

CHAPTER 12. APPLICATIONS AND PERMITS

12.1 Interpretation of this Section

12.1.2 Applicability

These standards shall apply in general to all applications and permits requested within the City of Tupelo. The Development Services Director, or designee, shall be authorized to make interpretations concerning the provisions of this Code in particular cases where uncertainty may exist. In making these interpretations, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body;
- (3) Deemed neither to limit nor repeal any powers granted under State statutes; and
- (4) Require application of the more stringent provisions wherever the provisions of this Code appear to impose conflicting provisions that cannot otherwise be reconciled.

12.1.3 Exceptions

The Director of Development Services generally shall make all interpretations of the Code, but shall not make interpretations of the following sections:

- (1) Floodplain and Flood Damage Protection Standards: The City Engineer, acting as the Floodplain Administrator, or designee, in consultation with the Director of Development Services, shall be authorized to make all interpretations related to this section.
- (2) Street Layout: The Public Works Director or designee shall be authorized to make all interpretations concerning the provisions of this section.
- (3) Stormwater Management: The Public Works Director or City Engineer or designees, as appropriate, shall be authorized to make all interpretations concerning the provisions of this section.
- (4) Building Code: All interpretations of matters relating to the Mississippi Building Code shall be made by the Building Official or designee.

12.1.4 Other Sections

The Director of Development Services may defer interpretations of additional sections of this Code to appropriate City Officials.

12.1.5 Requests for Interpretation: A request for interpretation shall be submitted in writing.

12.1.6 Action by Director of Development Services

- (1) The Director of Development Services shall:
 - (a) Review and evaluate the request in light of the text of this Development Code, the Official Zoning Map, the Comprehensive Plan and any other relevant information;
 - (b) Consult with the City Engineer or designee and coordinate with other staff, including the City Attorney, as necessary; and
 - (c) Render an opinion.
 - (d) The interpretation shall be provided to the applicant in writing.
 - (e) The Director of Development Services or designee shall maintain an official record of all interpretations. The record of interpretations shall be available for public inspection during normal business hours.

12.1.7 Appeal

Final action on an official interpretation of this Code by the Director of Development Services or designee may be appealed in accordance with Section 12.16, Appeal of Administrative Decision.

12.2 Common Review Procedures

12.2.1 Applicability

The review procedures described below apply to the types of applications listed below, as may be limited by the individual subsections that follow:

- (1) Zoning Map Change
- (2) Subdivision, including Conservation Subdivision
- (3) Site Plan
- (4) Compatible and Flexible Use Permit
- (5) Transportation Special Use Permit
- (6) Sign Permit
- (7) Temporary Use Permit
- (8) Administrative Adjustment
- (10) Appeal of Administrative Decision
- (11) Development Code Text Amendment
- (12) Statutory Vested Rights Determination

12.2.2 Pre-Application Conference

Before submitting an application for development approval, it is recommended that each applicant schedule a pre-application conference with the Director of Development Services or designee to discuss the procedures, standards and regulations required for development approval in accordance with this Code.

- (1) A mandatory pre-application conference with the Director of Development Services or designee shall be required for the following development reviews:
 - (a) Comprehensive Plan Amendment;
 - (b) Flexible Use Permit;
 - (c) Zoning Map Change;
 - (d) Major Subdivision
 - (e) Major Site Plan.
- (2) A mandatory pre-application conference with the City Engineer and Public Works Director or designee shall be required for the following development reviews:
 - (a) Traffic Impact Analysis;
 - (b) Traffic Impact Analysis Major Special Use Permit.

12.2.3 Neighborhood Meeting

- (1) All applicants are encouraged to hold a neighborhood meeting prior to submitting an application, but after a pre-application conference, for the following development reviews:
 - (a) Comprehensive Plan amendment;
 - (b) Zoning map change;
 - (c) Conservation subdivision; and
 - (d) Other applications as may be specified elsewhere in this Code.
- (2) The purpose of the neighborhood meeting shall be to inform the neighborhood of the nature of the proposed land use and development features, explain the site plan if any, and solicit comments. This requirement shall not mean that all association members, owners or tenants are required to attend such a meeting.
- (3) Notice by mail at least ten (10) days prior to the date of the neighborhood meeting shall be provided to each owner of record of any land within six hundred (600) feet of the property for which the development approvals are sought and to neighborhood associations located within one thousand (1,000) feet of the site which have registered with the Department of Development Services to receive notice. The notice shall include at a minimum the following:

- (a) The applicant's name and telephone number;
- (b) The street address of the site with an identification map;
- (c) A clear explanation of what the applicant is proposing; and
- (d) The date, time and location of the meeting.

12.2.4 Application Requirements: The following requirements shall apply to all applications for development approval identified in Section 12.2.1., Applicability.

- (1) **Forms:** Applications required under this Code shall be submitted on forms and in such numbers as required by the appropriate department. All forms shall include, at a minimum, the following information:
 - (a) Contact information for the individual or firm submitting the application.
 - (b) Contact information for the individual or firm on whose behalf the application is being submitted.
 - (c) Identification of the property affected by the application, such as a legal description, address, or PIN as may be appropriate.
 - (d) Any other information required by the director of the appropriate department, or designee, or the provisions of this Code.
- (2) **Fees:**
 - (a) All applications and associated fees shall be filed with the appropriate department.
 - (b) Filing fees shall be established from time to time to defray the actual cost of processing the application.
 - (c) An applicant who has paid the appropriate fee pursuant to the submission of an application, but who chooses to withdraw such application prior to its distribution for review shall be entitled to a refund of the total amount paid, less ten percent (10%) for administrative costs, upon written request to the appropriate department. Once review has begun, no refund shall be available.
- (3) **Applications Sufficient for Processing:**
 - (a) Applications shall contain all required information as described on forms available from each department involved in the review process, unless modified by the department, in writing, pursuant to (b), below. Incomplete applications may be reviewed in an extraordinary circumstance.
 - (b) The presumption shall be that all of the information required in the application forms is necessary to satisfy the requirements of this section. However, it shall be recognized that each application is unique, and therefore more or less information may be required according to the needs of the particular case. The applicant may rely on the

recommendations of the appropriate department as to whether more or less information should be submitted.

- (c) Once the application has been determined sufficient for processing, copies of the application shall be referred by the appropriate department to the appropriate reviewing entities.
- (d) The director of the appropriate department may require an applicant to present evidence of the authority to submit an application.
- (e) An application shall be considered to have been accepted for review only after it has been determined to be complete as provided above, not upon submission to the appropriate department.

(4) Application Deadline:

Applications sufficient for processing shall be submitted to the director of the appropriate department in accordance with the established schedule. Schedules indicating submittal dates shall be developed each year and made available to the public.

(5) Staff Consultation after Application Submitted:

- (a) Upon receipt of an application sufficient for processing, the director of the appropriate department shall review the application and confer with the applicant to ensure an understanding of the applicable requirements of this Code; that the applicant has submitted all of the information they intend to submit; and that the application represents precisely and completely what the applicant proposes to do.
- (b) Once the applicant indicates that the application is as complete as the applicant intends to make it, the application shall be placed before the appropriate approving authority in accordance with standard procedures. However, if the director of the appropriate department believes the application is incomplete, a recommendation to deny the application on that basis shall be provided to the appropriate approving authority.

(6) Related Applications:

- (a) Necessarily related applications for development approvals may be filed and reviewed simultaneously, at the option of the applicant. Any application that also requires a variance or use permit shall not be eligible for final approval until the variance or use permit has been granted.
- (b) Related applications submitted simultaneously are subject to approval of all other related applications; denial or disapproval of any concurrently submitted application shall stop consideration of any related applications until the denied or disapproved application is resolved.

12.3. Notice and Public Hearings

12.3.1 Summary of Notice Required

Notice shall be required for applications for development approval as shown in the table below.

NOTICE & PUBLIC HEARING	PUBLISHED	MAILED	POSTED
Comprehensive Plan Amendment	X	X	
Zoning Map Change	X	X	X
Compatible Use Permit		X	
Flexible Use Permit (including TIA special use permit)		X	
Variance		X	
Appeal of Administrative Decision			
Development Code Text Amendment	X		

12.3.2 Public Notice Standards

- (1) **Published Notice:** An advertisement shall be placed by the Development Services Department in a local newspaper of general circulation, the notice being published not less than fifteen (15) days before the date fixed for the public hearing.
- (2) **Mailed Notice:** The director of the appropriate department shall notify by first class mail all property owners, as indicated by County tax listings of property ownership, within the applicable notification distance from the property under consideration as specified in the table below:

NOTICE STANDARDS	NOTIFICATION Distance (ft)
Comprehensive Plan Amendment	One thousand (1,000)
Zoning Map Change	Five hundred (500)
Site Plans ¹	Five hundred (500)
Variance	Five hundred (500)
Compatible or Flexible Use Permit	Five Hundred (500)

¹ Mailed notice shall be required whenever an applicant for a site plan is seeking approval of any of the modifications to standards specified in Section 12.11, Site Plans, which are granted at the discretion of a governing body.

- (a) For amendments to the Comprehensive Plan, Zoning Map Changes, Site Plans that require mailed notice pursuant to Sec. 12.3.1, Summary of Notice Required, and Flexible Use Permits, notice shall also be provided to any organization or individual located within one thousand (1,000) feet of the site under consideration which is registered to receive notice pursuant to Sec.12.3.5., Registration to Receive Notice. Notice shall be provided to each organization or individual in the manner specified in

its registration information, which may be first class mail, electronic mail, or other manner offered by the Director of Development Services.

- (b) For Development Code Text Amendments, notice shall be provided to any organization or individual that is registered to receive such notice pursuant to Sec.12.3.5, Registration to Receive Notice. Notice shall be provided to each organization or individual in the manner specified in its registration information, which may be first class mail, electronic mail, or other manner offered by the Director of Development Services. Such notice shall be mailed at least seven (7) days prior to the date of the public hearing.
 - (c) Mailed notice under this section shall not be required if a zoning map change directly affects more than five hundred (500) properties owned by a total of at least five (5) different property owners, and the Director of Development Services or designee elects to use the following expanded published notice requirements: An advertisement may be placed in a local newspaper of general circulation, the notice being published not less than ten (10) days nor more than twenty-five (25) days before the date fixed for the public hearing.
 - (d) Mailed notice shall be provided by first class mail to property owners who reside outside of the newspaper's circulation area.
- (3) **Posted Notice (Sign):** For applications for zoning map change, a sign noticing the public hearing shall be prominently posted by the director of the appropriate department, or designee, not less than seven (7) days prior to the public hearing at which the application shall be reviewed. The sign shall be posted on the property or at a point visible from the nearest public street. In the case of multiple parcels, sufficient signs shall be posted to provide reasonable notice to interested persons.
- (4) **Content of Notice:** For all applications for development approval except Development Code text amendments, the notices listed above shall contain the following specific information.
- (5) **Published or Mailed Notice:** A published or mailed notice shall provide at least the following:
- (a) Parcel Identification Number;
 - (b) The subject property (if available);
 - (c) The general location of the land that is the subject of the application, which may include, a location map;
 - (d) A description of the action requested;
 - (e) Where a zoning map change or a Comprehensive Plan amendment is proposed, the current and proposed districts;

- (f) The time, date and location of the public hearing;
 - (g) A phone number to contact the Director of Development Services or designee;
 - (h) A statement that interested parties may appear at the public hearing; and
 - (i) A statement that substantial changes to the proposed action may be made following the public hearing.
- (6) Published Notice for Development Code Text Amendment: A published notice shall include the following specific information:
- (a) A summary description of the proposed change;
 - (b) The time, date and location of the public hearing;
 - (c) A phone number to contact the Director of Development Services or designee;
 - (d) A statement that interested parties may appear at the public hearing; and
 - (e) A statement that substantial changes to the proposed action may be made following the public hearing.
- (7) Posted Notice: Required posted notices shall indicate the following:
- (a) A case number;
 - (b) Type of action; and
 - (c) A phone number to contact the Director of Development Services.

12.3.3 Minor Defects in Notice

Minor defects in notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements.

12.3.4 Registration to Receive Notice

Upon adoption of this amended section, and every two (2) years thereafter, any organization or individual may pay an established fee, if applicable, and register with the Director of Development Services to receive notice of all applications for development approval requiring mailed notice and other notice required under this Code. To be eligible for registration, the applicant must provide the information required by the Director of Development Services, including manner of notice, whether first class mail, electronic mail, or other manner offered by the Director of Development Services. Notice will be provided in the manner specified in the registration information. Each organization or individual is responsible for providing updated information to the Director of Development Services as necessary, and must re-register and pay the established fee, if applicable, every two (2) years in order to continue receiving notice.

12.3.5 Required Hearing

A public hearing shall be required for development review as shown in the table below:

APPLICATION FOR APPROVAL	PLANNING COMMITTEE	CITY COUNCIL
Transportation Special Use Permit		X
Comprehensive Plan Adoption/Amendment	X	X
Zoning Map Change	X	X
Compatible Use Permit	X	
Flexible Use Permit	X	
Appeal of Administrative Decision	X	X
Development Code Text Amendment	X	X

The day of the public hearing shall be considered the day the hearing is originally advertised for, unless a deferral is granted by the governing body upon a request that follows the procedures set forth in this Code regarding timely submission of requests for deferrals.

12.3.6. Protest Petition Sufficiency and Procedures

(1) **Protest Petition Defined:** A petition in opposition to any application listed in Section 12.2.1, Applicability, shall be considered a "valid protest petition" if the petition meets the requirements of applicable state and local law.

(2) **Standards:**

(a) The petition must be signed by the owners of either:

- i. Twenty percent (20%) or more of the area included in the proposed change or;
- ii. Five percent (5%) of the area of a one hundred foot (100) wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned.

(b) In evaluating the sufficiency of a protest under this provision, a street right of way shall not be considered in computing the one hundred (100) foot buffer area as long as the street right of way is one hundred (100) feet wide or less. When less than an entire parcel of land is being rezoned, the one hundred (100) foot buffer shall be measured from the property line of the entire parcel.

(3) **Procedure:**

(a) A form for a protest petition shall be available in the Department of Development Services.

(b) Completed petitions shall be submitted to the Department of Development Services at least four (4) working days prior to the day of the public hearing.

- (c) The Director of Development Services, or designee, in consultation with the Attorney for the jurisdiction shall determine if the petition meets the criteria for classification of "valid protest petition". The Clerk shall inform the governing body that a petition has been filed and indicate the determination by the Director of Development Services, or designee, whether the petition is valid or invalid. The Director of Development Services, or designee, shall notify the petitioner as to the validity of the protest petition.
 - (d) Where a substantial modification to a zoning map change application that requires resubmission to the Planning Committee has been submitted, the Director of Development Services shall notify the petitioner, in writing, that a new protest petition is required.
 - (e) Petitions for zoning map change for which a protest petition has been determined to be valid shall require a three-fourths (¾) vote of the governing body for approval rather than a simple majority. Vacant positions on the Council and members who have been excused from voting because of a conflict of interest shall not be considered in computing Council membership.
- (4) **Withdrawal:** Persons or entities who have signed protest petitions may withdraw their signatures at any time prior to the vote on the proposed map change. Any withdrawal must meet standards established for such withdrawals by the Department of Development Services. Withdrawals submitted less than two (2) working days prior to the public hearing may result in a continuance of the hearing if the effect of the withdrawal on the validity of the protest cannot be determined prior to the public hearing.
- (5) **Exemption:** The foregoing provisions concerning protest petitions shall not be applicable to any zoning map change that establishes the City's zoning designation on property that has been added to the City's jurisdiction as a result of annexation, except as provided by general or local law.

12.3.7 Notice of Decision

Within seven days after a decision is made, a copy of the decision shall be provided to the applicant and filed in the appropriate department, where it shall be available for public inspection during regular office hours.

12.4 Development Review Checklist Procedure

12.4.1 Purpose

The Development Review Checklist is intended to provide a basis for evaluation of development projects which integrates the degree to which a project is compatible with its immediate context, the design values created by the project, and the ways in which a development proposal supports goals established by the Comprehensive Plan. It is not intended to represent a complete list of all standards and requirements that may apply to a proposed action.

12.4.2 Applicability

Completion of the Development Review Checklist shall be required for all major subdivisions, major site plans, development plans, flexible use approvals, and requests for variance in excess of thirty percent (30%) from the applicable standard (“major reviewable elements”). Completion of the compatibility section of the Development Review Checklist shall be required for compatible use approvals, for infill or redevelopment projects over two (2) acres, and for requests for variance between fifteen percent (15%) and thirty (30%) of the applicable standard.

12.4.3 Required Information for Review

The applicant shall include with the application all information necessary for staff to complete the Development Review Checklist. Where additional information is needed to make a complete review, staff will provide the applicant with a specific list of material needed. Staff will provide a determination of any sections of the checklist that are not applicable to the proposed application.

12.4.4 Compatibility

- (1) The compatibility section is used to grant zoning approval for activities identified as “compatible uses” in a given zone. It may also be used to grant staff approval of dimensional requirements of up to thirty percent (30%) of a given standard.
- (2) Variances in excess of thirty percent (30%) must obtain Planning Committee approval.

The compatibility section is also required as part of the review of any project or application which is classified as infill or redevelopment and involves a site of two (2) or more acres.

- (3) Identify all land uses and/or structures within five hundred (500) feet of subject property. For each compatibility element provide the required information for each property, beginning with the closest. If an element does not apply, indicate with N/A.
 - (a) Identify lot sizes in context area.
 - (b) Estimate height of context area structures beginning with closest.
 - (c) Estimate setbacks of context area structures beginning with closest.
- (4) Identify architectural elements:
 - (a) Width to height proportionality;
 - (b) Predominant exterior materials;
 - (c) Roof type and pitch if applicable;
 - (d) Other significant architectural element represented in project or context area.
- (5) Identify other significant non-architectural project or context area elements, such as sign dimensions or site amenities.

- (6) Identify average daily traffic generation from Institute of Traffic Engineers (ITE) manual for comparables beginning with closest.
- (7) Estimate on site parking provided at properties within five hundred (500) feet, and identify the location on site.

12.4.5 Comprehensive Plan Goals and Design Options

(1) Compact, efficient Land Use Pattern:

- (a) The project provides a mix of land uses or, for single use projects, adds to the diversity of uses in an area.
- (b) The project is located in a walkable neighborhood: frequently visited uses are within one-half (½) mile of the proposed project and are easily accessible to pedestrians via a sidewalk or other pedestrian facility.
- (c) The project will provide elements of a walkable environment.
- (d) The project site is an infill location or a location that logically reinforces or extends existing development.
- (e) The project will rehabilitate an existing structure and/or redevelop an existing developed site. Such a project shall have a minimum proposed construction cost that is fifty percent (50%) or more of the tax-assessed value.
- (f) The project will add to the diversity of housing types or prices. Median housing and rental unit prices shall be those provided by the US Census or another reliable source. Census figures may be adjusted for inflation using the US Department of Labor Consumer Price Index inflation calculator or another reliable method.

(2) High Quality, Environmentally Sustainable Design and Materials:

- (a) Projects that develop on vacant land or land used only for agricultural purposes shall avoid disturbance of environmentally sensitive areas such as wetlands, steep slopes, riparian buffers, flood hazard areas, and mature woodlands. The cluster subdivision and the planned unit development processes offer flexibility in lot size and other development standards to enable projects to be designed around environmental features. Projects which provide environmental amenities above the level required are encouraged.

The project shall not have adverse impacts on stormwater management. Development which was built in past decades with inadequate stormwater management has had negative impacts on surrounding property owners and the City of Tupelo. Projects that use good design principles to enhance the aesthetic features of stormwater management infrastructure are encouraged.

- (b) The project uses landscaping to enhance or preserve an urban tree canopy.
- (c) The project incorporates building design principles and uses materials to enhance the project and the surrounding area.

(3) **Transportation and Parking:**

- (a) The project is located in an area with and/or provides an interconnected street system.
- (b) The project provides pedestrian and/or bicycle improvements.
- (c) The project will use good design in parking requirements by locating parking in the side or rear or by having shared parking.

12.4.6 Review and Approval of Applications:

- (1) Staff will review information and compile a report identifying the features of the proposed project or action which address the comprehensive plan goals.

12.5 Traffic Impact Analysis (TIA)

12.5.1 Applicability

Unless exempted below, a traffic impact analysis (TIA) shall be required for zoning map changes utilizing a development plan, site plans, and preliminary plats that can be anticipated to generate at least one hundred-thirty (130) vehicle trips at the peak hour (as determined by Institute of Transportation Engineers Standards). Trips generated by separate developments meeting the criteria of Sec. 12.5.3, TIA Submission for Projects with Cumulative Impacts, shall be considered cumulatively.

12.5.2 Exemptions

The following projects shall not be required to submit a TIA:

- (1) Projects located within the Mixed Use Downtown District.

- (2) Developments that submitted a TIA in conjunction with a zoning map change or previously approved site plan, or other plan, where the TIA remains valid, consistent with the provisions of Sec. 12.5.5. (5), Period of Validity.
- (3) Redevelopment of any site on which the increase in traffic at peak hour represents an increase of less than one hundred-thirty (130) trips from the previous development, if the redevelopment is initiated within twelve (12) months of the cessation of use of the previous development.

12.5.3 TIA Submission for Projects with Cumulative Impacts

- (1) An applicant shall be required to submit a TIA for a development plan, site plan, preliminary plat, or other similar plan that does not otherwise meet the thresholds for submission of a TIA if the development approval is for a project that:
 - (a) Shares features such as site access or other roadways, design elements, or other infrastructure with nearby unbuilt, but reasonably foreseeable developments; and,
 - (b) When complete, will function in conjunction with such nearby developments as a single project, the impact on the infrastructure of which would exceed the thresholds for preparation of a TIA.
- (2) Determination: The Director of Development Services shall determine whether a development application meets the criteria above and shall determine whether one TIA shall be required for all of the aggregated development, or whether multiple TIAs may be employed for separate phases of the development.

12.5.4 Pre-Application Conference

The applicant shall schedule a pre-application meeting with the Development Services Director or designee to discuss procedures, standards, and regulations required for TIA submittal and approval.

12.5.5 Requirements

- (1) Content: The Development Services Director or designee shall set forth specific guidelines for preparation of TIAs. A TIA shall, at a minimum, provide the following information:
 - (a) An estimate of the traffic generated as a result of the proposed development;
 - (b) An analysis of the existing street system serving the proposed development; and
 - (c) An assessment of the improvements needed to the existing street system in order to support the traffic anticipated to be generated by the proposed development.

- (3) Preparer: A TIA shall be prepared by a registered professional engineer with experience in traffic engineering.
- (4) Sources of Data: Estimates of vehicle trips shall be calculated based on trip generation rates from the most recent edition of the Trip Generation Manual published by the Institute of Transportation Engineers, unless an alternative source of information is approved by the Development Services Director or MDOT.
- (5) Period of Validity: A TIA shall be valid for a specific site for no more than eight (8) years, so long as no significant modifications to the development proposed for the site that substantially increase the traffic impact are made. A TIA submitted in connection with a project that is accessed by a road that is operating at a level of service lower than that approved by the City Engineer or MDOT, if applicable, shall be valid for no more than five (5) years, however.
- (6) Coordination with Zoning Map Changes, Site Plans, and Preliminary Plats

Transportation mitigation measures may be required to address issues raised by a TIA, or as part of the approval of a Transportation Special Use Permit (TSUP). Such measures may include, but shall not be limited to, onsite and offsite improvements related to reduction of traffic impact on the surrounding road system, bicycle facilities, pedestrian movement, and the environment. These measures shall be conditions of development approval. Deletion or modification of these conditions shall require the same approval process that was required for the original project, unless the approved mitigation measure is deemed to conflict with MDOT or City of Tupelo requirements, in which case they may be deleted or modified by the Planning Committee.

12.6 Transportation Special Use Permit

- (1) A Transportation Special Use Permit shall be required for site plans and preliminary plats that are expected to generate:
 - (a) Six hundred (600) or more vehicle trips at peak hour; or
 - (b) Three hundred (300) or more vehicle trips at peak hour, if any road serving the project is operating at a level of service lower than the jurisdiction's adopted level of service.
 - (c) The following projects shall be exempt from the requirement for a TSUP, even if they meet or exceed the thresholds specified above.
 - (d) Projects located within the Downtown Tier.
 - (e) Projects which have submitted a TIA in connection with a zoning map change, and which are developing consistent with the approved development plan, if the TIA is valid pursuant to Sec. 12.5.5 (5), Period of Validity, above.

12.6.1 Process

Projects requiring a TSUP shall be processed in accordance with the provisions for flexible uses in Section 12.12, Compatible and Flexible Use Permits.

12.6.2 Criteria for Approval

In order to approve a TSUP, the governing body shall make the following findings:

- (1) The traffic generated by the development and associated improvements to the street system will not have a significant adverse impact on the surrounding area. Significant adverse impact shall include:
- (2) Substantial increases in traffic on local residential streets such that the majority of the traffic is not associated with the residential properties which front on the street; or
- (3) The need to widen local residential streets which would detract significantly from the character or basic function of the nearby streets.
- (4) Adequate provisions have been made for safe and efficient vehicular circulation, parking and loading, and pedestrian access.
- (5) The traffic generated by the proposed development and any proposed improvements to the street system will not have a significant adverse impact on the environment. Significant adverse impacts shall include but not be limited to undue concentration of air pollutants, or excessive noise or vibrations.
- (6) The traffic generated by the development can be accommodated by the existing or funded transportation system, or adequate traffic mitigation measures have been proposed as part of the development application. Proposed mitigation measures shall become conditions of the special use permit. The adopted level of service for the adjacent roadways may be considered in making this determination but shall not be the sole factor considered by the governing body.

12.7 Comprehensive Plan Adoption/Amendment and Development Code Amendment

12.7.1 Applicability

- (1) The governing bodies shall consider adoption of or amendments to the Comprehensive Plan, or to the Development Code, as may be required from time to time.
- (2) The governing bodies shall also consider adoption of or amendments to the Comprehensive Plan when zoning map change proposals are in conflict with the Plan, as determined by the Director of Development Services.

- (3) Adoption of or amendments to the Comprehensive Plan shall only apply to the jurisdiction in which the subject property is located unless the property is the subject of an annexation petition.

12.7.2 Coordination with Other Applications

- (1) Comprehensive Plan Amendment and Zoning Map Change. When required to ensure consistency between the Comprehensive Plan and proposed zoning map changes, an application for a plan amendment shall be submitted concurrently with a zoning map change application. The public hearings on both the plan amendment and zoning map change may be heard at the same meeting; however, decisions shall be rendered with separate motions.
- (2) Other Applications: In all other cases involving Comprehensive Plan amendments or Development Code amendments, related applications may not be submitted until the amendment has gone into effect.

12.7.3 Pre-Application Conference

All applicants applying for a plan amendment shall schedule a pre-application conference with the Director of Development Services or designee.

12.7.4 Neighborhood Meeting

All applicants applying for a plan amendment are encouraged to hold a neighborhood meeting.

12.7.5 Action by the Planning Committee

- (1) Before making any recommendation on a plan or Development Code amendment, the Planning Committee shall consider any recommendations from the Director of Development Services and shall conduct a public hearing.
- (2) Notice and public hearing requirements shall be in accordance with Sec. 12.4.8 Notice and Public Hearings.
- (3) It is expected that the applicant or a representative of the applicant will appear at the meetings to explain why the Comprehensive Plan should be changed.
- (4) Following the public hearing, the Planning Committee shall make a recommendation on the application to the governing body.
- (5) The Planning Committee shall make its recommendation within three (3) consecutive regular Committee cycles (approximately ninety (90) days total) of its initial public hearing on the amendment.

12.7.6 Criteria for Planning Committee Recommendation

- (1) The recommendations of the Planning Committee to the governing body shall show that the Planning Committee has studied and considered the proposed comprehensive plan change in relation to the following, where applicable:
 - (a) Whether the proposed change would be consistent with the intent, goals, objectives, policies, guiding principles and programs of any adopted plans;
 - (b) Whether the proposed change would be compatible with the existing land use pattern and designated future land uses;
 - (c) Whether the proposed change would create substantial adverse impacts in the adjacent area or the City in general; and
 - (d) Whether the subject parcel is of adequate shape and size to accommodate the proposed change.
- (2) For Development Code amendment, the recommendation of the Planning Committee to the governing body shall show that the Planning Committee has studied and considered the proposed code change in relation to the following:
 - (a) Whether the proposed change would be consistent with the intent, goals, objectives, policies, guiding principles and programs of any adopted plans;
 - (b) Whether the proposed change would create substantial adverse impacts on particular properties, businesses, or the City in general;
 - (c) Whether the proposed change would improve the effectiveness of the Code in regulating development.

12.7.7 Action by the Governing Body

- (1) Before taking action on a plan or Development Code amendment, the governing body shall consider the recommendations of the Planning Committee and Director of Development Services, and shall conduct a public hearing.
- (2) Notice and public hearing requirements shall be in accordance with Sec.12.4.8 Notice and Public Hearings.
- (3) It is expected that the applicant or a representative of the applicant will appear at the meetings to explain why the comprehensive plan should be changed. In the case of a Development Code amendment, the Director of Development Services or designee shall explain the need for the code amendment.
- (4) Following the public hearing, the governing body may approve the amendment, deny the amendment, or send the amendment back to the Planning Committee for additional consideration.

- (5) An approval shall be by written resolution. The approval may be contingent upon conditions specified by the governing body. The effective date may be immediate or may be a date otherwise specified in the approval.

12.8 Zoning Map Change

12.8.1 Purpose

The purpose of a zoning map amendment is to amend the zoning district boundaries of the Official Zoning Map.

12.8.2 Initiation

A zoning map change may be initiated by the governing body, the Planning Committee, the Director of Development Services or designee, or the property owner or their agent, except that a petition for a zoning map change with a development plan may only be initiated by the property owner or their agent.

12.8.3 Development Plans

A development plan is required for any rezoning of five (5) or more acres. The development plan provides additional information with a zoning map change petition. The purposes and required elements of the development plan are set forth in Section 12.9, Development Plan. The development plan establishes the level of development that will be allowed on the property. Subsequent site plans or plats shall not deviate from the plan, unless otherwise allowed, or required under this Code. Deviation may require a zoning map change, as established in Section 12.9.12, *Deviations from Approved Development Plans*. Unless a development plan also functions as a site plan, it is not a site specific development plan. The right to develop pursuant to a development plan, whether approved under this Code or any previous Code, accrues only for any portion of the plan for which a site plan or preliminary plat is approved, and then only for the period of validity specified in this Code.

12.8.4 Mandatory Development Plan

The development plan may be used by the petitioner in any zoning district; however, the development plan shall be required in all Mixed Use districts. Development plans may also be required as otherwise set forth in this Code. The development plan shall become a part of the zoning map change petition and shall be reviewed concurrently with the zoning map change petition. Development plans shall not be required for zoning map changes of less than five acres or for correction of zoning map errors.

12.8.5 Traffic Impact Analysis

- (1) A traffic impact analysis may be required if the proposed zoning map change meets the threshold requirements established in Section 12.4, Traffic Impact Analysis.

12.8.6 Pre-Application Conference

- (1) All applicants petitioning for a zoning map change shall schedule a pre-application conference with the Director of Development Services or designee in accordance with Sec. 12.2.2.

12.8.7 Neighborhood Meeting

An applicant petitioning for a zoning map change that requires a TIA pursuant to Sec. 12.4, Traffic Impact Analysis, shall hold a neighborhood meeting as set forth in Sec. 12.2.3, Neighborhood Meeting.

12.8.8 Relation to Comprehensive Plan

- (1) All petitions for zoning map change shall be consistent with the Comprehensive Plan. A petition for zoning map change shall not be approved by the governing body when there is a conflict with the Comprehensive Plan, as determined by the Director of Development Services or designee (see Section 12.7, Comprehensive Plan Amendment).
- (2) When required, an application for a plan amendment shall be submitted and reviewed concurrently with an application for zoning map change. The public hearings on both the plan amendment and zoning map change may be heard at the same meeting. The decisions, however, shall be rendered with separate motions.

12.8.9 Application Requirements

An application for zoning map change shall be submitted in accordance with Sec., Application Requirements.

- (1) Zoning map changes should correspond with the boundary lines of existing platted lots or tracts. If the boundaries of a zoning map change request stop short of an exterior property line, that portion of the property outside the proposed zoning map change boundary shall be capable of being subdivided and developed in accordance with the existing zoning and other requirements of this Code.
- (2) All zoning requirements shall be met within the boundaries of the area being proposed for change, unless the area being changed is utilizing a development plan and is an addition to an existing area zoned with a development plan. If all of the requirements cannot be met on the site being changed, the zoning map change shall be expanded to include necessary property being used to meet zoning requirements. Projects utilizing a development plan may be expanded without meeting this criteria if, considering the original development plan area, the requirement can be met without violating any committed elements. Projects utilizing this provision shall provide graphics and/or a chart demonstrating how the requirements are met.
- (3) If the boundaries of a zoning map change request in process are modified so as to 1) remove property from the request, and 2) have the effect of separating other adjoining properties from the boundaries of the modified request, that change shall be considered a

substantial change from the original request and shall result in the modified request being considered a new zoning map change request and requiring resubmittal with a new application and applicable fees.

12.9 Development Plan

12.9.1 Purpose

- (1) A development plan is intended to identify commitments that are equal to or greater than Code requirements, including but not limited to:
 - (a) Intensity/density of the proposed development;
 - (b) Sensitive areas and related protection;
 - (c) Any limitations on number, type, or range of uses;
 - (d) Dedications or reservations;
 - (e) Design elements if required or otherwise provided; and
 - (f) Development phasing if required or otherwise provided.

12.9.2 Designation/Effect

When a proposed zoning map change includes a development plan, the letter “D” shall follow the proposed zoning district designation. If approved, the letter “D” shall remain as a part of the zoning designation of the property. The elements submitted as part of the development plan, called "commitments", are binding and establish the level of development permitted on the property absent further zoning action except as otherwise allowed or required under this Code. "Commitments" may also be identified as "committed elements" throughout this Code.

12.9.3 Authority of Director of Development Services: The Director of Development Services is authorized to:

12.9.4 Requirements

- (1) A development plan shall comply with all applicable laws and guidelines, except where modification of development or use standards are specifically requested by inclusion in the plan. Requirements under this section shall consist of the following, which may be supplemented by guidelines of the Development Services Department.
- (2) A development plan shall be signed and sealed by a Professional Engineer, Registered Architect, or Registered Landscape Architect. All graphic depictions shall be accurately

scaled and separate or additional sheets may be required by the Development Services Department.

- (3) A development plan shall include a signed request from each property owner that the development plan be approved. A request from an owner's representative is unacceptable unless a document establishing legal authority to act as representative is included.

12.9.5 Existing Information

A development plan shall include an existing conditions survey that depicts conditions at time of plan submittal and is signed and sealed by a licensed Professional Land Surveyor, Engineer, or Landscape Architect. A separate existing conditions sheet may also be included. Such document(s) shall provide at least the following information:

- (1) All site location information, including vicinity map, property identification numbers, ownership, metes and bounds, and north arrow;
- (2) Acreage of the entire site, approximate acreage of the area within each zoning district or overlay on the site, and approximate acreage of area within floodway, floodway fringe, non-encroachment area, or non-encroachment area fringe on the site;
- (3) Existing zoning districts and overlays on the site and all adjoining properties, including properties separated by easements or rights of way;
- (4) The owners of all adjoining properties, including properties separated by easements or rights of way;
- (5) Existing manmade and natural conditions on the site and within 100 feet of the site on adjoining properties, including properties separated by easements or rights of way. Those existing conditions shall include but are not limited to: amount and location of impervious surface; topography including steep slopes; Special Flood Hazard Areas; streams; wetlands; water bodies; forested areas; sites identified in state or local inventories of important natural areas, plants and wildlife; historic sites or structures currently designated in, or eligible for, the National Register of Historic Places; sites identified in local Architectural and Historic Inventory; and other identified archaeological sites, including cemeteries and burial grounds; and other protected areas;
- (6) Existing utility and access easements and rights of way on the site and within 100 feet of the site; and
- (7) Adopted plans, including transportation plans that apply to the site.

12.9.6 Minimum Commitments

A development plan shall depict the following proposed elements, as applicable, in graphic form without side notes. Labels and descriptive information shall be located within the graphic depiction. Such elements shall become commitments:

- (1) Zoning districts and overlays on the site;
- (2) For non-residential or multi-family development, building and parking envelope;
- (3) Project boundary buffers, including any located off-site, depicted by border lines and indicating minimum committed width. Illustrative representations of vegetation shall not be used. A buffer reduction may only be requested if the minimum committed width that reflects the possible reduction is depicted. Any such width shall be labeled "width if reduced";

12.9.7 Authority of Director of Development Services: The Director of Development Services is authorized to: Delegate authority under this section to a designee;

- (1) Determine whether modification of an unapproved development plan or deviation from an approved development plan is significant/substantial or minor, or more or less stringent, if not specified in this section;
- (2) Interpret commitments;
- (3) Determine whether a conflict exists between commitments. Any conflict between commitments, including design commitments, shall be resolved in favor of the most stringent;
- (4) Determine whether an element is a commitment if it is not specified as such in this section; and
- (5) Determine whether additional staff review time is necessary following addition of commitments at hearings through proffers or illustrative graphic depictions. Such determination may require consultation with other departments.
- (6) General location of access points and connections to existing roads;
- (7) Dedications or reservations made for consistency with adopted plans, including transportation plans, or as otherwise required by this Code or other law;
- (8) Railroad and street rights of way;
- (9) Maximum impervious area for the site and for each separately zoned portion of the site, indicated numerically within the overall site depiction and each portion;
- (10) Areas committed for preservation, including but not limited to steep slopes; stream buffers; wetland buffers; inventory sites; historic sites or structures currently designated in, or eligible for, the National Register of Historic Places; sites identified in state or local

inventories of architectural and historical resources; and other identified archaeological sites, including cemeteries and burial grounds;

- (11) Tree preservation areas, tree replacement areas, and a generalized or specimen tree survey as required under Sec. 9.11.4 Tree Survey

12.9.8 Additional Commitments – Graphic

A development plan may depict additional proposed elements, including but not limited to the following, in graphic form without side notes. Labels and descriptive information shall be located within the graphic depiction. Such elements shall become commitments:

- (1) Limitations on number, type, or range of uses, if not required under Sec. Minimum Commitments;
- (2) General location of on- or off-site road improvements or pedestrian and bicycle systems;
- (3) General location and area of open space, recreation areas, trails and greenways, tree preservation areas, or buffers other than project boundary or stream buffers;
- (4) Buffer width or opacity that exceeds Code requirements;
- (5) Landscaping features such as berms or vegetation types;
- (6) Building specifications such as number, location, maximum floor area, or maximum height;
- (7) General location and types of stormwater facilities;
- (8) Areas where mass grading will not occur; and
- (9) Building or site design elements not subject to review by the Development Services Department.

12.9.9 Additional Commitments – Text

A development plan may include additional proposed elements as text in side notes, provided they cannot legibly be included within, or do not reference, the graphic depiction. Such elements shall become commitments and shall be labeled "Text Commitments." Examples include description of off-site transportation infrastructure improvements, technical specifications that exceed Code requirements, description of elements not identified graphically, and additional description of elements identified graphically. Such elements shall not repeat Code requirements or contradict or diminish graphic elements.

- (1) SIA and TIA Commitments: A development plan shall include a Stormwater Impact Analysis and a Traffic Impact Analysis, if required, with measures required to address

any identified deficiencies. Such measures shall be in text form, and may also be in graphic form as appropriate, and shall become commitments.

- (2) Design Commitments: The development plan for a project containing nonresidential or multi-family structures not located in the Mixed Use Downtown District shall include design elements indicating how the project will relate to its environment (both built and natural). Such elements may be in graphic or text form as appropriate and shall become commitments. They shall be labeled "Design Commitments" and shall include, at a minimum:
 - (a) A description of the general architectural styles proposed for use in the buildings. This description shall include information on rooflines, building materials, and any distinctive architectural features; and
 - (b) A description of how the proposed design will fit into the context area, including information about transitions and relationships to existing developments.
- (3) Residential Design Standards: If the project involves single family, duplex, or triplex housing units, design standards shall be provided comparable in form to those in Section 6.4.3.

12.9.10. Phasing Plans

- (1) A phasing plan may be provided with any development plan, but shall be required in the following instances:
 - (a) Projects utilizing any of the Mixed Use Districts. The phasing plan shall ensure that residential and non-residential components are constructed to satisfy the intent and requirements of these districts; and
 - (b) Development of more than one hundred-thirty (130) residential units.
 - (c) The phasing plan shall be in graphic or table form as appropriate and included in the development plan. It shall identify the sequence and timing of the development phases and include utility improvements, land use categories, and areas in square feet or acres. Phasing plan elements shall become commitments.

12.9.11 Illustrative Graphic Depictions

Graphic depictions other than those listed above shall not be shown at, submitted at, or otherwise used in connection with any public hearing on a zoning map change with development plan unless they depict only area within the scope of the development plan and are development plan commitments in their entirety. Such graphic depictions shall supersede existing commitments, if conflicts exist; to the extent they are more stringent.

12.9.12 Development Plan as Site Plan or Preliminary Plat

- (1) At the request of the applicant, a development plan may also serve as a site plan or preliminary plat. Such plan shall comply with both development plan and site plan or preliminary plat requirements, as applicable, and shall undergo one review process. Such plan shall be deemed approved as both development plan and site plan or preliminary plat, as applicable, following development plan approval by the governing body. Fees shall be adjusted by the Department of Development Services in such cases.
- (2) Where a development plan also serves as a site plan or preliminary plat, any associated compatible or flexible use permit requirement shall be waived if the development plan contains commitments as to all use categories; intensity of all uses; location of all uses; building heights and areas; and number and location of parking spaces.
- (3) Where a development plan serves as a site plan or preliminary plat, the plan may be used to qualify for compatible or flexible use permits, variances, or other forms of flexibility to apply to the site plan or preliminary plat.
- (4) Where a development plan also serves as a site plan or preliminary plat, any associated compatible or flexible use permit requirement shall be waived if the development plan contains commitments as to all use categories; intensity of all uses; location of all uses; building heights and areas; and number and location of parking spaces.

Where a development plan serves as a site plan or preliminary plat, the plan may be used to qualify for compatible or flexible use permits to apply to the site plan or preliminary plat.

12.9.13 Modifications Before Approval

- (1) Modifications to a development plan that are proffered at a hearing before the Planning Committee or governing body shall become additional commitments and shall supersede existing commitments, if conflicts exist, to the extent they are more stringent. Proffers that prove to be illegal or less stringent than existing commitments shall be referred back to the Planning Committee or governing body for an additional hearing.
- (2) Minor modifications may be made to a development plan after the Planning Committee recommendation and before the governing body hearing. Such modifications become additional commitments and shall supersede existing commitments, if conflicts exist; to the extent they are more stringent.
- (3) Significant modifications that are made to a development plan after the Planning Committee recommendation and before the governing body hearing shall be referred back to the Planning Committee for an additional hearing as required under Sec. 12.9.17, Changed Application.

12.9.14 Deferral and Withdrawal of an Application for Zoning Map Change

- (1) Deferral Requests are approved by the Director of Development Services. Deferrals may be granted by the Director of Development Services, or designee, under the following criteria:
 - (a) The applicant or an opponent may each seek not more than one (1) deferral for each zoning map change requested. No more than two (2) deferrals (one each from the applicant and an opponent) shall be allowed per proposed zoning map change;
 - (b) Each deferral request shall be for a maximum of one (1) month. Any deferral request shall be made in writing, citing reasons for requesting the deferral; and
 - (c) If the request for deferral is received by the Director of Development Services or designee and the reasons for the request are made in writing at least ten (10) days prior to the first Planning Committee or governing body meeting where the item would otherwise be considered.
 - (d) Any other deferrals which do not meet the above criteria shall be treated as a continuance.
 - (e) If notification of the hearing has already been sent by the time deferral is requested each request shall be accompanied by two (2) sets of mailing labels imprinted with the names and addresses of all previously notified property owners and a fee equivalent to the postage required to re-notify the property owners.
 - (f) The above procedures are not applicable to proposed zoning map changes that have been designated as “expedited” by a governing body.
- (2) **Withdrawal Request by Applicant:** The applicant petitioning for a zoning map change may withdraw the application provided that a written request stating the reason for the withdrawal is received by the Director of Development Services at least ten (10) days prior to the public hearing.
- (3) **Administrative Withdrawal:** The Director of Development Services or designee may withdraw applications due to the failure of the applicant to submit required information within ninety (90) days of a request for such information.
- (4) **Re-Submittal of Withdrawn Applications:** Except in the case of an application withdrawn by the applicant with ten (10) days notice as required in Section 12.9.14. (2), no application that was previously withdrawn may be resubmitted until at least six (6) months have elapsed since the date of withdrawal. In the case of applications withdrawn after publication of a notice of a public hearing, no new application may be resubmitted until at least twelve (12) months have elapsed since the date of withdrawal. The Director of Development Services or designee may waive this waiting period if the application has been substantially modified or if there has been a significant change in facts or circumstances since the application was withdrawn.

12.9.15 Action by the Director of Development Services

- (1) The Director of Development Services or designee shall prepare a staff report that reviews the zoning map change request in light of any applicable plans and the general requirements of this Code.
- (2) The staff report shall consider the entire range of permitted uses in the requested classification regardless of any representations made that the use will be limited, unless a development plan is submitted that restricts the permitted range of uses to specific uses. The staff report shall include an evaluation of the consistency of the requested classification with adopted plans and the impact of the requested classification on public infrastructure, as well as any specific requirements of the requested classification.
- (3) The Director of Development Services or designee shall forward completed zoning map change requests and any related materials to the Planning Committee for a hearing and recommendation at the first regularly scheduled meeting following completion of the technical reviews by staff.
- (4) The Director of Development Services or designee shall forward completed zoning map change requests and any related materials, including the Planning Committee recommendation, to the governing body for a public hearing and decision prior to the first regularly scheduled meeting after the Planning Committee hearing.

12.9.16 Action by the Planning Committee

- (1) Before making any recommendation on a petition for zoning map change, the Planning Committee shall consider any recommendations from the Director of Development Services and shall conduct a public hearing where interested parties may be heard.
- (2) Notice and public hearing requirements shall be in accordance with Sec. 12.3, Notice and Public Hearings.
- (3) The Committee shall make its recommendation within three (3) consecutive regular Committee cycles (approximately ninety (90) days total) of its initial public hearing. The time period for a recommendation may be altered, as in the case of significant modifications, in which case three (3) additional-consecutive regular cycles shall be granted before the case shall go to the governing body.
- (4) When a recommendation is not made within the time periods established in this section, the governing body may process the request without a Committee recommendation.

12.9.17 Changed Application

If the applicant makes a significant modification to an application for a zoning map change after the Committee has made its recommendation, the Director of Development Services shall refer the modified request back to the Committee for an additional public hearing. In such case, the Committee shall make a recommendation to the governing body within ninety (90) days of the public hearing on the modified application. If a recommendation is not made within this time

frame, the governing body may hear the application without a recommendation from the Planning Committee.

12.9.18 Written Recommendation and Review Criteria: The Planning Committee shall provide a written recommendation regarding whether each proposed map change is consistent with the comprehensive plan and other applicable adopted plans. The recommendation shall be based on the reasons articulated by Committee members voting in the majority, and the recommendation shall be developed as determined in the Committee's *Rules of Procedure*. In addition to plan consistency, Committee members may also consider other matters deemed appropriate by the Committee, which may include but are not limited to:

- (1) Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood;
- (2) Suitability of the subject property for uses permitted by the current versus the proposed district;
- (3) Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the City; and
- (4) The availability of adequate school, road, parks, wastewater treatment, water supply and stormwater drainage facilities for the proposed use.

12.9.19 Action by the Governing Body

Before taking action on a zoning map change request, the governing body shall consider any recommendations of the Planning Committee, Director of Development Services or designee, and of staff agencies, and shall conduct a public hearing where interested parties may be heard.

- (1) Notice and public hearing requirements shall be in accordance with Section 12.3., Notice and Public Hearings.
- (2) Continuances may be granted before action on the request.
- (3) Following the public hearing, the governing body may approve the request, deny the request, or send the request back to the Planning Committee for additional consideration.
- (4) In adopting or rejecting a zoning map change, the governing body shall adopt a statement describing whether its action is consistent with the Comprehensive Plan and why the action is reasonable and in the public interest. The governing body may adopt the statement furnished by staff or agencies, including but not limited to the Director of Development Services or the Planning Committee, or it may formulate its own statement.
- (5) The map change request approved by the governing body may include changes from the request presented. Changes to a development plan may be made upon the proffer by the applicant of such changes.

- (6) Approval of a petition gives the applicant the ability to proceed with any additional required approvals.

12.9.20 Deviations from Approved Development Plans

- (1) **Significant Deviations:** The deviations from an approved development plan listed below are deemed significant and shall require that the entire plan be resubmitted for a zoning map change in accordance with the application requirements of this section, except as specified in paragraphs (2), (3), and (4) below. Deviations not listed below do not require a zoning map change unless they are otherwise deemed significant or substantial:
- (a) Increase by any amount in the number of residential units or approved density of residential projects in the overall project, except through use of the Affordable Housing Density Bonus;
 - (b) Decrease by more than twenty (20%) in total density in residential projects, except in the Downtown Overlay District or Mixed Use Residential District;
 - (c) Decrease by more than five (5%) in total density in residential projects located within the Downtown Overlay District or Mixed Use Residential District, unless that decrease results from the application of Development Code requirements relating to size or design;
 - (d) In a nonresidential or mixed-use development, a cumulative expansion adjacent to a residential district or use that exceeds five (5%) of total building floor area or four thousand (4,000) square feet, whichever is greater, or a cumulative decrease that exceeds twenty percent (20%) of total building floor area if creating or maintaining intensity was important to the zoning map determination;
 - (e) With regard to development plans that were approved before commitments, or committed elements, were required to be identified on development plans, any change to a development plan depiction that exceeds current Code requirements for setbacks, open space, buffer width or planting, recreation areas, tree protection areas, landscaped areas, or limitations on height, unless such depiction is clearly identified as "conceptual" or "illustrative";
 - (f) Elimination or reduction of a dedication of right-of-way, greenway, or other public component;
 - (g) A change in the proposed phasing of the project where phasing plans are required or are commitments;
 - (h) A change in use category (for example, residential to office, office to commercial, commercial to industrial, as described in Chapter 4, Base Zoning Districts), if limitations on the number, range, or types of uses were proposed with the development plan and the governing body limited its consideration of uses to those uses;

- (i) A significant change in the number, location or configuration of access points to the development, or a significant change to previously shown public road improvements;
- (j) A significant change in the location, square footage, or size of a building adjacent to a residential district or use;
- (k) A significant change in the architectural design;
- (l) If a Traffic Impact Analysis was originally submitted, a change that would increase the total vehicle peak hour trips by ten percent (10%) or greater. If a Traffic Impact Analysis was not originally submitted, a change that would require a Traffic Impact Analysis;
- (m) An increase of more than five percent (5%) in impervious surface area; and
- (n) Any change that is otherwise prohibited under this Code.

(2) Changes to Portions of Development Plans

Where a deviation is proposed from a portion of a development plan, for example from one phase or zoning district, the Director of Development Services may consider cumulative deviations and the impact of such portion on the overall development in a significance assessment. If the deviation is deemed significant, the Director of Development Services shall determine whether it requires a zoning map change to all or only a portion of the development plan.

(3) Changes Following Transfers to Residential Owners

Where a deviation is proposed from a development plan and a portion of the development has been transferred to a residential owner, the Director of Development Services may exclude such residential portion from a significance assessment if it meets all minimum Code requirements. If the deviation is deemed significant, the Director of Development Services shall determine whether it requires a zoning map change to all or part of the development plan.

(4) Changes Required by Code or Other Law

Notwithstanding the other requirements of this section and except as stated below, a site plan or preliminary plat shall deviate from an approved development plan to conform to the requirements of a new Code or other law adopted after development plan approval, and a zoning map change shall not be required. Exceptions are: 1) where the development plan is vested by the appropriate governing body pursuant to the statutory vested rights procedure; and 2) as authorized under Sections 1.7, Previously Approved Subdivisions, and 1.8, Previously Issued Building Permits. Under such exceptions, the site plan or preliminary plat may conform to the approved development plan.

12.9.21 Coordination with Site Plans

Approval of a zoning map change with a development plan shall enable the owner or an authorized agent of the owner to prepare a site plan in conformance with the zoning map change and development plan for the property. The site plan may be prepared for the entire property or phases of the development project in accordance with Section 12.11, Site Plan Review.

12.9.22 Subsequent Amendments

When the governing body has taken action on a zoning map change, no new application may be filed for a similar zoning map change on the subject parcel(s) until at least twelve (12) months have elapsed since the date of the previous action. The Director of Development Services may waive this requirement if the application has been significantly modified or there has been a significant change in the facts or circumstances since the previous request.

12.10 Subdivision

12.10.1 Applicability

Subdivision means all divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street right-of-way or a change in existing street right-of-way. Subdivision approval shall be required before the division of land (for any purpose) into two (2) or more parcels, except as specified in Section 12.10.2., Actions Exempt from Subdivision Requirements.

All requirements imposed through a plat shall run with the land and shall apply against any owner, subsequent owner, or occupant.

12.10.2 Actions Exempt from Subdivision Requirements

The following shall not be considered “subdivision” and are exempt from the provisions of this section:

- (1) The combination or recombination of lots, or portions of lots, previously created and recorded, if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this Code;
- (2) The division of land into parcels greater than ten (10) acres if no street right-of-way dedication is involved;
- (3) The public acquisition of strips of land for the widening or opening of streets or the location of utility right-of-way; and
- (4) The division of a tract in single ownership of which the entire area is no greater than two (2) acres into not more than three (3) lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of this Code.

- (5) No review or approval is required for exempt subdivisions; however, Director of Development Services certification of exempt status is required. Exempt subdivision plats shall be stamped by the Director of Development Services noting their exemption, and signed so that they can be recorded by the Chancery Clerk.

12.10.3 No Subdivision without Plat Approval

- (1) No subdivision of land within the jurisdiction of the City may be filed or recorded with the Chancery Clerk until it has been submitted to and approved by the Planning Committee, Director of Development Services, or Director's designee as specified herein and until the approval is entered on the face of the plat.
- (2) Any person who, being the owner or the agent of the owner of any land located within the jurisdiction of this Code, subdivides land in violation of this Code, or transfers, or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this Code, and recorded in the Office of the Chancery Clerk, shall be guilty of a misdemeanor and shall be punishable, accordingly, by fine or imprisonment.
- (3) The description by metes and bounds in the instrument of transfer, or other document used in the process of selling or transferring land, does not exempt the transaction from penalties. The City may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land and the court shall, upon appropriate findings, issue an injunction and order for compliance.

12.10.4 Pre-Application Conference

All applicants considering petitioning for a preliminary plat may schedule a pre-application conference with the Director of Development Services, or designee to discuss the procedures, standards, and regulations required for subdivision approval in accordance with the provisions of this Code.

12.10.5 Sketch/Concept Plans

It is recommended, but not required, that the applicant applying for subdivision approval submit a sketch/concept plan for review by the Director of Development Services or designee. This plan should, in simple sketch form, show the proposed layout of streets, lots and other features in relation to existing conditions.

12.10.6 Preliminary Plat Requirements

An application for preliminary plat review shall be submitted in accordance with Sec. 12.2, Application Requirements. Preliminary plat documents showing the proposed subdivision of the land into lots shall contain, as a minimum, the information listed below unless the Director of Development Services makes the determination that less detailed information is adequate for review. No processing or review of a preliminary plat will proceed without the required information. Detailed standards and specifications for design and construction are available in the Specifications Manuals adopted by the City of Tupelo, as identified in the Appendix.

12.10.7 General Requirements

- (1) Title Block - Name of project, labeled: Preliminary Plat; submittal and revision dates; sheet size thirty-six by forty-eight (36" x 48") maximum with index map and match lines if multiple sheets are required; graphic scale (not smaller than one (1) inch to two hundred (200) feet on a standard engineering scale); north point; property identification number; vicinity map clearly establishing the location of the proposed project, with readily recognizable landmarks, stream buffers, flood plain boundaries, property zoning districts and any overlay zones.
- (2) Name, address and telephone number of owner, applicant and agent; name, address and telephone number of surveyor, engineer, landscape architect, or other designer, with seal.
- (3) In addition, State or Federal regulations may require that additional information be supplied to the Development Services Department as a part of a submittal.
- (4) The preliminary plat shall be provided to the Development Services Department in both hard copy and digital form. The plat drawing shall be in a generally accepted engineering file format and shall be georeferenced to the Mississippi East State Plane Coordinate System.

12.10.8 Existing Conditions

The preliminary plat shall show the following information on existing conditions:

- (1) Boundary of the property, using metes and bounds with angle of departure of adjacent properties;
- (2) Site total area and amount to be developed;
- (3) Lot lines;
- (4) Existing building footprints and square footage;
- (5) Improvements, such as loading areas, parking areas, driveways, alleys, streets, sidewalks, etc.;
- (6) Any septic tanks, drain fields and wells;
- (7) Culverts and other subsurface features;
- (8) All utility easements, above and below ground, including information on type, size, and elevation;
- (9) Railroads;
- (10) Cemeteries;
- (11) Setback requirements;

- (12) Zoning of the site and adjacent zoning, including any overlay zones;
- (13) Land use of the site and adjacent land uses including major improvements within fifty (50) feet of the subject property;
- (14) Adjacent property owners;
- (15) Adjacent streets, including name and right of way width.
- (16) Topographic contours at two (2) foot intervals for all property within one hundred (100) feet of a proposed development area and topographic contours at five (5) foot contour intervals for the remainder of the property including a source reference;
- (17) Locations and names of water features including shorelines, water bodies, intermittent and perennial streams;
- (18) A specimen tree survey;
- (19) Locations of drainage ways, stream buffers, special flood hazard areas, wetlands and wetland buffers;
- (20) Locations of vegetation, rock outcrops, steep slope areas, natural inventory sites and historic inventory sites.
- (21) A list of any conditions applied to the property as part of any previous approvals.
- (22) Existing features shall be clearly distinguishable from proposed development.

12.10.9 Proposed Conditions

- (1) Street Improvements (Public and Private): Location of improvements or widenings, names, widths of rights of way and pavement, design criteria including sight triangles and a typical cross section; Traffic Impact Analysis, if required.
- (2) Pedestrian Circulation: Location of sidewalks and other pedestrian ways including dimensions and surfacing, along streets and other locations; provision of crosswalks.
- (3) Landscaping: Location of all plant materials and other landscaping features, including calculations of amount required and the amount provided; the number, size, and description of plant materials, fences, walls and berms; provisions for screening specialized features, such as storage areas; calculations of the amount of tree coverage required and the amount and percentage of tree coverage provided by tree preservation and tree replacement; calculation of the amount of street trees and the amount provided by tree preservation and tree installation; a land disturbance tree survey; and the location and a description of all proposed and required tree protection measures.
- (4) Grading: Location of vegetation to be retained including approximate sizes and protection measures to be used; a depiction of contours at two (2) foot intervals, supplemented with

planned floor elevations on each lot that is wholly or partially within a Special Flood Hazard Area or that contains less than six thousand (6,000) square feet, and spot elevations when necessary, including location, description, and size of any retaining walls; dimensions of stream buffers.

- (5) Utilities: Location and width of all easements and rights of way for water, sewer, storm sewers, gas, electric, communication facilities, or any other utility facility.
- (6) Storm Drainage: Location and description of temporary and permanent storm drainage pipes and swales; amount of impervious surface; provisions for erosion and sedimentation controls, including retention and detention facilities; as well as professionally sealed engineering calculations used in the design.
- (7) Water and Sewer: Location and description of public and private water and sanitary sewer improvements including connections to existing facilities and maintenance provisions.
- (8) Property Dedications/Reservations: Location and description of dedicated or reserved properties under public or private ownership including the boundaries, size, purpose, future ownership and maintenance provisions for the property. This category includes but is not limited to thoroughfares, rail corridors, greenways, recreation facilities, open space and common areas.

12.10.10. Specific performance standards as required by other Articles of the Development Code

- (1) Within Special Flood Hazard Areas: demonstration that the subdivision will minimize flood damage through the location and construction of all public utilities and facilities, including water and sewer systems; adequate drainage in accordance with adopted standards to reduce exposure to flood hazards.
- (2) Traffic Impact Analysis: A traffic impact analysis (TIA) pursuant to Section 12.5, Traffic Impact Analysis (TIA) may be required.

12.10.11 Preliminary Plat Approval

- (1) Applicability: A preliminary plat shall be required for all major subdivisions of land within the jurisdiction of this Code, defined as any development of more than lots or any subdivision of land that would include public dedication of land, streets, utility extensions, or required stormwater management facilities. A preliminary plat is optional for minor subdivisions, defined as development of six (6) lots or less with no public dedication of land, no streets, no utility extensions, and no required stormwater management facilities.
- (2) Subdivision approval requires the submission of both preliminary and final plats and full interagency review for conformity with the requirements of this Code and other development-related Codes.

- (3) Where site plans, as required by this Code, serve as preliminary plats for subdivisions, they shall satisfy these submission requirements in addition to those required for zoning compliance.

12.10.12 Public Notice

As applicable, notification of preliminary plat review shall be sent to groups including, but not limited to, the following:

- (1) Tupelo Public Schools;
- (2) Historic Preservation Commission (if applicable);
- (3) If the applicant for the preliminary plat is seeking approval of any of the modifications to standards specified in Section 12.11., Major Site Plans, that are granted at the discretion of a governing body, any organization or individual that is registered to receive notice pursuant to Registration to Receive Notice, and is located within one thousand (1,000) feet of the site under consideration. Notice shall be provided to each organization or individual in the manner specified in its registration information, which may be first class mail, electronic mail, or other manner offered by the Director of Development Services.

12.10.13 Action by the Director of Development Services

Staff review agencies shall complete review and transmit comments back to the Director of Development Services or designee. If required corrections are minor, as determined by the Director of Development Services or designee, the Director of Development Services or designee shall schedule the subdivision for review at the next Planning Committee meeting; if required corrections are extensive, the applicant shall correct the plat before it is scheduled for Planning Committee review. If the applicant fails to submit revised plats in response to the comments of the staff review agencies within ninety (90) days of receiving such comments from the Director of Development Services, or designee, the Director of Development Services may consider the application to have been withdrawn by the applicant.

12.10.14 Action by the Planning Committee

- (1) The preliminary plat documents, along with the review comments, will then be considered by the Planning Committee at a public meeting at which a representative of the subdivider or any other interested person may attend.
- (2) After hearing a recommendation from the Director of Development Services or designee, the Planning Committee shall approve the plat as is, approve it subject to additional corrections, defer action for additional information and corrections, or disapprove it. Approved or corrected preliminary plats shall be stamped and signed denoting approval. If the preliminary plat is disapproved or deferred, the Planning Committee shall notify the applicant of the reasons for such disapproval or deferral.
- (3) The preliminary plat shall be approved by the Planning Committee if it meets the following criteria:

- (a) Conforms with all the provisions and requirements of applicable adopted plans, including but not limited to the Comprehensive Plan, greenways plans, or transportation plans;
- (b) Conforms with all the provisions and requirements of this Code; and
- (c) Conforms with all the provisions and requirements of other applicable Codes not included in this Code.

12.10.15 Reservation of Public Facility Sites and Lands

- (1) The review of preliminary plats may be delayed by no more than forty-five (45) calendar days if the proposed subdivision contains sites which appear in an adopted plan or policy documents as a future site for a public school or other public facility, recreation area, park, greenway or other open space. During preliminary plat review, the appropriate entity responsible for future site acquisition shall be given forty-five (45) calendar days from date of plat submission to decide if it wishes to reserve the site.
- (2) If the site is not to be reserved, the subdivision shall be processed in the normal fashion. If the agency wishes to reserve the site and specifies such intent in writing to the Director of Development Services or designee, the subdivision shall not be approved without the reservation.
- (3) Public school authorities shall have eighteen (18) months from the date of preliminary plat approval to acquire the site by purchase, by receipt of dedication, or by initiating condemnation proceedings. If, at the end of the eighteen (18) month period, none of the above actions has occurred, the subdivider may consider the land free from reservation and apply for revised preliminary plat approval for its use.
- (4) Public agencies other than schools shall have one hundred-twenty (120) calendar days from the date of preliminary plat approval to arrange for site acquisition for public facilities by option to purchase, by purchase, by receipt of dedication, or by initiating condemnation proceedings. If, at the end of the one hundred-twenty (120) day period, none of the above actions has occurred the subdivider may consider the land free from reservation and apply for revised preliminary plat approval for private use of the property.

12.10.16 Issuance of Required Permits

Upon preliminary plat approval, the applicant may apply for the required permits to begin site work and the installation of improvements. All site work shall be performed in compliance with the requirements of this section and other applicable regulations of the city, county, and state. No required permit may be issued until the required preliminary plat is approved.

12.10.17 Preliminary Plat Revisions

Minor revisions to approved preliminary plats, which reflect the same basic street and lot configuration as used for the original approval, may be approved by the Director of Development Services or designee. Significant changes to an approved preliminary plat, as determined by the

Director of Development Services or designee, shall be resubmitted for review and approval as if it is a new application.

12.10.18 Continuing Validity of Preliminary Plat

An approved preliminary plat shall retain its validity for four (4) years, if:

- (1) A permit to begin development pursuant to the plat, such as a land disturbance permit, a building permit, or an improvement permit has been issued and has remained continuously valid thereafter; and,
- (2) Building or land disturbing activity has begun on the property.
- (3) The issuance of a building permit or a certificate of compliance within a phase of a project shall not extend the validity of the preliminary plat for the unbuilt portions of that phase or any future phases of the project for which building permits have not been issued.

12.10.19 Modification of Design Standards and Improvement Requirements

- (1) In approving the preliminary plat, the City Council may modify any of the design standards or improvement requirements set forth in Chapters 6, 8, and 9, where necessary to make the approved preliminary plat conform to any master land use plan which the City Council has approved for a planned unit development on the property.
- (2) In all other cases, and only upon the request of the applicant, the City Council may modify any of the design standards or improvement requirements set forth in Chapters 6, 8, and 9, upon finding the following:
 - (a) That the topography or other physical conditions of the subject property are such that compliance with these standards and requirements would cause an unusual and unnecessary hardship on the applicant, above and beyond what other subdividers would face;
 - (b) That the modifications will not have the effect of nullifying the intent and purposes of this Code.
 - (c) Where any such modification is granted, the reasons therefore shall be stated in the minutes of the City Council meeting at which final action is taken on the preliminary plat.

12.10.20 Development Agreement Required Prior to Construction

- (1) Procedure: After the preliminary plat is approved by the City Council, and final construction drawings are approved by the Department of Development Services, the developer and owner, if applicable, must enter into a development agreement with and satisfactory to the Mayor and City Council relative to all required public and private improvements, payment of fees, required securities, certification of insurance, and any conditions placed on approval of the preliminary plat.

- (2) A draft development agreement shall be prepared by the City of Tupelo Department of Development Services. The draft agreement may be prepared and reviewed concurrently with the review of construction plans. The draft agreement shall reference the design incorporated within the approved construction drawings and shall be sufficient in form to assure the proposed construction methods and materials meet or exceed minimum standards established by the City of Tupelo. A draft development agreement shall be sent to the applicant for approval.
- (3) Upon acceptance of the agreement by the applicant, the draft development agreement shall be forwarded to the Mayor and City Council for approval and for execution by the Mayor or designee. If the applicant takes exception to the development agreement, a letter setting forth these items may be presented to the Mayor and City Council for consideration. The final plat may not be recorded until the development agreement is approved by the Mayor and City Council and executed by the Mayor or designee.
- (4) After the applicant has returned an executed copy of the development agreement, paid all applicable fees, provided the security and certificate of insurance, the Director of Development Services may sign the construction drawings and work may begin.

12.10.21 Effective Period of Approval

The applicant shall execute the approved Development Agreement within ninety (90) days of the date of approval of the Mayor and City Council. Any request for a time extension shall be submitted to the Department of Development Services at least sixty (60) days prior to the date of the appropriate City Council meeting. The time extension must be approved before the expiration of the preceding approval period.

12.10.22 Time Extension

It is agreed by the Developer and the City that the Development Agreement will become void unless the Developer commences construction within one (1) year from the effective date or obtains a time extension from the Mayor and City Council. Any request for a time extension shall be submitted to the Department of Development Services at least sixty (60) days prior to the date of the appropriate City Council meeting. The time extension must be approved before the expiry of the preceding approval period. The failure of the Developer to commence construction within one (1) year of the effective date will result in the approvals of the City Council, Planning Committee and other applicable boards and commissions being null and void.

12.10.23 Security Requirements

(1) General: In order to ensure that the work will be completed in accordance with approved construction drawings and applicable specifications, all public and private improvements proposed in conjunction with any subdivision must be covered by adequate security. The applicant shall post approved security with the City of Tupelo. The approved security shall be one or more of the types of security specified herein. Approved security shall be accompanied by a development agreement whereby the applicant agrees to make and install the improvements in accordance with the approved construction drawings and applicable specifications to ensure completion of the work.

- (2) **Types of Security:** Subject to the standards and requirements of this Article and of guaranteeing completion of improvements required by these regulations:
- (a) Cash that will be deposited in a liability account;
 - (b) Assignment of Certificate of Deposit that is to be held by the City as collateral to assure completion of project; or
 - (c) Irrevocable Standby Letter of Credit: The letter of credit shall be obtained at a financial institution acceptable to the City Attorney and show the City of Tupelo as beneficiary. The letter of credit shall be effective for one (1) year and automatically renewable for one-year periods with no effort on the part of the City. Should the financial institution decide not to renew the letter of credit, the institution shall notify the City in writing ninety (90) days prior to its expiration date by certified mail return receipt requested at which time the City can draw up to the full face value of the letter of credit. Any litigation concerning this letter of credit shall be held before a court of appropriate jurisdiction in Lee County, Mississippi.
- (3) **Amount of Security:** If the construction cost for internal improvements (within the property boundary) is estimated to be greater than one hundred-thousand (\$100,000), the Developer shall provide a financial security instrument for one hundred-thousand (\$100,000). If the construction cost for internal improvements (within the property boundary) is estimated to be less than one hundred-thousand (\$100,000), the Developer shall be required to provide a financial security instrument for the estimated cost of the public and private improvements. A financial security instrument shall be provided for the full amount of the estimated cost of the external public improvements (outside the property boundary). A financial security instrument may be revised during the contract period if approved by the Mayor and City Council.

12.10.24 Release of Security

Upon completion of all required and proposed improvements as specified in the development agreement, the City of Tupelo will authorize the release of ninety (90) per cent of the security. The final ten (10) per cent will be released at the end of the required warranty period. Security may be partially released or reduced upon the Director of Development Services' certification of the percentage of the estimated cost of improvements that has been completed and accepted. No more than three (3) such partial releases will be granted.

12.10.25 Acceptance of Improvements for City Maintenance

- (1) **Inspections:** The installation of improvements shall in no case bind the city to accept any such improvements for public maintenance and operation thereof, until the proper departments have inspected and accepted the improvements as meeting all applicable requirements and the terms of the Development Agreement; provided, however, that the city shall not accept drainage easements for maintenance except as provided herein.
- (2) Street and storm sewers which are properly constructed, enclosed, and subterranean within the right of way of any dedicated street shall be accepted for public maintenance.

“Major drainage easements” as defined in Chapter 2 of the Tupelo Development Code shall be accepted for public maintenance.

- (5) The city shall accept an irrevocable license to enter upon all other surface water drainage systems for emergency work to prevent or alleviate property damage or public damage, or to alleviate the failure of the subdivider or developer to maintain the drainage system which has or could result in property damage to the public, public danger or detrimentally affect public health.
- (6) The city will not accept such systems for maintenance, which shall remain the responsibility of the subdivider or property owner. The Development Agreement shall specify which improvements may be accepted for city maintenance and which shall remain private responsibilities.

12.10.26 Warranty Period Following Acceptance

- (1) If the Director of Development Services determines that the installed improvements meet all applicable city standards and all other conditions and requirements specified in the Development Agreement have been met and final construction plans are approved, then a Certificate of Initial Acceptance shall be issued, and the plat shall be recorded according to the procedures in Section 12.10.27. of this code.
- (2) A one (1) year warranty period begins with the first working day of the calendar year after the Certificate of initial acceptance is issued. During this warranty period any deficiencies in accepted improvements that are documented by the City Engineer or other city departments shall be the responsibility of the developer or subdivider to correct or repair.
- (3) The City shall not be obligated to maintain any improvements until one (1) year without defects has passed and a Certificate of Final Acceptance shall be issued by the Director of Development Services. Failure to make required repairs within three (3) months of the date on which the developer or subdivider is notified of the deficiency shall result in the revocation of any building permits issued to the developer or subdivider, and in the suspension of further issuance of additional building permits for construction on lots within the subdivision owned by the developer or subdivider.
- (4) The city may perform the necessary repairs, drawing upon the security provided under the development agreement, and if necessary, may also make every effort to collect payment from the subdivider or developer by all legal means including the placement of liens on lots owned by the subdivider or developer.

12.10.27 Final Plat Approval

- (1) **Applicability:** A final plat shall be required for all subdivision of land within the jurisdiction of this Code except as allowed under Mississippi General Statute.
- (2) **Conformity with Preliminary Plat:** The final plat shall conform to the approved preliminary plat, if any, and may constitute only that portion of the preliminary plat which is proposed for recordation.
- (3) **Submittal Requirements:**
 - (a) When the installation of required site improvements is nearing completion, the subdivider shall submit a final plat for review and approval.
 - (b) The final plat shall be drawn in accordance with Mississippi Statute Section 17-1-23, Subdivision Regulations; standard land surveying and mapping practices; and city engineering standards.
 - (c) **Endorsements on Final Plats.** The following certificates shall be placed upon all final plats:
 - (d) Certificate of accuracy and mapping signed by a registered surveyor;
 - (e) Certificate of ownership and dedication signed and notarized, including all individuals, partnerships, and corporations, and lenders with financial security interests;
 - (f) Attorney's certification of ownership for any final plat involving a right-of-way dedication signed and notarized; and
 - (g) Review Officer's Certification.
- (4) **Action by the Director of Development Services:** Staff review agencies shall complete review and transmit comments back to the Director of Development Services. The Director of Development Services shall approve the plat as is, defer action for additional information and corrections, or disapprove it. If the final plat is disapproved or deferred, the Director of Development Services or designee shall notify the applicant of the reasons for such disapproval or deferral. The final plat shall be approved by the Director of Development Services or designee if it meets the following criteria:
 - (a) Conforms with all the provisions and requirements of applicable adopted plans, including but not limited to the Comprehensive Plan, greenways plans, and transportation plans;
 - (b) Conforms with all the provisions and requirements of this Code; Conforms with all the provisions and requirements of other applicable Codes or Ordinances not included in this Code;

- (c) Conforms with the approved preliminary plat, if any;
- (d) Conforms with completed and approved construction drawings for public infrastructure, where such construction drawings are required by this Code or other applicable Code or Ordinance; and
- (e) Is accompanied by a bond or other performance guarantee deemed adequate in amount and form by the requesting department, if required infrastructure, including but not limited to stormwater, street, or water and sewer improvements, has not been completed in accordance with approved construction drawings, and if the department responsible for such infrastructure has consented to final plat approval pending its completion.

12.10.28 Issuance of Certificate of Compliance

(1) **Necessary Infrastructure:** If a final plat for a project has been approved prior to completion of stormwater facilities, water and sewer utilities, streets, sidewalks, and recreation facilities, certificates of compliance shall not be issued and permanent water or sewer service shall not be provided for buildings within the platted area until completion of required improvements except as further provided below.

(a) If the director or designee of the department responsible for acceptance or regulation of the required infrastructure determines in his/her reasonable discretion that delay will improve the quality of the infrastructure or will conserve resources, he/she may allow certificates of compliance to be issued. In such case, the responsible director or designee may require supplementation of the performance guarantee(s) that was provided prior to final plat approval, and shall, in addition, set a date by which the necessary infrastructure shall be completed.

(b) Examples of improvement for which delays may be granted include completing stormwater facilities after they are no longer needed as sedimentation basins; delaying final asphalt application on road surfaces for a period of time to detect problems; delaying construction of turn lanes until traffic thresholds are reached; delaying sidewalk segments as individual houses are built; and delaying construction of infrastructure that requires coordination with other planned infrastructure.

(2) **Other Improvements:** For other required improvements, if the responsible department director or designee determines the completion of the improvement prior to issuance of a certificate of compliance is not practicable, and sufficient justification for the delay has been shown, certificates of compliance may be issued if an adequate performance guarantee is provided. In such event, the responsible department director or designee shall determine the time period within which the improvement must be completed.

12.10.29 Expiration of Approval

The sub-divider shall have one hundred-eighty (180) days after approval to file and record the final plat with the Office of the Chancery Clerk before the approval becomes void.

12.10.30 Waivers

For purposes of financing or refinancing development, it is sometimes necessary to subdivide a previously approved development complex (including but not limited to a shopping center, an office or industrial park, or a housing complex) originally located on a single parcel into two (2) or more lots. The Planning Committee may by affirmative majority vote, vary or modify the requirements of this Code and the dimensional, parking, landscaping, and buffering provisions of this Code to permit such subdivision to occur subject to making the following findings:

- (1) A valid, approved site plan exists for the overall complex;
- (2) The complex, in its entirety, satisfies all Code requirements; and
- (3) Each final plat created contains a note stating that the owners acknowledge that the individual parcel is a part of the named development complex, and that deeds of easement, restrictive covenants, and/or other legal documents necessary for the perpetual functioning of the development complex shall be executed and recorded with the final plat.

12.11 Site Plan Review

12.11.1 Applicability

The site plan review process assures that future development will occur in a planned and orderly manner. All proposed development that will affect the exterior of a structure shall be subject to the site plan review process. In some cases, proposed interior changes will also be subject to site plan review. For instance, an applicant may propose interior changes as part of a change in use (e.g., from overnight accommodations to retail sales). A change in use may result in different standards for parking, landscaping, or buffers which must then be included in the application.

12.11.2 Types of Site Plans

There shall be three types of site plans with differing levels of approval required for each. The criteria for establishing which type of site plan and the corresponding level of approval for each are indicated below:

12.11.2.1 Basic Site Plans

- (1) Criteria: Projects shall be considered basic site plans if they meet the following standards.
 - (a) They involve the development of not more than one (1) single-family detached dwelling or one duplex dwelling; or
 - (b) They involve accessory structures less than twenty-five (25%) of the size of principal buildings; or

- (c) They involve additions to an existing single family residential structure; or
 - (d) They involve non-residential additions less than twenty-five (25%) of the size of the principal building.
- (2) Approval. Basic site plans shall be approved by the Director of Development Services or designee.

12.11.2.2 Minor Site Plans

- (1) Criteria: Projects that do not meet the criteria for basic or major site plans shall be considered minor site plans if they meet the following standards.
- (a) Minor site plans shall request no modifications of any of the standards established in this Code other than those which may be allowed through the compatible use review process;
 - (b) They do not involve the development of any use that requires the issuance of a flexible use permit.
- (2) Approval: Minor site plans shall be approved by the Director of Development Services with the concurrence of any departments who would be affected by the plan, such as building, fire, and public works.

12.11.2.3 Major Site Plans

- (1) Criteria: Projects that meet one (1) or more of the following standards shall be considered major site plans if:
- (a) They request modifications of a standard established in this Code that requires flexible use approval;
 - (b) They involve the development of any use that requires the issuance of a flexible use permit; or
 - (c) They include multi-family housing other than upper story residential units, or more than three commercial spaces.
- (2) Approval: Major site plans shall be reviewed by all relevant city departments and the Planning Committee. The Planning Committee shall make a recommendation to the City Council on the project. The City Council shall be the approving authority.
- (3) Pre-Application Conference: Any applicant petitioning for a site plan may schedule a pre-application conference with the Director of Development Services or designee to discuss the procedures, standards, and regulations required for site plan approval in accordance to the provisions of this Code.

- (4) **Site Plan Submittal Requirements:** An application for site plan review shall be submitted in accordance with Sec. 12.2, Application Requirements. Site Plan documents shall contain, at a minimum, the information listed below unless expressly exempted by another provision of this Code or the Director of Development Services makes the determination that an adequate review may be done with less detailed information. No processing or review of a site plan shall proceed without the required information. Detailed standards and specifications for design and construction are available from City and State agencies, as applicable.
- (a) **Title Block:** Name of project; submittal and revision dates; index map and match lines if multiple sheets are required; graphic scale (not smaller than one (1) inch to two hundred (200) feet on a standard engineering scale); north point; property identification number; vicinity map clearly establishing the location of the proposed project, with readily recognizable landmarks; and any overlay zones.
 - (b) Name, address, and telephone number of owner, applicant and agent; name, address, and telephone number of surveyor, engineer, landscape architect, or other designer, with seal.
 - (c) Existing Conditions, including:
 - i. Boundary of the property, using metes and bounds with angle of departure of adjacent properties;
 - ii. Site size and amount to be developed;
 - iii. Lot lines;
 - iv. Building foot prints and square footage;
 - v. Improvements, such as loading areas, parking areas, driveways, alleys, streets, sidewalks, etc.;
 - vi. Any septic tanks, drain fields and wells; culverts and other subsurface features;
 - vii. All utility easements, above and below ground, including information on type, size, and elevation;
 - viii. Railroads;
 - ix. Setback requirements;
 - x. Zoning of the site and adjacent zoning, including any overlay zones;
 - xi. Land use of the site and adjacent land uses including major improvements within fifty (50) feet of the subject property;
 - xii. Adjacent property owners;

- xiii. Adjacent streets, including name and right of way width;
 - xiv. Topographic contours at two (2) foot intervals for all property within one hundred (100) feet of a proposed development area and topographic contours at five (5) foot contour intervals for the remainder of the property including a source reference;
 - xv. Locations and names of water features including shorelines, water bodies, intermittent and perennial streams, drainage ways, stream buffers, floodways, floodway fringes, wetlands and wetland buffers;
 - xvi. A tree coverage and specimen tree survey;
 - xvii. Steep slope areas;
 - xviii. Natural Inventory sites; and
 - xix. Historic Inventory Sites.
- (d) A list of any conditions applied to the property as part of any previous approvals.
- (e) Existing features shall be clearly distinguishable from proposed development.
- (f) Proposed Conditions, including:
- i. Buildings: Location, footprint, entrances, area by floor (square feet), height, finished floor elevation, setback requirements defining building envelope. When building descriptions have been included in a zoning approval, the site plan shall include building elevations or renderings as well as any other information needed to support the requirements of the zoning map change approval.
 - ii. Site Service Areas and Facilities: Location of loading, trash/recycling handling and other facilities including height, footprint and screening.
 - iii. Internal Vehicular Circulation and Parking: Location of drives and driveway aisles (with radii); parking spaces, including number of spaces required and number provided; the number of disabled parking spaces required and number provided; the number of spaces for bicycle parking if applicable; a description of the pavement structure; and a lighting plan if lighting is proposed.
 - iv. Street Improvements (Public and Private): Location of improvements or widenings, names, widths of rights of way and pavement, design criteria including sight triangles and a typical cross section, and Traffic Impact Analysis if applicable.
 - v. Pedestrian Circulation: Location of sidewalks, trails, crosswalks, and/or other pedestrian ways including dimensions and description of surface materials.

- vi. Landscaping: Location of all plant materials and other landscaping features, including calculations of amount required and the amount provided; the number, size, and description of plant materials, fences, walls, and berms as applicable; provisions for screening specialized features such as storage areas; calculations of the amount of tree coverage required and the amount and percentage of tree coverage provided by tree preservation and tree replacement; calculation of the amount of street trees and the amount provided by tree preservation and tree installation; a land disturbance tree survey if applicable; and the location and description of all proposed and required tree protection measures.
 - vii. Grading: Location of vegetation to be retained including approximate sizes and protection measures to be used; a depiction of contours at two (2) foot intervals, supplemented with spot elevations when necessary, including location, description, and size of any retaining walls; and dimensions of stream buffers. Delineation of the proposed limits of disturbance shall be required.
 - viii. Utilities: Location and width of all easements and rights of way for water, sewer, storm sewers, gas, electric, communication facilities, or any other utility facility.
 - ix. Storm Drainage: Location and description of temporary and permanent storm drainage pipes and swales; amount of impervious surface; and professionally sealed engineering calculations used in the design.
 - x. Water and Sewer: Location and description of public and private water and sanitary sewer improvements including connections to existing facilities and maintenance provisions.
 - xi. Property Dedications/Reservations: Location and description of dedicated or reserved properties under public or private ownership including the boundaries, size, purpose, future ownership, and maintenance provisions for the property. This category includes but is not limited to streets, rail corridors, greenways, recreation facilities, open space, and common areas.
- (g) Specific performance standards as required by other parts of the Development Code.
- (h) A site plan shall conform to an approved development plan if applicable.
- (i) In addition, State or Federal regulations may require that additional information be supplied to the Development Services Department as a part of a submittal.
- (j) A digital copy of the site plan shall be submitted in DWG or DXF format by email or storage media. The submitted drawing shall be drawn to the Mississippi State Plane East Coordinate System, North American Vertical Datum 1988, Feet. Submitted files shall contain, at a minimum, parcels, rights-of-way, ground control points, street centerlines, street names, easements, and construction setbacks.

12.11.3 Review

- (1) Coordination with Compatible or Flexible Use Review
 - (a) Applications for compatible or flexible use permits may be submitted concurrently with a site plan. However, decisions shall be rendered with a separate motion.
 - (b) Dimensional variance requests may be proposed with site plan applications or identified during the site plan review process. Such variances will be considered according to procedures for variances, Section 12.16.
- (2) Action by the Director of Development Services: The Director of Development Services shall compile all staff comments on the site plan to determine adherence to all applicable requirements of this Code. A copy shall be provided to the applicant.
 - (a) The Director of Development Services shall be responsible for approving all simplified site plans.
 - (b) The Director of Development Services shall provide a copy of all staff comments on major site plans to the Planning Committee.
- (3) Action by the Planning Committee: The Planning Committee shall recommend approval, approval with modifications, or denial to the appropriate governing body or may continue a major site plan applicable, including a Traffic Impact Analysis where applicable.
- (4) Action by the City Council: The City Council shall approve, approve with modifications, deny, or continue the major site plan.

12.11.4 Site Plan Review Criteria

- (1) The following evaluations shall be made during the site plan review process. Site plans that meet the following criteria shall be approved by the approving authority:
 - (a) The site plan complies with all applicable Code requirements, including design standards in Chapter 6;
 - (b) The site plan complies with all previously approved applicable City plans, such as the comprehensive plan;
 - (c) The site plan displays a site design and development intensity appropriate for and tailored to the unique natural characteristics of the site, which may include the location of significant wooded areas, specimen trees, wetlands, steep slopes, Natural Inventory sites, and floodplains;
 - (d) For nonresidential and multifamily projects, the site plan displays the location of trash handling, recycling, grease bins, and other waste related facilities employed in the normal operation of the use, as applicable;

- (e) The site plan includes adequate and clearly marked parking areas and pedestrian and vehicular access points;
- (f) The site plan includes an adequate design of traffic patterns, traffic control measures and street pavement areas and has provisions for maintaining traffic flows and reducing negative impacts of traffic on nearby properties;
- (g) The site plan complies with site construction specifications;
- (h) The site plan includes adequate stormwater facilities, water supply, sanitary sewer service, fire protection, street signs, and street lighting, as applicable, as evidenced by compliance with department standards, specifications, and guidelines;
- (i) The site plan complies with requirements for easements or dedications; and
- (j) Where a TIA has been submitted, the site plan either accommodates the anticipated traffic generated by the development, or it proposes adequate traffic mitigation measures within the development project.

12.11.5 Modifications Required for Approval

Site plans requiring modifications for approval shall be returned to the Director of Development Services within ninety (90) days or the site plan application shall be considered withdrawn. An extension period may be granted by the Director of Development Services at the written request of the applicant.

12.11.6 Corrected Site Plans

Before final approval, the applicant shall submit the corrected site plan to the Director of Development Services or designee, which addresses any comments made as part of the approval process. The director or designee shall determine if the corrections adequately meet the stated concerns and either approves the corrected basic or minor site plan, or presents the corrected major site plan to the Planning Committee or City Council as required.

12.11.7 Development Agreement Required Prior to Construction

- (1) After the major site plan is approved by the City Council, and final construction drawings are approved by the Department of Development Services, the developer and owner, if applicable, must enter into a development agreement with and satisfactory to the Mayor and City Council relative to all required public and private improvements, payment of fees, required securities, certification of insurance, and any conditions placed on approval of the major site plan.
- (2) A draft development agreement shall be prepared by the Department of Development Services. Preparation and review of the draft agreement may be concurrent with review of construction drawings. The draft agreement shall reference the design incorporated within the approved construction drawings and shall be sufficient in form to assure the

proposed construction methods and materials meet or exceed minimum standards established by the City of Tupelo.

- (3) All requirements imposed through a site plan development agreement shall run with the land and shall apply against any owner, subsequent owner, or occupant.
- (4) The draft development agreement shall be sent to the applicant for approval. Upon acceptance of the agreement by the applicant, the draft development agreement shall be forwarded to the Mayor and City Council for approval and for execution by the Mayor or designee. If the applicant takes exception to the development agreement, a letter setting forth these items may be presented to the Mayor and City Council for consideration.
- (5) The final site plan may not be recorded, nor may any permit for construction on the site be issued, until the development agreement is approved by the Mayor and City Council and executed by the Mayor or designee.
- (6) After the applicant has returned an executed copy of the development agreement, paid the development fees, and provided the security and certificate of insurance, the Director of Development Services may sign the construction drawings and issue the necessary permits.

12.11.8 Effect and Duration of Site Plan Approval

Approval of the site plan, final construction drawings, and development agreement shall authorize the applicant to proceed with any applications for building permits and other permits and approvals required in order to develop the property in conformity with the approved site plan. A permit, certificate, or other approval may be issued for any building or structure on the property, and a building or structure on the property may be occupied, only where the applicant has complied with the approved site plan, development agreement, and final construction drawings and made all dedications and improvements required by this Code, except where the non-compliance is the subject of a minor change to the site plan approved by the Director of Development Services pursuant to Section 12.11.12. below.

- (1) An approved site plan shall become null and void under the following conditions:
 - (a) If a building permit is not applied for within six (6) months following the date of Site Plan approval; or
 - (b) If work on the project is not commenced within six (6) months following the date of issuance of the building permit; or
 - (c) If work on the project is not completed within two (2) years following the date of issuance of the building permit.

12.11.9 Extensions

Upon the written request of the applicant, and after good cause is shown, the Development Services Director may grant one (1) extension of an additional thirty days within which a building permit may be issued. Any further extensions will require review and approval by the Planning Committee.

12.11.10 Continuing Validity of Site Plans

An approved site plan shall retain its validity for four (4) years, if:

- (1) A permit to begin development pursuant to the site plan, such as a land disturbance permit, a building permit, or an improvement permit, has been issued and has remained continuously valid thereafter; and,
- (2) Building or land disturbing activity has begun on the property.
- (3) The issuance of a building permit or a certificate of compliance within a phase of a project shall not extend the validity of the site plan for the unbuilt portions of that phase or any future phases of the project for which building permits have not been issued.

12.11.11 Effect of Expiration

If the period of validity expires, no building permit shall be issued until a new application for a Site Plan is approved.

12.11.12 Changes to Approved Site Plans

- (1) Upon the written request of the applicant, the Director of Planning and Development may approve the following minor changes to an approved site plan without further review by the Planning Committee or City Council:
 - (a) Expansion of an existing building or structure, or construction of an accessory building or structure, representing ten percent or less of the floor area of the existing or proposed buildings or structures on the lot or project of the approved site plan;
 - (b) Alteration to any approved element of the building elevation, expansion of an approved building or structure, or addition of an accessory building or structure, representing no more than ten percent (10%) of the floor area of the buildings or structures approved on the site plan;
 - (c) Expansion or changes in off-street parking representing twenty percent or less of the area of the existing or proposed parking;
 - (d) Minor field alterations to accommodate physical site conditions involving interior features of the site design, including relocation of the buildings or uses shown on the approved site plan, which represents the same general building relationships, topography, landscaping, and minimum utility standards; or

- (e) Where the approved plant materials are unavailable, substitution of the approved plant materials for plant materials which will accomplish the intent of Chapter 9 of this Code and the approved site plan.
- (2) Standards of Review: Before approving any such change, the Director of Planning and Development shall make the following findings:
- (a) That all changes conform to the minimum required standards for the zoning district in which the property is located;
 - (b) The off-street parking is not reduced below the minimum required or increased above the maximum permitted by Chapter 8 of this Code;
 - (c) That all additions, alterations, and expansions shall be compatible with the existing or approved buildings, structures, and parking area;
 - (d) That any additional required landscaping shall be comparable to the approved site plan and shall follow City specifications and guidelines;
 - (e) That the effect of the landscaping, buffers, or screening on the site, or on the approved site plan, is not diminished;
 - (f) That the number of access points to public streets is neither increased or substantially relocated;
 - (g) That the circulation pattern provides for the safe, controlled, and orderly flow of pedestrians and vehicles;
 - (h) That the change will result in better or equal performance of the overall objectives of the approved site plan and specific zoning district classification;
 - (i) That the changes do not otherwise violate any provision of this Code or other applicable laws;
 - (j) That the use and development of the property is otherwise in full compliance with the requirements of this Code.
 - (k) Modifications to an approved Major Site Plan beyond the scope of this Section shall require review and approval by the Planning Committee and City Council according to the requirements of Section 12.11.6 for new site plans.

12.11.13 Site completion and Release of Security

(1) Release of Security

Upon completion of all required and proposed improvements as specified in the development agreement, the City of Tupelo will authorize the release of ninety (90) per

cent of the security. The final ten (10) per cent will be released at the end of the required warranty period. Security may be partially released or reduced upon the Director of Development Services' certification of the percentage of the estimated cost of improvements that has been completed and accepted. No more than three (3) such partial releases will be granted.

(2) Issuance of Building Permits

After the final approval, the approved plans shall be stamped and dated by the Director of Development Services, or designee, and supplied to appropriate departments. Building permits and any other permits required may be issued for the project upon receipt of the approved copy. No building permit shall be issued until the required site plan is approved.

(3) Inspections of Required Improvements.

Inspections during the installation of site improvements shall be made by the entity responsible for such improvements as required to certify compliance with approved site plans. No improvements shall be accepted for maintenance by the governing jurisdiction unless and until the requirements regarding public improvements have been met.

(4) Issuance of Certificate of Compliance

Improvements specified in the approved plan shall be made prior to issuance of a certificate of compliance unless an extension of compliance has been prepared and approved in conformance with the requirements of this Code.

12.12 Compatible and Flexible Use Permits

12.12.1 Applicability

- (1) Compatible and flexible uses within the zoning districts are considered to be uses which may be appropriate in a particular zoning district but because of their potential for incompatibility with adjacent uses shall require individual review.
- (2) A compatible use permit shall be required for all compatible uses as set forth in the use table in Section 4.16, Permitted Use Table, and as may be specified elsewhere in this Code. Compatible use permits require approval by the Director of Development Services.
- (3) A flexible use permit shall be required for all flexible uses as set forth in the use table in Section 4.16, Permitted Use Table. Flexible use permits require approval by the Planning Committee.
- (4) Projects with elements that require both compatible and flexible use permits may have the use permits consolidated into a single hearing for a flexible use permit before the

Planning Committee so long as all required findings for both the compatible and flexible use permits are made.

12.12.2 Application Process

(1) Pre-Application Conference

All applicants applying for a flexible use permit shall schedule a pre-application conference. Applicants applying for a compatible use permit may schedule a pre-application conference if they choose.

(2) Application Requirements.

All applications for compatible and flexible use permits shall be submitted in accordance with Sec. 12.2, Application Requirements.

(3) Notice and Public Hearings

Once the application has been determined complete, the Director of Development Services or designee shall schedule a public hearing and give public notice as set forth in Sec. 12.3, Notice and Public Hearings.

(4) Action by the Director of Development Services

The Director of Development Services or designee shall prepare a report that reviews the compatible or flexible use permit for compliance with requirements of this Code. A copy shall be provided to the Planning Committee or the City Council, as appropriate, and the applicant.

(5) Approval of a Compatible Use Permit

Prior to scheduling the public hearing on the compatible use permit, the corresponding site plan shall be ready for action by the approving authority. After conducting the public hearing, and hearing the recommendations of the Development Services staff, the Director of Development Services or designee shall:

- (a) Approve the request;
- (b) Approve the request with conditions;
- (c) Deny the request; or
- (d) Continue the hearing.
- (e) Conditions: The Director of Development Services may place conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use. The conditions shall become a part of the compatible use permit approval.

Violations of any of the conditions shall be treated in the same manner as other violations of this Code.

- (f) Transferability: A compatible use approval is not transferable from one property to another, but may be transferred to a successor-in-interest to the property, unless specifically prohibited.

(6) Approval of a Flexible Use Permit

Prior to scheduling the public hearing on the flexible use permit, the corresponding site plan shall be ready for action by the approving authority. After conducting the public hearing, and hearing the recommendations of the Director of Development Services or designee as appropriate, the Planning Committee shall:

- (a) Approve the request;
- (b) Approve the request with conditions;
- (c) Deny the request; or
- (d) Continue the hearing.
- (e) The Planning Committee may place conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use. The conditions shall become a part of the flexible use permit approval. Violations of any of the conditions shall be treated in the same manner as other violations of this Code.
- (f) Transferability: A flexible use approval is not transferable from one property to another, but may be transferred to a successor-in-interest to the property, unless specifically prohibited.

(7) Criteria for Approval of Compatible and Flexible Use Permits

Applications for compatible or flexible use permits shall be approved only if the approving authority finds that the use as proposed or the use as proposed with conditions:

- (a) Is in harmony with the area and is not substantially injurious to the value of properties in the general vicinity;
- (b) Conforms with all special requirements applicable to the use;
- (c) Will not adversely affect the health or safety of the public; and

12.12.3 Coordination with Variances

Applications for variances may be submitted concurrently with requests for compatible and flexible use permits. Variance requests which would normally be considered in reference to the requirements of section 12.13 may be included in the compatible or flexible use review process.

12.12.4 Coordination with Zoning Map Change Applications

An application for a compatible or flexible use permit may be reviewed concurrently with a zoning map change application. However, decisions shall be rendered with separate motions.

12.12.5 Re-submittals

An application for a compatible or flexible use permit which has been denied may be resubmitted prior to the lapse of one (1) year only if there has been a change in circumstances, as determined by the Director of Development Services.

12.12.6 Amendments

Alterations or revisions to approved compatible or flexible uses may be approved by the Director of Development Services if the compatible or flexible use still meets the intent of the standards established with the original approval. Significant modifications to approved compatible or flexible uses, as determined by the Director of Development Services, shall require submittal of a new application.

12.12.7 Expiration

A compatible or flexible use permit shall become null and void in any of the following cases:

- (1) If a site plan is not approved within twelve (12) months of the date of permit approval;
- (2) If an approved site plan or building permit expires;
- (3) If a building permit is not issued within two (2) years of the date of approval, in cases where a site plan is not required;
- (4) If a substantial violation of the conditions of the permit occurs, as determined by the Director of Development Services.

12.13 Sign Permit

12.13.1 Applicability

Certain signs shall be allowed without sign permits as set forth in Chapter 10, Signs. Signs requiring permits shall be allowed in accordance with the following procedures.

12.13.2 Application Requirements

- (1) Except as provided in Chapter 10, Signs, no sign may be erected, moved, enlarged, or altered except in accordance with this Code and pursuant to the issuance of a sign permit.
- (2) A sign permit application shall be submitted in accordance with Sec. 12.2., Application Requirements.

12.13.3 Action by the Director of Development Services

Upon review of the application, the Director of Development Services shall approve the sign permit provided the sign meets all requirements of this Code and all other applicable electrical and Mississippi Building Code requirements.

12.13.4 Post Approval Action

- (1) Inspection: The applicant shall request an inspection by the appropriate inspector after installation of the signs. If the signs are found to be in compliance, the applicant shall receive a copy of the approved inspection report.
- (2) Expiration: The sign permit shall be null and void if sign installation is not completed within six (6) months or the signs are not in conformance with the approved application.
- (3) Transferability: Valid sign permits may be assigned to a successor as holder of a business license for the same premises.
- (4) Revocation: The sign permit shall be revoked if a sign is found to be in violation of the requirements of this Code or other applicable electrical or Mississippi State Building Code requirements.

12.13.5 Temporary Sign Permits

A temporary sign permit shall be issued in accordance with Section 10.6., Temporary Signs Requiring Permits.

12.13.6 Appeal.

Final action on a sign permit may be appealed in accordance with Section 12.16, Appeal of Administrative Decision.

12.13.7 Common Signage Plan

- (1) Applicability: Prior to the issuance of a sign permit for one (1) or more buildings or businesses in a project for which major site plan review is required as provided in Section 12.11.5., a common signage plan shall be required, except as follows:
 - (a) Internally-oriented signs not visible from the public right-of-way shall not be required to submit an approved common signage plan; and

- (b) Applications for temporary sign permits shall not be required to submit an approved common signage plan.

(2) Action by the Director of Development Services

- (a) Upon hearing a recommendation from the City Engineer and all other applicable departments, the Director of Development Services shall approve the common signage plan provided the plan meets all the requirements of this section.
- (b) The Director of Development Services may allow modifications to the lettering style to accommodate state and federally registered trademarks (logos) if the Director of Development Services feels that the intent of the common signage plan requirements shall be maintained. In allowing the modifications, the Director of Development Services may limit the logo size. The requirements of a common signage plan shall apply to all businesses within a related project even if the properties have been subdivided.
- (c) Minor alterations in sign locations resulting from unexpected conditions on the site may be approved by the Director of Development Services.

(3) Revisions and Amendments

Revisions or amendments to the common signage plan shall require documentation from all tenants on the property prior to approval. Signs erected after the effective date of this Code and subsequently made nonconforming because of an amendment to a common signage plan shall be brought into compliance with the amended plan within six (6) months of approval of the amended plan.

(4) Appeal

Final action on a common signage plan may be appealed in accordance with Section 12.17, Appeals.

12.14 Temporary Use Permit

12.14.1 Applicability

Temporary uses occurring on property outside of the public right-of-way shall be allowed upon the issuance of a temporary use permit, except as set forth in Chapter 7, Accessory and Temporary Uses.

12.14.2 Application Requirements

A temporary use permit application shall be submitted in accordance with Sec. 12.2, Application Requirements.

12.14.3 Action by the Director of Development Services.

- (1) After receiving the application, the Director of Development Services shall have up to thirty (30) days to review the application.
- (2) Upon hearing recommendations from all appropriate departments, the Director of Development Services shall approve the issuance of a temporary use permit subject to the following:
 - (a) No lighting or electrical service shall be provided without an electrical permit;
 - (b) No temporary use structure shall be erected without a building permit;
 - (c) No temporary use structure shall block fire lanes or pedestrian or vehicular access;
 - (d) The site of the temporary use shall be cleared of all debris at the end of the temporary use. All temporary structures shall be cleared from the site within five (5) days after the use is terminated;
 - (e) Written permission of the property owner for the temporary use shall be provided;
 - (f) Adequate parking shall be provided, considering both the required parking for other uses and the parking for the proposed temporary use;
 - (g) Adequate traffic control measures shall be provided;
 - (h) Adequate provisions for trash disposal and sanitary facilities shall be provided; and
 - (i) When appropriate, adequate provisions for crowd control shall be provided.
 - (j) Temporary use permits may be renewed one time by the Director of Development Services unless other renewal standards are specified in Chapter 7, Accessory and Temporary Uses or in other provisions of this section.

12.14.4 Revocation of a Temporary Use Permit

A temporary use permit shall be revoked if the Director of Development Services or designee finds that the terms of the permit have been violated or that there is a hazard to the public health, safety or welfare.

12.14.5 Appeal

Final action on a temporary use permit may be appealed in accordance with Section 12.16, Appeals.

12.15 Home Occupation Permit

12.15.1 Applicability

A home occupation as defined in Chapter 2 of this Code shall require a permit.

12.15.2 Application Requirements

A home occupation application shall be submitted in accordance with Sec. 12.2, Application Requirements.

12.15.3 Action by the Director of Development Services

Upon review of the application, the Director of Development Services shall approve the home occupation permit, provided the home occupation meets all requirements of Section 7.7. of this Code.

12.15.4 Revocation

The home occupation permit shall be revoked if the home occupation is found to be in violation of the requirements of this Code.

12.15.5 Appeal

Final action on a home occupation permit may be appealed in accordance with Section 12.17, Appeal of Administrative Decision.

12.16 Variances and Administrative Adjustments

12.16.1 Compatibility Variance

The Director of Development Services may grant variances to certain requirements of this Code, in harmony with the general purpose of these regulations, as follows:

- (1) A variance of fifteen to thirty percent (15% to 30%) of any regulated dimension may be allowed if the request is found to be compatible with similar structures in the immediate vicinity, as determined by a finding that the requested dimension or feature is within the range of the affected dimension on other properties within the context, as provided in the Compatibility Checklist, Section 12.4.2 or;
- (2) A variance of fifteen to thirty (15% to 30%) of any regulated dimension may be allowed where special conditions applicable to the property in question would make the strict

enforcement of the regulations impractical or result in a hardship in making reasonable use of the property, or

Where other characteristics of the proposed use of property are found to support and advance the goals of the Comprehensive Plan, as incorporated in the Development Review Checklist, to a degree that exceeds the impact of the requested variance.

- (3) Compatibility variances may be considered as part of the site plan review process, but must be separately approved.

12.16.2 Flexibility Variance

- (1) The Planning Committee may grant variances of greater than thirty percent (30%) of any regulated dimension in the following circumstances:
 - (a) If the request is found to be compatible with similar structures in the immediate vicinity, as determined by completion and review of the compatibility section of the Development Review checklist; or
 - (b) Where special conditions applicable to the property in question would make the strict enforcement of the regulations impractical or result in a hardship in making reasonable use of the property; or
 - (c) Where necessary for reconstruction, rehabilitation, or restoration of structures that are individually listed or are contributing structures within an historic district; or
- (2) Where other characteristics of the proposed use of property are found to support and advance the goals of the Comprehensive Plan, as incorporated in the Development Review Checklist, Section 12.3, to a degree that exceeds the impact of the requested variance.
- (3) Flexibility variances may be considered as part of the site plan review process but must be separately approved.
- (4) The Planning Committee may waive certain requirements when authorized to do so by provisions adopted as a part of this Code.
- (5) No variance shall be granted that would have the effect of allowing a use not permitted in Table 4.2., Permitted Use Table.

12.16.3 Pre-Application Conference

All applicants seeking a variance shall schedule a pre-application conference with the Director of Development Services or designee to discuss the procedures, standards, and regulations required for variance approval in accordance with the provisions of this Code.

12.16.4 Application Requirements

An application for a variance shall be submitted in accordance with Sec. 12.2, Application Requirements.

12.16.5 Notice and Public Hearings

Once the application has been determined complete, the Director of Development Services shall schedule a public hearing and give public notice as stated in Sec. 12.3, Notice and Public Hearings.

12.16.6 Burden of Proof

The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Planning Committee to reach the conclusions set forth below, as well as the burden of persuasion on those issues.

12.16.7 Action by the Director of Development Services

- (1) For compatibility variances, each decision shall be accompanied by a finding of fact by the Director of Development Services which specifies the reasons for the decision.
- (2) For flexibility variances, the Director of Development Services shall provide the Planning Committee with a copy of the application and all relevant materials pertaining to the request prior to the public hearing.

12.16.8 Action by the Planning Committee

- (1) Each decision shall be accompanied by a finding of fact by the Planning Committee which specifies the reasons for the decision.
- (2) A decision of the Planning Committee to approve a flexibility variance requires an affirmative vote by three-fifths (3/5ths) of the members of the Committee.
- (3) The Planning Committee may approve the request, deny the request, or continue the request. In approving the variance, the Planning Committee may prescribe reasonable and appropriate conditions which will ensure that the use will be compatible with adjacent properties and will not alter the character of the neighborhood.

12.16.9 Findings

- (1) In granting any variance, the Planning Committee shall make the following findings:
 - (a) That special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts;

- (b) That the special conditions or circumstances or practical difficulties do not result from the actions of the property owner or applicant, their agent, employee, or contractor. Errors made by such persons in the development, construction, siting or marketing process shall not be grounds for a variance except in cases where a foundation survey submitted to the City Engineer, or designee, before a contractor proceeds beyond the foundation stage has not revealed an error which is discovered later;
 - (c) That the strict enforcement of this Code would deprive the owner or applicant of reasonable use of the property that is substantially consistent with the intent of this Code;
 - (d) That the granting of a variance will not result in advantages or special privileges to the applicant or property owner that this Code denies to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief;
 - (e) That the variance shall not be materially detrimental to the health, safety or welfare of persons residing or working in the neighborhood. Consideration of the effects of the variance shall include but not be limited to, increases in activity, noise, or traffic resulting from any expansion of uses allowed by the variance;
 - (f) That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties; and
 - (g) That the variance will not result in the expansion of a nonconforming use.
- (2) In making the findings above, the Planning Committee shall use the Development Review Checklist to ascertain and give specific weight to the number and percentage of nearby properties that share characteristics for which the variance is requested by the applicant.
 - (3) Appeal from final action by the Planning Committee on a variance may be taken by filing a petition for *certiorari* with the Court.

12.16.10 Administrative Adjustment

- (1) **Applicability:** The Director of Development Services or designee shall be authorized to approve minor specified deviations as specified in Sec. 3.14.3., Action by the Director of Development Services, where, owing to special conditions, strict enforcement of the provisions of this Code would be physically impractical. The Director of Development Services may also grant administrative exceptions as specified in Section 6.2.2.
- (2) **Documentation Requirements:** No separate application is required for an administrative adjustment or exception.
- (3) **Action by the Director of Development Services:** The Director of Development Services shall have the authority to authorize the following administrative adjustments:
 - (a) A reduction of up to fifteen (15%) of the required front, side, or rear yard setback for any encroachments into the required setback as of the effective date of these regulations;

- (b) Minor adjustments to site plans consistent with the requirements of Sec. 12.11.14, Site Plan Amendments.
- (c) Minor deviations from development plans consistent with the requirements of Sec. 13.9.20., Deviations from Approved Development Plans and Sec. 3.7, Authority of Director of Development Services.
- (d) Any request for deviation from the provisions of this Code not listed above shall be reviewed as provided in Section 12.16., Variances.
- (e) Action on a request for administrative adjustment shall be made by notation on the plan document in which the adjusted element is described.

12.16.11 Administrative Adjustment Criteria

- (1) To approve an administrative adjustment, the Director of Development Services shall make an affirmative finding, based on the Development Review compatibility checklist and other information as necessary, that all of the following criteria are met:
 - (a) That granting the administrative adjustment will not have an adverse impact on land use compatibility;
 - (b) That granting the administrative adjustment will not materially and adversely affect adjacent land uses and the physical character of uses in the immediate vicinity of the proposed development because of inadequate buffering, screening, setbacks and other land use considerations; and
 - (c) That granting the administrative adjustment shall be consistent with the purposes and intent of this Code.

12.16.12 Appeals

Final action on an administrative adjustment by the Director of Development Services or designee may be appealed in accordance with Section 12.17., Appeals.

12.17 Appeal

12.17.1 Applicability

An appeal by any person aggrieved by a final order, interpretation or decision of the Director of Development Services or any administrative official authorized to make decisions in regard to the provisions of this Code may be taken to the Planning Committee, except as otherwise provided in this Code.

12.17.2 Procedure

An appeal of an administrative decision shall be taken by filing a written notice of appeal specifying the grounds for the appeal with the Director of Development Services and with the Planning Committee. The date and time of filing shall be entered on the notice.

12.17.3 Deadline for Submission of Application

An appeal of an administrative decision shall be filed with the Department of Development Services within three (3) days of receipt of the decision.

12.17.4 Notice and Public Hearings

If the action or decision being contested was made involved a public hearing, the Director of Development Services shall schedule a second public hearing at the next available Planning Committee meeting and give public notice as forth in Sec.12.3, Notice and Public Hearings.

12.17.5 Action by the Director of Development Services

The Director of Development Services shall transmit to the Planning Committee all the papers constituting the record upon which the action appealed from was taken.

12.17.6 Action by Planning Committee

- (1) The Planning Committee may reverse or affirm (wholly or partly) or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the Planning Committee shall have all the powers of the official from whom the appeal is taken.
- (2) If a motion to reverse or modify is not made, or fails to receive the affirmative vote of the three-fifths (3/5^{ths}) of the members necessary for adoption, then appeal shall be denied.
- (3) Any motion to overturn or modify a decision shall state the specific reasons or findings of fact that support the motion.

12.17.7 Effect of Appeal

- (1) An appeal shall stay all proceedings in furtherance of the action appealed, unless the administrative official from whom the appeal is taken certifies to the Planning Committee that, because of facts stated in the certificate, a stay would, in their opinion, cause imminent peril to life or property or that because the violation is transitory in nature a stay would seriously interfere with the effective enforcement of this Code. In that case, proceedings shall not be stayed except by order of the Planning Committee or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the administrative official.

- (2) An appeal shall not stop action lawfully approved (including construction activities authorized by a building permit); only actions presumed in violation of this Code are stayed.

12.17.8 Appeal of Planning Committee Action

Appeal of the Planning Committee action under this subsection may be taken by filing a notice with the Clerk of the City Council.