

ARTICLE 24.00
APPLICATION REVIEW PROCEDURES

(This Article describes four types of application review procedures)

24.01 MINISTERIAL DECISION

A Ministerial decision shall be made by the Planning Director or delegated Planning Department Staff on interpretations of the Land Use Plan and this Ordinance and any subsequent amendments thereto, and on actions which require application of land use standards which do not require interpretation or the exercise of policy or legal judgement. Ministerial decisions are not "land use decisions" per ORS 197.015(10), therefore, they do not require application notice, a public hearing or decision notice. Where a ministerial decision is controverted the decision shall be reduced to writing within five(5) working days and an opportunity for appeal to the Planning Commission per Article 34.00 (Appeal Procedures) shall be provided to the aggrieved party. Ministerial decisions generally include but are not limited to such actions as interpretation of uses permitted outright in any zone; authorizing state agency land use compatibility statements; interpretation of environmental and hazard maps such as USDA soils maps, wildlife habitat areas, wetland boundaries, floodplain areas and geologic hazard areas; and interpretation of the terms and procedures in the Land Use Plan, this Ordinance and any amendments thereto.

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24.02 PLANNING DIRECTOR LAND USE DECISION

A Planning Director land use decision shall provide application notice and final notice to adjacent and nearby landowners and provide an opportunity for written public comment prior to a final decision per Section 24.07-.08. A Planning Director land use decision is the result of ascertaining the adequacy of facts to satisfy specific clear and objective standards and/or criteria, usually exercising little or no discretion. Such decisions generally include applications for, but are not limited to: dwelling request on predominantly farm or forest land in A-1, A-2, A-3 and A-4 Zones, except nonfarm dwellings; Conditional Use application for a home occupation in any Zone; site plan review; and minor partitions. The Planning Director shall make a final decision on such actions which may be appealed to the Planning Commission per Article 34.00 (Appeal Procedures).

¹ ORS 197.015(10) (A) defines a "land use decision" to not include decisions which are made under land use standards which do not require interpretation or the exercise of policy or legal judgement. Planning Director decisions may qualify for this exclusion. Such an exclusion reduces notification and appeal requirements. LUBA can only review "land use decisions", therefore if Planning director decisions are not "land use decisions", they cannot be appealed to LUBA. This Draft is currently prepared to make Planning Director decisions "land use decisions".

24.03 QUASI-JUDICIAL LAND USE DECISION

A Quasi-Judicial land use decision shall be reviewed by the Planning Commission through a public hearing review process prescribed in Section 23.06(1). A Quasi-Judicial land use decision usually involves applying discretionary criteria and making a judgement on the sufficiency of evidence submitted. Such decisions include applications for, except where otherwise indicated: conditional uses, variances, change of or reinstatement of nonconforming uses, major partitions, subdivisions, and Land Use Plan and this Ordinance text or map amendments or new land use regulations affecting a small amount of land or few number of people.

1. The Commission shall make a final decision on the following actions, except where otherwise indicated:
 - A. Conditional Use permits;
 - B. Variances;
 - C. Change of or reinstatement of nonconforming uses; and
 - D. Major Partition
 - E. Subdivision

2. The Commission shall take action on the following. Where the decision is to approve or conditionally approve the application the decision is a recommendation to the Board for a final decision. Where the Commission denies the application the decision is final and may be appealed to the Board per Article 34.00.
 - A. Amendment to the Land Use Plan or this Ordinance affecting a small amount of land or few number of people.
 - B. New land use regulation affecting a small amount of land or few number of people.

24.04 LEGISLATIVE LAND USE DECISION

A Legislative land use decision involves land use policy and generally affects a large amount of land or a large number of landowners. Amendments to the Land Use Plan, this Ordinance and any new provisions thereto that may affect a large amount of land or a large number of land owners are Legislative land use decisions. The Commission shall review such requests per Section 23.06(2) and where a decision to recommend approval or conditional approval is reached such decision shall be transmitted to the Board for final decision per Section 24.14-.16. If the Planning Commission's decision is to deny a Legislative land use decision such decision is final and may be appealed to the Board for reconsideration per Article 34.00 (Appeal Procedures).

24.05 PRE-APPLICATION CONFERENCE

A pre-application conference between the applicant(s) and Planning Department Staff shall be conducted to insure that:

1. The application is consistent with the substantive and procedural provisions of the Land Use Plan, the Transportation System Plan and this Ordinance;
2. Applicant is aware of all procedural matters relevant to the processing of the respective application;
3. Applicant is aware of his responsibilities, and type and level of information which will be required to enable the reviewing body to act upon his request; and
4. If any parcel of land proposed for a land use action abuts a state highway then the applicant shall notify ODOT, Region 5 prior to submitting any land use application. The purpose for this contact is to involve ODOT, Region 5 at the beginning of the application process so that the property owner/developer has the benefit of ODOT comments prior to submitting a site plan, conditional use application, or tentative plat map.

24.06 APPLICATION FOR PLANNING DIRECTOR LAND USE DECISION

1. An application shall be filed with the Planning Department on the form prescribed by the Planning Department and shall include the following information:
 - A. The name and address of the applicant(s) and recorded landowner(s).
 - B. The County Assessor's property description- township, range, section, & tax lot(s).
 - C. Other information as specifically required by this ordinance for the particular proposal.
 - D. A vicinity map marked Exhibit A and a site map drawn to scale marked Exhibit B showing the proposal.
 - E. Signature of the recorded landowner(s) and applicant(s) if different than the landowner(s).
2. The Planning Department Staff shall review each application for completeness. If the application is deemed incomplete, the Planning Department Staff shall notify the

applicant of exactly what information is missing within 30 days of receipt of the application. If the applicant submits the missing information, the application shall be deemed complete. If the applicant refuses to submit the missing information, the application shall be deemed complete on the 31st day after the application was submitted.

24.07 NOTICE FOR PLANNING DIRECTOR LAND USE APPLICATION

1. Within ten (10) days after the receipt of a complete application, notice of the request shall be provided to the applicant and to owners of recorded property on the most recent property tax assessment roll where such property is located:
 - A. Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;
 - B. Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone;
 - C. Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.
2. The notice provided by the Planning Department shall:
 - A. Explain the nature of the application and the proposed use or uses which could be authorized;
 - B. List the applicable Ordinance standards and/or criteria, Oregon Administrative Rules, and Oregon Revised Statutes 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 that failure to raise an issue in writing or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal to the Planning Commission;
 - E. Include the name of a local government representative to contact and the telephone number where additional information may be obtained;
 - F. 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;

- G. The failure of a property owner to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given.
- H. State that within 14 days after mailing notice of the request for action all interested agencies, departments or area residents may request upon stating specific reason why, that a public hearing be held by the Commission at their earliest convenient meeting to consider the request.
- I. Upon request of the applicant, the Planning Director may, at the time of application, set a public hearing date to consider approval of the request. Any request for modification of the provisions herein shall require a public hearing.

24.08 DECISION ON A PLANNING DIRECTOR LAND USE APPLICATION

- 1. An application shall be approved, conditionally approved, denied, scheduled for a public hearing, or when further information is needed, a decision may be postponed. The Planning Director or Commission may set a date for public hearing, based upon factual objections to mailed notices regarding the request.
- 2. The Planning Director shall give a decision on the request within 24-days after the filing of a complete application if it is found that no public hearing has been requested. The request shall be approved if it satisfies all applicable requirements for the specific request.
- 3. A land use decision by the Planning Director may be appealed, per Article 34.00, within 30-days of the date on the decision letter, to the Commission for a public hearing.² A decision on appeal by the Commission may be further appealed within 30-days to the Board.

24.09 APPLICATION FOR QUASI-JUDICIAL LAND USE DECISION

A Quasi-Judicial land use application shall be filed with the Planning Department on the form prescribed by the Planning Department and shall include the following information:

- 1. The name and address of the applicant and recorded landowner(s).
- 2. The County Assessor's property description-- township, range, section and tax lot(s).
- 3. Other information as specifically required by this ordinance, any applicable Land Use Plan policies, and any applicable Statewide Planning Goals, Oregon Administrative Rules and Oregon Revised Statutes.

² ORS 92.046(3)(b) identifies a 10 day appeal period.

4. For a site specific request a vicinity map marked Exhibit A and a site map drawn to scale marked Exhibit B showing the proposal.
5. Signature of the recorded landowner(s) and applicant if different than the landowner(s).

24.10 NOTICE FOR QUASI-JUDICIAL HEARINGS

1. The notice provided by the Planning Department shall:
 - A. Be mailed per Section 24.10(2) & (3) and published in a newspaper of general circulation at least 10 days before the first evidentiary hearing.
 - B. Explain the nature of the application and the proposed use or uses which could be authorized;
 - C. List the applicable ordinance criteria, plan policies, Statewide Planning Goals, Oregon Administrative Rule and/or Oregon Revised Statutes that apply to the application at issue;
 - D. Set forth the street address or other easily understood geographical reference to the subject property;
 - E. State the date, time and location of the hearing;
 - F. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue;
 - G. 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 submitted by or on behalf of 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; and
 - J. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

- K. The failure of a property owner to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given.
2. Notice of a hearing governed by this subsection shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:
 - A. Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;
 - B. Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone;
 - C. Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.
 - D. Within 250 feet of the property for which a zone change has been requested by a property owner. (ORS 215.223(3))
 3. Notice of a hearing to amend the Land Use Plan, a land use regulation or to adopt a new land use regulation shall be forwarded to the Oregon Department of Land Conservation and Development (DLCD) at least 45 days before the final hearing before the Board on adoption (ORS 197.610). This notice shall contain the text and any supplemental application information. Where emergency circumstances can be demonstrated such notice may be submitted in less than 45 days to DLCD.
 4. Notice of a zone change application by a property owner shall be provided to the Board when such property is within 10,000 feet of the side or end of a La Grande/Union County Municipal Airport runway. (ORS 215.223(4))

24.11 PLANNING COMMISSION AND BOARD OF COMMISSIONERS QUASI-JUDICIAL LAND USE HEARINGS

1. Quasi-Judicial land use hearings will be conducted per procedures in Section 23.06
2. The Commission and where applicable the Board shall hold at least one public hearing on a complete application and shall take final action on an application including resolution of all local appeals within 120 days after the application is deemed complete. Extensions to and all other statutory requirements applying to the 120-day rule in ORS 215.428 are incorporated by reference hereto. Unless otherwise ordered by the Commission or Board, the Planning Director shall take such applications in the order in which they are filed.

3. Recess of Hearing: The Planning Commission on its own initiative may recess a hearing in order to obtain additional information or to notify additional property owners who it believes may be interested in the application. Upon recessing the hearing, the Commission shall announce the time, date and place where the hearing will resume. The 120-day rule in ORS 215.428 can only be stayed with the applicant's consent or unless the involved parties agree to mediation as described in ORS 197.318(2)(6).
4. The Burden of Proof: The burden of proof is placed on the applicant or authorized agent seeking an action pursuant to the provisions of this Ordinance. The applicant or authorized agent's attendance is required at a prescribed hearing for the action unless otherwise authorized by the hearings body.

24.12 DECISION ON QUASI-JUDICIAL LAND USE APPLICATION

1. The decision of the hearings body shall be based upon and accompanied by a brief statement that explains:
 - A. The criteria and standards considered relevant to the decision;
 - B. Statement of basic facts relied upon in rendering the decision; and
 - C. Ultimate facts which explain and justify the reason for the decision based on the criteria, standards and basic facts set forth.
2. If the application is denied, no new application for the same or substantially similar action shall be filed for at least one(1) year from the date of the final order denying the application.
3. An applicant, whose request is approved or denied, and all participating parties shall be mailed notice of the decision within five working days. Decisions are final as of the date on the final decision notice and are appealable within 30 days when the Notice of Appeal and appropriate fee is received by the Planning Department.
4. Notice to the applicant and participating parties shall describe briefly the action taken, identify the date of the decision, list the place where and time when the decision may be reviewed, and explain the appeal requirements.
5. Notice of action on an amendment to the Land Use Plan or land use regulation, or adoption of a new land use regulation shall be mailed within five working days after the final decision to DLCD along with copies of any adopted amendments and supporting findings.

6. Actions involving the consideration of exceptions to the Statewide Planning Goals shall be subject to notice specifically noting the exceptions to be considered and shall summarize the issues in an understandable manner.

24.13 APPLICATION FOR LEGISLATIVE LAND USE DECISION

A Legislative land use application shall be filed with the Planning Department on the form prescribed by the Planning Department and shall include the following information:

1. The name and address of the applicant and recorded landowner(s).
2. The County Assessor's property description-- township, range, section and tax lot(s).
3. Other information as specifically required by this ordinance, any applicable Land Use Plan policies, and any applicable Statewide Planning Goals, Oregon Administrative Rules and Oregon Revised Statutes.
4. Signature of the recorded landowner(s) and applicant if different than the landowner(s).

24.14 NOTICE FOR LEGISLATIVE HEARINGS

1. Notice of a hearing governed by this subsection shall be provided to the applicant and in a newspaper of general circulation at least 10 days before the evidentiary hearing. (Notice is not sent to adjacent landowners)
2. The notice provided by the Planning Department shall:
 - A. Explain the nature of the application and the proposed use or uses which could be authorized;
 - B. List the applicable Ordinance standards and/or criteria, Oregon Administrative Rules, and Oregon Revised Statutes 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 that failure to raise an issue in writing or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal to the Planning Commission;
 - E. Include the name of a local government representative to contact and the telephone number where additional information may be obtained;

- F. 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.
- 3. Notice of a hearing governed by this subsection shall be mailed to DLCD at least 45 days before the Board's final decision on adoption (ORS 197.610). This notice shall contain the text and any supplemental application information. Where emergency circumstances can be demonstrated such notice may be submitted in less than 45 days to DLCD.

**24.15 PLANNING COMMISSION AND BOARD OF COMMISSIONERS
LEGISLATIVE LAND USE HEARINGS**

- 1. Legislative land use hearings will be conducted per procedure in Section 23.06(2).
- 2. The Commission shall hold at least one evidentiary public hearing and where a decision to recommend approval or conditional approval is reached such decision shall be transmitted to the Board for a de novo public hearing and a final decision by ordinance. If the Commission's decision is to deny a Legislative land use decision such decision is final and may be appealed to the Board for reconsideration per Article 34.00 (Appeal Procedures).
- 3. The ORS 215.428 120-day rule for making final decision does not apply to Legislative land use decisions (ORS 215.428(6)).
- 4. Unless otherwise ordered by the Commission or Board, the Planning Director shall take such applications in the order in which they are filed.
- 5. Recess of Hearing: The Commission or Board on their own initiative may recess a hearing in order to obtain additional information or to notify additional property owners who they believe may be interested in the application. Upon recessing the hearing, the Commission or Board shall announce the time, date and place where the hearing will resume.
- 6. The Burden of Proof: The burden of proof is placed on the applicant or authorized agent seeking an action pursuant to the provisions of this Ordinance. The applicant or authorized agent's attendance is required at a prescribed hearing for the action unless otherwise authorized by the hearings body.

24.16 DECISION ON LEGISLATIVE LAND USE APPLICATION

1. The decision of the hearings body shall be based upon and accompanied by a brief statement that explains:
 - A. The criteria and standards considered relevant to the decision;
 - B. Statement of basic facts relied upon in rendering the decision; and
 - C. Ultimate facts which explain and justify the reason for the decision based on the criteria, standards and basic facts set forth.
2. If the application is denied, no new application for the same or substantially similar action shall be filed for at least one(1) year from the date of the final order denying the application.
3. An applicant, whose request is approved or denied, and all participating parties shall be mailed notice of the decision within five working days. Decisions are final as of the date on the final decision notice and are appealable within 30 days³ when the Notice of Appeal and appropriate fee is received by the Planning Department.
4. Notice to the applicant and participating parties shall describe briefly the action taken, identify the date of the decision, list the place where and time when the decision may be reviewed, and explain the appeal requirements.
5. Notice of action on an amendment to the Land Use Plan or land use regulation, or adoption of a new land use regulation shall be mailed within five working days after the final decision to DLCD along with copies of any adopted amendments and supporting findings.
6. Actions involving the consideration of exceptions to the Statewide Planning Goals shall be subject to notice specifically noting the exceptions to be considered and shall summarize the issues in an understandable manner.

³ ORS 92.046(3)(b) identifies a 10 day appeal period.