

## 4.01 Decision-Making Procedures

This Section provides the review and decision-making procedures by which all applications relating to the use of land authorized by ORS Chapters 92, 197 and 227 are reviewed and decided, as well as legislative enactments initiated by the City Council.

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### **4.01.01 Application and Appeal Fees and Refunds**

- A. Fees: The City may adopt by ordinance or resolution, and revise from time to time, a schedule of fees for applications, appeals and other services provided by City departments. Fees shall be based upon the City's actual or average cost of processing the application or conducting the appeal process, except where limited by State statute.
- B. Payment: All fees shall be due and payable at the time the application or appeal is submitted. No application or appeal shall be accepted without the proper fee being paid.
- C. Refunds: Fees will only be refunded as provided in this subsection:
  - 1. When a fee is paid for an application, which is later found by the Director to not be required, the Director shall refund the fee.
  - 2. When an error is made in calculating a fee, overpayment will be refunded.
  - 3. In the event an applicant withdraws an application, the Director shall:
    - a. Refund 100 percent of application fee prior to deeming the application complete; or
    - b. Refund 50 percent prior to making the public notice; or
    - c. Make no refund after completing the public notice.

#### **4.01.02      Assignment of Decision-Makers:**

The following City entity or official shall decide the following types of decisions:

- A. Type I Decisions (Administrative): The Director shall render all Type I decisions. The Director's decision is the City's final decision on a Type I application and this decision is not appealable by any party through the City's land use process.
- B. Type II Decisions (Quasi-Administrative): The Director shall render the City's decision on all Type II applications, which are appealable to the City Council. The City Council may call up a Type II decision for review on its own motion. The City Council's decision is the City's final decision and is appealable to LUBA within 21 days after it becomes final.
- C. Type III Decisions (Quasi-Judicial): The Planning Commission shall render all Type III decisions EXCEPT for Type III design review, with or without a concurrent variance, which shall be decided by the Design Review Board, if one has been created by the City Council. A Type III decision is appealable to the City Council. The City Council may call up a Type III decision for review on its own motion. The City Council's decision is the City's final decision and is appealable to LUBA within 21 days after it becomes final.
- D. Type IV Decisions (Quasi-Judicial): The Planning Commission shall hold an initial public hearing on all Type IV permit applications before making a recommendation to the City Council. The City Council shall then conduct a *de novo* public hearing. The City Council's decision is the City's final decision on a Type IV application and is appealable to LUBA within 21 days after it becomes final.
- E. Type V Decisions (Legislative): Type V decisions involve legislative actions where the City Council enacts or amends the City's land use regulations, comprehensive plan, Official Zoning Map or some component of these documents. Type V decisions may only be initiated by the City Council. The Planning Commission holds an initial public hearing on the proposal before making a recommendation to the City Council. The City Council then holds a final public hearing and renders a decision. Public notice is provided for all public hearings (Section 4.01.14). The City Council's decision is the City's final decision and is appealable to LUBA within 21 days after it becomes final.

#### **4.01.03      Initiation of Applications**

- A. The City Council may initiate any type of land use action by motion designating the appropriate City department to complete and file the application.
- B. An application for a land use action may only be initiated by the record property owner or contract purchaser, the City Council or Planning Commission. If there is more than one record owner, then the City will not accept an application without signed authorization from all record owners.

#### **4.01.04      Completeness Review**

- A. It is the responsibility of the applicant to demonstrate that all applicable criteria are satisfied. Within 30 days of the date the application is first submitted, the Director may require additional information to ensure all applicable approval criteria are addressed. In any event,

the applicant is responsible for the completeness and accuracy of the application and all of the supporting documentation. The City will not deem the application complete until all information required by the Director is submitted and received, or the applicant requests in writing that the application be deemed complete.

- B. Within thirty days of receipt of the application, the Director shall review the application and all information submitted with it and evaluate whether the application is complete. If the application is incomplete, the Director shall notify the applicant in writing what information is missing.
  - 1. Upon receipt of a letter from the Director indicating the application is incomplete, the applicant has 180 days within which to submit the missing information. If the applicant submits the requested information within the 180-day period, the Director shall again verify whether the application, as augmented, is complete. Each such review and verification shall follow the procedure prescribed in this Section.
  - 2. If an incomplete application is not made complete within 180 days from the date it was first filed it shall become void on the 181<sup>st</sup> day. If an application becomes void under this subsection, the Director shall return all materials and refund the application fee as outlined above (Section 4.01.01) to the applicant.
- C. An application shall be deemed complete:
  - 1. When the Director, within 30 days after the filing date, determines the application is complete; or
  - 2. On the 31st day after filing if the applicant refuses in writing to submit the missing information; or
  - 3. On the date that the applicant files the missing information if a notice of incompleteness was given; or
  - 4. On the 31st day for any application not previously deemed complete if no incompleteness notice was given.
- D. The approval standards which control the City's review and decision on a complete application are those which were in effect on the date the application was first submitted.

**4.01.05      120-Day Rule**

- A. The City shall take final action on the application within 120 days of the date that the application was deemed complete, unless the applicant extends the 120 day period. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the 120-day period.
- B. When the 120-day Rule is Not Applicable: The 120-day rule does not apply to:
  - 1. Any Type I decision;
  - 2. Any application for an amendment to the City's comprehensive plan; or
  - 3. Any application for a permit, the approval of which depends upon a Comprehensive Plan amendment;

4. Any application that is not wholly within the City's authority and control;
5. Any Type V decision, or
6. Any annexation.

#### **4.01.06 Conditions of Approval**

- A. All City decision-making bodies have the authority to impose conditions of approval reasonably related to impacts caused by the development or designed to ensure that all applicable approval standards are, or can be, met on Type II, III and IV decisions except annexation. All conditions of approval shall be clear and objective or if the condition requires discretion shall provide for a subsequent opportunity for a public hearing.
- B. Compliance with Conditions:
  1. The applicant shall agree in writing that the applicant and successors shall be bound by the conditions prescribed for approval of the development.
  2. Failure to comply with any condition of approval shall be the basis for revocation of the permit(s) and/or instituting code enforcement proceedings pursuant to the Section 4.02.10 and 4.02.11 and ORS 30.315.

#### **4.01.07 Consolidated Applications**

An applicant may request, in writing, to consolidate applications needed for a single development project. Under a consolidated review, all applications shall be processed following the procedures applicable for the highest type decision requested. It is the express policy of the City that development review not be segmented into discrete parts in a manner that precludes a comprehensive review of the entire development and its cumulative impacts.

#### **4.01.08 Ex-Parte Contacts, Personal Site Observations, Conflicts of Interest and Bias**

- A. Declaration: Before the beginning of each hearing item, the chair shall ask the members of that decision-making body if there are any declarations of any *ex-parte* contacts, personal site observations, conflicts of interest, or bias.
- B. *Ex- parte* Contacts: Before rendering a decision, a member of the decision-making body may not communicate, directly or indirectly, with any person interested in the outcome. Should such communication occur, at the beginning of the hearing the member must:
  1. Enter into the record the substance of the written or oral communication; and
  2. Publicly announce the content of the communication and provide any person with an opportunity to rebut the substance of the contact.

This rule does not apply to legislative proceedings or to communications between City staff and a member of the decision-making body.

- C. Personal Site Observations: A member of the decision-making body shall disclose into the record any personal site observations, and provide any person with an opportunity to rebut

the substance of this disclosure. This rule does not apply to legislative proceedings.

- D. Conflicts of Interest: A member of the decision-making body shall review and observe the requirements of the Government Standards and Practices Law. All potential and actual conflicts of interest shall be publicly disclosed by the member and noted in the meeting minutes. A member shall not participate as a member of the decision-making body in any land use proceeding where the member has an actual conflict of interest.
- E. Bias: All decisions in quasi-judicial matters shall be fair, impartial and based on the applicable approval standards and the evidence in the record. A member of the decision-making body who is unable to render a decision on this basis in any particular matter shall refrain from participating in the deliberations or decision on the matter. This rule does not apply to legislative proceedings.

#### **4.01.09**      **Initiation of a Legislative Proposal**

- A. The City Council may initiate the consideration of a legislative decision by resolution.
- B. Actions initiated by the Council shall be referred to the Planning Commission for a public hearing and recommendation to the Council.
- C. The City Council shall hold the final public hearing on a proposed legislative decision.

#### **4.01.10**      **Legislative Hearing Process**

- A. Purpose: Legislative actions involve the adoption or amendment of the City's land use regulations, comprehensive plan, Official Zoning Map, or some component of these documents.
- B. Planning Commission Recommendation:
  - 1. The Planning Commission shall hold at least one public hearing before recommending action on a legislative proposal. Any interested person may appear and provide written or oral testimony on the proposal at or before the hearing. The Director shall notify the Oregon Department of Land Conservation and Development (DLCD) at least 35 days before the first hearing, or as required by the post-acknowledgment procedures of ORS 197.610 to 197.625, as applicable.
  - 2. Once the Planning Commission hearing has been scheduled and noticed, the Director shall prepare and make available a report on the legislative proposal at least seven days before the hearing.
  - 3. At the conclusion of the hearing, the Planning Commission shall adopt a recommendation on the proposal to the City Council. The Planning Commission shall make a report and recommendation to the City Council on all legislative proposals. If the Planning Commission recommends adoption of some form of the proposal, the Planning Commission shall prepare and forward to the City Council a report and recommendation to that effect.
- C. City Council Action: Upon receiving a recommendation from the Planning Commission on a legislative action, the City Council shall hold at least one public hearing on the proposal.

Any interested person may provide written or oral testimony on the proposal at or prior to the hearing. At the conclusion of the hearing, the City Council may adopt, modify or reject the legislative proposal, or it may remand the matter to the Planning Commission for further consideration. If the decision is to adopt at least some form of the proposal, and thereby enact or amend the City's land use regulations, comprehensive plan, Official Zoning Map or some component of any of these documents, the City Council decision shall be enacted as an ordinance.

- D. Notice of Final Decision to DLCD: Not later than five working days following the City Council's final decision, the Director shall mail notice of the decision to DLCD in accordance with ORS Chapter 197.

#### **4.01.11 Notice of Decision**

The City shall send, by mail, a notice of all Type II, III and IV decisions to all persons with standing, including the applicant, all persons who appeared either orally or in writing before the close of the public record and any persons who requested notice of the decision. The notice of decision shall include the following information:

- A. The file number and date of decision;
- B. The name of the applicant, owner and appellant (if different);
- C. The street address or other easily understood location of the subject property;
- D. A brief summary of the decision, and if an approval, a description of the permit approved;
- E. A statement that the decision is final unless appealed and description of the requirements for perfecting an appeal; and
- F. The contact person, address and a telephone number whereby a copy of the final decision may be inspected or copies obtained.

#### **4.01.12 Objections to Procedure**

Any party who objects to the procedure followed in any particular matter, including bias, conflict of interest and undisclosed ex-parte contacts, must make a procedural objection before the City renders a final decision. Procedural objections may be raised at any time before a final decision, after which they are deemed waived. In making a procedural objection, the objecting party must identify the procedural requirement that was not properly followed and identify how the alleged procedural error harmed that person's substantial rights.

#### **4.01.13 Pre-application Conference**

- A. Applicability: Prior to submitting an application, the applicant may schedule a pre-application conference with City staff to discuss the proposal before submitting an application of any land use action. A pre-application conference is advisory in nature and shall be voluntary, excepting annexations, where a pre-application conference is mandatory.
- B. Purpose: The purpose of a pre-application conference is to provide staff from all affected

City departments the opportunity to provide the applicant with information on the likely impacts, limitations, requirements, approval standards, fees and other information that may affect the proposal. The Director shall provide a written summary of the pre-application conference.

- C. Requirements for a Pre-application Conference: To schedule a pre-application conference, a complete City application, accompanying information, and filing fee must be submitted to the Director.
- D. No Waiver of Requirements: Notwithstanding any representations by City staff at a pre-application conference, staff is not authorized to waive any requirements of the Woodburn Development Ordinance and any omission or failure by staff to recite to an applicant all relevant applicable land use requirements shall not constitute a waiver by the City of any standard or requirement.

#### **4.01.14    Public Notices**

All public notices issued by the City for decisions shall comply with the requirements of this Section.

##### A. Mailed Notice.

1. Type II: After the Director has deemed a Type II application complete, the Director shall issue a decision. The City shall send notice of the decision, by mail, to all record owners of property within 250 feet of the subject property, and to any City recognized neighborhood associations whose territory includes the subject property. The City's notice of decision shall include the following information:
  - a. An explanation of the nature of the application and the proposed use or uses, which could be authorized;
  - b. Street address or other easily understood location of the subject property;
  - c. The name and telephone number of the planning staff person assigned to the application or who is otherwise available to answer questions about the application;
  - d. A statement that the application and all supporting materials may be inspected at no cost, and copies may be obtained at reasonable cost, at City Hall during normal business hours;
  - e. A statement that the decision will not become final until the period for filing an appeal to the City Council has expired and that the decision cannot be appealed directly to the Land Use Board of Appeals; and
  - f. An explanation of appeal rights, including that any person who is adversely affected or aggrieved or who is entitled to written notice of the decision may appeal the decision.
2. Type III or IV: Notice for all initial public hearings concerning Type III and IV decisions shall conform to the requirements of this subsection. At least 10 days before the initial public hearing, the Director shall prepare and send, by mail, notice of the hearing to all record owners of property within 250 feet of the subject property and to

any City-recognized neighborhood association whose territory includes the subject property. If an application would change the zone of property that includes any part of a mobile home or manufactured dwelling park, notice shall also be mailed to the tenants at least 20 days before but not more than 40 days before the initial public hearing. Notice of the application hearing shall include the following information:

- a. The time, date and location of the public hearing;
- b. The street address or other easily understood location of the subject property and city-assigned planning file number;
- c. A description of the applicant's proposal, along with a list of citations of the approval criteria that the City will use to evaluate the proposal;
- d. A statement that any interested party may testify at the hearing or submit written comments on the proposal at or before the hearing, and that a staff report will be prepared and made available to the public at least seven days prior to the hearing;
- e. A statement that any issue which is intended to provide a basis for an appeal to the City Council must be raised before the close of the public record. Issues must be raised and accompanied by statements or evidence sufficient to afford the City and all parties to respond to those issues;
- f. A statement that the application and all supporting materials and evidence submitted in support of the application may be inspected at no charge and that copies may be obtained at reasonable cost at City Hall during normal business hours;
- g. The name and telephone number of the Planning staff person responsible for the application or who is otherwise available to answer questions about the application; and
- h. A statement advising that ADA access may be accommodated, upon receipt of a timely request.

- B. Posted Notice: Notice of an initial public hearing for a Type III or IV decision shall be posted on the subject property as follows:
1. The applicant shall post on the site at least one (1) notice signboard provided by the Director for that purpose. The signboard shall be posted in a conspicuous place visible to the public on or in the vicinity of the property subject to the application. The signboard shall state with minimum two (2) inch high letters the case file number and the telephone number where City staff can be contacted for more information.
  2. The applicant shall post a notice on each frontage of the subject property. If the property's frontage exceeds 600 feet, one copy of the notice shall be posted for each 600 feet or fraction thereof. Notices shall be posted within ten feet of the street and shall be visible to pedestrians and motorists.
  3. The notice shall be posted at least 10 days prior to a public hearing. Once posted, the applicant need not maintain a posted notice. The applicant, upon posting shall certify that the property has been properly posted.
  4. The applicant shall remove all signs within ten days following the event announced in

the notice.

- C. Published Notice: The Director shall publish a notice of a Type IV or V public hearing as described in this subsection, unless otherwise specified by statute. The notice shall be published in a newspaper of general circulation within the City at least 7 days prior to the hearing. Such notice shall consist of:
  - 1. The time, date and location of the public hearing;
  - 2. The address or other easily understood location of the subject property;
  - 3. A City-assigned planning file number;
  - 4. A summary of the principal features of the application or legislative proposal;
  - 5. A statement that any interested party may testify at the hearing or submit written comments on the proposal at or before the hearing;
  - 6. The name and telephone number of the Planning staff person responsible for the proposal;
  - 7. A statement advising that ADA access may be accommodated, upon receipt of a timely request; and
  - 8. Any other information required by statute.
- D. Notice to Affected Agencies and Neighborhood Associations:
  - 1. At least 10 days before the initial public hearing (Type III or IV) notice must be sent to any City-recognized neighborhood association whose territory includes the subject property.
  - 2. At least 20 days before an initial public hearing (Type III & IV) or decision (Type II) for applications requiring submittal of a Transportation Impact Analysis notification shall be provided to the affected transportation facility and service providers (City, County, and State).
  - 3. At least 20 days before an initial public hearing for a legislative decision (Type V) notice shall be sent to affected governmental entities (special districts, County, and State).
  - 4. At least 20 days before an initial public hearing for a legislative decision (Type V) to any affected recognized neighborhood associations and any party who has requested in writing shall receive such notice.

#### **4.01.15 Quasi-Judicial Hearing Process**

- A. Applicable Procedures: All public hearings pertaining to Type III and IV permits, whether before the Planning Commission, Design Review Board, or City Council, and any appeal or review for a Type II, III or IV permit, shall comply with the procedures of this Section. In addition, all public hearings shall comply with the Oregon Public Meetings Law, the applicable provisions of ORS 197.763 and any other applicable law.
- B. Scheduling: Once the Director determines that an application for a Type III or IV decision is complete, the Director shall schedule a hearing before the Planning Commission or

Design Review Board, as applicable. If the Director has doubt about which type of procedure is applicable to a particular application, the application shall be processed pursuant to the procedure that provides the greater opportunity for public review. Once the Director determines that an appeal of a Type II or Type III decision has been properly filed, or that the City Council has called the decision up for review, the Director shall schedule a hearing before the City Council.

- C. Public Hearing Notice: Notice of the hearing shall be issued as provided by this Ordinance.
- D. Staff Report: The Director shall prepare a staff report on the application which lists the applicable approval criteria, describes the application and the applicant's development proposal, summarizes all relevant City department, agency and public comments, describes all other pertinent facts as they relate to the application and the approval criteria, concludes whether each of the approval criteria are met and makes a recommendation to approve, approve with conditions, or deny the application.
- E. Conduct of Quasi-Judicial Hearings: At the beginning of the public hearing at which any quasi-judicial application or appeal is reviewed, a statement shall be made to those in attendance that states that:
  - 1. The applicable substantive criteria;
  - 2. The hearing will proceed in the following general order: staff report, applicant's presentation, testimony in favor of the application, testimony in opposition to the application, rebuttal, record closes, deliberation and decision;
  - 3. All testimony and evidence submitted, orally or in writing, must be directed toward the applicable approval criteria. If any person believes that other criteria apply in addition to those addressed in the staff report, those criteria must be identified and discussed on the record. The decision-maker may reasonably limit oral presentations in length or content depending upon time constraints and to content that is relevant to applicable approval criteria. Any party may submit written materials while the public record is open;
  - 4. Failure to raise an issue on the record accompanied by statements or evidence sufficient to afford the City and all parties an opportunity to respond to the issue, will preclude appeal on that issue to LUBA;
  - 5. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the decision maker to respond to the issue precludes an action for damages in Circuit Court; and
  - 6. Any party wanting a continuance or to keep open the record must make that request while the record is still open.

#### **4.01.16 Requests of Continuance and to Keep the Record Open**

- A. The decision-maker may continue the hearing from time to time, to allow the submission of additional information or for deliberation without additional information. Similarly, the decision-maker may close the hearing, but keep the record open for the submission of additional written material or other documents and exhibits.

- B. Before the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence. The decision-maker shall grant the request by either continuing the hearing or allowing the record to remain open for at least seven days.
  - 1. If the decision-maker grants a continuance:
    - a. The hearing shall be continued to a date, time and place at least seven days from the date of the initial evidentiary hearing.
    - b. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony.
    - c. If new written evidence is submitted at the continued hearing, any person may request, before 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.
  - 2. If the decision-maker holding the hearing leaves the record open:
    - a. The record shall be left open for at least seven days for additional written evidence, arguments or testimony.
    - b. If new evidence is submitted during the period the record was left open, any participant may file a written request for an opportunity to respond to the new evidence and the decision-maker shall reopen the record.
  - 3. If the decision-maker reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.
  - 4. Any continuance or extension of the record granted shall be subject to the limitations of the 120-day rule. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the 120-day period.
  - 5. Unless waived by the applicant, the decision-maker shall allow the applicant at least seven days after the record is closed to allow other parties to submit final written arguments, but not new evidence, in support of application.
- C. The decision-maker may limit the factual and legal issues that may be addressed in any continued hearing or open record period.
- D. The City Council may call up a Planning Commission or Director's decision for review, and shall consider;
  - 1. The Planning Commission or Director's decision.
  - 2. The applicant and other parties shall have an opportunity to present testimony, arguments and evidence on all applicable criteria.
  - 3. The City Council may limit the issues that it will allow.
  - 4. The rights of participants to continuances or open records, applicable to the initial public hearing, do not apply.
- E. If the decision is appealed, the City Council shall consider:
  - 1. The Planning Commission or Director's decision.

2. The applicant and other parties shall have an opportunity to present testimony, arguments and evidence on all applicable criteria.
3. The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal.
4. The rights of participants to continuances or open record persons applicable to initial public hearings do not apply.

#### **4.01.17    Types of Decisions**

- A. Type I Decisions (Administrative): Type I decisions do not require interpretation or the exercise of policy or legal judgment in evaluating approval criteria. Because no discretion is involved, Type I decisions do not qualify as a land use, or limited land use decision. The decision-making process requires no notice to any party other than the applicant. The Director's decision is final and is not appealable by any party through the City land use process.
- B. Type II Decisions (Quasi-Administrative): Type II decisions involve the exercise of limited interpretation or exercise of policy or legislative judgment in evaluating approval criteria. The Director's decision is appealable to the City Council with notice to the Planning Commission, by any party with standing (i.e., applicant and any person who was mailed a notice of decision). The City Council then conducts a *de novo* public hearing. The City Council decision is the City's final decision and is appealable to LUBA within 21 days after it becomes final.
- C. Type III Decisions (Quasi-Judicial): Type III decisions involve significant discretion and evaluation of subjective approval standards, yet are not required to be heard by the City Council, except upon appeal. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and the Planning Commission or Design Review Board hearing is published and mailed to the applicant, recognized neighborhood associations and property owners within 250 feet of the subject property.
- D. Type IV Decisions (Quasi-Judicial): Type IV decisions involve the greatest amount of discretion and evaluation of subjective approval standards and are directed at a closely circumscribed factual circumstance or relatively small number of persons. Type IV decisions must be heard by the City Council before a final decision can be rendered. Included are small scale annexations, comprehensive plan map amendments, and Official Zoning Map amendments. The process for these land use decisions is controlled by ORS 197.763.
- E. Type V Legislative Decisions (Legislative): Type V decisions involve legislative actions where the City Council enacts or amends the City's land use regulations, comprehensive plan, Official Zoning Map or some other component of any of these documents where changes are such a size, diversity of ownership or interest as to be legislative in nature under State law. Large-scale annexations are included, as well as adopting or amending the Comprehensive Plan or the Woodburn Development Ordinance. The Planning Commission holds an initial public hearing on the proposal prior to making a recommendation to the City Council. The City Council then holds a final *de novo* public hearing and makes the City's

final decision. Public notice is provided for all public hearings. The City Council's decision is the City's final decision and is appealable to LUBA within 21 days after it becomes final.