

**RIVERGROVE**

**LAND DEVELOPMENT ORDINANCE**

**(Attachment C to Ordinance No. 54-89)**

**Adopted March, 1989, and as amended.**

**City of Rivergrove  
P.O. Box 1104  
Lake Oswego, OR 97035  
(503) 639-6919**

**This document was compiled from a variety of sources for ease of locating the various sources of authority over land development in the City of Rivergrove and has not been adopted or approved by either the Rivergrove Planning Commission or City Council. In the event of conflict between this document and the officially adopted ordinances, the ordinances take precedence. Anyone relying on this document should confirm the contents of the regulations with the official documents.**

**THIS DOCUMENT IS AN UNOFFICIAL ELECTRONIC VERSION COMPILED TO INCORPORATE AMENDMENTS. FOR THE OFFICIAL VERSION, PLEASE REFER TO THE ACTUAL DOCUMENTS ADOPTED BY THE RIVERGROVE CITY COUNCIL.**

The Rivergrove Land Development Ordinance, Attachment C to Rivergrove Ordinance No. 54-89 serves as the base document. The changes to this document include the following ordinances:

Ordinance No. 59-97A

Sections Affected:

- 5.010 (Land Use)
- 5.050 (Permitted Uses)
- 3.020 (Membership)

Ordinance No. 61-98

Sections Affected:

- 5.060 (Permitted Uses in the Flood Hazard Zone)
- 6.226 (Procedure)

Ordinance No. 62-98

Sections Affected:

- 5.055 (Secondary Dwelling Units)

Ordinance No. 68-2000

Sections Affected:

- 5.075 (Minimum Density Standard)
- 6.080 (Division of Land)
- 5.095 (Parking Standards)

Ordinance No. 71-2002

Sections Affected:

- 5.130 (Gates or Other Barriers)
- 6.135 (Public and Private Streets and Driveways)

Ordinance No. 73-2003A

Sections Affected:

- 5.050 (Permitted Uses)
- 6.300 (Conditional Use)
- 6.310 (Application Requirements)
- 6.320 (Review Criteria)
- 6.330 (Additional Criteria)
- 6.340 (Conditions)

Ordinance No. 74-2004

Sections Affected:

- 5.100 (Tree Cutting)

In addition, to the RLDO, the City of Rivergrove has adopted other ordinances that affect land use in the City. Some of those documents include:

- Ordinance #52 (Rivergrove Flood Damage Prevention Ordinance)
- Ordinance 57-93 (Siting of Manufactured Homes in the City of Rivergrove)
- Ordinance 65-99: (Consenting to the application and enforcement of Lake Oswego City Code provisions related to sanitary sewer services in the City of Rivergrove)
- Ordinance 70-2001 (Water Quality and Flood Management Ordinance)

Finally, the Rivergrove Planning Commission has interpreted several provisions of the RLDO and adopted formal interpretations, including:

- July 7, 1997 – Section 2.040(h)
- November 3, 1997 – Section 9.030
- March 2, 1998 – Section 5.080
- July 6, 1998 - Section 5.080
- May 7, 2001 - Section 9.030 (as well as Section 5.2-4(1)(iii) of Ordinance #52)
- September 5, 2002 - section 5.010
- October 11, 2004 - Section 5.080 (as well as Section VI(D)(4) of Ordinance #70-2001)

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**Attachment C  
to Ordinance No. 54-89**

**A LAND DEVELOPMENT ORDINANCE  
AND  
A DEVELOPMENT STANDARDS DOCUMENTS ORDINANCE FOR THE  
CITY OF RIVERGROVE, OREGON.**

**THE CITY OF RIVERGROVE, OREGON, ORDAINS AS FOLLOWS:**

**ARTICLE 1  
GENERAL PROVISIONS**

Section 1.010. Title. This ordinance shall be known as the Rivergrove Development Ordinance of 1989 (hereinafter the "ordinance") and is comprised of the ordinance and the Rivergrove Land Development Standards Document.

Section 1.020. Repeal. Ordinance Nos. 11, 12, 14, 26, 27, 34 and 36 and all other ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 1.030. Severability and Validity. The provisions of this ordinance are severable. If any section, sentence, clause or phrase of this ordinance is adjudged by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the remaining portions of this ordinance.

Section 1.040. Interpretation. Where the conditions imposed by a provision of this ordinance are less restrictive than comparable conditions imposed by any other provisions of this or any other ordinance, the more restrictive provision shall govern.

Section 1.050. Definitions. As used in this ordinance the masculine includes the feminine and the neuter and the singular includes the plural. The following words and phrases, unless the context otherwise requires, shall mean:

- (a) "Building line" means a line on a plat or map indicating the limit beyond which buildings, structures or development may not be erected or undertaken.
- (b) "City" means the city of Rivergrove, Oregon.
- (c) "City Council" means the governing body of the city of River grove, Oregon.
- (d) "Comprehensive Plan" means the official plan adopted by the City for the guidance of growth and development including those amendments which may be made to it.
- (e) "Development" means any man-made change to improved or unimproved real estate, including but not limited to construction, installation or alteration of a building or other

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structure, land division, establishment or termination of a right to access, storage on the land, tree cutting, drilling and site alteration such as that due to land or surface mining, dredging, paving grading, excavation, clearing, or the alteration of the banks or bed of any waterway in the City.

- (f) "Dividing Land" means the process of separating a parcel of land or a lot in a subdivision into a number of lots by subdivision or parcels by partitioning. Dividing occurs when an improved plat or plan has been filed, or, if approval is not required, when less than the entire contiguous land holdings in a single ownership on the effective date of this ordinance is transferred to a new owner.
- (g) "Impact Area" means an area that has been identified in the plan or map as needing land or Water management to protect against adverse impact such as erosion, slippage, loss of unique wildlife or plant habitat or another feature identified as needing special consideration and protection where such management is to be implemented through a site investigation program.
- (h) "Land Division" means a lot or parcel of land created through the process of dividing land.
- (i) "Lot" means a unit of land created by a subdivision of land or other means.
  - (1) "Corner Lot" means a lot at least two adjacent sides of which abut streets other than alleys, provided the angle of the intersection of the adjacent streets does not exceed 135 degrees.
  - (2) "Reversed Corner Lot" means a corner lot, the side street line of which is substantially a continuation of the front line of the first lot to its rear.
  - (3) "Through Lot" means a lot having frontage on two parallel or approximately parallel streets other than alleys.
- (j) "Major Partition" means the dividing of land into two or three parcels within one calendar year and including the creation of a road or street, either public or private and including easements.-
- (k) "Map" means a final diagram, drawing or other writing concerning a land division.
- (l) "Minor Partition" means the dividing of land into two or three parcels within one calendar year that does not include the creation of a road or street or easement.
- (m) "Nonconforming Use or Development" means a use or development lawfully existing at the time this ordinance became applicable to it by being in compliance with the standards applicable to it at the time it came into existence, but that would not be lawful except for its pre-existence.

- (n) "Owner" means the legal owner of record, or where there is a recorded land sales contract, the purchaser thereunder.
- (o) "Pedestrian Way" means a right-of-way for pedestrian traffic.
- (p) "Person" means an individual, including any trustee, receiver, assignee, or any group or combination acting as a unit, including any political subdivision.
- (q) "Planning Commission" or "Commission" means the Planning Commission of the city of Rivergrove, Oregon, and also serves as the City Design Review Body.
- (r) "Plat" means the final map, diagram, drawing, replat, or other writing containing all the descriptions, locations, specifications, dedications, provisions, and other information concerning a land division.
- (s) "Resident" means a person or persons living as a resident for some continuous period (as distinguished as a transient).
- (t) "Right-of-way" means the area between boundary lines of a street or other easement
- (u) "Roadway" means the portion of a street right-of-way developed for vehicular traffic.
- (v) "Sidewalk" means a pedestrian walkway with permanent surfacing to City standards.
- (w) "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, and the placement of utilities and including the terms "road," "highway," "lane," "avenue," "way," "place," "court," "boulevard," "circle," "drive," "alley," or other similar designation.
  - (1) "Alley" means a narrow street through a block primarily for vehicular service access to the back or side of property otherwise abutting on another street.
  - (2) "Arterial" means street of considerable continuity which is primarily a traffic artery for inter-communication among large areas.
  - (3) "Collector" means a street supplementary to the arterial street system and a means of intercommunication between this system and smaller areas; also used to some extent for access to abutting properties and may be used to a limited extent for through traffic.
  - (4) "Cul-de-sac" means a short street having one end open to traffic and terminated by a vehicle turnaround; also called a dead end street.
- (x) "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.

- (y) "Subdivision" means either an act of subdividing land or an area or a tract of land subdivided as defined in this ordinance.

## ARTICLE 2

### SCOPE AND COMPLIANCE

Section 2.010. Scope and Compliance. A parcel of land may be used, developed by land division or otherwise, and a structure may be used or developed by construction, reconstruction, alteration, occupancy, or otherwise only as this ordinance permits. The requirements of this ordinance shall apply to the person initiating any development, the user of any development, and to all successors in interest.

Section 2.020. Consistency with Plan and Laws. Development under this ordinance shall be consistent with the adopted comprehensive plan of the city of Rivergrove (hereinafter the "plan") and with applicable state and federal laws and regulations.

Section 2.030. Development Permit Required.

- (a) Except as provided by Section 2.040, no person shall engage in or cause to take place any development for which a development permit has not been issued. The City Council shall not issue a permit for the construction, reconstruction, or alteration of a structure or a part of a structure for which a development permit has not been issued.
- (b) A development permit shall be issued by the City Council according to the provisions of this ordinance. The City Council shall not issue a development permit for the improvement or use of land that has been previously divided or otherwise developed in violation of the plan or this ordinance, unless such violation can be cured as part of the development for which the permit is sought.
- (c) Unless appealed, a decision on a development permit shall be final upon expiration of the period provided for filing an appeal or, if appealed, upon final decision by the reviewing body.

Section 2.040. Exclusions From Development Permit Requirement. An activity or development listed below is excluded from the requirement for a development permit:

- (a) Landscaping or other treatment or use of the land surface not involving a structure.
- (b) A change internal to a building or other structure that does not substantially affect the use or appearance of the structure.
- (c) An emergency measure for the safety or protection of property.
- (d) Erection of a tent or similar portable temporary structure provided that the structure is in place for no more than 3 months per calendar year.

- (e) Farming, truck gardening, orchards and nurseries provided that no wholesale business office is maintained on the premises, and provided that no poultry or livestock, other than household pets, shall be housed within 100 feet of any residence other than the dwelling on the same 19t.
- (f) An alteration that does not substantially affect the use or appearance of land or a structure.
- (g) The establishment, construction, or termination of a public facility that directly serves development authorized for an area including facilities such as public or private streets, sewer and water lines, or telephone or television cable systems. However, as an alternative to complying with this ordinance, the developing public body shall supply to the city, engineered drawings of the public facility.
- (h) Installation or construction of an accessory structure that does not require a building permit (i.e. 108 square feet in size).<sup>1</sup>

Section 2.050. Use of a Development. A development may be used only for a lawful use. A lawful use is one that is not prohibited by law and for which the development is designed, arranged or intended, or which is nonconforming.

Section 2.060. Continuation of a Nonconforming Development. Except as provided in Section 2.080, a nonconforming development or use may continue but shall be changed only as authorized by this section.

- (a) A development that is nonconforming only because of a failure to comply with the Comprehensive Plan or this Ordinance may be altered or extended only if the Planning Commission and the City Council find the alteration or extension will decrease the extent of noncompliance and the development is not a land division that is nonconforming because of a public facility deficiency. A land division that is nonconforming because of a public facility deficiency may not be further altered or extended before the public facility deficiency is cured.
- (b) With the approval of the City Council under the procedure set out in Section 6.060 and Section 6.070, a nonconforming development or use may be changed provided, however, that the maximum special relief shall be as follows:
  - (1) the floor area of a building shall not be increased by more than twenty (20) percent;
  - (2) the land area covered by structures shall not be increased by more than twenty (20) percent; or

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<sup>1</sup> RLDO 2.040(H) is subject to an interpretation of the Rivergrove Planning Commission dated July 7, 1997. THIS IS A COMPILATION OF RIVERGROVE ENACTMENTS AND IS NOT THE OFFICIAL RIVERGROVE LAND DEVELOPMENT ORDINANCE. THE ACCURACY OF THIS DOCUMENT CANNOT BE ASSUMED.

- (3) the standard requirement for land area or width or length of a lot or parcel shall not be reduced by more than twenty (20) percent.
- (c) The entire contiguous ownership of land shall be considered as a single parcel for determination of noncompliance as a consideration for approval of any further development. A record of separate lot or parcel boundaries shall be disregarded.

Section 2.070. Completion of a Nonconforming Development. A development that is lawfully under construction on the effective date of this ordinance may be completed even though not in compliance with the requirements of this ordinance and may be used for the purpose for which it was designed, arranged or intended. Such development and its use are nonconforming.

Section 2.080. Termination of a Nonconforming Development. A nonconforming development or use shall automatically terminate when any of the following conditions are met:

- (a) the use has been discontinued for a period of 12 months.

Section 2.090. Timeline for Development Permit Review/Decision. Development permit review and decision shall be accomplished within 120 days of application -- unless an extension is agreed to in writing by both the City and the applicant.

## ARTICLE 3

### PLANNING COMMISSION AND HEARINGS OFFICER

Section 3.010. There is hereby established a city Planning Commission for the city of Rivergrove, Oregon (hereinafter the "Commission").

Section 3.020. Membership. The Commission shall consist of five members who are not officials or employees of the City. The Mayor and President of the Council shall be entitled to sit with the Commission and take part in its deliberations, but shall not have any voting privileges.

Section 3.030. Term of Office. Members of the Commission shall serve for a term of three (3) years.

Section 3.040. Vacancies and Removal. Appointments to fill vacancies shall be for the remainder of any expired term. A member may be removed by the City Council, after hearing, for misconduct or nonperformance of duty. A member who is absent from three (3) consecutive meetings, without good cause shown, shall be rebuttably presumed to be in nonperformance of duty and the City Council shall declare the position to be vacant unless it finds otherwise after a public hearing.

Section 3.050. Presiding Officers. At its first meeting of each calendar year, the Commission shall elect a chairperson and vice-chairperson to serve for that year.

Section 3.060. Meetings. The Commission shall meet at least once a month and shall be open to the public. Meetings other than at regularly scheduled times may be announced at a prior meeting which announcement shall be entered in the minutes. The chairperson upon his/her own motion, or upon the request of two or more of the Commission members, may call a special meeting previously unannounced and notice shall be given to other Commission members no later than 24 hours after such notice. Such notice shall be posted at the City Hall and, to the extent possible under the circumstances, shall be given to the public and other interested persons.

Section 3.070. Powers and Duties. The Commission shall have the powers and duties which are now or may hereafter be assigned to it by the Charter, ordinances, resolutions of the City and provisions of this ordinance and general laws of this State.

Section 3.080. Hearings Officer. The Planning Commission may refer such land use matters as it deems necessary to one or more Hearings Officers. The scope of authority of such officials shall be as provided in this ordinance and as otherwise provided by law. The findings of fact and recommendations of the Hearings Officers shall be acted upon by the Commission and City Council as provided in this ordinance. Appeals from the action of the Planning Commission on a Hearings Officer's report and recommendation shall be as provided in this ordinance. The cost of all Hearings Officer expenses shall be borne by the applicant

Section 3.090. Interpretation of the Land Development Code. It is the duty of the Planning Commission to interpret this Ordinance when necessary. These interpretations shall be made in writing and shall be available with copies of this Ordinance. A Planning Commission Interpretation of this Ordinance may be appealed to the City Council following the appeals procedure set forth in this Ordinance.

**ARTICLE 4**

**PROCEDURES FOR DECISION-MAKING**

Section 4.010. Procedures for Processing Development Permits.

- (a) An application for a development permit shall be processed under a Type I, II or III procedure as these procedures are described below. The difference between the procedures are generally associated with the different nature of the decisions as described in TABLE 4.010 below.

**TABLE 4.010**

**APPLICATION PROCESSING PROCEDURES**

| <u>Type I Procedure</u><br>(Objective Decisions)   | <u>Type II Procedure</u><br>(Objective Decisions)                  | <u>Type III Procedure</u><br>(Complex or Subjective Decisions)                    |
|--|--|---|
| Little discretion required.  | Little discretion required.  | Discretion or Judgement Required.   |
| Minimal or no effect on others; issuance of permit is not dependent on involving others. | Application of the standards may require knowing effect on others. | Possible significant effect on some or broad effect on a number of persons.       |
| Participation of applicant only.   | Affected persons invited to respond to tentative decision.         | In addition to applicant, others affected invited to present initial information. |

- (b) At its next regular meeting after an application and proposed development is submitted, the Commission shall determine the type procedure the ordinance specifies for processing and shall identify the affected agencies to which the application shall be referred. In the event of doubt about which type procedure the application should be processed, it shall be processed under the higher number type. An application shall be processed under the highest numbered type procedure required for any part of the development proposal.

Section 4.020. Coordination of Development Procedure. The Commission shall be responsible for coordinating the development permit application and decision-making procedure and shall issue a development permit to an applicant whose application and proposed development complies with the plan and this ordinance after being provided with the detail required to establish full compliance with the requirements of this ordinance.

Section 4.030. Pre-Application Conference. An applicant or his authorized representative may request the Commission to conduct a pre-application conference. Upon such request, the conference shall be held at the next regular meeting of the Commission. The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of this ordinance, provide for an exchange of information regarding applicable elements of the plan and development requirements, arrange any technical and design assistance that will aid the applicant, and to otherwise identify policies and regulations that create opportunities or pose significant problems for the proposed development, and to simplify and expedite the development process. If requested by the applicant at the time of the conference, the Commission shall provide the applicant with a brief written summary of the conference within five days of the conference. The summary shall include confirmation of the procedures to be used to process the application, a list of materials to be submitted, and the criteria and standards which may apply to the approval of the application.

Section 4.040. Development Permit Application. An application for a development permit shall consist of the materials below, and any that are otherwise required by this or other City ordinances.

- (a) A completed development permit application form, plus a copy of all plans to be submitted for the building permit.
- (b) A brief statement of intent, explaining the nature of the proposed development, reasons for the request, background information, and any other information that may be reasonably expected to aid the Commission in processing the application.
- (c) Legal description of the affected property.
- (d) Proof of exclusive ownership of the affected property, or proof that the applicant has the consent of all co-owners of the affected property.
- (e) Proof of sewer connection and/or septic system approval, where construction of a new residence is proposed.
- (f) Site Plan, certified survey, and building plans.
- (g) Other information as may be requested by the Planning Commission.
- (h) Fee as required for the permit (see City of Rivergrove fee schedule).

Section 4.050. Submission of Permit Application. Application materials shall be submitted to the City Recorder who shall mark the date of submission on each copy of the materials submitted. At the next regular meeting of the Commission, the Commission shall determine whether the application is complete. If the Commission determines that the application is incomplete or does not comply with this ordinance, the Commission shall immediately notify the applicant of the negative determination by mailing an explanation to the applicant. An application on which a negative determination has been made may be resubmitted under Section 4.080 after revision and correction. If a development permit application is complete and complies with this ordinance, the

Commission shall accept it and note the date of acceptance and the approvals needed for granting the permit on all copies.

Section 4.060. Referral and Review of Permit Applications. Upon acceptance of an application, the Commission shall do the following at the next regular meeting.

- (a) Transmit one copy of the application, or appropriate parts of it, to each referral agency for review and comment, including those responsible for determination of compliance with state and federal requirements. If the referral agency does not return its comment with ten (10) days, unless an extension of no more than ten (10) days has been granted by the Commission, the referral agency shall be presumed to have no comment. The Commission shall grant a request for an extension only under unusual circumstances or where a Type III procedure is involved.
- (b) Transmit an application involving approval by others for disposition as otherwise required by this ordinance. The Commission shall, to the greatest extent possible, consolidate action on approvals.
- (c) If a Type III procedure is required, provide for notice and hearing as required by Article 8.

Section 4.070. Development Permit Decision.

- (a) Within 15 days of acceptance of a permit application not involving approval by others or at the next regular meeting of the Commission after receipt of required approval by others the Commission shall grant or deny the development permit. The Commission's decision shall be based on the application, evidence, comments from referral agencies, and approvals from others. The Commission shall notify the applicant and, where required by this ordinance, others entitled to notice the disposition of the application. Such notice shall state the effective date of the decision and shall describe applicant's right to appeal the decision pursuant to Section 8.160.
- (b) The Commission shall issue the permit if it finds that necessary approvals by others have been granted and the proposed development otherwise meets the requirements of this ordinance.
- (c) The Commission shall deny the application if it does not meet the requirements of this ordinance. Notice of denial of the application shall state the reasons therefore and shall indicate the information listed in paragraph (a) which was relied on for the decision.

Section 4.080. Action On Resubmission of Denied Application. Upon a final determination denying an application, an applicant may take appropriate measures to cure the defect and resubmit the proposal with payment of any additional fees required. If a previously denied application is submitted within one year, previous approvals need not be reconsidered unless the Commission

finds that changed conditions or changes in the proposal warrant reconsideration of the entire proposal.

Section 4.090. Type I Procedure.

- (a) Under a Type I procedure, an application shall be processed without a public hearing or notification of other interested parties. As provided by other provisions of this ordinance, the nature of the development proposed may require the Commission sitting as a review Committee to determine compliance with standards. In that event, the action of the Commission to issue or deny the permit pursuant to Sections 4.010 to 4.080 shall include implementation of the determination of the Committee.
- (b) A decision of the Commission under a Type I procedure may be appealed by an affected party or referred by the Commission according to Sections 8.160 to 8.210, except review of a Type I decision shall be 'a review of the record supplemented by oral testimony.

Section 4.100. Type II Procedure.

- (a) Except as provided in paragraph (b) of this Section, an application under a Type II procedure shall be processed without a public hearing. If the Commission finds, considering any determination of the Review Committee, that the proposal meets the applicable standards, the Commission shall mail notice of the proposal as required by Sections 8.030 and 8.050. The applicant shall provide a list of abutting landowners or other affected persons. The notice shall briefly summarize the standards and facts that the decision was based on and shall be sent to abutting landowners and affected persons and shall invite persons to submit information relevant to standards applicable to the proposal within 10 days, stating specific reasons why the application should be approved or denied and any modifications that would bring the proposal into compliance. Notice shall advise of rights to appeal the decision pursuant to Sections 8.150 to 8.210.
- (b) If the Commission finds that persons other than the applicant may be expected to question the applicant's compliance with this ordinance of the plan, the Commission shall initiate a public hearing. The Commission shall set a date for the hearing and mail notices as required by Sections 8.030 to 8.050. At the hearing the applicant and other affected or interested persons may present testimony and submit evidence regarding the proposal, including specific reasons why the application should be approved or denied and may suggest any modifications that would bring the proposal into compliance.
- (c) The Commission shall review any information and evidence received under paragraph (a) or (b), make findings, and make a decision on the application by approving, approving conditionally or denying the application. A decision may be appealed by the applicant or other affected persons or interested person who appeared at the hearing or referred by the Commission. Appeals procedure shall

follow Sections 8.150 to 8.210, except that review of a Type II decision is a review of the record supplemented by oral testimony relevant to the record

Section 4.110. Type III Procedure.

- (a) Under a Type III procedure an application shall be set for public hearing pursuant to Article 8 before the Commission or its hearings officer. The form of notice and persons to receive it shall be as required by Sections 8.030 to 8.050 or this ordinance. The applicant shall provide the City with a list of abutting or affected property owners. At the hearing, the City staff, applicant and any interested person may present information and testimony on the criteria and standards relevant to the proposal, giving specific reasons why the application should be approved or denied and may suggest any modifications that would bring the proposal into compliance. If the application is approved, the Commission shall issue a development permit upon compliance with all other requirements of this ordinance.
- (b) A decision of the Commission may be appealed according to Sections 8.150 to 8.210.
- (c) The decision of the Planning Commission, with regards to a matter requiring a Type III hearing shall be based upon the Policies set forth in the Comprehensive Plan, the standards established on the Land Development Ordinance, and the factual evidence presented at the Public Hearing. The Commission shall make findings which explain the basis for the approval or denial of each particular proposal.

Section 4.120. Type IV Procedure. This type of procedure is intended for use in reaching decisions on ordinance amendments, street vacations, and other similar issues that are characterized by the establishment or revision of City land use policy and it is not intended for use in processing development permit application's.

- (a) The Commission shall schedule a public hearing pursuant to Article 8 before the Commission. Form of notice and the persons entitled to it shall be as setout in Sections 8.030 to 8.050. At the hearing, the City staff, and all interested persons may present evidence and testimony relevant to the proposal, giving specific reasons why the proposal does or does not meet the plan or this ordinance and may suggest any modifications that would bring the proposal into compliance. Where criteria are involved, the Commission shall make a finding for each that applies. A written report and recommendation shall be submitted to the City Council.
- (b) If the Commission has recommended against a proposal or fails to act on a proposal, the City Council may terminate further consideration of the proposal. Upon a favorable recommendation by the Commission and for proposals that have not been terminated, the City Council shall conduct a public hearing pursuant to Article 8. The Council shall set a date for the hearing and provide for notice in the form and to the persons that are required in Sections 8.030 to 8.050. At the hearing the City Council shall review the report of the Commission and all interested persons shall be

given the opportunity to present new information and evidence relevant to the proposal and to present testimony why the proposal should be approved or denied.

- (c) The City Council shall make a finding for each of the criteria applicable and may reverse, modify or sustain the findings of the report of the Commission.
- (d) To the extent that a policy is to be established or revised, the City Council shall make its decision only according to procedures set forth above. The decision shall be enacted by ordinance.

## ARTICLE 5

### DISTRICT AND ZONES

Section 5.010. Land Use.<sup>2</sup> All land within the city of Rivergrove is zoned residential. The minimum lot size within the Flood Hazard District is ½ acre. The minimum lot size outside the Flood Hazard District is 10,000 square feet.

Section 5.020. Flood Hazard District. All land development within the 100-year flood boundary as defined in the "Flood Insurance Study: City of Rivergrove, Oregon, August 4, 1987" [FEMA] shall be within the Flood Hazard District (HID) and shall be subject to special requirements in addition to the criteria and standards of this ordinance. Land subject to flood hazard is generally indicated on the floodplain map found in the Flood Insurance Study and consists of those areas of the City where hydrological studies have been prepared by the Federal Emergency Management Agency. A map based on these studies shows the boundaries of this district and is entitled the "Floodway Flood Boundary and Floodway Map" and shall be available to public inspection at City Hall during regular business hours. All development within the 100-year flood boundary shall follow the provisions of the Flood Damage Prevention Ordinance of the City of Rivergrove (Ord. #52).

Section 5.030. Change in Classification. The land use classifications of this ordinance may be changed according to the provisions of Section 6.221 or by legislative action. A change in classification shall take effect 20 days after the date of approval, unless appealed.

Section 5.050. Permitted Uses. The following developments are permitted. Uses not listed here are prohibited.

- (a) One single-family detached dwelling, including manufactured home, or one duplex, or one triplex residential unit per lot. All residential structures must have at least two of the following elements:
  - (1) the dwelling shall be placed on an excavated and backfilled foundation;
  - (2) the dwelling shall have a pitched roof with a slope no less than three feet in height for each 12 feet in width;
  - (3) the dwelling shall have an exterior thermal envelope meeting performance standards at or equivalent to those required of dwellings built under the state building code as defined in ORS 455.010;
  - (4) the dwelling shall have a garage or carport built of the same materials as the main dwelling.
- (b) Secondary Dwelling Unit (defined as a residential unit either within the primary residence or above a garage up to 750 sq. ft. of floor area).

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<sup>2</sup> RLDO 5.010 is subject to an interpretation of the Rivergrove Planning Commission dated September 5, 2002. THIS IS A COMPILATION OF RIVERGROVE ENACTMENTS AND IS NOT THE OFFICIAL RIVERGROVE LAND DEVELOPMENT ORDINANCE. THE ACCURACY OF THIS DOCUMENT CANNOT BE ASSUMED.

- (c) Area Accessory Development, subject to Sections 6.010 to 6.050 and accessory structures such as garages, carports, studios, pergolas, private workshops, play-houses, private greenhouses or other similar structures related to the dwelling in design, whether attached or not.
- (d) Cultivation of land and growing crops, subject to Section 2.040(5).
- (e) Residential homes and residential facilities as defined in ORS 443.400 and sited according to ORS 197.660 through 197.670.
- (f) Signs for the sale or rental of housing or land or for use by roadside vendors of fruit or produce, and signs stating the name of the owner or occupant of the property. No sign shall be artificially illuminated, permanent, or exceed 4 square feet in area or 4 feet on one side.
- (g) Conditional uses, such as parks, playgrounds or community centers, churches, schools, golf courses, day or child care facilities, recreation uses, public and private clubs and use of similar nature as approved by the Commission and subject to Sections 6.300 through 6.340.
- (h) Temporary structures provided they relate directly to the building or sale of land or houses, and provided that a temporary permit from the Commission shall first be obtained for such structure. The permit shall expire automatically one year from the date of approval and may be extended no more than once.

Section 5.055. Second Dwelling Units.

- (a) Notwithstanding the provisions of Section 5.050(b) and 5.060(c), secondary dwelling units (defined as residential units either within the primary residence or above a garage up to a maximum of 750 sq. ft. of floor area) are permitted only in conjunction with single family dwellings and will be permitted both within and outside the Flood Hazard District.
- (b) Within the Flood Hazard District, the minimum lot size is ½ acre and the maximum density allowed is one (1) house (single-family dwelling) per ½ acre plus one secondary dwelling unit as permitted by Section 5.050(b).
- (c) Outside the Flood Hazard District, the minimum lot size is 10,000 sq. ft. and the maximum density allowed is:
  - (1) one (1) house (single-family dwelling) per lot plus one secondary dwelling unit as permitted by Section 5.050(b), or
  - (2) one duplex per lot (secondary dwelling units not permitted in conjunction with duplexes), or

- (3) one triplex per lot (secondary dwelling units not permitted in conjunction with triplexes).
- (d) This section clarifies secondary dwelling unit policy but is not limited in its scope and/or application to development proposals including secondary dwelling units. It shall apply to all proposals for residential development within the City of Rivergrove.

Section 5.060. Permitted Uses in Flood Hazard District.

- (a) Open spaces.
- (b) Any use permitted otherwise, provided it is elevated above the regulation flood protection elevation and complies with the requirements of the City of Rivergrove Flood Damage Prevention Ordinance.
- (c) The maximum density allowed within the Flood Hazard District is one (1) house (single-family dwelling) per ½ acre.

Section 5.070. Future Development. New development shall be approved only where necessary and adequate services are available or provisions have been made to provide those services and facilities. There shall be no new development within 25 feet of the ordinary high watermark of the Tualatin River. There shall be no new development within 25 feet of a wetland area identified by the U.S. Army Corps of Engineers.

Section 5.075. Minimum Density Standard. To ensure that property develops at or near the density envisioned for the areas outside the Flood Hazard District, Rivergrove hereby establishes a minimum density standard of 80% of maximum density.

- (a) The calculation of minimum and maximum densities shall be made as follows:
  - (1) The “net development area,” in acres, shall be determined by subtracting the following land areas from the gross acres, which is all of the land included in the legal description of the property to be developed or divided:
    - a) Land within the 100-year flood plain;
    - b) Land with slopes exceeding 25%;
    - c) Water Quality Resource Areas;
    - d) All land dedicated for public rights-of-way;
    - e) All land used or proposed as a private road for access benefiting more than one lot.
  - (2) To calculate the maximum number of residential units per net acre, divide the number of square feet in the net acres by the minimum number of square feet required for each lot, i.e. 10,000 square feet.

- (3) To calculate the minimum density standard, multiply the maximum number of residential units per net acre by 80% (0.8), and round down to the next whole number.
- (b) The minimum density standard states the number of units to be placed on the property to be developed or divided.
  - (1) Units shall be counted as follows:
    - a) a single-family detached dwelling - one unit;
    - b) a secondary dwelling unit - one unit;
    - c) a duplex - two units;
    - d) a triplex - three units.
  - (2) Units shall be counted when a development permit is issued for one of the above or when a lot is restricted by plat restrictions or covenants to development as:
    - a) a single-family with a secondary dwelling unit; or
    - b) a duplex; or
    - c) a triplex.
  - (3) Applicants may request a variance from the minimum density standard under Section 6.060. Added to the criteria to be considered on a variance request from the minimum density standard are:
    - a) the configuration of the property to be developed or divided;
    - b) the availability of sewer service to the property to be developed or divided.
- (c) The provisions of this section do not apply to land within 100-year flood plain or to multi-family developments.

Section 5.080 General Building Setbacks in All Zones and Districts.<sup>3</sup>

All setbacks referred to in this section shall be measured from building roof edge or drip line.

- (a) All new detached residential structures built with any zone or district in the City of Rivergrove shall maintain the following setbacks from the property lines of the lot on which they are constructed or erected.

Front Setback - 25 feet.

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<sup>3</sup> RLDO 5.080 is subject to three interpretations by the Rivergrove Planning Commission dated March 2, 1998, July 6, 1998, and October 11, 2004.

Side Setback - 10 feet.

Side Setback on a Corner Lot - 15 feet (to insure better visibility).

Rear Setback - 25 feet (from the rear lot line or the ordinary high water mark - whichever is greater).

- (b) All new attached residential shall maintain the same set backs as detached residential around the perimeter of the structure.
- (c) All new detached accessory buildings (permanently placed on a site) shall maintain the following setbacks from the property line of the lot on which they are constructed or erected.

Front Setback - 30 feet. Side Setback - 3 feet

Side Setback (corner lot) - 10 feet.

Rear Setback - 3 feet.

- (d) Site specific variances from these setbacks may be granted to allow the location of building that use solar energy as a heating source. As requested for variance for solar access purposes shall be submitted with a detail site plan showing the location of all structures to be constructed, and other appropriate information as deemed necessary - such as solar easements obtained over adjoining properties.
- (e)

Section 5.090. Building Height Limit.

- (a) No new residential structure may exceed 35 feet in height (not including the height of antennas, solar collectors, or wind generators).
- (b) No new accessory structures may exceed 20 feet in height.

Section 5.095. Parking Standards.

(a) Rivergrove establishes parking minimums and maximums not to exceed those ratios established by the following table:

| <b>Land Use</b>        | <b>Minimum Parking Requirements</b>                              | <b>Maximum Parking Permitted</b> |
|------------------------|--|----------------------------------|
| Places of Worship      | 0.5 per 1,000 sq. ft.  | 0.8 per 1,000 sq. ft.            |
| Recreation Facilities  | 3.4 per 1,000 sq. ft.*   | 6.5 per 1,000 sq. ft.            |
| Single Family Detached | 2 covered, enclosed spaces per unit, 2 off-street parking spaces | No maximum                       |

|  |   |            |
|--|---|------------|
|  | per unit.   |            |
| Residential units, less than 500 sq. ft., 1 bedroom, except “over-the-garage” 1 bedroom units, which require no additional parking | 1 covered, enclosed space per unit, 1 off-street parking space per unit.      | No maximum |
| Multi-family, townhouse one bedroom  | 1 covered, enclosed space per unit, 1.25 off-street.                          | No maximum |
| Multi-family, townhouse two bedroom  | 2 covered, enclosed spaces per unit, 1.5 off-street parking spaces per unit.  | No maximum |
| Multi-family, townhouse three bedroom or more  | 2 covered, enclosed spaces per unit, 1.75 off-street parking spaces per unit. | No maximum |

\* Net interior floor space.

Note: Calculations resulting in fractional numbers shall be rounded up to the next whole number. Parking calculations shall be based on, and apply to individual lots, regardless of the number of lots in the development application.

- (b) Variances for parking when a development application is received which may result in approval of construction of parking spaces either in excess of the maximum parking ratios or less than the city’s minimum parking ratios established by the above table may be made under the provisions of Section 6.060.

Section 5.100. Tree Cutting

(a) DEFINITIONS

- (1) “Tree”: Any standing woody plant having a trunk 11.5 inch diameter (36" circumference) measured 4.5 feet from the ground (DBH diameter-breast-height). "Tree" does not include any plant on the Nuisance Plant List.
- (2) “Cutting”: Felling or removal or any procedure that has the natural result of causing the death or substantial destruction of a tree; cutting does not include trimming, limbing, pruning or topping within the bounds of accepted arboricultural practices. Cutting includes damage inflicted upon the root system of the tree.

(b) APPLICATION FOR PERMIT

- (1) A permit is required for each tree cut within the City of Rivergrove. Application is to be made and permit to be obtained from the City before the tree is cut. For permits issued under Emergency conditions, see part (c) below.
- (2) Permits or emergency permits for the first three trees not located in a Water Quality Resource Area cut on a single lot or parcel in one calendar year (January 1 to December 31): Approval will be granted by the City without a hearing. Such permits will be granted promptly upon submission of a written application. There will be no fee charged for this type of permit.
- (3) Permits for cutting trees beyond the first three trees cut on a single lot or parcel in one calendar year (January 1 to December 31) and for trees located in a Water Quality Resource Area: Written application must be made to the City for approval by the Planning Commission at one of its meetings. The first three trees cut on a single lot or parcel in a calendar year include any trees cut under emergency conditions in accordance with subsection (c) below.
- (4) The application shall contain the number, size, species, and location of the trees to be cut, the time and method of cutting or removal. In addition, the applicant shall furnish other information as may be required by the City.
- (5) If the tree cutting permit is approved, a fee of \$20 per tree (plus costs incurred by the City for all administrative, legal, engineering and planning requirements associated with the application) will be assessed starting with the fourth tree for that calendar year. The application will not require review by staff unless directed by the Planning Commission.
- (6) Notwithstanding subsection (5) above, a single fee of \$20.00 (plus costs incurred) will be assessed for a permit application that deals solely with dead, dangerous, and dying trees.

(c) EMERGENCIES

In emergency conditions that require the immediate cutting or removal of trees to avoid danger or hazard to persons or property, an emergency permit may be issued by the Mayor, the President of the City Council or the Chairman of the Planning Commission, without formal application or payment of a fee. If they are unavailable, it shall be lawful to cut trees without a permit to the extent necessary to avoid an immediate danger or hazard. If a tree is cut under the provisions of this section, without an application having been filed, the property owner shall report the action taken to one of the aforementioned people within 7 days after such removal and provide information and evidence as may be reasonably required to explain and justify the action. If the evidence and information presented by the property owner does not justify the emergency tree cutting standards set forth, the application shall

be denied and the property owner shall be subject to the penalties set forth in the Rivergrove Land Development Ordinance (RLDO).

(d) CRITERIA FOR ISSUANCE OF PERMITS

A tree cutting permit may be issued by the Planning Commission as requested in the application; may be issued in part and denied in part, or may be issued subject to compliance by the applicant with reasonable conditions to be imposed in order to promote the purpose of this Ordinance. The application does not require review by staff unless directed by the Planning Commission. A permit shall state the period of time for which it is valid. A permit issued for the reason that an improvement is to be constructed upon the premises shall contain a provision that a permit is not valid until a building permit or development permit has been issued for the construction of the improvement. The burden is on the applicant to show that granting of a permit would be consistent with the stated purposes of the Rivergrove Land Development Ordinance (RLDO). The following criteria shall be considered:

- (1) The condition of the trees with respect to dead, dying, dangerous, proximity to existing or proposed structures or development, and interference with utility services or traffic safety. For the purposes of Section 5.100:
  - a. “Dead” means the tree is lifeless.
  - b. “Dying” means the tree is in an advanced state of decline because it is diseased, infested by insects or rotting and cannot be saved by reasonable treatment or pruning, or must be removed to prevent spread of the infestation or disease to other trees.
  - c. “Dangerous” means the condition or location of the tree presents a clear public safety hazard or a foreseeable danger of property damage to an existing structure and such hazard or danger cannot reasonably be alleviated by treatment or pruning.

The planning commission may require the retention of dead or dying trees located in wetlands, natural areas, stream corridors, parks or open space areas, in order to provide for wildlife habit and natural processes, unless the tree presents a potential hazard to persons or property or conflicts with development.

- (2) The necessity to remove trees in order to construct proposed improvements, or to otherwise utilize the applicant’s property in a reasonable manner.
- (3) The topography of the land and the effect of tree removal on erosion, soil retention, stability of earth, flow of surface waters, protection of nearby trees, windbreaks, and a desirable balance between shade and open space.

- (4) The number of trees existing in the neighborhood, the character and property uses in the neighborhood, and the effect of tree removal upon neighborhood characteristics, beauty and property values.
- (5) The planning commission may require an adequate mitigation plan be submitted as a condition of approval for the permit, including requiring the submission of a drainage plan if appropriate.

(e) EVIDENCE OF VIOLATION

- (1) If a tree is removed without a tree cutting permit, a violation may be determined by measuring the stump. A stump measured at the ground that is 44" or more in circumference shall be considered prima facie evidence of a violation.
- (2) Removal of the stump of a tree cut without a tree cutting permit prior to the determination is a violation.
- (3) Proof of violation shall be deemed prima facie evidence that such violation is that of the owner of the property upon which the violation was committed. Prosecution of or failure to prosecute the owner shall not be deemed to relieve any other responsible individual property owner, legal entity, or collective parties.

(f) APPEAL

A decision made by the Planning Commission may be appealed to the City Council. A Notice of Appeal must be submitted in writing within 10 days after the denial, shall briefly state the facts and grounds of appeal and shall be signed by the appellant. Following receipt of the Notice of Appeal the matter shall be set for hearing no later than 45 days from the date of receipt. The appellant shall be notified of the hearing date.

(g) PENALTIES

- (1) Cutting a tree in violation of the Ordinance, breach of a term or conditions of a permit granted under this Ordinance, or violation of any other provision of this Ordinance is an offense punishable by fine not to exceed \$1,500.00. The unlawful cutting of each individual tree is a separate offense.
- (2) The City retains the authority to require the applicant to replace any illegally removed trees pursuant to a plan, and meet any conditions as set forth by the Planning Commission. No future permits or approvals for any use of the subject property shall be granted without compliance with the plan.

- (3) The property owner has the burden to prove that the criteria for granting a permit are satisfied or that cutting is allowed without a permit.

Section 5.110. Houses Moved Into City.

- (a) That any house moved onto a new foundation on a new lot in the City of Rivergrove must meet code requirements as if it were new construction; and
- (b) That in applying for a permit for a new dwelling unit, where an existing structure is to be moved, the applicant must provide photographs of all elevations of that structure and provide certification by appropriate professional engineers that the house to be moved meets all building code requirements as if it were new construction pursuant to the Uniform Building Code Section 1D4 (e); and
- (c) The City must find that the structure will not be detrimental to the quality of the City's neighborhoods and that the dwelling is comparable in all respects to other dwellings in the immediate area; and
- (d) The City may impose conditions on the building permit related both to the structural character of the house and its aesthetics, and that no permit for occupancy of the residence shall be issued by the City or its agents until those conditions have been met to the satisfaction of the Mayor of the City of Rivergrove;
- (e) Violations of this ordinance shall result in revocation of the Building Permit and/or Occupancy Permit.

Section 5.120. Home Occupations in All Zones and Districts

(a) DEFINITION

- 1) "Home Occupation" is an occupation or business activity which results in a product or service and which: is conducted, in whole or in part, in either the dwelling or in an accessory building normally associated with permitted uses; is conducted by at least one family member occupying the residence; and is clearly subordinate to the residential use of the dwelling and premises.
- 2) Home occupations do not include garage sales, yard sales, Christmas bazaars, or home parties which are held for the purpose of the sale or distribution of goods or services. However, if such sales and/or parties are held more than six times in any calendar year, or operate in excess of 24 cumulative days in a calendar year, such sales and/or parties shall be considered a home occupation.

(b) PURPOSE AND INTENT

The conduct of business in residences may be permitted under the provisions of this section. It is the intent of this section to only allow such uses which:

- 1) Ensure the compatibility of home occupations with other uses permitted in the district.
- 2) Maintain and preserve the character of the community and residential neighborhoods; and
- 3) Promote the efficient use of public services and facilities by assuring these services are provided to the residential population for which they were planned and constructed, rather than to commercial uses.
- 4) Provide peace, quiet, and domestic tranquility within all areas permitting residences within the County.
- 5) Guarantee to all residents freedom from excessive noise, excessive traffic, nuisance, fire hazard, and other possible effects of commercial uses being conducted in areas permitting residences.

(c) MINOR HOME OCCUPATIONS

In all zones permitting residences, minor home occupations in compliance with the following regulations are permitting as accessory uses. Due to their small scale and residential nature, minor home occupations are relatively common accessory uses which are not easily detectable and are not reasonable or desirable to regulate through a special use permit.

- 1) Scale: A minor home occupation shall be conducted within a dwelling and shall be clearly incidental to the use of the structure as a dwelling.
- 2) Character: There shall be no change in the outside appearance of the dwelling or premises or any visible evidence of the conduct of a minor home occupation.
- 3) Participants: No more than one (1) person other than residents of the dwelling shall be employed in the conduct of a minor home occupation.
- 4) Storage and Accessory Space: There shall be no storage of equipment, vehicles, or supplies associated with the minor home occupation outside the dwelling;
- 5) Display of Products: There shall be no display of products visible in any manner from the outside of the dwelling.
- 6) Signs: No advertising or display signs shall be permitted.

- 7) Parking: The use shall not require additional off-street parking spaces for clients or customers of the minor home occupation.
- 8) Traffic: The use shall not generate more than five vehicle trips to and from the property in one day. No vehicle associated with a home occupation shall be stored, parked, or repaired on public rights-of-way.
- 9) Noise, Equipment, and Process Restrictions:
  - (a) No equipment or process shall be used in a home occupation which creates noise, vibration, glare, fumes, or odor detectable to normal sense off the property, or produces hazardous chemical wastes dumped into septic systems or the public sewers, or spread onto the ground.
  - (b) No equipment or process shall be used which creates visual or audible electrical interference in any radio or television receiver off the premises or causes fluctuations in line voltage off the premises.
  - (c) Deliveries and Large Vehicles Storage: The home occupation shall not involve the use, parking, storage or repair of any vehicle or construction equipment exceeding a gross vehicle weight of 11,000 pounds, except deliveries by parcel post, United Parcel Service, or similar in-town delivery service trucks.
- 10) Vehicle Repair: No more than two (2) vehicles for repair shall be located on the property at any time, and such vehicles shall be stored, parked, and repaired within an enclosed building.
- 11) Lodging: Business offering transient lodging shall be allowed only with an approved permit from the City.

Section 5.130. Gates or Other Barriers. Gates or other barriers shall not be used to restrict vehicular access to residential developments from any public or private street, except as specifically required or allowed by the City Council to address an operational or safety issue. For the purpose of this Section, residential development means a residential partition or subdivision or 2 or more dwelling units on a single lot or parcel or 2 or more residential lots or parcels.

## ARTICLE 6

### PERMIT AND ISSUE DETERMINATIONS

Section 6.010. Area Accessory Development. Area accessory developments may be necessary in a particular area because of social or technical needs. The following are examples of appropriate area accessory developments:

- (a) Removal or deposit of earth or rock that changes the contour of the ground without being part of another development.
- (b) Utility structure, including a pole, line, pipe, substation or other facility required for the transmission of power or communication.
- (c) Sewerage or drainageway, including a pump station, manhole, or other collection or treatment facility for sewage or storm water.
- (d) Street, including a sidewalk, catch basin, street light, traffic control device or other facility associated with an access, collector or arterial street.
- (e) Water system, including a main, fire hydrant, treatment plant, storage reservoir, pump station or other facility associated with the supply or distribution of water.
- (f) Emergency service facilities or other public facilities needing location in the area to permit effective service within the area.
- (g) Any of these uses in Section 5.050(f).

Section 6.020. Application for Area Accessory Development.

Applications for an area accessory development shall be made by application for a permit and, unless the development is excluded from the development permit requirements of Section 2.040, shall provide facts and information sufficient to enable the Commission to make its determination and shall include the names and addresses of the owners of property situated within 200 feet of a boundary of the property to be developed.

Section 6.030. Action on Application. Unless referred to a hearings official, the Commission shall act on an application for area accessory development permit under Type II procedure. The Commission may refer an application to the hearings official for disposition under a Type III procedure if the Commission finds that the scope of the application requires a full public hearing to protect the best interests of affected properties or the City as a whole. Determination by either Type II or III procedure shall follow the criteria in Section 6.050.

Section 6.040. Notice. Notice of a Type II or III hearing on an area accessory development shall be mailed to the owners of property within 200 feet of the property to be developed.

THIS IS A COMPILATION OF RIVERGROVE ENACTMENTS AND IS NOT THE OFFICIAL RIVERGROVE LAND DEVELOPMENT ORDINANCE. THE ACCURACY OF THIS DOCUMENT CANNOT BE ASSUMED.

Section 6.050. Criteria for Decisions on Area Accessory Development.

- (a) A development permit shall be issued for an area accessory development if, in addition to complying with the plan and applicable standards, the location size, design and operating characteristics of the proposal are appropriate to the needs of the area and will be reasonably compatible with and have minimal impact on the livability and development of abutting property and the surrounding area.
- (b) Consideration shall be given also to the following:
  - (1) harmony in scale, bulk:, coverage and density;
  - (2) the availability of public facilities and utilities; and
  - (3) the generation of traffic and the capacity of surrounding streets.
  - (4) other relevant impacts of the development.

Hardship Relief

Section 6.060. Type II Hardship Relief Procedure.

- (a) The Council may grant hardship relief waiving a provision of this ordinance for an individual parcel of land under a Type II procedure upon a finding that a literal application of the requirement would render the parcel incapable of reasonable economic use. Authority to grant relief under this section does not grant authority to approve a development that is designed, arranged or intended for a use otherwise not approvable in the location, or that violates the plan. When submitting a written application for hardship relief, the applicant shall provide facts and information sufficient to enable findings in compliance with the criteria of this Section.
- (b) The criteria are:
  - (1) The hardship is not the result of any act or omission of the applicant;
  - (2) The grant of relief will not result in a land use not otherwise permissible;
  - (3) Grant of the relief will not violate the Plan;
  - (4) The relief sought will not be materially detrimental to the public welfare;
  - (5) The development will be on a parcel of land that in conjunction with adjacent land in the same ownership is not otherwise reasonably capable of economic use;
  - (6) Or materially injurious to the property in the vicinity;
  - (7) The development will be the same as development permitted under this ordinance and City standards to the greatest extent possible while permitting some economic use of the land;
  - (8) Special circumstances or conditions exist that do not apply to other property in the vicinity.

Section 6.070. Authority to Grant Hardship Relief Under Type I

Procedure. The Council may grant hardship relief under a Type I procedure if the request involves only the expansion or reduction by no more than 20 percent of one or more quantifiable provisions of yard or area standards of the Development Standards Document or comparable deviation from such additional standards set by the Commission. The decision shall be based on the criteria in Section 6.060.

Land Division

Section 6.080. Division of Land.

- (a) Section 2.030 requires that a land division not occur unless a development permit has been issued. No land shall be divided prior to approval of a major or minor partition or subdivision in accordance with this ordinance. If a land division application is submitted that does not involve other proposed development, the application shall state an intended form of future development for the parcels created. The future development will then be processed along with the land division processing just as if the applicant were intending to proceed with further development. Where the nature of the development associated with the land division does not otherwise require, the procedures of Sections 6.090 to 6.110 shall be followed.
- (b) Land division is processed by approving a tentative plan prior to approval of the complete land division plat or map. Where a Type II or III procedure is required, that procedure shall also apply to approval of the tentative plan. Upon compliance with the approved tentative plan the Commission shall approve final plats and maps for land division in conjunction with issuing a development permit under Section 4.010.
- (c) Nothing herein shall prohibit the partitioning or subdividing of an existing lot that is two or more times the minimum lot size specified in the development code.

Section 6.090. Type I Land Division. Minor partitioning shall be approved by the Council under a Type I procedure if the parcels created comply with standards for the form of additional development contemplated. A permit fee defined by a schedule of fees adopted by the City Council shall be charged only if the partition is one of the following:

- (a) The partition is located at the end of the street;
- (b) The partition abuts a street that has a center line-to-property line width less than one-half the width specified for that functional street classification according to City standards;
- (c) The partition contains a parcel having 25 feet or less street frontage;
- (d) The partition contains a parcel with depth-to-width ratio exceeding 2.5-to-1;

- (e) The partition contains a parcel with an area four or more times the area of the smallest parcel.

Section 6.100. Type II Land Division. Except as provided in Section 6.110, a major partition or subdivision shall be processed by the Commission under a Type II procedure when satisfactory street conditions exist Satisfactory street conditions exist when:

- (a) An existing street or a new proposed street need not continue beyond the land to be divided in order to complete an appropriate street system or to provide access to adjacent property; or
- (b) The proposed street layout is consistent with a street pattern adopted as part of the plan, or with a future street plan approved under Section 6.130. The applicant shall provide a list of owners of property abutting the property proposed for development.
- (c) Improvement of streets or other public facilities may be required by the Commission as a condition of permit approval.

Section 6.110. Type III Land Division. A land division of major significance shall be processed under a Type III procedure by the Commission. A land division of major significance is one of the following:

- (a) A land division that will create a street that is not part of a planned street; or
- (b) A land division that the Commission finds may either eliminate or make impractical the establishment of a planned street. The applicant shall provide an ownership list containing the names and addresses of property owners within 200 feet of the property to be divided.

Section 6.120. Pre-Application Conference. Prior to submission of a tentative plan for land division requiring a Type II or III procedure, the applicant may request a preapplication conference pursuant to Section 4.030.

Section 6.130. Future Street and Public Facilities Plan Required.

- (a) Except as required in paragraph (b) of this Section, a Future Street and Public Facilities Plan shall be filed simultaneously with an application for a land division requiring a Type III procedure. The plan shall show a pattern of future street from the boundaries of the proposed land division to include the other tracts within 200 feet surrounding and adjacent to the proposed land division.
- (b) A Future Street and Public Facilities Plan shall not be required for any portion of the area for which a proposed street layout has been established by either the plan or a Future Street and Public Facilities Plan already adopted by the Commission.

- (c) Construction of all or part of the Future Street and Public Facilities Plan may be required as a condition of approval by the Commission.
- (d) The Commission shall have the power to adopt a Future Street and Public Facilities Plan for which there is no proposal for a land division, providing that plan is adopted under a Type III procedure.

Section 6.135. Public and Private Streets and Driveways. Public and private streets and driveways providing access to residential developments from any public or private street shall not be gated, except as specifically required or allowed by the City Council to address an operational or safety issue. For the purpose of this Section, residential development means a residential partition or subdivision or 2 or more dwelling units on a single lot or parcel or 2 or more residential lots or parcels.

Section 6.140. Recording and Filing of Future Street and Public Facilities Plans. Upon final approval, a Future Street and Public Facilities Plan shall be:

- (a) Recorded by the applicant or, if there is no applicant, by the Commission, with the City Recorder, and
- (b) Indexed and filed with the Commission.

Section 6.150. Revision. An approved Future Street and Public Facilities Plan may be revised under a Type III procedure by the Commission, including revision in conjunction with approval of a land division. An approved Future Street and Public Facilities Plan may be revised by the City Council in conjunction with a revision of the plan.

Section 6.160. Criteria for Approval. A tentative land division plan or adopted Future Street and Public Facilities Plan shall comply with Sections 2.010, 2.020, and:

- (a) Development of any remainder of property under the same ownership must comply with this ordinance; and
- (b) It must not prevent access to or the development of adjoining land in accordance with the requirements of this ordinance or the plan,
- (c) Adequate bonding is provided to provide for construction and maintenance of the public improvements required as a condition of approval for a period of not less than two years from the date of approval of the final subdivision plot.

Section 6.170. Tentative Plan Expiration Date. Within six months after the effective date of approval of a tentative land division plan, the final plat or map shall be submitted in the form required by Section 4.040 and shall further state any modification or condition required by approval of the tentative plan. The Commission may, upon written request, grant an extension of time for up to six months upon a written finding that the facts relied on to grant the initial approval have not significantly changed and that no other development approval will be affected.

Section 6.180. Staged Subdivision Development. When an application desires to record and develop subdivision plats covering portions of an approved tentative plan in stages, the Commission may authorize a time schedule for platting and otherwise developing the stages in periods of time in excess of one year but in no case shall the total time for all stages be more than five years, unless there is a resubmission of the tentative plan. Each stage platting and developed shall comply with the plan and this ordinance and portions platting after one year may be required to be modified to comply with amendments to the plan or this ordinance and other regulations.

Section 6.190. Submission and Review of Final Plat or Map. A final plat or map shall be submitted and, at its next regular meeting, the Commission shall determine whether it complies with the approved tentative plan and this ordinance. If it does not comply, the applicant shall be notified and afforded an opportunity to make corrections. Upon compliance, the plat or map shall be signed and dated by the Commission if all other requirements for a development permit have been met

Section 6.200. Approval Signatures for Final Subdivision Plat. Following review and approval of a subdivision plat, the applicant shall perform the following:

- (a) Obtain the approval signature by the county surveyor certifying that the plat complies with applicable survey laws. The surveyor may conduct field investigations to verify that the plat survey is accurate. Upon notice of noncompliance, the applicant shall be notified and given an opportunity to make corrections. Upon compliance, the plat shall be signed and dated by the surveyor.
- (b) Obtain the signatures, required by ORS 92.110, of the board of directors of any irrigation district, drainage district, water control district or district improvement company if the subdivision is within such a district.
- (c) Obtain the approval signatures of a majority of the City Council certifying approval of the plat
- (d) Obtain the approval signature of the county assessor certifying that all property taxes have been paid or bonded for in accordance with the law.
- (e) Obtain proof of adequate bonding and provide for construction and maintenance, of the public improvements as required by §6.160( c) and Section 9.010 of this Ordinance.
- (f) Deliver the approved subdivision plat and accompanying documents for recording with the appropriate official.

Section 6.210. Approval Signatures for Final Partition Map. Following review and approval of a final partition map, the applicant shall follow the provisions of Section 6.200(a), shall obtain certification that the map is approved, and deliver the approved partition map and accompanying documents for recording with the appropriate official.

Section 6.220. Effective Date for Approval. Approval for a subdivision shall become final upon the recording of the approved subdivision plat under ORS 92.120(1), and for a partition, upon the recording of the approved partition map together with any required documents with the county recorder. Final approval constitutes the approval necessary before a development permit may be issued. Action expressly authorized by a tentative approval may take place prior to issuance of the development permit.

Section 6.221. Change of Land Use Classification. Unless part of a legislative action, a change of land use or district classification may be made by the Commission to Section 6.222 or as otherwise authorized. The change shall be under a Type III procedure and may be initiated by the Commission, either on its own motion or upon request of the City Council, or by petition of a majority of property owners in the area proposed for change. Written notice of the hearing shall be given to owners of property within 200 feet of the area.

Section 6.222. Criteria. The Commission shall approve a non-legislative land use or district change if it would comply with the requirements of Sections 2.010 and 2.020 and:

- (a) The change will not interfere with the development or value of other land in the vicinity when compared to the public interest in allowing the change; and
- (b) The change will not be detrimental to public interests of the Community.

#### Vacation

Section 6.223. Vacation Criteria. A proposal to vacate a street, plat, public square or other public place shall be under a Type IV procedure and applicable State law. The Commission shall base its recommendation on the following criteria:

- (a) The proposal shall not violate the plan.
- (b) No street to be vacated shall substantially reduce the fair market value of abutting property unless a majority of the owners of the affected property consent to the vacation in writing.
- (c) The Commission finds that the vacation is in the public interest of the community. The City Council shall make affirmative findings on the criteria and vacation proceedings may be terminated at any time.

Section 6.224. Conditions. The following conditions may be attached to the approval of a vacation:

- (a) Retention of an easement for a public utility or public service facility and limitations on the use of the area adjacent to such facility.
- (b) Construction or removal of a public utility or public facility.

- (c) Replotting of land in a subdivision to be vacated.
- (d) Construction or improvement of replacement facilities.

### Legislation

Section 6.225. Definition. A legislative action under this ordinance is land use action that the Council finds involves a substantial area of the City and number of property owners or such broad public policy that administrative processing would be inappropriate. Some examples of legislative decisions are amendments to the plan or this ordinance or changes in the use or classification of land or vacation actions.

Section 6.226. Procedure. Legislative action under this ordinance shall follow Type IV Procedure subject to the requirements of Sections 6.227 to 6.230.

Section 6.227. Notice of Legislative Hearing. Notice of a hearing on a legislative matter under this ordinance shall be reasonably calculated to actual notice to the owners of specific affected property, and shall be given to the community as a whole by posting and publishing notice as required by Section 8.040.

Section 6.228. Public Participation. The Commission shall provide all interested persons the opportunity to submit written recommendations and comments in advance of the hearing and this material shall be available for public inspection prior to the hearing. At the hearing, written recommendations and other material shall be received and oral statements shall be permitted. In addition to matters relating to compliance with applicable criteria and standards of this ordinance and with the Plan, a person may submit testimony and evidence regarding desirable policy the City should adopt.

Section 6.229. Recommendations. In making its recommendation, the Commission shall:

- (a) Identify the provisions of the plan that are relevant to the decision and prepare adequate findings on how the proposal does or does not comply with each provision;
- (b) Review the nature of the proposal and state whether the proposal is appropriate for processing as a legislative matter, and
- (c) Make appropriate recommendations, along with the reason for each.

Section 6.230. Legislative Action by the City Council.

- (a) The Council may limit information at the hearing in order to avoid unduly repetitive or cumulative information or testimony and may limit comment to whether the proposal (1) is appropriate for legislative consideration, (2) complies with the plan, and (3) presents issues of significant policy change or refinement;

- (b) After confirming, amending or denying the recommendations of the Commission, the Council may:
- (1) Enact or defeat an ordinance on all or part of the proposal;
  - (2) Refer some or all of the proposal back to the Commission for further consideration.  
If such referral is later returned, no further hearing is required provided the proposal is processed under the City's procedure for the enactment of ordinances.

### Site Design Review

Section 6.231. Site Design Review. The Commission may require a site review for any development which is proposed in environmentally sensitive areas, a flood plain or as required in other sections of this Ordinance. New Multiple Family Developments shall be subject to Site Design Review. All developments subject to Design Review shall follow the procedures established in Section 6.232. A development permit for multi-family housing units and for area accessory developments shall comply with the requirements of Section 6.232 if the development permit is for initial development or construction or for an alteration that affects the use or significant elements of the site plan or exterior building design. Information on the proposed development shall include detail sufficient to establish compliance with Sections 2.010 and 2.020 and this Section, and shall include sketches of the proposed development showing its integration and separation with its surroundings, and such other information as the Commission believes will reasonably aid in evaluating the proposal. In reaching a decision, the reviewing committee shall consider whether the proposal avoids endangering life and property; prevents the creation of public nuisances; prevents exposure to hazardous conditions; encourages preservation and use of natural drainageways; utilizes a site that is easily accessible to all necessary elements of the community infrastructure and avoids expansion of the infrastructure to accommodate uses which can be more easily accommodated elsewhere; encourages energy conservation; harmonizes with the lay of the land; respects the limitations of soils and geology; prevents excessive cuts and fills, unsightly grading, and scarring of natural landforms; prevents excessive loss of vegetation and limits disruption to areas with a relatively high potential for successful revegetation; avoids loss of watershed and wind shelter; preserves wetland areas and wildlife habitats; prevents disruption of natural watercourses; minimizes potential sources of pollution; and is consistent with applicable requirements of the Development Standards Document.

Section 6.232. Procedure. Land Development Ordinance Section 6.232 Procedure shall be amended to read as follows:

"Proposed Developments which are subject to a Site Design Review shall be considered by the Commission sitting as the Site Review Committee. All Site Design Reviews which occur within an environmentally sensitive area shall be processed under the Type III procedure. The review of a multi-family development outside of an Environmentally Sensitive Area shall be conducted under a Type III procedure."

Notice shall be given to all owners of land located within 200 feet of the property to be developed.

Section 6.233. Identification of Environmentally Sensitive Areas. The Commission shall identify environmentally sensitive areas, including, but not limited to, wetland and wildlife habitats, areas having significant drainage or erosion problems and areas where development may be constrained by the type of soil. These areas shall be delineated on the appropriate maps accompanying the Rivergrove Comprehensive Plan.

Section 6.234. Requests for Development/Site Design Review: Requests for Development, which require Site Design Review shall be submitted along With adequate information to allow the design review to occur. This information shall include site plans, grading plans, architectural drawings and any other supporting materials which would be helpful in explaining the development proposal to the Planning Commission.

The Planning Commission may require changes in a proposed project to ensure that the following general design criteria are met to the maximum extent practical in a particular development proposal.

- (a) The project shall contain a safe and efficient traffic circulation system which meets the needs of both pedestrians and automobiles.
- (b) The project shall not create any situations which contain significant hazard to life or property.
- (c) In an Environmentally sensitive area, grading, filling, and diversion of drainage ways shall be minimized.
- (d) Natural vegetation, specifically large trees shall be preserved whenever practical.
- (e) The proposed projects shall meet the criteria established in the Policies of the Comprehensive Plan when appropriate.
- (f) Appropriate screening shall be provided between multi-family dwelling and existing single family dwellings.

Section 6.235. Annexation Criteria. A proposal to annex territory to the city shall be conducted under the Type IV procedure with supplements or modifications required to comply with state law. When an annexation proposal has been initiated and the (planning director) has determined the territory is eligible for annexation it shall be referred to the planning commission. The commission shall base its recommendation on whether the following criteria have been met.

- (1) The proposal conforms to the comprehensive plan or substantial changes in conditions have occurred which render the comprehensive plan inapplicable to the annexation.

(2) The inclusion of the territory within the city would be consistent with the purpose served by the city.

Although the city council shall make affirmative findings on the two criteria if it proceeds with the annexation, proceedings may be terminated by the council at any time.

Section 6.236. Designation of Annexed Property. Territory annexed to the city shall remain subject to the land development regulations of the county until changed by the city. Such change may be entirely or partially carried out as a part of the annexation proceedings if included in the Type IV proceedings of the council. Within thirty days after the effective date of annexation the city recorder shall report on any further steps that appear necessary to have the annexed territory fully subject to the provisions of this ordinance and shall initiate appropriate action to have those steps carried out. If the city council finds it is important to the protection or implementation of city policies, interim regulations may be applied in the annexed area until more permanent action can be taken.

Section 6.300. Conditional Use. The Planning Commission may allow a conditional use, after a hearing conducted pursuant to the Type III land use procedure in the Rivergrove Land Development Ordinance provided the applicant complies with the relevant Application Requirements of this section and demonstrates that the proposed use satisfies the applicable conditions set forth in this ordinance and the Rivergrove Land Development Ordinance. For the purposes of Section 6.300 through 6.340, the Planning Commission has the responsibility and authority to determine the relevance of requirements and criteria and the applicability of conditions.

Section 6.310. Application Requirements. An application for Conditional Use will be on forms provided by the City Recorder and will include the following, where applicable:

- (a) A description of the land (address, lot, block, tract, or similar description) on which the proposed development is to take place;
- (b) A list of the addresses of property within 200 feet of the affected property and mailing labels;
- (c) Narrative addressing how the application meets the relevant review criteria in 6.320 and 6.330 below;
- (d) Site plan drawn to scale and, where relevant, illustrating existing and proposed:
  - (1) Relationship of the site to adjoining properties, streets, alleys, structures, public utilities, and drainage ways;
  - (2) Lot line dimensions;
  - (3) Location of structures;
  - (4) Vehicle and pedestrian access points and access ways;

- (5) General location of vegetated areas;
  - (6) Utility service areas;
  - (7) Fences and walls;
  - (8) Parking spaces, maneuvering, loading, and refuse areas;
  - (9) Direction of traffic flow on the property;
  - (10) Drainage controls;
  - (11) Proposed modifications to existing grades.
- (e) If relevant, exterior lighting plan (which may be shown on the site plan) indicating location, size, height, typical design, material, color, method and strength of illumination.
- (f) If relevant, plans and elevations of structure(s) to scale indicating:
- (1) Heights of structure;
  - (2) Entrances and exits of proposed structures;
  - (3) Architectural drawings or sketches, including floor plans, in sufficient detail to permit computation of set back requirements;
  - (4) Building materials to be used;
  - (5) Specifications as to type, color, and texture of exterior surfaces of proposed structures.
- (g) If relevant, landscape plan drawn to scale showing:
- (1) Location of existing trees and vegetation proposed to be removed or retained on the site;
  - (2) Location and design of landscaped areas;
  - (3) Proposed varieties and sizes of trees and plant materials;
  - (4) Other pertinent landscape features, and irrigation systems required to maintain plant materials.

- (h) Vicinity map showing the site in relation to local and collector streets; plus any other features in the nearby area;
- (i) Any additional information that may be required by the Planning Commission to properly evaluate the proposed conditional use, if the need for such information is justified on the basis of special and/or unforeseen circumstances.
- (j) The Planning Commission may waive any of the requirements above where determined that the information required is unnecessary to properly evaluate the proposal. The applicant will provide a number of plans as required by the City Recorder.

Section 6.320. Review Criteria. Applications for a conditional use will be reviewed to assure consistency with the purposes of this ordinance, the Rivergrove Land Development Ordinance, policies of the Comprehensive Plan, and any other applicable policies and standards adopted by the City Council. In addition, the Planning Commission will consider and weigh with equal priority the following compatibility factors that are relevant to the proposal:

- (a) Basic site design (organization of uses on the site);
- (b) Noise attenuation;
- (c) Noxious odors;
- (d) Lighting;
- (e) Signage;
- (f) Landscaping for buffering and screening;
- (g) Traffic;
- (h) Effects on off-street parking;
- (i) Effects on air and water quality.

Section 6.330. Additional Criteria. The Planning Commission may allow a conditional use, provided that the applicant provides evidence substantiating that all the requirements of the ordinance relative to the proposed use are satisfied, and demonstrates that the proposed use also satisfies the following criteria:

- (a) The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features;

- (b) The site and proposed development are timely, considering the adequacy of transportation systems, public facilities and services existing or planned for the area affected by the use;
- (c) The proposed use will not affect the surrounding area in a manner which adversely limits, impairs or precludes the use of surrounding properties.

Section 6.340. Conditions.

- (a) Permits for conditional uses stipulate restrictions or conditions which may include, but are not limited to, a definite time limit to meet such conditions, provisions for a front, side or rear yard greater than the minimum set back standards, suitable landscaping, off-street parking, and any other reasonable restriction, condition or safeguard that would uphold the spirit and intent of the Rivergrove Land Development Ordinance, and mitigate any adverse effect upon the neighborhood properties as set forth in the findings of the Planning Commission.
- (b) In the case of a use existing prior to the effective date of the ordinance codified in this title and classified in this title as a conditional use, any change of use, expansion of lot area or expansion of structure conform with the requirements for conditional use.
- (c) A conditional use approval expire if it is not implemented within 2 years from the date of the final written decision unless a lesser time period if specified as a condition of approval or a time extension is approved pursuant to RLDO 6.340(d). If the City's final written decision is appealed, the approval period commences on the date of the final appellate decision. A conditional use approve is implemented when all necessary permits for development have been secured and are maintained. Approval of public roads, public schools and public parks do not expire unless an expiration date is specified as a condition of approval.
- (d) A 1-year time extension may be granted once as a type I decision by the Planning Commission pursuant to RLDO 4.090 and subject to the following provisions:
  - (1) A time extension be requested in writing, on forms provided by the City Recorder, prior to the expiration of the approval; and
  - (2) The applicant demonstrates that:
    - (A) The conditional use is consistent with the provisions of this ordinance in effect on the date a complete application for a time extension is submitted; and
    - (B) There is a reasonable expectancy that the necessary development permits will be secured within the 1-year extension period.

- (e) Any violation of the terms, conditions or restrictions of a conditional use permit can result in revocation of the conditional use permit.

**ARTICLE 7**

**RESERVED FOR PLANNED UNIT DEVELOPMENT**

## ARTICLE 8

### PUBLIC DELIBERATIONS AND HEARINGS

Section 8.10. Responsibility of Commission for Hearings. The Commission shall carry out the following duties relating to public hearings on land use matters according to the requirements of this ordinance:

- (a) Schedule and assign the matter for hearing and review.
- (b) Conduct the correspondence of the hearing body.
- (c) Give notice as required.
- (d) Maintain a record of all proceedings and enter into the record all relevant dates such as those of giving notice, hearings, postponement and continuances and a summary of actions taken by the hearing body.
- (e) Prepare minutes of all decisions and the reasons for the decisions.
- (f) Reduce the decisions of the hearings body to writing no more than 15 days from the date of the hearing.
- (g) Mail a copy of the decision to any person requesting it upon payment of a reasonable copying fee and postage.

Section 8.020. Notice of Hearing. Notice shall be reasonably calculated to give actual notice and, except for a legislative action under Sections 6.225 to 6.230, shall contain the following information:

- (a) The date, time and place of the hearing.
- (b) A brief description of the property for which a development permit or other action is pending, including reference to a map or postal address and a subdivision lot and block designation, a metes and bounds description or the tax map designation of the county assessor.
- (c) The nature of the issues.
- (d) The section of the plan, this ordinance, or other ordinance that are believed to apply to the matter at issue.
- (e) Where information and evidence may be examined and the manner in which written comment or testimony addressing the issue may be submitted.

Section 8.030. Procedure for Mailed Notice. Unless otherwise required, addresses for mailed notice required by this ordinance shall be obtained from the county real property tax record. Unless the name and address is on file with the City, a person whose name is not on the tax records at the time an application is filed, or other action not based on an application is begun, need not be furnished mailed notice. Failure to receive notice shall not invalidate an action if a good faith effort was made to comply with the requirements for notice. In addition to persons required to be given notice by this ordinance, the Commission shall provide notice to persons it has reasonable cause to believe are affected by the proposal.

Section 8.040. Posted or Published Notice.

- (a) Where posted notice is required, it shall be posted in at least two conspicuous places within the area containing affected property and at City Hall.
- (b) Where published notice is required, it shall be published in a newspaper of general circulation at least twice and a copy of the notice shall be posted at City Hall.

Section 8.050. Time and Cost of Notice.

- (a) Unless otherwise required, notice shall be mailed, posted, or first published not less than 10 nor more than 15 days prior to the action or hearing requiring the notice.
- (b) Cost of notice shall be assessed as part of the development permit application fee.

Section 8.060. Challenges to Impartiality. Any interested persons or member of a hearing body may challenge the qualifications of a member of the hearing body to participate in the hearing and decision regarding the matter. The challenge shall be in writing and shall state the facts relied upon by the challenger relating to bias, prejudice, personal or pecuniary interest, or other facts from which the challenger concludes that the member of the hearing body cannot participate in an impartial manner. Any challenges shall be made part of the record.

Section 8.070. Disqualifications. No member of a hearing body shall participate in a discussion of a proposal or vote on it if anyone of the following conditions exist:

- (a) Any of the following have a direct or substantial pecuniary or financial interest in the proposal: the hearing body member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which the member is serving or employed or has served or been employed within the previous two years, or employment;
- (b) The member owns property within the area entitled to receive notice of the hearing;
- (c) The member has direct private interest in the proposal;

- (d) For any reasons the member has concluded that he cannot reasonably reach an impartial decision on the matter. A member shall disclose any disqualifications.

Section 8.080. Participation by Interested Officers or Employees. No officer or employee of the City who has a financial or other private interest in a proposal shall participate in discussion with or give an official opinion to the hearing body on the proposal without first disclosing the nature and extent of that interest.

Section 8.090. Ex Parte Contacts. Hearing body members shall disclose any prehearing or ex parte contacts with regard to any matter before the body at the commencement of the hearing.

Section 8.100. Disqualification. A majority of the members of a hearing body present and voting may order the disqualification of a member for any reasons stated in Sections 8.070 or 8.080. The member who is the subject of the motion to disqualify shall not vote on that motion.

Section 8.110; Rights of Disqualified Member.

- (a) An abstaining or disqualified member of a hearing body may be counted for purposes of forming a quorum. A member who represents his/her personal interest at a hearing shall do so only by abstaining from voting on the proposal, physically joining the audience and vacating the seat on the hearing body, and making full disclosure of his/her role at the time he/she addresses the body;
- (b) If all members of a hearing body are disqualified or abstain, all members present shall state their reasons for abstention or disqualification and after doing so shall be considered requalified and may proceed to resolve the issues before them;
- (c) A member absent during the presentation of evidence at a hearing shall not participate in the deliberations or decision on the matter until he/she reviews the evidence.

Section 8.120. Burden of Proof. The burden of proof is on the proponent. "In all cases, the burden of proof shall be the preponderance or greater weight of the creditable evidence." The proposal must be supported by proof that it complies with the applicable elements of the plan and to applicable provisions of this ordinance, including the specific criteria and standards set forth for the particular type of proposal or action.

Section 8.130. Decision. The hearing body shall approve or deny the application or, if the hearing is in the nature of an appeal, affirm, modify, reverse or remand the decision on appeal. A decision on a hearing or an application for development permit shall be made within 10 days of the application except that with the express agreement of the hearing body and the applicant or appellant, consideration may be extended for a reasonable time, but no longer than 45 days from the date of the first hearing on the matter.

Section 8.140. Findings and Order. The hearing body shall prepare brief written findings of fact and an order which shall include:

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- (a) A statement of the criteria and standards against which the proposal was tested, and of the hearing body's interpretation; of what is required to comply with those criteria and standards.
- (b) A statement of the facts which were found to establish compliance or noncompliance with the criteria and standards.
- (c) The reason for approval, modification, or denial.

Section 8.150. Record of Proceedings. Proceedings shall be recorded stenographically or electronically.

- (a) Testimony shall be transcribed if required for judicial review or if ordered by the hearing body.
- (b) Where practicable each item of evidence shall be marked with the name of the person introducing it, and shall be retained in the file until the expiration of the appropriate time of appeal. Unclaimed exhibits may be destroyed thereafter.
- (c) The findings and order shall be included in the record.
- (d) All proceedings' records shall be open for public inspection and copying during business hours at City Hall.

Section 8.160. Request for Review.

- (a) Where a decision has been made by a Hearings Officer, a decision on the issuance of a development permit may be appealed to the Commission by an affected person by filing an appeal with the Commission within 30 days of receipt of notice of the decision. Notice of appeal shall be as set out in Section 8.8170.
- (b) A decision of the Commission maybe appealed to the City Council by an affected person by filing an appeal within 10 days of receipt of notice of the decision. Notice of appeal shall clearly indicate the decision that is being appealed.
- (c) The City Council may limit its review to a review of the record and oral argument on the record, or it may accept new evidence and testimony in which case a hearing shall be conducted pursuant to this Article.

Section 8.170. Notice of Appeal. Notice of appeal shall contain the following:

- (a) An identification of the decision being appealed, including the date of the decision.
- (b) A short statement of the interest of the person seeking review.

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- (c) The specific grounds for the appeal.
- (d) A de novo review or review by additional testimony and evidence is sought, a statement relating the request to the factors listed in Section 8.200 (a).

Section 8.180. Scope of Review. The reviewing body shall issue an order stating the scope of review to be one of the following:

- (a) Restricted to the record made on the decision appealed.
- (b) Limited to such issues as the reviewing body determines necessary for a proper resolution of the matter.
- (c) A de novo hearing.

Section 8.190. Review on the Record. Unless otherwise required by this ordinance, review of a decision on appeal shall be confined to the record of the proceeding, which record shall include:

- (a) A factual report prepared by the hearing body.
- (b) All exhibits, materials, pleadings, memoranda, stipulations and motions.
- (c) The transcript of the hearing below, if one was required. The reviewing body shall allow oral argument on the record by the parties.

Section 8.200. De Novo Review.

- (a) The reviewing body may hear the matter de novo; or it may admit additional testimony or evidence not previously admitted if such evidence or testimony could not reasonably have been presented at the earlier hearing. In deciding whether to admit such testimony or evidence the reviewing body shall consider all of the following:
  - (1) Prejudice to a party;
  - (2) Convenience or availability of the evidence at the time of the initial hearing;
  - (3) Surprise to other parties;
  - (4) The nature and relevancy of the testimony or evidence.
- (b) "De novo hearing" shall mean a hearing by the review body as if the action had not been previously heard and as if no decision had been rendered, except that all testimony, evidence and other material from the prior hearing shall be included in the record of the review.

Section 8.210. Decision Upon Review.

- (a) Upon review, the review body may by order affirm, remand, reverse or modify, in whole or part, a determination of the decision under review. The review body shall clearly state its findings and the reasons for its decision.
- (b) Action by the review body shall be taken by a majority vote of the members present at the review session. The review body shall render its decision no later than 10 days after the filing of a request for review and shall me its decision with the City Recorder no later than five days after it is rendered.

## ARTICLE 9

### BONDS, DEPOSITS AND PENALTIES

Section 9.010. Bonds of Cash Deposits. Before issuing or renewing a development permit where the applicant has an obligation to construct or improve public facilities to serve the development or to reclaim land, the obligation shall be fulfilled prior to the issuance of the permit or the applicant shall file with the city recorder an acknowledgment of the obligation. The acknowledgment shall state the time within which it shall be met and a surety bond or cash or negotiable security deposit sufficient to cover the cost of the work as estimated by the Commission for the year fulfillment of the obligation is expected. The bond shall be conditioned on carrying out the obligation and meeting the requirements of this ordinance and the Development Standards Document that apply to the development. The deposit or bond shall be forfeit to the City in the event of failure to comply with this section and shall remain in, the custody of the City until the obligation is completed or the deposit or bond is forfeited "All maintenance bonds for maintenance of constructed public facilities shall be for a period of two years from the date of acceptance by the City of the completed improvements."

Section 9.020. Penalties and Abatement. This ordinance may be enforced in any manner now or hereafter authorized bylaw. Any person using land in violation of this ordinance shall be punished, upon conviction, by a fine of not more than \$100 for each day of violation where the offense is a continuing offense, but such fine shall not exceed \$1,500. For a noncontinuing offense, the fine shall be not more than \$500. In addition, the City Council, the District Attorney, or a person whose interest in real property in the city of Rivergrove is or may be affected by the violation may, in addition to all other remedies provided by law, institute injunction, mandamus, abatement or other proceedings to prevent, temporarily or permanently enjoin or abate the unlawful use.

Section 9.030. Fees and System Development Charges.<sup>4</sup> All fees and system development charges under this ordinance, and the Development Standards Document, shall be as outlined below. This fee schedule may be amended at any time by Resolution of the City Council. Fee must be paid to the City by the applicant at the time of application. Fees assessed to an applicant may include the costs to the City of legal services, hearings officers, engineering services, planning services, and design services as the City determines are necessary to consider the permit. When such costs are not known in advance, the City shall estimate the cost, and provide a full accounting at the end of the permit process. Overcharges will be refunded to the applicant, and the applicant shall be responsible to the City for any additional costs not covered by the estimate.

For construction of new residential units which will use streets and roads within the City of Rivergrove, the City may assess a roadway system development fee. This fee will be deposited in to the City's Road fund and may be used only for the purposes legally allowed for road funds. The roadway system development fee may be waived by the City Council should the City determine it will be a hardship, and, at the City's discretion, may credit the cost of required public facility improvements against such fees.

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<sup>4</sup> RLDO 9.030 is subject to two interpretations by the Rivergrove Planning Commission dated November 3, 1997 and May 7, 2001.

THIS IS A COMPILATION OF RIVERGROVE ENACTMENTS AND IS NOT THE OFFICIAL RIVERGROVE LAND DEVELOPMENT ORDINANCE. THE ACCURACY OF THIS DOCUMENT CANNOT BE ASSUMED.

**FEE SCHEDULE**

|                                   |  |
|-----------------------------------|--|
| BUILDING PERMIT (CITY FEE)        | \$10.00*   |
| VARIANCE (HARDSHIP RELIEF)        | \$50.00*   |
| TYPE I LAND DIVISION              | \$15.00<br>per lot plus actual City Costs  |
| TYPE II LAND DIVISION             | \$25.00<br>per lot plus actual City Costs  |
| TYPE III LAND DIVISION            | \$35.00<br>per lot plus actual City Costs  |
| TYPE IV STREET VACATIONS          | \$50.00<br>plus actual City Costs  |
| TREE CUTTING                      | No Cost -- Actual City Cost<br>upon appeal   |
| AREA DEVELOPMENT PERMIT           | \$25.00  |
| ROADWAY SYSTEM DEVELOPMENT CHARGE | \$500.00<br>per residential unit with access<br>provided by a roadway within<br>the City of Rivergrove |

\*Plus the cost of hearings officer, notification and specialized services the city may require.

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