



Special Planning Commission Work Session Meeting
Thursday, April 20, 2023 - 5:00 PM
AGENDA

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Public Comments on Items Not on the Agenda
5. PD District draft review
 - a. Chapter 1164 Planned Development (PD District) Draft
6. Other Business
7. Adjourn

CHAPTER 1164

Planned Development PD District

- 1164.01 Purpose and application.
- 1164.02 Establishment of Planned Development District.
- 1164.03 Permitted and conditional uses.
- 1164.04 Standards - generally.
- 1164.05 Project phasing.
- 1164.06 Procedures.
- 1164.07 Plan approval criteria.
- 1164.08 Submission requirements.
- 1164.09 Special PD Requirements for Parkland.

CROSS REFERENCES

Conditional uses - see P. & Z. Ch. 1131

Amendments - see P & Z. Ch. 1137

1164.01 PURPOSE AND APPLICATION.

(a) **Purpose.** The Planned Development (PD) District regulations are intended to provide flexibility and creativity in terms of the types of uses and improvements that may be developed and operated within a particular area. The purposes of the PD District regulations are to:

- (1) Facilitate master planning in order to provide for cohesive development across multiple properties;
- (2) Provide an opportunity for a mix of land uses otherwise not permitted within standard municipal zoning district classifications in order to facilitate the development and operation of uses in a manner that reflect modern needs, market trends, and preferences.
- (3) Allow for the creation of development standards that respect the unique characteristics and qualities of a property and the immediate vicinity and protect the community's natural resources.
- (4) Enable more specific reviews of certain design characteristics to ensure that a development project is properly integrated into its surroundings and is compatible with or complimentary to adjacent development.
- (5) Assure compatibility between proposed land uses within and around the Planned Development District through appropriate development controls.

- (6) Pursue the housing and economic development goals of the City.
- (7) Promote economical and efficient use of land and reduce infrastructure costs through unified development.
- (8) Provide for supporting community amenities such as (but not limited to) parkland, open spaces, and tree preservation areas.
- (9) Establish objective criteria for development plan review that ensure conformity to community and district standards and allow for consistent treatment throughout.
- (10) Encourage proper relationships between buildings, other developments, structures, and land, and develop in an orderly, coordinated, and comprehensive manner.
- (11) Implement predictable and timely review procedures applicable to Planned Development Districts in order to encourage unified development projects that exhibit creative planning and design in ways that cannot be achieved through a standard zoning district.

(b) Application. The Planned Development District regulations assist in accomplishing the above purposes by establishing review steps that combine the request for a zoning of real property with the development plan review process and, when applicable, the subdivision process.

(1) Separate Districts. Each Planned Development District shall be considered a separate and unique zoning district wherein a preliminary development plan (a “Preliminary Development Plan”), including (but not limited to) an associated written text providing the specific development standards applicable to the PD District (a “Zoning Text”), is adopted. The Preliminary Development Plan shall pertain only to the property within the particular PD District to which it applies. The approval of a Preliminary Development Plan application also shall constitute a zoning amendment to a PD zoning designation for the property that is the subject of the application.

(2) PD Supersedes Other Provisions. Planned Development Districts adopted and established in accordance with the provisions of this chapter shall take precedence over any conflicting regulations contained in the City’s Planning and Zoning Code and/or Subdivision Regulations.

(c) Ownership/Control. A Planned Development District shall be an integrated, unified development project wherein the entire project area that is the subject of a single application shall be in common or shared ownership and/or control at the time the application for Preliminary Development Plan approval is filed. Any transfer of land within the development resulting in ownership within the development by additional or other parties after an application has been filed shall not alter the applicability of the regulations contained herein. An approved Preliminary Development Plan shall be binding upon property owners and their successors and assigns.

(d) Eligibility. In order for property to be eligible to be classified with the PD designation, it must be included within a Preliminary Development Plan application pertaining to a minimum of three hundred fifty (350) acres, which must be contiguous to one another. Properties separated by a public right-of-way shall be considered to be contiguous for purposes of this provision. At any time after a Preliminary Development Plan application containing a

minimum of 350 acres has been approved so as to apply the PD designation thereto, separate property will be eligible, but not guaranteed, to be zoned as an addition to the same PD, regardless of whether or not it is contiguous to any of the acreage contained within that PD, if (i) the separate property is owned or controlled by the same applicant that filed the original PD application, or (ii) the separate property is under common ownership with a portion of other real property that is already zoned with that PD designation. In addition, non-contiguous separate real property that is not contiguous with a boundary of an existing PD shall be eligible to be added to the existing PD only if any portion of the boundary of the separate property to be added is located within 2,500 linear feet of a boundary of the existing PD.

1164.02 ESTABLISHMENT OF PLANNED DEVELOPMENT DISTRICT.

A Planned Development District shall be established according to the following:

(a) Zoning. A request for zoning land to a Planned Development District classification shall be made according to this Chapter 1164 by filing a Preliminary Development Plan application. All properties with a PD classification shall be designated on the zoning map as “PD”.

(b) Preliminary Development Plan. A Preliminary Development Plan application shall be reviewed by the Planning and Zoning Commission and City Council in accordance with this Chapter 1164. An action by City Council to approve, approve with conditions, or disapprove a Preliminary Development Plan application shall be deemed to constitute the act of zoning and shall be considered to be a legislative action.

(c) Final Development Plan. Detailed final development plans (each, a “Final Development Plan”) shall be reviewed and acted upon for all proposed developments which are not Major Economic Development Projects (such term being defined in Section 1164.06(j)) by the relevant reviewing body in accordance with this Chapter 1164. A Final Development Plan application may include the entirety of the PD District, or it may be submitted for part of the PD District in accord with any commitments that were made in the approved Preliminary Development Plan with regard to the phasing of development. All uses and developments within a PD District which are not Major Economic Development Projects shall comply with an approved Final Development Plan. An action by the relevant reviewing body to approve, approve with conditions, or disapprove a Final Development Plan application (or a permitted modification to or amendment thereof) shall be deemed to constitute an administrative action.

(d) Certificate of Development Approval. A certificate of development approval (“CODA”) shall be reviewed and acted upon for all Major Economic Development Projects (such term being defined in Section 1164.06(j)) by the Design Review Board (such term being defined in Section 1164.06(k)). Each use and development within a PD District which qualifies as a Major Economic Development Project shall comply with an approved CODA. An action by the Design Review Board to approve, approve with conditions, or disapprove a CODA application (or a permitted modification to or amendment thereof) shall be deemed to constitute an administrative action.

(e) Plats. When a plat is necessary or required it shall be reviewed in accordance with the City’s Subdivision Regulations. An application for preliminary plat review and approval may be filed at the same time as an application for Preliminary Development Plan review and approval or Final Development Plan review and approval, or may be filed at a later date. An application for final

plat review and approval may be filed at the same time as an application for Final Development Plan review and approval or may be filed at a later date

1164.03 PERMITTED AND CONDITIONAL USES. A PD District may allow for a single use or any combination of uses when such uses are found to be compatible with one another in the context of a Preliminary Development Plan and in keeping with the intent of the general development criteria of the PD District, provided the proposed location of the uses will not materially adversely affect the public health, safety, and general welfare.

(a) List of Uses. The specific uses to be included in the proposed PD District shall be clearly listed in the Zoning Text. Uses in the Zoning Text need not be listed as permitted uses or conditional uses in any other portion of the City's Planning and Zoning Code, it being the intent that each PD District is unique and may allow for the development and operation of uses which may or may not be permitted in any other zoning district within the City. Listed permitted, conditional, and accessory uses shall be defined by their customary name or identification, except where they are specifically defined or limited in the Planning and Zoning Code or the Zoning Text. Uses that are not listed as permitted, conditional, or accessory uses in the development text shall be prohibited.

(b) Designations of Uses. Uses shall be identified in the Zoning Text as being permitted uses, conditional uses, or accessory uses. Any listed use may be limited to certain areas delineated in the Preliminary Development Plan. A PD District may include subareas, districts, or similar designations where only certain uses are permitted and where particular development standards may be applied to only a portion of the PD District. Conditional uses shall be required to be reviewed in accordance with Chapter 1131, provided, however, that a decision of the Planning and Zoning Commission to deny a conditional use application may be appealed by an applicant to City Council by filing a notice of the appeal with the City Council Clerk within 15 days after such the Planning and Zoning Commission action is taken. City Council shall then hold a hearing on the appeal at its next regularly scheduled meeting that is at least 15 days after the City Council Clerk's receipt of the appeal and shall make an administrative determination of whether or not the denial of the conditional use was illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the record.

1164.04 STANDARDS - GENERALLY. The proposed PD District shall include development standards in the Zoning Text to identify the allowable uses of land, buildings, and other structures; building locations, bulk, layouts, arrangements, designs, and heights; the percentages of lot areas that may be occupied; the setbacks of buildings from public street rights-of-way and property lines; the sizes of yards and other spaces; the density of development; and other matters relevant to the proposed use and development.

1164.05 PROJECT PHASING. If the PD District is to or may be developed in phases, each phase shall have adequate provision for vehicular access, parking, storm water management, utilities, and other public improvements to serve approved development within that phase.

1164.06 PROCEDURES.

(a) General Provisions. Review of applications for Planned Development Districts shall be conducted in compliance with the provisions of this Section 1164.06. Each application shall be reviewed for completeness and compliance with applicable submission requirements, unless

specific items are determined by City staff to be inapplicable or unnecessary. If the application is deemed insufficient, the City staff shall notify the applicant of the deficiencies. Only complete applications shall be placed on a Planning and Zoning Commission or City Council agenda.

(b) Concept Plan. Prior to submittal of any application for a PD, the applicant shall meet with the appropriate staff of the City for the review of a “Concept Plan” before the applicant files a Preliminary Development Plan application. The Concept Plan is intended to outline the basic scope, character, and nature of a proposed project. The review of the Concept Plan is to provide input in the formative stages of design. The Concept Plan shall include, at a minimum, a proposed general use diagram for property proposed for development, an indication of anticipated proposed uses, and other information which may be relevant to future proposed rezoning and development of the property. The applicant may (but shall not be required to) request review and feedback of a Concept Plan from City Council prior to preparing a Preliminary Development Plan and filing a related application. If such a review is requested, an application for review of a Concept Plan shall be filed with City staff, which shall then forward it to City Council for review within 30 days of the filing of the application. No discussions, opinions, or suggestions provided on any aspect of the Concept Plan shall bind the applicant or the City.

(c) Zoning Amendment Request. The submittal of a Preliminary Development Plan application to the City shall constitute an application for a zoning amendment to a PD District classification with respect to the property that is the subject of the application. The procedures, timing, and requirements for filing and reviewing a Preliminary Development Plan application as provided in this Chapter 1164 shall apply to the exclusion of the procedures, timing, and requirements for other zoning amendment applications as provided in Chapter 1137. Any amendments to an approved Zoning Text and associated Preliminary Development Plan shall update the original documents, to create a single source of regulations for each PD. Amendments that only reference a previously approved plan will not be accepted until such time as the governing Zoning Text and Development Plan update the original documents accordingly.

(d) Preliminary Development Plan Review Procedures. An application for a Preliminary Development Plan review and approval, including all submission requirements for Preliminary Development Plans, shall be reviewed and distributed according to the following procedures.

(1) Staff Review. After determining that the application is complete pursuant to the requirements of Section 1164.08(a), the relevant City staff shall forward the application to the appropriate City departments and, if determined necessary, professional consultants for review and comment. During the course of their review, the staff may meet with the applicant to review the application, and the applicant may revise the application in response to staff's comments.

(2) Planning and Zoning Commission Review. After the application has been deemed by City staff to be complete, the Preliminary Development Plan application shall be placed on the agenda for the next regular meeting of the Planning and Zoning Commission that meets all notice requirements of the PD District. The Preliminary Development Plan application and supporting documentation, City staff comments, any other reports prepared and any accompanying documents (such as, but not limited to, letters from residents or maps) shall be transmitted to the Planning and Zoning Commission prior to the meeting. The Planning and Zoning Commission shall review the application at a public hearing to determine if it complies with the approval criteria set forth in this Section 1164.07(a). When reviewing the application the

Planning and Zoning Commission shall take into consideration any submitted plans, the Zoning Text, supporting documentation and/or testimony from the applicant or its agents or consultants, the City's Comprehensive Plan and/or other relevant plans and studies, staff reports, staff and/or public comments, and expert opinions.

(A) Request for Additional Information/Revisions. In its review of an application, the Planning and Zoning Commission may request additional information deemed reasonably necessary to adequately review and evaluate the proposed development, and/or may request that the applicant revise elements of the application. When this occurs, the Planning and Zoning Commission may table the application. A tabled application will be scheduled for additional review at the next regular meeting of the Planning and Zoning Commission unless the applicant requests additional time to address the information that has been requested by the Planning and Zoning Commission as part of its action to table the case, in which case the Planning and Zoning Commission shall schedule additional review of the application at the next regularly or specially scheduled meeting that allows the applicant adequate time to provide the new information.

(B) Action by Planning and Zoning Commission. The Planning and Zoning Commission shall recommend to City Council one of the following after considering the approval criteria set forth in Section 1164.07(a):

- (i) That the Preliminary Development Plan and its supporting documentation be approved as submitted;
- (ii) That the Preliminary Development Plan and its supporting documentation be approved with specific conditions set forth by the Planning and Zoning Commission to further improve the proposed development; or
- (iii) That the Preliminary Development Plan be disapproved.

(C) Transmission to City Council. The Planning and Zoning Commission shall transmit the Preliminary Development Plan application along with all appropriate documentation, including a recommendation to City Council, within 7 days of taking action.

(3) Review and Action by City Council. City Council shall review and act on a single proposed ordinance to approve both the zoning of the relevant property to the PD designation and the associated Preliminary Development Plan, including conducting a public hearing, in accordance with City Council procedures. Before holding the public hearing, notice of such hearing shall be given by the City Council Clerk by posting on the website maintained by the City at least 7 days before the date of such hearing. This notice shall set forth the time and place of the public hearing, and the nature of the proposed zoning amendment and Preliminary Development Plan as contemplated in the application.

(A) In reviewing the ordinance, City Council shall consider the approval criteria set forth in Section 1164.07(a). Approval of the Preliminary Development Plan application shall be required in order for a particular property to be classified with the PD designation. City Council may accept or reject any conditions of approval of the application as recommended by the Planning and Zoning Commission, in whole or in

part, or it may add conditions either in addition to or in substitution of conditions recommended by the Planning and Zoning Commission.

(B) Disapproval by City Council shall result in the property that is the subject of the zoning/Preliminary Development Plan application retaining the same zoning classification as applied to it prior to the filing of the application.

(C) Adoption of the ordinance to approve the Preliminary Development Plan application shall constitute a rezoning of the property to a Planned Development District, and the Preliminary Development Plan and associated commitments then shall be binding on the applicant and relevant property owner(s). The Official Zoning Map shall be amended to reflect the zoning change. In the event City Council approves the Preliminary Development Plan with conditions requiring modifications, the applicant shall incorporate such modifications into the appropriate documents and file the revised Preliminary Development Plan with the City staff for the City's records. The adequacy of any such modifications shall be determined by the City Manager or their designee.

(4) Significance of Approved Preliminary Development Plan. Legally effective approval or approval with recommended modifications of the Preliminary Development Plan application by the City Council shall:

(A) Establish the development framework for the particular PD District, including but not limited to use areas and types, densities, building types, recreational facilities, general locations of open space, and street alignments;

(B) For proposed developments other than Major Economic Development Projects, permit the applicant to file one or more Final Development Plan applications for some portion or all of the PD District; and

(C) For Major Economic Development Projects, permit the applicant to file one or more CODA applications for some portion or all of the PD District, in accordance with any approved phasing commitments as set forth in the Preliminary Development Plan.

(e) Final Development Plans. An application for Final Development Plan review, when required, shall include the submission requirements set forth in Section 1164.08(b) and shall be submitted for review according to the following. A Final Development Plan application may include all or a portion of the PD District. An application for Final Development Plan review and approval shall be required for each portion of the development other than any portion that contains a Major Economic Development Project. Major Economic Development Projects shall be reviewed pursuant to a certificate of appropriateness application as contemplated in Section 1168.08(j).

A Final Development Plan application shall be reviewed according to the following procedures:

(1) Staff Review. After determining that an application is complete pursuant to the requirements of Section 1164.08(b), the relevant City staff shall forward the application to the appropriate city departments and, if determined necessary, professional consultants for review and comment. The application shall be reviewed for compliance with the approved Preliminary Development Plan, and the requirements of the Zoning Text and other relevant provisions of

City Code. During the course of their review, City staff may meet with the applicant to review the application, and the applicant may revise the Final Development Plan application in response to staff's comments.

(2) Scheduling; Reviewing Body. After the application has been deemed by City staff to be complete, the Final Development Plan application shall be placed on the agenda for a meeting of City Council that meets all notice requirements of the PD District. The Final Development Plan application and supporting documentation, City staff comments, any other reports prepared and any accompanying documents (such as but not limited to letters from residents or maps) shall be transmitted to City Council prior to the meeting. At the meeting, City Council first shall take action to determine if it will either (A) review the Final Development Plan application so that it will make a decision to approve it, approve it with conditions, or disapprove it, or (B) refer the application to the Planning and Zoning Commission and delegate authority to review and act upon the application to that body. If City Council determines that it will retain the authority to make a decision on the particular application, then immediately following its vote to retain such authority it shall undertake a public review of and hearing on the application. Should City Council determine that it will refer the application to the Planning and Zoning Commission, then the Planning and Zoning Commission will review the application at its first meeting that is at least seven (7) days following the date when City Council took the action to refer the application. Prior to the Planning and Zoning Commission meeting, City staff shall provide the members of the Planning and Zoning Commission with copies of the same documents and materials which were provide to City Council for the same application.

The relevant reviewing body shall review the application to determine if it complies with the approval criteria set forth in Section 1164.07(b). It shall take into consideration any submitted plans, the Zoning Text, supporting documentation and/or testimony from the applicant or its agents or consultants, staff reports, staff and/or public comments, and expert opinions when reviewing the application.

(3) Request for Additional Information/Revisions. In its review of a Final Development Plan application, the reviewing body may request additional information deemed necessary to adequately review and evaluate the proposed development, and/or may request the applicant to revise elements of the application. When this occurs, the reviewing body may table the application. A tabled application will be scheduled for additional review at the next regular meeting of the reviewing body unless the applicant requests additional time to address the information that has been requested, in which case the reviewing body shall schedule additional review of the application at the next regularly or specially scheduled meeting that allows the applicant adequate time to provide the new information.

(4) Review Standard. In reviewing the Final Development Plan application, the reviewing body shall determine if the Final Development Plan substantially complies with all specific requirements, purposes, intent, and basic objectives of the Preliminary Development Plan, and any commitments made or conditions agreed to with the adoption of the Preliminary Development Plan, and if determines that there is such substantial compliance, it shall act to approve the application.

(5) Minor Text or Plan Modifications. The reviewing body for a Final Development Plan shall review and approve or disapprove of requests for minor text and/or plan modifications within the PD District, and may, in reviewing that Final Development Plan or a requested

modification thereto, approve a minor text modification from one or more provisions of the approved Zoning Text or other elements of the approved Preliminary Development Plan, if it determines that all of the following provisions are satisfied:

(A) The proposed modification(s) do not alter the list of permitted, conditional, or accessory uses or cause an increase in permitted density of development;

(B) The proposed modification(s) result in a development of equivalent or higher quality than that which could be achieved through strict application of the requirement(s); and

(C) The development, with the modification(s) as proposed on the Final Development Plan, will have no adverse impacts upon the surrounding properties or upon the health, safety, or general welfare of the community.

(f) Action on a Final Development Plan Application. The reviewing body for a particular Final Development Plan application shall take one of the following actions thereon:

(1) Approve the application as submitted, including any requested deviations from the approved Preliminary Development Plan;

(2) Approve the Final Development Plan with modification(s) as agreed to by the applicant and/or with deviations that the required reviewing body approves; or

(3) Disapprove the Final Development Plan when the application does not demonstrate that the required standards have been met. Disapproval of the Final Development Plan shall terminate the process, subject to any applicable administrative appeal rights. The applicant may file a revised Final Development Plan application if it receives a vote of disapproval on a previous application. Such action shall be considered a new application for review and shall contain all of the information required for a Final Development Plan.

(g) Permits. Following the approval of a Final Development Plan, the applicant may proceed with the certificate of zoning compliance and building permit process for the property and the development that was the subject thereof, consistent with approval as granted.

(1) After approval of the Final Development Plan, the applicant shall obtain a zoning certificate pursuant to Chapter 1127 and a building permit prior to commencing construction.

(2) A zoning certificate and building permit shall not be issued until any required final plat has been recorded and the City has accepted any applicable land areas that are to be dedicated to the City for the property that was the subject of the Final Development Plan.

(3) Required covenants, easements, and restrictions (if any) shall be recorded prior to the approval of any building permit in a location where such covenants, easements, or restrictions are intended to apply. The City may require a copy of the recorded document prior to issuing any building permit.

(4) All construction and development under any building permit shall be in accordance with the approved Final Development Plan, as may be amended pursuant to Section 1164.04(i). Any unauthorized departure from such plan shall be cause for revocation of the certificate of zoning compliance.

(h) Appeal of Disapproved Final Development Plan. When a Final Development Plan application (or an application for an amended Final Development Plan, as provided in the immediately following subsection (i)) is disapproved by the Planning and Zoning Commission, an applicant may file an administrative appeal to City Council by filing a notice of the appeal with the City Council Clerk within 15 days after such disapproval action is taken. City Council shall then hold a hearing on the appeal at its next regularly scheduled meeting that is at least 15 days after the City Council Clerk's receipt of the appeal and shall make an administrative determination of whether or not the disapproval of the Final Development Plan was illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the record. When a Final Development Plan application (or an application for an amended Final Development Plan, as provided in the immediately following subsection (i)) is disapproved by City Council as the reviewing body or after hearing an appeal of a Planning and Zoning Commission decision to disapprove a Final Development Plan application, an applicant may file an administrative appeal in court in accordance with applicable state law.

(i) Modifications to Approved Final Development Plans. Requested modifications to approved Final Development Plans shall be reviewed according to the following:

(1) Administrative Approval. The City Manager, or designee, in administering the approved Final Development Plan and Zoning Text, may authorize minor plan modifications to building layouts, parking arrangements, sign locations, lighting, and other site-related improvements that are required to correct any errors or address changes to the site made necessary during construction, provided the modifications remain consistent with the purpose of the approved Final Development Plan and Zoning Text.

(2) No administrative modifications shall be made that increase the permitted density of development or add to the list of permitted or conditional uses.

(3) Modifications deemed minor ("Minor Modifications") may include such changes as:

(A) Minor adjustments in lot lines provided no additional lots are created and required setbacks are maintained;

(B) Minor adjustments in the location of and layout of parking lots provided the required perimeter setbacks, yards and buffers are maintained;

(C) Minor adjustments in building footprints up to 3.0% in total floor area of the originally approved building, building height(s) or floor plans, that do not alter the character or intensity of the use thereof;

(D) Substitution of landscaping materials specified in the landscape plan with comparable materials of an equal or greater size;

(E) Redesigning and/or relocating stormwater management facilities provided that general character and stormwater capacities are maintained;

(F) Redesigning and/or relocating landscape mounds, provided that the same level and quality of screening is maintained;

(G) Minor modifications to signs and/or lighting;

(H) Changes required by outside agencies such as the county, state, or federal departments; or

(I) Other minor modifications deemed by the Zoning Inspector that do not alter the basic design or any specific conditions imposed as part of the original approval.

The City Manager, or designee shall report approved modifications to City Council.

(4) Amended Final Development Plan. Modifications other than Minor Modifications shall be submitted to the reviewing body that approved the original Final Development Plan as part of an application for an amended Final Development Plan. Modifications as part of an amended Final Development Plan shall be approved provided that the reviewing body finds that the modifications remain consistent with the approved Preliminary Development Plan or warrant any deviation therefrom. The reviewing body for the amended Final Development Plan shall have the right and power to grant such deviations as administrative action. If approved, amendments to the Final Development Plan shall supersede the originally approved Final Development Plan.

(j) Certificate of Development Approval. An application for a certificate of development approval (a “CODA”) shall be required for a Major Economic Development Project. The term “Major Economic Development Project” shall mean “a development containing at least 50,000 square feet of gross building floor area with one or more of the following: administrative or professional office uses; medical office uses; research and development facilities; warehousing and/or distribution facilities; data centers; industrial, manufacturing, assembly, and/or production uses, and other uses which are identified as Major Economic Development Projects in an approved Zoning Text.” The intent behind subjecting Major Economic Development Projects to the CODA application review process (rather than the Final Development Plan review process) is to enhance the speed-to-market of “shovel-ready” sites that are attractive to employment-generating uses and developments and/or uses which otherwise will bring significant private investments to the City. Decisions on CODA applications shall be deemed to be administrative in nature.

(k) Administrative Review Board. An Administrative Review Board (“ARB”) is hereby created to review CODA applications. The ARB shall consist of the City Manager; an appointee of the City Manager; a member of Council, appointed by a majority vote of Council; a member of the Planning and Zoning Commission, appointed by a majority vote of the Planning and Zoning Commission; and a member of the Design Review Board, appointed by a majority vote of the Board. Each of the foregoing members may select a designee to attend a particular meeting of the ARB if the designating member is unable to attend, and said designee shall act on behalf of that designating member at the meeting. The ARB shall have the duty to review and approve, approve with conditions, or disapprove of CODA applications (and permitted modifications thereof) in accordance with the requirements of the PD District and other applicable provisions of City Code. The ARB shall meet at least twice per calendar month on dates determined by the ARB, provided that meetings may be cancelled by the City Manager when no CODA applications are ready for review by the ARB. Special meetings of the ARB may be called by any member of the ARB with at least twenty-four (24) hours’ prior written notice being delivered by email or other written means to the other members of the ARB and otherwise in compliance with open meetings laws.

(1) CODA Application Review Process. A CODA application shall be reviewed according to the following procedures:

(1) Staff Review. After determining that an application is complete pursuant to the requirements of Section 1164.08(c), the relevant City staff shall forward the application to the appropriate city departments and, if determined necessary, professional consultants for review and comment. The application shall be reviewed for compliance with the approved Preliminary Development Plan, and the requirements of the Zoning Text and other relevant provisions of City Code. During the course of their review, City staff may meet with the applicant to review the application, and the applicant may revise the CODA application in response to staff's comments.

(2) ARB Review. After the CODA application has been deemed by City staff to be complete, it shall be forwarded to the ARB for review at its next regularly scheduled meeting that is at least 15 days and no more than 30 days after the date when the CODA application was unless City staff deemed the filing to be incomplete, in which case the application shall be reviewed by the ARB at its next regularly scheduled meeting that is at least 15 days and no more than 30 days after the date when all deficient CODA application materials have been filed by the applicant with City staff. City staff shall provide to the ARB any comments on the submittal as it deems to be necessary or appropriate as well as copies of the previously approved Preliminary Development Plan application, Zoning Text, and other related documents. At the ARB meeting, the ARB shall review the application to determine if it complies with the approval criteria set forth in Section 1164.07(c). The review of the CODA application is limited to a determination as to whether or not the plans and specifications for development of a site that have been submitted in conjunction with the CODA application comply with the approved Preliminary Development Plan which applies to that site.

(3) Request for Additional Information/Revisions. In its review of a CODA application, the ARB may request additional information deemed necessary to adequately review and evaluate the proposed development, and/or may request the applicant to revise elements of the application. When this occurs, the ARB may table the application. A tabled application will be scheduled for additional review at the next regular meeting of the ARB unless the applicant requests additional time to address the information that has been requested, in which case the reviewing body shall schedule additional review of the application at the next regularly or specially scheduled meeting that allows the applicant adequate time to provide the new information.

(4) Review Standard. In reviewing the CODA application, the ARB shall determine if the plans and specifications that are part of the application substantially comply with all specific requirements, purposes, intent, and basic objectives of the Preliminary Development Plan, and any commitments made or conditions agreed to with the adoption of the Preliminary Development Plan. If it determines that there is such compliance, it shall act to approve the application, and if it determines that there is no such compliance, it shall table the application and provide written comments to the applicant identifying the items that do not substantially comply with the approved Preliminary Development Plan. The applicant may then revise the CODA application to address the comments, and the ARB shall review the revised submission at its next regularly scheduled meeting that is at least 7 days after the revision submission has been filed by the applicant with City staff. If the ARB determines that the revised application

substantially complies with the approved Preliminary Development Plan, it shall approve the same, and if it determines that the revised application does not comply, then it may disapprove the revised application.

(5) Minor Text or Plan Modifications. The ARB shall review and approve or disapprove of requests for minor text and/or plan modifications for Major Economic Development Projects, and may, in reviewing a CODA application, approve a minor text modification from one or more provisions of the approved Zoning Text or other elements of the approved Preliminary Development Plan, if it determines that all of the following provisions are satisfied:

(A) The proposed modification(s) do not alter the list of permitted, conditional, or accessory uses or cause an increase in permitted density of development;

(B) The proposed modification(s) result in a development of equivalent or higher quality than that which could be achieved through strict application of the requirement(s);

(C) The development, with the modification(s) as proposed on the Final Development Plan, will have no adverse impacts upon the surrounding properties or upon the health, safety, or general welfare of the community.

(m) Permits – Major Economic Development Projects. Following the approval of a CODA application, the applicant:

(1) Shall obtain all engineering permits, a zoning certificate pursuant to Chapter 1127, and a building permit prior to commencing construction of improvements on the property that was the subject of the approved CODA application.

(2) A zoning certificate and building permit shall not be issued until any required final plat has been recorded and the City has accepted any applicable land areas that are to be dedicated to the City.

(3) Required covenants, easements, and restrictions (if any) shall be recorded prior to the approval of any building permit in a location where such covenants, easements, or restrictions are intended to apply. The City may require a copy of the recorded document prior to issuing any building permit.

(4) All construction and development under any building permit shall be in accordance with the approved CODA, including any modifications as may be provided in subsection (o). Any unauthorized departure from such plan shall be cause for revocation of the zoning certificate.

(n) Appeal of CODA Application Decision. When a CODA application (or an application for an amended CODA, as provided in the immediately following subsection (o)) is finally approved or disapproved by the ARB, an applicant or aggrieved party may file an administrative appeal to City Council by filing a notice of the appeal with the City Council Clerk within 15 days after such disapproval action is taken. City Council shall then hold a hearing on the appeal at its next regularly scheduled meeting that is at least 15 days after the City Council Clerk's receipt of the appeal and shall make an administrative determination of whether or not the decision on the

CODA application was illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the record. Appeal of a Council decision shall proceed as provided in state law for court review of political subdivision administrative actions.

(o) Modifications to Approved CODA. Requested modifications to approved CODAs shall be reviewed according to the following:

(1) Administrative Approval. The City Manager, or designee, in administering an approved CODA and Zoning Text, may authorize minor plan modifications to building layouts, parking arrangements, sign locations, lighting, and other site-related improvements that are required to correct any errors or address changes to the site made necessary during construction, provided the modifications remain consistent with the purpose of the approved CODA and Zoning Text. The City Manager may also authorize other Minor Modifications in accordance with the same requirements as apply to Minor Modifications of Final Development Plans. The City Manager, or designee, shall report approved modifications to City Council.

(4) Amended CODA. Modifications other than Minor Modifications shall be submitted to City Council as part of an application for an amended CODA. Modifications as part of an amended CODA shall be approved provided that City Council finds that the modifications remain consistent with the approved CODA or warrant any deviation therefrom. If approved, amendments to the CODA shall supersede the originally approved CODA.

1164.07 PLAN APPROVAL CRITERIA.

(a) Preliminary Development Plan. In the review of a proposed Preliminary Development Plan, the Planning and Zoning Commission and City Council shall determine whether or not the proposed Preliminary Development Plan complies with the following criteria. In the event that either the Planning and Zoning Commission or City Council determines that the proposed zoning amendment and Preliminary Development Plan do not comply with a preponderance of these criteria, then in the case of the Planning and Zoning Commission it may recommend disapproval of the application and in the case of City Council it may disapprove the application. Should the Planning and Zoning Commission determine that the proposed Preliminary Development Plan does comply with a preponderance of these criteria, it shall recommend approval of the application. City Council then shall make the final determination as to approval, approval with conditions, or disapproval of the application in accordance with these criteria. The review criteria are as follows:

(1) The proposed development is consistent with the purpose, intent and applicable standards of this Chapter 1164.

(2) The proposed development furthers the goals and recommendations of the City's Comprehensive Plan or other planning document applicable to the area that is the subject of the Preliminary Development Plan.

(3) The proposed development advances the general welfare of the City and will not impede the normal and orderly development and improvement of the surrounding areas.

(4) The proposed uses are appropriately located in the City.

(5) Adequate utilities, access roads, stormwater management, and other similar facilities have been or will be provided. Storm water management may include use of regional storm water management facilities approved as part of another approved Final Development Plan or, on a temporary basis, in areas outside the boundaries of the proposed Final Development Plan but within the PD District and consistent with the approved Preliminary Development Plan.

(7) Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion on the surrounding public streets, maintain public safety, and to accommodate adequate pedestrian circulation systems so that the proposed development provides for a safe circulation system for motorists and pedestrians.

(8) The density of uses, lot coverage, building heights, setbacks, distances between buildings and structures, yard space, design and layout of open spaces and parking areas, traffic accessibility and other elements contribute to the orderly development of land within the City;

(9) Proposed building characters and designs shall further the city's goal of establishing a memorable identity and the utilization of high-quality, enduring materials.

(10) The proposed development can be adequately serviced by existing or planned public improvements and not impair the existing public service system for the area.

(11) On balance, the proposed development is expected to have a positive economic impact on the City.

(12) Internal Compatibility and Design:

- (A) The streetscape pattern shall provide for pedestrian and bicycle pathways, as well as an interesting vista that includes street trees, sidewalk treatments, and lighting.
- (B) The overall development shall make use of existing natural features and interesting topography.
- (C) A variety of designs and typologies shall be included for detached residential structures, and the land use mix should be designed to be compatible and complimentary.
- (D) Building designs shall provide for architectural styles that meet and further the goals of the city and create an easily identifiable Johnstown image.
- (E) Open spaces shall be linked in meaningful ways. Open spaces shall provide for quality recreational amenities including playgrounds, plazas, pocket parks, seating, lighting; and passive recreational amenities such as multi-use trails and nature preserves.

(13) External Compatibility and Design:

- (A) The proposed development shall not negatively and materially impact any adjacent residential uses.
- (B) The proposed development shall not negatively impact any adjacent conservation lands.
- (C) The proposed development shall provide bikeway and trails and connect to existing trails where opportunities exist or are planned.

- (D) Access and street patterns of the development shall complement and be compatible with the existing street system of the surrounding development.
- (E) Commercial and industrial uses within the development shall be adequately buffered from any adjacent residential uses.

(b) Final Development Plan. In the review of a Final Development Plan or a permitted amendment thereof, the reviewing body shall determine whether or not the proposed development, as depicted on the Final Development Plan, complies with the following:

(1) It substantially conforms in all pertinent respects to the approved Preliminary Development Plan, provided, however, that the reviewing body may authorize deviations or variances from such plans as provided in Section 1164.06(e)(2)(C).

(2) Adequate provision is made for safe and efficient pedestrian and vehicular circulation within the site and to adjacent property;

(3) The development has adequate public services;

(4) The development preserves and is sensitive to the natural characteristics of the site in a manner that complies with the applicable regulations set forth in this code, the Zoning Text, and the Preliminary Development Plan;

(5) The development provides adequate lighting for safe and convenient use of the streets, walkways, driveways, and parking areas without unnecessarily spilling or emitting light onto adjacent properties or the general vicinity;

(6) Proposed signs are of an appropriate size, scale, and design in relationship with the principal building, site, and surroundings; and are located so as to maintain safe and orderly pedestrian and vehicular circulation;

(7) The landscape plan will adequately enhance the principal building and site; buffer adjacent incompatible uses; break up large expanses of pavement with natural material; and provide appropriate plant materials for the buildings, site, and climate; and

(8) Adequate provision is made for storm drainage within and through the site which complies with the applicable regulations in this code and any other design criteria established by the city or any other governmental entity which may have jurisdiction over such matters.

(c) Certificate of Development Approval. In the review of a CODA or a permitted amendment thereof, the ARB shall determine whether or not the proposed development, as depicted in the plans provided as part of the CODA application, complies with the following:

(1) The project that is the subject of the application qualifies as a Major Economic Development Project;

(2) It substantially conforms in all pertinent respects to the approved Preliminary Development Plan;

(3) Adequate provision is made for safe and efficient pedestrian and vehicular circulation within the site and to adjacent property;

(4) The development has adequate public services;

(5) The development preserves and is sensitive to the natural characteristics of the site in a manner that complies with the applicable regulations set forth in this code, the Zoning Text, and the Preliminary Development Plan;

(6) The development provides adequate lighting for safe and convenient use of the streets, walkways, driveways, and parking areas without unnecessarily spilling or emitting light onto adjacent properties or the general vicinity;

(7) Proposed signs are of an appropriate size, scale, and design in relationship with the principal building, site, and surroundings; and are located so as to maintain safe and orderly pedestrian and vehicular circulation;

(8) The landscape plan will adequately enhance the principal building and site; buffer adjacent incompatible uses; break up large expanses of pavement with natural material; and provide appropriate plant materials for the buildings, site, and climate; and

(9) Adequate provision is made for storm drainage within and through the site which complies with the applicable regulations in this code and any other design criteria established by the city or any other governmental entity which may have jurisdiction over such matters.

1164.08 SUBMISSION REQUIREMENTS.

(a) Contents of Preliminary Development Plan. A Preliminary Development Plan application shall provide the following:

(1) A completed application, on a form provided by the City, which also shall serve as an application for a zoning amendment. If the application is signed by a person other than the owner of the property, a notarized consent by the owner shall be attached.

(2) A Zoning Text with the following content and organization.

- (A) DESCRIPTION OF THE PROPOSAL
- (B) LEGAL DESCRIPTION OF THE REAL PROPERTY THAT IS SUBJECT TO THE APPLICATION (and of any subareas or subdistricts that are being proposed within the PD District)
- (C) REFERENCE TO A PRELIMINARY DEVELOPMENT PLAN
- (D) LIST OR TABLE OF PROPOSED PERMITTED, CONDITIONAL, AND ACCESSORY USES
- (E) DENSITY/INTENSITY MINIMUMS AND MAXIMUMS (expressed as a number of units or units per acre, total square footage or square footage per acre, impervious lot coverage ratios, or some combination thereto)
- (F) CRITICAL DESIGN FEATURES (Such as, but not necessarily limited to, architectural styles, allowable building materials, landscape and buffer standards)
- (G) ARCHITECTURAL STANDARDS (detailed written architectural standards and general character images for buildings to establish building typologies within the PD District for structures from which Major Economic Development Projects may operate, and detailed architectural standards for any project that does not meet the definition of a Major Economic Development Project)

- (H) LAND USE ALLOCATION SUMMARY OR TABLE
- (I) AREA, HEIGHT, BULK & OPEN SPACE REQUIREMENTS (prescribe standards for all development areas)
- (J) GENERAL REQUIREMENTS FOR ROADWAY DESIGN/TRAFFIC CIRCULATION (specific details for new street improvements or modifications to existing street improvements will be reviewed as part of a platting process)
- (K) IDENTIFICATION OF SIGNIFICANT NATURAL FEATURES (and description of how such features will be preserved or modified)
- (L) BUFFERING/SCREENING (specify typologies, locations, key considerations)
- (M) PROCEDURES (Describe procedures to be followed for implementation of the standards and requirements in the Zoning Text, which shall not be contrary to the procedures set forth in this Chapter 1164)
- (N) SUBAREAS (Description of the subareas proposed within the PD District and details concerning the use and development commitments and requirements that will be applicable to each, along with a general summary of the projected phasing of development within the PD District, which may provide for flexibility in recognition of the large amount of acreage required for a PD District)
- (O) UTILITIES (A statement that the applicant will enter into an agreement with the City concerning construction and funding of utilities which are required in order to facilitate development within the PD District, on terms that are mutually acceptable to the applicant and the City)
- (P) OTHER STANDARDS AND REQUIREMENTS (Standards and requirements that are relevant to the orderly development of the PD District and which are not otherwise included in any of the foregoing content requirements)

(3) A plan showing general or specific locations of uses, sizes of areas of uses, and indicating densities, unit types, the total number of dwelling units allowed in each area of the proposed PD District, and the density of non-residential uses in each area of the proposed PD District.

(4) A plan demonstrating, to the extent they are to be provided, locations for open areas and public parkland areas with the suggested ownership of such areas. In the alternative, provisions for these items may be included in the Zoning Text and their specific locations then shall be identified in one or more Final Development Plans.

(5) A general plan (in plan and/or text forms) for the provision of water, sanitary sewer and surface drainage facilities, including engineering feasibility studies or other evidence of reasonableness.

(6) A plan illustrating the traffic circulation patterns, including public and private streets, private alleys and drives, and parking areas. In the alternative, provisions for these

items may be included in the Zoning Text and their specific locations shall be identified in a Final Development Plan.

(7) A metes and bounds boundary legal description of the proposed PD District and of each subarea or subdistrict of land within the district, as well as associated scalable maps depicting the same.

(8) A list of property owners within the proposed PD District and of property owners contiguous to and/or directly across a street from the proposed PD District and their addresses as appearing on the Licking County Auditor's current tax list.

(9) Illustrations and/or depictions of the planned architectural character for structures in the PD district. Actual architectural designs of buildings and structures may, but shall not be required to be, filed with the Preliminary Development Plan. The Zoning Text shall provide standards for permitted exterior facade materials and building heights, and other commitments, standards, or requirements for architectural designs of buildings and structures that are particular to the PD District.

(10) Identification of locations and dimensions of existing environmental features within the proposed PD District, such as streams, creeks, wetlands, lakes, ponds, and treed areas together with an indication of whether such features will be preserved or impacted as part of the proposed development.

(11) A traffic study or traffic impact analysis of traffic volumes and impacts generated by the proposed development shall be completed by a traffic engineer in accordance with parameters agreed upon in writing by the applicant's traffic engineer and the City's traffic engineer, and any impacts and their proposed mitigation methods shall be defined by the applicant.

(12) A utility impact analysis and utility service plan including (but not limited to) estimated demands for potable water and sanitary sewer services.

(13) A map of existing conditions and features drawn to scale, with accurate boundaries of the entire PD District and a north arrow, including the property proposed for development, all adjacent right-of-way, and 100 feet of property immediately adjacent thereto, indicating:

- (a) Existing public improvements, permanent facilities, easements and property boundaries;
- (b) General indication of existing structures on the site and abutting properties;
- (c) Physical features and natural conditions of the site including the location of streams, tree masses, open spaces, etc.;
- (d) General topography;
- (e) Existing zoning district boundaries and jurisdictional boundaries;

- (f) Surface drainage and areas subject to flooding;
- (g) Existing public and private utility systems;
- (h) Regional transportation system.

(14) A regional context map indicating the proposed site and all areas within 2,000 feet in all directions showing both the basics of the proposed layout contained in the application and the property lines of the adjacent areas.

(b) Contents of Final Development Plan. Following approval of the Preliminary Development Plan, a Final Development Plan application may be submitted for all or any part of the property that was the subject of an approved Preliminary Development Plan. Final Development Plans are intended to be more detailed representations of the approved Preliminary Development Plan. Contents of the Final Development Plan shall include:

- (1) A completed application, on a form provided by the City.
- (2) A metes and bounds boundary legal description of the portion of the PD district that is the subject of the Final Development Plan, as well as associated scalable maps depicting the same.
- (3) A plan demonstrating, to the extent they are to be provided, the dimensions and locations of proposed structures, buildings, streets, parking areas, yards, open spaces and other public or private facilities. This provision shall not apply to those areas of the Final Development Plan indicated for development of detached single-family homes. However, all lots intended to be so developed shall have building setback lines indicated thereon.
- (4) A detailed plan or statement of all uses proposed to be established indicated in the areas to be occupied by each use and the anticipated density and building intensity.
- (5) Detailed engineering plans for the provision of all streets and utilities including provisions for off-site connections and facilities necessary to serve the areas which are the subject of the Final Development Plan.
- (6) Detailed engineering site grading plans including proposed finished grades. This provision shall not apply to those areas of the Final Development Plan indicated for development of single-family homes.
- (7) Proposed drainage facilities.
- (8) Detailed landscaping plans. This provision shall not apply to individual lots within those areas of the Final Development Plan indicated for development of single-family homes, except that detailed landscaping shall be provided as to all residential entry features and common areas.

(9) Scalable depictions of architectural elevations demonstrating the design and character of proposed structures and buildings, specifications of exterior materials and colors, and the physical relationship of all elements thereof. For areas designated for the development of single-family homes, this is intended to demonstrate the exterior design character and general elements of home designs and is not intended to require a detailed representation by the applicant, as such details shall be required as part of a certificate of zoning compliance application and building permit application.

(10) A tabulation showing the exact area of each lot, reserve, or other parcel shown on the plan (other than streets and alleys).

(11) Detailed water and sewer engineering plans.

(12) Locations and character of all signs, unless otherwise provided in the approved Zoning Text.

(13) A list of property owners within the proposed Final Development Plan and of property owners contiguous to and/or directly across a street from the property which is included in the proposed Final Development Plan and their addresses as appearing on the Licking County Auditor's current tax list.

(14) Identification of locations and dimensions of existing environmental features within the property which is included in the proposed Final Development Plan.

(c) Contents of CODA Application. Following approval of the Preliminary Development Plan, a CODA application may be submitted for all or any part of the property that was the subject of an approved Preliminary Development Plan and which proposes the development of a Major Economic Development Project. Plans to be reviewed as part of a CODA application are intended to be more detailed representations of the approved Preliminary Development Plan. However, the CODA application review process is not intended to address final engineering for an eligible development, as those details are to be reviewed as part of other relevant and required permit applications as required by City Code. Contents of the CODA application shall include:

(1) A completed application, on a form provided by the City.

(2) A metes and bounds boundary legal description of the portion of the PD district that is the subject of the CODA application, as well as associated scalable maps depicting the same.

(3) A plan demonstrating, to the extent they are to be provided, the dimensions and locations of proposed structures, buildings, streets, parking areas, yards, open spaces and other public or private facilities.

(4) A detailed plan or statement of all uses proposed to be established indicated in the areas to be occupied by each use and the anticipated density and building intensity.

(6) Detailed site grading plans including proposed finished grades.

(8) Detailed landscaping plans showing locations, sizes, and species of new plant materials to be installed, areas where existing vegetation is to remain, and illustrating locations of hardscape materials and fencing.

(9) Scalable depictions of architectural elevations demonstrating the design and character of proposed structures and buildings, specifications of exterior materials and colors, and the physical relationship of all elements thereof.

(10) A tabulation showing the exact area of each lot, reserve, or other parcel shown on the plan (other than streets and alleys).

(12) Locations, sizes, and character of all signs.

1164.09 SPECIAL PD REQUIREMENTS FOR PARKLAND AND OPEN SPACE.

(a) Applicability. Except as set forth in Section 1164.09(c), for each residential unit that is to be constructed within a PD, the applicant or property owner shall be required to dedicate to the City, at no charge, 1,700 square feet of land area to be used and/or preserved as publicly or privately owned parkland. A Preliminary Development Plan and/or Zoning Text may make commitments to providing certain sizes and locations of parkland, but in all circumstances the actual locations and sizes of parkland shall be provided in Final Development Plan applications or CODA applications for review and approval. Notwithstanding the foregoing, parkland need not be located on the property which is the subject of a Final Development Plan application or a CODA application.

In order to ensure that reasonable amounts of common areas and green space are provided for within the PD District, these areas shall be established and evaluated separately from the parkland requirement.

The zoning text, Preliminary Development Plan, and or Final Development Plan shall provide details as to whether the common areas and green space are to be open for use by the general public or are to be used privately.

(b) Sizes and Specifications. No single dedication of parkland to the City shall be less than one acre in size. Wet and dry stormwater basins (existing or proposed by the applicant) shall not be considered to be parkland. Property that is dedicated to the City as parkland shall have frontage on an existing or platted public street, or shall be accessible from an existing or planned public street and sidewalk by vehicles and pedestrians by and through a permanent easement through other property or adjacent parkland. Parkland shall meet one or more of the following criteria:

(i) It shall contain significant tree stands, forested areas, watercourses, or other natural features which may be preserved by coming under public ownership;

(ii) It shall provide adequate areas for the development and operation of active or passive recreational activities such as, but not limited to, playgrounds, leisure or other pedestrian trails, hiking, ballfields, and fishing; and/or

(iii) It shall contain historical, archeological, or special geographical features which may be preserved by coming under public ownership.

(c) Fees In-Lieu of Parkland Dedication. Parkland dedications may be waived when City Council has adopted a resolution, for a particular applicant, to accept payment-in-lieu fees instead of accepting land dedication. Upon the request of an applicant, City Council may accept the payment-in-lieu fees if it determines that one of the following criteria have been met:

(i) The features of available parkland within the PUD District are less desirable than other possible parkland acquisitions elsewhere within or near the City;

(ii) The use of payment-in-lieu fees will serve a broader public purpose than dedication of parkland within the PUD District by being available to acquire parkland in other locations should such opportunities arise;

Payment-in-lieu fees shall be placed into a designated City fund for future parkland acquisitions to benefit current and future residents. These fees shall be calculated by taking the product of (i) thirty thousand dollars (\$45,000.00) and (ii) the number of acres of parkland dedication that is to be offset by the payment. The dollar value in the immediately preceding subsection (i) automatically shall increase by seven percent (7.0%) over the then-effective value on the third (3rd) anniversary of the effective date of the original adoption of this Chapter 1164 and on each third (3rd) anniversary thereafter.

(d) Timing of Dedication(s). No zoning certificate shall be issued by the City for a residential unit until such time as the applicant has met the parkland dedication requirements or made payments-in-lieu of parkland dedication as required under this Section 1164.09.

(e) Operations and Maintenance.

- a. All common open space shall be preserved for its intended purpose as expressed in a Preliminary Development Plan, Final Development Plan, or in plans approved as part of a CODA application. No conservation area shall be cleared, graded, filled, or subject to construction.
- b. The developer shall choose one (1), or a combination of, the following three (3) methods of administering common open space, as detailed in a Final Development Plan or plans associated with a CODA application:
 - i. Dedication to the City of the common open space as parkland. This method is subject to formal acceptance by the City Council. The City may, but shall not be required to, accept undivided open space provided:
 1. Such land is accessible to all residents of the City; and
 2. There is no cost of acquisition other than any costs incidental to the transfer of ownership such as title insurance; and

3. The City agrees to and has access to maintain such lands. Where the City accepts dedication of common open space that contains improvements, the City may require the posting of financial security to ensure structural integrity of said improvements as well as the functioning of said improvements for a term not to exceed eighteen (18) months from the date of acceptance of dedication. The amount of financial security shall not exceed fifteen (15) percent of the actual cost of installation of said improvements.
4. All facilities and improvements within any subdivision, as well as any required off-site improvements required as part of Preliminary and/or Final Plat approval which are required to be dedicated for public use, shall be maintained by the owner of said subdivision in a clean, healthy and non-hazardous condition until such dedication and acceptance by the City has been made.

- ii. Establishment of an association or nonprofit corporation of all individuals or corporations owning property within a designated area to ensure the maintenance of all common open space that has not been dedicated to the City.

- iii. Retention of ownership, control and maintenance of all or a portion of all common open space by the developer.

- c. Land designated as open space will be restricted by an appropriate legal instrument satisfactory to the City Attorney as open space perpetually, or for a period of not less than ninety-nine (99) years. Such instrument shall be binding upon the developer, its successors, and assigns, and shall constitute a covenant running with the land. Such instrument shall be in recordable form.
- d. All common open space as well as public and recreational facilities, shall be specifically included in the development schedule and be constructed and fully improved by the developer at an equivalent or greater rate than the construction of residential structures, or the development order will be in default.

(a) Ownership Standards. Should the developer elect to administer common privately owned open space through the association or nonprofit corporation, said organization shall conform to the following requirements:

- (1) The developer must establish the association or nonprofit corporation prior to the sale of any lots or parcels that are governed thereby.
- (2) The developer shall provide a description of the association, including the bylaws and methods for maintaining the common open space, prior to the issuance of a building permit for the first development that is to be subject to the association or nonprofit corporation.

- (3) Membership in the association or nonprofit corporation shall be mandatory for all property owners within the relevant development.
- (4) The association or nonprofit corporation shall manage all common open space and recreational and cultural facilities that are not dedicated to the public, shall provide for the maintenance, administration and operation of said land, and shall secure adequate liability insurance on the land.
- (5) The association shall be responsible for maintenance of insurance and taxes on undivided common open space, enforceable by liens placed by the City of Johnstown on the association.
- (6) The members of the association shall share equitably the costs of maintaining and developing such undivided open space.

(b) Maintenance Standards.

- (1) In the event that the association or any successor organization shall, at any time after establishment of a development containing undivided open space, fail to maintain the undivided common open space in reasonable order and condition in accordance with the development plan, the City may serve written notice upon the owner of record, setting forth the manner in which the owner of record has failed to maintain the undivided common open space in reasonable condition.
- (2) Failure to adequately maintain the undivided common open space in reasonable condition and condition constitutes a violation of this ordinance.

→ Note: Section 1143.03(a) of the zoning code needs to add the PD district to the list of zoning districts under the Code

→ Note: Discuss whether or not any portions of Chapter 1137 of the Code need to be revised to accommodate the procedures in the proposed PD Code

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