Methods for protecting the surrounding area from any adverse effects of the development;
  4. Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;
  5. The proposed development is adequately protected from any reasonably foreseeable hazards including, but not limited to, geologic hazards, wind erosion, undercutting and flooding; and
  6. The proposed development is designed to minimize adverse environmental effects.

## 157.441 SHORELAND DEVELOPMENT REQUIREMENTS

### **157.441.01 Purpose**

Shoreland development standards are requirements which apply to uses adjacent to the Nehalem River and Nehalem Bay in the following zones: Marine Residential MR, Commercial C and Low-Density Residential RL.

### **157.441.02 General Standards**

The following general standards shall apply.

- (A) Setbacks. The shoreline setback for non-water-dependent structures and accessory uses, including parking, shall be 15 feet from the line of non-aquatic vegetation.
- (B) Riparian Vegetation.
  - 1. Removal of existing vegetation within the required setback line (15-foot setback) will not be permitted, except for water-dependent development.
  - 2. Limited removal of vegetation may be made on properties used for non-water-dependent uses only to provide walkways and trails.
  - 3. Placement or replacement of riparian vegetation may be required by the decision authority.
- (C) Waterfront Access.
  - 1. Waterfront access for the public such as walkways, trails and landscaped areas will be provided whenever possible.
  - 2. Subdivision will provide for pedestrian access to the shoreline within the development.
  - 3. Commercial uses are encouraged to provide access to the waterfront consistent with public safety.
- (D) Signs.
  - 1. Placement of signs for commercial and industrial uses will be done in such a way as to minimize impact on waterfront views.
  - 2. When feasible, signs should be constructed against buildings.
- (E) Lot Area. Marsh and other aquatic areas will not be used to compute lot area or density. Marsh area may be used in lot area and density calculations should the community dike project be initiated.
- (F) Utilities.
  - 1. Whenever feasible, utility lines will be located underground or along existing rights-of-way.
  - 2. All above-ground utilities should be designed to minimize view interference and the amount of land clearing.
- (G) Architectural Design. Uses shall be aesthetically compatible with their waterfront locations and architecturally relate to adjacent historic or scenic structures.



- (H) Parking. Parking facilities shall not be located over the water or within 30 feet of the line of non-aquatic vegetation except where parking elsewhere is rendered impractical by topography or constitutes a severe economic hardship, in which case it shall remain as far from the line of non-aquatic vegetation as feasible.
- (I) Views. The placement of structures will take into account the impact on views from adjacent areas.

**157.441.03 Specific Standards**

The following specific standards shall also apply.

- (A) Aquaculture.
  - 1. Structures and activities associated with an aquaculture operation shall not interfere with navigation.
  - 2. Water diversion or other shoreline structures shall be located so as not to interfere with public shoreline access. Public access to the facility shall be provided consistent with safety and security considerations.
  - 3. Aquaculture facilities shall be constructed to blend in and not detract from the aesthetic qualities of the area. In developed areas, views of upland owners shall be given consideration in facility design.
  - 4. Water diversion structures or human-made spanning channels shall be constructed so as to maintain stream flows.
- (B) Marinas.
  - 1. Marine facilities shall be designed and constructed to minimize negative impacts on navigation, water and air quality, sedimentation rates and patterns, fish rearing or migration routes, important sediment-dwelling organisms, birds, other wildlife, tidal marshes and other important vegetative habitat. The effects on traffic patterns, parking facilities, noise levels and uses in adjacent shoreland, and aquatic areas shall be considered.
  - 2. Unless the developer can demonstrate that existing water quality conditions can be maintained or improved, marinas shall not be allowed in poorly flushed embankments.
  - 3. The amount of water surface occupied shall be the minimum to meet the need.
  - 4. Fill, when necessary, shall be permitted only for the water-dependent portions of the facility.
- (C) Shoreline Stabilization.
  - 1. Vegetative (non-structural) stabilization will be used unless inappropriate due to a high erosion rate, and inability to accommodate a permitted water-dependent use, or other relevant factors.
  - 2. Acceptable engineering and construction practices shall be used in the placement of riprap, considering slope, size, composition and quality of material, excavation, gravel placement, and operation of equipment in water.

3. Shoreline protection measures shall not restrict existing public access to public shorelines.
4. Shoreline protection measures shall be designed to minimize the impact on the aesthetic qualities of the shoreline.
5. Shoreline protection measures shall minimize negative impacts on adjacent property.
6. Bank-line protection is not in itself a way to increase land surface area.
  - (a) Where an avulsion has occurred, fill may be used to restore the previous bank-line, so long as the corrective action is initiated within one year of the avulsion.
  - (b) Any extension of the bank-line into traditional aquatic areas will be considered a fill.
7. Construction of shoreline protection measures shall be coordinated with state and federal agencies and local interests to minimize the effects on aquatic resources and habitat.
8. Emergency repair to shoreline stabilization facilities is permitted, consistent with the above standards and subject to those standards imposed by the State Division of State Lands and the U.S. Army Corps of Engineers.

(D) Docks and Moorage.

Construction of docks and moorage shall first require approval of applicable government agencies, including the Oregon Department of State Lands and the Army Corps of Engineers. In addition, docks and moorage shall be subject to the following local requirements:

1. Where a private individual dock or moorage is proposed, the applicant must demonstrate that the alternative moorage sites such as nearby marinas, community docks or mooring buoys are not available and are impractical or will not satisfy the need. Where need is demonstrated, only one boat dock or moorage area will be permitted for each waterfront residence, subdivision or other use, except for a planned development, in which case the Planning Commission may approve more than one moorage facility if appropriate for the proposed development.
2. The size and shape of the dock or moorage shall be the minimum necessary to fulfill the purpose.
3. Open moorages are encouraged, except in connection with a commercial or industrial use where shelter is necessary for repair and maintenance of vessels and associated equipment.
4. Open pile piers or secured floats shall be used for dock construction.

## 157.442 SPECIAL BUFFERS AND SETBACKS

### **157.442.01 Riparian Vegetation and Small Streams**

- (A) Riparian vegetation along small streams shall be protected by a 15-foot riparian zone for all creeks. This zone shall be run parallel to the mean high-water line of the subject creek.
- (B) Any development within the 15-foot riparian zone, including the removal or replacement of vegetation, shall require a Conditional Use application pursuant to Section 157.507. In addition to the Conditional Use criteria in Section 157.507, a conditional use permit within the riparian vegetative area shall indicate how: (1) the proposal will not affect the following factors; (2) the proposal can be mitigated in some manner to minimize or eliminate potential harmful impacts regarding the following factors; or, (3) the factors do not apply to the request. The factors include:
  - 1. Development or improvements shall be directed away from adjacent streams and drainage corridors to the greatest possible extent.
  - 2. The development, change, or intensification of use shall provide the maximum possible landscaped area, open space, or vegetation between the activity and adjacent streams or drainage corridors.
  - 3. The fringe along streams and drainage corridors shall be maintained to the maximum extent practical in order to assure scenic quality, protection of wildlife habitat, and protection from erosion.
  - 4. Areas of annual flooding, flood plains, and wetlands shall be preserved in their natural state to the maximum possible extent to protect water retention, overflow and other natural functions. The development shall comply with the flood plain or floodway development requirements of the Development Ordinance.

### **157.442.01 Buffers Adjacent to EFU Zoned Property**

- (A) Where development is proposed on lands adjacent to Exclusive Farm Use Zones, the city shall require that a buffer of not less than 50 feet be required between the development and the EFU boundary in order to protect the farm and development from incompatible uses or activities.
- (B) Such a buffer shall be in addition to any required setback for structures or uses.
- (C) As part of a land use application and review, the decision authority may require the maintenance of tree stands, fencing or other separation.

## 157.443 YARD AND LOT STANDARDS

### **157.443.01 New Buildings Shall be on a Lot**

Every building erected shall be located on a lot as herein defined.

### **157.443.02 Yards Apply Only to One Building**

No required yard or other open space or required driveway provided for any building or structure for the purpose of complying with the provisions of this Chapter shall be considered as providing a yard or open space for any other building. No yard or other required space on an adjoining lot shall be considered as providing a yard or open space on the lot where the building is to be erected.

### **157.443.03 Front Yard Projections**

The following features, when not more than one story high, may project into the required front yard setback area, provided the projection shall come no closer than 10 feet from the property line: planter boxes, chimneys and flues, steps, cornices, eaves, gutters, belt courses, leaders, sills, pilasters, lintels, and other ornamental features, uncovered porches, covered but unenclosed porches.

### **157.443.04 Side Yard Projections**

- (A) Cornices, eaves, gutters, and fire escapes may project into a required side yard not more than one-fourth of the width of the required side yard.
- (B) Chimneys, flues, belt courses, leaders, sills, pilasters, lintels, and ornamental features may project not more than 18 inches into a required side yard, provided the chimneys and flues shall not exceed six feet in width.
- (C) Uncovered decks and patios attached to the main building, and no more than 30-inches in height when measured directly beneath the outside edge of the deck or patio, may be extended to the side yard property line.

### **157.443.05 Rear Yard Projections**

- (A) Chimneys, flues, belt courses, leaders, sills, pilasters, lintels, gutters, and other ornamental features, may project not more than 18 inches into a required rear yard, provided the chimneys and flues shall not exceed six feet in width.
- (B) A fire escape, balcony, outside stairway, cornice, or other unenclosed, unroofed projections may project not more than five feet into a required rear yard.
- (C) The following features, when not more than one story high, may project into the required rear yard setback area: planter boxes, chimneys and flues, steps, cornices, eaves, gutters, belt courses, leaders, sills, pilasters, lintels, and other ornamental features, uncovered porches, covered but unenclosed porches.

- (D) No permitted projection into a required rear yard shall extend within 10 feet of the center line of an alley or within five feet of a rear lot line if no alley exists.

**157.443.06 Vision Clearance**

A clear vision area shall be maintained where streets and private points of access intersect. The clear vision area shall conform to the following:

- (A) Measurement. A clear vision area at an intersection shall be the triangular area established according to the following procedure:
  - 1. A line extending a number of feet, as identified in the sections (B), (C), (D), and (E) below, from the intersection along a public street right-of-way;
  - 2. A line extending a certain number of feet from the intersection along the intersecting access; and.
  - 3. A third line that creates the triangular clear vision area by connecting the ends of the lines described in 1. and 2., above.
- (B) Street-Driveway. The clear vision area for a street-driveway intersection shall be 10 feet along the driveway from its intersection with the street right-of-way and 20 feet along the street right-of-way at the point of intersection with the driveway.
- (C) Street-Alley. The clear vision area for street-alley intersections shall be 10 feet along the alley from its intersection with the street right-of-way and 20 feet along the street right-of-way at the point of intersection with the alley.
- (D) Street-Private Access Easement. The clear vision area for street-access easement intersections shall be 10 feet along the access easement from its intersection with the street right-of-way and 20 feet along the street right-of-way at the point of intersection with the access easement.
- (E) Corner Lots (Street-Street Intersection). The clear vision area for corner lots on local residential streets (either public or private) shall be 20 feet along the right-of-way of each intersecting street. For collector and arterial streets, the measurement along the right-of-way of the collector or arterial street shall be 30 feet.
- (F) Prohibited Development. A clear vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding 36 inches in height, measured from the top of the curb or, where no curb exists, from the established street centerline grade, except that the following may be allowed in the clear vision area:
  - 1. Trees, provided all branches and foliage are removed to a height of eight feet above grade;
  - 2. Telephone, power, and cable television poles; switchboxes no more than 10 inches in width.

## 157.444 FENCING AND SCREENING

### **157.444.01 Placement of Fencing – Public Right-of-Way and Utility Easements**

Fences located on utility easements and within the public right-of-way shall be prohibited.

### **157.444.02 General Requirements**

- (A) Construction Material. Fences or walls constructed of unsafe materials, including, but not limited to barbed wire, electric fencing, broken glass, and spikes shall be prohibited. Permitted agricultural uses may use electric and barbed wire fencing.
- (B) Location. No fence shall be permitted in the sidewalk area or in a location which may impair the construction of a public sidewalk, pathway, or walkway.
- (C) Building Permit. Fences greater than six feet in height require the owner to secure a building permit.
- (D) Access. In the event any fence restricts access to or use of rights-of-way and easements, it shall be the fence owner's responsibility to remove fencing upon City request or other affected agency or utility provider request.
- (F) Utility Access. No fence shall restrict access to any utility meter or fire hydrant.
- (G) Clear Vision. Fence installation shall not impair the clear vision triangle clearance requirements at street and alley intersections.
- (H) Height Measurement. Fence heights shall be measured from undisturbed ground level, top of sidewalk, or street grade (crest or crown of the road), whichever is highest. Height of fences or walls within 20 feet of a street right-of-way shall include the measured height of the fence or wall and any retaining wall, berm, or other structure within the same 20 feet.

### **157.444.03 Fencing Requirements for the Residential Zones**

- (A) Height, Location. Fences, walls, and hedges may be located in any required yard or along the edge of any yard, subject to the maintenance of any required vision clearance area. The maximum fence height in residential zones is 7-feet.
- (B) Swimming Pools. All swimming pools shall be enclosed by a locking fence a minimum of 6 feet in height. A dwelling or structure may be used to meet part of the enclosure requirement. No swimming pool or fence shall be located in a clear vision area.

**157.444.04 Fencing Requirements for Commercial and Industrial Zones**

- (A) Industrial or commercial fencing installed adjacent to residential areas must be sight obscuring. Fences that do not exceed six feet in height may be located or maintained on any property line within this zone, except within the clear vision triangle area.
- (B) Fences for security purposes may be installed to a height of eight feet on any property line within the commercial and industrial zones, except within vision triangle areas and along the frontage of presentation streets. Barbed wire may be used as the top section for security fences, provided the barbed wires are a minimum of 84-inches above grade and do not project over public rights-of-way.

**157.444.05 Fences Required for Sight-Obscuring Purposes**

- (A) Sight obscuring fences shall be constructed of an aluminum mesh fencing with slats or other solid non-vision-type fencing of such design and material that will retain its attractiveness with nominal maintenance.
- (B) The following uses shall require sight obscuring fences: junkyards, wrecking yards, equipment or vehicle salvage storage yards, auction blocks, lumberyards, sanitary landfills, recycling collection stations and other uses determined to be similar in nature to the aforementioned as determined by the City Manager.

**157.444.06 Walls Serving Fencing Purposes**

- (A) Wall materials shall be constructed of impervious concrete or stucco or other appropriate material. The building official may require a building permit.
- (B) Wall heights shall be per the fence limitations noted in the above Sections.

**157.444.07 Fence Advertising or Signage**

- (A) Advertising. Fences shall not be used for advertising purposes. Accordingly, no signage may be installed on fencing except for advisory purposes (such as "no trespassing") consistent with the sign code provisions in this Chapter. No such sign shall exceed two square feet, and no such sign shall be located closer than 20 feet from any other sign posted on the same fence.
- (B) Exception. Advertising or other signage is permitted on the interior (playing field) side of athletic fields.

## 157.445 GENERAL STANDARDS

### **157.445.01 Lots of Record**

- (A) A parcel is a legal lot of record for purposes of this Chapter when the lot conforms to all zoning requirements, subdivision requirements, and the Comprehensive Plan provisions, if any, in effect on the date when a recorded separate deed or contract creating the separate lot or parcel was signed by the parties to the deed or contract.
- (B) Lots on recorded plats may be combined under a single ownership for the purpose of developing the combined property, subject to approval of a property line adjustment.
- (C) The use or development of any legal lot of record shall be subject to the regulations applied to the property when such development or use is commenced, irrespective of the lot width, street frontage, depth, or area, but subject to all other regulations.

### **157.445.02 Lots Abutting a Partial Street**

New structures which are proposed to be constructed on lots abutting an existing public street which does not meet the minimum standards of Section 157.402 for right-of-way width shall provide setbacks sufficient to allow for the future widening of the right-of-way. Building permits shall not be issued unless a yard setback equal to the minimum yard requirements of the zoning district plus the required minimum additional right-of-way width is provided.

### **157.445.03 Protection of Runoff Capacity of Natural Drainage Channels**

A property owner shall not allow the water carrying capacity of any drainageway within the property to deteriorate and subsequently contribute to flood hazard. The property owner shall remove excess debris from the channel including dead vegetation and sediment. Neither shall any fill or garbage be dumped in any drainageway. Failure to maintain the water carrying capacity of the drainageway shall empower the City to enter the property and take whatever action is necessary to ensure that the carrying capacity of the drainageway is not impaired and then assess the real property and improvements for the cost of the City's actions. Grading permits may be required and are subject to provisions in Chapter 157.407.

### **157.445.04 Farm Uses**

The growing of crops, orchard products, vegetables, or similar food items for personal use shall be permitted.

### **157.445.05 General Exception to Building Height Limitations**

Projections such as chimneys, spires, domes, elevator shaft housing, towers, aerials, flagpoles, and other similar objects not used for human occupancy may be constructed to a height not to exceed 1.25 times the height limit for the zone.



**157.445.06 Height Exceptions for Public Buildings**

Public or quasi-public buildings, religious buildings, hospitals, and educational institutions when permitted in a zone may be constructed to a height not to exceed 1.5 times the height limit for the zone, provided all the required yards are increased one foot for each two feet of additional building height above the maximum height regulation for the zone.

**157.445.07 Additions to Existing Structures**

When structures exist at the time a zone is adopted which do not comply with an individual yard setback restriction, additions to such structures not conforming to the yard setbacks shall be allowed, provided:

- (A) The setback distance will not be decreased by the addition.
- (B) The addition conforms to all other provisions of the zoning district.
- (C) The addition shall not be greater than 25% of the square footage on the ground level of the existing structure.

**157.445.08 Miscellaneous Exceptions to Setback Requirements**

Setback limitations stipulated elsewhere in this Chapter may be modified as follows:

- (A) Bus Shelters. Bus shelters which are intended for use by the public and are under the ownership and/or control of a city, county, state, municipal corporation or transportation district, shall be exempt from setback requirements, provided they do not violate clear-vision provisions in Section 157.443.
- (B) Underground Structures. Side and rear yards of underground structures may be reduced to three feet except:
  - 1. Where the perimeter wall of the structure is above the natural elevation of the adjacent ground, in which case the setback provisions of the zone shall apply.
  - 2. All openings into the structure, including doors, windows, skylights, plumbing, intake, and exhaust vents, shall meet the minimum setbacks of the zone.
- (C) Public Dedication. Setback restrictions of this Chapter shall not apply to existing structures where the setback is reduced by a public dedication.
- (D) Commercial and Industrial Setbacks. In commercial or industrial districts where an interior yard is not required and a structure is not located at the property line, it shall be set back at least five feet from the property line to accommodate access to the building.

**157.445.09 Nonconforming Uses**

- (A) Continuation. A nonconforming use may be continued although not in conformity with the regulations for the zone in which the use is located.
- (B) Discontinuation. If a nonconforming use is discontinued for a period of more than one year, the use shall not be resumed unless the use conforms with the requirements of the Chapter.
- (C) Restoration. If a nonconforming use is damaged or destroyed by fire, other casualty, or natural disaster, such use may be restored or replaced provided physical restoration or replacement is lawfully commenced within one year of the damage or destruction.
- (D) Alteration and Change of Use. Alterations or changes in a nonconforming use may be permitted to reasonably continue the use. Such alterations or changes are subject to the Nonconforming Use provisions in Section 157.509.
- (E) Exemptions. Nonconforming single-family homes may be modified or expanded in compliance with development requirements of the Residential Low-Density zone without the need to comply with the requirements and procedures in Section 157.509.

CHAPTER 157  
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## 157.501 APPLICATION TYPES

### **157.501.01 Summary of Application Types**

- (A) General. With the exceptions noted below, all development permits and land use actions are processed under the administrative procedures provided for in this Section. There are four types of actions, each with its own procedures.
- (B) Building Permit. Building permits are subject to the provisions of the Uniform Building Code and are processed administratively by Tillamook County. Therefore, these actions are not considered land use actions and subject to appeal. The procedures in this Section only apply if an action is necessary to site the use or vary a requirement of the Development Ordinance.

### **157.501.02 Review Types**

- (A) **Type I Action**  
A ministerial action reviewed by staff based on clear and objective standards. Notice of the decision is sent to the applicant with no appeal. Decisions are memorialized on the relevant permit form or other order.
- (B) **Type II Action**  
A ministerial action reviewed by staff based on clear and objective standards, with limited discretion. Conditions are limited to those that ensure compliance with Ordinance requirements and implement these standards. Notice of the decision is sent to the applicant, and adjacent property owners who submitted comments, after the decision is reached. Appeal is to the Planning Commission, with a subsequent appeal to the City Council allowed.
- (C) **Type III Action**  
A Type III action is a quasi-judicial review in which the Planning Commission applies a mix of objective and subjective standards that allow discretion. Public notice and a public hearing are provided. Appeal of a Type III decision is to the City Council.
- (D) **Type IV Action**  
A Type IV action can be either quasi-judicial or legislative actions. The quasi-judicial process applies to map amendments for individual properties. Plan and zone amendments or text amendments that impact larger areas are legislative actions. These later amendments must be initiated by City staff, Planning Commission, or City Council, although a private party may suggest such amendments. Both actions require hearings before both the Planning Commission and City Council with the Commission providing an advisory role and the Council

rendering the Final Decision. Public notice is provided for both public hearings. Appeal of the decision is to the Land Use Board of Appeals (LUBA).

**157.501.03 Applicable Jurisdiction**

- (A) For property within the City limits, land use applications identified in this Subsection shall be submitted to and reviewed by the City of Nehalem.
- (B) For property outside the City limits, but inside the Urban Growth Boundary, land use applications shall be submitted to and reviewed by Tillamook County, subject to the applicable decision criteria in this Chapter. The City shall assist the County with information and interpretation of the City's standards.
- (C) All Zone amendments in the Urban Growth Boundary shall be reviewed by both the City and the County.

**157.501.04 Table of Land Use Application Procedures**

**LAND USE APPLICATION PROCEDURES (Within City Limits)**

Land Use Action	Type	Staff	Planning Commission	City Council
Floodplain, Sign, Fence, Temporary Use, Home Occupation	Type - I	Final Decision		
Property Line Adjustment	Type - I	Final Decision		
Partition	Type – II	Final Decision unless appealed	Appeal of Staff Decision	Appeal of Commission Decision
Adjustment	Type - II	Final Decision unless appealed	Appeal of Staff Decision	Appeal of Commission Decision
Site Development Review – All Residential	Type - II	Final Decision unless appealed	Appeal of Staff Decision	Appeal of Commission Decision
Interpretations	Type III	Recommendation to Commission	Final Decision unless appealed	Appeal of Commission Decision
Variance	Type III	Recommendation to Commission	Final Decision unless appealed	Appeal of Commission Decision
Site Development Review – All Non-Residential	Type - III	Recommendation to Commission	Final Decision unless appealed	Appeal of Commission Decision



Conditional Use Permits	Type - III	Recommendation to Commission	Final Decision unless appealed	Appeal of Commission Decision
Nonconforming Uses	Type - III	Recommendation to Commission	Final Decision unless appealed	Appeal of Commission Decision
Subdivision/PD Cottage Cluster	Type - III	Recommendation to Commission	Final Decision unless appealed	Appeal of Commission Decision
Map Amendment	Type - IV	Recommendation to Commission	Recommendation to Council	Final Decision
Text Amendment	Type - IV	Recommendation to Commission	Recommendation to Council	Final Decision
Annexation	Type - IV	Recommendation to Commission	Recommendation to Council	Final Decision

**157.501.05 Expiration of Approval and Time Extension**

- (A) Time Limit. Unless otherwise specifically stated, Type I, Type II and Type III approvals shall be effective for two years following final approval. The applicant or developer shall exercise the approved decision within this time period. 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). Type IV approvals shall have no time limits.
- (B) Time Extension. Extensions may be granted in accordance with the original procedure for the application. The City may allow a reduced fee for the extension request. For a time-extension request, the only matter to be considered is the extension.
- (C) Conditions of Approval. During the review of an extension request, the conditions of approval may be revised to reflect Ordinance changes and/or changes in site or area conditions.
- (D) Number of Extensions. Except for (E) below, no more than two extensions shall be granted.
- (E) Time Extension Provisions for Subdivisions, Planned Developments and Cottage Cluster Developments. City staff may extend the time limit for any land division for not more than one additional year. Requests for extension of approval time shall be submitted, in writing, 30 days prior to the expiration date of the approval period

and shall be reviewed as a Type II application with appeal rights per 157.501.04. Staff may grant the request for an extension if the circumstances are the same and the findings of fact are still appropriate and may modify the original conditions of approval as part of any time extension review.

**157.501.06 Exercising a Land Use Approval**

Unless otherwise specifically stated, exercising a land use decision shall be subject to the following regulations.

- (A) Building Permit. Except for manufactured home parks, when a building permit is required as part of an approved land use, the decision shall be considered exercised with the first placement or permanent construction of a structure on a site. This may include the pouring of slabs or footings, any work beyond the stage of excavation, including the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; the installation of driveways or walkways; the excavation for a basement, footings, piers or foundations or the erection of temporary forms; the construction of accessory buildings, such as garages or sheds not occupied as dwelling units or not used as part of the main structure.
  
- (B) Manufactured Homes Parks. The decision shall be considered exercised with the beginning of construction of facilities for servicing the site on which the manufactured homes are to be placed. This shall include, at a minimum, the construction of streets with final site grading or the pouring of concrete pads, or the extension or installation of utilities.
  
- (C) Specific Use. If the approval does not require a building permit, the decision shall be considered exercised if the use or activity which was approved is in operation within the allotted time limit.

## 157.502 PROPERTY LINE ADJUSTMENTS

### **157.502.01 Applicability**

A Property Line Adjustment is a change to a property boundary and does not create a new parcel of land. A Property Line Adjustment may include the elimination of property boundaries to consolidate lots or parcels.

### **157.502.02 Process**

- (A) For property within the City Limits, a Property Line Adjustment application shall be reviewed in accordance with the Type I review procedures specified in Section 157.521 and subject to provisions in Section 157.502.
- (B) For property outside the City Limits, and within the Urban Growth Boundary, a Property Line Adjustment application shall be reviewed by Tillamook County, in accordance to provisions in the Intergovernmental Agreement, and subject to the decision criteria in Section 157.502.05.

### **152.503.03 Application**

An application for a Property Line Adjustment shall be filed with the City (or County as applicable) and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section. Notice shall be subject to the provisions in Section 157.521.

### **157.502.04 Submittal Requirements**

The following information and material must be submitted by the applicant:

- (A) The application must be signed by the owners of all lots affected by the application.
- (B) In addition, the following information shall be submitted by the applicant:
  - 1. Copies of the officially recorded title transfer instrument (deed, warranty deed, or contract) that shows the legal description for the affected parcels.
  - 2. Plan, map or other document showing the properties before and after the adjustment.
  - 3. A written statement which explains the applicants' reasons for adjusting the boundaries and demonstrating that the adjustment conforms to City land use policies and regulations of the applicable zone.
  - 4. The applicant(s) shall certify in writing that the application does not violate any deed restrictions that may be attached to or imposed upon the subject property.
- (C) At the discretion of the City Planner the previous requirements may be waived, in part, provided there is sufficient information to allow processing of an application.

**157.502.05 Decision Criteria**

Approval of a property boundary adjustment shall require compliance with the following criteria:

- (A) No additional parcel is created by the lot line adjustment.
- (B) Following the adjustment, all lots or parcels must comply with the area and dimension standards of the applicable zone. For existing non-conforming lots or parcels, the adjustment shall not increase the degree of non-conformance of the subject property or surrounding properties.
- (C) If there are existing structures on the lots or parcels, the boundary adjustment shall not reduce required setbacks or place a boundary beneath a structure.

**157.502.06 Implementation**

After a lot line adjustment is approved, the new boundary becomes effective only after the following steps are completed:

- (A) A legal description of the adjusted lots is recorded with Tillamook County Clerk and a copy submitted to the City of Nehalem.
- (B) If required by ORS Chapter 92 or the County Surveyor, a final map and boundary survey are prepared and all new boundaries are monumented as required by ORS Chapters 92 and 209. The final map is submitted to the City for signatures and approval as outlined in Section 157.504 (Partitions).

## 157.503 PARTITIONS

### **157.503.01 Applicability**

A partition is required for any land division which creates two or three parcels in a calendar year.

### **157.503.02 Process**

- (A) For property within the City Limits, preliminary plats for a Partition application shall be reviewed in accordance with the Type II review procedures in Section 157.522, and subject to the decision criteria in Section 157.504.05.
- (B) For property outside the City Limits, and within the Urban Growth Boundary, preliminary plats for a Partition application shall be reviewed by Tillamook County, in accordance to provisions in the Intergovernmental Agreement, and subject to the decision criteria in Section 157.504.05.

### **152.503.03 Application**

An application for a Partition shall be filed with the City (or County as applicable) and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section. Notice shall be subject to the provisions in Section 157.521.

### **157.503.04 Submittal Requirements**

- (A) The applicant shall prepare and submit a preliminary plan and other supplemental information as may be required by City staff to indicate the intent of the development. The application shall include a statement explaining the proposal and providing analysis of the proposal relative to the approval criteria. The preliminary plan should show pertinent information to scale to facilitate the review of the proposed development.
  - 1. General Information. The following general information shall be shown on the tentative plan:
    - (a) Vicinity map showing all streets, property lines, streams, and other pertinent data to locate the proposal.
    - (b) North arrow and scale of drawing.
    - (c) Tax map and tax lot number or tax account of the subject property.
    - (d) Dimensions and size in square feet or acres of the subject property and of all proposed parcels.
  - 2. Existing Conditions:
    - (a) Location of all existing easements within the property.
    - (b) Location of City utilities (water and storm drainage) and sanitary sewer (Nehalem Bay Wastewater Agency) within or adjacent to the property proposed for use to serve the development.

- (c) The location and direction of water courses or drainage swales on the subject property.
  - (d) Existing use of the property, including location of existing structures with dimensions of the structures and distances from property lines. It shall be noted whether the existing structures are to remain or be removed from the property.
3. Proposed Plan:
- (a) Locations, approximate dimensions, and area in square feet of all proposed parcels. All parcels shall be numbered consecutively.
  - (b) Location, width and purpose of any proposed easements.
- (B) At the discretion of the City Planner the previous requirements may be waived, in part, provided there is sufficient information to allow processing of an application.

**157.503.05 Decision Criteria**

Approval of a partition shall be subject to the following decision criteria:

- (A) Each parcel shall satisfy the dimensional standards of the applicable zone, unless a variance from these standards is approved.
- (B) The parcels shall meet the Development Standards for Land Division of Section 157.404.
- (C) Existing dwellings and accessory structures shall comply with the setback requirements of the applicable zone, including accessory structures which have a setback established by the building size, unless a variance from the requirements is approved.
- (D) Adequate public facilities, including access, shall be available to serve the existing and newly created parcels. The applicant shall design and install a water system to serve all lots or parcels within a development in accordance with Nehalem City Code Section 51.09 and shall connect those lots or parcels to the city's water system. Applicants are responsible for extending the city's water system to the development site and through the applicant's property to allow for the future connection of neighboring undeveloped properties that are suitably zoned for future development. If adjacent properties are undeveloped, not developed to their maximum density, or landlocked, consideration will be given to extending appropriate access to those properties in accordance with provisions in Section 157.402.

**157.503.06 Conditions of Approval**

In approving the partition, the City may impose such conditions as it deems appropriate to ensure that the intent of this Section is carried out.

**157.503.07 General Provisions**

- (A) Partition approval is valid in perpetuity upon recording of the final surveyed plat.
- (B) A master plan for development is required for any application which leaves a portion of the subject property capable of platting. If this would allow the creation of four or more parcels, the partition is considered a serial partition and must be processed as a subdivision.

**157.503.08 Final Plat Approval**

- (A) Survey. Within two years of the Final Decision approving a preliminary plat, a final survey of the approved plat shall be recorded. Failure to record a plat within the required time period shall void the approval and require a new partitioning application.
- (B) Final Approval. The City Manager shall sign the final plat if the plat substantially conforms to the approved preliminary plat, and if the conditions of approval are satisfied.
- (C) Final Plat. The final plat shall conform to the requirements in ORS Chapter 92 and applicable County surveying requirements.
- (D) Recording of Approved Plat. No building permit shall be issued, or parcel sold, transferred or assigned until the final approved Plat has been recorded with the County Manager. The applicant shall be responsible for all recording fees and submit a copy of the recorded document to the City.

**157.503.09 Expedited Land Division**

When an expedited land division for residential use only is requested by an Applicant the City shall use the procedures for expedited land divisions specified under ORS 197.365 in lieu of the procedures described in Section 157.504.

## 157.504 ADJUSTMENTS

### **157.504.01 Applicability**

The development standards in this Development Ordinance are to protect the public health, safety and welfare by establishing setbacks, building height limits and other development requirements. To address unique characteristics associated with a property, the City may allow a modification to quantifiable requirements. Modifications resulting in no more than a 10% change in a quantifiable standard are reviewed as an Adjustment.

### **157.504.02 Process**

- (A) For property within the City Limits, an Adjustment application shall be reviewed in accordance with the Type II review procedures in Section 157.522, and subject to the decision criteria in Section 157.505.06.
- (B) For property outside the City Limits, and within the Urban Growth Boundary, an Adjustment application shall be reviewed by Tillamook County, in accordance to provisions in the Intergovernmental Agreement, and subject to the decision criteria in Section 157.505.06.

### **152.504.03 Application**

An application for an Adjustment shall be filed with the City (or County as applicable) and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section. Notice shall be subject to the provisions in Section 157.521.

### **157.504.04 Submittal Requirements**

- (A) The applicant shall prepare and submit an application to address the Adjustment. The application shall include a statement explaining the proposal and providing analysis of the proposal relative to the approval criteria. A site plan shall be submitted and include the following information:
  - 1. Vicinity map showing all streets, property lines, streams, and other pertinent data to locate the proposal.
  - 2. Tax map and tax lot number or tax account of the subject property.
  - 3. Location of all existing easements within the property.
  - 4. Location of City utilities (water and storm drainage) and sanitary sewer (Nehalem Bay Wastewater Agency) within the property.
  - 5. Existing use of the property, including location of existing structures with dimensions of the structures and distances from property lines. It shall be noted whether the existing structures are to remain or be removed from the property.
  - 6. A site plan clearly indicating the proposed adjustment including dimensions.



- (B) At the discretion of the City Planner the previous requirements may be waived, in part, provided there is sufficient information to allow processing of an application.

**157.504.05 Adjustment Applicability**

An applicant may propose an Adjustment from a standard or requirement of this Ordinance, except when one or more of the following apply:

- (A) The proposed request would allow a use which is not permitted in the zone.
- (B) Another procedure and/or criterion is specified in the Ordinance for modifying or waiving the particular requirement or standard.
- (C) Modification of the requirement or standard is prohibited within the zone.
- (D) The request is to a sign or minimum lot size standard.

**157.504.06 Decision Criteria**

Approval of an Adjustment shall require compliance with the following:

- (A) The proposed development otherwise clearly satisfies the intent and purpose of the provision being adjusted.
- (B) The proposed development will not unreasonably impact adjacent existing or planned uses and development.
- (C) The Adjustment does not expand or reduce a quantifiable standard by more than 10% and is the minimum necessary to achieve the purpose of the Adjustment.
- (D) There has not been a previous land use action prohibiting an application for an Adjustment.

**157.504.07 Conditions of Approval**

In approving the Adjustment, the City may impose such conditions as it deems appropriate to ensure that the intent of this Section is carried out.

## 157.505 INTERPRETATIONS

### **157.505.01 Applicability**

The purpose of this Section is to provide a means to resolve potentially conflicting requirements and unclear Ordinance requirements, and identify uses not specifically listed in a particular zoning district but which are similar in character, scale and performance to the permitted uses specified therein.

### **157.505.02 Process**

Interpretation requests shall be reviewed in accordance with the Type III review procedures in Section 157.521.

### **157.505.03 Application**

Any application for an Interpretation use shall be filed with the City and accompanied by the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section. Notice shall be subject to the provisions in Section 157.521.

### **157.505.04 Decision Criteria**

The Planning Commission is authorized to make such an appropriate interpretation of the Ordinance provided that the applicant demonstrates that the proposed use satisfies the following criteria:

- (A) The interpretation is consistent with the purpose of this Chapter and any appropriate purpose statement in an underlying zoning district or development requirement.
- (B) The resulting interpretation conforms to the applicable standards and limitations of the underlying zoning district. In approving an application for a similar use, the City may determine whether the use is prohibited, or classified as permitted, special use or conditionally permitted in a specified zone.

## 157.506 VARIANCES

### **157.506.01 Applicability**

The development standards in this Development Ordinance are to protect the public health, safety, and welfare by establishing setbacks, building height limits and other development requirements. To address unique characteristics associated with a property, the City may allow a modification to quantifiable requirements. Modifications resulting in a greater than a 10% change in a quantifiable standard are reviewed as a Variance.

### **157.506.02 Process**

- (A) For property within the City Limits, a Variance application shall be reviewed in accordance with the Type III review procedures specified in Section 157.523 and subject to the decision criteria in Section 157.506.06.
- (B) For property outside the City Limits, and within the Urban Growth Boundary, a Variance application shall be reviewed by Tillamook County in accordance to provisions in the Intergovernmental Agreement, and subject to the decision criteria in Section 157.506.06

### **157.506.03 Application**

An application for a Variance shall be filed with the City (or County as applicable) and accompanied by the appropriate fee. Notice shall be subject to the provisions in Section 157.523.

### **157.506.04 Submittal Requirements**

The applicant shall prepare and submit an application, site plan, and other supplemental information as may be required by City staff to indicate the intent of the development. The application shall include a statement explaining the proposal and providing analysis of the proposal relative to the approval criteria. The site plan shall show pertinent information to scale to facilitate the review of the proposed development. The following information shall be shown on the site plan:

- (A) Vicinity map showing all streets, property lines, streams, river and waterways where applicable, and other pertinent data to locate the proposal, with north arrow and scale of drawing.
- (B) Tax map and tax lot number or tax account of the subject property.
- (C) Applicable dimensions and calculations.

- (D) Location of all existing easements within the property, and location of City utilities (water and storm drainage) and sanitary sewer (Nehalem Bay Wastewater Agency) within the property.
- (E) Existing use of the property, including location of existing structures with dimensions of the structures and distances from property lines. It shall be noted whether the existing structures are to remain or be removed from the property.
- (F) A site plan clearly indicating the proposed variance including dimensions.

**157.506.05 Variance Applicability**

Under the following provisions, an applicant may propose a Variance from a standard of this Ordinance, except when one or more of the following apply:

- (A) The proposed variance would allow a use which is not permitted in the district.
- (B) Another procedure and/or criterion is specified in the Ordinance for modifying or waiving the requirement or standard.
- (C) Modification of the requirement or standard is prohibited within the district.

**157.506.06 Decision Criteria**

The Planning Commission may allow a Variance from a requirement or standard of this Ordinance after a public hearing conducted in accordance with the Type III review procedures provided that the applicant provides evidence that the following circumstances substantially exist:

- (A) Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of this Ordinance, topography, or other circumstances over which the applicant has no control.
- (B) Such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by the owners of other properties in the same vicinity or district.
- (C) The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which property is located, or otherwise conflict with the objectives of any City plan or policy.
- (D) That the special conditions and circumstances on which the application is based do not result from a self-imposed hardship or a negligent or knowing violation of this Ordinance by the applicant.
- (E) The variance requested is the minimum variance which would alleviate the hardship.

**157.506.07 Conditions of Approval**

In approving the Variance, the City may impose such conditions as it deems appropriate to ensure that the intent of this Section is carried out.

## 157.507 CONDITIONAL USE

### **157.507.01 Applicability**

A conditional use is a use which is generally acceptable as a land use activity in a particular zone, but due to certain aspects of the activity, buffering, screening, time limitations or other conditions are necessary to ensure compatibility with adjacent property. Conditional uses are presumed to be allowed unless conditions to ensure their compatibility cannot be established.

### **157.507.02 Process**

- (A) For property within the City Limits, a Conditional Use application shall be reviewed in accordance with the Type III review procedures specified in Section 157.523 and subject to the decision criteria in Section 157.507.05.
- (B) For property outside the City Limits, and within the Urban Growth Boundary, a Variance application shall be reviewed by Tillamook County in accordance to provisions in the Intergovernmental Agreement, and subject to the decision criteria in Section 157.507.05

### **157.507.03 Application**

An application for a Variance shall be filed with the City (or County as applicable) and accompanied by the appropriate fee. Notice shall be subject to the provisions in Section 157.523.

### **157.507.04 Submittal Requirements**

The applicant shall prepare and submit an application, site plan, and other supplemental information as may be required by City staff to indicate the intent of the development. The application shall include a statement explaining the proposal and providing analysis of the proposal relative to the approval criteria. The site plan shall show pertinent information to scale to facilitate the review of the proposed development. The following information shall be shown on the site plan:

- (A) Vicinity map showing all streets, property lines, streams, and other pertinent data to locate the proposal.
- (B) North arrow and scale of drawing.
- (C) Tax map and tax lot number or tax account of the subject property.
- (D) Dimensions and size in square feet or acres of the subject property and of any proposed parcels or lots.
- (E) Location of all existing easements within the property.

- (F) Location of City utilities (water and storm drainage) and sanitary sewer (Nehalem Bay Wastewater Agency) within the property.
- (G) Existing use of the property, including location of existing structures with dimensions of the structures and distances from property lines. It shall be noted whether the existing structures are to remain or be removed from the property.
- (H) A site plan clearly indicating the proposed location of the proposed conditional use including the dimensions of any existing, expanded, or new structure proposed to house the conditional use along with all site improvements including parking, lighting, screening, landscaping, etc.

**157.507.05 Decision Criteria**

A Conditional Use shall be approved if the applicant provides supporting evidence that all the requirements of this Ordinance relative to the proposed use are satisfied, and demonstrates that the proposed use also satisfies the following criteria:

- (A) The use is listed as a conditional use in the underlying district and complies with the development requirements of the underlying zone.
- (B) The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and location of improvements and natural features.
- (C) The proposed development is timely, considering the adequacy of transportation systems, public facilities and services, existing or planned for the area affected by the use.
- (D) The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying zone.
- (E) Decision criteria for special buffers are found in Section 157.442.

**157.507.06 Conditions of Approval**

In approving a Conditional Use, the City may impose such conditions as it deems appropriate to ensure that the intent of this Section is carried out. These conditions may include, but are not limited to:

- (A) Increasing the required lot size or yard dimensions;
- (B) Reducing the required height and size of buildings;
- (C) Controlling the location and numbers of vehicle access points;

- (D) Increasing the required off-street parking spaces;
- (E) Increasing the required street width;
- (F) Limiting the number, size, location and lighting of signs;
- (G) Required diking, fencing, screening, landscaping, berms or other items to protect adjacent or nearby property;
- (H) Designating sites for open space;
- (I) Increasing pipe size or other facility installment requirements, such as for fire protection, water flow, sewerage, or storm drainage.
- (J) Require improvements to transportation facilities, including improvements for pedestrian, bicycle, and transit facilities.

**157.507.07 Specific Standards for Marijuana Facilities.**

In addition to the standards of the zone in which the conditional use is located and the general standards of this chapter, Marijuana Facilities shall meet the following standards.

- (A) Facilities must be located on a property with a boundary line adjacent to a public street.
- (B) Facilities must be in a permanent building and may not be located in a trailer cargo container or motor vehicle.
- (C) Outdoor storage of merchandise, raw materials, or other material associated with the facility is prohibited.
- (D) Facilities may not be located within 1,000 feet of any place where minors congregate including schools, parks, public recreation centers, daycare centers, and Parks and Recreation Districts property. This buffer shall not apply to an existing marijuana facility located within 1,000 feet of a park or school established after the marijuana facility is established regardless of the ownership of the marijuana facility.
- (E) Facilities may not be located within 200 feet of a residential zone.
- (F) Facilities may not have a drive-up or walk-up window.
- (G) Facilities must provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed within the facility's exterior refuse containers.



- (H) Facilities hours of operation are limited to between 9:00 a.m. and 8:00 p.m.
- (I) Facilities must have security systems with alarms in place prior to opening for business.
- (J) Facilities must have all doors well-lit at all hours.
- (K) Facilities are prohibited for the sale or production of extracts made with flammable explosive substances or methods.
- (L) Facilities must be registered with the Oregon Health Authority and the Oregon Liquor Licensing Commission and be licensed by the Oregon Liquor Control Commission.

## 157.508 SITE DEVELOPMENT REVIEW

### **157.508.01 Applicability**

- (A) The Site Development Review is intended to:
1. Guide future growth and development in accordance with the Comprehensive Plan and other related regulations;
  2. Provide an efficient process and framework to review development proposals;
  3. Ensure safe, functional developments which are compatible with the natural and man-made environment; and
  4. Resolve potential conflicts that may arise between proposed developments and adjacent uses.
- (B) The Site Development Review provisions relate to physical characteristics of a property, proposed site improvements, and proposed buildings. The site development review provisions do not deal with the use of property as the use is regulated by the provisions of each individual zone.

### **157.508.02 Process**

- (A) For residential projects within the City Limits, a Site Development Review application shall be reviewed in accordance with the Type II review procedures specified in Section 157.523 and subject to the decision criteria in Section 157.508.06
- (B) For non-residential projects within the City Limits, a Site Development Review application shall be reviewed in accordance with the Type III review procedures specified in Section 157.523 and subject to the decision criteria in Section 157.508.07
- (C) For property outside the City Limits, and within the Urban Growth Boundary, a Site Development Review application shall be reviewed by Tillamook County in accordance to provisions in the Intergovernmental Agreement, and subject to the decision criteria in Section 157.508.06 for residential projects and Section 15.508.07 for non-residential projects.

### **157.508.03 Application**

An application for a Site Development Review shall be filed with the City (or County as applicable) and accompanied by the appropriate fee. Notice shall be subject to the provisions in Section 157.523.

**157.508.04 Applicability of Provisions**

- (A) Site Development Review is applicable to all new industrial, commercial, mixed use, and multi-family developments and expansions involving a 10% or more increase in total square footage of existing industrial, commercial, mixed use, and multi-family structures.
- (B) All of the provisions and regulations of the underlying zone shall apply unless modified by other Sections of this Chapter.
- (D) Expansions of 10% or less shall be permitted and processed as a building permit, provided the expansion and associated use(s) comply with all applicable development requirements such as parking, setbacks, height restrictions, etc.

**157.508.05 Submittal Requirements**

The following information shall be submitted as part of a complete application for Site Development Review. The application shall include a statement explaining the proposal and providing analysis of the proposal relative to the approval criteria. At the discretion of the City, the information may be submitted graphically or by written summary.

- (A) Site Analysis
  1. Existing site topography;
  2. Identification of areas exceeding 10% slopes;
  3. Site drainage, identified flood zones;
  4. Existing structures, roadway access and utilities; and
  5. Existing and proposed streets, bikeways, and pedestrian facilities within 300 feet.
- (B) Site Plan
  1. Proposed grading and topographical changes;
  2. All proposed structures including finished floor elevations, setbacks, exterior elevations, and exterior finishing.
  3. Vehicular and pedestrian circulation patterns, parking, loading and service areas;
  4. Proposed access to public roads and highways, railroads or transportation systems;
  5. Site drainage plan including methods of storm drainage, sanitary sewer system, water supply system and electrical services.
  6. Proposed landscape plan, to include appropriate visual screening and noise buffering, where necessary, to ensure compatibility with surrounding properties and uses;
  7. Proposed on-premise signs, fencing or other fabricated barriers, together with their heights and setbacks;
  8. Proof of ownership and signed authorization for the proposed development if applicant is not the owner of the site; and

9. A schedule of expected development.
10. A traffic impact analysis if required by provisions in Section 157.402.
11. Other appropriate studies and information that may be required by the City to adequately evaluate the project.

**157.508.06 Decision Criteria – Residential**

The review of a Site Development plan shall be based upon the following criteria:

- (A) The proposed use is allowed in the zone and complies with the underlying zone setbacks, height limitations and other development requirements, including development standards of the particular zone.
- (B) Provisions for public utilities, including drainage and erosion control needs are met or can be met. The applicant shall design and install a water system to serve the development in accordance with Nehalem City Code Section 51.09 and shall connect the development to the city's water system. Applicants are responsible for extending the city's water system to the development site and through the applicant's property to allow for the future connection of neighboring undeveloped properties that are suitably zoned for future development.

**157.508.07 Decision Criteria – Non-Residential**

The review of a Site Development plan shall be based upon the following criteria:

- (A) The proposed use is allowed in the zone and complies with the underlying zone development standards.
- (B) The proposed use will not create negative impacts on the surrounding area resulting from traffic flow, noise, dust, glare, odor, potential incompatible adjacent uses such as parking lots, or other impacts identified in the review process.
- (C) Provisions for public utilities, including drainage and erosion control needs are met or can be met. The applicant shall design and install a water system to serve all lots or parcels within a development in accordance with Nehalem City Code Section 51.09 and shall connect those lots or parcels to the city's water system. Applicants are responsible for extending the city's water system to the development site and through the applicant's property to allow for the future connection of neighboring undeveloped properties that are suitably zoned for future development.
- (D) Parking, traffic safety, and connectivity of internal circulation to existing and proposed streets, bikeways and pedestrian facilities.
- (E) Provision for adequate noise and/or visual buffering from non-compatible uses including using site and landscaping design to provide needed buffering;

(F) Protections from any potential hazards.

**157.508.08 Conditions of Approval**

In approving a Site Development Review, the City may impose such conditions as it deems appropriate to ensure that the intent of this Section is carried out.

## 157.509 NONCONFORMING USES

### **157.509.01 Applicability**

Within the zoning districts established by this Ordinance, and amendments thereto, uses and structures may exist which were lawful before the date of adoption or amendment of this Ordinance, but which would be prohibited or restricted under the current terms of this Ordinance. This Section allows nonconforming uses and structures to be altered, restored, or replaced subject to satisfaction of the review criteria.

### **157.509.02 Process**

- (A) For property within the City Limits, a Nonconforming Use application shall be reviewed in accordance with the Type III review procedures specified in Section 157.523 and subject to the decision criteria in Section 157.509.04.
- (B) For property outside the City Limits, and within the Urban Growth Boundary, a Nonconforming Use application shall be reviewed by Tillamook County in accordance to provisions in the Intergovernmental Agreement, and subject to the decision criteria in Section 157.509.04.

### **157.509.03 Application**

An application for a Nonconforming Use shall be filed with the City (or County as applicable) and accompanied by the appropriate fee. Notice shall be subject to the provisions in Section 157.523.

### **157.509.04 Decision Criteria**

The alteration of a nonconforming use or structure may be authorized provided that the applicant demonstrates that the proposal satisfies the following criteria:

- (A) That the alteration of structure(s) would not result in an increase in nonconformity.
- (B) A change in use to another non-conforming use shall be permitted if it is of the same or less intensity of use.

### **157.509.05 Conditions of Approval**

In approving the alteration or modification of a nonconforming use, the City may impose such conditions as it deems appropriate to ensure that the intent of this Section is carried out.

## 157.510 SUBDIVISIONS, PLANNED DEVELOPMENTS AND COTTAGE CLUSTER DEVELOPMENTS

### **157.510.01 Applicability**

All Subdivisions, Planned Developments and Cottage Cluster Developments shall conform to all applicable standards of the underlying zone, as well as the development standards and other provisions of this Ordinance unless otherwise modified by provisions in this Section.

### **157.510.02 Process**

Preliminary plats for subdivisions and planned unit developments shall be reviewed in accordance with the Type III review procedures in Section 157.523.

- (A) For property within the City Limits, a Subdivision, Planned Development (including Cottage Cluster Development) application shall be reviewed in accordance with the Type II review procedures specified in Section 157.523 and subject to provisions in Section 157.510.05.
- (B) For property outside the City Limits, and within the Urban Growth Boundary, a Subdivision, Planned Development (including Cottage Cluster Development) shall be reviewed by Tillamook County in accordance with provisions in the Intergovernmental Agreement, and subject to the decision criteria in Section 157.510.05.

### **157.510.03 Application**

An application for a Subdivisions, Planned Developments or Cottage Cluster Development shall be filed with the City (or County as applicable) and accompanied by the appropriate fee. Notice shall be subject to the provisions in Section 157.523.

### **157.510.04 Submittal Requirements**

The following submittal requirements shall apply to all Preliminary Plat applications for Subdivisions, Planned Developments and Cottage Cluster Developments:

- (A) All applications shall be submitted on forms provided by the City to the City Manager along with the appropriate fee. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of this Section. The application shall include a statement explaining the proposal and providing analysis of the proposal relative to the approval criteria.
- (B) Applicants for subdivisions shall submit the following:
  - 1. General Information. The following general information shall be shown on the tentative plan:
    - (a) Vicinity map showing all streets, property lines, streams, and other pertinent data to locate the proposal.

- (b) North arrow and scale of drawing.
- (c) Tax map and tax lot number or tax account of the subject property.
- (d) Dimensions and size in square feet or acres of the subject property.
- (e) Name of the subdivision or PD.

2. Existing Conditions:

- (a) Location of all existing easements within the property.
- (b) Location of City utilities (water and storm drainage) and sanitary sewer (Nehalem Bay Wastewater Agency) within or adjacent to the property proposed for use to serve the development.
- (c) The location and direction of water courses or drainage swales on the subject property.
- (d) Existing use of the property, including location of existing structures. It should be noted whether the existing structures are to remain or be removed from the property.
- (e) Direction of drainage and approximate grade of abutting streets.
- (f) Proposed streets, approximate grade, and radius of curves.
- (g) Any other legal access to the subdivision other than a public street.
- (h) Contour lines related to an established bench mark on City datum, having the following minimum intervals:
  - (i) Areas with less than 5% slope: One-foot contours
  - (ii) Areas with slope between 5% and 10%: Two-foot contours.
  - (iii) Areas with slope greater than 10%: Five-foot contours.

3. Proposed Plan:

- (a) Locations, approximate dimensions and area in square feet of all proposed lots. All lots shall be numbered consecutively.
- (b) Location, width, and purpose of any proposed easements.
- (c) All areas offered for public dedication.
- (d) If any portion of the property is not proposed to be included in the subdivision or any public dedication, that portion shall be identified as a remnant parcel. A draft subdivision or development plan shall be included showing how the proposed subdivision will provide needed access and utilities to serve future development of the remnant parcel.
- (e) Proposed phasing

(C) The following supplemental information shall be required for all Planned Development Preliminary Plan applications:

- 1. Proposed uses on the property, including sites, if any, for attached dwelling units, recreational facilities, parks, and playgrounds or other public or semi-public uses, with the purpose, condition and limitations of such reservations clearly indicated.
- 2. Designation of the location of the building pads, or areas, or setback lines or setback standards for all buildings to be constructed.
- 3. Architectural renderings of the proposed residential and commercial buildings and structures.



4. The approximate location and dimensions of all commercial, mixed-use, or multi-family structures proposed to be located on the site.
  5. Calculations justifying the proposed density of development as required by Section 157.405.
  6. Landscaping plan indicating location of existing vegetation and proposed improvements.
  7. Statement of improvements to be made or installed including streets, sidewalks, bikeways, trails, lighting, tree planting, landscaping, and time such improvements are to be made or completed.
  8. Written statement outlining proposals for ownership and maintenance of all open space areas and any commonly owned facilities.
- (D) The following supplemental information shall be required for all Cottage Cluster Preliminary Plan applications:
1. Proposed uses on the property, including sites, if any, for attached dwelling units, recreational facilities, parks and playgrounds or other public or semi-public uses, with the purpose, condition and limitations of such reservations clearly indicated.
  2. Designation of the location of the building pads, or areas, or setback lines or setback standards for all buildings to be constructed.
  3. Architectural renderings of the proposed residential and commercial buildings and structures.
  4. Landscaping plan indicating location of existing vegetation and proposed improvements.
  5. Statement of improvements to be made or installed including streets, sidewalks, bikeways, trails, lighting, tree planting, landscaping, and time such improvements are to be made or completed.
  6. Written statement outlining proposals for ownership and maintenance of all open space areas and any commonly owned facilities.

**157.510.05 Decision Criteria**

- (A) Each parcel shall satisfy the dimensional standards of the applicable zone, unless a variance from these standards is approved or the request is part of a Planned Development or Cottage Cluster Development.
- (B) The parcels shall meet the Development Standards for Land Division of Section 157.404; or, specific requirements of a Planned Development or Cottage Cluster Development.
- (C) Existing buildings shall comply with the setback requirements of the applicable zone, unless a variance from the requirements is approved.

- (D) Adequate public facilities, including access, shall be available to serve the existing and newly created parcels. The applicant shall design and install a water system to serve all lots or parcels within a development in accordance with Nehalem City Code Section 51.09 and shall connect those lots or parcels to the city's water system. Applicants are responsible for extending the city's water system to the development site and through the applicant's property to allow for the future connection of neighboring undeveloped properties that are suitably zoned for future development. If adjacent properties are undeveloped or landlocked, consideration will be given to extending appropriate access to those properties in accordance with adopted City policy.
- (E) Planned Development. In addition to the criteria listed above, approval of a Planned Unit Development shall require compliance with the applicable development and layout provisions contained in Section 157.405 of this Ordinance.
- (F) Cottage Cluster. In addition to the criteria listed above, approval of a Cottage Cluster Development shall require compliance with the applicable development and layout provisions contained in Section 157.406 of this Chapter.

**157.510.06 Process for Final Plat Approval**

- (A) Within two years of the Final Decision a final approved plat (or first phase) shall be recorded with the County. If the first phase final plat is not recorded within two years, the preliminary approval shall lapse. All phases of an approved plat shall be recorded within 10 years of the final date of decision.
- (B) A final plat shall be submitted to the City Manager. After the final plat has been submitted, the City Staff shall review and compare it with the approved tentative plat to ascertain whether the final plat conforms substantially to the approved tentative plat and with such conditions of approval as may have been imposed.
- (C) No final plat shall be approved unless:
  - 1. The plat is in substantial conformance with this Ordinance and the provisions of the tentative plat as approved, including any conditions imposed in connection therewith;
  - 2. The plat contains land free and clear of all liens and encumbrances. All dedications to the public of all public improvements, including but not limited to streets, roads, sewage disposal and water supply systems, the donation of which is required by this Ordinance or was made a condition of the approval of the tentative plat;
  - 3. Any common areas or improvements to be held jointly by the future owners of the lots or by a Homeowners Association are indicated on the plat with the appropriate references to the structure of ownership. Any bylaws or agreements subject to approval by the City will be approved before the City Manager signs the plat.

4. The City received adequate assurances that the applicant has agreed to make all public improvements which are required as conditions of approval of the tentative plan, including but not limited to streets, alleys, pedestrian ways, storm drainage, sewer and water systems. The provisions for providing adequate assurance are subject to the Public Works Department and City Engineer requirements.
- (D) If the City Manager finds that conditions specified in subsection (C) of this section have not been met, the applicant shall be advised of the changes that must be made and afforded the opportunity to comply. Rejection of a final plat shall not affect the tentative plan approval.
  - (E) When the City Manager finds that the final plat is in substantial conformity to the approved tentative plan and is otherwise in lawful form, and is approved by the City Engineer, the City Manager shall sign and date the final plat.
  - (G) Following endorsement of the plat by the City Manager and the City Engineer, the applicant shall submit the plats to the Tillamook County Surveyor for final review and compliance with applicable state and county regulations.
  - (H) Effective Date for Final Plat Approval. The approval process for a development shall become final upon the recording of the approved final plat with the County, together with any required documents. A copy of the recorded plat and documents shall be submitted to the City. Approved final plats shall become void one year after final City approval if they are not recorded.

**157.510.07 Expedited Land Division**

When an expedited land division for residential use only is requested by an Applicant the City shall use the procedures for expedited land divisions specified under ORS 197.365 in lieu of the procedures described in Section 157.510.

## 157.511 MAP AMENDMENT

### **157.511.01 Applicability**

The Zone Map establishes the zones for individual properties. A zone change approval is required to change the zoning of any property.

### **157.111.02 Process**

- (A) For property within the City Limits, Zone changes shall be reviewed in accordance with the Type IV review procedures specified in Section 157.524.
- (B) For property outside the City Limits, Zone changes shall be reviewed by both Tillamook County and the City of Nehalem, in accordance with the adopted Intergovernmental Agreement.

### **157.511.03 Application**

An application for a zone change shall be filed with the City and accompanied by the appropriate fee. Notice shall be subject to the provisions in Section 157.524.

### **157.511.04 Submittal Requirements**

The applicant shall prepare and submit an application and other supplemental information as may be required by City staff. The application shall include a statement explaining the proposal and providing analysis of the proposal relative to the approval criteria. A site plan shall not be required to initiate a Zone Map amendment.

### **157.511.05 Decision Criteria**

Zone change proposals shall be approved if the applicant provides evidence substantiating the following:

- (A) All information and analysis must justify the proposed change relative to the Map designation to which the property is proposed to change, and to the Map designation from which the property is changing. The analysis must speak to the impacts from the decrease in land acreage of one map designation and the increase in land acreage for the proposed map designation.
- (B) The Plan does not provide adequate areas in appropriate locations for uses allowed in the proposed land use designation and the addition of this property to the inventory of lands so designated is consistent with projected needs for such lands in the Comprehensive Plan.
- (C) The Plan provides more than the projected need for lands in the existing land use designation.

- (D) Consistency with the applicable goals and policies in the Comprehensive Plan is demonstrated.
- (E) The uses permitted in the proposed zone can be accommodated on the proposed site without exceeding its physical capacity and be established in compliance with the development requirements in this Ordinance.
- (F) Adequate public facilities, services, and transportation networks are in place or are planned to be provided concurrently with the development of the property.
- (G) For residential zone changes, the criteria listed in the purpose statement for the proposed residential zone shall be met.

## 157.512 TEXT AMENDMENTS

### **157.512.01 Process**

Amendments to the Comprehensive Plan and Development Ordinance texts shall be reviewed in accordance with the Type IV review procedures specified in Section 157.524.

### **157.512.02 Application**

A Plan or Ordinance text amendment can only be initiated by the Planning Commission or City Council. Private citizens, however, may suggest text changes to either body. Upon direction of either the Commission or Council, City staff shall establish a file and set a schedule to review the proposed changes. Notice shall be subject to the provisions in Section 157.524.

### **157.512.03 Decision Criteria**

Amendments to the Comprehensive Plan or Development Ordinance text may be approved if the evidence can substantiate the following:

- (A) There are no negative impacts of the proposed amendment on land use and development patterns within the city, as measured by:
  - 1. Traffic generation and circulation patterns;
  - 2. Demand for public facilities and services;
  - 3. Economic activities;
  - 4. Protection and use of natural resources;
  - 5. Compliance of the proposal with existing adopted special purpose plans or programs.
- (B) A demonstrated need exists for the proposed amendment.
- (C) The proposed amendment complies with all applicable Statewide Planning Goals and administrative rule requirements. The City shall adopt land use or subdivision ordinance regulations, consistent with applicable federal and state requirements, to protect transportation facilities, corridors, and sites for their identified functions.
- (D) The amendment is appropriate as measured by at least one of the following criteria:
  - 1. It corrects identified error(s) in the provisions of the plan.
  - 2. It represents a logical implementation of the plan.
  - 3. It is mandated by changes in federal, state, or local law.
  - 4. It is otherwise deemed by the City Council to be desirable, appropriate, and proper.

## 157.513 ANNEXATIONS

### **157.513.01 Authority of City to Annex**

The boundary of the City may be extended by the annexation land not within the City but located within the urban growth boundary. This land must be contiguous to the City, or at most, separated from it by a stream or right-of-way.

### **157.513.02 Application**

An application for an annexation shall be filed with the City and accompanied by the appropriate fee. Requirements for an application are found in ORS 222.111 through 222.183 as may be amended. It shall be the applicant's responsibility to submit a complete application which addresses the review criteria of both the Statute and this Section.

### **157.513.03 General Annexation Procedure**

- (A) Notice. Following submission of annexation proposal or initiation, the City shall set a date for hearing with the Planning Commission. Notice shall be subject to the provisions in Statute and Section 157.524
  
- (B) Planning Commission Hearing. The Commission shall hear testimony and shall recommend approval or denial of the proposed annexation. The Planning Commission's decision shall, in a written form, state the rationale used in justifying the decision, and that the decision is in conformance with the City's comprehensive plan and on balance the following annexation factors are satisfied:
  - 1. Affect the community's air resources;
  - 2. Promote an orderly, timely and economical transition of rural and agricultural lands into urbanized lands;
  - 3. Relate to areas with natural hazards;
  - 4. Affect the fish and wildlife in the proposed annexation;
  - 5. Utilize energy resources and conserve energy use;
  - 6. Protect open spaces and scenic views and areas;
  - 7. Provide for transportation needs in a safe, orderly and economic manner;
  - 8. Provide for an orderly and efficient arrangement of public services;
  - 9. Provide for the recreation needs of the citizens;
  - 10. Affect identified historical sites and structures and provide for the preservation of such sites and structures;
  - 11. Improve and enhance the economy of the City; and
  - 12. Provide quality, safe housing through a variety of housing types and price ranges.
  - 13. Serve the best interest of the City. Generally, the City may consider the annexation is in the best interest of the City if it meets two or more of the following criteria:

- a. It provides a needed solution for existing problems, resulting from insufficient sanitation, water service, or other urban service-related problems; or
  - b. It provides land for development to meet urban needs including jobs and/or housing in an orderly and logical growth pattern; or
  - c. It provides needed routes for utility and transportation networks.
- C. City Council Hearing. The City Recorder shall set a date for a public hearing with the Council upon receipt of the Planning Commission's recommendation. After considering all the testimony the Council shall sustain or reverse the Planning Commission's recommendation.
- D. City Council Decision and Action. If the Council approves the annexation proposal, the Council shall forward the request to the registered voters of the City. If the Council approves the annexation the City shall annex the territory without an election if:
- (1) The territory is included within the urban growth boundary;
  - (2) The territory is, or upon annexation of the territory into the city will be, subject to the acknowledged comprehensive plan of the city;
  - (3) At least one lot or parcel within the territory is contiguous to the city limits or is separated from the city limits only by a public right of way or a body of water; and
  - (4) The proposal conforms to all other requirements of the city's ordinances.
- E. If any of the conditions for proceeding with annexation without an election in subsection (D) above are not satisfied, the City shall forward the request to the registered voters of the City as specified in ORS 222.111-.120.

**157.513.04 Submission of Annexation Reports**

- (A) If the annexation is approved, the City shall report all changes in the boundaries or limits of the City to the County Clerk and County Assessor. The report shall contain a legal description of the new boundaries and shall be filed within 10 days from the effective date of the change of any boundary lines.
- (B) The City Recorder shall submit to the Secretary of State:
  - 1. A copy of the annexation ordinance;
  - 2. An abstract of the vote within the City, which shall show the whole number of registered voters voting therein on the annexation, the number of votes cast against annexation;



3. A copy of the statement of consent of landowners in the territory annexed;
4. An abstract of the vote upon the referendum.

**157.513.05 Effective Date of Annexation**

The annexation shall be complete from the date of filing with the Secretary of State as provided in ORS 222 and the requirements of this Chapter. Thereafter, the annexed territory shall be and remain part of the City. The date of such filing shall be the effective date of annexation.

## 157.520 GENERAL ADMINISTRATIVE PROVISIONS

### **157.520.01 Multiple Applications**

Applications for more than one land use action for the same property may, at the applicant's discretion, be heard or reviewed concurrently. Multiple land use requests involving different processing Types shall be heard and decided at the higher processing Type. For example, an application involving a Conditional Use (Type III) with an Adjustment (Type II) shall be reviewed and decided as a Type III request. A Final Decision, unless appealed, shall be granted for each request and each request is appealable individually.

### **157.520.02 Generalized Area**

Applications involving multiple properties may be aggregated, if in the opinion of the City Manager, a better understanding of the entire land use proposal is served by combining requests.

### **157.520.03 Application Forms**

All applications shall be on forms supplied by the City and include the necessary requirements and submittal information as well as fee.

### **157.520.04 Time Limit to Process an Application**

The City shall process an application within 120 days from the date it is deemed complete, including all potential appeals. If for any reason it appears that a final action regarding an application may not be completed within the 120-day period, and unless the time period is voluntarily extended by the applicant, the following procedures shall be followed regardless of other processes set forth elsewhere in this Ordinance.

- (A) The City staff shall notify the City Council of the timing conflict by the 85th day after the application is deemed complete.
- (B) The City staff shall confer with the Mayor and schedule a hearing to render a timely decision on the application within the 120-day period.
- (C) The application will automatically transfer to the sole jurisdiction of the City Council on the 85<sup>th</sup> day after the application is deemed complete.
- (D) Public notice of the City Council's hearing on the application shall be mailed to affected parties as specified in Section 157.524 except the notice shall be for a period of 10 days.
- (E) The City Council shall hold a public hearing on the specified date, in accordance with the provisions of Section 157.526 and render a decision approving or denying the request within the 120-day period. Such action shall be the final action by the City on the application.

**157.520.05 Nature of Appeal Hearings**

Any Planning Commission or City Council hearing on an appeal shall be held *de novo*, meaning new testimony may be submitted in addition to the existing record of the case and prior hearings.

**157.520.06 Notice**

All mailed notices shall include an affidavit confirming the date and time the notice was mailed along with a list of those to receive notice. An individual's failure to receive a notice shall not invalidate the mailed notice.

## 157.521 TYPE I APPLICATION AND REVIEW PROCEDURES

### **157.521.01 Procedure for Type I Action**

- (A) Decision Authority. Applications subject to a Type I review shall be reviewed and decided by the City Manager or his/her designee.
- (B) Application. Upon receipt of an application for a Type I land use action, the City staff shall review the application for completeness.
  - 1. If determined to be complete, the 120-day time period shall begin.
  - 2. If determined to be incomplete, the applicant shall be notified and provided an additional 30 days to submit supplemental information as necessary.
  - 3. An applicant may request additional time to submit the requested information. However, under no circumstances shall this time extend beyond 180-days from submittal date of the application. Otherwise, the application will not be processed with the forfeiture of all application fees.
- (C) Completeness. The application shall be deemed complete for the purposes of scheduling and all related timing provisions either:
  - 1. Upon receipt of the requested acceptable additional information; or, refusal by the applicant to submit the requested information;
  - 2. On the 31st day after the original application submittal.
- (D) Decision. The City Manager or designee shall review the application and shall make a decision based on an evaluation of the proposal and on applicable clear and objective standards as set forth in this Ordinance. Notice of the decision shall only be sent to applicant(s).

## 157.522 TYPE II APPLICATIONS AND REVIEW PROCEDURES

### **157.522.01 Procedure for Type II Action**

- (A) Decision Authority. Applications subject to a Type II procedure shall be reviewed and decided by the City Manager or his/her designee.
- (B) Application. Upon receipt of an application for Type II land use action, the City staff shall review the application for completeness.
1. If determined to be complete, the 120-day time period shall begin.
  2. If determined to be incomplete, the applicant shall be notified and provided an additional 30 days to submit supplemental information as necessary.
  3. An applicant may request additional time to submit the requested information. However, under no circumstances shall this time extend beyond 180-days from submittal date of the application. Otherwise, the application will not be processed with the forfeiture of all application fees.
- (C) Completeness. The application shall be deemed complete for the purposes of scheduling and all related timing provisions either:
1. Upon receipt of the requested acceptable additional information; or, refusal by the applicant to submit the requested information;
  2. On the 31st day after the original application submittal.
- (D) Hearing Option. The applicant has the option to request a public hearing before the Planning Commission. The procedures for conducting the public hearing shall comply with the standards in Section 157.525 and notice shall comply with Section 157.523.
- (E) Application Notice. Before making a Type II decision, the City shall mail notice of the application to:
1. All owners of record of real property within 100-feet of the subject site.
  2. Any person who submits a written request to receive a notice.
  3. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City, or required by State statute.
  4. The road authority when there is a proposed development abutting or affecting their transportation facility and allow the agency to review, comment on, and suggest conditions of decision for the application.
  5. The City may notify other affected agencies, as appropriate, for review of the application.
- (F) Notice Information. The notice of a pending Type II decision in item (E) above shall include the following:

1. Provide a 14-day period for submitting written comments before a decision is made on the land use application.
  2. Identify the applicant, specific land use decisions or decisions requested.
  3. Describe the street address or other easily understandable reference to the location of the site.
  4. List the relevant decision criteria by name and number of Ordinance sections.
  5. State the place, date and time the comments are due, and the person to whom the comments should be addressed.
  6. Include the name and telephone number of a contact person regarding the Administrative Decision.
  7. State that if any person fails to address the relevant decision criteria with enough detail, they may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue. Only comments on the decision criteria are considered relevant evidence.
  8. State that all evidence relied upon by the City to make this decision is in the public record, available for public review. Copies of this evidence can be obtained at a reasonable cost from the City.
  9. State that after the comment period closes, the City shall issue a decision. The decision shall be mailed to the applicant and to anyone who submitted written comments or who is otherwise legally entitled to notice.
- (G) Decision. The City Manager or designee shall review the application and shall make a decision based on an evaluation of the proposal and on applicable criteria as set forth in this Ordinance. Further, the written decision shall address relevant comments submitted by noticed parties.
- (H) Notice of Decision. Within five working days after a decision is made, a Notice of Decision shall be sent by mail to:
1. The applicant and all owners or contract purchasers of record of the site that is the subject of the application.
  2. Any person who submits a written request to receive notice or provides comments during the application review period.
  3. Any governmental agency that is entitled to notice under an intergovernmental agreement entered with the City, and other agencies that were notified or provided comments during the application review period.
- (I) Appeals and Reconsideration. All Type II land use decisions may be appealed to the Planning Commission. The appeal shall be submitted within 15 days of the date the decision is mailed.

- (J) Commission Hearing and Notice of Appeal. If a Type II decision is appealed, City staff shall schedule a hearing before the Planning Commission. The Commission shall conduct the hearing consistent with procedures set forth in Section 157.525. Written notice of a public hearing on the appeal shall be mailed to the applicant and those who received notice of the original decision. This notice shall be mailed at least 10 days prior to the public hearing on the appeal and shall contain the information required in Chapter 157.523.
- (K) Commission Action. The Commission action on a Type II appeal shall be in the form of a decision. Within 7 days of the Commission decision, the applicant and all individuals who participated in the public hearing or requested notice of the decision, shall be mailed written notice of the decision. The notice shall specify the findings justifying the decision to approve or deny the request and any conditions of approval.
- (L) Appeals. All appeals of Type II land use decisions of the Planning Commission may be appealed to the City Council. The appeal shall be submitted within 15 days of the date the decision is mailed. Notice requirements shall comply with provisions in Section 157.522.01, items 2., to 8.
- (M) Council Hearing and Notice of Appeal. If the Commission decision on a Type II decision is appealed, City staff shall schedule a hearing before the City Council. The Council shall conduct the hearing consistent with procedures set forth in Section 157.526. Written notice of a public hearing on the appeal shall be mailed to the applicant and those who received notice of the Commission decision on appeal. This notice shall be mailed at least 10 days prior to the public hearing on the appeal and shall contain the information required in Section 157.522.01 (F).
- (N) Notice of Council Decision. Within 7 days of the final City Council decision, the applicant and those who attended the hearing or requested notice, shall be mailed written notice of the Council decision. The notice shall specify findings justifying the approval or denial of the request and any applicable conditions of approval. A decision by the City Council on a Type III application shall serve as the City's final decision. The decision shall be final on the date that notice of the decision is mailed to all parties who participated in the proceedings.

#### **157.522.02 Conditions of Approval**

- (A) Authorization for Conditions. Approvals of a Type II action may be granted subject to conditions. Conditions shall be designed to protect public health, safety and general welfare from potential adverse impacts caused by the proposed land use described in an application. Conditions shall either ensure compliance with the standards of the Development Ordinance or fulfill the need for public service demands created by the proposed use.

- (B) Timing of Conditions. Whenever practical, all conditions of approval required by the City shall be completed prior to the issuance of an occupancy permit. When an applicant demonstrates that it is not practical to fulfill all conditions prior to issuance of such permit, the City Manager may require a performance bond or other guarantee to ensure compliance with zoning regulations or fulfillment of required conditions. Bonding shall comply with adopted City regulations and procedures.
  
- (C) Modify Conditions. A request to change or alter conditions of approval shall be processed as a new Type II action.



157.523 TYPE III APPLICATIONS AND REVIEW PROCEDURES

**157.523.01 Procedures for Type III Actions**

- (A) Decision Authority. Applications subject to a Type III procedure shall be reviewed and decided upon by the Planning Commission.
- (B) Application. Upon receipt of an application for a Type III land use action, the City staff shall review the application for completeness.
1. If determined to be complete, the 120-day time period shall begin.
  2. If determined to be incomplete, the applicant shall be notified and provided an additional 180 days to submit supplemental information as necessary.
  3. An applicant may request additional time to submit the requested information. However, under no circumstances shall this time extend beyond 180-days from submittal date of the application. Otherwise, the application will not be processed with the forfeiture of all application fees.
- (C) Completeness. The application shall be deemed complete for the purposes of scheduling and all related timing provisions either:
1. Upon receipt of the requested adequate additional information; or, refusal by the applicant to submit the requested information;
  2. On the 31st day after the original application submittal.
- (D) Agency Referrals. Referrals will be sent to interested agencies such as City departments, police and fire departments, the school district, utility companies, and applicable state agencies. If a county road or state highway is impacted, referrals should be sent to the applicable County Public Works Department and/or Oregon Department of Transportation Region.
- (E) Commission Hearing and Notification Area. City staff shall schedule a hearing before the Planning Commission. Written notice of the public hearing shall be mailed at least 20 days prior to the hearing date to the applicant, owners of property within 200-feet of the boundaries of the subject property and to affected county and state agencies responsible for roads and highways. The Commission shall conduct the hearing consistent with procedures set forth in Section 157.525. The notice of a pending Type III hearing shall include the following:
1. Explain the nature of the application.
  2. Cite the applicable criteria from the Ordinance.
  3. Identify the location of the property.
  4. State the date, time, and location of the Planning Commission hearing.
  5. Include the name of the City representative to contact and the telephone number where additional information may be obtained;

6. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals;
  7. State that a copy of the application, all documents and evidence relied upon by the applicant and application criteria are available for inspection at no cost and a copy will be available at reasonable cost;
  8. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and a copy will be provided at reasonable cost;
  9. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearing.
- (F) Commission Action. The Commission action on a Type III request shall be in the form of a decision. Decisions are to be signed by the Planning Commission Chair or acting Planning Commission Chair. Within 7 days of the Commission decision, the applicant and all individuals who participated in the public hearing or requested notice of the decision, shall be mailed written notice of the decision. The notice shall specify the findings justifying the decision to approve or deny the request and any conditions of approval.
- (G) Appeals. All appeals of Type III land use decisions of the Planning Commission may be appealed to the City Council. The appeal shall be submitted within 15 days of the date the decision is mailed.
- (H) Council Hearing and Notice of Appeal. If the Commission decision on a Type III decision is appealed, City staff shall schedule a hearing before the City Council. The Council shall conduct the hearing consistent with procedures set forth in Section 157.526. Written notice of a public hearing on the appeal shall be mailed to the applicant and those who received notice of the Commission decision. This notice shall be mailed at least 10 days prior to the public hearing on the appeal and shall contain the information required in Section 157.523.01 (E).
- (I) Notice of Council Decision. Within 7 days of the final City Council decision, the applicant and those who attended the hearing or requested notice shall be mailed written notice of the Council decision. The notice shall specify findings justifying the approval or denial of the request and any applicable conditions of approval. A decision by the City Council on a Type III application shall serve as the City's final decision. The decision shall be final on the date that notice of the decision is mailed to all parties who participated in the proceedings.

**157.523.02 Conditions of Approval**

- (A) Authorization for Conditions. Approval of any Type III action may be granted subject to the conditions. Conditions shall be designed to protect public health, safety and general welfare from potential adverse impacts caused by the proposed land use described in an application. Conditions shall either ensure compliance with the standards of the Development Ordinance or fulfill the need for public service demands created by the proposed use.
  
- (B) Timing of Conditions. Whenever practical, all conditions of approval required by the City shall be completed prior to the issuance of an occupancy permit. When an applicant demonstrates that it is not practical to fulfill all conditions prior to issuance of such permit, the City Manager may require a performance bond or other guarantee to ensure compliance with zoning regulations or fulfillment of required conditions. Bonding shall comply with adopted City regulations and procedures.
  
- (C) Modify Conditions. A request to change or alter the conditions of approval shall be processed as a new Type III action.

## 157.524 TYPE IV APPLICATIONS AND REVIEW PROCEDURES

### **157.524.01 Procedures for Type IV Actions (Quasi-Judicial)**

- (A) Decision Authority. Zone Map amendments initiated at the request of a property owner are quasi-judicial applications and subject to a Type IV procedure. These shall be reviewed and decided by the City Council with the recommendation of the Planning Commission.
- (B) Application. Upon receipt of an application for a Type IV land use action, the City staff shall review the application for completeness.
1. If determined to be complete, the 120-day time period shall begin.
  2. If determined to be incomplete, the applicant shall be notified and provided with an additional 180 days to submit supplemental information as necessary.
  3. An applicant may request additional time to submit the requested information. However, under no circumstances shall this time extend beyond 180-days from submittal date of the application. Otherwise, the application will not be processed with the forfeiture of all application fees.
- (C) Completeness. The application shall be deemed complete for the purposes of scheduling and all related timing provisions either:
1. Upon receipt of the additional information; or refusal by the applicant to submit the requested information;
  2. On the 31st day after the original application submittal.
- (D) Agency Referrals. Referrals will be sent to interested agencies such as City departments, police and fire departments, the school district, utility companies, and applicable state agencies. If a county road or state highway is impacted, referrals should be sent to the applicable County Public Works Department and/or Oregon Department of Transportation Region.
- (E) Commission Hearing and Notice. City staff shall schedule a hearing before the Planning Commission. The City Council and Planning Commission hearings can be combined if approved by the Mayor. The Commission shall conduct the hearing consistent with procedures set forth in Section 157.525. Affected property owners within 200 feet of the subject property shall be notified by mail at least 20 days prior to the initial Planning Commission hearing. Mailed notice of a pending Type IV hearing shall include the following:
1. Identify the specific land use decisions or decisions requested.
  2. Describe the street address or other easily understandable reference to the location of the site.
  3. List the relevant decision criteria by name and number of Ordinance sections.

4. State the place, date, and time of the Planning Commission hearing.
  5. Include the name and telephone number of a contact person regarding the Administrative Decision.
  6. State that if any person fails to address the relevant decision criteria with enough detail, they may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue. Only comments on the relevant decision criteria are considered relevant evidence.
  7. State that all evidence relied upon by the City to make this decision is in the public record, available for public review. Copies of this evidence can be obtained at a reasonable cost from the City. application
- (F) Commission Action. The Commission action on a Type IV request shall be in the form of a recommendation to the City Council. Within 7 days of the Commission decision, the applicant and all individuals who requested notice of the decision shall be mailed written notice of the Commission recommendation. The notice shall specify findings justifying the recommendation and any recommended conditions of approval.
- (G) Council Hearing. Subsequent to the Commission hearing, City staff shall schedule a hearing before the City Council. Notice shall be provided consistent with requirements in Section 157.524.01 (E), except that only a 10-day notice is required. The Council shall conduct the hearing consistent with procedures set forth in Section 157.526.
- (H) Notice of Council Decision. Within 7 days of the final City Council decision, the applicant and all individuals who requested notice of the decision shall be mailed written notice of the Council decision. The notice shall specify findings justifying the approval or denial of the request and any applicable conditions of approval. City Council approval shall be in the form of an ordinance; a denial shall be in a form acceptable to the Council.
- (I) Appeals. All Type IV land use decisions of the City Council may be appealed to the Land Use Board of Appeals (LUBA). The appeal shall be submitted within 21 days of the date the decision is mailed. Appeals shall comply with LUBA procedures.
- (J) Joint Notice. The City has the option of mailing a single notice for both the Planning Commission and City Council hearings, provided the notice is mailed at least 20 days prior to the Planning Commission hearing.

**157.524.02 Procedures for Type IV Actions (Legislative)**

- (A) Procedures. Type IV legislative applications may be initiated by either a majority vote of the City Council or a majority vote of the Planning Commission.

- (B) Time Limit. Type IV legislative actions are not subject to the 120-day time limit.
- (C) Agency Referrals. Referrals will be sent to the Department of Land Conservation and Development, interested agencies such as City departments, police and fire departments, the school district, utility companies, and applicable state agencies. If a county road or state highway is impacted, referrals should be sent to the applicable County Public Works Department and/or Oregon Department of Transportation Region.
- (D) Public Hearings by Planning Commission. The Planning Commission shall hold a public hearing. Notice of the time, place and purpose of the Planning Commission's hearings shall be given by publication of a notice in a newspaper of general circulation in the City not less than 20 days prior to the date of the hearing and any other notice required by state law.
- (E) Commission Action. The Commission action on a Type IV legislative request shall be in the form of a recommendation to the City Council. Within 7 days of the Commission decision, the applicant and all individuals who requested notice of the decision shall be mailed written notice of the Commission decision. The notice shall specify findings justifying the recommendation of request.
- (F) Public Hearing by City Council. Following Planning Commission action, the City Council shall hold a public hearing to consider the Planning Commission's recommendation on proposed amendments. Notice of the time, place and purpose of the Council hearings shall be given by publication of a notice in a newspaper of general circulation in the City not less than 10 days prior to the date of hearing.
- (G) Notice of Council Decision. Within 7 days of the final City Council decision, the applicant and all individuals who requested notice of the decision shall be mailed written notice of the Council decision. The notice shall specify findings justifying the approval or denial of the request. City Council approval shall be in the form of an Ordinance; a denial shall be in a form acceptable to the Council.
- (H) Joint Hearing and Notice of Publication. The Planning Commission and City Council hearings can be combined if approved by the City Council. Only a single 20-day published notice is required. Further, the City has the option of publishing a single notice for both the Planning Commission and City Council hearings, provided the notice is set to be published at least 20-days prior to the Planning Commission hearing.

## 157.525 PUBLIC HEARING BEFORE THE PLANNING COMMISSION

### **157.525.01 General Provisions**

- (A) Timing. Land use actions which require a public hearing by the Planning Commission under the provisions of this Ordinance shall be initially heard by the Planning Commission within 45 days of when an application is deemed complete.
- (B) Hearing Action. The Planning Commission may continue a public hearing for additional information, testimony, or for decision only, to its next regular meeting or to a special meeting. In addition, any participant in the hearing may request the record be kept open for 7 days for the purpose of proving additional evidence. In no instance, however, shall the decision be continued more than 31 days beyond the initial hearing date unless the time limitation is waived by the applicant.
- (C) Continuance and Open Record. Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing for the receipt of additional written testimony. If testimony is submitted by opponents to an application, the applicant shall have an additional seven days in which to respond in writing.
- (D) Type II Appeals. Appeal of a Type II action shall be heard by the Planning Commission. Findings of the Planning Commission on such appeal shall be final unless further appealed to the City Council
- (E) Type III Action. The decisions of the Planning Commission on applications for Type III actions shall be final unless appealed to the City Council.
- (F) Type IV Actions. The recommendations of the Planning Commission on applications for Type IV actions shall be referred to the City Council for final determination. Notice of the Commission recommendation is required but shall not be subject to appeal.

### **157.525.02 Planning Commission Hearing Procedures**

A public hearing before the Planning Commission shall be conducted under the following procedures unless modified by the Commission for a specific hearing:

- (A) Open the public hearing and announce the purpose.
- (B) Call for abstentions and objections to jurisdiction; and, *ex parte* contacts, conflicts of interest or bias on behalf of the Commission members.

- (C) Receive the staff report and recommendation.
- (D) Applicant addresses Commission. Commissioners may ask questions of the applicant.
- (E) Those in favor of the application address the Commission. Commissioners may ask questions of each speaker.
- (F) Those not in favor of the application address the Commission. Commissioners may ask questions of each speaker.
- (G) Those neither a proponent nor opponent to the application may address the Commission. Any questions shall be directed to the Commission Chair who then shall direct the question to the appropriate party.
- (H) Applicant rebuttal.
- (I) Staff comments and recommendation based on testimony.
- (J) Close of public testimony.
- (K) Deliberation of Commission on findings of fact.
- (L) Decision of Commission.
- (M) Close of public hearing.

**157.525.03 Evidence**

- (A) Public Record. All evidence shall be offered and made a part of the public record in the case.
- (B) Use of Other Information. The Planning Commission may take notice of judicially recognizable facts, and members may take notice of general, technical, or scientific facts within their specialized knowledge so long as those specialized facts are made known before the public record is closed. Parties shall be notified of the material so noticed and shall be afforded an opportunity to contest the facts so noticed. The Planning Commission members may utilize their experience, technical competence, and specialized knowledge in evaluation of the evidence presented.



- (C) Rights of Participants. Every party is entitled to an opportunity to be heard and to present evidence. The Planning Commission Chair retains the right to limit the time available for an individual to present testimony.
- (D) LUBA Appeal. An issue which may be the basis for an appeal to the Land Use Board of Appeals (LUBA) must be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the City. Such issues shall be raised with sufficient specificity so as to afford the City Council or Planning Commission, and all parties to the hearing, an adequate opportunity to respond to each issue.

**157.525.04 Record of Hearing**

A record of the proceedings shall be made by written, mechanical or electronic means.

**157.525.05 Limits on Oral Testimony**

The Planning Commission Chair may set consistent, reasonable time limits for oral presentations to the end that parties are encouraged to submit as much evidence as possible in writing prior to the hearing.

**157.525.06 Exhibits**

All exhibits received shall be marked to provide identification upon review. Such exhibits shall be retained by the City.

## 157.526 REVIEW AND PUBLIC HEARINGS BY CITY COUNCIL

### **157.526.01 General Provisions**

- (A) Timing. All hearings or reviews required by the City Council shall be heard within 45 days of the Planning Commission's written decision or appeal request. In no instance, however, shall this period extend the date of the hearing and final action beyond 120 days from the date of the initial submission of a complete application, unless voluntarily agreed to by the applicant.
- (B) Submission of New Testimony and De Novo Hearings. The City Council shall admit additional testimony and other evidence by holding a *de novo* hearing. The hearing procedures shall be the same as for a Planning Commission hearing found in Section 157.525.
- (C) City Council Action. The City Council may affirm, rescind, or amend the action of the Planning Commission and may grant approval subject to conditions necessary to carry out the decision. The City Council may also remand the matter back to the Planning Commission for additional information, subject to the agreement of the applicant to extend the 120-day review period.
- (D) Council Decisions. The City Council shall prepare and adopt written findings for approval or denial, and any conditions of approval, within two weeks of the hearing by the City Council or direct staff to complete the necessary findings. In no case shall the decision and the preparation of written findings extend beyond the 120-day time limit, unless voluntarily agreed to by the applicant. Amendments to adopted maps and texts shall require an ordinance; other decisions shall require an order.

### **157.526.02 City Council Review of Appeals**

- (A) Appeals. The City Council shall hear the appeals of Planning Commission decisions, including appeals of Type II decisions rendered by staff and appealed to the Commission. The City Council action on such appeals shall be the final action of the City on the request. The City Council shall hold a *de novo* hearing. The hearing procedures shall be the same as for a Planning Commission hearing found in Section 157.525.
- (B) City Council Action. The City Council may affirm, rescind, or amend the action of the Planning Commission and may grant approval subject to conditions necessary to carry out the decision. The City Council may also remand the matter back to the Planning Commission for additional information, subject to the agreement of the applicant to extend the 120-day review period.



# EXHIBIT “C”

## BEFORE THE NEHALEM CITY COUNCIL

In the Matter of the )  
Application of ) 1. Nehalem Development Ordinance  
City of Nehalem ) 2. TSP Implementation Regulations  
) 3. Zone Map Amendment

### ORDER OF RECOMMENDATION

#### I. NATURE OF THE APPLICATION

This matter comes before the Nehalem City Council on the application of the City of Nehalem to adopt the Nehalem Development Ordinance establishing new planning regulations for the City.

#### II. GENERAL INFORMATION

##### A. Location

The action affects property within the Nehalem City limits and adjacent Urban Growth Boundary.

##### B. Background Information

The City seeks to adopt a new Development Ordinance effectively combining the existing Chapter 156 (Subdivisions) and Chapter 157 (Zoning) into a single document under Chapter 157. The new document will also contain the implementation provisions of the Transportation System Plan. In addition, the proposal will combine the existing Medium Density Residential zones (R1, R2, R3, and RM) and the Residential Trailer (RT) zone into a single new Mixed Density Residential zone.

#### III. PUBLIC HEARING

##### A. Planning Commission Action

The Nehalem Planning Commission conducted a public hearing on this application on July 20, 2023. Notice of the hearing was provided per requirements of the Nehalem Zoning Ordinance. Based on comments received during public testimony, the Commission voted to continue the matter until August 17, 2023, allowing time for City staff to address issues and concerns raised by the public.

The hearing was reconvened on August 17, whereby staff submitted an amended report addressing previous testimony and the Commission accepted additional public testimony.

At the conclusion of the hearing, the Planning Commission deliberated on the issue and voted to recommend the Nehalem City Council adopt the proposed Nehalem Development Ordinance, including amendments suggested by the amended staff report.

B. City Council Action

The Nehalem City Council conducted a public hearing on this application on September 11, 2023. Notice of the hearing was provided per requirements of the Nehalem Zoning Ordinance.

At the conclusion of the hearing, the City Council deliberated on the issue and voted to adopt the proposed Nehalem Development Ordinance and associated Zone Map.

#### IV. FINDINGS OF FACT-GENERAL

The Nehalem City Council after careful consideration of the testimony and evidence in the record, adopts the following general Findings of Fact:

- A. The applicant is the City of Nehalem.
- B. The City seeks to adopt a new Development Ordinance effectively combining the existing Chapter 156 (Subdivisions) and Chapter 157 (Zoning) into a single document under Chapter 157. The new document will also contain the implementation provisions of the Transportation System Plan, concurrently under review. In addition, the proposal will combine the existing Medium Density Residential zones (R1, R2, R3, and RM) and the Residential Trailer (RT) zone into a single new Mixed Density Residential zone. Specific amending language is contained in the attached Exhibit.
- C. The decision to approve or deny the new Development Ordinance and associated zone changes shall be based on the criteria contained in the Nehalem Zoning Ordinance Sections 157.387-157.388. The decision criteria regarding implementing provisions of the Transportation System are found in Statewide Planning Goal 12 and OAR 660-012.

#### V. APPLICATION SUMMARY

- A. The City of Nehalem is in the process of adopting a new Development Ordinance, replacing the existing Municipal Code Chapter 157 (Zoning) and Chapter 156 (Subdivisions) by combining the two elements into a single document. The new Ordinance is divided into five articles:
  - 1. Article I - This introduces the planning document defining the document's purpose and who is responsible for its administration. Applicable definitions terms are also included.

2. Article II - This Article identifies the various zones and permitted development. Article 2 is limited to the non-estuary zones and the Flood Hazard Overlay zone. The existing Utility Overlay zone was eliminated.
3. Article III – This Article is solely focused on the Estuary zones and associated development provisions.
4. Article IV – Development provisions are contained in this Article. This includes development requirements common to all zones (e.g., parking standards), standards for specific uses (e.g., bed and breakfast establishments), and land division requirements.
5. Article V - This Article contains application procedures and requirements.

A summary of the material follows:

### **Article I**

#### A. Section 157.101

Provisions regarding title, conformance, violations, severability, conflicts, fees and so forth are included in Section 157.101. Both Chapters 156 and 157 contained similar provisions and these are combined in this Article.

#### B. Section 157.102

Section 157.102 includes all the definitions contained in the Ordinance. Standards on how to apply definitions were also clarified and provide increased flexibility on the use of definitions. For example, definitions that apply to one use may be applied to other uses if the situation warrants.

### **Article II**

- A. This Article begins with a Section on how the zones are classified and how boundary locations are determined (157.201).
- B. Section 157.202 outlines the uses allowed in all zones (e.g., utility easements); the various types of use categories and how uses may be interpreted, specifically noting uses not identified or allowed through interpretation are prohibited. Prohibited activities are limited to the use categories and do not apply to incidental and customary uses. Finally, this Section outlines how each zone is organized:
  1. The purpose statement outlines the reason for the zone's existence.
  2. Permitted uses are identified.
  3. Special permitted uses are still allowed outright but require conformance to standards found elsewhere in the Chapter (e.g., home occupation or land divisions).
  4. Conditionally permitted uses are listed.

5. Dimensional standards such as lot area, height and setbacks are identified.
  6. Development standards which list other applicable requirements (e.g., parking or signs) conclude each Section.
- C. Overall, the identified uses are consistent with existing language in Chapter 157. The major changes are in the formatting. Every attempt was made to rationalize the uses and their appropriate category: for example, moving a use from the “permitted” subsection to the “special permitted” subsection (e.g., manufactured home on an individual lot), and adding requirements for uses such as land divisions. Under dimensional standards, a lot-coverage percentage was added. Also, the order of the zones was rearranged to from least intensive to most intensive, ending with the Public Lands zone.
- D. In addition to the changes noted in items “C.” above, individual zones received additional modifications:
1. 157.203 (A1) – General follows current uses. Boat and moorage activities were dropped as they did not fit in the zone’s location. Mining was dropped as a conditional use.
  2. 157.204 (Low Density Residential - RL) – This zone generally follows the current regulations, with the revisions noted in item #9 below.
  3. 157.205 (Mixed Density Residential - RM) – The new RM zone incorporates the following five zones: RM, R1, R2, R3 and RT. Combining them into a single zone is logical as differences between the zones were insignificant. This effectively establishes the City’s higher density residential zone and provides additional housing opportunities for the property owners. In addition, nursing homes and similar facilities are conditionally permitted in the zone.
  4. 157.206 (Marine Residential - MR) – Other than formatting, there are no significant changes.
  5. 157.207 (Commercial - C) – Permitted commercial uses were expanded to include financial and medical offices. Otherwise, the zone follows current provisions.
  6. 157.208 (Light Industrial - LM) – Primarily formatting changes and establishing a minimum area requirement.
  7. 157.209 (Public Lands - P) – Changes are limited to formatting, increasing the allowable building height to 35-feet, and establishing a minimum area standard.
  8. 157.210 (Flood Hazard Overlay - FHO) - The major change to the Flood Hazard Overlay zone was formatting and updated to meet current Federal regulations.
  9. Residential (General) – ADUs are now permitted in all residential zones within City limits. The residential zones were further enhanced by permitting middle-housing and cottage cluster developments. Changes related to special housing needs in the Commercial,

Industrial and Public zones were also included. Height limits were increased for residences other than single-family homes and lot coverage was increased for single-family homes and suplexes.

### **Article III**

Article III places all the estuary requirements in one Article. This includes the three estuary zones and associated development standards. Three major revisions:

- A. A table is now included [157.317.02(D)] which outlines all the estuary uses and whether they are permitted, conditionally permitted or regulated activities in each zone.
- B. Log dumps were eliminated, both on land and in the water. These are intensive activities that include loading logs onto ships or creating rafts for transportation.
- C. Houseboats are now permitted subject to specific standards.

### **Article IV**

This is the “technical” portion of the Ordinance. Regarding the individual Sections:

- A. Section 157.401 (General Provisions) – This introduces the Article and outlines its organization. Further, it notes all improvements must comply with Public Works and City Engineer requirements.
- B. Section 157.402 (Street Standards) – Generally follows provisions in Chapter 156. The City can modify these standards depending on existing conditions. Construction standards are referenced, standards were added for sidewalks and bikeways, and Traffic Impact Analysis requirements are specified. There are provisions for private streets and easements. Requirements from the recently completed Nehalem Bay TSP are included.
- C. Section 157.403 (Off-street Parking) – Parking and aisle standards remain, and assisted parking is now a function of building code requirements. 157.403.02 allows an exception to increasing parking with a change of use. A single table identifies both vehicle and bicycle parking requirements. Provisions prohibit increasing the required vehicle parking spaces by more than 50%. In addition, off-street parking requirements were eliminated for Commercial zoned property located adjacent to Highway 101 and within the City’s downtown.
- D. Section 157.404 (Land Divisions) – This includes all provisions related to partitions and subdivisions. The material basically follows current regulations in Chapter 156, but where applicable, references the



requirements of other agencies. If there is the potential for additional land division of a parcel (“serial partition”) the request must be processed as a subdivision. Consistent with state law, the Ordinance no longer distinguishes between “major” or “minor” partitions; however, provisions are in place to require street improvements for partitions.

- E. Section 157.405 (Planned Development) – This section was revamped based on prior experience with PDs. Provisions require these developments to be something special for the community and not a quick way to maximize density. There are limited commercial options and different allowable densities based on the zone. Provisions for modifications are included.
- F. Section 157.406 (Cottage Cluster) – A cottage cluster is like a planned development in format and process. However, a cottage cluster has restrictions on the size, design, and location of the homes. There are no commercial options.
- G. Section 157.407 (Storm Drainage and Grading) and Section 157.408 (Utility Lines and Facilities) – These two Sections lay out applicable requirements. Unless existing conditions require otherwise, all facilities must be placed underground, and their design and construction approved by the applicable agency.
- H. Section 157.409 (Signs) - No changes were made to regulations, although some of the definitions were updated. A-frame sign regulations were clarified. A new subsection was added for sign variances. The criteria are designed to avoid granting advertising advantages to businesses and prohibit varying regulations to meet corporate sign standards.
- I. Section 157.420 (Mixed Use Development) - The language follows the current requirements and includes the off-street parking exception for City Commercial zoned property adjacent to Highway 101.
- J. Section 157.421 (Special Residential Dwellings) - This Section includes requirements for both accessory residential dwellings (ADU), attached single family homes (townhouses), and special housing units for low-income developments. ADUs are now allowed within City limits and within all yards.
- K. Section 157.422 (Manufactured Homes on Individual Lots) - This Section follows current state regulations and current local requirements.
- L. Section 157.423 (Manufactured Dwelling Parks) and Section 157.424 (Recreational Vehicle Parks) - These Sections follow current requirements. Additional parking spaces are now required for RV parks and application submittal requirements were also increased.

- M. Section 157.425 (Residential Accessory Structures) -This is a new Section. The regulations are intended to keep accessory structures away from the street-side yards and provide some limit as to size and finish. The use of metal shipping containers is expressly prohibited.
- N. Section 157.426 (Home Occupation) - The current language seems to cover home occupations as permitted, and conditional use. Since the zones were revised to allow the use outright, these standards were reorganized to reflect that change. Employees at the home were limited but there is no limit to individuals employed outside the home.
- O. Section 157.427 (Temporary Uses) - This covers the temporary use of an RV (not a manufactured home!) during construction. In addition, there are provisions for Christmas tree and firework sales, placement of temporary construction shacks, auctions and yard sales, and a Council waiver for special events involving the community.
- P. Section 157.429 (Bed and Breakfast Facility) – This is a new Section establishing regulations to operate a bed and breakfast. The business is limited to B&B operations, with food preparation limited to breakfast and snacks only, and the facility cannot be used for special events or parties.
- Q. Section 157.430 (Automobile-oriented Facilities) - This Section follows current regulations.
- R. Section 157.440 (Geological Hazards) - This Section follows current regulations.
- S. Section 157.441(Shoreland Development) - This Section follows current regulations.
- T. Section 157.442 (Special Buffers and Setbacks) - This Section combines existing provisions for riparian and EFU zone setbacks. The riparian setback measurement was clarified.
- U. Section 157.443 (Yards and Lots) – This Section includes provisions on projections into required yards and the clear vision requirements. Otherwise, follows current requirements.
- V. Section 157.444 (Fencing and Screening) - This is a new Section which combines all regulations regarding fencing, walls, and screening.
- W. Section 157.445 (General Standards) – This is the traditional “catch-all” Section and includes provisions on height exceptions, setback exceptions,

farm uses and non-conforming uses. Section 157.445.07 allows limited expansion of buildings that do not comply with yard setback requirements.

## **Article V**

This Article concludes the Ordinance by establishing the administrative and review requirements. The current Chapter 157 only addresses conditional use and variance requests. Besides incorporating land divisions procedures from Chapter 156, the new Ordinance includes review procedures for adjustments (minor variances), site development, interpretations, nonconforming uses, zone map amendments, text amendments and annexation. This material is summarized as follows:

- A. Section 157.501 is the introductory Section to the Article. The four application types are identified. Time limits are established as are rules which govern when an approval is considered initiated. The review types:
  - 1. Type I Review - Staff level decision applies to property boundary, sign permits, flood permits, etc. These have little discretion and there is no appeal of the staff decision.
  - 2. Type II – This is also a staff level decision but requires notifying adjacent property owners before a decision is made. Notice of the staff decision is mailed to the applicant and adjacent owners who submitted comments. Type II applications apply to land divisions, residential site plan developments, and adjustments (changing a quantifiable standard by 10% or less).
  - 3. Type III – These applications require hearings before the Planning Commission. Included in this group are variances (greater than 10% quantifiable change), conditional uses, non-residential site development reviews, and interpretations.
  - 4. Type IV – These requests include hearings before both the Planning Commission and City Council. Applications include map and text amendments and annexations.

This Section also includes a chart identifying the various land use applications and how they are processed. Expiration dates are established along with requirements to implement a decision. The goal of this re-organization was to move some of the current decisions to the staff level.

- B. Section 157.502 (Property Boundary Adjustments) – Similar provisions to Chapter 156. This is reviewed by staff with no option for appeal.
- C. Section 157.503 (Partitions) – This follows current provisions in Chapter 156. Staff have some flexibility regarding the application requirements. The idea is to avoid hiring a surveyor before a decision is made.

- D. Section 157.504 (Adjustment) – This is a type of variance that can be reviewed at the staff level and allows up to a 10% change in a quantifiable standard. An adjustment does not apply to sign regulations or lot sizes. The standards are not as strict as the variance requirements.
- E. Section 157.505 (Interpretations) – This is a new Section which allows an applicant to request a formal interpretation of an Ordinance provision. This is reviewed by the Planning Commission.
- F. Section 157.506 (Variances) – This Section applies to any change in a quantifiable standard that exceeds 10%. The request requires a public hearing before the Commission. The standards are stricter than an adjustment.
- G. Section 157.507 (Conditional Use) – This closely follows the current language. The applicability provision (157.505.01) specifically notes a conditional use is considered permitted unless conditions to ensure compatibility cannot be established. Special conditional use requirements apply for marijuana facilities.
- H. Section 157.508 (Site Development Review) – This is a new Section designed to address new developments, or significant expansions, of uses permitted in the underlying zone. For example, a new school in the Public zone would require a site development review. These are processed as Type II applications for residential uses (staff review) and Type III for non-residential projects (Commission review). Expansions of less than 10% can be processed with a building permit.
- I. Section 157.509 (Nonconforming Uses) – Similar to current provisions.
- J. Section 157.510 (Subdivision, Planned Developments and Cottage Clusters) – Unlike simple partitions, these projects involve large areas and have special design considerations (and options). The format follows current processes with additional requirements for planned developments and cottage cluster developments. These are all processed as Type II applications (staff review).
- K. Section 157.511 (Map Amendment) and Section 157.512 (Text Amendments) - The current Ordinance lumps Comprehensive Plan and map amendments under one section but does not address amendments to the Ordinance text. These are now divided into individual Sections - 157.512 for map changes and 157.513 for changes to the Plan or Ordinance text. The major change is in the decision criteria for text changes. Such changes not only need to conform to the City's Plan but must be consistent with Statewide Planning Goals and applicable administrative rules (e.g., TPR).

- L. Section 157.513 (Annexations) – This is a new Section. Annexations essentially are treated as a land use application with hearings before the Commission and Council. However, the Council would retain the option of accepting or rejecting the Commission recommendation, or the Council may require a public vote on the matter.
  - M. Section 157.520 (General Administrative Provisions) – This covers the general requirements of application processing, including the 120-day time limit, the ability to combine requirements under a single application, ability to aggregate application involving several properties, and all appeal procedures reviewed as *de novo* hearings.
  - N. Section 157.521 (Type I Application) – This Section covers the Type I procedures from application to final decision.
  - O. Section 157.522 (Type II Application) – This Section covers the Type II procedures from application to appeals before the Commission and/or Council.
  - P. Section 157.523 (Type III Application) – This Section covers the Type III procedures from application to appeals before the Council.
  - Q. Section 157.524 (Type IV Application) – This Section covers the Type IV procedures from application to initial hearing before the Commission and the final hearing before the Council. Both quasi-judicial and legislative processes are addressed.
  - R. Section 157.525 (Public Hearing Before the Commission) – This Section covers all the responsibilities of the Commission when reviewing new cases or appeals. It generally follows current language in Chapter 157.
  - S. Section 157.526 (Public Hearing Before the Council) - This Section covers all the responsibilities of the Commission when reviewing new cases or appeals. As above it generally follows current language in Chapter 157 with specific responsibilities for the Council.
- B. Code changes recommended by the Nehalem TSP are incorporated in this new document. Adoption of the new Ordinance effectively implements the TSP concurrently established by the Comprehensive Plan amendments.
  - C. As the R1, R2, R3, RT and RM are combined into a single Mixed Density (RM) zone, the Zone Map requires an amendment. However, there is absolutely no increase or decrease in the amount of residential land. On balance, property owners in all five current zones obtain additional development opportunities as it relates to housing.

## VI. CRITERIA AND FINDINGS – NEW DEVELOPMENT ORDINANCE

- A. Current Zoning Ordinance Section 157.387 contains provisions for legislative zone changes and comprehensive plan amendments but does not include provisions for amending the Zoning Ordinance text. The Commission finds plan amendment provisions are applicable to all text changes. The following Sections review these provisions.

**FINDINGS:** The City provided the required public notice, including notice to the Department of Land Conservation and Development (DLCD). As of the date of this report, the DLCD did not submit comments, indicating no opposition to the amendments.

- B. Section 157.388 establishes the standards for approval of zone changes or comprehensive plan amendments. All zone changes or Comprehensive Plan amendments, whether legislative in nature or whether quasi-judicial, may be approved only if all the following are satisfied:

1. Section 157.388(A) - The proposed change is consistent with the Comprehensive Plan's policies;

**FINDINGS:** The Comprehensive Plan consists of 18 Goals with each Goal addressing specific land use issues such as housing or natural resources. Each Goal is reviewed below:

- a. Goal 1: Citizen Involvement – To provide all city and Urban Growth Area residents with an opportunity to be involved in all phases of the planning process.

**FINDINGS:** Consistent with this Goal, the Planning Commission conducted several monthly work sessions to review the material. These included the initial review as well as subsequent modifications. These work sessions, this Commission hearing, and eventual hearing before the City Council, are consistent with this Goal.

- b. Goal 2: Land Use Planning – To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions; to encourage development outside of natural hazard areas including climate-related hazards; and to encourage the use of construction materials and standards that limit greenhouse gas emissions during building use.

FINDINGS: The proposed new Ordinance provides the necessary land use regulations and processes to address the above noted issues.

- c. Goal 3: Agricultural Lands – Although this State Goal does not apply to the City, the City supports preservation and maintenance of the agricultural lands.

FINDINGS: This Goal is met as the new Ordinance maintains setbacks requirements for urban land located adjacent to EFU zoned land. Further, farming may continue in the A1 zone.

- d. Goal 4: Forest Lands – Although this State Goal does not apply to the City, the City supports preservation and maintenance of forest lands.

FINDINGS: This City will maintain the A1 zone which permits forest-related activities.

- e. Goal 5: Natural Features, Natural Resources, Scenic and Historic Areas, and Open Spaces – To foster high-quality development consistent with the natural environment.

FINDINGS: The new Ordinance maintains existing regulations protecting wetlands, wildlife habitat or other resources identified as requiring preservation or protection. In addition, shoreland and creek setback requirements remain.

- f. Goal 6: Air, Water, and Land Resources - To maintain, and where necessary, improve the City's air and water resources.

FINDINGS: Nothing in the new Ordinance establishes or promotes land uses that adversely affect air, water, or resource quality issues. On the contrary, positive environmental impacts are anticipated as the new Ordinance implements the TSP which encourages, and provides for, alternative modes of transportation, thereby lessening dependence on automobiles.

- g. Goal 7: Areas Subject to Natural Hazards - To reduce risk to people and property from natural hazards

FINDINGS: This Goal is addressed as the new Ordinance maintains the Flood Hazard Overlay zone, including all required updates.

- h. Goal 8: Recreational Needs - To provide for park facilities and open space.

FINDINGS: Existing provisions for park facilities and recreational activities are not altered.

- i. Goal 9: Economic Development - Improve the Economic Base of the Community

FINDINGS: The new Ordinance streamlines the review processes by allowing City staff to review certain types of applications that currently are heard by the Planning Commission. This economically benefits all applicants.

- j. Goal 10: Housing – To provide for housing which will meet the needs of a variety of age and income groups.

FINDINGS: The new Ordinance adopts recent housing legislation to allow middle housing, accessory dwelling units, cottage cluster developments, and streamlines the review process by allowing City staff to review land division applications.

- k. Goal 11: Public Facilities and Services – Continue to plan and develop orderly and efficient system of public facilities and services.

FINDINGS: The existing zoning regulations include five different classifications of medium density residential zones (R1, R2, R3 and RM) and the Residential Trailer (RT) zone. In all of these zones, except the R1 zone, the uses permitted outright and the minimum lot coverage are largely the same. Single family residential and duplex uses are permitted outright, along with multi-family residential, and on a minimum lot size of 5,000 square feet with 2,500 square feet required for each additional dwelling unit. The R1 zone is the only zone where the primary uses and lot sizes will change to allow for a greater number of dwelling units than exist today. Today, in the R1 zone, duplex uses are allowed only as a conditional use, rather than permitted outright, and the minimum lot size is 7,500 square feet. Per the 2017/18 Buildable Lands Inventory, R-1 zoned property totals 38-acres, and is situated on the west edge and northeast corner of Nehalem. These 38-acres account for only 22% of the total land incorporated into the new RM zone. Although this change in the R1 area will authorize the construction of a greater number of development units, Nehalem City Code 51.04(A) provides that the City can allow a new water connection, a prerequisite to any building permit or land division approval, only upon a finding that the City has a “sufficient water supply to satisfy all the customers” including those existing within the City and those outside of the City within the UGB. If the City concluded that it did not have sufficient water supply or



infrastructure necessary to serve the development, it would not be allowed. In addition, provisions in the proposed RM prohibit development of multi-family buildings (three or more units) unless public sewer is available. The Ordinance does not affect the City's ability to provide public services or requirements for public service connections. In fact, the Ordinance establishes clear provisions regarding how the services are extended and who is responsible in the case of a land division.

- I. Goal 12: Transportation - To provide and encourage a safe, convenient, and economic transportation system.

FINDINGS: The new Ordinance effectively implements the findings, conclusions, and recommendations of the Nehalem TSP. These include, but are not limited to, allowing right-of-way improvements in all zones; strengthening TIA requirements; access restrictions on US Highway 101; requirements for bicycle parking; promoting traffic circulation and bikeways; and allowing narrower street widths.

- m. Goal 13: Energy - To conserve energy.

FINDINGS: Nothing within the new Ordinance impacts the City's ability to establish uses or regulations to conserve energy.

- n. Goal 14: Urbanization/Urban Growth Boundary and Urban Growth Area - Coordinate land-use, development, and annexation strategies with Tillamook County.

FINDINGS: This Goal does not directly apply, as the proposed TSP implementing measures do not affect, reduce, or otherwise alter the ability to coordinate development with Tillamook County.

- o. Goal 16: Estuarine Resources - To conserve, protect the unique environmental, economic, and social values of local estuarine resources, where appropriate, recognizing their value for the protection and maintenance of water quality, fish and wildlife habitat, and water dependent uses.

FINDINGS: Other than Plan policies encouraging pedestrian access to the estuary system for recreational purposes, nothing within the Ordinance adversely impacts these resources.

- p. Goal 17: Coastal Shorelands - The City of Nehalem recognizes the interdependence of shoreland and estuarine uses.

FINDINGS: As above, other than improving pedestrian access to the interconnected estuary system for recreational purposes, nothing within the Ordinance adversely impacts coastal areas.

- q. Goal 18: Beaches and Dunes - The City supports efforts to implement policies consistent with Statewide Planning Goal 18.

FINDINGS: This Goal does not apply, as the proposed Ordinance does not affect or otherwise impact beaches or dunes.

- r. Goal 19: Ocean Resources - The City supports efforts to implement policies consistent with Oregon Statewide Planning Goal 19, “to conserve the long-term values, benefits, and natural resources of the near shore ocean and the continental shelf.”

FINDINGS: This Goal does not apply, as the proposed Ordinance does not affect or otherwise impact ocean resources.

- 2. Section 157.388(B) - The proposed change shall not result in the conversion of resource lands to non-resource use without an approved exception to applicable state resource protection goals;

FINDINGS: Nothing in the proposed Ordinance requires or encourages conversion of resource lands to non-resource uses. All development requirements are limited to the City limits and adopted Urban Growth Boundary. Further, the A1 zone still allows farming and forestry activity, and the Ordinance maintains setback requirements to EFU zoned land, shoreland areas and streams.

- 3. Section 157.388(C) - The site involved is better suited to the purposes allowed by the proposed change than it is to the purposes of the existing zone; and

FINDINGS: The new Ordinance expands allowed residential uses in the residential zones. This is consistent with changes in State law and is solely concentrated on those lands zoned – or required - for that purpose.

- 4. Section 157.388(D) - Development anticipated to result from the proposed change shall not impair the actual or the legally designated uses of neighboring properties.

FINDINGS: The new Ordinance will not alter the existing land use patterns nor impair the development of permitted uses.

## VII. CRITERIA AND FINDINGS – TSP IMPLEMENTATION MEASURES

- A. The new Ordinance includes implementing measures for the proposed TSP. As such, it appears appropriate to address these measures against Goal 12.
- B. Goal 12 of the Statewide Planning Goals establishes the basis for Transportation planning in the state. The Goal's objective: *To provide and encourage a safe, convenient, and economic transportation system.*

FINDING: The TSP provides a comprehensive, long-term guide for City transportation improvement investments for a 20-year period. The multi-modal, network-wide approach prioritizes projects which benefit driving, bicycling, and walking. The new Ordinance encourages street connectivity, establishes additional standards to promote pedestrian and bicycle circulation, and requirements for traffic impact studies. On balance, these requirements help promote a safe, convenient, and economic transportation system.

- C. The Oregon Transportation Plan (OTP) is the state's long-range multimodal transportation plan. The OTP is the overarching policy document among a series of plans that together form the state's transportation system plan. A local TSP must be consistent with applicable OTP goals and policies. The most pertinent OTP goals and policies are as follows:

*POLICY 1.2 – Equity, Efficiency and Travel Choices*

*It is the policy of the State of Oregon to promote a transportation system with multiple travel choices that are easy to use, reliable, cost-effective and accessible to all potential users, including the transportation disadvantaged.*

FINDING: The Ordinance encourages a multi-modal, network-wide approach as roadway standards are designed to accommodate all users of the road, including motorists, pedestrians, and bicyclists. New provisions for bicycle parking and safe walkways help encourage these uses.

*POLICY 2.1 - Capacity and Operational Efficiency*

*It is the policy of the State of Oregon to manage the transportation system to improve its capacity and operational efficiency for the long term benefit of people and goods movement.*

*POLICY 2.2 – Management of Assets*

*It is the policy of the State of Oregon to manage transportation assets to extend their life and reduce maintenance costs.*

FINDING: Standards which preserve the function and capacity of roadways within Nehalem are included in the Development Ordinance. These include access spacing and mobility standards.

*POLICY 3.1 – An Integrated and Efficient Freight System*

*It is the policy of the State of Oregon to promote an integrated, efficient and reliable freight system involving air, barges, pipelines, rail, ships and trucks to provide Oregon a competitive advantage by moving goods faster and more reliably to regional, national and international markets.*

*POLICY 3.2 – Moving People to Support Economic Vitality*

*It is the policy of the State of Oregon to develop an integrated system of transportation facilities, services, and information so that intrastate, interstate, and international travelers can travel easily for business and recreation.*

FINDING: US 101 is the main route through the City connecting to the adjacent cities of Manzanita and Wheeler as well as providing the primary tourist route along the coast. This economic benefit is maintained as the Ordinance now specifically limits access to the Highway.

*POLICY 4.1 - Environmentally Responsible Transportation System*

*It is the policy of the State of Oregon to provide a transportation system that is environmentally responsible and encourages conservation and protection of natural resources.*

FINDING: The new street designs incorporated in the Ordinance encourage pedestrian and bicycle mobility, thereby reducing the impact of automobiles. Notably, roadway specification allows for narrower streets.

*POLICY 5.1 – Safety*

*It is the policy of the State of Oregon to continually improve the safety and security of all modes and transportation facilities for system users including operators, passengers, pedestrians, recipients of goods and services, and property owners.*

FINDING: Traffic impact analysis requirements enhance the ability to provide safe transportation facilities for all users. This is further supported by access restrictions to US Highway 101.

*POLICY 7.1 – A Coordinated Transportation System*

*It is the policy of the State of Oregon to work collaboratively with other jurisdictions and agencies with the objective of removing barriers so the transportation system can function as one system.*

FINDING: Nothing in the new Ordinance prohibits or restricts continued cooperation between the City and the County along with adjacent communities. Further, any development proposals within the UGB require coordination between the City and the County and are subject to City adopted transportation requirements.

*POLICY 7.3 – Public Involvement and Consultation*

*It is the policy of the State of Oregon to involve Oregonians to the fullest practical extent in transportation planning and implementation in order to deliver a transportation system that meets the diverse needs of the state.*

***POLICY 7.4 - Environmental Justice***

*It is the policy of the State of Oregon to provide all Oregonians, regardless of race, culture or income, equal access to transportation decision-making so all Oregonians may fairly share in benefits and burdens and enjoy the same degree of protection from disproportionate adverse impacts.*

FINDING: The Ordinance work session and adoption process were entirely open to the public, including providing the material on the City's website.

- D. The following Statutes, Rules, Comprehensive Plan Provisions and Implementing Ordinances have been considered by the City of Nehalem in the formation of the language contained within this request:

***OAR 660 Division 12 – Transportation Planning Rule (TPR):***

The purpose of the TPR is to “implement Statewide Planning Goal 12 (Transportation) and promote the development of safe, convenient, and economic transportation systems that are designed to reduce reliance on the automobile so that the air pollution, traffic, and other livability problems face by urban areas in other parts of the country might be avoided.” A major purpose of the TPR is to promote more careful coordination of land use and transportation planning, to ensure that planned land uses are supported by and consistent with planned transportation facilities and improvements.

***660-012-0005 through 660-012-0055***

These sections of the TPR contain policies for preparing and implementing a transportation system plan.

FINDING: The 2023 TSP includes sections on existing conditions, future conditions, roadway classifications and corresponding standards, recommended improvements by mode, and a general funding plan as required by Section -0020 of the TPR. The TSP is a collection of current inventory, forecasts, past and current project ideas, decisions, and standards, which was developed collaboratively among various public agencies, the community, a public advisory committee, and the project management team which consisted of City staff, ODOT, and consultants.

Elements of the TSP are implemented in the requirements of the proposed new Nehalem Development Ordinance. The new Ordinance will regulate land uses and development within City limits and Urban Growth Boundary, implementing the long-range vision of the Comprehensive Plan, of which the TSP is part. Proposed

language in the new Development Ordinance is intended to protect the design and function of the transportation network.

### VIII. CRITERIA AND FINDINGS – MAP AMENDMENTS

- A. The current Zoning Ordinance contains four zones identified as “Medium Density Residential” and a fifth zone that allows residential uses beyond a single family home (Residential Trailer). On balance, these zones represent the higher density zones in the Code, either permitting or conditionally permitting uses beyond a single family home. Owing to recent housing legislation and the desire to use the existing land efficiently, the City finds it appropriate to combine the five noted zones into a single new RM zone – Mixed Density Residential. The following table shows current uses allowed in the five zones and what would occur under a consolidated new MR zone:

Activity/Zone	R-1	R-2	R-3	RT	RM	New RM
SFD/MH	P	P	P	P	P	P
Duplex	CU	P	P	P	P	P
Tri-Plex			P		CU	P
Four-Plex			P		CU	P
Multi-Family			P		CU	P
Partition	P	P	P	P	P	P
Subdivision	P	P	P	P	P	P
PUD	P	P	P	P	P	P
Cottage Cluster						P

P - Signifies the activity is permitted.

CU – Requires a conditional use permit.

R-1 - Medium Density Residential (R-1)

R-2 - Medium Density Residential (R-2)

R-3 - Medium Density Residential (R-2)

RT – Residential Trailer

RM - Medium Density Residential Zone

*New RM – Mixed Density Residential*

- B. The new RM creates a single high density zone for the City, effectively allowing any residential use to multi-family. These uses are permitted outright with a staff-level site design review for only multi-family projects. Even the land divisions are only subject to a staff level review. On balance, this improves the City’s ability to provide additional housing without expanding the UGB. It is important to note property currently zoned R-1, R-2, R-3, RT, and RM will be renamed Mixed Density Residential (RM). There will be no increase or decrease in the amount of acreage. Further, since the zone map and Plan map are the same, changes to Plan designations are unnecessary.

- C. Section 157.387 provides introductory provisions for legislative zone changes or comprehensive plan amendment. Zone changes or Comprehensive Plan amendments that are legislative in nature, (i.e., without a specific applicant or project in mind but of more general application) shall require such public hearings as are required in Ord. 90-3 and O.R.S. 227.160 through 227.185, with notice given as therein required.

FINDINGS: The City provided the required public notice, including notice to the Department of Land Conservation and Development (DLCD). As of the date of this report, the DLCD did not submit comments.

- D. Section 157.388 establishes the standards for approval of zone changes or comprehensive plan amendments. All zone changes or Comprehensive Plan amendments, whether legislative in nature or whether quasi-judicial, may be approved only if all of the following are satisfied:

1. Section 157.388(A) - The proposed change is consistent with the Comprehensive Plan's policies;

FINDINGS: The Comprehensive Plan consists of 16 Goals with each Goal addressing specific land use issues such as housing or natural resources. Each Goal is reviewed below:

- a. Goal 1: Citizen Involvement – To provide all city and Urban Growth Area residents with an opportunity to be involved in all phases of the planning process.

FINDINGS: Consistent with this Goal, the community was involved in reviewing the material through work sessions and eventual public hearings before the Commission and Council.

- b. Goal 2: Land Use Planning – To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions; to encourage development outside of natural hazard areas including climate-related hazards; and to encourage the use of construction materials and standards that limit greenhouse gas emissions during building use.

FINDINGS: Except for allowing additional residential uses – encouraged by state law - nothing effectively changes regarding the overall land use pattern within the City.

- c. Goal 3: Agricultural Lands – Although this State Goal does not apply to the City, the City supports preservation and maintenance of the agricultural lands.

FINDINGS: This Goal does not apply, as the zone changes do not impact identified farmland.

- d. Goal 4: Forest Lands – Although this State Goal does not apply to the City, the City supports preservation and maintenance of forest lands.

FINDINGS: This Goal does not apply, as the zone changes do not impact identified forest land.

- e. Goal 5: Natural Features, Natural Resources, Scenic and Historic Areas, and Open Spaces – To foster high-quality development consistent with the natural environment.

FINDINGS: This Goal does not apply, as the revised zoning does not ultimately lead to new regulations involving wetlands, wildlife habitat or other resources identified as requiring preservation or protection.

- f. Goal 6: Air, Water, and Land Resources - To maintain, and where necessary, improve the City’s air and water resources.

FINDINGS: On balance, allowing the concentration of housing avoids sprawl and reduces dependence on the automobile. This is anticipated to have a positive effect on air, water, and land resources.

- g. Goal 7: Areas Subject to Natural Hazards - To reduce risk to people and property from natural hazards.

FINDINGS: Nothing within map amendments impacts the City’s ability to address natural hazards nor changes existing hazard regulations.

- h. Goal 8: Recreational Needs - To provide for park facilities and open space.

FINDINGS: The zone map revisions do not impact the City’s ability to address recreational needs.

- i. Goal 9: Economic Development - Improve the Economic Base of the Community

FINDINGS: The zoning revisions allow additional levels of residential development. The potential population increase has a beneficial off-shoot by providing construction employment, and additional customers – and possibly employees - for local businesses.



- j. Goal 10: Housing – To provide for housing which will meet the needs of a variety of age and income groups.

FINDINGS: The revision not only provides additional housing opportunities for a significant portion of the City. This helps address meeting Goal 10 of the Plan.

- k. Goal 11: Public Facilities and Services – Continue to plan and develop orderly and efficient system of public facilities and services.

FINDINGS: The existing zoning regulations include five different classifications of medium density residential zones (R1, R2, R3 and RM) and the Residential Trailer (RT) zone. In all of these zones, except the R1 zone, the uses permitted outright and the minimum lot coverage are largely the same. Single family residential and duplex uses are permitted outright, along with multi-family residential, and on a minimum lot size of 5,000 square feet with 2,500 square feet required for each additional dwelling unit. The R1 zone is the only zone where the primary uses and lot sizes will change to allow for a greater number of dwelling units than exist today. Today, in the R1 zone, duplex uses are allowed only as a conditional use, rather than permitted outright, and the minimum lot size is 7,500 square feet. Per the 2017/18 Buildable Lands Inventory, R-1 zoned property totals 38-acres, and is situated on the west edge and northeast corner of Nehalem. These 38-acres account for only 22% of the total land incorporated into the new RM zone. Although this change in the R1 area will authorize the construction of a greater number of development units, Nehalem City Code 51.04(A) provides that the City can allow a new water connection, a prerequisite to any building permit or land division approval, only upon a finding that the City has a “sufficient water supply to satisfy all the customers” including those existing within the City and those outside of the City within the UGB. If the City concluded that it did not have sufficient water supply or infrastructure necessary to serve the development, it would not be allowed. In addition, provisions in the proposed RM prohibit development of multi-family buildings (three or more units) unless public sewer is available. The Ordinance does not affect the City’s ability to provide public services or requirements for public service connections. In fact, the Ordinance establishes clear provisions regarding how the services are extended and who is responsible in the case of a land division.

- l. Goal 12: Transportation - To provide and encourage a safe, convenient, and economic transportation system.

FINDINGS: The potential housing increase better utilizes the existing road system.

- m. Goal 13: Energy - To conserve energy.

FINDINGS: Nothing within the zone revisions impacts the City's ability to establish uses or regulations to conserve energy.

- n. Goal 14: Urbanization/Urban Growth Boundary and Urban Growth Area - Coordinate land-use, development, and annexation strategies with Tillamook County.

FINDINGS: This zoning revision is entirely consistent with maintaining a compact urban form by better use of existing residentially zoned land.

- o. Goal 16: Estuarine Resources - To conserve, protect the unique environmental, economic, and social values of local estuarine resources, where appropriate, recognizing their value for the protection and maintenance of water quality, fish and wildlife habitat, and water dependent uses.

FINDINGS: The zone revisions do not create new uses or activities that would adversely impact these resources.

- p. Goal 17: Coastal Shorelands - The City of Nehalem recognizes the interdependence of shoreland and estuarine uses.

FINDINGS: The zone revisions do not create new uses or activities that would adversely impact these resources.

- q. Goal 18: Beaches and Dunes - The City supports efforts to implement policies consistent with Statewide Planning Goal 18.

FINDINGS: The zone revisions do not create new uses or activities that would adversely impact these resources.

- r. Goal 19: Ocean Resources - The City supports efforts to implement policies consistent with Oregon Statewide Planning Goal 19, "to conserve the long-term values, benefits, and natural resources of the near shore ocean and the continental shelf."

FINDINGS: The zone revisions do not create new uses or activities that would adversely impact these resources.

2. Section 157.388(B) - The proposed change shall not result in the conversion of resource lands to non-resource use without an approved exception to applicable state resource protection goals;

FINDINGS: The zone revisions apply only to residentially zoned land and do not involve resource-related property.

3. Section 157.388(C) - The site involved is better suited to the purposes allowed by the proposed change than it is to the purposes of the existing zone; and

FINDINGS: The focus is on existing residential zoned land and does not reduce the availability of land for commercial, industrial, or public purposes.

4. Section 157.388(D) - Development anticipated to result from the proposed change shall not impair the actual or the legally designated uses of neighboring properties.

FINDINGS: The revisions create in-fill opportunities in existing residentially zoned land and do not place non-residential uses or activities within these zones.

## IX. CONCLUSION

The City Council finds the proposed Nehalem Development Ordinance and the associated zone map amendments comply with applicable decision criteria. Further, the Council finds provisions implementing the Transportation System Plan comply with applicable State regulations.