

TITLE 7: LAND USE AND DEVELOPMENT CODE

SECTION 7.3.2 ADMINISTRATIVE PROCEDURES

7.3.201 GENERAL PROVISIONS

7.3.201.01 Multiple Applications

Applications for more than one land use action for the same property may, at the applicant's discretion, be heard or reviewed concurrently.

7.3.201.02 Multiple Processing Types

Multiple land use requests involving different processing Types shall be heard and decided at the higher processing Type. For example, an application involving a Subdivision (Type II) with a Minor Variance (Type I) shall be reviewed and decided as a Type II request.

7.3.201.03 Generalized Area

Applications involving a generalized area may be aggregated if in the opinion of the City Manager a better understanding of the entire land use proposal is served by combining requests. A final decision shall be granted for each request and each request is appealable individually. *Amended ORD 608 effective 10/06/11*

7.3.201.04 Time Limit

If for any reason it appears that such final action may not be completed within the 120 day period, unless the time period is voluntarily extended by the applicant, the following procedures shall be followed regardless of other processes set forth elsewhere in this Code.

- A. The City staff shall notify the City Council of the timing conflict by the 95th day. The City Council shall, in accordance with its own procedures, set a time for an emergency meeting within the 120 day period.
- B. Public notice shall be mailed to affected parties as specified in Section 7.3.204.
- C. The City Council shall hold in a public hearing on the specified date, in accordance with the provisions of Section 7.3.206 and render a decision approving or denying the request within the 120 day period. Such action shall be the final action by the City on the application.

7.3.201.05 Performance Bonding

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

- A. Types of Guarantees - Performance guarantees may be in the form of performance bond payable to the City of Dayton, cash, certified check, time certificate of deposit, or other form acceptable to the City. The form must be approved by the City Attorney and appropriate documents filed with the City Recorder.
- B. Amount of Guarantee - The amount of the guarantee must be equal to at least one-hundred-ten percent (110%) of the estimated cost of the performance. The applicant must provide a written estimate acceptable to the City, which must include an itemized estimate of all materials, labor, equipment and other costs of the required performance.
- C. Completion of Performance - All improvements shall be completed within one year of filing the performance guarantee. This time limit may be extended for additional one year periods by the City Manager. *Amended ORD 608 effective 10/06/11*

7.3.202.01 Procedure for Type I Review

- A. Upon receipt of an application for a Type I land use action, the City staff shall review the application for completeness.
 - 1. Incomplete applications shall not be reviewed until all required information has been submitted by the applicant.
 - 2. If incomplete, the applicant shall be notified and provided additional time of up to 30 days to submit supplemental information as necessary.
- B. The application shall be deemed complete for the purposes of issuing a staff report and related timing provisions either:
 - 1. Upon receipt of the additional information to complete the application; or
 - 2. If the applicant refuses to submit the information the application shall be deemed complete for review purposes on the 31st day after the original submittal.
- C. Referrals may be sent to affected agencies such as City departments, police and fire departments, school district, utility companies, and applicable state agencies at the Manager's option. When a land use development has either direct access or creates an additional 20% average daily traffic on a county road or state highway, then a referral shall be sent to the Yamhill County Public Works Department or ODOT, as appropriate. *(Amended by Ordinance 589 – Effective 4/2/09)(Amended ORD 608 effective 10/06/11)*
- D. Within thirty (30) days of receipt of a complete application, staff shall review the application and shall make a decision based on an evaluation of the proposal and on applicable criteria as set forth in this Code.
- E. Approvals of a Type I action may be granted subject to conditions and performance agreement requirements.
- F. Notice of the decision shall comply with the provisions in Section 7.3.204.
- G. A Type I land use decision may be appealed to the Planning Commission, by either the applicant or persons receiving notice of the decision. The appeal shall be filed within 15 days from the date of the final decision, pursuant to the provisions of Section 7.3.207.

7.3.202.02 Procedures for Type II and Type III Actions

- A. Upon receipt of an application for Type II or Type III land use action, the City staff shall review the application for completeness.
 - 1. Incomplete applications shall not be scheduled for Type II or Type III review until all required information has been submitted by the applicant.

2. If incomplete, the applicant shall be notified and provided additional time of up to 30 days to submit supplemental information as necessary.
- B. The application shall be deemed complete for the purposes of scheduling the hearing and all related timing provisions either:
 1. Upon receipt of the additional information to complete the application; or,
 2. If the applicant refuses to submit the information, the application shall be deemed complete for scheduling purposes only on the 31st day after the original submittal .
 - C. Referrals will be sent to affected agencies such as City departments, police and fire departments, school district, utility companies, and applicable state agencies. When a land use development has either direct access or creates an additional 20% average daily traffic on a county road or state highway, then a referral shall be sent to the Yamhill County Public Works Department or ODOT, as appropriate. *(Amended by Ordinance 589 – Effective 4/2/09)*
 - D. The Public Hearing shall be scheduled and notice shall be mailed to the applicant and adjacent property owners. Notice requirements shall comply with Section 7.3.204.
 - E. Staff shall prepare and have available within 7 days of the scheduled hearing a written recommendation concerning the proposed action. This report shall be mailed to the applicant and available at City Hall for all interested parties.
 - F. The public hearing before the Planning Commission shall comply with the provisions in Section 7.3.205.
 - G. Approvals of any Type II or Type III action may be granted subject to conditions and performance agreement requirements.
 - H. The applicant shall be notified, in writing, of the Planning Commission's decision or recommendation. In addition, notice of the Commission's decision or recommendation shall be mailed to individuals who request such notice at the public hearing, or, by those individuals who submitted a written request for notice prior to the public hearing.
 - I. A Type II land use decision may be appealed to the City Council by either the applicant, persons receiving notice of the decision or the Manager. The appeal shall be filed within 15 days from the date of the decision, pursuant to the provisions of Section 7.3.207. Type III land use applications are automatically reviewed by the City Council. *Amended ORD 608 effective 10/06/11*

7.3.203 TYPE IV ACTIONS

7.3.203.01 Initiation

Type IV may be initiated by:

- A. Majority vote of the City Council.
- B. Majority vote of the Planning Commission.
- C. Recommendation by the City Manager subject to majority approval by the City Council or Planning Commission. *Amended ORD 608 effective 10/06/11*

7.3.203.02 Procedure for Type IV Actions

- A. Public Hearings by Planning Commission:
 - 1. A public hearing shall first be held by the Planning Commission on all Type IV requests.
 - 2. The Planning Commission may continue any hearing in order to make a reasonable decision. Amendments to the original request may be considered and acted upon by the Planning Commission.
 - 3. A Type IV Planning Commission action shall be in the form of a recommendation to the City Council.
- B. Public Hearing by City Council:
 - 1. Following the Planning Commission action, the City Council shall hold a public hearing to consider the Planning Commission's recommendation.
 - 2. The City Council may continue any hearing in order to make a reasonable decision. Amendments to the original request or the Planning Commission's recommendation may be considered and acted upon by the City Council.
 - 3. An approved Type IV City Council action shall be in the form of an Code.

7.3.204 PUBLIC NOTICE REQUIREMENTS

- 7.3.204.01 Type I Action. Consistent with State statutes, written notice of a Type I decision shall be mailed to the applicant and all property owners, including county and state agencies responsible for road and highways, within 100 feet of the subject property. Written notice for a Type I Action shall include the following: *(Amended by Ordinance 589 – Effective 4/2/09)*

1. Summary of the request.
2. Relevant decision criteria.
3. Findings of fact indicating how the request does or does not comply with the decision criteria.
4. Conclusionary statement indicating approval or denial of the request including (where appropriate) conditions of approval.
5. Information regarding the appeal process including who may appeal, where appeal must be submitted, fees and the appeal deadline.

7.3.204.02 Type II and Type III Actions

Written notice of any public hearing shall be mailed at least 20 days prior to the hearing date to the applicant and owners of property, including county and state agencies responsible for roads and highways, within 200 feet of the boundaries of the subject property. *(Amended by Ordinance 589 – Effective 4/2/09)*

7.3.204.03 Type IV Actions

Written notice of a hearing before the Planning Commission or City Council hearings shall be given by publication of a notice in a newspaper of general circulation in the City not less than 10 days prior to the date of the hearing before the Planning Commission and City Council.

7.3.204.04 Notice for Appeals

An appeal to either Planning Commission or City Council shall include written notice at least 10 days prior to hearing to the appellant, the applicant and any other individuals who received notice of the original decision.

7.3.204.05 Public Hearing Notice Requirements

Notice for any public hearing, including appeals, shall include the following:

- A. Explain the nature of the application and the proposed use or uses which could be authorized.
- B. Cite the applicable criteria from the Code and the plan which apply to the application at issue.
- C. Set forth the street address or other easily understood geographical reference to the subject property.
- D. State the date, time and location of the hearing.
- E. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient detail to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Appeals Board of Appeals.

- F. Include the name and phone number of the City representative where additional information may be obtained.
- G. State that a copy of the application, all documents and evidence relied upon by the applicant and application criteria are available for inspection at no cost and a copy will be available at reasonable cost.
- H. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and a copy will be provided at reasonable cost.
- I. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearing.

7.3.205 PUBLIC HEARING BEFORE THE PLANNING COMMISSION

7.3.205.01 General Provisions

- A. Land use actions which require a public hearing by the Planning Commission under the provisions of this Code shall be initially heard within sixty (60) days of the receipt of an application or appeal.
- B. The Planning Commission may continue a public hearing for additional, information, testimony or for decision only, to its next regular meeting or to a

special meeting. In no instance, however, shall the decision be continued more than sixty (60) days beyond the initial hearing date.

- C. Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing.
- D. Appeal of a Type I action shall be heard by the Planning Commission. The decision of the Commission on such appeal shall be final unless further appealed to the City Council.
- E. The decision of the Planning Commission on applications for Type II actions shall be final unless appealed to the City Council pursuant to Section 7.3.207.
- F. The recommendations of the Planning Commission on applications for Type III or Type IV actions shall be referred to the City Council for final determination.
- G. An issue which may be the basis for an appeal to the Land Use Board of Appeals (LUBA) may be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the City. Such issues shall be raised with sufficient specificity so as to afford the decision authority, and affected parties, an adequate opportunity to respond to each issue.

7.3.205.02 Public Hearing Procedures

The public hearings before the Planning Commission shall be conducted according to hearings procedures adopted by City Council resolution.

7.3.205.03 Evidence

- A. All evidence offered and not objected to may be received unless excluded by the Planning Commission on its own motion. Evidence may be received subject to a later ruling as to its admissibility.
- B. The Planning Commission may exclude irrelevant, unduly repetitious, immaterial or cumulative evidence; but erroneous admission of evidence by the Commission shall not preclude action or cause reversal on appeal unless shown to have substantially prejudiced the rights of a party. Any part of the evidence may be received in written, recorded, video tape or other suitable form.
- C. All evidence shall be offered and made part of the public record.
- D. Every party is entitled to an opportunity to be heard and to present evidence.
- E. All interested persons shall be allowed to testify.

7.3.205.04 Record of Hearing

A verbatim record of the proceeding shall be made by written, mechanical or electronic means, which record need not be transcribed except upon review of the record.

7.3.205.05 Limits on Oral Testimony

The Planning Commission Chair may set consistent, reasonable time limits for oral presentations to the end that parties are encouraged to submit as much evidence as possible in writing prior to the hearing.

7.3.205.06 Exhibits

All exhibits received shall be marked so as to provide identification upon review. Such exhibits shall be retained by the City.

7.3.206 REVIEW AND PUBLIC HEARINGS BY CITY COUNCIL.

7.3.206.01 General Provisions

- A. Appeals. The City Council shall hear appeals of the Planning Commission actions. The appeal hearing shall be conducted in a manner consistent with Section 7.3.204.
- B. Action on Type III Reviews. The City Council shall hear all Type III actions; the City Council action on such requests shall be the final action by the City.

- C. All hearings or reviews required by the City Council shall be heard within sixty (60) days of the Planning Commission's written decision or appeal request.
- D. The decision shall be made by the City Council and written findings prepared listing findings for approval or denial, and any conditions of approval, within two weeks of the hearing by the City Council.

7.3.206.02 Hearings by City Council

- A. All public hearings shall be conducted pursuant to the City Council's adopted rules of procedure. The City Council shall allow the opportunity for all parties to be heard and may accept new evidence.
- B. Decisions of the City Council may be appealed to the State Land Use Board of Appeals (LUBA), subject to the provisions in ORS 197.805-855.

7.3.206.03 Appeal Review by City Council

- A. Review on Record: The City Council review of an appeal on an action by the Planning Commission shall be confined to the record of the initial proceeding. Parties may offer testimony regarding alleged errors in the prior decision. The meeting shall be conducted as set forth in the City Council's adopted rules of procedures. The record of the initial proceeding shall include:
 - 1. All materials, pleadings, memoranda, stipulations and motions submitted by any party to the proceeding and received or considered by the Planning Commission as evidence.
 - 2. All materials submitted by the City Staff with respect to the application.
 - 3. The minutes of the hearing.
 - 4. The findings and action of the Planning Commission and the notice of decision.
- B. Submission of New Testimony and De Novo Hearings: The City Council may admit additional testimony and other evidence by holding a de novo hearing. Upon the decision to admit additional testimony or other evidence and to hear the entire matter de novo, the presentation of such testimony and evidence shall be governed by the procedures applicable to the presentation of such matters at the initial hearing.
- C. City Council Action. The City Council may affirm, rescind or amend the action of the Planning Commission. The Council may also remand the matter back to the Planning Commission for additional information, subject to the agreement of the applicant to extend the 120 day review period.

7.3.207 APPEAL PROVISIONS

7.3.207.01 Appeal Period

- A. The decision of the City Manager shall be final for a Type I land use decision unless a notice of appeal from an appropriate aggrieved party is received by the City within 15 days of the date the final written notice is mailed. An appeal stays the proceedings in the matter appealed until the determination of the appeal.
Amended ORD 608 effective 10/06/11
- B. The decision of the Planning Commission for a Type II land use decision, or the appeal of a Type I decision, shall be final unless a notice of appeal from an aggrieved party is received by the City within 15 days of the date the final written

notice is mailed. An appeal stays the proceedings in the matter appealed until the determination of the appeal.

7.3.207.02 Form of Appeal

Appeal requests shall be made on forms provided by the City. Appeals shall state the alleged errors in the original action.

7.3.207.03 Notice Requirements

Notice of public hearings by the Planning Commission or City Council on an appeal shall be as specified in Section 7.3.204.

7.3.208 FEES

7.3.208.01 Purpose. Fees are for the purpose of defraying administrative costs.

7.3.208.02 General Provisions

- A. Fees shall be payable at the time of application and shall be as set forth by Ordinance or Resolution of the City Council. There shall be no fee required for an application initiated by the Planning Commission or the City Council.
- B. The failure to submit the required fee with an application or notice of appeal, including return of checks unpaid or other failure of consideration, shall be a jurisdictional defect resulting in the dismissal of the case.

- C. Fees are not refundable unless the application is withdrawn prior to the completion of a staff report for a Type I action or notification of the hearing for Type II and III actions.
- D. The City Council may reduce or waive the fees upon showing of just cause to do so.