

## 33.700 Administration and Enforcement

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### Sections:

#### Implementing the Code

- 33.700.005 Building Permit Required
- 33.700.010 Uses and Development Which Are Allowed By Right
- 33.700.015 Review of Land Divisions
- 33.700.020 Uses and Development Which Are Not Allowed By Right
- 33.700.025 Neighborhood Contact
- 33.700.030 Violations and Enforcement
- 33.700.040 Reconsideration of Land Use Approvals
- 33.700.050 Performance Guarantees
- 33.700.060 Covenants with the City
- 33.700.070 General Rules for Application of the Code Language
- 33.700.075 Automatic Changes to Specified Dollar Thresholds

#### Timeliness of Regulations

- 33.700.080 Regulations that Apply at the Time of an Application
- 33.700.090 Regulations that Apply After Approval
- 33.700.100 Transfer of Approval Rights
- 33.700.110 Prior Conditions of Land Use Approvals
- 33.700.115 Expiration of Tree Preservation Requirements
- 33.700.120 Status of Prior Revocable Permits
- 33.700.130 Legal Status of Lots

### Implementing the Code

#### **33.700.005 Building Permit Required**

New development, changes to existing development, and changes in the type or number of uses may require a permit. In addition, other land use reviews may also be required, depending upon the location, the use proposed, the site development proposed, or materials to be used on the site.

#### **33.700.010 Uses and Development Which Are Allowed By Right**

Proposals for uses or developments which are allowed by right under this Title are subject to the following regulations. For the purposes of this chapter, uses and development allowed by right includes any limited uses which are not subject to a land use review.

- A. Method of review.** Requests for uses and development which are allowed by right are reviewed for compliance with the zoning regulations. The review is a nondiscretionary administrative review. Decisions are made by the Director of BDS and are final. The review is done in a timely manner according to general operating procedures of the Bureau of Development Services and the City.

**B. Applications.**

1. Applications for nondiscretionary reviews are generally processed in conjunction with obtaining a building permit or a home occupation permit. Applicants must submit information showing that the proposal complies with this Title, including a site plan with the necessary level of detail.
2. The applicant has the responsibility to obtain the property owner's permission for the request.
3. Approvals of nondiscretionary reviews are based on the information submitted. If the information is incorrect, the approval may be voided.

**C. Applications which will not be accepted.**

1. Prohibited uses and development. Applications for uses or development which are listed as prohibited in this Title will not be accepted.
2. Reasonable use. The Director of BDS or a review body may refuse an application when the proposed structure has been clearly designed for a use or development different from that which is being proposed, and could not reasonably be expected to meet the needs of the proposed use or development. An example would be an application for the construction of a house, when the building has no kitchen or bathrooms.
3. Procedure. When an application is not accepted, the applicant may appeal the decision through the Type II procedure. The applicant's appeal will be considered an appeal of an administrative decision, and will be subject to all notice, hearing, and fee requirements for a Type II procedure. A letter requesting the appeal, showing how the application complies with the requirements of Title 33, and stating the reasons the appeal should be granted will substitute for an official appeal form.

**33.700.015 Review of Land Divisions**

Proposals for land divisions and final plats that are subject to discretionary review under this Title require a land use review. The specific land use review is stated in the 600s series of chapters. Each land use review has specified procedures. See Chapter 33.730 for a description of the quasi-judicial procedures.

**A. Adjustment review required for existing development**

1. Conforming development. If a proposed land division will cause conforming development to move out of conformance with any regulation of the zoning code, and if the regulation may be adjusted, the land division request must include a request for an adjustment. If an adjustment to the regulation is prohibited, the land division is prohibited.
2. Nonconforming development. If a proposed land division will cause nonconforming development to move further out of conformance with any regulation of the zoning code, and if the regulation may be adjusted, the land division request must include a

request for an adjustment. If an adjustment to the regulation is prohibited, the land division is prohibited.

- B. Applications that will not be accepted.** Applications for land divisions that include elements that are prohibited by this Title will not be accepted.

### **33.700.020 Uses and Development Which Are Not Allowed By Right**

Requests for uses and development which are not allowed by right require a land use review. The specific land use review is stated in the base zone or other regulations of this Title. Each land use review has specified quasi-judicial procedures. See the 800s series of chapters for a description of the land use reviews and Chapter 33.730 for a description of the quasi-judicial procedures.

### **33.700.025 Neighborhood Contact**

- A. Purpose.** The Neighborhood Contact process provides a setting for an applicant and neighborhood residents to discuss a proposal in an informal manner. By sharing information and concerns early in the quasi-judicial or permit process, all involved have the opportunity to identify ways to improve a proposal, and to resolve conflicts before the proposal has progressed far into the quasi-judicial or permit process.

Where the proposal is for a land division, the focus of the meeting should be on the proposed configuration of lots, tracts, and streets. Where the proposal involves design review or historic resource review, the focus of the meeting should be the design of the proposal and not whether the proposal will be built. Where the proposal is for a use or development that is allowed by the zoning, the focus of the meeting should be on the proposal and not on whether it will be built. The discussion at the meeting is advisory only and is not binding on the applicant.

- B. When Neighborhood Contact is required.** Neighborhood Contact is required before applying for certain building permits or land use reviews, as specified in this Title. Applicants may also choose to follow the process voluntarily when it is not required.

- C. Requirements.** The requirements for Neighborhood Contact are:

1. The applicant must contact the neighborhood association for the area, by registered or certified mail, to request a meeting. A copy of this request must also be sent by registered or certified mail to the district neighborhood coalition, neighborhood business associations, and the school district within whose boundaries the proposal is located. Meeting request forms are available at the Development Services Center. Applicants are encouraged to include conceptual site plans, building elevations, and any other information that supports their proposal. The request letter must summarize the proposed development, the purpose of the meeting, and describe the following timelines.

The neighborhood association should reply to the applicant within 14 days and hold a meeting within 45 days of the date of mailing the request. If the neighborhood association does not reply to the applicant's letter within 14 days, or hold a meeting within 45 days, the applicant may request a land use review or building permit without further delay. If the neighborhood requests the meeting within the time frame, the applicant must attend the meeting. The applicant may attend additional

meetings on a voluntary basis. The neighborhood may schedule the meeting with its board, the general membership, or a committee.

2. After the meeting and before applying for the land use review or building permit, the applicant must send a letter by registered or certified mail, to the neighborhood association, district neighborhood coalition, and school district. The letter will explain changes, if any, the applicant is making to the proposal.
3. Copies of letters required by this subsection, and registered or certified mail receipts, must be submitted with the application for land use review or building permit.
4. The application must be submitted within one year from the date of sending the initial letter required in paragraph C.1., or the neighborhood contact process must be restarted.

### **33.700.030 Violations and Enforcement**

- A. Violations.** It is unlawful to violate any provisions of this Title, a land use decision, or conditions of a land use approval. This applies to any person undertaking a development or land division, to the proprietor of a use or development, or to the owner of the land underlying the development or land division. For the ease of reference in this chapter, all of these persons are referred to by the term "operator."
- B. Notice of violations.** BDS must give written notice of any violation of this Title, land use decision, or conditions of land use approval to the operator. Failure of the operator to receive the notice of the violation does not invalidate any enforcement actions taken by the City.
- C. Responsibility for enforcement.** The regulations of this Title, land use decisions, and conditions of land use approvals may be enforced in one or more of the following ways:
  1. By the Director of BDS pursuant to Chapter 3.30 and Title 22 of the City Code; or
  2. By the Director of BDS pursuant to 33.700.040 below.

### **33.700.040 Reconsideration of Land Use Approvals**

- A. Purpose.** The ability to publicly reconsider a land use approval provides an opportunity to determine if the use or development is in compliance with this Title. It also allows for clarification of prior land use approvals. As part of this reconsideration, the ability to add new conditions or even revoke the approval provides a strong enforcement mechanism for this code.
- B. Situations when land use approvals may be reconsidered.** All quasi-judicial land use approvals, except plan amendments, zone changes, and land divisions, may be reconsidered. In addition, all uses that became conditional uses or nonconforming uses due to a change of zoning regulations or mapping are also eligible for reconsideration. They may be reconsidered if there is evidence of any of the following situations:
  1. One or more conditions of the land use approval have not been implemented or have been violated;

2. The activities of the use, or the use itself, are substantially different or have substantially increased in intensity from what was approved. Examples of increases in intensity are: an increase in the number of members, students, employees, visitors, or vehicle trips per event, per year, or per other comparable period of time; an increase in the hours of operation; or an increase in the number of events per year; or
  3. The use is subject to the conditional use or nonconforming use regulations, has not been subject to a conditional use or nonconforming use review, and has substantially changed its activities or substantially increased the intensity of its operations since it became a conditional use or a nonconforming use. Examples of increases in intensity are: an increase in the number of members, students, employees, visitors, or vehicle trips per event, per year, or per other comparable period of time; an increase in the hours of operation; or an increase in the number of events per year.
- C. Initiating the reconsideration.** The Director of BDS may initiate a reconsideration if there is substantial evidence that one of the situations described in Subsection B. above applies to the use or development. The evidence relied on must be made part of the record. The reconsideration may be initiated anytime after 60 days have passed from the first notice of violation as described in 33.700.030.B. above.
- D. Procedure for reconsideration.**
1. Procedure. After initiation, the reconsideration is processed using a modified Type III procedure. An application does not have to be submitted, a pre-application conference is not required, and a fee is not charged.
  2. Review body. The review body is the same one that is assigned to hear new requests of that review type.
  3. Notice.
    - a. Notice to the operator. The operator will be notified that the reconsideration process has been initiated. This notice will be mailed at least 30 days prior to the scheduled hearing. Written comments from the operator must be received 15 days prior to the public hearing date to be included in the staff report.
    - b. Additional public notice. In addition to people who are mailed notice due to the Type III procedure requirements, people who have complained in writing about the use or development are also mailed notice of the hearing.
- E. Possible actions at the reconsideration hearing.** Depending on the situation, the review body may take any of the actions described below. The review body may not approve a new use or one more intense than originally approved unless the possibility of this change has been stated in the public notice.
1. Uses or development which are alleged to have not fulfilled conditions or which violate conditions are subject to the following actions.
    - a. The review body may find that the use or development is complying with the conditions of the land use approval. In this case, the use or development is allowed to continue.

- b. The review body may find that the use or development does not fully comply with the conditions of approval, but that the violations are not substantial enough to warrant revocation, and that the use can comply with the original approval criteria if the conditions are met. In this case, the review body may modify the existing conditions, add new conditions to ensure compliance with the approval criteria, and refer the case to the Code Hearings Officer for enforcement of the existing conditions.
        - c. The review body may revoke the land use approval if it finds that there are substantial violations of conditions or failure to implement conditions of prior land use decisions, such that the original approval criteria for the use or development are not being met.
  2. Uses and development which are alleged to be different from what was approved are subject to the following actions.
    - a. The review body may find that the use or development is consistent with what was approved. In this case, the use or development is allowed to continue.
    - b. The review body may find that the use or development, including its intensity or scale, is not consistent with what was approved, but that the differences are not substantial enough to warrant revocation, and that the use or development can comply with the original approval criteria with appropriate conditions. In this case, the review body may modify the existing conditions or add new conditions to ensure compliance with the original approval criteria.
    - c. The review body may revoke the land use approval if it finds that the land use being conducted on the site is substantially different from what was approved, does not comply with the original approval criteria for the use, and it cannot be reasonably conditioned to come into compliance.
  3. Conditional uses and nonconforming uses that have not been subject to a land use review are subject to the following actions:
    - a. The review body may find that the use and its activities, including its intensity, are consistent with what was on the site at the time it became a conditional or nonconforming use. In this case, the use is allowed to continue.
    - b. The review body may find that the use and its activities are substantially different or have substantially increased in intensity from what was on the site at the time it became a conditional use or nonconforming use. In this case, the review body may apply conditions or restrictions to ensure that the changes in activities or substantial increases in intensity comply with the current approval criteria for the use.
- F. Enforcement of revocation.** In the event that the land use approval is revoked, the use or development becomes illegal. The use or development must be terminated within 21 days of the date the revocation decision is filed with the City Auditor, unless the decision provides otherwise. Enforcement is the responsibility of BDS.

### 33.700.050 Performance Guarantees

- A. Purpose.** This section states the requirements for performance guarantees when they are required of an applicant by this Title or as a condition of a land use approval.
- B. Types of guarantees.** Guarantees by the applicant may be in the form of a performance bond payable to the City in cash, by certified check, time certificate of deposit, irrevocable letter of credit, or other form acceptable to the City. Indemnity agreements may be used by other governmental agencies. Guarantees must be accompanied by a contract. The form of the guarantee and contract must be approved by the City Attorney. The Director of BDS is authorized to accept and sign the contract for the City, and to accept the guarantee. The guarantee must be filed with the City Auditor.
- C. Amount of guarantee.** The amount of the performance guarantee must be equal to at least 110 percent of the estimated cost of performance. The applicant must provide written estimates by three contractors with their names and addresses. The estimates must include as separate items all materials, labor, and other costs of the required action.
- D. Completion.** An inspection an approval of the action or improvement covered by the performance guarantee is required before the performance guarantee is returned. The inspection is done by BDS or other appropriate City bureaus. If the action or improvement is not completed satisfactorily within the stated time limits, the City may have the necessary action or improvement completed and seek reimbursement for the work from the performance guarantee. Any remaining funds will be returned to the applicant.

### 33.700.060 Covenants with the City

- A. Content of the covenant.** A covenant required by this Title or a condition of a land use approval must state that:
  - 1. The owner will comply with all applicable code requirements and conditions of approval; and
  - 2. If the owner fails to perform under the covenant, the City may terminate occupancy of the site and seek all necessary injunctive relief, including seeking to prevent future occupancy of the site while a violation of the covenant exists.
  - 3. Where the development rights of one site are dependent on the performance of conditions by the owner of another site (such as the transfer of development rights), the covenants are judicially enforceable by the owner of one site against the owner of another.
- B. Adopting the covenant.** The form of all covenants must be approved by the City Attorney. The covenant must run with the land. The covenant must be attached to the deed and be recorded in the appropriate records of the county in which the site is located. Proof of the recording must be made prior to the issuance of any building permits.

### **33.700.070 General Rules for Application of the Code Language**

The rules of this section apply to this Title and any conditions of a land use approval granted under this Title.

- A. Reading and applying the code.** Literal readings of the code language will be used. Regulations are no more or less strict than as stated. Applications of the regulations that are consistent with the rules of this section are nondiscretionary actions of the Director of BDS to implement the code. The action of the Director of BDS is final.
- B. Ambiguous or unclear language.** Where the language is ambiguous or unclear, the Director of BDS may issue a statement of clarification processed through a Type III procedure, or initiate an amendment to Title 33 as stated in Chapter 33.835, Goal, Policy, and Regulation Amendments.
- C. Situations where the code is silent.** Proposals for uses, development, or land divisions where the Code is silent or where the rules of this section do not provide a basis for concluding that the proposal is allowed are prohibited. The Planning and Sustainability Director may initiate an amendment to Title 33 to add a new use category, or make other amendments, as stated in Chapter 33.835, Goal, Policy, and Regulation Amendments.
- D. Terms.**
  - 1. Defining words. Words used in the zoning code have their dictionary meaning unless they are listed in Chapter 33.910, Definitions. Words listed in the Definitions chapter have the specific meaning stated, unless the context clearly indicates another meaning.
  - 2. Tenses and usage.
    - a. Words used in the singular include the plural. The reverse is also true.
    - b. Words used in the present tense include the future tense. The reverse is also true.
    - c. The words "must," "will," and "may not" are mandatory.
    - d. "May" is permissive.
    - e. "Prohibited" means that an adjustment, conditional use, or other land use review may not be requested in order to allow an exception to the regulation in question. This does not preclude requests for zone changes or Comprehensive Plan map amendments.
    - f. When used with numbers, "Up to x," "Not more than x" and "a maximum of x" all include x.
  - 3. Conjunctions. Unless the context clearly indicates otherwise, the following conjunctions have the following meanings:
    - a. "And" indicates that all connected items or provisions apply;



- b. "Or" indicates that the connected items or provisions may apply singly or in combination;
  - c. "Either...or" indicates that the connected items or provisions apply singly, but not in combination.
4. Lists. Lists of items that state "including the following," "such as," or similar language are not limited to just those items. The lists are intended to provide examples, but not to be exhaustive of all possibilities.

**E. Hierarchy of regulations.**

1. Different levels of regulations. In general, an area with base zoning, overlay zoning, or an area in a plan district is subject to all of the regulations of each. Where a land division is requested, the regulations of the 33.600s series of chapters also must be met.

When the regulations conflict, unless specifically indicated otherwise, the following rules apply:

- a. The regulations in a plan district supersede regulations in overlay zones, base zones, and regulations in the 600s series of chapters;
  - b. The regulations in an overlay zone supersede regulations in base zones and regulations in the 600s series of chapters;
  - c. The regulations for plan districts and overlay zones also supersede conflicting regulations for a specific use or development stated in the 200s series of chapters; and
  - d. The regulations in the 200s series of chapters supersede regulations in the 600s series of chapters.
2. Regulations at the same level. When regulations at the same level conflict, those that are more specific to the situation apply. An example would be the parking space requirement for houseboats in moorages, two spaces per unit, which is stated in the Floating Structures chapter. This would supersede the standard residential requirement of one space per unit stated in the Parking chapter. When the regulations are equally specific or when it is unclear which regulation to apply, the most restrictive applies. Regulations at the same level include such situations as two different standards in a base zone or regulations from separate chapters in the 200s series of chapters.
3. Figures, tables, and maps. Where there are differences of meaning between code text and figures or tables, the code text controls. When there are differences between code text and maps, the maps control.

**F. Sites in more than one zone.** When a site is in more than one zone, the development standards of each zone apply to the portion of the site in that zone.

**G. Applying the code to specific situations.** Generally, where the code cannot list every situation or be totally definitive, it provides guidance through the use of descriptions and

examples. In situations where the code provides this guidance, the descriptions and examples are used to determine the applicable regulations for the situation. If the code regulations, descriptions, and examples do not provide adequate guidance to clearly address a specific situation, the stated intent of the regulation and its relationship to other regulations and situations are considered.

- H. Determining whether a land use request is quasi-judicial or legislative.** Quasi-judicial and legislative are terms describing two different types of land use actions. In general, legislative actions involve the adoption of law or policy applicable Citywide or to a broad geographical area of the City. Quasi-judicial actions involve the application of existing law or policy to a small area or a specific factual situation. There are different legal requirements for the processing of these two types of actions. In general, quasi-judicial actions require greater notice and procedural protections than do legislative actions. If there are questions as to whether a specific request for a land use review is quasi-judicial or legislative, the decision will be made by the City Attorney. The decision will be based on current law and legal precedent. Requests for decisions on this issue must be in writing and must be filed with the Director of BDS, who will forward the request to the City Attorney.

### **33.700.075 Automatic Changes to Specified Dollar Thresholds**

The sections listed below include dollar thresholds. These thresholds will be increased or decreased each year on March 1. The change will occur automatically, and the new dollar amount will be placed in the Zoning Code without being subject to the procedures for amending the Zoning Code. The change will be based on the annual national average of the Construction Cost Index (CCI), as published in the second January issue of the Engineering News-Record.

- A. The following sections are subject to this regulation.** Any increase or decrease that is not a multiple of \$50 will be rounded to the nearest multiple of \$50:
1. 33.258.070.D.2.a;
  2. 33.258.070.D.2.d(2);
  3. 33.440.230.D.1;
  4. 33.510.253.D.1.a;
  5. 33.515.278.B.17.a(1);
  6. 33.560.020
  7. 33.565.310.B.2
  8. Table 825-1
  9. Table 846-1; and
  10. Table 846-3
- B. The following sections are subject to this regulation.** Any increase or decrease that is not a multiple of \$0.10 will be rounded to the nearest multiple of \$0.10:

1. 33.510.205.G.2.f; and
2. 33.510.210.C.18.

### **Timeliness of Regulations**

#### **33.700.080 Regulations That Apply at the Time of an Application**

The regulations of this section apply to applications for land use reviews and building or development permits.

##### **A. Applications.**

1. Application for land use review. Applications for land use reviews will be processed based on the regulations in effect on the date an application is filed with the City, as follows:
  - a. Complete at filing. If, on the date the application is filed with the City, the application contains all the information stated in 33.730.060, Application Requirements, as well as any additional information required in the pre-application conference notes, the application will be processed based on the regulations in effect on the date the application is filed;
  - b. Complete within 180 days. If, on the date the application is filed with the City, the application does not contain all the information stated in Section 33.730.060, Application Requirements, as well as any additional information required in the pre-application conference notes, but the applicant provides the information within 180 days of the date the application was filed, the application will be processed based on the regulations in effect on the date the application was filed.
2. Application for building or development permit. Applications for building or development permits will be processed based on regulations in effect on the date a complete application is filed with the City. For the purposes of this section, a complete building or development permit application contains the information necessary for BDS to determine whether the proposal conforms with all applicable use regulations and development standards.

##### **B. Revisions to building or development permit applications.** Revisions will be processed based on the regulations in effect when the original complete application was received if:

1. The use remains within the same use category as in the original application;
2. The revision does not increase the total square footage of the proposed use;
3. The original application has not expired; and
4. The revised development meets all applicable development standards.

##### **C. Use of new regulations or mapping.** Applications will not be accepted for building permits or land use reviews based on regulations or changes to zoning maps that have been approved but not yet implemented, or have been adopted but have not yet become effective. However, pre-application conferences may be requested and held.

### **33.700.090 Regulations That Apply After Approval**

The regulations of this section apply to land use approvals that are subject to expiration as provided in 33.730.130, Expiration of an Approval.

- A. Building permits.** Applications for building permits for development approved by a land use decision that has not expired are subject only to the regulations in effect on the date a land use application was filed with the City, as specified in 33.700.080.A.1.
- B. Land divisions.** Applications for Final Plat approval where the Preliminary Plan approval has not expired are subject only to the regulations in effect on the date an application for Preliminary Plan was filed with the City, as specified in 33.700.080.A.1.

### **33.700.100 Transfer of Approval Rights**

Approvals of quasi-judicial land use reviews run with the land and are transferred with ownership. Any conditions, time limits, or restrictions apply to all subsequent operators.

### **33.700.110 Prior Conditions of Land Use Approvals**

This section addresses situations where a use, development, or land division was approved with conditions as part of a land use review under zoning or land division regulations that no longer apply to the site. Over time, there are instances when uses or development previously approved with conditions are subject to new zoning or land division regulations. This may result from a change of the content of zoning or land division regulations or from legislative zone changes including annexation rezonings.

- A. Conditions of approval prior to 1981.** Conditions of approval for a land use review applied for prior to 1981 no longer apply to a site, except for conditions on all types of land divisions, Planned Unit Developments (PUD), or any other quasi-judicial review approved in association with a land division or PUD.
- B. Conditions of approval after 1981.** The regulations stated below apply to all prior conditions of approval for all types of land divisions, Planned Unit Developments (PUD), and any other quasi-judicial review approved in association with a land division or PUD, and for land use reviews applied for after January 1, 1981, unless the conditions of approval or the ordinance adopting the conditions provide for their continuance.
  - 1. **Zone changes.** If a site is subject to conditions as the result of a zone change, the conditions continue to apply if the site is rezoned to a comparable zone as part of an annexation rezoning or as part of a legislative remapping. The conditions of the original zone change do not apply if the site is rezoned to a noncomparable zone. Comparable zone changes are single-dwelling to single-dwelling, multi-dwelling to multi-dwelling, commercial to commercial or commercial/mixed use, employment to employment, and industrial or manufacturing to industrial zones. Also, changes from a City M3 or Multnomah County LM, M3, or M4 zone to a C, E, or I zone retain all conditions of approval on the site. Other zone changes are considered noncomparable.

2. Conditional uses.
  - a. An allowed conditional use. If a use was an approved conditional use under the prior regulations or had a Community Service overlay zone, and is a conditional use under the new regulations pertaining to the site, any conditions of approval continue to apply.
  - b. Use allowed by right. If the use is now allowed by right, the conditions of approval no longer apply, except for the following:
    - (1) Colleges and Medical Centers in the CI1 and CI2 zones.
      - Conditions of approval that mandate a Transportation Demand Management plan or address parking, vehicle trips or any other transportation system related issue continue to apply until superseded by an approved Transportation Impact review;
      - If a College or Medical Center in a CI1 or CI2 zone was approved through a conditional use, conditional use master plan, or impact mitigation plan under the prior regulations, and the conditional use, conditional use master plan, or impact mitigation plan has not expired, the applicant can continue to develop under the approved conditional use review, the conditional use master plan, or the impact mitigation plan until the review expires, or December 31, 2023, whichever comes first. If the applicant chooses to develop under the approved conditional use, the conditional use master plan, or the impact mitigation plan, they must develop under the zoning code regulations that were in effect on the date the land use application was deemed complete. Amendments to the conditional use are prohibited.
    - (2) Conditions of approval continue to apply to outdoor sports facilities that are on a site with a College or Medical Center that was an approved use under the prior regulations.
  - c. Use no longer allowed. If the use was a conditional use without an expiration date and is no longer allowed, it becomes a nonconforming use under the new regulations, and must continue to meet the conditions as well as the nonconforming use regulations. If the use was a conditional use with an expiration date and is no longer allowed, it is subject to the same regulations as revocable permits, as stated in Paragraph 120.C.1 below.
3. Variances and adjustments. If the variance or adjustment was for development that is now allowed by right, and the development on the site conforms with the current regulations, then the prior conditions of approval no longer apply.
4. Greenway review. If a use or development is subject to conditions under a greenway review, the conditions continue to apply.
5. Other land use actions. If the use or development was approved with conditions under a review that is no longer in effect on the site (such as site review, design review, significant environmental concern review), the conditions no longer apply.

### **33.700.115 Expiration of Tree Preservation Requirements**

The regulations of this section apply to tree preservation required as a condition of a land use review or required in a tree preservation plan approved in conjunction with a land use review for sites within the City Limits. These regulations do not apply outside the City Limits. Although tree preservation requirements may expire for a site, the site is still subject to the tree requirements of this Title and Title 11, Trees.

- A. Generally.** Tree preservation requirements expire 10 years from the effective date of the land use approval, unless otherwise stated in the land use approval or as specified in B and C;
- B. Land divisions.** Tree preservation requirements for land divisions expire 10 years from the date the final plat is approved, unless otherwise stated in the conditions of approval; and
- C. Master plans and IMPs.** Multi-year Conditional Use Master Plans and Impact Mitigation Plans may establish an expiration date through conditions of approval.

### **33.700.120 Status of Prior Revocable Permits**

Land use revocable permits approved prior to January 1, 1991 are subject to the regulations stated below.

- A. Uses that are now allowed.** Revocable permits for uses that are now an allowed use are revoked and the uses are subject to the zoning regulations. Specific activities of the use which were allowed by the revocable permit but that do not conform to the code may continue and are limited by any conditions of approval from the prior revocable permit. Any other conditions of approval no longer apply.
- B. Uses that are now conditional uses.** Revocable permits for uses that are now regulated as a conditional use are revoked and the uses are subject to the conditional use regulations. Any conditions of approval continue to apply. Specific activities of the use that were allowed by the revocable permit but do not conform to the code may continue and are limited by any conditions of approval from the prior revocable permit.
- C. Uses that are prohibited.** Revocable permits for uses that are prohibited by this Title may continue under the conditions of the permit as provided below.
  - 1. Revocable permits with a specified expiration date.
    - a. A revocable permit that has a specified expiration date continues to be in effect until the expiration date, the use that was approved changes, or the owner changes. Transfers of permit rights or modifications to the permit are prohibited. The holder of the revocable permit may ask to have a one-time extension of the expiration date of up to 3 years. Approval of more than one extension is prohibited. Extensions are processed through a Type III procedure. An extension will be granted if the review body finds that all of the following approval criteria are met:
      - (1) The use has no adverse impacts on surrounding uses; and
      - (2) The extension is necessary to allow the use time to cease operation or to move to a location where the use is allowed.

- b. Exception. If the revocable permit granted additional residential dwelling units, then the extra dwelling units become nonconforming residential density, and must meet nonconforming residential density regulations. In this case, any conditions of approval of the revocable permit no longer apply.
2. Revocable permits without an expiration date.
- a. A revocable permit that does not have a specified expiration date continues to be in effect until the use that was approved changes or the owner changes. Extensions, transfers of permit rights, or modifications to the permit are prohibited.
  - b. Exceptions.
    - (1). If the revocable permit granted additional residential dwelling units, then the extra dwelling units become nonconforming residential density and must meet nonconforming residential density regulations. In this case, any conditions of approval of the revocable permit no longer apply.
    - (2) If the use established by the revocable permit has been maintained over time, and the applicant can document that the use has been maintained over time using standard evidence per 33.258.038.B or through a review per 33.258.075, then the use becomes a nonconforming use and must meet nonconforming use regulations. If the use approved through the revocable permit has been discontinued for 3 consecutive years, it has not been maintained over time. The use is considered to be discontinued when the use approved ceases to operate, even if the structure or materials related to the use remain. Conditions of approval of the revocable permit continue to apply, except for any conditions that limit the transfer of ownership.

### **33.700.130 Legal Status of Lots**

- A.** A lot shown on a recorded plat remains a legal lot except as follows:
  - 1. The plat, or the individual lot or parcel lines have been vacated as provided by City Code; or
  - 2. The lot has been further divided, or consolidated, as specified in the 600 series of chapters in this Title, or as allowed by the former Title 34.
- B.** Where a portion of the lot has been dedicated for public right-of-way, the remaining portion retains its legal status as a lot, unless it has been further altered as specified in Subsection A, above.
- C.** The determination that a lot has legal status does not mean that the lot may be developed, unless all requirements of this Title are met.

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*(Amended by: Ord. No. 163697, effective 1/1/91; Ord. No. 166702, effective 7/30/93; Ord. No. 167386, effective 2/23/94; Ord. 169535, effective 1/8/96; Ord. No. 169917, effective 3/27/96; Ord. No. 171219, effective 7/1/97; Ord. No. 174263, effective 5/14/00; Ord. No. 175837, effective 9/7/01; Ord. Nos. 175965 and 176333, effective 7/1/02; Ord. No. 176469, effective 7/1/02; Ord. No. 177368, effective 5/17/03; Ord. No. 177422, effective 6/7/03; Ord. No. 178509, effective 7/16/04; Ord. No. 178657, effective 9/3/04; Ord. No. 180619, effective 12/22/06; Ord. No. 181357, effective 11/9/07; Ord. No. 183518, effective 03/05/10; Ord. No. 183598, effective 4/24/10; Ord. No. 184521, effective 5/13/11; Ord. No. 185333, effective 5/16/12; Ord. No. 185915, effective 5/1/13; Ord. No. 186639, effective 7/11/14; Ord. No. 186053, effective 1/1/15; Ord. No. 187216, effective 7/24/15; Ord. No. 188177, effective 5/24/18; Ord. No. 188958, effective 5/24/18; Ord. No. 189000, effective 7/9/18.)*