

Chapter 17.50 ADMINISTRATION AND PROCEDURES

17.50.010 Purpose.

This chapter provides the procedures by which Oregon City reviews and decides upon applications for all permits relating to the use of land authorized by ORS 92, 197 and 227. These permits include all form of land divisions, land use, limited land use and expedited land division and legislative enactments and amendments to the Oregon City Comprehensive Plan and Titles 16 and 17 of this code. Pursuant to ORS 227.175, any applicant may elect to consolidate applications for two or more related permits needed for a single development project. Any grading activity associated with development shall be subject to preliminary review as part of the review process for the underlying development. It is the express policy of the city of Oregon City that development review not be segmented into discrete parts in a manner that precludes a comprehensive review of the entire development and its cumulative impacts.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.030 Summary of the city's decision-making processes.

The following decision-making processes chart shall control the city's review of the indicated permits:

**Table 17.50.030
Permit Approval Process**

| Permit Type | I | II | III | IV | Expedited Land Division |
|---|---|--------------|-----|----|-------------------------|
| Annexation | | | | X | |
| Compatibility review for communication facilities | X | | | | |
| Compatibility review for the Willamette River Greenway Overlay District | | | X | | |
| Code interpretation | | | X | | |
| Master plan/planned unit development—General development plan | | | X | | |
| Master plan/planned unit development—General development plan amendment | X | X | X | | |
| Conditional use (excluding shelters) | | | X | | |
| Conditional use for a shelter | | | | X | |
| Detailed development plan ¹ | X | X | X | | |
| Expedited land division | | X (modified) | | | x |
| Extension | X | | | | |
| Final plat | X | | | | |
| Geologic hazards | | X | | | |
| Historic review | X | | X | | |
| Lot line adjustment and abandonment | X | | | | |

| | | | | | |
|---|---|--------------|---|---|---|
| Manufactured home park review (new or modification) | | X | | | |
| Placement of a single manufactured home on existing space or lot within a park | X | | | | |
| Middle housing land division | | X (modified) | | | x |
| Minor partition | | X | | | |
| Nonconforming use, structure and lots review | X | X | | | |
| Plan or code amendment | | | | X | |
| Revocation | | | | X | |
| Site plan and design review | X | X | | | |
| Subdivision | | X | | | X |
| Variance | | X | X | | |
| Zone change | | | | X | |
| Natural resource overlay district exemption | X | | | | |
| Natural resource overlay district review | | X | X | | |
| Live/work dwelling review | | X | | | |
| Residential design standards review for single-family detached, duplexes, triplexes, quadplexes, townhouses, cottage clusters and accessory dwelling units (uses minor site plan and design review) | X | | | | |
| Modification of residential design standards | | X | | | |

¹ If any provision or element of the master plan/planned unit development requires a deferred Type III procedure, the detailed development plan shall be processed through a Type III procedure.

- A. Type I decisions do not require interpretation or the exercise of policy or legal judgment in evaluating approval criteria. Because no discretion is involved, Type I decisions do not qualify as a land use, or limited land use, decision. The decision-making process requires no notice to any party other than the applicant. The community development director's decision is final and not appealable by any party through the normal city land use process.
- B. Type II decisions involve the exercise of limited interpretation and discretion in evaluating approval criteria, similar to the limited land use decision-making process under state law. Applications evaluated through this process are assumed to be allowable in the underlying zone, and the inquiry typically focuses on what form the use will take or how it will look. Notice of application and an invitation to comment is mailed to the applicant, recognized active neighborhood association(s) and property owners within three hundred feet. The community development director accepts comments for a minimum of fourteen days and renders a decision. The community development director's decision is appealable to the city commission, by any party who submitted comments in writing before the expiration of the comment period. Review by the city commission shall be on the record pursuant to OCMC 17.50.190 under ORS 197.195(5). The city commission decision is the city's final decision and is

subject to review by the land use board of appeals (LUBA) within twenty-one days of when it becomes final.

- C. Type III decisions involve the greatest amount of discretion and evaluation of subjective approval standards, yet are not required to be heard by the city commission, except upon appeal. In the event that any decision is not classified, it shall be treated as a Type III decision. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and the planning commission or the historic review board hearing is published and mailed to the applicant, recognized neighborhood association(s) and property owners within three hundred feet. Notice shall be issued at least twenty days pre-hearing, and the staff report shall be available at least seven days pre-hearing. At the evidentiary hearing held before the planning commission or the historic review board, all issues are addressed. The decision of the planning commission or historic review board is appealable to the city commission, on the record pursuant to OCMC 17.50.190. The city commission decision on appeal from is the city's final decision and is subject to review by LUBA within twenty-one days of when it becomes final, unless otherwise provided by state law.
- D. Type IV decisions include only quasi-judicial plan amendments and zone changes. These applications involve the greatest amount of discretion and evaluation of subjective approval standards and shall be heard by the city commission for final action. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and planning commission hearing is published and mailed to the applicant, recognized neighborhood association(s) and property owners within three hundred feet. Notice shall be issued at least twenty days pre-hearing, and the staff report shall be available at least seven days pre-hearing. At the evidentiary hearing held before the planning commission, all issues are addressed. If the planning commission denies the application, any party with standing (i.e., anyone who appeared before the planning commission either in person or in writing within the comment period) may appeal the planning commission denial to the city commission. If the planning commission denies the application and no appeal has been received within fourteen days of the issuance of the final decision, then the action of the planning commission becomes the final decision of the city. If the planning commission votes to approve the application, that decision is forwarded as a recommendation to the city commission for final consideration. In either case, any review by the city commission is on the record and only issues raised before the planning commission may be raised before the city commission. The city commission decision is the city's final decision and is subject to review by LUBA within twenty-one days of when it becomes final.
- E. Expedited land divisions and middle housing land divisions are subject to the requirements of OCMC 16.24. The expedited land division (ELD) process is set forth in ORS 197.360 to 197.380.
- F. Decisions, completeness reviews, appeals, and notices in this chapter shall be calculated according to OCMC 1.04.070 and shall be based on calendar days, not business days.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.040 Development review in overlay districts and for erosion control.

For any development subject to regulation of geologic hazards overlay district under OCMC 17.44; natural resource overlay district under OCMC 17.49; Willamette River Greenway Overlay District under OCMC 17.48; historic overlay district under OCMC 17.40, and erosion and sediment control under OCMC 17.47, compliance with the requirements of these chapters shall be reviewed as part of the review process required for the underlying development for the site.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.050 Pre-application conference.

- A. Pre-application Conference. Prior to a Type II—IV or legislative application, excluding historic review, being deemed complete, the applicant shall schedule and attend a pre-application conference with city staff to discuss the proposal, unless waived by the community development director. The purpose of the pre-application conference is to provide an opportunity for staff to provide the applicant with information on the likely impacts, limitations, requirements, approval standards, fees and other information that may affect the proposal.
 - 1. To schedule a pre-application conference, the applicant shall contact the planning division, submit the required materials, and pay the appropriate conference fee.
 - 2. At a minimum, an applicant should submit a short narrative describing the proposal and a proposed site plan, drawn to a scale acceptable to the city, which identifies the proposed land uses, traffic circulation, and public rights-of-way and all other required plans.
 - 3. The planning division shall provide the applicant(s) with the identity and contact persons for all affected neighborhood associations as well as a written summary of the pre-application conference.
- B. A pre-application conference shall be valid for a period of six months from the date it is held. If no application is filed within six months of the conference or meeting, the applicant shall schedule and attend another conference before the city will accept a permit application. The community development director may waive the pre-application requirement if, in the director's opinion, the development has not changed significantly and the applicable municipal code or standards have not been significantly amended. In no case shall a pre-application conference be valid for more than one year.
- C. Notwithstanding any representations by city staff at a pre-application conference, staff is not authorized to waive any requirements of this code, and any omission or failure by staff to recite to an applicant all relevant applicable land use requirements shall not constitute a waiver by the city of any standard or requirement.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.055 Neighborhood association meeting.

Neighborhood Association Meeting. The purpose of the meeting with the recognized neighborhood association is to inform the affected neighborhood association about the proposed development and to receive the preliminary responses and suggestions from the neighborhood association and the member residents.

- A. Applicants applying for annexations, zone change, comprehensive plan amendments, conditional use, planning commission variances, subdivision, or site plan and design review (excluding minor site plan and design review), general development master plans or detailed development plans applications shall schedule and attend a meeting with the city-recognized neighborhood association in whose territory the application is proposed no earlier than one year prior to the date of application. Although not required for other projects than those identified above, a meeting with the neighborhood association is highly recommended.
- B. The applicant shall request via email or regular mail a request to meet with the neighborhood association chair where the proposed development is located. The notice shall describe the proposed project. A copy of this notice shall also be provided to the chair of the citizen involvement committee.
- C. A meeting shall be scheduled within thirty days of the date that the notice is sent. A meeting may be scheduled later than thirty days if by mutual agreement of the applicant and the neighborhood association. If the neighborhood association does not want to, or cannot meet within thirty days, the applicant shall host a meeting inviting the neighborhood association, citizen involvement committee, and all property owners within three hundred feet to attend. This meeting shall not begin before six p.m. on a weekday or may be held on a weekend and shall occur within the neighborhood association boundaries or at a city facility.

- D. If the neighborhood association is not currently recognized by the city, is inactive, or does not exist, the applicant shall request a meeting with the citizen involvement committee.
- E. To show compliance with this section, the applicant shall submit a copy of the email or mail notice to the neighborhood association and CIC chair, a sign-in sheet of meeting attendees, and a summary of issues discussed at the meeting. If the applicant held a separately noticed meeting, the applicant shall submit a copy of the meeting flyer, postcard or other correspondence used, and a summary of issues discussed at the meeting and submittal of these materials shall be required for a complete application.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.060 Application requirements.

A permit application may only be initiated by the record property owner or contract purchaser, the city commission or planning commission. If there is more than one record owner, then the city will not complete a Type II—IV application without signed authorization from all record owners. All permit applications shall be submitted on the form provided by the city, along with the appropriate fee and all necessary supporting documentation and information, sufficient to demonstrate compliance with all applicable approval criteria. The applicant has the burden of demonstrating, with evidence, that all applicable approval criteria are, or can be, met.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.070 Completeness review and one hundred twenty-day rule.

- A. Upon submission, the community development director shall date stamp the application form and verify that all of the appropriate application review fee(s) have been submitted. Upon receipt of all review fees and an application form, the community development director will then review the application and all information submitted with it and evaluate whether the application is complete enough to process. Within thirty days of receipt of the application and all applicable review fees, the community development director shall complete this initial review and issue to the applicant a written statement indicating whether the application is complete enough to process, and if not, what information shall be submitted to make the application complete.
- B. The applicant has one hundred eighty days from the date the application was made to submit the missing information or the application shall be rejected and the unused portion of the application fee returned to the applicant. If the applicant submits the requested information within the one hundred eighty-day period, the community development director shall again verify whether the application, as augmented, is complete. Each such review and verification shall follow the procedure in subsection A of this section.

The application will be deemed complete for the purpose of this section upon receipt by the community development director of:

1. All the missing information;
2. Some of the missing information and written notice from the applicant that no other information will be provided; or
3. Written notice from the applicant that none of the missing information will be provided.

- C. Once the community development director determines the application is complete enough to process, or the applicant refuses to submit any more information, the city shall declare the application complete. Pursuant to ORS 227.178, the city will reach a final decision on an application within one hundred twenty calendar days from the date that the application is determined to be or deemed complete unless the applicant agrees to suspend the one hundred twenty-calendar-day timeline or unless state law provides otherwise. The one hundred twenty-day period, however, does not apply in the following situations:
 1. Any hearing continuance or other process delay requested by the applicant shall be deemed an extension or waiver, as appropriate, of the one hundred twenty-day period.

2. Any delay in the decision-making process necessitated because the applicant provided an incomplete set of mailing labels for the record property owners within three hundred feet of the subject property shall extend the one hundred twenty-day period for the amount of time required to correct the notice defect.
3. The one hundred twenty-day period does not apply to any application for a permit that is not wholly within the city's authority and control.
4. The one hundred twenty-day period does not apply to any application for an amendment to the city's comprehensive plan or land use regulations nor to any application for a permit, the approval of which depends upon a plan amendment.

D. A one hundred day-period applies in place of the one hundred twenty-day period for affordable housing projects where:

1. The project includes five or more residential units, including assisted living facilities or group homes;
2. At least fifty percent of the residential units will be sold or rented to households with incomes equal to or less than sixty percent of the median family income for Clackamas County or for the state, whichever is greater; and
3. Development is subject to a covenant restricting the owner and successive owner from selling or renting any of the affordable units as housing that is not affordable for a period of sixty years from the date of the certificate of occupancy.

E. The one hundred twenty-day period specified in OCMC 17.50.070.C or D may be extended for a specified period of time at the written request of the applicant. The total of all extensions may not exceed two hundred forty-five calendar days.

F. The approval standards that control the city's review and decision on a complete application are those which were in effect on the date the application was first submitted.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.080 Complete application—Required information.

Unless stated elsewhere in OCMC 16 or 17, a complete application includes all the materials listed in this subsection. The community development director may waive the submission of any of these materials if not deemed to be applicable to the specific review sought. Likewise, within thirty days of when the application is first submitted, the community development director may require additional information, beyond that listed in this subsection or elsewhere in Titles 12, 14, 15, 16, or 17, such as a traffic study or other report prepared by an appropriate expert. In any event, the applicant is responsible for the completeness and accuracy of the application and all of the supporting documentation, and the city will not deem the application complete until all information required by the community development director is submitted. At a minimum, the applicant shall submit the following:

- A. One copy of a completed application form that includes the following information:
 1. An accurate address and tax map and location of all properties that are the subject of the application;
 2. Name, address, telephone number and authorization signature of all record property owners or contract owners, and the name, address and telephone number of the applicant, if different from the property owner(s);
- B. A complete list of the permit approvals sought by the applicant;
- C. A complete and detailed narrative description of the proposed development;

- D. A discussion of the approval criteria for all permits required for approval of the development proposal that explains how the criteria are or can be met or are not applicable, and any other information indicated by staff at the pre-application conference as being required;
- E. One copy of all architectural drawings and site plans shall be submitted for Type II—IV applications. One paper copy of all application materials shall be submitted for Type I applications;
- F. For all Type II—IV applications, the following is required:
 - 1. An electronic copy of all materials.
 - 2. Mailing labels or associated fee for notice to all parties entitled under OCMC 17.50.090 to receive mailed notice of the application. The applicant shall use the names and addresses of property owners within the notice area indicated on the most recent property tax rolls.
 - 3. Documentation indicating there are no liens favoring the city on the subject site.
 - 4. A receipt from the county assessor's office indicating that all taxes for the lot or parcels involved are paid in full for the preceding tax year.
 - 5. A current preliminary title report or trio for the subject property(ies);
- G. All required application fees;
- H. Annexation agreements, traffic or technical studies (if applicable);
- I. Additional documentation, as needed and identified by the community development director.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.090 Public notices.

All public notices issued by the city announcing applications or public hearings of quasi-judicial or legislative actions, shall comply with the requirements of this section.

- A. Notice of Type II Applications. Once the community development director has deemed a Type II application complete, the city shall prepare and send notice of the application, by first class mail, to all record owners of property within three hundred feet of the subject property and to any city-recognized neighborhood association whose territory includes the subject property. The applicant shall provide or the city shall prepare for a fee an accurate and complete set of mailing labels for these property owners and for posting the subject property with the city-prepared notice in accordance with OCMC 17.50.100. The city's Type II notice shall include the following information:
 - 1. Street address or other easily understood location of the subject property and city-assigned planning file number;
 - 2. A description of the applicant's proposal, along with citations of the approval criteria that the city will use to evaluate the proposal;
 - 3. A statement that any interested party may submit to the city written comments on the application during a fourteen-day comment period prior to the city's deciding the application, along with instructions on where to send the comments and the deadline of the fourteen-day comment period;
 - 4. A statement that any issue which is intended to provide a basis for an appeal shall be raised in writing during the fourteen-day comment period with sufficient specificity to enable the city to respond to the issue;
 - 5. A statement that the application and all supporting materials may be inspected, and copied at cost, at city hall during normal business hours;

6. The name and telephone number of the planning staff person assigned to the application or is otherwise available to answer questions about the application;
7. The notice shall state that a city-recognized neighborhood association requesting an appeal fee waiver pursuant to OCMC 17.50.290.C must officially approve the request through a vote of its general membership or board at a duly announced meeting prior to the filing of an appeal.

B. Notice of Public Hearing on a Type III or IV Quasi-Judicial Application. Notice for all public hearings concerning a quasi-judicial application shall conform to the requirements of this subsection. At least twenty days prior to the hearing, the city shall prepare and send, by first class mail, notice of the hearing to all record owners of property within three hundred feet of the subject property and to any city-recognized neighborhood association whose territory includes the subject property. The city shall also publish the notice on the city website within the city at least twenty days prior to the hearing. Pursuant to OCMC 17.50.080.H, the applicant is responsible for providing an accurate and complete set of mailing labels for these property owners and for posting the subject property with the city-prepared notice in accordance with OCMC 17.50.100. Notice of the application hearing shall include the following information:

1. The time, date and location of the public hearing;
2. Street address or other easily understood location of the subject property and city-assigned planning file number;
3. A description of the applicant's proposal, along with a list of citations of the approval criteria that the city will use to evaluate the proposal;
4. A statement that any interested party may testify at the hearing or submit written comments on the proposal at or prior to the hearing and that a staff report will be prepared and made available to the public at least seven days prior to the hearing;
5. A statement that any issue which is intended to provide a basis for an appeal to the city commission shall be raised before the close of the public record. Issues must be raised and accompanied by statements or evidence sufficient to afford the city and all parties to respond to the issue;
6. The notice shall state that a city-recognized neighborhood association requesting an appeal fee waiver pursuant to OCMC 17.50.290.C must officially approve the request through a vote of its general membership or board at a duly announced meeting prior to the filing of an appeal;
7. A statement that the application and all supporting materials and evidence submitted in support of the application may be inspected at no charge and that copies may be obtained at reasonable cost at the planning division offices during normal business hours; and
8. The name and telephone number of the planning staff person responsible for the application or is otherwise available to answer questions about the application.

C. Notice of Public Hearing on a Legislative Proposal. At least twenty days prior to a public hearing at which a legislative proposal to amend or adopt the city's land use regulations or comprehensive plan is to be considered, the community development director shall issue a public notice that conforms to the requirements of this subsection. Notice shall be sent to affected governmental entities, special districts, providers of urban services, including Tri-Met, Oregon Department of Transportation and Metro, any affected recognized neighborhood associations and any party who has requested in writing such notice. Notice shall also be published on the city website. Notice issued under this subsection shall include the following information:

1. The time, date and location of the public hearing;
2. The city-assigned planning file number and title of the proposal;
3. A description of the proposal in sufficient detail for people to determine the nature of the change being proposed;

4. A statement that any interested party may testify at the hearing or submit written comments on the proposal at or prior to the hearing; and
5. The name and telephone number of the planning staff person responsible for the proposal and who interested people may contact for further information.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.100 Notice posting requirements.

Where this chapter requires notice of a pending or proposed permit application or hearing to be posted on the subject property, the requirements of this section shall apply.

- A. City Guidance and the Applicant's Responsibility. The city shall supply all of the notices which the applicant is required to post on the subject property and shall specify the dates the notices are to be posted and the earliest date on which they may be removed. The city shall also provide a statement to be signed and returned by the applicant certifying that the notice(s) were posted at the correct time and that if there is any delay in the city's land use process caused by the applicant's failure to correctly post the subject property for the required period of time and in the correct location, the applicant agrees to extend the applicable decision-making time limit in a timely manner.
- B. Number and Location. The applicant shall place the notices on each frontage of the subject property. If the property's frontage exceeds six hundred feet, the applicant shall post one copy of the notice for each six hundred feet or fraction thereof. Notices do not have to be posted adjacent to alleys or unconstructed right-of-way. Notices shall be posted within ten feet of the street and shall be visible to pedestrians and motorists. Notices shall not be posted within the public right-of-way or on trees. The applicant shall remove all signs within ten days following the event announced in the notice.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.110 Assignment of decision-makers.

The following city entity or official shall decide the following types of applications:

- A. Type I Decisions. The community development director shall render all Type I decisions. The community development director's decision is the city's final decision on a Type I application.
- B. Type II Decisions. The community development director shall render the city's decision on all Type II permit applications, which are then appealable to the city commission with notice to the planning commission. The city's final decision is subject to review by LUBA.
- C. Type III Decisions. The planning commission or historic review board, as applicable, shall render all Type III decisions. Such decision is appealable to the city commission, on the record. The city commission's decision is the city's final decision and is subject to review by LUBA within twenty-one days of when it becomes final.
- D. Type IV Decisions. The planning commission shall render the initial decision on all Type IV permit applications. If the planning commission denies the Type IV application, that decision is final unless appealed in accordance with OCMC 17.50.190. If the planning commission recommends approval of the application, that recommendation is forwarded to the city commission. The city commission decision is the city's final decision on a Type IV application and is subject to review LUBA.
- E. Expedited Land Division (ELD). The community development director shall render the initial decision on all ELD applications. The community development director's decision is the city's final decision unless appealed in accordance to ORS 197.375 to a city-appointed hearings referee. The hearings referee decision is the city's final decision which is appealable to the Oregon Court of Appeals.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.120 Quasi-judicial hearing process.

All public hearings pertaining to quasi-judicial permits, whether before the planning commission, historic review board, or city commission, shall comply with the procedures of this section. In addition, all public hearings held pursuant to this chapter shall comply with the Oregon Public Meetings Law, the applicable provisions of ORS 197.763 and any other applicable law.

- A. Once the community development director determines that an application for a Type III or IV decision is complete, the planning division shall schedule a hearing before the planning commission or historic review board, as applicable. Once the community development director determines that an appeal of a Type II, Type III or Type IV decision has been properly filed under OCMC 17.50.190, the planning division shall schedule a hearing pursuant to OCMC 17.50.190.
- B. Notice of the Type III or IV hearing shall be issued at least twenty days prior to the hearing in accordance with OCMC 17.50.090.B.
- C. Written notice of an appeal hearing shall be sent by regular mail no later than fourteen days prior to the date of the hearing to the appellant, the applicant if different from the appellant, the property owner(s) of the subject site, all persons who testified either orally or in writing before the hearing body and all persons that requested in writing to be notified.
- D. The community development director shall prepare a staff report on the application which lists the applicable approval criteria, describes the application and the applicant's development proposal, summarizes all relevant city department, agency and public comments, describes all other pertinent facts as they relate to the application and the approval criteria and makes a recommendation as to whether each of the approval criteria are met.
- E. At the beginning of the initial public hearing at which any quasi-judicial application or appeal is reviewed, a statement describing the following shall be announced to those in attendance:
 1. That the hearing will proceed in the following general order: Staff report, applicant's presentation, testimony in favor of the application, testimony in opposition to the application, rebuttal, record closes, commission deliberation and decision;
 2. That all testimony and evidence submitted, orally or in writing, shall be directed toward the applicable approval criteria. If any person believes that other criteria apply in addition to those addressed in the staff report, those criteria shall be listed and discussed on the record. The meeting chairperson may reasonably limit oral presentations in length or content depending upon time constraints. Any party may submit written materials of any length while the public record is open;
 3. Failure to raise an issue on the record with sufficient specificity and accompanied by statements or evidence sufficient to afford the city and all parties to respond to the issue, will preclude appeal on that issue to the land use board of appeals;
 4. Any party wishing a continuance or to keep open the record shall make that request while the record is still open;
 5. That the commission chair shall call for any ex parte contacts, conflicts of interest or bias before the beginning of each hearing item; and
 6. For appeal hearings, only those persons who participated either orally or in writing in the decision or review will be allowed to participate either orally or in writing on the appeal.
- F. Requests for continuance and to keep open the record: The hearing may be continued to allow the submission of additional information or for deliberation without additional information. New notice of a continued hearing need not be given so long as a time-certain and location is established for the continued hearing. Similarly, hearing may be closed but the record kept open for the submission of

additional written material or other documents and exhibits. The chairperson may limit the factual and legal issues that may be addressed in any continued hearing or open record period.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.130 Conditions of approval and notice of decision.

- A. All city decision-makers have the authority to impose reasonable conditions of approval designed to ensure that all applicable approval standards, including standards set out in city overlay districts, the city's master plans, and city public works design standards, are, or can be met.
- B. Failure to comply with any condition of approval shall be grounds for revocation of the permit(s) and grounds for instituting code enforcement proceedings pursuant to OCMC 1.20 of this code and ORS 30.315.
- C. Notice of Decision. The city shall send, by first class mail, a notice of all decisions rendered under this chapter to all persons with standing, i.e., the applicant, all others who participated either orally or in writing before the close of the public record and those who specifically requested notice of the decision. The notice of decision shall include the following information:
 - 1. The file number and date of decision;
 - 2. The name of the applicant, owner and appellant (if different);
 - 3. The street address or other easily understood location of the subject property;
 - 4. A brief summary of the decision, and if an approval, a description of the permit approved;
 - 5. A statement that the decision is final unless appealed and description of the requirements for perfecting an appeal;
 - 6. The contact person, address and a telephone number whereby a copy of the final decision may be inspected or copies obtained.
- D. Modification of Conditions. Any request to modify a condition of permit approval is to be considered either minor modification or a major modification, unless otherwise authorized. A minor modification shall be processed as a Type I. A major modification shall be processed in the same manner and shall be subject to the same standards as was the original application. However, the decision-maker may at their sole discretion, consider a modification request and limit its review of the approval criteria to those issues or aspects of the application that are proposed to be changed from what was originally approved.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.140 Financial guarantees.

When conditions of permit approval require a permittee to construct certain public improvements, the city shall require the permittee to provide financial guarantee for construction of the certain public improvements. Financial guarantees shall be governed by this section.

- A. Form of Guarantee. Guarantees shall be in a form approved by the city attorney. Approvable forms of guarantee include irrevocable standby letters of credit to the benefit of the city issued by a recognized lending institution, certified checks, dedicated bank accounts or allocations of construction loans held in reserve by the lending institution for the benefit of the city. The form of guarantee shall be specified by the city engineer and, prior to execution and acceptance by the city shall be reviewed and approved by the city attorney. The guarantee shall be filed with the city engineer.
- B. Performance Guarantees. A permittee shall be required to provide a performance guarantee as follows.
 - 1. After Final Approved Design by the City. The city may request the permittee to submit a performance guarantee for construction of certain public improvements. A permittee may

request the option of submitting a performance guarantee when prepared for temporary/final occupancy. The guarantee shall be one hundred twenty percent of the estimated cost of constructing the public improvements as submitted by the permittee's engineer. The engineer's estimated costs shall be supported by a verified engineering estimate and approved by the city engineer.

2. Before Complete Design Approval and Established Engineered Cost Estimate. The city may request a permittee to submit a performance guarantee for construction of certain public improvements. A permittee may request the option of submitting a performance guarantee before public improvements are designed and completed. The guarantee shall be one hundred fifty percent of the estimated cost of constructing the public improvements as submitted by the permittee's engineer and approved by the city engineer. The engineer's estimated costs shall be supported by a verified engineering estimate and approved by the city engineer.
- C. Release of Guarantee. The guarantee shall remain in effect until the improvement is actually constructed and accepted by the city. Once the city has inspected and accepted the improvement, the city shall release the guarantee to the permittee. If the improvement is not completed to the city's satisfaction within the time limits specified in the permit approval, the city engineer may, at their discretion, draw upon the guarantee and use the proceeds to construct or complete construction of the improvement and for any related administrative and legal costs incurred by the city in completing the construction, including any costs incurred in attempting to have the permittee complete the improvement. Once constructed and approved by the city, any remaining funds shall be refunded to the permittee. The city shall not allow a permittee to defer construction of improvements by using a performance guarantee, unless the permittee agrees to construct those improvements upon written notification by the city, or at some other mutually agreed-to time. If the permittee fails to commence construction of the required improvements within six months of being instructed to do so, the city may, without further notice, undertake the construction of the improvements and draw upon the permittee's performance guarantee to pay those costs.
- D. Fee-in-lieu. When conditions of approval or the city engineer allows a permittee to provide a fee-in-lieu of actual construction of public improvements, the fee shall be one hundred fifty percent of the estimated cost of constructing the public improvements as submitted by the permittee's engineer and approved by the city engineer. The percentage required is to ensure adequate funds for the future work involved in design, bid, contracting, and construction management and contract closeout. The engineer's estimated costs shall be supported by a verified engineering estimate and approved by the city engineer. The fee-in-lieu shall be submitted as cash, certified check, or other negotiable instrument acceptable by the city attorney.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.141 Public improvements—Warranty.

All public improvements not constructed by the city, shall be maintained and under warranty provided by the property owner or developer constructing the facilities until the city accepts the improvements at the end of the warranty period. The warranty is to be used at the discretion of the city engineer or designee to correct deficiencies in materials or maintenance of constructed public infrastructure, or to address any failure of engineering design.

- A. Duration of Warranty. Responsibility for maintenance of public improvements shall remain with the property owner or developer for a warranty period of two years.
- B. Financial Guarantee. Approvable forms of guarantee include irrevocable standby letters of credit to the benefit of the city issued by a recognized lending institution, bond, certified checks, dedicated bank accounts or allocations of construction loans held in reserve by the lending institution for the benefit of the city. The form of guarantee shall be specified by the city engineer and, prior to execution and

acceptance by the city shall be reviewed and approved by the city attorney. The guarantee shall be filed with the city engineer.

- C. **Amount of Warranty.** The amount of the warranty shall be equal to fifteen percent of the estimated cost of construction of all public improvements (including those improvements that will become owned and maintained by the city at the end of the two-year maintenance period), and shall be supported by a verified engineering estimate and approved by the city engineer. Upon expiration of the warranty period and acceptance by the city as described below, the city shall be responsible for maintenance of those improvements.
- D. **Transfer of Maintenance.** The city will perform an inspection of all public improvements approximately forty-five days before the two-year warranty period expires. The public improvements shall be found to be in a clean, functional condition by the city engineer before acceptance of maintenance responsibility by the city. Transfer of maintenance of public improvements shall occur when the city accepts the improvements at the end of the two-year warranty period.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.150 Covenant with the city.

- A. The city may impose as a condition of final approval of a quasi-judicial permit, the requirement that the applicant execute a covenant with the city agreeing to comply with all conditions of approval. Any such covenant shall include the following elements:
 1. An agreement that the applicant will comply with all applicable code requirements, conditions of approval and any representations made to the city by the applicant or the applicant's agents during the application review process, in writing. This commitment shall be binding on the applicant and all of the applicant's successors, heirs and assigns;
 2. If the owner fails to perform under the covenant, the city may immediately institute revocation of the approval or any other enforcement action available under state law or this code. The covenant may also provide for payment of attorney fees and other costs associated with any such enforcement action; and
 3. Where the development rights of one site are dependent on the performance of conditions by the owner of another property (such as joint access), the covenants are judicially enforceable by the owner of one site against the owner of another.
- B. **Adopting the Covenant.** The form of all covenants shall be approved by the city attorney. The covenant shall run with the land and shall be placed in the county deed records prior to the issuance of any permits or development activity pursuant to the approval. Proof of recording shall be made prior to the issuance of any permits and filed with the planning division. Recording shall be at the applicant's expense. Any covenant required under this section shall be properly signed and executed within thirty days after permit approval with conditions; provided, however, that the community development director may grant reasonable extensions, not to exceed an additional thirty days, in cases of practical difficulty. Failure to sign and record the covenant within the prescribed period shall require a new application for any use of the subject property.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.160 Ex parte contact, conflict of interest and bias.

The following rules shall govern any challenges to a decision-maker's participation in a quasi-judicial action:

- A. **Ex parte Contacts.** Any factual information obtained by a decision-maker outside the context of a quasi-judicial hearing shall be deemed an ex parte contact. Prior to the close of the record in any particular matter, any decision-maker that has obtained any materially factual information through an ex parte

contact shall declare the content of that contact and allow any interested party to rebut the substance of that contact. This rule does not apply to legislative proceedings.

- B. Conflict of Interest. Whenever a decision-maker, or any member of a decision-maker's immediate family or household, has a financial interest in the outcome of a particular quasi-judicial or legislative matter, that decision-maker shall not participate in the deliberation or decision on that matter.
- C. Bias. All decisions in quasi-judicial matters shall be fair, impartial and based on the applicable approval standards and the evidence in the record. Any decision-maker who is unable to render a decision on this basis in any particular matter shall refrain from participating in the deliberation or decision on that matter. This rule does not apply to legislative proceedings.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.170 Legislative hearing process.

- A. Purpose. Legislative actions involve the adoption or amendment of the city's land use regulations, comprehensive plan, maps, inventories and other policy documents that affect the entire city or large portions of it. Legislative actions which affect land use shall begin with a public hearing before the planning commission.
- B. Planning Commission Review.
 - 1. Hearing Required. The planning commission shall hold at least one public hearing before recommending action on a legislative proposal. Any interested person may appear and provide written or oral testimony on the proposal at or prior to the hearing. The community development director shall notify the Oregon Department of Land Conservation and Development (DLCD) as required by the post-acknowledgment procedures of ORS 197.610 to 197.625, as applicable.
 - 2. The Community Development Director's Report. Once the planning commission hearing has been scheduled and noticed in accordance with OCMC 17.50.090.C and any other applicable laws, the community development director shall prepare and make available a report on the legislative proposal at least seven days prior to the hearing.
 - 3. Planning Commission Recommendation. At the conclusion of the hearing, the planning commission shall adopt a recommendation on the proposal to the city commission. The planning commission shall make a report and recommendation to the city commission on all legislative proposals. If the planning commission recommends adoption of some form of the proposal, the planning commission shall prepare and forward to the city commission a report and recommendation to that effect.
- C. City Commission Review.
 - 1. City Commission Action. Upon a recommendation from the planning commission on a legislative action, the city commission shall hold at least one public hearing on the proposal. Any interested person may provide written or oral testimony on the proposal at or prior to the hearing. At the conclusion of the hearing, the city commission may adopt, modify or reject the legislative proposal, or it may remand the matter to the planning commission for further consideration. If the decision is to adopt at least some form of the proposal, and thereby amend the city's land use regulations, comprehensive plan, official zoning maps or some component of any of these documents, the city commission decision shall be enacted as an ordinance.
 - 2. Notice of Final Decision. Not later than five days following the city commission final decision, the community development director shall mail notice of the decision to DLCD in accordance with ORS 197.615(2).

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.180 Objections to procedure.

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

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.190 Appeals.

Appeals of any non-final decisions by the city shall comply with the requirements of this section.

- A. Type I decisions by the community development director are not appealable to any other decision-maker within the city.
- B. A notice of appeal of any Type II, III or IV decision shall be received in writing by the planning division within fourteen calendar days from the date notice of the challenged decision is provided to those entitled to notice. Late filing of any appeal shall be deemed a jurisdictional defect and will result in the automatic rejection of any appeal so filed.
- C. The following shall be included as part of the notice of appeal:
 1. The planning file number and date the decision to be appealed was rendered;
 2. The name, mailing address and daytime telephone number for each appellant;
 3. A statement of how each appellant has an interest in the matter and standing to appeal;
 4. A statement of the specific grounds for the appeal;
 5. The appropriate appeal fee. Failure to include the appeal fee, with the exception of actual attorney fees, within appeal period is deemed to be a jurisdictional defect and will result in the automatic rejection of any appeal so filed. If a city-recognized neighborhood association with standing to appeal has voted to request a fee waiver pursuant to OCMC 17.50.290.C, no appeal fee shall be required for an appeal filed by that association. In lieu of the appeal fee, the neighborhood association shall provide a duly adopted resolution of the general membership or board approving the request for fee waiver.
- D. Standing to Appeal. The following rules prescribe who has standing to appeal:
 1. For Type II decisions, only those persons or recognized neighborhood associations who submitted comments in writing before the expiration of the comment period have standing to appeal a community development director decision. Review by the city commission shall be on the record, limited to the issues raised in the comments and no new evidence shall be considered.
 2. For Type III and IV decisions, only those persons or recognized neighborhood associations who have participated either orally or in writing have standing to appeal the decision of the planning commission or historic review board, as applicable. Grounds for appeal are limited to those issues raised either orally or in writing before the close of the public record. No new evidence shall be allowed.
- E. Notice of the Appeal Hearing. The planning division shall mail notice of the appeal hearing to all parties who participated either orally or in writing and provided their mailing address before the close of the public record in accordance with OCMC 17.50.090.B and post notice on the city website. Notice of the appeal hearing shall contain the following information:
 1. The file number and date of the decision being appealed;

2. The time, date and location of the public hearing;
3. The name of the applicant, owner and appellant (if different);
4. The street address or other easily understood location of the subject property;
5. A description of the permit requested and the applicant's development proposal;
6. A brief summary of the decision being appealed and the grounds for appeal listed in the notice of appeal;
7. A statement that the appeal hearing is confined to the issues raised in the notice of appeal;
8. A general explanation of the requirements for participation and the city's hearing procedures.

F. Appeal Hearing—Scope of Review. Appeal hearings shall comply with the procedural requirements of OCMC 17.50.120. Appeal hearings shall be conducted by the city commission. The decision shall be on the record and the issues under consideration shall be limited to those listed in the notice of appeal.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.200 Expiration of an approval.

A. When Approvals Become Void. All Type I—IV approvals, except for zoning or comprehensive plan map amendments, conditional use or master plan approvals, all Type I—IV approvals automatically become void if any of the following events occur:

1. If, within three years of the date of the final decision, an application for a building permit has not been submitted. Unless the approval provides otherwise, all building permits associated with the approval shall be issued within five years of date of the final decision.
2. If, within three years of the date of the final decision for all land divisions, property line adjustments, abandonments, or replat, the plat or survey approved in the decision has not been submitted to the Clackamas County Surveyors Office for recording. The plat or survey shall be recorded within five years of date of the final decision.
3. Annexations become void if a vote of the citizens rejects the application.

B. New Application Required. Expiration of an approval shall require a new application for any use on the subject property that is not otherwise allowed outright.

C. Deferral of the Expiration Period Due to Appeals. If a permit decision is appealed beyond the jurisdiction of the city, the expiration period shall not begin until review before the land use board of appeals and the appellate courts has been completed, including any remand proceedings before the city. The expiration period provided for in this section will begin to run on the date of final disposition of the case (the date when an appeal may no longer be filed).

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.230 Interpretation.

Where a provision of Title 12, 14, 15, 16, or Title 17 conflicts with another city ordinance or requirement, the provision or requirement that is more restrictive or specific shall control.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.240 Conformity of permits.

The city shall not accept any application for a permit, certificate or other approval, including building permit applications, for any property that is not in full compliance with all applicable provisions of Title 16 and Title 17 and

any permit approvals previously issued by the city. The city shall not issue a Type II—IV permit, permit recordation of a land division with the Clackamas County Surveyor's Office, or allow finalization of a project for a Type II—IV development, until any pending liens in favor of the city filed against the property have been fully resolved.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.270 Revocation of a previously approved permit.

In the event an applicant, or the applicant's successor in interest, fails to fully comply with all conditions of permit approval or otherwise does not comply fully with the city's approval, the city may institute a revocation or modification proceeding under this section.

- A. Situations when Permit Approvals may be Revoked or Modified. All quasi-judicial permits may be revoked or modified if the planning commission determines a substantial likelihood that any of the following situations exists:
 1. One or more conditions of the approval have not been implemented or have been violated;
 2. The activities of the use, or the use itself, are substantially different from what was approved; or
 3. The use is subject to the nonconforming use regulations, the applicant has not obtained approval, and has substantially changed its activities or substantially increased the intensity of its operations since the use became nonconforming.
- B. Process for Revocation and Modification. Revocation or modification shall be processed as a Type IV decision. The planning division or any private complaining party shall have the burden of proving, based on substantial evidence in the whole record, that the applicant or the applicant's successor has in some way violated the city's approval.
- C. Possible Actions at the Revocation Hearing. Depending on the situation, the planning commission may take any of the actions described below. The planning commission may not approve the new use or a use that is more intense than originally approved unless the possibility of this change has been stated in the public notice. Uses or development which are alleged to have not fulfilled conditions, violate conditions or the use is not consistent with the city's approval may be subject to the following actions:
 1. The planning commission may find that the use or development is complying with the conditions of the approval. In this case, the use or development shall be allowed to continue.
 2. The planning commission may modify the approval if it finds that the use or development does not meet the standards for revocation and that the use can comply with the original approval criteria if certain conditions are met. In this case, the planning commission may modify the existing conditions, add new conditions to ensure compliance with the approval criteria, or refer the case to the code compliance officer for enforcement of the existing conditions.
 3. The planning commission may revoke the approval if it finds there are substantial violations of conditions or failure to implement conditions of prior land use decisions, such that the original approval criteria for the use or development are not being met.
- D. Effect of Revocation. In the event permit approval is revoked, the use or development becomes illegal. The use or development shall be terminated within thirty days of the date the revocation final order is approved by the planning commission, unless the decision provides otherwise. In the event the decision-maker's decision on a revocation request is appealed, the revocation action shall be stayed pending a final, unappealed decision.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.280 Transfer of approval rights.

Unless otherwise stated in the city's permit decision, any approval granted under Title 16 or Title 17 of this code runs with the land and is transferred with ownership of the land. Any conditions, time limits or other restrictions imposed with a permit approval shall bind all subsequent owners of the property for which the permit was granted.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)

17.50.290 Fees.

The city may adopt by resolution, and revise from time to time, a schedule of fees for applications and appeals. Fees shall be based upon the city's actual or average cost of processing the application or conducting the appeal process. The only exception shall be the appeal fee for a Type II decision, which shall be limited by ORS 227.175.10.b. The requirements of this section shall govern the payment, refund and reimbursement of fees.

- A. Payment. All fees shall be due and payable at the time the application or appeal is submitted. No application or appeal shall be completed without the proper fee being paid.
- B. Refunds. Fees will only be refunded as provided in this subsection:
 1. When a fee is paid for an application which is later found to not be required, the city shall refund the fee.
 2. Errors. When an error is made in calculating a fee, overpayment will be refunded.
 3. Refund upon Withdrawal of an Application. In the event an applicant withdraws an application, the planning department shall refund the unused portion of the fee. In this case, the planning department will deduct from the fee the city's actual costs incurred in processing the application prior to withdrawal.
- C. Fee Waivers. The planning division may waive all or any portion of an application fee if, in the opinion of the director, a particular application shall be resubmitted because of an error made by the city. Appeal fees may be waived, wholly or in part, by the city commission, if the city commission finds that, considering fairness to the applicant and to opposing parties, a full or partial waiver of the appeal fee is warranted. Appeal fees shall not be charged for an appeal filed by a city-recognized neighborhood association, so long as the appeal has been officially approved by the general membership or board of the neighborhood association at a duly announced meeting.
- D. Major Projects. The fees for a major project shall be the city's actual costs, which shall include, but not be limited to, the actual costs for staff time, as well as any consultants, including contract planners, attorneys and engineers. The costs of major projects will not be included in any average used to establish other fees under this section.

(Ord. No. 18-1009, § 1(Exh. A), 7-3-2019; Ord. No. 19-1008, § 1(Exh. A), 12-18-2019)