

MCMINNVILLE, OREGON  
ORDINANCE NO. 3702

## LAND DIVISION

An ordinance providing land division standards and procedures, providing penalties for the violation thereof, and declaring an emergency.

Section 1. Purpose. The purpose of this ordinance is to establish standards and procedures for the partitioning and subdividing of land in the City. These regulations are necessary to provide uniform procedures and standards for the subdivision and partitioning of land; to assure adequate width and arrangement of streets; to coordinate proposed development with plans for utilities and other public facilities; to avoid undue congestion of population; to assure adequate sanitation and water supply; to provide for the protection, conservation, and proper use of land; to secure safety from fire, flood, slides, pollution, drainage or other dangers; to provide adequate light and air, recreation, education, and adequate transportation; to promote energy conservation through solar access; to protect in other ways the public health, safety, and welfare; and to promote the goals and policies of the McMinnville Comprehensive Plan.

Section 2. Definitions. As used in this ordinance, unless it is apparent from the context that different meanings are intended, the words and phrases below shall have the following meanings:

- (a) Abut. To border on a given line; e.g., a given street right-of-way;
- (b) Building line. A line on a plat indicating the limit beyond which buildings or other structures may not be erected;
- (c) City. The City of McMinnville, Oregon;
- (d) McMinnville Comprehensive Plan. A plan developed by the City to implement the statewide planning goals of the Land Conservation and Development Commission, including amendments which may be made from time to time;
- (e) Dwelling unit. Dwelling unit means one or more rooms designed for occupancy for one family;
- (f) Easement. A grant of the right to use a strip of land for specific purposes; e.g., utility easement;
- (g) Family. Family means an individual or two or more persons related by blood, marriage, adoption, or legal guardianship, living together as one housekeeping unit, and providing meals or lodging to not more than two additional persons, excluding servants; or a group of not more than five (5) unrelated persons, excluding servants, living together as one housekeeping unit;
- (h) Lot. Lot means a single unit of land that is created by a subdivision of land;

- (1) Corner lot. A lot in which at least two (2) adjacent sides abut streets other than alleys;
  - (2) Through lot. A lot having frontage on two parallel or approximately parallel streets other than alleys. Refer to Section 32, subsection (c), below;
  - (3) Flag lot. A lot, the main body of which is some distance from the street, which is connected to the street and takes access from the street via a narrow (usually 25 feet in width) strip of land. Also known as panhandle lots.
- (i) Major partition. Major partition means a partition which includes the creation of a road or street;
  - (j) Minor Partition. Minor partition means a partition that does not include the creation of a road or street;
  - (k) Parcel. Parcel means a single unit of land that is created by a partitioning of land;
  - (l) Partition. Partition means either an act of partitioning land or an area or tract of land partitioned as defined in this section;
  - (m) Partition land. Partition land means to divide land into two or three parcels of land within a calendar year, but does not include:
    - (1) A division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property, or the creation of cemetery lots; or
    - (2) An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance; or
    - (3) A sale or grant by a person to a public agency or public body for state highway, county road, city street, or other right-of-way purposes provided that such road or right-of-way complies with the applicable comprehensive plan and ORS 215.213(2)(q) to (s) and 215.283(2)(p) to (r).
  - (n) Partition plat. Includes a final map and other writing containing all the descriptions, location, specifications, provisions, and information concerning a major or minor partition;
  - (o) Pedestrian way. A right-of-way for pedestrian and/or bicyclist traffic;

- (p) Person. An individual, firm, partnership, corporation, company, association, syndicate, or any legal entity, and including any trustee, receiver, assignee, or other similar representative thereof;
- (q) Planning Commission. The Planning Commission of the City;
- (r) Plat. Includes a final map, diagram, drawing, replat, or other writing containing all the descriptions, locations, specifications, dedications, provisions, and information concerning a subdivision plat, replat, or partition plat;
- (s) Replat. Includes a final map of the reconfiguration of lots and easements of a recorded subdivision or partition plat and other writings containing all the descriptions, locations, specifications, dedications and provisions, and information concerning a recorded subdivision;
- (t) Right-of-way. The area between boundary lines of a street or other easement;
- (u) Road or street. Road or street means a public or private way that is created to provide ingress or egress for persons to one or more lots, parcels, areas, or tracts of land, excluding a private way that is created to provide ingress or egress to such land in conjunction with the use of such land for forestry, mining, or agricultural purposes, and further, that the width of a street or road shall be as set forth in Section 24, subsection (c) or (d), and Section 30, subsection (b) of this ordinance; or as approved by the Planning Commission and the City Council under the provisions of a planned development;
  - (1) Alley. A narrow street through a block primarily for access by service vehicles to the back or side of properties fronting on another street;
  - (2) Arterial. A major arterial: Regional routes linking major population centers. They are designed mainly for through traffic but also normally perform a secondary land service function. A minor arterial: Streets that serve to connect different sections of the City. They are designed for through traffic and land service functions;
  - (3) Collectors. Major or minor streets that serve as the main routes within neighborhoods. They are designed to connect local streets and abutting properties or arterials;
  - (4) Cul-de-sac (dead-end street). A short street with one end open to traffic and the other terminated by a vehicle turnaround;
  - (5) Half street. A portion of the width of a street, usually along the edge of a subdivision, where the remaining portion of the street could be provided in another subdivision;
  - (6) Frontage road. A service road parallel and adjacent to abutting properties, but protected from through traffic;

- (7) Local streets (Includes cul-de-sacs and all other streets). Streets that serve primarily to provide direct access to adjacent properties. Through traffic is discouraged.
- (v) Sidewalk. A pedestrian walkway with permanent surfacing;
- (w) Subdivide land. Subdivide land means 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 or contiguous units of land under a single ownership at the beginning of such year;
- (x) Subdivision. Subdivision means either an act of subdividing land or an area or tract of land subdivided as defined in this section;
- (y) Subdivision plat. Includes a final map and other writing containing all the descriptions, locations, specifications, dedications, provisions, and information concerning a subdivision.

Section 3. Scope of Regulations. Subdivision plats and streets or ways created for the purpose of partitioning land shall be approved and accepted by the Planning Commission or Planning Director, as appropriate, in accordance with these regulations. A person desiring to subdivide land, to make a major or minor partition of land, or to sell any portion not the whole of a parcel of land shall submit tentative plans and final documents for approval as provided in this ordinance and state law. The applicant shall meet all of the requirements set forth in ORS, Chapters 92 and 227.

#### Section 4. Fees.

- (a) For all applications concerning a major partition, a minor partition, or subdivision, a fee as established by the official City fee schedule shall be charged for a review and investigation of the proposed tentative plan.
- (b) A fee as established by official City fee schedule and in no case less than allowed by ORS 92.100(2) shall be charged for the review of a final plat by the City Surveyor as required by this ordinance. In the event a final plat must be reviewed again because of error in the original documents as submitted by the applicant, the City Surveyor shall charge an additional fee as established in the fee schedule.

Section 5. Planned Development. The subdivision of land in accordance with the planned development section of the City of McMinnville Ordinance No. 3380 may result in the terms and requirements of this ordinance being waived, altered, or otherwise changed as determined by action of the Planning Commission and approved by the City Council.

### **Tentative Subdivision Plan**

Section 6. Submission of Tentative Subdivision Plan. A subdivider shall prepare a tentative plan together with improvement plans and other supplementary material required to indicate his general program and objectives, and shall submit twenty-two (22) copies of

the tentative plan and supplementary data to the Planning Director's office at least forty (40) days prior to the Planning Commission meeting at which consideration of the plan is desired (see Section 15). The tentative plan need not be a finished drawing, but shall show pertinent information to scale in order that the Planning Commission may properly review the proposed development.

Section 7. Scale. The tentative plan shall be drawn on a sheet eighteen (18) by twenty-four (24) inches in size at a scale of one inch equals 100 feet, or a reasonable engineer's scale for the sheet size.

Section 8. General Information. The following general information shall be shown on the tentative plan:

- (a) Proposed name of subdivision. No plan of a subdivision shall be approved which bears a name which is the same as, similar to, or pronounced the same as a word in the name of any other subdivision in the same county, except for the words "town," "city," "place," "court," "addition," or similar words, unless the land platted is contiguous to and platted by the same party that platted the subdivision bearing that name or unless the party files and records the consent of the party that platted the subdivision bearing that name. All plats must continue the block numbers of the contiguous subdivision plat of the same name last filed;
- (b) Date, north point, and scale of drawing;
- (c) Appropriate identification clearly stating the plan is a tentative plan;
- (d) Location of the subdivision sufficient to define the location and boundaries of the proposed tract;
- (e) Names and addresses of the owner(s), subdivider, engineer, and surveyor;
- (f) In the event the subdivider plans to utilize the provisions of ORS 92.060 as pertains to "Post Monumentation," he shall notify the City Surveyor and Planning Commission and report said fact on the tentative plan;
- (g) A subdivision guarantee report issued by a title insurance company in the name of the owner(s) of the land, showing all parties whose consent is necessary and their interest in the premises and all encumbrances, covenants, and other restrictions pertaining to the subject property.

Section 9. Existing Conditions. The following existing conditions shall be shown on the tentative plan:

- (a) The locations, widths, and names of both opened and unopened streets within or adjacent to the tract, together with easements and other important features, such as section lines, city boundary lines, and monuments;
- (b) The direction of slope by means of arrows or other suitable symbol;

- (c) The location of at least one temporary bench mark, on established City datum, within 200 feet of the plat boundaries;
- (d) The location and direction of water courses, and the location of areas subject to flooding on a probability frequency one (1) percent or greater;
- (e) Natural features such as rock outcroppings, marshes, wooded areas, and isolated preservable trees. Areas noted in the Comprehensive Plan, Volume I Background Element, Chapter VII, Parks and Recreation and Open Space Sections, as potential open space lands should be identified;
- (f) Existing uses of the property, including location of existing structures to remain on the property after platting.

Section 10. Proposed Plan of Subdivision. The following information shall be included on the tentative plan:

- (a) The location, width, names, approximate grades, and radii of curves of streets. The relationship of streets to any existing streets and to any projected streets as shown on the McMinnville Comprehensive Plan Map 1980, as amended, or as identified in the McMinnville Comprehensive Plan text, or as may be suggested by the Planning Commission in order to assure adequate traffic circulation;
- (b) The location, width, and purpose of easements;
- (c) The location and approximate dimensions of lots and the proposed lot and block numbers;
- (d) Sites, if any, allocated for purposes other than single-family dwellings, such as multiple-family dwellings, parkland, open space common areas, etc.

Section 11. Partial Development. If the tentative subdivision plan pertains to only part of the tract owned or controlled by the subdivider, the Planning Commission may require a sketch of a tentative layout for streets in the unsubdivided portion. Refer to Section 24 below.

Section 12. Explanatory Information with Tentative Subdivision Plan. The following information shall be required by the Planning Commission or staff; and if it cannot be shown practicably on the tentative plan, it shall be submitted in separate statements accompanying the tentative plan:

- (a) A vicinity plan, showing existing subdivisions and unsubdivided land ownerships adjacent to the proposed subdivision, and showing how proposed streets and utilities may be extended to connect to existing streets and utilities;
- (b) Proposed deed restrictions, if any, in outline form;

- (c) The location of existing sewers, water mains, culverts, drain pipes, and electric lines and elevations of sewers at points of probable connections within the subdivision and in the adjoining streets and property;
- (d) Special studies of areas which appear to be hazardous due to local conditions such as inundation or slippage;
- (e) Contour lines related to an established bench mark on city datum and having minimum intervals as follows:
  - (1) For slopes of less than five (5) percent: show the direction of slope by means of arrows or other suitable symbol together with not less than four (4) spot elevations per acre, evenly distributed;
  - (2) For slopes of five (5) percent to fifteen (15) percent: five (5) feet;
  - (3) For slopes of fifteen (15) percent to twenty (20) percent: ten (10) feet;
  - (4) For slopes of over twenty (20) percent: twenty (20) feet.

Section 13. Supplemental Plans with Tentative Subdivision Plans. Any of the following plans may be required by the Planning Commission or staff to supplement the plan of subdivision:

- (a) Approximate center line and right-of-way profiles with extensions for a reasonable distance beyond the limits of the proposed subdivision showing the finished grade of the streets and the nature and extent of street construction. Where any cut or fill will exceed three (3) feet in depth, cross section of the road shall also be submitted.
- (b) Proposals for storm water drainage and flood control, including profiles of proposed drainage ways.
- (c) If lot areas are to be graded, a plan showing the nature of cuts and fills exceeding five (5) feet, and information on the character of the soil.

Section 14. Preliminary Review of Tentative Subdivision Plan. Upon receipt, the City Surveyor shall distribute copies to appropriate officials and agencies designated by the City. In addition, coordination of the tentative plan should be made with affected county, state, and federal agencies, and all affected special districts. These officials and agencies shall be given a reasonable time to review the plan and to suggest any revisions that appear to be indicated in the public interest. The Planning Commission shall conduct a public hearing on the proposed subdivision and give notice as required in Section 15.

Section 15. Preliminary Approval of Tentative Subdivision Plan.

- (a) It shall be the responsibility of the Engineering Department and Planning Department to review a tentative plan to insure that it substantially conforms to the requirements of this ordinance prior to the submittal of the plan to the Commission. The Planning Director may refuse to submit a tentative plan to

the Commission if it is found that it does not substantially conform to the ordinance requirements. All decisions of the Planning Director may be appealed to the Planning Commission.

- (b) Upon finding that a tentative plan substantially conforms to the requirements of this ordinance, the Planning Director shall submit the plan along with the reports of appropriate officials and agencies to the Commission for review at its earliest practicable meeting.
- (c) The Planning Commission shall hold at least one public hearing on an application for tentative plan approval.
  - (1) Notice of the public hearing shall be published in a newspaper of general circulation in the City not less than 5 days nor more than 15 days prior to the date of hearing.
  - (2) Written notice of the public hearing shall be mailed to all owners of property within 300 feet of the exterior boundary of the property for which the approval has been requested. Notice shall be mailed not fewer than 20 nor more than 30 days prior to the date of the hearing.
  - (3) Public hearings shall be conducted as per the requirements of McMinnville Ordinance No. 3682, as amended.
  - (4) Any public hearing may be continued to a specific date by oral pronouncement prior to the close of such hearing; and such pronouncement shall serve as sufficient notice of such continuance to all applicants, adverse parties, and interested persons.
  - (5) A decision of the Commission shall become final 15 days after the date it is made provided that an appeal is not filed. For appeals procedures, see Section 45.
- (d) Approval of the tentative plan shall indicate approval for preparation of the final plat if there is no substantial change in the plan of the subdivision and if the subdivider complies with the requirements of this ordinance.
- (e) The action of the Planning Commission shall be noted on two copies of the tentative plan, including reference to any attached documents describing conditions. One copy shall be returned to the applicant, and the other shall be retained by the City of McMinnville.

### **Final Subdivision Plat**

Section 16. Submission of Final Plat. Within twelve (12) months after approval of the tentative plan, the subdivider shall prepare a final plat in conformance with the tentative plan as approved. The subdivider shall submit the original drawing and two exact copies and any supplementary information to the City Surveyor. If the subdivider wishes to proceed with the subdivision after the expiration of the twelve (12) month period following approval of the tentative plan by the Planning Commission, he must resubmit his tentative



plan to the Planning Commission and make any revisions considered necessary to meet changed conditions.

Section 17. Information on Final Plat. In addition to that specified by ORS 92.050 and ORS 209.250, the following information shall be shown on the final plat and/or complied with:

- (a) The date, scale, north point, legend, controlling topography, such as bluffs, creeks, and other bodies of water, and existing cultural features, such as highways and railroads;
- (b) Legal description of the tract boundaries;
- (c) Name of the owner, subdivider, and surveyor;
- (d) Reference points of existing surveys identified, related to the plat by distances and bearings, and referenced to a field book or map as follows:
  - (1) Stakes, monuments, or other evidence found on the ground and used to determine the boundaries of the subdivision;
  - (2) Adjoining lot corners of adjoining subdivisions;
  - (3) Oregon Coordinate System;
  - (4) Error of closure throughout the subdivision shall not exceed one foot in 10,000 feet;
  - (5) Measurement error shall not exceed 0.10 of a foot between monuments, or 1/5,000 of distance shown on the subdivision plat, whichever is greater.
  - (6) Other monuments found or established in making the survey of the subdivision or required to be installed by provisions of this ordinance.
- (e) The exact location, deflection angle, and width of streets and easements intercepting the boundary of the tract. The width of the portion of streets being dedicated and the width of existing right-of-way. For streets on curvature, curve data shall be based on the street center line. In addition to showing bearings in degrees, minutes, and seconds of a degree and distances in feet and hundredths of a foot, the following curve information shall be shown on the subdivision either on the face of the map or in a separate table:
  - (1) Arc length;
  - (2) Chord length;
  - (3) Chord bearing;
  - (4) Radius; and
  - (5) Central angle.
- (f) Tract, block, and lot boundary lines and street rights-of-way and center lines, with dimensions, bearing and deflection angles, radii, arcs, points of curvature,

and tangent bearings. Flood plain and normal high water lines for any creek or other body of water. Tract boundaries and street bearings shall be shown to the nearest thirty (30) seconds with basis of bearings. Distances shall be shown to the nearest 0.01 feet. No ditto marks shall be used;

- (g) Easements denoted by fine dotted lines, clearly identified and, if already of record, their recorded reference. If an easement of record is not definitely located, a statement of the easement shall be given. The width of the easement, its length and bearing, and sufficient ties to locate the easement with respect to the subdivision shall be shown. If the easement is being dedicated by the plat, it shall be properly referenced in the owner's certificates of dedication;
- (h) Lot numbers beginning with the number "1" and numbered consecutively in each block. Paired lots shall be identified as such, e.g., 1A and AB;
- (i) Area of each lot shall be shown on the face of the plat, with acreage calculated to 1/100 acre or square footage to nearest square foot, when area is less than one acre;
- (j) Block numbers beginning with the number "1" and continuing consecutively without omission or duplication throughout the subdivision. The numbers shall be solid, of sufficient size and thickness to stand out, and so placed as not to obliterate any figure. Block numbers in an addition to a subdivision of the same name shall be a continuation of the numbering in the original subdivision;
- (k) Identification of land parcels to be dedicated for any purpose, public or private, so as to be distinguishable from lots intended for sale;
- (l) The following certificates which may be combined where appropriate;
  - (1) A certificate signed and acknowledged by all parties having any recorded title or interest in the land, consenting to the preparation and recording of the plat;
  - (2) A certificate signed and acknowledged as above, dedicating all parcels of land shown on the final map intended for public use except those parcels which are intended for the exclusive use of the lot owners in the subdivision, their licenses, visitors, tenants, and servants;
  - (3) A certificate with the seal of the surveyor responsible for the survey and final map;
  - (4) Other certifications, deed restrictions, or covenants as now or hereafter may be required by law.
- (m) A statement of water right, if appropriate, and, if a water right is appurtenant, a copy of the acknowledgment from the Water Resources Department must be attached before the County recording officer may accept the plat of the subdivision for recording (ORS 92.120).

Section 18. Supplementary Information with Final Subdivision Plat. The following data shall accompany the final plat:

- (a) An amended subdivision guarantee report issued by a title insurance company in the name of the owner(s) of the land, showing all parties whose consent is necessary and their interest in the premises;
- (b) Sheets and drawings showing the following:
  - (1) Traverse data including the coordinates of the boundary of the subdivision and ties to section corners and donation land claim corners, and showing the error of closure, if any, prior to adjustment;
  - (2) The computation of all distances, angles, and courses shown on the final map;
  - (3) Ties to existing monuments, proposed monuments, adjacent subdivisions, street corners, state highway stationing, and Oregon Coordinate System;
- (c) A copy of any deed restrictions applicable to the subdivision;
- (d) A copy of any dedication requiring separate documents;
- (e) Written proof that all taxes and assessments which have become a lien on the tract are paid;
- (f) A certificate by the City Engineer that the subdivider has complied with the requirements of Sections 20 and 21.

Section 19. Technical Review.

- (a) Upon receipt of the final plat and accompanying data, the City Surveyor shall review the final plat and documents to determine that the plat conforms with the approved tentative plan, and that there has been compliance with provisions of the law and of this ordinance.
- (b) The City Surveyor shall examine the plat for compliance with requirements for accuracy and completeness and shall collect such fees as are required by this ordinance. He shall make checks in the field to verify that the plat is sufficiently correct on the ground, and he may enter the property for this purpose. If he determines that there has not been full conformity, he shall advise the subdivider of the changes or additions that must be made, and afford the subdivider an opportunity to make such changes or additions.
- (c) If the City Surveyor determines that full conformity has been made, he shall so certify.

Section 20. Agreement for Improvements. Before Planning Commission approval is certified on the final plat, the subdivider shall either install required improvements and repair existing streets and other public facilities damaged in the development of the subdivision; or execute and file with the City an agreement between himself and the City, specifying the period within which required improvements and repairs shall be completed. The agreement shall provide that if the work is not completed within the period specified, the City may complete the work and recover the full cost and expense thereof from the subdivider. The agreement may provide for the construction of the improvements in units and for an extension of time under specified conditions.

Section 21. Bond.

- (a) The subdivider will be required to file with the agreement for improvement as required in Section 20 above, to assure his full and faithful performance thereof, one of the following:
  - (1) A surety bond executed by a surety company authorized to transact business in the State of Oregon in a form approved by the City Attorney;
  - (2) File with the City a copy of instructions to a qualified escrow agent, providing that said agent shall withhold any amounts due or to become due to the subdivider in amount sufficient to cover the cost of all public improvements to be completed or installed by the subdivider, in a form approved by the City Attorney;
  - (3) Cash;
  - (4) Letter of credit or loan commitment in a form approved by the City Attorney.
- (b) Such assurance of full and faithful performance shall be for a sum determined by the City Engineer as sufficient to cover the cost of the improvements and repairs, including related City expenses.
- (c) If the subdivider fails to carry out provisions of the agreement and the City has unreimbursed costs or expense resulting from such failure, the City shall call on the bond or cash deposit for reimbursement. If the amount of the bond or cash deposit exceeds the cost and expense incurred by the City, the City shall release the remainder. If the amount of the bond or cash deposit is less than the cost and expense incurred by the City, the subdivider shall be liable to the City for the difference.

Section 22. Approval of Final Subdivision Plat. If the City Surveyor determines that the final plat conforms fully with all applicable regulations and standards, the City Surveyor shall so advise the chairman of the Planning Commission. If the final plat is referred to the chairman of the Planning Commission, the chairman may elect either to sign the plat or submit it to the Planning Commission for further review. When submitted to the Planning Commission for review, approval of the final plat shall be by a majority of those present. If the plat is signed without further review by the Planning Commission, the action shall be reported to the Planning Commission at the next regular meeting. In the absence of the

chairman, his duties and powers with respect to action on final plats shall be vested in the vice-chairman.

Section 23. Filing of Final Subdivision Plat. The subdivider shall, without delay, submit the final plat for signatures of other public officials required by law, e.g., County Commissioners, County Assessor, County Clerk, and Tax Collector. Approval of the final plat shall be null and void if the plat is not recorded within thirty (30) days after the date the last required signature has been obtained.

### **Approval of Streets and Ways**

#### Section 24. Creation of Streets.

- (a) The creation of streets shall be in conformance with requirements for subdivision except, however, the Planning Commission shall recommend the creation of a street to be established by deed if any of the following conditions exist:
  - (1) The establishment of the street is initiated by the City Council and is declared essential for the purpose of general traffic circulation, and the partitioning of land is an incidental effect rather than the primary objective of the street;
  - (2) The tract in which the street is to be dedicated is an isolated ownership of one acre or less;
  - (3) The tract in which the street is to be dedicated is an isolated ownership of such size and condition as to make it impractical to develop more than three (3) lots.
- (b) In those cases where approval of a street is to be established by deed, a copy of the proposed deed shall be submitted to the City Engineer at least fifteen (15) days prior to the Planning Commission meeting at which consideration is desired. The deed and such information as may be submitted shall be reviewed by the Planning Commission and, if not in conflict with the standards of Sections 25 to 30 of these regulations, shall be recommended for approval with such conditions as are necessary to preserve these standards;
- (c) An easement providing access to property and which is created to allow the partitioning of land for the purpose of lease, transfer of ownership, or building development, whether immediate or future, shall be in the form of a street in a subdivision, except that a private easement to be established by deed without full compliance with these regulations may be approved by the Planning Director under the following conditions:
  - (1) If it is the only reasonable method by which the rear portion of a lot being unusually deep or having an unusual configuration that is large enough to warrant partitioning into two more new parcels, i.e., a total of not more than three (3) parcels including the original may then exist, that may be

provided with access and said access shall be not less than 15 feet in width and shall have a hard surfaced drive of 10 feet width minimum;

- (2) The Planning Director shall require the applicant to provide for the improvement and maintenance of said access way, and to file an easement for said access way which includes the right to passage and the installation of utilities. Such requirements shall be submitted to and approved by the City Attorney.
  - (3) Access easements shall be the preferred form of providing access to the rear lots created by minor partition if the alternative is the creation of a flag lot.
- (d) A private way/drive which is created to allow the subdivision of land shall be in the form of common ownership, provide on-street parking or parking bays to replace that displaced by limited parking area, be approved by the Planning Commission in the form of a planned development, and meet the following conditions:
- (1) If it is the only reasonable method by which the rear portion of the existing parcel can be provided with access; or because of unusual topography, vegetative cover (preservable trees), lot size, or shape, it is the most feasible way to develop the parcel.
  - (2) The Planning Commission shall require the subdivider to provide the improvements to standards as set forth in Section 30(p) and maintenance of said private way/drive; to establish binding conditions upon each parcel taking access over said private way/drive, not limited to only the required maintenance, but to include adherence to the limited parking restrictions imposed by the individual planned development ordinance; and to provide necessary easements for the installation, operation, and maintenance, of public utilities.
  - (3) Provisions must be made to assure that the private streets will be properly maintained over time and that new purchasers of homes or lots within the subdivision are notified, prior to purchase, that the street is private and that maintenance fees may be charged. Such provisions must meet with the approval of the Planning Commission.
  - (4) Street sign posts on private streets must contain a sign stating that the street is private. The design and location of such signs must be approved by the City Engineer.

### **Tentative Minor Partition Plan**

Section 25. Submission of Tentative Minor Partition Plan. Land partitioning other than major partition or subdivision shall be approved under the following procedure:

- (a) There shall be submitted to the Planning Director a tentative plan with sufficient information to show the following:
- (1) The date, north point, scale, a copy of recorded deed, and any conveyed rights to define the location and boundaries of the parcel to be partitioned;
  - (2) Name and address of the recorded owner(s);
  - (3) Approximate acreage of the parcel under a single ownership or, if more than one ownership is involved, the total contiguous acreage of all owners of land directly involved in the minor partitioning;
  - (4) For land adjacent to and within the parcel to be partitioned, show locations, names, and existing widths of all streets and easements of way; locations, width, and purpose of all other existing easements; and location and size of sewer and water lines and drainage ways;
  - (5) Outline and location of existing buildings to remain in place;
  - (6) Lot layout showing size and relationship to existing or proposed streets and utility easements;
  - (7) Location and dimension of any existing or planned curb-side planting strip which may border the subject site. **(Modified by 12/9/97 by Ordinance No. 4654B.)**
  - (8) Such additional information as required by the Planning Director.
- (b) The plans shall be submitted to the Planning Director for review and determination that the proposal will be compatible with the comprehensive development plan. The Planning Director may require such dedication of land and easements and may specify such conditions or modifications in the plan as are deemed necessary to carry out the McMinnville Comprehensive Plan. In no event, however, shall the Planning Director require greater dedications or conditions than could be required if the entire parcel were subdivided.
- (1) If the parcel of land to be partitioned, being large in size, shall be divided into more than two parcels within any one calendar year, full compliance with all requirements for a subdivision plat may be required if the Planning Director should determine, in his judgment, that the entire parcel is in the process of being subdivided.

Section 26. Preliminary Approval of Tentative Minor Partition Plan.

- (a) It shall be the responsibility of the Engineering Department and Planning Department to review a tentative plan to insure that it substantially conforms to the requirements of this ordinance. The Planning Director may reject a tentative plan if it is found that it does not substantially conform to the ordinance requirements. All decisions of the Planning Director may be appealed to the Planning Commission.

- (b) Approval of the tentative plan shall indicate approval for preparation of the final plat if there is no substantial change in the plan of the minor partition and if the subdivider complies with the requirements of this ordinance.
- (c) The action of the Planning Director shall be noted on two copies of the tentative plan, including reference to any attached documents describing conditions. One copy shall be returned to the applicant and the other shall be retained by the City of McMinnville.

### **Final Minor Partition Plat**

Section 27. Submission of Final Minor Partition Plat. Within twelve (12) months after approval of the tentative plan, the subdivider shall prepare a final plat in conformance with the tentative plan as approved. The subdivider shall submit the original drawing and two exact copies thereof, and any supplementary information to the City Surveyor. If the subdivider wishes to proceed with the minor partition after the expiration of the twelve (12) month period following approval of the tentative plan by the Planning Director, he must resubmit his tentative plan to the Planning Director and make any revisions considered necessary to meet changed conditions.

Section 28. Filing of Final Minor Partition Plat. The subdivider shall, without delay, submit the final plat for signatures of other public officials required by law. Approval of the final plat shall be null and void if the plat is not recorded within thirty (30) days after the date the last required signature has been obtained.

### **Major Partitions**

Section 29. Major Partitioning Procedure for Approval. Major partitioning shall be approved under the procedures outlined in this ordinance for subdivision approval. These include:

- (a) Submission of tentative major partition plans. See Section 6.
- (b) Scale. See Section 7.
- (c) General information. See Section 8.
- (d) Existing conditions. See Section 9.
- (e) Proposed plan of major partition. See Section 10.
- (f) Partial development. See Section 11.
- (g) Explanatory information with major partition plan. See Section 12.
- (h) Supplemental plans with major partition plans. See Section 13.
- (i) Preliminary review of tentative major partition plans. See Section 14.



- (j) Preliminary approval of tentative major partition plans. See Section 15.
- (k) Submission of major partition final plat. See Section 16.
- (l) Information on final plat. See Section 17.
- (m) Supplementary information with final major partition plat. See Section 18.
- (n) Technical review. See Section 19.
- (o) Agreement for improvements. See Section 20.
- (p) Bond. See Section 21.
- (q) Approval of final major partition plat. See Section 22.
- (r) Filing of final major partition plat. See Section 23.

Section 30. Streets.

- (a) General. The location, width, and grade of streets shall be considered in their relation to existing and planned streets, to topographical conditions, to public convenience and safety, and to the proposed use of the land to be served by the streets. Where location is not shown in a comprehensive plan, the arrangement of streets in a subdivision shall:
  - (1) Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or
  - (2) Conform to a plan for the neighborhood approved or adopted by the Planning Commission to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical; or
  - (3) Maximize potential for unobstructed solar access to all lots or parcels. Streets providing direct access to abutting lots shall be laid out to run in a generally east-west direction to the maximum extent feasible, within the limitations of existing topography, the configuration of the site, predesigned future street locations, existing street patterns of adjacent development, and the preservation of significant natural features. The east-west orientation of streets shall be integrated into the design.
- (b) Rights-of-way and street widths. The width of rights-of-way and streets shall be adequate to fulfill city specifications as provided in Section 38 of this ordinance. Unless otherwise approved, the width of rights-of-way and streets shall be as shown in the following table:

Type of Street	Minimum Right-of-Way <sup>a,b</sup>	Street Width Measured (curb to curb) <sup>b</sup>	Design Capacity <sup>*</sup>
Major arterials with bikeways	104 feet	74 feet	32,000 & greater
Minor arterials with bikeways	100 feet	50 feet	32,000
Major collectors with bikeways	78 feet	48 feet	10,000
Minor collectors with bikeways	70 feet	46 feet	3,000
Minor collectors without bikeways	60 feet	36 feet	3,000
Local commercial and industrial streets	Varies <sup>c</sup>	Varies <sup>c</sup>	NA
Local residential streets	50 feet	26 <sup>d</sup> feet	1,200
Residential cul-de-sac streets not extending over 400' in length	44 feet	20 <sup>d</sup> feet	200
Eyebrows shall have a maximum length of 125', serving no more than 3 dwelling units	36 feet	20 <sup>e</sup> feet	30
Radius for residential cul-de-sac bulb	45 feet	33 <sup>f</sup> feet	NA
Radius for commercial and industrial cul-de-sac bulb	Varies <sup>c</sup>	Varies <sup>c</sup>	NA
Radius for end of eyebrow	18 feet	10 <sup>g</sup> feet	NA
Alley	20 feet	20 feet	NA

**Modified 11/8/94 by Ordinance No. 4573**

- (a) Exclusive of side slope easement which may be required in addition for cuts and fills in rough terrain.
- (b) The right-of-way and street width may be varied after consideration of the unique characteristics of the land including geography, topography, unique vegetation, and its relation to land developments already present or proposed in the area.
- (c) The right-of-way, street width, improvement standards, and turnaround radius of commercial/industrial cul-de-sacs and streets shall be dependent upon the types of vehicle traffic to be served.
- (d) Intersection curb radii shall be no less than 25 feet. On-street parking shall not be permitted within a 30-foot distance of street intersections measured from the terminus of the curb return. Where such a local residential street intersects an arterial, parking along the local street shall not be permitted within a 60-foot distance of the intersection measured from the terminus of the curb return. The developer shall be responsible for the provision and installation of "No Parking" signs as approved by the City Engineering Department.
- (e) Sidewalks and planting strips shall not be required along eyebrows.
- (f) For cul-de-sacs greater than 300 feet in length, fire hydrants may be required to be installed at the end of the bulb and appropriately spaced along the throat of the cul-de-sac as determined by the McMinnville Fire Department.
- (g) On-street parking shall not be permitted along the radius of the eyebrow.
- (\*) Design capacity of streets is based on a seven-day average of daily trips (ADT).

Where existing conditions, such as the topography or the size or shape of land parcels, make it otherwise impractical to provide buildable lots, the Planning Commission may accept a narrower right-of-way, ordinarily not less than fifty (50) feet. If necessary, special slope easements may be required.

- (c) Reserve strips. Reserve strips or street plugs controlling access to streets will not be approved unless necessary for the protection of the public welfare or of substantial property rights, and in these cases they may be required. The

control and disposal of the land comprising such strips shall be placed within the jurisdiction of the Planning Commission under conditions approved by them.

- (d) Alignment. As far as practical, streets other than minor streets shall be in alignment with existing streets by continuations of the center lines thereof. Staggered street alignment resulting in "T" intersections shall, wherever practical, leave a minimum distance of 200 feet between the center lines of streets having approximately the same direction and otherwise shall not be less than 125 feet.
- (e) Future extension of streets. Where necessary to give access to or permit a satisfactory future subdivision of adjoining land, streets shall be extended to the boundary of the subdivision; and the resulting dead-end streets may be approved without a turnaround. Reserve strips and street plugs may be required to preserve the objectives of street extensions.
- (f) Intersection angles. Streets shall be laid out to intersect at angles as near to right angles as practical except where topography requires a lesser angle, but in no case shall the acute angle be less than sixty (60) degrees unless there is a special intersection design. The intersection of an arterial or collector street with another street shall have at least 100 feet of tangent, measured from right-of-way adjacent to the intersection unless topography requires a lesser distance. Other streets, except alleys, shall have at least fifty (50) feet of tangent measured from property line adjacent to the intersection unless topography requires a lesser distance. Intersections which contain an acute angle of less than eighty (80) degrees or which include an arterial street shall have a minimum corner radius sufficient to allow for a roadway radius of twenty (20) feet and maintain a uniform width between the roadway and the right-of-way line.
- (g) Existing streets. Whenever existing streets adjacent to or within a tract are of inadequate width, additional right-of-way shall be provided at the time of subdivision.
- (h) Half streets. Half streets, while generally not acceptable, may be approved where essential to the reasonable development of the subdivision, when in conformity with other requirements of these regulations, and when the Planning Commission finds it will be practical to require the dedication of the other half when the adjoining property is subdivided. Whenever a half street is adjacent to a tract to be subdivided, the other half of the street shall be platted within such tract. Reserve strips and street plugs may be required to preserve the objectives of half streets.
- (i) Cul-de-sacs. A cul-de-sac shall be as short as possible and shall have a maximum length of 400 feet and serve not more than eighteen (18) dwelling units. A cul-de-sac shall terminate with a turnaround.
- (j) Street names. Except for extensions of existing streets, no street name shall be used which will duplicate or be confused with the names of existing streets.

Street names and numbers shall conform to the established pattern in the City; street names shall be subject to the approval of the Planning Commission. The naming of new streets with names of local historic significance and/or where appropriate in alphabetical order is encouraged. **(Modified 10/9/90 by Ordinance No. 4477.)**

- (k) Grades and curves. Grades shall not exceed six (6) percent on arterials, ten (10) percent on collector streets, or twelve (12) percent on any other street. Centerline radii of curves shall not be less than 300 feet on major arterials, 200 feet on secondary arterials, or 100 feet on other streets, and shall be to an even ten (10) feet. Where existing conditions, particularly topography, make it otherwise impractical to provide buildable lots, the Planning Commission may accept steeper grades and sharper curves.
- (l) Streets adjacent to a railroad right-of-way. Wherever the subdivision contains or is adjacent to a railroad right-of-way, provision may be required for a street approximately parallel with and on each side of such right-of-way at a distance suitable for the appropriate use of the land between the streets and the railroad. The distance shall be determined with due consideration at cross streets of the minimum distance required for approach grades to a future grade separation, and to provide sufficient depth to allow screen planting along the railroad right-of-way.
- (m) Frontage roads/streets. Where a subdivision or partition abuts or contains an existing or proposed arterial street, the Planning Commission may require frontage streets, reverse frontage lots with suitable depth, screen planting contained in a non-access reservation along the rear or side property lines, or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic.
- (n) Alleys. Alleys shall be provided in commercial and industrial districts, unless other permanent provisions for access to off-street parking and loading facilities are approved by the Planning Commission.
- (o) Eyebrows. Where conditions do not warrant the use of cul-de-sacs and the land available in the proposed plan does not allow for a discontinuous minor street extension and where there are no more than three (3) dwelling units proposed to take access, the City Engineer or Planning Director may allow eyebrows. Eyebrows shall be limited to a maximum length of 125 feet, when measured from the main street right-of-way from which the eyebrow takes access. The City Engineer or Planning Director may allow less than that required in (d) above, after taking into consideration the effects upon traffic flows. The right-of-way width shall be thirty-six (36) feet, with a paved ten (10) foot curb to curb radius at the terminus. Sidewalks shall not be installed within eyebrows without additional right-of-way dedication. **(Modified 11/18/94 by Ordinance No. 4573.)**
- (p) Private way/drive. This type of street will be allowed when the conditions of Section 24(d) are met. A private drive shall be constructed to the same structural standards that would apply to a public street. Storm runoff will be controlled to prevent damage to adjacent properties. A storm drainage plan

shall be approved by the City Engineer. The right-of-way width will be determined based on site conditions and proposed use and will be approved by the Planning Commission.

- (q) Bikeways. Provisions shall be made for bikeways planned along arterial and collector streets and where shown on the Bikeway Master Plan. Arterial streets shall be designed to be wide enough to accommodate a six-foot wide bike lane adjacent to each outside traffic lane. All major collector and some minor collector streets (dependent upon available right-of-way) shall be designed so that five-foot wide bike lanes may be striped in the future. Where a proposed development abuts a collector street less than 44 feet in width, the Planning Commission may require that on-street parking be restricted to one side of the street only or that the deed(s) of the lot(s) adjacent to the street show that on-street parking will be eliminated in the future for bikeway development. **(Modified 11/8/94 by Ordinance No. 4573.)**
- (r) Residential Collector Spacing. Generally, residential collector or arterial streets should be spaced no more than 1,800 feet from each other unless it is determined otherwise after consideration of the unique characteristics of the land including geography, topography, unique vegetation, and the relation of the site to developments already present or proposed in the area. **(Added 11/8/94 by Ordinance No. 4573.)**
- (s) Sidewalks. Along arterials and along major collectors with bikeways in commercial areas, sidewalks shall be eight (8) feet in width or, where less than eight (8) feet of right-of-way is available, shall extend to the property line and be located adjacent to the curb. Sidewalks in all other locations shall be five (5) feet in width and be placed one (1) foot from the right-of-way line. Sidewalks adjacent to a cul-de-sac bulb shall be located adjacent to the curb. **(Added 11/8/94 by Ordinance No. 4573.)**
- (t) Park strips. Park strips shall be provided between the curb and sidewalk along both sides of all streets except arterials, major collectors with bikeways, and cul-de-sac bulbs. Street trees shall be planted and maintained within the park strip as specified in the McMinville Street Tree Ordinance. **(Added 11/8/94 by Ordinance No. 4573.)**

### Section 31. Blocks.

- (a) General. The length, width, and shape of blocks shall take into account the need for adequate lot size and street width and shall recognize the limitations of the topography.
- (b) Size. No block shall be more than 1,000 feet in length between street corner lines unless it is adjacent to an arterial street, or unless the topography or the location of adjoining streets justifies an exception. The recommended minimum length of blocks along an arterial street is 1,800 feet.
- (c) Easements.

- (1) Utility lines. Easements for sewers, water mains, electric lines, or other public utilities shall be dedicated whenever necessary. The easements shall be at least ten (10) feet wide and centered on lot lines where possible, except for utility pole tieback easements which may be reduced to six (6) feet in width. Easements of ten (10) feet in width shall be required along all fifty (50) foot rights-of-way, and five (5) feet in width shall be required along all sixty (60) foot rights-of-way.
- (2) Water courses. If a subdivision is traversed by water courses such as a drainage way, channel, or stream, there shall be provided a storm unit easement or drainage right-of-way conforming substantially with the lines of the water course and of such width as will be adequate for the purpose, unless the water course is diverted, channeled, or piped in accordance with plans approved by the City Engineer's office. Streets or parkways parallel to major water courses may be required.
- (3) Pedestrian ways. When desirable for public convenience, safety, or travel, pedestrian ways not less than ten (10) feet in width may be required to connect to cul-de-sacs, to pass through unusually long or oddly shaped blocks, to connect to recreation or public areas such as schools, or to connect to existing or proposed pedestrian ways.

Section 32. Lots.

- (a) Size and shape. Lot size, width, shape, and orientation shall be appropriate for the location of the subdivision and for the type of use contemplated. All lots in a subdivision shall be buildable.
  - (1) Lot size shall conform to the zoning requirement of the area. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street parking and service facilities required by the type of use contemplated. The depth of lot shall not ordinarily exceed two times the average width.
- (b) Access. Each lot shall abut upon a street other than an alley for a width of at least twenty-five (25) feet except those lots approved and created under the provisions of Section 24(c) above. Direct access onto a major collector or arterial street designated on the McMinnville Comprehensive Plan Map shall be avoided for all lots subdivided for single-family, common wall, or duplex residential use, unless no other access point is practical.
- (c) Through lots. Through lots shall be avoided except where they are essential to provide separation of residential development from major traffic arteries or adjacent nonresidential activities, or to overcome specific disadvantages of topography and orientation. A planting screen easement at least ten (10) feet wide, and across which there shall be no right of access, may be required along the line of lots abutting such a traffic artery or other incompatible use.
- (d) Lot side lines. The side lines of lots, as far as practicable, shall run at right angles to the street upon which the lots face.

- (e) Flag lots. The creation of flag lots shall be discouraged and allowed only when it is the only reasonable method of providing access to the rear of a lot which is large enough to warrant partitioning or subdividing.

Section 33. Lot Grading. Lot grading shall conform to the following standards unless physical conditions demonstrate the propriety of other standards:

- (a) Cut slopes shall not exceed one and one-half feet horizontally to one foot vertically.
- (b) Fill slopes shall not exceed two feet horizontally to one foot vertically.
- (c) The character of soil for fill and the characteristics of lots made usable by fill shall be suitable for the purpose intended.
- (d) The minimum elevation at which a structure may be erected, taking into consideration the topography of the lot, the surrounding area, drainage patterns, and other pertinent data shall be established by the City Building Official.
- (e) The City Engineer shall determine whether a storm drainage system is necessary to control, manage, and dispose of water lying on or running over a subdivision. In addition, the subdivider shall be required to meet other standards and conditions imposed by state laws and city ordinances.

Section 34. Building lines. If special building setback lines are to be established in the subdivision or partition, they shall be shown on the plat or included in the deed restrictions.

Section 35. Large Lot Subdivision. In subdividing tracts into large lots which at some future time are likely to be resubdivided, the Planning Commission may require that the blocks be of such size and shape, be so divided into lots, and contain such building site restrictions as will provide for extension and opening of streets at intervals which will permit a subsequent division of any parcel into lots of smaller size.

Section 36. Left-over Land. Islands, strips, or parcel of property unsuited for subdividing and not accepted by the City for appropriate use shall not be left unsubdivided but shall be identified as required in Section 17(k) above.

### **Improvements**

Section 37. Improvement procedures. In addition to other requirements, improvements shall conform to the requirements of this ordinance and improvement standards or specifications adopted by the City, and shall be installed in accordance with the following procedure:

- (a) Work shall not be commenced until plans have been reviewed for adequacy and approved by the City. To the extent necessary for evaluation of the

subdivision proposal, the plans shall be required before approval of the final plat. All plans shall be prepared in accordance with requirements of the City;

- (b) Work shall not be commenced until the City has been notified in advance; and if work has been discontinued for any reason, it shall not be resumed until the City has been notified;
- (c) Required improvements shall be inspected by and constructed to the satisfaction of the City. The City may require changes in typical sections and details if unusual conditions arising during construction warrant such change in the public interest;
- (d) Underground utilities, sanitary sewers, and storm drains installed in streets by the subdivider shall be constructed prior to the surfacing of the streets. Stubs for service connections for underground utilities and sanitary sewers shall be placed to lengths that will avoid the need to disturb street improvements and utilities when service connections are made;
- (e) Plans showing public improvements as built shall be filed with the City Engineer within 30 days after acceptance of the improvements by the Engineer.

Section 38. Specifications for Improvements. The City Engineer has submitted and the City Council has adopted the standard specifications for public works construction, Oregon Chapter A.P.W.A., and has included those special provisions that are, by their very nature, applicable to the City of McMinnville. The specifications cover the following:

- (a) Streets, including related improvements such as curbs and gutters, shoulders, and median strips, and including suitable provisions for necessary slope easements;
- (b) Drainage facilities;
- (c) Sidewalks in pedestrian ways;
- (d) Sewers and sewage disposal facilities.

Section 39. Improvement requirements. The following improvements shall be installed at the expense of the subdivider:

- (a) Water supply system. All lots within a subdivision shall be served by the City water supply system.
- (b) Electrical system. All lots within a subdivision shall be served by the City electrical system.
- (c) Sewer system. All lots within a subdivision shall be served by the City sewer system.



- (d) Drainage. Such grading shall be performed and drainage facilities installed conforming to City specifications as are necessary to provide proper drainage within the subdivision and other affected areas in order to assure healthful, convenient conditions for the residents of the subdivision and for the general public. Drainage facilities in the subdivision shall be connected to drainage ways or storm sewers outside the subdivision. Dikes and pumping systems shall be installed, if necessary, to protect the subdivision against flooding or other inundations.
- (e) Streets. The subdivider shall grade and improve streets in the subdivision, and the extension of such streets to the paving line of existing streets with which such streets intersect, in conformance with City specifications. Street improvements shall include related improvements such as curbs, intersection sidewalk aprons, street signs, gutters, shoulders, and median strips to the extent these are required.
- (f) Pedestrian ways. A paved sidewalk not less than five (5) feet wide shall be installed in the center of pedestrian ways.
- (g) Private way/drive. The subdivider shall grade and improve to conform with City specifications in terms of structural standards.
- (h) The subdivider shall install street trees as required by Chapter 17.58 of the McMinnville Zoning Ordinance. **(Amended 12/9/97 by Ordinance No. 4654B.)**

### **Exceptions, Variances, and Enforcement**

Section 40. Exceptions in Case of Large Scale Development. The Planning Commission may modify the standards and requirements of this ordinance if the subdivision plat comprises a planned development unit, a large scale shopping center, or a planned industrial area. The Planning Commission shall determine that such modifications are not detrimental to the public health, safety, and welfare, and that adequate provision is made within the development for traffic circulation, open space, and other features that may be required in the public interest.

Section 41. Exceptions in the Case of Hillside Development. The Planning Commission may modify the standards and requirements of this ordinance if the subdivision is located on land of twenty (20) percent or greater slope. To minimize disturbance of the existing grade and to take advantage of natural building sites, modification may concern alignment, width and improvement of streets, and building site locations. If modification involves the creation of some lots of less than the minimum area, the average area of lots in the subdivision shall equal the density established for the area under the zoning in effect.

Section 42. Variance Application. When necessary, the Commission may authorize conditional variances to the requirements of this ordinance. The Commission shall hold at least one public hearing on a variance application. Procedures for the public hearing shall be the same as those described in Section 15(c) (1 - 5). Public hearings for

variances may be held simultaneously with tentative plan hearings when the same property is affected. Applications shall be made on forms provided by the Planning Department. Before a variance may be granted, the Commission shall first determine that the following circumstances substantially exist:

- (a) That there are special conditions affecting the property that are not common to all property in the area;
- (b) That the variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner and extraordinary hardship would result from strict compliance with these regulations because of the special circumstances or conditions affecting the property;
- (c) That the variance complies with the spirit and intent of these regulations and will not be detrimental to the public health, safety, or welfare or injurious to other property in the vicinity;
- (d) The variance requested is the minimum variance which would alleviate the hardship.

Section 43. Failure to Receive Notice - Not to Impair Hearing. For the purposes of giving notice to affected parties, the names and addresses of owners as shown on the records of the County Assessor may be used. Failure of a person or persons to receive notice as prescribed in this article shall not impair the validity of the hearing.

Section 44. Enforcement. The administration and enforcement of this subdivision ordinance shall reside with the City Engineer and the City Planning Director.

Section 45. Appeal from Ruling of Commission. An action or ruling of the Commission pursuant to this title may be appealed to the Council within fifteen days after the Commission has rendered its decision. Written notice of the appeal shall be filed with the City Recorder and shall set forth in detail the basis for and issues raised in the appeal. If the appeal is not taken within the fifteen-day period, the decision of the Commission shall be final. If the appeal is filed, the Council shall receive a report and recommendation thereon from the Commission and shall hold a public hearing on the appeal. Notice of a Council hearing on an appeal of a decision of the Commission shall take the form of that provided for in the initial application before the Commission.

- (a) The City Council shall hold a hearing on the appeal within forty (40) days from the time the appeal is filed. The Council may continue the hearing for good cause. Following the hearing, the Council may overrule or modify the decision or requirement made by the Planning Commission if the decision of the Council complies with the spirit and intent of the ordinance. The deposition of the appeal shall be final.

Section 46. Severability. If any provision of this ordinance shall for any reason be judged invalid or unconstitutional, the judgment shall not affect the validity of the rest of the ordinance.

Section 47. Violation - Procedure - Penalty.

- (a) A uniform complaint, or citation to appear, may be issued to the owner or developer of property being used in violation of this ordinance, requiring said owner or occupier to appear in court regarding a violation of the subdivision ordinance.
- (b) A trial shall be heard before the judge without a jury. No appeal from the decision may be taken. The standard of proof required shall be by a preponderance of the evidence.
- (c) A person convicted of violating a provision of this ordinance shall, upon conviction, be punished by a fine of not more than five hundred dollars (\$500) for each offense.
- (d) A violation of this ordinance shall be considered a separate offense for each day that the violation continues.
- (e) In the event the owner / developer fails to pay any fine imposed upon conviction of a violation, the court may issue a Show Cause Order to the individual so charged and require his presence in court to set forth the reasons for said failure to pay. If good and sufficient reasons do not exist, the court may request the Council to adopt an ordinance making the amount a lien against the property.