

## ATTACHMENT B – PROPOSED UDO CHANGES

### Chapter 18.110 RULES OF INTERPRETATION AND DEFINITIONS

#### **18.110.071 Best Management Practice (BMP)**

**“Best Management Practice” or “BMP”** mean physical facilities, schedules of activities, prohibitions of practices, maintenance procedures, and other management practices which, when properly designed, installed and maintained, will be effective to prevent or reduce the discharge of water or air pollution associated with land disturbance activities regulated by this Ordinance.

#### **18.110.074 Building permit**

**“Building permit”** means an official document or certificate issued by the Director of Planning and Development Services which authorizes any owner or authorized agent to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to install, enlarge, alter, remove, replace any electrical, gas, mechanical, or plumbing system, the installation of which is regulated by Title 16 of the Overland Park Municipal Code, or to cause any such work to be done. A building permit may also specifically authorize land disturbance and installation of site improvements in lieu of separate site development and land disturbance permits.

#### **18.110.336 Land disturbance**

**“Land disturbance”** means any activity that changes the physical conditions of landform, vegetation and hydrology, creates bare soil, or otherwise may cause erosion or sedimentation. Such activities include, but are not limited to, clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, logging and storing of materials.

#### **18.110.337 Land disturbance permit**

**“Land disturbance permit”** means an official document or certificate issued by the Director of Planning and Development Services authorizing land disturbance. A land disturbance permit may only be issued to the property owner.

#### **18.110.583 Site development permit**

**“Site development permit”** means an official document or certificate issued by the Director of Planning and Development Services authorizing installation of site improvements, including but not limited to, pavement, curbs, sidewalks, stormwater facilities, retaining walls and bank stabilization, and work related to such construction, including but not limited to clearing, grading, and grubbing.

**Chapter 18.130**  
**PERMITS AND CERTIFICATES OF OCCUPANCY**

Sections:

- 18.130.010 ~~Land use permits~~Land disturbance permits – when required
- 18.130.012 Land disturbance permits – exemptions
- 18.130.014 Land disturbance permits – limitations of usage
- 18.130.015 Site development permits – when required
- 18.130.020 Building permits - when required
- 18.130.030 ~~Land use permits~~Land disturbance permits, site development permits, and building permits - applications
- 18.130.040 Number of permits required for buildings
- 18.130.045 ~~Land use~~Site development, and building permits - compliance with subdivision regulations
- 18.130.050 ~~Land use~~Site development permits and building permits - minimum rights-of-way required
- 18.130.055 Building permits and site development permits – compliance with existing land disturbance permits.
- 18.130.057 Building permits, site development permits, and land disturbance permits - closure
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- 18.130.130 Certificates of occupancy - connection with sewer system
- 18.130.140 Certificates of occupancy - parking
- 18.130.150 Filing fees

**18.130.010 Land ~~use~~disturbance permits -- when required**

A land ~~use~~disturbance permit shall be obtained from the ~~Code Administrator~~Director of Planning and Development Services prior to commencement of any of the following:

- A. Any activity that changes the physical conditions of landform, vegetation and hydrology, creates bare soil, or otherwise may cause erosion or sedimentation. Such activities include, but are not limited to, clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, logging and storing of materials. Exemptions permitted in 18.130.012(A)(1) are not applicable to land disturbance activities in the floodway overlay and/or floodway fringe overlay district pursuant to Chapter 18.360 of this Code.~~Grading,~~

~~excavation or any activity precedent to development of open, vacant or unimproved land for any use other than agricultural use.~~

~~B. Dredging, filling, grading or excavation of land within the Floodway Overlay or the Floodway Fringe Overlay districts.~~

~~B. Utility construction.~~

~~(History: Ord. ZRR-1725; ZRR-1637; ZRR-941; ZRR-889 §18.54)~~

### **18.130.012 Land disturbance permits – exemptions**

A. A Land disturbance permit is not required for the following:

1. Land disturbance activities that cumulatively disturb less than one acre, and are not part of a larger common plan of development or sale which disturbs a cumulative area of 1 acre or more, and involves fill of less than 3 feet in height, and containing less than 50 cubic yards, and does not create a slope in excess of 3 horizontal to 1 vertical, and does not obstruct a drainage course.
2. Work to correct or remedy emergencies, including situations that pose an immediate danger to life or property or substantial flood or fire hazards.
3. Agricultural uses.
4. Land disturbance activities specifically authorized by a building permit which includes an erosion and sediment control plan covering the entire area of disturbance. This exemption is not intended to exempt the building permit from erosion and sediment control requirements provided by Chapter 16.200 of this Code.

B. If the land disturbance activity threatens or impedes the ability of the City to meet its own permit requirements under the National Pollutant Discharge Elimination System (NPDES), the Director of Planning and Development Services may terminate the exemption and require the applicant to obtain a Land Disturbance Permit in full compliance with Chapter 16.200 of the Code.

### **18.130.014 Land disturbance permits – limitations of usage**

Construction of a project with a final development plan approved by the Planning Commission or the Director of Planning and Development Services requires a site development permit or a building permit, or both if a project is constructed in phases. Construction of a project with a final development plan cannot be accomplished solely through a land disturbance permit.

**18.130.015 Site development permits – when required**

A site development permit is generally considered a companion permit to a building permit, or land disturbance permit, and shall be required to be obtained prior to authorization of the following work unless specifically authorized by a building permit:

- A. Construction of any site improvements including but not limited to; pavement, curbs, sidewalks, stormwater facilities, retaining walls and bank stabilization, and work related to such construction, including but not limited to clearing, grading and grubbing, unless a building permit authorizes the work. A site development permit may be waived by the Director of Planning and Development Services for work of a minor nature such as sidewalks on private property, retaining walls under 4 feet in height, patios and other minor flatwork, residential driveways, maintenance or in-kind replacement of existing driveways and parking lots, and similar construction.
- B. If a site development permit is not issued in conjunction with a building permit application, a land disturbance permit will also be required, unless waived by the Director of Planning and Development Services.

**18.130.020 Building permits -- when required**

A building permit shall be obtained from the ~~Code Administrator~~Director of Planning and Development Services prior to commencement of construction or expansion of any building ~~or structure, parking lot or driveway~~ when required by this ordinance or Title 16 of the Code. (History: Ord. ZRR-1725; ZRR-1637)

**18.130.030 Land ~~use~~disturbance permits, site development permits and building permits - applications**

- A. Applications for land ~~use~~disturbance, site development, or building permits shall be filed upon forms prescribed by the City and conform with the following: ~~setting forth the legal description of the lot, tract or parcel of land, together with a general description of any building or structure proposed to be constructed, erected or altered thereon, including the approximate size and shape, square foot and cubic area, the principal materials of construction, location of the building or structure upon the lot, tract or parcel, and the intended use of the land or building.~~
1. Construction documents shall ~~clearly~~ indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this ordinance, and other relevant laws, rules and regulations as determined by the Director of Planning and Development Services.
  2. The construction documents shall include a site plan drawn to scale showing the size and location of new construction and existing structures on the site and the legal description of the lot tract or parcel.

3. The construction documents shall include a grading plan, drainage map, and a erosion and sediment control plan in conformance with Chapter 16.200 of this Code.
- B. Applications for land use disturbance permits shall be submitted for approval by the Code Administrator Director of Planning and Development Services. Issuance of land disturbance permits shall conform to the following:
1. Where the proposed land disturbance activity covers multiple tracts of land or multiple lots, the permit shall be issued only to the common owner.
  2. A contact person or field representative shall be identified on every permit as a responsible party whom the City can contact regarding the installation, maintenance, and removal of erosion and sediment control measures. The land disturbance permit holder is responsible for timely written notification to the Codes Administrator of any changes to the contact person or field representative.
  3. The land disturbance permit holder may request that the permit be transferred to another party. The transfer of a permit from one party to another shall be subject to the approval of the Director of Planning and Development Services and not be effective until written approval is issued.
  4. The owner of the property may designate, in writing, others to act on his or her behalf, however the responsibility for compliance with this Code with respect to land disturbance activities shall remain with the owner of the property until the issued permit has been officially closed.
- C. Applications for site development permits shall be submitted for approval by the Director of Planning and Development Services.
- D. Land disturbance permits issued for land disturbances less than one acre are intended to track small projects that may impact the public safety and welfare, or sensitive areas. In these cases, a site specific erosion and sediment control plan is not required unless deemed necessary by the Director of Planning and Development Services. The applicant is required to acknowledge their intent to conform with the City's standards for erosion and sediment control in accordance with Chapter 16.200 of this Code and shall employ BMP methods proportional to the scale of the land disturbance activity.
- ~~C.E.~~ Applications for building permits shall be submitted for approval by the Code Administrator Director of Planning and Development Services.
- (History: Ord. ZRR-1725; ZRR-1637)

**18.130.040 Number of permits required for buildings**

When construction of groups of buildings and accessory buildings for a principal building is to be simultaneous, and when all the buildings are to be constructed on land zoned for one classification and use, the Code Administrator may, in his or her discretion, issue one permit for such groups of buildings or may require a separate permit for each building or structure to be constructed.

(History: Ord. ZRR-1725; ZRR-1637; ZRR-889 §18.54; ZRR-412-19; ZRR-412 §28)

**18.130.045 ~~Land use~~ Site development, and building permits - compliance with subdivision regulations**

No ~~land use permit~~ or building permit to allow the construction of new floor area, nor site development permit for recreational facilities shall be issued unless the applicant can demonstrate compliance with the standards and requirements of Chapter 18.460. Provided, however, that land which has already been platted need not be replatted so long as all other requirements of Chapter 18.460, including but not limited to, development standards and required improvements, are satisfied. Provided further, that the owner of a single lot may apply to the Planning Commission for a rule exception according to the standards set forth in Section 18.460.210.

(History: Ord. ZRR-1725)

**18.130.050 ~~Land use permits~~ Site development permits and building permits - minimum rights-of-way required**

- A. When a ~~land use permit~~, site development permit, or building permit is requested on a lot or tract abutting a public street other than a thoroughfare as defined in Section 18.400.020.D., the ~~Code Administrator~~ Director of Planning and Development Services shall determine that adequate right-of-way exists on that portion of the public street abutting the property. The minimum right-of-way, measured from the center line of the street to the property line of the lot or tract, shall be determined based upon the classification of the abutting street. Classification of the abutting street shall be determined by reference to the Master Plan, the Official Street Map or a master street plan; if the classification is not designated on any of such documents, the Director of Planning and Development Services shall determine the street classification by reference to existing or planned land uses of abutting properties.
- B. Once the street classification has been determined, right-of-way requirements shall be calculated in an amount equal to one-half of the total right-of-way requirement established for such street classification in Title 13 of the Code and summarized in Table 18.460.110 of this ordinance. Where the property lies on both sides of the public street, the right-of-way requirement shall be equal to the amount set forth in Title 13 of the Code and summarized in Table 18.460.110 of this ordinance.

- C. No ~~land use permit, site development permit,~~ or building permit shall be issued for any lot or tract where the abutting right-of-way does not clearly comply with the right-of-way requirements until title for the additional required right-of-way has been conveyed to the City by plat or deed and accepted by the Governing Body.
- D. Any requirement for dedication of right-of-way pursuant to this section may be waived by the ~~Code Administrator~~ Director of Planning and Development Services where the permit being requested does not result in a change or expansion of use of the property or an increase in the square footage of any building.  
(History: Ord. ZRR-2015 §8, 97; ZRR-1725; ZRR-1637)

**18.130.055 Building permits and site development permits – compliance with existing land disturbance permits.**

Issuance of any building permit or site development permit that is part of a common plan of development with a pre-existing land disturbance permit, will require written agreement by the permit applicant to comply with the provisions of the pre-existing land disturbance permit.

**18.130.057 Building permits, site development permits, and land disturbance permits – Closure.**

A. Closure of a building permit shall be completed in accordance with the provisions of Title 16 of this Code. In cases where there is not a separate land disturbance permit issued for a particular site, a final certificate of occupancy shall not be issued until the site has been permanently stabilized and all temporary BMP's removed and all drainage and grading is found to be in compliance with this Code.



B. Closure of a site development permit shall be completed by obtaining a satisfactory final inspection and issuance of a certificate of compliance or certificate of occupancy by the Codes Administrator. In cases where there is not a separate land disturbance permit issued for a particular site, a certificate of compliance shall not be issued until the site has been permanently stabilized, all temporary BMP's removed, and all drainage and grading has been found to be in compliance with this Code.

C. Closure of a land disturbance permit is independent of closure of other permits. If a site has been partially stabilized, a land disturbance permit can be closed upon issuance of a subsequent land disturbance permit covering remaining unstabilized areas. Closure of a land disturbance permit shall be completed by obtaining a satisfactory final inspection and issuance of a certificate of compliance. Timing of final inspections for land disturbance permits shall conform with the following:

1. For single-family or two-family construction only, a final inspection can be completed after 80 percent of the housing units in the associated final plat have received final certificates of occupancy, or a minimum of three years after issuance of the first building permit for a housing unit. Additionally, no final

inspection can be made before any temporary BMP's serving more than one lot are no longer needed and are removed.

2. For development other than single-family or two-family residential development, a final inspection can occur when all temporary BMP's serving more than one lot are no longer needed and are removed.

#### **18.130.060 Sign permits -- when required**

A sign permit shall be obtained from the Director of Planning and Development Services prior to installation or construction of any sign except those signs specifically exempted from such requirement pursuant to the provisions of Chapter 18.440.

(History: Ord. ZRR-2343 §13, 2002; ZRR-1725; ZRR-1637; ZRR-889 §18.52)

#### **18.130.070 Sign permits -- applications**

Applications for sign permits shall be filed upon forms prescribed by the City, accompanied by two sets of plans drawn to scale indicating the sign size, location, method of illumination, colors, materials of the sign and structure, and method of attachment. In the case of signs other than freestanding signs, the plans shall depict the entire facade on which the sign is to be mounted or attached. In addition, the applicant shall submit any other information relating to the placement, construction, design, etc. of the sign as may be required by the Director of Planning and Development Services.

(History: Ord. ZRR-2343 §14, 2002; ZRR-1725; ZRR-1637; ZRR-889 §18.52)

#### **18.130.080 Permits -- conformance of construction**

No permit shall be issued for any building, structure, sign or ~~use~~-disturbance of land unless the same shall be in conformance in every respect with:

- A. ~~a~~All provisions of this ordinance;
- B. ~~a~~Any conditions or stipulations attached to the approval of any applicable rezoning, special use permit, preliminary development plan, final development plan, site plan or other form of development plan approval;
- C. ~~t~~The content of any applicable final development plans, site plans, or other development plans approved by the Governing Body, Planning Commission or the Planning & Development Services Department; and
- D. Title 16 of the Code and any other applicable provisions of the Code.

(History: Ord. ZRR-2343 §15, 2002; ZRR-1925; ZRR-1725; ZRR-1637; ZRR-889 §18.54; ZRR-777)



**18.130.090 Action on permit applications**

In the event of refusal to issue a permit upon an application based upon noncompliance with the provisions of this ordinance, the applicant shall have the right to appeal to the Board of Zoning Appeals as set forth in Chapter 18.140.

(History: Ord. ZRR-1725; ZRR-1637; ZRR-889 §18.54)

**18.130.095 Suspension of permits**

Suspension of building, site development, and land disturbance permits shall comply with the following:

A. Suspension of building permits are subject to the provisions of Title 16 of this Code.

B. A land disturbance or site development permit can be suspended by the City if the Director of Planning and Development Services determines that:

1. The site is not in substantial compliance with the approved plan or any permit condition.
2. A violation of any provision of this Chapter or any other applicable law, ordinance, rule, or regulation relating to this work exists.
3. A condition exists, or act is being done that constitutes a nuisance or hazard or endangers human life or the property of others.
4. The approved plan is failing to achieve required erosion and sediment control objectives due to improper installation, maintenance, or failure of the plan to perform anticipated erosion and sediment control functions as required by Chapter 16.200 of this Code.

C. A site development or land disturbance permit shall be suspended by issuance of written notice to the permit holder, or the permit holders representative. The notice shall indicate the reason for permit suspension and indicate corrective measures required and the timeframe within which corrections must be made to reinstate the permit. The notice shall also include a stop work order pursuant to Chapter 16.200 of the Code, if not previously issued. If the applicant fails to make corrective measures within the timeframe required the Director of Planning and Development Services may revoke the permit.

**18.130.098 Expiration of permits**

Expiration of building, site development, and land disturbance permits shall comply with the following:

- A. Expiration of building permits are subject to provisions of Title 16 of this Code. Additionally, land disturbance activities authorized by a building permit that are not stabilized following expiration of a building permits are subject to abatement provisions pursuant to Chapter 16.200 of this Code.
- B. Site development permits shall expire if the authorized work has not commenced within 180 days of permit issuance, or if the authorized work is suspended or abandoned for a period of greater than 180 days. The Director of Planning and Development Services is authorized to grant, in writing, extensions up to 180 days each.
- C. Land disturbance permits shall expire if the authorized work has not commenced within 180 days after permit issuance. A land disturbance permit shall not expire after land disturbance activities have begun, but shall be closed pursuant to Section 18.130.057.

#### **18.130.100 Revocation of permits**

A permit may be revoked by the official issuing the permit at any time prior to the completion of the ~~use~~ land disturbance, site development, building, structure or sign for which the same was issued, when it appears to such official that one or more of the following conditions is present: there is departure from the plans, specifications or conditions as required under the terms of the permit; that the permit was procured by false representation; that the permit was issued by mistake; or that any of the provisions of this ~~title~~ are being violated. Written notice of such revocation shall be served upon the owner, the owner's agent or contractor, or upon any person employed in the building or structure for which such permit was issued, or shall be posted in a prominent location on the property. Where notice of revocation has been served or posted, no further construction or use of the property shall proceed. Any revocation of a permit other than a building permit may be appealed to the Board of Zoning Appeals as provided in Chapter 18.140. Except where revocation of a building permit is successfully appealed to the Code Board of Appeals, or another permit revocation is successfully appealed to the Board of Zoning Appeals, a revoked permit may not be reinstated.

(History: Ord. ZRR-1725; ZRR-1637; ZRR-889 §18.54; ZRR-837)

#### **18.130.110 Certificates of occupancy -- when required**

No new or existing building or structure shall be occupied or used, and no change in the character or use of land or of a building shall occur, until a certificate of occupancy has been issued by the Code Administrator certifying that such building or use complies with all regulations of this ordinance, Title 16 and other applicable provisions of the Code.

(History: Ord. ZRR-1725; ZRR-1637)

#### **18.130.120 Certificates of occupancy -- records**

A record of all certificates of occupancy shall be kept on file in the office of the Code Administrator.

(History: Ord. ZRR-1725; ZRR-1637; ZRR-889 §18.58)

**18.130.130 Certificates of occupancy -- connection with sewer system**

Except where some other method of handling liquid waste has been specifically approved by the City, no certificate of occupancy shall be issued by the Code Administrator for any building or use until the property has been connected with a public sanitary sewer system.

(History: Ord. ZRR-1725; ZRR-1637; ZRR-889 §18.58)

**18.130.140 Certificates of occupancy -- parking**

Prior to issuance of a certificate of occupancy for a new use or change in use of an existing building or structure, all parking requirements as specified in this ordinance for the new use shall be met.

(History: Ord. ZRR-1725; ZRR-1637; ZRR-889 §18.58)

**18.130.150 Filing fees**

Filing fees for all applications for permits and certificates of occupancy shall be established by resolution of the Governing Body. Filing fees may be reviewed on an annual basis and revised as necessary by adoption of a new resolution. Copies of the current resolution establishing filing fees shall be on file in the offices of the City Clerk, the Director of Planning and Development Services and the Code Administrator.

(History: Ord. ZRR-2343 §16, 2002; ZRR-1725; ZRR-1637; ZRR-889 §18.54)

**Chapter 18.140**  
**APPLICATIONS AND PROCEDURES**

**18.140.490 Consideration of downtown development plans:**

- A. All development that includes at least 10,000 square feet of new floor area, shall comply with the following procedure:
1. Notices to surrounding property owners shall be provided as outlined in 18.140.080.
  2. Public hearing required at the Planning Commission.
  3. Planning Commission approval required.
  4. Action by the Planning Commission on a downtown development plan may be appealed to the Governing Body by the applicant by providing written notice to the Director of Planning and Development Services within 15 days following the Planning Commission's decision. Approval of the application will allow for processing for the issuance of a building or ~~land-use-~~ site development permit.
- B. All development requiring a building permit, ~~land-use-permit~~ site development permit, or sign permit, where improvements to building(s) or site(s) do not include at least 10,000 square feet of new floor area may be approved administratively by the Director of Planning and Development Services. Applications that have been denied by the Director of Planning and Development Services, may appeal the Director's decision to the Planning Commission, provided written notice is provided to the Director within 15 days following the Director's decision. In the event an application is appealed to the Planning Commission, the procedure outlined in 18.140.490(A) 1-3 shall be followed. Any action by the Planning Commission on an appeal is final. Approval of the application by the Planning Commission will allow for processing for the issuance of a building or land use permit.
- C. The Planning Commission, Governing Body, or Director of Planning and Development Services, shall approve downtown development plans upon a determination that the following criteria have been satisfied:
1. The plan conforms to the applicable zoning district regulations, the Downtown Overland Park Master Plan, Downtown Overland Park Design Guidelines, and any other adopted plans and policies.
  2. The plan complies with the criteria set forth in Section 18.140.180(C) – Consideration of site plans.
  3. The landscaping and screening is provided as set forth in Chapter 18.450.

4. All submission requirements have been met.
- D. Revisions to an approved downtown development plan may be approved administratively by the Director of Planning and Development Services. Provided, however, that in no event shall revisions to approved downtown development plans be approved administratively if the revisions require modification or removal of conditions or stipulations approved by the Planning Commission or Governing Body, or involve cumulative increases in the total floor area of all buildings or building additions of more than 10,000 square feet.  
(History: Ord. ZRR-2343 §38, 2002)

**Chapter 18.370**  
**SPECIAL USES**

**18.370.040 Development and performance standards**

- K. At the time of approval of any special use permit, the Governing Body may impose such restrictions as to height or bulk of buildings or structures, yard and lot area requirements, parking requirements, open space or landscaping requirements, fencing requirements or other requirements determined to be reasonably necessary for the protection of the public health, safety and welfare of the neighborhood and the community at large. Further, the Governing ~~b~~Body may require that the applicant submit a final development plan for approval by the Staff, Planning Commission or Governing Body prior to the issuance of any building or ~~land-use-site development~~ permit.

**Chapter 18.410**  
**NONCONFORMING SITUATIONS AND VESTED RIGHTS**

**18.410.060 Change in use of property where a nonconforming situation exists**

- A. A change in use of property (where a nonconforming situation exists) may not be made except in accordance with subsections B through E of this section. However, this requirement shall not apply if only a sign permit is needed.
- B. If the intended change in use is to a principal use that is permissible in the district where the property is located, and all of the other requirements of this [§ Title](#) applicable to that use can be complied with, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant lot. Once conformity with this [§ Title](#) is achieved, the property may not revert to its nonconforming status.
- C. If the intended change in use is to a principal use that is permissible in the district where the property is located, but all of the requirements of this ordinance applicable to that use cannot reasonably be complied with, then the change is permissible only if the Planning Commission issues a nonconforming situation permit authorizing the change. This permit may be issued if the Planning Commission finds, in addition to any other findings that may be required by this [§ Title](#), that the intended change will not result in a violation of Section 18.410.040 and that all of the applicable requirements of this [§ Title](#) will be complied with that are reasonably possible. Compliance with a requirement of this [§ Title](#) is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or without moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. Further, in no case may an applicant be given permission pursuant to this subsection to construct a building or add to an existing building if additional nonconformities would thereby be created.
- D. In making a determination under subsection C, whenever (1) there exists a lot with one or more structures on it, and (2) a proposed change in use that does not involve any enlargement of a structure is proposed for such lot, and (3) the parking or loading requirements that would be applicable as a result of the proposed change cannot be satisfied on such lots because there is not sufficient area available on the lot that can practicably be used for parking or loading, then the proposed use shall not be regarded by the Planning Commission as resulting in an impermissible extension or enlargement of a nonconforming situation in violation of Section 18.410.140. However, if the proposed use is approved, the applicant shall be required to comply with all applicable parking and loading requirements than can be satisfied without acquiring additional land, and shall also be required to obtain off-site parking if parking requirements cannot be satisfied on the lot with respect to which the [land-use-site development](#) permit is required and such

off-site parking is reasonably available. If such off-site parking is not reasonably available at the time the nonconforming situation permit is granted, then the permit recipient shall be required to obtain it if and when it does become reasonably available.

This requirement shall be a continuing condition of the nonconforming situation permit. (History: Ord. ZRR-1725; ZRR-1637; ZRR-889 §18.44)

#### **18.410.90 Completion of nonconforming projects -- vested rights**

- A. All nonconforming projects on which construction was begun at least 180 days before the effective date of this ordinance as well as all nonconforming projects that are at least 10% completed in terms of the total expected cost of the project on the effective date of this ordinance may be completed in accordance with the terms of their permits, so long as those permits were validly issued and remain unrevoked and unexpired, and a vested rights permit is obtained from the Director of Planning and Development Services. If a development is designed to be completed in stages, this subsection shall apply only to the particular phase under construction.
- B. Except as provided in subsection A, all work on any nonconforming projects shall cease on the effective date of this ordinance, and all permits previously issued for work on nonconforming projects may begin or may be continued only pursuant to a vested rights permit issued in accordance with this section by the Planning Commission. The Planning Commission shall approve such a permit if it finds that the applicant has in good faith made substantial expenditures or incurred substantial binding obligations or otherwise changed his or her position in some substantial way in reasonable reliance on the development regulations as they existed before the effective date of this ordinance and thereby would be unreasonably prejudiced if not allowed to complete its project as proposed. In considering whether these findings may be made, the Planning Commission shall be guided by the following, as well as other relevant considerations:
1. All expenditures made to obtain, or pursuant to, a validly issued and unrevoked building, ~~land use~~ land disturbance, site development or sign permit shall be considered as evidence of reasonable reliance on the development regulations that existed before the effective date of this ordinance.
  2. Except as otherwise provided in subdivisionsection B-1, no expenditures made more than 180 days before the effective date of this ordinance may be considered as evidence of reasonable reliance on the development regulations that existed before the effective date of this ordinance. An expenditure is made at the time a person incurs a binding obligation to make that expenditure.



3. To the extent that expenditures are recoverable with a reasonable effort, a person shall not be considered prejudiced by having made those expenditures. For example, a person shall not be considered prejudiced by having made some expenditure to acquire a potential development site if the property obtained is approximately as valuable under the new classification as it was under the old, for the expenditure can be recovered by a resale of the property.
  4. To the extent that a nonconforming project can be made conforming and that expenditures made or obligations incurred can be effectively utilized in the completion of a conforming project, a person shall not be considered prejudiced by having made such expenditures.
  5. An expenditure shall be considered substantial if it is significant in dollar amount and in terms of the total estimated cost of the proposed project and the ordinary business practices of the developer.
  6. A person shall be considered to have acted in good faith if actual knowledge of a proposed change in the development regulations affecting the proposed development site could not be attributed to such person.
  7. Even though a person had actual knowledge of a proposed change in the development regulations affecting a development site, the Planning Commission may still find that such person acted in good faith if such person did not proceed with his plans in a deliberate attempt to circumvent the effects of the proposed ordinance. For example, the Planning Commission may find that the developer did not proceed in an attempt to undermine the proposed ordinance if it determines that at the time the expenditures were made, either there was considerable doubt about whether any ordinance would ultimately be passed, or it was not clear that the proposed ordinance would prohibit the intended development, and the developer had legitimate business reasons for making expenditures.
- C. When it appears from the developer's plans or otherwise that a project was intended to be or reasonably could be completed in phases, stages, segments, or other discrete units, the developer shall be allowed to complete only those phases or segments with respect to which the developer can make the showing required under subsection B. In addition to the matters and subject to the guidelines set forth in [subdivisionssections](#) 1 through 6 of subsection B, the permit-issuing authority shall, in determining whether a developer would be unreasonably prejudiced if not allowed to complete phases or segments of a nonconforming project, consider the following in addition to other relevant factors:
1. Whether any plans prepared or approved regarding uncompleted phases constitute conceptual plans only or construction drawings based upon detailed surveying, architectural or engineering work.

2. Whether any improvements, such as streets or utilities, have been installed in phases not yet completed.
  3. Whether utilities and other facilities installed in completed phases have been constructed in such a manner or location or to such a scale, in anticipation of connection to or interrelationship with approved but uncompleted phases, that the investment in such utilities or other facilities cannot be recouped if such approved but uncompleted phases are constructed in conformity with existing regulations.
- D. The Planning Commission shall not consider any application for a vested rights permit authorized by subsection B that is submitted more than 60 days after the effective date of this ordinance. The Planning Commission may waive this requirement for good cause shown, but in no case may it extend the application deadline beyond one year from the effective date of this ordinance.
- E. The Planning Commission shall establish expedited procedures for hearing applications for permits under this section.
- F. Notwithstanding the provisions of subsections A and B above, development rights for a single-family residential development shall vest upon the recording of a plat of such land. If construction is not commenced on such land within five years of recording a plat, then the development rights in the project shall expire.

(History: Ord. ZRR-2343 §51, 2002; ZRR-1725; ZRR-1637)

**Chapter 18.450**  
**LANDSCAPING AND SCREENING**

**18.450.040 Landscaping plan required**

All plans submitted in support of a final development plan, site plan, building permit or ~~land-use~~ site development permit, except for any residential use in Districts RE, R-1, RP-1, R-1A, RP-1A and R-2, shall include a landscaping plan signed by a registered landscape architect. Property located within District A, Agriculture, is excluded from this requirement. All landscaping plans shall include the following information:

- A. North point and scale.
- B. Topographic information and final grading adequate to identify and properly specify planting for areas needing slope protection.
- C. The location, size and surface of materials of all structures and parking areas.
- D. The location, size and type of all above-ground and underground utilities and structures with proper notation, where appropriate, as to any safety hazards to avoid during installation of landscaping.
- E. The location, size, type and quantity of all proposed landscaping materials, along with common and botanical names of all plant species. The size, grading and condition shall be specified according to American Association of Nurserymen Standards.
- F. The location, size and common name of all existing plant materials to be retained on the site.
- G. Mature sizes of plant materials shall be drawn to scale and called out on the plan by a common name or appropriate key.
- H. Location of hose connections and other watering sources.
- I. The location of all trees, 12-inch caliper or larger, measured at 4-1/2 feet above ground level, that are proposed for removal.
- J. All screening required by this eChapter.  
(History: Ord. ZRR-1795 §1, 93; ZRR-1637; ZRR-889 §18.56)