

# ARTICLE 1

## ADMINISTRATION AND PROCEDURES

1.000 Overview. This Article establishes the framework for the review of land use applications. It explains the processes the City follows for different types of reviews and how hearings and appeals are conducted. The list below is a summary of the topics covered in this chapter.

- General Administration
- Clarification of Land Use Decisions
- Administrative Process
- Limited Land Use Process
- Quasi-Judicial Process
- Legislative Process

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

#### INTRODUCTION

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.”

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, sewage, transportation, drainage, parks, open space and other public facilities and services for each development.
- (6) Establish procedures and standards requiring that the design of site improvements and building improvements 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, with particular emphasis on not exceeding the planned capacity of residential streets.
- (8) Require that permitted uses and development 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.
- (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 1.350 shall be followed. For legislative interpretations, Type IV procedures as set forth in Section 1.370 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 proponent of the burden of responding to allegations that the development action requested is inconsistent with one or more Comprehensive Plan policies.
- 1.060 When Land Use Applications Are Required.
- (1) Except as excluded by 1.070, no person shall engage in or cause to occur a development for which a required land use application has not been approved.
  - (2) Whenever this Code requires a land use application, no other permit issued by the City shall be approved until the land use application has first been approved by the Director or reviewing body.
  - (3) 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 previous land use approvals. [Ord. 5728, 1/27/10]
  - (4) Land use applications shall be approved by the Community Development Director, the Hearings Board, the Planning Commission, the Landmarks Advisory Commission, or the City Council pursuant to the provisions of this Code. The Director shall not approve a land use application for the division, improvement, or use of land that has been previously divided in violation of state or local codes or otherwise developed in violation of this Code unless the violation is corrected prior to or concurrent with issuance of required permits. [Ord. 5728, 1/27/10]
  - (5) No action may be taken in reliance upon a decision approving a land use application until all applicable appeal periods have expired or while an appeal to a City review body is pending. However, the action allowed by the decision may be initiated if:

- (a) Issues raised in opposing testimony were resolved at a hearing or in writing prior to the hearing; and
- (b) The applicant has executed a release and indemnity agreement in a form satisfactory to the City Attorney that protects the City from all claims of the applicant resulting from the approval of the land use application or issuance of a building permit.

1.070 When Land Use Applications Are Not Required. Activities and developments listed below do not require a 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 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 either a non-conforming site or a site containing a non-conforming use may require a Nonconforming Situations Review in accordance with Article 2.

[Ord. 5764, 12/1/11; Ord. 5767, 12/7/11; Ord. 5832, 4/9/14, Ord. 5886, 1/6/17]

- (1) Agricultural uses permitted outright in Articles 3, 4 and 5.
- (2) New detached single-family dwelling or a two-family dwellings and additions to existing single-family dwellings or two-family dwellings. [Ord. 5767, 12/7/11; Ord. 5832, 4/9/14]
- (3) Residential accessory buildings up to 750 square feet and walls not greater than 11 feet tall or that meet the standards in Section 3.080(9). [Ord. 5728, 1/27/10; Ord. 5767, 12/7/11]
- (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. [Ord. 5728, 1/27/10]
- (5) Routine property maintenance. [Ord. 5767, 12/7/11]
- (6) New parking areas or expansions to existing parking areas that are less than 1,000 square feet in area, excluding restriping an existing lot, and do not modify site circulation or access, do not require Site Plan Review as stated in Section 2.430. [Ord. 5767, 12/7/11; Ord. 5832, 4/9/14]
- (7) Additions to an existing building or use expansions that are less than 2,000 square feet or less than 50 percent of existing building area, whichever is less, and that do not: [Ord. 5886, 1/6/17]

- (a) Add dwelling units; or
- (b) Require three or more parking spaces or additional loading areas; or
- (c) Modify site circulation or access.

For building additions greater than 2,000 square feet, see Site Plan Review applicability in Section 2.430. [Ord. 5767, 12/7/11; Ord. 5832, 4/9/14]

- (8) A change internal to a building or other structure or use that is allowed through Site Plan Review, and the new use does not:
  - (a) Add dwelling units; or
  - (b) Require three or more parking spaces or additional loading areas; or
  - (c) Modify site circulation or access. [Ord. 5767, 12/7/11; Ord. 5832, 4/9/14]
- (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. [Ord. 5728, 1/27/10, Ord. 5764, 12/1/11; Ord. 5832, 4/9/14]

1.073 *Section removed by Ordinance 5767 adopted December 7, 2011.*

1.075 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.

1.078 Applicable Standards. The Development Code standards for development are those in effect at the time the original approval was granted. [Ord. 5768, 12/1/11]

1.080 Expiration of Land Use Approvals.

- (1) All land use approvals, except Type IV approvals, shall expire three years from the date of approval, unless: [Ord. 5832, 4/9/14]
  - (a) 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
  - (b) If the development did not require public infrastructure, a valid approved building permit exists for new construction or improvements, and work has commenced; or [Ord. 5728, 1/27/10, Ord. 5768, 12/1/11; Ord. 5832, 4/9/14]
  - (c) 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 [Ord. 5728, 1/27/2010, Ord.5768, 12/1/11; Ord. 5832, 4/9/14]
  - (d) An extension has been filed before the expiration date, and subsequently granted approval pursuant to Section 1.083. [Ord. 5832, 4/9/14; Ord. 5886, 1/6/17]

*(2) and (3) Repealed by Ord. 5832, 4/9/14.*

1.083 Extension of a Land Use Approval. These provisions apply to all land use approvals that have not expired or for which a written request for an extension was received prior to the effective date of this Section 1.083. [Ord. 5832, 4/9/14]

- (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. [Ord. 5886, 1/6/17]

- (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. [Ord. 5886, 1/6/17]
- (4) 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 established uses may continue during the time the extension request is pending. [Ord. 5832, 4/9/14]

- 1.085 Approval Runs with the Land. Approval of a land use decision runs with the land. The approval transfers to a new owner if the property is sold. [Ord. 5475, 4/11/01]
- 1.090 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 the zoning regulations.
- 1.100 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. [Ord. 5720, 8/12/09]

**ENFORCEMENT**

- 1.110 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 these premises.
- 1.120 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.

- 1.130 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.
- 1.140 Code Enforcement. The Director or designee may enforce the provisions of this ordinance using the remedies provided in Sections 1.110 through 1.190 herein and in Title 18 of 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.

[Ord. 5720, 8/12/09]

- 1.150 Legal Proceedings by City Attorney. In addition to the remedies prescribed herein, the City Attorney, upon request from the City Council or City Manager, shall cause to be instituted any civil action, suit, or other legal means considered appropriate to remedy violations of this ordinance.
- 1.160 Suits in Equity to Enjoin Violations. If any existing or proposed structure or use violates this Code, the City Attorney or any affected person may sue to enjoin the violation.
- 1.170 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.
- 1.180 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.
- 1.190 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.

## **APPLICATION PROCEDURES**

- 1.200 Land Use Application Procedures.
- (1) A land use application shall be processed under a Type I, I-L, II, III, or IV procedure, as described in this Article.
  - (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 1.220(2) shall apply as if a single application had been made.
- [Ord. 5912, 7/11/18]
- 1.201 Coordination of Land Use Application Procedure. The Director shall be responsible for coordinating the land use application and decision-making procedure. The Director shall issue a land use approval for applications and proposed developments that comply with the provisions of this Code. Before issuing the approval, the Director shall be provided with the information required to determine full compliance with the requirements of this Code.
- 1.202 Pre-application Conference. The Director and the applicant or the applicant's authorized representative shall arrange a pre-application conference, unless the applicant and Director agree that the conference is not needed. The purpose of the conference is to acquaint the applicant with the substantive and procedural requirements of this Code, and to identify any constraints on the proposed development. Depending on the nature and size of the proposed development, a rough sketch conceptual plan may be required for review in the pre-application conference. Upon the applicant's request, the Director shall provide the applicant with a written summary of the conference including confirmation of the procedures to be used to process the application, a list of materials to be submitted, and the criteria and standards which may apply to the approval of the application.
- 1.203 Neighborhood Meeting. 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.
- [Ord. 5886, 1/6/17]

The applicant shall hold a neighborhood meeting before submitting the following types of land use applications:

- (1) Multiple-family development that abuts a single-family zoning district.
- (2) 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. [Ord. 5728, 1/27/10]
- (3) Manufactured home park adjacent to any residential zoning district. [Ord. 5728, 1/27/10]
- (4) Subdivision with more than ten lots.
- (5) Any subdivision that is an infill development.
- (6) Cluster and planned development. [Ord. 5728, 1/27/10]
- (7) 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). [Ord. 5832, 4/9/14]
- (8) For other 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. [Ord.5445, 4/12/00; Ord. 5562, 10/10/03; Ord. 5728, 1/27/10]

1.204 Neighborhood Meeting Standards.

- (1) 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. [Ord. 5832, 4/9/14]
- (2) The applicant shall send mailed notice of the public meeting to the Community Development Department Director and all property owners within a minimum distance of 300–feet of the boundaries of the subject property with the specific area to be determined by the Director based on the project scale, land use and transportation patterns or anticipated public interest in the project. If any part of the subject property is within the boundaries of a neighborhood association recognized by the City of Albany or within 300 feet of any other neighborhood association recognized by the City, notice shall be sent to the designated representative(s) of such neighborhood association(s). The property owner list shall be compiled from county tax assessor’s property owner list 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: [Ord. 5832, 4/9/14]
  - (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 assessors map) that depicts the subject property.
- (3) 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). [Ord. 5728, 1/27/10]

1.207 Application Contents. A land use application shall consist of the following:

- (1) 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.
- (2) 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.
- (3) Property description and assessor map parcel number(s).
- (4) Additional information required by other sections of this Code because of the type of proposal or the area involved.
- (5) Duplicates of the above information as required by the Director.
- (6) Application fees as established by the City Council.
- (7) A report documenting the results of any neighborhood meeting. 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) The number of people who attended the meeting or 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. 5445, 4/12/00]

1.210 Submission of Quasi-Judicial Land Use Applications.

- (1) Application materials shall be submitted to the Director who shall have the submittal date indicated on each copy of the materials.
- (2) Within 30 calendar days, the Director shall determine whether the application is complete. The Director shall notify the applicant if the application is found to be incomplete and identify what additional information is needed. An application that has been determined to be incomplete may be supplemented, amended, or resubmitted at the Director's discretion. The application will be deemed complete the date the City receives the missing information; or submits some of the missing information and written notice that no other information will be provided; or written notice from the applicant that none of the missing information will be provided. If the application is not deemed complete by the 181st day from the application first being submitted, the application is void. (See Oregon Revised Statutes 227.178.)

[Ord. 5475, 4/11/01; Ord. 5728, 1/27/10]

- (3) The Director shall set public hearing dates for land use applications requiring them. When setting hearing dates, the Director may take into consideration the complexity of the development proposal, other scheduled agenda items, and adequate review and preparation time for the staff report.
- (4) All documents or evidence relied upon by the applicant shall be submitted to the Planning Division and made available to the public at least 20 days before the evidentiary public hearing (or 10 days before the first evidentiary public hearing if two or more evidentiary public hearings are allowed). Any staff report used at the hearing shall be available at least seven days prior to the hearing.  
  
If additional documents or evidence are provided by any party, the local government may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond.
- (5) Upon request, the application file shall be made available to the public for inspection at no cost, and copies provided at reasonable cost. [Ord. 5446, 5/10/00]

1.215 Referral and Review of Quasi-Judicial Land Use Applications. Upon acceptance of an application, the Director shall do the following:

- (1) Send one copy of the project review sheet to each agency and city department the Director identifies as having possible interest in reviewing and commenting on the development proposal, including those agencies and departments responsible for determining compliance with state and federal requirements. If the agency or city department does not comment within 10 days from the date the Director mails or routes the project review sheet, the agency or city department is presumed to have no comments or objections. The Director may grant an extension of up to 14 days to a reviewing department or agency if the application involves unusual circumstances.
- (2) Send the project review sheet to other governmental bodies and private utilities as appropriate.
- (3) Provide for notices to be given and hearings to be established as required under Type I-L, II, III, and IV procedures established in this Article. [Ord. 5446, 5/10/00]

1.220 Land Use Decision for Quasi-Judicial Applications.

- (1) Within five days of final action on a land use application, the Director shall provide written notice of the decision to the applicant and any other parties entitled to notice. The notice shall state the effective date of the decision, describe the right of appeal, and summarize the reasons for the decision and any conditions of approval or indicate where such can be reviewed in detail.
- (2) The City shall take final action on all land use requests that are wholly within the authority and control of the City within 120 days from the date the application is deemed complete. Final action on qualifying residential developments subject to ORS 197.311 shall be taken within 100 days from the date the application is deemed complete. However, by agreement with the applicant, this deadline may be extended for any reasonable length of time, not to exceed the maximum allowed by state law. The 120-day period set out in Oregon Revised Statutes (ORS) 227.178, does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610 (for legislative amendments). [Ord. 5728, 1/27/10; Ord. 5912, 7/11/18]
- (3) Development shall be completed as shown on the plans that were reviewed and approved through the land use process, subject to any modifications identified in the conditions of approval. Modifications to site plans and conditional uses may be made as described in ADC 1.226. [Ord. 5446, 5/10/00; Ord. 5475, 4/11/01]

1.225 Action on Resubmission of Denied Quasi-Judicial Application. An applicant may make appropriate alterations to a proposal that has previously been denied and resubmit it with a payment of any required fee. If a previously denied application is resubmitted within one year of the date denied, recommendations of advisory bodies, departments, and agencies need not be requested again unless the Director finds that changed conditions or changes in the proposal warrant such reconsideration.

1.226 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 here, 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 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 1.226 (6) and is consistent with the original approval as outlined in 1.226 (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) Traffic and other off-site impacts;
  - (d) Compatibility with surrounding development;
  - (e) Capacity of available infrastructure; and
  - (f) 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 10 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 first granted, a site plan or conditional use approval is valid for three years [ADC 1.080]. 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.)

Any subsequent modification of the site plan will be subject to the time limit established at the time the first modification was approved. The approval can be valid for only a total of four years, including the first three-year period and the one-year extension received with an approved modification to an approved site plan or conditional use.

[Ord. 5475, 4/11/01; Ord. 5728, 1/27/10]

- 1.228 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. [Ord. 5728, 1/27/10]

## CLARIFICATION OF LAND USE DECISIONS

### ACTIONS INCLUDED AS LAND USE DECISIONS

- 1.230 Definition. A “land use decision” includes a final decision or determination made by the City that concerns the adoption, amendment, or application of:
- (1) The statewide planning goals.
  - (2) A Comprehensive Plan provision.
  - (3) An existing land use regulation.
  - (4) A new land use regulation.
- 1.240 Procedure. The procedure for applications that result in land use decisions is given in the provisions on the quasi-judicial and legislative processes, later in this Article.
- 1.250 Examples. Examples of applications that result in land use decisions include, but are not limited to – Comprehensive Plan amendments, conditional uses, development code amendments, site plans, subdivisions, modifications to non-conforming situations, vacations, variances, and zoning map amendments.

### ACTIONS NOT INCLUDED AS LAND USE DECISIONS

- 1.260 Definition. A “land use decision” does not include a decision of the City:
- (1) That is made under land use standards that do not require interpretation or the exercise of policy or legal judgment;
  - (2) That approves or denies a building permit under clear and objective land use standards;  
[Ord. 5912, 7/11/18]
  - (3) That is a limited land use decision;  
[Ord. 5912, 7/11/18]
  - (4) That is an expedited land division as described in ORS 197.360; or  
[Ord. 5912, 7/11/18]
  - (5) That determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with the Comprehensive Plan and land use regulations.
- 1.270 Procedure. Land use applications that do not result in land use decisions are processed under the Type I Administrative procedure. The Director makes the decision based on the stated review criteria, without need for public hearing or notification.
- 1.280 Examples. Examples of applications that do not result in land use decisions include, but are not limited to: lot line adjustments, final subdivision plats, land use determination letters, and land use status letters.  
[Ord. 5475, 4/11/01; Ord. 5767, 12/7/11; Ord. 5832, 4/9/14]
- 1.290 *Section removed by Ord. 5728, adopted January 27, 2010.*

## ADMINISTRATIVE PROCESS

### 1.320 Type I Procedure.

- (1) The purpose of the Type I procedure is to provide for land use review based on standards specified in this Code that do not require interpretation or the exercise of policy or legal judgment. Approval of a Type I land use application is not a land use decision. (See Sections 1.230 and 1.260.)
- (2) Under the Type I procedure, the Director shall process an application without need for public hearing or notification.
- (3) Examples of applications processed through a Type I procedure include, but are not limited to, lot line adjustments, final planned developments, final subdivision plats, land use determination letters, and land use status letters. [Ord. 5728, 1/27/10; Ord. 5767, 12/7/11; Ord. 5832, 4/9/14]

## LIMITED LAND USE PROCESS

1.325 Definition. A “limited land use decision” is a final decision or determination made by the City pertaining to a site within its urban growth boundary that concerns approval or denial of applications based on discretionary standards to regulate the physical characteristics of a use permitted outright. Applications that result in limited land use decisions are not subject to the requirements of the Oregon Revised Statutes (ORS) and this Code relative to quasi-judicial public hearings. [Ord. 5728, 1/27/10]

### 1.330 Type I-L Procedure.

- (1) The purpose of the Type I-L procedure is to provide for land use review of partitions, subdivisions with fewer than 20 lots, and applications involving discretionary standards for design or Site Plan Review of permitted uses. [Ord. 5767, 12/7/11]
- (2) In making a limited land use decision, the City will follow the applicable procedures contained within its acknowledged comprehensive plan and land use regulations and other applicable legal requirements.
- (3) Once the application is deemed complete, written notice will be provided to persons who own property within 300 feet of property on which applications are received for development of subdivisions, manufactured home parks, multi-family development, and Site Plan Review. For Site Plan Review of Residential Accessory Structures and all other limited land use decisions, the City will provide written notice to persons who own property within 100 feet of the entire contiguous site for which the application is made. The Director shall have discretion to increase the notice area up to 1,000 feet due to land use or transportation patterns or an expected level of public interest. For purposes of review, this requirement shall be deemed met when the City can provide an affidavit or other certification that such notice was given. Notice shall also be provided to any neighborhood or community organization recognized by the City Council and whose boundaries include the site and to other neighborhood associations recognized by the City Council located within 300 feet of the site.  
[Ord. 5728, 1/27/10, Ord. 5768, 12/1/11; Ord. 5767, 12/7/11; Ord. 5886, 1/6/17]
- (4) The notice and procedures used by the City will:
  - (a) Provide a 14-day period for submission of written comments before the decision;
  - (b) State that issues that may provide the basis for an appeal to the Land Use Board of Appeals shall be raised in writing before the expiration of the comment period. Issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue;
  - (c) List, by commonly used citation, the applicable criteria for the decision;
  - (d) Provide the street address or other easily understood geographical reference to the subject property;

- (e) State the place, date and time that comments are due;
  - (f) State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;
  - (g) Include the name and phone number of a local government contact person;
  - (h) Provide notice of the decision to the applicant and any person who submits comments under subparagraph (a) of this paragraph. The notice of decision must include an explanation of appeal rights;
  - (i) Briefly summarize the local decision making process for the limited land use decision being made, and
  - (j) Include other information the Director deems appropriate.
- (5) Decisions and Appeals. Standing to appeal a limited land use decision shall be limited to the property owner of the subject development, the applicant, and/or any person who has provided written comments pursuant to Section 1.330(4)(b) or who spoke at the public hearing if one was held.
- (a) For application types for which a neighborhood meeting is not required in Section 1.203, a limited land use decision made by the Director may be appealed to the Land Use Board of Appeals (LUBA) when a person with standing files a Notice of Intent to Appeal with LUBA not later than 21 days after the Director's notice of decision is mailed.
  - (b) For application types for which a neighborhood meeting is required in Section 1.203, a limited land use decision by the Director may be appealed to the Planning Commission when a person with standing files a Notice of Appeal with the City not later than 10 days after the Director's notice of decision is mailed.
  - (c) At the Director's discretion, a limited land use application may be referred to the Planning Commission or Hearings Board for the local decision.
  - (d) A limited land use decision made by the Planning Commission or Hearings Board may be appealed to the Land Use Board of Appeals when a person with standing files a Notice of Intent to Appeal with LUBA no later than 21 days after the Planning Commission notice of decision is mailed. [Ord. 5338, 1/28/98; Ord. 5445, 4/12/00; Ord. 5562, 10/10/03]

1.340 *Section removed by Ord. 5728, on January 27, 2010.*

## QUASI-JUDICIAL PROCESS

### PROCEDURES

#### 1.350 Type II Procedure.

- (1) The purpose of the Type II procedure is for the Director to review certain applications based on standards specified in this Code that may require limited discretion. A notice of filing is mailed to the applicant and property owners within 300 feet of the property being reviewed to allow the applicant or property owners an opportunity to comment on the proposal prior to the Director's Decision. Persons that provided written comment are mailed the notice of tentative decision and given a chance to appeal the decision at the local level.

[Ord. 5768, 12/7/11; Ord. 5886, 1/6/17]

- (2) Once the application is deemed complete, a notice of filing shall be mailed to the applicant and persons who own property within 300 feet of the proposed development site. Notice shall also be provided to any neighborhood association recognized by the City Council and whose boundaries include the site and to other neighborhood association recognized by the City Council within 300 feet of the site. The Director shall have discretion to increase the notice area up to 1,000 feet due to land use or transportation patterns or an expected level of public interest. The notice and procedures used by the City will:

[Ord. 5886, 1/6/17]

- (a) Provide a 14-day period for submission of written comments before the decision;
- (b) State that issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue;
- (c) State the applicable review criteria for the decision;
- (d) Set forth the street address or other easily understood geographical reference to the subject property;
- (e) State the place, date and time that comments are due;
- (f) State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;
- (g) Include the name and phone number of a local government contact person;
- (h) Provide notice of the decision to the applicant and persons entitled to notice. The notice of decision must include an explanation of appeal rights;
- (i) Briefly summarize the local decision making process for the limited land use decision being made, and
- (j) Include other information the Director deems appropriate.

[Ord. 5728, 1/27/10, Ord. 5768, 12/7/11]

- (3) The Director shall mail notice of the tentative decision to the applicant and any party who provided written comments on the proposal.

The Director's notice shall list the relevant criteria used to make the decision and any conditions of approval or findings of denial. The notice shall invite persons to contact the Planning staff in writing within ten days of notification to request a public hearing.

A public hearing may be requested in writing ten days from notification, if a person believes that the conditions of approval do not adequately address the established approval criteria or alleviate adverse impacts on the neighborhood.

If no one requests a public hearing, the tentative decision becomes final ten days after the notice of decision is mailed to affected parties.

[Ord. 5768, 12/7/11]

- (4) If the applicant, the Director, any party entitled to notice initiates a public hearing on a Type II

proposal, the Director shall, within 30 days of receiving a written request for a public hearing, set a date for a public hearing before the Planning Commission, Landmarks Advisory Commission, or the Hearings Board. The notice shall be mailed at least 20 days in advance of the hearing to those same persons specified in (2) above. The public hearing notice shall contain the information outlined in Section 1.400 (4). The subject property shall be posted in accordance with Section 1.410. [Ord. 5728, 1/27/10, Ord. 5768, 12/7/11]

- (5) If a hearing is conducted, the Hearings Board, the Planning Commission, or the Landmarks Advisory Commission shall review the request and any written comments and testimony; adopt findings based on the established criteria, and make a decision by approving, conditionally approving, or denying the application. Conditions and/or restrictions may be applied to the approval of any land use application granted under a Type II procedure in accordance with the relevant provisions of this Code. [Ord. 5728, 1/27/10, Ord. 5768, 12/7/11]

#### 1.360 Type III Procedure.

- (1) The purpose of the Type III procedure is to provide for the review of certain applications within the City by the Planning Commission, Hearings Board, or the Landmarks Advisory Commission at a public hearing. Such actions may be complex in nature, requiring the interpretation of Plan policies and the requirements of this Code.
- (2) Under the Type III procedure, an application is scheduled for public hearing at the Director's discretion before the Hearings Board, the Planning Commission, or the Landmarks Advisory Commission. The Director shall notify all persons who own property within 300 feet of the subject property and any neighborhood association recognized by the City and whose boundaries include the site and other neighborhood association recognized by the City within 300 feet of the site. The Director shall have discretion to increase the notice area up to 1,000 feet due to land use or transportation patterns or an expected level of public interest. The Director may require the applicant to post notices as set forth in Section 1.410. [Ord. 5728, 1/27/10; Ord. 5768, 12/7/11]
- (3) The review body shall review the request and any written comments and testimony, adopt findings based on the established criteria, and make a decision by approving, conditionally approving, or denying the application. Conditions and/or restrictions may be applied to the approval of any land use application granted under a Type III procedure in accordance with the relevant provisions of this Code.

#### 1.370 Type IV Procedure.

- (1) The purpose of the Type IV procedure is to provide for the review of certain land use applications by the Planning Commission, Hearings Board or Landmarks Advisory Commission and the City Council at public hearings. These decisions are usually complex in nature, and require the interpretation of Comprehensive Plan policies and the criteria of this Code.
- (2) Under the Type IV Procedure, an application is scheduled for public hearing before the Hearings Board, Landmarks Advisory Commission, or the Planning Commission at the Director's discretion. If the application is quasi-judicial, the Director shall notify all persons who own property within 300 feet of the subject property and any neighborhood or community organization recognized by the City and whose boundaries include the site and to other organization recognized by the City within 400 feet of the site. The Director shall have discretion to increase the notice area up to 1,000 feet due to land use patterns or an expected level of public interest. The Director may require the applicant to post notices as set forth in Section 1.410. [Ord. 5763, 12/1/11; Ord. 5768, 12/7/11]
- (3) For a quasi-judicial proposal on which the Hearings Board, Landmarks Advisory Commission, or Planning Commission has made a favorable recommendation, the City Council shall hold a public hearing and make a final decision prior to expiration of the 120-day land use processing rule, if applicable. An applicant may request a review delay of up to 6 months and extend the 120-day

time frame. Final action on qualifying residential developments subject to ORS 197.311 shall be taken within 100\_days from the date the application is deemed complete. [Ord. 5912, 7/11/18]

- (4) If the Planning Commission, Landmarks Advisory Commission, or Hearings Board recommend against a proposal, the City Council will only consider the proposal on appeal by the applicant(s).
- (5) The review body shall:
  - (a) Review the request and any written comments and testimony;
  - (b) Adopt findings based on the established policies and criteria; and,
  - (c) Make a decision by approving, conditionally approving, or denying the application.

Conditions and/or restrictions may be applied to land use approval granted under a Type IV procedure in accordance with the relevant provisions of this Code. [Ord. 5728, 1/27/10]

## **PUBLIC HEARINGS**

- 1.380 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, all 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.
- 1.390 Hearings Record. When practical, the secretary to the review body will be present at each hearing and shall cause the proceedings to be recorded either stenographically or electronically. If the secretary is absent, proceedings will be recorded electronically and minutes will be taken from the tape.
- (1) Testimony shall be transcribed at the expense of the requesting party if required for judicial review or local appeal proceedings. The transcribing fee may include all actual costs as authorized by state law.
  - (2) 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 secretary, distributed to members, returned to the secretary, and shall become part of the record.
  - (3) The staff report and recommendation shall be included in the record.
  - (4) 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.
- 1.400 Mailed Notice. Addresses for a mailed notice required by this Code shall be generated from the most recent property tax assessment roll where the subject property is located. A person whose name is not in the tax records at the time an application is filed may receive notice if the person provides the Community

Development Department with the necessary address(es). Any deficiency in the form of notice prescribed in this section, or failure of a property owner to receive notice, shall not invalidate an action if a good faith attempt was made to comply with the requirements of this Code for notice.

[Ord. 5728, 1/27/10, Ord. 5768, 12/7/11]

- (1) The Director may provide notice to others who may be considered affected or otherwise represent an interest that may be affected by the proposed development.
- (2) The cost of notice mailings shall be included in the land use application fee.
- (3) Notice of a public hearing shall be sent by mail at least 20 days before the evidentiary public hearing (or, if more than one hearing is allowed, 10 days before the first evidentiary public hearing) and shall contain the following information:
  - (a) The reviewing body, the date, time, and place of the hearing.
  - (b) The street address or other easily understood geographic reference to the subject property.
  - (c) The nature of the application and the proposed use or uses that could be authorized.
  - (d) Where information may be examined and when and how written comments addressing findings required for a decision by the review body may be submitted.
  - (e) A list of the applicable criteria from the ordinance and/or the plan that apply to the application.
  - (f) A statement that failure to raise an issue in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.
  - (g) The name of a City representative to contact and the telephone number where additional information may be obtained.
  - (h) A statement that a copy of the application, all documents and evidence relied upon by the applicant, and applicable criteria are available for inspection at no cost and copies will be provided at reasonable cost.
  - (i) A statement that a copy of the staff report will be available for inspection at no cost at least seven days before the hearing and a copy will be provided at reasonable cost.
  - (j) A statement that all interested persons may appear and provide testimony and that only those making an appearance of record, either in person or in writing, shall be entitled to appeal.
  - (k) A general explanation of the procedure for conducting hearings. [Ord. 5446, 5/10/00]

1.410 Posted Notice. Development sites that are the subject of quasi-judicial public hearings shall be posted unless otherwise noted in this Code. At the Director's discretion, the applicant may 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 shall be provided by the City. The posting shall meet the following requirements:

- (1) The notice shall be at least 2 feet by 3 feet.
- (2) 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.)
- (3) The notice shall be posted for at least seven consecutive days before the first scheduled public hearing on the matter.
- (4) If the subject property is a corner lot, then two signs are required in locations defined in (2) above.
- (5) At least five days before any hearing (or decision made by the Director), an affidavit of posting shall be filed with the Director.

- (6) If the subject property is not properly posted as set forth in Section 2 or this section, the Director may postpone the hearing until such provisions are met.
- (7) 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.

1.420 Compliance and Waiver of Notice.

- (1) Notice by mail shall be deemed given on the day the notice is deposited with the United States Postal Service, first class postage, fully prepaid, for mailing to the addressee at the addressee's last known mailing address. Failure of the addressee to actually receive notice shall not invalidate the proceeding if the City can demonstrate by affidavit that notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.
- (2) Posted notice is deemed given on the day the sign is first posted.
- (3) The requirement for notice shall be deemed satisfied as to any person who, in any manner, obtains actual knowledge of the time, place, and subject matter of the hearing prior thereto.
- (4) Appearance and testimony or comment on the merits of the proposed action by any person at a hearing, or submission by any person of written comment directed to the merits of the proposed action at or prior to the hearing and after the proceeding was initiated, shall be deemed a waiver by such person of any defect in notice. [Ord. 5446, 5/10/00]

1.430 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.

1.440 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:

- (1) 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.
- (2) The member has a direct private interest in the proposal.
- (3) Any other valid reason for which the member has determined that participation in the hearing and decision cannot be impartial.

1.450 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.

1.460 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.

[Ord. 5728, 1/27/10]

1.470 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.

1.480 Burden and Nature of Proof. The burden of proof is upon the applicant or appellant. The more drastic the change or the greater the impact of the proposal in the area, the greater is the burden. The proposal must be supported by proof that it conforms to the applicable provisions of this Code, especially the specific criteria set forth for the particular type of decision under consideration.

1.490 Hearing Procedures. Hearing procedures will depend in part on the nature of the hearing. The following may be supplemented by appropriate rules announced by the presiding officer:

- (1) The presiding officer will state the case and call the public hearing to order, informing those present that testimony and evidence is to be directed towards the applicable criteria for the case and that failure to raise an issue accompanied by statements of 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) For the purposes of this section:
  - (a) "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.
  - (b) "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.
- (17) 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.
- (18) If the hearing is closed, it shall be reopened only upon a majority vote of the review body.

[Ord. 5446, 5/10/00]

## DECISION

- 1.500 Findings. The review body shall make a decision and adopt findings based upon the information accompanying the application, staff report, and/or evidence presented at the hearing. The findings shall address:
- (1) Applicable Development Code criteria.
  - (2) For approval, a statement of the facts establishing compliance with each applicable policy or criteria. For denial, a statement of the facts establishing non-compliance with one or more required policy or criteria.
  - (3) Concluding statement(s) to approve or deny.
- 1.505 Final Decision. Unless a local ordinance specifies that the decision becomes final at a later time than defined in this section, a decision becomes final when: (a) it is reduced to writing, bears the necessary signatures of the decision maker; and (b) if written notice of the decision is required by law, when written notice of the decision is mailed to persons entitled to notice. [Ord. 5475, 4/11/01]
- 1.510 Notice of Decision.
- (1) Within five days of final action on a land use application, the Director shall provide written notice of the decision to the applicant and any other parties entitled to notice. The notice shall state the effective date of the decision, describe the right of appeal, and summarize the reasons for the decision and any conditions of approval, or indicate where such can be reviewed in detail.
  - (2) The City shall take final action on all land use requests that are wholly within the authority and control of the City within 120 days from the date the application is deemed complete. However, by agreement with the applicant, this deadline may be extended as set out in ORS 227.178. The 120-day period set out in ORS 227.178 does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610 (for legislative changes). [Ord. 5446, 5/10/00; Ord. 5912, 7/11/2018]
  - (3) Final action on qualifying residential developments subject to ORS 197.311 shall be taken within 100 days from the date the application is deemed complete. [Ord. 5912, 7/11/18]

## APPEALS

- 1.520 Appeal Procedures.
- (1) See ADC 1.330(5) for appeals of Type I-L limited land use decisions.
  - (2) Appeals of a Type II land use decision made by the Director is to the Planning Commission (PC), Hearings Board, (HB), or the Landmarks Advisory Commission (LAC). See Section 1.350 (2) through (5). A Type II decision made by the PC, HB, or LAC may be appealed to the Land Use Board of Appeals (LUBA) when a person who participated in the land use process in writing or testimony files a Notice of Intent to Appeal with LUBA no later than 21 days after the hearing body's notice of decision is mailed. [Ord. 5728, 1/27/10; Ord. 5768, 12/7/11]
  - (3) Any person who submitted written comments during a comment period or testified at the public hearing has standing to appeal a Type III decision of the Planning Commission, Hearings Board, or Landmarks Advisory Commission to the City Council by filing a Notice of Appeal within ten days from the date the City mails the notice of decision. [Ord. 5475, 4/11/01; Ord. 5728, 1/27/10]
  - (4) Within the appeal period, the City Council, acting upon the recommended action of the City Manager or upon its own motion, may order a de novo review of any lower level decision. This review shall be conducted in accordance with appeal procedures specified herein.

- (5) For any appeal proceeding, the Director shall cause notice to be provided in the same manner as for the original decision, to those testifying and to any other parties to the proceedings who request notice in writing.
- (6) A decision of the City Council may be appealed by persons with standing to the Land Use Board of Appeals (LUBA) by filing a notice of intent to appeal to LUBA not later than 21 days after the decision becomes final. [Ord. 5446, 5/10/00; Ord. 5475, 4/11/01; Ord. 5728, 1/27/10]

1.530 Requirements of Notice of Appeal. A Notice of Appeal 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 he/she was a party to the initial proceedings.
- (3) The specific policy or criteria relied upon for review.
- (4) If de novo review is requested, a statement summarizing the new evidence that will be offered and the criteria to which it will relate.

1.540 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.

1.550 Review on the Record.

- (1) The reviewing body may hear the entire matter on the record or it may admit additional testimony and other evidence in a de novo hearing.
- (2) When the reviewing body requests a review on the record, the record shall include:
  - (a) A factual report prepared by the Community Development Director.
  - (b) All exhibits, materials, pleadings, memoranda, stipulations, and motions submitted by any party and received or considered in reaching the decision under review.
  - (c) The minutes of the hearing.
- (3) The reviewing body may make its decision based only upon the record or may grant the right of oral argument to all affected parties, but not the introduction of additional evidence.

1.560 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.

1.570 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 reviewing 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.

## LEGISLATIVE PROCESS

### 1.580 Initiation.

- (1) The City Council may make changes in the Comprehensive Plan or Development Code provisions and designations by legislative act where such changes affect a large number of persons, properties, or situations and are applied over a large area.
- (2) The City Council, Planning Commission, Landmarks Advisory Commission, or Community Development Director may initiate a review on any legislative matter.
- (3) Any property owner or resident of the City may request that the Planning Commission initiate a review of any legislative matter (such as an amendment to the Development Code text). The planning Commission shall review the proposal and determine whether the proposal warrants processing as a legislative amendment.

### 1.590 Procedure. Legislative land use applications are processed as a legislative Type IV procedure.

### 1.600 Hearing Notice.

- (1) The Director may inform persons believed to have a particular interest and provide the general public with reasonable opportunity to be aware of the hearings on the proposal.
- (2) Notice shall be published in the Albany Democrat-Herald at least one week before the hearing and additionally as may be required by state law for a particular proceeding.
- (3) Published notice shall include the following information:
  - (a) The reviewing body, the date, time, and place of the hearing;
  - (b) The nature of the proposed amendment; and
  - (c) The name and telephone number of the staff member to contact for more information.

### 1.610 Hearing Procedures. 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 statements will be permitted. The presiding officer may establish a time limit for presentation of information.

### 1.620 Planning Commission Recommendation. In preparing its recommendation to the City Council, the Planning Commission shall do the following:

- (1) Evaluate the proposal based on the relevant Development Code criteria.
- (2) Prepare a recommendation and make findings in support of such recommendation.

### 1.630 City Council Action.

- (1) 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.
- (2) The City Council may:
  - (a) Enact, amend or defeat all or part of the proposal under consideration, or
  - (b) Refer some or all of the proposal back to the Planning Commission, Hearings Board, or Landmarks Advisory Commission for further consideration. [Ord. 5728, 1/27/10]

### 1.640 Notice to the Department of Land Conservation and Development (DLCD) on Legislative Matters.

- (1) The Director shall notify the DLCD for adoption of or amendment to the Comprehensive Plan, the Development Code, or any other land use regulation. The notice shall be provided at least 35 days before the first evidentiary hearing on adoption and shall contain information sufficient to inform the Department about the effect of the proposal. [Ord. 5832, 4/9/14]

- (2) If the City determines that the statewide goals do not apply to a particular proposed amendment or new regulation, notice under subsection (1) of this section is not required. In addition, the City may consider an amendment or new regulation with less than 45 days notice if the City Council determines that there are emergency circumstances requiring expedited review.

[Ord. 5446, 5/10/00]

1.650 Decision Notice Requirements.

- (1) Within five working days following adoption of an amendment or new land use regulation, the Director shall forward to the DLCDC 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.
- (2) Within five working 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.

1.660 Appeal. A legislative land use decision not related to periodic review may be appealed to the 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.

[Ord. 5728, 1/27/10]