

ARTICLE 11 PROCEDURES

SECTION 11.0100

DEVELOPMENT PERMIT REQUIREMENTS

11.0100 Development Permit Requirements

- 11.0101 Development Permit Required
- 11.0102 Exclusions from Development Permit
- 11.0103 Issuance and Effective Date of Development Permit
- 11.0104 Development Permit Conditions of Approval and Modifications of Approvals
- 11.0105 Expiration of Development Permit
- 11.0106 Extension of Development Permit
- 11.0107 Application for Staff Interpretation
- 11.0108 Modifications to Approved DR-E Applications

11.0100 Development Permit Requirements

11.0101 Development Permit Required

- A. Except as excluded by **Section 11.0102**, no person may engage in or cause a development to occur, as defined in **Section 3.0103**, without first obtaining a Development Permit through the procedures set forth in this code.
- B. A building permit shall constitute a Development Permit, and all use of the property and construction done under a valid building permit shall comply with all requirements of this code.
- C. The Manager shall not issue a Development Permit that does not meet the minimum requirements of this code. The Manager shall not issue a Development Permit if the subject land was divided or otherwise developed in violation of this code, regardless of whether the permit applicant or its predecessor created the violation, unless the violation can be rectified as part of the development.

11.0102 Exclusions from Development Permit

The following activities do not require a Development Permit except as noted.

- A. Landscaping not involving a structure. Landscaping does not include the paving of a parking lot. Landscaping in the Floodplain Overlay District and Natural Resource Overlay may require a development permit, as described in **Section 5.0100** and **Section 5.0700**.
- B. An internal change to a building or other structure that does not substantially affect the use of the building or structure or a sign that does not require design review approval;
- C. An emergency measure necessary for the immediate safety of persons or protection of property. In such circumstances, the property owner must notify the City of the activity within 5 calendar days. An application or pre-application request (as appropriate) for a Development Permit shall be filed within 30 calendar days if the action otherwise would require a Development Permit but for the emergency. Any required application must be obtained within 1 year of the action.
- D. The following activities do not require a Development Permit, except in the Floodplain Overlay District and Natural Resource Overlay.

1. Erection of a tent or similar portable structure for non-commercial use not exceeding 10 days.
2. Expansion or continuation of an existing farming operation.
3. The conversion of a hotel or motel to an emergency shelter or to affordable housing under **Section 10.0420**.
4. An alteration that does not substantially affect the use or appearance of land or a structure.
5. A helicopter landing facility when established for the support of an emergency in progress or when established for the occasional demonstration and/or training of emergency service operations.
6. A modular unit or trailer used as a construction office on a job site during construction activities that is removed before final occupancy is approved for the project.
7. Commercial structures of under 200 square feet not visible from a public place.

E. The following activities do not require a Development Permit, except in the Floodplain Overlay District, Hillside and Geologic Risk Overlay, and Natural Resource Overlay:

1. The establishment, construction, maintenance, or termination of minor basic utilities and the following authorized public facilities: public streets, public sidewalks, sanitary sewers, storm sewers, water lines, electrical power and gas lines, communication and data lines, and telephone and television cable lines; and public paths and trails which are identified in the Gresham Community Development Plan as a transportation facility, constructed by a public agency, and are within a public right-of-way or a public access easement.
2. Construction, maintenance, or demolition of an accessory structure that does not require a building permit.
3. Excavation or filling of land not exceeding 50 cubic yards within any 1 year period and the following activities:
 - a. Excavations below finish grade for basements and footings of a building, retaining walls
 - b. Cemetery graves
 - c. Excavations for wells, tunnels, or utilities
 - d. Exploratory excavations under the direction of a soils engineer or engineering geologist
 - e. An excavation which is less than 2 feet in depth or which does not create a cut slope greater than 5 feet in height and steeper than 2 horizontal to 1 vertical
 - f. A fill less than 1 foot in depth, and placed on natural terrain with a slope flatter than 5 horizontal to 1 vertical; or less than 3 feet in depth, not to exceed 50 cubic yards on any one lot and does not obstruct a drainage course
 - g. Grading for a parcel that conforms to an approved grading plan

F. Wireless Communication Facilities located in the public rights-of-way under the jurisdiction or control of the City of Gresham.

G. The following activities do not require a Planning Development Permit but will require a Building Permit:

1. Construction of Single Detached Dwellings and Middle Housing in the LDR-GB, LDR-7, LDR-5, TR, TLDR, MDR-12 (lots of record only), OFR (lots of record only), LDR-PV, MDR-PV, VLDR-SW, LDR-SW, CMF (only those portions along the NE Glisan and NE 162nd Avenue corridors), DRL-1 and DRL-2 districts.

2. Roof-top solar energy systems where the system meets the following:
 - a. Is installed on the roof of a residential, commercial/mixed-use or industrial structure; and
 - b. Does not exceed the peak height of the portion of the roof on which it is installed; and
 - c. Does not increase the footprint of the residential, commercial/mixed-use or industrial structure; and
 - d. Is installed parallel to the slope of the roof; and
 - e. Is not listed in the exceptions of **Section 11.0102.H**.
3. The conversion of a hotel or motel to an emergency shelter or to affordable housing under **Section 10.0420**.

H. There are conditions under which certain roof-top solar energy systems may require both a Building Permit and a Planning Development Permit. Exceptions to the roof-top solar energy system exclusions of **Section 11.0102.G.2** include any solar energy system which is:

1. Located on a federally or locally designated historic building or landmark; or
2. Located in a federally or locally designated historic district; or
3. Located on a conservation landmark designated by the city or county because of the historic, cultural, archeological or similar merit of the landmark; or
4. Located within the boundaries of a locally established conservation district; or
5. Installed on a frame structure and is not generally parallel to the roof or is more than 18” off the roof of the building on which it is installed.

11.0103 Issuance and Effective Date of Development Permit

- A. A development permit becomes effective on the day after the appeal period expires or, if appealed, final and effective upon a decision by the final appeal body.
- B. Every Development Permit shall be specific as to the approval granted or development authorized. It shall be subject to the standards and conditions set forth in this code, excepting only those variances or exceptions authorized by the decision authority, together with any conditions imposed by the decision authority.

11.0104 Development Permit Conditions of Approval and Modifications of Approvals

- A. **Imposition of Conditions.** The decision authority may impose conditions on any development permit. Such conditions shall be designed to ensure the Development Code requirements are met, protect the public from potential adverse impacts of the proposed use or development or to fulfill an identified need for public services within the impact area of the proposed development.

In addition to conditions imposed above, a condition is valid and enforceable when the applicant:

1. Requested the condition;
 2. Consented to the condition in writing or on the record; or
 3. Allowed the decision to become final.
- B. **Assurance of Compliance with Conditions.** A bond, cash deposit or other security acceptable to the decision authority may be required from the applicant in an amount sufficient to ensure compliance with a condition of approval. Such security shall be posted prior to the issuance of the appropriate

construction permit.

- C. Modification of Approvals and Conditions. Except for modifications to approved DR-E applications which are described in Section 11.0108, modification of conditions of approval may be sought on appeal or as a new development permit. The level of review for the modification shall be the same as the review level for the applicable component of the application unless noted otherwise in the Code. Modification of conditions of approval shall only be granted if the decision authority determines that:
1. The condition(s) could not be implemented for reasons beyond reasonable control of the permit holder and the modification will not require a significant modification of the original decision; or
 2. The circumstances have changed to the extent that the condition(s) is no longer needed or warranted; or
 3. The different condition(s) would better accomplish the purpose of the original condition.

11.0105 Expiration of Development Permit

- A. Unless a different expiration date is specifically provided in the Development Code, a Development Permit shall expire automatically one (1) year from the effective date unless one of the following occurs first:
1. For design review permits except for phased design reviews as provided in **Section 7.0004** of the Development Code, a structural or grading permit for each proposed structure has been submitted to the City and is active or in review.
 2. For tentative land division plans, except for phased plans as provided in **Section 6.0211** of the Development Code, a final plat or map application has been submitted to the City.
 3. For final land division plats or final survey maps, a final plat or final survey map is signed by the Manager pursuant to **Section 6.0403(C)** of the Development Code within one year of the submittal of the final land division plat or final survey map.
 4. For final land division plats or final survey maps signed by the Manager, final land division plats or final survey maps must be recorded within one year of signature.
 5. For all development permits, an application for an extension is filed and granted pursuant to **Section 11.0106**.
- B. Upon final approval by the city of a Development Permit, if the permit is appealed beyond the local level, the one-year permit period shall be tolled until a decision by a review authority with final jurisdiction is made that is not appealed.

11.0106 Extension of Development Permit

- A. Except as noted in **Section 11.0106(B)**, if an extension is desired, the holder of the Development Permit must file an application for an extension prior to the expiration of the Development Permit. Unless approved, an extension request does not extend the expiration date. Extension requests shall be processed as a Type I action. An extension may be granted for one (1) year from the original date of expiration unless noted otherwise in the Development Code.

Extensions shall be granted only upon findings that:

1. Commencement of development could not practically occur for reasons beyond control of the permit holder;
2. The request for extension is not sought for purposes of avoiding any responsibility imposed by this code or the Development Permit;

3. There has been no change in the Development Code since approval of the Development Permit that would require significant modification of the Development Permit or conditions of approval; and
4. There has been no change of the Plan Map designation of the property since approval of the development permit that would prevent approval under the plan map designation in effect at the time of the extension request.

B. A holder of a Development Permit for a tentative land division plan may file an application for an extension of the permit prior to its expiration. Unless approved, an extension request does not extend the expiration date. Extension requests shall be processed as a Type I procedure. Extensions may be granted for one (1) year periods. Phased subdivisions, as described in **Section 6.0211**, shall follow **Section 11.0106(A)**.

Extensions shall be granted only upon findings that:

1. The request for extension is not sought for purposes of avoiding any responsibility imposed by this code or the Development Permit;
2. There has been no change in the Development Code since approval of the Development Permit that would require significant modification of the Development Permit or conditions of approval;
3. There has been no change that would alter the need for public facilities; and
4. There has been no change of the Plan Map designation of the property since approval of the Development Permit that would prevent approval under the Plan Map designation in effect at the time of the extension request.

11.0107 Application for Staff Interpretation

An application for staff interpretation shall follow the Type II procedure per **Section 11.0400**, including the opportunity for appeal. A staff interpretation is not binding upon the Hearings Officer, Design Commission, Planning Commission or City Council. Only the City Council has the ultimate authority to interpret the Gresham Community Development Code.

A. Application. In addition to any other requirements established by the Manager for the application, the following shall be provided by the applicant:

1. The applicant shall identify the specific section(s) of the Gresham Community Development Code for which the applicant is seeking Interpretation.
2. The applicant may submit an assumed set of hypothetical facts that can be used to inform the application. Any interpretation decision that utilizes an assumed set of hypothetical facts will not determine the truth or falsity of such facts and such facts shall not be subject to any substantial evidence in the record determination. Factual determinations will not be made in an Application for Staff Interpretation. Such factual determinations are left to any later proceedings where a specific application is made for a development permit or application.

B. Criteria for Staff Interpretation. The criteria for staff interpretation are:

1. The Interpretation is consistent with the context of the applicable Gresham Community Development Plan, including, particularly, the land use district in which the use is proposed, if applicable.
2. The Interpretation is consistent with the text of the applicable Gresham Community Development Code provisions. In interpreting the section or sections, the Gresham Community Development Code **Section 3.0100** shall apply.

3. The Interpretation is consistent with the legislative intent of the section and for the words or phrases at issue. The intent is based on the legislative record for the ordinance that adopted or amended the section or sections at issue as well as any related sections.
4. The Interpretation will not vary or modify any clear and unambiguous language of the section or sections at issue in the Gresham Community Development Code.
5. The Interpretation is consistent with the stated purpose of the land use district or other purpose or intent statement or general provision applicable to the section or sections at issue, if available.

11.0108 Modifications to Approved DR-E Applications

Proposed modifications to approved DR-E applications will be reviewed as follows:

- A. Modifications not necessitating changes to Design Standards, Design Guidelines, conditions of approval or specific discretionary guidelines discussed as part of the DR-E approval may be modified by staff as part of the Building Permit review.
- B. Modifications necessitating changes to Design Standards, Design Guidelines, conditions of approval or specific discretionary standards discussed as part of the DR-E review will be reviewed and decided upon by the Design Commission with the exception of those applications reviewed by City Council as described in 11.1106(F), which shall be reviewed and decided upon by City Council. Written notice of the Design Commission meeting will be provided to all parties of record 20 days prior to the meeting at which the Design Commission will consider these changes.