

SUBCHAPTER 11: ADMINISTRATIVE PROVISIONS

11.002 Application Types and Review Procedures

All development permits and land use actions are processed under the City's administrative procedures. There are four types of actions, each with its own procedures.

A. Type I Action

A Type I action is a ministerial action reviewed by staff based on clear and objective standards. Clear and objective conditions may be placed on the decision, and notice of the decision is sent to the applicant and any interested party who requests a copy of the decision. Appeal is to the Planning Commission. The following actions are processed under the Type I procedure:

1. Lot Line Adjustment
2. Floodplain Permit
3. Site Design Review
4. Minor Partition
5. Administrative Variance
6. Willamette Greenway Administrative Review
7. Downtown Overlay Design Standards Review
8. Home Occupation.

B. Type II Action

A Type II action is a quasi-judicial review in which the Planning Commission applies a mix of objective and subjective standards that allow considerable discretion. Public notice is provided pursuant to Section 11.025. A public hearing is required for Type II actions unless otherwise specified. Appeal of a Type II decision is to the City Council. The following actions are processed under the Type II procedure:

1. Variance, including Floodplain Variances
2. Conditional Use Permit
3. Major Partition
4. Subdivision
5. Planned Unit Development
6. Similar Use Determination
7. Downtown Overlay Design Guidelines Review
8. Site Design Review applications for commercial/industrial developments with more than 40,000 square feet of total gross floor area.

C. Type III Action

A Type III action is a quasi-judicial process in which the City Council applies a mix of objective and subjective standards, and makes the final, local decision. The Planning Commission plays an advisory role. Public notice is provided and, except as noted in subsection (4), public hearings are held before both the Planning Commission and City Council. Sections 11.025 and 11.030 list the notice and hearing requirements. Appeal of the decision is to the Land Use Board of Appeals (LUBA). The following actions are processed under a Type III procedure:

1. Zone Change
2. Comprehensive Plan Map Amendment
3. Annexation and Zone Change when requested concurrent with one another. The City Council reviews such a request without review or recommendation by the Planning Commission.

D. Type IV Action

A Type IV action is a legislative review in which the City considers and enacts or amends laws and policies. Private parties may request a Type IV action; however, it must be initiated by the Planning Commission, or City Council. The City Council makes the final, local decision. Sections 11.025 and 11.030 list the notice and hearing requirements.

1. Amendments and Revisions of the Comprehensive Plan
2. City Plan Document Adoption, e.g. Water System Plan
3. Zoning Code Amendments

11.005 Applications for Land Use Actions

Applications for all land-use actions as defined in this ordinance shall be filed with the City Manager or designee. An application shall be submitted in writing on the form provided by the City Manager and shall include the following:

- A. Name, address and telephone number of the applicant;
- B. Name, address, and telephone number of the owner of record of the subject property;

- C. Name, address, and telephone number of any agent acting on behalf of the applicant;
- D. Township, range, section and tax lot number of the subject property;
- E. A legal description of the property;
- F. A list of all property owners of record within the notification area of the subject property;
- G. A map showing all properties within the notification area and any other information pertinent to the request;
- H. The fee for the land-use action, as determined by resolution of the City Council;
- I. Other information required by this ordinance or deemed necessary by the City Manager or Planning Commission.

11.010 Persons Who May Apply for a Land Use Action

An application for a land-use action may be filed by any of the following:

- A. The owner of record of the property that is the subject of the request;
- B. A contract purchaser of the subject property, provided that a written statement of the owner of record's consent to the request accompanies the application;
- C. A lessee of the subject property, provided that a written statement of the owner of record's consent to the request accompanies the applications;
or
- D. The agent of any of the above persons. A written statement of the owner of record's consent to the request and a written statement that the agent is authorized to act on behalf of the applicant must accompany any application made by an agent.

11.015 General Provisions

In order to provide for citizen review of the planning process and the orderly keeping of records of actions relating to this Ordinance, the City shall ensure that the following measures are maintained and available for public review.

- A. The City staff shall prepare a written report relating to all applications and actions pursuant to this Ordinance.

B. The City shall maintain a record of all actions taken pursuant to this Ordinance. The record shall include the required application materials, any exhibits presented to the decision-making bodies, findings for approval or denial, conditions of approval, and any other materials that may have a bearing on the decision.

C. Citizen and Agency Involvement. The City shall provide opportunities for public and agency input in the planning process. The City shall give notice to:

- (1) the Oregon Department of Transportation (ODOT) regarding any proposed land use action within 250 feet of, or affects private access to, a State transportation facility and
- (2) the public works department of any jurisdictions (for example, Polk County), when any action by the City could potentially affect another jurisdiction's transportation facilities.
- (3) ODOT, Polk County and the City of Monmouth of any land use applications that require public hearings or subdivision and partition applications.
- (4) Oregon Department of Aviation of applications within airport noise impact boundaries and imaginary surfaces that affect airport operations.

Information conveyed to reviewing agencies and jurisdictions shall include the project location, proposed land use action, and the location of project access points.

D. Consolidated Review of Applications. When an applicant applies for more than one type of land use action for one or more contiguous parcels of land, the proceedings shall be consolidated for review and decision. When proceedings are consolidated, required notices may be consolidated, provided the notice shall identify each application to be decided. When more than one land use action is reviewed in a hearing, separate findings and decisions shall be made on each land use action.

E. Ministerial Actions – Type I. This subsection establishes the procedures to be followed in Type I actions. Applications subject to ministerial review shall be reviewed and decided by the City Manager's designee.

1. Initiation: An application may be submitted by the property owner, contract purchaser or an authorized agent of the owner or contract purchaser.
2. Completeness: Upon receipt of an application for a development permit, the City staff shall review the application for

completeness with respect to the submission requirements of this Ordinance. If the application is incomplete, staff shall notify the applicant of exactly what information is missing within 30 days of the receipt of the application, and allow the applicant to submit the missing information. The application shall not be acted upon until:

a. All necessary information is received and the application is deemed complete.

3. Within 180 days of receipt of staff's completeness determination, the applicant shall submit:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided (ORS 227.178).

4. Information submitted to the City after the date the application is deemed complete that results in a substantial change from the original application shall authorize review as a new application. The City Manager's designee shall determine whether a submission constitutes a substantial change from the original application.

5. Except for Home Occupations, Sign Permits, Lot Line Adjustments, and Floodplain Permits, notice of the application will be sent to interested agencies such as City departments, school district, utility companies, and applicable state agencies. Notice will not be provided for Home Occupations, Sign Permits, Lot Line Adjustments, and Floodplain Permits.

6. Except for Home Occupations, Sign Permits, Lot Line Adjustments, and Floodplain Permits, notice of the application will be sent to adjacent property owners within 250 feet of the subject property. For conditional use permit applications for wireless communication facilities, notice will be sent to adjacent property owners within 350 feet of the subject property. Notice will not be provided for Home Occupations, Sign Permits, Lot Line Adjustments, and Floodplain Permits. Except for applications for Home Occupations, Sign Permits, Lot Line Adjustments, and Floodplain Permits, adjacent property owners will have 14 days to respond with written comments prior to issuance of a decision. There is no public comment period for Home Occupations, Sign Permits, Lot Line Adjustments, and Floodplain Permits.

7. If the staff finds that the facts of the particular case require interpretation of existing standards, then the application shall be forwarded to the Planning Commission for review. The procedures for conducting the public hearing shall comply with the standards in Section 11.030.

8. Within 30 days of receipt of a complete application or such longer period mutually agreed to by both staff and the applicant, staff shall review the application and shall make a decision based on an evaluation of the proposal and on applicable criteria as set forth in this Ordinance.

9. Except for Home Occupations, Sign Permits, Lot Line Adjustments, and Floodplain Permits, written notice of any Type I decision shall be mailed to the applicant and any adjacent property owner or interested party that requested a copy of the decision.

10. A Type I land use decision may be appealed to the Planning Commission by the applicant or person(s) with standing. The appeal shall be filed within 12 days from the date of the decision, pursuant to the provisions of Section 11.040.

11. The timing requirements established in this subsection are intended to allow a final action, including resolution of any appeals, within 120 days from the date the application is deemed complete. If for any reason it appears that such final action may not be completed within the 120-day period, unless the time period is voluntarily extended by the applicant, the following procedures shall be followed regardless of other processes set forth elsewhere in this Ordinance.

a. The City staff shall notify the City Council of the time conflict by the 95th day. The City Council shall, in accordance with its own procedures, set a time for an emergency meeting within the 120-day period.

b. Public notice shall be mailed to affected parties as specified in this section.

c. The City Council shall hold a public hearing on the specified date and render a decision approving or denying the request within the 120-day period. Such action shall be the final action by the City on the application.

F. Quasi-Judicial Actions. This subsection establishes the procedures to be followed in Type II and Type III land use actions.

1. The City Manager's designee shall examine each application to ascertain if the appropriate forms have been completed, the appropriate fees have been paid and if all required documents and information has been submitted. If the application is found to be complete, a public hearing shall be scheduled before the Planning Commission. A complete application for a land-use action must be submitted at least 30 days prior to the public hearing.
2. If the application for a land-use action is incomplete, the City Manager's designee shall notify the applicant of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete upon receipt of the missing information.
3. Within 180 days of receipt of staff's completeness determination, the applicant shall submit:
 - (a) All of the missing information;
 - (b) Some of the missing information and written notice from the applicant that no other information will be provided; or
 - (c) Written notice from the applicant that none of the missing information will be provided (ORS 227.178).
4. Should the applicant refuse or fail to submit the missing information, or request that the application be deemed complete as submitted within 180 days of staff's completeness determination, the application is void.
5. Information submitted to the City after the date the application is deemed complete that results in a substantial change from the original application shall authorize review as a new application. The City Manager or designee shall determine whether a submission constitutes a substantial change from the original application.
6. If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.
7. Application Review: Type II and Type III, quasi-judicial applications shall be heard by the Planning Commission at a public

hearing conducted in accordance with the provisions for public hearings. Type III actions also require a second public hearing before the City Council.

8. Review Standards: If an application for a quasi-judicial land use action was complete when first submitted, or if the applicant submits the requested additional information within 180 days of the original submittal date, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted. Type III actions: the Planning Commission makes recommendations to City Council; the City Council makes the decision.

9. Written notice for all Type II and Type III decisions shall be sent to the applicant, adjacent property owners within 250 feet of the subject property, and all individuals who have in writing requested notice of the decision, shall be mailed written notice of the action. Notice shall specify findings justifying the approval or denial of the request and any applicable conditions of approval.

10. A Type II land use decision of the Planning Commission may be appealed to the City Council, pursuant to the provisions of Section 11.045. A Type II or Type III decision of the City Council may be appealed to the Land Use Board of Appeals (LUBA).

11. The timing requirements established in this subsection are intended to allow a final action, including resolution of any appeals, within 120 days from the date the application is deemed complete. If for any reason it appears that such final action may not be completed within the 120-day period, unless the time period is voluntarily extended by the applicant, the following procedures shall be followed regardless of other processes set forth elsewhere in this Ordinance.

a. The City staff shall notify the City Council of the time conflict by the 95th day. The City Council shall, in accordance with its own procedures, set a time for an emergency meeting within the 120-day period.

b. Public notice shall be mailed to affected parties as specified in this section.

c. The City Council shall hold a public hearing on the specified date and render a decision approving or denying the request within the 120-day period. Such action shall be the final action by the City on the application.

12. Conditions of Approval: Approvals of any quasi-judicial action may be granted subject to conditions. The following limitations shall be applicable to conditional approvals:

a. Conditions shall be designed to protect public health, safety and general welfare. Conditions shall be related to the following:

i. Protection of the public from the potentially deleterious effects of the proposed use; or

ii. Fulfillment of the need for public service demands created by the proposed use.

b. Changes or alterations of conditions shall be processed consistent with the level of review provided for the original approval.

c. Whenever practical, all conditions of approval required by the City shall be completed prior to the issuance of an occupancy permit. When an applicant provides information that demonstrates to the satisfaction of the Planning Commission that it is not practical to fulfill all conditions prior to issuance of such permit, the Planning Commission may require a performance guarantee to ensure compliance with zoning regulations or fulfillment of required conditions.

G. Legislative Actions. This subsection establishes the procedures to be followed by the City in the consideration of Type IV land use actions.

1. Initiation: A Type IV, legislative land use action may be initiated by a majority vote of either the Planning Commission or the City Council.

2. Procedures: Legislative land use actions shall be heard by the Planning Commission at a public hearing conducted in accordance with the provisions of this section. Public notice shall be in accordance with the procedures set forth in this Section. The Planning Commission may continue any meeting in order to make a reasonable recommendation to the City Council. Following Planning Commission action, the City Council shall hold a public hearing to consider the Planning Commission's recommendation on proposed amendments pursuant to the notification requirements and hearing procedures of this Section.

11.025 Notice of Public Hearings

A. Quasi-judicial hearings (Type II or Type III). Except as provided in subsection 11.025.A.(11), whenever a quasi-judicial public hearing (Type II or Type III) is required under this ordinance, the following procedures shall apply:

1. For Type I land use decisions, see Section 11.015.D.5.
2. For Type II land use decisions, notice of the hearings governed by this section shall be provided through each of these methods:
 - a. Provided to the applicant and to owners of record of property on the most recent property tax assessment roll within 250 feet of the property, which is the subject of the notice, a minimum of 20 days prior to the hearing date.
 - b. Posted on the proposed development site. The notice shall be posted by the project applicant at least 20 days before the public hearing, using a City-provided notice board, in a location considered suitable by the City of Independence. The location of the posted notice shall be visible from the highest classified adjacent roadway (i.e. arterial, collector, or local street).
 - c. Provided to any neighborhood or community organization recognized by the city and whose boundaries include the site.
 - d. Published on the City website a minimum of 10 days prior to the public hearing.
 - e. For Site Design Review applications, Subdivisions and Planned Unit Developments, published in a newspaper of general circulation a minimum of 10 days prior to the public hearing.
3. For Type III land use decisions, notice of the hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll within 250 feet of the property, which is the subject of the notice, a minimum of 10 days prior to the initial hearing date before the Planning Commission. Notice shall also be provided to any neighborhood or community organization recognized by the city and whose boundaries include the site. Notice shall be published in a newspaper of general circulation, a minimum of 10 days prior to the initial public hearing before the Planning Commission.
4. The City shall give notice to: (1) the Oregon Department of Transportation (ODOT) regarding any proposed land use action within 250 feet of a State transportation facility and (2) the public works department of any jurisdictions (for example, Polk County), when any action by the City could potentially affect another jurisdiction's transportation facilities.

Information conveyed to reviewing agencies and jurisdictions shall include the project location, proposed land use action, and the location of project access points.

5. The notice provided by the city shall:
 - a. Explain the nature of the application and the proposed use or uses which could be authorized.
 - b. List the applicable criteria from the ordinance and the plan that apply to the application at issue.
 - c. Set forth the street address or other easily understood geographical reference to the subject property.
 - d. State the date, time and location of the hearing.
 - e. State that failure of an issue to be raised 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 hearings body based on that issue.
 - f. Be mailed at least twenty days before the evidentiary hearing, except if the application requires two or more hearings, written notice may be mailed ten (10) days before the first hearing.
 - g. Include the name of a local government representative to contact and the telephone number where additional information may be obtained.
 - h. State 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 will be provided at reasonable cost.
 - i. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost.
 - j. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

6. Applicant's documents and evidence. All documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public at the time notice of the public hearing is mailed. If additional documents or evidence is provided in support of the application, any party shall be entitled to a continuance of the hearing. Delays caused by the allowance of such a continuance shall extend any deadlines within which the city is required to complete final action on a land use application.

7. Staff Reports. Any staff report used at the hearing shall be available at least seven (7) days prior to the hearing.

8. Commencement of Hearing. At the Commencement of a hearing under a comprehensive plan or land use regulation, a statement shall be made to those in attendance that:

a. Lists the applicable substantive criteria;

b. States that testimony and evidence must be directed toward the criteria described in paragraph (1) of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision.

c. States that failure to raise an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to LUBA on that issue.

d. States that failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the local government or its designee to respond to the issue precludes an action for damages in circuit court.

9. Close of Record. Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing. Delays caused by keeping the record open under this subsection shall extend any deadlines within which the city is required to complete final action on a land use application.

10. New Evidence. If the record of a public hearing is reopened to admit new evidence or testimony, 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.

11. An issue which may be the basis for an appeal to the hearing body shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the city. Such issues shall be raised with sufficient specificity so as to afford the hearings body and the parties an adequate opportunity to respond to each issue.

12. The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if, the city can demonstrate by affidavit, that such notice was given. The notice provisions of this subsection shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.

B. Legislative Hearings (Type IV). Notice of Public Hearing by the Planning Commission or City Council relating to any legislative action shall be published in a newspaper of general circulation a minimum of 10 days prior to the date of the hearing. Notice shall be provided to the Department of Land Conservation and Development in conformance with DLCD rules prior to the first evidentiary hearing by the City for any legislative action.

C. Appeals.

1. Type I actions are appealable to the Planning Commission. Notice is per Type II hearing procedure.
2. Planning Commission actions are appealable to the City Council. Notice is per Type II hearing procedure.

11.030 Conduct of Public Hearings

The Planning Commission and City Council shall hear and decide upon requests for land-use actions (Type II and Type III actions) in accordance with the following procedures:

A. Proponents and opponents of the request shall have an opportunity to present and rebut evidence at a hearing.

B. Applicants for and proponents and opponents of a land-use action may be represented at the hearing by legal counsel.

C. The Planning Commission and the City Council shall establish procedures for the conduct of hearings. Hearings shall be conducted in accordance with those procedures. A written description of such procedures shall be kept at the place of the hearing and shall be available to all persons at the hearing.

D. Members of the Planning Commission and City Council shall disclose any ex-parte contacts made with any person interested in the request being heard.

E. Any decision made by the Planning Commission or City Council on a request for a land-use action shall be supported by findings. Such findings shall indicate the facts and reasons used to make the decision.

F. The Planning Commission or City Council may grant, deny, continue, or table any request for a land-use action. Written notice of the Planning Commission's action shall be sent to the applicant and to the City Council within ten days of the Planning Commission's action.

G. Any public hearing may be continued prior to the closing of the hearing. Notice of the time and place at which the hearing is to be resumed shall be publicly announced during the initial hearing. Such announcement shall serve as sufficient notice of the continuance to all interested persons.

11.035 Resubmission of Requests

Any request for a land-use action which has been denied by the Planning Commission or City Council shall not be resubmitted for a period of one year following the date of the denial unless consent for resubmission is approved by the Planning Commission or the City Council.

11.040 Appeal of Type I Decision

A. An applicant, agent for or representative of the applicant, or any other aggrieved party may appeal any Type I decision made by the City Manager's designee. Such an appeal shall be directed to the Planning Commission within 12 days of the date of the designee's decision. If no appeal is filed within 12 days from the date of the designee's decision, that decision shall be final.

B. Any appeal shall be based upon the applicable criteria from the ordinance and must state with specificity which criteria are being appealed.

C. If an appeal is filed, the Planning Commission shall be given a report of the designee's action or ruling. The Planning Commission shall hold a public hearing of the appeal. Notice of such a public hearing shall be provided in accordance with the provision for public hearings set forth in this chapter. The public hearing of an appeal shall be conducted in accordance with the procedures for public hearings set forth in this ordinance.

D. All appeals shall be accompanied by a fee, established by resolution.

11.045 Appeal of Planning Commission Actions

Any land-use action granted under this ordinance may be rescinded by the Planning Commission or City Council if it is found that the application for such action contains false statements, or if subsequent division, development, or use of land occurs in a manner different from that which was approved.

A. An applicant, agent for or representative of the applicant, or any person who appeared in person, by representative or in writing, at the public hearing, may appeal any land-use action or ruling made by the Planning Commission. Such an appeal shall be directed to the City Council and shall be filed in writing with the City Manager or designee within 12 days of the date of the Planning Commission decision. If no appeal is filed within 12 days from the Planning Commission's decision, that decision shall be final.

B. Any appeal shall be based upon the applicable criteria from the ordinance and the plan which were raised in the land use hearing and must state with specificity which criteria are being appealed.

C. If an appeal is filed, the City Council shall be given a report of the Planning Commission's action or ruling. The City Council shall hold a public hearing of the appeal. Notice of such a public hearing shall be provided in accordance with the provision for public hearings set forth in this chapter. The public hearing of an appeal shall be conducted in accordance with the procedures for public hearings set forth in this ordinance. The decision of the City Council regarding any appeal shall be final and shall become effective on the date of the City Council's action on the appeal.

D. The City Council may appoint a hearings officer to hear land-use actions on a case-by-case basis and may provide that the decision of a hearings officer of the Planning Commission is the final determination of the city.

E. All appeals shall be accompanied by a fee, established by resolution.

11.060 Supplemental Application for Remaining Permitted Uses Following Denial of an Initial Application

A. A person whose application for a permit is denied by the City may submit to the City a supplemental application for any or all other uses allowed under the City's comprehensive plan and land use regulations in the zone that was the subject of the denied application.

B. The City or its designee shall take final action on a supplemental application submitted under this section, including resolution of all appeals, within 240 days after the application is deemed complete. Except that 240

days shall substitute for 120 days, all other applicable provisions of ORS 227.178 (“The 120-day Rule”) shall apply to a supplemental application submitted under this section.

C. A supplemental application submitted under this section shall include a request for any rezoning or variance that may be required to issue a permit under the City's comprehensive plan and land use regulations.

D. The City shall adopt specific findings describing the reasons for approving or denying:

1. A use for which approval is sought under this section; and
2. A rezoning or variance requested in the application.