

ORDINANCE NO. 4953

TITLE: AN ORDINANCE AMENDING THE ALBANY MUNICIPAL CODE, TITLE 20, KNOWN AS THE "CITY OF ALBANY DEVELOPMENT CODE," RELATIVE TO ADMINISTRATION AND PROCEDURES, ADOPTING FINDINGS ATTACHED AS EXHIBIT "A", AND DECLARING AN EMERGENCY.

WHEREAS, the Albany City Council has directed staff to perform an update of the Albany Development Code; and

WHEREAS, the Planning Commission following a public hearing on January 21, 1991, recommended approval of proposed amendments to the Development Code (Case File No. DC-02-91) to improve readability and clarify the regulatory language regarding administration and procedures; and

WHEREAS, a notice of the City Council public hearing has been published, and

WHEREAS, the Albany City Council held a public hearing on February 27, 1991 and members of the public were given an opportunity to be heard.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: The Findings below are hereby adopted in support of this decision:

- A. The proposed amendments are in compliance with Development Code policies on prompt review of proposals and application of clear standards, and provisions for public information and comments on development proposals.
- B. The proposed amendments are in compliance with Comprehensive Plan policies on citizen participation and development review.
- C. The proposed amendments result in a Code structure that is easy to follow and utilize.
- D. The proposed amendments will clarify the text of the Code and improve readability of the regulations.

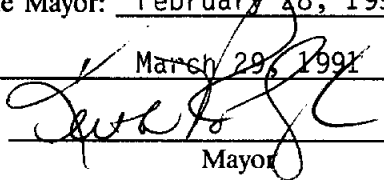
Section 2: The Albany Municipal Code, Title 20, known as the "City of Albany Development Code," Articles 1, 2, 4, 20, and 21 is hereby amended as shown on Exhibit "A."

Section 3: A copy of this ordinance with Exhibit "A" is to be forwarded to the Department of Land Conservation and Development.

Passed by the Council: February 27, 1991

Approved by the Mayor: February 28, 1991

Effective Date: March 29, 1991



Mayor

ATTEST:



Deputy City Recorder

**CITY OF ALBANY
DEVELOPMENT CODE AMENDMENTS
DC-02-91
STAFF REPORT**

HEARING BODIES

DATES

TIMES

Albany Planning Commission
Albany City Council

January 21, 1991
February 27, 1991

4:00 P.M.
7:15 P.M.

HEARING LOCATION: 250 Broadalbin SW, City Hall II Council Chambers

GENERAL INFORMATION:

Staff-initiated amendments to the Albany Development Code, Articles 1, 2, 4, 20, and 21.

PROPOSAL FOR CONSIDERATION:

The attached proposed amendments to the Development Code restructure the Code in order to improve readability and clarify the regulatory language. On January 21, 1991, the Planning Commission voted unanimously to recommend to the City Council approval of the proposed amendments.

DEVELOPMENT CODE AMENDMENT CRITERIA:

Staff has evaluated the proposed amendments and found them to be in compliance with the following Development Code policies on purpose and legislative intent:

1.020 (3): Assure prompt review of development proposals and the application of clear and specific standards.

1.020 (4): Provide for public information, review, and comment on development proposals which may have a significant impact on the community.

Staff has also found the proposed amendments to be in compliance with the following goals and policies in the Comprehensive Plan:

GOAL 1: Ensure that local citizens and other affected groups, neighborhoods, agencies, and jurisdictions are involved in every phase of the planning process.

Policy 4: Ensure information is made available to the public concerning development regulations, land use, and other planning matters including ways they can effectively participate in the planning process.

GOAL 14: Ensure that all new developments are reviewed expeditiously and thoroughly and result in compliance with Comprehensive Plan goals and policies and ordinance standards.

Policy 5: Ensure that the City's land use planning process and its policy framework is workable and understandable for local officials, staff, and the public. Ensure that the degree of application and review is commensurate with the size and complexity of various development requests.

Policy 7: Periodically review and update all City and County implementing ordinances to ensure continued coordination, consistency in procedure, and efficient processing of development

applications within the Urban Growth Management Area.

PROPOSED FINDINGS FOR APPROVAL:

1. The proposed amendments are in compliance with Development Code policies on prompt review of proposals and application of clear standards, and provisions for public information and comments on development proposals.
2. The proposed amendments are in compliance with Comprehensive Plan policies on citizen participation and development review.
3. The proposed amendments result in a Code structure that is easy to follow and utilize.
4. The proposed amendments will clarify the text of the Code and improve readability of the regulations.

PLANNING COMMISSION AND STAFF RECOMMENDATION: That the City Council **ADOPT** the attached amendments to the Albany Development Code (Casefile DC-02-91) relative to restructuring the Code and clarifying the regulatory language based on the findings listed in the staff report.

PROPOSED CITY COUNCIL MOTION: I move that the City Council **APPROVE** the attached amendments to the Albany Development Code (Casefile DC-02-91) relative to restructuring the Code and clarifying the regulatory language by **ADOPTING** the attached ordinance, which contains findings in support of the decision.

**ARTICLE 1
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ARTICLE 1

ADMINISTRATION AND PROCEDURES

1.000 **Overview.** This Article establishes the framework for the review of land use applications. It explains the processes which 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
- Ministerial Process
- Quasi-judicial Process
- Legislative Process

These headings precede subtopics which can assist the user in locating information. The table of contents contains a complete listing of the material covered in this Article.

GENERAL COMMENT

Unless specific comments follow a set of changes, those changes have been made to clarify the content and improve the readability.

GENERAL ADMINISTRATION

INTRODUCTION

1.010 ~~Title. Sections 20.01.010 to 20.21.900 of the Albany Municipal Code (AMC) may also be cited as the City of Albany Development Code and may be referred to herein as "this Code." For numbering and reference purposes, hereafter, the AMC Chapter number "20" may be deleted as a preface to Article and Section identification.~~

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 "this Code."

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

- (21) ~~Guide future growth and development in accordance with the Comprehensive Plan and to generally~~ Serve as the principal vehicle for implementation of the City's Comprehensive Plan in a manner which protects the health, safety, and welfare of the citizens of Albany.
- (12) Satisfy relevant requirements of federal law, state law, statewide goals, and administrative rules.
- (3) ~~Assure~~ 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 which may

have a significant impact on the community.

- (5) Guide public and private planning policies and actions to ~~as~~ensure provision of adequate water, sewerage, transportation, drainage, parks, open space and other public facilities and services for each development.
- (6) Establish procedures and standards ~~assuring~~ requiring that the design of site improvements and building improvements are consistent with applicable standards and flexible 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) ~~Ensure~~ **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 aid in the prevention of crime. ~~and protect property values.~~

COMMENT

"Protect property values" removed because this concern is addressed in Purpose statement number 10 below.

- (9) Protect and enhance the city's aesthetic beauty and character.
 - (10) Protect constitutional property rights, ~~assure~~ 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, commentary sections, and/or 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 ~~may be used, or developed by land division or otherwise, and~~ or a structure may be used or developed by construction, reconstruction, alteration, occupancy or otherwise, 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 for any reason declared by a court of law to be invalid or ineffective unconstitutional in whole or in part, 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. ~~in accordance with~~ For quasi-judicial interpretations, the Type I II procedure set forth in Section ~~1.030~~ 1.240 shall be followed. For legislative interpretations, Type IV procedures as set forth in Section 1.260 shall be followed. A person requesting such an interpretation shall do so in writing to the Director.

- (3) The terms of this ordinance shall be liberally construed to give maximum effect to the purposes set forth in Section 1.020.
- (4) Where the conditions imposed by a provision of this Code are less restrictive than comparable conditions imposed by other provisions of this Code or other sections of the Albany Municipal Code, the more restrictive shall govern.

COMMENT

Formerly a portion of Article 20.

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. ~~Inasmuch as~~ Since the City of Albany has a Comprehensive Plan and implementing regulations which 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. ~~and unless stated otherwise within this Code, specific findings demonstrating compliance with the Comprehensive Plan are not required for development permit land use application approval. However, the foregoing 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 Development Permits 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 ~~development permit land use application~~ has not been issued approved.
- (2) Whenever this Code requires a ~~development permit land use application~~, no other permit issued by the City shall be approved until the ~~development permit land use application~~ has first been approved by the Director.

COMMENT

All references to "development permit" have been replaced by "land use application", because no permits are actually issued in the process when a land use application is approved.

- (3) ~~Development permits~~ Land use applications shall be issued approved by the Planning Community Development Director, the Hearings Board, the Planning Commission, or the City Council pursuant to the provisions of this Code. The Director shall not ~~issue~~ approve a ~~development permit 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.

- (4) No action may be taken in reliance upon a decision ~~granting approving a development permit land use application~~ until all applicable appeal periods have expired or while an appeal to a City review body is pending. However, ~~notwithstanding the foregoing~~, the action allowed by the decision may be initiated if:
 - (a) There were no objections to the decision or if all objections were resolved at a hearing or in writing ~~subsequent thereto prior to the hearing~~; and
 - (b) The applicant has executed a release and indemnity agreement in a form satisfactory to the City Attorney which protects the City from all claims of the applicant resulting from ~~the approval of the land use application or issuance of the development or a building permit~~.
- (5) ~~All development permits~~ land use approvals shall expire one year from the date of issuance unless:
 - (a) Substantial construction or operation of the development has begun within that time and has continued toward final completion; or
 - (b) Development proceeds in accordance with an approved phasing plan; or
 - (c) An extension has been granted by the Director upon request of the applicant.
- (6) **Requests for extension must be filed with the Director prior to the expiration date of the original approval or subsequent extension. No single extension of time shall exceed a one (1) year period.** Extensions of time shall not be approved where the effect of doing so would violate any provisions of this Code including any amendments made ~~hereto~~ following the effective expiration date. In no instance shall the extension(s) of time exceed a total of 36 months from the effective date of project approval.

1.070 **Exclusions from Development Permit When Land Use Applications Are Not Required.** Activities and developments listed below are excluded from the requirement for a ~~development permit~~ land use application but are nevertheless subject to the provisions of the Code where applicable:

- (1) Agricultural uses as permitted outright in Article 5.
- (2) Detached single family dwellings and two unit dwellings.
- (3) Accessory buildings and building additions of less than 500 square feet which conform to the provisions of this Code and the Uniform Building Code.
- (4) Landscaping and routine property maintenance.
- (5) Improvement of parking areas containing less than 1,000 square feet and otherwise meeting the provisions of this Code.
- (6) A change internal to a building or other structure or usage of land that does not constitute a change of use as listed in Article 5.

- (7) ~~The Director shall also waive~~ Site Plan Review requirements for a change in use within an existing structure when the following criteria are satisfied:
- (a) No structural expansion in excess of 500 feet or additional exterior storage is proposed.
 - (b) The use will not create additional adverse affects for abutting properties or the neighborhood (e.g. ~~objectionable conditions~~; visual, noise, ~~and/or~~ air pollution; increased parking requirements, or ~~increased improvements to public facilities~~ requirements).
 - (c) Any non-conformities with the provisions of this Code have been addressed, **i.e. including** compliance with sign, landscaping, and parking requirements except where restricted by building location or limiting site characteristics.
- (8) An emergency measure necessary for the safety or protection of property when authorized by the City Manager with written notice to the City Council.
- (9) Any temporary use of land of up to a 30 days duration (such as a promotional event, festival, carnival, or outdoor sale) which conforms with all other requirements of this Code and other applicable City regulations and public health and safety requirements, some of which may further limit such uses in terms of location, scope, and duration.
- (10) The establishment, construction, alteration, or maintenance of a public facility authorized by the ~~City Engineer~~ 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~~ **including** construction of staging areas of less than a six months duration but ~~does not include~~ **ing** major substations, treatment facilities, ~~and~~ storage tanks, reservoirs, and towers.
- (11) Excavation and ~~backfill~~ for foundations and all other excavation or filling of land involving 50 cubic yards or less which does not adversely affect drainage patterns and is not located within a floodplain or slope area. ~~as regulated further in~~ **See also** Article 11.
- 1.075 Fees. The City Council shall establish application and review fees and fee policies by separate resolution for the performance of the actions and reviews required by this Code.
- 1.080 Validity of Prior Approval.
- (1) The following actions initiated prior to the adoption of this Code, or prior to the adoption of any amendment which would otherwise restrict the activity, may be continued and completed according to prior approvals granted by the City and in accordance with requirements in effect at the time approval was granted:
- (a) Completion of any construction activity for which a building permit has been issued provided that such work continues to be in conformance with the requirements under which it was issued. Such work shall progress in a timely manner and not be discontinued for a period of more than one year after which time a new ~~development permit~~ **land use application** shall be required.
 - (b) Completion of final subdivision plat, final manufactured home park plan, and final PUD plan for which preliminary or interim approval has been granted, provided such plats and plans are submitted within one year of previous approval or are submitted in accordance with a previously approved phasing plan under which construction has begun and has progressed in a timely manner on at least one phase.

- (c) Construction of any subdivision, PUD, or manufactured home park, which: i) has received final approval (provided that such work is commenced within one year of final approval and is completed within two years of final approval); or ii) wherein substantial construction activity has not been discontinued for more than 24 consecutive months.
 - (d) Construction of any structure or facility for which a Conditional Use Permit, Variance, or Site Plan approval has been granted provided such work is **commenced begun** within one year of approval and is completed within two years of approval.
- (2) Extensions of time under Sections (a)-(d) above may be granted by the Director for up to two additional years provided there are no requirements in effect which would otherwise restrict project development and provided further that no extensions shall be granted which extend beyond 36 months from the effective date of project approval.
- 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 designated building official stating that the proposed use of the building or land conforms to the requirements of the Uniform Building Code, this ordinance, and any other City conditions attached to the development or use of the building or land.

ENFORCEMENT

- 1.110 Inspections. ~~It shall be within the authority of the official or employee of the City charged with the enforcement of this ordinance, or such other official or employee as may be designated by the City Manager or City Council, to make routine and periodic inspections of properties and premises within the corporate limits of Albany to determine whether there is compliance with the laws, rules, and regulations which are designed for the protection of the health, safety, and welfare of the public; and such persons are empowered to make such inspections upon the receipt of complaints or specific or general information indicating the existence of hazardous conditions or non-compliance with such rules, regulations, and laws.~~ The Director or his 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 which are designed for the protection of the health, safety, and welfare of the public. The Director is also empowered to make such inspections upon the receipt of complaints, specific or general information, or observations indicating the existence of hazardous conditions or non-compliance with such rules, regulations, and laws. In the event that any authorized officer or employee of the City of Albany shall be denied access to any property or premises for the purposes of making an inspection provided for in this ordinance, then such officer or employee shall not inspect such premises unless and until he ~~shall have~~ has obtained from the municipal judge of the City of Albany a search warrant for the inspection of such premises.
- 1.120 Search Warrants. ~~No search warrant shall be issued, under the terms of this ordinance, for the inspection of any property or premises within the corporate limits of Albany unless and until there shall have been filed with the municipal court of the City of Albany an affidavit showing probable cause for such inspection by stating the purpose and extent of the proposed inspection, the ordinance or ordinances which form the basis for such inspection, whether it is~~

~~a routine or periodic inspection or an inspection instituted by complaint or other specific or general information concerning the property or premises or the area in which it is situated.~~

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 which 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 observation concerning the property or premises or the area in which it is situated.

~~The search warrant issued by the court shall specify the purpose and extent of the inspection which is proposed to be made and the specific property or premises covered by such warrant. 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.~~

COMMENT

Inspection and enforcement intent the same as before. Hopefully, it reads a little easier.

The Planning staff (which is reported to have some female members) appreciates the Planning Commission's questioning the Director or "his" designee wording. "His/her" gets very tiring after a while. The definitions section will clarify that "his" means "his and her."

- 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 Building Official-Code Enforcement. ~~It shall be the duty of the designated City official to The Director or his designee may enforce the provisions of this ordinance. Such official shall send a description of any violation of the zoning regulations to the Commission within 15 days after he becomes aware of such violation.~~ The enactment of this ordinance shall not invalidate any prior, existing, or future prosecutions for violation of the zoning Development Code regulations committed under a previous ordinance.
- 1.150 Legal Proceedings by City Attorney. In addition to the remedies prescribed herein, the City Attorney, upon written request from the ~~Planning Commission or City Council or City Manager,~~ shall cause to be instituted any civil action, suit, or other legal means it considereds to be appropriate to remedy violations of this ordinance.

COMMENT

This change in wording reflects current policy.

- 1.160 Suits in Equity to Enjoin Violations. ~~In case a building or other structure is, or is proposed to be, located, constructed, maintained, repaired, altered, or used, or any land is, or is~~

~~proposed to be used, in violation of this ordinance, the City Attorney, as prescribed in this Article, or any person whose interest in real property in the city may be affected by the violation, may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate, or remove the unlawful location, construction, maintenance, repair, alteration, or use. If any existing or proposed structure or use is in violation of 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 ~~and or his authorized representatives designee(s)~~ shall have the power to assist in the enforcement of the provisions of this ordinance.
- 1.180 General Penalty. In addition to the remedies ~~hereinabove~~ set forth ~~above~~, the general penalties ~~and~~ procedures set forth in Chapter 1.04 of the Albany Municipal Code applies to any and all violations of this Development Code. The City may, at its option, elect to pursue such procedure in lieu of or in addition to any other remedy set forth above.
- 1.190 Violation of a Development Permit Land Use Approval. Violation of any condition or requirement of any ~~development permit land use approval~~ constitutes a civil infraction when such violation does not, in and of itself, constitute a separate violation of the Albany Municipal Code.

APPLICATION PROCEDURES

- 1.200 Development Permit Land Use Application Procedures.
- (1) ~~An application for a development permit~~ A land use application shall be processed under a Type I, II, III, or IV procedure, as described in this Article.
 - (2) Where there is a question as to the appropriate type of procedure, the Director shall determine the type of procedure to be utilized based upon the most similar ~~development permit land use application~~ procedure specified by this Code or other established policy.
 - (3) Where a proposal involves more than one application for the same property, the applicant(s) may submit concurrent applications which shall be processed simultaneously in accordance with the highest numbered procedure specified. When concurrent applications are so received and accepted as complete, the 120-day requirement of Section 1.220(2) shall apply as if a single application had been made.
- 1.201 Coordination of Development Permit Land Use Application Procedure. The Director shall be responsible for ~~the~~ coordination of the ~~development permit land use~~ application and decision-making procedure. ~~and~~ The Director shall also issue a ~~development permit land use approval to an applicant whose~~ for applications and proposed developments is that are in compliance with the provisions of this Code. Before issuing the ~~development permit 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 shall be is to acquaint the applicant with the substantive, and procedural requirements of this Code, and to ~~provide for an exchange of information regarding applicable elements of the Comprehensive Plan and development requirements, to arrange such technical and design assistance as will aid the applicant, and to otherwise identify policies and regulations that create opportunities or pose significant~~ identify any constraints for on the proposed development. Any multiple family project involving more than five dwelling units or subdivision or planned unit development involving more than 2 acres requires Depending on the nature and size of the proposed development, a rough sketch conceptual plan to be reviewed may be required for review in the pre-application conference. Upon the request of the applicant, 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 Application Contents. An land use application for a development permit shall consist only of the items required by this Code and the following:

- (1) An Explanation of intent, stating the nature and proposed use of the development, pertinent background information and other information that may have a bearing in determining the action to be taken, including submission of detailed findings where such are required by the provisions of this Code.
- (2) Signed statement indicating 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 and parcel number(s). ~~of the property affected by the application.~~
- (4) Additional information required by other sections of this Code because of the type of development proposal or the area involved.
- (5) ~~As many~~ Duplicates of the above information as may be requested required by the Director. ~~to facilitate expeditious review of the application.~~
- (6) Submission of application fees as established by the City Council.

1.210 Submission of Land Use Applications.

- (1) Application materials shall be submitted to the Director who shall have the date of submission indicated on each copy of the materials submitted.
- (2) Within seven (7) calendar days the Director shall determine whether the application is complete. The Director shall notify the applicant when the application is found to be incomplete and identify what additional information is needed. An application which has been determined to be incomplete may be supplemented, amended or resubmitted, at the Director's discretion. Resubmitted applications shall be subject to another seven (7) calendar day completeness check.
- (3) Land use applications requiring a public hearing shall be submitted at least 35 days in advance of the next regularly scheduled public meeting of the hearings body unless waived by the

Director ~~at the Director's discretion~~, when adequate notice can otherwise be achieved. 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 prior to the public hearing (10 days before the first evidentiary hearing if two or more evidentiary hearings are required). If additional documents, evidence or written materials are provided in support of that application less than 20 days (10 days before the first evidentiary hearing if two or more evidentiary hearings are required) prior to the public hearing, any party shall be entitled to a continuance of the hearing. Such a continuance shall not be subject to the limitations of ORS 227.178.

- (4) Upon request, the application file ~~containing these materials~~ shall be made available to the public for inspection at no cost and copies will be provided at reasonable cost.

1.215 Referral and Review of Development Permit Land Use Applications. Within 5 working days of accepting an application, the Director shall do the following:

- (1) ~~Transmit~~ Send one copy of the ~~application, or appropriate parts of the application, project review sheet~~ to each agency and city department identified by the Director as having possible interest in reviewing and commenting on the development proposal, ~~and 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 of a completed submission, 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) ~~Transmit~~ Send the ~~development permit application project review sheet~~ to other governmental bodies and private utilities as appropriate. ~~where approval of other governmental bodies is required prior to granting a development permit.~~
- (3) Provide for notices to be given and hearings to be established as required under Type II, III, and IV procedures established in Sections 1.240-1.260.

1.220 Development Permit Land Use Application Decision.

- (1) Within five days of final action on a ~~development permit 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 ~~development permit land use~~ requests which are wholly within the authority and control of the City within 120 days of receipt of a completed application. However, by agreement with the applicant, this deadline may be extended for any reasonable length of time. ~~mutually agreed upon.~~

1.225 Action on Resubmission of Denied Application. An applicant may make appropriate alterations to a proposal which 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.

MINISTERIAL PROCESS

1.230 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 which do not require interpretation or the exercise of factual, policy or legal judgement. **Approval of a Type I land use application is not a land use decision. (See definitions.)**
- (2) Under the Type I procedure, an application shall be processed by the Director without need for public hearing or notification. ~~of other property owners.~~
- ~~(3) Conditions and/or restrictions may be applied to the approval of any land use application granted under a Type I procedure in accordance with the relevant provisions of this Code.~~

COMMENT

This statement could be interpreted as authorizing the attachment, to a Type I approval, of subjective conditions involving discretionary rather than clear and objective standards. The City Attorney suggests that we use a "blanket" statement on Type I approvals that places responsibility on the applicant for compliance with any other codes or regulations which may apply.

- (43) Examples of applications processed through a Type I procedure include, but are not limited to -- Lot line adjustments, Type I ~~variances~~ **adjustments**, partitions, Type I modifications to non-conforming situations, Type I historic review, preliminary planned unit development plans, final subdivision plats, mobile home park plans, site plan review involving a change in use or minor addition to existing use in a conforming building, 100% consent annexations, and all other land use applications not included in a Type II, III, or IV review.

QUASI-JUDICIAL PROCESS

PROCEDURES

1.240 Type II Procedure.

- (1) The purpose of the Type II procedure is to provide notice of a tentative land use decision to the applicant and property owners within 100 feet of the property being reviewed. The decision of the Director shall be based on standards specified in this Code which are reasonably objective and may require limited discretion.
- (2) Except as provided by subsection (3) below, under the Type II procedure, an application shall be processed by the Director without a public hearing within 30 days of acceptance of a complete application. If the Director determines that the development proposal appears to meet the required standards, the Director shall mail notice of the tentative decision to all property owners within 100 feet of the subject site. The applicant shall supply a list of the names and addresses of the owners of property to receive the notice. The mailing list must be certified by the applicant as accurate and complete as found from current County Assessor

records.

The Director's notice shall list the relevant criteria and any conditions of approval and invite persons to contact the Planning staff within 10 days of notification to proposeing modifications to the conditions of approval or to request a public hearing. ~~the person believes are necessary for approval according to the standards or requesting a public hearing.~~ A public hearing may be requested if the 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 10 days after the Notice of Decision is mailed to affected parties.

COMMENT

The new wording reflects our current policy. It allows for the opportunity of a public hearing while keeping the process moving along. In the majority of Type II cases no one requests a public hearing.

- (3) The applicant, the Director, or any party entitled to notice or otherwise affected by the proposed action may initiate 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 either the Planning Commission or Hearings Board and mail notice of such to those same persons specified in (2) above.
- (4) If a hearing is conducted, the Hearings Board or Planning 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 **development permit land use application** granted under a Type II procedure in accordance with the relevant provisions of this Code.
- (5) Examples of applications processed through a Type II procedure include, but are not limited to -- Type II variances, conditional use permits, Type II modifications to non-conforming situations, Greenway district use permits, Type II Planned Industrial Developments, historic site review, Type II Code interpretations, final planned unit development plans, and site plan reviews.

1.250 Type III Procedure.

- (1) The purpose of the Type III procedure is to provide for the quasi-judicial review of certain applications within the City by the Planning Commission or Hearings Board 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 pursuant to this Article 4 before either the Hearings Board or Planning Commission at the Director's discretion. The Director shall notify all property owners within ~~300~~ 100 feet of the subject property. The applicant shall supply a list of the names and addresses of the owners of property to receive the notice. The mailing list must be certified by the applicant as accurate

and complete as found from current County Assessor records. The Director may require the applicant to post notices as set forth in Section ~~4.035~~ 1.305.

COMMENT

House Bill 2288 requires notice be sent to those property owners within a 100 foot radius inside the Urban Growth Boundary. This change will cut down on postage expense and should have minimal impact on getting the word out. We have found that the posted notice is the most effective outreach tool.

- (3) ~~The hearings authority 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 ~~development permit~~ land use application granted under a Type III procedure in accordance with the relevant provisions of this Code.
- (4) Examples of applications processed through a Type III procedure include, but are not limited to -- Interim planned unit development plans, preliminary subdivision plats, future street plans, Type III Planned Industrial Developments, some Code interpretations, and Type III variances.

1.260 Type IV Procedure.

- (1) The purpose of the Type IV procedure is to provide for the review of certain quasi-judicial and legislative land use applications by both the Planning Commission and the City Council at public hearings. These decisions are usually complex in nature, and require the interpretation of the Comprehensive Plan policies and the criteria of this Code.
- (2) Under the Type IV Procedure, an application is scheduled for public hearing ~~pursuant to Article 4~~ before either the Hearings Board or the Planning Commission at the Director's discretion. ~~On quasi-judicial land use actions, the Director shall cause notice to be published pursuant to Article 4.~~ The Director shall notify all property owners within 100 feet of the subject property. The applicant shall supply a list of the names and addresses of the owners of property to receive the notice. The mailing list must be certified by the applicant as accurate and complete as found from current County Assessor records. The Director may require the applicant to post notices as set forth in Section 1.305.

COMMENT

Same rational as 1.250 (2) above.

- (3) For a proposal on which the Hearings Board or Planning Commission has made a favorable recommendation, the City Council shall hold a public hearing within 45 days. An applicant may request a review delay of up to six months.
- (4) If the Planning Commission or Hearings Board recommended against a proposal, the City Council will only consider the proposal on appeal by the applicant(s).

- (5) The ~~hearings authority~~ 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 ~~the approval of any development permit land use approval~~ granted under a Type IV procedure in accordance with the relevant provisions of this Code.

- (6) Examples of applications processed through a Type IV procedure include, but are not limited to --Zone changes, development code amendments, comprehensive plan amendments, street vacations, some annexations.

PUBLIC HEARINGS

1.270 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:

- (1) Schedule and assign the matter for review and hearing.
- (2) Conduct the correspondence of the ~~hearing~~ 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 hearings 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 hearings body to writing and maintain permanent record of such.
- (7) Provide advance notice of all hearings and written decisions to persons requesting the same and not entitled to such by this section provided that such persons pay the actual cost for the service provided as established by the City (applicants excepted).

1.275 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. Should the secretary not be present, 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 up to \$500 plus one-half the actual costs over \$500 or as authorized by state law.
- (2) The review body shall, where practical, retain as part of the hearing record each item of physical or documentary evidence presented and shall have the items marked to show the

identity of the person offering the same 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, at which time the exhibits may be released. Any physical evidence presented at the public hearing shall be submitted to the hearings 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) A person shall have access to the record of the proceedings at reasonable times, places, and circumstances. A person shall be entitled to make copies of the record at the person's own expense.

COMMENT

Moved from Section 1.390 (current #).

1.280 Mailed Notice of Quasi-Judicial Hearings Addresses for a mailed notice required by this Code shall be provided by the applicants for land use applications. The mailing list must be certified by the applicant as accurate and complete as found from current County Assessor records. A person whose name is not in the tax records at the time of filing of an application 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 a 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. In addition to persons receiving notice as required by the matter under consideration, the Director may provide notice to others he has reason to believe are affected or otherwise represent an interest that may be affected by the proposed development. The cost of notice mailings shall be included in the land use application fee.

COMMENT

Wording from Section 1.290 (current #) moved here for clarification.

- (1) Notice of a public hearing shall be sent by mail at least twenty (20) days before the hearing (or, if more than one hearing is scheduled, 10 days before the first 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 which could be authorized.
 - (d) Where information may be examined and when and how written comments addressing findings required for a decision by the hearing 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 sufficient specificity 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 prior to 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 the conduct of hearings.

~~1.290 Procedure for Notice. Unless otherwise provided, addresses for a mailed notice required by this title shall be provided by the applicants for development permit land use applications. The mailing list must be certified by the applicant as accurate and complete as found from current County Assessor records. A person whose name is not in the tax records at the time of filing of an application or of initiating other action not based on an application, may only receive a notice if the person provides the Planning Department with the necessary address(es). Any deficiency in the form of notice prescribed in Section 4.020 1.220 or a 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 Title for notice. In addition to persons receiving notice as required by the matter under consideration, the Director may provide notice to others he has reason to believe are affected or otherwise represent an interest that may be affected by the proposed development.~~

- ~~(1) Required published notice shall be published in a newspaper of general circulation at least once during the week preceding the hearing and additionally as may be required by state law for a particular proceeding.~~
- ~~(2) Cost of notice mailings shall be included in the development application fee.~~

COMMENTS

Moved to Section 1.280 in part, and to Section 1.300.

1.300 Published Notice. Notice shall be published in a newspaper of general circulation at least one week prior to the first evidentiary hearing and additionally as may be required by state law for a particular proceeding.

- (1) Published notice shall include 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 which could be authorized.
 - (d) The name and telephone number of the staff member to contact for more information.

COMMENTS

Establishes standards for published notice. HB 2288 does not require published notice because of the extensive requirements for contents of mailed notice. Staff asks for guidance from the Planning Commission regarding continuing to publish notice of quasi-judicial hearings.

COMMENT TO THE CITY COUNCIL

The Planning Commission recommends that we continue to publish legal notice on legislative matters, but cease publication of quasi-judicial hearings where posted and mailed notice are the most effective means of informing the public. This section is currently shown under Legislative Process pending Council's acceptance of the Planning Commission recommendation. We have recently begun using the calendar feature in the Democrat-Herald and the bulletin board outside the Finance Kiosk to get the word out on all land use public hearings.

- 1.305 Procedures for Posted Notice. The sites that are the subject of quasi-judicial public hearings shall be posted. At the discretion of the Director, the applicant shall may be responsible for providing a sign frame for the notice and also responsible for posting the notice at the correct time and location. The actual notice shall be provided by the City. The posting shall comply with the following criteria requirements:
- (1) The notice shall be a minimum of 2 feet by 3 feet.
 - (2) The notice shall be posted in a location which is visible ~~and within 10 feet of~~ from a traveled public road or street abutting the property. (If no public street abuts the property, the notice shall be placed in such a manner to be generally visible to the public.)
 - (3) The notice shall be posted for at least 7 consecutive days prior to 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 5 days prior to any hearing (or decision made by the Director), ~~the applicant shall file with 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 hearing may be postponed by the Director 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.
- 1.306 Compliance and Waiver of Notice.
- (1) Notice by mail shall be deemed received three calendar days after the notice is deposited with the US 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.

- (2) Posted notice is deemed given when 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 of such person of any defect in notice.

1.310 Challenges to Impartiality. ~~Except for legislative hearings,~~ A party to a hearing or a member of a hearing body authority may challenge the qualifications of a member of the hearing body to participate in the hearing and decision regarding the matter. ~~The challenge shall state by affidavit the facts relied upon by the challenger relating to a person's bias, prejudice, personal interest, or other facts from which the challenger has concluded that the member of the hearing body cannot participate in an impartial manner. A challenge shall be delivered by personal service to the Director or City Manager not less than 48 hours preceding the time set for public hearing. The Director or City Manager shall attempt to notify the person whose qualifications are challenged prior to the meeting.~~ The challenge shall be incorporated into the record at the time of the hearing.

COMMENT

The previous wording made presenting a challenge unduly cumbersome to a citizen.

1.320 Disqualification. ~~Except for legislative hearings,~~ No member of a hearing review body shall participate in a discussion of the proposal without removing himself or herself from the bench or shall vote on the proposal when any of the following conditions exist:

- (1) Any of the following have a direct or substantial financial interest in the proposal: the hearing 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 in which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment 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 in an impartial manner.

1.330 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 ~~hearing body~~ review body on the proposal without first declaring for the record the nature and extent of such interest.

1.340 Ex Parte Contacts. ~~Except for legislative hearings,~~ The general public has a right to have ~~hearing body review body~~ members free from prehearing or ex parte contacts on matters heard by them. It is recognized that a countervailing public right is free access to public officials on any matter. **Should ex parte communication occur, at the beginning of the hearing Therefore, the hearing body authority member shall reveal the source and substance of any significant prehearing or ex parte contacts regarding any matter at the commencement of the public hearing on such and the Chair shall allow for rebuttal of any information received through such ex parte contact. If such contacts have not impaired the member's impartiality or ability to vote on the matter, the member shall so state and shall participate or abstain in accordance with the following section.**

1.350 Abstention or Disqualification.

- (1) An abstaining or disqualified member of the hearing ~~body authority~~ 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 hearing ~~body authority~~ and physically removing himself or herself from the ~~proceedings. hearing body during the hearing and deliberations on the matter and abstaining from voting on the proposal.~~
- (2) If a quorum of a hearing ~~body authority~~ abstains or is disqualified, all members present after stating their reasons for abstention or disqualification shall, by so doing, be requalified and proceed to resolve the issues.
- (3) ~~Except for legislative hearings,~~ A member absent during the presentation of evidence in a hearing may not participate in the deliberations or final decision regarding the matter of the hearing unless the member has reviewed the evidence received and so states on the record.

1.360 Burden and Nature of Proof. ~~Except for a legislative determination,~~ The burden of proof is upon the proponent or appellant. The more drastic the change or the greater the impact of the proposal in the area, the greater is the burden upon the proponent. 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.

1.370 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 with sufficient specificity to afford the decision-makers and other parties an opportunity to respond will preclude appeal to the State Land Use Board of Appeals on that issue. The presiding officer may establish the time allowed for the 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 ~~hearing authority~~ 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 hearing 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 persons who support the proposed change.
- (10) Presentation of evidence or inquiries by those persons who oppose the proposed change.
- (11) Presentation of evidence or inquiries by those persons 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 a continuance has been granted.
- (16) Unless there is a continuance, if a participant so requests before the conclusion of the first evidentiary hearing, the record shall remain open for at least seven (7) calendar days after the hearing.
- (17) When the hearing has ended, the hearing body may openly discuss the issue and may further question a person submitting information or the staff if opportunity for rebuttal is provided.
- (18) If the hearing is closed, it shall be reopened only upon a majority vote of the hearing

authority review body.

- (19) Upon reopening a hearing, any person may raise new issues which relate to the new evidence, testimony, or criteria for decision-making which apply to the matter at issue.

DECISION

1.380 ~~Findings. The decision of the hearing body shall be based upon~~ The review body shall make a decision and adopt findings which, in turn, shall be based upon the information accompanying the application, staff report, and/or evidence presented at the hearing. The decision findings shall address include:

- (1) ~~A statement of the Applicable Comprehensive Plan policies and Development Code criteria. and standards of this Code against which the proposal was tested.~~
- (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 any required policy or criteria.
- (3) ~~Conclusioning~~ statement(s) to approve or deny.

~~1.390 Record of Proceedings. When practical, the secretary to the hearing body will be present at each hearing and shall cause the proceedings to be recorded either stenographically or electronically. Should the secretary not be present, 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 up to \$500 plus one-half the actual costs over \$500 or as authorized by state law.~~
- ~~(2) The hearing body shall, where practicable, retain as part of the hearing record each item of physical or documentary evidence presented and shall have the items marked to show the identity of the person offering the same 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, at which time the exhibits may be released to the person identified thereon or otherwise disposed of.~~
- ~~(3) The staff report and decision shall be included in the record.~~
- ~~(4) A person shall have access to the record of the proceedings at reasonable times, places, and circumstances. A person shall be entitled to make copies of the record at the person's own expense.~~

COMMENT

Moved to Section 1.275.

1.400 Notice of Decision.

- (1) Within five days of final action on a land use application, the Director shall provide written

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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 which are wholly within the authority and control of the City within 120 days of receipt of a completed application. However, by agreement with the applicant, this deadline may be extended for any reasonable length of time.

COMMENT

These deadlines are set by state law.

APPEALS

1.410 Appeal Procedures.

- (1) ~~A decision of the Director on issuance of a development permit land use decision~~ may be appealed to the Hearings Board by an affected party by filing a "Notice of Appeal" with the Director within 7 days following the deemed receipt of mailed notice of the decision. The notice of appeal shall indicate the nature of the interpretation that is being appealed and the matter at issue will be a determination of the appropriateness of the interpretation of the requirements of this Code.
- (2) A decision of the Board may be appealed to the City Council by an affected party by filing a "Notice of Appeal" within 7 days following the deemed receipt of mailed notice of the decision. The "Notice of Appeal" shall indicate the decision that is being appealed. A decision of the Planning Commission may similarly be appealed to the City Council.
- (3) 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. Such review shall be conducted in accordance with appeal procedures as specified herein.
- (4) For any appeal proceeding, the Director shall cause notice to be provided in the same manner as provided for the original decision, ~~those~~ ~~testifying and~~ ~~plus~~ any other parties to the proceedings who request notice in writing.

1.420 Requirements of Notice of Appeal.

- (1) A "Notice of Appeal" shall contain:
 - (a) An identification of the decision sought to be reviewed, including the date of the decision.
 - (b) A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings.
 - (c) The specific ~~grounds policy or criteria~~ relied upon for review.
 - (d) If de novo review is requested, a statement summarizing the new evidence which will be offered and the criteria to which it will relate.

1.430 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.

1.440 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. ~~if it is satisfied that the additional testimony or other evidence could not reasonably have been presented at the prior hearing. The reviewing body shall consider all of the following in making such a decision.~~
 - ~~(a) Prejudice to the parties.~~
 - ~~(b) Convenience or availability of evidence at the time of the initial hearing.~~
 - ~~(c) Surprise to opposing parties.~~
 - ~~(d) The competency, relevancy, and materiality of the proposed testimony or other evidence.~~

COMMENT

Deleting these passages increases the Council's discretion in determining the type of review.

- (2) When the reviewing body requests a review on the record, the record shall include:
 - (a) A factual report prepared by the **Planning 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) ~~A written transcript of the previous hearing or, if agreed upon by the parties, The minutes of the hearing, including a detailed summary of the evidence.~~
- (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.

1.450 De Novo Hearing. "De novo hearing" shall mean a hearing by the review body as if the ~~action request~~ had not been previously heard and as if no decision had been rendered, except that all testimony, evidence, and other material from the record of the previous consideration may be included in the record of the review.

1.460 Review Body Decision. Upon review, the reviewing body may affirm, remand, reverse, or modify in whole or part a determination or requirement of the decision that is under review. When the reviewing body modifies or renders a decision that reverses a decision of the hearing body, the review 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 hearing 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.

LEGISLATIVE PROCESS

1.470 Legislative Actions Initiation.

- (1) ~~Nothing in this Code shall limit the authority of~~ The City Council ~~to may~~ make changes in the Comprehensive Plan or Development Code provisions and designations by legislative act where such changes have broad application. ~~and where quasi-judicial proceedings would be unnecessary or impractical.~~
- (2) The City Council, Planning Commission or ~~the~~ Community Development Director may ~~order~~ initiate a review ~~and/or public hearing~~ on any legislative matter.
- (3) Any property owner or resident of the City may ~~petition~~ request the Planning Commission to initiate a ~~public hearing on 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.

1.471 Legislative Hearing Notice Procedure. ~~Notice of a review or hearing on a legislative decision under this Code need not include a mailing to property owners. The Manager or Director may prepare a notice designed to reach~~ inform persons believed to have a particular interest and to provide the general public with reasonable opportunity to be aware of the hearings on the proposal.

Notice shall be published in a newspaper of general circulation at least one week prior to the hearing and additionally as may be required by state law for a particular proceeding. Published notice shall include the following information:

- (1) The reviewing body, the date, time, and place of the hearing.
- (2) The nature of the proposed amendment.
- (3) The name and telephone number of the staff member to contact for more information.

COMMENT TO THE CITY COUNCIL

Upon your direction, the wording in bold above will be added.

1.472 Information at Planning Commission 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.~~

1.480 Planning Commission Recommendation. In preparing its recommendation to the City Council, the Planning Commission shall ~~may do any of~~ the following:

(1) Evaluate the proposal based on the relevant Comprehensive Plan policies and Development Code criteria.

~~(1) Require the proponent to identify the provisions of the Comprehensive Plan that govern the decision and prepare findings describing how the proposal complies or fails to comply with these plan provisions.~~

~~(2) Review the nature of the proposal and describe whether the proposal warrants processing as a legislative matter.~~

(32) Prepare a recommendation and make findings in support of such recommendation.

1.490 City Council Legislative Action.

~~(1) The City Council may limit the nature of the information it will receive at a legislative review and may establish separate rules for consideration of each of the following:~~

~~(a) Compliance with the Plan.~~

~~(b) Appropriateness of the legislative process.~~

~~(c) Policy changes or refinements proposed.~~

COMMENT

This deletion improves the Council's responsiveness to community concerns.

(21) In reaching a decision on a legislative matter, the Council ~~may~~ shall adopt findings applicable to the relevant policies and criteria in support of the decision.

(32) ~~After confirming, amending, or reversing the recommendations of the Planning Commission, The City Council may: take any of the following steps:~~

(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 for further consideration.

1.500 Notice to DLCD on Legislative Matters.

(1) ~~Except as noted below, The Director shall cause notice to be given to the notify~~ Department of Land Conservation and Development 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 45 days before the proposed final hearing on adoption and the notice shall contain information sufficient to inform the Department as to the effect of the proposal.

~~(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.~~

COMMENT

Because virtually every change can be construed as affecting statewide goals, staff feels that we should automatically notify DLCD of all proposed amendments.

1.505 Decision Notice Requirements.

- (1) Within five working days following adoption of an amendment or new land use regulation, the Director shall forward to the Department of Land Conservation and Development a copy of the adopted text and findings and notify the Department of any substantial changes which may have occurred in the proposal since any previous notification to the Department.
- (2) ~~In addition, Within five working days, the Director shall also forward general notice of the decision to notify any person who participated in the proceedings leading to the decision. adoption of the proposal and who requested in writing that they be given such notice.~~ Such 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.