Chapter 4

MODEL SMART LAND DEVELOPMENT REGULATIONS WITH COMMENTARY

This chapter contains 11 model smart growth ordinances with commentary. The ordinances are:

- 4.1—Model Mixed-Use Zoning District Ordinance
- 4.2—Model Live/Work Ordinance
- 4.3—Model Town Center Ordinance
- 4.4—Model Affordable Housing Density Bonus Ordinance
- 4.5—Model Unified Development Permit Review Process Ordinance
- 4.6—Model Transfer of Development Rights Ordinance
- 4.7—Model Cluster Development Ordinance
- 4.8—Model Pedestrian Overlay District (POD)
- 4.9—Model On-Site Access, Parking, and Circulation Ordinance
- 4.10—Model Shared Parking Ordinance
- 4.11—Model Street Connectivity Standards Ordinance

We have prefaced each model with a discussion that may include references or web links to ordinances that served as a basis for the model and to useful reference materials related to the ordinance's topic. These references may include links to other ordinances consulted by APA. The discussion will also indicate primary and secondary smart growth principles satisfied by the use of the ordinance (see Chapter 2 for a discussion of smart growth principles). We have interspersed comments throughout each model to highlight the particular issues related to that ordinance section. The models, in some cases, propose lists of permitted, prohibited, and conditional uses. Note that there can be a fair degree of debate as to the use lists in districts, depending on planning goals and objectives. Users of these models should be prepared to review these use lists and determine whether they would be appropriate for their own communities.

4.1 MODEL MIXED-USE ZONING DISTRICT ORDINANCE

The following model zoning district provisions represent a commercial zoning classification that permits, rather than mandates, a vertical mix of commercial and residential uses within the same building. The district is intended to accommodate a physical pattern of development often found along village main streets and in neighborhood commercial areas of older cities.

Primary Smart Growth Principle Addressed: Mix land uses
Secondary Smart Growth Principle Addressed: Compact building design

CX1, Neighborhood Commercial, Mixed-Use District

101. Purpose

The purposes of the CX1, Neighborhood Commercial, Mixed-Use District are to:

(1) Accommodate mixed-use buildings with neighborhood-serving retail, service, and other uses on the ground floor and residential units above the nonresidential space;

(2) Encourage development that exhibits the physical design characteristics of pedestrian-oriented, storefront-style shopping streets; and

(3) Promote the health and well-being of residents by encouraging physical activity, alternative transportation, and greater social interaction.

102. Definitions

As used in this ordinance, the following words and terms shall have the meanings specified herein:

"Floor Area Ratio" means the ratio of a building's gross floor area to the area of the lot on which the building is located.

"Gross Floor Area" is the sum of the gross horizontal areas of all floors of a building measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings. Gross floor area does not include basements when at least one-half the floor-to-ceiling height is below grade, accessory parking (i.e., parking that is available on or off-site that is not part of the use's minimum parking standard), attic space having a floor-to-ceiling height less than seven feet, exterior balconies, uncovered steps, or inner courts.

"Mixed-use Building" means a building that contains at least one floor devoted to allowed nonresidential uses and at least one devoted to allowed residential uses.

103. Allowed Uses

Uses are allowed in "CX1" zoning districts in accordance with the use table of this section.

USE GROUP	Zoning District
Use Category / Specific Use Type	**CX1**
P= permitted by-right C = conditional use N = Not allowed	
RESIDENTIAL	
Household Living	
Artist Live/Work Space located above the ground floor	P
Artist Live/Work Space, ground floor	C
Dwelling Units located above the ground floor	P
Detached House	C
Multiunit (3+ units) Residential	C
Single-Room Occupancy	C
Townhouse	C
Two-Flat	C
Group Living	

USE GROUP	Zoning District
Use Category / Specific Use Type	**CX1**
P= permitted by-right C = conditional use N = Not allowed	
Assisted Living	C
Group Home	P
Nursing Home	C
Temporary Overnight Shelter	C
Transitional Residences	C
Transitional Shelters	C
PUBLIC AND CIVIC	
Colleges and Universities	P
Cultural Exhibits and Libraries	P
Day Care	P
Hospital	N
Lodge or Private Club	N
Parks and Recreation	P
Postal Service	P
Public Safety Services	P
Religious Assembly	P
School	C
Utilities and Services, Minor	P
Utilities and Services, Major	C
COMMERCIAL	
Adult Use	N
Animal Services	
Shelter/Boarding Kennel	N
Sales and Grooming	P
Veterinary	P
Artist Work or Sales Space	P
Drive-Through Facility [See comment]	C
Eating and Drinking Establishments	
Restaurant	P
Tavern	C
Entertainment and Spectator Sports	
Small (1–149 seats)	P
Medium (150–999 seats)	N
Large (1,000+ seats)	N
Financial Services	P
Food and Beverage Retail Sales	P
Gas Stations	N
Lodging	
Small (1–16 guest rooms)	P
Large (17+ guest rooms)	C
Medical Service	P
Office	P
Parking, Commercial (Nonaccessory)	C

USE GROUP	Zoning District
Use Category	**CX1**
Specific Use Type	
P= permitted by-right C = conditional use N = Not allowed	
Personal Service, including health clubs and gyms	P
Repair Service, Consumer, including bicycles	P
Residential Storage Warehouse	N
Retail Sales, General	P
Vehicle Sales, Service, and Repair	N
INDUSTRIAL	
Manufacturing, Production and Industrial Services	
Artisan (hand-tools only; e.g., jewelry or ceramics)	C
OTHER	
Wireless Communication Facilities	
Co-located	P
Freestanding (Towers)	C

Comment: *This use table should be refined to reflect local characteristics and planning objectives. The range of uses allowed should be kept as broad as possible in order to ensure that the district is economically viable. Note that this model allows, as a conditional use, drive-through facilities. Drive-through facilities may be appropriate in such areas in connection with banks and pharmacies. Whether to allow them is a policy choice, no different than other policy choices in selecting permitted uses. Also keep in mind that in buildings with residential units, commercial use issues will be largely self-policing because owner associations and builder/developers will ensure that commercial uses in mixed-use buildings will be compatible with upper-story residential uses.*

104. Commercial Establishment Size Limits

The gross floor area of commercial establishments in the CX1 district shall not exceed [15,000] square feet.

Comment: *Floor area limits are proposed in the model ordinance to help ensure that allowed commercial uses would be geared toward a neighborhood market area. Some local ordinances impose much more restrictive floor area limits in neighborhood-oriented districts. The limit proposed in this model ordinance would accommodate a modern drug store. If floor area limits are employed, the standards should not be so restrictive as to hamper the economic viability of the district.*

105. Indoor/Outdoor Operations

All permitted uses in the CX1 district must be conducted within completely enclosed buildings unless otherwise expressly authorized. This requirement does not apply to off-street parking or loading areas, automated teller machines, or outdoor seating areas.

106. Floor-to-Floor Heights and Floor Area of Ground-floor Space

(1) All commercial floor space provided on the ground floor of a mixed-use building must have a minimum floor-to-ceiling height of [11] feet.

(2) All commercial floor space provided on the ground floor of a mixed-use building must contain the following minimum floor area:

(a) At least [800] square feet or [25] percent of the lot area (whichever is greater) on lots with street frontage of less than [50] feet; or

(b) at least 20 percent of the lot area on lots with [50] feet of street frontage or more.

Comment: *In areas with strong residential real estate markets, ground-floor space is sometimes viewed as an afterthought, particularly when developed by those with a poor understanding of mixed-use development. These types of provisions can help ensure that ground-floor space will meet the needs of future retailers and not sit vacant for years after upper-floor residential units have been leased or sold.*

107. Lot Area per Unit (Density)

The minimum lot area per dwelling unit shall be [1,000] square feet for mixed-use buildings and [1,500] square feet for all other buildings.

Comment: *If mixed-use buildings are desired, such buildings should be rewarded with more flexible development standards. The model ordinance allows higher residential densities in mixed-use buildings than it does in single-use buildings.*

108. Floor Area Ratio

The maximum FAR shall be [2.0] for mixed-use buildings and [1.25] for all other buildings.

Comment: *To encourage mixed-use buildings, the model ordinance allows higher FARs for mixed-use projects.*

109. Setbacks

(1) The entire building façade must abut front and street side property lines or be located within [10] feet of such property lines.

Comment: *Rather than mandating a zero-foot "build-to" line for all properties in CX1 zoning districts, this model offers flexibility to accommodate shallow building setbacks that are sometimes necessary to accommodate features such as outdoor seating/display areas, stoops and sidewalk widening. Alternately, it is possible for the ordinance to establish a formula to determine setbacks based on the average setback of buildings in a block face. For an example of this, see Section 108 of the Model Town Center Center Ordinance (below).*

(2) The minimum rear setback is [*0–30*] percent of the lot depth.

Comment: *The appropriate minimum building setback will depend on lot and development patterns in the area. When alleys abut the rear of CX1 lots, no rear setback may be necessary, except perhaps for upper floors. On the other hand, when CX1-zoned lots will abut the rear property line of residential lots, buildings in the CX1 district should be set back from rear property lines in order to protect the privacy and open feeling expected within residential rear yards.*

(3) No interior side setbacks are required in the CX1 district, except when CX1-zoned property abuts R-zoned property, in which case the minimum side setback required in the CX1 district shall be the same as required for a residential use on the abutting R-zoned lot.

Comment: *Most pedestrian-oriented shopping streets are lined with buildings that span the entire width of the lot. The standard proposed here will help reinforce that pattern, while also ensuring that if a CX1 district abuts a residential zoning district, a "typical" residential side yard will be provided.*

110. Building Height

The maximum building height shall be [*38–50*] feet for mixed-use buildings and [*35–47*] feet for all other buildings.

Comment: *Some communities will want to regulate height by stories rather than feet above grade, since stories will allow for greater flexibility in building design. The standards proposed allow greater height for mixed-use buildings than for single-use buildings because mixed-use buildings are required to have taller floor-to-ceiling heights on the ground floor. The proposed standards will accommodate three- or four-story buildings.*

111. Off-Street Parking

(1) [Insert off-street parking standards]

(2) No off-street parking is required for nonresidential uses in CX1 districts unless such uses exceed [3,000] square feet of gross floor area, in which case off-street parking must be provided for the floor area in excess of [3,000] square feet.

Comment: *Paragraph (2) may be incorporated into paragraph (1). Exempting small retail businesses from compliance with off-street parking requirements will help promote pedestrian-oriented character and encourage use/reuse of storefront retail space. Communities should also examine off-street parking ratios with an eye toward reducing the amount of off-street parking required overall and encouraging shared and off-site parking arrangements.*

(3) Off-street parking spaces must be located to the rear of the principal building or otherwise screened so as to not be visible from public right-of-way or residential zoning districts.

112. Transparency

(1) A minimum of [*60–75*] percent of the street-facing building façade between two feet and eight feet in height must be comprised of clear windows that allow views of indoor space or product display areas.

(2) The bottom of any window or product display window used to satisfy the transparency standard of paragraph (1) above may not be more than [*3–4.5*] feet above the adjacent sidewalk.

(3) Product display windows used to satisfy these requirements must have a minimum height of [4] feet and be internally lighted.

113. Doors and Entrances

(1) Buildings must have a primary entrance door facing a public sidewalk. Entrances at building corners may be used to satisfy this requirement.

(2) Building entrances may include doors to individual shops or businesses, lobby entrances, entrances to pedestrian-oriented plazas, or courtyard entrances to a cluster of shops or businesses.

Comment: *Requiring ground-floor windows and sidewalk-facing entrances help make for a more pleasing pedestrian environment.*

114. Vehicle and Driveway Access

No curb cuts are allowed for lots that abut alleys.

Comment: *Driveways that cross sidewalks disrupt pedestrian movements and pose safety threats. They should be the rare exception in neighborhood-oriented mixed-use districts.*

References

Denver, Colorado, City of. Div. 15. Mixed-Use Districts, Sections 59-301--59-320, website [accessed November 5, 2004]: www.municode.com/resources/gateway.asp?pid=10257&sid=6

Fort Worth, Texas, City of. Zoning Code, Mixed Use Sections 4.902, Low-Density Mixed Use [accessed November 5, 2004]: www.fortworthgov.org/csec/disclaimer.asp

Maryland, State of. Infill Development Model [accessed November 5, 2004]: www.mdp.state.md.us/mgs/infill/InfillFinal_1.pdf

Orland, Florida, City of. Southeast Orlando Sector Plan Development Guidelines and Standards [accessed November 5, 2004]: www.cityoforlando.net/planning/deptpage/sesp/sespguid.htm

4.2 MODEL LIVE/WORK ORDINANCE

The notion of residents living and working on a single premise may seem novel in the context of modern urban life, but it was the norm until the early decades of the twentieth century. Storekeepers, trades people, doctors, lawyers, and others commonly lived upstairs from or adjacent to their shops or offices. A wide range of economic, societal, and political factors resulted in such arrangements becoming uncommon and even outlawed. Rapid suburbanization, increased car dependence, continued adoption of Euclidean-type zoning that called for separating land uses by category, a burgeoning middle class, and a desire on the part of urbanites for relief from overcrowding and urban pollution all contributed to such change.

Live/work units emerged in the 1970s as manufacturers moved out of large industrial buildings and warehouses in downtown areas and artists began to occupy and use these spaces. By the late 1980s, a number of cities, including New York, Boston, Chicago, and San Francisco, began to legalize the live/work concept by adapting building and zoning regulations to accommodate them. This era of loft and warehouse conversions coincided with significant private investment in adaptive reuse of the structures for all manner of uses. Soon the artists were joined small businesses, restaurants, personal and professional service businesses, coffee shops, galleries, and other sole-proprietors who wanted to live near where they worked. In the 25 or more years since this trend began, many warehouse and manufacturing districts, including Printer's Row in Chicago, Larimer Square in Denver, and the South-of-Market district in San Francisco have become some of the most pricey and sought-after residential and employment locations and entertainment destinations.

Communities today are once again embracing many features of traditional town planning, including allowing a mix of land uses both within a district and within a building. The modern iteration of the live/work option exists in two distinct forms: (1) home occupations and (2) live/work units. A home occupation ordinance is intended to allow modest, low-impact business or commercial uses within a residence in a residential zone. Such uses are subject to significant limitations on the permitted extent of commercial activities, hours of operation, parking, and number of employees to ensure that such uses do not upset the residential character of the neighborhood. In contrast, a live/work ordinance may allow incidental residential uses within commercial, office, or industrial buildings and zones.

Where such uses are allowed does depend on what the city's objective is for allowing such uses at all. Mark Troxel of the Seattle Planning Department says that the live/work concept—as applied through the Seattle zoning ordinance—would be more aptly named a "work/live" ordinance because the emphasis is on maintaining the commercial or industrial character of the district while allowing some residences. Seattle also prohibits live/work units in industrial zones in adherence with the city's policy to preserve industrial lands for industrial uses. At the same time the city recognizes that entrepreneurs and creative professionals in new media and more traditional businesses are seeking ways to integrate their home life and work life, and improved technology has allowed workers to telecommute from home. To help foster live/work units, the city allows them in all commercial districts (Troxel 2004).

The strategy of wanting to retain industrial land for industrial uses is understandable, especially where there is a strong demand for residential uses. Alternatively, live-work ordinances do help older cities with a surplus of underused or industrial land to revitalize such areas by providing development alternatives.

Primary Smart Growth Principle Addressed: Mixed land use.
Secondary Smart Growth Principle Addressed: Range of housing choices.

101. Definitions

As used in this ordinance:

"Live/work unit" or **"live/work space"** means a building or spaces within a building used jointly for commercial and residential purposes where the residential use of the space is secondary or accessory to the primary use as a place of work.

[*or*]

"Live-work unit" means a structure or portion of a structure:

(a) That combines a commercial or manufacturing activity allowed in the zone with a residential living space for the owner of the commercial or manufacturing business, or the owner's employee, and that person's household;

(b) Where the resident owner or employee of the business is responsible for the commercial or manufacturing activity performed; and

(c) Where the commercial or manufacturing activity conducted takes place subject to a valid business license associated with the premises.

102. Purposes

The purposes of this ordinance are to:

(a) Provide for the appropriate development of units that incorporate both living and working space;

(b) Provide flexibility for the development of live/work units, particularly within existing buildings;

(c) Provide locations where appropriate new businesses can start up;

(d) provide opportunities for people to live in mixed-use industrial and commercial areas where compatible with existing uses;

(e) Protect existing and potential industrial uses and nearby residential uses from conflicts with each other; and

(f) Ensure that the exterior design of live/work buildings is compatible with the exterior design of commercial, industrial, and residential buildings in the area, while remaining consistent with the predominant workspace character of live/work buildings.

103. Where Live/Work Units Are Permitted

(1) Live/work units are permitted in all commercial [and manufacturing] zones.

Comment: *This provision allows the option of allowing live/work units in manufacturing or industrial zones. The city of Oakland authorizes this; Seattle does not. Seattle's decision to limit such uses to commercial districts reflects a city policy of protecting manufacturing districts from encroachment and displacement from residential or other uses. Seattle does, however, conditionally permit artist's studio/dwellings—which are regulated separately from general live/work units—in manufacturing zones.*

(2) Any commercial use permitted in the zoning district applicable to the property is permitted in the live/work unit.

(3) Live/work units at street level are prohibited where single-purpose residential structures are prohibited.

(4) Where permitted, live/work units located at street level are subject to the development standards for ground-floor retail or commercial establishments as follows, and any additional standards for ground-floor commercial establishments provided in section ___ of the [zoning ordinance]:

Comment: *The purpose of the following provisions is to allow live/work units in neighborhood commercial districts without compromising the districts' vibrant commercial environment. Seattle has several neighborhood commercial streets wherein single-purpose residential buildings are prohibited. In those areas, street-level live-work units are prohibited, but are allowed in the rear or on upper floors. Seattle's ordinance also contains provisions for the appearance and function of street-level live/work units adapted for this model.*

(a) A minimum of 80 percent of a structure's street front facade at street level shall be occupied by nonresidential uses.

(b) A minimum of 51 percent of the portion of a structure's street front facade that contains required nonresidential use shall be at or above sidewalk grade.

(c) In districts where live/work units are permitted at street level, the live/work unit shall have a minimum floor-to-floor height of [13] feet.

(d) In districts where live/work units are permitted at street level, parking for live-work units on neighborhood commercial streets and in mixed-use zones is prohibited in front of the building.

(e) Live/work units that exceed [2,000] square feet must have at least two exits.

[(f) Within each live/work unit, the living area shall not exceed [one-third] of the total floor area of the unit.]

Comment: *Not every live/work ordinance contains a required living area/working area ratio or proportion. Oakland, California, requires a ratio of one-to-three living-to-working area. In an effort to provide flexibility, Seattle opted not to set proportion standards.*

104. Business License Required

At least one resident in each live/work unit shall maintain a valid business license and [zoning permit] for a business on the premises.

Comment: *Not all businesses may require a valid business license. For example, an artist may not be required to have one.*

105. Parking

For live/work units of less than [2,500] square feet, one parking space is required for each unit. For live/work units greater than [2,500] square feet, required parking will be based on the applicable parking standard for the nonresidential use or the closest similar use as determined by the [zoning administrator].

Comment: *The relatively nonstringent parking standards provided here reflect the fact that a person occupying a relatively small live/work unit may have less use for a car given that he or she works on the premises. Larger units may have additional residents as well as employees, and thus must provide more parking.*

References

Berkeley, California, City of. Zoning Code. Chapter 23E.20 Live/Work Provisions [accessed November 4, 2004]: www.ci.berkeley.ca.us/bmc/Berkeley_Zoning_Code/Sub-Title_23E/20/index.html

Live/Work Institute, available at www.live-work.com/revised/lwi/.

Oakland, California, City of. Planning Code, Title 17, 17.102.190 Joint living and work quarters [accessed December 27, 2004]: http://bpc.iserver.net/codes/oakland/

San Jose, California, City of. Zoning Ordinance, Section 20.40.130, Live Work Units [accessed November 4, 2004]: www.sanjoseca.gov/planning/pdf/zoning_code.pdf

Seattle, Washington, City of. Live-Work Units, Ordinance No. 12196 (passed June 23, 2003), [accessed November 4, 2004]: http://www.ci.seattle.wa.us/dclu/news/20030715a.asp
Mark Troxel, Senior Planner, City of Seattle, telephone interview, February 26, 2004.

4.3 MODEL TOWN CENTER ZONING ORDINANCE

The following ordinance model establishes a town center that serves as a high-density, high-intensity, mixed-use employment center. Three types of subdistricts are authorized:

> (1) TC-1, Town Center Core Subdistrict, primarily intended to encourage and enhance the high-intensity office and employment center function of the Town Center's core area;
>
> (2) TC-2, Town Center Mixed-Use Subdistrict, primarily intended to support mixed-use (residential/nonresidential) projects that contain active ground-floor uses within walking distance of the TC-1 district; and
>
> (3) TC-3, Town Center Residential Subdistrict, primarily intended to accommodate moderate- to high-density residential development and small-scale ground-floor commercial uses with residential units above. The district also accommodates low-intensity office development compatible with the residential character of the TC-3 district.

The model ordinance describes, in Section 104, a set of permitted uses, which are slightly different for each use district. While every community may not want to establish and map all three different types of districts, this table offers guidance for the types of uses that might be allowed if the community opts for the three-district alternative.

Note that drive-in facilities are not allowed uses in the TC districts because of the potential of interfering with the desired pedestrian orientation of the land-use mix. Similarly, the TC districts also require a certain level of transparency for ground-floor retail to give buildings a human scale (see Section 112). In core areas such as town centers, setbacks are critical; the model below allows setback averaging up to a maximum of 15 feet to reflect the context of adjoining buildings (see Section 108).

Primary Smart Growth Principle Addressed: Mix land uses
Secondary Smart Growth Principle Addressed: Walkable neighborhoods, distinctive and attractive places.

TC, Town Center District

101. Purpose

The purposes of a TC, Town Center district, are to:

> (a) Promote development of a compact, pedestrian-oriented town center consisting of a high-intensity employment center, vibrant and dynamic mixed-use areas, and residential living environments that provide a broad range of housing types for an array of housing needs;
>
> (b) Promote a diverse mix of residential, business, commercial, office, institutional, educational, and cultural and entertainment activities for workers, visitors, and residents;

(c) Encourage pedestrian-oriented development within walking distance of transit opportunities at densities and intensities that will help to support transit usage and town center businesses;

(d) Promote the health and well-being of residents by encouraging physical activity, alternative transportation, and greater social interaction;

(e) Create a place that represents a unique, attractive, and memorable destination for visitors and residents; and

(f) Enhance the community's character through the promotion of high-quality urban design.

Comment: *These "generic" purpose statements reflect the intent of typical town center-style districts. Actual purpose statements should reflect the objectives of the plans that the zoning regulations are intended to implement.*

102. Subdistricts

The TC district consists of three mapped subdistricts that reflect the existing and desired places within the Town Center area. They are:

(a) TC-1, Town Center Core Subdistrict. The TC-1 subdistrict is primarily intended to encourage and enhance the high-intensity office and employment center function of the Town Center's core area. The TC-1 subdistrict regulations support the Town Center's role as a hub of regional importance for business, communications, office, government, retail, culture, education, visitor accommodations, and entertainment. The district regulations support a mix of large-scale offices, commercial, public, recreation, and entertainment uses. The TC-1 district also accommodates mixed-use and residential projects as important components of the area's vitality.

(b) TC-2, Town Center Mixed-Use Subdistrict. The TC-2, Town Center Mixed-use subdistrict is primarily intended to support mixed-use (residential/nonresidential) projects with active ground-floor uses within one-quarter of a mile of the TC-1 district.

(c) TC-3, Town Center Residential Subdistrict. The TC-3, Town Center Residential subdistrict is primarily intended to accommodate moderate- to high-density residential development and small-scale ground-floor commercial uses with residential units above. The district also accommodates low-intensity office development compatible with the residential character of the TC-3 district.

Comment: *This model suggests a basic framework consisting of three districts. The number of districts needed to implement town center planning objectives will vary from community to community, reflecting the types of places and activities that exist within the area as well as the community's agreed-upon vision for its town center area. Note that, if desired, the TC-2 and TC-3 subdistricts can be combined if the distinctions between them are perceived as too fine for regulation or are simply not needed in a particular community.*

103. Definitions

As used in this ordinance, the following words and terms have the meanings specified below:

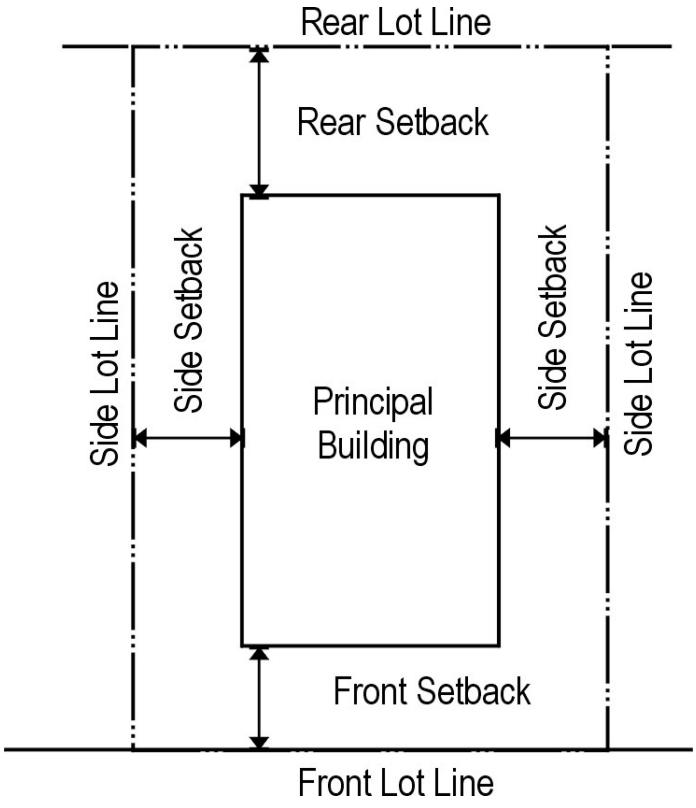
"Floor Area Ratio" means the ratio of a building's gross floor area to the area of the lot on which the building is located.

"Gross Floor Area" is the sum of the gross horizontal areas of several floors of a building measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings. Gross floor area does not include basements when at least one-half the floor-to-ceiling height is below grade. Gross floor area does not include accessory parking, attic space having a floor-to-ceiling height less than seven feet, exterior balconies, uncovered steps, or inner courts.

"Mixed-use Building" means a building that contains at least one floor devoted to allowed nonresidential uses and at least one devoted to allowed residential uses.

"Setback" means the open, unobstructed area required to be provided between the furthermost projection of a building and the adjacent property line.

Location of Lot Lines and Setbacks



104. Allowed Uses

Uses are allowed in "TC" zoning districts in accordance with the use table of this section.

USE GROUP	SUBDISTRICT		
Use Category / Specific Use Type	**TC-1**	**TC-2**	**TC-3**

P = permitted by-right C = conditional use N = Not allowed

USE GROUP	SUBDISTRICT		
Use Category Specific Use Type	**TC-1**	**TC-2**	**TC-3**
P = permitted by-right C = conditional use N = Not allowed			
RESIDENTIAL			
Household Living			
Artist Live/Work Space located above the ground floor	P	P	P
Artist Live/Work Space, ground floor	N	C	P
Dwelling Units located above the ground floor	P	P	P
Dwelling Units located on the ground floor	N	C	P
Group Living			
Assisted Living	C	C	C
Group Home	C	C	C
Nursing Home	C	C	C
Temporary Overnight Shelter	C	C	C
Transitional Residences	C	C	C
Transitional Shelters	C	C	C
PUBLIC AND CIVIC			
Colleges and Universities	C	C	N
Cultural Exhibits and Libraries	P	P	C
Day Care	P	P	P
Hospital	C	C	C
Lodge or Private Club	P	P	N
Parks and Recreation	P	P	P
Postal Service	P	P	N
Public Safety Services	P	P	P
Religious Assembly	P	P	P
School	C	C	C
Utilities and Services, Minor	P	P	P
Utilities and Services, Major	C	C	C
COMMERCIAL			
Animal Services			
Shelter/Boarding Kennel	N	N	N
Sales and Grooming	P	P	N
Veterinary	P–	P	N
Artist Work or Sales Space	P	P	P
Eating and Drinking Establishments			
Restaurant	P	P	P[1]
Tavern	P	P	C[1]
Entertainment and Spectator Sports			
Small (1–149 seats)	P	P	N
Medium (150–999)	P	P	N
Large (1,000+)	P	C	N
Financial Services	P	P	P[1]
Food and Beverage Retail Sales	P	P	P[1]
Gas Stations	N	N	N
Lodging			
Small (1–16 guest rooms)	P	P	P
Large (17+ guest rooms)	P	P	N
Medical Service	P	P	P[1]

USE GROUP	SUBDISTRICT		
Use Category Specific Use Type	**TC-1**	**TC-2**	**TC-3**
P = permitted by-right C = conditional use N = Not allowed			
Office	P	P	P[1]
Parking, Commercial (Nonaccessory)	C	C	C
Personal Service, including health clubs and gyms	P	P	P[1]
Repair Service, Consumer, including bicycles	P	P	P[1]
Residential Storage Warehouse	N	N	N
Retail Sales, General	P	P	P[1]
Vehicle Sales, Service, and Repair	N	N	N
INDUSTRIAL			
Manufacturing, Production and Industrial Services			
Artisan (hand-tools only; e.g., jewelry or ceramics)	C	C	N
OTHER			
Wireless Communication Facilities			
Co-located	P	P	P
Freestanding (Towers)	C	C	C

[1] Allowed only in buildings containing more than 50 dwelling units and may only be located on the first or second floor. Individual business establishments are limited to a maximum of 5,000 square feet in area. Larger establishments or expansions beyond 5,000 square feet require conditional use approval.

Comment: *This use table should be refined to reflect local characteristics and planning objectives.*

105. Floor Area Ratio

All development in TC districts is subject to the following maximum FAR standards:

District	Maximum Floor Area Ratio
TC-1	[varies: 3.0–7.0 "typical"]
TC-2	[varies: 3.0–5.0 "typical"]
TC-3	[varies: 2.0–3.0 "typical"]

Comment: *This table suggests a typical range of FAR standards that may be appropriate for buildings within the boundaries of a Town Center district. In establishing proposed standards, communities will want to survey existing development to ascertain typical FAR ranges within the various areas to be covered by the TC district. Care should be taken to ensure that allowed FAR levels are high enough to encourage moderate- to high-intensity buildings, while not setting the allowed levels so high that new buildings would be out-of-scale with the surrounding areas. In underdeveloped town center areas, communities may want to consider increasing the maximum allowable FAR to accommodate larger buildings.*

106. Lot Area per Unit (Density)

All residential development in TC districts is subject to the following standards for lot area per dwelling unit:

District	Minimum Lot Area Per Dwelling Unit
TC-1	[varies: 200–400 square feet]
TC-2	[varies: 200–400 square feet]
TC-3	[varies: 300–700+ square feet]

Comment: *Within the types of urban and semi-urban settings where a town center district is likely to be applied, it is fairly common to regulate residential density in terms of the amount of lot area required per dwelling unit. It should be noted that some jurisdictions—notably Seattle—have chosen to abandon residential density standards in village center and mixed-use commercial areas. The thinking behind such an approach is that density is already indirectly regulated by many other controls, such as building codes, parking requirements, FARs, maximum height limits and setback controls. If the community wants to encourage residential development, the logic goes, why not remove the sometimes-arbitrary control that density limits represent.*

107. Building Height

All development in TC districts is subject to the following maximum building height standards:

District	Maximum Building Height
TC-1	[varies: 5 stories to unlimited]
TC-2	[varies: 4–7 stories]
TC-3	[varies: 3–5 stories]

Comment: *Communities that want to promote building forms compatible with the physical context of the existing area will want to establish maximum building heights. Height limits can also play an important role in protecting neighborhoods on the periphery of the town center area. Building step-backs (skyplane) standards, such as those proposed above, should be used to soften the height transition between town center-style districts and lower-intensity neighborhood districts.*

When height limits are used, they should be calibrated to reflect FAR and building coverage limits. To calculate the number of building stories required to make full use of the allowed FAR, divide FAR by the maximum building coverage. If, for example, the maximum FAR allowed is 2.0 and the maximum building coverage allowed is 66 percent, it will require a building of three or more stories to achieve the full FAR (2.0÷0.66=3.03). When no building coverage limits apply, maximum building height limits (in stories) should be established at no less than 1.5 to 2.5 times the allowed FAR (e.g., three to five stories in a district that allows an FAR of 2.0). In mid- and high-rise districts, the rule of thumb is typically three to four stories for each additional 1.0 FAR.

108. Setbacks

(1) No minimum front or street side building setback is required.

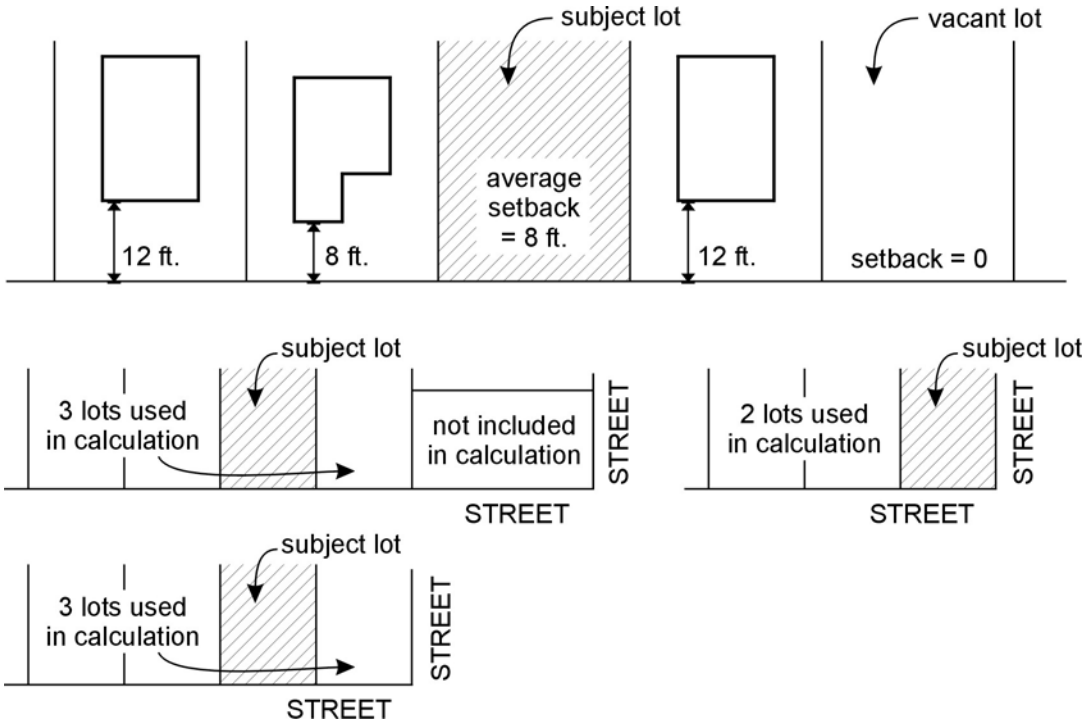
(2) The maximum front and street side building setback may not exceed the average front yard depth of the nearest two lots on either side of the subject lot or 12 feet, whichever is less.

> (a) If one or more of the lots required to be included in the averaging calculation are vacant, such vacant lots will be deemed to have a yard depth of 0 feet.
>
> (b) Lots fronting a different street than the subject lot or separated from the subject lot by a street or alley may not be used in computing the average.
>
> (c) When the subject lot is a corner lot, the average setback will be computed on the basis of the 2 adjacent lots that front on the same street as the subject lot.

(d) When the subject lot abuts a corner lot fronting on the same street, the average setback will be computed on the basis of the abutting corner lot and the nearest two lots that front on the same street as the subject lot.

Calculating Setbacks

Example: (12 ft. + 8 ft.+12 ft.+ 0 ft.)/4 = 8 ft.

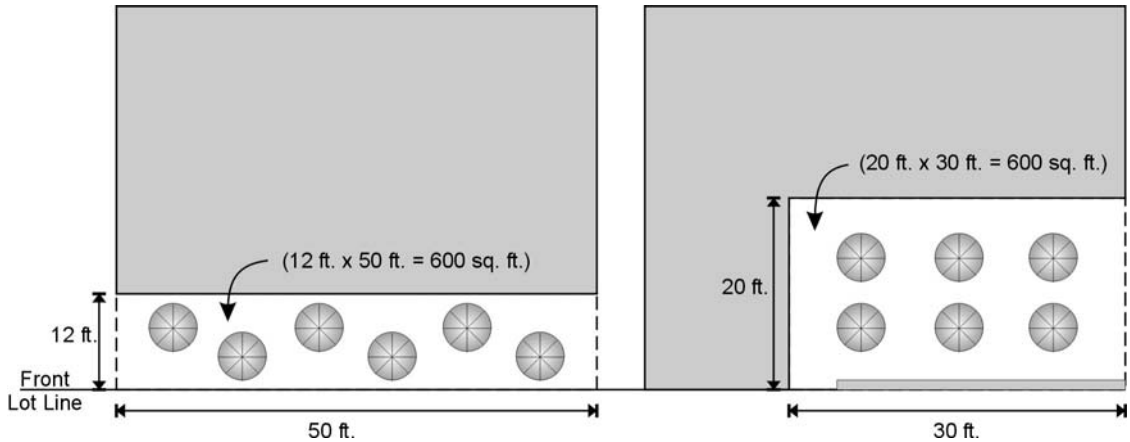


(3) The following exceptions to the maximum front and street side building setbacks apply:

(a) A portion of the building may be set back from the maximum setback line in order to provide an articulated façade or accommodate a building entrance feature, provided that the total area of the space created must not exceed one square foot for every linear foot of building frontage.

(b) A building may be set back farther than the maximum setback in order to accommodate an outdoor eating area. In order to preserve the continuity of the streetwall, the building may be set back no more than 12 feet from the front or street side property line or at least 40 percent of the building façade must be located at the maximum setback line. The total area of an outdoor eating area that is located between a public sidewalk and the building façade may not exceed 12 times the building's street frontage in linear feet.

Exceptions to Minimum Front and Street Side Setbacks



Comment: *Rather than mandating a zero-foot "build-to" line for all properties in TC zoning districts, this model offers flexibility to accommodate contextual setbacks, reflecting the setbacks of adjacent buildings. Paragraph (2) allows buildings to be set back to reflect the building setbacks of neighboring buildings. Special provisions are also included to accommodate building recesses and setbacks for building entries and outdoor seating areas.*

(4) The minimum rear setback must be [*0–30*] percent of the lot depth.

Comment: *The appropriate minimum building setback will depend on lot and development patterns in the area. When alleys abut the rear of lots, no rear setback may be necessary, except perhaps for upper floors. On the other hand, when TC-zoned lots will abut the rear property line of low- to moderate-density residential lots, buildings in TC districts should be set back from rear property lines in order to protect the privacy and open feeling expected within residential rear yards.*

(5) No interior side setbacks are required in the TC district, except when TC-zoned property abuts R-zoned property, in which case the minimum side yard setback required in the TC district must be the same as required for a residential use on the abutting R-zoned lot.

Comment: *Streets within town center areas are often lined with buildings that span the entire width of the lot. The standard proposed here will help reinforce that pattern, while also ensuring that a "typical" residential side yard will be provided in areas abutting neighborhood residential zoning districts.*

109. Off-Street Parking

(1) One off-street parking space must be provided for each dwelling unit.

(2) No off-street parking is required for nonresidential uses in TC-1 district unless the gross floor area of such uses exceed twice the area of the lot, in which case off-street parking must be provided at a minimum ratio of [one or two] spaces per each 1,000 square feet of gross floor area in excess of twice the lot area.

(3) No off-street parking is required for nonresidential uses in TC-2 district unless the gross floor area of such uses exceeds the area of the lot, in which case off-street parking must be provided at a minimum ratio of [one or two] spaces per each 1,000 square feet of gross floor area in excess of twice the lot area.

(4) No off-street parking is required for nonresidential uses in TC-3 district unless the gross floor area of such uses exceeds 5,000 square feet of gross floor area, in which case off-street

parking must be provided at a minimum ratio of [one or two] spaces per each 1,000 square feet of gross floor area in excess of 5,000 square feet.

(5) All off-street parking spaces must be located to the rear of the principal building or otherwise screened so as to not be visible from public right-of-way or residential zoning districts.

Comment: *Although many ordinances require 1.5 or two parking spaces per dwelling unit, the nature of most TC-style districts warrants consideration of lower residential parking ratios, such as one space per unit (lower perhaps for affordable units, elderly housing, and areas with excellent transit accessibility). Exempting certain sizes of nonresidential uses from compliance with off-street parking requirements will help promote pedestrian-oriented character and encourage use/reuse of storefront retail space.*

110. Indoor/Outdoor Operations

All permitted uses in the TC districts must be conducted within buildings unless otherwise expressly authorized. This requirement does not apply to off-street parking or loading areas, automated teller machines, or outdoor seating areas, alone or in connection with restaurants.

111. Floor-to-Floor Heights and Floor Area of Ground-floor Space

(1) All nonresidential floor space provided on the ground floor of a mixed-use building must have a minimum floor-to-ceiling height of 11 feet.

(2) All nonresidential floor space provided on the ground floor of a mixed-use building must contain the following minimum floor area:

> (a) At least 800 square feet or 25 percent of the lot area (whichever is greater) on lots with street frontage of less than 50 feet; or
>
> (b) At least 20 percent of the lot area on lots with 50 feet of street frontage or more.

Comment: *In areas with strong residential real estate markets, ground-floor space is sometimes viewed as an afterthought or an incidental area, particularly when developed by those with a poor understanding of mixed-use development. In other words, if profit margins are high enough on the residential units, inexperienced developers may have no incentive to make ground-floor commercial space attractive and actually useable for retail activities. These types of provisions can help ensure that ground-floor space will meet the needs of future retailers and not sit vacant for years after upper-floor residential units have been leased or sold.*

112. Transparency

(1) A minimum of [*60–75*] percent of the street-facing building façade between two feet and eight feet in height must be comprised of clear windows that allow views of indoor nonresidential space or product display areas.

(2) The bottom edge of any window or product display window used to satisfy the transparency standard of paragraph (1) above may not be more than [*3–4.5*] feet above the adjacent sidewalk.

(3) Product display windows used to satisfy these requirements must have a minimum height of four feet and be internally lighted.

Comment: *There is always a possibility that merchants will choose to block required windows with display shelves, signs, and other visual obstructions, either because they view windows as a security concern or because they desire to maximize product display area. This ordinance does not expressly prohibit this practice because of the difficulty of enforcing such prohibitions. Moreover, the most important objective is that buildings be designed to include such pedestrian-oriented features rather than later having to retrofit existing storefront designs.*

113. Doors and Entrances

(1) Buildings must have a primary entrance door facing a public sidewalk. Entrances at building corners may be used to satisfy this requirement.

(2) Building entrances may include doors to individual shops or businesses, lobby entrances, entrances to pedestrian-oriented plazas, or courtyard entrances to a cluster of shops or businesses.

Comment: *Requiring ground-floor windows and sidewalk-facing entrances help make for a more pleasing pedestrian environment. People are attracted to spaces with interesting, pedestrian-scale views and visually appealing elements, such as window displays. Identifiable and accessible building entrances make it easier for pedestrians to navigate the area and thus encourage them to spend time there.*

114. Vehicle and Driveway Access

No curb cuts are allowed for lots that abut alleys.

Comment: *Driveways that cross sidewalks disrupt pedestrian movements and pose safety threats. They should be the rare exception in neighborhood-oriented mixed-use districts.*

115. Drive-through Facilities

Drive-through facilities for vehicles are prohibited in all TC districts.

Comment: *Some communities may elect to treat businesses with drive-through facilities as a conditional use, requiring case-by-case approval. When that approach is used, standards should be included requiring that drive-through windows be located behind the building and that pedestrian circulation routes be protected from auto traffic. Note that this prohibition does not apply to service windows, such as a service window for an ice cream parlor.*

References

Bellevue, Washington, City of. Land Use Code, Part 20.25I Community Retail Design District [accessed December 13, 2004]:

http://search.mrsc.org/nxt/gateway.dll/blvu?f=templates&fn=blvupage.htm$vid=municodes: Bellevue

Lacey, Washington, City of. Municipal Code, Title 16, Chapter 16.59, Village Center Zone [accessed November 8, 2004]: www.ci.lacey.wa.us/lmc/lmc_main_page.html

Miami-Dade County, Florida. Downtown Kendall Urban Center District [accessed November 4, 2004]: http://sustainable.state.fl.us/fdi/fscc/resource/document/docs/kendall99-166.pdf

Providence, Rhode Island, City of. Municipal Code, Zoning, Chapter 27, Article 5, Section 502. Downcity District [accessed November 8, 2004]: http://www.municode.com/resources/gateway.asp?pid=11458&sid=39

San Diego, California, City of. Municipal Code, Zoning Regulations, Chapter 13, Art. 2, Division 11, Urban Village Overlay Zone [accessed November 8, 2004]: http://clerkdoc.sannet.gov/legtrain/mc/MuniCodeChapter13/Ch13Art02Division11

Tacoma, Washington, City of. Municipal Code, Land Use Regulatory Code, Title 13, Chapter 13.06A, Downtown Tacoma [accessed November 8, 2004]: www.cityoftacoma.org/default.asp?main=/54municode/default.asp

Winter Springs, Florida, City of. Municipal Code, Zoning, Chapter 20, Sections 20-230 *et seq.*, Town Center District Code [accessed November 8, 2004]: http://www.winterspringsfl.org/towncenter.html

4.4 MODEL AFFORDABLE HOUSING DENSITY BONUS ORDINANCE

Many communities today are adopting inclusionary zoning ordinances with the intent of increasing the supply of affordable housing. These ordinances either require or encourage the provision of affordable housing in market-rate development, typically by the provision of density bonuses and other incentives. The ordinances include:

- Definitions, including those defining "affordable housing" and "low- and moderate-income households";
- Procedures for the review of affordable housing developments;
- A requirement that the developer of housing enter into development agreements that will ensure that the affordable housing, whether for sale or for rent, remains affordable;
- Designation of an officer or body to review and approve applications for developments that include affordable housing; and
- Provisions for enforcement.

Some communities with such ordinances have made a political commitment to such housing, recognizing that, in some real estate markets, affordable housing would not be produced without governmental intervention, and others have adopted such ordinances to respond to state-established housing goals. In addition, such ordinances ensure that critical governmental service workers (e.g., teachers, firefighters, and police officers) can afford to live in communities where they work despite their low pay. Numerous monographs and studies have described the operation and success of such programs in both suburban areas and central cities. For a good overview, see Morris (2000), Ross (2003), and Brunick (2004a and 2004b).

The following model ordinance for affordable housing provides two alternatives: (1) a mandatory alternative in which affordable housing is required, in some manner, in all development that produces new residential units, either through new construction or through rehabilitation and conversion of existing units or commercial space; (2) an incentive-based approach in which a density bonus of one market-rate unit for each affordable unit is offered as of right. In either case, the affordable housing density bonus is offered for all types of residential construction. The model ordinance uses the U.S. Department of Housing and Urban Development definitions of low- and moderate-income to establish eligibility criteria for purchase or rental of affordable units.

An applicant for an Affordable Housing Development would be required to submit an Affordable Housing Development Plan and enter into a development agreement with the local government. The development agreement would fix the responsibilities of the respective parties with regard to the provision of affordable housing. Under this model, affordable housing units need not only be those subsidized by the federal or state government. Rather, they can be subject to private deed restrictions to ensure they remain affordable for a period of time, typically for 30 years. In the case of for-sale affordable units, purchasers would have to be income-qualified, and appreciation of the dwelling unit would be calculated on the basis of certain listed factors to ensure that the unit remains affordable in the case of resale. In the case of for-rent affordable units, the development agreement would establish an income-qualification process to ensure that the affordable units are rented to

eligible households. The model ordinance also describes the creation of an affordable housing trust fund that can be used for a variety of purposes, including waivers of permit and tap-in fees.

Primary Smart Growth Principle Addressed: Range of housing choices.
Secondary Smart Growth Principle Addressed: Not applicable

101. Purpose

The purposes of this ordinance are to:

(a) Require the construction of affordable housing [or payment of fees-in-lieu] as a portion of new development within the community;

[Or]

(a) Create incentives for the provision of affordable housing as a portion of certain new development within the community;

(b) Implement the affordable housing goals, policies, and objectives contained in the [*insert name of local government's*] comprehensive plan;

(c) Ensure the opportunity of affordable housing for employees of businesses that are located in or will be located in the community; [and]

(d) Maintain a balanced community that provides housing for people of all income levels [; and]

[(e) Implement planning for affordable housing as required by [*cite to applicable state statutes*]].

102. Definitions

As used in this ordinance, the following words and terms shall have the meanings specified herein:

"**Affordable Housing**" means housing with a sales price or rental amount within the means of a household that may occupy moderate- and low-income housing. In the case of dwelling units for sale, affordable means housing in which mortgage, amortization, taxes, insurance, and condominium or association fees, if any, constitute no more than [30] percent of such gross annual household income for a household of the size that may occupy the unit in question. In the case of dwelling units for rent, affordable means housing for which the rent and utilities constitute no more than [30] percent of such gross annual household income for a household of the size that may occupy the unit in question.

"Affordable Housing Development Agreement" means a written agreement between an applicant for a development and the [*name of local government*] containing specific requirements to ensure the continuing affordability of housing included in the development.

"Affordable Housing Dwelling Unit" means any affordable housing subject to covenants or restrictions requiring such dwelling units to be sold or rented at prices preserving them as affordable housing for a period of at least [30] years.

"**Affordable Housing Development**" means any housing subsidized by the federal or state government, or any housing development in which at least [20] percent of the housing units are affordable dwelling units.

"Affordable Housing Development Plan" means that plan prepared by an applicant for an Affordable Housing Development under this ordinance that outlines and specifies the development's compliance with the applicable requirements of this ordinance.

"Affordable Housing Trust Fund" means the fund created by the [name of local government] pursuant to Section 109 of this ordinance.

"Affordable Housing Unit" means either a housing unit subsidized by the federal or state government or an affordable dwelling unit.

Comment: *Note that an "Affordable Housing Unit" can either be federally or state subsidized or subject to covenants and deed restrictions that ensure its continued affordability.*

"Conversion" means a change in a residential rental development or a mixed-use development that includes rental dwelling units to a development that contains only owner-occupied individual dwelling units or a change in a development that contains owner-occupied individual units to a residential rental development or mixed-use development.

"Density Bonus" means an increase in the number of market-rate units on the site in order to provide an incentive for the construction of affordable housing pursuant to this ordinance.

"Development" means the entire proposal to construct or place one or more dwelling units on a particular lot or contiguous lots including, without limitation, a planned unit development, site plan, or subdivision.

"Lot" means either: (a) the basic development unit for determination of area, width, depth, and other dimensional variations; or (b) a parcel of land whose boundaries have been

established by some legal instrument, such as a recorded deed or recorded map, and is recognized as a separate legal entity for purposes of transfer of title.

"**Low-Income Housing**" means housing that is affordable, according to the U.S. Department of Housing and Urban Development, for either home ownership or rental, and that is occupied, reserved, or marketed for occupancy by households with a gross household income that does not exceed 50 percent of the median gross household income for households of the same size within the [*insert name of housing region or county*] in which the housing is located.

"Median Gross Household Income" means the median income level for the [*insert name of housing region or county*], as established and defined in the annual schedule published by the Secretary of the U.S. Department of Housing and Urban Development, adjusted for household size.

"**Moderate-Income Housing**" means housing that is affordable, according to the federal Department of Housing and Urban Development, for either home ownership or rental, and that is occupied, reserved, or marketed for occupancy by households with a gross household income that is greater than 50 percent but does not exceed 80 percent of the median gross household income for households of the same size within the [*insert name of housing region or county*] in which the housing is located.

"Renovation" means physical improvement that adds to the value of real property, but that excludes painting, ordinary repairs, and normal maintenance.

103. Scope of Application; Density Bonus

[*Alternative 1: Mandatory Affordable Units*]

(1) All of the following developments that result in or contain five or more residential dwelling units shall include sufficient numbers of affordable housing units in order to constitute an Affordable Housing Development as determined by the calculation in paragraph (2) below:

(a) New residential construction, regardless of the type of dwelling unit

(b) New mixed-use development with a residential component

(c) Renovation of a multiple-family residential structure that increases the number of residential units from the number of units in the original structure

(d) Conversion of an existing single-family residential structure to a multiple-family residential structure

(e) Development that will change the use of an existing building from nonresidential to residential

(f) Development that includes the conversion of rental residential property to condominium property

Developments subject to this paragraph include projects undertaken in phases, stages, or otherwise developed in distinct sections.

(2) To calculate the minimum number of affordable housing units required in any development listed in paragraph (1) above, the total number of proposed units shall be multiplied by 20 percent. If the product includes a fraction, a fraction of 0.5 or more shall be rounded up to the next higher whole number, and a fraction of less than 0.5 shall be rounded down to the next lower whole number.

(3) Any development providing affordable housing pursuant to paragraph (1) above shall receive a density bonus of one market-rate unit for each affordable housing unit provided. All market-rate units shall be provided on site, except that, in a development undertaken in phases, stages, or otherwise developed in distinct sections, such units may be located in other phases, stages, or sections, subject to the terms of the Affordable Housing Development Plan.

(4) Any development containing four dwelling units or fewer shall comply with the requirement to include at least 20 percent of all units in a development as affordable housing by:

(a) Including one additional affordable housing dwelling unit in the development, which shall constitute a density bonus;

(b) Providing one affordable housing dwelling unit off site; or

(c) Providing a cash-in-lieu payment to the [*name of local government's*] affordable housing trust fund proportional to the number of market-rate dwelling units proposed.

Comment: *Under (3)(c), the proportion of the in-lieu fee would be computed as follows. Assume an affordable unit in-lieu fee of $120,000. In a four-unit development, the fee would be 4/5s of the $120,000, or $96,000, in a three-unit development, the fee would be 3/5s, or $72,000, and so on.*

[*Alternative 2: Incentives for Affordable Units*]

Any Affordable Housing Development or any development that otherwise includes one affordable housing dwelling unit for each four market-rate dwelling units shall receive a density bonus of one market-rate unit for each affordable housing dwelling unit provided on-site.

104. Cash Payment in Lieu of Housing Units

Comment: *This section would be required only under a mandatory affordable housing alternative.*

(1) The applicant may make a cash payment in lieu of constructing some or all of the required housing units only if the development is a single-family detached development that has no more than [10] dwelling units. In the case of an in-lieu payment, the applicant shall not be entitled to a density bonus.

(2) The [legislative body] shall establish the in-lieu per-unit cash payment on written recommendation by the [*planning director or city or county manager*] and adopt it as part of the [local government's] schedule of fees. The per-unit amount shall be based on an estimate of the actual cost of providing an affordable housing unit using actual construction cost data from current developments within the [local government] and from adjoining jurisdictions. At least once every three years, the [legislative body] shall, with the written recommendation of the [*planning director or city or county manager*], review the per-unit payment and amend the schedule of fees.

(3) All in-lieu cash payments received pursuant to this ordinance shall be deposited directly into the affordable housing trust fund established by Section 109 below.

(4) For the purposes of determining the total in-lieu payment, the per-unit amount established by the [legislative body] pursuant to paragraph (1) above shall be multiplied by 20 percent of the number of units proposed in the development. For the purposes of such calculation, if 20 percent of the number of proposed units results in a fraction, the fraction shall not be rounded up or down. If the cash payment is in lieu of providing one or more of the required units, the calculation shall be prorated as appropriate.

105. Application and Affordable Housing Development Plan

(1) For all developments [in which affordable housing is required to be provided *or* in which the applicant proposes to include affordable housing], the applicant shall complete and file an application on a form required by the [local government] with the [*name of local government department responsible for reviewing applications*]. The application shall require, and the applicant shall provide, among other things, general information on the nature and the scope of the development as the [local government] may determine is necessary to properly evaluate the proposed development.

(2) As part of the application required under paragraph (1) above, the applicant shall provide to the [local government] an Affordable Housing Development Plan. The plan shall be subject to approval by the [local government] and shall be incorporated into the Affordable Housing Development Agreement pursuant to Section 106 below. An Affordable Housing Development Plan is not required for developments in which the affordable housing obligation is satisfied by a cash payment in lieu of construction of affordable housing units. The Affordable Housing Development Plan shall contain, at a minimum, the following information concerning the development:

(a) A general description of the development, including whether the development will contain units for rent or for sale

(b) The total number of market-rate units and affordable housing units

(c) The number of bedrooms in each market-rate unit and each affordable unit

(d) The square footage of each market-rate unit and of each affordable unit measured from the interior walls of the unit and including heated and unheated areas

(e) The location in the development of each market-rate and affordable housing unit

(f) If construction of dwelling units is to be phased, a phasing plan stating the number of market-rate and affordable housing units in each phase

(g) The estimated sale price or monthly rent of each market-rate unit and each affordable housing unit

(h) Documentation and plans regarding the exterior appearances, materials, and finishes of the Affordable Housing Development and each of its individual units

(i) A marketing plan the applicant proposes to implement to promote the sale or rental of the affordable units within the development to eligible households

106. Criteria for Location, Integration, Character of Affordable Housing Units

An Affordable Housing Development shall comply with the following criteria:

(a) Affordable housing units in an Affordable Housing Development shall be mixed with, and not clustered together or segregated in any way from, market-rate units.

(b) If the Affordable Housing Development Plan contains a phasing plan, the phasing plan shall provide for the development of affordable housing units concurrently with the market-rate units. No phasing plan shall provide that the affordable housing units built are the last units in an Affordable Housing Development.

(c) The exterior appearance of affordable housing units in an Affordable Housing Development shall be made similar to market-rate units by the provision of exterior building materials and finishes substantially the same in type and quality.

Comment*: Some of the affordable housing ordinances reviewed by APA contained minimum-square-footage requirements for dwelling units or suggested that there be a mix of units with different numbers of bedrooms, especially to ensure that for-rent projects contain sufficient numbers of bedrooms for larger families. While minimum-square-footage requirements, especially for bedroom sizes, are customarily found in housing codes, rather than zoning codes, it is possible to amend this model to include such minimums.*

107. Affordable Housing Development Agreement

Comment: *A development agreement between the local government and the developer of the affordable housing project is necessary to reduce to writing the commitments of both parties, thus eliminating ambiguity over what is required regarding maintaining the affordability of the units and establishing and monitoring the eligibility of those who purchase or rent them.*

(1) Prior to the issuance of a building permit for any units in an Affordable Housing Development or any development in which an affordable unit is required, the applicant shall have entered into an Affordable Housing Development Agreement with the [local government]. The development agreement shall set forth the commitments and obligations of the [local government] and the applicant, including, as necessary, cash in-lieu payments, and shall incorporate, among other things, the Affordable Housing Plan.

(2) The applicant shall execute any and all documents deemed necessary by the [local government] in a form to be established by the [law director], including, without limitation, restrictive covenants, deed restrictions, and related instruments (including requirements for income qualification for tenants of for-rent units) to ensure the continued affordability of the affordable housing units in accordance with this ordinance.

(3) Restrictive covenants or deed restrictions required for affordable units shall specify that the title to the subject property shall only be transferred with prior written approval by the [local government].

108. Enforcement of Affordable Housing Development Agreement; Affordability Controls

(1) The director of [*name of responsible local government department*] shall promulgate rules as necessary to implement this ordinance. On an annual basis, the director shall publish or make available copies of the U.S. Department of Housing and Urban Development household income limits and rental limits applicable to affordable units within the local government's jurisdiction, and determine an inflation factor to establish a resale price of an affordable unit.

(2) The resale price of any affordable unit shall not exceed the purchase price paid by the owner of that unit with the following exceptions:

(a) Customary closing costs and costs of sale

(b) Costs of real estate commissions paid by the seller if a licensed real estate salesperson is employed

(c) Consideration of permanent capital improvements installed by the seller

(d) An inflation factor to be applied to the original sale price of a for-sale unit pursuant to rules established pursuant to paragraph (1) above

(3) The applicant or his or her agent shall manage and operate affordable units and shall submit an annual report to the [local government] identifying which units are affordable units in an Affordable Housing Development, the monthly rent for each unit, vacancy information for each year for the prior year, monthly income for tenants of each affordable units, and other information as required by the [local government], while ensuring the privacy of the tenants. The annual report shall contain information sufficient to determine whether tenants of for-rent units qualify as low- or moderate-income households.

(4) For all sales of for-sale affordable housing units, the parties to the transaction shall execute and record such documentation as required by the Affordable Housing Development Agreement. Such documentation shall include the provisions of this ordinance and shall provide, at a minimum, each of the following:

(a) The affordable housing unit shall be sold to and occupied by eligible households for a period of 30 years from the date of the initial certificate of occupancy.

(b) The affordable housing unit shall be conveyed subject to restrictions that shall maintain the affordability of such affordable housing units for eligible households.

(5) In the case of for-rent affordable housing units, the owner of the Affordable Housing Development shall execute and record such document as required by the Affordable Housing Development Agreement. Such documentation shall include the provisions of this ordinance and shall provide, at a minimum, each of the following:

(a) The affordable housing units shall be leased to and occupied by eligible households.

(b) The affordable housing units shall be leased at rent levels affordable to eligible households for a period of 30 years from the date of the initial certificate of occupancy.

(c) Subleasing of affordable housing units shall not be permitted without the express written consent of the director of [*name of responsible local government department*].

109. Affordable Housing Trust Fund

[*This section establishes a housing trust fund into which monies from cash in-lieu payments and other sources of revenues will be deposited. Because of the variation as to how such funds could be established and the differences in state law, no model language is provided.*]

References

Boulder, Colorado, City of. Municipal Code, Title 9, Land Use Regulation, Chapter 6.5, Inclusionary Zoning [accessed December 13, 2004]: www.ci.boulder.co.us/cao/brc/965.html

Brunick, Nicholas J. 2004a. "The Inclusionary Housing Debate: The Effectiveness of Mandatory Programs Over Voluntary Programs, Part 1." *Zoning Practice*, No. 9 (September): 1-7.

_____. 2004b. "Inclusionary Housing: Proven Success in Large Cities." *Zoning Practice*, No. 10 (October): 1-7.

Burlington, Vermont, City of. Zoning Ordinance, Article 14, Inclusionary Zoning/Density Bonus [accessed December 13, 2004]: www.ci.burlington.vt.us/planning/zoning/znordinance/article14.html

Cambridge, Massachusetts, City of. Municipal Code, Sections 11.2000 et seq., Incentive Zoning Provisions and Inclusionary Housing Provisions [accessed December 13, 2004]: http://www.cambridgema.gov/~CDD/cp/zng/zord/zo_article11_1288.pdf

Davis, California, City of. Municipal Code, Chapter 18.05.0, Affordable Housing [accessed December 13, 2004]:
www.city.davis.ca.us/cmo/citycode/chapter.cfm?chapter=18

Denver, Colorado, City of. Ordinance 617 (2002), amending Chapter 27 of the Revised Municipal Code (Housing) by adding Article IV relating to affordable housing [accessed December 13, 2004]:
www.denvergov.org/admin/template3/forms/20020617ord.pdf

Dublin, California, City of. Zoning Code, Chapter 8.68, Inclusionary Zoning Regulations [accessed December 13, 2004]:
www.ci.dublin.ca.us/pdf/Dublin_Zoning_Ord_8.68.pdf

Fremont, California, City of. Ordinance No. 2493 (2002), amending Chapter 2, Title VIII (Planning and Zoning of the Fremont Municipal Code, to add a new Article 21.7 (Inclusionary Housing) [accessed December 13, 2004]: www.ci.fremont.ca.us/NR/rdonlyres/
e77vfiwmvopqzmp2brhvnzpgx5qybzzzjndqfogwhamlgz5rveijxes5mpg2swdprxao55zew6lw
74klhzopk7xevgd/ Ord2493_020303.pdf

Hayward, California, City of. Municipal Code, Title 10, Article 17, Inclusionary Zoning Ordinance [accessed December 13, 2004]:
http://www.ci.hayward.ca.us/municipal/HMCWEB/InclusionaryHousing.doc

Highland Park, Illinois, City of. Zoning Code, Article XXI, Inclusionary Zoning [accessed December 13, 2004]: www.bpichicago.org/rah/pubs/iz_ordinance.pdf [Note: The authors of this report highly recommended this ordinance].

Longmont, Colorado, City of. Municipal Code, Title 15, Land Development Code, Section 15.05.220, Affordable Housing [accessed December 13, 2004]:
http://www.ci.longmont.co.us/planning/dev_code/pdf/ch_15.05.pdf

Madison, Wisconsin, City of. Inclusionary Housing Ordinance No.13501, amending Sec. 28.04 of the Madison City Ordinances (2004) [accessed December 13, 2004]:
http://www.ci.madison.wi.us/BI/InclusionaryDUPlanAppl2-22.pdf

Morris, Marya. 2000. *Incentive Zoning: Meeting Urban Design and Affordable Housing Objectives*, Planning Advisory Service Report No. 494. Chicago: American Planning Association, September.

Pasadena, California, City of. Ordinance No. 6868 (2001), amending Title 17 of the Pasadena Municipal Code (Zoning) to require inclusionary housing [accessed December 13, 2004]:
www.ci.pasadena.ca.us/planninganddevelopment/news/inclusionary/ordinance.pdf

Pleasanton, California, City of. Zoning Ordinance, Chapter 17.44, Inclusionary Zoning [accessed December 13, 2004]: www.ci.pleasanton.ca.us/pdf/17.44.pdf

Ross, Lynn. 2003. "Zoning Affordability: The Challenges of Inclusionary Zoning." *Zoning News* (August): 1-6.

Sacramento, California, City of. An Ordinance adding Chapter 17.190 to Title 17 (Zoning Code) of the City Code Relating to Mixed Income Housing (2000) [accessed December 13, 2004]: www.lsnc.net/housing/Sac_city_ordinance.pdf

San Diego, California, City of. Municipal Code, Chapter 14, Article 4, Division 13, Inclusionary Affordable Housing Regulations [accessed December 13, 2004]: sandiego.gov/development-services/news/pdf/ahinordinance.pdf

San Leandro, California, City of. Inclusionary Zoning Ordinance [accessed December 13, 2004]: www.ci.san-leandro.ca.us/pdf/slcommdevInclusionary.pdf

San Luis Obispo, California, City of. Municipal Code, Chapter 17.91, Inclusionary Housing Requirement
www.ci.san-luis-obispo.ca.us/communitydevelopment/download/inclusho.pdf

4.5 MODEL UNIFIED DEVELOPMENT PERMIT REVIEW PROCESS ORDINANCE

The model ordinance below establishes a unified development permit review process. It brings together the various types of development permissions and related approvals under a single procedural umbrella while retaining the authority of permit-approving officers and bodies. The model also groups in one place the application requirements, the schedule for action, and decision-making criteria for different types of land-use decisions. The ordinance draws on statutory models contained in the American Planning Association's *Growing Smart*[SM] *Legislative Guidebook* (2002 edition), Sections 10-201 to 211 as well as the *State of Oregon's Model Development Code and User's Guide for Small Cities* (September 1999), Section 4 (Applications and Review Procedures).

The unified development permit review process applies to all land-use decisions, whether by the legislative body, the planning commission, a hearing officer, or a specialized body (e.g., a historic preservation commission). The permit review process has three elements: (a) a completeness review for applications; (b) action on the development application itself; and (c) an appeal process.

Under the model, an applicant for a development permit, a preliminary approval (such as that for a preliminary subdivision), or a zoning district map amendment applies to the local government for approval. The local government, through the appropriate official, determines within a certain period of time whether the application is complete (i.e., all the mechanical requirements for submitting an application are present). If it is complete, the local government issues a completeness determination and processes the application according to the standards in the land development regulations. If the local government determines the application is not complete, the applicant has a certain period of time in which to respond with the needed information. If the applicant does not respond, the application is automatically rejected, unless provisions for an extension are secured. If the local government fails to conduct a completeness review in the time established by the ordinance, the application is deemed complete.

Action on the development application takes two forms. The first is an administrative review, which is the traditional review for routine building and zoning permits, where no hearing is required and an administrative officer makes the decision. The second type of review requires a record hearing (e.g., an application for a conditional use permit) before the approving authority. In such a hearing, a complete record, including a transcript of the hearing, is created. After such a hearing, the approving authority makes a written decision. With both application types, a decision must occur within certain time limits, although extensions are possible, or the application is deemed approved.

Any person aggrieved by the land-use decision may appeal it to an appeals board, which would be the board of zoning appeals in most communities, although it could be a hearing officer. For a land-use decision that was the result of a record hearing, the appeals board reviews only the written record and does not hold another hearing. For a land-use decision that is the result of an administrative review, the appeals board must hold a record hearing.

Not all land-use decisions are subject to appeal, however. For example, a city council's refusal to amend the text of the zoning ordinance, which is a legislative action, could not be appealed. Similarly, a preliminary subdivision denial could not be appealed because the decision is not a final one, allowing development to occur. Denial of a final subdivision plat, however, could be appealed.

The model also creates a consolidated permit review process for development projects that require multiple permits. The zoning administrator or another designated official serves as the permit review coordinator and has discretion in scheduling hearings. Hearings may be combined in order to reduce their number. Under the consolidated permit review process, the zoning permit, which serves as the master permit, is the last permit issued, and it signifies that the developer has obtained all subordinate development permissions.

The consolidated permit review process, however, only applies to development projects for which the local government issues permits. It would not apply, for example, to projects that require state and local approval under separate application procedures (i.e., a project needing both building and zoning permits from the local government and a wetland permit for a state department). While it is possible to tailor a review process that would combine state and local approvals, such a process would of necessity call for action from both levels of government.

The model authorizes the permit review coordinator to establish a technical review committee of local government officials and officials from other governmental agencies, (e.g., health departments or the local soil and water conservation district) and nongovermental agencies (e.g., the local utility company). Finally, Section 106 of the model establishes a procedure for the rendering of written interpretations of the land development regulations upon request.

Primary Smart Growth Principle Addressed: Predictable and cost-effective development decisions
Secondary Smart Growth Principle Addressed: Not applicable

Model Unified Development Permit Review Process Ordinance

101. Purpose

The purposes of this ordinance are to:

(a) Provide for the timely consideration of development permit review applications;

(b) State the requirements for applying for and receiving a development permit;

(c) Authorize a consolidated permit review process for land-use decisions; and

(d) State the manner for the appeal of land-use decisions.

102. Authority

This ordinance is enacted pursuant to the authority granted by [*cite to state statute or local government charter or similar law*].

103. Definitions

As used in this ordinance, the following words and terms shall have the meanings specified herein:

"Administrative Review" means a review of an application for a development permit based on documents, materials, and reports, with no testimony or submission of evidence as would be allowed at a record hearing.

"Aggrieved" means that a land-use decision has caused, or is expected to cause, [special] harm or injury to a person, neighborhood planning council, neighborhood or community organization, or governmental unit, [distinct from any harm or injury caused to the public generally]; and that the asserted interests of the person, council, organization, or unit are among those the local government is required to consider when it makes the land-use decision.

Comment: *The definition of "aggrieved" determines who can be party to a hearing, who can submit information in an administrative review, who has standing in an appeal, who can appeal decisions to hearing officers, and who can bring judicial appeals. The "aggrieved" test has two elements: (1) harm or injury, and (2) an interest that the local government was required to consider in making its decision. Inclusion of the bracketed language requires persons claiming standing to demonstrate they have suffered harm distinct from the harm to the general public. Removing the bracketed language still requires a showing of harm or injury but not a demonstration that the harm is in some way special or unique. In most states, the local government is required to consider the interest of abutting and confronting property owners when making certain types of land-use decisions. In others, they may consider the interests of neighborhood associations, which do not own property.*

"Appeals Board" means any officer or body designated by the legislative body to hear appeals from land-use decisions.

Comment: *The appeals board could be a single hearing examiner or the board of zoning appeals.*

"Approving Authority," means the officer or body with the authority to make a land-use decision.

"Certificate of Appropriateness" means the written decision by a local historic preservation or design review board that a proposed development is in compliance with a historic preservation or design review ordinance.

"Chief Building Official" means the local government official responsible for administering and enforcing the building code, including the issuance of building permits.

"Code Interpretation" means a written decision issued by the Permit Review Coordinator or other designated administrative official regarding the interpretation of any provision set forth in the land development regulations.

"Completeness Determination" means a written finding by a local government official that a development permits application contains all required information in order that it can be reviewed for compliance with land development regulations and a land-use decision can be made.

"Conditional Use" means a use or category of uses authorized, but not permitted as of right, by a local government's land development regulations in designated zoning districts.

"Development Permit" means any written approval or decision by a local government under its land development regulations that gives authorization to undertake some category of development, including, but not limited to, a building permit, zoning permit, final subdivision plat, minor subdivision, resubdivision, conditional use, variance, appeal decision, planned unit development, site plan, [and] certificate of appropriateness [.] [, and zoning district map amendment(s) by the legislative body]. "Development permit" does not mean the adoption or amendment of a local comprehensive plan or any subplan, the adoption or amendment of the text of land development regulations, or a liquor license or other type of business license.

Comment: *In some states, a parcel-specific rezoning decision is an administrative or policy decision and can therefore be treated as a development permit. In most states, however, a rezoning is a legislative decision and, for this reason, the phrase is placed in brackets. Individuals adapting this model should consult with an attorney licensed in their state to determine the status of zoning map amendments.*

"Land Development Regulations" mean any building, zoning, subdivision, impact fee, site plan, floodplain or stormwater regulations, or other governmental controls that affect the use, density, or intensity of land.

"Land Use" means the conduct of any activity on land, including, but not limited to, the continuation of any activity, the commencement of which is defined herein as "development."

"Land-Use Decision" means a decision made by an approving authority on a development permit application, and includes decisions made following a record hearing or record appeal, and preliminary approvals and amendments to the zoning map and text. A "completeness decision," "development permit," and "master permit" are "land-use decisions" for the purposes of this ordinance.

"Master Permit" means the permit issued by a local government under its land development regulations and any other applicable ordinances, rules, and statutes that incorporates all development permits together as a single permit and that allows development to commence.

Comment: *The master permit is the unification of all development permits necessary for a land development. For example, in order to build a single-family home in a subdivision that*

has been platted, it may be necessary to obtain only a building permit (approving the plans for the residence itself) and a zoning permit (indicating that the use is allowed and the structure meets zoning standards. If the two permits are granted, the master permit would automatically be issued, allowing development to commence.

"Permit Review Coordinator" means the [zoning administrator *or other designated administrative official*] that is responsible administering the consolidated permit review process and for issuing a master permit.

"Preliminary Approval" means an approval by the local government that is a condition precedent to the approval of a development permit but does not by itself allow development to commence.

"Record" means the written decision on a development permit application and any documents identified in the written decision as having been considered as the basis for the decision.

"Record Appeal" means an appeal to a local government officer or body from a record hearing on a development permit application.

"Record Hearing" means a hearing, conducted by the approving authority that creates the local government's record through testimony and submission of evidence and information, under the procedures required by this ordinance. "Record hearing" also means a record hearing held in an appeal, when no record hearing was held on the development permit application.

"Rezoning" means an amendment that changes the zoning district map.

"Variance" means a minor departure from any of the numerical dimensional requirements of the land development regulations.

"Zoning Administrator" means the local government official responsible for administering and enforcing the zoning code and land development regulations, including the issuance of zoning permits and master permits.

"Zoning Permit" means the development permit signed by the zoning administrator that is a condition precedent to the commencement of a use or the construction, reconstruction, restoration, alteration, conversion, or installation of a structure or a building, which confirms that such use, structure, or building complies with the zoning code, and that also serves as the master permit in the consolidated permit review process.

104. Schedule for decisions on development permits and preliminary approvals; application requirements; preapplication meetings

(1) The purpose of this Section is to identify the types of development permits issued by the [*name of local government*], who is responsible for determining whether applications are complete, whether an application can be approved, whether a record hearing is required, and the maximum number of days after the completeness determination for a decision on the application.

(2) Decisions on development permit applications, preliminary approvals, and amendments to the zoning map and the text of the land development regulations shall be made according to the following schedule.

Type of Development Permit, or Preliminary Approval (P.A.), or Legislative Action (L.A.)	*Citation to Authorizing Section*	*Approving Authority*	*Responsibility for Completeness Determination*	*Record Hearing Required*	*Maximum Review Time in days for Land-use Decision after Completeness Determination*
Building permit	[*Insert citation*]	Chief Building Official	Chief Building Official	No	30
Zoning permit	[*Insert citation*]	Zoning Administrator	Zoning Administrator	No	30
Sign permit	[*Insert citation*]	Zoning Administrator	Zoning Administrator	No	15
Conditional use permit	[*Insert citation*]	Planning Commission	Zoning Administrator	Yes	45
Variance	[*Insert citation*]	Board of Zoning Appeals	Zoning Administrator	Yes	45
Planned unit development preliminary development plan—P.A.	[*Insert citation*]	Legislative Body	Zoning Administrator	No	60
Planned unit development final development plan	[*Insert citation*]	Legislative Body	Zoning Administrator	Yes	60
Subdivision preliminary plan—P.A.	[*Insert citation*]	Planning Commission	Zoning Administrator	No	60
Subdivision final plat	[*Insert citation*]	Planning Commission	Zoning Administrator	Yes	60
Lot split, minor subdivision, resubdivision	[*Insert citation*]	Planning Commission	Zoning Administrator	Yes	30
Certificate of appropriateness	[*Insert citation*]	Historic and Architectural Preservation Commission (or similarly named body)	Zoning Administrator	Yes	45
Zoning district map amendment (L.A.)	[*Insert citation*]	Legislative Body	Zoning Administrator	[*Depends on whether rezoning is legislative or administrative in nature*]	60
Text	[*Insert*	Legislative	Law Director	No	90

Type of Development Permit, or Preliminary Approval (P.A.), or Legislative Action (L.A.)	Citation to Authorizing Section	Approving Authority	Responsibility for Completeness Determination	Record Hearing Required	Maximum Review Time in days for Land-use Decision after Completeness Determination
amendment to land development regulations (L.A.)	*citation*]	body			
Master permit for building permit and zoning permit	[*Insert citation*]	Chief Building Official and Zoning Administrator	Chief Building Official, Zoning Administrator as Permit Review Coordinator	No	30
Master permit for building permit, zoning permit, conditional use, or variance, or certificate of appropriateness	[*Insert citation*]]	Chief Building Official, Zoning Administrator, Planning Commission or Board of Zoning Appeals, or Historic and Architectural Preservation Commission	Chief Building Official, Zoning Administrator as Permit Review Coordinator	Yes	60
[*Insert other combinations of development permits, as appropriate, for master permits*]	*Insert citation*]	[*Insert name of officer or body*]	Chief Building Official, Zoning Administrator as Permit Review Coordinator	[*Insert as necessary*]	*Insert as necessary*]

Comment: *This table lists the typical types of development permits and approvals granted by a local government. The times shown are typical but may vary. A building permit is necessary when new construction takes place. A zoning permit is issued when new construction changes a building's exterior dimensions or where there is a change of use. If a conditional use permit for a specific use is granted, a zoning permit is nonetheless required as the final determination that all zoning requirements are satisfied. While approval of a preliminary plan of a subdivision does not by itself authorize development, it is a condition precedent to the review of a final subdivision plat. Consequently, it is included in this table as a "preliminary approval."*

The table treats a rezoning as a legislative action not requiring a record hearing because the only route of appeal is directly to the courts. Nonetheless, some local governments may treat rezonings as if they were administrative and compile a record, including a transcript of the proceedings. In some states, like Oregon, zoning map changes are considered administrative

or quasi-judicial, and require more formal hearings. Because a sign permit is a ministerial action involving no discretion, the time limit on approval is proposed to be 15 days.

(3) In computing any period of time prescribed or allowed by this ordinance, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or a legal holiday.

(4) The permit review coordinator shall prepare and issue a standard form requiring information common to all applications, including:

(a) Name, address, telephone number, and electronic mail address (if available) of applicant;

(b) Address or legal description of the location of the property for which the development permit, preliminary approval, or zoning map amendment is sought;

(c) Area in square feet or acres of property described in (4)(b) above;

(d) Zoning district designation for property described in (4)(b) above;

(e) Type of development permit, preliminary approval, or zoning map or text amendment being sought;

(f) For new construction or additions to an existing building or structure, a site plan, drawn to a scale of [insert scale] showing the distances of the new construction or addition to lot lines and the dimensions of the lot; and

(g) Fee schedule and location on application form for calculation of the total fee to be charged.

In addition, the coordinator shall prepare forms for specific additional information required for development permits, preliminary approvals, zoning map amendments, and amendments to the text of the land development regulations.

Comment: *Types of information typically required include:*

- *Special information for the different type of developments, such as a subdivision or a conditional use;*
- *Names and addresses of property owners within a certain radius of the property;*
- *Submission of certain drawings in certain formats, such as electronic or on certain drafting media, or at certain scales;*
- *Engineering calculations, including runoff calculations;*
- *Descriptions, in written and graphic form, of mitigation measures; and*
- *Statements explaining how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision making.*

(5) In order to be determined complete, an application for a development permit or preliminary approval, a zoning map amendment, or amendment to the text of the land development regulations shall contain the following information:

Comment*: The purpose of this Section is to list all of the application requirements for each type of development permit or similar action. Each of the following types of development permits, preliminary approvals, or applications for zoning map or text amendments requires different types of information, although no attempt has been made to list all of them. Common to each would be: (1) completion of an application form; (2) a scale drawing of the proposed building on the site in relation to lot lines; and (3) payment of the required fee. Building permit application requirements would be governed by the applicable building code, which is often based on a national model. In addition, applications for subdivisions and planned unit developments would require maps drawn in a manner required by the local government and containing certain information.*

Other information may be required for applications. In some cases, the land development regulations will require a narrative statement describing how the applicant believes the proposal will satisfy the decision-making criteria. For applications that require a record hearing, providing the names and addresses of all owners of record of real property within a certain radius of the site is necessary in order to give notice. Sometimes, technical information will be required. An application for a final plat of a subdivision would be accompanied by engineering plans and calculations for runoff. In the case of a certificate of appropriateness for changes to a historic structure, the applicant would need to submit drawings of building elevations and, in some cases, examples of proposed materials or colors. A zoning map amendment would require a legal description of the property proposed to be rezoned and the name of the specific zoning district classification. In some cases, the legal description would need to be prepared by a registered surveyor to ensure its accuracy.

(a) Building permit

[*Insert information requirements*]

(b) Zoning permit

[*Insert information requirements*]

(c) Sign permit
[*Insert information requirements*]

(d) Conditional use permit

[*Insert information requirements*]

(e) Variance

[*Insert information requirements*]

(f) Planned unit development preliminary plan

[*Insert information requirements*]

(g) Planned unit development final plan

[*Insert information requirements*]

(h) Subdivision preliminary plan

[*Insert information requirements*]

(i) Subdivision final plat

[*Insert information requirements*]

(j) Certificate of appropriateness

[*Insert information requirements*]

(k) Lot split, minor subdivision, or resubdivision

[*Insert information requirements*]

(l) Zoning map amendment

[*Insert information requirements*]

(m) Amendment to text of land development regulations

[*Insert information requirements*]

(6) The permit review coordinator shall be responsible for convening, at the request of an applicant, a preapplication meeting with officials of the local government and other governmental and nongovernmental organizations who would be involved in reviewing and acting on a development, whether or not the applicant is applying for a consolidated permit, provided that no official who is responsible for a land-use decision made on the basis of a record hearing shall participate in the preapplication meeting. At such a meeting, the permit review coordinator shall:

(a) Identify the comprehensive plan policies and plan map designations applicable to the proposal;

(b) Identify relevant ordinance provisions, including substantive and procedural requirements, applicable to the proposal;

(c) Provide available technical data that will aid the applicant;

(d) Identify other governmental policies and regulations that relate to the proposal; and

(e) Identify any other reasonable opportunities or constraints concerning the application.

Failure of the permit coordinator to provide any of the information in (a) to (e) above shall not constitute a waiver of any criteria or requirements for the application.

Comment: *Paragraph (6) allows the permit review coordinator to convene meetings for the applicant that would include local government officials, the local public health department, and the local utility company. All would be involved, for example, in the review of a subdivision. Such a committee could also include officials from adjoining local governments where the development would be located partly in another jurisdiction.*

One advantage of such a meeting is that, early in the design process, the applicant would be given information that clarifies how the land development regulations collectively apply to the property. This will prevent problems arising from applicants misunderstanding development regulations and then spending time and money to have plans prepared that may violate the development regulations. In addition, it allows an applicant to determine if variances, which are minor departures from the strict and literal interpretation of the zoning ordinance, are in fact needed for the project, or if good design alternatives are available that lessen or eliminate the need for variances.

The limitation on the participation of certain officials in the pre-application meeting is to ensure that officials who must make a decision based on a record created at a hearing are not involved in ex parte *contacts with applicants or others. For example, if a development involved a variance from the board of zoning appeals, a member of the board of zoning appeals could not participate. On the other hand, a preapplication meeting could involve the local government's engineer, building official, and planning director.*

(7) The permit review coordinator may establish a technical advisory committee officials of the local government and other governmental and nongovernmental organizations who would be involved in reviewing and acting on a development to coordinate action on applications for development permits and preliminary approvals. A technical advisory committee, however, shall have no authority to approve, approve with conditions, or deny applications.

Comment: *Paragraph (7) describes the type of technical advisory committee typically established within a local government to review certain types of development involving multiple decision makers (e.g., subdivisions and PUDs). It is important, for example, that the views of the health department in terms of minimum lot size for a septic tank or friendliness to pedestrians and bicyclists be taken into consideration by the planning department in the review of a subdivision. Similarly, the parks and recreation department may have an opinion on the location of a proposed park in a new subdivision or PUD.*

105. Consolidated permit review process; permit coordinator

(1) The purpose of this Section is to establish a process by which an applicant may apply at one time for a master permit for all development permits, preliminary approvals, and zoning map amendments needed for a development and to have the application considered by approving authorities in a timely manner that minimizes the number of record hearings.

(2) An applicant for a master permit shall apply to the permit review coordinator on forms provided by the local government.

(3) The permit review coordinator shall be responsible for:

(a) Serving as the single point of contact with the applicant and other officials, boards, commissions, and the public in the consolidated permit review process;

(b) Distributing permit application material to the officials and the boards and commissions responsible for determining the completeness of the application, approving individual development permits, and taking other actions listed in Section 1-104 above;

(c) Scheduling record hearings;

(d) Issuing a completeness determination for those permits listed in Section 1-104 other than building, permits, and amendments to the text of the land development regulations (in the case of master permits, the permit coordinator shall be responsible for coordinating completeness reviews on behalf of the local government and providing the applicant with copies of all completeness determinations by all local government officials, as applicable); and

(e) Issuing the master permit.

(4) The permit review coordinator shall have the discretion to schedule a single record hearing for all types of development permits or to schedule multiple record hearings in phases before approving authorities. These hearings are to be limited to reviewing the specific type of development permit that is the subject of the hearing so that the review of the application may be completed within the time limit set for a master permit. If more than one approval authority would be required to decide on applications, the decision shall be made by the approving authority having original jurisdiction over one of the applications in the following order of preference:

(a) [Legislative body]

(b) Planning commission

(c) Board of zoning appeals

(d) [Zoning hearing examiner, if applicable]

(e) [Historic and architectural preservation commission, if applicable]

(f) [Local health department, if applicable]

(g) Chief building official

(h) [O*ther local government official*]

(i) Zoning administrator

Comment: *It is possible to structure a record hearing in which all decision-making officials and bodies attend and participate in the hearing, but then make their decisions separately on the record. Rather than requiring this, the ordinance gives the local government the flexibility to decide whether one record hearing or multiple record hearings on different aspects of the development permit would be appropriate.*

(5) The permit coordinator shall issue the master permit immediately if all subordinate permits have been approved. The zoning permit shall also serve as the master permit.

106. Completeness review of application; when application is deemed complete

(1) The purpose of this Section is to establish a process by which the local government determines whether an application for a development permit, preliminary approval, or a zoning map amendment or amendment to the text of the land development regulations is complete before making a decision on the application, and, if it is not complete, identifying for the applicant the necessary information to make it complete.

(2) When an application for a development permit, an application for preliminary approval, or a zoning map amendment or amendment to the text of the land development regulations is received by the [local government], the approving authority shall immediately determine whether the following items are present:

(a) Required forms

(b) Required fee

(c) Signature of the applicant on the required form and signed written authorization of the property owner of record if the applicant is not the owner.

If items (a) through (c) are not present, the approving authority shall not accept the application and shall immediately return it to the applicant.

(3) Within [30] days after receiving a application for a development permit, preliminary approval, or a zoning map amendment or amendment to the text of the land development regulations, the approving authority shall make a written determination to the applicant stating that the application is complete or that the application is incomplete, precisely identifying what information is necessary to make the application complete.

(4) If the approving authority determines that the application is incomplete, the approving authority shall identify in its determination the parts of the application that are incomplete and shall indicate the manner in which they can be made complete, including a list and specific description of the additional information needed to complete the application. The applicant shall then submit this additional information to the approving authority within [30] days of the determination pursuant to paragraph (2) above. If the applicant fails to submit the

additional information to the approving authority within [30] days of the determination pursuant to paragraph (3), the application shall be deemed incomplete, and shall be denied, unless the approving authority agrees in writing to a longer period.

(5) The approving authority shall determine in writing whether an application is complete within [30] days after receipt of the additional information indicated in the list and description provided to the applicant under paragraph (4) above.

(6) A development permit application is deemed complete under this Section if the local government does not provide a written determination to the applicant that the application is incomplete within [30] days of the receipt of an application under paragraph (3) above or within [30] days of the receipt of any additional information submitted under paragraph (4) above.

(7) A development permit application is complete for purposes of this Section when it meets the completeness requirements of, or is deemed complete under, this Section, even though additional information may be required or modifications in the development may occur subsequently. The completeness determination does not preclude the local government from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed development occur.

(8) Once an application is complete for the purposes of this Section or is deemed complete under this Section, and the applicant submits additional documents or other information, the approving authority shall determine whether the new documents or other information significantly changes the application. If the approving authority determines that the new documents or other information significantly changes the application, the decision maker shall include as part of the decision a written determination that a significant change has occurred. Alternatively, the decision maker may inform the applicant in writing that such changes may constitute a significant change and allow the applicant to withdraw the new materials or information submitted in order to avoid a determination of significant change. If the applicant's new documents or information are determined to constitute a significant change in an application that was previously determined or deemed complete, the local government decision maker shall take one of the following actions, at the option of the applicant:

(a) Continue to process the existing application and allow the applicant to submit a second new application with the proposed significant changes. The old and new applications will both proceed through the review process, but each will be determined or deemed complete on different dates and therefore may be subject to different criteria and different decision dates.

(b) Suspend consideration of the existing application upon the written request of the applicant and allow the applicant to submit a new application with the proposed significant changes that will be subject to a new completeness review.

(c) Reject the new documents or other information determined to constitute a significant change and continue processing the existing application without considering the materials that would constitute a significant change.

107. Decision-making criteria

In making a decision for the following types of development permits, preliminary approvals, zoning district map amendments, and amendments to text of the land development regulations, the approving authority shall apply the following criteria, provided that approval, denial, or approval with conditions shall be based on the criteria applicable at the time the application was first accepted:

Comment: *The criteria the local government approving authority uses to make the particular land-use decision should be set forth under each of the following headings. Because each set of land development regulations contains unique criteria for different types of land-use decisions or because statutes might establish the criteria independent of local regulations (as in the case of a variance), this model does not attempt to describe all of them. Examples of the language to be used are under the headings of a building permit, a zoning permit, and a zoning district map amendment. If this Section is drafted using an internal citation style rather than the style setting forth the complete criteria, the internal citation should be as specific as possible. For example, if the criteria for approving a conditional use permit appear in Article 12 of the zoning code, but the precise language is in Section 12-103(2), the internal citation should refer to that Section, including paragraph (2). Doing so will eliminate confusion as to what parts of a code actually constitute "criteria."*

(a) Building permit

The chief building official shall approve an application for a building permit if the official finds that the application complies with the relevant provisions of the building code.

(b) Zoning permit

The zoning administrator shall approve an application for a zoning permit:

1. If the administrator finds that the application complies with the relevant provisions of the zoning code; and

2. If the application requires an additional development permit, the approving authority for such development permit has either approved the application or has approved it with conditions, which shall be incorporated as conditions of the zoning permit.

A zoning permit shall not be required for any construction that does not alter the exterior dimensions of a building or structure.

(c) Sign permit

The zoning administrator shall approve an application for a sign permit if the administrator finds that the application complies with the relevant provisions of the sign code.

(d) Conditional use permit

[*Insert decision-making criteria*]

(e) Variance

[*Insert decision-making criteria*]

(f) Planned unit development preliminary plan

[*Insert decision-making criteria*]

(g) Planned unit development final plan

[*Insert decision-making criteria*]

(h) Subdivision preliminary plan

[*Insert decision-making criteria*]

(i) Subdivision final plat

[*Insert decision-making criteria*]

(j) Certificate of appropriateness

[*Insert decision-making criteria*]

(k) Lot split, minor subdivision, and resubdivision

[*Insert decision-making criteria*]

(l) Zoning district map amendment

A proposed amendment to the zoning district map shall be consistent with the local comprehensive plan. The legislative body shall find that the proposed amendment to the zoning map is consistent with the local comprehensive plan when the amendment:

1. Furthers, or at least does not interfere with, the goals and policies contained in the local comprehensive plan;

2. Is compatible with the proposed future land uses and densities and/or intensities contained in the local comprehensive plan; and

3. Carries out, as applicable, any specific proposals for community facilities, including transportation facilities, other specific public actions, or actions proposed by nonprofit and for-profit organizations that are contained in the local comprehensive plan.

In determining whether the proposed amendment to the zoning map satisfies the requirements of subparagraph (l)1 above, the legislative body may take into account any relevant guidelines contained in the local comprehensive plan.

(m) Amendment to the text of land development regulations

108. Administrative review; responsibility for completeness review

(1) Building permits and zoning permits are subject to administrative review.

Comment: *In some communities, lot splits, minor subdivisions (subdivisions of three to four lots and not involving any public improvements or dedication), and resubdivisions (redrawing of lot boundaries without creating new lots) are subject to an administrative review, bypassing a planning commission, and could be included in paragraph (1). In such a case, a record hearing would not be required, and Section 104 would need to be changed to eliminate it.*

(2) An applicant for a building or zoning permit shall submit an application to the chief building official or zoning administrator, respectively, on forms provided by the local government. An applicant for a master permit that incorporates a building permit and a zoning permit shall submit the application to the permit coordinator.

(3) Any decision on a building or zoning permit or master permit that incorporates a building permit and a zoning permit shall be accompanied by a checklist stating applicable codes or regulations that the chief building official or zoning administrator applied in making the decision.

(4) In the event the chief building official or zoning administrator denies a building permit or a zoning permit, the official or administrator shall state in writing the reasons for denial and the code Sections relied upon in making the decision.

109. Applications not involving solely administrative reviews

For any development permit application that requires a record hearing as specified in Section 104, the applicant shall apply to the zoning administrator on forms provided by the local government.

110. Record hearing; notice requirements

(1) If an approving authority holds a record hearing on a development permit application, it shall provide notice of the date of the record hearing within [15] days of a completeness determination on the application under Sections 106(3) to 106(5) above, or within [15] days from the date an application is deemed complete under Section 106(7) above. Notice of the record hearing shall be mailed at least [20] days before the record hearing, and the record hearing must be held no longer than [30] days following the date that notice of the record hearing is mailed. A local government may hold a record hearing at a later date, but no more than [60] days following the date that notice of the record hearing was mailed, if state agencies or other local governments must approve or review the development application, or if the applicant for a development permit requests an extension of the time at which the record hearing will be held.

(2) The notice of the record hearing shall:

(a) State the date, time, and location of the record hearing and the body or officer that will hold the hearing;

(b) Explain the nature of the application and the proposed use or uses that could be authorized;

(c) List the land development regulations and any goals, policies, and guidelines of the local comprehensive plan that apply to the application;

(d) Set forth the street address or other easily understood geographical reference to the subject property;

(e) State that a failure to raise an issue at a record hearing, in person or by letter, or the failure to provide statements or evidence sufficient to afford the local government an opportunity to respond to the issue, precludes an appeal to the appeals board based on that issue, unless the issue could not have been reasonably known by any party to the record hearing at the time of the record hearing;

(f) State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant, and any applicable land development regulations or goals, policies, and guidelines of the local comprehensive plan are available for inspection at no cost and will be provided at reasonable cost;

(g) State that a copy of any staff reports on the application will be available for inspection at no cost at least [7] days prior to the record hearing and will be provided at actual cost;

(h) State that a record hearing will be held and include a general explanation of the requirements for the conduct of the record hearing; and

(i) Identify, to the extent known by the local government, any other governmental units with jurisdiction over some aspect of the application.

111. Record hearing; methods of giving notice

Comment: *This Section should specify the manner in which the local government gives notice for the record hearing. Requirements for notice may be stated in state statutes or the local government may have latitude to establish its own methods. For that reason, no ordinance language has been provided. Alternatives for notice include:*

- *Conspicuous posting of the notice on the property for site-specific development proposals;*
- *Publishing the notice, including at least the development location, description, type of permit(s) required, and location where the complete application may be reviewed, in a newspaper of general circulation in the jurisdiction of the local government and giving notice by publication on the Internet;*
- *Posting the notice on a bulletin board in a conspicuous location in the principal offices of the local government;*
- *Making certain the manner of publication or posting of the notice takes into account the culture of the affected community by, for example, writing the notice in Spanish for a Hispanic area;*
- *Mailing of the notice to all adjacent local governments and to all state agencies with jurisdiction over the development application; and*
- *Mailing the notice to abutting and confronting property owners or property owners within a certain radius of the site; and*

This Section should also indicate how far in advance of the record hearing notice must be given, either through publication, posting, or mailing. If the request is for a consolidated permit procedure, the notice must identify each application to be deciding as a consequence of the record hearing. Finally, the Section should indicate how the information is to be presented so that a layperson can understand whether the property in question is located, who owns or has control of it, which is the applicant, and what the matter to be decided is.

112. Record hearing; conduct of hearing

(1) This Section applies when a local government holds a record hearing on a development permit application as required by Section 104 above.

(2) The applicant or any person who will be a party to or will testify or would like to testify in any record hearing shall submit all documents or evidence on which he or she intends to rely to the local government, which shall make them available to the public at least [7] days prior to the record hearing.

(3) The local government shall make any staff report it intends to use at the record hearing available to the public at least [7] days prior to the record hearing.

(4) Any governmental unit with jurisdiction over the development application and any abutting or confronting owner or occupant, may be a party to a record hearing held under this Section. Any other party or governmental unit may be a party to any record hearing held under this Section if it would be aggrieved by a land-use decision on the development permit application.

(5) The following procedures apply to the conduct of the record hearing:

(a) The officer presiding at a record hearing or such person as he or she may designate [shall or may] have the power to conduct discovery and to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties. The presiding officer may call any person as a witness whether or not he or she is a party.

(b) The presiding officer shall take the testimony of all witnesses relating to a development permit application under oath or affirmation and shall permit the right of cross-examination to all parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and to reasonable limitations on the time and number of witnesses.

(c) Technical rules of evidence do not apply to the record hearing, but the presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence.

(d) If a party to the record hearing provides additional documents or evidence, the presiding officer may allow a continuance of the record hearing or leave the record open to allow other parties a reasonable opportunity to respond.

(e) The local government shall provide for the verbatim recording and written transcription of the record hearing, and shall furnish a copy of the recording and transcription, on request, to any interested person at the requestor's expense, provided that the cost does not exceed the actual cost of making the recording and transcription.

(6) Any decision-making officer or member of an approving authority who has a direct or indirect financial interest in property that is the subject of a record hearing, who is related by blood, adoption, or marriage to the owner of property that is the subject of a record hearing or to a party to the record hearing, or who resides or owns property within [500] feet of property that is the subject of a record hearing shall recuse himself or herself from the matter before the commencement of the record hearing and shall state the reasons for such recusal.

Comment: *State laws may establish stricter rules governing conflict of interest than those in paragraph (6).*

113. Record hearing; findings, decision, and notice

(1) Where a development permit application requires a record hearing pursuant to Section 104, the approving authority may approve or deny a development permit application, or may approve an application subject to conditions.

(2) Any decision on a development permit application shall be based on and accompanied by a written statement by the approving authority that:

(a) states the land development regulations, goals, policies, and guidelines of the local comprehensive plan relevant to the decision;

(b) states the facts relied upon in making the decision;

(c) explains how the decision is based on the land development regulations, the goals, policies, and guidelines of the local comprehensive plan (including the future land-use plan map), and the facts set forth in the written statement of the comprehensive plan;

(d) responds to all relevant issues raised by the parties to the record hearing; and

(e) states the conditions that apply to the development permit, must be satisfied before a certificate of compliance can be issued, and are continuing requirements and apply after a certificate of compliance is issued.

Where the application involves the issuance of a master permit, the approving authorities shall make separate written statements on each application for a development permit.

(3) The approving authority shall give written notice of its decision to all parties to the proceeding [and shall publish its decision in a newspaper of general circulation and on its Internet site].

(4) Within [30] days of a request for clarification of findings, decisions, and conditions specifically included in the written notice of decision pursuant to paragraph (2) above, the approving authority shall issue a written clarification concerning those specific findings and decisions. Notice of the clarification shall be given in the same manner as the notice of decision pursuant to paragraph (3) above.

114. Time limits on decisions

(1) If the approving authority for a development permit fails to approve, conditionally approve, or disapprove a development permit application within the time period stated in Section 104 after it makes a written determination that a development permit application is complete, or from the time a development application is deemed complete, the failure to act shall be deemed an approval.

(2) The approving authority and the applicant for a development permit may mutually agree to an extension of the time limits for a decision specified in paragraph (1) above for a period not in excess of [90] days.

(3) If an application for a development permit is deemed approved under this Section, the approving authority shall send by mail written notice that the permit has been deemed approved to all:

(a) parties to the record hearing, and

(b) persons and governmental units that submitted documents and materials to the administrative review.

(4) The time limits for the decision specified in this Section do not run during any period:

(a) of less than [30] days during which a local government requests additional studies or information concerning a development permit application; or

(b) in which the local government is unable to act upon development permit applications due to circumstances beyond the local government's control, including a reasonable period for resubmission of development permit applications and related materials destroyed, damaged, or otherwise rendered unusable.

115. Appeals

Comment: *This Section describes an appeals procedure concerning land-use decisions. It gives the authority to an appeals board to hear appeals. The appeals board can hear appeals: (a) on the record, which occurs where there has already been a record hearing (e.g., when there has been a hearing on a conditional use permit); and (b) subject to a record hearing held by the appeals board, which would occur in the case of an administrative decision (e.g., the decision on a zoning permit). An appeals board could not, however, hear appeals it had previously heard. One situation needs special attention. If there is an existing board of zoning appeals and it is charged with serving as the appeals board, an alternate body must be designated as the appeals board in the case of record appeals on variances. A good alternative is to assign the job of conducting the review to a hearings officer.*

(1) The appeals board shall have the authority to hear and decide appeals where it is alleged there is error in a land-use decision made by an approving authority. An appeal of a land-use decision may be taken to the appeals board within [30] days after the decision is issued or within [30] days after the date the application is deemed approved under Section 114:

(a) by the applicant for the development permit and any party to the record hearing if there has been a record hearing; or

(b) if there has been an administrative review:

1. by the applicant for the development permit; or

2. by any person or governmental unit aggrieved by the land-use decision.

There shall be no more than one record appeal on an application for a master permit.

Comment: *The authority of the appeals board extends only to appeals administrative in nature. Consequently, the appeals board cannot hear decisions that are not final (e.g., preliminary approvals of subdivisions or decisions on zoning map amendments and amendments to the land development regulations).*

(2) The party appealing must file a notice of appeal specifying the grounds for the appeal with the approving authority that made the decision that led to the appeal, and with the appeals board. The approving authority that made the decision that led to the appeal shall transmit to the appeals board the record for the land-use decision that the party is appealing.

(3) The appeals board may dismiss an appeal if it determines the notice of appeal is legally insufficient on its face.

Comment: *If a record hearing has been held on a development permit application, any person who could be aggrieved has the opportunity to become a party to the hearing, so this Section limits appeals to persons who became parties. If there has been an administrative review without a hearing, there has been no opportunity to establish party status, so the applicant and any person aggrieved may appeal.*

(4) An appeal that is not dismissed shall stay any and all proceedings to enforce, execute, or implement the land-use decision being appealed. Any development authorized by said land-use decision, unless the approving authority that made the decision that led to the appeal certifies in writing to the appeals board that a stay in the decision or development thereunder would cause immediate and irreparable harm to the appellant.

(4) The appeals board shall set the time and place at which it will consider the appeal, which shall be no more than [20] days from the time the appeal was filed. The appeals board shall give at least [10] days' notice of the appeal hearing to the approving authority that made the decision that led to the appeal and to the parties to the appeal.

(5) The appeals board shall hold a hearing on the record in a record appeal. The appeals board may take supplementary evidence in record appeals only in those limited cases in which it makes a written finding that evidence proffered by any party was improperly excluded from the record hearing. If the appeals board decides to take supplementary evidence, it shall provide mailed notice of this decision to all parties to the record hearing that was appealed and shall hold a record hearing as required by the local government's unified development review process.

(6) An appeals board shall issue a written decision after the record hearing in which it may reverse or affirm, wholly or in part, or may modify a land-use decision that has been appealed, and shall have the authority in making such a decision to exercise all the powers of the approving authority that made the decision that led to the appeal, insofar as they concern the issues stated in the appeal. A tie vote is an affirmation of the decision that was appealed.

(7) The appeals board shall not make findings of fact unless the board has taken evidence supplementing the record on appeal, in which case it shall make findings of fact based on this evidence and shall make a decision based on such findings.

(8) In an appeal from an administrative review, the appeals board shall hold a record hearing and make a decision as provided in Sections 110 to 114 above.

(9) The appeals board shall mail a notice of any decision to the parties to the appeal and to the [local planning agency *or* code enforcement officer] of the local government within [30] days of the commencement of the hearing.

(10) The appeals board shall keep written minutes of its proceedings, showing the vote of each member upon each appeal or, if absent or failing to vote, indicating that fact, and shall keep records of its official actions in its office.

(11) The [*name of legislative body*] shall adopt rules of procedure for the appeals board.

116. Code Interpretations; Index of Interpretations

(1) Any person(s) may submit a written request for a code interpretation to the Permit Review Coordinator or any other designated administrative official regarding any applicable title or any subsequent amendment thereto.

(2) The Permit Review Coordinator or other designated administrative official shall render only one interpretation per issue. In the event an interpretation is requested on an issue previously addressed, the Permit Review Coordinator or other designated administrative official shall provide a copy of the previous interpretation to satisfy such request.

(3) At a minimum, the request for code interpretation shall include:

> (a) the section of land development regulations that is allegedly ambiguous or needing clarification;
>
> (b) the subject matter or nature of the request; and
>
> (c) facts relevant to the nature of the request.

(4) The Permit Review Coordinator or other designated administrative official may deny or reject the request if there is no ambiguity or need for the clarification demonstrated by the requestor.

(5) The Permit Review Coordinator or other designated administrative official shall provide a quarterly report to the [legislative body] on code interpretations rendered. The report shall include, if necessary, any recommendations for amendments.

(6) All code interpretations shall be numbered consecutively in order of their issuance. The Permit Review Coordinator shall maintain such interpretations for public access and review in hard copy and on its Internet site until such time as the applicable section of the land development regulations is amended to provide the necessary clarification and to establish an index that refers to the applicable section of the land development regulations and the number of code interpretations.

Resources:

Irvine, California, City of. Zoning Ordinance, Chapter 2-2, Administrative Relief Procedure, Chapter 2-35, Use Determination Procedure. Website [portal to zoning codes of Irvine and other California cities, accessed December 14, 2004]:
http://ceres.ca.gov/planning/zoning/city.html

Milwaukee, Wisconsin, City of. Zoning Code, Subchapter 3, Administration, Enforcement, and Appeals, Section 291.311.5, Administrative Appeals [accessed December 14, 2004]:
http://www.mkedcd.org/czo/

Otak, *Model Development Code and User's Guide for Small Cities* (1999). Available in hard copy from the Transportation and Growth Management Program, Oregon Department of Land Conservation and Development, 635 Capitol Street NE, Suite 200, Salem, OR 97301-2450, tel. 503-373-0050.

Pierce County, Washington, County Code, Title 1.22, Hearing Examiner Code, and Title 18, Development Regulations, General Provisions (application filing, department review, public notice, time periods, code interpretations, and enforcement and penalties); and website [accessed December 14, 2004]:
www.co.pierce.wa.us/pc/services/home/property/pals/regs/regs.htm

4.6 MODEL TRANSFER OF DEVELOPMENT RIGHTS (TDR) ORDINANCE

The model ordinance below establishes a general framework for severing development rights involving net density and intensity (through FARs) from a sending parcel and transferring them to a receiving parcel. Section 101 of the ordinance authorizes a transfer of development rights (TDR) for a variety of purposes, including environmental protection, open space preservation, and historic preservation, which are the most typical.

Under Section 104, the local government has two options in setting up the TDR program. The first involves the use of overlay districts, which would zone specific areas as sending and receiving parcels. The second involves identifying which zoning districts would be sending and receiving districts in the text of the ordinance itself, rather than through a separate amendment to the zoning ordinance. In both cases, the designations must be consistent with the comprehensive plan. Section 105 of the ordinance contains a table that shows, by use district, the permitted maximum increases in density and FAR that can be brought about through TDR.

Section 106 outlines a process by which the zoning administrator would determine the specific number of development rights for a sending parcel in terms of dwelling units per net acre or square feet of nonresidential floor area (for commercial and industrial parcels) and

issue a certificate to the transferor. Sections 107 and 108 describe the instruments by which the development rights are legally severed from the sending parcel through instruments of transfer and attached to the receiving parcel. Section 107 describes how the applicant for a subdivision or other type of development permit would formally seek the use of development rights in a development project (e.g., a subdivision). Note that the transfer would not apply to rezonings, but only to specific projects where a development permit is going to be issued in order that development may commence.

Commentary to the ordinance describes, in Section 109, a development rights bank, a mechanism by which the local government purchases development rights before they are applied to receiving parcels, retains them permanently in order to prevent development, or sells them as appropriate in order to make a profit or direct development of a certain character to a specific area. Whether this is an appropriate role for local government or should be left to nonprofit organizations (e.g., land trusts) is matter for local discussion and debate. No ordinance language is provided, although the description in the commentary should be sufficient for local government officials to draft language establishing the bank.

Primary Smart Growth Principle Addressed: Preserve open space and farmland
Secondary Smart Growth Principle Addressed: Direct development towards existing communities

101. Purposes

The purposes of this ordinance are to:

(a) preserve open space, scenic views, critical and sensitive areas, and natural hazard areas;

(b) conserve agriculture and forestry uses of land;

(c) protect lands and structures of aesthetic, architectural, and historic significance;

(d) retain open areas in which healthful outdoor recreation can occur;

(e) implement the comprehensive plan;

(f) ensure that the owners of preserved, conserved, or protected land may make reasonable use of their property rights by transferring their right to develop to eligible zones;

(g) provide a mechanism whereby development rights may be reliably transferred; and

(h) ensure that development rights are transferred to properties in areas or districts that have adequate community facilities, including transportation, to accommodate additional development.

Comment: *The local government may tailor this list of purposes to its particular planning goals and objectives or leave it with a wide range of purposes and implement the ordinance to achieve specific goals and objectives.*

102. Authority

This ordinance is enacted pursuant to the authority granted by [*cite to state statute or local government charter or similar law*].

Comment: *It is important to determine whether the local government has legal authority to enact a TDR program because not all local governments in all states have identical powers. In addition, enabling legislation for TDR may require that the transfers be done in a certain manner other than is described in this model.*

103. Definitions

As used in this ordinance, the following words and terms shall have the meanings specified herein:

"**Development Rights**" mean the rights of the owner of a parcel of land, under land development regulations, to configure that parcel and the structures thereon to a particular density for residential uses or floor area ratio for nonresidential uses. Development rights exclude the rights to the area of or height of a sign.

Comment: *Unless sign area and height are excluded from the definition of "development rights," it is possible to transfer them to another parcel, resulting in larger or taller signs. In some cases, development rights might extend to impervious surface coverage, and a transfer of such rights would allow more extensive lot coverage.*

"Density" or **"Net Density"** means the result of multiplying the net area in acres times 43,560 square feet per acre and then dividing the product by the required minimum number of square feet per dwelling unit required by the zoning ordinance for a specific use district.

"Density" or "Net Density" is expressed as dwelling units per acre or per net acre

"Floor Area" means the gross horizontal area of a floor of a building or structure measured from the exterior walls or from the centerline of party walls. "Floor Area" includes the floor area of accessory buildings and structures.

"Floor Area Ratio" means the maximum amount of floor area on a lot or parcel expressed as a proportion of the net area of the lot or parcel.

"Net Area" means the total area of a site for residential or nonresidential development, excluding street rights-of-way and other publicly dedicated improvements, such as parks, open space, and stormwater detention and retention facilities, and easements, covenants, or deed restrictions, that prohibit the construction of building on any part of the site. "Net area" is expressed in either acres or square feet.

[**"Overlay District"** means a district superimposed over one or more zoning districts or parts of districts that imposes additional requirements to those applicable for the underlying zone.]

Comment: *This definition is only necessary if the TDR designation is accomplished via an overlay district.*

"**Receiving District**" means one or more districts in which the development rights of parcels in the sending district may be used.

"**Receiving Parcel**" means a parcel of land in the receiving district that is the subject of a transfer of development rights, where the owner of the parcel is receiving development rights, directly or by intermediate transfers, from a sending parcel, and on which increased density and/or intensity is allowed by reason of the transfer of development rights;

"**Sending District**" means one or more districts in which the development rights of parcels in the district may be designated for use in one or more receiving districts;

"**Sending Parcel**" means a parcel of land in the sending district that is the subject of a transfer of development rights, where the owner of the parcel is conveying development rights of the parcel, and on which those rights so conveyed are extinguished and may not be used by reason of the transfer of development rights; and

"**Transfer of Development Rights**" means the procedure prescribed by this ordinance whereby the owner of a parcel in the sending district may convey development rights to the owner of a parcel in the receiving district or other person or entity, whereby the development rights so conveyed are extinguished on the sending parcel and may be exercised on the receiving parcel in addition to the development rights already existing regarding that parcel or may be held by the receiving person or entity.

Comment: *This definition recognizes that development rights may be sold to an entity (e.g., the local government or a nonprofit organization) that will hold them indefinitely.*

"Transferee" means the person or legal entity, including a person or legal entity that owns property in a receiving district, who purchases the development rights.

"Transferor" means the landowner of a parcel in a sending district.

104. Establishment of Sending and Receiving Districts.

[*Alternative 1: Amend the zoning map using overlays*]

(1) The [local legislative body] may establish sending and receiving districts as overlays to the zoning district map by ordinance in the manner of zoning district amendments. The [planning director] shall cause the official zoning district map to be amended by

overlay districts to the affected properties. The designation "TDR-S" shall be the title of the overlay for a sending district, and the designation "TDR-R" shall be the title of the overlay for a receiving district.

Comment: *When a zoning map is amended, one practice is to list the ordinance number and the enactment date in a box on the map, along with the signatures of the planning director and the clerk of the local legislative body (e.g., the clerk of council). This allows for an easy reference if there should be any later questions about whether the map amendment accurately reflects the legal description in the ordinance.*

(2) Sending and receiving districts established pursuant to Paragraph (1) shall be consistent with the local comprehensive plan.

[*Alternative 2—Specify zoning districts that can serve as sending and receiving districts*]

(1) The following zoning districts shall be sending districts for the purposes of the transfer of development rights program:

[*list names of districts*]

(2) The following zoning districts shall be receiving districts for the purposes of the transfer of development rights program:

[*list names of districts*]

Comment: *Since the sending and receiving districts are being established as part of the ordinance rather than through separate overlays, the local government would need to make a declaration of consistency with the comprehensive plan for such districts as part of the enactment of these two paragraphs.*

105. Right to Transfer Development Rights

(1) Each transferor shall have the right to sever all or a portion of the rights to develop from the parcel in a sending district and to sell, trade, or barter all or a portion of those rights to a transferee consistent with the purposes of Section 101 above .

(2) The transferee may retire the rights, resell them, or apply them to property in a receiving district in order to obtain approval for development at a density or intensity of use greater than would otherwise be allowed on the land, up to the maximum density or intensity indicated in Table 1.

Table 1
Maximum Density and Intensity Allowed in Zoning Districts through Transfer of Development Rights (TDR)

Note: District names, densities, and intensities are hypothetical examples only.

Zoning District Title	Maximum Density in Dwelling Units Per Net Acre	Maximum Intensity in Floor Area Ratio	Maximum Density with TDR	Maximum Intensity in Floor Area Ratio with TDR
R-1	4		8	
R-2	8		16	
R-3	16		32	
C-1		0.2		0.4
C-2		1.0		2.0
C-3		2.0		4.0
C-4		4.0		8.0
I-1		0.75		1.5

(3) Any transfer of development rights pursuant to this ordinance authorizes only an increase in maximum density or maximum floor area ratio and shall not alter or waive the development standards of the receiving district, including standards for floodplains, wetlands, and [*other environmentally sensitive areas*]. Nor shall it allow a use otherwise prohibited in a receiving district.

Comment: *In some cases, it may be desirable to allow the transfer of the right to additional impervious surface coverage on a site. For example, if a certain zoning district limits the amount of surface parking by a maximum impervious surface parking ratio and additional parking is needed, Table 1 should be amended to authorize this.*

106. Determination of Development Rights; Issuance of Certificate

(1) The [zoning administrator] shall be responsible for:

(a) determining, upon application by a transferor, the development rights that may be transferred from a property in a sending district to a property in a receiving district and issuing a transfer of development rights certificate upon application by the transferor.

(b) maintaining permanent records of all certificates issued, deed restrictions and covenants recorded, and development rights retired or otherwise extinguished, and transferred to specific properties; and

(c) making available forms on which to apply for a transfer of development rights certificate.

(2) An application for a transfer of development rights certificate shall contain:

(a) a certificate of title for the sending parcel prepared by an attorney licensed to practice law in the state of [*name of state*];

(b) [five] copies of a plat of the proposed sending parcel and a legal description of the sending parcel prepared by [licensed *or* registered] land surveyor;

(c) a statement of the type and number of development rights in terms of density or FAR being transferred from the sending parcel, and calculations showing their determination.

(d) applicable fees; and

(e) such additional information required by the [zoning administrator] as necessary to determine the number of development rights that qualify for transfer

Comment: *A local government should consult with its law director or other legal counsel to determine the requirements for an application for a TDR. Consequently, this paragraph as well as other Sections of the ordinance may need to be revised to reflect state-specific issues concerning real property law and local conditions.*

(3) A transfer of development rights certificate shall identify:

(a) the transferor;

(b) the transferee, if known;

(c) a legal description of the sending parcel on which the calculation of development rights is based;

(d) a statement of the number of development rights in either dwelling units per net acre or square feet of nonresidential floor area eligible for transfer;

(e) if only a portion of the total development rights are being transferred from the sending property, a statement of the number of remaining development rights in either dwelling units per net acre or square feet of nonresidential floor space remaining on the sending property;

(f) the date of issuance;

(g) the signature of the [zoning administrator]; and

(h) a serial number assigned by the [zoning administrator].

(4) No transfer of development rights under this ordinance shall be recognized by the [local government] as valid unless the instrument of original transfer contains the [zoning administrator's] certification.

107. Instruments of Transfer

(1) An instrument of transfer shall conform to the requirements of this Section. An instrument of transfer, other than an instrument of original transfer, need not contain a legal description or plat of the sending parcel.

(2) Any instrument of transfer shall contain:

(a) the names of the transferor and the transferee;

(b) a certificate of title for the rights to be transferred prepared by an attorney licensed to practice law in the state of [name of state];

(c) a covenant the transferor grants and assigns to the transferee and the transferee's heirs, assigns, and successors, and assigns a specific number of development rights from the sending parcel to the receiving parcel;

(d) a covenant by which the transferor acknowledges that he has no further use or right of use with respect to the development rights being transferred; and

(e) [*any other relevant information or covenants*].

(3) An instrument of original transfer is required when a development right is initially separated from a sending parcel. It shall contain the information set forth in paragraph (2) above and the following information:

(a) a legal description and plat of the sending parcel prepared by a licensed surveyor named in the instrument;

(b) the transfer of development rights certificate described in Section 106 (4) above.

(c) a covenant indicating the number of development rights remaining on the sending parcel and stating the sending parcel may not be subdivided or developed to a greater density or intensity than permitted by the remaining development rights;

(d) a covenant that all provisions of the instrument of original transfer shall run with and bind the sending parcel and may be enforced by the [*local government*] and [*list other parties, such as nonprofit conservation* organizations]; and

(d) [*indicate topics of other covenants, as appropriate*].

(4) If the instrument is not an instrument of original transfer, it shall include information set forth in paragraph (2) above and the following information :

(a) a statement that the transfer is an intermediate transfer of rights derived from a sending parcel described in an instrument of original transfer identified by its date, names of the original transferor and transferee, and the book and the page where it is recorded in the [land records of the county].

(b) copies and a listing of all previous intermediate instruments of transfer identified by its date, names of the original transferor and transferee, and the book and the page where it is recorded in the [land records of the county].

(5) The local government's [law director] shall review and approve as to the form and legal sufficiency of the following instruments in order to affect a transfer of development rights to a receiving parcel:

(a) An instrument of original transfer

(b) An instrument of transfer to the owner of the receiving parcel

(c) Instrument(s) of transfer between any intervening transferees

Upon such approval, the [law director] shall notify the transferor or his or her agent, who shall record the instruments with the [name of county official responsible for deeds and land records] and shall provide a copy to the [*county assessor*]. Such instruments shall be recorded prior to release of development permits, including building permits, for the receiving parcel.

Comment: *The procedures in paragraph (5) may need to be modified based on the structure of local government in a particular state and the responsibilities of governmental officials for land records and assessments. The important point is that the TDRs must be permanently recorded, and the property of the owner of the sending parcel, the value of which is reduced because of the transfer, should be assessed only on the basis of its remaining value.*

108. Application of Development Rights to a Receiving Parcel

(1) A person who wants to use development rights on a property in a receiving district up to the maximums specified in Table 1 in Section 105 above shall submit an application for the use of such rights on a receiving parcel. The application shall be part of an application for a development permit. In addition to any other information required for the development permit, the application shall be accompanied by:

(a) an affidavit of intent to transfer development rights to the property; and

(b) either of the following:

1. a certified copy of a recorded instrument of the original transfer of the development rights proposed to be used and any intermediate instruments of transfer through which the applicant became a transferee of those rights; or

2. a signed written agreement between the applicant and a proposed original transferor, which contains information required by Section 106(2) above and in which the proposed transferor agrees to execute an instrument of such rights on the proposed receiving parcel when the use of those rights, as determined by the issuance of a development permit, is finally approved.

(2) The [local government] may grant preliminary subdivision approval of a proposed development incorporating additional development rights upon proof of ownership of development rights and covenants on the sending parcel being presented to the [local government] as a condition precedent to final subdivision approval.

(3) No final plat of subdivision, including minor subdivisions, shall be approved and no development permits shall be issued for development involving the use of development rights unless the applicant has demonstrated that:

> (a) the applicant will be the bona fide owner of all transferred development rights that will be used for the construction of additional dwellings, the creation of additional lots, or the creation of additional nonresidential floor area;
>
> (b) a deed of transfer for each transferred development right has been recorded in the chain of title of the sending parcel and such instrument restricts the use of the parcel in accordance with this ordinance; and
>
> (c) the development rights proposed for the subdivision or development have not been previously used. The applicant shall submit proof in the form of a current title search prepared by an attorney licensed to practice law in the state of [name of state] .

109. Development Rights Bank [*optional*]

Comment: *This section should establish a development rights bank, otherwise referred to as a "TDR Bank." The local government or any other existing or designated entity may operate the bank. The TDR Bank should:*

- *have the power to purchase and sell or convey development rights, subject to the local legislative body's approval;*
- *have the power to recommend to the local legislative body property where the local government should acquire development rights by condemnation;*
- *have the power, to hold indefinitely any development rights it possesses for conservation or other purposes;*
- *receive donations of development rights from any person or entity; and*
- *receive funding from the local government, the proceeds from the sale of development rights, or grants or donations from any source.*

No model ordinance language for the creation of the TDR bank is provided here because the specifics of such must be determined by the operating entity.

References

Fruita, Colorado, City of. Land Use Code, Chapter 17.09, Transfer of Development Rights/Credits [accessed December 14, 2004]: www.fruita.org/pdf/LUC_4_2004/Chapter17_comp.pdf

Howard County, Maryland. Zoning Ordinance, Section 106, Density Exchange Option Overlay District [accessed December 14, 2004]: http://www.co.ho.md.us/DPZ/DPZDocs/ClusterDEO070104.pdf

Redmond, Washington, City of. Community Development Guide, Section 20D.200, Transfer of Development Rights/Purchase of Development Rights Program [accessed December 14, 2004]:
http://search.mrsc.org/nxt/gateway.dll/rdcdg?f=templates&fn=rdcdgpage.htm$vid=municodes:RedmondCDG

Sarasota County, Florida. Zoning Code, Section 4.11, TDR Overlay District Intent Statements and Section 6.12, TDR Overlay District Development Standards, website [accessed December 14, 2004]:
http://www.scgov.net/Frame/ScgWebPresence.aspx?AAA498=AFC1BAAFC0A89CB7B9BBBAA7C0A4B273C8B5B3B5C86FBBAAC981B0ABB8A2C2B1C980ADB9C2B9

St. Mary's County, Maryland. Zoning Ordinance, Chapter 26, Transferable Development Rights [accessed December 14, 2004 http://www.co.saint-marys.md.us/planzone/docs/TDRammendment.pdf

4.7 MODEL RESIDENTIAL CLUSTER DEVELOPMENT ORDINANCE

Residential cluster development is a form of land development in which principal buildings and structures are grouped together on a site, thus saving the remaining land area for common open space, conservation, agriculture, recreation, and public and semipublic uses (Whyte 1964; Unterman and Small 1977; Arendt 1996; Sanders 1980). In many respects, cluster development dates back to one of the earliest town forms. In primitive early settlements, dwelling units were often organized to form a common area or enclosure that residents could use together and readily defend if necessary.

In the United States, the development of Radburn, New Jersey, in 1928 represented the first formal introduction of the cluster development concept. It drew on English town planning principles, notably those of the Garden Cities movement. In Radburn, single-family homes and garden apartments are sited in ”superblocks” of 35 to 50 acres (Stein 1957, 34-37). The superblocks have no through traffic and are interspersed with parks and related green spaces on which the residences face. Clustering also became the basic site design concept in such contemporary new towns as Reston, Virginia, and Columbia, Maryland.

Cluster development has a number of distinct advantages over conventional subdivision development. A well-planned cluster development concentrates dwelling units on the most buildable portion of the site and preserves natural drainage systems, vegetation, open space, and other significant natural features that help control stormwater runoff and soil erosion. The common areas function as a trap for nutrients dissolved or suspended in stormwater runoff (Arendt 1994, 278, 281). Cost savings during construction are achieved by the reduction in street lengths and utility installations. Later savings can be realized in street and utility maintenance (less surface area that needs repaving and fewer feet of water and sewer line to maintain). Because dwelling units are placed closer together, refuse and other service vehicles do not have to negotiate over as much street mileage, thus reducing travel time. Where clustering is accompanied by higher-density residential land uses and the provision of pedestrian pathways and bikeways, especially those that link to off-site activity centers, residents of the cluster development may walk and exercise more. Clustering also enhances the sense of community, allowing parents better supervision of children playing in common areas and promoting social interaction among neighbors.

This model ordinance is intended to encourage developers to use cluster development as an alternative to conventional lot-by-lot development and authorizes cluster development as-of-right either in all residential districts or in selected residential districts. Section 110 of the ordinance also offers density bonuses of up to 25 percent when a developer: (a) provides affordable housing as part of the cluster development (thereby helping the local government achieve housing goals that may have been established by the state) and/or (b) conveys land for open space, recreation, or other purposes that is accessible to the public.

Under Section 107 of the model, the local planning commission has the primary responsibility for reviewing and approving a cluster development, although such a function could also be assigned to a hearing examiner. The model ordinance sets forth criteria for the commission to apply in deciding whether to approve the cluster development.(Remember that the responsibilities of the local planning commission vary from state to state.)

The model does not include a severability clause because it assumed this ordinance will be incorporated into a zoning code that will have one already.

This model is based on a sample ordinance appearing in *Nonpoint Source Pollution: A Handbook for Local Governments* by Sanjay Jeer, Megan Lewis, Stuart Meck, Jon Witten, and Michelle Zimet, Planning Advisory Service Report No. 476 (Chicago: American Planning Association, 1997), 81-90.

Primary Smart Growth Principle Addressed: Preserve open space and farmland
Secondary Smart Growth Principle Addressed: Distinctive and attractive places

101. Purpose

(1) It is the purpose of this ordinance to permit residential cluster development in order to:

(a) encourage creative and flexible site design that is sensitive to the land's natural features and adapts to the natural topography;

(b) protect environmentally sensitive areas of a development site and preserve on a permanent basis open space, natural features, and prime agricultural lands;

(c) decrease or minimize nonpoint source pollution impacts by reducing the amount of impervious surfaces in site development;

(d) promote cost savings in infrastructure installation and maintenance by such techniques as reducing the distance over which utilities, such as water and sewer lines, need to be extended or by reducing the width or length of streets; and

(e) provide opportunities for social interaction and walking and hiking in open space areas.

102. Definitions

As used in this ordinance, the following words and terms shall have the meanings specified herein:

Comment. *Please remember to consult your state statutes to employ definitions that are consistent with those statutes. These definitions were drawn from different sources and, while useful, may differ from those already established by your state legislation.*

"Affordable" means either a sales price that is within the means of a moderate-income household or a rental amount for housing that is within the means of a low-income household, as those terms are defined in this Section. In the case of dwelling units for sale, housing that is affordable is housing for which the mortgage, taxes, insurance, and fees are no more than [30] percent of the adjusted income for a household whose gross annual income is at or below [80] percent of the median for the area based on household size. In the case of rental housing, housing that is affordable is housing for which the monthly rental amount plus utility costs do

not exceed [30] percent of the adjusted income for a household whose gross income is [50] percent of the area median household income adjusted for household size.

Comment. *Definitions of ”affordable,” ”low-income household,” and ”moderate-income household” may need to be changed here and below. The definitions should comply with current requirements of the applicable federal or state construction or rehabilitation program. In particular, the bracketed percentages may be modified to affect the scope of the definition.*

“Buffer” means land maintained in either a natural or landscaped state and used to screen and/or mitigate the impacts of development on surrounding areas, properties, or rights-of-way.

”Building” means any structure used or intended for supporting or sheltering any use or occupancy.

”Cluster” or **”Clustering”** means a site-planning technique that concentrates buildings and structures in specific areas on a lot, site, or parcel to allow the remaining land to be used for recreation, open space, and/or preservation of features and/or structures with environmental, historical, cultural, or other significance. The techniques used to concentrate buildings may include, but shall not be limited to, reduction in lot areas, setback requirements, and/or bulk requirements, with the resultant open space being devoted by deed restrictions for one or more uses.

“Cluster development, residential” means a land development project in which the site planning technique of clustering dwelling units is employed.

“Common open space” means the portion of the site set aside in perpetuity as open space. This area may include coastal and freshwater wetlands, floodplains or flood-hazard areas, stream corridors, prime agricultural lands, habitats of endangered wildlife, as identified on applicable federal or state lists, scenic views, historical or cultural features, archaeological sites, or other elements to be protected from development, as well as easements for public utilities.

”Development” means the construction, reconstruction, conversion, structural alternation, relocation, or enlargement of any structure; any mine, excavation, landfill or land disturbance; and/or any change in use, or alteration or extension of the use, of land.

”Gross area” means the total area of the site, including the net buildable area and public rights-of-way.

“infrastructure” means the facilities and services needed to sustain residential, commercial, industrial, institutional, and other activities.

”Land development project” means a project in which one or more lots, tracts, or parcels of land are to be developed or redeveloped as a coordinated site for a complex of uses, units, or structures, including, but not limited to, planned development and/or cluster development for

residential, commercial, institutional, recreational, open space, and or/mixed uses as are provided for in the zoning ordinance.

”Lot” means either: (a) the basic development unit for determination of area, depth, and other dimensional variations; or (b) a parcel of land whose boundaries have been established by some legal instrument, such as a recorded deed or recorded map, and recognized as a separate legal entity for purposes of transfer of title.

”Low-income household” means a household whose gross annual income does not exceed [50] percent of the area median as adjusted for household size.

“Moderate-income household” means a household whose gross annual income is less than [80] percent of the area median as adjusted for household size.

“Net buildable area” means the portion of the cluster development that may be developed or used for common open space, whether publicly dedicated or private, but excluding private streets, public streets, and other publicly dedicated improvements.

”Site plan” means the development plan for one or more lots on which is shown the existing and/or the proposed conditions of the lot.

”Street, private” means a local roadway serving only abutting lots, not publicly dedicated or maintained by the [local government] but meeting specific municipal improvement standards, and providing access for service and emergency vehicles.

“Street, public” means all public property reserved or dedicated for street traffic.

“Structure” means anything constructed or erected that requires location on the ground or attached to something having location on the ground.

103. Applicability; General Provisions

(1) A residential cluster development shall be permitted [as of right in any residential zoning district pursuant to this ordinance *or* as of right in the following zoning districts: *list district names*]:

(a) All principal and accessory uses authorized in the applicable residential zoning district(s) shall be allowed in the cluster development. In addition, multifamily dwellings, duplexes, and townhouses may be permitted for a cluster development located in a residential zoning district that does not otherwise allow attached dwelling units.

(b) Maximum lot coverage, floor area ratios, building height, and parking requirements for the applicable zoning district shall apply to the cluster development. Maximum lot coverage,

floor area ratios, and parking requirements, however, shall be applied to the entire site rather than to any individual lot.

(2) The following provisions shall apply to any residential cluster development, regardless of the general requirements of the applicable residential zoning district:

(a) The minimum area of the cluster development shall be [two *to* five] acres.

Comment. *There is a fair degree of debate about whether the area of a cluster development should be limited. Because cluster development is fundamentally a design review process, in theory, the approach should be applicable to a site of any size. However, it may be that, for smaller sites, a cluster development may not yield any appreciable benefits over conventional subdivisions. Consequently, the decision to authorize cluster development will depend on the policy preferences of the individual local government.*

(b) No minimum width or depth of a lot shall apply.

(c) A minimum separation of [10] feet shall be provided between all principal buildings and structures.

(d) A minimum yard or common open space of a least [25] feet in depth shall be provided, as measured from all public streets and from the side and rear lot lines of the entire cluster development.

(e) Each lot shall have a minimum access of [12] feet to a public or private street. Such access may be shared with other lots.

(f) More than one principal building or structure may be placed on a lot.

(g) Not less than [25] percent of the site shall be conveyed as common open space in the manner provided for in Section [110] below. [Where the site contains floodplains and/or coastal or freshwater wetlands, not less than [50] percent of such floodplains and/or wetlands shall be included in calculating the common open space.]

Comment. *In some states, the identification of floodplains and coastal or freshwater wetlands occurs routinely as part of the land development and subdivision review process. Optional language in Section 103(2)(g) above requires that at least 50 percent of the floodplains and/or wetlands must be included as part of the common open space. By including the land designated as common open space, the calculation of net buildable area gives credit for the land area in which floodplains and wetlands that meet state criteria are located. This is intended to serve as an incentive to employ clustering by allowing the area represented by lands in floodplains and wetlands to be used in determining the maximum number of dwelling units.*

104. Contents of Site Plan

(1) The preliminary and final site plan for a residential cluster development shall include, but shall not be limited to, the following information:

(a) The maximum number and type of dwelling units proposed

(b) The areas of the site on which the dwelling units are to be constructed or are currently located and their size (this may take the form of the footprint of the dwelling unit or a building envelope showing the general area in which the dwelling unit is to be located)

(c) The calculations for the permitted number of dwelling units, derived pursuant to Section [105] below

(d) The areas of the site on which other proposed principal and accessory uses may be located and their size

Comment. *Uses other than residences may be located on the site. For example, the cluster development may include storage facilities, garages, and recreational buildings. Conceivably, a very large cluster development could also include sites for schools.*

(e) The areas of the site designated for common open space and their size

(f) The areas of the site designated for parking and loading and the size of individual spaces

(g) The number and percentage of dwelling units, if any, that are proposed to be affordable

(h) The location of sidewalks, trails, and bike paths.

Comment: *This model assumes the local government will require sidewalks as part of the public improvements required for subdivision.*

(i) The number of acres that are proposed to be conveyed as common open space

(j) [C*ite any other plans or information otherwise required by the local government for a major land development or subdivision in its land development or subdivision regulations, such as a plan for landscaping and screening*.]

105. Calculation of Permitted Number of Dwelling Units; Density Bonuses

(1) Except as provided in paragraph (3) below, the maximum numbers of dwelling units proposed for a residential cluster development shall not exceed the number of dwelling units otherwise permitted for the residential zoning district in which the parcel is located.

(2) Except as provided in paragraph (3) below, the number of permitted dwelling units on a site shall be calculated in the following manner.

Comment. *The calculations in paragraph (2) are intended to mirror those that a local government would normally employ for determining the maximum number of dwelling units permitted for nonclustered development. Some communities may subtract from the gross area of the cluster development land area in wetlands and/or floodplains, which will reduce the maximum number of dwelling units in the development.*

(a) Measure the gross area of the proposed cluster development site in acres and tenths of an acre.

(b) Subtract from the gross area determined in subparagraph (a) the area of public and private streets and other publicly dedicated improvements, measured in acres and tenths of an acre, excluding common open space (whether or not it is conveyed pursuant to Section [110] below). The remainder shall be the net buildable area;

(c) Convert the net buildable area from acres to square feet (SF), using the equivalency of 43,560 SF = 1 acre; and

(d) Divide the net buildable area by the smallest minimum lot size (in square feet) per unit for a dwelling unit permitted in the zoning district. This figure shall be rounded to the nearest lower number to establish the maximum number of dwelling units to be permitted in the cluster development.

(3) The [local planning commission] may approve an increase of up to [25] percent of the maximum number of dwelling units in the cluster development, as calculated in paragraph (2) above, if:

Comment. *The bonus provisions in paragraph (3) are a means by which a local government can ensure that new housing will benefit low- and moderate-income households and implement state goals for affordable housing. Indeed, should a local government decide it wants to more aggressively provide for affordable housing through cluster development (as well as open space conveyance), it might increase the density bonus from the suggested figure of 25 percent.*

(a) the percent of density bonus is no greater than the percent of dwelling units in the cluster development that are affordable units; and/or

(b) the percent of density bonus is no greater than the percent of the gross area of the cluster development that is both:

1. set aside as and conveyed as common open space pursuant to Section [110] below; and

2. accessible to the public.

Comment. *Note that only when the common open space is both conveyed and is accessible to the public is a density bonus justified. If the common open space was simply conveyed to a private entity (as opposed to the local government), but there was no public access, a density bonus could not be approved.*

106. Procedures for Review

(1) The [local planning commission] shall review and approve a residential cluster development and any amendments thereto as a land development project in the manner provided for in [*cite applicable state statute*], together with any ordinances and regulations adopted pursuant thereto and appearing in [*cite applicable local land development regulations*].

107. Review Criteria

(1) In reviewing a residential cluster development, the [local planning commission shall determine whether:

(a) the site plan satisfies the requirements of Sections [103], [104], and [105] above;

(b) buildings and structures are adequately grouped so at least [25] percent of the total area of the site is set aside as common open space. To the greatest degree practicable, common open space shall be designated as a single block and not divided into unconnected small parcels located in various parts of the development;

(c) pedestrians can easily access common open space;

(d) the site plan establishes, where applicable, an upland buffer of vegetation of at least [50] feet in depth adjacent to wetlands and surface waters, including creeks, streams, springs, lakes, and ponds;

(e) individual lots, buildings, structures, streets, and parking areas are situated to minimize the alteration of natural features, natural vegetation, and topography;

(f) existing scenic views or vistas are permitted to remain unobstructed, especially from public streets;

(g) the site plan accommodates and preserves any features of historic, cultural, or archaeological value;

(h) floodplains, wetlands, and areas with slopes in excess of [25] percent are protected from development;

(i) the cluster development advances the purposes of this ordinance as stated in Section [101] above; and

(j) [*other, such as contiguity requirement for common open space*].

(2) The [local planning commission] may, in its opinion, apply such special conditions or stipulations to its approval of a residential cluster development as may be required to maintain harmony with neighboring uses and to promote the objectives and purposes of the comprehensive plan and the zoning and subdivision ordinances.

(3) If the [local planning commission] finds that the requirements of paragraph (1) above are satisfied, it shall approve the residential cluster development, subject to any special conditions or stipulations pursuant to paragraph (2) above, any density bonus pursuant to Section [105] above, and any reductions [and/or waivers] pursuant to Section [108] below.

Comment. *While these review criteria are intended to guide the planning commission in the evaluation of the proposed cluster development, they cannot replace a sensitive and creative site planner who has the responsibility of designing cluster development or an experienced professional planner whose responsibility it is to review the proposal and advise the planning commission on necessary design changes.*

108. Reduction [and/or Waiver] of Certain Physical Design Requirements

(1) In approving a residential cluster development, the [local planning commission] may reduce the pavement width of any public or private streets that would otherwise be required by the [subdivision regulations *or other design specifications for roads*] to [22] feet.

(2) An applicant who wants the reduction of pavement width of public or private streets as provided for in paragraph (1) above, shall submit a statement of justification for the reduction [and/or waiver] along with the final site plan.

Comment. *Most local governments have adopted standard design specifications for streets. This Section allows the planning commission to reduce street pavement widths in order to minimize impervious surfaces on the site as well as limit the portions of the site that must be regraded to accommodate wider streets. If a street proposed in a cluster development is to be used as a connector from an adjoining development or as a through street, it is probably not a candidate for a reduction in width. There is no firm rule, however, on when a reduction or waiver should be allowed and determinations should be made on a case-by-case basis.*

The 22-foot pavement width shown in brackets assumes a 15-foot travel lane and a seven-foot parking area. If parking were desired on both sides of the street, a 28-foot pavement would accommodate two seven-foot parking lanes and a 14-foot wide travel lane (Southworth and Ben-Joseph 1997; Livable Oregon n.d.; Ewing 1996, 69-72).

109. Controls on Resale and Re-rental of Affordable Housing Units Used as Basis for Density Bonus

(1) Affordable dwelling units used as the basis for approving a density bonus in Section [105] above shall be subject to a deed restriction and a mortgage lien to ensure that newly constructed low- and moderate-income sales and rental units remain affordable to low- and moderate-income households for a period of not less than [30] years, which period may be renewed.

(2) The deed restriction and mortgage lien shall be approved by the [local government] law director and shall be enforceable by the [local government] through legal and equitable remedies.

Comment. *If the density bonus is to be given on the basis of a guarantee of the provision of affordable housing, there must be a mechanism that ensures the housing, whether it is for sale or for rent, will remain affordable for a reasonable period of time. This is done through a deed restriction and mortgage lien approved by the local government's law director (New Jersey n.d.).*

110. Conveyance of Open Space

(1) Common open space provided by a residential cluster development shall be conveyed as follows:

(a) To the [local government] and accepted by it for park, open space, agricultural, or other specified use or uses, provided that the conveyance is approved by the [local planning commission] and is in a form approved by the [local government] law director; or

(b) To a nonprofit organization whose principal purpose is the conservation of open space, to a corporation or trust owned or to be owned by the owners of lots or dwelling units within the residential cluster development, or to owners of shares within a cooperative development. If such a corporation or trust is used, ownership shall pass with the conveyances of the lots or dwelling units. The conveyance shall be approved by the [local planning commission] and shall be in a form approved by the [local government's] law director (see Diehl et al. 1988 for model language for easements).

(2) In any case, where the common open space in a residential cluster development is conveyed pursuant to subparagraph (1)(b) above, a deed restriction enforceable by the [local government] shall be recorded that provides that the common open space shall:

(a) be kept in the authorized conditions(s); and

(b) not be developed for principal uses, accessory uses (e.g., parking), or roadways.

References for Section 4.7, Model Residential Cluster Development Ordinance

Arendt, Randall G. 1996. *Conservation Design for Subdivisions: A Practical Guide to Creating Open Space Networks.* Washington, D.C.: Island Press.

Arendt, Randall G. et al. 1994. *Rural by Design.* Chicago: APA Planners Press.

Diehl, Janet, et al. 1988. *The Conservation Easement Handbook: Managing Land Conservation and Historic Preservation Easement Programs.* Washington, D.C.: Trust for Public Land and Land Trust Alliance.

Ewing, Reid. 1996. *Best Development Practices.* Chicago: APA Planners Press, 69-72.

Jeer, Sanjay, et al. 1997. *Nonpoint Source Pollution: A Handbook for Local Governments.* Planning Advisory Service Report No. 476. Chicago: American Planning Association, 81-90.

Livable Oregon, Inc. n.d. *Skinny Streets: Better Streets for Livable Communities.* Portland, Ore: Livable Oregon.

New Jersey, State of. n.d. *New Jersey Administrative Code,* Vol. 5, Ch. 93, Appendix I.

Sanders, Welford G. 1980. *The Cluster Subdivision: A Cost-Effective Approach.* Planning Advisory Service Report No. 356. Chicago: American Planning Association.

Southworth, Michael, and Eran Ben-Joseph. 1997. *Streets and the Shaping of Towns and Cities.* New York: McGraw-Hill.

Stein, Clarence S. 1957. *Toward New Towns for America.* New York: Reinhold Publishing Co, 37-34.

Unterman, Richard, and Robert Small. 1977. *Site Planning for Cluster Housing.* New York: Van Nostrand Reinhold.

Whyte, William H. 1964. *Cluster Development.* New York: American Conservation Association.

4.8 FOUR MODEL ORDINANCES TO HELP CREATE A PHYSICALLY ACTIVE COMMUNITY

During the last decade of the twentieth century, a number of communities stepped up support for bicycling and walking as modes of transportation by planning for and providing the necessary infrastructure. Many are college towns (e.g., Madison, Wisconsin; Eugene, Oregon; Davis, California; and Boulder, Colorado). Since 1990, other newly developing and redeveloping cities and suburbs have also implemented plans that incorporate pedestrian, bicycle, and transit facilities. Some of the funding for such plans and projects has come from the federal Transportation Equity Act for the 21st Century (TEA-21), and its precedent law, the Intermodal Surface Transportation Efficiency Act of 1990 (ISTEA).

Both ISTEA and TEA-21 represented a departure in the traditional formula for federal and state transportation spending. Rather than devote resources almost exclusively to highway expansion and maintenance, the acts required states to set aside 10 percent of funding for projects that support nonautomobile modes of travel, including transit, bicycling, and walking. This shift occurred in large part in response to public and lawmakers' emerging awareness that the auto-only recipe for solving transportation problems (i.e., more, wider roads as the principal strategy) that had dominated transportation funding formulas since World War II was not fiscally or environmentally stable in the long term. Such concerns coincided with growing aversion for low-density urban sprawl and the resultant loss of open space, farmland, and diminished sense of place and community.

A key part of ISTEA and TEA-21 is the Transportation Enhancements Program, which provides states and local governments with monies for bike trails, sidewalks, public transportation, preservation and restoration of historic transportation facilities, and scores of other projects. Enhancements constitute about 2 percent of the overall funding of the federal-aid highway program. It has funded more than 15,000 projects nationwide, helping communities create bicycle and pedestrian paths, develop walkable downtowns, and protect scenic vistas and historical sites. To date, bicycle and pedestrian facilities, combined with rail-to-trails, comprise over one-half of all enhancement obligations.

A 2003 survey by the Surface Transportation Policy Project (STPP), a Washington, D.C.-based organization that monitors the implementation of federal transportation laws, demonstrated that the public has a desire to do more walking but that poorly designed communities and neighborhood streets often prevent them from doing so (STPP 2003). Design elements that survey respondents described as barriers to walking included inconvenient or nonexistent pedestrian routes from neighborhoods to transit stops and shopping streets, streets designed to encourage speeding, and dangerous intersections.

Much of what is implemented through the three model ordinances that follow (a pedestrian overlay district; an on-site access, parking, and circulation ordinance; and a shared parking ordinance) aims to meet the public's desire for walkable communities.

The standards that have arisen over time are in many cases direct responses to planning practices that run counter to the goal of creating active communities. Here is a sampling of those traditional practices, ranging from the very broad to the very specific:

- The perpetuation (through zoning and subdivision regulations) of low-density development, which is not conducive to walking or bicycling and thus is not conducive to incorporating activity into daily routines

- The regulatory challenge of implementing truly mixed-use developments and districts (coupled with the difficulties developers have securing financing for any project that departs from conventional subdivisions, strip shopping centers, or big box retail)

A preponderance of streets and street environments in American cities and towns that are unsafe and hostile toward anything except the automobile.

- A lack of street connectivity. Isolated, single-use subdivisions that have no direct connections to surrounding shopping areas, schools, or other destinations make it very difficult for people to choose to walk, even those that are motivated to do so.

- And finally, there are simple things, like allowing developers to either waive their sidewalk requirement in some cases or to not require sidewalks at all. Developers may argue that sidewalks add costs to development, and some neighbors may prefer the rural feel of a neighborhood without sidewalks, but neighborhoods send a direct message: No one walks here. The health consequences of what might seem like a fairly inconsequential requirement need to be recognized.

In the mid-1990s, the public health field began to focus its attention and support on bicycle and pedestrian planning and smart growth measures. That profession recognized that many of the community planning and design tools communities were using to implement smart growth objectives (e.g., mixing land uses, broadening transportation options, and encouraging compact form) could result in communities where people could be physically active on a regular basis and where air quality could be improved.

Attention by health professionals to the community design/physical activity relationship was sparked by soaring rates of obesity nationwide and recognition that longstanding models aimed at getting people to modify their exercise and eating habits to reduce their weight and improve their cardiovascular health were only modestly effective. Other factors recognized by health officials as being affected by land use and the built environment included the relationship of land-use decisions to air quality and respiratory health; the impact of urban design on the number of pedestrian injuries and deaths; the relationship between the built environment and transportation systems; the mobility and quality of life of the elderly; and the ways in which land-use decisions affect community water quality, sanitation, and outbreaks of disease (Frumkin 2002).

While the recent flurry of media and professional attention paid to the planning and public health connection may make it seem new, the two disciplines do have a long shared history. The first master plans and zoning ordinances enacted early in the twentieth century were aimed at preventing overcrowding and stemming the spread of contagious disease in urban areas, the result of the interaction of professional planners and public health officials and advocates. Early zoning laws required homes to be kept separate from noxious industry and nuisances, and mandated residential building designs that would provide tenement dwellers with adequate air and light.

As the century progressed, traditional town planning gave way to conventional urban sprawl, which was facilitated in part by zoning. In retrospect, the sharp separation of land uses, a fundamental tenet of zoning, is now recognized as one of several hindrances to communities' efforts to create high-quality neighborhoods, to balance transportation, land use, jobs, and housing, and to protect the environment. Early zoning codes were regulatory tools used by governments to protect the public health and safety. The current concern is on how zoning and subdivision regulations and the plans that support them can be modified to help improve health. For example, conventional patterns of urban sprawl—(wherein housing, employment, schools, and shopping are at great distances from one another) have also all but precluded any mode of transportation other than driving for the vast majority of Americans. This pattern of development, combined with other lifestyle and dietary changes, has contributed to the growing epidemic of obesity and overweight among every age group in this country. These conditions are known causes of diabetes, cardiovascular disease, and early death. As we've learned more and more about the precise neighborhood and community characteristics that support active living and healthy people, planners and others have responded by crafting new planning and regulatory approaches that ultimately will result in healthier places. The three model ordinances set forth below represent three such tools that communities can use to meet health goals.

4.8.1 MODEL PEDESTRIAN OVERLAY DISTRICT (POD) ORDINANCE

The model Pedestrian Overlay District is to be superimposed on a zoning district map and incorporates additional requirements to those otherwise of the underlying zone. The ordinance addresses a specific mix of uses that generally work well in a pedestrian environment. In addition, it prohibits setbacks of principal buildings, contains standards for the inset of entrances in order to protect pedestrian movement, requires that ground floors of buildings are chiefly transparent and do not present blank walls, and mandates that the ground floors of parking garages contain commercial or service uses. The overlay includes standards for the installation of canopies over building entrances.

The overlay would be mapped on the local zoning map and may have different boundaries than the underlying zoning district. The standards contained in the overlay, however, would prevail when they conflict with provisions in the underlying zone. Where the overlay is silent, for example, on matters such as the location of accessory buildings and side yards, the underlying zoning district regulations would control.

This ordinance is intended to result in districts and areas in which people can walk to and from their destinations, and in which pedestrians are given preference over automobiles. Such an overlay district can be considered one of group of plan and ordinance types that seek to redirect land-use and transportation development and spending priorities toward a more balanced transportation network that accommodates all modes and all users. Such plans and ordinances also increasingly aim to promote and improve public health by creating environments where people have opportunities to incorporate physical activity into their daily routines.

One issue not addressed by this model is the matter of determining if and when to waive sidewalks. Sometimes local governments waive sidewalk requirements as part of the subdivision review process or fail to construct them when undertaking road construction,

only to find that they are needed as an area develops. The only answer to this is to mandate them everywhere and to use special assessment procedures, which vary according to state law. Such procedures require that either local property owners in developed areas install sidewalks at their own expense or the local government will install them and assess the property owners on a lineal front foot basis.

In some cases, such as in neighborhoods of predominately low- and moderate-income persons, federal Community Development Block Grants can cover sidewalk installation, eliminating the need to impose assessments. In other cases, the requirement of installation of sidewalks after an area is developed may be politically controversial, so the local government may decide to pay for their installation through its general fund, rather than assessments. Costs may also be reduced by installing asphalt pedestrian paths rather than concrete sidewalks, which must be poured in forms over an aggregate base and which are typically linked to the centerline elevation of the adjoining roadway. If a pedestrian orientation is what a community desires, however, some type of sidewalk is necessary, regardless of who pays. In general, sidewalks should be required, and waivers should be rare or nonexistent.

Primary Smart Growth Principle Addressed: Walkable neighborhoods
Secondary Smart Growth Principle Addressed: Mix land uses

101. Purpose

The purposes of the Pedestrian Overlay District (POD) are to:

(a) implement the [*applicable plan name*];

(b) create a healthful built environment in which individuals have opportunities to incorporate physical activity, such as walking, into their daily routine;

(c) create a safe, attractive pedestrian-friendly environment where the risk of pedestrian injuries or fatalities is minimized through the application of appropriate development standards; where residents have increased opportunities to interact with neighbors; where children can walk to and from school; and where the elderly have a safe convenient pedestrian routes;

(d) encourage active commercial and service uses on the ground floor of buildings; and

(e) prohibit development that discourages pedestrian activity.

102. Allowed Uses. Uses are allowed in a POD in accordance with the use table of this Section.

USE GROUP	Zoning District
Use Category	**POD**
Specific Use Type	
P= permitted by-right C = conditional use N = Not allowed	
RESIDENTIAL	
Household Living	
Artist Live/Work Space located above the ground floor	P
Artist Live/Work Space, ground floor	C
Dwelling Units located above the ground floor	P
Detached House	C
Multiunit (3+ units) Residential	C
Single-Room Occupancy	C
Townhouse	C
Two-Flat	C
Group Living	
Assisted Living	C
Group Home	P
Nursing Home	C
Temporary Overnight Shelter	C
Transitional Residences	C
Transitional Shelters	C
PUBLIC AND CIVIC	
Colleges and Universities	C
Cultural Exhibits and Libraries	C
Day Care	P
Hospital	C
Lodge or Private Club	C
Parks and Recreation	P
Postal Service	C
Public Safety Services	C
Religious Assembly	P
School, Public and Private	C
Utilities and Services, Minor	P
Utilities and Services, Major	C
COMMERCIAL	
Adult Use	N
Animal Services	
Shelter/Boarding Kennel	N
Sales and Grooming	P
Veterinary	P
Artist Work or Sales Space	P
Boat Sales, Repair, and Storage	N
Car Wash	N
Drive-Through Facility	N
Eating and Drinking Establishments	
Restaurant	P
Tavern	P
Entertainment and Spectator Sports	
Small (1—149 seats)	P

USE GROUP	Zoning District
Use Category Specific Use Type	**POD**
P= permitted by-right C = conditional use N = Not allowed	
Medium (150–999)	N
Large (1,000+)	N
Financial Services	P
Food and Beverage Retail Sales	P
Bicycle Sales and Service	P
Movie and Live Theatre	P
Gas Stations	N
Lodging	
Small (1–16 guest rooms)	P
Large (17+ guest rooms)	C
Medical Service	P
Vehicle Sales, Service and Repair	N
Office	P
Parking Lot	–
Parking Structure, Commercial (Non accessory; parking on second floor and levels above)	C
Personal Service, including health clubs and gyms	P
Repair Service, Consumer, including bicycles	P
Residential Storage Warehouse	N
Retail Sales, General	P
Vehicle Sales, Service, and Repair	N
INDUSTRIAL	
Manufacturing, Production and Industrial Services	
Artisan (hand-tools only; e.g., jewelry or ceramics)	P
Manufacturing	N
OTHER	
Wireless Communication Facilities	
Co-located	P
Freestanding (Towers)	C

Comment: *The model ordinance permits, by right, restaurants, retail food and beverage sales, and general retail uses. There are certain types of uses particularly appropriate in pedestrian districts that jurisdictions may want to encourage to locate in these districts. Coffee shops, bakeries, Internet cafes, bicycle shops, and bookstores are a few such uses. Uses that are institutional or governmental in nature are generally treated as conditional uses. A conditional use permit procedure for such uses (e.g., schools, colleges, and universities) is important to ensure that such uses have a pedestrian orientation incorporated in their building and site design.*

103. Setbacks

(1) All principal buildings shall be located on the front lot line.

(2) Any principal building located on a corner lot shall be located on the front lot line and on the side lot line abutting the street.

Comment: *Under this setback standard, sidewalk cafes and similar pedestrian-oriented uses would need to be located on public sidewalks. This is a common practice in large cities, where the municipal government establishes standards for the use of sidewalks and issues a permit that allows outdoor cafes.*

104. Building Entrances

(1) Building entrances facing a street shall be recessed into the face of the building to a depth that permits the entry door to open and close without projecting into the public right-of-way.

(2) A principal building located on a corner lot may provide a single primary entrance at the corner.

105. Transparency of Street-Level Floor Commercial and Public and Civic Buildings

(1) Blank street-level walls for commercial and public and civic buildings are not permitted on any street frontage in the Pedestrian Overlay District.

(2) At least [50] percent of the ground-level wall area of any new or reconstructed commercial or public and civic building facing a public street shall be devoted to interest-creating features, such as building entrances, murals, display windows, or windows affording views into retail, office, or lobby spaces. This requirement shall apply to both frontages of a building located on a corner lot.

(3) All parking structures located within the Pedestrian Overlay District as conditional uses shall have retail or service uses located the ground floor.

(4) Street-level openings on parking structures shall be limited to those necessary for retail store entrances, vehicle entrance and exit lanes, and pedestrian entrances to stairs and elevator lobbies.

106. Awnings and Canopies

(1) All commercial and public and civic buildings in a Pedestrian Overlay District shall have an awning or canopy over any building entrance that abuts the public right-of-way.

(2) Awnings or canopies shall:

(a) overhang the sidewalk on which the building fronts by a minimum of [five] feet; and

(b) if illuminated, be lit internally so that the lighting system is encased or otherwise screened from public view.

Comment: *An awning is a hood or cover made of fabric, metal, or glass that projects from the wall of a building, above ground-floor window, or over an entryway. In pedestrian-friendly areas, store signage is often printed on the awnings. Awnings emphasize a store's or restaurant's entrance, provides shade and weather protection for transit users, pedestrians, cafe patrons, and contributes to a high-quality streetscape. They add texture to*

the streetscape and interest and variety to the building facade, while protecting storefront displays from sun exposure. In rainy climates, a requirement that buildings install awnings on the first floor can create an environment where people can still walk and commute to work, shopping, or school without getting wet.

A note about arcades: This model pedestrian overlay ordinance does not include provisions for arcades, nor does it recommend them. Arcades are recessed areas between the curb and the building wall that are open to the street. Most arcades are one or two stories in height. As an architectural feature arcades were very popular ground-floor feature of skyscrapers built in the 1960s and 1970s. They were widely used in zoning bonus programs as an amenity that the developer could provide in exchange for additional height and floor area above what the base zoning allowed. As their use grew, several design-related problems became clear. Most of the design problems stemmed from the fact that, beyond requiring that they be installed, many cities did not do any substantive urban design review of the arcades to determine if in fact it would be a pleasant, usable public space that connected with surrounding properties. For example, many arcades were dimly lit if lit at all, lacked sunlight, and were generally uninviting to and avoided by pedestrians. Many of them terminated at dead ends (e.g., the side of an adjacent building) and thus created a haphazard experience for pedestrians. From a retailing standpoint, the added distance created by an arcade between the building and the street, coupled with inadequate light, made the ground-floor retail spaces hard to see, meaning that shoppers couldn't find them and, consequently, building owners had a hard time keeping or recruiting retail tenants.

107. Through-Block Connections

Where necessary for public convenience or safety, a developer shall improve and dedicate to the public a [*10 to 30*]–foot-wide pedestrian and bicycle access way to connect to cul-de-sac streets, to pass through odd-shaped or oversized city blocks [600] feet or longer, to complete existing pedestrian and bicycle routes, and to provide for networks of public paths creating access to schools, parks, shipping centers, transit stops, or other destinations.

Comment: *Long blocks and cul-de-sacs often increase walking distances by prohibiting people on foot or bike to use the most direct route possible between their origin and destination. Through-block connections can shorten such walking trips and can thus decrease the tendency to drive between relatively close by destinations.*

108. Parking, including bicycles

(1) Pursuant to Section 102, surface parking lots are prohibited in the Pedestrian Overlay District.

(2) Parking Requirements.

[*Insert parking standards*]

Comment: *This model does not specify minimum or maximum parking standards for uses in the Pedestrian Overlay District. Cities that have enacted such districts (e.g., Portland, Oregon; Seattle, Washington; and Charlotte, North Carolina) have lessened the required amount of parking and in some cases do not require businesses to provide off-street parking at all. The rationale is that people will make more trips within the walkable district on foot, thus reducing demand for off-street parking. In Portland, a maximum parking standard is applied in the pedestrian district. Cities that have transit systems and transit-station area zones (with provisions similar to a pedestrian overlay district) often also reduce the amount of parking required for uses within a specific walking distance (e.g., one-quarter mile) of the transit station.*

(3) Minimum Required Bicycle Parking Spaces. The required minimum number of bicycle parking spaces is based on the principal uses on a site as shown in Table 1.

Comment: *Table 1 is adapted from the Portland, Oregon, Bicycle Parking Facilities Guidelines (2004). Standards are provided for various land-use categories and according to long-term and short-term needs. As used in this table, long-term spaces provide employees, students, residents, commuters, and others who generally stay at a site for several hours a secure and weather-protected place to park bicycles. The measure of security for long-term bicycle parking must be greater than that provided for short-term parking Short-term spaces provide shoppers, customers, messengers and other visitors who generally park for two hours or less a convenient and readily accessible place to park bicycles.*

Table 1
Minimum Required Bicycle Parking Spaces
in the Pedestrian Overlay District

Principal Use Categories	Specific Uses	Long-term Spaces	Short-term Spaces
Residential Categories			
• Household Living	Multidwelling	1 per 4 units	2, or 1 per 20 units
• Group Living		2, or 1 per 20 residents	None
	Dormitory	1 per 8 residents	None
Commercial Categories			
• Retail Sales And Service		2, or 1 per 12,000 SF of net building area	2, or 1 per 5,000 SF of net building area
	Temporary Lodging	2, or 1 per 20 rentable rooms	2, or 1 per 20 rentable rooms
• Office		2, or 1 per 10,000 SF of net building area	2, or 1 per 40,000 SF of net building area
• Commercial Parking		10, or 1 per 20 auto spaces	None

• Commercial Outdoor Recreation		10, or 1 per 20 auto spaces	None
• Major Event Entertainment		10, or 1 per 40 seats or per CU* review	None
Industrial Categories			
• Manufacturing And Production		2, or 1 per 15,000 SF of net building area	None
• Warehouse And Freight Movement		2, or 1 per 40,000 SF of net building area	None
Institutional Categories			
• Basic Utilities		8	None
	Light-rail stations, transit centers,	10, or 5 per acre	None
• Community Service	Park and ride	2, or 1 per 10,000 SF of net building area	2, or 1 per 10,000 SF of net building area
• Parks And Open Areas		Per CU* review	Per CU* review
• Schools	Grades 2 through 5	2 per classroom, or per CU* review	None
	Grades 6 through 12	4 per classroom, or per CU* review	None
• Colleges	Excluding dormitories (see Group Living, above)	2, or 1 per 20,000 SF of net building area, or per CU* review	2, or 1 per 10,000 SF of net building area, or per CU* review
• Medical Centers		2, or 1 per 70,000 SF of net building area, or per CU* review	2, or 1 per 40,000 SF of net building area, or per CU* review
• Religious Institutions		2, or 1 per 4,000 SF of net building area	2, or 1 per 2,000 SF of net building area
• Daycare		2, or 1 per 10,000 SF of net building area	None
Other Categories			
• Aviation And Surface Passenger Terminals, Detention		Per CU* Review	Per CU* Review

Facilities			

* CU mean "conditional use."

(6) Where the [local government] has established an on-street or off-street bikeway that adjoins or abuts the site, the internal on-site bicycle system for the use shall connect to it.

References

Charlotte, N.C., City of. Zoning Code, Part 9, Sections 9.901 et seq., Uptown Mixed-Use District, website [accessed December 15, 2004]: www.charmeck.org/Departments/Planning/Rezoning/City+Rezoning+Ordinance.htm

Clark County, Washington. Unified Development Code, 40.230.020 Mixed Use District [accessed December 15, 2004]: www.clark.wa.gov/commdev/documents/devservices/title40/40-230.pdf

Frumkin, Howard. 2002. "Urban Sprawl and Public Health." *Public Health Report.* May-June; 117: 201-17.

Lee, Gary. 2003. Planner, City of Redmond, Wash. Department of Planning. Telephone conversation with Marya Morris. November 17.

Portland, Oregon, City of. *Bicycle Facility Parking Guideline*s [accessed December 17, 2004] www.trans.ci.portland.or.us/bicycles/parkguide.htm

Portland, Oregon, Metropolitan Regional Government. Metro Code, Urban Growth Management Functional Plan, Chapter 3.07, Title 6, Central City, Regional Centers, Town Centers, and State Community [accessed December 15, 2004]: www.metro-region.org/library_docs/about/chap307.pdf

Redmond, Washington, City of. Community Development Guide. Sec. 20C.40.105, City Center Pedestrian System. [accessed December 15, 2004]: http://www.codepublishing.com/WA/redmond.html

Seattle, Washington, City of. Municipal Code, Ch. 23.66, Subchapter III. International Special Review District [accessed December 15, 2004]: http://clerk.ci.seattle.wa.us/~public/code1.htm

Surface Transportation Policy Project. 2003. *Americans Attitudes Toward Walking and Creating Better Walking Environments.* Results of a telephone survey of 800 adults conducted for STPP by Belden, Russonello, and Stewart in October 2002. The report is available at: www.transact.org/report.asp?id=205

4.8.2. On-Site Access, Parking, and Circulation Ordinance

The model that follows establishes standards for on-site pedestrian access. It is intended to integrate with a local government's existing procedures for reviewing a variety of development types; consequently, it does not include new procedures in Section 102. It does emphasize the design of the site and the linkage of pedestrian and bicycle systems on the site to ensure that bicyclists and pedestrians are able to cross the site safely.

Primary Smart Growth Principle Addressed: Variety of transportation choices
Secondary Smart Growth Principle Addressed: Walkable neighborhoods

101. Purpose

(1) The purposes of this ordinance are to:

(a) implement the [*applicable plan name*];

(b) ensure that each development accommodates the safe and convenient movement of vehicles, bicycles, pedestrians, and transit throughout the proposed development and to and from surrounding areas; create a healthful built environment in which individuals have opportunities to incorporate physical activity, such as walking, into their daily routine;

(c) create a safe, attractive, pedestrian-friendly environment where the risk of pedestrian injuries or fatalities is minimized through the application of appropriate development standards; where residents have increased opportunities to interact with neighbors; and where the elderly have a safe convenient pedestrian routes;

(d) create a circulation system that contributes to the attractiveness of the development and the community as a whole; and

(e) establish standards for the review of development plans.

102. Definitions and Scope of Application

Comment: *This Section should define which developments are subject to review under the ordinance and how the standards are to be applied.*

103. Pedestrian Movement

(1) To the maximum extent feasible, site plans for proposed developments shall separate movement of pedestrians from movement of vehicles and bicycles, and protect bicyclists from conflicts with vehicles.

(2) Where complete separation of movement of pedestrians from movement of vehicles and bicycles is not possible, the site plan shall minimize potential hazards by using special paving, grade separations, pavement marking, signs, striping, bollards, median refuge areas, traffic calming features, landscaping, lighting, or other means to clearly delineate pedestrian areas for both day and night use.

(3) Where pedestrians and bicyclists share walkways, the pedestrian/bicycle system shall be designed to be wide enough to accommodate anticipated pedestrian and bicycle traffic volumes. A shared walkway shall have a minimum width of [eight] feet and shall comply with the American Association of State Highway and Transportation Officials (AASHTO) guidelines, as contained in AASHTO's *Guide for Development of Bicycle Facilities* (August 1999), which are adopted by reference and which shall be on permanent file in the [planning department].

(4) Curb cuts and ramps shall be located at convenient, safe locations for the physically disabled, bicyclists, and people pushing strollers or carts. The location and design of curb cuts and ramps shall meet the requirements of the [applicable building code] and the [local government] Americans With Disabilities Act ramp standards, and shall avoid crossing or directing traffic through loading areas, drive-in lanes, and solid waste storage and collection areas.

Comment: *For additional information on methods for separating pedestrians and bicycles from vehicles and on sidewalks or trails that are shared space, refer to* "Capacity Analysis of Pedestrian and Bicycle Facilities: Recommended Procedures" in the Pedestrians Chapter of the *Highway Capacity Manual. Available at www.walkinginfo.org/task_orders/to_8/to8/chap13/intro.htm*

104. Location of Bicycle Parking Facilities; Connection to Citywide System

(1) Bicycle parking facilities shall meet the following standards:

(a) A minimum number of bicycle parking spaces as set forth in [*cite to bicycle parking requirements section of the parking ordinance*] shall be provided on site. In making the determination, the [local government] shall consider when appropriate, the number of dwelling units or lodging rooms, the number of students, the number of employees, and the number of auto parking spaces in accordance with the following guidelines.

(b) Bicycle parking facilities shall be located within [50] feet of building entrances and shall be visible from the uses they serve. They shall not be located so as to impede pedestrian or automobile traffic flow or to cause damage to plant material from bicycle traffic.

(c) Bicycle parking facilities shall be designed to allow the bicycle frame and both wheels to be securely locked to the parking structure. The structure shall be of permanent construction such as heavy gauge tubular steel with angle bars permanently attached to the pavement. Bicycle parking facilities shall be at least two feet in width and six feet in length, with additional back-out or maneuvering space of at least five feet.

[(d) Covered bicycle lockers. In areas with high demand for bicycle parking, the zoning administrator has the authority to require that a certain number of covered, lockable bicycle storage units are provided. Structures that require a user supplied locking device shall be designed to accommodate U shaped locking devices. All lockers and racks must be securely anchored to the ground or the building structure to

prevent the racks and lockers from being removed from the location. The surfacing of such facilities shall be designed and maintained to be mud and dust free.]

(2) Where the [local government] has established an on-street or off-street bikeway that adjoins or abuts the site, the internal on-site bicycle system for the use shall connect to it.

105. Walkways and Pedestrian Access

(1) Walkways shall provide pedestrian access through parking lots from street sidewalks to building entries. Walkways shall be located and aligned to directly and continuously connect areas or points of pedestrian origin and destination, and shall not be located and aligned solely based on the outline of a parking lot configuration unless such a configuration allows for direct pedestrian access.

(2) Such walkways shall have a paved surface not less than [five] feet in width and shall be grade separated from the parking lot or otherwise delineated with pavement markings, planters, or alternate paving material.

(3) Where the primary pedestrian access to the site crosses drive aisles or internal roadways, the pedestrian crossing shall emphasize and place priority on pedestrian access and safety. The material and layout shall be continuous as the pedestrian access crosses the driveway, with a break in continuity of the driveway paving and not in the pedestrian access way.

(4) The entirety of the on-site pedestrian walkway system shall be marked and defined using pavement treatments, signs, striping, lighting, median refuge areas, and landscaping, as appropriate.

References

See References for 4.8.3, Model Shared Parking Ordinance

4.8.3. MODEL SHARED PARKING ORDINANCE

Communities have used several tools to minimize the overall amount of surface parking in neighborhoods, downtowns, and commercial areas. One tool has been to allow certain land uses to meet the minimum requirements for parking spaces by sharing spaces with other uses. Shared parking arrangements are applied when land uses are adjacent or in close proximity to one another, have different parking demand patterns, and are able to use the same parking spaces or lots throughout a day. Shared parking is also commonly used in mixed-use developments where commercial and office tenants have varying hours of operation. In general, shared parking is most effective when the land uses have significant different peak parking characteristics that vary by time of day, day of week and work for businesses, restaurants, churches, schools, and other uses.

Jurisdictions with shared parking standards tend to limit the types of land uses to which such provisions can be applied. For example, in Bastrop, Texas, shared parking may be allowed

in the case of mixed uses (different buildings) for up to 50 percent of the parking spaces required for a theater or other place of evening entertainment (after 6:00 p.m.), or shared parking may be provided for a church when parking for banks, offices, and similar uses not normally open, used, or operated during the same hours as church events or services. Shared parking must be in the same parking lot (Bastrop 2003).

In Ft. Collins, Colorado, residential uses are prohibited from reducing the amount of parking required per unit by using shared parking. The rationale for this is that circumstances may arise where a resident is unable to access the shared lot and thus would have no parking available at all. Planners recognize that such a scenario would be very unpopular and could undermine the overall effort to promote shared parking (Barkeen 2003).

The commentary for Portland Metro's Model Shared Parking Ordinance notes that the closer shared spaces are to the land uses they serve, the more likely the arrangement will be a success. The model ordinance provides maximum distances between land uses and parking spaces that would make them eligible to be classified as shared parking spaces/areas (Portland Metro 1997).

Of the dozen or so ordinances that were reviewed for this model, Seattle offers the largest overall reductions in required parking in its shared parking provisions. For example, where an office use and a retail sales or service use share parking, the parking requirement for the retail sales and service use may be reduced by 20 percent, provided the reduction does not result in fewer spaces than the minimum required for the office use. For arrangements involving a residential and retail sales and service use, the residential use may reduce its parking by 30 percent, provided the reduction does not result in less than the minimum required for the retail and service use. Furthermore, no restaurant or entertainment uses may share parking with residential uses. And for residential and office use shared arrangements, the residential portion may be reduced by as much as 50 percent, provided there is still the minimum required amount for the office use. Jurisdictions using this model ordinance may consider applying no minimum number of required spaces for office uses if such an approach is appropriate and practical in the local districts.

The ordinance has additional provisions for shared parking arrangements between land uses that are either solely daytime uses or solely nighttime and Sunday uses. Daytime uses include administrative offices, retail sales and service (excluding restaurants), and wholesale storage. Nighttime and Sunday uses include restaurants and drinking establishments, religious uses, theaters, and school auditoriums. The planning director can authorize that up to 90 percent of the parking required for a daytime use may be supplied by the off-street parking provided by a nighttime or Sunday use and vice-versa, and up to 100 percent when the nighttime or Sunday use is a religious facility. Applicants must show there is no major conflict between the operating hours of the uses that share parking.

According to Mark Troxel, a land-use planning analyst with the city of Seattle, shared parking is applied primarily by single-owner, mixed-use buildings. This is the case for two primary reasons: Seattle's land-use code has many mixed-use zones, and the city strongly encourages mixed-use developments that incorporate residential and retail uses, residential and office uses, or a combinations thereof. Troxel says that because "parking is such a big cost driver" most developers are eager to use shared parking as a means of reducing the total number of spaces they must provide (Troxel 2004).

Less than 5 percent of the shared parking arrangements in Seattle are between adjacent properties with different owners. Troxel says this is largely because each property owner is required to sign a parking covenant, which essentially places an easement on the portion of the parking that one owner is providing to the other as part of the arrangement. In the past, landowners had signed covenants without a sunset date, essentially locking them in the arrangement indefinitely. Troxel says some of those arrangements became a problem for property owners who sell their property (when the new owners balk at the existing parking covenant) and for the other owner who still needed the parking but must deal with the new owner. Finally he says that in some cases property owners have granted rights to share parking for as many as six other properties for the exact same spaces. Such problems with the covenants and the oversharing of parking are difficult to enforce and are generally complaint driven.

The model shared parking ordinance here adapts Seattle's regulations. Under this model, applicants for zoning permits in certain areas within the community would either be required to evaluate the use of shared parking or may elect to do so. In case, the zoning administrator or other code enforcement official would promulgate guidelines for the preparation of shared parking feasibility studies, which applicants would use. Where the shared parking proposal entails two or more separately owned properties, the owners of those properties must enter into an agreement regarding access to, and maintenance and management of, the shared parking spaces. The zoning administrator may require applicants to submit a shared parking plan as part of the site plan requirements for a zoning permit.

Primary Smart Growth Principle Addressed: Variety of transportation choices
Secondary Smart Growth Principle Addressed: Compact building design

101. Purpose

(1) The purposes of the ordinance are to:

(a) allow a reduction in the total number of parking spaces required for certain properties in cases where a mix of adjacent land uses have varying peak periods of parking demand;

(b) reduce the overall amount of impervious surfaces, specifically the amount of land devoted to surface parking; and

(c) support [*insert applicable plan name*] policies that call for:

[*List relevant plan policies here such as: 1. Encouraging compact development and efficient use of land; 2. Promoting nonmotorized vehicle trips including walking and bicycling; and 3. Improving accessibility and mobility to common destinations for users of all transportation modes*.]

102. Applicability

(1) Applicants for a zoning permit for any change of use [shall *or* may] evaluate the feasibility of shared parking arrangements as part of their application where:

(a) The proposed use is in an area identified in [*applicable plan name*] as characterized by concentrated or mixed-use development, including land located in the following zoning districts:

[1. *Central business district*]

[2. *Town center district*]

[3. *Transit station or transit-oriented development district*]

[4. *Regional center district*]

[5. *Neighborhood commercial district*]

[6. *Main street district*]

Comment: *These are sample names for zoning districts. Users of this model can substitute their own districts.*

(b) The number of parking spaces proposed by the applicant is more than [10] percent of, or more than [10] spaces greater than, the minimum number of parking spaces required by the [parking standard ordinance], whichever is greater.

103. General Provisions

(1) Shared parking is allowed between two or more uses to satisfy all or a portion of the minimum off-street parking requirement.

(2) Shared parking is permitted between different categories of uses or uses with different hours of operation.

(3) A use for which an application is being made for shared parking shall be located within [800] feet of the parking facility.

(4) The reductions to parking permitted through shared use of parking shall be determined as a percentage of the minimum-parking requirement as modified by the reductions permitted in other sections of the parking ordinance.

Comment: *A jurisdiction may allow initial reductions in parking requirements for certain uses or in certain districts that would be calculated prior to the consideration of a shared parking arrangement. Seattle, for example, allows for reductions in parking standards for landmark buildings, for uses in areas where transit is available, and in pedestrian commercial zones.*

(5) An agreement providing for the shared use of parking, executed by the parties involved, shall be filed with [zoning administrator]. Shared parking privileges shall continue in effect only as long as the agreement, binding on all parties, remains in force. If the agreement is no longer in force, parking shall be provided as otherwise required by this chapter.

[*Section 104: Alternative 1*]

104. Calculation of Parking Requirements for Shared Parking; Shared Parking Feasibility Study

(1) Where shared parking arrangements are proposed, the [zoning administrator] shall determine the number of parking spaces that may be shared based on a shared parking feasibility study prepared by the applicant for a zoning permit. The[zoning administrator] shall promulgate written guidelines for the preparation of such studies by [date].

(2) A shared parking feasibility study shall:

(a) identify the properties and uses for the study (the study may include properties and uses not the subject of the zoning permit, provided that the applicant obtains a letter of authorization from the property owner or his or her agent);

(b) determine the number of parking spaces that would be required by applying the standard for the uses for all of the properties in subparagraph (2)(a) above;

(c) determine the peak parking demand for the combined demand of all of the uses for all of the properties in subparagraph (2)(a) above using standard parking generation rates in sources approved by the [zoning administrator]; and

(d) compare the results of (b) and (c) above.

If the [zoning administrator] finds that the shared parking feasibility study is consistent with guidelines promulgated pursuant to paragraph (1) above, the [zoning administrator] shall use the lesser of the two parking demands calculated in subparagraph (2)(d) above as the minimum number of parking spaces to be provided for all the properties and uses in the study;

(3) If standard parking generation rates for any of the uses in the study are not available, the applicant may collect data at similar sites to establish local parking demand rates. If the shared parking feasibility study assumes use of an existing parking facility, the applicant shall conduct field surveys to determine actual parking accumulation.

Comment: *The Urban Land Institute (2004) has developed procedures for conducting shared parking studies. For parking generation rates see, for example, APA PAS Report No. 510/511,* Parking Standards *(2001), which contains examples of parking standards from hundreds of ordinances around the U.S. In addition, see* Parking Generation, 3d edition

(2004) published by the Institute of Transportation and Shared Parking Planning Guidelines *(ITE 1995), which contains guidelines for planning and regulating shared parking facilities.*

In The High Cost of Free Parking *author Donald Shoup assails planners' use of parking standards altogether. He argues that, because of numerous significant flaws in how jurisdictions calculate parking standards the amount of parking that gets built bears little or no relationship to what is actually needed. This has resulted in an oversupply of parking in many jurisdictions, which has had far reaching negative implications on everything from the natural environment to downtown revitalization efforts to making transit infeasible through low-density auto-dependent land use patterns. Readers of this report are strongly encouraged to read* The High Cost of Free Parking. *Although critical of the status quo in parking policy, it is sure to spark a lively debate in your community out of which some creative solutions to this problem could emerge (Shoup 2005).*

[*Section 104-Alternative 2*]

104. Calculation of Parking Requirements for Shared Parking Between Different Categories of Uses, Uses with Different Hours of Operation, and Uses of the Same Type

(1) Shared Parking for Different Categories of Uses. Business establishments constituting different categories of use may share parking as follows:

(a) If an office use and a retail sales and service use share parking, the parking requirement for the retail sales and service use may be reduced by 20 percent, provided that the reduction shall not exceed the minimum parking requirement for the office use.

(b) If a residential use shares parking with a retail sales and service use other than lodging uses, eating and drinking establishments or entertainment uses, the parking requirement for the residential use may be reduced by 30 percent, provided that the reduction does not exceed the minimum parking requirement for the retail sales and service use.

(c) If an office and a residential use share off-street parking, the parking requirement for the residential use may be reduced by 50 percent, provided that the reduction shall not exceed the minimum parking requirement for the office use.

(2) Shared Parking for Uses With Different Hours of Operation.

(a) For the purposes of this Section, the following uses shall be considered daytime uses, operating anytime between the hours 8:01 a.m. and 5:59 p.m. [Monday through Friday only]:

1. Customer service and administrative offices

2. Retail sales and services, except [eating and drinking establishments and] entertainment uses

3. Wholesale, storage and distribution uses

4. Manufacturing uses

5. Other similar primarily daytime uses, as determined by the [zoning administrator].

(b) For the purposes of this section, the following uses shall be considered nighttime uses, operating anytime between the hours of 6:00 p.m. and 8:00 a.m., or [Saturday and] Sunday uses:

1. Auditoriums accessory to public or private schools

2. Religious facilities

3. Entertainment uses, such as theaters, bowling alleys, and dance halls

[4. Eating and drinking establishments]

5. Other similar primarily nighttime or Sunday uses, as determined by the [zoning administrator]

Comment: *A good deal of judgment must be applied to determine which uses are "daytime" and which are "nighttime" activities because these are not cut-and-dried determinations. Of these, eating and drinking establishments may be the most problematic. A restaurant that is a "supper club" would be a "nighttime" use, but one that serves breakfast and lunch would not. For that reason, they have been placed in brackets.*

(c) The [zoning administrator] may authorize upon application the use of up to 90percent of the required off-street parking for a daytime use to serve as the required off-street parking provided for a nighttime or Sunday use and vice-versa, except that this may be increased to 100 percent when the nighttime or Sunday use is a religious facility. The applicant shall demonstrate that there is no substantial conflict in the principal operating hours of the uses for which the sharing of parking is proposed.

(3) Shared Parking for the Uses of the Same Type

(a) The [zoning administrator] may authorize in writing shared parking arrangements between two or more commercial uses having the same or overlapping operating hours, allowing reductions in the total minimum number of required parking spaces as follows:

1. Up to a 20 percent reduction in the total minimum number of required parking spaces for four or more separate establishments;

2. A 15 percent reduction in the total minimum number of required spaces for three establishments; and

3. A 10 percent reduction in the total minimum number of required spaces for two establishments

(b) No reductions to the parking requirement shall be made if the proposed business establishments have previously received a reduction through the provisions for shared parking under paragraphs (1) or (2) above.

(c) The establishments for which the application is being made for shared parking shall be located within 800 feet of the parking facility. The parking facility shall be located in a commercial or residential-commercial zone.

(d) The reductions to parking quantities allowed through shared parking shall be determined as a percentage of the minimum parking requirement as stated in Section [cite to Section establishing minimum parking requirements by use].

(e) New business establishments seeking to meet parking requirements by becoming part of an existing shared parking arrangement shall provide the [zoning administrator] with an amendment to the agreement stating their inclusion in the shared parking facility or area.

105. Written Agreement between Property Owners to Share Parking

(1) Where an application for a zoning permit for which shared parking is proposed includes two or more separately owned properties and the [zoning administrator] has made a determination of the minimum number of required parking spaces for the each of the applicable properties and uses, the [zoning administrator] shall require that the owners of the properties enter into a legal agreement guaranteeing access to, use of, and management of designated shared parking spaces. The agreement shall be in a form approved by the [local government law director], included as a condition of the zoning permit, and enforceable by the [local government].

(2) Where an application for a zoning permit for which shared parking is proposed includes two or more properties owned by the same property owner and the [zoning administrator] has made a determination of the minimum number of required parking spaces for the applicable properties and uses, the [zoning administrator] shall require that the owner of the properties shall enter into a legal agreement with the [local government] guaranteeing access to, use of, and management of designated shared parking spaces. The agreement shall be in a form approved by the [local government law director], included as a condition of the zoning permit, and enforceable by the [*local government*].

106. Shared Parking Plan

(1) The [zoning administrator] may require an applicant for a zoning permit that incorporates shared parking to submit a shared parking plan. Such a plan shall be included as an addendum to a site plan and shall be drawn to the same scale. A shared parking plan includes one or more of the following:

(a) A site plan showing parking spaces intended for shared parking and their proximity to the uses they will serve.

(b) A signage plan that directs drivers to the most convenient parking areas for each particular use or group of uses, if such distinctions can be made.

(c) A pedestrian circulation plan that shows connections and walkways between parking areas and land uses.

(2) The shared parking plan shall satisfy the following standards, as applicable:

(a) Shared spaces for residential units must be located within [300] feet of dwelling unit entrances they serve.

(b) Shared spaces at nonresidential uses must be located within [500] feet of the principal building entrances of all sharing uses. However, up to [20] percent of the spaces may be located greater than [500] feet but less than [1,000] feet from the principal entrances.

(c) Clearly delineated and direct pedestrian connections must be provided from the shared parking area(s) to the building entrances.

(d) Pedestrians shall not be required to cross an arterial street to access shared parking facilities except at a signalized intersection along a clearly delineated pedestrian pathway.

References

Barkeen, Bob. 2003. Current Planner, City of Ft. Collins, Colorado, Department of Planning. Telephone conversation with Marya Morris. November 18.

Bastrop. Texas, City of. Municipal Ordinance 2003-14, pertaining to rules for computing the number of parking spaces [accessed December 16, 2004]: www.cityofbastrop.org/ordinances/ord03-14.htm

"Capacity Analysis of Pedestrian and Bicycle Facilities: Recommended Procedures for the '*Pedestrian*" Chapter of the *Highway Capacity Manual." Available at www.walkinginfo.org/task_orders/to_8/to8/chap13/intro.htm*

Davidson, Michael, and Fay Dolnick. 2001. *Parking Standards.* Planning Advisory Service Report No. 510/511. Chicago: American Planning Association.

Fort Collins, Colorado, City of. Land Use Code, Sec. 3.2.2. Access, Circulation, and Parking [accessed December 17, 2004]: www.colocode.com/ftcollins/landuse/article3.htm - div3d2

Institute of Transportation Engineers (ITE). 2004. *Parking Generation.* Washington, D.C.: ITE

Portland Metro. 1997. *Shared Parking in the Portland Metro Area*, Appendix A. Model Shared Parking Ordinance Provisions; Appendix B. Model Shared Parking Agreement. January 1. website [accessed December 16, 2004]:

www.metro-region.org/library_docs/land_use/sharedpark.pdf

Portland, Oregon, City of. Zoning Ordinance, Chapter 33.26, Parking and Loading, and Section 33.266.115 Maximum Allowed Parking Spaces [accessed December 17, 2004]: www.portlandonline.com/shared/cfm/image.cfm?id=53320

Redmond, Washington, City of. *Community Development Guide* [Development Regulations], Section 20D.130.10-020 Required Off-Street Parking (including maximum parking standards) and Section 20D.130.10-030 Design Requirements for Parking Facilities [accessed December 17, 2004]: http://www.codepublishing.com/WA/redmond.html

Seattle, Washington, City of. Municipal Code. Ch. 23.54 Quantity and Design Standards for Off-Street Parking and Access, Section 23.54.020 Parking quantity exceptions [accessed December 16, 2004]: http://clerk.ci.seattle.wa.us/~public/code1.htm

Troxel, Mark. 2004. Senior Planner. City of Seattle Department of Planning and Development. Telephone conversation with Marya Morris. January 7.

The Urban Land Institute. 1983. *Shared Parking.* Washington D.C.: ULI.

An Example of a Shared Parking Calculation

Calculate the shared parking required for a mixed-use development with a 40,000-gross-square-foot (GSF) office building and a 5,000 GSF Restaurant.

Step 1. Determine the base parking required (as per the local parking ordinance) for each land use.

Assume the parking standards ordinance requires, at a minimum, 2.7 spaces per 1,000 GSF for office uses and 15.3 spaces per 1,000 GSF for restaurants.

Parking for offices = 2.7 x 40,000/1,000 = 108 spaces
Parking for restaurant = 15.3 x 5,000/1,000 = 77 spaces

Combined base requirement: 108 + 77 = 185 spaces

Step 2. Based on the hourly variation in parking demand, determine the peak parking demand for the combined demand of all the uses in the development.

Standardized data (e.g., those contained in the Urban Land Institute report, *Shared Parking)* or other studies should be used to estimate hourly variations. Field studies can also be performed on similar land uses within the jurisdiction to establish the hourly variation patterns. This analysis may be needed for both weekdays and weekends, depending on the type of uses involved, and may need to consider seasonal peak periods.

Table 1: Weekday Hourly Parking Demand Ratios for Office Buildings And Restaurants (Source: ULI, *Shared Parking*, 1983)

Hour of Day	Office Parking Demand per 1,000 GSF	*40,000 GSF Office*	Restaurant Parking Demand per 1,000 GSF	*5,000 GSF Restaurant*	*Total Spaces Needed to Meet Combined Demand*
(1)	(2)	(3)	(4)	(5)	(6)
10 AM	3.0	120	4.0	20	140
11AM	*3.0*	*120*	*6.0*	*30*	*150*
12 noon	2.7	108	10.0	50	158
1 PM	***2.7***	***108***	***14.0***	***70***	***178***
2 PM	2.9	116	12.0	60	176
3 PM	2.3	92	12.0	60	152
4 PM	2.3	92	10.0	50	142
5 PM	1.4	56	14.0	70	126
6 PM	0.7	28	18.0	90	118
7 PM	*0.2*	*8*	*20.0*	*100*	*108*
8 PM	*0.2*	8	*20.0*	100	108

Example: Table 1 shows the various hourly parking demand rates for offices and restaurants (columns 2 and 4) from ULI data. These rates were multiplied by the GSF of each development to determine the number of parking spaces needed each hour during a typical weekday. The hourly parking demands for this example are shown in Figure 1. Below is the combined peak parking demands for several critical hours during the day

Combined Demand for Office peak hour at 11 a.m.:

Office = 3.0 spaces/1,000 GSF; Restaurant = 6.0/1,000 GSF

Combined Demand = (3.0 x 40) + (6.0 x 5) = 120 + 30 = 150 spaces

Combined Demand for Restaurant peak hour at 7 p.m.:

Office = 0.2 spaces/1,000 GSF, Restaurant = 20.0/1,000 GSF
Combined Demand = (0.2 x 40) + (20.0 x 5) = 8+100 = **108 spaces**

Peak Demand for Combined Uses at 1 p.m.:

Office = 2.7 spaces/1,000 GSF, Restaurant =14.0/1,000 GSF
Combined Demand = (2.7 x 40) + (14.0 x 5) = 108 + 70 = **178 spaces**

Peak-Hour Parking Demand for Combination of Uses = 178 spaces

Step 3. Compare the calculations of the two steps above, and the lesser of the two parking demands shall be used as the minimum number of parking spaces required.

Example:

Minimum parking required for both uses according to local parking standards = 185 spaces

Peak-hour parking needs with shared parking = 178 spaces

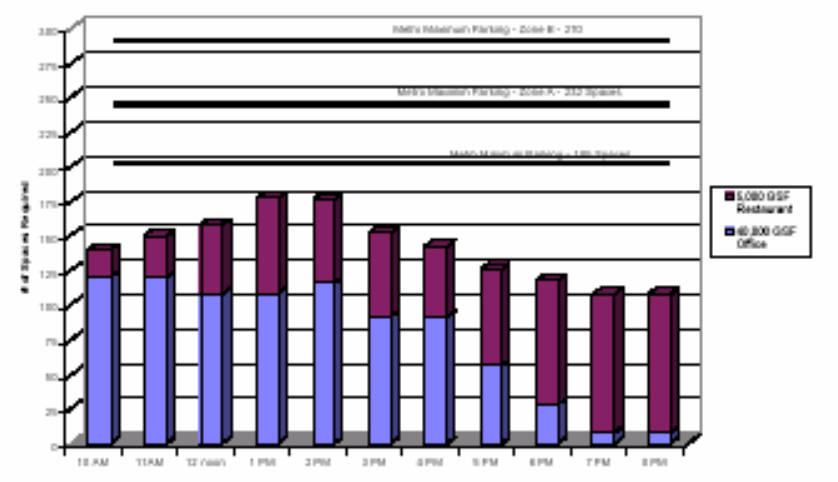
185 – 178 = Net savings of 7 spaces

Table 2 – Combined Parking Requirements from Metro, *Urban Growth Management Functional Plan* (11/96)

Metro Codes	Office Code Req.	*40,000 GSF Office*	Restaurant Code Req.	*5,000 GSF Restaurant*	*Total Required*	*Total Demand*	*Net Savings*
Minimum	2.7	*108*	15.3	*77*	***185***	*178*	***7***
Maximum - Zone A	3.4	*136*	19.1	*96*	***232***	*178*	***54***
Maximum - Zone B	4.1	*164*	23	*115*	***279***	*178*	***101***

Table 2 shows the potential savings in the construction of parking spaces based on the calculations in the example. Using the maximum parking ratio requirements from the Portland, Oregon, Metro Functional Plan for its Zones A and B, a shared parking arrangement could save as many as 101 parking spaces. The effect of shared parking for this example is also shown in Figure 1.

Figure 1 - Parking Comparison – Shared Parking Demand versus Code Requirements



4.8.4. MODEL STREET CONNECTIVITY STANDARDS ORDINANCE

Street connectivity ordinances are designed to increase the number of street connections in a neighborhood and to improve the directness of routes (Handy 2003, 68). The purpose is to achieve an open street network that provides multiple routes to and from destinations. Such a network is key to supporting walking and bicycling as a convenient, safe, and healthy form of transportation. It also discourages the proliferation of limited access street designs where residential subdivisions have but one or two points of entry and exit, and where commercial developments have access only onto arterial streets with no connections to adjacent properties.

The growing trend in cities enacting connectivity requirements is reflective of several larger trends and forces shaping planning and land development. These trends include the following:

- Acknowledgment that bicycling and walking need to be routinely accommodated as transportation modes in regional and local transportation plans, models, and funding formulas

- Recognition that the traditional street hierarchy of arterial, collector, and local streets has reinforced the problems caused by conventional single-use zoning, including neighborhood isolation and inaccessibility (by all modes, but in particular walking) between origins and destinations.

- Inclusion of traditional town planning principles (i.e., New Urbanism) in the mainstream of community planning and design whether on a communitywide or project-level scale.

- Growing recognition of the relationship between neighborhood design and residents' level of physical activity and rates of overweight and obesity (Dannenberg, Jackson, et al. 2003; Frank, Andresen, & Schmid 2004; Frank, Engleke, and Schmid 2003).

- The desire of residents, local officials, and others to tame the effects of the automobile on communities and to provide alternative transportation modes at the neighborhood, city, and regional levels.

In general, connectivity requirements have the purposes of creating multiple, alternate routes for automobiles and creating more route options for people on foot and on bicycles. Additional requirements can be added to the ordinances to establish pedestrian routes and passageways between land uses that can link isolated subdivisions to each other and create the shortest, safest routes possible between origins and destinations. Almost all communities that have pursued street connectivity also prohibit or greatly limit gated streets or gated communities.

Handy (2003) describes what supporters of connectivity point to as its potential benefits and what those who oppose it see as its potential detriments.

- Perceived benefits:
  - Decreased traffic on arterial streets

    - Continuous and more direct routes for travel by walking and biking
    - Greater emergency vehicle access
    - Improved utility connections, easier maintenance, and more efficient trash and recycling pick up
  - Perceived detriments:
    - Increased traffic on residential streets
    - Increased infrastructure costs and impervious cover
    - The need for more land for development, thus increasing housing costs and threatening the profitability of housing development

Handy says these potential outcomes have not been adequately studied to fully determine which assertions are most supportable. Furthermore, what research there is on connectivity has generally compared the extremes—the traditional grid with a conventional suburban curvilinear pattern—ignoring the fact that many communities have a hybrid of the two systems. She concludes that connectivity requirements should be aimed at increasing connections without significantly increasing through-traffic in residential areas. This can be done by avoiding long, straight streets that may encourage speeding, using curves to slow traffic, and allowing cul-de-sacs as well as bicycle cut-throughs where natural or built features prevent connectivity.

Connectivity ordinances generally use one of two methods to evaluating proposed developments. The first and most common method is to establish a maximum block length. In Portland, Oregon, the maximum block length is 530 feet; in Austin, Texas, 600 feet; and in Ft. Collins, Colorado, 660 feet. The appropriate block length for any community can be determined by examining and measuring the dimensions of blocks in residential areas of the city that reflect the desired scale, character, and connectivity the municipality is hoping to achieve within new developments. For example, consider the specific block lengths of identifiable areas of these cities: the mean block length in San Francisco's city center is 353 feet; in Lower Manhattan, 274 feet; and in areas of Boston built as of 1895, 190 feet (Jacobs 1993).

The second measurement method is a connectivity index. Such indices are calculated by dividing the number of streets links (i.e., street sections between intersections, including cul-de-sacs) by the number of street nodes (i.e., intersections and cul-de-sacs). The city of Cary, North Carolina, for example, requires a street connectivity index of 1.2 or higher. That means a neighborhood with 50 street links would need to have approximately 41 street nodes to meet the standard.

The model ordinance below uses the more common block-length approach rather than the index approach. The model is sufficiently flexible for a jurisdiction to apply the index measurement if it so desires.

(A note regarding one-way streets: Although not addressed in the ordinances reviewed for this model, the use of one-way streets can affect street connectivity and more importantly pedestrian, bicyclist, and motorist safety. On the one hand, one-way streets can simplify crossings for pedestrians, who must look for traffic in only one direction; however, studies have shown that conversion of two-way streets to one-way generally reduces pedestrian crashes, but one-way streets tend to result in higher auto speeds, which creates other safety problems.)

As a system, one-way streets can also increase travel distances for motorists and bicyclists, and can create confusion, especially for nonlocal residents. For pedestrians, provided they are on a grid or modified grid pattern, one-way streets should not increase the length of a route. One common factor that can make a one-way street system confusing to pedestrians is signage identifying street names. Often cities will install street signs that face only in the direction of oncoming traffic.

According to the Pedestrian and Bicycle Information Center, one-way streets operate best in pairs, separated by no more than 0.4 km (0.25 mi) (www.pedbikeinfo.org, 2004/). If one-way streets are being present in the area in which street connectivity requirements are being applied, this standard should be considered.

Primary Smart Growth Principle Addressed: Walkable neighborhoods
Secondary Smart Growth Principle Addressed: Variety of transportation choices

101. Purpose

(1) The purpose of this ordinance is to support the creation of a highly connected transportation system within the [municipality name] to:

(a) provide choices for drivers, bicyclists, and pedestrians;

(b) promote walking and bicycling;

(c) connect neighborhoods to each other and to destinations, such as schools, parks, shopping, libraries, and post offices, among others;

(d) provide opportunities for residents to increase their level of physical activity each day by creating walkable neighborhoods with adequate connections to destinations;

(e) reduce vehicle miles traveled and travel time to improve air quality and mitigate the effects of auto emissions on the health of residents;

(f) reduce emergency response times;

(g) increase effectiveness of municipal service delivery; and

(h) restore arterial street capacity to better service regional long-distance travel needs.

102. Definitions

As used in this ordinance, the following words and terms shall have the meanings specified herein:

"Arterial street" means a street that primarily accommodates through-traffic movement between areas and across the local government, and that secondarily provides direct access to abutting property.

"Connectivity" means a system of streets with multiple routes and connections serving the same origins and destinations.

"Development" means a subdivision, resubdivision, planned unit development, [insert name of any other type of development], or any other type of land-use change that results in the creation of public or private streets.

"Local Street System" means the interconnected system of collector and local streets providing access to a development from an arterial street.

"Resubdivision" means [cite to definition of resubdivision in local subdivision regulations].

"**Subdivision"** means [cite to definition of "subdivision" in subdivision regulations].

103. Relationship to other Adopted Plans and Ordinances

The design and evaluation of vehicular, bicycle, and pedestrian circulation systems built in conjunction with new residential and nonresidential development and the application of the street connectivity requirements to those developments shall conform to [list all applicable ordinances and plans].

104. General Standards

(1) A proposed development shall provide multiple direct connections in its local street system to and between local destinations, such as parks, schools, and shopping, without requiring the use of arterial streets. Each development shall incorporate and continue all collector or local streets stubbed to the boundary of the development plan by previously approved but unbuilt development or existing development.

(2) To ensure future street connections to adjacent developable parcels, a proposed development shall provide a local street connection spaced at intervals not to exceed [660] feet along each boundary that abuts potentially developable or redevelopable land.

(3) A proposed development shall provide a potentially signalized, full-movement intersection of a collector or a local street with arterial street at an interval of at least every 1,320 feet or one-quarter mile along arterial streets. A proposed development shall provide an additional nonsignalized, potentially limited movement, intersection of a collector or local street with an arterial street at an interval not to exceed 660 feet between the full movement collector and the local street intersection.

(4) The [local government] engineer may require any limited movement collector or local street intersections to include an access control median or other acceptable access control device.

(5) The requirements of paragraphs (1), (2), and (3) above may be waived if, in the written opinion of the [local government] engineer, they are infeasible due to unusual topographic features, existing development, or a natural area or feature.

(6) Gated street entryways into residential developments are prohibited.

References

Beaverton, Oregon, City of. n.d. *Development Code*, Chapter 60 Special Requirements, 60.55 Transportation Facilities [accessed December 16, 2004]: www.ci.beaverton.or.us/departments/CDD/docs/development/chapter60/60_55.pdf

Cary, North Carolina, Town of. n.d. *Land Development Ordinance*. Sec. 7.10 Connectivity [accessed December 16, 2004]: www.townofcary.org/depts/dsdept/P&Z/ldo/chapter7.pdf.

Cornelius, North Carolina, Town of. n.d. *Land Development Code*, Section 7.1 General Street Design Principles : [accessed December 16, 2004]: http://other.cornelius.org/planning/LDC Chapters/Chapter 7 Streets, Parking & Lighting.PDF

Dannenberg, A.L., R.J. Jackson, et al. 2003. "The Impacts of Community Design and Land Use Choices on Public Health: A Scientific Research Agenda." *American Journal of Public Health.* 3, 9: 1500-1508.

Frank, L. D., J. F. Sallis, et al. 2006. "Many Pathways from Land Use to Health." *Journal of the American Planning Association.* 72, 1: 75-87.

Frank, L.D., M. Andresen, and T. Schmid. 2004. "Obesity Relationships with Community Design, Physical Activity, and Time Spent in Cars." *American Journal of Preventive Medicine.* 27, 2: 87-96.

Frank L.D., P.O. Engelke, & T. L. Schmid. *Health and Community Deign: The Impact of the Built Environment on Physical Activity.* Washington, D.C.: Island Press.

Frumkin, H. 2002. "Urban Planning and Public Health." *Public Health Reports.* May/June.

Ft. Collins, Colorado, City of. n.d. *Land Use Code*, Sec. 3.6.3 Street Pattern and Connectivity Standards [accessed December 16, 2004]: www.colocode.com/ftcollins/landuse/article3.htm - div3d6.

Handy, S. 2003. *Planning for Street Connectivity: Getting from Here to There*, Planning Advisory Service Report No. 515. Chicago: American Planning Association, May.

Jacobs, Alan. 1993. *Great Streets.* Cambridge: MIT Press.

Orlando, Florida, City of. n.d. *Southeast Orlando Sector Plan Development Guidelines and Standards*, Connectivity Index, website [accessed December 16, 2004]: www.cityoforlando.net/planning/pdf/seplan5.pdf

Plaster, S.C., S.L. Carter, and A. Dannenberg, "Zoning Out Crime and Improving Community Health in Sarasota, Florida 'Crime Prevention Through Environmental Design.'" *American Journal of Public Health.* 94 (September 2003): 1442-1445.

Portland, Oregon, City of. n.d.., Metropolitan Regional Government, *Metro Code*, Urban Growth Management Functional Plan, Chapter 3.07, Title 6, Central City, Regional Centers, Town Centers, and State Community [accessed December 15, 2004]: www.metro-region.org/library_docs/about/chap307.pdf

Portland, Oregon, City of. n.d. *Municipal Code*, Title 33 Planning and Zoning, Chapter 33.654, Rights of way, Section 33.654.122, Connectivity and Rights of Way [accessed December 16, 2004]: www.portlandonline.com/shared/cfm/image.cfm?id=53453

Raleigh, North Carolina, City of. 2002. *Comprehensive Plan*, "Urban Design Guidelines, General Street Design Principles" [accessed December 16, 2004]: www.raleighnc.gov/portal/server.pt/gateway/PTARGS_0_2_4748_0_0_18/CP-Urban_Design_Guidelines-Text.pdf.