

**Chapter 18.765
MODIFICATIONS**

Sections:

18.765.010	Purpose
18.765.020	Applicability
18.765.030	Review Type Determination
18.765.040	General Provisions
18.765.050	Allowed Modifications
18.765.060	Minor Modifications
18.765.070	Major Modifications

18.765.010 Purpose

The purpose of this chapter is to provide an appropriate and efficient review process for evaluating modifications to existing developments or land use approvals. (Ord. 18-28 §1)

18.765.020 Applicability

- A. This chapter applies to all proposals to modify an existing or proposed use, structure, site improvement, or condition of approval—for existing developments or land use approvals—when initially approved through one of the land use applications listed below:
 - 1. Conditional uses,
 - 2. Planned developments,
 - 3. Site development reviews, or
 - 4. Subdivisions and land partitions.
- B. This chapter also applies to all proposals to modify an existing development that was not subject to city approval when developed but would be subject to city approval, through one of the land use applications listed in Paragraph 18.765.020.A.1 through 4, if proposed for development under current city regulations.
- C. This chapter does not apply to proposals to modify a condition of approval where the modification is subject to the provisions of Paragraph 18.20.040.E.4.
- D. This chapter does not apply to proposals to modify an urban forestry plan where the modification is subject to the provisions of Subsection 18.420.060.F. (Ord. 18-28 §1)

18.765.030 Review Type Determination

- A. The Director will determine the most appropriate review type for the proposed modification. In addition to Subsection 18.710.040.D, the Director’s determination will consider whether the proposed modification involves any of the following:
 - 1. Application of clear and objective standards or approval criteria;

2. Application of discretionary standards or approval criteria;
 3. Exercise of professional judgment about technical issues; or
 4. Exercise of limited discretion.
- B. Allowed modifications involve the application of clear and objective standards that do not require the exercise of professional judgment about technical issues. These modifications do not require land use review.
- C. Minor modifications involve the exercise of professional judgment about technical issues as they relate to the application of clear and objective or discretionary standards or approval criteria. These modifications require Type I land use review.
- D. Major modifications involve the exercise of limited discretion as they relate to the application of clear and objective or discretionary standards or approval criteria. These modifications require Type II land use review. (Ord. 18-28 §1)

18.765.040 General Provisions

- A. A minor or major modification land use review is limited in scope to an evaluation of the modification's compliance with applicable standards and the degree of impact, if any, on surrounding properties, sensitive lands, or public facilities.
- B. A proposed modification involving a nonconforming use or development is subject to the provisions of Chapter 18.50, Nonconforming Circumstances, in addition to the provisions of this chapter.
- C. A proposed modification that constitutes substantial redevelopment, as determined by the Director, requires submittal of a new land use application rather than a modification application. Substantial redevelopment is defined as a modification that involves substantial changes to uses, structures, site improvements, operating characteristics, or original findings of fact. (Ord. 18-28 §1)

18.765.050 Allowed Modifications

- A. Definition. An allowed modification has the following characteristics:
1. It has negligible impacts on surrounding properties, sensitive lands, or public facilities;
 2. It does not cause the development to go out of conformance with any applicable standard or further out of conformance if already nonconforming, except where an adjustment has been approved; and
 3. It does not alter or contravene any condition of approval.
- B. Examples. Examples of allowed modifications include, but are not limited to, the following:
1. Increase in open space or landscaping.
 2. Interior building modification or change of use that does not require the application of a higher parking quantity requirement.

3. Exterior building facade modification that does not require the application of any design standard.
4. Installation of mechanical equipment that does not involve the removal of any parking spaces or landscaping and where screening standards are met as provided in the applicable development standards chapter in 18.200 Residential Development Standards or 18.300 Nonresidential Development Standards. (Ord. 18-28 §1)

18.765.060 Minor Modifications

A. Definition. A minor modification has the following characteristics:

1. It has minimal impacts on surrounding properties, sensitive lands, or public facilities; and
2. It does not cause the development to go out of conformance with any applicable standard or further out of conformance if already nonconforming, except where an adjustment has been approved.

B. Examples. Examples of minor modifications include, but are not limited to, the following:

1. Interior building modification or change of use that requires the application of a higher parking quantity requirement.
2. Exterior building facade modification that requires the application of a design standard.
3. Change of use to a restricted use.
4. Change to the site that results in a change in the number or configuration of parking spaces.
5. Minor decrease in open space or landscaping.

C. Approval process. A minor modification application is processed through a Type I procedure as provided in Section 18.710.050, using approval criteria in Subsection 18.765.060.D.

D. Approval criteria. The approval authority will approve or approve with conditions a minor modification application when all of the following criteria are met:

1. The proposed modification qualifies as a minor modification as defined in Subsection 18.765.060.A;
2. If the proposal involves the modification of a condition of approval, at least one of the following criteria is met:
 - a. The condition cannot be implemented for reasons outside the control of the applicant or property owner;
 - b. The condition is no longer needed or warranted because circumstances have changed; or
 - c. A new or modified condition better accomplishes the purpose of the original condition. (Ord. 18-28 §1)

18.765.070 Major Modifications

- A. Definition. A major modification has the following characteristics:
1. It has more than minimal impacts on surrounding properties, sensitive lands, or public facilities but does not qualify as substantial redevelopment as defined in Subsection 18.765.040.C; and
 2. It does not cause the development to go out of conformance with any applicable standard or further out of conformance if already nonconforming, except where an adjustment has been approved.
- B. Examples. Examples of major modifications include, but are not limited to, the following:
1. Addition of an accessory use associated with a conditional use.
 2. An increase in residential density other than the addition of an accessory dwelling unit.
 3. Major decrease in open space or landscaping.
- C. Approval process. A major modification application is processed through a Type II procedure as provided in Section 18.710.050, using approval criteria in Subsection 18.765.070.D.
- D. Approval criteria. The approval authority will approve or approve with conditions a major modification application when all of the following are met:
1. The proposed modification qualifies as a major modification as defined in Subsection 18.765.070.A;
 2. The operating and physical characteristics of the modified development are reasonably compatible with surrounding properties, sensitive lands, or public facilities;
 3. Any impacts from the proposed modification are mitigated to the extent practicable;
 4. If the proposed modification involves development that has nonconforming structures or site improvements and exceeds the project valuation threshold listed in the city's Master Fees and Charges Schedule, the development will be improved as required by Subsection 18.765.070.E; and
 5. If the proposal involves the modification of a condition of approval, at least one of the following criteria is met:
 - a. The condition cannot be implemented for reasons outside the control of the applicant or property owner;
 - b. The condition is no longer needed or warranted because circumstances have changed; or
 - c. A new or modified condition better accomplishes the purpose of the original condition.
- E. Modifications to nonconforming development. The purpose of these provisions is to require existing development with nonconforming structures or site improvements to come into conformance with city standards gradually as structures or site improvements are modified over time. These provisions

also give applicants the choice of making improvements that support pedestrians—in lieu of making improvements to come into conformance—in order to advance Tigard’s vision to become a walkable, healthy, and inclusive city.

1. Development with nonconforming structures or site improvements is required to come closer or fully into conformance with all applicable development standards when the total project valuation of all proposed modifications equals or exceeds the amount listed in the city’s Master Fees and Charges Schedule. The method for calculating total project valuation is as follows:
 - a. The total project valuation is based on the entire project and not individual development permits; and
 - b. The following modifications do not count toward the total project valuation:
 - i. Modifications to comply with fire and life safety requirements.
 - ii. Modifications to comply with applicable federal and state accessibility requirements.
 - iii. Modifications to improve seismic resiliency in conformance with state building codes.
 - iv. Modifications to improve or enlarge on-site stormwater management facilities in conformance with Clean Water Services and City of Tigard standards.
 - v. Modifications related to the installation of solar panels.
 - vi. Modifications to remove or remediate hazardous substances.
2. The applicant must demonstrate that a minimum of 10 percent of the total project valuation is being used to bring the development closer into conformance with all applicable development standards, except where:
 - a. The expenditure of a lesser amount brings the development fully into conformance with all applicable development standards;
 - b. No further improvements are practicable as determined by the Director; or
 - c. The cost to complete all required improvements exceeds 10 percent of the total project valuation, in which case the applicant must demonstrate that a minimum of 10 percent of the total project valuation is being used to bring the development closer into conformance with one or more development standards of the applicant’s choosing.
3. The applicant must complete the improvements required by Paragraph 18.765.070.E.2 prior to final inspection or certificate of occupancy.
4. The applicant may choose to satisfy the requirements of Paragraph 18.765.070.E.2 by providing improvements that support pedestrians in lieu of bringing the development closer into conformance with all applicable development standards.
 - a. Pedestrian improvements may be to existing structures, site improvements, or public rights-of-way;

- b. Pedestrian improvements must provide a new site or building element or enhance an existing site or building element. Improvements involving maintenance or repair of existing site improvements or structures do not satisfy this provision; and
- c. Pedestrian improvements must be located in the public right-of-way or within 20 feet of a street property line. Improvements must not contravene any applicable standard and must fall into one of the following categories:
 - i. Pedestrian access and safety. Examples of access and safety improvements include:
 - (A) Building entrances that face a public sidewalk and provide direct pedestrian access to a public sidewalk;
 - (B) Paths that connect building entrances to public sidewalks using the shortest practicable route;
 - (C) Directional signage and lighting along paths that connect building entrances to public sidewalks;
 - (D) Wider sidewalks to further separate pedestrians from vehicle travel lanes; and
 - (E) Landscape strips or street trees to buffer pedestrians from vehicle travel lanes.
 - ii. Pedestrian comfort. Examples of comfort improvements include:
 - (A) Awnings over building entrances or windows for weather protection;
 - (B) Furnishings such as decorative trash cans or benches; and
 - (C) Installation of approved trees in the right-of-way or along the street property line to further separate pedestrians from parking areas or vehicle travel lanes and to provide weather protection.
 - iii. Visual interest. Examples of improvements that provide visual interest include:
 - (A) More or larger building windows that face a public sidewalk and provide building transparency for pedestrians;
 - (B) Pedestrian-scale architectural features such as window trim, awnings, wall trellises, or any permanent feature that reduces the visual impact of blank, flat, or long building walls; and
 - (B) Screening of parking or service areas with vegetation or decorative fencing or walls. (Ord. 18-28 §1) ■