

**176.28 CLUSTER DEVELOPMENT OPTION.** The intent of the Cluster Development Option is to promote greater design flexibility in land development by offering density transfers in conjunction with relaxation of conventional lot and building bulk controls. In those zoning districts offering the Cluster Development Option, the developer has the option of choosing either conventional or cluster development. The Cluster Development option is intended to promote the most appropriate design and development of land, facilitate the adequate and economic provision of public services, and preserve the natural and scenic qualities of open areas.

1. General Requirements. Whenever there is a conflict or difference between the provisions of this section and those of the other sections of this Zoning Ordinance, the provisions of this section shall prevail. Subjects not covered by this section shall be governed by the respective provisions found elsewhere in this Ordinance. Cluster development shall conform to the following:

A. In a district in which the Cluster Development Option is available, dwelling units may be clustered in one or more locations upon the site, provided that the average land area for which dwelling unit contained in the site, exclusive of the area occupied by private streets or public rights-of-way, shall not be less than the lot area per dwelling unit required in the zoning district within which the development is located.

B. Single-family dwellings, two-family dwellings, three- and four-plexes, multiple-family dwellings, and accessory uses may be permitted in a cluster development, provided that the density requirement set forth in paragraph A above is met. However, no use shall be permitted except in conformity with an approved Cluster Development Plan pursuant to the provisions set forth herein.

C. Other principal permitted uses in the zoning district within which the development is located may be permitted in the cluster development. However, no use shall be permitted except in conformity with an approved Cluster Development Plan.

D. Conditional uses set forth in the zoning district within which the development is located may be permitted in the cluster development, when authorized by the Zoning Board of Adjustment as provided in Section 176.36. However, no conditional use shall be permitted except in conformity with an approved Cluster Development Plan.

E. The cluster development may depart from strict conformance with the required lot dimension, lot area, lot width, setback, yard, and bulk regulations and the zoning district within which the development is located, so long as the development will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare.

(1) However, the setbacks on all exterior boundaries of the cluster development shall be at least equal in width or depth to that required in the adjacent property.

(2) No departure from conformance with the lot dimension, lot area, lot width, setback, yard, and bulk regulations shall be permitted except in conformity with an approved Cluster Development Plan pursuant to the provisions set forth herein.

F. Adequate off-street parking and loading facilities shall be provided and shall conform to the standards set forth in Section 176.29 of this Ordinance.

G. Adequate provision shall be made to provide ingress and egress designed to promote optimal traffic safety and flow.

H. If the sequence of construction of various portions of the cluster development is to occur in stages, then the off-street parking, open space, or any other shared facility as contained in the approved Cluster Development Plan shall be developed in proportion to the number of dwelling units developed during the given stage of construction.

I. At no time during the construction of the cluster development shall the number of constructed dwelling units exceed the over-all density per acre established in the approved Cluster Development Plan.

J. No land may be used or building permit issued on land within the cluster development until all procedural and regulatory provisions of this section have been complied with.

2. Coordination With Subdivision Ordinance.

A. No lot, tract, parcel, or other division of land may be divided into two or more lots, tracts, parcels or other divisions of land for the purpose of sale, transfer or of building development, whether immediate or future, including the re-subdivision or re-platting of lands or lots, except in conformance with Chapter 175 (Subdivision Regulations) of this Code of Ordinances.

B. It is the intent of this section that subdivision plat review, when applicable, be carried out simultaneously with the review of the Cluster Development Plan.

C. The Cluster Development Plan required under this section may be submitted in a form which satisfies the subdivision filing requirements set forth in said Chapter 175, provided that such Cluster Development Plan satisfies all the requirements set forth in this Ordinance.

3. Filing Procedure.

A. Application. A petition for a cluster development shall be submitted to the Clerk accompanied by thirty (30) copies of the Cluster Development Plan and, when appropriate, subdivision plat.

B. Filing Fee. The filing fee for a cluster development shall be \$5.00 per acre or fraction thereof with a minimum fee of \$40.00. If a Cluster Development Plan is submitted in conjunction with a subdivision plat, the applicant shall pay either the cluster development filing fee or the plat filing fee, whichever amount is greater. The filing fee is not refundable.

C. Cluster Development Plan. The Cluster Development Plan shall contain the following information:

(1) All information required to be submitted with preliminary plats as provided in Chapter 175 of this Code of Ordinances.

(2) The approximate location and dimension of each building site, common open and recreation area, and other improvements.

(3) The location of open spaces around buildings and structures.

(4) If the proposed site contains ten (10) or more acres, a circulation diagram indicating movement of vehicles and pedestrians to and within the development and to and from existing features.

(5) Location and dimensions of off-street parking facilities and access and service drives.

(6) A schematic landscaping plan (preliminary) indicating landscaping treatment around the perimeter of the property (if any) and other critical areas.

(7) A preliminary development schedule indicating approximate dates for start and completion of the project and phasing of the project, if applicable, and identification of location and sequence of stages, density, use, and public facilities.

(8) If the cluster development involves the subdivision of land as governed by Chapter 175, the bound copies of the final plat shall contain, in addition to that required under Chapter 175, all public and private agreements, provisions, or covenants which will govern the use, maintenance, protection, performance and/or design of the development and any of its common open areas.

(9) If the cluster development does not involve the subdivision of land as governed by the Subdivision Regulations, the following materials shall be submitted as part of the Cluster Development Plan:

- a. Easements showing dimensions and purposes for any right-of-way provided for public use, drainage, services, or utilities.
- b. Private easements showing dimensions and purposes for traffic and pedestrian circulation, parking, and similar purposes.
- c. All public and private agreements, provisions, or covenants which will govern the use, maintenance, protection, performance, and/or design of the development and any of its common open areas.

(10) A restrictive covenant, which shall be recorded as provided under paragraph (5)(E) of this section, shall be submitted with the Cluster Development Plan which shall stipulate compliance with paragraph (2)(A) of this section pertaining to the subdivision of land.

4. Evaluation Criteria. The following criteria shall be considered by the Commission and the Council in reviewing the Cluster Development Plan:

- A. The Cluster Development Plan substantially conforms to the City's Comprehensive Community Plan.
- B. The existing character of the neighborhood will not be adversely affected and that adequate safeguards are provided to minimize possible detrimental effects to adjacent properties and the neighborhood.
- C. There is ample provision for sanitary sewage disposal, storm and surface water drainage, water supply, and other utilities.
- D. Topography, soil conditions, geography, and other natural characteristics do not present a substantial hazard to development or adjacent properties.
- E. There is adequate availability to police and fire protection, schools, parks and recreational facilities, and other community facilities and public services.
- F. The location, height, bulk, and dimensions of buildings and structures relate well to one another and are in proportion to each other and to other structures and visual perspectives in the area.
- G. Safe patterns of pedestrian circulation and the effective use and design of open spaces, landscaping, and amenities are provided.
- H. Safe and efficient vehicular access and circulation to and within the site is provided, that off-street parking spaces are adequate and well located, and that conflicts between vehicular traffic and other uses and activities are minimized.

I. The proposed installation of drives, landscaping, and other site details are generally in harmony with the proposed development, adjacent properties, and with the rights of interests of the general public.

5. Approval of Cluster Development Plan.

A. After receiving the Cluster Development Plan, the Commission shall review such plan in accordance with the evaluation criteria set forth in subsection 4 above and shall forward to the Council a written recommendation advising that the Plan be approved, approved with modifications, or disapproved, and citing the reasons for such recommendation.

B. After receiving the Commission's recommendation, the Council shall hold a public hearing prior to considering the Cluster Development Plan. Such public hearing shall be held in accordance with State and Municipal Codes.

(1) After holding the public hearing, the Council may approve, approve with modifications, or disapprove the Cluster Development Plan.

(2) If the Cluster Development Plan is approved with modifications, no building permits may be issued on the development until the applicant has filed with the Clerk written consent to the Cluster Development Plan as modified.

C. Prior to the approval of the Cluster Development Plan, the Council may stipulate such conditions and restrictions upon the establishment, location, design, layout, height, construction, maintenance, aesthetics, operation, and other elements of the development as deemed necessary for the protection of the public health, safety, morals, comfort, or general welfare, or to secure compliance with the provisions of this Ordinance. In all cases in which cluster developments are granted, the Council may require such evidence and guarantees as it may deem necessary to assure that the conditions stipulated in connection therewith are being and will be complied with.

D. All common open space shall be either conveyed to a municipal or public corporation, conveyed to a corporation or entity established for the purpose of benefiting the owners and residents of the cluster development, or retained by the owner or owners with legally binding guarantees, in a form approved by the City Attorney, such that the common open space will be permanently preserved and maintained as an open area. All land conveyed to a nonprofit corporation or like entity shall be subject to the right of said corporation to impose a legally enforceable lien for maintenance and improvement of the common space.

E. The approved Cluster Development Plan shall be recorded with the County Recorder and evidence thereof shall be furnished to the Building Official. In addition, the Building Official shall also be furnished evidence of recording of the following documents, when applicable; all final plats, all agreements, provisions, easements, restrictive covenants, or other materials which govern the use, maintenance, protection, performance, and/or design of the development and any of its common open area. No building permits on the development shall be issued until the provisions of this section have been met.

F. If the Cluster Development involves the subdivision of land as governed by Chapter 175 of this Code of Ordinances, no building permits shall be issued on the development until all provisions of said Chapter 175 are satisfied.

G. If no development has begun or no use established in the cluster development within twenty-four (24) months from the approval of the Cluster Development Plan, the approved Cluster Development Plan shall lapse and be of no further effect. In its discretion and for good cause, the Council may extend for additional six-month increments, the period for the beginning of the construction or the establishment of a use.

6. Revisions to Cluster Development Plan. Minor changes to the approved Cluster Development Plan may be authorized by the Zoning Official if required by engineering or other circumstances not foreseen at the time the Cluster Development Plan was approved. No change authorized by this section may cause any of the following:

A. A material change in the use of the development.

B. An increase in the overall coverage of the structures in excess of 10 percent.

C. An increase in the intensity of the use.

D. An increase in projected traffic volumes to and within the site.

E. A material change in the location of the street or utility systems.

F. A reduction in approved open space in excess of 5 percent.

G. A reduction in approved off-street parking facilities.

H. A reduction in building setback from the approved Cluster Development Plan when such setback deviates from the minimum setback requirements established in the zoning district regulations or from the approved Cluster Development Plan.

I. Revisions providing for a reduction in density, lot coverage, or increase of open space.

All proposed changes not classified as minor must be approved by the Council, after receiving a recommendation from the Commission. Any changes which are approved in the Cluster Development Plan shall be recorded as amendments in accordance with the procedure set forth in paragraph (5)(E) above.