



CITY OF BURNS, HARNEY COUNTY, OREGON

ZONING ORDINANCE

Prepared by
Dan Meader, Project Director
TENNESON ENGINEERING CORPORATION
409 Lincoln Street
The Dalles, Oregon 97058
Phone (541) 296-9177

April, 1997
Revised: May, 1997
Adopted: August, 1997

Revised: June 2007
Revised: February 2008
Revised: September 2009

Revised: May 2015
Revised: June 2016

BURNS ZONING ORDINANCE

SECTION 1, GENERAL PROVISIONS.....	3
1.00 TITLE.....	3
1.01 PURPOSE.....	3
1.02 REPEALED ORDINANCES	3
1.03 COMPLIANCE AND ENFORCEMENT	4
1.04 BUILDING PERMIT REQUIRED	4
1.05 EXEMPTION FOR MINOR BUILDING ACTIVITIES	4
1.06 SURVEY REQUIRED FOR EXTERIOR ENLARGEMENT	5
1.07 INSPECTION REQUIRED FOR ORDINANCE COMPLIANCE	5
1.08 MAINTENANCE OF MINIMUM REQUIREMENTS	5
1.09 INTERPRETATION OF APPLICABILITY, TERMINOLOGY, AND SIMILAR USES	5
1.10 SEVERABILITY.....	6
SECTION 2, DEFINITIONS.....	7
2.0 INTERPRETATION.....	7
SECTION 3, LAND USE ZONES.....	24
3.01 CLASSIFICATION OF LAND-USE ZONES	24
3.02 DESCRIPTION OF ZONE BOUNDARIES	25
3.03 ZONING BOUNDARY ADJUSTMENTS.....	23
3.04 ZONING OF ANNEXED LAND.....	25
3.05 SINGLE-FAMILY RESIDENTIAL (RS) ZONE	26
3.06 SINGLE-FAMILY RESIDENTIAL/MOBILE HOME (RS/MH) ZONE	29
3.07 MULTI-FAMILY RESIDENTIAL (RM) ZONE	30
3.08 GENERAL COMMERCIAL (CG) ZONE	32
3.09 LIGHT INDUSTRIAL (IL) ZONE	39
3.10 HEAVY INDUSTRIAL (IH) ZONE ...	43
3.11 OPEN SPACE (OS) ZONE.....	47
3.12 PUBLIC FACILITY (PF) OVERLAY ZONE	48
3.13 FLOOD HAZARD REGULATIONS.	49
3.14 STEEP SLOPE REGULATIONS	67
3.15 HISTORIC LANDMARK REGULATIONS	68
3.16 SILVIES RIVER NATURAL AREA..	72
3.17 LIVESTOCK ACTIVITIES.....	73
3.18 BUSINESS PARK ZONE(BP).....	77
3.19 INDUSTRIAL/ENERGY DEVELOPMENT ZONE (I/ED).....	83
3.20 WIRELESS AND BROADCAST COMMUNICATIONS FACILITIES..	88
SECTION 4, SUPPLEMENTAL PROVISIONS	100
4.0 MANUFACTURED HOME SITING STANDARDS.....	100
4.1 MOBILE HOME SITING STANDARDS...	101
4.2 RECREATION-TYPE MOBILE HOMES (RECREATIONAL VEHICLE).....	104
4.3 EXCEPTIONS.....	104

4.4 OFF-STREET PARKING.....107
4.5 SIGNS.....112
4.6 TRANSPORTATION IMPROVEMENT STANDARDS.....116
SECTION 5, ADMINISTRATIVE PROVISIONS.....118
5.0 ADMINISTRATIVE PROVISIONS.....118
5.1 VARIANCE CRITERIA.....121
5.2 CONDITIONAL USE PERMITS...123
5.3 ZONE CHANGE.....125
5.4 LEGISLATIVE AMENDMENTS...127
SECTION 6, APPLICATION PROCEDURES.....128
6.0 APPLICATION PROCEDURES...128
6.1 FEES.....128
6.2 REHEARING.....129
6.3 NOTICE OF HEARING.....129
6.4 HEARINGS PROCEDURE.....132
6.5 APPEALS AND RECONSIDERATIONS.....135

SECTION 1, GENERAL PROVISIONS

SECTIONS:

- 1.00 [TITLE](#)
- 1.01 [PURPOSE](#)
- 1.02 [REPEALED ORDINANCES](#)
- 1.03 [COMPLIANCE AND ENFORCEMENT](#)
- 1.04 [BUILDING PERMIT REQUIRED](#)
- 1.05 [EXEMPTIONS FOR MINOR BUILDING ACTIVITIES](#)
- 1.06 [SURVEY REQUIRED FOR EXTERIOR ENLARGEMENT](#)
- 1.07 [INSPECTION REQUIRED FOR ORDINANCE COMPLIANCE](#)
- 1.08 [MAINTENANCE OF MINIMUM REQUIREMENTS](#)
- 1.09 [INTERPRETATION OF APPLICABILITY, TERMINOLOGY AND SIMILAR USES](#)
- 1.10 [SEVERABILITY](#)

1.00 TITLE

This Ordinance shall be known as the City of Burns Zoning Ordinance.

1.01 PURPOSE

1. To implement the Burns Comprehensive Plan as adopted by the City Council.
2. To comply with ORS Chapters 227 and 197.
3. To promote the public health, safety and welfare of the citizens of the City of Burns

1.02 REPEALED ORDINANCES

The following ordinances and all amendments thereto are hereby repealed: 628, Flood Amendments; 625, Flood Amendments; 601, Comprehensive Plan; 602, Zoning; 603, Subdivisions; 586, Hearings Procedures; 571, Mobile Homes; 555, Special Use Area; 563, Future Platting Provisions; and 531, Livestock. However, notwithstanding the aforesaid, any approvals and permits, except as otherwise provided for herein, granted pursuant to authority given by ordinances enacted prior to the effective date of this ordinance, shall remain in full force and effect unless otherwise voided pursuant to the provisions of this ordinance.

1.03 COMPLIANCE AND ENFORCEMENT

Land may be used and a structure or part of a structure constructed, reconstructed, altered, occupied, or used only as this ordinance permits. Failure to comply with all of the terms and conditions attached to any land development, zone change, conditional use, variance, site plan, or similar approval, shall constitute a violation of this ordinance and is hereby deemed a nuisance. The Manager shall have the power and duty to enforce the provisions of this ordinance. An appeal from a filing of the Manager shall be made to the Commission, and thereafter to the Council.

It shall be unlawful for any person to violate any provision of this ordinance, to permit or maintain any such violation, to refuse to obey any provision hereof, or to fail or refuse to comply with any such provision, except as variation may be allowed under this ordinance. Such violations are hereby deemed a nuisance. Proof of such unlawful act or failure to act shall be deemed prima facie evidence that such act is that of the owner. Prosecution or lack thereof either of the owner or of the occupant shall not be deemed to relieve the other. A person violating any provision of this ordinance shall, upon conviction, be punished by a fine of not more than one thousand (\$1,000.00) dollars. Each violation and each day that a violation continues shall constitute a separate offense.

Where a building or other structure is, or is proposed to be located, constructed, maintained, repaired, altered, or used, or land is, or is proposed to be, used in violation of this ordinance, the City may, as an alternative to any other remedies that are legally available for enforcing this ordinance, institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, enjoin temporarily or permanently, abate, or remove the unlawful location, construction, maintenance, repair, alteration, or use. In addition, the City may seek abatement of the violation through Burns Municipal Code Chapter 8.10. Further, the City may seek reimbursement for all costs, including staff time, legal fees, and public notice costs associated with the enforcement action from the property owner(s) through Burns Municipal Code Chapter 8.10.

1.04 BUILDING PERMIT REQUIRED

Except as provided in Section 1.05, no person, firm, or corporation shall erect, construct, alter, repair, move, improve, remove, convert, or demolish any building or structure in the City, or cause the same to be done, without first obtaining a separate building permit for each such building or structure from the City Building Official.

1.05 EXEMPTION FOR MINOR BUILDING ACTIVITIES

It is not the purpose of this ordinance to require that building permits be obtained or fees be paid for repairs or maintenance which do not violate the intent of this ordinance, when such repair maintenance is done on a single-family residence, or a private garage, carport or storage shed that is accessory to a single-family residence. The following items in or appurtenant to single-family residences, which do not encroach over subsurface sewer disposal systems or into required

yards, are exempt from permits and fees required by this ordinance: concrete slabs, driveways, sidewalks, masonry repair; porches, patio covers; painting; interior wall, floor or ceiling covering; non-bearing partitions; shelving, cabinet work; gutters, downspouts; small accessory building not over 200 square feet.

1.06 SURVEY REQUIRED FOR EXTERIOR ENLARGEMENT

Prior to obtaining a building permit for construction of any improvement that would expand the footprint of an existing structure or otherwise increase lot coverage, the estimated cost of which, including labor, materials, incidentals, is expected to exceed \$3,000.00, the applicant for such permit shall have the real property surveyed by a registered professional surveyor, locating by appropriate monuments all corners, and submit a diagrammatic plan with the building permit application describing and showing the location of the present and proposed improvements on said property.

1.07 INSPECTION REQUIRED FOR ORDINANCE COMPLIANCE

Upon issuance of a building permit, the City Manager or designee shall inspect the permitted use prior to issuance of a completion or occupancy certificate, in order to assure compliance with the requirements of this ordinance.

1.08 MAINTENANCE OF MINIMUM REQUIREMENTS

No lot area, yard, or off-street parking area existing on or after the effective date of this ordinance shall be reduced below the minimum requirements of this ordinance, except as provided by variance. An accessory use or structure shall comply with requirements for a principal use, except as this ordinance specifically allows to the contrary.

1.09 INTERPRETATION OF APPLICABILITY, TERMINOLOGY, AND SIMILAR USES

1. If the conditions imposed by a provision of this ordinance are less restrictive than comparable conditions imposed by another provision of this ordinance or of any other ordinance of the City, the provision which is more restrictive shall govern.
2. The Commission may rule that a use not specifically permitted in a zone be permitted in such zone if: it is similar to the specifically permitted uses in the zone; its effect on adjacent properties is substantially the same as the permitted uses; and if it is not specifically designated as a permitted use in another zone. The Commission shall follow the Conditional Use Permit process, Article 5, before making the ruling.

1.10 SEVERABILITY

The provisions of this ordinance are severable. If any section, sentence, clause, or phrase of this ordinance is judged by a court to be invalid, the decision shall not affect the remaining portions of this ordinance.

SECTION 2, DEFINITIONS

SECTIONS:

2.0 [INTERPRETATION](#)

2.0 INTERPRETATION

Words used in a singular include the plural, and words used in the plural include the singular. The word "shall" is mandatory and the word "may" is permissive. The masculine includes the feminine and the neuter. Words used in the present tense include the future, and the future tense includes the present.

For the purposes of this Ordinance, the following words and phrases shall mean:

ACCESSORY USE OR ACCESSORY STRUCTURE

A use or structure incidental and subordinate to the main use of the property and located on the same lot or parcel as the main use or structure.

ALLEY

A minor publicly-dedicated right-of-way 20 feet or less in width used primarily for service access to the back or side of properties abutting along or facing other streets.

ALTERATION

Any exterior change or modification, through public or private action, of property including, but not limited to, exterior additions to or modification of the structure.

ALTERATION, STRUCTURAL

Any change or repair which would affect or materially change a supporting member of a building such as a bearing wall foundation, column, beam or girder, or any structural change in the roof or exterior walls.

ALTERNATIVE TOWER STRUCTURE

Any existing building or other structure that is able to be used to support communication and broadcast equipment, including but not limited to, light poles, utility poles, steeples, etc., but not including camouflaged or stealth towers constructed for the specific purpose of supporting communication and broadcast equipment. For the purposes of this definition, an alternative tower structure shall include all attached elements necessary to/for the structural integrity of the alternative tower structure.

ANTENNA

Any system of wires, poles, rods, reflecting discs or similar devices designed for telephonic, radio, facsimile, data, or television communications through sending and/or receiving of radio, television, electromagnetic waves/signals when such system is either external to or attached to the exterior of a

structure. Antennas shall include, but not be limited to, devices having active elements extending in any direction, and directional beam-type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted up and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which elements are deemed to be part of the antenna.

APARTMENT (See Dwelling, Multiple-Family)

APPLICANT

A person applying for a permit or amendment of this ordinance.

ARCHITECTURE FEATURE, EXTERIOR (See Exterior Architectural Feature)

ARTERIAL STREET

A major street, thoroughfare, or highway, of considerable continuity which is primarily a traffic artery for travel among separate areas.

AUTO DETAIL SHOP

A commercial business engaged in one or more of the following activities; shampooing and cleaning of motorized vehicles; repairing or reconditioning of motorized vehicles; minor assembly of motorized vehicle and motorized vehicle parts; pressure washing and buffing.

AUTOMOBILE, BOAT, TRUCK, OR TRAILER SALES LOT

A lot used for display, sale or rental of new or used automobiles, trucks, boats, or trailers, where no repair work is done except minor incidental maintenance and repairs of automobiles, trucks, boats, or trailers to be displayed, sold or rented on the premises.

AUTOMOBILE SERVICE STATION, FILLING STATION OR GAS STATION

A retail place of business engaged primarily in the sale of motor fuels, but also in supplying goods and services generally required in the operation and maintenance of automotive vehicles and fulfilling of motorist needs. These may include sale of petroleum products; sale and servicing of tires, batteries, automotive accessories and replacement items; washing and lubrication services; the performance of minor automotive maintenance and repair; and the supplying of other incidental customer services and products.

AUTOMOBILE SALVAGE OR WRECKING YARD

A premises used for the storage or sale of used automobile parts, or for the storage, dismantling or abandonment of obsolete automobiles, trailers, trucks, machinery, or parts thereof. Three or more dismantled, obsolete, inoperable motor vehicles or any inoperable machinery or parts thereof on one lot shall constitute a wrecking yard.

BASEMENT OR CELLAR

That portion of a building between floor and ceiling which is partly below and partly above the average grade, but so located that the vertical distance from the

average grade to the floor below is equal to or greater than the vertical distance from the average grade to ceiling. If such portion of a building is not a basement, then it shall be considered a story.

BOARDING, LODGING OR ROOMING HOUSE

A dwelling or part thereof, other than a motel or hotel, or multiple-family dwelling, where lodging with or without meals is provided, for compensation, for three (3) or more persons other than members of the family occupying such house.

BUILDING

A structure built for the support, shelter, enclosure of persons, animals, chattels, or property of any kind. Trailers shall not be considered as buildings.

BUILDING LINE

A line on a plat from a lot line indicating where buildings or structures may be erected.

CAMOUFLAGED

Any communications facility that is designed to blend into the surrounding environment. Examples of camouflaged facilities may include architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure, antennas integrated into architectural elements, towers made to look like trees and antenna support structures designed to look like flag poles or light poles.

CARPORT

A stationary structure not enclosed and consisting of a roof with its supports or storage cabinets substituting for supports and used for sheltering motor vehicles and open on at least two of the four sides.

CITY

The City of Burns, Oregon.

CITY MANAGER

The appointed Chief Administrative Officer of the City.

CLEAR VISION AREA (See Vision Clearance Area)

COLLECTOR STREET

A secondary street, thoroughfare, or highway which is supplementary to arterials, but superior to minor streets.

COLLOCATION

Locating communication facilities and/or equipment from more than one provider on a single support structure, including an increase in height of an existing tower or alternative tower structure to allow installation of such additional wireless communication or broadcast facility equipment.

COMMISSION

The Planning Commission of the City of Burns, Oregon.

COMMUNICATIONS FACILITY

Any facility that transmits radio signals, television signals, and electromagnetic waves including, but not limited to, antennas, dish antennas, microwave antennas, and other types of equipment for the transmission of such signals, including towers and similar supporting structures, equipment cabinets or buildings, parking areas, and other accessory development. This definition does not apply to Amateur Radio Stations as defined by the Federal Communications Commission, Part 97 of the Commission's Rules.

CONTESTED CASE

Proceedings in which the legal rights, duties or privileges of specific parties under this or other similar ordinance regulating land-use are required to be determined only after a hearing at which specific parties are entitled to appear and be heard.

COUNCIL

The City Council of the City of Burns, Oregon.

CURBLINE. The improvement or line dividing the roadway from the planting strip or footway.

DAY CARE CENTER, NURSERY OR KINDERGARTEN

An institution, establishment or place, not part of the public school system, in which are commonly received at one time 4 or more children, if in a residence, or any number of children if in other than a residence, not related by parentage to the provider of the day care service, 14 years of age or under, for a period or periods not exceeding twelve hours per day for the purpose of being given board, care or training, apart from their parents or guardians for compensation or reward.

DEAD END STREET

A minor street with only one outlet.

DEVELOPMENT

A building or mining operation, making a material change in the use or appearance of a structure or land, dividing land into two or more parcels, including partitions and subdivisions as provided in ORS 92.010 to 92.285, and creating or terminating a right of access. Development also means any man-made change to improved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

DWELLING UNIT

One or more rooms which are intended or designed to be occupied by one family with facilities for living, sleeping, cooking and eating. Trailers shall not be considered dwelling units.

DWELLING, MULTIPLE-FAMILY

A building containing three or more dwelling units.

DWELLING, SINGLE-FAMILY

A detached building designed exclusively for occupancy by one family.

DWELLING, TWO-FAMILY (DUPLEX)

A building designed exclusively for occupancy by two families living independently of each other.

EQUINE THERAPY

Also known as equine-assisted therapy (EAT), is a treatment that includes equine activities or an equine environment to promote physical, occupational and emotional growth in persons with conditions including, but not limited to, attention deficit hyperactivity disorder (ADHD) anxiety, autism, cerebral palsy, dementia, or depression. Equine therapy businesses may also include the following activities; trail riding, animal care, blacksmith shop, leather working shop, and coffee/snack shop.

EQUIPMENT BUILDING, SHELTER, CABINET OR STRUCTURE

A free-standing cabinet, shelter, building or other structure used primarily to house equipment used by a communications facility.

EXTERIOR-ARCHITECTURAL FEATURE

The architectural elements embodying style, design, general arrangement, and components of all of the outer surfaces of an improvement, including but not limited to, the kind, color and texture of building materials, and the type and style of all windows, doors, lights, signs, and other fixtures appurtenant to such improvement.

FAA

Means Federal Aviation Administration.

FCC

Means the Federal Communications Commission.

FAMILY

An individual of two or more persons related by blood or marriage, or a group of not more than five persons not related by blood or marriage, living together in a dwelling unit.

FENCE

An unroofed barrier such as masonry, ornamental iron, woven wire (chain link), wood pickets, solid wood, or any other material used as an unroofed barrier to light, sight, air or passage. Fences of barbed wire are prohibited in the City. The maximum height of fences in any required front yard shall be 72 inches for wire fences, and 36 inches for solid fences (wood, masonry). The maximum height for any fence located other than in a required front yard shall be 6 feet. Notwithstanding these maximum heights, all fences are subject to the height limitations of vision clearance areas. All fences must be placed on or inside the property line. Fences built in the City right of way are prohibited.

GARAGE, PRIVATE

A detached accessory building or portion of a main building for the parking or temporary storage of motor vehicles.

GARAGE, PUBLIC

A building, other than a private garage, used for the care, repair, or equipping of motor vehicles, or where vehicles are parked or stored for compensation, hire or sale.

GRADE, GROUND LEVEL

The average elevation of the finished ground elevation at the centers of all walls of a building, except that if a wall is parallel to and within five feet of a public sidewalk, alley, or other public way, the grade shall be the elevation of the sidewalk, alley or public way.

HABITABLE FLOOR

Any floor usable for living purposes, which includes working, sleeping, eating, cooking, recreation, or a combination thereof. A floor used only for storage purposes is not a habitable floor.

HEARINGS OFFICER

A planning and zoning hearings officer appointed or designated by the Council pursuant to ORS 227.165, or in the absence of such appointed hearings officer, the Commission.

HEIGHT OF A BUILDING

The vertical distance from the grade to: the highest point of the coping of a flat roof; or the deck line of a mansard roof; or the center height between the highest and lowest points of a gable, hip or shed roof.

HEIGHT OF AN ANTENNA

The vertical distance measured from the ground surface at grade to the tip of the highest point of the antenna on the proposed structure.

HEIGHT OF A TOWER

The distance measured from the pre existing grade level to the highest point on the communications facility tower, even if said highest point is an Antenna, light or lightning protection device.

HISTORICAL LANDMARK

Any officially designated improvement that has special historical, cultural, aesthetic, or architectural character, interest, or value as part of the development, heritage, or history.

HOME OCCUPATION

An occupation carried on solely by the resident of a dwelling house as a secondary use, in connection with which no assistants are employed, no sounds are heard beyond the premises. Home occupations may include practitioners of any art, craft or profession of a nature which can be conveniently, unobtrusively

and inoffensively pursued in a family dwelling or a garage located on the same tax lot as the dwelling. No structural alterations may be made to accommodate such occupations. The residential character of the building shall remain unchanged. Not more than one-half (1/2) of the floor area of one story may be devoted to such use. All activity connected with the use shall be contained within the building, with no outdoor display or storage.

HOTEL

Any building containing guest rooms intended or designed to be used or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests.

IMPROVEMENT

Any building, structure, place, parking facility, fence, gate, wall, work of art, or other object constituting a physical betterment of real property, or any part of such betterment.

IMPROVEMENT, SUBSTANTIAL

See Substantial Improvement.

JUNK YARD

An area used for storing junk, such as scrap metal, that can be resold.

KENNEL

Any premises where four (4) or more dogs, cats or other small animals or any combination thereof are kept commercially or permitted to remain for board, propagation, training, racing or sale, except veterinary clinics and animal hospitals.

LAND-USE ACTION

Any action involving a contested case or application for a permit.

LANDSCAPING

Trees, grass, bushes, shrubs, flowers and garden areas; also the arrangement of fountains, decks, street furniture and paving materials. Landscaping does not include the placing or installation of artificial plants, shrubs, bushes or flowers.

LARGE ANIMALS

Large animals include cattle, sheep, goats, swine, llamas, horses, mules or donkeys and similar animals.

LIVESTOCK

Livestock includes large animals and/or poultry/fowl.

LOT

A parcel or tract of land that is part of a recorded subdivision described by lot and block occupied or capable of being occupied by a building or group of buildings, including accessory structures, together with such yards or open spaces as are required by this ordinance and having a frontage upon a street. If a building or group of buildings occupy more than one lot, the combined lots shall

be considered one lot, if all applicable property development standards are not maintained for each individual lot but are maintained for the combined lots.

LOT AREA

The total computed land area, measured on a horizontal plane, contained within the lot lines of a lot exclusive of streets or alley rights-of-way, but including the area of all easements on the lot.

LOT, CORNER

A lot abutting on two or more streets other than an alley, at their intersection, or upon two (2) parts of the same street where such streets or parts of the same street form an interior angle of less than 135 degrees within the lot lines.

LOT, DEPTH

The horizontal distance from the mid-point of the front lot line to the midpoint of the rear lot line of a lot or parcel.

LOT, INTERIOR

A lot or parcel other than a corner lot or parcel.

LOT LINE. The property lines bounding a lot or parcel.

LOT LINE, FRONT

In the case of an interior lot or parcel, the lot line separating the lot or parcel from the street other than an alley, and in the case of a corner lot or parcel, the shortest line along a street other than an alley.

LOT LINE, REAR

A property line which is opposite and most distant from the front lot line. In the case of an irregular, triangular, or other shaped lot or parcel, a line 10 feet in length within the lot or parcel parallel to and at a maximum distance from the front lot line. In the above instance, and if the front lot line is curved and a determination of the parallel relationship to the front lot line is being made, a straight line connecting the two end points of the front lot line shall be used. In the case of a corner lot or parcel, either interior lot line may be the rear lot line, regardless of the placement of the front door of any structure.

LOT LINE, SIDE

Any lot line not a front or rear lot line.

LOT OF RECORD

A lot which is part of a subdivision, record of survey, or a lot or parcel described by metes and bounds which has been legally recorded in the office of the Harney County Clerk.

LOT WIDTH

The horizontal distance between the side lot lines, measured at right angles to the lot depth at a point midway between the front and rear lot lines as defined in this.

MANUFACTURED DWELLING

1. **Residential Trailer**

A structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes, and that was constructed before June 15, 1976.

2. **Mobile Home**

A structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes, and that was constructed before June 15, 1976, and met the construction requirements of Oregon Mobile home law in effect at the time of construction.

3. **Manufactured Home**

- A. For any purpose other than that set forth in subparagraph 2 of this paragraph, "manufactured home" means a structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes, and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction; or
- B. For purposes of implementing any contract pertaining to manufactured homes between the department and the federal government, "manufactured home" has the meaning given the term in the contract.
- C. "Manufactured dwelling" does not mean any building or structure subject to the structural specialty code adopted pursuant to ORS 455.100 to 455.450 or any unit identified as a recreational vehicle by the manufacturer.

MAP

A final diagram, drawing or other writing concerning a major or minor partition, or subdivision.

MEDICAL MARIJUANA DISPENSARY

Any structure or use of property subject to registration through the Oregon Health Authority under ORS 475.300 to 475.346, as may be amended from time to time, involving the sale, distribution, transmittal, gift, dispensing, and/or otherwise provides medical marijuana or medical marijuana products to medical marijuana qualifying patients excluding the wholesaling or production of medical marijuana or medical marijuana products.

METES AND BOUNDS

The method used to describe a tract or tracts of land intended for dwelling or other purposes as the sole means of recording such property with the Harney County Clerk.

MICROCELL

A low powered antenna that provides additional coverage and capacity where there are high numbers of users within urban and suburban macrocells, and are mounted at street level, typically on the external walls of existing structures, lamp posts, and other street furniture.

MINOR STREET

Local street or cul-de-sac, primarily for access to abutting properties.

MOBILE HOME PARK

Any privately owned place where two or more mobile homes used for human occupancy are parked within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is the rental of spaces.

MODULAR HOME

A building or structural unit which has been in whole or substantial part manufactured at an off-site location to be wholly or partially assembled on-site, but not including a mobile home or recreational vehicle.

MOTEL

A business which provides a building or a group of buildings used for transient residential purposes containing guest rooms consisting of sleeping and bathroom facilities with automobile storage provided therewith, which building or group of buildings is designed, intended or used primarily for the accommodation of transient automobile traveler and visitors.

MOTORIZED EQUIPMENT MAINTENANCE AND REPAIR ESTABLISHMENT

A commercial business engaged in the construction, repair and reconstruction, of motorized equipment, including small engines, marine equipment, farm equipment, automobiles, trucks and motorcycles that have been damaged by collision or aging; mechanical maintenance and upgrades of all components including powertrains, chassis and bodies; paint and body work; tire and wheel sales and service; and, custom modifications to existing vehicles and construction of new vehicles.

NEW CONSTRUCTION

Structures for which the start of construction commenced on or after the effective date of this ordinance.

NONCONFORMING LOT OR PARCEL

A lot or parcel which does not meet the dimensional requirements of the zone in which it is located.

NONCONFORMING STRUCTURE OR USE

A lawful existing structure or use at the time this ordinance or any amendment thereto becomes effective, which does not conform to the requirements of the ordinance.

NURSING HOME

Any home, place or institution which operates and maintains facilities providing convalescent or nursing care, or both, for a period exceeding 24 hours for two or more patients not related to the nursing home administrator, or owner, by blood or marriage. A nursing home 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 ORS.

OAR

Oregon Administrative Rule.

OPEN SPACE

As defined by ORS 197 and 308.740 to 308.790.

ORS

Oregon Revised Statutes.

OWNER

The owner of record of real property as shown on the latest Harney County tax rolls or deed records, or a person who is purchasing a parcel or property under written contract. This does not include earnest or option agreements when applied to a subject property.

PARCEL

A tract of land that is not part of a recorded subdivision, described by metes and bounds, that is occupied or capable of being occupied by a building or a group of buildings, including accessory structures, together with such yards or open spaces as are required by this ordinance and having a frontage upon a road or street. If a building or group of buildings occupy more than one parcel, the combined parcels shall be considered one parcel if all applicable property development standards are not maintained for each individual parcel but are maintained for the combined parcels as if it was one parcel.

PARTITION LAND

To divide an area or tract of land into two or three parcels within a calendar year when such areas or tracts of land exist as a unit under single ownership at the beginning of such year. Partition land does not include divisions of land resulting from lien foreclosure; division of lands resulting from the creation of cemetery lots; and divisions of land made pursuant to a court order, including but not limited to court orders in proceedings involving testate and intestate succession; or 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 this ordinance.

PARTY

Any person who has standing to be heard under this ordinance.

PERMIT

Authority for, or approval of, a proposed use of land for which approval is a matter of discretion and is required by this ordinance. The term includes, but is not limited to, permission given for a conditional use, variance, special exception, site plan review, and other similar permits.

PERSON

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

PLAT

Includes a final map, diagram, drawing, replat or writing containing all the descriptions, locations, specifications, dedications, easement, provisions and information concerning a subdivision.

POULTRY/FOWL

Only chickens (excluding roosters), turkeys, ducks and geese.

PRESERVATION

The identification, study, protection, restoration, rehabilitation, or enhancement of natural resources (historic, cultural, biological).

PUBLIC FACILITY OR SERVICE

A government-operated structure, building, site, project, or other improvement or development, including but not limited to administrative and maintenance facilities, schools, parks, sewer and water systems, drainage facilities, police and fire protection, street and alleys, utility substations, and similar public works.

RECREATION VEHICLE

A vacation trailer or other vehicular or portable unit which is either self-propelled or towed, or is carried by a motor vehicle, and which is intended for temporary human occupancy such as vacation or recreation, but not permanent residential purposes.

RECYCLING CENTER

A facility that receives and temporarily stores separated recyclable waste materials including glass, scrap paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil. Maximum storage for each type of separated recyclable waste shall not exceed six hundred cubic feet. Oil storage shall not exceed six hundred gallons. Preparation of separated materials shall be limited to non-mechanical methods such as baling and glass breaking.

RESIDENTIAL FACILITY

A residential care, residential training, or residential treatment facility licensed or registered by or under the authority of the Department, as defined in ORS 443.400 under ORS 443.400 to ORS 443.460, or licensed by the Children's Services Division under ORS 418.205 to ORS 418.327 which provides residential care alone or in conjunction with treatment or training, or the combination thereof, for six to fifteen individuals who need not be related. Staff persons required to meet the licensing requirement shall not be counted in the number of facility residences and need not be related to each other or to any resident of the residential facility.

RESIDENTIAL HOME

A residential treatment or training or adult foster home licensed by or under the authority of the Department as defined in ORS 443.400, under ORS 443.400 to 443.825, a residential facility registered under ORS 443.480 to ORS 443.500, or an adult foster home licensed under ORS 443.705 to 443.825, which provides residential care alone or in conjunction with treatment or training, or a combination thereof, of five or fewer individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any residents of the residential home.

RESTAURANT (CAFE)

A business establishment where prepared food is served to the public for consumption within the building, on the premises, or to take to some other location.

RF

Means Radio Frequency.

ROAD (See Street)

ROADWAY

The portion or portions of a street available for vehicular traffic.

SCREENED

Concealed from view with a sight obscuring fence, wall or vegetation.

SERVICE AREA

The area served by a single communications facility.

SIGN

A sign is any lettering, picture, pattern, mark, token, indication, figure, representation, image, or symbol which names, attracts attention to, points out, describes, or explains any use, product, meeting, event, location, service, method, or time and may be constructed of animal, vegetable, or mineral products, or any combination thereof, may be animated or inanimate, lighted or otherwise.

SIGN AREA

The area of a sign includes its horizontal plane and the perimeter or border which may enclose any writing, emblem, figure, character or other representation. If the sign has a curved surface, the area shall be measured on the curvature. Each display surface of a sign is a part of the sign area.

START OF CONSTRUCTION

The first placement of permanent construction of a structure (other than a mobile home) on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. 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 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 as part of the main structure. For a structure (other than a mobile home) without a basement or poured footings, the start of construction includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. For mobile homes not within a mobile home park or mobile home subdivision, start of construction means the affixing of the mobile home to its permanent site. For mobile homes within mobile home parks or mobile home subdivisions, start of construction is the date on which the construction of facilities for servicing the site on which the mobile home is to be affixed (including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads, and the installation of utilities) is completed.

STEALTH

Communications facilities, including, but not limited to microcells, antennas, towers, equipment cabinets, and any other ancillary equipment that cannot be seen from any street or any nearby property, improved or unimproved, and/or that do not result in any apparent architectural changes or additions to existing buildings or telecommunication towers or alternative tower structures. The addition of landscaping, walls, fences, or grading as screening techniques does not make an otherwise visible facility a stealth facility.

STORY

That portion of a building included between the surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor directly above a basement, cellar, or unused under-floor space is more than 6 feet above grade, as herein defined, for more than 50 percent of the total perimeter or is more than 12 feet above grade, as defined herein, at any point, such basement, cellar, or unused under-floor space shall be considered a story.

STREET

A public thoroughfare or right-of-way 20 feet or greater in width dedicated, deeded or otherwise available for use as such (other than an alley), or a private thoroughfare commonly owned within a subdivision, which affords the principal means of access to abutting property including avenue, place, way, drive,

boulevard, highway, road and any other similar designations. Also see: Alley, Arterial, Collector, Dead End, and Minor Street definitions.

STREET WIDTH, IMPROVED

The shortest distance between the curb faces or edge of improvements.

STREET WIDTH, RIGHT-OF-WAY

The shortest distance between the property or easement lines which delineate the right-of-way of a street.

STRUCTURE

Anything constructed or built, any edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner which requires location above or below grade, or is attached to something having a location above or below grade including swimming and wading pools and covered patios. This definition does not include outdoor areas such as paved areas, walks, tennis courts, and similar recreation areas.

SUBDIVISION

The act of subdividing land into four or more parcels or lots.

SUBDIVIDE LAND

To divide an area or tract of land into four or more lots within a calendar year when such area or tract of land exists as a unit under a single ownership at the beginning of such year.

SUBSTANTIAL IMPROVEMENT

Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either: before the improvement or repair is started; or if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either: any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or any alteration of a structure listed on the National Register of Historic Places, or the Oregon Department of Transportation Inventory of Historic Places.

TOWER OR TELECOMMUNICATIONS TOWER

Any mast, pole, monopole, guyed tower, lattice tower, free standing tower, or other structure designed specifically for and primarily used to support one or more antennae.

TRAILER (TRAVEL OR VACATION) (See Recreational Vehicle)

TRAILER PARK

A parcel or lot which is operated on a fee or other basis as a place for the parking or siting of two or more occupied recreational vehicles.

USE

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

VARIANCE

A grant of relief from the dimensional requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

VIEW CORRIDOR

The route that directs the public or an observer's attention when looking toward an object of significance to the community.

VISION CLEARANCE AREA

A clear-vision area shall be maintained on each corner of property at the intersection of two streets or a street and a railroad. No fence, wall, hedge, sign, or other planting or structure that would impede visibility between a height of 3 feet and 10 feet shall be established in the clear-vision area. Measurements shall be made from the top of the curb or, where no curb exists, from the established street centerline grade. The preceding provisions shall not apply to the following: a public utility pole; a tree trimmed (to the trunk) to a line at least eight feet above the level of the intersection; another plant species of open growth habit that is not planted in the form of a hedge and which is so planted and trimmed as to leave at all seasons a clear and unobstructed cross-view; a supporting member or appurtenance to a permanent building lawfully existing on the date this standard becomes effective; an official warning sign or signal and; a place where the natural contour of the ground is such that there can be no cross-visibility at the intersection. A clear-vision area shall consist of a triangular area two sides of which are lot lines for a distance specified in this Section, or, where the lot lines have rounded corners, the lot lines extended in a straight line to a point of intersection and so measured, and the third side of which is a line across the corner of the lot joining the non-intersecting ends of the other two sides. The following measurements shall establish the clear-vision areas at street intersections: 20 feet along each lot line in a residential or commercial zone; and 15 feet along each lot line in an industrial or public facility zone. Driveways to public streets in commercial, industrial, and public facility zones shall have a minimum vision clearance area formed by the intersection of the driveway, the street right-of-way line, and a straight line joining said lines through points twenty feet from their intersection. No obstruction over thirty inches in height that has a cross section over twelve inches shall be permitted in such areas. Driveways to public streets in residential zones shall have a minimum vision clearance area formed by the intersection of the driveway, the street right-of-way line, and a straight line joining said lines through points ten feet from their intersection. No obstruction over thirty inches shall be permitted in such areas.

WHIP ANTENNA

An antenna that transmits or receives signals in 360 degrees. Whip antennas are typically cylindrical in shape, less than 3 inches in diameter and no more than 6 feet long, including the mounting.

YARD, FRONT

A yard extending across the full width of a lot or parcel, the depth of which is the minimum horizontal distance between the front lot line and a line parallel thereto at the nearest point of the foundation of the main building. Any yard meeting this definition and abutting on a street other than an alley shall be considered a front yard.

YARD, REAR

A yard extending between side lot lines and measured horizontally at right angles to the rear lot line from the rear lot line to the nearest point of the foundation of the main building.

YARD,**SIDE**

A yard between the main building and the side lot line, extending from the front yard, or front lot line if no front yard is required, to the rear yard; the width of the required side yard shall be measured horizontally from the nearest point of the side lot line toward the nearest part of the foundation of the main building.

YOUTH-CLUB

An actual neighborhood-based building designed solely for after school youth programs and activities.

SECTION 3, LAND USE ZONES

SECTIONS:

- 3.01 [CLASSIFICATION OF LAND USE ZONES](#)
- 3.02 [DESCRIPTION OF ZONE BOUNDARIES](#)
- 3.03 [ZONE BOUNDARY ADJUSTMENTS](#)
- 3.04 [ZONING OF ANNEXED LAND](#)
- 3.05 [SINGLE-FAMILY RESIDENTIAL \(RS\) ZONE](#)
- 3.06 [SINGLE-FAMILY RESIDENTIAL/MOBILE HOME \(RS/MH\) ZONE](#)
- 3.07 [MULTI-FAMILY RESIDENTIAL \(RM\) ZONE](#)
- 3.08 [GENERAL COMMERCIAL \(CG\) ZONE](#)
- 3.09 [LIGHT INDUSTRIAL \(IL\) ZONE](#)
- 3.10 [HEAVY INDUSTRIAL \(IH\) ZONE](#)
- 3.11 [OPEN SPACE \(OS\) ZONE](#)
- 3.12 [PUBLIC FACILITY \(PF\) OVERLAY ZONE](#)
- 3.13 [FLOOD HAZARD REGULATIONS](#)
- 3.14 [STEEP SLOPE REGULATIONS](#)
- 3.15 [HISTORIC LANDMARK REGULATIONS](#)
- 3.16 [SILVIES RIVER NATURAL AREA](#)
- 3.17 [LIVESTOCK ACTIVITIES](#)
- 3.18 [BUSINESS PARK \(BP\) ZONE](#)
- 3.19 [INDUSTRIAL/ENERGY DEVELOPMENT \(I/ED\) ZONE](#)
- 3.20 [COMMUNICATIONS FACILITIES](#)

3.01 CLASSIFICATION OF LAND-USE ZONES

For the purpose of implementing land-use policies, the following land-use zones are established:

ZONE TITLE	ZONE ABBREVIATION	APPLICABLE ORDINANCE SECTION
Single-family Residential	RS	3.05
Single-family Residential/Mobile Home	RS/MH	3.06
Multi-family Residential	RM	3.07
General Commercial	CG	3.08
Light Industrial	IL	3.09
Heavy Industrial	IH	3.10
Open Space	OS	3.11
Public Facility Overlay	PF	3.12
Business Park	BP	3.18

Industrial/Energy Development	I/ED	3.19
Communications Facilities	CF	3.20

Uses permitted in these zones are described in the applicable ordinance sections listed above. These zones represent comprehensive land-use plan designations for purposes of ORS 197.015(5), and zoning designations for purposes of ORS 227.

3.02 DESCRIPTION OF ZONE BOUNDARIES

The boundaries of land-use zones are described in Map 2.1, which is titled the Burns Land-Use Plan & Zoning Map, and which shall provide a diagrammatic representation of such boundaries. This Map shall be filed with and maintained by the Manager, and is incorporated into this ordinance as an exhibit.

3.03 ZONE BOUNDARY ADJUSTMENTS

Unless otherwise specified, zone boundaries are lot lines or the center of streets, alleys, railroad rights-of-way, or public waterways as indicated. Where a zone boundary divides a single lot, or contiguous lots or parcels under a single ownership into two zones, on the effective date of this ordinance, then the entire lot or parcel shall be zoned for the less restrictive use by the adjustment of the boundaries by the Commission; provided however, if the boundary adjustment involves an average distance of 20 feet or more, the procedure for a zone change shall be followed. An applicant for a zone boundary adjustment shall submit an application in accordance with Article 5.

3.04 ZONING OF ANNEXED LAND

Any area annexed to the City must be within the acknowledged Urban Growth Boundary. As such, the land in question will have a land use designation given by the City's Comprehensive plan Map. Lands annexed to the City shall be zoned in accordance with the land use designation on the Comprehensive Plan Map, unless the applicant, at the time of annexation, requested redesignation on the Comprehensive Plan and Zoning Ordinance as a part of the annexation procedures.

3.05 SINGLE-FAMILY RESIDENTIAL (RS) ZONE

1. **Purpose**

To provide areas which will be developed with single-family detached dwellings and characterized by a high ratio of home ownership; to stabilize and protect the essential characteristics of low-density residential environments; to promote and encourage a suitable low-density environment for activities associated with family life; and to allow certain non-residential uses that are deemed to be compatible with the low-density residential environment.

2. **Uses Permitted Outright**

In an RS zone the following uses and their accessory uses are permitted outright:

- A. One single-family dwelling per tax lot, including manufactured homes meeting the requirements of Section 4.0.
- B. Two-family dwellings (duplexes) on a corner lot of 10,000 square feet or more;
- C. Gardens, orchards and crop cultivation, provided no stable or barn, cattle or other livestock or poultry is maintained in connection therewith, except as provided in Section 3;
- D. Customary residential accessory buildings for private use, such as a pergola, greenhouse, hothouse, patio, enclosed or covered patio, woodshed, quarters for domestic animals maintained as pets of the residents;
- E. The taking of boarders or leasing of rooms by a resident family, providing the total number of boarders and roomers does not exceed two in any single-family dwelling, nor more than four in any legally established two-family dwelling;
- F. Hospitals;
- G. Sanitariums other than for the contagious or insane; and
- H. Offices for medical or other professional use.
- I. Residential Home.

3. **Uses Permitted Conditionally**

In an RS zone the following uses and their accessory uses are permitted conditionally:

- A. Two-family dwelling unit on an interior lot of 10,000 square feet;

- B. Schools;
- C. Public Facility or service;
- D. Home occupation;
- E. Boarding house;
- F. Day care center/youth clubs
- G. Churches; and
- H. Residential facility.

4. **Dimensional Standards**

In an RS zone the following dimensional standards shall apply:

- A. The front yard shall be a minimum of 20 feet. No parking shall be allowed within the required front yard excluding driveways.
- B. Each side yard shall be a minimum of five (5) feet, except that on corner lots the side yard adjacent to the street shall be a minimum of fifteen (15) feet.
- C. The rear yard shall be a minimum of five (5) feet.
- D. For the creation of new lots, the minimum lot depth shall be seventy-five (75) feet.
- E. No building shall exceed a height of thirty-five (35) feet.
- F. For the creation of new lots the minimum lot area shall be 7,500 square feet.
- G. For the creation of new lots the minimum lot width shall be fifty (50) feet.
- H. Vision clearance areas shall be provided in accordance with Section 2.0.

5. **Parking**

At the time of erection of a structure, or at the time of enlargement, increase in capacity, or change in use, off-street parking spaces shall be provided as follows:

- A. Dwellings:
 - (1) Single-family: two spaces;
 - (2) Two-family: four spaces;

- B. Space requirements for other uses, and all other requirements for off-street parking, shall be provided in accordance with Section 4.4.

6. **Site Plan Review**

In a RS zone, a site plan review by the City staff or the Commission shall be required prior to issuance of any building permit for improvement, expansion, or construction of permitted or conditionally permitted uses except for single family dwellings in said zone. This site plan review for uses permitted conditionally shall be conducted as a part of the Conditional Use hearing process by the Commission. It is not the intention of this regulation to deny a building permit, but rather to assure traffic safety, aesthetic quality, and compatibility of uses. Application requirements are given in Section 6.

3.06 SINGLE-FAMILY RESIDENTIAL/MOBILE HOME (RS/MH) ZONE

1. **Purpose**
To provide areas similar to single-family residential in density and character, while also allowing the outright placement of single mobile homes on individual lots; and to afford maximum flexibility and opportunity for meeting projected mobile home housing needs in the City.
2. **Uses Permitted Outright**
In an RS/MH zone, the following uses and their accessory uses are permitted outright:
 - A. All uses permitted outright in an RS zone; and
 - B. Mobile homes meeting the requirements of Section 4.0.
3. **Uses Permitted Conditionally**
In an RS/MH zone the uses permitted conditionally in an RS zone shall also apply.
4. **Dimensional Standards**
In an RS/MH zone the dimensional standards of an RS zone shall apply, except that no RS/MH zone shall be created that is less in size than one square block in platted areas, or one acre in unplatted areas.
5. **Parking**
At the time of erection of the structure, or at the time of enlargement, increase in capacity or change in use, off-street parking spaces and other parking provisions shall be provided as required in Section 4.4.
6. **Site Plan Review**
In a RS/MH zone, a site plan review by the City staff or the Commission shall be required prior to issuance of any building permit for improvement, expansion, or construction of permitted or conditionally permitted uses except for single family dwellings in said zones. This site plan review for uses permitted conditionally shall be conducted as a part of the Conditional Use hearing process by the Commission. It is not the intention of this regulation to deny a building permit, but rather to assure traffic safety, aesthetic quality, and compatibility of uses. Application requirements are given in Section 6.

3.07 MULTI-FAMILY RESIDENTIAL (RM) ZONE

1. **Purpose**
To establish sites for moderate and high-density residential developments where full services and adequate transportation facilities are available; and to provide for areas that are characterized primarily for meeting rental housing needs.
2. **Uses Permitted Outright**
In an RM zone the following uses and their accessory uses are permitted outright:
 - A. Any use permitted outright in an RS zone;
 - B. Duplexes on corner or interior lots of 10,000 square feet;
 - C. Multiple-family dwellings;
 - D. Boarding houses; and
3. **Uses Permitted Conditionally**
In an RM zone the following uses and their accessory uses are permitted conditionally:
 - A. Residential facility;
 - B. Schools;
 - C. Home occupation;
 - D. Public facility or service; and
 - E. Mobile home park.
 - F. Day care nursery/kindergarten/youth clubs
4. **Dimensional Standards**
In an RM zone the following dimensional standards shall apply:
 - A. The front yard shall be a minimum of twenty (20) feet. No parking shall be allowed within the required front yard area.
 - B. The side yard shall be a minimum of five (5) feet, except that on corner lots the side yard adjacent to a street shall be a minimum of fifteen (15) feet. No parking shall be allowed in a required side yard adjacent to a street.
 - C. The rear yard shall be a minimum of five (5) feet.

D. Minimum lot areas for newly created lots:

- | | | |
|-----|---|----------------|
| (1) | Single-family dwelling -- | 7,500 sq. ft. |
| (2) | Duplex -- | 10,000 sq. ft. |
| (3) | Multi-family dwelling units -- | |
| | Threplex | 12,500 sq.ft. |
| | Fourplex | 15,000 sq.ft. |
| (4) | For multi-family structures containing four or more dwelling units, 15,000 square feet of lot area for the first four dwelling units, and 2,500 square feet of lot area for each dwelling unit in excess of four units. | |

E. For the creation of new lots the minimum lot width shall be fifty (50) feet.

F. The minimum lot depth shall be seventy-five (75) feet.

G. No building shall exceed thirty-five (35) feet in height.

H. No main building or group of buildings shall occupy more than forty (40) percent of the total lot area.

I. Vision clearance areas shall be provided in accordance with Section 2.0.

5. **Parking**

At the time of erection of a structure, or at the time of enlargement, increase in capacity, or change in use, off-street parking spaces and other parking provisions shall be provided as required in Section 4.4.

6. **Site Plan Review**

In a RM zone, a site plan review by the City staff or the Commission shall be required prior to issuance of any building permit for improvement, expansion, or construction of permitted or conditionally permitted uses except for single family dwellings in said zones. This site plan review for uses permitted conditionally shall be conducted as a part of the Conditional Use hearing process by the Commission. It is not the intention of this regulation to deny a building permit, but rather to assure traffic safety, aesthetic quality, and compatibility of uses. Application requirements are given in Section 6.

3.08 GENERAL COMMERCIAL (CG) ZONE

1. **Purpose**

The General (CG) Commercial zone is intended to preserve and enhance areas within the City dedicated to providing business goods and services to the resident population and the traveler. The intent is to provide compatible standards for the central business district, which is generally oriented to pedestrians, and for the outlying commercial areas that are generally oriented to vehicles.

2. **Uses Permitted Outright**

In the CG zone, the following uses and their accessory uses are permitted outright:

- A. Business or trade school;
- B. Retail trade establishment such as a food store, drug store, hardware store, furniture store, clothing store, department stores, or similar retail stores;
- C. Business, governmental or professional office and financial institutions;
- D. Service, commercial, and amusement establishment such as hotel, restaurant, tavern, club, lodge, fraternal organization and indoor theaters;
- E. Personal and business service such as barber shop, tailoring shop and printing shop;
- F. Parking lots;
- G. Laundry or dry cleaning shop;
- H. Second-hand goods store; and
- I. Public facilities and services.
- J. Automobile and boat rental and sales;
- K. Motorized equipment maintenance and repair establishments/auto detail shops
- L. Automobile, truck or vehicles service station;
- M. Retail building materials, lumber supply and hardware sales; and
- N. Motels including one dwelling unit for on-site manager

O. Veterinary clinic or animal hospital, including boarding areas for convalescent use.

3. **Use Permitted Conditionally**

- A. Auction house.
- B. Monument sales.
- C. Trailer or truck rental and sales;
- D. Farming or logging materials, implements or machinery sales and service;
- E. Outdoor storage of merchandise;
- F. Mobile home sales;
- G. Drive-in theater;
- H. Drive-in restaurant; and
- I. Residential uses – subject to sub-section 4 below
- J. Dwelling units, including mobile homes, and associated improvements, provided that a dwelling unit was an existing use at the time of the adoption of the Reformatted and Revised Zoning Ordinance for the City of Burns, Oregon, on August 27, 1997.
- K. Schools, including private schools, youth clubs, and associated improvements.
- L. Owner operated cabinet, carpenter, or wood working shop including furniture and similar products with the manufacture and assembly done within an enclosed building, upon the condition that such use shall not create, permit, or continue any loud, disturbing or unreasonable noise.
- M. Recreational vehicle or trailer park, excluding mobile home parks.
- N. Animal Kennels
- O. Medical Marijuana Dispensary

4. **Limitations On Uses**

- A. All business, service, repair, processing, storage of merchandise displays in the CG zone shall be conducted wholly within an

enclosed building except for the following: off-street parking or loading, drive-in windows, nursery plants, shrubs or trees, tires, or displays of new or used automobiles, trailers, trucks, boats, or other mobile equipment that are displayed by a state licensed dealer.

- B. Signs advertising a use or business located in a CG zone shall be maintained in good repair, appearance, and condition. Any sign shall be located on the premises of the use or business which the sign advertises.
- C. Residential uses may be located anywhere above the ground floor of a structure. Ground-floor residential uses may not occupy any portion of the storefront, generally identified as the initial portion of the side(s) of a building fronting a street, except the ground-floor entrances or breezeways may be located on a street frontage to provide access to dwelling units. Ground floor residential uses are also limited to occupying no more than 20% of the area of the ground floor.

5. **Site** **Plan** **Review**

In a CG zone, a site plan review by the City staff or the Commission shall be required prior to issuance of any building permit for improvement, expansion, or construction of permitted or conditionally permitted uses in said zones. This site plan review for uses permitted conditionally shall be conducted as a part of the Conditional Use hearing process by the Commission. It is not the intention of this regulation to deny a building permit, but rather to assure traffic safety, aesthetic quality, and compatibility of uses. Application requirements are given in Article 6.

- A. The City staff or the Commission may impose the following conditions before a building permit will be issued for the proposed use:
 - (1) Limit or prohibit access to streets not designated as arterial streets in Section 12 of the Comprehensive Plan, where the principal uses along the street in the block are residential.
 - (2) Limit the size and location of any access point so as to provide safety, freedom from congestion, and smooth traffic flows;
 - (3) Require the physical characteristics, setbacks, height, window heights, of the proposed structure to be compatible with the adjoining structures.
 - (4) Require landscaping or screening in amount, types, and location so as to enhance the aesthetic quality of the street, and to help assure compatibility between neighboring uses;

- (5) Limit the size, location, type and illumination of signs so as to enhance the aesthetic quality of the street, and to help assure compatibility between neighboring uses; and
 - (6) Require storm drainage provisions in amounts, types, and locations so as to help assure the containment of storm water on the property and in the storm drainage system.
- B. The Commission may not impose restrictions on use or architecture of the structures, except as otherwise noted, providing that the other provisions of this ordinance are complied with.
- C. The City shall consider site plan review applications within 30 days of their filing. The Commission may hold a public hearing in accordance with the procedures for a conditional use permit if City staff determines that the proposed use is of sufficient importance to the community.
- D. Any person aggrieved by the action of the City staff or the Commission regarding a site plan review may appeal the decision to the Council in accordance with Section 6.5.
- E. An approved site plan shall be effective only if the rights granted thereby are executed within six months of its approval, as evidenced by the issuing of a building permit and commencement of construction. All construction must be completed within 18 months of the date of the City approval of the site plan. The City may allow time extensions if determined to be warranted.
- F. Additional conditions that may apply when reviewing development in a CG Zone in regards to Transportation issues:
 - (1) The proposed use shall not impose an undue burden on the public transportation system. For developments that are likely to generate more than 400 average daily motor vehicle trips (ADTs), the applicant shall provide adequate information, such as a traffic impact study or traffic counts, to demonstrate the level of impact to the surrounding road system. The developer shall be required to mitigate impacts attributable to the project.
 - (2) The determination of impact or effect and the scope of the impact study should be coordinated with the provider of the affected transportation facility.
 - (3) Dedication of land for roads, transit facilities, sidewalks, bikeways, paths, or accessways shall be required where the existing transportation system will be impacted by or is inadequate to handle the additional burden caused by the proposed use.

- (4) Improvements such as paving, curbing, installation or contribution to traffic signals, construction of sidewalks, bikeways, accessways, paths, or roads that serve the proposed use where the existing transportation system may be burdened by the proposed use.
- G. Bicycle Parking. The development shall include the number and type of bicycle parking facilities required in the Off-Road Parking and Loading section of this Title. The location and design of bicycle parking facilities shall be indicated on the site plan.
- H. Pedestrian Access and Circulation.
 - (1) Internal pedestrian circulation shall be provided in new commercial, office, and multi-family residential developments through the clustering of buildings, construction of hard surface walkways, landscaping, accessways, or similar techniques.
- I. Commercial Development Standards.
 - (1) New commercial buildings, particularly retail shopping and offices, shall be oriented to the road, near or at the setback line. A main entrance shall be oriented to the road. For lots with more than two front yards, the building(s) shall be oriented to the two busiest roads.
 - (2) Off-road motor vehicle parking for new commercial developments shall be located at the side or behind the building(s).
- J. All site plans (industrial and commercial) shall clearly show how the site's internal pedestrian and bicycle facilities connect with external existing or planned facilities or systems.

6. **Dimensional Standards**

- A. **Downtown Core Area** (Defined as the commercially zoned lands two blocks on either side of Broadway from Jackson Street to "D" Street.)
 - (1) No yard adjacent to a street shall be required except when the front lot line abuts a residential zone, in which case the yard shall be ten feet.
 - (2) No side yard shall be required except when the side lot line abuts a residential zone, in which case the yard shall be ten feet.

- (3) No rear yard shall be required except when the rear lot line abuts a residential zone and there is no alley intervening, in which case the yard shall be 20 feet.
- (4) Where yards are required, a foot shall be added to each yard for each foot by which the height of a building exceeds 45 feet.

B. All Other Areas

- (1) A yard adjacent to all streets of 20 feet shall be required.
- (2) A side yard of 10 feet shall be required.
- (3) A rear yard of 20 feet shall be required.
- (4) One foot shall be added to each yard for each foot by which the height of a building exceeds 45 feet.

C. All Areas

- (1) Only parking areas, landscaping areas, or permitted display or storage areas, are allowed in required yards.
- (2) If a front yard is provided, the first five feet shall be landscaped, and shall not be used for parking, outdoor display, or storage.
- (3) If a side yard is provided the first five feet shall be landscaped, or if desired, a parking area or allowed outdoor display or storage area may be adjacent to the side lot line, providing a screening device is installed that is at least four feet in height.
- (4) If a rear yard is provided, the first five feet shall be landscaped, or if desired, a parking area or allowed outdoor display or storage area may be adjacent to the rear lot, line providing a screening device is provided that is at least four feet in height.
- (5) Where a side or rear yard abuts an alley, it need not be landscaped.

D. No newly created lot or parcel shall be less than 5,000 square feet in size.

E. Height. No building or structure in a CG zone shall exceed 45 feet in height.

- F. Vision Clearance Area. All improvements, uses, and construction in CG zones shall comply with the clear vision requirements of Section 2.0.

7. **Landscaping**

All lot area not occupied by structures, parking, or open storage shall be landscaped as required by the Commission. During the site plan review process, the Commission may allow a portion of a lot to not be landscaped if all of the following conditions exist:

- A. The proposed improvements, with all required parking and yards occupies only a minor portion of the property;
- B. The owner or developer certifies that the unused portion of the property will be utilized within three years in one of the following manners: the balance will be partitioned and sold; the balance will be used for expansion of the existing facility; or the balance will be used for new construction by the owner of the total property;
- C. The unused portion of the property will not be used in any way as part of or supportive of the use on the balance of the property; and
- D. If one of the foregoing conditions is not met within three years of issuing a building permit, the total property shall be improved in accordance with the provisions of this ordinance unless an extension is granted by the Commission. The Commission may grant two extensions of one year each if it is shown that the owner has had good cause not to comply and recertifies that the conditions will be met within the required time period.

8. **Parking**

Uses within the CG zone shall be subject to the off-street parking and loading requirements of Section 4.4.

3.09 LIGHT INDUSTRIAL (IL) ZONE

1. **Purpose**

To provide sites for limited industrial activity in areas close to other types of land-uses, and to provide standards to help assure compatibility with such uses; and to permit only those industrial uses which should not cause undue negative impacts on surrounding uses.

2. **Uses Permitted Outright**

In an IL zone the following uses and their accessory uses are permitted outright:

- A. Night watchman dwelling.
- B. Cabinet, carpenter or wood working shop.
- C. Freight depot.
- D. Laboratory for research or testing, but not including the testing of combustion engines.
- E. Laundry, dry cleaning or dyeing establishment.
- F. Lumber Yards.
- G. Manufacture, repair or storage of articles from the following previously prepared materials: bone, cellophane, cloth, cork, feathers, felt, fiber, fur, glass, hair, horn, leather, paper, plastic, precious or semi-precious stone or metal, shell, textiles, wax, wire or yarn.
- H. Manufacture, repair or storage of ceramic products, musical instruments, novelties, rubber or metal stamps, toys, optical goods, scientific or precision instruments, medical or dental supplies or equipment, small electronic supplies or equipment, business machines, watches or timing devices, luggage, photographic equipment, or small pleasure boats.
- I. Motor vehicle body shop, tire shop, or similar repair service.
- J. Plumbing, heating, electrical, or paint sales, repairs or storage.
- K. Packaging or storage of food and beverages.
- L. Railroad tracks and related facilities.
- M. Utility lines, station or substation.

- N. Warehousing, including mini-storage.
- O. Welding, sheet metal or machine shop.
- P. Wholesale distribution or outlet, including warehousing and storage.
- Q. Machinery or equipment sales, services or storage.

3. **Uses Permitted Conditionally**

In an IL zone, the following uses and their accessory uses are permitted conditionally:

- A. Temporary dwelling unit.
- B. Dwelling units, including mobile homes, and associated improvements, provided that a dwelling unit was an existing use at the time of the adoption of the Reformatted and Revised Zoning Ordinance for the City of Burns, Oregon, on August 27, 1997.
- C. Recycling center

4. **Limitations on Uses**

In an IL zone, the following conditions and limitations shall apply:

- A. A use is prohibited which creates a nuisance because of noise, smoke, odor, dust or gas, or which has been declared a nuisance by statute, by action of the municipal court, or by a court of competent jurisdiction.
- B. Wastes and other materials shall be stored and grounds shall be maintained in a manner that will not attract or aid the propagation of insects or rodents, or otherwise create a health hazard.
- C. There shall be no outside storage of materials, products, or waste unless appropriate security fencing is provided.
- D. Points of access from a public street to properties in a IL zone shall be so located as to minimize traffic congestion and avoid directing traffic onto residential streets.
- E. Building entrances or other openings adjacent to or across the street from a residential (RS, RS/MH, RM) zone shall be prohibited if they cause glare, excessive noise, or otherwise adversely affect land-uses in the residential zone.

5. **Dimensional Standards**

In an IL zone, the following dimensional standards shall apply:

- A. Setback requirements:

- (1) A front yard shall be a minimum of 20 feet measured from the foundation.
- (2) A side yard shall be a minimum of 10 feet measured from the foundation.
- (3) The rear yard shall be a minimum of 25 feet measured from the foundation.

- B. All side or rear lot lines abutting residentially (RS, RS/MH, RM) zoned property shall have a solid fence or hedge at least 6 feet tall.
- C. All required yards adjacent to a street shall be landscaped with no parking within the required yard area.
- D. The minimum lot area shall be 10,000 square feet.
- E. No building shall exceed a height of 45 feet.
- F. Vision clearance areas shall be required in accordance with Section 2.0.

6. **Parking**

Uses within an IL zone shall be subject to the off-street parking and loading requirements of Section 4.4.

7. **Site Plan Review**

- A. In an IL zone a site plan review by the Commission shall be required prior to issuance to any building permit for improvement or construction of permitted uses in said zones. It is not the intention of this regulation to deny a building permit, but rather to assure traffic safety, aesthetic quality, and compatibility of uses.
- B. Additional conditions that may apply when reviewing development in an IL Zone in regards to Transportation issues:
 - (1) The proposed use shall not impose an undue burden on the public transportation system. For developments that are likely to generate more than 400 average daily motor vehicle trips (ADTs), the applicant shall provide adequate information, such as a traffic impact study or traffic counts, to demonstrate the level of impact to the surrounding road system. The developer shall be required to mitigate impacts attributable to the project.
 - (2) The determination of impact or effect and the scope of the impact study should be coordinated with the provider of the affected transportation facility.

- (3) Dedication of land for roads, transit facilities, sidewalks, bikeways, paths, or accessways shall be required where the existing transportation system will be impacted by or is inadequate to handle the additional burden caused by the proposed use.
 - (4) Improvements such as paving, curbing, installation or contribution to traffic signals, construction of sidewalks, bikeways, accessways, paths, or roads that serve the proposed use where the existing transportation system may be burdened by the proposed use.
- C. Bicycle Parking. The development shall include the number and type of bicycle parking facilities required in the Off-Road Parking and Loading section of this Title. The location and design of bicycle parking facilities shall be indicated on the site plan.
- D. Pedestrian Access and Circulation.
- (1) Internal pedestrian circulation shall be provided in new commercial, office, and multi-family residential developments through the clustering of buildings, construction of hard surface walkways, landscaping, accessways, or similar techniques.
- E. Commercial Development Standards.
- (1) New commercial buildings, particularly retail shopping and offices, shall be oriented to the road, near or at the setback line. A main entrance shall be oriented to the road. For lots with more than two front yards, the building(s) shall be oriented to the two busiest roads.
 - (2) Off-road motor vehicle parking for new commercial developments shall be located at the side or behind the building(s).
- F. All site plans (industrial and commercial) shall clearly show how the site's internal pedestrian and bicycle facilities connect with external existing or planned facilities or systems.

3.10 HEAVY INDUSTRIAL (IH) ZONE

1. **Purpose**

To provide sites for a wide range of industrial and related uses which may need various types of access, and which, because of the nature of their operation, may or may not be compatible in close proximity to other land-uses; and to permit normal manufacturing and industrial activity subject only to those regulations necessary to control congestion and pollution which may have an adverse affect on the City's livability or conduct of other uses.

2. **Uses Permitted Outright**

In an IH zone the following uses and their accessory uses are permitted outright:

- A. Night watchman dwelling.
- B. Compounding, packaging or storage of cosmetics, drugs, perfumes, pharmaceuticals, soap or toiletries.
- C. Ice or cold storage plant.
- D. Processing, packaging or storage of food or beverages, including processes involving distillation, fermentation, slaughtering or rendering of fats and oils.
- E. Welding, sheet metal, or machine shop.
- F. Cement or asphalt plant.
- G. Metal Foundry.
- H. Manufacture of furniture, automobiles, and other large bulk items.
- I. Saw mills, lumber mills.

3. **Uses Permitted Conditionally**

In an IH zone the following uses and their accessory uses are permitted when authorized in accordance with the requirements of a conditional use:

- A. Temporary dwelling unit.
- B. Dwelling units, including mobile homes, and associated improvements, provided that a dwelling unit was an existing use at the time of the adoption of the Reformatted and Revised Zoning Ordinance for the City of Burns, Oregon, on August 27, 1997.
- C. Recycling center
- D. Warehousing, including mini-storage

- E. Equine therapy
- F. Automobile salvage or wrecking yard

4. **Limitations on Uses**

In an IH zone the following conditions and limitations shall apply:

- A. A use is prohibited which creates a nuisance because of noise, smoke, odor, dust or gas, or which has been declared a nuisance by statute, by action of the municipal court, or by a court of competent jurisdiction.
- B. Wastes and other materials shall be stored and grounds shall be maintained in a manner that will not attract or aid the propagation of insects or rodents, or otherwise create a health hazard.
- C. There shall be no outside storage of materials, products, or waste unless appropriate security fencing is provided.
- D. Points of access from a public street to properties in an IH zone shall be so located as to minimize traffic congestion and avoid directing traffic onto residential streets.
- E. Building entrances or other openings adjacent to or across the street from a residential (RS, RS/MH, RM) zone shall be prohibited if they cause glare, excessive noise, or otherwise adversely affect land-uses in the residential zone.

5. **Dimensional Standards**

In an IH Zone the following dimensional standards shall apply:

- A. Setback requirements:
 - (1) A front yard shall be a minimum of 20 feet measured from the foundation.
 - (2) A side yard shall be a minimum of 10 feet measured from the foundation.
 - (3) The rear yard shall be a minimum of 25 feet measured from the foundation.
- B. There shall be no minimum lot area for any new lot.
- C. Within 100 feet of a residential (RS, RS/MH, RM) zone, no building shall exceed a height of 45 feet.

- D. Vision clearance areas shall be required in accordance with Section 2.0.
- E. All side or rear lot lines abutting residentially (RS, RS/MH, RM) zoned property shall have a solid fence or hedge at least six feet tall.

6. **Parking**

Uses within an IH zone shall be subject to the off-street parking and loading requirements of Section 4.4.

7. **Site Plan Review**

A. In an IH zone a site plan review by the Commission shall be required prior to issuance to any building permit for improvement or construction of permitted uses in said zones. It is not the intention of this regulation to deny a building permit, but rather to assure traffic safety, aesthetic quality, and compatibility of uses.

B. Additional conditions that may apply when reviewing development in a IH Zone in regards to Transportation issues:

- (1) The proposed use shall not impose an undue burden on the public transportation system. For developments that are likely to generate more than 400 average daily motor vehicle trips (ADTs), the applicant shall provide adequate information, such as a traffic impact study or traffic counts, to demonstrate the level of impact to the surrounding road system. The developer shall be required to mitigate impacts attributable to the project.
- (2) The determination of impact or effect and the scope of the impact study should be coordinated with the provider of the affected transportation facility.
- (3) Dedication of land for roads, transit facilities, sidewalks, bikeways, paths, or accessways shall be required where the existing transportation system will be impacted by or is inadequate to handle the additional burden caused by the proposed use.
- (4) Improvements such as paving, curbing, installation or contribution to traffic signals, construction of sidewalks, bikeways, accessways, paths, or roads that serve the proposed use where the existing transportation system may be burdened by the proposed use.

C. Bicycle Parking. The development shall include the number and type of bicycle parking facilities required in the Off-Road Parking

and Loading section of this Title. The location and design of bicycle parking facilities shall be indicated on the site plan.

D. Pedestrian Access and Circulation.

(1) Internal pedestrian circulation shall be provided in new commercial, office, and multi-family residential developments through the clustering of buildings, construction of hard surface walkways, landscaping, accessways, or similar techniques.

E. Commercial Development Standards.

(1) New commercial buildings, particularly retail shopping and offices, shall be oriented to the road, near or at the setback line. A main entrance shall be oriented to the road. For lots with more than two front yards, the building(s) shall be oriented to the two busiest roads.

(2) Off-road motor vehicle parking for new commercial developments shall be located at the side or behind the building(s).

F. All site plans (industrial and commercial) shall clearly show how the site's internal pedestrian and bicycle facilities connect with external existing or planned facilities or systems.

3.11 OPEN SPACE (OS) ZONE

1. **Purpose**

The purpose of the Open Space (OS) zone is to conserve and protect needed and desirable open spaces, livestock activities, wildlife resources, hazard areas, natural areas, renewable energy resource sites, surface water run-off areas, and cultural areas; to enhance the value to the public of neighboring open space; and to promote orderly urban development.

2. **Permitted Uses**

In an Open Space (OS) zone, the following uses are permitted outright:

- A. Farm uses, as defined by ORS 215.203(2).
- B. Wildlife management practices, as may be recommended by the Oregon Department of Fish & Wildlife.
- C. Cultural resource management practices, as may be conducted by the Burns Paiute Indian Tribe and the U.S. Bureau of Indian Affairs.
- D. Public facilities and services.
- E. Commercial utility facilities for the purpose of generating power or heat for public use by sale.

3. **Dimensional Standards**

Dimensional standards in an Open Space (OS) zone shall be those applicable to the Single-family Residential (RS) zone, except that minimum lot sizes shall be 40 acres.

3.12 PUBLIC FACILITY (PF) OVERLAY ZONE

1. **Purpose**
To provide areas which are designated by overlay zoning for government or public utility activities, and which can be held or developed by public and utility agencies; and to assure that such public facility development occurs in a manner compatible with surrounding uses.
2. **Uses Permitted Outright**
In a PF zone, public facilities and services, as defined in Section 2 (Interpretations), are permitted outright. All other uses permitted in the underlying zone shall continue to be authorized.
3. **Limitations on Uses**
All public facility and service uses in a PF zone shall be subject to the site plan review requirements of Section 3.08(5). No additional limitations shall apply to uses permitted in the underlying zone other than those specifically applicable to said zone.
4. **Dimensional Standards**
In a PF zone, the dimensional standards of a CG zone Section 3.08(6) shall apply for public facility and services uses. The dimensional standards for the underlying zone shall apply to all other uses.
5. **Parking**
In a PF zone, the off-street parking and loading requirements of Section 4.4 shall apply to public facilities and services. The parking requirements of the underlying zone shall apply to all other uses.
6.

<u>Site</u>	<u>Plan</u>	<u>Review</u>
<p>In a PF zone, a site plan review by the City staff or the Commission shall be required prior to issuance of any building permit for improvement, expansion, or construction of permitted or conditionally permitted uses in said zones. This site plan review for uses permitted conditionally shall be conducted as a part of the Conditional Use hearing process by the Commission. It is not the intention of this regulation to deny a building permit, but rather to assure traffic safety, aesthetic quality, and compatibility of uses. Application requirements are given in Article 6.</p>		

3.13 FLOOD HAZARD REGULATIONS

1. **Statement of Purpose**

It is the purpose of this Section 3.13 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:

- A. To protect human life and health
- B. To minimize expenditure of public money and costly flood control projects
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public
- D. To minimize prolonged business interruptions;
- E. To 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. To 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. To ensure that potential buyers are notified that property is in an area of special flood hazard
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

2. **Methods of Reducing Flood Losses**

The City of Burns has over the years recognized the need for improvement and protection for the community from the high water from snow melt that occasionally occurs. Here are some of the preventive measures that have been taken:

- (1) Dike construction along west of Silvies River, April 1938, (W.P.A.) Work Projects Administrator Project.
- (2) Maintenance to raise the dike Silvies River, June 1942, United States Dept. of the Interior, Grazing Service.
- (3) Preliminary examination of Silvies River and tributaries by War Department, Office of the Chief of Engineers, December 1945.

- (4) Silvies River Flood Control Project, 1952, by Lankford Brothers, Nyssa, Oregon. Engineered dike improvements/levee along west side of Silvies River.
- (5) Drainage Study for City of Burns, December 1957 by Clark & Groff Engineers, Salem, Oregon.
- (6) Burns-Hines Flood Plain Study, Harney County, Oregon, December 1968, State Water Resources Board, Salem, OR.
- (7) Operation and Maintenance Plan for slide gates, North Burns drainage, burns, by Touragneau NorWes, Inc. Beaverton, Oregon and Waterman Industries, Inc. Exeter, CA.
- (8) North Burns drainage Ditch Project, Foley Drive to Silvies River, City of Burns, August 1986. Prepared by: M.A. Palmer & Sons, Engineering and Surveying, Burns, OR.
- (9) City of Burns, Emergency Operations Plan, September 2014, especially section "1A 4 Flood: which mentions: storm drains, bridge viaducts, main arterial routes, public rights-of-way, and dams. These involve existing infrastructure.
- (10) Levee System and Storm Water Structures Operations and Maintenance Manual, 2015.
- (11) ODOT installed 4 36" culverts in April 2011 under highway 20/395 to help divert water away from town.

3. **Definitions**

Unless specifically defined below, words or phrases used in Section 3.13 shall be interpreted so as to give them the meaning they have in common usage and to give this Section 3.13 its most reasonable application.

"**APPEAL**" means a request for a review of the interpretation of any provision of this ordinance or a request for a variance.

"**AREA OF SHALLOW FLOODING**" means a designated AO, or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

"**AREA OF SPECIAL FLOOD HAZARD**" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V.

"BASE FLOOD" means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "100-year flood." Designation on maps always includes the letters A or V.

"BASEMENT" means any area of the building having its floor subgrade (below ground level) on all sides.

"BREAKAWAY WALL" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

"CRITICAL FACILITY" means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

"DEVELOPMENT" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.

"ELEVATED BUILDING" means for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

"FLOOD" OR "FLOODING" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters and/or
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

"FLOOD INSURANCE RATE MAP (FIRM)" means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"FLOOD INSURANCE STUDY" means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

"FLOODWAY" means 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.

"LOWEST FLOOR" means 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 Section 3.13 found at Section 13.3(7)(B)(1)(ii).

"MANUFACTURED DWELLING" means 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 attached to the required utilities. The term "manufactured dwelling" does not include a "recreational vehicle."

"MANUFACTURED DWELLING PARK OR SUBDIVISION" means a parcel (or contiguous parcels) of land divided into two or more manufactured dwelling lots for rent or sale.

"NEW CONSTRUCTION" means structures for which the "start of construction" commenced on or after the effective date of Ordinance No.15-833 (the adopting ordinance).

"RECREATIONAL VEHICLE" means a vehicle, which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck; and
- (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"START OF CONSTRUCTION" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of 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 foundations or the erection of temporary forms; nor does it include the installation of the property or 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.

"STRUCTURE" means a walled and roofed building including a gas or liquid storage tank that is principally above ground.

"SUBSTANTIAL DAMAGE" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"SUBSTANTIAL IMPROVEMENT" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

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

The term does not, however, include either:

- (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
- (b) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"VARIANCE" means a grant of relief from the requirements of this Section 3.13, which permits construction in a manner that would otherwise be prohibited by this Section 3.13.

"WATER DEPENDENT" means a structure for commerce or industry, which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

4. General Provisions

- A. Lands to which this Section 3.13 applies

This Section 3.13 shall apply to all areas of special flood hazards within the jurisdiction of the City of Burns.

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 the City of Burns," dated November 3, 1989, and as amended, with accompanying Flood Insurance Maps, as amended, are hereby adopted by reference and declared to be a part of this Section 3.13. The Flood Insurance Study is on file at Burns City Hall. The best available information for flood hazard area identification as outlined in Section 3.13(6)(C)(2) shall be the basis for regulation until a new FIRM is issued which incorporates the data utilized under Section 3.13(6)(C)(2).

C. Abrogation and Severability

This Section 3.13 is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Section 3.13 and another ordinance, code section, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

D. Interpretation

In the interpretation and application of this Section 3.13, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and,
- (3) Deemed neither to limit or repeal any other powers granted under State statutes.

5. Warning and Disclaimer of Liability

The degree of flood protection required by this Section 3.13 is considered reasonable for regulatory purposes and is based on scientific and engineering considerations not historic local data. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Section 3.13 does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Section 3.13 shall not create liability on the part of the City, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this Section 3.13 or any administrative decision lawfully made hereunder.

6. Administration

A. Establishment of Development Permit

(1) Development Permit Required

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 3.13(4). The permit shall be for all structures including manufactured dwellings, as set forth in the "DEFINITIONS," and for all development including fill and other activities, also as set forth in the "DEFINITIONS.

(2) Application for Development Permit

Application for a development permit shall be made on forms furnished by the City and may include but not be limited to plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- (i) Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
- (ii) Elevation in relation to mean sea level of floodproofing any structure;
- (iii) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 3.13(8)(B)(2); and
- (iv) Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

B. Designation of the Local Administrator

The Local Administrator (as used herein the local administrator shall refer to the City Manager or his designee) is hereby appointed to administer and implement this Section 3.13 by granting or denying development permit applications in accordance with its provisions.

C. Duties and Responsibilities of the Local Administrator

Duties of the Local Administrator shall include, but not be limited to:

(1) Permit Review

- (i) Review all development permits to determine that the permit requirements of this Section 3.13 have been satisfied.
- (ii) 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.
- (iii) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 3.13(8)(D) are met.

(2) Use of Other Base Flood Data

When base flood elevation data has not been provided in accordance with Section 3.13(4)(B), BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, the (local administrator) shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer Sections 3.13(8)(B), SPECIFIC STANDARDS, and 8(D) FLOODWAYS.

(3) Information to be Obtained and Maintained

- (i) Where base flood elevation data is provided through the Flood insurance Study, FIRM, or required as in Section 3.13(6)(C)(2), obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- (ii) For all new or substantially improved floodproofed structures where base flood elevation data is provided through the Flood Insurance Study, FIRM, or required as in Section 3.13(6)(C)(2):
 - 1. Verify and record the actual elevation (in relation to mean sea level), and
 - 2. Maintain the floodproofing certifications required in Section 3.13(6)(A)(2)(iii).

3. Maintain for public inspection all records pertaining to the provisions of this Section 3.13.

D. Alteration of Watercourses

- (1) Notify adjacent communities and the Department of Land Conservation and Development and other appropriate state and federal agencies prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
- (2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

E. Requirement to Submit New Technical Data

- (1) Notify FEMA within six months of project completion. When an applicant had obtained a conditional letter of Map Revision (CLOMR) from FEMA, or when development altered a watercourse, modified floodplain boundaries, or modified Base Flood Elevations. This notification shall be provided as a letter of Map Revision (LOMR).
- (2) The property owner shall be responsible for preparing technical data to support the LOMR application and paying any processing or application fees to FEMA.
- (3) The Floodplain Administrator shall be under no obligation to sign the Community Acknowledgement Form, which is part of the CLOMR/LOMR application, until the applicant demonstrates that the project will or has met the requirements of this code and all applicable State and Federal laws.

F. Interpretation of FIRM Boundaries

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). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 3.13(6).

7. Variance Procedure

A. Appeal Board

- (1) The City Planning Commission as established by the City shall hear and decide appeals and requests for variances from the requirements of this Section 3.13.
- (2) The Planning Commission shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the in the enforcement or administration of this Section 3.13.
- (3) Those aggrieved by the decision of the Planning Commission, or any taxpayer, may appeal such decision to the City Council, as provided in the Zoning Ordinance.
- (4) In passing upon such applications, the Planning Commission shall consider all technical evaluations, all relevant factors, standards specified in other subsections of this Section 3.13, and:
 - (i) The danger that materials may float onto other lands and injure others;
 - (ii) The danger to life and property due to flooding or erosion damage;
 - (iii) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (iv) The importance of the services provided by the proposed facility to the community;
 - (v) The necessity to the facility of a waterfront location, where applicable;
 - (vi) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (vii) The compatibility of the proposed use with existing and anticipated development;

- (viii) The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
 - (ix) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (x) The expected heights, velocity, and duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, of floods expected at the site; and,
 - (xi) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, electrical, and water systems, and streets and bridges.
- (5) Upon consideration of the factors of Section 3.13(7)(A)(4) and the purposes of this Section 3.13, the Planning Commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Section 3.13.
- (6) The Local Administrator shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

B. Conditions for Variances

- (1) Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (I-xi) in Section 3.13(7)(A)(4) have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.
- (2) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section.

- (3) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
- (4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Variances shall only be issued upon:
 - (i) A showing of good and sufficient cause;
 - (ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant;
 - (iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (6) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece or property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
- (7) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except Section 13.3(7)(B)(1), and otherwise complies with Sections 13.3(8)(A)(1) through (3) of the GENERAL STANDARDS.
- (8) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

8. Provisions for Flood Hazard Reduction

A. General Standards

In all areas of special flood hazards, the following standards are required:

(1) Anchoring

- (i) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- (ii) All manufactured dwellings must likewise be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, 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

- (i) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (ii) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (iii) Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(3) Utilities

- (i) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (ii) 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; and,

- (iii) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding consistent with the Oregon Department of Environmental Quality.

(4) Subdivision Proposals

- (i) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (ii) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- (iii) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
- (iv) 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 5 acres (whichever is less).

(5) Review of Building Permits

Where elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative source (Section 3.13(6)(C)(2)), 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 use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

(6) AH Zone Drainage

Adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures.

B. Specific Standards

In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 3.13(4)(B), BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

or Section 3.13(6)(C)(2), Use of Other Base Flood Data, the following provisions are required:

(1) Residential Construction

- (i) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to a minimum one foot above the base flood elevation.
- (ii) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - (A) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - (B) The bottom of all openings shall be no higher than one foot above grade.
 - (C) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(2) Nonresidential Construction

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated at or above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

- (i) Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
- (ii) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

- (iii) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official;
- (iv) Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in Section 3.13(8)(B)(1)(ii);
- (v) Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building floodproofed to the base flood level will be rated as one foot below).

(3) Manufactured Dwellings

- (i) Manufactured dwellings supported on solid foundation walls shall be constructed with flood openings that comply with Section 3.13(8)(A)(1)(ii) above:
- (ii) The bottom of the longitudinal chassis frame beam in A zones, shall be at or above BFE;
- (iii) The manufactured dwelling shall be anchored to prevent flotation, collapse, and lateral movement during the base flood. Anchoring methods may include, but are not limited to, 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), and
- (iv) Electrical crossover connections shall be a minimum Of 12 inches above BFE.
 - (iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood;

(4) Recreational Vehicles

Recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:

- (i) Be on the site for fewer than 180 consecutive days,
- (ii) Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
- (iii) Meet the requirements of Section 3.13(8)(B)(3) above and the elevation and anchoring requirements for manufactured dwellings
- (iv) If a recreational vehicle is stored on a property, and it is not used as a dwelling, this section does not apply.

C. Before Regulatory Floodway

In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

D. Floodways

Located within areas of special flood hazard are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- (1) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional civil engineer is provided demonstrating through hydrologic analyses performed in accordance with standard engineering practice that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) If Section 3.13(8)(D)(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 13.3(8), PROVISIONS FOR FLOODHAZARD REDUCTION.

E. Standards for Shallow Flooding Areas (AO ZONES)

Shallow flooding areas appear on FIRMs as AO zones with depth designations. The base flood depths in these zones range from 1 to 3 feet above ground where a clearly defined channel does not exist,

or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In these areas, the following provisions apply:

- (1) New construction and substantial improvements of residential structures and manufactured homes within AO zones shall have the lowest floor (including basement) elevated above the highest grade adjacent to the building, one foot or more above the depth number specified on the FIRM (at least two feet if no depth number is specified).
- (2) New construction and substantial improvements of nonresidential structures within AO zones shall either:
 - (i) Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, one foot or more above the depth number specified on the FIRM (at least two feet if no depth number is specified); or
 - (ii) Together with attendant utility and sanitary facilities, be completely flood proofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as in section 3.13 (8)(B)(2)(iii).
- (3) Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.
- (4) Recreational vehicles placed on sites within AO Zones on the community's FIRM either:
 - (i) Be on the site for fewer than 180 consecutive days,
 - (ii) Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
 - (iii) Meet the requirements of Section 3.13(8)(E) and the elevation and anchoring requirements for manufactured dwellings.

3.14 STEEP SLOPE REGULATIONS

1. Building permit applications for structures to be located on slopes of 25% or greater shall include certification from a registered professional engineer or architect that said structure is to be designed and constructed in a manner, which does not materially jeopardize the physical integrity of the slope, or the safety of the structure or surrounding properties.
2. Land development applications, which include areas of slopes greater than 25% shall delineate such areas on tentative plan maps, and configure lots in such a way as to provide building sites on slopes of less than 25% to the greatest extent practical.
3. Land development applications which include slopes of 25% or greater shall include certification by a registered professional engineer that required public facilities and services for the development can be designed and constructed over or adjacent to such slopes, without materially jeopardizing the public safety and continued integrity of such facilities and services.

3.15 HISTORIC LANDMARK REGULATIONS

1. **Purpose**

The purpose of these regulations are: to provide interim guidelines for historic resource protection during completion of the final historic inventory; to safeguard the heritage of the City by providing for the protection of landmarks which represent significant elements of its history; to foster public appreciation of, and civic pride in, the beauty of the City and the accomplishments of its past; to strengthen the economy of the City by protecting and enhancing the City's attractions to residents and visitors; to stabilize and improve property values within the City; and to promote the private and public use of historic resources for the education, prosperity, and general welfare of the people.

2. **Commission Duties**

The Commission shall have the following duties: maintain specific guidelines for the designation of historical landmarks; maintain an inventory of landmarks within the City; review and comment upon the conflicts of land-use, housing, municipal improvements, and other programs undertaken by any government agency as they relate to the historic resources of the City; and recommend to the Council new or amended landmark designations.

3. **Designation**

Criteria

An improvement may be designated as an historical landmark by the Council if it meets at least one of the following criteria: it exemplifies or reflects special elements of the City's cultural, social, economic, aesthetic, or architectural history; or it is identified with persons or events significant in local, state, or national history; or it embodies distinctive characteristics of a style, type, period, or method of construction, or is a valuable example of the use of indigenous materials or craftsmanship.

4. **Designation Procedures**

Historic landmarks may be designated by the Council, after Commission recommendation, in the following manner:

A. Any person may request the designation of a landmark by submitting an application for such designation to the Commission. The Commission or Council may also initiate such proceedings on their own motion.

B. The Commission shall evaluate the proposed designation and make a preliminary determination based on such documentation as it may require, as to the appropriateness of the proposed site or structure for landmark status. If the Commission determines that the application merits consideration, it shall schedule a public hearing within 30 days.

C. The Commission's decision to schedule or not to schedule a public hearing shall be in writing and shall be filed with the City Manager.

Notice of a decision not to schedule a public hearing shall be given by mail to the applicant. No building, alteration, demolition, or removal permits relative to a proposed landmark shall be issued while the public hearing or any appeal related thereto is pending.

- D. Notice of the date, place, time and purpose of the hearing shall be given by mail to the applicants, owners, and occupants of the improvement at least twenty (20) days prior to the date of public hearing, and shall be advertised once in a newspaper of general circulation at least ten (10) days prior to the hearing.
- E. At the conclusion of the public hearing, but in no event more than 30 days from the date set for the initial public hearing, the Commission shall recommend to the Council approval, in whole or in part, or disapproval of the application. Such recommendation shall be in writing.
- F. The Council, within 30 days of receipt of the recommendations from the Commission, shall, by ordinance amendments approve the application in whole or in part, or shall by motion disapprove it in its entirety.

5. **Demolition and Alteration Procedures**

Upon receiving an application for demolition or major exterior alteration involving an historic area, site, structure or object, as designated by the Comprehensive Plan, the Planning Commission in a public meeting shall review the application to determine its conformance with the Historic Preservation factors of this ordinance.

Demolition Procedure - If it is determined the Land Use action will result in the demolition or extensive exterior modification of any historical building, the Planning Commission shall review the application taking into account the following.

- A. State of repair of the building.
- B. The reasonableness of the cost of restoration or repair.
- C. The purpose of preserving such designated historical building and sites.
- D. The character of the neighborhood.
- E. All other factors the Planning Commission feels are appropriate.

Following the Planning Commission review, the Planning Commission may approve or deny the permit for Land Use action or delay action for sixty (60) days to allow cognizant agencies to explore alternatives. If no suitable alternatives are available, the permit may be issued. The Planning Commission upon finding significant progress is being made

toward preserving the structure, may extend the delay for an additional thirty (30) days.

Major Exterior Alteration Procedure - Exterior alterations shall be in accordance with the following:

- A. Upon receipt of an application for a major exterior alteration of an historic structure listed in the Comprehensive Plan, the Planning Commission, in a public meeting, shall review the proposed alteration to determine if the resource's historical significance will be altered. This review shall be based on the criteria for determining historic significance contained in the Comprehensive Plan.
- B. Major exterior alterations as defined by this section include any change or alteration of a facade, texture, design, materials, fixtures, or other treatment.
- C. All applications for major exterior alteration shall be accomplished by plans and specifications of the proposed alteration. The Planning Commission may request additional sketches and other information deemed necessary to make an informed decision.
- D. In order to approve the application, the Planning Commission shall find the alteration harmonious and compatible with the resource with respect to style, scale, texture, and construction materials and/or find the alteration will enhance the historical value of the resource. Conditions may be attached to the approval if the Planning Commission deems it necessary to achieve the above objectives. The Planning Commission shall approve the request if the proposal would reduce the resource's value or historic significance.

Conditions attached to a permit for major exterior alteration of a historic structure shall be limited to permit requirements addressing architectural design, surface texture, materials, fixtures, or other facade or surface treatments which are deemed inconsistent with the integrity of the historic values being preserved.

The Planning Commission shall not make any recommendation or requirement except for the purpose of preventing developments out of character with the historic aspects of the resources.

- E. Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature which does not involve a change in design, or the construction, reconstruction, or alteration of such feature which the building inspectors certify is required by the public safety because of unsafe conditions.

6. **Ordinary Maintenance and Repair**

Nothing in this ordinance shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in or on any historical landmark that does not involve a change in design, material, or external appearance thereof; nor does this ordinance prevent the construction, reconstruction, alteration, restoration, demolition, or removal of any such feature when such action is required for the public safety due to an unsafe or dangerous condition.

7. **Historic Landmark Designation**

The Historic Landmark designation of a property may be removed from the City's official listing at the request of the property owners. This consideration can only be done during an update of the City's Comprehensive Plan.

3.16 SILVIES RIVER NATURAL AREA

Within the Silvies River floodway, as designated in Section 7, the Commission or Council shall not take final action on any zone change, conditional use permit, land development, or annexation, unless and until written or oral testimony from state or federal wildlife officials has been requested and entered into the record, as to the probable impact to the Silvies River natural area from the proposed land-use action. Lack of response from said officials within ten (10) days from the date of notice shall be construed as meaning that no significant adverse impacts will occur to the natural area from said proposal.

3.17 LIVESTOCK ACTIVITIES

1. PURPOSE

The City of Burns has attempted to accommodate livestock within the corporate city limits since the early 1960s. The City's Comprehensive Plan policies recognize the need to allow livestock within certain areas of the City. However, the Comprehensive Plan does state "..... the City shall consider livestock lands to be urbanizable lands, when demonstrated urban need is shown for such lands." The intent is to allow the keeping of livestock until such time as the land is needed for urban land uses. Over time, the keeping of livestock in the City will be diminished. Therefore, beginning on January 1, 1998, a new set of rules will be in place concerning keeping of livestock in the City of Burns. It is the intent of the City that this new process be as fair and equitable to all property owners in the City, including those who currently have livestock, and those who are living next to properties with livestock located there.

2. LIVESTOCK PERMITS REQUIRED CITY WIDE

- (a)** Beginning on January 1, 1998 livestock permits shall be required for all livestock kept on properties 2.5 acres or smaller unless identified by the Comprehensive Plan as unbuildable due to natural hazards.
- (b)** Parcels 2.5 acres or larger, as shown by the Harney County Assessor's Office, shall not require livestock permits.
- (c)** Notwithstanding subsections (A) or (B) above, any property that previously required a livestock permit shall continue to require a livestock permit regardless of parcel size.
- (d)** No new livestock permits shall be issued for large animals except lots or parcels resulting from the subdivision or partitioning of lands not previously subject to livestock permitting. New livestock permits may be issued for poultry/fowl in residential zones and the Open Space (OS) Zone.
- (e)** A livestock permit may allow for up to one livestock unit per .5 acres. A livestock unit shall be one large animal or 5 poultry/fowl. Acreages shall be rounded down for purposes of determining the maximum number of livestock units. For example, a 2.5 acre property with four large animals could have 5 poultry/fowl for a total of 5 livestock units, but a 1.1 acre property with two large animals could not have any poultry/fowl as it already meets the maximum number of livestock units. Properties not subject to livestock permitting are not restricted in the number of livestock units that may be kept on the property.

- (f) The Council may, by resolution, suspend the provisions of this Section 3.17 during the time of the Harney County Fair and Rodeo.

3. **APPLICATION PROCESS**

- A. For each year, commencing with the year 1998, with respect to each parcel subject to permitting requirements, the owner thereof shall, not later than December 15 of the preceding year, file with the City Manager or designee an application for a livestock permit.
- B. Each such application shall be made upon forms furnished by the City; shall describe with reasonable certainty the lands to which the application refers; shall describe the specie or species of animals or livestock proposed to be kept thereon; shall contain the name or names and addresses of the owners of record of such land; and shall be submitted with an annual permit fee as set forth by City Council Resolution.
- C. Commencing with the year 1997, not later than December 1 of each year, the City Manager or designee shall mail to each holder of any such permit a notice informing such permit holder that said permit shall expire on December 31 of that year, and that the right to keep livestock on the lands covered by said permit shall become void, should application for a permit for the succeeding year not be filed by December 31.
- D. If the City Manager or designee finds the land to which any such application refers is eligible for use in the keeping of such animals or livestock thereon under this section, and that such application meets the requirements of this section, the City Manager or designee shall issue the permit. The property owner for each such permit shall furnish such statements or other evidence as the City Manager or designee may require in determining whether the land to which such application refers is eligible for the keeping of livestock thereon under this section.
- E. Each permit issued pursuant to this section shall be issued to and in the name of the property owner; shall describe with reasonable certainty the land to which it is limited; shall describe the specie or species of livestock to which the permit is limited; shall bear the date of expiration of such permit; shall be appurtenant to and run with the land therein described, and may not be transferred to another parcel of land.
- F. If a livestock permit application is denied by the City Manager, the owner may appeal the denial to the City Council following the procedure set forth in Sections 6.4 and 6.5 of this ordinance.

- G. With respect to any parcel of land for which a permit has been issued pursuant to this section, failure to apply for a permit covering such land for the year following expiration of the existing permit therefore, shall automatically render such land ineligible for a livestock permit for large animals.

4. **REQUIREMENTS FOR KEEPING LIVESTOCK**

- A. No person keeping livestock may treat or maintain the livestock in violation of any federal, state, or local law.
- B. The parcel of land occupied by any livestock shall be kept in a reasonably clean condition, as determined by the City Manager or designee, or any appropriate state official.
- C. Large animals shall be housed within pens, corrals, sheds or wire enclosures. Poultry/fowl shall be housed within pens or coops. If livestock are permitted to move beyond their housing, such area(s) shall be enclosed with four wire, woven wire, or board fencing with the posts being not further than 16 feet apart. Barbed wire is not permitted within the City limits. All enclosures and fencing shall be designed as to prevent livestock from roaming at large and be constructed and maintained in a workmanlike manner. All gates shall be kept locked when not in use.
- D. Buildings to be used in conjunction with livestock shall meet the applicable setbacks for the zone in which the property is located.
- E. Landlords shall ensure that their tenants comply with the terms of this Section 3.17 and shall not allow any violation of this Section 3.17 to persist. Following notice to the landlord at the address of record with the Harney County Assessor's Office, landlords shall be deemed responsible for continuing violations.
- F. Any livestock kept within the City without the required permits shall be in violation of this ordinance, shall constitute a nuisance, and shall be immediately removed by the owner upon notice from the City. If the animals are not timely removed, the City may remove such animals and assess the costs to the property owner in the manner prescribed for abating nuisances.
- G. Should any complaint be presented to the Council charging any person with violating any provision of this Section 3.17, the Council, after having given such person reasonable notice and opportunity to be heard, may cancel or suspend such permit, may impose fines, and may, by resolution, declare such person permanently ineligible for keeping livestock within the City limits.

5. SUBDIVISIONS AND PARTITIONS

- A. Any partition or subdivision of lands holding a required livestock permit shall render the livestock permit(s) void upon the filing of the final plat.

- B. Properties larger than 2.5 acres that are not required to have livestock permits may be partitioned or subdivided and, if the resulting lots or parcels are subject to livestock permitting, the owner may be issued livestock permits by the City Council upon an affirmative recommendation by the Planning Commission during the partition or subdivision review. The property owner shall make the request for livestock permits as part of its partition or subdivision application.

3.18 BUSINESS PARK ZONE

PURPOSE

To provide areas for the establishment of light manufacturing and warehousing uses in a park-like setting, with flexibility for siting of certain commercial/office uses where appropriate. In general, commercial and professional office uses (if any) should be sited in portions of the zone with good street visibility, with manufacturing and warehousing uses located on less visible sites. The Business Park (BP) Zone is more restrictive than conventional industrial or commercial zones in order to provide buildings that have architectural excellence, grounds that have an abundance of landscaping and land uses that are non-polluting. The Zone should be established only on large tracts of land.

2. USES PERMITTED OUTRIGHT

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

- A. Accessory Uses – Food or drink service providers or personal service providers that are built as an integral part of the main use.
- B. Building maintenance Services – Janitorial, landscape maintenance, or window cleaning services.
- C. Business Equipment Sales and Services – Office equipment and supply firms, small business machine shops or hotel equipment and supply firms.
- D. Business Support Services – Secretarial services, telephone answering services, or blueprint services.
- E. Commercial Administrative and Professional Services – Administrative offices, law offices, architectural, engineering, surveying, or consulting firms.
- F. Communications Services – Television studios, radio stations, telecommunication service centers or telegraph service offices.
- G. Custom Manufacturing – Such as, but not limited to Ceramic studios, candle-making shops or custom jewelry manufacture.
- H. Essential Services – Streets, roads, alleys, public right-of-way, pipelines, power lines, distribution feeders and poles.
- I. Financial, Insurance and Real Estate Services – Banks, insurance agencies, real estate appraisal, or real estate firms.

- J. General Industrial – Manufacturing, compounding, processing, assembling, packaging, treatment or fabrication of materials and property, cabinet shops, textiles and metal fabrication, provided such uses comply with the performance standards of this section.
- K. Laundry Services – Laundry agencies, diaper services or linen supply services.
- L. Medical Services – Dental laboratories or health maintenance organizations.
- M. Personal Services – Photography studios, driving schools, barber shops, hair salons, or reducing salons.
- N. Public Research Area – Governmental, educational, public or non-profit operated buildings or land dedicated to pure or applied scientific discovery in fields of agriculture, wildlife management, forestry, geology, archaeology, ecology, astronomy.
- O. Research Services – Electronics research laboratories, space research and development firms, soil and material testing labs, or pharmaceutical research labs.
- P. Transportation Services – Taxi services and bus depots.
- Q. Wholesaling, Storage and Distribution: Light – Limited to wholesale distributors, storage warehouses, moving and storage firms, excludes mini-warehouses.

3. **USES PERMITTED CONDITIONALLY**

In a BP Zone, the following uses and their accessory uses are permitted conditionally:

- A. Cultural Exhibits and Library Services – Limited to non-profit museum-like preservation and exhibition of works of art.
- B. Eating and Drinking Establishments – Restaurants, short order eating places, bars or micro-brewery.

- C. Extensive Impact Services and Utilities – Limited to public safety buildings, substations, and electrical generation facilities.
- D. Group Care Residential – Limited to day nursery.
- E. Participant Sports and Recreation – Bowling Alleys, arcades, youth centers, martial art studios, dance studios, health clubs, fitness centers, gymnasiums or billiard parlors within enclosed buildings; and driving ranges, miniature golf courses, or hunting and fishing camps or ranges in open facilities.
- F. Postal Services – Mailing services excluding major processing.
- G. Spectator Sports and Entertainment – Small theaters, meeting halls, large exhibition halls, service club and membership organizations, social and fraternal orders, or sports stadiums, excludes extensive impact use types.
- H. Other uses not listed above provided the planning commission finds that such use complies with the purpose of the zone and the conditional use permit criteria. In such cases, a recommendation shall be sought from the Business Park Owner’s Association, should one exist.

4. LIMITATIONS ON USES

In a BP Zone, the following conditions and limitations shall apply:

- A. A use is prohibited which creates a nuisance because of noise, smoke, odor, dust or gas, or which has been declared a nuisance by statute, by action of the municipal court, or by a court of competent jurisdiction.
- B. Air Pollution: There shall be no emission of air pollutants unless an air discharge permit is issued by the Oregon Department of Environmental Quality.
- C. Incineration: There shall be no incineration of waste material allowed.
- D. Noise: In no event shall the peak intensity of sound exceed 85 dBA between 7:00 a.m. and 10:00 p.m. and 55dBA between 10:00 p.m. and 7:00 a.m.
- E. Vibration: There shall be no activity on any site, which causes ground vibration which is perceptible, without instruments, at the boundary line of the site.
- F. manner that will not attract or aid the propagation of insects or rodents, or otherwise create a health hazard.

- G. Wastes: There shall be no wastes maintained on a site that generates odorous, unsightly or unsanitary effects beyond the site. Sewage shall be pre-treated if required by the city sewer code. Waste shall be discharged onto the ground or into a waterway. Adequate waste disposal facilities and services shall be provided prior to site occupancy.
- H. Lighting: Light poles shall not exceed a height of twenty-five feet (25'). Cut-off fixtures shall be used. Average horizontal illumination levels on the ground and average illumination levels on a vertical surface shall not exceed 1.5 foot candles as demonstrated by a photometric report.
- I. Building Design: Architectural design standards within the Business Park Covenants shall be met or exceeded.
- J. There shall be no outside storage of materials, products, or waste unless appropriate security fencing is provided.
- K. Landscaping: In addition to complying with the landscaping provisions of this code, site landscaping shall follow the theme established in the common areas of the business park. Natural vegetation shall be maintained in wetland areas.
- L. Points of access from a public street to properties in a BP Zone shall be so located as to minimize traffic congestion and avoid directing traffic onto residential streets.
- M. Building entrances or other openings adjacent to or across the street from a residential (RS, RS/MH, RM) zone shall be prohibited if they cause glare, excessive noise, or otherwise adversely affect land-uses in the residential zone.
- N. Storm Water: Storm water discharge shall be dealt with in compliance with a Storm Water Management Plan adopted for the entire Business Park.

5. **DIMENSIONAL STANDARDS**

In a BP Zone, the following dimensional standards shall apply:

- A. Setback requirements:
 - (1) A front yard shall be a minimum of 20 feet measured from the foundation to the front property line.
 - (2) A side yard shall be a minimum of 10 feet measured from the foundation to the side property line.
 - (3) The rear yard shall be a minimum of 25 feet measured from the foundation to the rear property line.

- B. All side or rear lot lines abutting residentially (RS, RS/MH, RM) zoned property shall have a solid fence or hedge at least 6 feet tall.
- C. All required yards adjacent to a street shall be landscaped with no parking within the required yard area.
- D. The minimum lot area shall be 10,000 square feet.
- E. No building shall exceed a height of 45 feet.
- F. Vision clearance areas shall be required in accordance with section 2.0.

6. **PARKING**

Uses within a BP zone shall be subject to the off-street parking and loading requirements of Section 4.4.

7. **SITE PLAN REVIEW**

- A. In a BP Zone a site plan review by the Commission shall be required prior to issuance of any building permit for improvement or construction of permitted uses in said zones. It is not the intention of this regulation to deny a building permit, but rather to assure traffic safety, aesthetic quality, and compatibility of uses.
- B. Additional conditions that may apply when reviewing development in a BP Zone in regards to transportation issues:
 - (1) The proposed use shall not impose an undue burden on the public transportation system. For developments that are likely to generate more than 400 average daily motor vehicle trips (ADTs), the applicant shall provide adequate information, such as a traffic impact study or traffic counts, to demonstrate the level of impact to the surrounding road system. The developer shall be required to mitigate impacts attributable to the project.
 - (2) The determination of impact or effect and the scope of the impact study should be coordinated with the provider of the affected transportation facility.
 - (3) Dedication of land for roads, transit facilities, sidewalks, bikeways, paths, or accessways shall be required where the existing transportation system will be impacted by or is inadequate to handle the additional burden caused by the proposed use.
 - (4) Improvements such as paving, curbing, installation or contribution to traffic signals, construction of sidewalks, bikeways, accessways, paths, or roads that serve the proposed use where the existing transportation system may be burdened by the proposed use.

- C. **Bicycle Parking:** The development shall include the number and type of bicycle parking facilities required in the Off-Road Parking and Loading section of this Title. The location and design of bicycle parking facilities shall be indicated on the site plan.

- D. **Pedestrian Access and Circulation.**
 - (1) Internal pedestrian circulation shall be provided in new commercial, office and multi-family residential developments through the clustering of buildings, construction of hard surface walkways, landscaping, accessways, or similar techniques.

- E. **Commercial Development Standards**
 - (1) New commercial buildings, particularly retail shopping and offices, shall be oriented to the road, near or at the setback line. A main entrance shall be oriented to the road. For lots with more than two front yards, the building(s) shall be oriented to the two busiest roads.

 - (2) Off-road motor vehicle parking for new commercial developments shall be located at the side or behind the building(s).

- F. All site plans (industrial and commercial) shall clearly show how the site's internal pedestrian and bicycle facilities connect with external existing or planned facilities or systems.

3.19 INDUSTRIAL / ENERGY DEVELOPMENT (I/ED) ZONE

1. **Purpose**

To provide sites for industrial activity, including low and non-polluting alternative energy facilities, in areas close to other types of land-uses, and to provide standards to help assure compatibility with such uses; and to permit only those industrial uses which should not cause undue negative impacts on surrounding uses.

2. **Uses Permitted Outright**

In an I/ED zone the following uses and their accessory uses are permitted outright, subject to a building permit and site plan review:

- A. Night watchman hovel.
- B. Cabinet, carpenter or wood working shop.
- C. Freight depot.
- D. Laboratory for research or testing, including projects related to green energy production, but not including the testing of combustion engines.
- E. Manufacture, repair or storage of articles from the following previously prepared materials: bone, cellophane, cloth, cork, feathers, felt, fiber, fur, glass, hair, horn, leather, paper, plastic, precious or semi-precious stone or metal, shell, textiles, wax, wire or yarn; and articles derived from or related to the production of green energy.
- F. Manufacture, repair or storage of ceramic products, musical instruments, novelties, rubber or metal stamps, toys, optical goods, scientific or precision instruments, medical or dental supplies or equipment, small electronic supplies or equipment, business machines, watches or timing devices, luggage, photographic equipment, or small pleasure boats.
- G. Motor vehicle body shop, tire shop, or similar repair service; including the repair and painting of auto body in an approved paint booth.
- H. Plumbing, heating, electrical, or paint wholesale sales, repairs or storage.
- I. Packaging or storage of food and beverages.
- J. Utility lines, station or substation, or communication facilities

- J. Welding, sheet metal or machine shop.
- L. Wholesale distribution or outlet.
- M. Machinery or equipment sales, services or storage.

3. **Uses Permitted Conditionally**

In an I/ED zone, the following uses and their accessory uses are permitted conditionally:

- A. Temporary dwelling unit related to a permitted industrial or energy development use.
- B. Energy development and generation activities related to low and non-polluting alternative energy sources, such as solar, wind and biofuels production, as well services and support for smart grid development for distribution of electrical generation. This includes related storage and manufacturing activities that support low and non-polluting alternative energy sources and their development.

4. **Limitations on Uses**

In an I/ED zone, the following conditions and limitations shall apply:

- A. A use is prohibited which creates a nuisance because of noise, smoke, odor, dust or gas, or which has been declared a nuisance by statute, by action of the municipal court, or by a court of competent jurisdiction.
- B. Wastes and other materials shall be stored and grounds shall be maintained in a manner that will not attract or aid the propagation of insects or rodents, or otherwise create a health hazard.
- C. There shall be no outside storage of materials, products, or waste unless contained in appropriate security fencing.
- D. Points of access from a public street to properties in an I/ED zone shall be so located as to minimize traffic congestion and avoid directing traffic onto residential streets.
- E. Building entrances or other openings adjacent to or across the street from a residential (RS, RS/MH, RM) zone shall be prohibited if they cause glare, excessive noise, or otherwise adversely affect land-uses in the residential zone.
- F. Any chemical or biological agents will not affect existing ground, water or air resources. Any materials injected to ground, water, city water or sewer collection system that may have an adverse affect to the environment , air ground, or water supplies including but not limited to the aquifers is prohibited.

5. **Dimensional Standards**

In an I/ED zone, the following dimensional standards shall apply:

- A. Setback requirements:
 - (1) A front yard shall be a minimum of 20 feet measured from the foundation.
 - (2) A side yard shall be a minimum of 10 feet measured from the foundation.
 - (3) The rear yard shall be a minimum of 25 feet measured from the foundation.
- B. All side or rear lot lines abutting residentially (RS, RS/MH, RM) zoned property shall have a solid fence or hedge at least 6 feet tall.
- C. All required yards adjacent to a street shall be landscaped with no parking within the required yard area.
- D. The minimum lot area shall be 10,000 square feet.
- E. No building shall exceed a height of 45 feet.
- F. Vision clearance areas shall be required in accordance with Section 2.0

6. **Parking**

Uses within an I/ED zone shall be subject to the off-street parking and loading requirements of Section 4.4.

7. **Site Plan Review**

- A. In an I/ED zone a site plan review by the Commission shall be required prior to issuance to any building permit for improvement or construction of permitted uses in said zones. It is not the intention of this regulation to deny a building permit, but rather to assure traffic safety, aesthetic quality, and compatibility of uses.
- B. Additional conditions that apply when reviewing development in an I/ED Zone in regards to Transportation issues:
 - (1) (a) The proposed use shall not impose an undue burden on the transportation system. For developments that are likely to generate more than 400 average daily motor vehicle trips (ADTs), the applicant shall provide adequate information, such as a traffic impact study or traffic counts, to demonstrate the level of impact to the surrounding road system. The developer shall be required to mitigate impacts attributable to the project.
 - (b) Trip Cap Requirement - A trip cap shall be applied to the city's 100 acre industrial site located east of Monroe Street which corresponds to the level of traffic generated by acknowledged zoning prior to amendments which have enabled the 100-acre site

to be used for industrial uses. The trip cap shall be applied to either total daily or peak hour trips, whichever would trigger the trip cap threshold first. The trip cap requirements shall be included in the I-ED zone district for the area east of Monroe Street and enforced and monitored through permit conditions set forth with site plan approval(s). Each applicant subject to this zone district shall coordinate with the city and the Oregon Department of Transportation to determine if and to what extent a trip cap applies to their proposal. In the event all trips authorized under this trip cap requirement are allocated, these trip cap requirements are to be superseded by requirements called out pursuant to OAR 660-012-0060 of the Transportation Planning Rule.

In order to comply with the Transportation Planning Rule at OAR 660-012-0060, a trip cap on future industrial development of the 100-acre site is calculated by the number of trips that would be likely generated by the site's previously acknowledged residential zoning as follows:

(100 acres) (4 dwelling units/acre) = 400 dwelling units at buildout
(400 dwelling units) (9.8 trip/day/dwelling) = **3,920 trips/day trip cap**

And

(3,920 trips/day) (10% peak hour) = **396 trips/hour trip cap.**

The acknowledged residential equivalent trip cap is set as not-to-exceed 3,920 trips per day or 396 trips per hour.

(c) Allocation of Trip Cap:

The applicable traffic impact study or traffic evaluation for each permit application shall determine both the daily ADT and trips per peak hour and apply them against the remaining trip cap in the manner and method allocated for this district. If the traffic impact study shows that the remaining trip cap has become fully utilized, the application shall be subject to review pursuant to OAR 660-012-0060 found in the state's Transportation Planning Rule.

(d) Monitoring of Cumulative Use of Trip Cap:

The city will prepare annually a report on cumulative use of the trip cap for this district. The report shall contain the following:

1. A summary of each issued permit, including the project size by acreage, building footprint, estimated number of employees, and projected trips per day and per peak hour.
2. A summary of cumulative trip cap use and remaining capacity of the trip cap for the subject area.
3. A summary of any recommendation concerning performance and/or modification of the trip cap methodology that the city

or Oregon Department of Transportation has reported during the past year.

4. The report shall be compiled before March 31st of each year, and copies provided to the city's planning authority and Oregon Department of Transportation regional office.
- (2) The impact or effect of the development shall be determined by a traffic impact study if required by Subsection B(1)(a), above. The scope and method of impact study shall be determined by the city Director of Public Works, after coordination with other affected transportation service providers, including the Oregon Department of Transportation. If Subsection B(1)(a) does not apply to the permit application, then the applicant shall provide enough information in order for the city Director of Public Works to evaluate and determine a trip cap allocation.
 - (3) Dedication of land for roads, transit facilities, sidewalks, bikeways, paths, or access ways shall be required where the existing transportation system will be impacted by or is inadequate to handle the additional burden caused by the proposed use.
 - (4) Improvements such as paving, curbing, installation or contribution to traffic signals, construction of sidewalks, bikeways, access ways, paths, or roads that serve the proposed use where the existing transportation system may be burdened by the proposed use.
- C. Pedestrian and Bicycle Circulation. The development shall include the number and type of bicycle parking facilities required in the Off-Road Parking and Loading section of this Title. The location and design of bicycle parking facilities shall be indicated on the site plan. All site plans (industrial and commercial) shall clearly show how the site's internal pedestrian and bicycle facilities connect with external existing or planned facilities or systems.

3.20 COMMUNICATIONS FACILITIES

1. Purpose

The purpose of these standards is to provide reasonable and necessary regulations for communications facilities in order to:

- A. Implement an application process for the review and permitting of communications facilities.
- B. Minimize the visual impacts of such communications facilities through careful design, siting, and screening.
- C. Allow for the reasonable siting of communications facilities necessary to meet the functional requirements of the wireless and broadcast industries and the public and private utilities, including conformance with the guidelines and intent of federal law and the Telecommunications Act of 1996.
- D. Provide for the reasonable siting of non-commercial transmitting and receiving antennas for the recreational benefits of the citizens.
- E. Promote and encourage, whenever practicable and whenever possible, the sharing and/or co-location of communications facilities among service providers.
- F. Promote and encourage, whenever possible, the placement, height and quantity of communications facilities in such a manner, including but not limited to the use of stealth technology and camouflage, to minimize adverse aesthetic and visual impacts on the land, property and buildings adjacent to, surrounding, and in generally the same area as the requested location of such facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.
- G. Avoid potential damage to adjacent properties from tower failure through proper engineering and careful siting of towers.

2. Applicability

This Section applies to the development, siting, installation, and modification of all communication facilities, including but not limited to cellular telephone facilities, broadband internet facilities, and radio and TV broadcasting facilities. This Section in no way prohibits, restricts, or impairs the installation, maintenance, or use of video antennas (including direct-to-home satellite dishes, TV antennas, and wireless cable antennas) used by viewers to receive video programming signals from direct broadcast facilities, broadband radio service providers, and TV broadcast stations.

3. Communications Facilities

Communications Facilities in compliance with the provisions of this Zoning Ordinance shall be allowed as a conditional use in all zones within the City of Burns except that new Communications Facilities are prohibited in all Residential Zones (RS; RS/MH; and RM) and all Public Facilities (PF Zones)

abutting any Residential Zone unless the applicant can demonstrate One of the following in conjunction with any application for a new communications facility proposed in any Residential Zone or Public Facilities Zone adjacent to a Residential Zone:

- A. There are no other options under this Zoning Ordinance to provide coverage because the proposed communications facility would fill a significant gap in coverage and no alternative locations are available and technologically feasible.
- B. The proposed facility must be sited in a Residential Zone to prevent unreasonable discrimination in the application of this Zoning Ordinance among providers of functionally equivalent services.
- C. The communications facility is proposed as a collocation on an alternative tower structure and the additional components are designed as a stealth facility.

4. Application Requirements

An applicant for a new communications facility shall submit the following information:

- A. Property Owner List. A list of all property owners, including mailing address, tax map number and tax lot number, within 1000 feet of the boundaries of the subject property. The subject property includes the boundary of the entire property on which the lease area of the communications facility lies. The list shall be compiled from the Harney County Tax Assessor's most recent property tax assessment roll.

B. demonstrate the need for the new communications facility and why alternative locations and design alternatives, such as the use of alternative technology, cannot be used to meet the identified service objectives, pursuant to Section 3.20(3), unless the applicant demonstrates compliance with stealth design requirements on an existing communications facility or alternative tower structure as specified in Section 3.20(5).

C. A visual study containing, at a minimum, a vicinity map depicting where, within a halfmile radius, any portion of the proposed communications facility could be visible, and a photographic simulation showing the appearance of the proposed communications facility and accessory structures from two separate points within the impacted vicinity, accompanied by an assessment of potential mitigation measures. Such points shall be selected by the City. The applicant shall include a map showing where the photos were taken. The study shall show the maximum silhouette, view shed analysis, color and finish palette, and proposed screening for all components of the facility.

D. Documentation of the steps that will be taken to minimize the visual impact of the proposed communications facility, including but not limited to, the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property and buildings adjacent to, surrounding, and in the general vicinity as the requested location of such communications facilities, using the least visually and physically intrusive communications facility that is not technologically or commercially impracticable under the facts and circumstances.

E. The applicant shall include an inventory of all existing communications facilities within the Burns City limits and the surrounding one (1) mile radius thereof, including ownership and information concerning the type of communications facility for each.

F. The applicant shall identify the geographic service area for the proposed communications facility, including a map showing all the applicant's existing sites in the local service network associated with the gap the communications facility is meant to close. The applicant shall describe how this service area fits into and is necessary for the service provider's service network.

G. If a new tower is proposed, a feasibility study for the collocation of the communications facility as an alternative to a new structure. The feasibility study shall include:

1. Documentation of the efforts that have been made to collocate on existing or previously approved towers. Each applicant shall make a good faith effort to contact the owner(s) of all existing or approved towers and shall provide a list of all owners contacted in the area, including the date, form and content of such contact.
2. Documentation as to why collocation on existing or proposed towers or location on an alternative tower structure is not practical or feasible.

Collocation shall not be precluded simply because a reasonable fee for shared use is charged or because of reasonable costs necessary to adapt the existing and proposed uses to a shared tower or alternative tower structure. The City may consider expert testimony to determine whether the fee and costs are reasonable. Collocation costs exceeding new tower development are presumed to be unreasonable.

H. If a new tower is proposed, a report from a licensed engineer containing the following information:

1. A description of the proposed tower height and design, including technical, engineering, and other pertinent factors governing selection of the proposed design. A cross-section of the proposed tower structure shall be included. The engineer shall document that the design is sufficient for future collocation requirements. The total anticipated capacity of the tower in terms of the number and types of antennae which can be accommodated. The engineer shall also describe any limitations on the ability of the tower to accommodate collocation. The engineer shall describe the technical options available to overcome those limitations and reasons why the technical options considered were not used.

2. The total and types of antennae which can be accommodated. The engineer shall also describe any limitations on the ability of the tower to accommodate collocation. The engineer shall describe the technical options available to overcome those limitations and reasons why the technical options considered were not used.

3. Documentation from a licensed Professional Engineer that the proposed tower will have sufficient structural integrity for the proposed uses at the proposed location, in conformance with the minimum safety requirements of the State Structural Specialty Code, latest adopted edition at the time of the application.

I. A written narrative that describes in detail all of the equipment and components to be included in the facility, e.g., antenna(s) and arrays, equipment cabinet(s), back-up generator(s), air conditioning unit(s), lighting, fencing, etc.

J. Noise/Acoustical Information. Provide manufacturer's specifications for all noise generating equipment such as air conditioning units and back-up generators, and a depiction of the equipment location in relation to adjoining properties.

K. A landscape plan drawn to scale that is consistent with the need for screening at the site. Existing vegetation that is to be removed must be clearly indicated and provisions for mitigation included where appropriate.

L. Show the designated driveway and vehicular circulation pattern for maintenance vehicles and equipment.

M. Construction. Describe the anticipated construction techniques and timeframe for construction or installation of the communications facilities. This narrative shall include all temporary staging and the type of vehicles and equipment to be used.

N. Lease. Provide a copy of the lease agreement with the property owner of the proposed site.

O. Lighting and Marking. Any proposed lighting and marking of the facility, including any required by the FAA.

P. FCC License. Provide a copy of the applicant's FCC license and/or construction permit, if an FCC license and/or construction permit is required for the proposed communications facility, including documentation showing that the applicant is in compliance, both cumulatively and individually, with all the FCC's RF emissions safety standards.

Q. A description of anticipated long term maintenance needs, including frequency of service, personnel needs, equipment needs and potential safety impacts of such maintenance.

R. A written document addressing how the project satisfies the General Development Standards listed in section 3.20(6), and the Approval Criteria listed in Section 3.20(7)(B).

S. A Facility Maintenance Plan indicating: the number of days; hours of the day; duration; type of vehicles and equipment that will be utilized; and, the anticipated noise, dust, and glare that will be associated with regular maintenance of the communications facility to ensure normal operation. Regular maintenance to ensure normal operation shall only occur between the hours of 7:00 am and 7:00 pm, Monday through Saturday (Sunday not permitted). Notwithstanding these restrictions, regular maintenance does not include unanticipated emergency situations of communications facility failure outside of normal communications facility maintenance hours specified herein and/or indicated in the Communications Facility Maintenance Plan.

T. The materials required by section 3.20(12) below.

U. The City may request any other information deemed necessary to fully evaluate and review the application and the potential impact of a proposed communications facility.

5. **Collocation**

Communications facility towers shall be designed to accommodate collocation of additional provider's antennas:

- A. All communications facility towers over 50 feet in height shall be designed to accommodate collocation of additional antennas/ antennae arrays.
- B. At least one future antennas/antennae arrays must be accommodated on any tower over 50 feet in height with accommodation for at least one additional future antenna/antennae array for each additional 25 feet in height above 50 feet.
- C. All collocated communications facilities shall be designed in such a way as to be visually compatible with the tower structures on which they are placed.
- D. All accessory equipment shall be located within the existing enclosure, shall not result in any exterior changes to the enclosure and, in Residential and Public Facilities zones adjacent to a Residential Zone, shall not include any additional above grade equipment structures.
- C. Collocation on an alternative tower structure in a Residential or Public Facilities Zone adjacent to a Residential Zone shall require a stealth design.

6. **General Development Standards**

All new communications facilities shall be found to comply with the following standards.

A. **Visual Impact**

- 1. **Tower Height.** The maximum tower height shall not exceed 150 feet, as measured from the ground elevation to the highest point of the tower or any attachment thereto, except that in Residential and Public Facilities Zones adjacent to a Residential Zone, no portion of the communications facility shall exceed fifty (50) feet in height, except where

such communications facility is sited on an alternative tower structure. This exemption notwithstanding, the height and mass of the transmission tower shall be the minimum which is necessary for its intended use, as demonstrated in a report prepared by a licensed professional engineer. A communications facility that is attached to an alternative tower structure shall not exceed the height of the alternative tower structure by more than ten (10) feet, except that for location or collocation on alternative tower structures in Residential or Public Facilities zones adjacent to a Residential Zone, no increase in height shall be allowed.

2. **Visual Impact.** The applicant shall demonstrate that the tower can be expected to have the least visual impact on the environment, taking into consideration technical, engineering, economic and other pertinent factors. The blocking or impairing of views from other properties shall be taken into consideration in the siting of a tower, and it shall be demonstrated that no other practicable alternative exists. The siting shall be made to minimize the effect on all view corridors, including reducing the height to only that which is needed to provide service. Towers clustered on the same site shall be of similar height and design, whenever possible, unless an existing tower does not conform with the standards included in the Chapter, in which case the standards of this chapter shall apply to the new tower.
3. **Paint and Finish.**
 - a. A camouflage or stealth design that blends with the surrounding area shall be utilized for communications facilities unless an alternative design is approved during the land use review process. If an alternative design is approved, all towers, antennae and associated equipment shall be painted a non-reflective, neutral color as approved through the review process. Communications facilities attached to structures shall be painted so as to be identical to or compatible with the existing structure.
 - b. Where ancillary facilities are allowed under this Zoning Ordinance to be visible, they shall be colored or surfaced so as to blend the facilities with the surrounding natural and built environment, and where mounted on the ground shall be otherwise screened from public view, or placed underground.
4. If approved in a Residential or Public Facilities Zone adjacent to a Residential Zone, all equipment and ancillary facilities necessary for the operation of and constructed as part of a communications facility shall be placed within an underground vault specific to the purpose. For communications facilities required to be approved as stealth facilities, no fencing around the communications facilities shall be allowed.
5. Unenclosed storage of materials is prohibited.
6. Other building facilities, including offices, vehicle storage areas or other similar uses not necessary for transmission or relay functions are prohibited, in Residential or Public Facilities zones adjacent to a Residential Zone.
7. Stealth design shall be required for location or collocation on alternative tower structures in all Residential and Public Facilities zones adjacent to a Residential Zone.

B. Site size

1. The site on which a transmission tower is located shall be of a sufficient shape and size to provide adequate setbacks as specified below.

2. Wherever possible, tower sites shall be large enough and structurally sufficient to allow for additional collocated and ancillary facilities, unless a finding is made by the City as part of the land use review process that the tower will not accommodate future collocation when considering requirements for visual screening. This standard shall not apply to antennae attached to existing structures or towers located on rooftops.

C. Setbacks and Separation

1. **Setbacks.** The following setbacks from adjacent property lines, dwellings, streets and zone boundaries:

a. Except where attached to a structure or building, all towers shall be setback from all buildings, structures, property lines and public streets by a distance equal to or greater than the height of the tower.

b. Except where permitted in a Residential Zone or Public Facilities Zone adjacent to a Residential Zone, all towers shall be setback from a Residential or Public Facilities Zone adjacent to a Residential Zone boundary by a distance equal to or greater than 500 feet.

c. Should the use of "concealment technology" be implemented, or if the Communications Facility is integrated into an existing or proposed structure, such as church steeple, electrical transmission tower, or other structure, the Planning Commission may reduce or waive the setback requirements.

d. Towers are prohibited in the required front yard, back yard or side yard setback of any lot in any zone.

2. **Separation**

a. Freestanding communications facilities located on sites containing other principal uses must maintain a minimum distance between the tower and other principal uses of the greater of 20% of the tower height or twenty-five (25) feet, unless during the permit review process this requirement is specifically waived by the Planning Commission for purposes of mitigating visual impacts or improving compatibility with other uses on the property.

b. Towers and antennae that are mounted on alternative tower structures shall be exempt from these minimum separation and setback requirements. However, communications facilities and related equipment may be required to be set back from the edge of the roof line in order to minimize their visual impact on surrounding properties.

D. Lighting. No lighting shall be permitted on transmission towers except that required by the Oregon State Aeronautics Division or the Federal Aviation Administration.

E. Signs. All signs are prohibited on communications facilities, except for non-illuminated signage, not to exceed two (2) square feet, which shall be provided at the main entrance to the communications facility stating owner's name and address, and a contact name and phone number for emergency purposes or any other warning and safety signage. No more than two signs are permitted unless required by law.

F. Security. All communications facilities, other than those located or collocated on an alternative tower structure or otherwise required to be built as a stealth design, shall be enclosed by decay-resistant security fence six (6) feet in height or as conditionally required. Fencing shall be compatible with other nearby fencing. Such requirements may be waived for attached communications facilities.

G. Landscaping. Landscaping shall be placed around the outside perimeter of the security fencing and shall consist of fast growing vegetation that can be expected to reach a minimum height of six feet and form a continuous hedge within two years of planting. Drought tolerant landscaping materials shall be required and applicant shall maintain a watering regimen until it is no longer necessary to ensure the continued survival of the landscaping. Trees and shrubs in the vicinity of guy wires shall be of a kind that would not exceed 20 feet in height and would not affect the stability of the guys should they be uprooted. Landscaping shall be compatible with other nearby landscaping. Continued maintenance of all landscaping is required and deemed the applicant's responsibility and any approval shall be so conditioned.

H. Conflict with planned right-of-way. No communications facility shall be located within a planned or existing public right-of-way, unless it is specifically designed for the purpose in a way that will not impede pedestrian or vehicular traffic.

I. A paved access driveway a minimum of 26 feet in width and a paved vehicular circulation area suitable to accommodate anticipated service vehicles and turnaround shall be provided between the public right of way and the communications facility site. Communications facilities approved in Industrial zones may have unpaved driveways and vehicular circulation areas.

J. Pre-existing towers/non-conforming use. In order to encourage the collocation of antennae on existing towers, all communications facilities lawfully approved and operative prior to the adoption date of this ordinance shall be allowed to continue in use without being considered to be non-conforming uses. Any changes, modifications or replacement to/of an existing tower, or alternative tower structure, other than routine maintenance, shall comply with the requirements of this Chapter.

K. Speculation tower. No application shall be accepted or approved for a tower, unless the applicant submits a binding written commitment or executed lease from a service provider to utilize or lease space on the tower.

L. If the City of Burns approves a new tower, the owner of the tower shall, as conditions of approval, be required to:

1. Respond in a timely, comprehensive manner to a request for information from a potential shared use applicant;
2. Negotiate in good faith with any potential user for shared use of space on the tower;
3. The above conditions, and any others required by the City, shall run with the land and be binding on subsequent purchasers of the tower site and/or improvement; and,
4. A person/entity who/which deems himself/herself/itself aggrieved by the failure of a tower owner to respond in a timely and comprehensive manner or negotiate in good faith for shared use of a tower approved by the City under this ordinance or any previous iteration of this ordinance, shall have a private right of action for

damages for injury sustained by the party which was caused by the failure of the owner of the tower to so respond or negotiate in good faith as required by this section. In the resulting private litigation/mediation/arbitration, the prevailing party shall be entitled to have his/her/it's reasonable attorney fees paid by the non prevailing party at the trial level and upon appeal.

7. Review Process and Approval Criteria

The following procedures shall be applicable to all new communications facility applications as specified in the Section:

- A. All new communications facilities shall be reviewed as a conditional use decision. Applications for new communications facilities shall be processed in accordance with the provisions of this section, and the City of Burns Zoning Ordinance (Sections 5 and 6 as applicable).
- B. Approval Criteria. In addition to the requirements for conditional use approval, the City shall approve the application for a communications facility on the basis that the proposal complies with the General Development Standards listed in section 3.20(6) above, and upon a determination that the following criteria are met:
 - 1. The location is the least visible of other possible locations and technological design options that achieve approximately the same signal coverage objectives.
 - 2. The location, size, design, and operating characteristics of the proposed communications facility will be compatible with adjacent uses, residences, buildings, and structures, with consideration given to:
 - a. Scale, bulk, coverage and density;
 - b. The harmful effect, if any, upon neighboring properties;
 - c. The suitability of the site for the type and intensity of the proposed facility; and
 - d. Any other relevant impact of the proposed use in the setting where it is proposed (i.e. noise, glare, traffic, etc).
 - 3. All required public facilities and services have adequate capacity as determined by the City, to serve the proposed communications facility; and

C. The City may impose any other reasonable condition(s) deemed necessary to achieve compliance with the approval standards. If compliance with all of the applicable approval criteria cannot be achieved through the imposition of reasonable conditions, the application shall be denied.

D. Notwithstanding any other provisions of the Zoning Ordinance, the Burns City Council may establish fees in amounts sufficient to recover all of the City's costs in reviewing applications filed pursuant to this Chapter, including retaining independent telecommunication or other professional consultants as may be necessary to review and evaluate any evidence offered as part of an application. Such fee may be imposed during the review of an application as deemed appropriate by the City Planning Department.

8. Exemptions

The following shall be considered exempt structures or activities under this Chapter:

- A. Whip or other similar antennas no taller than 6 feet.
- B. Antennas (including direct-to-home satellite dishes, TV antennas, and wireless cable antennas) used by viewers to receive video programming signals from direct broadcast facilities, broadband radio service providers, and TV broadcast stations regardless of zone category.
- C. Low-powered networked telecommunications facilities such as microcell radio transceivers located on existing utility poles and light standards within public rights-of-way. Low-powered networked telecommunications facilities shall comply with Section 3.20.
- D. All military, federal, state, and local government communications facilities except for towers in Residential Zones.
- E. Cell on Wheels (COW), which are permitted as temporary uses in nonresidential zones for a period not to exceed 14 days, or during a period of emergency as declared by the City, County, or State.
- F. Replacement antennas and/or equipment, provided the replacement antennas and/or equipment have a function similar to the replaced antenna and/or equipment and do not exceed the overall size of the original antenna and/or equipment.
- G. Amateur Radio Stations as defined by the Federal Communications Commission, Part 97 of the Commission's Rules.

9. Maintenance

The following maintenance requirements apply to all communications facilities and shall be required as conditions of approval, where applicable:

- A. All landscaping shall be maintained at all times and shall be promptly replaced if not successful.
- B. If a flagpole is used for camouflaging a facility, flags must be flown and must be properly maintained at all times.
- C. All communications facility sites shall be kept clean, free of litter and noxious weeds.
- D. All communications facility sites shall maintain compliance with current RF emission standards of the FCC, the National Electric Safety Code, and all state and local regulations.
- E. All equipment cabinets shall display a legible operator's contact number for reporting maintenance problems.
- F. The owner/operator of the facility shall submit a yearly maintenance report to the Planning Commission Secretary indicating that all statements of operation as specified in the land use application, including the Communications Facility Maintenance Plan required by Section 3.20(4)(J), and all conditions of approval are being complied with and met.
- G.

10. Eligible Modifications

A. Requests to modify a communications facility, including adding additional antennae, alterations to accessory buildings, cabinets, and other infrastructure in a manner that will not substantially change the physical dimensions of the tower shall be considered a "eligible modification".

B. For purposes of this section, "substantial change" shall mean:

1. A proposed modification that would increase the existing height of the communications facility by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater (may exceed these size limits if necessary to avoid interference with existing antennas);
2. A proposed modification that would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter.
3. A proposed modification that would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater (may exceed these size limits if necessary to shelter the antenna from inclement weather or connect the antenna to the tower via cable); or
4. A proposed modification that would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

C. The City may impose any reasonable condition(s) deemed necessary to achieve compliance with the approval standards except that the City may not place any condition on the tower supporting the eligible modification (i.e. re-location, additional camouflaging, etc.).

D. Eligible Modification Application Requirements

1. Any proposal for an eligible modification shall require the submittal requirements as an application for a new communications facility to the extent applicable as determined by City staff.
2. An application for an eligible modification shall be reviewed to determine whether the proposal constitutes an eligible modification and that the eligible modification would not violate any applicable objective setback or height requirement otherwise established by this chapter.
3. Nothing herein is intended or shall operate to waive or limit the City's right to enforce, or condition approval on, compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.

11. Other Modifications

All modifications other than eligible modifications shall be processed as a conditional use approval with the same submittal requirements and evaluation criteria as a new communications facility except that only the criteria applicable to the proposed modification shall be evaluated.

12. Abandoned Facilities

- A. All operators who intend to abandon or discontinue the use of any communications facility shall notify the City of such intentions no less than 60 days prior to the final day of use.
- B. Communications facilities shall be considered abandoned 90 days following the final day of use or operation.

- C. All abandoned communications facilities shall be physically removed by the facility owner no more than 90 days following the final day of use or of determination that the communications facility has been abandoned, whichever occurs first.
- D. In the event that an owner discontinues use of a communications facility for more than ninety (90) days, the City may declare the communications facility abandoned and require the property owner to remove it. An abandoned communications facility may be declared a nuisance subject to the abatement procedures in Burns Municipal Code Chapter 8.10. Delay by the City in taking action shall not in any way waive the city's right to take action. Upon written application prior to the expiration of the ninety (90) day period, the City Manager or their designee may grant a six-month extension for reuse of the communications facility. Additional extensions beyond the first six-month extension may be granted by the City subject to any conditions required to bring the project into compliance with current law(s) and make compatible with surrounding development.
- E. Any abandoned site shall be restored to its natural or former condition. Grading and landscaping in good condition may remain.
- F. As a condition of approval for a new communications facility, the applicant shall submit a cash deposit or equivalent surety to be held by the City as security for abatement of the communications facility as specified herein. The security shall be equal to 120% of the estimated cost for removal of the communications facility and restoration of the site. Cost estimates for the removal shall be provided by the applicant based on an independent, qualified engineer's analysis and shall be verified by the City. Upon completion of the abandonment of the communications facility by the applicant as specified by this section, and inspection by the City, the entirety of the cash deposit/other surety shall be returned to the applicant.
- G. The applicant for a new communications facility shall provide an affidavit, signed by the property owner, indicating that the owner has read, and understands Section 3.20 (12)(A-E), above.

SECTION 4, SUPPLEMENTAL PROVISIONS

SECTIONS:

4.0 [MANUFACTURED HOME SITING STANDARDS](#)

4.1 [MOBILE HOME SITING STANDARDS](#)

4.2 [RECREATION-TYPE MOBILE HOMES \(Recreational Vehicles\)](#)

4.3 [EXCEPTIONS](#)

4.4 [OFF STREET PARKING](#)

4.5 [SIGNS](#)

4.6 [TRANSPORTATION IMPROVEMENT STANDARDS](#)

4.0 **MANUFACTURED HOME SITING STANDARDS**

Manufactured homes meeting the following criteria are allowed on individual lots in specified residential zones.

1. Only those manufactured homes used as permanent residences, and
 - A. The manufactured home shall be multi-sectional and enclose a space of not less than 1,000 square feet.
 - B. The manufactured home shall have a foundation of sufficient strength to support the loads imposed by the manufactured home as specified by the manufacturer's installation instructions. Manufactured home placements shall be reviewed and approved by the City's designated building official. In the absence of the specific manufactured home installation instructions, installation of the manufactured home shall follow the installation requirements outlined in Oregon Administrative Rules, Chapter 918.
 - C. The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.
 - D. The manufactured home shall have exterior siding and roofing which in color, material, and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.
 - E. The manufactured home shall be placed on an excavated and backfilled foundation and enclosed at the perimeter such that no more than 16 inches of the enclosing material is exposed above grade. The enclosing material used shall be concrete, concrete block, or masonry. Where the building site has a sloped grade, no more than 16 inches of the enclosing material shall be exposed on the uphill side of the home. If the manufactured home is placed on a basement, the 16-inch limitation shall not apply.

4.1 **MOBILE HOME SITING STANDARDS**

1. The mobile home unit shall be manufactured after June 15, 1996, and bear the Oregon Department of Commerce "Insignia of Compliance." All pre-owned and

pre-occupied units (i.e. used) shall be inspected by a certified Building Official prior to installation and occupancy to insure compliance with applicable standards required for the "Insignia of Compliance" and to insure that such units are in such a condition as to not be detrimental to the public health, safety and general welfare or to adjoining properties. The applicant shall provide such certification, at the applicant's expense, to the City prior to receiving the City's approval of a Mobile Home Movement Permit or a Mobile Home Placement Permit.

2. **Mobile Home Design Standards**

A. **Single-wide Units**

Defined as an individual section not including tipout or extended sections and shall:

- (1) Be at least 14 feet wide and contain at least 700 square feet of living space as determined by measurement of exterior dimensions of the unit, exclusive of any trailer hitch device.
- (2) Have wood siding or other comparable siding to other single family residential structures in the City.
- (3) Have composition or fiberglass roofing shingles comparable to other single family residences in the City.

B. **Double-wide units**

Defined as the combining of two or more sections at the site to create a single family residence shall:

- (1) Shall enclose a living area of at least 1000 square feet as determined by measurement of exterior dimensions of the unit, exclusive of any trailer hitch device.
- (2) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the City.

(3) **The following siting standards apply to all units**

The mobile home shall:

- (a) Be installed according to manufacturer's instructions approved by the State Department of Commerce, and all road and transient lights, wheels and the hitch shall be removed.

- (b) Be placed on an excavated and back-filled foundation and enclosed at the perimeter such that no more than 16 inches of the enclosing material is exposed above grade. The enclosing material used shall be in compliance with the Oregon State Building Codes in effect at the time of home placement. Where the building site has a sloped grade, no more than 16 inches of the enclosing material shall be exposed on the uphill side of the home. If the manufactured home is placed on a basement, the 16 inch limitation shall not apply.
- (c) The mobile home shall have a continuous perimeter of skirting that shall be composed of the same texture and finish as the exterior of the mobile home. The skirting shall be of a non-corrosive, non-combustible material, or shall be of brick, concrete, or masonry block. Such skirting shall be secure against the entrance of animals, but there shall be provisions for ventilation and access to the space under the unit.
- (d) All plumbing, electric and gas service connections shall be made according to instructions approved by the State Department of Commerce.
- (e) All mobile home accessory buildings and structures shall comply with State and local construction and installation standards. Mobile home accessory structures include porches and steps, awnings, cabanas, carports, or any other structure or addition that depends in part on the mobile home for its structural support, or in any manner is immediately adjacent to or attached to the mobile home, excluding decks. Such structures or additions shall not total more than 30% of the total living space of the mobile home and such structures or additions combined. Roofing and siding materials shall be of similar material and color and complimentary to the existing mobile home unit. A secondary roof (ramada) over the manufactured home shall not be permitted.
- (f) The owner of the property shall remove the foundation and all accessory structures and additions to the mobile home and permanently disconnect sewer, water and other utilities if the mobile home is removed from it foundation unless otherwise authorized by the City. In the event the owner fails to accomplish said work within 30-days from the date on which the mobile home is moved, the City may perform such work and place a lien against the property for the cost of such work. This condition

shall not apply in the event that the mobile home is replaced on the original foundation, or on the original foundation as modified, or by another approved mobile home within 30-days of the original unit's removal. Said lien may be initiated by the City Council.

4.2 RECREATION-TYPE MOBILE HOMES (Recreational Vehicle)

Recreation-type mobile homes parked within the City shall not be used for permanent domestic or residential purposes unless it is located within an area, which allows for such use.

4.3 EXCEPTIONS

1. **Nonconforming Use of Land**

The lawful use of land existing on the effective date of this ordinance, although such use does not conform to the regulations specified for the zone on which such land is situated, may be continued, provided that no such use shall be enlarged or increased, or be extended to occupy a greater area than that occupied by such use at the time of the passage of this ordinance, and if any such use ceases, as hereinafter provided, subsequent use of such land shall be in conformity with the regulations specified in this ordinance for the zone in which such land is situated.

2. **Nonconforming Use of a Building**

The lawful use of a building on the effective date of this ordinance may be continued although such building or the use thereof does not conform to the regulations specified for the zone in which such building is located.

3. **Cessation of Nonconforming Use of Building or Land**

If the actual operation of a nonconforming use of building ceases for a continuous period of one year, such building and the land on which it is located shall then be subject to all the regulations of this ordinance, except required setbacks and off-street parking specified by this ordinance for the zone in which such land and building is situated. In the case of nonconforming use of land where no building is involved ceases for a period of 30 days, then such land shall be subject to all the regulations in this ordinance specified for the zone in which the land is located.

Nonconforming land includes land used for the grazing or keeping of livestock, except as provided in Section 3 of this ordinance.

4. **Repairs to Nonconforming Structures**

A nonconforming structure may be repaired and maintained, so long as any such repair or maintenance does not in any way increase its nonconformity and it remains otherwise lawful.

5. **Destruction of Nonconforming Structures**

In case any lawful nonconforming building is damaged or destroyed by fire, explosion, an act of God, or by any other cause, and such damage exceeds eighty (80) percent of the cost of replacement of the building using new material, the land and building shall be subject to all the regulations specified by this ordinance for the zone in which such land and building are located. When it is permissible to rebuild or repair a nonconforming use building which is partially destroyed, the rebuilding thereof shall commence within one year if the new building is to be used for the same nonconforming use as was made of the old building. A maximum of six (6) months shall be allowed for completion of the exterior of any reconstruction.

6. **Enlargement or Extension to Nonconforming Buildings**

A nonconforming building may be enlarged, extended or structurally altered provided such enlargement, extension or structural alteration itself conforms in all respects to the regulations specified by this ordinance for the zone in which such building is located, but otherwise it shall be unlawful to enlarge, extend or structurally alter any nonconforming building.

7. **Extension of Nonconforming Use Throughout a Building**

A non-conforming use of a portion of a building may be extended throughout the entire building provided that such extension be approved by the Commission after a public hearing in conformance with Article 6 on the matter.

8. **Change of Nonconforming Use**

The nonconforming use of a building may be changed to a use of the same or more restrictive nature when such change of use is approved by the Commission after a public hearing, following the provisions of Section 5.2, on the matter.

9. **Exceptions to Lot Size Requirements**

If a property ownership, whether it be a lot or more than one contiguous lot held in a single ownership at the time of passage of this ordinance, has an area or dimension which does not meet the lot size requirements of the zone in which the property is located, the holdings may be occupied by a use permitted in the zone subject to the other requirements of the zone, provided that, if there is an area deficiency, residential use shall be limited to a single-family dwelling or the number of dwelling units consistent with the density requirements of the zone. The record of ownership as recorded in the office of the Harney County Clerk at the time of passage of this ordinance shall be the basis for application of this exception, unless the owner submits proof that a different ownership existed at the time this ordinance became applicable to the land concerned.

10. **Exceptions to Yard Requirements**

The following exceptions to yard requirements are authorized for a lot in any zone, except where limited to residential zones: if there are buildings on both abutting lots which are within 100 feet of the intervening lot, and the buildings have front yards of less than the required depth for the zone, the depth of the front yard for the intervening lot need not exceed the average depth of the front yards of the abutting lots; if there is a building on one abutting lot which is within 100 feet of the lot, and this building has a front yard of less than the required depth for the zone, the front yard for the lot need not exceed a depth halfway between the depth of the yard of the abutting lot and the required front yard depth; in all residential zones accessory structures which do not exceed a height of 15 feet may be located on a side or rear lot line; in all residential zones a garage or carport may be built on the side property line if it replaces an existing garage which is built up to the side property line, providing it is not possible to gain automobile access to the garage with the required setback.

11. **Exceptions to Building Height Limitations**
Vertical projections such as chimneys, spires, domes, elevator shaft housing, towers, aerials, flagpoles, and similar objects not used for human occupancy are not subject to the building height limitations of this ordinance.

12. **Projections from Buildings**
Architectural features such as cornices, eaves, canopies, sunshades, gutters, chimneys, and flumes shall not project into a required yard more than three (3) feet.

4.4 OFF-STREET PARKING

1. **Parking**
At the time of erection of a structure, or at the time of enlargement, increase in capacity, or change from one of the following classifications to another of the following classifications, off-street parking spaces, standard

space 8'W x 12'L and handicap space 9'W x 12'L with a 6' aisle, shall be provided as follows:

A. Dwellings

- (1) Single-family: two spaces;
- (2) Two-family: four spaces;
- (3) Three-family: five spaces;
- (4) Four-family: six spaces;
- (5) Five or more dwelling units: 1.5 spaces per unit; plus one space for each five units, to be reserved for recreational vehicles.

B. Convalescent home, sanitarium, rest home, and nursing home: one space for each four beds.

C. Hospital: one space for each two beds.

D. Club and Association: these shall be the requirements for auditoriums as provided in Section E(4).

E. Commerce and industry:

- (1) Retail store except as provided in paragraph (b) below: one space per 250 square feet of gross floor area.
- (2) Repair shop or retail store handling predominately bulky merchandise such as automobiles and furniture: one space per 700 square feet of gross floor area.
- (3) Bank and office except medical and dental: one space per employee, plus one space per 400 square feet of gross floor area.
- (4) Medical and dental clinic or office: one space per 200 square feet of floor area.
- (5) Restaurant, tavern, and bar: one space per 100 square feet of gross floor area.
- (6) Hotel: one space per two guest rooms.
- (7) Motel: one space per guest room.

- (8) Storage warehouse, wholesale or manufacturing business, air, rail, or trucking freight terminal: one space per employee plus one space per 700 square feet of patron service area.
- F. Church, school, and other places of public assembly:
 - (1) Library: one space per 400 square feet of reading room.
 - (2) Church: one space per four seats or eight feet of bench length in the main auditorium.
 - (3) Schools: one space per classroom plus one space per administrative employee or one space per four seats or eight feet of bench length in the auditorium or the assembly room, whichever is greater.
 - (4) Other auditoriums or meeting rooms: one space per four seats or eight feet of bench length for spectators, or one space per 100 square feet of gross floor area.
- G. Residential space requirements are given in Section 10.5. All other provisions of this Section shall also apply to such residential parking.
- H. Space Computation. Space computations for any use which result in fractional requirements shall be increased to the next higher full digit.
- I. Accessible Parking. Parking lots that contain less than ten parking spaces shall provide at least one American with Disability Act (“ADA”) compliant accessible space. Parking lots that contain ten or more spaces shall designate no less than ten percent of the total number of spaces required under this Ordinance as ADA compliant accessible parking spaces.
- J. Unlisted uses. Parking requirements for types of structures and uses not specifically listed shall be determined by the Commission based upon the requirements of comparable uses listed herein.
- K. Structures to be built or substantially altered which receive and distribute material and merchandise by truck shall provide the following off-street loading berths:
 - (1) Buildings of 5,000 to 20,000 square feet in gross floor area, one berth; buildings of 20,000 to 50,000 square feet in gross floor area, two berths; and for each additional 50,000 square feet of gross floor area, one additional berth shall be provided.
 - (2) A loading berth shall contain a space 10 feet wide and 35 feet long and have a clearance height of 14 feet. Where the

vehicles generally used for loading and unloading exceed these dimensions, the dimensions shall be increased to accommodate the larger average vehicle size.

L. A plan, drawn to scale, indicating how the off-street parking and loading requirements are to be fulfilled shall accompany the site plans submitted pursuant to the requirements of this ordinance. The plan shall show all those elements necessary to indicate that said requirements are being fulfilled, and shall include the following:

- (1) Delineation of individual parking and loading spaces;
- (2) Circulation area necessary to serve spaces;
- (3) Access to streets and property to be served;
- (4) Curb cuts;
- (5) Dimensions, continuity, and substance of screening;
- (6) Grading, drainage, surfacing, and subgrading details;
- (7) Delineation of obstacles to parking and circulation in finished parking area;
- (8) Specifications as to signs and bumper guards; and
- (9) Other information as deemed necessary by the Commission.
- (10) The following general provisions shall apply to off-street parking and loading facilities.
 - (a) The maintenance of off-street parking and loading spaces is a continuing obligation of the property owner. No building or other permit shall be issued until a plan is presented to show property that is and will remain available for exclusive use of off-street parking and loading space. The subsequent use of property shall be conditional upon the unqualified continuance and availability of the parking and loading facilities required. The location of the parking and loading facilities may be changed with prior Commission approval.
 - (b) Parking spaces in public streets shall not be considered as fulfilling any part of the off-street parking requirements of this ordinance.

Parking spaces shall be so located and served by a driveway so that its use will require no backing

movements or other maneuvering within a street right-of-way other than an alley. The only exception to the above requirement is single- two- and three-family dwellings.

- (c) 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 several uses computed separately.
 - (d) Required parking spaces shall be available for the parking of operable passenger vehicles of residents, visitors, customers, and employees only.
- (11) Off-street parking facilities shall be located within the following distances measured in a straight line from the nearest point of the parking facility to the nearest point of the structure that such facility is required to serve:
- (a) Dwellings: on the same lot with the structure at a distance not to exceed 150 feet.
 - (b) Commercial uses: on the same lot or a lot contiguous to the same lot on which the structure the facility is required to serve is located, at a distance not to exceed 150 feet.
 - (c) For all other uses, such parking facilities shall be located not more than 300 feet from the structure the parking facility is required to serve.

(12) Whenever any structure is enlarged or expanded, or the use is changed, off-street parking and loading shall be provided for the expansion, enlargement, or change of use prior to occupancy in accordance with the requirements of this subsection, except that no additional spaces need be provided in the case of enlargement or expansion where the number of parking spaces is less than two additional spaces. Off-street parking and loading spaces existing on the effective date of this ordinance may be included in the amount necessary to meet the requirements in case of subsequent enlargements of the structure or use.

- (13) Design requirements for parking and load facilities should be:
- (a) All areas used for off-street parking and maneuvering of vehicles, including driveways and truck loading areas, shall have either

concrete or asphalt surfaces, and be drained so as to avoid flow of water across sidewalks.

- (b) Parking and loading facilities adjacent to residential zones or uses shall be designed to minimize disturbance of residents.
 - (c) Parking spaces along the outer boundaries of a parking area shall be contained by a bumper rail or curb at least four inches high and set back a minimum of four feet from the property line.
 - (d) Access aisles, which provide for two-way traffic shall be a minimum of 25 feet in width, and those which provide one-way traffic shall be a minimum of 15 feet in width.
 - (e) Directional signs and pavement markings shall be used to control vehicle movement within parking and loading facilities.
 - (f) Accessible Parking spaces shall be a minimum of nine feet wide by twelve feet in length with an 8 foot wide travel lane per direction of travel. Each space shall be marked by an ADA compliant sign placed at the front of the space.
- (14) Required parking and loading spaces shall be improved and made available for use before the final inspection under the building permit is made by the City Building Official, or before a change of use and resulting occupancy are commenced.

4.5 SIGNS

1. Purpose

The purpose of this section is to regulate the placement, size, and appearance of signs in the city of Burns.

2. **Definitions**

A. **Signs**

A sign is any object or device or part thereof situated outdoors or indoors which, if projected in such a manner to attract the attention of the public outside, is used to advertise or identify an object, person, institution, organization, business, product, service, event or location by means including pictures, colors, motion illumination or project images. Signs do not include the following:

- (1) Flags of nations, or an organization of nations, states and cities, fraternal, religious, and civic organizations.
- (2) Merchandise, pictures or models of products or services in window display.
- (3) Time and temperature devices not related to a product.
- (4) National, state, religious, fraternal, professional and civic symbols or crests.
- (5) Works of art, which in no way identify a product.

B. **Billboards**

The term "billboard" commonly refers to a large advertising sign that is either "freestanding" (supported by one or more posts) or a "wall sign" (attached to the wall of a building). Billboards in Burns are usually one of two standard sizes:

12 ft. x 24 ft. (288 sq.ft.) known as a "poster"; and

14 ft. x 48 ft. (672 sq.ft.) known as a "bulletin".

Billboards are generally used for "off-premise" advertising. That is, they primarily advertise products and services that are not sold or offered on the site at which the sign is located. "On-premise" signs are signs that identify or advertise a business, person, activity, product, or service provided at the location of the sign.

C. **Sign Face Area**

The area of a sign face enclosed in frames or cabinets is determined based on the outer dimensions of the frame or cabinet surrounding the sign face. The sign face area does not include foundations, supports, and other essential structures, which are not serving as a backdrop or border to the sign. Only one side of a double-faced sign is counted.

3. **Authority**

The City Manager is empowered to administer and enforce this ordinance. The procedures outlined in this Zoning Ordinance may be used in the administration of this ordinance.

4. **Conformance**

No sign may be erected unless it conforms to the provisions of this ordinance. a sign permit must be obtained from the City Recorder prior to the construction or placement of the sign. The application for the Sign Permit shall be accompanied by a plot plan.

5. **Exempt Signs**

The following signs are exempt from the provisions of this section, but may be subject to other portions of the City code.

- A. Signs not oriented toward or intended to be legible from a public right-of-way, private road, or other private property.
- B. Signs inside a building, except for strobe lights visible from a right-of-way, private road, or other private property.
- C. Street and traffic signs legally erected in the right-of-way.
- D. Building numbers as required by the City of Burns.
- E. Signs carved into or part of materials, which are an integral part of the building.
- F. Government, fraternal, civic, or religious organization flags on permanent flag poles, which are designed to allow raising and lowering of flags.
- G. Painted wall decorations and painted wall highlights.

6. **Prohibited Signs**

The following signs are prohibited and shall be removed:

- A. Strobe lights and signs containing strobe lights, which are visible beyond the property lines.
- B. Signs placed on or painted on a motor vehicle trailer and parked with the primary purpose of providing a sign not otherwise allowed for by this code.
- C. Signs constructed in the public right-of-way in whole or in part, except signs legally erected for informational purposes by or on behalf of a government agency. Overhead signs shall be a minimum of fourteen (14) feet above a sidewalk and shall not extend into the street and owner agrees to hold the City harmless of any claims resulting thereof from the signs.
- D. Signs placed on rooftops exceeding the thirty-five (35) foot building height limitation.

E. Flashing or blinking light rooftop signs, excluding seasonal decorations.

7. **Signs in All Zones Except General Commercial (CG), Light Industrial (IL), and Heavy Industrial (IH) Zones**

One non-illuminated name plate, not to exceed one and one-half (1-1/2) square feet in area, placed flat against the building for each dwelling containing a home occupation. One temporary non-illuminated sign not to exceed five (5) square feet in area pertaining to the lease, rental, or sale of a building or premises upon which it is located. One bulletin board, not to exceed twelve (12) square feet in area for each church, public library, neighborhood, or community center.

Temporary signs allowed by a variance shall require renewal every one hundred twenty (120) days.

8. **Signs in the General Commercial (CG), Light Industrial (IL), Heavy Industrial (IH), and Recreational Zones**

A. The sign face area is a direct function of the property frontage on a public right-of-way. Rivers and streams shall not be construed as a public right-of-way. One (1) square foot of sign face area is allowed for each lineal foot of property frontage on a public right-of-way, excluding alleys. The sign(s) must be placed in a manner to be viewed from the public right-of-way frontage used in the sign face area computation. The maximum sign face area is one hundred (100) square feet. Property frontage of less than thirty-two (32) lineal feet shall be allowed a maximum sign face area of thirty-two (32) square feet.

B. Signs must advertise goods and services sold or provided on the property on which the sign is placed. No off-premise signs are allowed. Existing billboards, at the time of the adoption of this ordinance, may be continued and used for advertising purposes.

C. The use of multiple signs for single businesses shall be discouraged. It is recognized certain types of retail enterprises will wish to display more than one sign.

D. Multiple businesses utilizing the same building will have the sign face area determined by the percentage of right-of-way frontage each business occupies in the building.

E. Sandwich board signs and other temporary signs readily placed on or near public rights-of-way advertising an ongoing commercial enterprise shall not be permitted. The exceptions to this provision will be signs advertising temporary garage sales and community service or other public agency functions, i.e.,: high school car washes or service club activities. These signs shall be removed within forth-eight (48) hours after activity has ended. (Signs shall not be placed on utility poles.)

9. **Enforcement**

Enforcement of the section shall follow the same procedure as outlined in Section 1.03 of this ordinance.

10. **Citizen Complaints**

Citizen complaints shall be filed in writing with the Burns City Recorder.

4.6 TRANSPORTATION IMPROVEMENT STANDARDS

The intent of these provisions is to provide clear directions and guidelines when considering installation of transportation facilities in the City of Burns. Although some zone designations may address certain uses listed below, these provisions generally apply to all zones in the City. Thus, except where otherwise specifically regulated by this ordinance, the following improvements are permitted outright or conditionally.

1. Uses Permitted Outright.

- A. Normal operation, maintenance, repair, and preservation activities of existing transportation facilities.
- B. Installation of culverts, pathways, medians, fencing, guardrails, lighting, and similar types of improvements within the existing right-of-way.
- C. Projects specifically identified in the Transportation System Plan as not requiring further land use regulation.
- D. Landscaping as part of a transportation facility.
- E. Emergency measures necessary for the safety and protection of property
- F. Acquisition of right-of-way for public roads, highways, and other transportation improvements designated in the Transportation System Plan except for those that are located in exclusive farm use or forest zones.
- G. Construction of a street or road as part of an approved subdivision or land partition approved consistent with the applicable land division ordinance.

2. Conditional Uses Permitted

- A. Construction, reconstruction, or widening of highways, roads, bridges or other transportation projects that are: (1) not improvements designated in the Transportation System Plan or (2) not designed and constructed as part of a subdivision or planned development subject to site plan and/or conditional use review, shall comply with the Transportation System Plan and applicable standards, and shall address the following criteria. For state projects that require an Environmental Impact Statement (EIS) or EA (Environmental Assessment), the draft EIS or EA shall be reviewed and used as the basis for findings to comply with the following criteria:

- (1) The project is designed to be compatible with existing land use and social patterns, including noise generation, safety, and zoning.
- (2) The project is designed to minimize avoidable environmental impacts to identified wetlands, wildlife habitat, air and water quality, cultural resources, and scenic qualities.
- (3) The project preserves or improves the safety and function of the facility through access management, traffic calming, or other design features.
- (4) The project includes provision for bicycle and pedestrian circulation as consistent with the comprehensive plan and other requirements of this ordinance.

B. Construction of rest areas, weigh stations, temporary storage, and processing sites.

C. If review under this Section indicates that the use or activity is inconsistent with the Transportation System Plan, the procedure for a plan amendment shall be undertaken prior to or in conjunction with the conditional use permit review.

3. Time Limitation on Transportation-Related Conditional Use Permits

Authorization of a conditional use shall be void after a period specified by the applicant as reasonable and necessary based on season, right-of-way acquisition, and other pertinent factors. This period shall not exceed three years

SECTION 5, ADMINISTRATIVE PROVISIONS

SECTIONS:

- 5.0 [ADMINISTRATIVE PROVISIONS](#)
- 5.1 [VARIANCE CRITERIA](#)
- 5.2 [CONDITIONAL USE PERMITS](#)
- 5.3 [ZONE CHANGE](#)
- 5.4 [LEGISLATIVE AMENDMENTS](#)

5.0 ADMINISTRATIVE PROVISIONS

1. **Notice to Applicants**

The following provisions outline the procedures which will be followed by the City for a variety of land use actions, including building permits for outright permitted uses, administrative review for some variances, and conditional use permits, and public hearing procedures by the Planning Commission and/or City Council for variances, conditional use permits, appeals, zone changes, quasi-judicial and legislative, and Comprehensive Plan amendments.

2. **Application Timeframes**

The City will endeavor to complete all administrative procedures or submitted applications in an expeditious and timely manner. City action on simple building permits should normally be completed within three working days. Other land use applications will be processed as quickly as the Timeframes for public notice and current workload of City staff allow.

3. **Final Action**

Except as provided for under ORS 227.178, the City Council shall take final action on conditional use permits and variances, including the resolution of all appeals to the City Council under ORS 227.180, within 120 days from the date a complete application is submitted to the City. Within 30 days of receipt of an application, the City will review the application to determine whether it is complete. The applicant will be notified of any missing materials within the 30 day period. The 120 day time period will commence on the date the application is deemed complete.

4. **Building Permit Applications**

All building permit applications shall be completed on forms provided by the City and accompanied with a site plan in accordance with Section 1.7 of this ordinance.

5. **Administrative Land Use Decision**

- A. An administrative land use decision may be used to expedite the decision making process on certain variances and conditional use permits, where it appears no identified public purpose will be served by conducting a contested case (quasi-judicial) public hearing on the matter. Both the City staff and the applicant should agree on the decision of whether or not to use the administrative land use decision making process. However, the final decision is left to the City staff. This process, if used, can result in a decision within approximately 10 days, not including the initial application processing and the preparation of the finding of fact and decision. The City staff has the right to elevate any land use action to a public hearing before the Planning Commission.

The City staff shall follow the statutory requirements (ORS 227.175) for an administrative land use decision in reviewing certain variances and conditional uses. The City shall provide written notice to owners of property within 200 feet of the entire contiguous site for which the application is made. The property owner list shall be obtained from the most recent property tax assessment role. The notice shall contain the following.

- (1) Provide a ten (10) day period for submission of written comment prior to the decision.
- (2) State that issues, which may provide the basis for an appeal to the Planning Commission may be raised in writing prior to expiration of the comment period. Issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue.
- (3) List by commonly used citation the applicable criteria for the decision.
- (4) Set forth the street address or other easily understood geographical reference to the subject property.
- (5) State the place, date, and time that the comments are due.
- (6) State that copies of all evidence relied upon by the applicant are available for review and that copies can be obtained at cost.
- (7) Include the name and telephone number of the local government contact person.
- (8) Briefly summarize the local decision making process for the limited land use decision being made.

At the end of the ten (10) day period provided for review, the City shall render a decision based upon the appropriate approval criteria for variances or conditional uses and prepare a written decision together with the findings of fact on which the decision is based.

Anyone filing an objection may appeal the decision to the Planning Commission, following the procedure of Section 6.5.

5.1 VARIANCE CRITERIA

1. **Staff and/or Commission Authority**

The City staff and/or Commission may approve, conditionally approve, or deny variances to quantifiable requirements of this ordinance. An applicant for a variance shall submit an application, and notification and decision making process shall be conducted in accordance with Sections 5.0 and 5.1.

2. **Commission Hearing**

If a public hearing is required, the Commission shall conduct the public hearing on the requested variance at the time and place designated on the notice of public hearing. After consideration of all pertinent information and testimony, the Commission shall announce its decision at that time or within 5 days thereof, provided, however, the matter may be continued to a future hearing and the decision announced at the close of such future hearing. The decision of the Commission shall be to approve, conditionally approve, or deny the requested variance. The decision shall incorporate findings in support of such decision and shall be in writing. The decision shall be mailed to all parties within 5 days of the decision. The Commission, in conditionally approving a variance, may set forth in its decision reasonable conditions, which will ensure conformance with the intent and purpose of this ordinance, and avoid the creation of detrimental effects upon abutting properties. The decision of the Commission may also include a time limit for compliance with the conditions of approval. If such conditions have not been fulfilled within the prescribed time limit, the variance shall be considered null and void.

3. **Required Findings**

Prior to making a decision on the requested variance, the City staff or Commission shall analyze the following criteria and incorporate such analysis in its decision on the proposed variance.

- A. The variance is otherwise in conformance with this ordinance;
- B. There are exceptional or extraordinary circumstances, or conditions applicable to the property involved, which do not apply generally to other properties in the same vicinity and zone;
- C. A variance is necessary for the applicant to preserve and enjoy a substantial property right equal to that right possessed by other property owners under like conditions in the same vicinity and zone; and
- D. The granting of the requested variance will not be materially detrimental to the public health, safety, convenience, and welfare, or injurious to the property improvements in the same vicinity and zone in which the subject property is located.

4. **Termination of Variance**

When a variance is approved, such approval shall become void one year from the date of such approval if substantial progress, such as substantial excavation or substantial construction, toward the specified variance has not been made. The holder of such a variance may apply for an extension of such approval as may be granted by the City staff or Commission.

5.2 CONDITIONAL USE PERMITS

1. **Commission Authority**

The City staff or Commission may approve, conditionally approve, or disapprove conditional use permits for the conditional uses prescribed in the various zones. An applicant for a conditional use permit shall submit an application and notice shall be given in accordance with Sections 5.0 or 6.3, whichever is appropriate.

2. **Commission Hearing**

If a public hearing is required, the Commission shall conduct the public hearing on the requested conditional use permit at the time and place designated on the notice of public hearing. After consideration of all pertinent information and testimony, the Commission shall announce its decision at that time or within five days thereof; provided, however, the matter may be continued to a future hearing and decision announced at the close of such hearing. The decision of the Commission shall be to approve, conditionally approve, or disapprove the requested conditional use permit. Said decision shall incorporate findings and shall be in writing. A copy thereof shall be mailed to all parties within five days. The Commission in approving a conditional use permit, may set forth in its decision reasonable, clear and objective conditions which will ensure the intent and purpose of this ordinance, and avoid the creation of detrimental effects upon abutting properties. The decision of the Commission may also have incorporated therein a time limit within which the conditions of approval shall have been complied with. If such conditions have not been complied with within the prescribed time limit, the conditional use permit shall be considered null and void.

3. **Required Findings**

Prior to making a decision on the requested conditional use permit, the City staff or Commission shall analyze the following criteria and incorporate such analysis into its decision on the proposed conditional use permit:

- A. The proposed conditional use complies with applicable provisions of this ordinance;
- B. The site for the proposed use is adequate in size and shape to accommodate said use, and all yards, spaces, walls, fences, parking, loading, landscaping, and other features required to adjust said use with land and uses in the neighborhood.
- C. The site for the proposed use relates to streets and other public facilities and services adequate for the quantity and kind of demand generated by the proposed use.

4. **Limitations on Conditional Uses**

The City staff or Commission, in approving a conditional use permit pursuant to the provisions of this ordinance, may set forth in its decision reasonable, clear, and objective limitations on conditional uses deemed necessary to protect the public health, safety, and welfare, and assure conformance with the intent and purpose of this ordinance, and avoid the creation of detrimental effects upon abutting property or uses thereon. Such conditions shall be clear and objective, and quantifiable wherever possible, and may include, but not be limited to requiring:

- A. Special yards, spaces, and buffers;
- B. Fences and walls;
- C. Surfacing of parking areas subject to City specifications;
- D. Dedications, improvements, or bonds for any type of improvement;
- E. Regulation of points of vehicular and pedestrian ingress and egress;
- F. Regulation of signs;
- G. Landscaping and maintenance thereof;
- H. Maintenance of the grounds;
- I. Regulation of noise, vibration, and odors;
- J. Regulation of time for certain activities;
- K. Limitation of the time period within which the proposed use shall be developed;
- L. Limitation of the duration of use; or
- M. Such other conditions as will make possible the development of the City in an orderly and efficient manner, so as to conform with the intent and purposes of all applicable ordinances.

5. **Termination of Conditional Use Permit**

When a conditional use permit is approved, such approval shall become void one year from the date of approval if substantial progress, such as substantial excavation or substantial structure construction, toward the specified conditional use has not been made. The holder of such a permit may apply for an extension of such approval as may be granted by the City staff or Commission.

5.3 ZONE CHANGE

1. **Initiation**

Amendment to the zoning map may be initiated by the Planning Commission, City Council, or by application of the property owner.

2. **Required Findings**

Prior to making a recommendation on the proposed change of zone, the Commission shall analyze the following criteria and incorporate such analysis in its decisions.

- A. The proposed amendment is in accordance with the City's Comprehensive Plan Goals and Policies.
- B. The change of zone is otherwise in conformance with this ordinance.
- C. The property affected by the change of zone is adequate in size and shape to facilitate those uses that are allowed in the requested zone.
- D. The property affected by the proposed change of zone is properly related to streets and other public facilities and services to adequately serve the type of demands generated by those uses that are allowed in the requested zone.
- E. The proposed change of zone will have no adverse effect on abutting property or the permitted uses thereof.

3. **Quasi-Judicial Change Requires Public Hearing**

If the application is for a change of quasi-judicial nature, as determined by the City administrative staff:

- A. **Timing of Public Hearing** - The Planning Commission shall conduct a public hearing as provided in Section 6.3 on the proposed amendment at its earliest practical meeting date after the proposal is submitted;

and

- B. **Follow Rules for Quasi-Judicial Hearings** - The Planning Commission shall follow the adopted rules for quasi-judicial hearings.

4. **Comprehensive Plan and Land Use Regulation Amendments Effecting Transportation Facilities**

- A. A comprehensive plan or land use regulation amendment significantly affects a transportation facility if it:

- (1) Changes the functional classification of an existing or planned transportation facility;
- (2) Changes standards implementing a functional classification system;
- (3) Allows types or levels of land use that would result in levels of travel or access what are inconsistent with the functional classification of a transportation facility; or
- (4) Would reduce the level of service of the facility below the minimum acceptable level identified in the Transportation System Plan.

B. Amendments to the comprehensive plan and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan. This shall be accomplished by one of the following:

- (1) Limiting allowed land uses to be consistent with the planned function of the transportation facility;
- (2) Amending the Transportation System Plan to ensure that existing, improved, or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the Transportation Planning Rule; or,
- (3) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes

5. **Time Limit for Decision**

Within sixty (60) working days after the hearing, the Planning Commission shall render a decision.

6. **Decision of Planning Commission to City Council**

The written decision of the Planning Commission shall then be brought before the City Council, along with a record of the hearing, at the next regular Council meeting after the appeal period has expired on the Planning Commission decision.

7. **Review and Decision by City Council**

A. **City Council Reviews Without Hearing Further Evidence** - The City Council shall review the decision of the Planning commission without hearing further evidence.

B. **Actions Available to the City Council** - The City Council shall:

(1) Either affirm the decision of the Planning Commission, at which time the decision shall be final,

or

(2) Shall set the matter for a hearing de novo before the City Council, after which the Council shall affirm, reverse, or modify the decision of the Planning Commission. The Public Hearing Procedure shall require public notice in accordance with Section 6.3 and shall follow the rules for a quasi-judicial hearing.

8. **Record of Amendments**

The City Manager shall maintain records of amendments to the text and zoning map of the ordinance.

9. **Limitation on Reapplication**

No application of a property owner for an amendment to a zoning boundary shall be considered by the Planning Commission within a one (1) year period immediately following a previous denial of such request.

10. **Certification of Decision - Written Notice of Decision and Time Limit**

Within ten (10) days after a final decision on an amendment to the Comprehensive Plan, Zoning Ordinance text, or the Plan/Zone Map, the City Manager shall provide:

A. **To Applicant and DLCD** - The applicant and the Department of Land Conservation and Development a complete copy of the City Council decision.

B. **To all Persons who Participated and Requested in Writing** - Notice of the decision to all persons who participated in the local proceedings and requested in writing that they be given notice.

5.4 LEGISLATIVE AMENDMENTS

Legislative Amendments are those, which will have widespread significant impacts beyond a site specific area. The City is, in effect, considering new law in the legislative amendment procedure. Only the Planning Commission or City Council may initiate legislative amendments. Public notice in the local newspaper is required ten (10) days prior to the public hearing. However, mailed public notice to property owners is not required. A legislative public hearing may follow the rules of procedure listed in Section 6.4.

SECTION 6, APPLICATION PROCEDURES

SECTIONS:

- 6.0 [APPLICATION PROCEDURES](#)
- 6.1 [FEES](#)
- 6.2 [REHEARING](#)
- 6.3 [NOTICE OF HEARING](#)
- 6.4 [HEARINGS PROCEDURE](#)
- 6.5 [APPEALS AND RECONSIDERATION](#)

6.0 APPLICATION PROCEDURES

An application required by this ordinance may be initiated by the owner of the property involved or an authorized agent. Authorization to act as an agent shall be in writing and filed with the application. Such applications shall be filed on forms provided by the Manager. When any such application requires the submission of a site plan, the site plan shall be drawn to scale, and include all proposed improvements or development with relevant measurements and other information necessary to evaluate the application. The Commission or Council may initiate application proceedings by motion. If the Council shall initiate such proceedings, the matter shall first be referred to the Commission, which shall then conduct proceedings and make recommendations to the Council if appropriate. Applicants shall file with all applications a list of tax lot numbers of properties situated within 200 feet, including public rights-of-way, of the external boundaries of the property affected by the application. Such tax lot numbers shall be those listed on the last preceding tax roll of the Harney County Assessor. If it is determined by the Manager or its designated representative that any of the aforementioned application requirements have not been satisfied, the application may not be accepted.

6.1 FEES

1. The filing fees for various land use actions are established by Council resolution, are nonrefundable, and shall accompany all applications at the time of filing.
2. The established fee schedule does not include costs incurred by the City relating to the provision of legal notices, including but not limited to, newspaper publication and mailed notices. Such costs shall be billed to the applicant and shall be paid within 30 days of billing. Failure to pay such billing shall render any action taken relative to said application null and void until such payment is received.

6.2 REHEARING

The Council or Commission shall not consider any application involving a lot, parcel, or structure which has been the subject of the same application within 12 months following final action on such application, unless substantial new evidence is submitted which could not reasonably have been presented in the previous application.

6.3 NOTICE OF HEARING

1. Notices of Public Hearings Required

Each notice of a public hearing authorized by this ordinance shall be published in a newspaper of general circulation in the City at least twenty (20) working days prior to the date of hearing.

2. When Mailed Notices are Required

A. **Requests for Variance, Conditional Use, Zone Boundary Amendment** - In addition, a notice of hearing on a conditional use, a variance, or a quasi-judicial amendment to a zone boundary shall be mailed to owners of property within 200 feet of the property for which the variance, conditional use, or zone boundary amendment has been requested. Said notice shall:

- (1) Explain the nature of the application and the proposed use or uses which would be authorized.
- (2) List the applicable criteria from the ordinance and the plan that apply to the application.
- (3) Set forth the street address or other easily understood geographical reference to the subject property.
- (4) State the date, time, and location of the hearing.
- (5) State the failure to raise an issue by the close of the record at or following the final evidentiary hearing, in person or by letter, precludes appeal to LUBA based on that issue.
- (6) State that failure to provide sufficient specificity to afford the decision maker an opportunity to respond to an issue that is raised precludes appeal to LUBA based on that issue.
- (7) Include the name of a local government representative to contact and a telephone number where additional information may be obtained.
- (8) State that a copy of (1) the application, (2) all documents and evidence relied upon by the applicant, and (3) applicable

criteria area available for inspection at no cost and will be provided at reasonable cost.

- (9) State that if a staff report is prepared, a copy of the staff report will be available for inspection at no cost at least seven (7) days prior to the hearing and will be provided at reasonable cost.
- (10) Include a general explanation of the requirements for submission of testimony and the procedure for the conduct of hearings.

B. Requests for Variance, Conditional Use, Zone Boundary Amendment when there are possible effects to transportation facilities- In addition, a notice of hearing on a conditional use, a variance, or a quasi-judicial amendment to a zone boundary shall be mailed to public agencies providing transportation facilities/access for the property for which the variance, conditional use, or zone boundary amendment has been requested. Information that should be conveyed to reviewers includes:

- (1) Project location
- (2) Proposed land use action.
- (3) Location of project access point(s).
- (4) Additional information that could be supplied to the review upon request (provided the information is available) includes a site plan showing the following:
 - a. Distances to neighboring constructed access points, median openings, traffic signals, intersections, and other transportation features on both sides of the property;
 - b. Number and direction of lanes to be constructed on the driveway, plus striping plans;
 - c. All planned transportation features (lanes, signals, bikeways, walkways, crosswalks, etc.);
 - d. Trip generation data or appropriate traffic studies;
 - e. Parking and internal circulation plans for vehicles and pedestrians;
 - f. Plat map showing property lines, right-of-way, and ownership of abutting properties; and
 - g. A detailed description of any requested variance.

- C. **If Zone Boundary Change Includes Mobile Home Park**
If a proposed zone boundary amendment has been initiated by the Planning commission or City Council, and is declared by the City Council to be a major reclassification, the mailing of individual notice is not required but such additional means of informing the public as may be specified by the Council shall be observed, except if an application would change the zone of property which includes all or part of a mobile home ark as defined in ORS 446.003, the governing body shall give written notice by first class mail to each existing mailing address for tenants of the mobile home park at least twenty (20) working days, but not more than forth (40) working days before the date of the first hearing on the application.
- D. **Failure to Receive Notice**
Failure of a person to receive the notice prescribed in this section shall not impair the validity of the hearing.
- E. **Recess in Hearing Authorized**
The Planning Commission and the City Council may recess a hearing in order to obtain additional information or to serve further notice upon other property owners or persons it decides may be interested in the proposal being considered. Upon recessing, the time and date when the hearing is to be resumed shall be announced.

6.4 HEARINGS PROCEDURE

1. **Scope**

Conduct of all public hearings on application by the Commission or the Council shall be governed by these procedural rules. Every person entitled to notice of hearing shall be entitled to be heard in accordance with the rules as herein established. These rules shall be interpreted to promote justice. Technical violations which do not affect substantial rights of parties or of the public shall not interfere with the hearing of an application.
2. **General Conduct of Hearing**

Each person appearing before the Commission or Council shall give their name and address in an audible tone of voice for the record. Persons may be required to be sworn prior to speaking. No person shall speak more than once without obtaining permission from the presiding officer. No person shall be disorderly, abusive, or disruptive of the orderly conduct of the hearing. The Commission or Council may set reasonable time limits for all presentations, and may exclude or limit cumulative, repetitious or immaterial matter.
3. **Burden of Proof**

The proponent of the application shall have the burden of proving the justification of their request. The more drastic the request, or the greater the impact of the request in an area, the greater is the burden upon the proponent. The following criteria and factors are deemed relevant and material, and shall be considered by the Council or Commission in reaching its decision on a proposal: mistake or error in the original land-use designation; change of conditions in the character of the neighborhood in which the use or development is proposed; and all factors relating to the question of the public health, safety, and general welfare, including but not limited to, the character of the area involved, its peculiar suitability for particular uses, the conservation of property values and natural resources, and the direction of building development.
4. **Order of Procedure**

The order of proceedings in the hearings shall be as follows:

 - A. **Commencement of Hearing**

The presiding officer shall announce the nature and purpose of the hearing, and summarize the rules for the conduct of the hearing.
 - B. **Objections to Jurisdiction**

The presiding officer shall inquire of the audience whether there are objections to jurisdiction of the Council or Commission to hear the matter and, if such objections are received, conduct such further inquiry as necessary to determine the question. The presiding officer shall terminate the hearing if the inquiry demonstrates that the Council or Commission lacks jurisdiction. Any matters thus terminated shall, if the defect can be remedied, be rescheduled.

- C. **Staff Report**
The City staff may summarize the nature of the proposal, explaining graphic or pictorial displays, which are part of the record and a summary of the staff report. All petitions and letters filed with the Manager shall be introduced at this time.
- D. **Proponent's Case**
- (1) The applicant-proponent may appear on his or her own behalf, or by a representative.
 - (2) Upon failure of the applicant or its representatives to appear at the hearing on his proposal, or upon the applicant's express waiver of presenting testimony and evidence, the presiding officer shall consider the written application, plus staff materials, as presenting the applicant's case.
- E. **Questioning of Proponents**
The opponents shall be allowed, if the proponent is present and upon recognition by the presiding officer, to submit questions directly to the proponents. Proponents shall be given a reasonable time to respond solely to the question. The presiding officer shall have the right to rule any question out of order.
- F. **Opponent's Case**
Persons opposed to the proposal and who received or were entitled to receive notice of the hearing, or their representatives, shall be heard next.
- G. **Questioning of Opponents**. The proponent shall be allowed, upon recognition of the presiding officer, to submit questions to opponents who have testified. Opponents shall be given a reasonable time to respond solely to the question. The presiding officer shall have the right to rule any question out of order.
- H. **Rebuttal Testimony**
The proponent may offer rebuttal testimony, if any.
- I. **Close of Hearings and Deliberation**
The presiding officer shall conclude the hearing, and the Council or Commission shall deliberate the proposal.
- J. **Decision**
The Council or Commission, in making its decision, shall adopt written findings proposed by the proponent, opponent, or the staff as its own. A copy of the decision shall be filed with the Manager and a copy of the decision shall be sent by first class mail to the applicant and to all other parties.

K. **Council Reconsideration of Commission Decisions**

The Council may, upon its own motion, reconsider Commission decisions to correct perceived errors, within 14 days of the Commission's decision.

5. **Record of Proceedings**

The presiding officer shall cause the proceedings to be stenographically or electronically recorded. It shall not be necessary to transcribe testimony unless required for review or unless the Council or Commission deems it necessary for the purpose of its decision. The presiding officer shall, where practical, cause to be received all physical and documentary evidence presented which shall be marked to show the identity of the person offering the same, and whether presented on behalf of proponent or opponent. Unless evidence is capable of being offered and incorporated in the record of the case, it shall not be received. All exhibits received into evidence shall be retained by the Council or Commission until after any applicable appeal period has expired, at which time the exhibits may be released upon written demand to the person identified thereon. Any member of the public shall have access to the record of the proceedings at reasonable times, places, and circumstances. Any member of the public shall be entitled to make copies of the record at their own expense.

6. **Ex Parte Contracts**

The Commission and Council shall neither: communicate, directly or indirectly, with any party or their representatives in connection with any issue involved except upon notice and opportunity for all parties to participate; nor take notice of any communication, reports, staff memoranda, or other materials prepared in connection with the particular case unless the parties are afforded an opportunity to contest the material so noticed; nor inspect the site with any party or their representative unless all parties are given an opportunity to be present.

7. **Continuances**

The presiding officer may, at his or her discretion, or at the request of a party for good cause shown, postpone or continue a public hearing to a date certain.

8. **Citizen Involvement and Agency Coordination**

To assure public involvement in the planning process, any application may be submitted to the citizens of the City for their review and advisory comment through the procedures in the citizen involvement program as provided by this ordinance. To assure affected agencies involvement in the planning process, any application may be referred to appropriate local, state, or federal agencies for their review and comment. The Manager shall utilize the procedures in the agency coordination program as provided in this ordinance.

6.5 APPEALS AND RECONSIDERATIONS

1. **Decisions Appealable**

An administrative land use decision or a decision of the Commission shall be final unless the Manager receives a notice of appeal to the Commission/Council. Such notice must be received from a party to the decision of the City staff or the Commission within ten days of the date of mailing of the final decision.

An administrative land use decision may be appealed to the Commission. A Planning Commission decision may be appealed to the City Council. The procedure for both appeals is outlined below.

2. **Notice of Appeal**

Every notice of appeal shall contain: a reference to the application sought to be reviewed; if not submitted by the applicant; a statement of the interest of the appellant to determine the appellant's status as a party; and proof of service of notice of appeal on other parties.

3. **Public Hearing Date and Notice**

Upon receipt of an appeal from a decision of the Commission, the Manager shall set a date for public hearing not less than 20 days from receipt of appeal before the Council. In the event of review by the Council as herein provided, notice of review shall be given to the applicant, to all persons notified of the original hearing on the application, and to all parties before the original hearing body. Such notice shall include the nature of the appeal, and time and place of the public hearing before the Council.

4. **Written Appeal Statement**

The appellant shall submit for the public hearing a written statement specifically referring to those portions of this ordinance and the record from below, which supports the appeal. Any party may submit a written statement no later than five (5) days prior to the date set for review, setting forth the respective party's contentions regarding the decision below relative to the issues under appeal.

5. **Public Hearing by Council**

The Council shall conduct a public hearing on the appeal from the Commission at the time and place designated on the notice of review. Such public hearings shall be conducted in accordance with the rules of procedure of this ordinance. The appellant shall appear at said hearing and offer justification of the appeal. If the appellant fails to do so, the appeal shall be denied. The Council, at the conclusion of the public hearing, or within 35 days thereof, shall render a written decision upon the appeal. The review of a decision of the Commission shall be confined to the record of the proceedings before the Commission and shall include: all materials, pleadings, memoranda, stipulations, and motions submitted by any party to the proceeding and received or considered by the Commission; all material submitted by the City staff with respect to the application; the minutes of the hearing before the Commission (a verbatim

transcript shall be prepared upon written request and payment of cost thereof by any party); the findings and action of the Commission; and the notice of appeal. The Council may amend, rescind, or affirm the appealed decision, or remand the matter back to the Commission for further reconsideration and decision.

6. **Council Reconsideration of Commission Decisions**

The Council may, upon its own motion, reconsider Commission decisions in order to correct perceived errors, provided, however, that the Council shall, prior to taking final action on the matter, refer the matter back to the Commission, in order for the Commission to review and comment upon the Council's reconsideration. Upon receiving the Commission's comments, the Council may take final action on the matter.