

ZONING and SUBDIVISION CODES ANALYSIS CITY of SWEET HOME, OREGON

INTRODUCTION

The purpose of the audit is to review the zoning code and identify areas that need updating to conform to current statutory requirements, eliminate inconsistencies or conflicting materials and take a fresh look at the organization that include possible additions the City may wish to consider. The analysis includes an overview of the document followed by commentary for each chapter. The audit does not attempt to create specific new language, which is beyond the project's scope. However; where appropriate, revisions are suggested. Finally, in addition to any general comments, only those sections that might be potentially subject to revision are discussed.

It is important to understand proposed revisions are measured against a set of objectives. In this case, the objectives are to improve readability and understanding; simplify requirements where feasible; conform to current law; and, streamline the review process. A land use code should not be a barrier to development but assist property owners in meeting shared community values and goals.

At the bottom line, this set of objectives is offered as a framework for decision-making. It is asked the Commission, and ultimately the community and the City Council, use this framework to consider every possible change:

The Test of Compelling Interest

Public decision making must be based on balancing interests, and in particular, public and private interests.

Compelling public interest: "But for this process or standard, there will be significant long-term damage to the public health, safety, or welfare; or there will be a lost opportunity to guide private investment in a way that furthers some major public purpose."

Compelling private interest: "Ability to make unfettered choices on the use of land and the design and construction of buildings and site improvements; ability to make investments for business or wealth reasons, or make physical

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improvements to property without the added burden of financial or time costs caused by a public process."

- 1. Is there a compelling public interest in having this process or standard that outweighs any private interest?*
- 2. If so what is being protected or achieved by having the process or standard?*
- 3. Is this process or standard the best one to protect that compelling public interest? Is its complexity more or less than necessary? © John N. Morgan 2015*

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GENERAL ANALYSIS - TITLE 17

The Zoning Ordinance is generally comprehensive and understandable. It is neither repetitious nor wordy which helps significantly. However, as can be expected of any older document that has been amended many times, inconsistencies and conflicts occur. This is not a criticism but simply recognizes even the most diligent Commission and staff cannot possibly foresee every nuance associated with ongoing changes. Regarding the document as a whole, the City may wish to consider the following general comments:

- A. Organization – There are several parts to any development code. These include administration, zoning regulations, specific development requirements and procedures. These categories are scattered through-out the document making it challenging to the reader - and staff. A planning document is not a novel but should have a logical beginning, middle and end. With this in mind it is suggested the document be reorganized to address essential planning questions into the following four Divisions:
1. *Article I (Introduction)* – This Division introduces the planning document to the reader and asks the basic questions of the document’s purpose and who is responsible for its administration. This Article would include, with some minor variations and exceptions, Chapters 17.02 to 17.16.
 2. *Article II (Zoning)* – This Article answers the questions as to a property’s zoning and what development is allowed on the site. Generally, Chapters 17.20 to 17.44, and Chapters 17.60 and 17.68 would be included.
 3. *Article III (Development Requirements)* – Once a use is determined the next logical question is **how** a site can be developed, addressing such requirements as landscaping or parking. All of these standards would be incorporated in this Article. Current “overlay zones” – Chapters 17.48 and 17.52 – could be revised as development standards. Current Chapters 17.92 to 17.98 would also be included. A number of other design standards repeated in each zone may be placed in this Article.

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4. *Article IV (Procedural)* – Once an owner knows the zoning, allowed development and particular standards found in the preceding Articles, the issue is now how to proceed with development. At a minimum this would include Chapters 17.80 to 17.84. There are also a number of processes embedded in the Zoning Chapters that could be placed in this Article. Finally, there are times in the Zoning Ordinance when a “review” is required but the process – or criteria – are not clearly stated. These types of actions would need to be created and placed in this Article.

Ultimately, it should be a smooth transition from finding a property’s zoning, understanding the development standards and entering into the decision process.

B. Other – The review also identified other items for the City’s consideration:

1. The Zoning Ordinance, Chapter 17, is a separate document from the Land Division regulations, Chapter 16. This is less and less common. It makes it difficult for the public (and possibly staff) to refer back to each document while processing a land division. It is also redundant as the processes for zoning and subdivision application considerations are generally the same. It is strongly suggested the two chapters be merged into a single development code.
2. In a similar vein, there are references to floodplain regulations. Development issues within flood-prone areas is all part-and-parcel of development process shared by the public and staff. Again, if there is a separate ordinance, it may be better to merge flood regulations into a single land development code.
3. Where feasible, reference an external adopted document instead of including a standard. This is especially true of engineering standards and building codes. For example, it is better to state street construction must conform to City standards then spell out those standards in the Code. These types of requirements can readily be changed and effectively adopted by reference. Otherwise, the Commission (and Council) must continually amend the Ordinance to be consistent with regulations in other documents. Also, be embedding such standards in the Zoning or Subdivision Code, they become subject to all the planning related laws and required processes, and make decision-making based on those standards subject to LUBA appeal.

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4. At this point, this review has not analyzed the Chapters of the Municipal Code dealing with Public Works issues, though that will come next.
5. The current use of the Calibri font is good as it is a Microsoft standard available in all versions of Word and it is very readable. Arial is also a good alternative for the same reasons. As a suggestion, increase the font size to 12pt to improve readability.
6. Where possible include diagrams or pictures. This is especially helpful with sign regulations.
7. Finally, if the City proceeds with any changes, the document will likely require re-formatting. This will allow a new presentation design focusing on readability and ease of use. It should incorporate all the sophisticated formatting and organizational conventions available in Word, including the automatic generation of a Table of Contents and a key word index. It should be formatted both as a readable printed document, and appropriately for web-based publishing which is the way most people will access the Code now and in the future. The web-based version should include extensive internal hyperlinks to further aid convenient use. It is suggested an appendix be created to identify the formatting organization including details such as the applicable styles for Normal and Heading text including font, line spacing, indentations and so forth to help staff in the future.

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CHAPTER ANALYSIS - TITLE 17

Chapter 17.04 - Purpose and Definitions.

This Chapter is dominated by definitions. The Commission may wish to consider the following revisions:

1. Section 17.04.030 - The definitions are currently alphabetized which makes it easier to add or eliminate definitions – *do not change this format*. This section usually includes grammatical references: single means plural, and vice-versa; there is no distinction between the masculine and feminine; and, noting words not otherwise defined have their ordinary meaning (usually with a reference to Webster’s Dictionary). Finally, as a general comment, definitions should simply define the term and not include specific standards. This will be noted in a few instances.

Regarding individual definitions:

- a. Amusement or Recreational Services – Given the fluid nature of this term it may be appropriate to include the phrase “but not limited to” to allow some staff flexibility.
- b. Bed & Breakfast – The definition includes a standard (time limit). The standard should be included in as part of any B&B development requirements.
- c. Day Nursery – This definition includes regulatory requirements. Again, this is best left to the applicable Ordinance section. Also, there is usually a distinction between home day care and a stand-alone facility; a separate definition may be appropriate. It is likely best to simply reference the applicable Oregon Revised Statutes and Administrative Rules.
- d. Dwellings, Single Family Attached – The definition should note these are “single-family” dwelling units. Attached dwelling units are a type of multi-family use. Here, the units are attached but also include the underlying ground.

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- e. Lot, Corner – The intersection of two streets may not result in a corner lot if they greatly exceed 90 degrees. The Commission may want to place an upper limit to the angle – 135 degrees is common.
- f. Lot Line, Front – Instead of the City Manager selecting the front lot line on a corner lot, consider the location of the architectural front of the home, either existing or as proposed by the owner.

General note on the definition of lots, lot lines, setbacks, yards, etc.: Include an illustration of all lot types and circumstances.

- g. Permitted (New) – A definition for “permitted” would be appropriate.
- h. Quasi-judicial (New) - A definition for “quasi-judicial” would be appropriate.
- i. Residential Home (New) – ORS allows “residential homes” as well where up to five individuals are under supervised care. The distinction allows the City to limit “homes” to single family zones while “facilities” with 6 to 15 residents are limited to those zones permitting multi-family uses.

Note: while the current definition establishes some standards, this is appropriate in this case as the definition mirrors the State’s definition. In the case of all categories of supported living, including foster homes, group homes, transition homes, etc., it is likely best to simply refer to the applicable Oregon Administrative Rule rather than including a definition. This keeps the Code fully in compliance with state law and transitions automatically with any changes in State definitions or standards.

- j. Trailer House – This definition can be eliminated as it is covered under “manufactured home”.
- k. Travel Trailer – The definition can simply reference “recreational vehicle”.
- l. Variance – The definition should note the relief is to a quantitative standard. For example, a dimension can be varied as it is a measurement; a variance cannot be granted to allow a use not otherwise permitted in a zone.

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- m. Wetlands – The last sentence referencing “riparian areas” is not required but may be appropriate as a separate definition.
2. General – Any definitions found elsewhere in the Ordinance (e.g., signs, wireless cell towers) should be included in this list.

Chapter 17.08 - General Provisions. This Chapter includes a mix of legal requirements and development standards. The former provides a legal framework to implement the Ordinance while the later place standards on how development should occur.

As noted under item II.A, a reorganization might be appropriate as a means to group like things together. In this case, Sections 17.08.010 and 17.08.020 are better placed in Chapter 17.04.

It is recommended the remaining Sections in this Chapter be located elsewhere in the Ordinance, effectively grouped together with other development-type standards.

Regarding individual Sections:

1. Section 17.08 – Attention needs to be given to the use and regulation of recreational vehicles. They are allowed in the zones as a conditional use listed as, “RV for government facility caretaker.” But, the City’s Nuisance Code doesn’t allow RV’s anywhere. But other parts of the City Code allow an RV to be used for up to 60 days for a medical hardship. These all need to be cleaned up with the suggestion of generally allowing RV’s for caretaker dwellings and medical hardship housing and likely no other use outside of being allowed in campgrounds and RV parks.
2. Section 17.08, etc. The City should give considering to developing standards for new styles of housing involving small dwelling units, commonly called Tiny Homes. There is a lot of variance in the Codes to which such houses are built, and to the way they are sited on land. They can be used as freestanding homes on single-family lots, accessory dwelling units, and in larger housing developments with innovative designs such as cottage-clusters. Sweet Home is a highly desirable location for the use of Tiny Homes given its location, recreational opportunities, cost of living, and overall quality of life. Creating a pro-active position developing standards now will help create these new housing options with a degree of quality.

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3. Section 17.08.030 – The City may wish to consider allowing accessory residences. This is a completely separate home from the primary residence, often referred to as the “mother-in-law” apartment. Unlike a “guest house” cooking facilities are included.
4. Section 17.08.033 - Item “4.” requires the City Manager (or designee) to set a time limit for temporary fences. There is no decision process, or criteria, in which to make this determination. As this is likely a limited occurrence, this item could be eliminated. If needed, it is important to provide a process along with decision criteria.
5. Section 17.08.050 – The language should make it clear that a non-conforming lot does not prevent the application of a variance to cure issues such as setbacks or parking.
6. Section 17.08.090 – In item A.2.c., it appears to prohibit parking on a driveway, which is usually located in a front yard. The restriction makes sense for multi-family projects but perhaps should be clarified to exempt single family homes and duplexes.

Overall, the parking requirements are generally consistent with accepted practices. Additional land uses can always be added, but unless there is some compelling need, the list is adequate. A few issues to consider:

- To meet current State Transportation Planning Rule requirements, there needs to be provisions for bicycle parking. There are standards in the Transportation System Plan, but these have no regularity authority. These should be added to the vehicle parking table by creating another column.
- Bicycle parking will also require the establishment of bicycle parking standards.
- There are no loading space provisions. These are usually required for larger commercial and industrial enterprises.
- To minimize impervious surface and reduce storm water run-off, parking requirements often place an upper limit as to the amount of additional parking. This limit is usually set at 50% of the minimum.
- Parking is not required in the C-1 zone but if provided must comply with all provisions, which includes number of spaces. It may not be feasible (or desirable) to meet this particular requirement for a downtown business and should be eliminated

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from subsection “I.” In other words, providing a few spaces, with the right dimensions, is better than none.

Chapter 17.12 - Administration and Enforcement. As previously discussed, procedural matters should be grouped together. This material is usually located at the end of the Ordinance. When located at the beginning, the reader is reviewing changes before the issue of zoning is established, somewhat of a cart before the horse. Regarding the individual Sections:

1. Section 17.12.020 & 17.12.025 – These two Sections are considered together. Both refer to maps and text changes initiated as part of Section 17.12.010. However, the criteria in 17.12.025 generally relate to map amendments and whether the property is developable. This raises an issue whether one can rezone property in a manner that is inconsistent with the Comprehensive Plan designation. At a minimum, conformance between the Plan and zone maps must be required (*Baker v. Milwaukie*). If the inconsistency exists, then the applicant must also change the Plan map as well. However, the Plan and zone map change can only be justified in relation to the availability of land in the City’s 20-year growth projection. For example, if the City has a huge surplus of single family property but a deficit of industrial land, a Plan map and zone change from industrial to single family cannot be supported. The criteria do not address this issue.

There is also needs to be a clear distinction between a map amendment and a text amendment. Factors such as a change in circumstances, changes in state law or an identified need must be considered when changing the text. At a minimum a separate set of criteria would be appropriate for text changes.

2. Section 17.12.040 - The Commission may allow a rejected applicant to reapply less than a year after the Commission’s denial. However, how this decision is made is not clear. An applicant can spend a lot of time and money on a request and be denied even before the merits are considered. The Commission may enforce the one-year time period or simply place no time limits. Consider that an owner is likely to reapply only if there are substantial changes to the plan or circumstances that address the reasons behind the original denial.
3. Section 17.12.050 – This Section should also include the phrase “or designee” recognizing the day-to-day activities are conducted by the Planning Official.

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4. Section 17.12.060 – A permit is required for fence, but the type and process are not clearly defined – is this a land use matter or a building permit issue?
5. Section 17.12.090 - When the Council considers a case, the case is usually held de novo; that is, they hear it as a new case without restrictions. This is not required but certainly maintains a sense of fairness and impartiality. However, on an appeal, they may wish to hear the matter solely “on the record”. That is, there is no new testimony and the Council is limited to determining whether errors were made in the prior decision. Councils often hold on-the-record processes for efficiency, and when there is no real public benefit it allowing all the same arguments to be made again.
6. Section 17.12.100 – Item “B.” can probably be eliminated as requirements are detailed elsewhere in the Ordinance.
7. Section 17.12.130 – Regarding the hearing procedures some lines refer to the “Board”. This could be clarified to be the Commission, Council or simply state decision authority. Item “A.8” extends the right of rebuttal to all those testifying. The burden of proof for the application falls to the applicant and for this reason only the applicant may rebut previous testimony. As a point of clarification for item “H.”, at the end of presentations, the public testimony is closed – the hearing still remains open for deliberation and the decision. A phrase regarding deliberations – and the fact they are limited to the Commission (or Council) and staff – could be included.
8. Section 17.12.150 – Provisions regarding enforcement are usually found at the beginning of the ordinance, again another Section that could be moved to Chapter 17.04.
9. General - Once an application is deemed complete, the City has 120-days in which to make a final decision, up to an including any action or appeals heard by the City Council. Circumstances may occur whereby the Commission is unable to render a decision in a timely manner. For this reason, it is suggested a “95-day” rule be established: if the Commission cannot take action within 95-days, the case is automatically moved to the City Council for a hearing. While rare, this ensures the City meets its 120-day obligation.

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Chapter 17.16 - Official City Comprehensive Plan. No issues – this is a good way to introduce the concept and another reason to relocate issues regarding plan amendments to the back of the Ordinance.

Chapter 17.20 - Establishment of Zones. The only issue here is Section 17.20.010. While zones and their abbreviations are listed, there is no connection to the Comprehensive Plan. For example, can commercial zones be established in areas designated for residential uses by the Plan? Consistency is required between the Plan and zone maps to ensure the right type of development is occurring in the right areas of the community – no fast food restaurant in a subdivision! One other note: overlay zones are usually included in this Section.

Chapter 17.24 - R-1 Residential Low-Density Zone.

1. Section 17.24.020 – By state law, only residential homes need to be allowed in the zone. Accessory structures should be listed, and based on General comments at the beginning of this report, the Section should also specifically allow property line adjustments, partitions and subdivisions.
2. Section 17.24.030 – The City may wish to consider the accessory dwelling as a permitted use or allowed by a process other than a conditional use. The antenna limitation would be appropriate if the antennae exceeds the height limitation. Suggest allowing the use outright but require a variance if they exceed a specific height.
3. Section 17.24.050 – It is common for the rear yard setback to exceed the front yard setback. This recognizes that the rear yard is often where family (and friends) gather. Suggest reducing front yard setback to 15-feet and increasing rear yard to 20-feet. The garage can always be set back to ensure adequate off-street parking.
4. Section 17.24.060 – A 35% coverage of an 8,000 square foot lot is only 2,800 square feet. Given the size limitation of accessory structures (864 square feet) it would be reasonable to allow a 40% coverage (3,200 square feet).
5. Section 17.24.080 – It is unusual to require minimum building sizes as the current trend is to smaller homes. Often, size requirements will be a part of the deed

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restrictions and covenants for a particular subdivision as a means to maintain economic exclusivity. Not sure this is a role for the City.

6. Section 17.24.090 – This Section mirrors the requirements for the placement of manufactured homes on individual lots. It is not clear though, if they are allowed and this should be specifically noted in Section 17.24.020. Specific design standards should be located elsewhere in the Ordinance.
7. Section 17.24.100 – Item “A.” is usually associated with the placement of a manufactured home and can be incorporated within those requirements (see comments on Section 17.24.090). The paving requirement is noted elsewhere under parking standards and need not be repeated.
8. General – The zone includes permitted and conditionally permitted uses that have – or could have – specific design requirements. If this is the case, it would be appropriate to identify other Ordinance Sections (or Chapters) that might apply. For example, accessory structures would be listed as a permitted use, subject to provisions in Section 17.08.030. In addition, a new Section could be added that references other general standards or requirements that might apply to development of the site. For example, this Section would list “Parking” and cite Section 17.08.090.

Chapter 17.28 - R-2 Residential High-Density Zone.

1. Section 17.28.020 – Item “A.” references the R-1 zone. For clarity, it would be better to specifically list those uses. For the record, both residential homes and facilities would be allowed in this zone. Accessory structures should be listed, and based on comments at the beginning of this report; the Section should also specifically allow property line adjustments, partitions and subdivisions.
2. Section 17.28.030 – Again, item “A.” references the R-1 zone – a specific list helps with clarity. Previous comments regarding accessory dwellings and antenna apply.
3. Section 17.28.040 – May wish to consider requiring a 3,000 square foot minimum lot area for an attached single family home located on a corner lot as a second street-side setback is required.

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4. Section 17.28.050 – For the reasons previously stated, have the rear yard setback exceed the front yard setback for each type of use.
5. Section 17.28.060 – There does not appear to be a minimum lot area coverage for a single family attached home. This may be by omission but suggest a 70% coverage as the inclusion of an accessory structure is still possible.
6. Section 17.28.080 – Again, it is unusual to require minimum building sizes as the current trend is to smaller homes.
7. Section 17.28.090 – Comments similar to those for Section 17.24.090
8. Section 17.28.100 – Comments similar to those for Section 17.24.100
9. Section 17.28.110 – It is suggested this Section be grouped with other design standards and not placed in the R-2 zone. This ensures consistency in the event the City allows manufactured home parks in other residential zones. Also include design standard for homes in manufactured housing parks.
10. General – As before, it would be appropriate to identify other Ordinance Sections (or Chapters) that might apply to specific developments.

Chapter 17.30 - R-3 Medium Density Residential Zone.

1. Section 17.30.020 – Again, for clarity, it would be better to specifically list those uses instead of references other zones. For the record, both residential homes and facilities would be allowed. Previous comments apply to accessory structures, property line adjustments, partitions and subdivisions.
2. Section 17.30.030 – Again, list the uses as opposed to a reference. Attached homes are allowed yet apartments require a conditional use. The impact should not be significantly different – possibly allowing these outright should be considered. Again, the antenna limitation would be appropriate if the antenna exceeds a height limitation.
3. Section 17.30.040 – A 4,800 square foot lot with a minimum 60-foot width is not conducive to the establishment of attached single family homes. If the desire is to be a bit more “up-scale” than the R-2 zone it is suggested the minimum and area be

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reduced to 3,000 square feet and the width reduced to 30-feet. A 4,000 square foot corner lot is appropriate. All these dimensions exceed the R-2 requirements.

4. Section 17.30.050 – As previously noted, the rear yard setback is usually larger to accommodate the family's recreational use of the property
5. Section 17.30.060 – Based on previous comments recommending a 40% lot coverage for single family homes; 60% for a duplex and multi-family; and, 70% for attached homes.
6. Section 17.30.080 – As noted before, let the market determine the house size.
7. Section 17.30.090 – Comments similar to those for Section 17.24.090.
8. Section 17.30.100 – Comments similar to those for Section 17.24.100.
9. General – As noted in the other residential zones, where appropriate, reference other Sections of the Ordinance to assist staff and the public.

Chapter 17.31 - R-4 Residential Mixed Use Zone.

1. Section 17.31.020 – The residential uses should be listed along the allowing accessory buildings/uses and the various land divisions.
2. Section 17.31.030 – Again, the antenna limitation would be appropriate if the antennae exceeds the height limitation - allow the use outright but require a variance if they exceed a specific height.
3. Section 17.31.040 – Previous comments regarding residential front and rear yard setbacks still apply. Otherwise the setbacks for non-residential uses are appropriate.

It appears this zone is designed to allow a mixing of residential and commercial uses. This is becoming far more common and provides increased pedestrian opportunities. Also by design, it appears residential uses are favored over commercial uses. Generally, in mixed use zones it is the market that determines the appropriate mix.

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If the City chooses to maintain the mix some items need to be clarified. First, does the 10,000 square foot limitation include parking or is that separate from the structures? That appears to be the case if there is a single establishment (“A.5.”). If parking is included it may not provide sufficient buildable area to maintain business viability. The R-4 property must be on one side of the street or one corner of an intersection – yet access limitations may effectively prohibit the use of a street corner. The need to front on an arterial or collector street also diminishes the pedestrian friendly nature of the design. Finally, the commercial uses all require conditional use approval. Developers seek a degree of certainty and may balk at a project if there is no guarantee commercial uses would be approved.

This is an important zone as it allows mixing of uses and promotes pedestrian oriented business in a residential setting. Its required location however, appears to be more oriented to auto-dependent types of uses. With these restrictions it may be better to simply allow both residential and commercial uses outright and not limit of area of a particular use.

Chapter 17.32 - C-1 Commercial Central Zone.

1. Section 17.32.020 – Uses Permitted Outright. Under item “A.” the City may wish to allow apartments above first floor commercial businesses. If recommendations regarding non-conforming uses (see item “T.” below) are adopted, item “K.” is not required.
2. Section 17.32.030 – Conditional Uses Permitted. Under item “E.” the City may wish to establish standards for drive-in, drive-through and walk-up services. Previous comments regarding a conditional use for antennas apply.
3. Section 17.32.040 – Yards. Clarify that the front yard setback (item “A.”) refers to a residential zone across the street.
4. Section 17.32.050 – Building Height. It is suggested the building heights be specifically identified.
5. Section 17.32.060 – Open Storage. The City may wish to consider allowing temporary outdoor displays in the zone (e.g., during business hours or special events).

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6. General. As noted in the other residential zones, where appropriate, reference other Sections of the Ordinance to assist staff and the public.

Chapter 17.36 - C-2 Commercial Highway Zone.

1. Section 17.36.020 – Uses Permitted Outright. Again, it is suggested the uses be specifically listed and not reference other zones. If homes are to be considered, possibly limit them to the floors above a commercial business.
2. Section 17.36.030 – Conditional Uses Permitted. It is suggested that single family homes not be encouraged in this zone. This is prime commercial real estate and should be reserved for those uses. Previous comments regarding a conditional use for antennas also applies.
3. Section 17.36.040 – General Standards. This Section requires the submittal of a development plan. However, there is no process with established criteria and methods for appeal. As will be discussed at the end of this report, discretionary decisions require decision criteria, findings in support of the decision and the opportunity to appeal that decision.
4. Section 17.36.050 – Yards. Again suggest specifically identifying the setbacks for the particular uses. The City may wish to consider reducing street side setbacks to 10 or 15-feet as 20-feet significantly reduces the amount of land available for development.

Add a section to 17.36.050 to address clear vision areas at street/street, street/alley, and street/driveway intersections. There is an illustration but no defined standards.

5. Section 17.36.060 – Lot Coverage. A 50% lot coverage limitation leaves a lot of developable property on the table. Even without a reduced setback, 60% may be more reasonable.
6. Section 17.36.070 – Building Height. Again, specifically identify building height requirements for the various uses.

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7. Section 17.36.080 – Open Storage. See below comments regarding open storage (item “V.”).
8. Section 17.36.100 – Use of Residential Structures in Commercial Zones. This Section is not required as proposed revisions to the non-conforming use regulations would address this issue.
9. General. As noted in the other residential zones, where appropriate, reference other Sections of the Ordinance to assist staff and the public.

Chapter 17.40 - C-3 Commercial Neighborhood Zone.

1. Section 17.40.010 – Purpose. This zone is designed to serve local neighborhoods. As such, it is somewhat duplicates the restrictive provisions in the R-4.
2. Section 17.40.020 – Uses Permitted Outright. Again, list uses.
3. Section 17.40.030 – Conditional Uses Permitted. Item “D.” is a perfect use for this zone; it would be appropriate to allow it as a permitted activity.
4. Section 17.40.040 – Special Standards. Development requirements for the uses should be specifically identified. The two acre limitation may create some significant neighborhood impacts; one acre may be more appropriate given its purpose. Also specify note that both residential and commercial activities can be mixed either on the parcel or within the same building.
5. General. As noted in the other residential zones, where appropriate, reference other Sections of the Ordinance to assist staff and the public.

Chapter 17.44 - M Industrial Zone.

1. Section 17.44.020 – Uses Permitted Outright. There is a lot of discretion in item “C.2.”. Again, with discretion, there needs to be some criteria, findings and appeal opportunity.
2. Section 17.44.030 – Conditional Uses Permitted. Items “F.”, “G.” and “H.” are usually allowed outright within an industrial type zone. Be cautious regarding caretaker

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dwellings – they often become permanent housing. The language could be strengthened to require an existing land use.

3. Section 17.44.040 – Limitations on Use. This Section is common to advise developers of other potential requirements. It includes “zoning permits” which raises the issue of what type and how processed. Again, the processing issue will be re-examined at the end of this report.
4. Section 17.44.050 – Yards. Again, list specific yard requirements. Given the value of industrial land, a 10-foot street setback is appropriate.
5. Section 17.44.060 – Lot Coverage. The 50% limitation restricts development – the City may wish to consider a 70% or 80% figure.
6. Section 17.44.070 – Building Height. Again, specify exceptions.
7. General. As noted in the other residential zones, where appropriate, reference other Sections of the Ordinance to assist staff and the public.

Chapter 17.48 - PD Development Zone. A “planned development” is generally a set of regulations to encourage creative development and may also include a land division component. As an overlay zone however, the City’s zone map is being amended. This is technically a zone change and requires hearings before the Commission and Council. In effect, an applicant must comply with design provisions for a planned development **and** meet the decision criteria for a zone change. This process effectively creates expensive time barriers to achieving the “greater variety and diversity”. As an alternative the City may wish to limit this Chapter to establishing design requirements and decision criteria and eliminate the need for an overlay zone.

There are some issues with the Ordinance language. First, the PD standards really do not encourage design flexibility. The most creative thing in the language is the ability to have common open space and facilities, such as a club house, within it. Most planned development ordinances allow a greater mix of uses, such as allowing small commercial or office areas within the project, and housing types, such as allowing any type of housing as long a density standards are met. The Sweet Home PD standards do not address these design options and flexibility.

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The Comprehensive Plan says all subdivisions over three acres in size must be processed as planned developments. As this is not in the Development Code it has no legal weight, but it has been enforced over time. If this standard is to be followed, the Code should incorporate the regulatory language. However, the reason for this requirement is not readily apparent. A conventional subdivision without common open space or facilities, or with conventional single-family lots, has no reason to be treated as a planned development. There is no public or private value in doing so. It is suggested there be a minimum size established for allowing a planned development, possibly three acres, as the design flexibility inherent in a planned development needs property of a minimum size to be effective and to minimize any potential negative impacts on surrounding property.

The City may wish to extend the time period in which the project must start from 6-months to one or two years (17.48.050.C, and 17.48.080.A.1.). Weather and engineering issues, as well as financial matters, often delay a project.

In Section 17.48.070.B, minor changes to the plan can be approved by the Director. Again, there is no process or criteria along with notice and right to appeal.

Generally, it is recommended the PD sections from both Chapter 16 and Chapter 17 be eliminated and a new planned development process and standards be created that has what is needed to create the outcome of design flexibility and potentially better future neighborhoods.

Chapter 17.52 - MI Mobile Home Infill Overlay Zone. State law effectively requires communities to allow manufactured homes on individual lots. This is based on a manufactured home which meets certain design standards laid out in State Law being considered just as a stick-built home for the purpose of zoning and location on individual lots. Therefore, there is no need for this overlay zone, and it actually is contrary to state law.

Chapter 17.60 - RC Recreational Commercial Zone. This Chapter needs to be revised to reflect current and acceptable development plans for the properties zoned RC. The general intent is to broaden the array of permitted uses, including allowing some light industrial, to reflect the desired future development pattern of the district. This is a comprehensive process which can be undertaken as part of the general Code update or independently.

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1. Section 17.60.040 – Special Standards. Item “A.” requires an 8,000 square foot lot with a minimum 80-foot width for a single family home while item “B.” requires a 5,000 square foot lot and 50-foot width for a duplex. These probably should be reversed. As noted in other residential zones, the City may wish to consider reducing the front yard setback and increasing the rear yard setback.
2. Section 17.60.050 – Development Plan Review. Improvements call for the review of a submitted site plan. The process and decision criteria are not defined.
3. General. As noted in the other residential zones, where appropriate, reference other Sections of the Ordinance to assist staff and the public.

Chapter 17.68 - R/M (T) Residential Industrial Transitional. While the zone is designed to be transitional, the restrictions effectively maintain residential uses and reduce the chance of conversion to industrial uses. The City needs to clearly define its industrial land needs and locate industrial land appropriately. The City may wish to consider dropping the zone entirely, or if property is currently zoned for this purpose, rezone the land to the M zone.

Chapter 17.72 - NR Natural Resources.

1. Section 17.72.040 – Activities Subject to Review. This is an appropriate overlay zone as it corresponds to specific features. Suggest language that clarifies the requirements of this zone do not apply to the portion of the property that is located outside the zone.
2. Section 17.72.050 – Exceptions in the Riparian Zone. As noted elsewhere, to approve or deny is a discretionary decision requiring criteria, findings and opportunity to appeal.
3. Section 17.72.070 – Easements. Include a new section requiring easements between properties when public or private infrastructure passes between properties, including streets, sewer, water, and storm facilities.
4. Section 17.72.090 and 17.72.100. Mitigations standards and requirements may change. To avoid duplication and constant changes to the Ordinance, it may be best

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to reference the need for approval by various agencies and let them determine requirements.

Chapter 17 - Zoning Generally. The ability to develop a business campus does not exist in the current Sweet Home Code. Such a campus generally has offices and retail intermixed with light industrial uses. It commonly includes what is known as “flex-space” with buildings that have multiple “bays” or business fronts for rent or lease. These spaces generally have overhead doors, small office spaces, and then larger open spaces of 3,000 to 5,000 square feet or more with high ceilings. These spaces are commonly leased out for a variety of light industrial uses, distribution facilities, warehousing, and other classic light industrial uses. But, commonly they are leased out for things like trade schools, martial arts studios, office spaces, and restaurants, and even for some light retail like convenience stores.

For example, the Salmon Run area is a place where utilizing a new business campus zone might be very viable for part of the district. Many cities find areas with this type of zoning become some of their most viable and vibrant economic development areas. It is recommended Sweet Home adopt such a zone.

Chapter 17.80 - Conditional Uses.

1. Section 17.80.010 – Purpose. The City may wish to consider the “philosophy” behind reviewing the request. Is a conditional use an allowed use that only requires measures to mitigate impacts – or – is the conditional use effectively prohibited in the zone unless the development plan and mitigating measures can prove otherwise? It is suggested the former is the appropriate approach, as why include the use in the zone.
2. Section 17.80.040 – Use Criteria. Item “E” lists criteria for home occupations. First, the use is not listed in any of the residential zones. Second, it is recommended home occupations be permitted outright subject to a limited review and not a full conditional use hearing. Quite a few successful businesses started in a garage (e.g., Hewlett-Packard) and this is a good way to encourage localized economic development.
3. Section 17.80.060 – Modification to Approved Plans and Development and Transfer. Item “A.” allows a ministerial decision to modify the plan, without notice or hearing.

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Again, to approve or deny is a discretionary decision requiring criteria, findings and opportunity to appeal.

Item “C.” discusses transfer of the decision. It is important to note that unless otherwise specifically conditioned (a rare event) land use approvals remain with the land and not with the applicant. Provisions in this subsection can be eliminated.

Chapter 17.84 - Nonconforming Uses. The one issue is on Section 17.84.060 which requires future structures or uses conform with Ordinance requirements if 60% or more of the structure is destroyed. This is addressed in 17.84.020 for a non-conforming single family home located in a commercial or industrial zone. But, extending the same guarantees of maintenance and repair to all non-conforming single-family houses might be worth considering.

The reality is the nonconforming use is often functional, and current regulations may wind up penalizing a conscientious owner. Using the above example (and given current rules) an owner cannot sell a nonconforming single family home as no bank will provide a loan unless the home can be replaced if destroyed. As a result, there is no incentive for an owner to maintain a property which results in deteriorated and unsafe housing conditions.

As an alternative, the City may wish to consider allowing replacement of a nonconforming use provided a building permit is obtained within one year of the uses' destruction. In this way, the owner has an incentive to at least maintain the property, and if so destroyed, still has an option to establish a conforming use.

Chapter 17.88 - Variances.

1. Section 17.88.040 – Item “B.” requires conformance with the Comprehensive Plan. ORS 197 prohibits the use of Plan policies as a decision criteria – in effect, those policies should be incorporated in the Ordinance without further reference to the Plan. This Section should also include a criterion that the variance request is not the result of an action by the applicant; in effect, one in violation of the Ordinance and now seeking permission to change the rules.
2. Section 17.88.050 – This Section can be eliminated. With the above noted addition, the prior Section effectively covers the bases for a decision. According to case law,

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economic matters cannot be considered (otherwise everyone qualifies to some extent) and aesthetic issues allow too much subjectivity. Again, the essential decision criteria are found in Section 17.88.040 with the one suggested addition.

3. General – The City may wish to consider various levels of variances. Minor changes (e.g., a 5% or 10% change in a setback) could be reviewed by staff while those exceeding a certain percentage would then require review by the Planning Commission.

Chapter 17.92 - Open Storage of Property in C-1 and C-2 Zones. – This Section is somewhat confusing as it includes both requirements and a decision process. The following is suggested:

- Open storage is not allowed in the C-1 zone, so the reference to the C-1 zone should be removed.
- Allow outdoor storage if screened with a sight-obscuring fence. The exemptions under item “B.” would still apply. This regulation can be placed in the C-2 zone Chapters.
- Instead of creating a unique permit process, use the process under items “C.” to “H.” as a type of staff-level variance review. This would be in a separate part of the Ordinance addressing procedures.
- Even better, consider dropping the permit requirement all together. Staff reports the permit system does not work as few people come in to get permits and there is no pro-active enforcement. As with most provisions of the Code, it is likely best to set standards, help people know the standards exist through an outreach effort, and only intervene as a code enforcement issue if there is the report of a violation. It is likely this will be effective without the burden of the process that exists today.
- Matters of abatement and/or enforcement would be detailed under the administrative portions of the Ordinance and need not be repeated.

Chapter 17.96 - Signs. It is said the two most controversial issues in local government are cat licensing and sign codes. The analysis of this Chapter did not focus on aesthetic matters – those are local preferences - but more of process and formatting.

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1. Section 17.96.020 – Definitions. All definitions should be included in the Chapter 17.04.
2. Section 17.96.030 – General Standards. Item “G.” is actually a definition and could be moved to 17.96.020.
3. Section 17.96.050 – Types of Signs. This Section lists types of signs which are by themselves definitions. Again, place in 17.96.020
4. Section 17.96.090 – Prohibited Signs. The list addresses the common prohibitions. Item “K.” may be difficult to enforce owing to the word “substantially”. It may be appropriate to eliminate this item.
5. Section 17.96.110 – Signs in Commercial and Industrial Zones. There are standards for signs over sidewalks, but no standards for awnings or canopies or other protrusions over sidewalks with or without signs. This should be addressed.

Otherwise, there are no general issues but it may be helpful to reorganize the material to help readability. This, and the definition section, is a good place for diagrams.

6. General. It is not unusual for owners to seek a variance to the standards. Sign variances are unique and should be designed to avoid an owner gaining an advertising advantage or violating size requirements due to some industry or corporate standard. The City sets the aesthetic standard through quantifiable methods – it is up to an owner to show a true hardship and not just an inconvenience.

Chapter 17.98 - Wireless Communications Facilities. The regulations and process are similar to other codes reviewed by the author. It is suggested all the definitions be placed in Chapter 17.04. Also note, the local land use process may not conform to Federal wireless communication guidelines. It is suggested the City Attorney review this matter.

Chapter 17.100 - Vacation of Public Ways. The Commission may wish to consider whether they want to be involved in vacations. Often, the Council simply requires a report from the Planning Director as to whether the vacation may potentially affect

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development, and if so, could mitigating measures be applied. As a footnote, current language allows the Council to by-pass the Commission in the vacation process.

Chapter 17.104 - Annexations. This Section needs to be revamped. The process is somewhat confusing (the Commission may “hold hearings as it deems proper”) and there are no criteria in which to determine whether the annexation is appropriate or timely. The City may wish to consider some limited criteria such as whether the site is located adjacent to city limits; whether public facilities and the transportation network can be extended to serve the site; and are there any limitations to development of the property.

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ANALYSIS - TITLE 16

General – As a general comment, this Title should be merged with Title 17. While there is language to connect the two Titles, having a single document addressing all relevant land use matters benefits the public and staff.

When making a final decision on a subdivision, partition or property line adjustment it may be appropriate to grant some flexibility in the final product as topographical or survey issues may require minor adjustments. This can be incorporated in the language.

Chapter 16.04 - Purpose Scope and Definitions. The list of definitions is quite extensive. With a merged document these definitions would also be located in chapter 17.04 (or equivalent).

Chapter 16.08 - Administration and Enforcement.

1. Section 16.08.010 – Appeal. This subsection puts the “cart before horse”. Appeals and associated processes are usually placed at the end of the Title.
2. Section 16.08.020 – Amendments. In a similar vein, amendments are placed at the end of the document. Also note, as part of the Zoning Ordinance, amendments are effectively text amendments and processed as such – a separate subsection would be unnecessary. This also applies to fees (16.08.040) and violations (16.08.060).

Chapter 16.12 - Design Standards.

1. Section 16.12.010 – Principles of Acceptability. As noted, the Comprehensive Plan cannot be part of the decision criteria.
2. Section 16.12.020 – Streets. It could be formatted a bit better to help readability but otherwise no issue with this Section; the standards appear up to date and also include reasonable and progressive alternatives.

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3. Section 16.12.035 – Easements. Suggest eliminating the dimension standards in item “A.2.” as these could change over time. Simply refer to current Public Works requirements.

Chapter 16.16 - Tentative Plan.

1. Section 16.16.020 – Pre-application Review. Suggest *requiring* a pre-application conference for a subdivision but make it optional for a partition and property line adjustment.
2. Section 16.16.025 – Tentative Subdivision, Subdivision Replat or Partition, Partition Replat Plan Submittal. The requirements for a tentative plan are similar to other jurisdictions. However, it is suggested the requirements for a partition can be lessened as the request only creates two or three parcels.
3. Section 16.16.030 – Procedures. Standards for “series partitioning” should be included. A series partition is a partition of a property leaving one or two large lots, which then are divided again in the next calendar year, etc. This is a way to create a defacto subdivision without the standards for process or design normally found for a subdivision. Standards should be developed that eliminate the ability to create a series partition.
4. Section 16.12.030 – Procedures. Regarding notice requirements, these will be redundant in a merged Ordinance. Regardless, it may be appropriate to not identify specific agencies as these may change over time. Simply state notice must be sent to “affected agencies” and maintain an appropriate list and contact information.
5. Section 16.16.040 – Tentative Subdivision, Subdivision Replat or Partition, Partition Replat Review Criteria. It is suggested the decision criteria for a partition can be lessened as the request only creates two or three parcels.
6. Section 16.16.060 – Development Phasing. Situations arise which may make it difficult to record a plat or even a phase within an approved timeline. It is suggested phasing be extended to two years and the total project be completed in 10-years (conforms to ORS 92).

Chapter 16.20 - Final Plat.

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1. Section 16.20.010 – Procedures. Current requirements allow the Commission Chair to call for a new hearing on the final plat. This again is somewhat discretionary and it is suggested that all decisions related to the plat conformance with the original approval be made at the staff level.
2. Section 16.20.020 – Final Plat Review Criteria. This is a common sense list. As a suggestion, and consistent with maintaining the decision on a staff level, a ministerial review could be completed to affirm compliance.
3. Section 16.20.030 – Final Plat Submittal. Final plat submission is administered by the county in conformance with state law. This Section effectively duplicates existing rules - it would be simple to note the final plat must conform to state law as administered by Linn County.

Chapter 16.24 - Improvements. A well done Chapter, especially the Section regarding improvements for subdivisions. One suggestion is to increase the bonding percentage (16.24.020.C) from 115% to 125% to cover administrative and legal costs.

Chapter 16.28 - Exceptions and Variances. For consistency, suggest such requests be processed according to the procedures and criteria in Chapter 17.88. Also the City may wish to use some of the criteria from this Chapter in Chapter 17.88.

Chapter 16.32 - Property Line Adjustments.

1. Section 16.32.020 – There are circumstances where an adjustment, while adding area to an existing parcel, still does not meet the minimum lot size requirement. This should be acceptable as the adjustment effectively increases the parcel's conformity. Also, item "F." is a requirement and not part of any decision criteria.
2. Section 16.32.030 – Generally, a property line adjustment is a simple procedure with little impact. Unless it is critical to the decision, it is suggested the submittal requirements be reduced to absolute minimum. For example, much of the utility information is not required. If it is important the official can always ask the applicant for more data.

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3. Section 16.32.040 – It is simple to note the document must be recorded at Linn County. Leave the submittal details to the County Surveyor, they could change over time.

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SUMMARY COMMENTS

General

While the State takes great pride in creating a progressive and innovative land use program, the day-to-day functions embedded in any Zoning Ordinance revolve around process. This is the one area whereby the Ordinance is deficient - there are several places in the document whereby an official has decision making powers without the benefit of any criteria. In this regard, decisions can become arbitrary and certainly challengeable from a legal standpoint. To reiterate: discretionary decisions require criteria in which to make a decision, findings relative to the criteria in support of that decision, a written notice of that decision and opportunity to appeal.

The early part of this report discussed a change in Ordinance's organization. The following will expand on those comments and show how it ties into process.

1. *Article I (Introduction)* – This Article introduces the planning document to the reader and asks the basic questions of the document's purpose, appropriate definitions and who is responsible for its administration.
2. *Article II (Zoning)* – The sole purpose of this identify the individual zones and what uses are permitted or conditionally permitted in each zone.
3. *Article III (Development Requirements)* – The Article is limited to standards on how property is developed with requirements for parking, landscaping, fencing, home occupations and so forth.
4. *Article IV (Procedural)* – This Article is essentially divided into two parts. The first lists the **type** of review: conditional uses, variances, property line adjustments, site design and so forth. The second part describes **how** the review is to occur. Planning has traditionally employed four type of review. These are noted below:
 - a. Ministerial – Reviews by staff with little discretion. Notice is limited to the applicant. Appeal is to the Commission. Applications: sign code, property line adjustment, home occupation.

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- b. Administrative – Staff reviews requiring notice to area property owners. Greater discretion is possible. Notice of the decision is provided to the applicant and those who commented. Appeal is to the Commission. Applications: partitions, site design reviews, minor variances.
- c. Quasi-Judicial – Cases requiring a hearing before the Planning Commission, also known as a quasi-judicial hearing. Hearing notice is provided and notice of the decision is provided to the applicant and those who participated at the hearing. Appeal is to Council. Applications: subdivision, conditional use, variance.
- d. Legislative – Requires hearing before Commission and Council and adoption by ordinance. Notice provided to both groups. The Commission recommends and the Council makes the final decision. Appeal is to the Land Use Board of Appeals. Applications: text amendments, zone changes, Comprehensive Plan Map and text changes. Note an application by a private party for a zone change or a Comprehensive Plan map change is a quasi-judicial process even though it follows the legislative process.

(Note that Sweet Home does not have an Administrative review process as outlined above. Creating such a process which allows review of minor land use cases without a public hearing except on appeal can greatly streamline the development process and is recommended.)

So how does this tie together? Here are two examples:

Example 1 – Home Occupation. A property owner wants to know if she can conduct a home occupation at her residence:

- Article I – Provides a definition.
- Article II – Determines whether the use is allowed in a specific zone.
- Article III – Rules and requirements to operate a home occupation are listed here.
- Article IV – The process to receive city approval, including any decision criteria, is found here.

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Example 2 – Church. A group wishes to build a new church but is unsure of the appropriate zone and development requirements.

- Article I – Provides a definition.
- Article II – Determines what zones allow the use, and, what development requirements – setbacks, height, lot coverage – must be considered.
- Article III – Applicable development requirements are found here: parking, landscaping, etc.
- Article IV – The process to receive city approval, including any decision criteria, is found here.

By providing such a format the document becomes more readable and usable, benefiting both the public and staff.

Other Considerations

The analysis focused on the existing language and made suggestions to possible changes. Below are other options the city may wish to consider regarding changes to the Zoning Ordinance that did not fit into the format:

1. The City may also wish to consider the addition of a “Limited Use Overlay Zone”. This type of overlay allows zone changes for specific uses but restricts other uses in the new zone by requiring conditional use approval for their establishment. For example, a C-2 zone change may be appropriate to establish a new grocery store. However, other uses allowed in the zone may not be compatible with the residential development pattern. These uses would then require a conditional use to be established.
2. Often a development may require multiple applications such as a partition, conditional use and variance. Language could be included to allow, as an option, a combined application. Further, if combined, this application would be reviewed at the highest level. For example, if a combined application included both a staff review and Commission review, it would be reviewed at the Commission level. Combining requests saves time for the applicant, the public and staff.

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3. It is not clear who provides an adjacent property owners list for notice. An applicant's submittal does not guarantee an acceptable source of the information or the currency of the data. A poorly prepared list can cause legal challenges and unnecessary delays. For this reason, it may be better for the City to provide the list.
4. It is somewhat unusual not to have a Public use zone to accommodate government and public-related uses such as police stations, treatment plants or churches. This may be something for the City to consider.
5. Bed & Breakfast businesses are allowed in certain zones. It may be appropriate to establish some design requirements so the use can be reviewed on a consistent basis. Issues to consider are number of units, parking, types of meals, length of stay and whether events are permitted.
6. In a similar vein, standards can be applied to home occupations. Examples include size of work area, whether employees or customers are allowed, types of businesses and so forth.
7. Administrative provisions for time extensions would be appropriate. It is legitimate to limit the duration and number of extensions.
8. There are a number of processes requiring some type of site or design review. In each case there are guidelines but no decision criteria. Besides recommending a singular review process, the City may wish to consider establishing some simple criteria with regard to the request:
 - Is the use allowed in the zone?
 - Does the property meet minimum lot size requirements?
 - Does the building comply with area, setback and height requirements?
 - Is their adequate parking?
 - Are landscaping requirements met?
 - Can the site be served by necessary public services?
 - Are there other issues that need to be considered such as points of access or overlay zone requirements?

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The goal is to make the process and clear an objective as possible. This helps both the applicant and the ultimate decision maker.

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CONCLUSION

The current Zoning Ordinance works as a planning document and there are no significant changes needed to conform to State law. Most of the suggested changes help with clarity or address minor inconsistencies. While these are relatively minor matter, three issues stood out:

1. Document Organization – Improvements with readability can always be made with judicious editing. However, the current layout displaces many similar themed items. Re-organizing the document in a consistent manner will assist in readability and usability. This includes merger of Title 16 and 17.
2. Processes – In a similar vein, processes need to be defined with a clear understanding of the applicable criteria. There are a number of cases where decisions can be made without any criteria or a chance to challenge the decision.
3. Overlay Zones – Planned developments are effectively design exercises but technically require zone changes for their implementation. A similar comment can apply to manufactured housing overlay. Elimination of the zone change requirement would be appropriate.