

Chapter 16.04

GENERAL PROVISIONS AND ADMINISTRATION

Sections:

- 16.04.010 Title**
- 16.04.015 Purpose**
- 16.04.020 Definitions**
- 16.04.030 Delegation of Powers to the Planning Commission and Planning Director**
- 16.04.040 Authorizations for Sale of Lots**
- 16.04.050 Hearings**
- 16.04.060 Appeals**
- 16.04.070 Fee Schedule**
- 16.04.080 Initiation of Proceedings by City**
- 16.04.090 Subdivisions of Existing Mobile Home Park and Manufactured Dwelling Parks**
- 16.04.100 Preapplication**
- 16.04.110 Two-Step Land Division Process**
- 16.04.120 Criteria for Tentative Approval of Partitions and Subdivisions**
- 16.04.130 Criteria for Final Plan Approval of Partitions and Subdivisions**
- 16.04.140 Applicable Standards**

16.04.10 Title

This title shall be the “Subdivision Ordinance of the City of Port Orford, Oregon” (Ord. 258 § 1, 1974)

16.04.015 Purpose.

Partitioning and subdivision regulations are enacted to accomplish the orderly division and development of land within the City of Port Orford to promote the public health, safety, and the general welfare of the City. This is accomplished through regulations and standards that govern the approval of plats for land divisions and land reconfiguration

including, but not limited to land partitions, subdivisions, replats and planned unit developments. (Ord. 2009-02 § 01, 2009)

16.04.020 Definitions.

As used in this title, unless the context requires otherwise:

“City” means the city of Port Orford, Oregon.

“Community water supply” means a source of water and distribution system, whether publicly or privately owned, which serves more than three single residences or other users for the purpose of supplying water for drinking, culinary or household uses.

“Contested case” means a proceeding in which the legal rights, duties or privileges of specific parties pursuant to the zoning and subdivision ordinances of the city and any orders or regulations pursuant thereto at which specific parties are entitled to appear and be heard.

“County” means the county of Curry, Oregon.

“Expedited Land Division” is a land division action that meets all of the criteria of ORS 197.360 and is subject to all of the provisions of ORS 197.360 – ORS 197.365.

“Hearing” means a quasi-judicial hearing held pursuant to notice and may include the taking of testimony under oath and the introduction of exhibits at the discretion of the hearings officers.

“Hearings officer” means a person or board or commission appointed by the city council to hear matters encompassed within this title and may include one or more such persons, boards or commissioners.

“Limited Land Use Decision” is a final decision or determination that is consistent with applicable provisions of the Port

Orford Comprehensive Plan, zoning and land development standards and is subject to approval or denial under the provisions of ORS 197.195.

“Lot” means a unit of land that is created by a subdivision of land.

“Major partition” means a partition which includes the creation of a road.

“Map” means a final diagram, drawing or other writing concerning a major partition.

“Minor partition” means a partition that does not include the creation of a street or road.

“Parcel” means a unit of land that is created by a partitioning of land.

“Partition” means either an act of partitioning land or an area or tract of land partitioned as defined in this section. “Partition land” means to divide land into two or three parcels of land within a calendar year, but does not include:

1. A division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots; or

2. An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with the minimum lot size requirements of the city zoning ordinance; however, if such adjustment involves a lot described by a recorded plat or map the adjustment of property lines must follow the replat procedure defined by this chapter.

“Plat” includes a final map, diagram, drawing, replat or other writing containing all the descriptions, locations, specifications, dedications, provisions and information concerning a subdivision.

“Replat” means and includes a final map, diagram or drawing of the reconfiguration of lots and easements of a

recorded plat and other writings containing all the descriptions, location, specifications, dedications and provisions and information concerning a recorded subdivision.

“Road” or “street” means a public or private way that is created to provide ingress or egress for persons to one or more lots, parcels, areas or tracts of land, excluding a private way that is created to provide ingress or egress to such land in conjunction with the use of such land for forestry, mining or agricultural purposes.

“Subdivide land” means to divide an area or tract of land into four or more lots within a calendar year when such area or tract exists as a unit or contiguous units of land under a single ownership at the beginning of such year.

“Subdivision” means either an act of subdividing land or an area or a tract of land subdivided as defined in this section. (Ord. 260-85 §§1, 2, 1985; Ord. 258 § 2, Ord. 258 § 3, 1974)

“Tentative plan” means the preliminary plat map and plans or the tentative plat map and plans indicating the proposed layout of the subdivision. The tentative plan includes the site plan and explanatory information submitted for preliminary approval. (Ord. 2009-02 § 02, 2009)

16.04.030 Delegation of Powers to the Planning Commission and Planning Director.

A. The Port Orford planning commission is delegated all lawful powers and functions of the city council of Port Orford with respect to the consideration, requirements and approval of all tentative plans and plats and final approval of all plans and plats of subdivisions, major partitions and planned unit developments, so far as the same pertains to plans and

plats of subdivisions, major partitions and planned unit developments.

B. The Port Orford planning director is delegated all lawful powers and functions of the city council of Port Orford with respect to the consideration, requirements and approval of all minor partitions.

C. Notwithstanding any requirements for appeals, the city council may upon its own motion review and affirm, modify or reverse any final decision of the Planning Commission and the Planning Director. In addition, at any time when the Planning Commission or the Planning Director may fail to act on any matter within the time as provided herein, or, if no time is provided, within a reasonable time, the city council may on its own motion or the motion of any interested party, intervene and take jurisdiction of such matter from the planning commission or the planning director, and render a determination in such matter. (Ord 258 § 3, 1974)

16.04.40 Authorization for Sale of Lots

A. No person shall divide land, except after the approval of such division pursuant to this ordinance.

B. No person shall sell any lot in any subdivision for which approval is required by this ordinance:

1. Until such approval is obtained, and
2. The plat of the subdivision has been acknowledged and recorded with the recording officer of the County.

C. No person shall negotiate to sell, advertise, solicit or promote to sell any lot in a subdivision until there is tentative approval. Prior to tentative approval, however, the owner or owner's agent may

obtain non-binding, fully refundable without "reservation" agreements.

D. When a subdivision has been granted tentative approval, the owner or owner's agent may negotiate and enter into binding sale agreements that are specifically conditioned upon final subdivision plat approval. In negotiating to sell a lot in a subdivision a person may use the tentative approval.

E. No person may sell any parcel or unit of land in a partition for which approval is required by this ordinance until such approval is obtained and the partition recorded. However, a person may negotiate to sell a parcel in a partition prior to the required approval of the partition, provided that the sale agreement is specifically conditioned upon final partition plat approval.

F. No person shall create a street or road for the purpose of partitioning or subdividing an area or tract of land without the appropriate partitioning or subdivision approvals of the City of Port Orford under this chapter.

G. No instrument dedicating land to public use shall be recorded unless the City Council has accepted the dedication. (Ord. 2009-02 § 04, 2009)

16.04.050 Hearings.

A. Notice.

Notice of hearing for a subdivision, major partition or planned unit development shall be mailed to the applicant, affected agencies, affected property owners and interested parties as set forth in Title 17, Section 17.04.100 Notice at least twenty (20) days before such hearing. (Ord.2009-02 § 05, 2009)

16.04.060 Appeals

A. Right of Appeal. Any ruling decision or order of the planning commission may be appealed to the city council by filing with the city clerk within thirty (30) days after the planning commission or planning director has rendered a decision. Nothing herein shall be construed as limiting the right of appeal from the city council in the manner provided by the Oregon Revised Statutes.

B. Persons Entitled to Appeal. Any interested person including any governmental agency having an interest in the matter may appeal to the city council. "Interested person" means one who has an interest that is directly affected by the ruling, decision or order, as contrasted to a general interest in the subject matter. The city council may dismiss any appeal, with or without a hearing that it finds is not brought by an interested party. (Ord 258 § 11, 1974)

16.04.070 Fee Schedule

A. General. In addition to the fees required by Oregon Revised Statutes, there shall be fees paid at the time of filing, the exact description and amount to be set by Resolution passed by the Common Council. (Ord. 2006-15 Amending Ord. 258 § XII, 2006)

16.04.080 Initiation of Proceedings by City

Nothing in this title shall be construed to prohibit the initiation of any matter pertaining to this title, by the planning director, planning commission or city council. (Ord 257 § b13(1), 1974)

16.04.090 Subdivision of Existing Mobile Home Parks and Manufactured Dwelling Parks.

Conversions of existing mobile home parks and manufactured dwelling parks (lawfully approved before July, 2001) in order to allow for individual ownership interest in the lot on which the dwelling is located are subject to ORS 92.830 - 92.845. ((Ord 2009-02 § 09, 2009)

16.04.100 Preapplication.

Prior to filing an application for partitioning of land, subdivision, reconfiguration of platted lots, or lot line adjustment, the owner or authorized agent of such land shall initially submit a sketch map of sufficient accuracy to determine the procedures that apply so that staff can respond regarding application procedures. The applicant shall comply with all applicable sections of this ordinance. (Ord. 2009-02 § 10, 2009)

16.04.110 Two-Step Land Division Process.

A. Subdivision and Partition Approval Through Two-Step Process. Applications for subdivision or partition approval shall be processed through a two-step process including tentative approval and final approval:

1. Tentative Approval. The tentative map and plan shall be approved before the final plan and plat can be submitted for approval.

a. All land division shall comply with Section 16.04.120 Criteria for Tentative Approval of Partitions and Subdivisions at the time of tentative approval.

b. Standards and procedures set forth in Chapter 16.12, Minor Partitions and applicable portions of 16.20 Final Plats shall apply to all minor partitions.

c. Tentative approval of any major partitions, subdivisions, and planned unit development shall be considered at a public hearing. The findings of compliance with the criteria specified in Section 16.04.120 of this chapter, and applicable conditions of approval for compliance with Chapters 16.08 Subdivisions and Mayor Partitions, 16.16 Planned Unit Developments, and 16.20 Final Plats shall be spelled out by the Planning Commission at the time of tentative approval.

2. Final Plan and Final Plat Approval. Final plan and plat approval shall comply with this chapter and all the conditions of the tentative approval and the requirements for the final plat approval set forth in this ordinance as follows:

- a. Minor Partitions: Chapters 16.12 and 16.20.
- b. Subdivisions and Major Partitions: Chapters 16.08 and 16.20.
- c. Planned Unit Developments: Chapters 16.08, 16.16 and 16.20. (Ord. 2009-02 § 11, 2009)

16.04.120 Criteria for Tentative Approval of Partitions and Subdivisions.

Tentative approval for partitioning or subdivision may be granted when the Planning Commission provides findings that all of the following criteria are met:

A. Compliance with ORS Chapter 92. Conformance with ORS 92 shall be a condition of all approvals.

B. Conformance to City Plans and Policies. All proposals shall conform with

the intent of the Comprehensive Plan, and with provisions of this Ordinance, and other adopted plans and policies including, but not limited to, the Port Orford Design Standards, taking into consideration existing and planned streets, parks and recreation areas, public facilities, and specific requirements of the underlying zone, any applicable overlay zone requirements, and all requirements of tentative approval.

C. Future Potential Redivision Plan.

When partitioning or subdividing units of land into lots greater than twice the area of the minimum lot size allowed by the underlying zone in residential zones, or greater than one acre in commercial or industrial zones, or where the area proposed to be divided includes only part of the unit of land in a single ownership, the Planning Commission shall find the following:

1. That the lots are of such size, shape and orientation as to facilitate future redivision in accordance with the requirements of the zone as set forth by the applicable zoning in this ordinance.

2. Those street right-of-way alignments will be capable of serving future development of the property, and connect to adjacent properties, including existing and planned rights-of-way to serve the property and adjacent properties.

D. Properties Adjacent to the City Limits. When property that is proposed for development is adjacent to the City Limits, the city shall provide notice of the proposed development to the Curry County Planning Department for purposes of coordination at the same time that notice is provided to adjacent property owners.

E. Access to Lots. Each lot or parcel shall be capable of being served by a public or private road or street that provides satisfactory vehicular access to an existing street in compliance with City of Port Orford Design Standards approved by the City Council. The Planning Commission shall assure that the proposed ingress and egress are adequate for fire protection and other services.

F. Continuation of Existing Streets.

1. **Abutting New Lots.** The Planning Commission may require that existing streets abutting new lots be continued through dedication of an easement, improvement of an existing right-of-way or dedication of improved right-of-way on the property, provided the requirement that is imposed on the applicant in regards to providing easements, right-of-way, or dedications of streets is roughly proportional in nature and extent to the impact that can result from the proposed partitioning or subdivision. In such cases, the Planning Commission shall make findings as to the elements that make the easements, right-of-way, or dedications “roughly proportional” to the impacts of the partitioning or subdivision that are being allowed. The Planning Commission shall assure that any street that is proposed to be accepted as a dedicated street by the City connects directly to a City-maintained street. If proposed streets do not connect directly to City-maintained streets, the Planning Commission shall recommend that street dedications not be accepted for maintenance by the City.

2. **Continuation of Street Existing in Adjoining Properties.** A partition or subdivision that does not abut an existing street system may provide for

the continuation of a street in adjoining property through dedication of an easement, improvement of an existing right-of-way, or dedication of improved right-of-way on the property. In such cases, the Planning Commission shall make findings that the requirement that is imposed on the applicant in regards to providing easements, right-of-way, or dedications of streets is roughly proportional in nature and extent to the impact that can result from the proposed uses for the new lots, if and when fully developed. The number of lots that could ultimately be created, topography, lot size and shape, zoning requirements and the layout of properties within the vicinity are pertinent.

G. Adequate Utilities. All lots created through partitioning and subdivision shall have adequate public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to prevent or minimize flood damage to the extent practicable to standards set forth in the City of Port Orford Design Standards approved by the City Council.

H. Buildable Lots. The Planning Commission must make a determination that all lots that are created for residential purposes are buildable lots, and that the public welfare and safety will be served by the configuration of the lots with respect to size, shape, topography and natural features.

I. Erosion and Runoff. The Planning Commission should require conditions so that development activity will not accelerate runoff or make other changes in the natural landscape that will exacerbate existing runoff or erosion patterns that will negatively affect the public welfare of the

safety of neighboring properties as a result of the development.

J. Flood Areas. All partitions and subdivisions shall be designed based on the need to minimize the risk of flood damage. No new building lots shall be created entirely within a flood way. All new lots shall be buildable without requiring development within the flood way. Development in a 100-year flood plain shall comply with Federal Emergency Management Agency requirements, including filling to elevate structures above the base flood elevation. The applicant shall be responsible for obtaining such approvals from the appropriate agency before City approval of the final plat.

K. Base Flood Elevation. Where new lots are being created in or near areas prone to inundation, and the base flood elevation has not been provided or is not available from another authoritative source, the applicant shall provide the base flood elevation prepared by a licensed civil engineer certified and qualified to evaluate flood elevations. The applicant shall employ the person or team preparing the Flood Elevation Report.

L. Geologic Hazards: At the time of tentative plat approval, all partition and subdivision proposals in geologic hazard areas shall provide a geologic hazard assessment in compliance with the requirements of Chapter 17.16.080, so that there can be a determination that the lots being created are buildable lots.

M. Wetlands: At the time of tentative plat approval, there must be a determination that all lots being created are buildable lots with respect to the location of wetlands. When property is shown as having wetlands on the City of Port Orford's Local Wetlands Inventory or

the Approved Wetlands Inventory of the Oregon Department of State Lands, a wetlands delineation by an approved wetland delineator may be required so that this determination can be made.

N. Riparian Areas. At the time of preliminary plat approval, there must be a determination that all lots being created are buildable lots with respect to the location of riparian areas. A delineation of riparian areas on the properties where there are streams identified as wetland areas may be required so that this determination can be made as addressed in Section 16.04.120 (J) and subject to Section 17.12.080 Shoreland overlay zone (9-SO).

O Jurisdictional Concerns. Jurisdictional concerns of state and federal agencies including, but not limited to the Oregon Department of Fish and Wildlife (ODFW), Oregon Department of Transportation (ODOT), Department of State Lands (DSL), the State Department of Forestry, the Department of Environmental Quality (DEQ), Department of Geology and Mineral Industries

(DOGAMI), Oregon State Parks, and the Federal Emergency Management Agency (FEMA) shall be considered when applicable, and the applicant shall be required to show that they can accommodate or alleviate jurisdictional concerns prior to final plat approval. (Ord. 2009-02 § 20, 2009)

16.04.130 Criteria for Final Plat Approval of Partitions and Subdivisions.

A. Conformity with Tentative Approval. The partition or subdivision plat must be in substantial conformity with

the provisions of the tentative approval, and with the requirements of ORS 92.

B. Private Streets, Roads and Accesses.

Streets, roads and accesses held for private use and indicated on the tentative plat map of such partition or subdivision must be approved by the City.

C. Dedication of Property for Public Use.

The partition or subdivision plat must include a dedication to the public of all common improvements, including but not limited to streets, roads, parks, sewage disposal and water supply systems where such dedication was made a condition of the approval of the tentative plat and plan.

D. Explanations of Common Improvements.

Explanations of all common improvements required as conditions of tentative approval of the partition or subdivision must be referenced on the partition or subdivision plat for recording.

E. Certification from Special Districts.

A certification from any fire or forest protection district, irrigation district, drainage district, water control district, water improvement district or district improvement company that appears to be located within the boundaries of the proposed partition or subdivision that the partition or subdivision shall state that the partition or subdivision is entirely excluded

from the district or company, or that it is included within the district or company fo

purposes of receiving services and subject to the fees and other charges of the district or company.

F. Drainage: All partition and subdivision proposals shall provide for adequate surface water drainage in compliance with the City of Port Orford

Design Standards approved by the City Council. Water quality or quantity control improvements may be required.

G. Provision for Improvements.

Improvements including streets, sidewalks, water distribution lines, sewage collection lines, land surface drainage electrical service, telephone service, T.V. cable service, fire protection service or any other service, utility or improvement required by the City as a condition of approval shall be the responsibility of the applicant. It shall also be the responsibility of each applicant to complete such construction, installation or repair as a condition of, and prior to, final approval or recording of a subdivision plat or partition map for subject property. In the alternative, and subject to approval of the City Council prior to final plat approval, the applicant may enter into an agreement with the City, which agreement is hereinafter referred to as a "Subdivision Improvement Guarantee and Performance Bond," which shall specify the following:

1. Specify the responsibilities of the applicant, and the date by which all required improvements and repairs shall be completed.
2. State that the agreement is for the benefit of the local government and not the ultimate purchasers of individual lots, units, or real estate interests.
3. State that the City staff and professionals retained by the City may come onto the property and inspect and complete work as necessary.
4. State that if the work is not completed by the date specified the City may recover as damages an amount equal to the amount of the improvement guarantee and performance bond as provided pursuant to a Subdivision Improvement Guarantee and

Performance Bond described within this section.

5. State that the City of Port Orford may at its own option complete all or part of any such improvements or repairs, and recover the full cost and expenses, and in either case shall have the right to collect from the applicant any court costs, attorneys' fees or damages incurred by the City of Port Orford by reason of failure of the applicant to provide all specified improvements, or by reason of any breach of any such subdivision improvement guarantee and performance bond as may be incurred in the collection of any amount due from said applicant to the City of Port Orford, whether or not suit or action be commenced, including any costs or attorneys' fees incurred in any appeal.

6. State that the applicant shall pay a fee to reimburse to the City of Port Orford its costs and expenses in authorizing, preparing and administering any agreement in respect thereto, the amounts of which shall be determined from time to time by resolution of the City Council of the City of Port Orford.

7. The City Attorney shall approve the agreement between the applicant and the City.

H. Improvement Guarantee and Performance Bond. When 70% of the improvements have been completed, if the City Council authorizes deferral of completion of improvements, the applicant shall execute a subdivision improvement guarantee and performance bond in form approved by the City of Port Orford, and in an amount at least 150% of the cost of the remaining improvements as estimated by the City Manager/Engineer, payment and performance of which will be secured

by means of one or more of the following:

1. A guarantee upon such bond executed by a surety company authorized to transact business in the State of Oregon, in form and manner approved by the Port Orford City Attorney.

2. A cash deposit, which may be in the form of a cash deposit deposited with the City of Port Orford, or may be in the form of a certificate of deposit or other negotiable instrument for the payment of money, drawn on and payable on demand by, a bank or savings and loan association doing business in the State of Oregon, which certificate shall be approved by the City Manager/Engineer, and which shall be endorsed, assigned or otherwise irrevocably transferred to the City of Port Orford and placed in the possession of the City of Port Orford during the period in which it shall remain as security for such subdivision improvement guarantee and performance bond. The City may, in its discretion, require acknowledgment of such transfer from the issuer of such a certificate.

3. A duly recorded first mortgage upon real property having a value equal to at least 150 percent of the amount of such improvement guarantee and performance bond. It shall be the responsibility of such applicant to provide a mortgagee's policy of title insurance and to pay any other expenses incurred with respect to the creation of such a mortgage interest.

4. At the option of the City Council, specify such other security as in its discretion the Council shall see fit.

I. Local Improvement District.

Although the City of Port Orford shall be under no obligation to form a local improvement district or otherwise to provide for the construction of such improvements, if the City of Port Orford shall elect to permit the applicant to apply for the formation of a local improvement district for the construction of all or part of such improvements, and if such improvements shall be so constructed, and if the applicant shall elect to pay the cost of the improvements as assessed against each lot in installments under the Bancroft Act of the State of Oregon and the ordinances of the City of Port Orford, then the obligation with respect to such portion of the improvements as are constructed shall be deemed wholly performed on the part of such applicant at such time as the City of Port Orford shall adopt its ordinance assessing the cost of such improvements against the property thereby benefited, thereby creating a duly subsisting assessment lien upon such benefited property.

J. Certificate and Guarantee of Improvements.

The City of Port Orford shall not accept the responsibility for any improvements, nor release a subdivision improvement guarantee and performance bond, or any security therefore, until such time as a licensed professional engineer working at the discretion of the City Council, shall submit a certificate stating that the applicant has submitted a detailed "as built" engineering plan and survey of the subdivision, indicating location, dimensions, materials and other information as may be required by the City of Port Orford. Notwithstanding such approval or acceptance, or the release of any subdivision guarantee and improvement bond or any security therefore, the applicant shall, and by proceeding with such project in accord

with this ordinance does, for a period of one year following the submission of such a certificate, guarantee that such improvements and repairs are constructed and performed in a good and workmanlike manner, using first class materials, in accordance with all standards and requirements of the City of Port Orford and all requirements and conditions imposed for the approval of the subdivision or partition by the Port Orford City Planning Commission and the Port Orford City Council.

K. Reduction in Security Upon Partial Completion of Improvements.

The security for, or the amount of the obligation of any corporate surety providing a guarantee upon, any subdivision improvement guarantee and performance bond, may be reduced, at the discretion of the City of Port Orford upon approval of the City Council, prior to completion and dedication of all such improvements, if a portion shall be satisfactorily completed. Such reduction shall be in the same proportion to the whole of the bond as the ratio of the improvements that have been satisfactorily completed and dedicated to the total cost of all such required improvements and repairs. (Ord. 2009-02 § 13, 2009)

16.04.140 Applicable Standards

Approval or denial for a partitioning or subdivision application shall be based upon the Standards, including Port Orford Design Standards, and criteria that were applicable at the time the application was submitted. (Ord. 2009-02 § 14, 2009)