

**ORDINANCE NO. 1080**

**AN ORDINANCE AMENDING TITLE 16 OF THE CANBY MUNICIPAL CODE.**

**WHEREAS**, the City is required to review its residential zoning ordinance under the state-mandated process of periodic review; and

**WHEREAS**, an extensive public involvement process lasting more than a year and including two rounds of neighborhood meetings, many meetings of the City's Residential Zoning Task Force, and Planning Commission meetings has resulted in a set of recommendations on amendments to the Land Development and Planning Ordinance of the City of Canby; and

**WHEREAS**, the Canby Planning Commission, after providing appropriate public notice, conducted a public hearing on said amendments, during which the citizens of Canby were given the opportunity to come forward to present testimony on these proposed changes; and

**WHEREAS**, the Planning Commission found that the standards and criteria of Section 16.88.160 of the Land Development and Planning Ordinance, concerning Text Amendments, were met, and unanimously recommended approval to the City Council after making certain modifications; and

**WHEREAS**, the City Council, after reviewing the record of the Canby Planning Commission regarding the subject amendments, concluded that the Planning Commission's findings of fact and the amendment itself are appropriate.

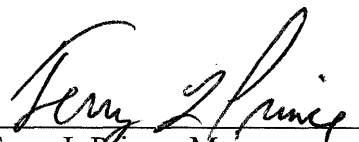
**NOW, THEREFORE, THE CANBY CITY COUNCIL ORDAINS AS FOLLOWS:**

TA 01-02 is hereby approved and Title 16, the Land Development and Planning Ordinance of the City of Canby, is modified as detailed in Exhibit 1.

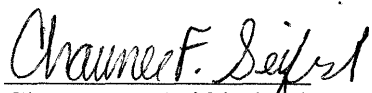
**SUBMITTED** to the Council and read the first time at a regular meeting thereof on November 7, 2001, ordered posted in three (3) public and conspicuous places in the City for a period of five (5) days, as authorized by the Canby City Charter; and to come up for final reading and action by the Canby City Council at a regular meeting thereof on November 21, 2001, commencing after the hour of 7:30 p.m., at the Council's regular meeting chambers at the Canby City Hall in Canby, Oregon.

**ENACTED** on the second and final reading by the Canby City Council at a regular meeting thereof on November 21, 2001 by the following vote:

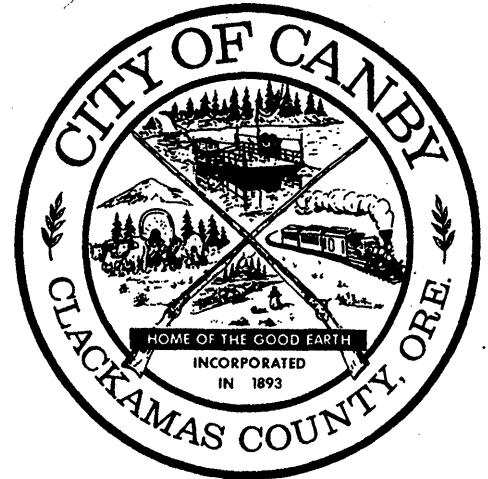
YEAS 4                      NAYS 0  
ABSTENTION 1

  
Terry L Prince, Mayor

ATTEST:

  
Chauncey F. Seifried, City Recorder Pro Tem

ORD 1080  
ex 1



## STAFF REPORT

**TITLE:** Residential Zoning/Land Use Procedures

**APPLICANT:** City of Canby

**FILE #:** TA 01-03

**STAFF:** John Williams, Community Development & Planning Director

**REPORT DATE:** September 10, 2001

**HEARING DATE:** September 24, 2001

### I. APPLICATION SUMMARY

This application contains modifications to Canby's Residential Zoning Code and other sections of the Land Development & Planning Ordinance. The amendments stem from a lengthy process of public involvement, including two rounds of neighborhood meetings with over 200 attendees, many meetings of the City's Residential Zoning Task Force, and Planning Commission workshops. Public notice during the process has included two notices in Canby Utility's bill, advertisements on Channel 5, and numerous articles in the *Herald* and *Oregonian*.

The project is a required work task under the City's Periodic Review order and much of the work was sponsored by a TGM grant from ODOT/DLCD. Initial code drafts were created by staff and Scot Siegel, a consultant with OTAK, Inc., supervised by the Task Force. This draft was discussed and critiqued in six neighborhood meetings in March 2001 attended by over 130 persons. Amendments were made based on the comments at these meetings, and in July 2001 a second round of four meetings was held. Attendance at the follow-up meetings was lower, but almost all attendees were in support of the proposals as written. Based on the positive feedback from these meetings, this final draft is being proposed for adoption. The September 24 public hearing was noticed by direct mail to every property owner within Canby's Urban Growth Boundary.

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The amendments can be grouped into two main categories. The first consists of changes to the Low, Medium, and High Density Residential Zones, focusing on permitted uses and development standards. The second category is more process-oriented, focusing on changes to our land use application procedures.

To summarize, the amendments will:

1. Allow attached accessory dwellings (“granny flats”) outright and detached accessory dwellings conditionally in the Low Density Residential Zone;
2. Allow lot size averaging in the Low and Medium Density Residential Zones;
3. Create a maximum lot size in the Low and Medium Density Residential Zones;
4. Allow zero-lot line development as a conditional use in the Low and Medium Density Residential Zones;
5. Allow a reduced front-yard setback for porches;
6. Allow fourplexes as an outright use in the Medium Density Residential Zone;
7. Eliminate the maximum density standard in the High Density Residential Zone;
8. Reduce frontage requirements in the Medium and High Density Residential Zones;
9. Revise parking standards for duplex units;
10. Create a minor variance process;
11. Create a formal code interpretation process;
12. Modify public notice procedures, including expanding the mailing radius and requiring review of some applications by neighborhood groups;
13. Create a standardized, simplified process for land use applications and public notice, and centralize them in one place in the code;
14. Make some minor corrections and modifications to fix typos, relocate sections of code, and update language; and
15. Allow extensions of certain land use approvals.

Section III of this staff report lists the proposed amendments and provides a more detailed analysis of each one. Section IV presents the proposed findings in response to applicable criteria, and Section V contains a recommendation for the Commission to consider. Exhibit 1 contains letters received to date on this topic.

## **II. APPLICABLE CRITERIA**

### *Section 16.88.10 Amendments to text of title*

This is a legislative land use amendment. In judging whether or not this title should be amended, the Planning Commission and City Council shall consider:

1. The Comprehensive Plan of the city, and the plans and policies of the county, state, and local districts, in order to preserve functions and local aspects of land conservation and development;
2. A public need for the change;
3. Whether the proposed change will serve the public need better than any other change which might be expected to be made;

4. Whether the change will preserve and protect the health, safety and general welfare of the residents in the community;
5. Statewide planning goals.

The Planning Commission will hold a public hearing and make a recommendation to the City Council on this proposal. The City Council will make their decision based on the record of the Planning Commission's hearing and deliberations but will not hold its own hearing.

### **III. PROPOSED AMENDMENTS**

First, the amendments to the residential zones. These are presented embedded in their code to show the context of the changes. Each amendment is numbered and explained by a brief description and rationale on the facing page.

Due to the volume of changes included in this application, the more substantive amendments have been called out with highlighting. Underlined, highlighted text shows a "significant" (policy) change. Underlined text with no highlighting represents more routine changes (housekeeping, relocations, etc.). Text to be deleted is shown in ~~strikethrough~~. The proposal begins on the next page.

#1 **Duplexes in the R-1 zone.** Currently duplexes on corner lots of 10,000 square feet or more are allowed as conditional uses in the R-1 zone. This proposal would allow that use outright if the driveways face different streets (this requirement makes duplexes look more like single family homes).

#2 **Accessory Units.** Accessory dwellings (“granny flats”) are small second units, typically used for relatives (college kids, older parents). Currently our code does not allow a second cooking unit on a lot in the R-1 zone. The proposal would allow such units outright when attached to a primary residence or conditionally when detached. Many cities around Oregon have adopted similar regulations in recent years. This proposal was been the subject of extensive discussion in the neighborhood meetings, where the comments were overwhelmingly positive. The units will be affordable housing for a target population that is often low on resources (seniors and youth). While most (though not all) meeting attendees supported the concept, there were various concerns raised about the application. The eight proposed restrictions, including parking requirements, a residency requirement, and design guidelines, were devised to address the concerns. By the second round of meetings there was very little concern about the proposal.

**Chapter 16.16**  
**R-1 LOW DENSITY**  
**RESIDENTIAL ZONE**

**Sections:**

- 16.16.010**     **Uses permitted outright.**
- 16.16.020**     **Conditional uses.**
- 16.16.030**     **Development standards.**

**16.16.010 Uses permitted outright.**

Uses permitted outright in the R-1 zone shall be as follows:

A. Single-family dwelling; one single-family dwelling per lot;

#1

B. Two family (duplex) dwelling on a corner lot that contains a minimum of ten thousand square feet, provided that the building is designed such that vehicle access to the different units is taken from different streets;

BC. Agriculture, including all accessory structures necessary to the conduct of agricultural activity but excluding commercial processing, sales, manufacturing, or packaging plants except when used primarily for items grown on the premises;

CD. Accessory uses and/or accessory structures;

#2

E. Accessory dwellings attached to a primary dwelling (sharing a common wall) are permitted only when approved through administrative review, in conformance with Chapter 16.48. The administrative approval shall be based on findings that all of the following standards are met:

1. Compliance with the Oregon Structural Specialty Code;

2. Yard area, building height, lot coverage and other development standards are the same as for the primary dwelling;

3. The accessory dwelling does not exceed 800 square feet of floor area;

4. Not more than one accessory dwelling unit per lot;

5. One off-street parking space provided (i.e., in addition to any off-street parking required for other uses on the same lot);

6. Exterior siding and roofing must be similar in color, material and appearance to that used on the primary dwelling. Different siding or roofing may be approved by the planning commission if it finds that the proposed design is more compatible with surrounding residences;

7. The property owner resides on the subject property and uses it as his/her



primary residence. It is the property owner's on-going responsibility to provide evidence showing that this standard is met:

8. Utility connections and metering comply with applicable city standards and those of utility providers:

DF. Day care facility in a residential home, with twelve (12) or fewer children;

EG. Manufactured and mobile home subdivisions, where developed as planned unit developments, subject to the requirements of Divisions IV and V;

FH. Public building or land use such as fire station, city hall, park and playgrounds, library or museum;

GI. Manufactured home - with the following additional approval criteria:

1. Must be double-wide or wider and must enclose at least 1,000 square feet.

2. Must be located not more than twelve (12) inches above grade on an excavated and back-filled masonry foundation which is enclosed at the perimeter.

3. Must have a pitched roof with a minimum slope of at least a nominal three (3) feet in height for each twelve (12) feet in width.

4. Exterior siding and roofing must be similar in color, material and appearance to that used on surrounding dwellings within three hundred (300) feet of the lot.

5. The exterior thermal envelope must meet performance standards equivalent to those required for single family dwellings under the State Building Code.

6. Must have a garage or carport with exterior materials matching the residential unit.

7. Must not have bare metal siding or roofing.

HJ. Home occupations which meet the strict definition of section 16.04.240. (Ord. 890 section 15, 1993; Ord. 859 section 1, 1991; Ord. 740 section 10.3.18(A), 1984)

#### **16.16.020 Conditional uses.**

Conditional uses in the R-1 zone shall be as follows:

A. Cemetery;

B. Church;

C. Day care facility, other than a residence or caring for more than twelve (12) children;

D. Hospital;

E. Nursing home, convalescent home, home for the aged, board and care home, foster care home, etc.;

F. School;

G. Utility, pumping station or substation with facilities and structures that are associated with the use;

H. Golf courses, public or private, with facilities and structures that are associated with the use;

I. Home occupations which otherwise meet the strict definition of section 16.04.240, but which involve the manufacture of products, nonresidential storage of goods, or any activity which is likely to increase traffic;



- #3 **Detached accessory dwellings.** See comment #2. This proposal would allow detached units as a conditional use (requiring a public hearing). The requirement ensures that the detached unit would meet the same setback requirements as for the primary structure.
- #4 **Zero lot line housing.** This is a creative development option that would be available for use in a new subdivision or larger infill project. Essentially, it looks just like standard housing, except the lot lines are at the foundation line. Each house thus gets possession of a large side yard rather than two narrow side yards. This proposal is often misunderstood due to its name (people tend to think you're allowing new houses with no setbacks). This option would be available as a conditional use, and would most likely be accompanied by specific house plans illustrating how the developer would take advantage of the design. In addition, the developer would have to demonstrate that all utility issues were taken care of and provide copies of proposed easement language to take care of the construction and maintenance issues noted in the text.
- #5 **R-1 lot size requirements.** The proposal adds two new concepts to the R-1 zone: maximum lot size and lot size averaging. The only current restriction on lot sizes in this zone is a 7,000 square foot minimum. A maximum lot size in the single family zone of 10,000 square feet is proposed. This would help ensure that efficient use is made of the land added to Canby, to reduce the amount of farmland used over time. The minimum is unchanged, 7,000 s.f. An exception to the lot size maximum is made for existing houses that subdivisions are being created around (i.e., allowing the owner to remain on a larger lot if they prefer). In addition, the Planning Commission will be able to waive the lot size maximum in cases where it cannot be met due to existing lot dimensions, road patterns, etc, or if other special circumstances apply.

The 7,000 to 10,000 square foot size requirement may also be altered somewhat by the Planning Commission under the lot size averaging proposal. Under this rule, the *average* lot size in a subdivision would have to fall between 7,000 and 10,000 square feet. The minimum lot size would be allowed to dip to 6,000 square feet as long as the average lot size falls in the described range. One main goal of the proposal is to encourage the provision of parks or natural areas by allowing those areas to be included in the average lot calculation (as long as the provided area is not required in the Parks Plan). For example, a developer could provide a couple of small pocket. Developers will be able to provide some oversized lots under this system, but must demonstrate a public benefit in order for more than ten percent of the lots to be over 10,000 square feet (this benefit would have to be demonstrated for more than ten percent to be under 7,000 square feet as well).

Developers will have to record easements preventing the redivision of large lots in the future.

These proposals were discussed extensively in the neighborhood meetings and other forums, resulting in the numbers and restrictions seen in the text. Opinion was generally

J. Accessory use or structure (not a dwelling) located on a lot or lots abutting the lot which houses the principal use of the property;

K. Manufactured and mobile home park or trailer park, subject to the criteria of Chapter 16.44;

L. ~~One two-family dwelling duplex~~ where the lot contains a minimum of twelve thousand square feet; through the conditional use permit process, the Planning Commission may require the two dwellings in a duplex to share a common driveway to minimize curb cuts and paving. ~~or, if a corner lot on other than arterial streets, ten thousand square feet. Any duplex constructed on a corner lot of less than twelve thousand square feet shall be designed such that access to the different units is taken from different streets;~~

M. Bed and Breakfast;

#3 N. Accessory Dwelling that is not attached to the primary dwelling. The accessory dwelling shall be separated from the primary dwelling by a minimum of 10 feet and conform to the standards in Section 16.16.010(E)(2). The setback standards for one and two story buildings in Section 16.16.030(E) shall apply.

#4 O. Zero-lot line development for uses otherwise allowed, provided that the minimum side yard setback shall be 7 feet when adjacent to housing with standard setbacks. Prior to building permit approval, the applicant shall submit a copy of a recorded easement for every zero-lot line housing that guarantees rights for the purpose of construction and maintenance of structures and yards. The easement shall stipulate that no fence or other obstruction shall be placed in a manner that would prevent maintenance of structures on the subject lot; and the building placement, landscaping, and/or design of windows shall provide a buffer for the occupants of abutting lots.

OP. Other developments customarily found within a residential zone, as determined by the Planning Commission. (Ord. 890 section 16, 1993; Ord. 740 section 10.3.18(B), 1984)

### 16.16.030 Development standards.

The following subsections indicate the required development standards of the R-1 zone::

#5 A. Minimum and maximum lot area: seven thousand square feet minimum, and ten thousand square feet maximum, per single-family dwelling. The maximum lot area standard does not apply to single family dwellings existing at the time of subdivision or partition plan approval; and the Planning Commission may approve smaller or larger lots in conformance with subsection B, below. Preexisting, legally created lots of record shall be considered to be legally buildable and separately saleable, provided they contain at least five thousand square feet; and further provided, that any structures on such lots meet the required setbacks from the lot lines which will result when these lots of record are separated. Lot width requirements ~~shall~~ may be reduced to a minimum of fifty feet, and side yard setbacks reduced to a minimum of five feet for such lots.

B. ~~Minimum width and frontage: sixty feet, except that t~~Lot area exceptions:

1. The Planning Commission may approve an exception to the minimum and maximum lot area standards in subsection 16.16.030.A as part of a subdivision or

favorable, but there were concerns about the smaller lots. Many people were interested in the positive applications of the proposal, though, including the possibility of receiving additional park areas or other amenities.

- #6 **Porch setbacks.** Residential design has proven to be an important issue to Canby; we are beginning a project to assess whether residential design standards are appropriate here. Visual preference surveys show that most people think houses with porches are more attractive. The proposal offers an incentive for this design – covered front porches will be allowed to come within ten feet of a street property line. The Planning Commission has recommended that no building elements on the other than porches will be allowed to enter the standard twenty foot required yard, including habitable area on the second floor.
- #7 **Side yard setback.** Side yard setbacks would be changed to seven feet on both sides rather than seven feet and ten feet. This proposal originated from the Residential Zoning Task Force. The Planning Commission should consider whether this will impact the look of neighborhoods.
- #8 **Detached accessory dwelling height.** Currently, detached accessory structures must be single story buildings no taller than 22 feet. As described in #3, detached accessory dwellings will now be allowed conditionally in the R-1 zone. Provision #7 allows the Planning Commission to approve two-story structures through the Conditional Use process. Staff anticipates that this provision would be used for converting spaces above detached garages into an accessory unit. No other structures would be allowed to exceed 22 feet or one story.

partition application when all of the following standards are met:

a. The average area of all lots created through the subject land division, excluding required public park land dedications, surface water management facilities and similar public use areas, shall be no less than seven thousand square feet and no greater than ten thousand square feet. Non-required significant natural resource areas shall be included in the average lot size calculation to enable a transfer of density onto buildable portions of the site;

b. No lot shall be created that contains less than six thousand square feet;

c. The lot area standards for two-family dwellings, as provided in Sections 16.16.010 and 16.16.020, shall be met; and

d. As a condition of granting the exception, the city will require the owner to record a deed restriction with the final plat that prevents the re-division of oversized lots (e.g., ten thousand square feet and larger), when such re-division would violate the average lot area provision in subsection 16.16.030.B.1.a. All lots approved for use by more than one dwelling shall be so designated on the final plat.

2. A public benefit must be demonstrated in order to allow more than ten percent of the lots to be outside of the minimum and maximum lot areas in subsection 16.16.030.A.

3. Notwithstanding section 16.16.030.B.1, the Planning Commission may modify the maximum lot area requirements in 16.16.030.A if these cannot be met due to existing lot dimensions, road patterns, or other site characteristics, if the parcel being created is intended for future re-division for residential use, or if other special circumstances apply.

C. Minimum width and frontage: sixty feet, except that the Planning Commission may approve lots having less frontage subject to special conditions to assure adequate access; corner lots: sixty-five feet.

D. Minimum yard requirements:

#6

1. Street yard: twenty feet on side with driveway; fifteen feet for all other street sides; except that street yards may be reduced to ten feet for covered porches.

2. Rear yard: all corner lots, ten feet single story or fifteen feet two-story; all other lots, fifteen feet single story or twenty feet two-story;

#7

3. Interior yard: ~~One side seven feet, other side(s) ten feet;~~ except that zero-lot line housing may be approved as a conditional use, as described in Section 16.16.020(O). Interior yards may be reduced to three feet for detached accessory structures, except accessory dwellings, erected sixty feet or more from any street other than an alley.

DE. Maximum building height:

1. Principal building: thirty-five feet.

#8

2. Accessory building: twenty-two feet or one story, whichever is less. For detached accessory dwellings, the Planning Commission may approve buildings over one story and heights over twenty-two feet through the Conditional Use process, but in

#9 **Clarifying vision clearance requirements.** This is simply a clarification of a section of code that has caused some confusion over time. It codifies an interpretation made several years ago.

no case shall the accessory dwelling be higher than the principal building.

EE. Maximum lot coverage:

1. Principal building: no limit;
2. Accessory building: no more than the area covered by the main building, unless lot area exceeds twelve thousand square feet in which case no limit is specified.

F. Other regulations:

#9

1. Vision clearance distance shall be ten feet from a street to an alley or a street to a driveway, and thirty feet from a street to any other street.
2. All setbacks to be measured from the foundation line of the building; overhangs shall not exceed two feet; mechanical units, used for the heating/cooling of residential units are exempt from interior and/or rear yard setback requirements.
3. Required yards on southern and western exposures may be reduced by not more than five feet for eaves or canopies to provide shade. (Ord. 890 section 17, 1993; Ord. 740 section 10.3.18(C), 1984; Ord. 955 section 5, 1996; Ord. 981 section 45, 1997)

#10 **R 1.5 uses.** This proposal allows fourplexes in the medium density zone; a maximum of three-unit structures are allowed currently. The Planning Commission has recommended keeping common-wall housing as a conditional use in this zone, at least until design standards are created for this type of development.

#11 **R 1.5 lot sizes.** As with the R-1 zone, maximum lot sizes and lot size averaging are proposed in the R-1.5 zone. The main difference is that the range of lot sizes proposed is much narrower – 5,000 to 6,500 square feet. Duplex, etc. lots will be required to have at least 4,000 square feet per unit. The only current restriction on lot sizes in this zone is a 5,000 s.f. minimum for single family, or 10,000 square feet for duplexes. The proposal codifies the goal of making more efficient use of medium density land. Most meeting attendees supported this goal and the proposed numbers, particularly when placed in the context of Canby's overall land needs and our upcoming rezoning of land.

**Chapter 16.18**  
**R-1.5 MEDIUM DENSITY  
RESIDENTIAL ZONE**  
(Ord. 890 section 18, 1993)

**Sections:**

**16.18.010 Uses permitted outright.**

**16.18.020 Conditional uses.**

**16.18.030 Development standards.**

**16.18.010 Uses permitted outright.**

Uses permitted outright in the R-1.5 zone shall be as follows:

A. Uses permitted outright in the R- 1 zone;

#10 B. Two-family or, three-family, or four-family dwellings; One duplex or, triplex, or fourplex on each lot. (Ord. 740 sect 10.3.20 (A), 1984)

**16.18.020 Conditional uses.**

Conditional uses in the R-1.5 zone shall be as follows:

A. Uses listed as conditional in the R-1 zone; except as modified by Section 16.18.010, above.

B. Single-family dwellings having common wall construction and located on lots of not less than four thousand five hundred square feet each. (Ord. 740 sect. 10.3.20(B), 1984),

**16.18.030 Development standards.**

The following subsections indicate the required development standards of the R-1.5 zone:

#11 A. Minimum lot area: six thousand square feet for the first dwelling unit and four thousand square feet for each additional unit. A minimum area of five and maximum lot area: Five thousand square feet minimum and six thousand five hundred square feet maximum, may be permitted within a new subdivision or partition provided that the overall mean average lot size exceeds six thousand square feet. Single-family dwellings with common wall construction may be permitted on lots of four thousand five hundred square feet each if approved as a conditional use.

B. Minimum width and frontage: sixty feet, except that the maximum lot area





standard does not apply to single family dwellings existing prior to subdivision or partition plan approval. Lots designated for open space, or two-, three-, or four-family use are exempt from the maximum lot size requirement (such lots shall have a minimum of four thousand square feet per unit). The Planning Commission may approve lots having less frontage subject to special conditions smaller or larger lots in accordance with subsection B, below.

B. Lot area exceptions:

1. The Planning Commission may approve an exception to the minimum lot area standards in subsection 16.18.030.A as part of a subdivision or partition application when all of the following standards are met:

a. The average area of all lots and open space tracts created through the subject land division, excluding required public park land dedications, surface water management facilities and similar public use areas, shall be no less than five thousand square feet and no greater than six thousand five hundred square feet. Non-required significant natural resource areas shall be included in the average lot size calculation to enable a transfer of density onto buildable portions of the site;

b. No lot shall be created that contains less than four thousand square feet; and

c. As a condition of granting the exception, the city will require the owner to record a deed restriction with the final plat that prevents the re-division of oversized lots (six thousand five hundred square feet and larger), when such re-division would violate the average lot size provision in subsection 16.18.030.B.1.a. All lots approved for use by more than one dwelling shall be so designated on the final plat.

2. A public benefit must be demonstrated in order to allow more than ten percent of the lots to be outside of the minimum and maximum lot areas in subsection 16.18.030.B.1.a.

3. Notwithstanding section 16.18.030.B.1, the Planning Commission may modify the maximum lot area requirements in 16.18.030.A if these cannot be met due to existing lot dimensions, road patterns, or other site characteristics, if the parcel being created is intended for future re-division for residential use, or if other special circumstances apply.

4. Lots of three thousand square feet each may be permitted by the Planning Commission for single family dwellings having common wall construction.

C. Minimum width and frontage: Sixty forty feet, except that the Planning Commission may approve lots having less frontage subject to special conditions to assure adequate access. Twenty feet is permitted for single family attached (common wall) housing on interior lots; ~~corner lots: sixty-five feet.~~

D. Minimum yard requirements:

1. Street yard: twenty feet on side with driveway; fifteen feet for all other street sides; ~~except that street yards may be reduced to ten feet for covered porches.~~

2. Rear yard: all corner lots, ten feet single story or fifteen feet two-story; all other lots: fifteen feet single story or twenty feet two-story;

3. Interior yard: ~~one side, seven feet; other side(s), seven ten feet; except as otherwise provided for zero-lot line housing.~~ Interior yards may be reduced to three



feet for detached accessory structures, except accessory dwellings, erected sixty feet or more from any street other than an alley.

DE. Maximum building height:

1. Principal building: thirty-five feet.

2. Accessory building: twenty-two feet or one story, whichever is less. For detached accessory dwellings, the Planning Commission may approve buildings over one story and heights over twenty-two feet through the Conditional Use process, but in no case shall the accessory dwelling be higher than the principal building.

EF. Maximum lot coverage: sixty percent.

FG. Other regulations:

1. Vision clearance distance shall be ten feet from a street to an alley or a street to a driveway, and thirty feet from a street to any other street.

2. All setbacks to be measured from the foundation line of the building.

Overhangs shall not exceed two feet; mechanical units, used for the heating/cooling of residential units are exempt from interior and/or rear yard setback requirements.

3. Required yards on southern and western exposures may be reduced by not more than five feet for eaves or canopies to provide shade. (Ord. 890 sect. 19, 1993; Ord. 740 sect. 10.3.20(C), 1984; Ord. 955 sect. 6, 1996; Ord. 981 sect. 46, 1997; Ord. 1019 sect. 8, 1999.)

- #12 **Neighborhood commercial uses.** The proposal would allow neighborhood commercial uses, including beauty shops, bakeries, and offices, in the R-2 zone with a conditional use permit. If a developer can put together a concept for a small community center in a development, this would be a desired element of that plan. Note that these would be conditional uses to ensure adequate review, the size of uses would be limited, and they would be subject to design review.

**Chapter 16.20**  
**R-2 HIGH DENSITY  
RESIDENTIAL ZONE**  
(Ord. 890 section 20, 1993)

**Sections:**

**16.20.010 Uses permitted outright.**

**16.20.020 Conditional uses.**

**16.20.030 Development standards.**

**16.20.010 Uses permitted outright.**

Uses permitted outright in the R-2 zone shall be as follows:

A. Uses permitted outright in the R-1.5 zone, subject to the density standards in Section 16.20.030(A);

~~B. Two-family or duplex dwelling;~~

B. Single family dwellings having common wall construction;

C. Boarding, lodging or rooming house;

D. Multi-family dwelling;

E. Manufactured and mobile home subdivision of eight or fewer lots per acre, subject to the requirements of Chapter 16.80;

F. Manufactured and mobile home or trailer parks, subject to the criteria of Chapter 16.44;

G. Bed and Breakfast. (Ord. 890 section 21, 1993; Ord. 740 section 10.3.21(A), 1984; Ord. 1019 section 9, 1999)

**16.20.020 Conditional uses.**

Conditional uses in the R-2 zone shall be as follows:

A. A use listed as conditional in the R-1 zone and not listed as permitted outright in section 16.20.010;

#12 B. Uses listed as permitted outright in the C-R zone (Section 16.24.010), not to exceed 3,000 square feet, and only when part of a Planned Unit Development. All such uses shall be subject to site and design review.

~~B. Single-family dwellings having common wall construction and located on lots of not less than four thousand square feet each.~~

C. Zero-lot line development for uses otherwise allowed, provided that the minimum side yard setback shall be 7 feet when adjacent to housing with standard setbacks. Prior to building permit approval, the applicant shall submit a copy of a recorded easement for every

#13 **R-2 density standards.** The density standard for the R-2 zone will function differently from that of the other zones. The standard was proposed by the Planning Commission in a workshop setting and requires a minimum density of 14 units per acre (on the low end of many of Canby's recent R-2 developments). As written, the proposal would allow any type of housing as long as it met this standard. Obviously, parking, landscaping, building height, and other restrictions would cap the maximum number of units, but no specific maximum density is proposed.

This standard is intended to increase the utilization of high density land for high density projects. The City will soon have to designate additional land for high density zoning, and this land should be used for high density projects.

zero-lot line housing that guarantees rights for the purpose of construction and maintenance of structures and yards. The easement shall stipulate that no fence or other obstruction shall be placed in a manner that would prevent maintenance of structures on the subject lot; and the building placement, landscaping, and/or design of windows shall provide a buffer for the occupants of abutting lots.(Ord. 890 section 22(A)(B), 1993; Ord. 740 section 10.3.21 (B), 1984).

### 16.20.030 Development standards.

The following subsections indicate the required development standards of the R-2 zone:

A. ~~Minimum lot area: five thousand square feet for the first dwelling unit plus two thousand five hundred square feet for each additional unit, except that dwellings with common wall construction may be permitted on lots of four thousand square feet each if approved as a conditional use. Preexisting, legally created lots of record shall be considered to be legally buildable and separately saleable, provided they contain at least five thousand square feet; and further provided, that any structures on such lots meet the required setbacks from the lot lines which will result when these lots of record are separated. Lot width requirements shall be reduced to a minimum of fifty feet, and side yard setbacks reduced to a minimum of five feet for such lots.~~ Minimum residential density: New development shall achieve an overall density over 14 units per acre. Density is calculated by dividing the number of dwelling units by the property area in acres (minus area required for street right-of-way and public park/open space areas). Decimals are rounded to the nearest whole number. The Planning Commission may modify the density standard if it cannot be met due to existing lot dimensions, road patterns, or other site characteristics.

#13

B. ~~Minimum width and frontage: sixty~~Twenty feet ~~(see Chapter 16.46 for regulations governing access); corner lots, sixty-five feet, except that the Planning Commission may require additional width to ensure that all applicable access standards are met.~~

C. Minimum yard requirements:

1. Street yard: twenty feet on side with driveway; fifteen feet for all other street sides; except that street yards may be reduced to ten feet for covered porches.

2. Rear yard: all corner lots, ten feet single story or fifteen feet two-story; all other lots: fifteen feet single story or twenty feet two-story;

3. Interior yard: one side, seven feet; other side(s), seven ~~ten~~ feet; except as provided for zero-lot line housing. Interior yards may be reduced to three feet for detached accessory structures erected sixty feet or more from any street other than an alley.

D. Maximum building height:

1. Principal Building: thirty-five feet. ~~for principal building;~~

2. Accessory building: twenty-two feet or one story, whichever is less.

E. Maximum lot coverage: seventy percent of the lot for single-family residences, sixty percent of the lot for duplex and triplex developments; forty percent of the lot for other multiple-family developments.



F. Other regulations:

1. Vision clearance distance shall be ten feet from a street to an alley or a street to a driveway, and thirty feet from a street to any other street.

2. All setbacks to be measured from the foundation line of the building. Overhangs shall not exceed two feet; mechanical units, used for the heating/cooling of residential units are exempt from interior and/or rear yard setback requirements.

3. Required setbacks on southern and western exposures may be reduced by not more than five feet for eaves or canopies to provide shade.

4. Multi-family developments exceeding fifteen units shall provide 100 square feet of recreation space per dwelling unit. Recreation spaces shall be no less than 1,500 square feet in size. (Ord. 890 section 23, 1993; Ord. 740 section 10.3.21(C), 1984; Ord. 955 section 7, 1996; Ord. 981 section 47, 1997)

## **TA 01-03: OTHER TEXT AMENDMENTS**

The following changes are proposed to sections other than the residential zones:

1. Create a minor variance process and a new Variances section;
2. Move the standard variance process to the new section;
3. Create an interpretation process;
4. Create a standardized procedure for land use applications and public notice and centralize those processes in one section; require neighborhood meetings in some cases.
5. Revise parking standards for duplexes;
6. Add food-related uses as a conditional use in the C-R zone;
7. Change various definitions as needed; and
8. Allow extensions to certain land use approvals.

Each proposal is discussed in more detail below and the required text changes are presented in detail. As in the previous section, underlined, highlighted text shows a “significant” (policy) change. Underlined text with no highlighting represents more routine changes (housekeeping, relocations, etc.). Text to be deleted is shown in ~~strikethrough~~.

### **1. Create minor variance procedure**

Occasionally a variance of a few inches is needed for a project to go forward. However, currently the only way to allow this is with our variance process, which has very stringent standards and is almost impossible to get for new development. Thus, staff recommends the creation of a minor variance process to allow small setback deviations. The proposal is modeled after that of many other cities and the version presented in the state’s *Model Development Code*. As an example, the variance would allow up to a two-foot reduction in a required 20-foot rear yard setback. The minor variance procedure could be extended to other standards (lot size, coverage, frontage, building height), but staff does not see a need for such changes at this time.

*Changes required:*

**Create Section 16.53, Variances**

#### **Sections:**

**16.53.010 Minor Variances**

**16.53.10 Minor Variances**

**A. The following variances shall be reviewed using a Type II procedure (see Chapter 16.89), using the approval criteria in subsection B, below. Applications shall be made on forms provided by the Planning Department.**

**1. Setbacks: up to a ten percent (10%) reduction to the setbacks required in the zone.**

**B. A minor variance may be granted if the applicant demonstrates compliance with all of the following criteria, if applicable:**

1. The variance is required due to the lot configuration or other physical conditions of the site;
2. The variance is proposed in order to preserve trees or will not result in the removal of significant natural resources, including trees;
3. The variance will not reduce allowable lot size, violate landscaping requirements, or result in a violation of other chapters or sections of this ordinance; and
4. The variance will not be materially detrimental to other property within the same vicinity.

**2. Move existing variance process to the new Section 16.53**

One of staff's continuing goals is to make the code easier to use. The existing variance process is buried in Chapter 16.88 of the code, with many other general procedures, and is difficult to find. This move will meld it with the new minor variance process in a new Variances section.

*Changes required:*

**Delete Section 16.88.150, Variances, and move the existing text unchanged to a new section 16.53.030. Add a new header as appropriate to the section.**

**3. Create interpretation process**

Currently, we have no formal interpretation process for cases in which the code is unclear. Looking back through the files, different Planning Directors have handled it in different ways, and I believe it's time to standardize the process. The proposal is again taken from the state's *Model Development Code*, so we can be sure it meets all legal requirements. As written, the Planning Director would be able to issue code interpretations that may be appealed to the Planning Commission. Notice of the decision would be given to neighbors within 200 feet of the subject property.

*Changes required:*

**Create Chapter 16.05, Interpretations**

**Sections:**

**16.05.010 Purpose.**

**16.05.020 Procedure.**

**16.05.010 Purpose.**

**Some terms and phrases within this Title may have two or more reasonable meanings.**

**This section provides a process for resolving differences in the interpretation of the text.**

**16.05.020 Procedure.**

- A. Requests. A request for a code interpretation shall be made in writing to the Planning Director on forms created for the purpose.
- B. Decision to Issue Interpretation. The Planning Director is authorized to issue or decline to issue a requested interpretation and shall advise the applicant in

writing within 14 days after the request is made whether or not the City will issue an interpretation. Basis for declining may include, but is not limited to, a finding that the subject code section affords only one reasonable interpretation. The Planning Director's decision to issue or not issue an interpretation is final when the decision is mailed to the party requesting the interpretation.

- C. Written Interpretation. If the Planning Director decides to issue an interpretation, it shall be issued in writing and shall be mailed or delivered to the person requesting the interpretation, any other person who requested a copy, and those receiving public notice of the decision. The written interpretation or notice thereof shall be issued within 14 days after the City advises the applicant that an interpretation shall be issued. The decision shall become effective 10 days after mailing, unless an appeal is filed.
- D. Public Notice. Public notice for code interpretations shall follow the Type II procedure described in Chapter 16.89, with notice to all property owners and residents within 200 feet of the subject property.
- E. Interpretations On File. The Planning Director shall keep all code interpretations on file.

**4. Create a standardized procedure for land use application procedures and public notice and centralize those processes in one section; require neighborhood meetings in some cases.**

Currently, it's not entirely clear how various land use applications should be processed and what procedures should be applied. Also, some material is repeated in various places in the code. Staff recommends that all of the procedures be consolidated into one new section for easy use and reference. This section will also incorporate the Planning Commission's recent decisions on notice distance and neighborhood meetings.

The proposal will also revise and standardize the City's appeal processes. Currently it is unclear who can appeal various kinds of decisions. The proposal will keep the provision that any staff decision may be appealed to the Planning Commission, but adds a new provision that in order to appeal a Planning Commission decision the appellant must have participated in the original hearing. This puts the City in line with LUBA's appeal standards.

The proposal also will remove the long lists of application requirements from our code. These add significant length to the code, and there is no legal reason that they must be there. Instead, the phrase "applications shall be made on forms provided by the Planning Director" has been added in all appropriate locations. The Commission will review any changes to the application forms as a new business item. This will allow changes to be made easily with oversight from the Commission (currently, because they are located in the City code, changes to our application requirements must be approved by ordinance by the City Council after public hearings).

The proposed language appears very lengthy, but most of the changes are simply relocations, housekeeping, clarifications, and updates with regards to state law. All text in this section is new (though much is relocated), so for ease of reading there is no underlining. The few significant changes are highlighted.

*Changes required:*

**Create Chapter 16.89 Application and Review Procedures**

**Sections:**

- 16.89.010 Purpose.**
- 16.89.020 Description and summary of processes.**
- 16.89.030 Type I procedure.**
- 16.89.040 Type II procedure.**
- 16.89.050 Type III procedure.**
- 16.89.060 Type IV procedure.**
- 16.89.070 Neighborhood Meetings.**

**16.89.010 Purpose**

The purpose of this chapter is to establish standard decision-making procedures that will enable the City, the applicant, and the public to review applications and participate in the decision-making process in a timely and effective way.

**16.89.020 Description and Summary of Processes.**

All land use and development applications shall be decided by using the procedures contained in this Chapter. Specific procedures for each type of permit are contained in Sections 16.89.030 through 16.89.060. The procedure “type” assigned to each permit governs the decision-making process for that permit. Additional requirements may be found in the individual chapters governing each permit type. The four types of procedure are described below. Table 16.89.020 lists the City’s land use and development applications and their required procedures.

- A. Type I Procedure (Ministerial). Type I decisions are made by the Planning Director without public notice and without a public hearing. The Type I procedure is used when there are clear and objective approval criteria and applying those criteria requires no use of discretion.
- B. Type II Procedure (Administrative). Type II decisions are made by the Planning Director with public notice and an opportunity for a public hearing. The appeal of a Type II decision is heard by the Planning Commission.
- C. Type III Procedure (Quasi-Judicial/Legislative). Type III decisions are made by the Planning Commission after a public hearing, with appeals reviewed by the City Council. Type III procedures generally use discretionary approval criteria.
- D. Type IV procedure (Council Decision). Type IV decisions generally apply to legislative matters, but include certain other applications as well. Legislative matters involve the creation, revision, or large-scale implementation of public policy (e.g., adoption of land use regulations, zone changes, and comprehensive plan amendments that apply to entire districts). Type IV matters are considered initially by the Planning Commission with final decisions made by the City Council. Annexations and certain quasi-judicial applications are also processed under the Type IV process.

<b>Table 16.89.020</b>			
<b>Land Use and Development Application Procedures</b>			
<i>Application Type</i>	<i>Process Type</i>	<i>Notice Radius (feet)</i>	<i>Neighborhood Meeting Required</i>
Access permit to public street	I	n/a	No
Annexation, Minor and Major	IV	500	Yes
Appeals	III	200	No
Building Permit	I	n/a	No
Comprehensive Plan Amendment	IV	500	Yes
Conditional Use Permit	III	200	No
Interpretation	II	200	No
Lot Line Adjustment	II	100	No
Non-conforming Structure	II	100	No
Partition, Minor	III	200	No
Partition, Major	III	200	No
Planned Unit Development	III	200	No
Sign Permit (non-SDR)	I	n/a	No
Site and Design Review	III	500	Yes
Subdivision	III	500	Yes
Text Amendment	IV	500	Yes
Variance, Minor	II	200	No
Variance, Major	III	200	No

**16.89.030 Type I Procedure.**

- A. Application requirements. Type I applications shall be made on forms provided by the Planning Director. The application shall be accompanied by all required information and fees.
- B. Decision requirements. The Planning Director's decision shall address all of the approval criteria. Based on the criteria and the facts contained within the record, the Planning Director shall approve, approve with conditions, or deny the requested permit or action. A written record of the decision shall be provided to the applicant and kept on file at the City.
- C. Final decision. The decision shall be final on the date it is mailed or otherwise provided to the applicant, whichever occurs first.

**16.89.040 Type II Procedure.**

- A. Preapplication conference. A preapplication conference may be required by the Planning Director for Type II applications.
- B. Application requirements. Type II applications shall be made on forms provided by

the Planning Director. The application shall be accompanied by all required information and fees.

C. Public notice.

1. Before making a Type II decision, the Planning Director shall mail notice meeting the requirements of state law to:
  - a. All owners of real property and, if the owner's address is different from the site address, all residents of property, within the distance prescribed in Table 16.89.020.
  - b. Any person who submits a written request to receive notice; and
  - c. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies, as appropriate, for review of the application.
2. The public notice shall allow a 10-day period for submitting written comments before a decision is made on the permit.
3. The City shall prepare an affidavit of mailing for the public notice and make the affidavit part of the application file.

D. The Planning Director shall make Type II decisions in writing addressing all of the relevant approval criteria and standards. Based upon the criteria and standards, and the facts contained within the record, the Planning Director shall approve, approve with conditions, or deny the requested permit or action.

E. Notice of decision.

1. Within five days of making a final decision on a Type II application, a notice of decision shall be sent to:
  - a. Any person who submits a written request to receive notice or provides comments during the application review period;
  - b. The applicant and owner of the subject property; and
  - c. Any governmental agency entitled to notice under an intergovernmental agreement entered into with the City.
2. The notice of decision shall include information on the application, the City's decision, and a statement explaining how an appeal of the decision may be filed.

F. Effective date. A Type II decision is final for purposes of appeal when it is mailed by the City.

G. Appeal. A Type II decision may be appealed to the Planning Commission as follows:

1. The following persons have legal standing to appeal a Type II decision:
  - a. The applicant;
  - b. Any person who was mailed notice of the decision; and
  - c. Any other person who participated in the proceeding by submitting written comments.
2. Procedure.
  - a. A Notice of Appeal shall be filed in writing, on forms provided for the purpose by the Planning Director, within 14 days of the date the Notice of Decision was mailed.
  - b. The Notice of Appeal shall be accompanied by all required information and fees.
  - c. An appeal of a Type II decision shall be made following the Type III public

notice procedures, as described in Section 16.89.050.D.

- d. The appeal shall be limited to the specific issues raised during the written comment period unless the hearings body allows additional evidence or testimony concerning any other relevant issue. The hearings body may allow additional evidence if it determines that such evidence is necessary to resolve the case. The purpose of this requirement is to limit the scope of Type II appeals by encouraging persons to submit specific concerns in writing during the comment period. Only in extraordinary circumstances should new issues be considered by the hearings body on appeal of a Type II decision.
3. The decision of the Planning Commission regarding an appeal of a Type II decision is the final decision of the City unless appealed to the City Council. An appeal to the City Council shall follow the same notification and hearing procedures as for the appeal of the staff decision.
- H. Any decision or interpretation of this title made by staff that is not a Type II decision or an interpretation as described in Chapter 16.05 may be appealed to the Planning Commission without fee, provided that such appeal is filed in writing within ten days of the staff decision. Such appeals shall be heard as a new business item. The Planning Commission's decision on such appeals may be appealed to the City Council following the Type III public notice procedures, as described in Section 16.89.050.D.

**16.89.050 Type III Decision**

- A. Preapplication conference. A preapplication conference may be required by the Planning Director for Type III applications.
- B. As directed in Table 16.89.020, the applicant may be required to present their development proposal at a neighborhood meeting before the City accepts the application as complete. See Section 16.89.070.
- C. Application requirements. Type III applications shall be made on forms provided by the Planning Director. The application shall be accompanied by all required information and fees.
- D. Public notice.
  1. At least 20 days prior to a public hearing on a Type III decision or a Type II appeal decision, the Planning Director shall mail notice meeting the requirements of state law to:
    - a. All owners of real property and, if the owner's address is different from the site address, all residents of property, within the distance prescribed in Table 16.89.020;
    - b. Any neighborhood association whose boundaries include the subject property;
    - c. Any person who submits a written request to receive notice;
    - d. Any governmental agency entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies, as appropriate, for review of the application; and
    - e. For appeals, the appellant and all persons who provided testimony.
  2. The City shall prepare an affidavit of mailing for the public notice and make the affidavit part of the application file. Failure of any individual to receive notice as



prescribed in this section does not invalidate the proceedings.

3. Written notice shall be published in a newspaper of general circulation in Canby once in either of the two consecutive weeks prior to the hearing.
4. At least 10 days before the hearing, written notice shall be posted at City Hall and such other conspicuous locations as the Council may determine to be appropriate.
5. At least 10 days before the hearing, the applicant shall post notice of the hearing on the property as directed by the Planning Director.
6. The Planning Director may expand the notice area or take other steps to assure that affected property owners or residents are made aware of the pending public hearing.
7. Any application that involves access to the state highway system shall be provided to the Oregon Department of Transportation for their review and comment regarding conformance with state access management standards and requirements.

E. Conduct of public hearing.

1. In all evidentiary hearings required by this title the following procedures shall be followed:
  - a. All interested persons in attendance shall be heard on the matter for hearing, and this fact shall be communicated to those in attendance.
  - b. A summary of the application or other matter for hearing shall be given by the presiding officer or their designee.
  - c. The staff report shall be made followed by questions, if any, of the staff by the hearing body.
  - d. The public hearing shall be opened and testimony shall be received in the following order:
    - i. Applicant;
    - ii. Proponents;
    - iii. Opponents; and
    - iv. Rebuttal by proponents or applicant.
  - e. Close public hearing.
  - f. Questions and discussion by the hearing body.
  - g. Decision by the hearing body except that further discussions, decision, or reopening of the public hearing may be postponed to another meeting, the time, date, and place of which shall be announced before adjournment.
2. All persons who speak at the hearing shall identify themselves by name, address, and interest in the matter. Attorneys or other agents shall be allowed to speak on behalf of all participants.
3. Physical evidence in the form of written documents, photographs, or other exhibits may be accepted by the hearing body if deemed to be pertinent to the case at hand.
4. A record made at any prior evidentiary hearing may be accepted, considered, and used by the hearing body at any subsequent hearing, and said body, by majority vote of a quorum present, may deny to accept or hear any repetitious matter.
5. The hearing body 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. Upon recessing for these purposes, the hearing body shall announce the time and date when the hearing will be resumed.

6. Before the conclusion of the initial evidentiary hearing, any participant may ask the hearings body for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing. The hearings body shall grant the request by scheduling a date to finish the hearing as follows:
  - a. If the hearings body grants a continuance, the completion of the hearing shall be continued to a date, time, and place at least seven days after the date of the first evidentiary hearing. An opportunity shall be provided at the second hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the second hearing, any person may request, before the conclusion of the second hearing, that the record be left open for at least seven days, so that they can submit additional written evidence or testimony in response to the new written evidence; or
  - b. If the hearings body leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days after the hearing. Any participant may ask the City in writing for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings body shall reopen the record as follows:
    - i. When the hearings body re-opens the record to admit new evidence or testimony, any person may raise new issues which relate to that new evidence or testimony.
    - ii. An extension of the hearing or record granted pursuant to this subsection is subject to the limitations of ORS 227.178 ("120-day rule"), unless the continuance or extension is requested or agreed to by the applicant.
    - iii. If requested by the applicant, the City shall allow the applicant at least seven days after the record is closed to all other persons to submit final written arguments in support of the application, unless the applicant expressly waives this right. The applicant's final submittal shall be part of the record but shall not include any new evidence.

F. Decision process.

1. Approval or denial of a Type III decision or appeal of a Type II decision shall be based on standards and criteria located in the code.
2. The hearings body shall issue a final written order containing findings and conclusions that approve, approve with conditions, or deny the application.
3. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts.
4. In cases involving attorneys, the prevailing attorney shall prepare the findings, conclusions, and final order. Staff shall review and, if necessary, revise, these materials prior to submittal to the hearings body.

G. Notice of decision.

1. The written findings shall be sent to:
  - a. Any person who submits a written request to receive notice or provides comments during the application review period;

- b. The applicant and owner of the subject property; and
    - c. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the City.
  - 2. The written findings shall include information on the application, the City's decision, and a statement explaining how an appeal of the decision may be filed.
- H. Effective date. A Type III decision is final for purposes of appeal when it is mailed by the City.
- I. Appeal. The Planning Commission's decision on a Type III decision or Type II appeal may be appealed to the City Council as follows:
  - 1. The following persons have legal standing to appeal:
    - a. The applicant;
    - b. Any person who was mailed notice of the decision; and
    - c. Any other person who participated in the proceeding by submitting written comments.
  - 2. Procedure.
    - a. A Notice of Appeal shall be filed in writing, on forms provided for the purpose by the Planning Director, within 14 days of the date the written findings were mailed.
    - b. The Notice of Appeal shall be accompanied by all required information and fees.
    - c. The appeal shall be limited to the specific issues raised in the record of the public hearing unless the hearings body allows additional evidence or testimony concerning any other relevant issue. The hearings body may allow additional evidence if it determines that such evidence is necessary to resolve the case. The purpose of this requirement is to limit the scope of appeals by encouraging persons to be involved in the public hearing. Only in extraordinary circumstances should new issues be considered by the hearings body on an appeal.
  - 3. The City Council shall overturn the decision of the Planning Commission only when one or more of the following findings is made:
    - a. That the Commission did not correctly interpret the requirements of this title, the Comprehensive Plan, or other requirements of law;
    - b. That the Commission did not observe the precepts of good planning as interpreted by the Council; or
    - c. That the Commission did not adequately consider all of the information which was pertinent to the case.
  - 4. The Council's action on an appeal shall be governed by the same general regulations, standards, and criteria as apply to the Commission in the original consideration of the application.
- J. The decision of the City Council regarding an appeal of a Type III decision or Type II appeal is the final decision of the City.

**16.89.060 Type IV decision.**

- A. For certain applications, the City Council makes a final decision after a recommendation by the Planning Commission. These application types are referred to

- as Type IV decisions.
- B. Preapplication conference. A preapplication conference may be required by the Planning Director for Type IV applications.
  - C. The applicant may be required to present their development proposal at a neighborhood meeting (see Section 16.89.070). Table 16.89.020 sets the minimum guidelines for neighborhood review but the Planning Director may require other applications to go through neighborhood review as well.
  - D. Application requirements. Type IV applications shall be made on forms provided by the Planning Director. The application shall be accompanied by all required information and fees.
  - E. Public notice and hearings. The public notice and hearings process for the Planning Commission's review of Type IV applications shall follow that for Type III applications, as provided in subsections 16.89.050.D and 16.89.050.E.
  - F. Decision process.
    - 1. Approval or denial of a Type IV decision shall be based on the standards and criteria located in the code.
    - 2. The hearings body shall issue a final written order containing findings and conclusions that recommend the City Council approve, approve with conditions, or deny the application.
    - 3. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts.
    - 4. In cases involving attorneys, the prevailing attorney shall prepare the findings, conclusions, and final order. Staff shall review and, if necessary, revise, these materials prior to submittal to the hearings body.
  - G. City Council proceedings:
    - 1. Upon receipt of the record of the Planning Commission proceedings, and the recommendation of the Commission, the City Council shall conduct a review of that record and shall vote to approve, approve with conditions, or deny the recommendation of the Planning Commission.
    - 2. The City Council may question those individuals who were a party to the public hearing conducted by the Planning Commission if the Commission's record appears to be lacking sufficient information to allow for a decision by the Council. The Council shall hear arguments based solely on the record of the Commission.
    - 3. The City Council may choose to conduct public hearings on Comprehensive Plan amendments, amendments to the text of this title, and annexations. If the Council elects to conduct such hearings, it may do so in joint session with the Planning Commission or after receiving the written record of the Commission.

**16.89.070 Neighborhood Meetings.**

- A. Applicants are encouraged to meet with adjacent property owners and neighborhood representatives prior to submitting their application in order to solicit input, identify issues, and exchange information about the proposed meeting.
- B. The Planning Director may require an applicant to hold a meeting in the

neighborhood prior to accepting an application as complete. A neighborhood meeting is required for some application types, as shown in Table 16.89.020, unless this requirement is waived by the Planning Director.

- C. At least two weeks prior to the required neighborhood meeting, the applicant shall mail notice of the meeting to:
  - 1. The appointed chair and all members of any neighborhood association in whose boundaries the application lies; and
  - 2. All of those who would receive notice of the application's public hearing before the Planning Commission.
- D. The meeting shall be held in a fully accessible location approved by the City.
- E. Following a required neighborhood meeting, applicants shall prepare a written summary of pertinent issues raised and shall prepare a response to each issue. This summary shall be submitted to the Planning Department at least two weeks before the initial public hearing.

**16.89.080 Application Requirements and Completeness.**

- A. Submittal. Applications for land use and development permits shall be filed on forms provided for the purposes by the Planning Director. The application shall be made with all required information and fees.
- B. Fees. Fees shall be set out by resolution adopted by the City Council. Fees shall differentiate between various processes and applications and no part of the fee shall be refunded unless approved by the Planning Director.
- C. Amendments to forms. Application forms may be amended by the Planning Director. The Planning Commission shall first review and approve all proposed amendments as New Business Items.
- D. Completeness. In reviewing an application for completeness, the following procedure shall be used:
  - 1. When an application is received by the City, the Planning Director shall immediately determine whether the following essential items are present. If they are not, the Planning Director may choose not to accept the application in which case the application shall be immediately returned to the applicant:
    - a. The required form;
    - b. The required fee; and
    - c. The signature of the applicant on the form, and signed written authorization of the property owner of record if the applicant is not the owner.
  - 2. Completeness.
    - a. After the application is accepted, the Planning Director shall review the application for completeness. If the application is incomplete, the Planning Director shall notify the applicant in writing exactly what information is missing within thirty (30) days of the application and allow the applicant 180 days to submit the missing information;
    - b. In accordance with the application submittal requirements, the application shall be deemed complete upon the receipt by the Planning Director of all required information. The applicant shall have the option of withdrawing the application or refusing to submit information requested under (a), above. For

the refusal to be valid, it shall be made in writing and received by the Planning Director no later than fourteen (14) days after the date on the letter of incompleteness. If the applicant refuses in writing to submit the missing information, the application shall be deemed complete for the purposes of processing on the 31<sup>st</sup> day after first acceptance of the application.

- E. The City shall take final action on permit applications which are subject to this chapter, including resolution of all appeals, within 120 days from the date the application is deemed complete. Any exceptions to this rule shall conform to the provisions of ORS 227.178. This 120-day rule does not apply to legislative comprehensive plan and text amendment applications as defined under ORS 227.178.
- F. Standards and criteria. Approval or denial of a complete application shall be based upon the standards and criteria that were applicable at the time the application was first accepted.

**5. Change duplex parking requirement**

Single family homes are currently allowed to have parking spaces in the 20-foot street yard setback while duplexes are not. This requirement has forced a good deal of extra paving in front of duplexes, and should be eliminated.

**Table 16.10.050 (Off-street parking provisions)**

<b>USE</b>	<b>PARKING REQUIREMENT</b>
b. Two-family dwellings	2.00 spaces per dwelling unit, <del>however, no parking will be allowed within a street yard setback.</del>

**6. Add food-related businesses to the list of conditional uses in the Residential/Commercial Zone.**

The Residential/Commercial zone currently allows a variety of different businesses, but the only food-related use is bakeries. This should be expanded to include a broader variety of food-related businesses. The proposed code is intended to exclude auto-related convenience stores, but since the use is being proposed as a conditional use, the merits and impacts of any specific proposed use can be evaluated on a case-by-case basis.

*Change required:*

**Add 16.24.020.E** Food services, excluding auto-oriented uses.

**7. Change definitions in Chapter 16.04**

This chapter contains all of the definitions used in the rest of Title 16. Two minor changes are needed.

*Changes required:*

**Modify 16.04.125 City Planner**

City Planner means the person appointed by the City Administrator as supervisor of the day-to day operations of Canby's city planning functions, or another staff person he or she

designates for a particular function. Also referred to as "Director of Planning Director."

**Add 16.04.513 Porch, covered**

Covered porch means a one-story covered platform largely open to the yard.

**8. Allow extensions to certain land use approvals.**

Our code states that approvals for lot line adjustments, partitions, and subdivisions are valid for one year after issuance. However, for some reason, we may grant extensions to subdivision approvals but not lot line adjustments or partitions. Staff assumes this was an oversight. It has caused some inconveniences in the past and required what is perceived as "extra bureaucracy," particularly for small projects which had no opposition. Staff recommends allowing an additional discretionary extension of up to one year as follows:

*Changes required:*

**Add 16.58.060.E. (Lot Line Adjustment procedures)**

The Planning Director may approve a single one-year extension to the original one-year period. Applicants must file a request for such extension in writing, stating the reasons the request is needed. The Planning Director shall review such requests and may issue the extension after reviewing any changes that may have been made to the text of this title and any other pertinent factors, including public comment on the original application.

**Add 16.60.060.D. (Partition procedures)**

The Planning Director may approve a single one-year extension to the original one-year period. Applicants must file a request for such extension in writing, stating the reasons the request is needed. The Planning Director shall review such requests and may issue the extension after reviewing any changes that may have been made to the text of this title and any other pertinent factors, including public comment on the original application.

**IV. FINDINGS AND CONCLUSIONS**

1. Staff concludes that the proposed amendments comply with the Comprehensive Plan of the City, and the plans and policies of the County, State, and local districts, and will preserve functions and local aspects of land conservation and development;
2. Staff concludes that there is a public need for the change in that the residential zoning work was required by the state as part of Canby's periodic review work order. Changes are required in order to keep Canby's Land Development and Planning Ordinance pertinent to modern needs and challenges. Good planning is needed in order to assure quality development in the future.
3. Staff concludes that the proposed amendments will serve the public need better than any other change which might be expected to be made. The proposed amendments have been subject to extensive citizen involvement as documented in Section I, and have been revised several times in response to comments raised in that process.

4. Staff concludes that the proposed amendments will preserve and protect the health, safety, and general welfare of the residents of the community; and
5. Staff concludes that the proposed amendments comply with the Statewide Planning Goals.

**V. RECOMMENDATION**

Based upon previous public meetings and the findings and conclusions stated in this report, and without benefit of a public hearing on the matter, staff recommends that the Planning Commission recommend approval of **TA 01-03** to the City Council.

Exhibits:

1. Comments from Craig Shinn and Mark O'Shea. To date, these are the only comments that have been received in response to a mailing to every property owner inside Canby's Urban Growth Boundary plus over 100 additional interested parties.



**AFFIDAVIT OF POSTING**

**STATE OF OREGON** )  
 )  
**County of Clackamas** )  
 )  
**CITY OF CANBY** )

ss:

I, CHAUNEE SEIFRIED, being first duly sworn, depose and say that I am the Recorder for the City of Canby, Clackamas County, Oregon, a City duly incorporated under and by virtue of the laws of the State of Oregon.

That on the 7th day of November, 2001, the Council for said City of Canby held a regular Council Meeting, at which meeting Ordinance No. 1080 was read for the first time and passed by the vote of said Council and was then and there ordered posted in at least three (3) public and conspicuous places in said City for a period of five (5) days prior to the second reading and final vote on said Ordinance, as provided in Section 2 of Chapter 8 of the Charter of the City of Canby, and

Thereafter, on the 8th day of November, 2001, I personally posted said Ordinance in the following three (3) conspicuous places, all within the said City of Canby, to wit:

1. Canby City Hall Bulletin Board - outside
2. Canby Public Library Bulletin Board
3. Canby Post Office

That since said posting on the date aforesaid, the said Ordinance will remain posted in the said three (3) public and conspicuous places continuously for the period of five (5) days and until the very 21st day of November, 2001.

*Chaunee F. Seifried*

Chaunee F. Seifried  
City Recorder pro tem

Subscribed and sworn to before me this 8th day of November, 2001.



*Martha Anne Moretty*  
Notary Public For Oregon  
My Commission Expires: 2-20-03