



# CITY OF LEBANON

*It's easier from here.*

## **Lebanon Municipal Code Title 16: Development Code**

### **Article Four: Land Use and development Reviews, Decision Requirements and Procedures**

## **Chapter 16.20:**

# **Review and Decision Making Procedures**

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CITIZEN SERVICES & DEVELOPMENT CENTER

925 Main Street • Lebanon, Oregon 97355 • 541.258.4906 • 541.258.4955 Fax • [www.ci.lebanon.or.us](http://www.ci.lebanon.or.us)

# Chapter 16.20: Review And Decision-Making Procedures, and Other Administration Issues

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# **CHAPTER 16.20: REVIEW AND DECISION-MAKING PROCEDURES, AND OTHER ADMINISTRATION ISSUES**

## **16.20.010 INTRODUCTION**

### ***A. Background***

This Chapter provides the decision-making requirements and procedures for obtaining land use approvals required by this Code. For any particular type of land use application, please refer to **Table 16.20.020-1** in this Chapter (page 6) to see which land use reviews and procedures are required, and which decision-making body will be utilized. The following procedures are established for the various types of decision making procedures where such procedures are required by the provisions of this Code. In the event that this Code and a specific provision of State law address the same subject, then the requirement of State law shall be fulfilled in lieu of the procedure provided by this Code.

### ***B. Purposes***

The purposes of this Chapter are to:

1. Establish standard decision-making procedures that will enable the City, the applicant, and the public to reasonably review applications and participate in the local decision-making process in a timely and effective way.
2. Describe rules of conduct, notice requirements, order of proceedings, and action required for the various types of decision making procedures; and
3. Provide clear and consistent rules for land use decision making.

### ***C. Exemptions***

Except as noted in this Section, land use applications, reviews and approvals are not required for a change in use within an existing building or portion thereof. For the purpose of this exemption, Class I and Class II activities shall be considered interchangeable. Class III activities may be replaced with Class I, Class II or Class III activities; however, no Class III activity shall replace a Class I or Class II activity without being subject to the applicable land use review process.

### ***D. Completeness, Acceptance and Review of Applications***

Except as otherwise noted, the City shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all local appeals, within 120 days after the application is deemed complete.

## **1. Review and Written Findings**

The Planning Official shall review applications as soon as possible after they are filed to verify their completeness. Within 30 days of the original filing, each application shall be formally accepted as complete or rejected as being incomplete. The applicant shall be notified in writing<sup>1</sup> of the acceptance or rejection of the application. If the application is rejected, the applicant shall be advised what information is needed to make the application complete.

## **2. Incomplete Applications**

If an application for a permit, limited land use decision or zone change is incomplete, the City Council or its designee shall notify the applicant in writing 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 for the purpose of Subsection "1" (immediately preceding) upon receipt by the governing body or its designee of:

- 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.

## **3. Failure to Comply with Submittal Requirements**

On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required immediately above and has not submitted:

- a. All of the missing information;
- b. Some of the missing information and written notice that no other information will be provided; or
- c. Written notice that none of the missing information will be provided.

## **4. Applicable Decision Criteria and Standards**

- a. 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 decision criteria that were applicable at the time the application was first submitted.
- b. If the application is for industrial or trade sector development of a site identified under applicable State Law, and proposes an amendment to the Comprehensive Plan, approval or denial of the application must be based upon the standards and decision criteria that were applicable at the time the application was first submitted, provided the application complies with Subsection 16.20.010.D.2 above.

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<sup>1</sup> Completeness Notifications may be made electronically.

## 5. One Hundred and Twenty Day Rule

- a. The 120-day period set in Section 16.20.010.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 245 days.
- b. The 120-day period set in Section 16.20.010.D applies:
  - (1) Only to decisions wholly within the authority and control of the governing body of the City; and
  - (2) Unless the parties have agreed to mediation as described in applicable State Law.
- c. The 120-day period described in Section 16.20.010.D above does **not** apply to an amendment to an acknowledged Comprehensive Plan or land use regulation, or adoption of a new land use regulation, that was forwarded to the Director of the Department of Land Conservation and Development.
- d. Except when an applicant requests an extension under Subsection 16.20.010.D.5.a above, if the City Council or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days after the application is deemed complete, the City shall refund to the applicant, subject to the provisions of Subsection 16.20.010.D.6 of this Code, either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.
- e. The City may not compel an applicant to waive the 120-day period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a Comprehensive Plan Map Amendment.

## **16.20.020 OVERVIEW OF TYPES OF APPLICATIONS, REVIEWS AND DECISION MAKING PROCEDURES**

### **A. Description of Land Use Decision-Making Procedures**

All land use applications and reviews shall be decided by using the procedures contained in this Chapter. General procedures for all reviews and reviews are contained in this Chapter. Specific procedures for certain types of land use reviews are contained in the remainder of Article Four (Chapters 16.21 – 16.29) of this Code. The procedure “type” assigned to each type of land use application governs the decision-making process for that application. There are four types of land use reviews and decision-making procedures: Ministerial, Administrative, Quasi-Judicial and Legislative. These procedures are summarized in Subsections below.

#### **1. Ministerial Procedure**

- a. A routine governmental action or decision that involves little or no discretion. Ministerial decisions are not land use decisions.
- b. Ministerial decisions are made by the Planning Official (or designee) without public notice and without a public hearing. The Ministerial procedure is used when there are clear and objective review criteria, and applying City standards and criteria requires no use of discretion.

#### **2. Administrative Procedure**

- a. An Administrative decisions is a discretionary action or permit decision made without a public hearing, but requiring public notification and an opportunity for appeal. Such decisions include limited land use decisions.
- b. Administrative decisions are made by the Planning Official [or the Planning Commission by referral or appeal] with public notice but without a public hearing. The Planning Official may refer the application to the Planning Commission for a public hearing, or the applicant may request referral to the Planning Commission for a public hearing. The appeal of an Administrative decision by the Planning Official is heard by the Planning Commission, and an appeal of a decision by the Planning Commission is heard by the City Council.

#### **3. Quasi-Judicial Procedure**

- a. A decision by the Planning Commission or City Council that requires notice and a public hearing and requires the City to apply specific criteria in the development code and the comprehensive plan to a land use application. A quasi-judicial decision must be based on substantial evidence in the record.
- b. Quasi-Judicial decisions are made by the Planning Commission after a public hearing. Quasi-Judicial decisions generally include the use of discretionary criteria applied to specific lands identified in an application. A decision by the Planning Commission decisions may be appealed to the City Council. At the appeal hearing before the City Council, no new evidence may be submitted into the Planning Commission record. The City Council’s decision shall be based solely upon a review of the record before the Planning Commission. The City Council may affirm, reverse or amend the Planning Commission’s decision or remand the decision back to the Planning Commission for additional information or process.

#### **4. Legislative Procedure**

- a.** A decision made by City elected officials based on policy considerations and the official's perception of the best course of action. No evidence must be present in the record to support the decision and specific findings of fact based on the record are not required. Legislative decisions typically occur when the City is adopting an ordinance or resolution, or establishing a basic principle or policies, such as during adoption of a Comprehensive Plan.
- b.** Legislative procedures apply to legislative matters. Legislative matters involve the creation, revision, or large-scale implementation of public policy (e.g., annexations, adoption of land use regulations, Zoning Map amendments, and Comprehensive Plan Text and Map amendments). Land use legislative matters are considered initially by the Planning Commission which makes recommendations for action by the City Council. Final decisions are made by the City Council.

#### ***B. Summary of Development Decisions and Land Use by Type of Decision-Making Procedure***

**Table 16.20.020-1** (page 6) lists all of the City's land use and development applications and their required land use decision procedure(s).

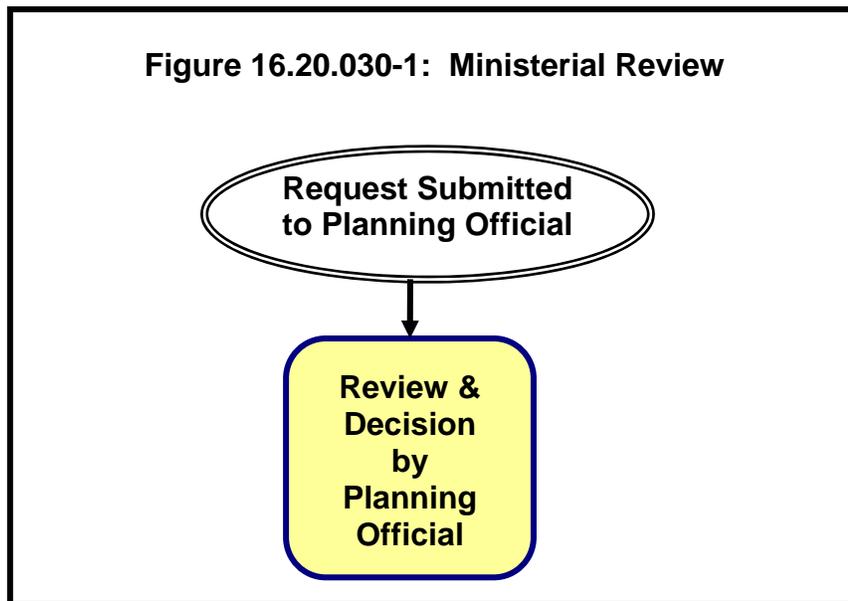
**Table 16.20.020-1: Summary of Development Decisions and Procedures**

<b>Land Use &amp; Development Decisions</b>	<b>Decision-Making Procedure</b>	<b>Decision Authority <sup>[a]</sup></b>	<b>Local <sup>[b]</sup> Appeal is Heard By</b>	<b>References <sup>[c]</sup></b>
Annexation	Legislative	City Council [CC]	xxx	Comp Plan & LDC Chapter 16.26.
Appeals	Administrative / Quasi-Judicial	Planning Official / Planning Commission [PC]	PC CC	LDC Chapter 16.20
Code Interpretation	Administrative	Planning Official / PC	PC	LDC Chapter 16.25
Comprehensive Plan and Zoning Map Amendments	Legislative	City Council	xxx	Comp Plan & LDC Chapter 16.27
Conditional Use	Quasi-Judicial	Planning Comm.	CC	LDC Chapter 16.21
Development Code (LDC), and Comprehensive Plan Text Amendments	Legislative	City Council	xxx	LDC Chapter 16.28
Historic Preservation Reviews and Register Updates	Administrative Quasi-Judicial Legislative	Planning Official Planning Comm. City Council	PC CC xxx	LDC Chapter 16.31
Home Occupations	Ministerial	Planning Official	PC	LDC Chs. 16.05, 16.19, 16.20
Land Partition	Administrative	Planning Official	PC	LDC Chapter 16.22
Modification to Approved Plans and Conditions of Approval	Ministerial Administrative Quasi-Judicial	Planning Official Planning Official Planning Comm.	PC PC CC	LDC Chapter 16.24
Non-Conforming Uses and Developments	Administrative	Planning Official	PC	LDC Chapter 16.30
Planned Development - Preliminary	Quasi-Judicial	Planning Comm.	CC	LDC Chapter 16.23
Planned Development - Final	Ministerial Administrative Quasi-Judicial	Planning Official Planning Official Planning Comm.	PC PC CC	LDC Chapter 16.23
Property Line Adjustment	Administrative	Planning Official	PC	LDC Chapter 16.22
Sign Permit (Planning Review)	Ministerial	Planning Official	PC	LDC Chapter 16.18
Subdivision	Administrative Quasi-Judicial	Planning Official Planning Comm.	PC CC	LDC Chapter 16.22
Temporary Uses	Ministerial	Planning Official	PC	LDC Chapter 16.19
Tree Felling Permit (Steep Slopes)	Administrative	Planning Official	PC	LDC Chapter 16.11
Urban Growth Boundary Amendments	Legislative	City Council	xxx	Comp Plan & LDC Chapter 16.27.
Vacating Public Lands and Plats	Legislative	City Council	xxx	Chapter 16.22
Variations (Adjustments) <ul style="list-style-type: none"> <li>• Class 1 (Minor Adjustment)</li> <li>• Class 2 (Adjustment)</li> <li>• Class 3 (Variance)</li> </ul>	Ministerial Administrative Quasi-Judicial	Planning Official Planning Official Planning Comm.	PC PC CC	Chapter 16.29 Chapter 16.29 Chapter 16.29
<p><b>a.</b> Legislative Items are first reviewed by the Planning Commission, which makes a recommendation to the City Council, the Final Decision Authority.</p> <p><b>b.</b> City Council decisions may be appealed to the Oregon Land Use Board of Appeals (LUBA).</p> <p><b>c.</b> The LDC Chapters referenced above in the right-hand column describe the types of land uses and development activity that require land use reviews under each type of decision-making procedure.</p>				
<p><i>An applicant may be required to obtain approvals from other agencies, such as a road authority for some types of reviews. The City notifies agencies of applications that may affect their facilities or services.</i></p>				

## 16.20.030 MINISTERIAL DECISION MAKING PROCEDURE

### A. Introduction

1. With one exception, Ministerial decisions are made by the Planning Official (or designee) without public notice and without a public hearing.
2. The Ministerial procedure is used when there are clear and objective review criteria, and applying City standards and criteria requires no use of discretion.



### B. Pre-Application Conference

A pre-application conference is not required for Ministerial applications, but is recommended. The applicant may request additional meetings after an initial pre-application conference (fees may be assessed for these additional meetings).

### C. Application Requirements

1. **Application Forms:** Ministerial applications shall be made on forms provided by the Planning Official or designee.
2. **Application Requirements.** Ministerial applications shall:
  - a. Include the information requested on the application form.
  - b. Address the criteria in sufficient detail for review and action.
  - c. Be filed with the required fee.

#### ***D. Ministerial Decision Requirements***

The Planning Official's (or designee's) decision shall address all of the relevant decision criteria. Based on the criteria and the facts contained within the record, the Planning Official shall approve, approve with conditions, or deny the requested land use decision or action. A written record of the decision shall be provided to the applicant and kept on file in the City's Community Development office.

#### ***E. Final Decision and Appeals***

1. A Ministerial decision shall be final on the date it is mailed or otherwise provided to the applicant, whichever occurs first.
2. A decision by the Planning Official may be appealed to the Planning Commission.

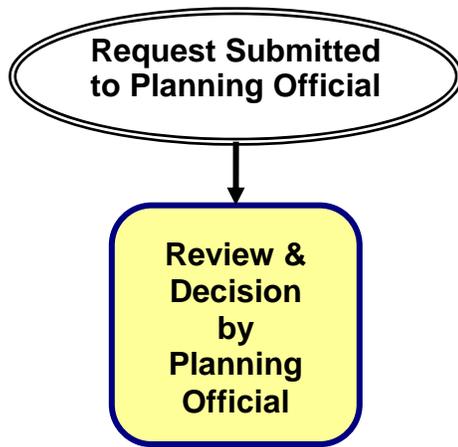
#### ***F. Effective Date***

The decision is effective the day it is issued in writing.

## 16.20.040 ADMINISTRATIVE DECISION MAKING PROCEDURE

Administrative decisions are made by the Planning Official [or the Planning Commission by referral from the Planning Official or appeal by a person with standing] with public notice. The Planning Official may refer an Administrative Review application to the Planning Commission for a public hearing, or the applicant may request referral to the Planning Commission for a public hearing. The appeal of an Administrative decision by the Planning Official is heard by the Planning Commission, and an appeal of a decision by the Planning Commission is heard by the City Council.

**Figure 16.20.04-1: Administrative Review**



### **A. Pre-Application Conference**

A pre-application conference is not required for Administrative applications, but is recommended. The applicant may request additional meetings after an initial pre-application conference (fees may be assessed for these additional meetings).

### **B. Application Requirements**

**1. Application Forms.** Administrative applications shall be made on forms provided by the Planning Official or designee.

**2. Submittal Information.** The application shall:

- a. Include the information requested on the application form.
- b. Be filed with six (6) hard copies and one (1) electronic copy (in a form specified by the City) of a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision-making. Note: additional information may be required under the specific application requirements for each decision, (e.g., Land Use Review, Land Divisions, Modifications, Code Interpretations, and so on).
- c. Be accompanied by the required fee.

### **C. Notice of Application for Administrative Decision**

1. Before making an Administrative Decision, the Planning Official shall mail notice to:
  - a. All owners of record of real property within one hundred feet of the subject site.
  - b. All City-recognized neighborhood groups or associations whose boundaries include the site.
  - c. Any person who submits a written request to receive a notice.
  - d. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City, or required by State statute.

- e. The City shall notify the road authority, owners of airports and rail authority and owner of all applications for administrative decisions.
  - f. Other affected agencies, as appropriate, for review of the application.
2. The purpose of the notice is to give nearby property owners and other interested people the opportunity to submit written comments about the application, before the Administrative Decision is made. The goal of this notice is to invite people to participate early in the decision-making process.
3. Notice of a pending Administrative Decision shall:
- a. Provide a 14-day period for submitting written comments before a decision is made on the land use application.
  - b. Identify the specific land use decisions or decisions requested.
  - c. Describe the street address or other easily understandable reference to the location of the site.
  - d. List the relevant decision criteria by name and number of Code Sections and Subsections.
  - e. State the place, date and time the comments are due, and the person to whom the comments should be addressed.
  - f. Include the name and telephone number of a contact person regarding the Administrative Decision.
  - g. State that if any person fails to address the relevant decision criteria with enough detail, they may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue. Only comments on the relevant decision criteria are considered relevant evidence.
  - h. State that all evidence relied upon by the Planning Official (or Planning Commission) to make this decision is in the public record, available for public review. Copies of this evidence can be obtained at a reasonable cost from the City.
  - i. State that after the comment period closes, the Planning Official shall issue an Administrative Decision. The decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice.

#### ***D. Administrative Decision Requirements***

- 1. The applicable decision authority shall make written decisions addressing all of the relevant decision criteria and standards. Based upon the criteria and standards, and the facts contained within the record, the applicable decision authority shall approve, approve with conditions, or deny the requested land use decision application or action.
- 2. Unless otherwise required by provisions in the Development Code, Administrative Reviews involving the establishment of a new structure or facility, or the expansion of an existing structure or facility, shall be subject to the following specific criteria:
  - a. The proposal shall conform to use, height limits, setbacks and similar development requirements of the underlying zone.
  - b. The proposal shall comply with applicable access and street improvement requirements in Chapters 16.12 and 16.13, respectively.

- c. The proposal shall comply with applicable parking requirements in Chapter 16.14
- d. The proposal shall comply with applicable screening and landscaping provisions in Chapter 16.15.
- e. Any required public facility improvements shall comply with provisions in Chapter 16.16.
- f. Where applicable, the proposal shall comply with development requirements within identified hazard areas and/or overlay zones.
- g. The proposal shall comply with the supplementary zone regulations contained in Chapter 16.19 or elsewhere in the Development Code.

**E. Notice of Decision**

1. Within five working days after the Planning Official signs the decision, a Notice of Decision shall be sent by mail to:
  - a. The applicant and all owners or contract purchasers of record of the site that is the subject of the application.
  - b. Any person who submits a written request to receive notice, or provides comments during the application review period.
  - c. Any City-recognized neighborhood group or association whose boundaries include the site.
  - d. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City, and other agencies that were notified or provided comments during the application review period.
2. The Planning Official shall cause an affidavit of mailing and posting of the notice to be prepared and made a part of the file. The affidavit shall show the date the notice was mailed and posted, and shall demonstrate that the notice was mailed to the people and within the time required by law.
3. The Administrative (Notice) of Decision shall contain:
  - a. A description of the applicant's proposal and the City's decision on the proposal.
  - b. The address or other geographic description of the property proposed for development.
  - c. A statement of where the City's case file and record can be reviewed.
  - d. The date the decision shall become final, unless appealed.
  - e. A statement briefly explaining how a participant in the process can file an appeal based on their testimony, the deadline for filing an appeal, and where further information can be obtained concerning the appeal process.
  - f. A statement that unless appellant (the person who files the appeal) is the applicant, the hearing on the appeal shall be limited to the specific issues identified in the written comments submitted during the comment period.
  - g. The applicant shall provide the following notice to the mortgagee, lien holder, vendor, or seller: "The City of Lebanon Development Code requires that if you receive this notice of decision it shall be promptly forwarded to the purchaser."

## **F. Final Decision and Effective Date**

An Administrative Decision is final for purposes of appeal, when it is mailed by the City. An Administrative Decision is effective on the day after the appeal period expires (14 days after the date the Notice of Decision was mailed) if there is no appeal. If an appeal is filed, the decision is effective when the appeal is decided.

## **G. Appeal**

An Administrative decision may be appealed to the Planning Commission as follows:

### **1. Who May Appeal**

The following people have legal standing to appeal an Administrative decision:

- a. The applicant.
- b. A person who participated in the proceeding by submitting written comments or who requested a copy of the decision.

### **2. Notice of Appeal**

A person described in Subsection 16.20.040.G.1, above, may appeal an Administrative Decision by filing a Notice of Appeal according to the following procedures;

- a. Time for filing. A Notice of Appeal shall be filed with the Planning Official within 14 days of the date the Notice of Decision was mailed;
- b. Content of notice of appeal. The Notice of Appeal shall contain:
  - (1) An identification of the decision being appealed, including the date of the decision.
  - (2) A statement demonstrating the person filing the Notice of Appeal has standing to appeal.
  - (3) A statement explaining the specific criteria the person believes the Planning Official applied incorrectly or failed to apply.
  - (4) Filing fee.

### **3. Scope of Appeal**

The appeal of an Administrative Decision by a person with standing shall be a hearing *de novo* before the Planning Commission. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the Administrative review. The Planning Commission may allow additional evidence, testimony or argument concerning any relevant standard, criterion, condition, or issue.

### **4. Appeal Procedures**

If appealed to the Planning Commission, Quasi-Judicial notice, hearing procedures and decision-making process shall also be used for all Administrative Appeals. All such appeals shall be reviewed under the provisions, requirements and procedures of Section 16.20.050.

## 5. Further Appeal to City Council

- a. The decision of the Planning Commission regarding an appeal of an Administrative Decision is the final decision of the City unless appealed to City Council.
- b. An appeal to City Council shall follow the same notification procedures as for the Planning Commission hearing. **The City Council Hearing shall be conducted based on the record compiled by the Planning Commission and is limited to those issues raised before the Planning Commission.**
- c. The decision of the City Council on an appeal is final and effective on the date it is mailed by the City.
- d. The City Council's decision may be appealed to the State Land Use Board of Appeals (LUBA) pursuant to the provisions of applicable State Law.

## 16.20.050 QUASI-JUDICIAL DECISION MAKING PROCEDURE

Quasi-Judicial decisions are made by the Planning Commission after a public hearing, with appeals reviewed by the City Council. Quasi-Judicial decisions generally use discretionary decision criteria.

Figure 16.20.050-1: Quasi-Judicial Review



### A. Pre-Application Conference

A pre-application conference with Planning staff and/or the City's Development Review Team (DRT) is **required** for all Quasi-Judicial applications. The applicant may request additional meetings after an initial pre-application conference (fees may be assessed for these additional meetings).

### B. Application Requirements

1. **Application forms.** Quasi-Judicial applications shall be made on forms provided by the City Planning Official or designee. If an Administrative application is referred to a Quasi-Judicial hearing, either voluntarily by the applicant or staff, or upon appeal, no new application is required.

2. **Submittal Information.** The Quasi-Judicial application shall:

- a. Include the information requested on the application form.
- b. Be filed with six (6) hard copies and one (1) electronic copy (in a form specified by the City) of a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision-making. Note: additional information may be required under the specific application requirements for each decision, (e.g., Land Use Review, Land Divisions, Modifications, Code Interpretations).
- c. Be accompanied by the required fee.

### C. Notice of Hearing

#### 1. Mailed Notice

The City shall mail the notice of the Quasi-Judicial action. The records of the Linn County Assessor's Office are the official records for determining ownership. Notice of a Quasi-Judicial application hearing or Administrative appeal hearing shall be given by the City Planning Official or designee in the following manner:

- a. At least 20 days before the hearing date, notice shall be mailed to:
  - (1) The applicant and all owners or contract purchasers of record of the property that is the subject of the application.

- (2) All property owners of record within two hundred and fifty (250) feet of the site.
  - (3) Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies.
  - (4) The City shall notify the road authority, owners of airports, and rail authority and owner, when there is a proposed development abutting or affecting their transportation facility.
  - (5) Any neighborhood or community organization recognized by the City Council and whose boundaries include the property proposed for development.
  - (6) Any person who submits a written request to receive notice.
  - (7) For appeals of Administrative Reviews, the appellant and all persons who were entitled to receive notice.
  - (8) For a Land Use Zoning Map change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with the provisions of applicable State Law.
- b. The City Planning Official or designee shall have an affidavit of notice prepared and made a part of the file. The affidavit shall state the date that the notice was mailed to the persons who must receive notice.

## **2. Publication**

At least 14 business days before the hearing, notice of the hearing shall be printed in a newspaper of general circulation in the City. The newspaper's affidavit of publication of the notice shall be made part of the administrative record.

## **3. Content of Notice for Quasi-Judicial Hearing**

Notice of appeal of an Administrative decision or notice of a Quasi-Judicial hearing to be mailed and published per Subsection 16.20.050.C.1 above shall contain the following information:

- a. The nature of the application and the proposed land use or uses that could be authorized for the property.
- b. The applicable criteria and standards from the development Code(s) that apply to the application.
- c. The street address or other easily understood geographical reference to the subject property.
- d. The date, time, and location of the public hearing.
- e. A statement that the failure to raise an issue in person, or by letter at the hearing, or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue, means that an appeal based on that issue cannot be filed with the State Land Use Board of Appeals.

- f. The name of a City representative to contact and the telephone number where additional information on the application may be obtained.
- g. A statement that a copy of the application, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards can be reviewed at City of Lebanon Community Development Office at no cost and that copies shall be provided at a reasonable cost.
- h. A statement that a copy of the City's staff report and recommendation to the hearings body shall be available for review at no cost at least seven days before the hearing, and that a copy shall be provided on request at a reasonable cost.
- i. A general explanation of the requirements to submit testimony, and the procedure for conducting public hearings.
- j. The applicant shall provide the following notice to the mortgagee, lien holder, vendor, or seller: "The City of Lebanon Development Code requires that if you receive this notice of decision it shall be promptly forwarded to the purchaser."

#### **4. Notification of Transportation Authorities and Owners**

The City shall notify the road authority, owners of airports and rail authority and owner of all land use applications that require public hearings, all subdivision and partition applications, and other applications which affect private access to roads. Owners of airports also shall be notified of any application within airport noise corridors and imaginary surfaces.

#### ***D. Conduct of the Public Hearing***

1. At the commencement of the hearing, the hearings body shall state to those in attendance:
  - a. The applicable decision criteria and standards that apply to the application or appeal.
  - b. A statement that testimony and evidence shall concern the decision criteria described in the staff report, or other criteria in the land use regulations that a person testifying believes to apply to the decision.
  - c. A statement that failure to raise an issue with sufficient detail to give the hearings body and the parties an opportunity to respond to the issue, means that no appeal may be made to City Council, the State Land Use Board of Appeals or the circuit court on that issue.
  - d. A statement to the applicant that the 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.
  - e. Before the conclusion of the initial evidentiary hearing, any participant may ask the Planning Commission for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing. The hearings body shall grant the request by scheduling a date to finish the hearing (a "continuance") per Subsection 16.20.050.D.2 below, or by leaving the record open for additional written evidence/testimony per Subsection 16.20.050.D.3 below.

2. If the Planning Commission grants a continuance, the completion of the hearing shall be continued to a date, time, and place at least seven days after the date of the first evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and respond to new written evidence and verbal testimony. If new written evidence is submitted at the continued hearing, any person may request, before the conclusion of the continued hearing, that the record be left open for at least seven days, so that they can submit additional written evidence/testimony in response to the new written evidence.
3. If the Planning Commission leaves the record open for additional written evidence/testimony, the record shall be left open for at least seven days after the hearing. The Planning Commission shall leave a record open only after the Public Testimony portion of the hearing as been closed. During the Public Testimony portion of the hearing any participant may ask the City verbally or in writing to leave the record open to submit new written testimony. If such a request is filed, the Planning Commission shall leave the record open for at least seven days, and an equivalent amount of time for the submittal of a written rebuttal by the other side.
4. Unless waived by the applicant, the City shall allow the applicant at least seven days after the record is closed to all other persons to submit final written arguments in support of the application, unless the applicant expressly waives this right. The applicant's final submittal shall be part of the record but shall not include any new evidence.
5. In making its decision, the hearings body may take notice of facts not in the hearing record (e.g., local, state, or federal regulations; previous City decisions; case law; staff reports). The review authority must announce its intention to take notice of such facts in its deliberations, and allow persons who previously participated in the hearing to request the hearing record be reopened, if necessary, to present evidence concerning the noticed facts.

### ***E. The Record***

1. The record shall contain all testimony and evidence that is submitted to the City and the hearings body.
2. The review authority shall retain custody of the record according to State mandated public record retention laws.

### ***F. Order of Proceedings***

1. The presiding officer will state the case and call the public hearing to order, informing those present that testimony and evidence is to be directed towards the applicable criteria for the case and making all other introductory statements required by law. The presiding officer may establish the time allowed for the presentation of information.
2. Any objections to the notice and on jurisdictional grounds shall be noted in the record.

3. Any abstentions or disqualifications shall be determined. Members shall announce all bias, conflicts of interest and shall disclose the time, place, and nature of any *ex parte* contacts they have had. Parties to the case shall have the opportunity to rebut any information contained in the *ex parte* contact.
4. A staff report shall be presented including a list of the criteria applying to the case. City staff may also present additional information whenever allowed by the presiding officer during the proceedings.
5. The hearing authority may view the subject property for purposes of evaluating the proposal, but shall state in the record the place, time, manner, and circumstances of such viewing, including any evidence not otherwise included in the record that was obtained during the site visit.
6. **During the public testimony portion of the hearing**, the applicant or those persons representing the applicant may present information.
7. **During the public testimony portion of the hearing**, those persons who support the proposal may present evidence or make inquiries. If additional documents or evidence are provided in support of an application at the initial evidentiary hearing, any party shall, upon request, be entitled to a continuance of the hearing to allow for adequate preparation of rebuttal.
8. **During the Public Testimony portion of the hearing**, those persons who oppose the proposal may present evidence or offer inquiries.
9. **During the Public Testimony portion of the hearing**, those persons who do not necessarily support or oppose the proposal may present evidence or offer inquiries.
10. **During the Public Testimony portion of the hearing**, rebuttal testimony may be presented by persons who have testified supporting the proposal. The scope of material presented during rebuttal shall be limited to matters raised during the course of the hearing.
11. At the **end of the Public Testimony portion of the hearing** (including the presentation of information, rebuttal, and written argument):
  - a. **Closing Public Testimony:** the presiding officer shall declare that the Public Testimony portion of the hearing is closed.
  - b. **Motion to Continue:** However, **the Public Testimony portion of the hearing** may be continued if there is a **motion to continue** the Public Testimony portion of the hearing.
  - c. **Leaving the Record Open:** If the public hearing is the initial evidentiary hearing and **the Public Testimony portion of the hearing** is not to be continued, any participant may request that the record remain open for submittal of additional written testimony. If such a request is made, the Planning Commission shall leave the record open for at least seven days, and an equivalent amount of time for the submittal of a written rebuttal by the other side. The record may be left open longer than seven days at the discretion of the hearing authority. If an opponent of the proposal requests that the record be left open, the applicant shall have an equal amount of time to respond in writing to materials submitted by the opponent. Likewise, if the applicant of the proposal requests that the record be left open, the opponent(s) shall have an equal amount of time to respond in writing to materials submitted by the applicant.

12. Once the **Public Testimony portion** of a hearing has been closed, no further evidence shall be received, unless the **Public Testimony portion** of a hearing is re-opened by the Planning Commission. If so, persons who do not necessarily support or oppose the proposal may comment on any new evidence submitted by the applicant, and rebuttal testimony may be presented by the applicant or persons who have testified supporting the proposal.
13. The Quasi-Judicial Public Hearing Process is summarized in **Table 16.20.050-1** following.

**TABLE 16.20.050-1: SUMMARY OF QUASI-JUDICIAL PUBLIC HEARING PROCESS**

(for Planning Commission or City Council)

**Step 1.** Open Public Hearing, including legal statements

**Step 2.** Disclosure (Ex Parte, Conflict of Interest)

**Step 3.** Staff Report

**Step 4.** Questions of Staff

**Step 5. Open Public Testimony Portion of Hearing**

**Step 5.1** Public Testimony In Favor – must address identified criteria or criteria speaker believes apply.

**Step 5.2** Public Testimony in Opposition – must address identified criteria or criteria speaker believes apply.

**Step 5.3.** Rebuttal by Applicant

**Step 6. Close Public Testimony Portion of Hearing**

**Step 7.** Hearings Body Discussion (questions may be asked of staff)

**Step 8.** Hearings Body Decision

**Step 9.** Conclude Public Hearing

## **G. Impartial Review Authority and Ex Parte Communications**

Participants in the appeal of an Administrative decision or participants in a Quasi-Judicial hearing are entitled to an impartial review authority as free from bias, conflicts of interest and *ex parte* contacts (see below) as reasonably possible. Furthermore, the public has a countervailing right of free access to public officials. Therefore:

1. At the beginning of the public hearing, hearings body members shall disclose the substance of any *ex parte* contacts (as defined in Subsection 16.20.050.G.6 below) concerning the application or appeal. He or she shall state whether the contact has impaired their impartiality or their ability to vote on the matter and shall participate or abstain accordingly.
2. A member of the hearings body shall not participate in any proceeding in which the member or a relative of the member, as defined in ORS 244.020, has a direct or substantial financial interest. Any actual or potential interest shall be disclosed at the hearing where the action is being taken.
3. Disqualification of a member of the hearings body due to bias, *ex parte* contacts or conflict of interest may be ordered by a majority of the members present and voting. The person who is the subject of the motion may not vote on the motion to disqualify.
4. If enough members of the Planning Commission abstain or are disqualified such that there is not a quorum, the City Council shall be the hearing body. If all members of the City Council abstain or are disqualified, a quorum of those members present who declare their reasons for abstention or disqualification shall be re-qualified to make a decision.
5. Any member of the public may raise bias or conflict of interest issues at the public hearing, to which the member of the hearings body shall respond in accordance with this Section.
6. Ex Parte Communications
  - a. Members of the hearings body shall not:
    - (1) Communicate directly or indirectly with any applicant, appellant, other party to the proceedings, or representative of a party about any issue involved in a hearing without giving notice as noted above in the preceding Subsections.
    - (2) Make use of any communication, report, or other materials outside the record prepared by the proponents or opponents in connection with the particular case, unless all participants are given the opportunity to respond to the noticed materials.
  - b. A decision or action of the hearings body is not invalid due to *ex parte* contacts if the person receiving contact:
    - (1) Places in the record the substance of any written or verbal *ex parte* communications concerning the decision or action; and
    - (2) Makes a public announcement of the content of the communication and of all participants' right to dispute the substance of the communication made. This announcement shall be made at the first hearing following the communication during which action shall be considered or taken on the subject of the communication.
  - c. A communication between City staff and the hearings body is not considered an *ex parte* contact.

## **H. Presenting and Receiving Evidence**

1. The hearings body may set reasonable time limits for presentations and may limit or exclude cumulative, repetitious, irrelevant or personally derogatory testimony or evidence.
2. No verbal testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing only as provided in when the record is left open.
3. Members of the hearings body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.

## **I. The Decision Process and Appeals**

### **1. Basis for Decision**

Approval or denial of an appeal of an Administrative decision or of a Quasi-Judicial application shall be based on standards and criteria in the Development Code. The standards and criteria shall relate approval or denial of a discretionary development permit application to the applicable development regulations and, when appropriate, to any neighborhood refinement plan for the area in which the development would occur and to the development regulations for the City as a whole.

### **2. Findings and Conclusions**

Approval or denial shall be based upon the criteria and standards considered relevant to the decision. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts.

### **3. Form of Decision**

The Planning Commission shall issue a final written order containing the findings and conclusions stated in Subsection 16.20.050.1.2 above, which either approves, denies, or approves with specific conditions. The Planning Commission may also issue appropriate intermediate rulings when more than one permit or decision is required.

## **J. Decision-Making Time Limits**

The City Planning Official or designee shall prepare an order for the signature of the Planning Commission Chair within ten business days after the Commission's decision. This order shall reflect the decision, criteria and findings made by the Planning Commission, and shall constitute the final written order as set forth in Subsection 16.20.050.1.3 above.

## **K. Notice of Decision**

1. Written notice of an Administrative Appeal decision or a Quasi-Judicial decision shall be mailed to the applicant and to all participants of record within ten business days after the hearings body decision. For purposes of appeal, the decision is effective on the date that the final written order, as defined in Subsection 16.20.050.I.3 above, is mailed to the applicant and to all participants of record. The mailing shall be made by regular mail, with sufficient postage affixed and addressed to the last known address of the parties as reflected by the record of the proceedings. The Planning Official shall cause an affidavit of mailing and posting of the notice to be prepared and made a part of the file. The affidavit shall show the date the notice was mailed and posted, and shall demonstrate that the notice was mailed to the people and within the time required by law.
2. Failure of any person to receive mailed notice shall not invalidate the decision or extend the appeal period for any decision or final written order.
3. An affidavit of mailing shall be made and placed in the official case file for the land use action.

## **L. Final Decision, Effective Date, and Appeals**

1. If an appeal is not filed within 15 days following the date the Planning Commission's final written decision is mailed, the decision of the Commission shall be final.
2. A Decision of the Planning Commission may be appealed to the City Council by filing a written appeal notice with the City Recorder during the 15 day appeal period after the Planning Commission's final written decision was mailed as provided in Subsection 16.20.050.K.1 above.
3. The written appeal notice shall be on a form required by the City, accompanied by a required filing fee that shall be set by the City.
4. If an appeal is filed, the Council shall receive record of the proceedings from the Planning Commission and a public hearing shall be held on the appeal pursuant to the procedures set forth in this Chapter.
5. If an appeal is filed, the decision becomes effective on the day after the appeal is decided by the City Council.
6. The notification and hearings procedures for Quasi-Judicial applications on appeal to the City Council shall be the same as for the initial hearing.
7. An appeal of a land use decision to the State Land Use Board of Appeals (LUBA) must be filed within 21 days of the City Council's written decision.

## **M. City Council Actions on Issues First Reviewed by the Planning Commission**

### **1. Overview**

With the exception of Legislative Actions, a City Council public hearing on a land use application first heard by the Planning Commission shall be based on the record established before the Planning Commission. In such cases, the City Council's decision shall be based solely upon a review of the Planning Commission record and the testimony and other evidence in that record.

## **2. Scope of Review**

- a. Upon appeal, the City Council shall not re-examine issues of fact and shall limit its review to determining whether there is substantial evidence to support the findings of the Planning Commission, or to determine if errors in law were committed by the Planning Commission.
- b. Review shall in any event be limited to those issues set forth in the notice of appeal.
- c. The appellant is also precluded from raising an issue on appeal to the council if the appellant could have raised the issue before the Planning Commission but failed to do so.
- d. Review shall be based on the record of the initial proceedings. The record shall consist of the application and all materials submitted with it; documentary evidence, exhibits and materials submitted at the initial hearing; recorded testimony; the decision of the approving authority, including the findings and conclusions; and the notice of appeal.
- e. Only the appellant and other parties who appeared in person or who submitted evidence in the initial proceedings may participate in the appeal hearing.
- f. Appellant shall make the initial presentation and shall be allowed rebuttal.
- g. Each participant in the appeal hearing shall present to the council those portions of the record which the participant deems relevant to the appeal.
- h. If a party wishes the Council to review recorded testimony, the party shall present a written summary or transcript of such testimony to be read by the council in lieu of actually listening to the recording.
- i. If the City Council determines that additional evidence is necessary in order to make a decision, it shall remand the decision back to the Planning Commission for further proceedings.

## **3. Council Options**

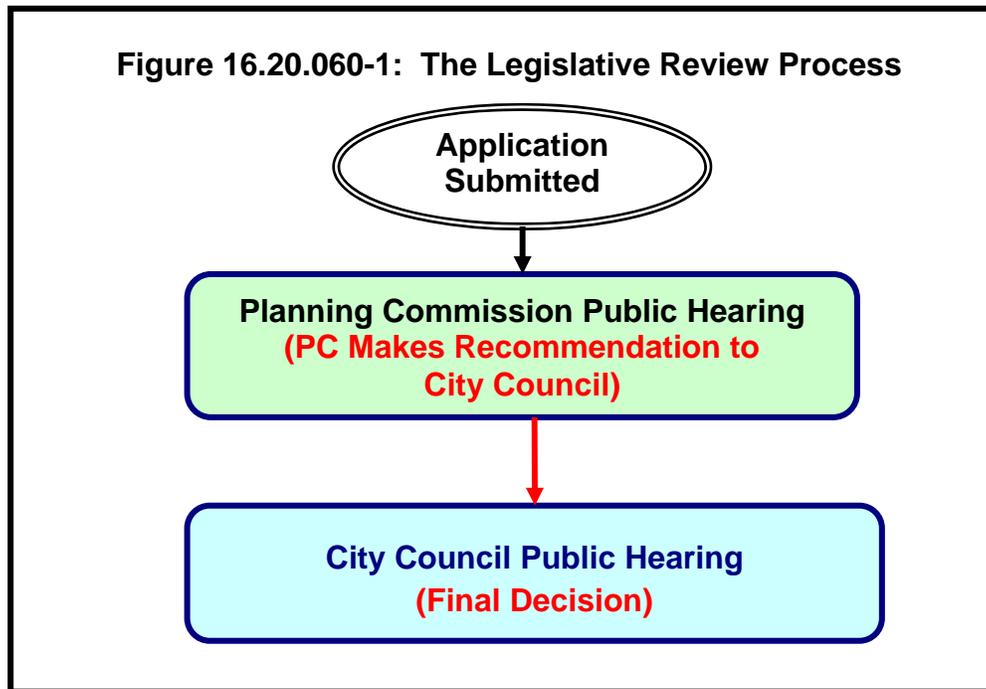
- a. The Council may, in its decision on the appeal, amend, rescind, or affirm the action appealed from, or may remand the matter for further proceedings or fact finding by the Planning Commission.
- b. The Council shall not be bound by any finding, conclusion or other ruling of the Planning Commission.

## ***N. Continuation of the Public Hearing***

The Planning Commission or the City Council may continue any hearing, and no additional notice of hearing is required if the matter is continued to a specified place, date, and time.

## 16.20.060 LEGISLATIVE DECISION MAKING PROCEDURE

Legislative procedures apply to legislative matters. Legislative matters involve the creation, revision, or large-scale implementation of public policy (e.g., annexations, adoption of land use regulations, Zoning Map amendments, and Comprehensive Plan Text and Map amendments). Such legislative matters are considered initially by the Planning Commission which makes “recommendations” for action by the City Council. Final decisions are made by the City Council.



### A. Pre-Application Conference

A pre-application conference is required for all Legislative applications initiated by a party other than the City. The applicant may request additional meetings after an initial pre-application conference (fees may be assessed for these additional meetings).

### B. De Novo Hearings

City Council public hearings on legislative matters, including those first heard by the Planning Commission shall be de novo hearings. In other words, the City Council shall admit new verbal and written evidence into the record. In such cases, the City Council decision shall be based upon the new evidence and the Planning Commission record, including the testimony and other evidence in that record.

## **C. Application Requirements**

### **1. Application forms**

Legislative applications shall be made on forms provided by the City Planning Official or designee.

### **2. Submittal Information**

The application shall contain:

- a. The information requested on the application form.
- b. A map and/or plan addressing the appropriate criteria and standards in sufficient detail for review and decision (as applicable).
- c. The required fee.
- d. One copy of a letter or narrative statement that explains how the application satisfies each and all of the relevant decision criteria and standards.

## **D. Notice of Hearing**

### **1. Required Hearings**

A minimum of two hearings, one before the Planning Commission and one before the City Council, are required for all Legislative applications.

### **2. Notification Requirements**

Notice of public hearings for the request shall be given by the City Planning Official or designee in the following manner:

- a. At least 20 days, but not more than 40 days, before the date of the first hearing on an ordinance that proposes to amend the Comprehensive Plan or any element thereof, or to adopt an ordinance that proposes to rezone property, a notice shall be prepared in conformance with the provisions of applicable State Law and mailed to:
  - (1) Each owner whose property would be rezoned in order to implement the ordinance (including owners of property subject to a Comprehensive Plan Amendment shall be notified if a zone change would be required to implement the proposed Comprehensive Plan amendment).
  - (2) Any affected governmental agency.
  - (3) Any person who requests notice in writing.
  - (4) For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park.
  - (5) Owners of airports shall be notified of a proposed zone change in accordance with the applicable provisions of Chapter 16.11 of this Development Code.

- b. At least 10 days before the scheduled Planning Commission public hearing date, and 14 days before the City Council hearing date, public notice shall be published in a newspaper of general circulation in the City.
- c. The City Planning Official or designee shall:
  - (1) For each mailing of notice, file an affidavit of mailing in the record as provided by Subsection 16.20.060.D.2.a above.
  - (2) For each published notice, file in the record the affidavit of publication in a newspaper that is required in subsection 16.20.060.D.2.b above.
- d. The Oregon Department of Land Conservation and Development (DLCD) shall be notified in writing of proposed comprehensive plan and Development Code amendments as per the provisions of State requirements. The notice to DLCD shall include a DLCD Certificate of Mailing.
- e. Notifications for annexation shall follow the provisions of this Chapter.

### **3. Content of Notices**

The mailed and published notices shall include the following information:

- a. The number and title of the file containing the application, and the address and telephone number of the City Planning Official or designee's office where additional information about the application can be obtained.
- b. The proposed site location.
- c. A description of the proposed site and the proposal in enough detail for people to determine what change is proposed, and the place where all relevant materials and information may be obtained or reviewed.
- d. The time(s), place(s), and date(s) of the public hearing(s); a statement that public verbal or written testimony is invited; and a statement that the hearing will be held under this title and rules of procedure adopted by the Council and available at City Hall.
- e. The applicant shall provide the following notice to the mortgagee, lien holder, vendor, or seller: "The City of Lebanon Development Code requires that if you receive this notice of decision it shall be promptly forwarded to the purchaser."

### **4. Failure to Receive Notice**

The failure of any person to receive notice shall not invalidate the action, providing:

- a. Personal notice is deemed given where the notice is deposited with the United States Postal Service.
- b. Published notice is deemed given on the date it is published.

### **5. Affidavit of Mailing**

An affidavit of mailing shall be made and placed in the official case file for the land use action.

## **E. Hearing Process and Procedure**

Same as for Quasi-Judicial hearings (see Section 16.20.050 above).

## **F. Continuation of the Public Hearing**

The Planning Commission or the City Council may continue any hearing, and no additional notice of hearing shall be required if the matter is continued to a specified place, date, and time.

## **G. Decision Process and Authority**

### **1. The Planning Commission**

- a. After notice and a public hearing, the Planning Commission shall vote on and prepare a recommendation to the City Council to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative.
  - b. Within 14 business days of determining a recommendation, the presiding officer shall sign the written recommendation, and it shall be filed with the City Planning Official or designee.
2. If the Planning Commission fails to adopt a recommendation to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative proposal within 60 days of its first public hearing on the proposed change, the City Planning Official or designee shall:
- a. Report the failure together with the proposed change to the City Council.
  - b. Provide notice and put the matter on the City Council's agenda for the City Council to hold a public hearing make a decision. No further action shall be taken by the Commission.

### **3. The City Council**

After notice and a public hearing,

- a. The City Council shall consider the recommendation of the Planning Commission. However, the City Council is not bound by the Commission's recommendation.
- b. The City Council shall approve, approve with modifications, deny, or adopt an alternative to an application for legislative change, or remand the application to the Planning Commission for rehearing and reconsideration on all or part of the application.
- c. The City Council shall act by ordinance, that shall be signed by the Mayor after the Council's adoption of the ordinance.

## **H. Vote Required for a Legislative Change**

1. A vote by a majority of the qualified voting members of the Planning Commission present is required for a recommendation for decision, decision with conditions, denial or adoption of an alternative.
2. A vote by a majority of the qualified members of the City Council present is required to decide any motion made on the proposal.

***I. Notice of Decision***

Notice of a Legislative decision shall be mailed to the applicant, all participants of record, and the Department of Land Conservation and Development (as per the provisions of State requirements), within five business days after the City Council decision is filed with the City Planning Official or designee. The City shall also provide notice to all persons as required by other applicable laws.

***J. Final Decision, Effective Date and Appeals***

A Legislative decision, if approved, shall take effect and shall become final as specified in the enacting ordinance, or if not approved, upon mailing of the notice of decision to the applicant.

## **16.20.070 GENERAL PROVISIONS**

### **A. Hearing Process and Procedure for Planning Commission and City Council**

1. Unless otherwise provided in the rules of procedure adopted by the review body:
  - a. The presiding officer of the Planning Commission and of the City Council shall have the authority to:
    - (1) Regulate the course, sequence, and decorum of the hearing;
    - (2) Direct procedural requirements or similar matters; and
    - (3) Impose reasonable time limits for verbal presentations.
  - b. A person may not address the Commission or the Council without:
    - (1) Receiving recognition from the presiding officer; and
    - (2) Stating their full name and address.
  - c. Disruptive conduct such as applause, cheering, or display of signs shall be cause for expulsion of a person or persons from the hearing, termination or continuation of the hearing, or other appropriate action determined by the presiding officer.
2. Unless otherwise provided in the rules of procedures adopted by the Council, the presiding officer of the Commission and of the Council shall conduct the hearing as follows:
  - a. The presiding officer shall begin the hearing with a statement of the nature of the matter before the body, a general summary of the procedures, a summary of the standards for decision-making, and whether the decision which will be made is a recommendation to the City Council or the final decision of the Council.
  - b. The City Planning Official or designee's report and other applicable staff reports shall be presented.
  - c. The public shall be invited to testify.
  - d. The public hearing may be continued to allow additional testimony or it may be closed.
  - e. The body's deliberation may include questions to the staff, comments from the staff, and inquiries directed to any person present.

### **B. Burden of Proof and Demonstration of Compliance**

It is the responsibility of an applicant to demonstrate compliance or the ability to comply with Decision Criteria. In short, the burden of proof is upon the applicant.

### **C. Time Computation**

In computing any period of time prescribed or allowed by this Chapter, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event, the period runs until the end of the following business day.

## ***D. Pre-Application Conferences***

- 1. Participants.** When a pre-application conference is required, the applicant shall meet with the City Planning Official or his/her designee(s) and other parties as appropriate.
- 2. Additional Meetings and Fees:** The applicant may request additional meetings after an initial pre-application conference (fees may be assessed for these additional meetings).
- 3. Information Provided:** At such conference, the City Planning Official or designee shall:
  - a. Cite the comprehensive plan policies and map designations applicable to the proposal;
  - b. Cite the ordinance provisions, including substantive and procedural requirements applicable to the proposal;
  - c. Provide available technical data and assistance that will aid the applicant;
  - d. Identify other governmental policies and regulations that relate to the application; and
  - e. Reasonably identify other opportunities or constraints concerning the application.
- 4. Disclaimer:** Failure of the City Planning Official or his/her designee to provide any of the information required by this Section shall not constitute a waiver of any of the standards, criteria or requirements for the application;
- 5. Changes in the Law:** Due to possible changes in federal, state, regional, and local law, the applicant is responsible for ensuring that the application complies with all applicable laws on the day the application is deemed complete.
- 6. Not Public Meetings:** Pre-application conferences are not public meetings, and are not open to the public.
- 7. Confidentiality:** To the extent allowable by State law, pre-application conferences will remain confidential.

## ***F. Acceptance and Review of Applications***

### **1. Initiation of Applications**

- a. Applications for decision under this Chapter may be initiated by (and qualified by provisions in other Chapters in Article Four of this Development Code):
  - (1) Order of City Council.
  - (2) Resolution of the Planning Commission.
  - (3) The City Planning Official or designee.
  - (4) A record owner of property [person(s) whose name is on the most recently recorded deed], or contract purchaser with written permission from the record owner.
- b. A person authorized to submit an application under this section may be represented by an agent authorized in writing to make the application on the person's behalf.

## **2. Consolidation of Proceedings**

When an applicant applies for more than one type of land use or development permit (e.g., Administrative and Quasi-Judicial) for the same one or more parcels of land, the proceedings may be consolidated for review and decision.

- a.** If more than one decision authority would be required to decide on the applications if submitted separately, then the decision may be made by the decision authority having original jurisdiction over one of the applications in the following order of preference: the Council, the Commission, or the City Planning Official or designee.
- b.** When proceedings are consolidated:
  - (1)** The notice may identify each application to be decided.
  - (2)** The decision on a plan map amendment may precede the decision on a proposed land use district change and other decisions on a proposed development. Similarly, the decision on a zone map amendment may precede the decision on a proposed development and other actions.
  - (3)** Separate findings and decisions may be made on each application.

## **3. Coordinated Review**

The City may also submit the application for review and comment to the City Engineer, road authority, and other applicable County, State, and federal review agencies.

## **4. Changes or Additions to the Application During the Review Period**

### **a. Process**

Once an application is deemed complete:

- (1)** All documents and other evidence relied upon by the applicant shall be submitted to the City Planning Official or designee at least seven days before the notice of action or hearing is mailed, if possible. Documents or other evidence submitted after that date shall be received by City Planning Official or designee, and transmitted to the hearings body, but may be too late to include with the staff report and evaluation.
- (2)** When documents or other evidence are submitted by the applicant during the review period but after the application is deemed complete, the assigned review person or body shall determine whether or not the new documents or other evidence submitted by the applicant significantly change the application.

### **b. Determination of Significant Change**

- (1)** If the assigned reviewer determines that the new documents or other evidence significantly change the application, the reviewer shall include a written determination that a significant change in the application has occurred as part of the decision. In the alternative, the reviewer may inform the applicant either in writing, or verbally at a public hearing, that such changes may constitute a significant change, and allow the applicant to withdraw the new materials submitted, in order to avoid a determination of significant change.

- (2) If the applicant's new materials are determined to constitute a significant change in an application that was previously deemed complete, the City shall take one of the following actions:
  - (a) Suspend the existing application and allow the applicant to submit a new application with the proposed significant changes. Before the existing application can be suspended, the applicant must consent in writing to waive the 120-day rule on the existing application. If the applicant does not consent, the City may not select this option.
  - (b) Reject the new documents or other evidence that has been determined to constitute a significant change, and continue to process the existing application without considering the materials that would constitute a significant change. The City will complete its decision-making process without considering the new evidence.

### c. New Application

If a new application is submitted by the applicant, that application shall be subject to a separate check for acceptance and completeness and will be subject to the standards and criteria in effect at the time the new application is accepted.

## 5. Acceptance of Only One Development Proposal Package at a Time for the Same Property

Requests for different development proposals for the same property shall not be considered by any review authority of the City (Planning Official, Planning Commission, City Council) at the same time. If an application has been filed and accepted by the City for a given property, additional different development applications for that same property cannot be accepted, until a final determination was made on the original proposal or the original proposal was withdrawn. **This limitation does not prevent an applicant from submitting and the City accepting and acting simultaneously upon multiple applications for the same development on the same property** (e.g., a Planned Development or Conditional Use application that might also involve a Subdivision, a Variance, or a Zone Amendment).

## G. Record of the Public Hearing

1. A verbatim record of the proceeding shall be made by stenographic, mechanical, or electronic means. It is not necessary to transcribe an electronic record. The minutes and other evidence presented as a part of the hearing shall be part of the record.
2. All exhibits received and displayed shall be marked to provide identification and shall be part of the record.

The official record shall include:

- a. All materials considered by the hearings body.
- b. All materials submitted by the City Planning Official or designee to the hearings body regarding the application.
- c. The verbatim record made by the stenographic, mechanical, or electronic means; the minutes of the hearing; and other documents considered.
- d. The final ordinance.
- e. All correspondence.
- f. A copy of the notices that were given as required by this Chapter.

## **H. City Planning Official's Duties**

The City Planning Official or designee shall:

1. Prepare application forms based on the criteria and standards in applicable state law, the City's comprehensive plan, and implementing ordinance provisions.
2. Accept all development applications that comply with application requirements.
3. Prepare a staff report that summarizes the application(s) and applicable decision criteria, and provides findings of conformance and/or non-conformance with the criteria. The staff report may also provide a recommended decision of: decision; denial; or decision with specific conditions that ensure conformance with the decision criteria.
4. Prepare a notice of the proposal decision:
  - a. In the case of an application subject to a Ministerial or Administrative review process, the City Planning Official or designee shall make the staff report and all case-file materials available at the time that the notice of the decision is issued.
  - b. In the case of an application subject to a Quasi-Judicial or Legislative hearing, the City Planning Official or designee shall make the staff report available to the public at least seven days prior to the scheduled hearing date, and make the case-file materials available when notice of the hearing is mailed, as provided by the previous Subsections of this Chapter.
5. Administer the hearings process.
6. File notice of the final decision in the City's records and mail a copy of the notice of the final decision to the applicant; all persons who provided comments or testimony; persons who requested copies of the notice; and any other persons entitled to notice by law.
7. Maintain and preserve the file for each application for the time period required by law. The file shall include, as applicable, a list of persons required to be given notice and a copy of the notice given; the affidavits of notice; the application and all supporting information; the staff report; the final decision including the findings, conclusions and conditions, if any; all correspondence; minutes of any meeting at which the application was considered; and any other exhibit, information or documentation which was considered by the decision-maker(s) on the application.
8. Administer the appeals and review process.

### **I. Amended Decision Process**

1. The purpose of an amended decision process is to allow the City Planning Official or designee to correct typographical errors, rectify inadvertent omissions and/or make other minor changes that do not materially alter the decision.
2. The City Planning Official or designee may issue an amended decision after the notice of final decision has been issued but before the appeal period has expired. If such a decision is amended, the decision shall be issued within 14 business days after the original decision would have become final, but in no event beyond the period for a final decision allowed by state law. A new 14-day appeal period shall begin on the day the amended decision is issued.
3. Notice of an amended decision shall be given using the same mailing and distribution list as for the original decision notice.
4. Modifications to approved plans or conditions of decision requested by the applicant shall follow the procedures in Chapter 16.24. All other changes to decisions that are not modifications under Chapter 16.24 follow the appeal process.

## **J. Expiration of Planning Approval and Re-Application**

Unless the decision authority otherwise stipulates, Planning Approval for all types of land use applications, except for subdivisions, are valid for two years. Subdivision approvals are valid for three years. Expiration of land use approval occurs when applicants do NOT “exercise” their land use approval (see Section 16.20.080 immediately below) within the approved time period<sup>2</sup>. Preliminary Plats for subdivisions must be recorded within the approved time period. The City shall NOT grant a renewal or extension if planning approval has expired. Applicants must resubmit if their approval has expired.

### **16.20.080 EXERCISING A LAND USE APPROVAL**

Unless otherwise specifically stated, exercising a land use decision shall be subject to the following regulations.

#### **A. When Building Permits are Required as Part of an Approved Land Use**

1. Except for manufactured home parks, when a building permit is required as part of an approved land use, the decision shall be considered exercised with the first placement or permanent construction of a structure on a site. This may include the pouring of slabs or footings, any work beyond the stage of excavation, including the first permanent framing or assembly of the structure or any part thereof on its piling or foundation.
2. Permanent construction does not include land preparation, such as clearing, grading, and filling; the installation of driveways or walkways; the excavation for a basement, footings, piers or foundations or the erection of temporary forms; the construction of accessory buildings, such as garages or sheds not occupied as dwelling units or not used as part of the main structure.

#### **B. Approval of Manufactured Home Parks**

The decision shall be considered exercised with the beginning of construction of facilities for servicing the site on which the manufactured homes are to be placed. This shall include, at a minimum, the construction of streets with final site grading or the pouring of concrete pads, or the extension or installation of utilities.

#### **C. When Building Permits are Not Required as Part of an Approved Land Use**

If the approval does not require a building permit, the decision shall be considered exercised if the use or activity which was approved is in operation within the approved time frame.

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<sup>2</sup> Pursuant to the provisions of other Chapters in this Code, the decision authority may grant approval of a land use request that has a time frame greater than the above noted two or three year period of time.

## **16.20.090 EXPEDITED LAND DIVISIONS**

An Expedited Land Division (“ELD”) shall be defined and may be used as provided under the provisions of applicable State Law.

### **A. Selection**

An applicant who wishes to use an ELD procedure for a partition, subdivision or planned development instead of the regular procedure type assigned to it, must request the use of the ELD in writing at the time the application is filed, or forfeit his/her right to use it.

### **B. Review Procedure**

All applications for Expedited Land Divisions shall comply with the provisions of applicable State Law and the City’s Comprehensive Plan. The provisions of applicable State Law detail the criteria, application and notice requirements, and action and appeal procedures for expedited land divisions.

### **C. Appeal Procedure**

An appeal of an ELD shall follow the procedures in the provisions of applicable State Law. Where the City has not otherwise appointed a hearings officer (referee) for such appeals, and the City Attorney is a Contractor (not a city employee), the City Attorney shall serve as the referee for ELD appeals.

## **16.20.100 NEIGHBORHOOD MEETINGS**

Applicants are *encouraged* to meet with adjacent property owners and neighborhood representatives prior to submitting their application to the City in order to solicit input and exchange information about the proposed development.

## **16.20.110 TRAFFIC IMPACT STUDIES**

### **A. Introduction**

The purpose of this Section of the Code is to assist in determining which road authorities participate in land use decisions, and to implement the State's Transportation Planning Rule that requires the City to adopt a process to apply conditions to development proposals in order to minimize impacts and protect transportation facilities. This Section establishes the standards for when a proposal must be reviewed for potential traffic impacts; when a Traffic Impact Study must be submitted with a development application in order to determine whether conditions are needed to minimize impacts to and protect transportation facilities; what must be in a Traffic Impact Study; and who is qualified to prepare the Study.

### **B. When a Traffic Impact Study Is Required**

The City or other road authority with jurisdiction may require a Traffic Impact Study (TIS) as part of an application for development, a change in use, or a change in access. A TIS may be required when a land use application involves one or more of the following actions:

1. A change in zoning or a plan amendment designation.
2. Any proposed development or land use action that a road authority states may have operational or safety concerns along its facility(ies).
3. An increase in site traffic volume generation by 300 Average Daily Trips (ADT) or more.
4. An increase in peak hour volume of a particular movement to and from the State highway by Twenty (20) percent or more.
5. An increase in use of adjacent streets by vehicles exceeding the 20,000 pound gross vehicle weights by 10 vehicles or more per day.
6. The location of the access driveway does not meet minimum sight distance requirements, or is located where vehicles entering or leaving the property are restricted, or such vehicles queue or hesitate on the State highway, creating a safety hazard.
7. A change in internal traffic patterns that may cause safety problems, such as back up onto a street or greater potential for traffic accidents.

### **C. Traffic Impact Study Preparation**

A Traffic Impact Study shall be prepared by an Oregon licensed professional engineer in accordance with the requirements of the road authority. If the road authority is the Oregon Department of Transportation (ODOT), the study shall conform to ODOT's regulations.

(See Subsection 16.12.010.B of Chapter 16.12 for further details on traffic studies.)