

Division VII. ADMINISTRATIVE PROCEDURES

Chapter 17.188 APPLICATION PROCEDURES

17.188.005 Pre-application conference.

- A. A pre-application conference is recommended for Type II administrative applications and is required for Type III permits. The City Manager may waive this requirement in writing.**
- B. The applicant shall file the appropriate application, pay the review fee and meet with the City Planner, other city staff and affected agencies. At the conference, the City Planner shall identify the relevant Comprehensive Plan policies, map designations, zone and development standards and procedural requirements that apply to the application. The Planner, staff and affected agencies shall provide technical direction and identify opportunities or constraints concerning the application.**
- C. Failure of the city to provide any information required by this section does not constitute a waiver of any of the standards, criteria or requirements for the application. Due to possible changes in federal, state, regional and local law, the applicant is responsible for assuring the application complies with all applicable laws on the day the application is deemed complete.**

17.188.010 Procedures for Type I action.

Applications subject to administrative review shall be reviewed and decided by the City Manager.

- A. Upon receipt of an application for a Type I ministerial land use action, the city staff shall review the application for completeness. the City Manager shall notify the applicant in writing of exactly what information is missing within thirty (30) days of receipt of the application.**
 - ~~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 thirty (30) days to submit supplemental information as necessary.~~

On the one-hundred-eighty-first (181st) day after first being submitted, the application is void if the applicant has been notified of missing information within the thirty (30)-day period and has not submitted:

 - 1. All of the missing information; or**
 - 2. Some of the missing information and written notice that no other information will be provided; or**
 - 3. Written notice that none of the missing information will be provided.**
- B. The application shall be deemed complete either:**
 - 1. Upon receipt of the all additional information; or, if the applicant refuses to submit written notice indicating no other the information will be provided; or**

2. On the thirty-first (31st) day after the original submittal ~~the application shall be deemed complete for review purposes.~~ **date if the city has not informed the applicant of missing information.**
- C. Referrals may be sent to interested agencies such as city departments, the school district, utility companies, and applicable state agencies. If a county road or state highway might be impacted, referrals should be sent to Yamhill County public works and/or ODOT.
- D. ~~All subdivisions, permits for new structures, conditional use permits and planned unit developments on any land illustrated on the NWI/LWI Maps shall be referred within five days of receipt, to~~ **If applications for Type I ministerial review include the scope of work described under ORS 227.350,** the Oregon ~~Division~~ **Department** of State Lands **shall be notified, and** ~~the~~ the applicant shall be notified of the referral.
- E. If the City Manager finds that the facts of the particular case require interpretation of city policy or application of discretionary standards, then the City Manager shall inform the applicant in a timely manner that the application, as submitted, may be processed only through a Type III **quasi-judicial** review. The applicant shall then have the option of modifying the application to conform to the requirements for a Type I **ministerial** review, withdrawing the application, or proceeding with a Type III **quasi-judicial** review, including a public hearing before the Planning Commission. Where the applicant consents to elevating the application to a Type III **quasi-judicial** review, the applicant shall pay a fee to the city for the ~~Type II applicable~~ **review** but shall be credited in an amount equal to the ~~Type I review~~ **fee** previously paid. ~~Finally, the procedures for conducting a public hearing shall comply with the standards in Chapter 17.196.~~
- F. ~~Within thirty (30) days of~~ **Following** receipt of a complete application ~~or such longer period mutually agreed to by both staff and the applicant,~~ ~~staff~~ **the City Manager** shall review the application and shall make a decision based on an evaluation of the proposal and on applicable criteria. **The city shall take final action on an application for Type I ministerial permit, including resolution of all appeals in accordance with ORS 227.180, within one hundred twenty (120) days after the application is deemed complete, unless the applicant voluntarily extends the time period.**
- G. Written notice of a Type I **ministerial** decision shall be mailed to the applicant.
- H. The applicant for a Type I **ministerial** review may appeal city staff's decision on the application to the Planning Commission. The appeal shall be filed, pursuant to the provisions of Chapter 17.204, within **ten (10)** days from the date of the decision.
- I. ~~The timing requirements established in this section are intended to allow a final action, including resolution of any appeals, within one hundred twenty (120) days of receipt of a complete application. If for any reason it appears that such final action may not be completed within the one hundred twenty (120) day period, unless the applicant voluntarily extends the time period, the following procedures shall be followed regardless of other processes set forth elsewhere in this title.~~
 1. ~~The city staff shall notify the City Council of the timing conflict by the ninety fifth (95th) day. The City Council shall, in accordance with its own procedures, set a time for an emergency meeting within the one hundred twenty (120) day period;~~
 2. ~~Public notice shall be mailed to affected parties as specified in Chapter 17.192;~~

~~3. The City Council shall hold a public hearing on the specified date, in accordance with the provisions of Chapter 17.200 and render a decision approving or denying the request within the one hundred twenty (120) day period.~~

17.188.020 Procedures for Type II and Type III actions.

A. Upon receipt of an application for Type II **administrative** or Type III **quasi-judicial** land use action, the city staff shall review the application for completeness.

1. Incomplete applications shall not be scheduled for Type II **administrative** or Type III **quasi-judicial** 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 thirty (30) days to submit supplemental information as necessary.~~ **City Manager shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application to submit the missing information.**

On the 181st day after first being submitted, the application is void if the applicant has been notified of missing information within the 30-day period and has not submitted:

a. All of the missing information; or

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.

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; or, if the applicant ~~refuses to submit~~ **written notice indicating no other** ~~the~~ information **will be provided; or**
2. On the thirty-first (31st) day after the original submittal ~~the application shall be deemed complete for scheduling purposes only.~~ **date if the city has not informed the applicant of missing information.**

C. Applications for more than one Type II **administrative** or Type III **quasi-judicial** land use action for the same property may, at the applicant's discretion, be combined and heard or reviewed concurrently.

D. Referrals may be sent to interested agencies such as city departments, the school district, utility companies, and applicable state agencies. If a county road or state highway might be impacted, referrals should be sent to Yamhill County public works and/or ODOT.

E. All **work described in ORS 227.350, including but not limited the applications for** subdivisions, permits for new structures, conditional use permits and planned unit developments on any land illustrated on the NWI/LWI Maps shall be referred within five days of receipt to the Oregon ~~Division~~ **Department** of State Lands. The applicant shall be notified of the referral.

F. ~~The public hearing shall be scheduled and notice shall be mailed to the applicant and adjacent property owners.~~ Notice requirements shall comply with Section 17.192.020.

G. **For applications subject to the Type III quasi-judicial procedure,** ~~S~~ staff shall prepare and have available within seven days of the scheduled hearing a written recommendation concerning the

proposed action. This report shall be mailed to the applicant and be available at City Hall for all interested parties.

- H. **For applications subject to the Type III quasi-judicial procedure,** ~~the~~ the public hearing before the Planning Commission shall comply with the provisions in Chapter 17.196.
- I. Approvals of any Type II **administrative** or Type III **quasi-judicial** action may be granted subject to conditions. The following limitations shall be applicable to conditional approvals:
1. Conditions shall be designed to protect public health, safety and general welfare from potential adverse impacts caused by a proposed land use described in an application. Conditions shall be related to the following:
 - a. Protection of the public from the potentially deleterious effects of the proposed use; or
 - b. Fulfillment of the need for public service demands created by the proposed use;
 2. Changes or alterations of conditions shall be processed as a new administrative action;
 3. All conditions of approval required by the city for a Type II **administrative** or Type III **quasi-judicial** approval shall be completed prior to the issuance of building permits, except that the Planning Commission may stipulate that some conditions be completed prior to issuance of building occupancy permits when the former is impractical. When an applicant provides information demonstrating to the satisfaction of the Planning Commission that it is not practical to fulfill all conditions prior to issuance of a building permit, the applicant must complete a performance guarantee for required improvements pursuant to Chapter 17.216.
- J. **For applications subject to the Type II administrative procedure,** ~~the~~ the applicant shall be notified in writing of the ~~Planning Commission~~ **City Manager's** decision ~~or recommendation~~. In addition, notice of the ~~commission~~ **City Manager's** decision 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~~ **comments during the 20-day comment period as described in Chapter 17.192.020. For applications subject to the Type III quasi-judicial procedure, the Planning Commission's or City Council's decision shall be mailed to the applicant and all individuals having submitted written comments during the 20-day notice period as described in Chapter 17.192.030, and to individuals having submitted written or oral comments during the public hearing(s).**
- K. ~~Either the applicant or persons receiving notice of the decision may appeal a Type II land use decision to the City Council. The appeal shall be filed within days from the date of the decision, pursuant to the provisions of Chapter 17.204. Type III land use applications are automatically reviewed by the City Council.~~ **Standing to appeal a Type II or Type III decision and requisite timing to submit an appeal is governed by procedures identified in Chapter 17.204.**
- L. The timing requirements established by this section are intended to allow a final action, including resolution of appeals for all land use actions within one hundred twenty (120) days of receipt of a complete application, ~~except for Type III~~ **quasi-judicial** actions. If for any reason it appears that such final action may not be completed within the one hundred twenty (120) day period, unless the applicant voluntarily extends the time period, the following procedures shall be followed regardless of other processes set forth elsewhere in this title.

1. The city staff shall notify the City Council of the timing conflict by the ninety-fifth (95th) day. The City Council shall, in accordance with its own procedures, set a time for an emergency meeting within the one hundred twenty (120) day period;
2. Public notice shall be mailed to affected parties as specified in Chapter 17.192;
3. The City Council shall hold a public hearing on the specified date, in accordance with the provisions of Chapter 17.200 and render a decision approving or denying the request within the one hundred twenty (120) day period.

17.188.030 Consolidated review.

When an applicant applies for more than one type of land use or development permit for the same one or more contiguous parcels of land, the proceedings may be consolidated for review and decision at the applicant's request. When proceedings are consolidated, the highest level of review shall be applied to the consolidated application. Required notices may be consolidated, provided the notice shall identify each application to be decided. When more than one application is reviewed in a hearing, separate findings and decisions shall be made on each application.

Chapter 17.192 PUBLIC NOTICE REQUIREMENTS

17.192.010 Type I ~~actions~~ public notice requirements.

Not all Type I ministerial actions require ~~are not subject to~~ public notice; only those that involve the exercise of discretion require notice. Where written notice of a Type I ministerial decision is required or otherwise provided it ~~and~~ shall be mailed to the applicant.

17.192.020 Type II ~~actions~~ public notice requirements.

- A. Written public notice of ~~the initial public hearing on a~~ pending Type II administrative action shall be mailed ~~at least twenty (20) days prior to the hearing date~~ to the owners of property within one hundred (100) feet of the boundaries of the subject property ~~at least twenty (20) days before the City Manager issues a written decision~~; the City Manager at his or her discretion may mail notices to owners of property within a larger radius, where the project is likely to a wider impact (e.g., traffic, noise, parking, etc.). Applicants shall be responsible for providing a certified list of property owners within the notice area prepared by Yamhill County or a title company. The list must be current within the last thirty (30) days.
- B. Type II administrative actions do not require notice in a newspaper, but the city may publish such notice at the City Manager's discretion. ~~Notice for annexations shall be as set forth in Chapter 17.184.~~

C. Written notice of a pending Type II administrative action shall include the following:

1. The city case file number of the application(s), the nature of application(s) and proposed use or uses which could be authorized.
2. A list of applicable standards and criteria from the Development Code and Comprehensive Plan that apply to the application(s) at issue.
3. Street address or other easily understood geographical reference to the subject property.
4. A statement that advises submitting written comments for consideration no later than the end of the comment period for standing to appeal the decision. The comment deadline date and time shall also be shown.
5. State that failure of an issue to be raised, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals, based on that issue.
6. Name of the city representative to contact and the telephone number where additional information may be obtained.
7. 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.
8. State that a decision by the City Manager shall be made after the comment closing date and will be mailed to the applicant and those individuals having provided written comments during the comment period.

17.192.030 Type III and Type IV ~~actions~~ public notice requirements.

- A. Written notice of the initial public hearing on a Type III **quasi-judicial** or Type IV **legislative** action shall be mailed at least twenty (20) days prior to the hearing date to the owners of property within one hundred (100) feet of the boundaries of the subject property, as applicable; the City Manager at his or her discretion may mail notices to owners of property within a larger radius, where the project is likely to a wider impact (e.g., traffic, noise, parking, etc.). Applicants for Type III **quasi-judicial** reviews shall be responsible for providing a certified list of property owners within the notice area prepared by Yamhill County or a title company. The list must be current within the last thirty (30) days.
- B. At least thirty-five (35) days before the date of the first hearing on an **ordinance application** that proposes to amend the comprehensive plan, **development code**, or any element thereof, or ~~to adopt~~ an **ordinance application** for any zone change, the city shall notify **the Department of Land Conservation and Development (DLCDC)** of the proposed action.
- C. At least twenty (20) days, but not more than forty (40) days, before the date of the first hearing on an **ordinance application** that proposes to amend the comprehensive plan, **development code**, or any element thereof, or ~~to adopt~~ an **ordinance application** for any zone change, a notice shall be prepared in conformance with ORS 227.175 and mailed to:
1. Each owner whose property would be directly affected by a rezoning or a change from one comprehensive plan land use category to another, as applicable;
 2. Each property owner whose property value may be diminished if the proposed amendment is adopted because the amendment limits or prohibits a previously allowed use;
 2. Any affected governmental agency;
 3. Any person who requests notice in writing; and
 4. For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175;
- ~~C-D.~~ At least ten (10) days before the scheduled public hearing date **for a Type III quasi-judicial or Type IV legislative action**, public notice shall be published in a newspaper of general circulation in the City.
- ~~D-E.~~ For each mailing and publication of notice, the city shall keep an affidavit of mailing/publication in the record.

~~17.192.040 Notice for appeals.~~

~~Notice of hearings on appeal to the City Council shall be pursuant to Section 17.192.020, and shall include written notice at least ten (10) days prior to hearing to the appellant, the applicant and any other individuals who received notice of the original decision.~~

~~17.192.050 Notice requirements.~~

- ~~A-F.~~ Public notices for Type ~~II~~ and III **quasi-judicial** and **Type IV legislative** actions shall **include the following**:
1. **Case file number of the application(s)**, ~~explain the~~ nature of the applications, and the proposed use or uses that could be authorized;

2. Cite the applicable criteria from this title and the plan that apply to the application at issue;
3. **Set forth the A** street address or other easily understood geographical reference to the subject property;
4. State the date, time and location of the hearing;
5. **A S** **statement** that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide **statements or evidence** sufficient **specificity** to afford the decision maker an opportunity to respond to the issue precludes appeal to the land use board of appeals **based on that issue**;
6. Include the name of the city representative to contact and the telephone number where additional information may be obtained;
7. 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;
8. 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;
9. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearing.

B-G. Public notices for Type IV **legislative** actions that **potentially limit or prohibit land uses previously allowed in the affected zone or** "rezone property" **as defined in a manner as described** by ORS 227.186(9), **shall be approved in advance by the City Council and shall contain additional information as described by ORS 227.186 and shall** be mailed to the owner of each lot or parcel of property that the ordinance proposes to rezone, at least twenty (20) days, but not more than forty (40) days, before the date of the first public hearing. **The notice shall:**

1. **Include the following language in boldfaced type extending from the left hand margin to the right hand margin across the top of the face page of the notice:**

This is to notify you that the City of Carlton has proposed a land use regulation that will affect the permissible uses of your land.

2. **Include in the body of the notice:**

On (date of public hearing), the City of Carlton will hold a public hearing regarding the adoption of Ordinance Number _____. The City of Carlton has determined that adoption of this title will affect the permissible uses of your property and may reduce the value of your property.

Ordinance Number _____ is available for inspection at the Carlton City Hall located at 191 E. Main Street. A copy of Ordinance Number _____ also is available for purchase at a cost of _____.

For additional information concerning Ordinance Number _____, you may call the Carlton City Recorder 503-852-_____.

3. **If notice is pursuant to a requirement of periodic review, the body of the notice shall include in lieu of subsection (B)(2) of this section:**

As a result of an order of the Land Conservation and Development Commission, has proposed Ordinance Number _____. The City of Carlton has determined that adoption of this title will affect the permissible uses of your property and may reduce the value of your property.

Ordinance Number _____ will become effective on _____.

Ordinance Number _____ is available for inspection at the Carlton City Hall located at 191E Main Street. A copy of Ordinance Number _____ also is available for purchase at a cost of _____.

For additional information concerning Ordinance Number _____, you may call the Carlton City Recorder 503-852-_____.

- ~~C. Notice of public hearing by the Planning Commission or City Council on any Type IV action shall be published in a newspaper of general circulation a minimum of ten (10) days prior to the date of the hearing.~~
- ~~D. Notice of a Type IV hearing shall be provided to the Oregon Department of Land Conservation and Development at least thirty five (35) days prior to the first evidentiary hearing by the city on any Type IV action.~~

Chapter 17.196 PUBLIC HEARING BEFORE THE PLANNING COMMISSION

17.196.010 General provisions.

- A. Land use actions that require a public hearing by the Planning Commission shall be initially heard by the Planning Commission within sixty (60) days of the receipt of a complete application or appeal.
- B. The Planning Commission may continue a public hearing for additional, information, testimony or for decision, 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. The decisions of the Planning Commission on applications for Type III **quasi-judicial** actions shall be final unless appealed to the City Council pursuant to Chapter 17.204.
- E. The recommendations of the Planning Commission on applications for Type III **quasi-judicial** actions **that pertain to Zone Change, Annexation or Street Vacation** shall be referred to the City Council for final determination, pursuant to Chapter 17.200.
- F. An issue that 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 City Council or Planning Commission, and the parties, an adequate opportunity to respond to each issue.
- G. Appeal of a Type I **ministerial** action shall be heard by the Planning Commission in accordance with provisions of Chapter 17.204. Findings of the Planning Commission on such appeal shall be final ~~unless further appealed to the City Council.~~

17.196.020 Public hearing procedures.

- A. The public hearing shall be conducted under the following procedures:
 - 1. Open the public hearing, announce the purpose, and explain the process.
 - 2. A prepared statement shall be made to all in attendance that conforms to ORS 197.763 **797**(5).
 - 3. Ask for objections to jurisdiction.
 - 4. ~~Call for abstentions.~~ **Call for decision makers to declare any bias, conflicts of interests or exparte contacts.**
 - 5. Staff report with initial recommendation.
 - 6. Letters.
 - 7. Public agencies.
 - 8. Proponents' testimony.
 - a. Principal;
 - b. Others.

9. Opponents' testimony.
10. Questions of proponents and opponents from the floor and commission/council directed through chair/mayor.
11. Proponent rebuttal.
12. Staff final recommendation.
13. Close of hearing.
14. Deliberation of commission/council of findings of fact.
15. Decision.

17.196.030 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. When a hearing will be expedited, any part of the evidence may be received in written form.
- C. All evidence shall be offered and made a part of the public record in the case.
- D. The Planning Commission may take notice of judicially recognizable facts, and members may take notice of general, technical or scientific facts within their specialized knowledge. Parties shall be notified at any time during the proceeding, but in any event prior to the final decision, of the material so noticed. Parties shall be afforded an opportunity to contest the facts so noticed. **For quasi-judicial hearings,** ~~The~~ Planning Commission members **shall not introduce evidence but** may utilize their experience, technical competence and specialized knowledge in evaluation of the evidence presented.
- E. Every party is entitled to an opportunity to be heard and to present and rebut evidence.
- F. All interested persons shall be allowed to testify.

17.196.040 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.

17.196.050 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.

17.196.060 Exhibits.

All exhibits received shall be marked so as to provide identification upon review. The city shall retain such exhibits.

17.196.070 Continued hearing.

The Planning Commission may during the course of the hearing, continue a hearing to a date, time and place announced at the hearing without additional notification.

Chapter 17.200 REVIEWS AND PUBLIC HEARING BY CITY COUNCIL

17.200.010 General provisions.

- A. Type III **quasi-judicial** Reviews. The City Council shall hear all Type III **quasi-judicial** actions **that pertain to Zone Change, Annexation or Street Vacation**. The City Council action on such requests shall be the final action of the city on the request.
- B. Appeals. The City Council shall hear appeals of all Planning Commission actions conducted pursuant to Chapter 17.204. The appeal hearing shall be conducted in a manner consistent with Chapter 17.196. The action of the Planning Commission shall be final and the council shall not hear the appeal if the appeal period has lapsed.
- C. All hearings or reviews required by the City Council shall be heard within thirty (30) days of the Planning Commission's written decision or appeal request. In no instance, however, shall this period extend the date of the hearing and final action beyond one hundred twenty (120) days from the date of the initial submission of a complete application, unless voluntarily agreed to by the applicant.
- 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. In no case, however, shall this decision and the preparation of written findings extend beyond one hundred twenty (120) days from the date of initial submittal of a complete application, unless voluntarily agreed to by the applicant.

17.200.020 Hearing by City Council.

Actions on quasi-judicial requests shall be conducted at public hearing pursuant to the City Council's adopted rules of procedure. The City Council shall allow opportunity for all parties to be heard and may accept new evidence.

17.200.030 Review of the record and action by City Council for appeals.

- A. Review on Record. Except as set forth in Section 17.200.030(B), 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 Planning Commission action. 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 exhibits submitted by the city staff with respect to the application;
 - 3. The transcript of the hearing; and
 - 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 and may grant approval subject to conditions necessary to carry out the comprehensive plan. The City 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.

Chapter 17.204 APPEAL PROVISIONS

17.204.010 Standing to Appeal and time period.

- A. **Appeal of a Type I Ministerial Decision.** The decision of the City Manager shall be final for a Type I ministerial land use decision unless a notice of appeal from an appropriate aggrieved party the applicant is received by the city within ten (10) days of the date of the final written notice, or unless the City Council, on its own motion, orders review within ten (10) days of initial action. An appeal stays the proceedings in the matter appealed until the determination of the appeal. **The final appellate decision-making authority on appeal of a Type I decision shall be the Planning Commission.**
- B. **Appeal of a Type II Administrative Decision.** The decision of the Planning Commission City Manager for a Type II administrative land use decision, or the appeal of a Type I administrative decision, shall be final unless a notice of appeal from an aggrieved party is received by the city the decision is appealed by the applicant or by any person who submitted written testimony prior to mailing the notice of decision. **Appeal of a Type II administrative decision must be received by the city** within ten (10) days of the date of the final written notice, or unless the City Council, on its own motion, orders review within ten (10) days of initial action. An appeal stays the proceedings in the matter appealed until the determination of the appeal. **The final appellate decision-making authority on appeal of a Type II decision shall be the Planning Commission.**
- C. **Appeal of a Type III Quasi-Judicial Decision.** The decision of the Planning Commission for a Type II quasi-judicial decision shall be final unless the decision is appealed by the applicant or by any person who provided either oral or written testimony to the record leading to the decision. **Appeal of a Type III quasi-judicial decision must be received by the city within ten (10) days of the date of the final written notice, or unless the City Council, on its own motion, orders review within ten (10) days of initial action. An appeal stays the proceedings in the matter appealed until the determination of the appeal. The appellate decision-making authority on appeal of a Type III decision shall be the City Council.**
- D. **Type IV legislative land use decisions can be appealed to LUBA within twenty-one (21) days after the land use decision becomes final as described by OAR 661-010-0010(3).**

17.204.020 Form of appeal.

Appeal requests shall be made on forms provided by the city and shall state the alleged errors in the Planning Commission action.

17.204.030 Notice requirements.

- A. Notice of hearings by the Planning Commission on appeal requests shall be as specified in Chapter 17.192.
- B. Notice of hearings by the City Council on appeal requests shall be as specified in Chapter 17.192.

17.204.040 Supplemental application for remaining permitted uses following denial of initial application

As described in ORS 227.184, following denial of an initial application an applicant may submit a supplemental application for remaining permitted uses.

- A. A person whose application for a permit is denied by the city may submit to the city a supplemental application for any or all other uses allowed under the city's comprehensive plan and land use regulations in the zone that was the subject of the denied application.
- B. The city or its designee shall take final action on a supplemental application submitted under this section, including resolution of all appeals, within two hundred forty (240) days after the application is deemed complete. Except that two hundred forty (240) days shall substitute for one hundred twenty (120) days, all other applicable provisions of ORS 227.178 ("The 120-Day Rule") shall apply to a supplemental application submitted under this section. See Section 17.188.010.
- C. A supplemental application submitted under this section shall include a request for any rezoning or variance that may be required to issue a permit under the city's comprehensive plan and land use regulations.
- D. The city shall adopt specific findings describing the reasons for approving or denying:
 - 1. A use for which approval is sought under this section; and
 - 2. A rezoning or variance requested in the application.

17.204.050 Review of the record and action by the Planning Commission for appeals.

A. Review on Record. Planning Commission review of an appeal on an action by the City Manager shall be confined to the record of the initial proceeding. Parties may offer testimony regarding alleged errors in the City Manager decision. The record shall include:

- 1. All materials, pleadings, memoranda, stipulations and motions submitted by any party to the proceeding and received or considered by the City Manager as evidence;**
- 2. All exhibits submitted by the city staff with respect to the application;**
- 3. Notice of decision issued by the City Manager.**

B. Planning Commission Action on Appeal. The Planning Commission may affirm, rescind or amend the decision of the City Manager, in addition to amending conditions of approval.

Chapter 17.208 FEES

17.208.010 Purpose.

Fees are for the purpose of defraying administrative costs.

17.208.020 General provisions.

- A. Fees shall be payable at the time of application and shall be set forth by 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.
- C. Fees are not refundable unless the application is withdrawn prior to the notification of the hearing.
- D. The City Council may reduce or waive the fees upon showing of just cause to do so.

17.208.030 Transcript fees.

In addition to other fees for appeal requests, any person requesting a verbatim transcript shall pay a fee equal to the actual cost of the preparation of the transcript. The cost of the transcript fee shall be determined by the cost per page for the preparation of such transcripts, at an appropriate rate. The city shall estimate the cost of the transcript at the time of the filing of the appeal request and shall receive a deposit in that amount. Any person requesting a verbatim transcript shall be billed for actual costs in excess of the deposit or receive a refund for surplus deposit funds in excess of transcript fees authorized by this section.

Chapter 17.212 TYPE IV ACTIONS

17.212.010 Initiation.

Type IV **legislative proceedings** may be initiated by:

- A. Majority vote of the City Council.
- B. Majority vote of the Planning Commission.

17.212.020 Procedure for Type IV actions.

~~A. Public Hearings by Planning Commission.~~

- ~~1. A public hearing shall be held by the Planning Commission on all proposed amendments to this title and on all legislative amendments and revisions of the comprehensive plan.~~
- ~~2. The Planning Commission may continue any hearing in order to make a reasonable decision.~~

~~B. Public Hearing by City Council. Following Planning Commission action, the City Council shall hold a public hearing to consider the Planning Commission's recommendation on proposed amendments. Notice shall be as specified in Chapter 17.192.~~

A. All Type IV legislative actions require two hearings, one before the Planning Commission and one before the City Council. The public hearings shall be scheduled and notice shall be mailed to the affected property owners. Notice requirements shall comply with Section 17.192.030.

B. Staff shall prepare and have available within seven days of the scheduled hearing a written recommendation concerning the proposed action. This report shall be available at City Hall for all interested parties.

C. The public hearing before the Planning Commission shall comply with the provisions in Chapter 17.196. The Planning Commission shall make a recommendation to the City Council to adopt, adopt with modifications, adopt an alternative, or deny the Type IV action.

D. The City Council shall hold a public hearing and comply with the provisions in Chapter 17.200. The City Council shall vote to adopt, adopt with modifications, adopt an alternative, deny, or remand to the Planning Commission for rehearing and reconsideration on all or part of the Type IV action. The City Council may consider the recommendation of the Planning Commission, however, it is not bound by the Planning Commission's recommendation.

E. The City Council's decision shall be mailed to all individuals having submitted written or oral comments during the public hearing(s).

F. The decision on a Type IV action is final and effective on the date specified in the enacting ordinance.

Chapter 17.216 PERFORMANCE GUARANTEES

17.216.010 Performance guarantee.

When required, the applicant shall file a performance guarantee to insure the full and faithful performance of all terms of an improvement agreement, if any, or to ensure completion of all work for which permits are required. The guarantee shall contain an agreement between the developer and city that no building permit for any structure within the development will be issued until the city finds that all required improvements are complete, except where the Planning Commission has stipulated differently **in a final land use decision**, ~~per Section 17.188.120~~. The agreement shall provide one of the following:

- A. A surety bond executed by a surety company authorized to transact business in the State of Oregon, in a form approved by the city attorney in an amount equal to one hundred twenty (120) percent of the construction cost of required improvements, as verified by the city.
- B. A deposit with the city, or at the option of the city, a verified deposit with a responsible escrow agent or trust company, of cash or negotiable bonds in an amount equal to one hundred twenty (120) percent of the construction costs of the required improvements, together with an agreement that the deposit may be disbursed only upon city approval of disbursement. The agreement shall include a provision that the city shall allow release of the deposit in such amounts and at such times as a corresponding proportion of the required improvements are completed to the satisfaction of the city engineer following an inspection by the city engineer or the engineer's authorized representative.
- C. An irrevocable letter of credit pledging that funds equal to one hundred twenty (120) percent of the construction cost of all required improvements are available to the applicant and are guaranteed for payment for the improvements. An irrevocable letter of credit is acceptable.

17.216.020 Failure to complete improvements.

If the applicant fails to complete all improvements required by the city, the city shall estimate the cost of completing any required improvement(s). The city shall then call on the bond or deposit for the funds necessary to complete the improvement. If the amount obtained from the bond or deposit is insufficient to complete the improvement, or no bond or deposit was obtained, the city may either hold the collected funds until additional funds are available from the applicant or, the city may perform improvement on a portion of the improvement as determined reasonable. Following final inspection of the improvement, and if the bond or deposit exceeds the actual cost to the city of completing the improvement, the remainder shall be released. If collected funds were inadequate to compensate the city for all reasonable costs, then the city may pursue all legal and appropriate remedies to collect any funds due to the city. These remedies shall include placing a lien on the real property where the city paid improvement was performed. Funds payable to the city shall also be a personal debt and obligation of the owner.

17.216.030 Improvement deferral.

- A. If public improvements are required as a condition of approval of a land division action under this title, such improvements shall be the obligation of the applicant, and but may not be deferred except by specific approval by the city council or planning commission. Such approval shall not be granted where the required improvements are necessary to provide adequate access or utility

service to the proposed development, or where it will compromise the health or safety of the public, or result in violations of City or state codes.

- B. Upon approval of a variance to allow a construction deferral agreement, the improvements may be deferred on all or a portion of the public improvements specifically approved by the city council or planning commission required as a part of the condition of approval under this title, until the a stated time such as the owner applies for a building permit or certificate of occupancy, or until required by council, whichever is earlier indicated in the notice of decision. A property owner seeking deferral under this title shall sign an improvement construction deferral agreement that runs with the property, until the owner installs the required improvements or until such improvements are required to be completed by the city council or planning commission. Said construction deferral agreement shall be in a form approved by the city attorney, shall be recorded with Yamhill County, and shall be filed in the office of the city recorder. The deferral agreement shall be subject to requirements of Section 17.88.050 relating to prohibition against issuance of building permits prior to completion of said improvements.
- C. Where allowed under Section 17.88.050, In lieu of an improvement deferral agreement, the council or planning commission may approve require a non-remonstrance agreement in lieu of an improvement deferral agreement. Such a non-remonstrance agreement shall be in for approved by the city attorney, and shall be recorded with Yamhill County and would run with the property until the city installs the improvements and assesses the property owner the owner's proportionate cost of the improvements.

Chapter 17.220 REVOCATION OF DECISION

17.220.010 Compliance with conditions.

Compliance with conditions imposed by the City Manager, Planning Commission or City Council in granting a permit for any land use action shall be required. Any departure from these conditions of approval and approved plans constitutes a violation of this title.

17.220.020 General provisions.

- A. The City ~~recorder~~ **Manager** may initiate ~~a~~ **proceedings for** revocation of any land use permit or approval issued for failure to comply with any prescribed condition of approval. The hearing shall be conducted as a Type II **quasi-judicial** hearing and in accordance with the procedures for a Type III **quasi-judicial** hearing.
- B. Final decisions regarding comprehensive plan text or map amendments, development code text amendments or zone changes shall not be subject to revocation.