

# ARTICLE 1<sup>1</sup>

## ADMINISTRATION AND PROCEDURES

1.000 Overview. This Article establishes the framework for the review and processing of land use applications and legislative land use proposals, as well as ministerial actions. This Article is intended to enable the City, applicants, and the public, where applicable, to reasonably review applications and participate in the local decision-making process in a timely and effective way.

The list below is a summary of the topics covered in this chapter.

- General Administration of Title 20
- Review Procedures Generally
- Pre-Application Conferences and Neighborhood Meetings
- Application Submittal and Completeness Review
- Review Type Procedures
- Expirations, Extensions, and Modifications
- Appeals
- Conduct of Quasi-Judicial Hearings
- Conduct of Legislative Hearings
- Enforcement

These headings precede subtopics that can help the user locate information. The table of contents contains a complete listing of the material covered in this Article.

### GENERAL ADMINISTRATION OF TITLE 20

1.010 Official Name. The official name of this Title is “Title 20, Development Code and Zoning Map.” It may be referred to as “Development Code” or “Code” or “ADC.”

1.020 Purpose. The general purpose of this Code is to set forth and coordinate City regulations governing the development and use of land. The Code is more specifically intended to do the following:

- (1) Serve as the principal vehicle for implementation of the City’s Comprehensive Plan in a manner that protects the health, safety, and welfare of the citizens of Albany.
- (2) Satisfy relevant requirements of federal law, state law, statewide goals, and administrative rules.
- (3) Facilitate prompt review of development proposals and the application of clear and specific standards.
- (4) Provide for public information, review, and comment on development proposals that may have a significant impact on the community.
- (5) Guide public and private planning policies and actions to ensure provision of adequate water, sewer, transportation, drainage, parks, open space and other public facilities and services for each development, as applicable.
- (6) Establish procedures and standards requiring that the design of site improvements and building improvements are consistent with applicable standards and design guidelines.
- (7) Provide for review and approval of the relationship between land uses and traffic circulation in order to minimize congestion.
- (8) Require that permitted uses and site designs provide reasonable protection from fire, flood, landslide, erosion, or other natural hazards, as well as prevent the spread of blight, and help prevent crime.
- (9) Protect and enhance the city’s beauty and character.

---

<sup>1</sup> Entire article replaced with Ordinance 5947, January 1, 2021.

- (10) Protect constitutional property rights, provide due process of law, and give consideration in all matters to affected property owner interests in making land use decisions.
- 1.025 Legislative Intent. In addition to the purposes set forth above, subsequent amendments to this Code may be accompanied by staff reports and additional findings, which may be used to more accurately determine the purpose and legislative intent of specific provisions.
- 1.030 Scope and Compliance. A parcel of land or a structure may be used or developed only as this Code permits. The requirements of this Code apply to the property owner(s), the person(s) undertaking a development, the user(s) of a development, and to their successors in interest.
- 1.035 Severability. The provisions of this Code are severable. If any portion of this Code is declared by a court of law to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions.
- 1.040 Interpretation.
- (1) Except as otherwise specified, the definitions included in Article 22 shall be used to interpret the provisions of this Code.
  - (2) The Director shall have the initial authority and responsibility to interpret all terms, provisions, and requirements of this ordinance. For quasi-judicial interpretations, the Type II procedure set forth in Section 1.230 shall be followed. For legislative interpretations, the procedures as set forth in Section 1.260 shall be followed. A person requesting such an interpretation shall do so in writing to the Director.
  - (3) The terms of this ordinance shall be liberally construed to give maximum effect to the purposes set forth in Section 1.020.
  - (4) Where the conditions imposed by a provision of this Code are less restrictive than comparable conditions imposed by other provisions of this Code or other sections of the Albany Municipal Code, the more restrictive shall govern.
- 1.050 Consistency with Plan and Laws. Actions initiated under this Code shall be consistent with the adopted Comprehensive Plan of the City of Albany and with applicable state and federal laws and regulations as these plans, laws, and regulations may now or hereafter provide. Since the City of Albany has a Comprehensive Plan and implementing regulations that have been acknowledged by the State of Oregon as being in compliance with statewide goals, any action taken in conformance with this Code shall be deemed also in compliance with statewide goals and the Comprehensive Plan. Unless stated otherwise within this Code, specific findings demonstrating compliance with the Comprehensive Plan are not required for land use application approval. However, this provision shall not relieve the applicant of the burden of responding to allegations that the development action requested is inconsistent with one or more Comprehensive Plan policies.
- 1.055 Fees. The City Council shall establish application review fees, and fee policies by separate resolution for the performance of the actions and reviews required by this Code.
- 1.060 Official Action. All officials, departments, and employees of the City vested with authority to issue permits, certificates, or licenses shall adhere to and require conformance with this Title.
- 1.070 Certificate of Occupancy. It shall be unlawful to use or occupy any new building or premises until a certificate of occupancy has been issued by the Building Official stating that the proposed use of the building or land conforms to the requirements of the adopted building code, this ordinance, and any other City conditions attached to the development or use of the building or land.
- 1.080 Approval Runs with the Land. Unless expired, approval of a land use or development permit decision runs with the land. The approval transfers to a new owner if the property is sold.
- 1.085 Prior Approvals. Before another land use application can be filed for a site with a completed development, the site must be brought into compliance with all applicable outstanding conditions of approval from prior land use approvals.

[Ord. 5966, 11/12/21]

## LAND USE REVIEW PROCEDURES GENERALLY

1.100 Applicability of Review Procedures. Except for those activities and developments listed in Section 1.105, all land use and development permit decisions will be made by using the procedures contained in this Article. The procedure "type" assigned to each application governs the decision-making process for that permit or application. There are six types of permit/application procedures as described in subsections (1) through (6) below. Table 1.100-1 lists the City's land use and development applications and corresponding review procedure(s).

- (1) Type I Procedure (Ministerial Staff Review). A Type I procedure is used in applying City land use standards and criteria that do not require the use of discretion, interpretation, or the exercise of policy or legal judgment (i.e., clear and objective standards). Type I decisions are made by the Director without public notice and without a public hearing. Appeals of Type I decisions are to Circuit Court under writ of review.
- (2) Type I-L Procedure (Staff Review with Notice). A Type I-L procedure is used for some tentative plats and when applying discretionary land use standards that regulate the physical characteristics of a use which is permitted outright. Type I-L decisions are made by the Director and require public notice and an opportunity for appeal to a local hearing body. With the exception of Historic Resource decisions which are appealed to the Landmarks Commission, appeals of Type I-L decisions are heard by the Planning Commission.
- (3) Type II Procedure (Staff Review with Notice of Decision). A Type II procedure is used when the land use standards and criteria require some discretion, interpretation, or policy or legal judgment. The Director is the person designated in accordance with ORS 227.175 to make Type II decisions. Type II decisions require public notice and an opportunity for appeal to a local hearing body. With the exception of Historic Resource decisions which are appealed to the Landmarks Commission, appeals of Type II decisions are heard by the Planning Commission.
- (4) Type III Procedure (Quasi-Judicial Review—Public Hearing). A Type III procedure is used when the land use standards and criteria require discretion, interpretation, or policy or legal judgment or for large projects. Quasi-Judicial decisions implement established policy but typically involve discretion. Type III decisions are made by the Planning Commission, Hearings Board or Landmarks Commission and require public notice and a public hearing, with an opportunity for appeal to the City Council.
- (5) Type IV-Q Procedure (Quasi-Judicial Review—City Council Public Hearing). The Type IV-Q procedure is used when the land use standards and criteria require discretion, interpretation, or policy or legal judgment and is the procedure used for site-specific land use actions initiated by an applicant. The application is heard by the Planning Commission, Hearings Board, or Landmarks Commission. If the recommending body makes a favorable recommendation, the City Council will hold a hearing and make a final decision. If the Planning Commission, Hearings Board, or Landmarks Commission recommends against a proposal, the City Council will only consider the proposal on appeal by the applicant. Appeal of the City Council's Type IV-Q decisions are heard by the state Land Use Board of Appeals.
- (6) Type IV-L Procedure (Legislative Review). Legislative review procedures are used to review proposals to amend the Albany Comprehensive Plan, the City's land use regulations, and large-scale changes to the Comprehensive Plan or Plan Maps, and involve the creation, revision, or implementation of broad public policy. Legislative proposals are first considered by the Planning Commission, which makes a recommendation to City Council. City Council makes the final decision on a legislative proposal through the enactment of an ordinance. Appeals of legislative decisions are heard by the state Land Use Board of Appeals.

**Table 1.100-1 – Procedure by Application Type**

Application / Action	Procedure Type	Decision Body	Pre-App Conference Required	Neighborhood Mtg Req.	Applicable Section
<b>Adjustments</b>	III	HB or PC	No	No	2.070
<b>Annexations</b>					
• Annexations mandated by state law	I	CDD	No	No	2.095
• All other annexations	IV-Q and IV-L	See 2.095	Yes	No	2.095
<b>Comprehensive Plan and Map Amendments</b>					
• Quasi-Judicial	IV-Q	PC or CC	Yes	No	2.210
• Legislative	IV-L	CC	Yes*	No	2.210
• Corrections to Comp Plan map	I	CDD	No	No	2.225
<b>Conditional Use</b>	II or III	CDD HB or PC	Yes	See 1.140	2.240
<b>Development Code Amendments</b>					
• Corrections to Development Code	I	CDD	No	No	2.280
• All other amendments	IV-L	CC	Yes*	No	2.280
<b>Interpretations</b>	I, I-L, II, III	See 1.040	Yes*	No	1.040
<b>Land Divisions and Planned Developments</b>					
• Cluster development	III	PC	Yes	Yes	11.430
• Land division (partition or subdivision) – preliminary plat	I-L	CDD	Yes	See 1.140	11.170
• Land division – final plat	I	CDD	No	No	11.170
• Planned development – preliminary review	III	PC	Yes	Yes	11.260
• Planned development – final approval	I	CDD	No	No	11.260
• Planned development – major changes	III	PC	Yes	Yes*	11.350
• Planned development – minor changes	I	CDD	No	No	11.350
• Property line adjustment	I	CDD	No	No	11.110
• Expedited land divisions***	N/A (ORS 197.360)	CDD	No; Recommended	No	11.600
• Middle housing land division***	N/A (ORS 197.365)	CDD	No; Recommended	No	11.610
<b>Manufactured Home Park (excluding Planned Developments)</b>	I-L	CDD	Yes	See 1.140	10.210
<b>Modifications</b>					
• Modification of Approved Site Plan Review and Conditional Use Applications	Same procedure and decision body as original decision		Yes*	No	1.330

Application / Action	Procedure Type	Decision Body	Pre-App Conference Required	Neighborhood Mtg Req.	Applicable Section
<ul style="list-style-type: none"> <li>Modification of Condition of Approval</li> </ul>	Same procedure and decision body as original decision		Yes*	No	1.340
<b>Nonconforming Use</b>					
<ul style="list-style-type: none"> <li>Nonconforming use review – change of use within same use category (see 2.345(1)(a) for criteria)</li> </ul>	I	CDD	No	No	2.350
<ul style="list-style-type: none"> <li>Nonconforming use review – all other situations</li> </ul>	II	CDD	Yes	No	2.350
<b>Recreational vehicle park</b>	I-L or III	CDD or PC	Yes		10.530
<b>Signs</b>					
<ul style="list-style-type: none"> <li>Standard Sign Permit</li> </ul>	I	CDD	No	No	13.610
<ul style="list-style-type: none"> <li>Sign Variance</li> </ul>	II	CDD	Yes	No	13.710
<b>Site Plan Review</b>	I or I-L	CDD	Yes*	See 1.140	2.415
<b>Vacations</b>	IV-Q or IV-L	CC	Yes*	No	2.620
<b>Variance</b>					
<ul style="list-style-type: none"> <li>Major Variance</li> </ul>	II	CDD	Yes	No	2.670
<ul style="list-style-type: none"> <li>Minor Variance</li> </ul>	I-L	CDD	Yes*	No	2.670, 2.694
<b>Zoning Map Amendments</b>					
<ul style="list-style-type: none"> <li>Quasi-judicial zoning map amendments</li> </ul>	IV-Q	PC or CC	Yes	No	2.720
<ul style="list-style-type: none"> <li>Legislative zoning map amendments</li> </ul>	IV-L	CC	Yes*	No	2.720
<b>OTHER APPLICATION TYPES</b>					
<b>Floodplain</b>					
<ul style="list-style-type: none"> <li>Floodplain Appeals</li> </ul>	II	See 6.091	Yes*	No	6.091
<ul style="list-style-type: none"> <li>Floodplain Development Permit</li> </ul>	I, I-L, II, III	See 6.093	Yes*	See 1.140	6.093
<ul style="list-style-type: none"> <li>Floodplain Variance</li> </ul>	II	CDD	Yes*	No	6.092
<b>Hillside Development</b>					
<ul style="list-style-type: none"> <li>Hillside review for development that only requires a building permit</li> </ul>	I	CDD	No	No	6.190
<ul style="list-style-type: none"> <li>Hillside review for all other</li> </ul>	I, I-L, II, III	See 6.190	No	See 1.140	6.190
<b>Historic Resources**</b>					
<ul style="list-style-type: none"> <li>Designation of a resource or district</li> </ul>	IV-Q or IV-L	LC and CC	No	No	7.040
<ul style="list-style-type: none"> <li>Amendments to Exist. Districts</li> </ul>	IV-L	CC	No	No	7.040
<ul style="list-style-type: none"> <li>Local Historic Inventory Removal (outside districts, not on National Register, demolished or removed resources)</li> </ul>	I	CDD	Yes*	No	7.040

Application / Action	Procedure Type	Decision Body	Pre-App Conference Required	Neighborhood Mtg Req.	Applicable Section
• Individual Property Re-Rating	III	LC	Yes*	No	7.040
• Historic review of Ext. Alterations – no change in character; not visible	I	CDD	No	No	7.120
• Historic review of Ext. Alterations – all other, including all non-residential	III	LC	Yes*	See 1.140	7.120
• Substitute materials	III	LC	Yes*	See 1.140	7.180
• New construction	I-L	CDD	Yes*	No	7.240
• Demolitions / Relocations – contributing structures	III	LC	Yes*	See 1.140	7.310
<b>Natural Resource Impact Review</b>					
• Natural Resource review without concurrent land use review	I or I-L	CDD	No	No	6.300
• Natural Resource review for all other	I, I-L, II, III	See 6.300	Yes*	See 1.140	6.300
• Natural Resource minor variance	I-L	CDD	No	No	6.450
• Natural Resource major variance	II	CDD	Yes*	No	6.450
<b>Special Use Permit</b>	I	CDD	No	No	10.440 and 10.470
<b>Tree Removal</b>					
Site Plan Review for tree removal (5 or more trees 8” in diameter on contiguously owned property 20,000 sf or greater)	I-L	CDD	Yes*	No	9.204 and 9.205
<b>Willamette River Greenway</b>					
• Greenway development review	II	CDD	Yes	No	6.520
LEGEND: City Council (CC), Director (CDD), Hearings Board (HB), Landmarks Commission (LC), Planning Commission (PC).					
* Unless waived by the Community Development Director.					
** Additional application review procedures applicable to Historic Resources are found in Article 7. In cases of conflict with the procedures in Article 1, the procedures in Article 7 shall prevail.					
*** Application review procedures for Expedited and Middle Housing Land Divisions are found in Article 11 Sections 11.600 through 11.630.					

[Ord. 5966, 11/12/21; Ord. 5968, 1/14/22; Ord. 6004, 12/28/22; Ord. 6024, 12/29/23]

1.105 When a Type I - IV Application is Not Required. Activities and developments listed below do not require a Type I - IV land use application but are nevertheless subject to the provisions of the Code, including, but not limited to setbacks, lot coverage, building height, design standards, on-site development standards, and public improvement and environmental standards.

Activities and development within special purpose districts must comply with the regulations described in Article 4 (Airport Approach), 6 (Natural Resources), and 7 (Historic), as applicable, and may require a land use application as described in each respective section.

Activities and development on a site containing a nonconforming use may require a Nonconforming Use Review in accordance with Article 2.

[Ord. 5966, 11/12/21]

- (1) Agricultural uses permitted outright in Articles 3, 4 and 5.
- (2) New detached single dwelling unit, duplexes, and additions to existing single dwelling units or duplexes, except where specifically identified as requiring conditional use or site plan approval in Article 4 and 5.  
[Ord. 5968, 1/14/22]
- (3) Residential accessory buildings up to 750 square feet and walls not greater than 12 feet tall or that meet the standards in Section 3.080(9).
- (4) Non-residential accessory buildings of any size in the NC, CC, RC, IP, LI, HI and PB zones and non-residential accessory buildings up to 750 square feet in the CB, HD, ES, LE, MS, MUC, MUR, OP and WF zoning districts.
- (5) Routine property maintenance.
- (6) New parking areas or expansions to existing parking areas that are less than 1,000 square feet in area and do not modify site circulation or access, do not require Site Plan Review as stated in Section 2.430.  
[Ord. 6018, 6/30/23; Ord. 6024, 12/29/23]
- (7) Restriping an existing parking lot with no additional parking spaces and does not modify site circulation or access.  
[Ord. 6024, 12/29/23]
- (8) A change internal to a building or other structure or use, and/or additions to an existing building that are less than 2,000 square feet or less than 50 percent of existing building area, whichever is less, and that do not:
  - (a) Provide three or more parking spaces or additional loading areas; or
  - (b) Modify site circulation or access.

[Ord. 6018, 6/30/23, Ord. 6024, 12/29/23]
- (9) An emergency measure necessary for the safety or protection of property when authorized by the City Manager with written notice to the City Council.
- (10) Any temporary use of land of up to a 30-day duration (such as a promotional event, festival, carnival, or outdoor sale) that conforms with all other requirements of this Code and other applicable City regulations, public health, and safety requirements, some of which may further limit such uses in terms of location, scope, and duration.
- (11) The establishment, construction, alteration, or maintenance of a public facility authorized by the Director of Public Works, including streets, highways, traffic control devices, drainage ways, sanitary and storm sewers, pump stations, water lines, electrical power or gas distribution lines, or telephone or television cable systems. This includes construction of staging areas of less than six months' duration but does not include major substations, treatment facilities, storage tanks, reservoirs, and towers.
- (12) Excavation and fill for foundations and all other excavation or filling of land involving 50 cubic yards or less that does not adversely affect drainage patterns and is not located in the special flood hazard area.
- (13) In middle housing zoning districts, new middle housing, including middle housing created through internal conversion of, or addition to, existing dwellings; and additions to existing middle housing.  
[Ord. 5968, 1/14/22]
- (14) Expedited land divisions and middle housing land divisions (see application review procedures in Article 11, Sections 11.600 through 11.630).  
[Ord. 5968, 1/14/22; Ord 6004, 12/28/22]

1.110 Determination of Review Type.

- (1) Unless specified in Table 1.100-1 or elsewhere in this Code, the Director will determine whether a permit or application is processed as Type I, I-L, II, III, IV-Q, or IV-L based on the descriptions in ADC 1.100.
- (2) When there is a question as to the appropriate type of procedure, the Director shall determine the type of procedure to be used based upon the most similar land use application procedure specified by this Code or other established policy.

- (3) When a proposal involves more than one application for the same property, the applicant(s) may submit concurrent applications that shall be processed simultaneously in accordance with the highest numbered procedure specified. When concurrent applications are received and accepted as complete, the requirements of Section 1.120 shall apply as if a single application had been made.

1.120 Time to Process Complete Applications.

- (1) Time Limit—120-day Rule. The City must take final action on all Type I-L, Type II, Type III, and Type IV-Q land use applications, as provided by ORS 227.178, including resolution of all local appeals, within 120 days after the application has been deemed complete under ADC 1.170, unless the applicant provides written request or consent to an extension in compliance with ORS 227.178. (Note: The 120-day rule does not apply to Type IV-L decisions.)
- (2) Time Limit—100-day Rule. The City must take final action including resolution of all local appeals on qualifying applications under ORS 227.180 within 100 days after the application is deemed complete. An application qualifies if it is submitted under ORS 227.175 and meets the following criteria:
  - (a) The application is for development of a multiple-dwelling unit building units within the urban growth boundary; [Ord. 5968, 1/14/22]
  - (b) At least 50 percent of the residential units included in the development will be sold or rented as affordable housing. For the purposes of this section, "affordable housing" means housing that is affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the development is built or for the state, whichever is greater; and
  - (c) The development is subject to a covenant appurtenant that restricts the owner and each successive owner of the development or a residential unit within the development from selling or renting any residential unit described in paragraph (b) of this subsection as housing that is not affordable housing for a period of 60 years from the date of the certificate of occupancy.
- (3) Time Periods. "Days" means calendar days unless otherwise specified. In computing time periods prescribed or allowed by this Article, the day of the act or event from which the designated period of time begins is not included. The last day of the period is included, unless it is a Saturday, Sunday, or a federal holiday, in which case the period runs until the end of the next day that is not on a weekend or City recognized legal holiday. [Ord. 6004, 12/28/22]

## **PRE-APPLICATION CONFERENCES AND NEIGHBORHOOD MEETINGS**

1.130 Pre-Application Conference.

- (1) Purpose of Pre-Application Conferences. Pre-application conferences are intended to familiarize applicants with the requirements of the ADC; to provide applicants with an opportunity to discuss proposed projects in detail with City staff; and to identify approval criteria, standards, and procedures prior to filing a land use application. The pre-application conference is intended to be a tool to assist applicants in navigating the land use process, but is not intended to be an exhaustive review that identifies or resolves all potential issues, and does not bind or preclude the City from enforcing any applicable regulations or from applying regulations in a manner differently than may have been indicated at the time of the pre-application conference.
- (2) When Mandatory. Pre-application conferences are mandatory for all land use actions identified as requiring a pre-application conference in Table 1.100-1. An applicant may voluntarily request a pre-application conference for any land use action even if it is not required.
- (3) Timing of Pre-Application Conference. When mandatory, a pre-application conference must be held with City staff before an applicant submits an application and before an applicant conducts a Neighborhood Meeting (if applicable).



- (4) Requesting a Pre-Application Conference.
  - (a) Request Form. Pre-application conference requests must be made on forms provided by the Director.
  - (b) Submittal Requirements. Pre-application conference requests must be made in writing and include:
    - i. A description of the development proposal along with a list of any questions the applicant has for staff related to the proposal.
    - ii. A sketch of the development plan. The sketch shall indicate the approximate location of the property boundaries, existing structures, and proposed improvements; and
    - iii. Any additional information the applicant deems necessary to demonstrate the nature and scope of the proposal in sufficient detail to allow City staff to review and comment.
- (5) Scheduling of Pre-Application Conference. Upon receipt of a complete pre-application request, the Director will schedule the pre-application conference. The Director will coordinate the involvement of City departments, as appropriate, in the pre-application conference. Pre-application conferences are not open to the general public.
- (6) Validity Period for Mandatory Pre-Application Conferences; Follow-Up Conferences. Unless waived by the Director, a follow-up conference is required for those mandatory pre-application conferences that have previously been held when:
  - (a) An application relating to the proposed development that was the subject of the pre-application conference has not been submitted within one year of the pre-application conference;
  - (b) The proposed use, layout, and/or design of the proposal have significantly changed; or
  - (c) The owner and/or developer of a project changes after the pre-application conference and prior to application submittal.
- (7) Written Summary. Upon the applicant's request, the Director shall provide the applicant with a written summary of the conference.

1.140 Neighborhood Meeting.

- (1) Purpose. The purpose of a neighborhood meeting is to ensure that applicants pursue early and effective public participation in conjunction with their applications, giving them the opportunity to understand and try to mitigate any real or perceived impacts their application may have on the neighborhood. The meeting is not intended to produce complete consensus on all applications. It is intended to encourage applicants to be good neighbors.
- (2) When Mandatory. Neighborhood meetings are mandatory for all land use actions identified in Table 1.100-1 as requiring a neighborhood meeting. In addition, the applicant shall hold a neighborhood meeting before submitting the following types of land use applications:
  - (a) Multiple-dwelling unit development that abuts a single-dwelling unit zoning district.
  - (b) Commercial or industrial development that abuts any residential zoning district and the addition of outside seating areas to restaurants or bars/taverns/breweries/night clubs within 300 feet of a residence.
  - (c) Manufactured home park adjacent to any residential zoning district.
  - (d) Subdivision with more than 10 lots, excluding expedited and middle housing land divisions.  
[Ord. 5968, 1/14/22]
  - (e) Cluster and planned development.
  - (f) Retail Sales and Services Uses proposed in existing buildings in the Light Industrial zone that require Conditional Use approval per Section 4.060(11)(b).
  - (g) For other non-residential applications or revisions to applications that the Director determines may have a neighborhood impact, such as conditional uses. In these cases, the Director shall determine the minimum notice area for the neighborhood meeting.
- (3) Time and Location. The applicant shall consult with City staff to determine an appropriate meeting date, time, and place given the location of the proposed development and availability of staff to attend.

- (4) Notice. The applicant shall send mailed notice of the public meeting to the Director and all property owners and designated representative(s) of City Council-recognized neighborhood association(s) within the minimum notice area specified below. The broadest notice area applicable to a proposal shall apply.

<b>Proposals for:</b>	<b>Notice Area based on minimum distance from the boundaries of the subject property*</b>
Non-residential development (including the non-residential portion of a mixed-use development)	300 feet**
Residential development proposing 50 or less dwelling units, lots or spaces	300 feet
Any development which proposes more than 50 dwelling units, lots or spaces	1,000 feet
* <i>Additional notice area requirements applicable to Historic Resources are found in Article 7. In cases of conflict with the procedures in Article 1, the procedures in Article 7 shall prevail.</i>	
** <i>For applications which include non-residential development, the Director may increase the notice area based on the project scale, land use and transportation patterns or anticipated public interest in the project, up to a maximum of 1,000 feet.</i>	

The property owner list shall be compiled from county tax assessor's property owner lists from the most recent property tax assessment roll. The address for the designated representative(s) of the affected neighborhood association(s) shall be obtained from the City. The notice shall be sent a minimum of 10 days and no more than 30 days before the meeting, and shall include:

- (a) Date, time, and location of the public meeting.
  - (b) A brief written description of the development proposal and proposed use(s) with enough specificity so that the project is easily discernible.
  - (c) The location of the subject property(ies), including address (if applicable), nearest cross streets and any other easily understood geographical reference, and a map (such as a tax assessor's map) that depicts the subject property.
- (5) Presentation. The applicant's presentation at the neighborhood meeting shall include:
- (a) A map depicting the location of the subject property(ies) proposed for development.
  - (b) A visual description of the project including a site plan, tentative subdivision plan and elevation drawings of any proposed structures, when applicable.
  - (c) A description of the nature of the proposed use(s) including, but not limited to, sizes and heights of structures, proposed lot sizes, density, etc.
  - (d) The expected or anticipated impacts from the proposed development (e.g., traffic, storm drainage, tree removal, etc.).
  - (e) Mitigation proposed by the applicant to alleviate the expected/anticipated impacts.
  - (f) An opportunity for the public to provide comments.

Applicants are encouraged to reconcile as many public concerns as possible before submitting land use application(s).

- (6) Report. A report documenting the results of any neighborhood meeting is required to be submitted with the application. The report shall contain:
- (a) The dates and locations of all meetings where citizens were invited to discuss the applicant's proposal;
  - (b) The method(s) by which each meeting was publicized;
  - (c) Sign in sheet indicating the number of people who attended the meeting and a list of people who otherwise contacted the applicant;
  - (d) A summary of the concerns, issues, and problems raised by neighbors;

- (e) A discussion of how the applicant has addressed or intends to address concerns, issues, and problems; and
- (f) A discussion of any concerns, issues, and problems the applicant is unable or unwilling to address and why. [Ord. 6004, 12/28/22]

## **APPLICATION SUBMITTAL AND COMPLETENESS REVIEW**

### 1.150 Initiation of Applications.

- (1) Type I, Type I-L, Type II, Type III, and Type IV-Q applications. Type I, Type I-L, Type II, Type III, and Type IV-Q applications may be submitted by one or more of the following persons:
  - (a) The owner of the subject property;
  - (b) The contract purchaser of the subject property, when the application is accompanied by proof of the purchaser's status as such and by the seller's written consent;
  - (c) A lessee in possession of the property, when the application is accompanied by the owners' written consent; or
  - (d) The agent of any of the foregoing, when the application is duly authorized in writing by a person authorized to submit an application by subsections (a), (b), or (c) and accompanied by proof of the agent's authority.
  - (e) A public entity that has the right of eminent domain for projects the entity has the authority to construct.
- (2) Type IV-L (Legislative Applications). Legislative applications shall be initiated in accordance with ADC 1.260(1).

### 1.160 Application Submittal.

- (1) Submittal Requirements. Type I – IV-Q land use applications must be submitted on forms provided by the City. A land use application may not be accepted in partial submittals. All information supplied on the application form and accompanying the application must be complete and correct as to the applicable facts. Unless otherwise specified, all of the following must be submitted to initiate completeness review under ADC 1.170:
  - (a) Explanation of intent, nature, and proposed use(s) of the development, pertinent background information, and other information that may have a bearing in determining the action to be taken, including detailed findings when required by the provisions of this Code.
  - (b) Signed statement that the property affected by the application is in the exclusive ownership or control of the applicant, or that the applicant has the consent of all partners in ownership of the affected property.
  - (c) Property description and assessor map parcel number(s).
  - (d) Additional information required by other sections of this Code because of the type of proposal or the area involved.
  - (e) Duplicates of the above information as required by the Director.
  - (f) Application fees.
  - (g) A report documenting the results of any mandatory neighborhood meeting prepared in accordance with ADC 1.140(5).
- (2) Application Intake. Each application, when received, will be date-stamped with the date the application was received by the City, and designated with a receipt number and a notation of the staff person who received the application.
- (3) Administrative Standards for Applications. The Director is authorized to establish administrative standards for application forms and submittals, including but not limited to plan details, information detail and specificity, number of copies, scale, and the form of submittal.

1.165 Concurrent Applications. When an applicant files a consolidated set of applications for: (1) a comprehensive plan amendment and/or (2) a Zoning Map amendment that is dependent on that plan map amendment; and/or (3) a development permit that is dependent on that Zoning Map amendment, the goal post rule at ORS 197.427(3)(a) does not apply to “freeze” in place the standards and criteria that applied to that development permit as of the date the applications were filed. Instead, the standards and criteria that apply are those supplied by the new plan and zoning designations. [Ord. 5966 11/12/21]

1.170 Completeness Review.

- (1) Duration. Except as otherwise provided under ORS 227.178, the Director must review an application for completeness within 30 days of its receipt.
- (2) Considerations. Determination of completeness will be based upon receipt of the information required under ADC 1.160 and will not be based on opinions as to quality or accuracy. Applications that do not respond to relevant Code requirements or standards can be deemed incomplete. A determination that an application is complete indicates only that the application is ready for review on its merits, not that the City will make a favorable decision on the application.
- (3) Complete Applications. If an application is determined to be complete, review of the application will commence.
- (4) Incomplete Applications. If an application is determined to be incomplete, the Director must provide written notice to the applicant identifying the specific information that is missing and allowing the applicant the opportunity to submit the missing information. An application which has been determined to be incomplete must be deemed complete for purposes of this section upon receipt of:
  - (a) All of the missing information;
  - (b) Some of the missing information and written notice from the applicant that no other information will be provided; or
  - (c) Written notice from the applicant that none of the missing information will be provided.
- (5) Vesting. If an application was complete at the time it was first submitted, or if the applicant otherwise responds as provided in subsection (4) of this section within 180 days of the date the application was first submitted, then:
  - (a) Approval or denial of the application must be based upon the standards and criteria that were in effect at the time the application was first submitted; or
  - (b) When a concurrent quasi-judicial Comprehensive Plan and/or Zoning Map is proposed and approved, then approval or denial of the concurrent application will be based on the new zoning district or Comprehensive Plan designation. [Ord. 5966 11/12/21]
- (6) Void Applications. An application is void if the application has been on file with the City for more than 180 days and the applicant has not provided the missing information or otherwise responded, as provided in subsection (4) of this section.

1.180 Revised Applications. Revisions or alterations of an application may be made following the determination that an application is complete, provided such revisions or alterations address applicable requirements and do not render the application incomplete. Revisions or alterations desired by the applicant may impact the application processing timelines outlined in Section 1.120.

1.185 Withdrawal of Application.

- (1) Withdrawn by Applicant. An application may be withdrawn by the applicant at any time prior to the issuance of the decision if the owner or contract purchaser consents in writing to withdraw the application.
- (2) Notice. If an application is withdrawn after the mailing of public notice, the Director must send written notice stating the application has been withdrawn to all persons who were provided mailed notice of the application or public hearing.

## REVIEW TYPE PROCEDURES

- 1.210 Type I Procedure (Ministerial). The Director makes ministerial decisions through the Type I procedure without public notice and without a public hearing.
- (1) Submittal Requirements. Complete Type I applications must include the submittal information required by ADC 1.160.
  - (2) Notice of Application Submittal. No public notice of review is required, except for a Special Use Permit for Temporary Placements in 10.450 and 10.470, where a notice of 100 feet is required.  
[Ord. 6024, 12/29/23]
  - (3) Notice of Decision. Written notice of the decision must be provided to the applicant and property owner of record.
  - (4) Appeal of a Type I Decision. The decision of the Director on a Type I application shall be the final decision of the City. Appeal shall be to the Circuit Court under writ of review.
  - (5) Effective Date of a Type I Decision. A Type I decision is final on the date it is signed by the Director.
- 1.220 Type I-L Procedure (Administrative Review with Notice). Type I-L decisions are made by the Director with public notice and an opportunity for review and comment.
- (1) Submittal Requirements. Type I-L applications must include the submittal information required by ADC 1.160.
  - (2) Determination of Completeness. After receiving an application for filing, the Director will review the application for completeness in accordance with ADC 1.170.
  - (3) Written Notice of Application and Opportunity to Comment. Once the application has been deemed complete, the City will mail notice of filing to the identified recipients in (a) no fewer than 14 days before making the Type I-L decision to allow interested people and agencies the opportunity to submit written comments on the application before the City issues the decision.
    - (a) Recipients:
      - i. All property owners and designated representative(s) of City Council-recognized neighborhood association(s) within the minimum notice area specified below. The broadest notice area applicable to a proposal shall apply.

Proposals for:	Notice Area based on minimum distance from the boundaries of the subject property*
<ul style="list-style-type: none"> <li>• Non-residential development subject to Site Plan Review (including the non-residential portion of a mixed-use development)</li> </ul>	300 feet**
<ul style="list-style-type: none"> <li>• Subdivision, 50 lots or less</li> <li>• Manufactured home park, 50 spaces or less</li> <li>• Multi-dwelling unit development, 50 units or less</li> </ul>	300 feet
<ul style="list-style-type: none"> <li>• Any development which proposes more than 50 dwelling units, lots or spaces</li> </ul>	1,000 feet
<ul style="list-style-type: none"> <li>• All other Type I-L decisions not listed above, including, but not limited to, Site Plan Review of Residential Accessory Structures and Minor Variances</li> </ul>	100 feet**
<p><i>* Additional notice area requirements applicable to Historic Resources are found in Article 7. In cases of conflict with the procedures in Article 1, the procedures in Article 7 shall prevail.</i></p> <p><i>** For applications which include non-residential development, the Director may increase the notice area based on the project scale, land use and transportation patterns or anticipated public interest in the project, up to a maximum of 1,000 feet.</i></p>	

- ii. Any person who submits a written request to receive a notice;
  - iii. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and any other affected agencies, including but not limited to: school districts; fire district; the Oregon Department of Transportation, where the project either adjoins or directly affects a state highway or a railway; the County, where the project site would access a County road or otherwise be subject to review by the County. The failure of another agency to respond with written comments on a pending application does not invalidate an action or permit approval made by the City under this Code; and
  - iv. Utility companies (as applicable).
- (b) The mailed notice of filing, at a minimum, must contain all of the following information:
- i. The names of the applicant(s), any representative(s) thereof, and the owner(s) of the subject property;
  - ii. The street address if assigned, if no street address has been assigned then Township, Range, Section, Tax Lot or Tax Lot ID or other easily understood geographic reference to the subject property;
  - iii. The proposed site plan;
  - iv. Statement noting if a railroad-highway grade crossing provides or will provide the only access to the subject property;
  - v. The type of application and a concise description of the nature of the land use action;
  - vi. A list of the approval criteria by ADC section for the decision and other ordinances or regulations that apply to the application at issue;
  - vii. Brief summary of the local decision making process for the land use decision being made;
  - viii. The date, place, and time where comments are due and that comments are due no later than 5:00 p.m. on the 14th calendar day after the notice was mailed;
  - ix. A statement indicating that issues which may provide the basis for an appeal to the Land Use Board of Appeals must be raised in writing prior to the expiration of the comment period and with sufficient specificity to enable the applicant and local appeal body to respond to the issue;
  - x. A statement that after the comment period closes, the City will issue its decision and the decision will be mailed to the applicant, property owner, anyone who submitted written comments on the application, and to anyone else is otherwise legally entitled to notice;
  - xi. A statement that comments received after the close of the public comment period will not be considered;
  - xii. The name of a City representative to contact and the telephone number where additional information may be obtained; and
  - xiii. Statement that the application and all documents and evidence submitted by the applicant are available for review and that copies can be obtained at a reasonable cost from the City.
- (c) Failure of a person or agency identified in ADC 1.220(3)(a) to receive the notice required in ADC 1.220(3)(b) does not invalidate any proceeding in connection with the application provided the City can demonstrate by affidavit that notice was given in accordance with this section.
- (d) Written comments must be received by the City no later than 5:00 p.m. on the 14th calendar day after the notice was mailed in order for comments to be considered.
- (4) **Decision.** At the conclusion of the comment period, the Director must review the comments received and approve, approve with conditions, or deny the application. The decision must be in writing and include a statement that:
- (a) Explains the criteria and standards considered relevant to the decision;
  - (b) States the facts relied upon in issuing the decision; and
  - (c) Explains the justification for the decision based on the criteria, standards, and facts set forth.

- (5) Notice of Type I-L Decision. Notice of the decision must be provided to the property owner, applicant, and any person who submitted written comments in accordance with ADC 1.220(3)(d). The Type I-L Notice of Decision must contain all of the following information:
- (a) A description of the applicant's proposal and the City's decision on the proposal, which may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;
  - (b) The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area;
  - (c) A statement that the complete case file, including findings, conclusions, and conditions of approval, if any, is available for review and how copies can be obtained;
  - (d) The date the decision becomes final, unless an appeal is submitted; and
  - (e) A statement that all person entitled to notice of the decision may appeal the decision in accordance with ADC 1.410.
- (6) Appeal of a Type I-L Decision. Appeals may be made in accordance with ADC 1.410.
- (7) Effective Date of Type I-L Decision. A Type I-L Decision becomes effective 10 days after the City mails the Notice of Decision unless an Appeal is submitted pursuant to ADC 1.410 or unless the conditions of approval specify otherwise. [Ord. 6004, 12/28/22]

1.230 Type II Procedure (Administrative Review with Notice). Type II decisions are made by the Director with public notice and an opportunity for review and comment.

- (1) Submittal Requirements. Type II applications must include the submittal information required by ADC 1.160.
- (2) Determination of Completeness. After receiving an application for filing, the Director will review the application for completeness in accordance with ADC 1.170.
- (3) Written Notice of Application and Opportunity to Comment. Once the application has been deemed complete, the City will mail notice of filing to the identified recipients in (a) no fewer than 14 days before making the Type II decision to allow interested people and agencies the opportunity to submit written comments on the application before the City issues the decision.
  - (a) Recipients:
    - i. All property owners and designated representative(s) of City Council-recognized neighborhood association(s) within the minimum notice area specified below. The broadest notice area applicable to a proposal shall apply.

<b>Proposals for:</b>	<b>Minimum distance from the boundaries of the subject property*</b>
• Non-residential development (including the non-residential portion of a mixed-use development)	300 feet**
• Residential development proposing 50 or less dwelling units, lots or spaces	300 feet
• Any development which proposes more than 50 dwelling units, lots or spaces	1,000 feet
* Additional notice area requirements applicable to Historic Resources are found in Article 7. In cases of conflict with the procedures in Article 1, the procedures in Article 7 shall prevail.	
** For applications which include non-residential development, the Director may increase the notice area based on the project scale, land use and transportation patterns or anticipated public interest in the project, up to a maximum of 1,000 feet.	

- ii. Any person who submits a written request to receive a notice;
  - iii. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and any other affected agencies, including but not limited to: school districts; fire district; the Oregon Department of Transportation, where the project either adjoins or directly affects a state highway or railway; the County, where the project site would access a County road or otherwise be subject to review by the County. The failure of another agency to respond with written comments on a pending application does not invalidate an action or permit approval made by the City under this Code; and
  - iv. Utility companies (as applicable).
- (b) The mailed notice of filing, at a minimum, must contain all of the following information:
- i. The names of the applicant(s), any representative(s) thereof, and the owner(s) of the subject property;
  - ii. The street address if assigned, if no street address has been assigned then Township, Range, Section, Tax Lot or Tax Lot ID or other easily understood geographic reference to the subject property;
  - iii. The proposed site plan;
  - iv. Statement noting if a railroad-highway grade crossing provides or will provide the only access to the subject property;
  - v. The type of application and a concise description of the nature of the land use action;
  - vi. A list of the approval criteria by ADC section for the decision and other ordinances or regulations that apply to the application at issue;
  - vii. Brief summary of the local decision making process for the land use decision being made, including the process to appeal a decision;
  - viii. The date, place, and time where comments are due and that comments are due no later than 5:00 p.m. on the 14th calendar day after the notice was mailed;
  - ix. A statement that after the comment period closes, the City will issue its decision and the decision will be mailed to the applicant, property owner, anyone who submitted written comments on the application, and to anyone else who is legally entitled to notice;
  - x. A statement that comments received after the close of the public comment period will not be considered in the Director's decision;
  - xi. The name of a City representative to contact and the telephone number where additional information may be obtained; and
  - xii. Statement that the application and all documents and evidence submitted by the applicant are available for review and that copies can be obtained at a reasonable cost from the City.
- (c) Failure of a person or agency identified in ADC 1.230(3)(a) to receive the notice required in ADC 1.230(3)(b) does not invalidate any proceeding in connection with the application provided the City can demonstrate by affidavit that notice was given in accordance with this section.
- (d) Written comments must be received by the City no later than 5:00 p.m. on the 14th calendar day after the notice was mailed in order for comments to be considered.
- (4) Decision. At the conclusion of the comment period, the Director must review the comments received and approve, approve with conditions, or deny the application. The decision must be in writing and include a statement that:
- (a) Explains the criteria and standards considered relevant to the decision;
  - (b) States the facts relied upon in issuing the decision; and
  - (c) Explains the justification for the decision based on the criteria, standards and facts set forth.
- (5) Notice of Type II Decision. Notice of the decision must be provided to the property owner, applicant, any person who submitted written comments in accordance with ADC 1.230(3)(d) and all persons and agencies entitled to notice pursuant to ADC 1.230(3)(a). The Type II Notice of Decision must contain all of the following information:



- (a) A description of the applicant's proposal and the City's decision on the proposal, which may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;
  - (b) The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area;
  - (c) A statement that the complete case file, including findings, conclusions, and conditions of approval, if any, is available for review and how copies can be obtained;
  - (d) The date the decision becomes final, unless an appeal is submitted;
  - (e) A statement that all person entitled to notice of the decision may appeal the decision within 14 days in accordance with ADC 1.410 and that issues which may provide the basis for an appeal must be raised in writing and with sufficient specificity to enable the applicant and local appeal body to respond to the issue;
  - (f) A statement that a person who is mailed written notice of the decision cannot appeal the decision directly to the state Land Use Board of Appeals under ORS 197.830; and
  - (g) A statement that the decision will not become final until the period for filing a local appeal has expired.
- (6) Appeal of a Type II Decision. Appeals may be made in accordance with ADC 1.410. A de novo appeal hearing is required for Type II decisions.
- (7) Effective Date of Type II Decision. A Type II Decision becomes effective 14 days after the City mails the Notice of Decision, unless an appeal is submitted pursuant to ADC 1.410 or unless the conditions of approval specify otherwise.

1.240 Type III Procedure (Quasi-Judicial Review—Public Hearing). Type III decisions are made by the Planning Commission, Hearings Board, or the Landmarks Commission after a public hearing with an opportunity for appeal to the City Council. The decision body for each application type is specified in Table 1.100-1. A hearing under these procedures provides a forum to apply standards to a specific set of facts to determine whether the facts conform to the applicable criteria.

- (1) Submittal Requirements. Type III applications must include the submittal information required by ADC 1.160.
- (2) Determination of Completeness. After receiving an application for filing, the Director will review the application for completeness in accordance with ADC 1.170.
- (3) Written Notice of Public Hearing—Type III. Once the application has been deemed complete, the City must mail by regular first class mail Notice of a Public Hearing to the following individuals and agencies no fewer than 20 days before the hearing.
  - (a) Recipients:
    - i. All property owners and designated representative(s) of City Council-recognized neighborhood association(s) within the minimum notice area specified below. The broadest notice area applicable to a proposal shall apply.

<b>Proposals for:</b>	<b>Minimum distance from the boundaries of the subject property*</b>
Non-residential development (including the non-residential portion of a mixed-use development)	300 feet**
Residential development proposing 50 or less dwelling units, lots or spaces;	300 feet
Any development which proposes more than 50 dwelling units, lots or spaces	1,000 feet
<p><i>* Additional notice area requirements applicable to Historic Resources are found in Article 7. In cases of conflict with the procedures in Article 1, the procedures in Article 7 shall prevail.</i></p> <p><i>** For applications which include non-residential development, the Director may increase the notice area based on the project scale, land use and transportation patterns or anticipated public interest in the project, up to a maximum of 1,000 feet.</i></p>	

- ii. Any person who submits a written request to receive a notice;
  - iii. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and any other affected agencies, including but not limited to: school districts; fire district; the Oregon Department of Transportation, where the project either adjoins or directly affects a state highway or railway; the County, where the project site would access a County road or otherwise be subject to review by the County. The failure of another agency to respond with written comments on a pending application does not invalidate an action or permit approval made by the City under this Code; and
  - iv. Utility companies (as applicable).
- (b) The Notice of a Public Hearing, at a minimum, will contain all of the following information:
- i. The names of the applicant(s), any representative(s) thereof, and the owner(s) of the subject property;
  - ii. The street address if assigned, if no street address has been assigned then Township, Range, Section, Tax Lot or Tax Lot ID or other easily understood geographic reference to the subject property;
  - iii. The type of application and a concise description of the nature of the land use action;
  - iv. A list of the approval criteria for the decision and other ordinances or regulations that apply to the application at issue;
  - v. Brief summary of the local decision-making process for the land use decision being made and a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;
  - vi. The reviewing body, the date, time, and place of the hearing;
  - vii. Disclosure statement indicating that if any person fails to address the relevant approval criteria with enough detail, he or she may not be able to appeal to City Council or the state Land Use Board of Appeals on that issue, and that only comments on the relevant approval criteria are considered relevant evidence and that only those persons making an appearance of record, either in person or in writing, shall be entitled to appeal;
  - viii. The name of a City representative to contact and the telephone number where additional information may be obtained;
  - ix. Statement that the application and all documents and evidence submitted to the City are in the public record and available for review, and that copies can be obtained at a reasonable cost from the City; and
  - x. Statement that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at a reasonable cost.

- (c) Failure of a person or agency identified in ADC 1.240(3)(a) to receive the notice required in ADC 1.240(3)(b) does not invalidate any proceeding in connection with the application, provided the City can demonstrate by affidavit that required notice was given.
- (4) Posted Notice. Development sites that are the subject of Type III public hearings shall be posted unless otherwise noted in this Code. Posted notice is deemed given on the day the sign is first posted. The applicant shall be responsible for providing a sign frame for the notice and also for posting the notice at the correct time and location. The actual notice to be posted on the sign shall be provided by the City. The posting shall meet the following requirements:
  - (a) The notice shall be at least 2 feet by 3 feet.
  - (b) The notice shall be posted in a location visible from a traveled public road or street abutting the property. (If no public street abuts the property, the notice shall be placed so as to be generally visible to the public.)
  - (c) The notice shall be posted for at least seven consecutive days before any public hearing on the matter.
  - (d) If the subject property is a corner lot, then two signs are required in locations defined in (b) above.
  - (e) At least five days before any hearing (or decision made by the Director), an affidavit of posting shall be filed with the Director.
  - (f) If the subject property is not properly posted as set forth in this section, the Director may postpone the hearing until such provisions are met.
  - (g) The posted notice shall display the nature of the application and a telephone number for more information. The posted notice shall also include a photocopy of the original mailed notice sent to affected property owners.
- (5) Hearings. Type III hearings shall be conducted in accordance with the procedures in ADC 1.510 through 1.590.
- (6) Notice of a Type III Decision. Notice of Decision must be provided to the property owner, applicant, and any person who provided testimony at the hearing or in writing. The Type III Notice of Decision must contain all of the following information:
  - (a) A description of the applicant's proposal and the City's decision on the proposal, which may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;
  - (b) The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area;
  - (c) A statement that a copy of the decision and complete case file, including findings, conclusions, and conditions of approval, if any, is available for review and how copies can be obtained;
  - (d) The date the decision becomes final, unless a request for appeal is submitted; and
  - (e) The notice must include an explanation of rights to appeal the decision to the City Council in accordance with ADC 1.410.
- (7) Appeal of a Type III Decision. Appeals may be made to the City Council in accordance with ADC 1.410.
- (8) Effective Date of a Type III Decision.
  - (a) Unless a local ordinance specifies that the decision becomes final at a later time than defined in this section, a Type III decision becomes final when it is reduced to writing and bears the necessary signatures of the decision maker.
  - (b) A final decision becomes effective when the appeal period expires unless:
    - i. A written appeal is received at the City offices within 10 calendar days of the date notice of the final decision is mailed; or
    - ii. The City Council requests a review of the decision within 10 calendar days of the date notice of the final decision is mailed.

1.250 Type IV-Q Procedure (Quasi-Judicial Review—City Council Public Hearing). Type IV-Q decisions are quasi-judicial decisions. The application is first heard by the Planning Commission (PC), Hearings Board (HB), or Landmarks Commission (LC) as specified in Table 1.100-1, through a public hearing. If the recommending body makes a favorable recommendation, the City Council will hold a second public hearing and make a final decision. If the PC, HB, or LC recommends against a proposal, the City Council will only consider the proposal on appeal by the applicant, through a second public hearing. Hearings under these procedures provides a forum to apply standards to a specific set of facts to determine whether the facts conform to the applicable criteria.

- (1) Submittal Requirements. Type IV-Q applications must include the submittal information required by ADC 1.160.
- (2) Determination of Completeness. After receiving an application for filing, the Director will review the application for completeness in accordance with ADC 1.170.
- (3) Written Notice of Public Hearing—Type IV-Q. Once the application has been deemed complete, the City must mail by regular first class mail Notice of a Public Hearing to the following individuals and agencies no fewer than 20 days before the initial hearing.
  - (a) Recipients:
    - i. All property owners and designated representative(s) of City Council-recognized neighborhood association(s) within the minimum notice area specified below. The broadest notice area applicable to a proposal shall apply.

<b>Proposals for:</b>	<b>Minimum distance from the boundaries of the subject property*</b>
Non-residential development (including the non-residential portion of a mixed-use development)	300 feet**
Residential development proposing 50 or less dwelling units, lots or spaces	300 feet
Any development which proposes more than 50 dwelling units, lots or spaces	1,000 feet
<p><i>* Additional notice area requirements applicable to Historic Resources are found in Article 7. In cases of conflict with the procedures in Article 1, the procedures in Article 7 shall prevail.</i></p> <p><i>** For applications which include non-residential development, the Director may increase the notice area based on the project scale, land use and transportation patterns or anticipated public interest in the project, up to a maximum of 1,000 feet.</i></p>	

- ii. Any person who submits a written request to receive a notice;
  - iii. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and any other affected agencies, including but not limited to: school districts; fire district; the Oregon Department of Transportation, where the project either adjoins or directly affects a state highway or railway; the County, where the project site would access a County road or otherwise be subject to review by the County. The failure of another agency to respond with written comments on a pending application does not invalidate an action or permit approval made by the City under this Code; and
  - iv. Utility companies (as applicable).
- (b) The Notice of a Public Hearing, at a minimum, must contain all of the following information:
- i. The names of the applicant(s), any representative(s) thereof, and the owner(s) of the subject property;
  - ii. The street address if assigned, if no street address has been assigned then Township, Range, Section, Tax Lot, or Tax Lot ID or other easily understood geographic reference to the subject property;
  - iii. The type of application and a concise description of the nature of the land use action;

- iv. A list of the approval criteria by ADC section for the decision and other ordinances or regulations that apply to the application at issue;
  - v. Brief summary of the local decision making process for the land use decision being made and a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;
  - vi. The review body, date, time, and location of the hearing;
  - vii. Disclosure statement indicating that if any person fails to address the relevant approval criteria with enough detail, he or she may not be able to appeal to City Council or the state Land Use Board of Appeals on that issue, and that only comments on the relevant approval criteria are considered relevant evidence and that only those persons making an appearance of record, either in person or in writing, shall be entitled to appeal;
  - viii. The name of a City representative to contact and the telephone number where additional information may be obtained;
  - ix. Statement that the application and all documents and evidence submitted to the City are in the public record and available for review, and that copies can be obtained at a reasonable cost from the City; and
  - x. Statement that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at a reasonable cost.
- (c) Failure of a person or agency to receive a notice does not invalidate any proceeding in connection with the application, provided the City can demonstrate by affidavit that required notice was given.
- (4) Additional Notice Requirements for Certain Type IV-Q Application Types. The following additional notice requirements apply to Type IV-Q Hearings where the City Council will be considering the application or removal of a Historic Landmark Designation or a Plan Text or Map Amendment for a particular property or discrete set of properties.
- (a) The Director will notify in writing the Oregon Department of Land Conservation and Development (DLCD) in accordance with the minimum number of days required by ORS Chapter 197.
  - (b) At least 14 calendar days before the scheduled City Council public hearing date, the Director will provide public notice by publication in a newspaper of general circulation in the City.
  - (c) At least 14 calendar days before the scheduled City Council public hearing date, the Director will post public notice in two public and conspicuous places within the City.
- (5) Posted Notice. Development sites that are the subject of Type IV-Q quasi-judicial public hearings shall be posted unless otherwise noted in this Code. Posted notice is deemed given on the day the sign is first posted. The applicant shall be responsible for providing a sign frame for the notice and also for posting the notice at the correct time and location. The actual notice to be posted on the sign shall be provided by the City. The posting shall meet the following requirements:
- (a) The notice shall be at least 2 feet by 3 feet.
  - (b) The notice shall be posted in a location visible from a traveled public road or street abutting the property. (If no public street abuts the property, the notice shall be placed so as to be generally visible to the public.)
  - (c) The notice shall be posted for at least seven consecutive days before any public hearing on the matter.
  - (d) If the subject property is a corner lot, then two signs are required in locations defined in (b) above.
  - (e) At least five days before any hearing (or decision made by the Director), an affidavit of posting shall be filed with the Director.
  - (f) If the subject property is not properly posted as set forth in this section, the Director may postpone the hearing until such provisions are met.
  - (g) The posted notice shall display the nature of the application and a telephone number for more information. The posted notice shall also include a photocopy of the original mailed notice sent to affected property owners.

- (6) Hearings. Type IV-Q hearings shall be conducted in accordance with the procedures in ADC 1.510 through 1.590. The Hearings Board, Landmarks Commission, or Planning Commission as specified in Table 1.100-1 will hold an initial hearing.
  - (a) For a proposal on which the Hearings Board, Landmarks Commission, or Planning Commission has made a favorable recommendation, the City Council shall hold a second public hearing and make a final decision.
  - (b) If the Planning Commission, Landmarks Commission, or Hearings Board decides against a proposal, the City Council will only consider the proposal on appeal by the applicant(s).
- (7) Notice of a Type IV-Q Decision. Notice of Decision must be provided to the property owner, applicant, and any person who provided testimony at the hearing or in writing. The Type IV-Q Notice of Decision must contain all of the following information:
  - (a) A description of the applicant's proposal and the City's decision on the proposal, which may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;
  - (b) The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area;
  - (c) A statement that a copy of the decision and complete case file, including findings, conclusions, and conditions of approval, if any, is available for review and how copies can be obtained;
  - (d) The date the decision becomes final; and
  - (e) The notice must include an explanation of rights to appeal a Planning Commission, Landmarks Commission, or Hearings Board denial to the City Council or a City Council decision to the state Land Use Board of Appeals pursuant to ORS 197.805—197.860.
- (8) Appeal of a Type IV-Q Decision. A Planning Commission, Hearings Board, or Landmarks Commission Type IV-Q decision denying an application may be appealed to the City Council in accordance with ADC 1.410. A decision of the City Council may be appealed to the state Land Use Board of Appeals.
- (9) Effective Date of a Type IV-Q Decision.
  - (a) Unless a local ordinance specifies that the decision becomes final at a later time than defined in this section, a Type IV-Q decision becomes final when it is reduced to writing and bears the necessary signatures of the decision maker.
  - (b) A final decision of the Planning Commission, Hearings Board, or the Landmarks Commission denying a proposal become effective when the appeal period expires unless:
    - i. A written appeal is received at the City offices within 10 calendar days of the date notice of the final decision is mailed; or
    - ii. A member of the City Council requests a review of the decision within 10 calendar days of the date notice of the final decision is mailed.
  - (c) A decision of the City Council is the final decision of the City. It may be appealed to LUBA.

1.260 Type IV-L (Legislative Decisions). Legislative land use decisions are made by the City Council after a recommendation from the Planning Commission or Landmarks Commission. Legislative land use proceedings include proposals to amend the Comprehensive Plan and Development Code text and/or maps, and involve the creation, revision, or implementation of broad public policy generally impacting more than one property owner or a large number of individual properties. Legislative requests are not subject to the 120-day review period under ORS 227.178. In most cases a public hearing is required. However, no public hearing is required in a legislative land use proceeding if the purpose of the amendment is to conform to new requirements in state land use statutes, Statewide Land Use Planning Goals, or administrative rules of the Oregon Land Conservation and Development Commission implementing state land use statutes or Statewide Land Use Planning Goals, if the Oregon Department of Land Conservation and Development confirms in writing that the only effect of the proposed change is to conform the City's Comprehensive Plan or land use regulations to the new state requirements. The Council may, in its discretion, hold a public hearing although one is not required.

- (1) Submittal Requirements.
  - (a) The City Council or Director may initiate a review on any legislative matter.
  - (b) The Planning Commission, Landmarks Commission or any property owner or resident of the City may request that the City Council initiate a review of any legislative matter (such as an amendment to the Development Code text). The City Council shall review the proposal and determine whether the proposal warrants processing as a legislative amendment.
  
- (2) Notice of Public Hearing—Legislative. Hearings on Legislative Land Use requests must conform to state land use laws (ORS 227.175), as follows:
  - (a) DLCD Pre-Adoption Notice. The Director will notify in writing the Oregon Department of Land Conservation and Development (DLCD) of legislative amendments (zone change, rezoning with annexation, or Comprehensive Plan amendment) in accordance with the minimum number of days required by ORS Chapter 197.
  - (b) Notice of Rezone and Limitations of Land Use (Measure 56 Notice). When the proposed legislative decision affects the base zoning classification of a property or limits or prohibits a land use previously allowed, the City must provide notice to the owners of such property at least 20 days, but not more than 40 days, before the date of the first hearing on an ordinance. The notice must comply with ORS 227.186.
  - (c) Other Public Notice. In addition to any other notice required, at least 14 calendar days before the scheduled public hearing date, the City must mail by regular first class mail Notice of a Public Hearing to the following individuals and agencies.
    - i. Any affected governmental agency;
    - ii. Any person who requests notice in writing;
    - iii. For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175;
    - iv. For an amendment which affects the State highway system, ODOT, and an amendment which affects the County road system, Linn and/or Benton Counties; and
    - v. For a plan amendment or land use regulation amendment that significantly impacts school capacity, the Albany School District.
  - (d) At least 14 calendar days before the scheduled public hearing date, public notice must be provided by publication in a newspaper of general circulation in the city.
  - (e) At least 14 calendar days before the scheduled public hearing date, public notice must be posted in two public and conspicuous places within the City.
  
- (3) Mailed Notice. If required, the mailed Notice of a Public Hearing, at a minimum, must contain all of the following information:
  - (a) A concise description of the proposal;
  - (b) A map identifying the properties affected by the proposal, if applicable, in relation to major streets or other landmarks;
  - (c) A list of the applicable standards or criteria;
  - (d) The date, time, and location of the public hearing;
  - (e) Brief summary of the local decision making process for the land use decision being made and a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;
  - (f) A statement that all interested persons may appear either in person or with representation by an attorney and provide testimony and that only those participating at the hearing, in person or by submission of written testimony, have the right to appeal the decision to the state Land Use Board of Appeals;
  - (g) The information required under ORS 227.186 (Measure 56 Notice), if the hearing changes the base zoning classification of a property or limits or prohibits a land use previously allowed;

- (h) A statement that subsequent to the close of the hearing, notice of a decision adopting a new land use regulation will be mailed to all neighborhood associations, anyone who participated in the hearing, either in person or in writing, and anyone who requested to receive notice;
  - (i) The name and contact information for the City representative responsible for collecting comments or responding to questions; and
  - (j) Statement that all documents are available for review and that copies can be obtained at a reasonable cost from the City.
- (4) Conduct of the Hearing—Legislative. A legislative land use hearing will follow the City's legislative hearing procedures.
- (5) Planning Commission or Landmarks Commission Recommendation. In preparing its recommendation to the City Council, the Planning Commission or Landmarks Commission shall do the following:
- (a) Evaluate the proposal based on the relevant Development Code criteria.
  - (b) Prepare a recommendation and make findings in support of such recommendation.
- (6) City Council Action.
- (a) In reaching a decision on a legislative matter, the Council shall adopt findings applicable to the relevant policies and criteria in support of the decision.
  - (b) The City Council may:
    - i. Enact, amend, or deny all or part of the proposal under consideration, or
    - ii. Refer some or all of the proposal back to the Planning Commission, or Landmarks Commission for further consideration.
- (7) Effective Date of a Legislative Decision and Notice of Adoption.
- (a) A Legislative Land Use decision, if approved, takes effect and becomes final as specified in the enacting ordinance.
  - (b) Within 5 business days following adoption of an amendment or new land use regulation, the Director shall forward to the Department of Land Conservation and Development a copy of the adopted text and findings and notify the Department of any substantial changes that may have occurred in the proposal since any previous notification to the Department.
  - (c) Within 5 business days, the Director shall also notify any person who participated in the proceedings leading to the decision. The notice shall briefly describe the final action taken, state the date and effective date of the decision, and explain the requirements for appealing the action under ORS 197.830 to 197.845.
- (8) Appeal. A legislative land use decision not related to periodic review may be appealed to the state Land Use Board of Appeals. Persons who participated in periodic review, as outlined by state law, may appeal or object to a legislative land use decision made as part of periodic review to the Department of Land Conservation and Development as outlined in Oregon Administrative Rules 660-025-0140.

## **EXPIRATIONS, EXTENSIONS, AND MODIFICATIONS**

- 1.310 Expiration of Land Use Approvals. All land use approvals, except Type IV approvals, shall expire three years from the date of approval, unless:
- (1) The applicant has installed all of the required public infrastructure related to the development and the infrastructure has been accepted by the City, or the applicant has provided financial assurance for all required public infrastructure per Section 12.600 or the first phase, if the development was approved for phased construction; or
  - (2) If the development did not require public infrastructure, a valid approved building permit exists for new construction or improvements, and work has commenced; or



- (3) In the case of Phased Subdivisions or Planned Developments, when an applicant desires to develop and record final subdivision plats covering portions of an approved tentative plat in phases, the City may authorize a time schedule for platting and otherwise developing the various phases not to exceed five years for all phases. Each phase that is platted and developed shall conform to the applicable requirements of this title; or
- (4) An extension has been filed before the expiration date, and subsequently granted approval pursuant to Section 1.320.

1.320 Extension of a Land Use Approval. Except as provided in subsection (4), these provisions apply to all land use approvals that have not expired. [Ord. 5968, 1/14/22]

- (1) Whenever the decision requires exercise of approval rights or satisfaction of conditions of approval within a particular period of time, the approval period may be extended one time for two years for all land use approvals, except for phased or planned developments, a second two-year extension may be granted. Applicants shall apply for an extension by filing an application for extension before the expiration date. For the purposes of this sub-section the expiration date shall be the applicable anniversary date of the Notice of Decision previously given to the applicant.
- (2) Requests for extensions shall be processed as a Type I application and shall be granted if there has been no change to all applicable local, state or federal standards since the original approval, or the development complies with any changes or can meet the current standards with limited modifications to the approved development.
- (3) If the Type I application for the extension request is not approved, the subject land use approval shall expire on the applicable anniversary date of the Notice of Decision previously issued to the applicant.
- (4) Tentative approval of a middle housing land division is not eligible for extension. [Ord. 5968, 1/14/22]

While an application for extension is pending, no further action to develop the subject property or expand any use dependent upon the approval shall be taken subsequent to the expiration of the approval period; but existing legally established uses may continue during the time the extension request is pending.

1.330 Modification of Approved Site Plan Review and Conditional Use Applications. When a property owner wants to make changes to the approved plans and the approval has not expired, the following procedures shall be used to review the proposed modifications.

- (1) Definitions: When “property owner” is used in this section, it means the property owner, or the property owner’s authorized agent. When “site plan” is used here, it means the site plan approved through either a Site Plan Review application or review of a Conditional Use application.
- (2) The property owner must submit an application to modify the approved site plan that identifies the areas of the plan or approval proposed to be modified. The application fee will be determined by the Director and will be based on the scope of the modification(s) and review.
- (3) The review body shall be the same one that granted the final approval (including a decision on an appeal, if applicable) for which modification is sought. The same procedures shall be used as for the original approval. The Development Code regulations in effect at the time the application for modification is submitted will be used to review the proposed modification(s).
- (4) Only the area proposed to be modified will be reviewed.
- (5) A modification shall not be filed:
  - (a) as a substitute for an appeal, or
  - (b) to seek the reduction or elimination of a condition of approval for infrastructure requirements, or
  - (c) to provide a new timeline for appealing a previously-accepted infrastructure obligation, or
  - (d) to apply for a substantially new proposal, or
  - (e) if it would have significant additional impacts on surrounding properties.

If any of the above conditions exist, a new application must be submitted.

- (6) The modified plan must compensate for any negative effects caused by the requested changes from approved plans such that the intent of the original approval is still met.
- (7) The modification(s) shall be consistent with the approved site plan. If the review body determines that the modified site plan meets the standards in 1.330 (6) and is consistent with the original approval as outlined in 1.330 (8), a modification to the site plan may be allowed. If the modified site plan is consistent with the approved site plan and meets the review criteria specified in this section, the modified plan shall be approved. If the review body determines that the modified site plan is not consistent with the original approval, then approval of the site plan will be denied. If a new application is submitted, it will be subject to the Development Code standards in effect at the time the new application is submitted.
- (8) The review body's determination on consistency shall be based on a comparison of the approved site plan and the modified site plan, taking into account:
  - (a) The land use category;
  - (b) The size and scale of the proposed building(s);
  - (c) The number of dwelling units;
  - (d) Traffic and other off-site impacts;
  - (e) Compatibility with surrounding development;
  - (f) Capacity of available infrastructure; and
  - (g) Unusual obstacles and opportunities associated with the property.

The modified site plan will be found to be consistent with the approved site plan if the review body determines that there are no greater adverse impacts, or, if additional adverse impacts are identified, they have been adequately mitigated.

- (9) Conditions of approval:
  - (a) When reviewing a modified site plan that has different impacts than the approved site plan, the decision-maker may modify conditions or impose new ones. Only conditions related to the impact of the modified site plan may be imposed on the modified site plan approval. "Impact" means characteristics of the development such as traffic, wastewater discharge, noise, etc.
  - (b) The original conditions of approval imposed for the approved site plan may remain in effect or be increased as necessary to address additional impact. Conditions related to improving existing infrastructure or building new infrastructure (such as streets, sewers, etc.) may be reduced only if the modification substantially reduces the infrastructure burden created by the development.
- (10) The property owner may choose to either accept approval of the modified site plan or to retain the original approval. If the property owner accepts approval of the modified site plan and any conditions that may be imposed, the property owner must give written notice to the Planning Division within 14 days of the date on the notice of decision for approval of the modified site plan. If the property owner accepts approval of the modified site plan, the new approval supersedes and voids the original approval.
 

If the property owner does not provide the required written notice of acceptance, or if the review body does not approve the modified site plan, the project shall continue to be subject to the original conditions of approval and timelines.
- (11) When a modified site plan is approved and accepted, the approval is valid for one year beyond the date that the original site plan approval would have expired. (For example, if the original approval would have expired on July 1, 2001, the approval of the modified site plan is extended to July 1, 2002.) No additional extensions of time will be allowed for subsequent modifications.

1.340 Request to Modify a Condition of Approval. A request to modify a condition of approval is processed using the procedure assigned to the land use review and the approval criteria for the original land use review.

## APPEALS

1.410 Appeals Generally. Appeals shall be heard by the reviewing body specified in Table 1.410-1 provided that the City Council has the discretion to choose to hear any appeal which would otherwise go to the Landmarks Commission or Planning Commission. The timely and complete filing of the notice of appeal and payment of the appeal fee are required for an appeal. The required timeframes for filing an appeal are specified under each review type. The Director cannot accept a notice of appeal that does not comply with this section. The Director's determination that an appellant has failed to comply with this section is final.

**Table 1.410-1 – Reviewing Bodies for Appeals**

Decision	Decision Body	Reviewing Body
Type I	CDD	Circuit Court
Type I-L – Historic Resource Reviews	CDD	LC
Type I-L – All other review	CDD	PC
Type II – Historic Resource Reviews	CDD	LC
Type II – All other review	CDD	PC
Type III – Historic Resource Reviews	LC	CC
Type III – All other review	PC or HB	CC
Type IV-Q	PC, HB, or LC	CC
Type IV-Q	CC	LUBA
Type IV-L	CC	LUBA
LEGEND: City Council (CC), Director (CDD), Hearings Board (HB), Landmarks Commission (LC), Planning Commission (PC).		
NOTE: Required timelines for filing appeals are identified under each review type.		

1.420 Requirements of Notice of Appeal. A Notice of Appeal of a decision to the Planning Commission, Landmarks Commission or City Council shall contain:

- (1) Identification of the decision sought to be reviewed, including the date of the decision.
- (2) A statement of the interest of the person seeking review and that they were a party to the initial proceedings.
- (3) The specific policy or criteria relied upon for review.
- (4) If de novo review is requested or required, a statement summarizing the new evidence that will be offered and the criteria to which it will relate.
- (5) Decisions appealed to circuit court or LUBA must follow those body's appeal procedures and criteria.

1.430 Notice of a Planning Commission, Landmarks Commission or City Council Appeal Hearing.

- (1) Written Notice. Notice of a Planning Commission, Landmarks Commission or City Council appeal hearing must be provided to the property owner, applicant, and any person who provided testimony at the hearing or in writing at least 10 days prior to the hearing.
- (2) Posted Notice. A development site that is the subject of a Planning Commission, Landmarks Commission or City Council appeal hearing shall be posted unless otherwise noted in this Code. Posted notice is deemed given on the day the sign is first posted. The applicant shall be responsible for providing a sign frame for the notice and also for posting the notice at the correct time and location. The actual notice to be posted on the sign shall be provided by the City. The posting shall meet the following requirements:
  - (a) The notice shall be at least 2 feet by 3 feet.

- (b) The notice shall be posted in a location visible from a traveled public road or street abutting the property. (If no public street abuts the property, the notice shall be placed so as to be generally visible to the public.)
- (c) The notice shall be posted for at least seven consecutive days before any public hearing on the matter.
- (d) If the subject property is a corner lot, then two signs are required in locations defined in (b) above.
- (e) At least five days before any hearing (or decision made by the Director), an affidavit of posting shall be filed with the Director.
- (f) If the subject property is not properly posted as set forth in this section, the Director may postpone the hearing until such provisions are met.
- (g) The posted notice shall display the nature of the application and a telephone number for more information. The posted notice shall also include a photocopy of the original mailed notice sent to affected property owners.

1.440 Scope of Review. The reviewing body shall determine the scope of review on appeal to be one of the following:

- (1) Restricted to the record made on the decision being appealed.
- (2) Limited to such issues as the reviewing body determines necessary for a proper resolution of the matter.
- (3) A de novo hearing on the merits.
- (4) Decisions appealed to circuit court or LUBA will be subject to those body's review policies and procedures.

1.450 Hearings. Appeal hearings are quasi-judicial hearings and shall be conducted in accordance with the procedures in ADC 1.510 through 1.590.

- (1) Review on the Record. Unless otherwise required by law, the reviewing body may hear the entire matter on the record.
  - (a) When the reviewing body requests a review on the record, the record shall include:
    - i. A factual report prepared by the Director.
    - ii. All exhibits, materials, pleadings, memoranda, stipulations, and motions submitted by any party and received or considered in reaching the decision under review.
    - iii. The minutes of the hearing.
  - (b) The reviewing body may make its decision based only upon the record.
- (2) De Novo Hearing. The reviewing body may hear the entire matter through a de novo hearing. "De novo hearing" shall mean a hearing by the review body as if the request had not been previously heard and as if no decision had been rendered, except that all testimony, evidence, and other material from the record of the previous consideration may be included in the record of the review.

1.460 Review Body Decision. Upon review, the reviewing body may affirm, remand, reverse, or modify in whole or in part a determination or requirement of the decision that is under review. When the reviewing body modifies or reverses a decision of the previous review body, the reviewing body shall set forth its findings and state its reasons for taking the action. When the reviewing body elects to remand the matter back to the previous review body for such further consideration as the reviewing body deems necessary, it may include a statement explaining the error found to have materially affected the outcome of the original decision and the action necessary to rectify such error.

1.470 Withdrawing an Appeal.

- (1) At any time before the close of an appeal hearing, any appellant may withdraw the appeal. The appellant must provide written notice of the withdrawal prior to 5:00 p.m. the day of the hearing, or orally at the hearing.
- (2) If the withdrawal is made before public notice of the hearing is sent, the City will refund the appeal fee.

- (3) Where multiple people or parties sign and file a single Notice of Appeal, all parties to the original filing must consent to the withdrawal of the appeal.
- (4) A withdrawn appeal cannot be refiled by any party subject to the original appeal.
- (5) If all appeals are withdrawn, the Director must issue a Notice of Appeal Withdrawal to the applicant, the appellant, and the parties who received a Notice of Final Decision.

## **CONDUCT OF QUASI-JUDICIAL HEARINGS**

1.510 Responsibility for Hearings. The Director, or the City Recorder in case of City Council hearings, shall carry out the following duties pertaining to a hearing, in accordance with other provisions of this Code and with the Oregon Public Meetings law:

- (1) Schedule and assign the matter for review and hearing;
- (2) Conduct the correspondence of the review body;
- (3) Provide notices of public hearings as required by this Code and state law;
- (4) Maintain a record and enter into the record relevant dates such as those of giving notice, hearings, postponement, and continuances and a summary of action taken by the review body;
- (5) Prepare minutes to include the decision on the matter heard and the reasons given for the decision;
- (6) Reduce the decisions of the review body to writing and maintain permanent record of such; and
- (7) Provide advance notice of all hearings and written decisions to persons requesting the same and not entitled to them by this section (applicant excepted), provided that such persons pay the actual cost for the service provided as established by the City.

1.520 Hearings Record. When practical, the recorder to the review body will be present at each hearing and shall cause the proceedings to be recorded either stenographically or electronically. If the recorder is absent, proceedings will be recorded electronically and minutes will be taken from the tape.

- (a) The review body shall, when practical, retain as part of the hearing record each item of physical or documentary evidence presented and shall have the items marked with the identity of the person offering them and whether presented on behalf of a proponent or opponent. Exhibits received into evidence shall be retained in the hearing file until after all appeal periods have expired, when they may be released. Any physical evidence presented at the public hearing shall be submitted to the review body recorder, distributed to members, returned to the recorder, and shall become part of the record.
- (b) The staff report and recommendation shall be included in the record.
- (c) The public shall have access to the record of the proceedings at reasonable times, places, and circumstances. The public shall be entitled to purchase copies of the record.

1.530 Challenges to Impartiality. A party to a hearing or a member of a review body may challenge the qualifications of a member of the review body to participate in the hearing and decision regarding the matter. The challenge shall be incorporated into the record at the time of the hearing.

1.540 Disqualification. No member of a review body shall participate in a discussion of the proposal without removing himself or herself from the bench and shall not vote on the proposal when any of the following conditions exist:

- (a) A direct or substantial financial interest in the proposal by any of the following: the review body member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which the member is then serving or has served within the previous two years or is otherwise in a position of conflict of interest as determined by state law.
- (b) The member has a direct private interest in the proposal.
- (c) Any other valid reason for which the member has determined that participation in the hearing and decision cannot be impartial.

1.550 Participation by Interested Officer or Employees. No officer or employee of the City who has a financial or other private interest in a proposal shall participate in discussion with or give an official opinion or staff report to the review body on the proposal without first declaring for the record the nature and extent of such interest.

1.560 Ex Parte Contacts. A member of a review body should limit communication, directly or indirectly, with any person interested in the outcome concerning the decision or action pending before the review body. "Person interested in the outcome" means a person who has some concern, interest in, or relationship to the decision or action pending before the review body. Should such communication occur, at the beginning of the first hearing after which the communication occurs, the member of the review body shall:

- (1) Publicly announce the content of the communication and provide any person an opportunity to rebut the substance of the communication; and
- (2) If the communication was in written or tangible form, place a copy of the communication into the record.

If such contacts have not impaired the member's impartiality or ability to vote on the matter, the member shall so state and shall participate or abstain in accordance with the following section.

1.570 Abstention or Disqualification.

- (1) An abstaining or disqualified member of the review body may be counted for purposes of forming a quorum. A member who represents personal interest at a hearing may do so only by making full disclosure of his or her status and position at the time of addressing the review body and physically removing himself or herself from the proceedings.
- (2) If a quorum of a review body abstains or is disqualified, at least enough members to achieve a quorum shall state their reasons for abstention or disqualification and shall, by so doing, be requalified and proceed to resolve the issues.
- (3) A member absent during the presentation of evidence in a hearing may not participate in the deliberations or final decision on the matter of the hearing unless the member has reviewed the evidence received and so states on the record.

1.580 Burden and Nature of Proof. The burden of proof is upon the applicant or appellant. The proposal must be supported by proof that it conforms to the applicable provisions of this Code.

1.590 Hearing Procedures. Quasi-judicial hearing procedures will depend in part on the nature of the hearing. The following subsections may be supplemented by appropriate rules announced by the presiding officer. For the purposes of this section, "Argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policies the proponent believes relevant to a decision. "Argument" does not include facts. "Evidence" means facts, documents, data, or other information offered to demonstrate compliance or noncompliance with the standards the proponent believes to be relevant to the decision.

- (1) The presiding officer will state the case and call the public hearing to order, informing those present that testimony, arguments and evidence is to be directed towards the applicable criteria for the case or other criteria in the plan or land use regulation which the person believes to apply to the decision and that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision-makers and other parties an opportunity to respond to the issue precludes appeal to the state Land Use Board of Appeals on that issue. The presiding officer may establish the time allowed for presentation of information.
- (2) Any objections on jurisdictional grounds shall be noted in the record.
- (3) Any abstentions or disqualifications shall be determined. Members shall announce all conflicts of interest and shall disclose the time, place, and nature of any ex-parte contacts they have had. Parties to the case shall have the opportunity to rebut any information contained in the ex-parte contact.
- (4) The review body may view the area under consideration for purposes of evaluating the proposal, but shall state the place, time, manner, and circumstances of such viewing in the record.
- (5) The presiding officer at the hearing may take official notice of known information related to the issue, such as provisions of federal or state law, or of an ordinance, resolution, official policy, or charter of the City.

- (6) Matters officially noticed need not be established by evidence and may be considered by the review body in the determination of the matters. Parties requesting official notice shall do so on the record.
- (7) Presentation of staff report, including a list of the criteria applying to the issue(s) being heard. City staff may also present additional information whenever allowed by the presiding officer during the proceedings.
- (8) Presentation of information by the applicant or those representing the applicant.
- (9) Presentation of evidence or inquiries by those who support the proposed change.
- (10) Presentation of evidence or inquiries by those who oppose the proposed change.
- (11) Presentation of evidence or inquiries by those who do not necessarily support or oppose the proposed change.
- (12) If additional documents or evidence are provided in support of an application, any party shall, upon request, be entitled to a continuance of the hearing to allow for adequate preparation of rebuttal. Such a continuance shall not be subject to the limitations of ORS 227.178.
- (13) Only the applicant shall have the right to present rebuttal testimony. If the presiding officer allows rebuttal by an opponent, the proponent or applicant shall have a right to an additional and final rebuttal.
- (14) The presiding officer may approve or deny a request to ask a question from a person attending the hearing. Unless the presiding officer specifies otherwise, the presiding officer will direct the question to the person who has submitted testimony.
- (15) At the close of presentation of information the presiding officer shall declare that the hearing is closed unless, before the conclusion of the initial evidentiary hearing, any participant has requested an opportunity to present additional evidence, arguments, or testimony regarding the application. The local hearings authority shall grant such a request by continuing the public hearing pursuant to paragraph (a) of this subsection, or leaving the record open for additional written evidence, arguments, or testimony pursuant to paragraph (b) of this subsection.
  - (a) If the hearings authority grants a continuance, the hearing shall be continued to a date, time, and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments, or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.
  - (b) If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (e) of this section.
  - (c) A continuance or extension granted pursuant to this section shall be subject to the limitation of ORS 227.178, unless the continuance or extension is requested or agreed to by the applicant.
  - (d) Unless waived by the applicant, the hearings authority shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application(s). The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the limitations of ORS 227.178.
  - (e) When the hearings authority reopens a record to admit new evidence, arguments or testimony, any person may raise new issues that relate to the new evidence, arguments, testimony, or criteria for decision-making which apply to the matter at issue.
- (16) When the hearing has ended, the review body may openly discuss the issue and may further question a person submitting information or staff if opportunity for rebuttal is provided.

- (17) If the hearing is closed, it shall be reopened only upon a majority vote of the review body.

## **CONDUCT OF LEGISLATIVE HEARINGS**

- 1.610 Public Participation. Interested persons may submit written recommendations and comments in advance of the hearing and this information shall be available for public inspection. At the hearing, written recommendations and other information will be received and oral testimony will be permitted. The presiding officer may establish a time limit for presentation of information.
- 1.615 The following requirements applicable to quasi-judicial hearings generally apply to legislative hearings as well.
- 1.510 Responsibility for Hearings.
  - 1.520 Hearings Record.
  - 1.530 Challenges to Impartiality
  - 1.540 Disqualification.
  - 1.550 Participation by Interested Officer or Employees.
  - 1.570 Abstention or Disqualification.
- 1.620. Pre-hearing Contact. There can be pre-hearing contact between citizens and the decision makers on legislative matters. "Ex parte contact" is not a concern.
- 1.630 Hearings Procedures. Legislative hearing procedures will depend in part on the nature of the hearing. The following subsections may be supplemented or superseded by appropriate rules announced by the presiding officer. For the purposes of this section, "Argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policies the proponent believes relevant to a decision. "Argument" does not include facts. "Evidence" means facts, documents, data, or other information offered to demonstrate compliance or noncompliance with the standards the proponent believes to be relevant to the decision
- (1) The presiding officer will state the case and call the public hearing to order, informing those present that testimony, arguments and evidence is to be directed towards the applicable criteria for the case or other criteria in the plan or land use regulation which the person believes to apply to the decision.
  - (2) Any objections on jurisdictional grounds shall be noted in the record.
  - (3) The presiding officer at the hearing may take official notice of known information related to the issue, such as provisions of federal or state law, or of an ordinance, resolution, official policy, or charter of the City.
  - (4) Matters officially noticed need not be established by evidence and may be considered by the review body in the determination of the matters. Parties requesting official notice shall do so on the record.
  - (5) Presentation of staff report, including a list of the criteria applying to the issue(s) being heard. City staff may also present additional information whenever allowed by the presiding officer during the proceedings.
  - (6) Presentation of information by the applicant or those representing the applicant.
  - (7) Presentation of evidence or inquiries by those who support the proposed change.
  - (8) Presentation of evidence or inquiries by those who oppose the proposed change.
  - (9) Presentation of evidence or inquiries by those who do not necessarily support or oppose the proposed change.
  - (10) The presiding officer may approve or deny a request to ask a question from a person attending the hearing. Unless the presiding officer specifies otherwise, the presiding officer will direct the question to the person who has submitted testimony.
  - (11) At the close of presentation of information, the presiding officer shall declare that the hearing is closed.



- (12) When the hearing has ended, the review body may openly discuss the issue and may further question a person submitting information or staff if opportunity for rebuttal is provided.
- (13) If the hearing is closed, it shall be reopened only upon a majority vote of the review body.

## **ENFORCEMENT**

- 1.710 Inspections. The Director or designee may make periodic and routine inspections of properties and premises within the corporate limits of Albany. The purpose of these inspections shall be to determine whether there is compliance with the laws, rules, and regulations designed to protect the health, safety, and welfare of the public. The Director is also empowered to make such inspections upon receiving complaints, specific or general information, or observations indicating the existence of hazardous conditions or non-compliance with such rules, regulations, and laws. If any authorized officer or employee of the City of Albany is denied access to any property or premises for the purposes of making an inspection provided for in this ordinance, then the officer or employee shall not inspect the premises unless and until he has obtained from the City's municipal judge a search warrant for the inspection of the premises.
- 1.720 Search Warrants. A search warrant for inspections can only be issued under the terms of this ordinance when an affidavit has been filed with the City's municipal court showing probable cause for the inspection by stating:
- (1) The purpose and extent of the proposed inspection;
  - (2) The ordinance or ordinances that form the basis for the inspection; and
  - (3) Whether it is a routine or periodic inspection, an inspection initiated by complaint, other specific or general information, or an observation concerning the property or premises or the area in which it is situated.
- It shall be unlawful for any person, firm, or corporation to hinder, delay, or obstruct the inspection of premises based on a search warrant issued under the terms of this ordinance.
- 1.730 Abatement. The location, erection, construction, maintenance, repair, alteration or use of a building or other structure in violation of this ordinance shall be deemed a nuisance and may be abated as such.
- 1.740 Code Enforcement. The Director or designee may enforce the provisions of this ordinance using the remedies provided in Sections 1.610 through 1.690 herein and elsewhere within the Albany Municipal Code. The enactment of this ordinance shall not invalidate any prior, existing, or future prosecutions for violation of the Development Code regulations committed under a previous ordinance.
- 1.750 Legal Proceedings by City Attorney. In addition to the remedies prescribed herein, the City Attorney, upon request from the City Council or Director, shall cause to be instituted any civil action, suit, or other legal means considered appropriate to remedy violations of this ordinance.
- 1.760 Suits in Equity to Enjoin Violations. If any existing or proposed structure or use violates this ordinance, the City Attorney or any affected person may sue to enjoin the violation.
- 1.770 Enforcement by Chief of Police. The Chief of Police or his or her designee(s) shall have the power to help enforce the provisions of this ordinance.
- 1.780 Penalty. In addition to the remedies set forth above, the general penalties and procedures set forth in Chapter 1.04 of the Albany Municipal Code apply to any and all violations of this Development Code. The City may elect to pursue such procedure instead of or in addition to any remedy set forth above.
- 1.790 Violation of a Land Use Approval. Violation of any condition or requirement of any land use approval constitutes a civil infraction when that violation does not, in and of itself, constitute a separate violation of the Albany Municipal Code.