

ARTICLE 3 DECISION PROCESSES

SECTION 3.110 BASIS FOR DECISION

The basis for a decision on a land use application and the reasons for approval or denial are contained in **ORS 227.173**.

- (1) Approval or denial of a discretionary permit application shall be based on standards and criteria contained in the City's Comprehensive Plan and implementing ordinances.
- (2) Approval or denial of a land use application shall be based upon and accompanied by:
 - (a) A brief statement that explains the criteria and standards considered relevant to the decision.
 - (b) A statement of the facts relied upon in rendering the decision.
 - (c) An explanation of the justification for the decision based on the criteria, standards and facts set forth.
- (3) An application shall not be approved unless the proposed development of land would be in compliance with the City Comprehensive Plan, this Code ~~or~~ and other applicable land use regulations or ordinance provisions. The approval may include such conditions as are authorized by **ORS 227.215** or any city legislation.

SECTION 3.120 FORM OF DECISION

A land use decision will take one of three forms:

- (1) **Approval.** Approval means the review or hearing body found the approval criteria was satisfied by the presented facts.
- (2) **Approval with Conditions.** Approval with conditions means the review or hearing body found the approval criteria could be satisfied with the application of specified conditions of approval as authorized in this Code.
- (3) **Denial.** Denial means the review or hearing body found the approval criteria was not satisfied by the presented facts and could not be made to comply with attached conditions of approval.

SECTION 3.200 TYPE OF DECISIONS

ORS 197 and ORS 227 define four types of decisions utilized by cities to address land use applications. Each type of decision has its own procedural requirements. The four types of decisions are:

- (1) **Administrative Decisions**

An administrative decision is a decision that correlates the adopted code or ordinance requirements and standards, to an individual issue. These interpretations are usually provided by the City Administrator or designee.

Examples of Administrative Decisions provided for in this Code include, but are not limited to, Property Line Adjustments provided for in **Section 2.310**, Duplex Division Partitions provided for in **Section 6.105**, Final Plat Approval provided for in **Section 2.331** & Site Plan Reviews for structures less than 4,000 square feet provided for in **Section 2.400**.

(2) **Legislative Decisions**

A legislative decision produces a general rule, law or policy applicable to everyone under similar circumstances. Legislative decisions have a "presumption of validity." They are the laws that apply to everyone in similar situations.

An example of a Legislative Decision was the adoption of the City's Comprehensive Plan, this Code and Ordinances. Other legislative decisions provided for in this Code include text amendments and zone change map amendments that affect a group or class of properties within the City. Legislative Amendments to this Code are provided for in **Section 2.700**.

(3) **Quasi-judicial Decisions**

A Quasi-judicial Decision involves a discretionary judgment applying the adopted rules, laws or policies to a specific individual land use situation like determining the permissible use of a specific piece of property. The action is judicial in nature and the hearing body must conduct a fair and impartial hearing. The decision must be based upon demonstrated compliance with the applicable criteria or standards contained in the City Comprehensive Plan, this Code, ordinances or policies, as determined by the factual evidence presented in the public hearing. The applicant for a change in the use of land specified in the Comprehensive Plan and implementing ordinances bears the burden of proof for the requested change.

Examples of Quasi-judicial Decisions provided for in this Code include, but are not limited to, Conditional Uses as provided in **Section 2.500**, Variances as provided in **Section 2.600** or a zone change map amendment for a specific property as provided in **Section 2.700**.

(4) **Limited Land Use Decision**

The 1991 Oregon Legislature added **ORS 197.195** to Chapter 197 to provide provisions for a final decision or determination made by a city pertaining to a site within its urban growth boundary that concerns:

- (a) Approval or denial of a subdivision or partition, as described in **ORS 92**.

- (b) Approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to, site reviews and design reviews.

A Limited Land Use Decision is a form of discretionary decision that does not require a public hearing and is not subject to the requirements of ORS 197.763 for quasi-judicial public hearings, but is subject to the requirements of **ORS 227.173** for a review of the application.

Examples of limited land use decisions in this Code include Property Line Adjustments as provided in **Section 2.310**, Partitions and Subdivisions as provided in **Section 2.320** and Site Plan Reviews as provided in **Section 2.400**. ~~that require a review by the Planning Commission include, but are not limited to, Subdivision and Site Plan Reviews for structures greater than 4000 square feet specified in **Section 2.400**. Examples of limited land use decision that may be conducted by the City Administrator include property line adjustments, land use partitions, and site plan review for structures less than 4000 square feet.~~

SECTION 3.300 NOTIFICATION

- (1) **Administrative** actions authorized by this Code do not require notifications.
- (2) **Legislative** actions authorized by this Code require one or more public hearings and notification to property owners if the land use or zoning classification of the property is changed or the proposed change limits or prohibits uses previously allowed in the affected zone. Other means of notification that provides the general public and organizations believed to have an interest in a legislative issue with reasonable opportunity to be aware of the hearing on the issue is permitted and encouraged.
- (3) **Limited Land Use** reviews or **Quasi-judicial** public hearings authorized by this Code require notification to the applicant and to owners of property within 100 Feet of the property which is the subject of the notice as identified on the most recent property tax assessment roll where such property is located . Notice shall also be provided to public agencies known to be affected and to any neighborhood or community organization recognized by the City whose boundaries include the site.

The applicant shall provide the City with a list of property owners of record within 100 Feet of the property subject to the review or hearing.

- (4) A notice of review or hearing shall be mailed at least 20 days prior to the date of the review or hearing; or if two or more reviews or hearings are allowed, 10 days before the first review or hearing. A Legislative ordinance change that rezones property or limits or prohibits uses previously allowed in the affected zone requires notification to be mailed to the affected property owners at least 20 days but not more than 40 days prior to the date of the first hearing on the ordinance amendment.
- (5) The required notice provisions of this section may be expanded to include properties beyond 100 Feet and may include giving notice by other means, including news letters, mail, postings, radio or newspaper. If newspaper notification is utilized notification shall be published in a newspaper of general circulation not less than 10 days nor more than 20 days prior to the date of the hearing.
- (6) The failure of a person to receive the notice as provided in this section shall not invalidate such proceedings if the City can validate by affidavit that such notice was given.
- (7) The notice provided by the City shall:
 - (a) Explain the nature of the application or the proposed change and how the proposal would affect the proposed use of the property.
 - (b) List the applicable criteria from the Code and the Plan that apply to the application at issue or indicate where to find criteria.

- (c) Set forth the street address or other easily understood geographical reference to the subject property.
 - (d) State the ordinance number or file number and the date, time and location of the review or public hearing.
 - (e) State that failure of an issue to be raised in a review or 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 Board of Appeals (LUBA) based on that issue.
 - (f) Include the name and address of the City Administrator and the telephone number where additional information may be obtained.
 - (g) State that a copy of the application, all documents and evidence relied upon by the applicant and the applicable criteria are available for inspection at the Adair Village City Hall at no cost and will be provided 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 review or hearing and copies will be provided at reasonable cost.
 - (i) Include a general explanation of the requirements for submission of testimony and the procedures for the conduct of reviews or public hearings by the City.
 - (j) The City shall provide written notice of the decision to the Applicant and all parties to the proceeding. The notice shall briefly summarize the decision making process and contain an explanation of appeal rights.
- (8) **Wetland Notice.** The City shall provide the Oregon Division of State Lands, the Applicant and Owner with notice of applications for developments located within areas identified as "Wetlands" on the State-wide Wetlands Inventory. No physical alteration shall occur within defined wetland areas until a notice or permit is received from the Division. If the Division fails to respond within 30 days of notice, City approval may be granted with written notice to the applicant and owner that their proposal may require state or federal permits.
- (9) **DLCD Notice.** The City shall notify the Department of Land Conservation and Development of a pending adoption or amendment to the City Comprehensive Plan, Implementing Ordinances, or any other land use ordinance or regulation. The notice shall be provided at least 45 days before the proposed final hearing on adoption and the notice shall contain information sufficient to inform the Department as to the effect of the proposal. If the City determines that the statewide goals do not apply to a proposed amendment or new regulation, notice is not required. In addition, the City may consider an amendment or new regulation with less than 45 days notice if the City Council determines that there are emergency circumstances requiring expedited review.

- (10) **Manufactured Home Park Notice.** If an application would change the zone of property, including all or part of a Manufactured Home Park, the City shall provide written notice by first class mail to each existing mailing address for tenants of the Manufactured Home Park at least 20 days prior to the date of the first hearing on the application.

SECTION 3.400 LIMITED LAND USE REVIEW PROCEDURES

The following procedures govern the conduct of Limited Land Use Reviews by the City Administrator or Planning Commission for all Site Plan Reviews, Nonconforming Use Reviews, Subdivision or Partition Tentative Plans. Written comments may be submitted prior to the review decision. No public comment or testimony is permitted at the review unless the Planning Commission finds that clarification from the Applicant is needed.

- (1) At the commencement of a review the Chairperson shall request a summary of the Staff Report that:
 - (a) States the address or geographic location of the subject property.
 - (b) Explains the nature of the application and the proposed use or uses which could be affected or could be authorized.
 - (c) Lists the applicable criteria from the Code and the plan that apply to the application at issue.
 - (d) State that written testimony and evidence must be directed toward the criteria or other criteria in the plan or ordinances which the person believes to apply to the decision.
 - (e) State that a failure to raise an issue with sufficient detail to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the City Council or LUBA based on that issue.
 - (f) State that the City shall provide written notice of the decision to the Applicant and all parties to the proceeding. The notice shall briefly summarize the decision making process and contain an explanation of appeal rights.
- (2) The Planning Commission may choose to schedule a public hearing to receive testimony if it determines that the proposed development may present possible adverse impacts on surrounding properties, the neighborhood or the City.

SECTION 3.510 QUASI-JUDICIAL PUBLIC HEARING PROCEDURES

The following procedures govern the conduct of Quasi-judicial Public Hearings by the Adair Village Planning Commission or the Adair Village City Council on an application for a land use decision:

- (1) A Quasi-judicial Public Hearing is required by the Planning Commission for discretionary land use decisions including, but not limited to: Conditional Uses and Variances. Written testimony may be provided at the hearing or prior to the hearing. Oral testimony may be provided at the hearing.
- (2) Quasi-judicial Public Hearings are required by both the Planning Commission and City Council for discretionary land use decisions for a Zone Change Map Amendment initiated by an applicant for a specific property. Written testimony may be provided at the hearing or prior to the hearing. Oral testimony may be provided at the hearing. An Amendment to this Code is provided for in **Section 2.700**.
- (3) The Planning Commission and City Council may choose to combine their hearings into a single joint public hearing. The Mayor or President of the City Council shall preside at joint hearings. Following the joint public hearing, the Planning Commission will deliberate at a separately scheduled meeting and make a recommendation to the City Council. The City Council will consider the recommendation of the Planning Commission and following deliberation, make a final decision on the amendment considering the public testimony, factual evidence presented and compatibility and compliance with the City Comprehensive Plan and the Statewide Land Use Goals and Guidelines.
- (4) An issue which may be the basis for an appeal to the Land Use Board of Appeals (LUBA) shall be raised not later than the close of the record following the final evidentiary hearing on the proposal before the City. Such issues shall be raised with sufficient detail so as to afford the City Council or Planning Commission, and the parties, an adequate opportunity to respond to each issue.
- (5) At the commencement of a hearing the Chairperson of the Hearing Body shall:
 - (a) Announce the purpose of the hearing.
 - (b) State that the applicable substantive criteria will be presented in the Staff Report.
 - (c) State that testimony and evidence must be directed toward the criteria or other criteria in the plan or ordinances which the person believes to apply to the decision.
 - (d) State that a failure to raise an issue with sufficient detail to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to LUBA based on that issue.
- (6) The Chair shall request members of the hearing body to declare and identify any potential conflict of interest or any ex parte contacts on the issue:

- (a) Members shall place on the record the substance of any written or oral ex parte communications concerning the decision or action.
 - (b) Members shall make a public announcement of the content of the communication.
 - (c) Opposition parties' have a right to rebut the substance of any ex parte communication at the first hearing following said communication.
 - (d) In accordance with **ORS 227.180**, no decision or action by the Planning Commission or City Council shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body if the member makes the declarations cited above.
- (7) The Chair shall request presentation of the Staff Report.
 - (8) The Chair shall request reports or testimony from any Governmental Agencies.
 - (9) The Chair shall make the following statements before presentation of testimony:
 - (a) A person shall first stand and state his full name and address.
 - (b) The Chair, members of the Hearing Body, or others, with the recognition of the Chair may question a witness.
 - (10) The Chair shall call for the Applicant's Presentation.
 - (11) The Chair shall call for other Proponent testimony in favor of the Request.
 - (12) The Chair shall call for Opponent's testimony in opposition to the Request.
 - (13) The Chair shall call for general comments.
 - (14) The Chair shall call for the Applicant's rebuttal to opponent's testimony. The Applicant has the right of rebuttal - Opponents do not.
 - (15) The Chair shall close the hearing or continue it to an announced time and place.
 - (16) 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. When a record is reopened to admit new evidence or testimony, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.
 - (17) Call for deliberation by Hearing Body following the close of the Hearing or Record. The Hearing Body may make its decision following the hearing or may continue its deliberation to a subsequent meeting. The time and place of the subsequent meeting shall be announced.

SECTION 3.520 LEGISLATIVE PUBLIC HEARING PROCEDURES

The following procedures govern the conduct of Legislative land use public hearings conducted before the Adair Village Planning Commission or the Adair Village City Council on an Amendment to this Code:

- (1) Legislative public hearings are required by both the Planning Commission and City Council for text amendments or zone change map amendments that affect a group or class of properties. Written testimony may be provided at the hearing or prior to the hearing. Oral testimony may be provided at the hearing. Amendments to this Code are provided for in **Section 2.700**.
- (2) The Planning Commission and City Council may choose to combine their hearings into a single joint public hearing. The Mayor or President of the City Council shall preside at joint hearings. Following the joint public hearing, the Planning Commission will deliberate at a separately scheduled meeting and make a recommendation to the City Council. The City Council will consider the recommendation of the Planning Commission and following deliberation, make a final decision on the amendment considering the public testimony, factual evidence presented and compatibility and compliance with the City Comprehensive Plan and the Statewide Land Use Goals and Guidelines.
- (3) An issue which may be the basis for an appeal to the Land Use Board of Appeals (LUBA) shall be raised not later than the close of the record following the final evidentiary hearing on the proposal before the City. Such issues shall be raised with sufficient detail so as to afford the City Council or Planning Commission, and the parties, an adequate opportunity to respond to each issue.
- (4) At the commencement of a hearing a statement by the Chairperson shall be made to those in attendance that:
 - (a) Announces the purpose of the hearing.
 - (b) States that the applicable substantive criteria will be presented in the Staff Report.
 - (c) States that testimony and evidence must be directed toward the criteria or other criteria in the City Comprehensive Plan, this Code or other ordinances which the person believes to apply to the decision.
 - (d) States that a failure to raise an issue with sufficient detail to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to LUBA based on that issue.
- (5) The Chair shall request presentation of the Staff Report.
- (6) The Chair shall request reports or testimony from any Governmental Agencies.
- (7) The Chair shall make the following statements before presentation of testimony:
 - (a) A person shall first stand and state his full name and address.

- (b) The Presiding Officer, members of the Hearing Body, or others, with the recognition of the chair may question a witness.
- (8) Call for testimony in favor of the change.
- (9) Call for testimony in opposition to the change.
- (10) Call for general comments.
- (11) Close the hearing or continue it to another announced time and place.
- (12) Call for deliberation by Hearing Body following close of the Hearing. The Hearing Body may make its decision following the hearing or may continue its deliberation to a subsequent meeting. The time and place of the subsequent meeting shall be announced.

SECTION 3.600 DECISION

Applicants and participants in a land use proceeding are entitled to a decision based upon a fair and impartial review or hearing of the factual evidence presented in conformance with the relevant standards and criteria contained in the City's Comprehensive Plan, Codes or Ordinances.

- (1) **Decision Justification.** The review or hearing body shall make a decision on a land use application and provide a brief statement that explains the standards and criteria considered relevant to decision, states the facts relied upon and explains the justification for the decision, with findings that summarize the facts believed by the review or hearing body and how the standards and criteria are satisfied by the accepted facts.
- (2) **Findings.** Findings are based on the information presented in the application, the staff report and evidence presented in the proceedings. **ORS 227.173** requires:
 - (a) An explanation of the relevant criteria applicable to the decision.
 - (b) A statement of the facts supporting the decision.
 - (c) An explanation of how the standards and criteria are satisfied by the accepted facts and justify the decision.
- (3) **Findings for Approval.** The findings must contain a statement that the applicable policy or criteria is satisfied by the accepted facts presented.
- (4) **Findings for Approval with Conditions.** The findings must contain a statement that the applicable policy or criteria can be satisfied by the facts presented with the application of conditions of approval as authorized in this Code.
- (5) **Findings for Denial.** The findings must contain a statement that the applicable policy or criteria are not satisfied by the facts presented.
- (6) **Notice of Decision.** Written notice shall be given to the Applicant and all parties to the proceedings. The notice shall contain the following information:
 - (a) The name of the Applicant and/or Owner of the subject property.
 - (b) The address or geographic description of the subject property.
 - (c) A description of the requested action.
 - (d) The date of decision.
 - (e) A summary of the decision made.
 - (f) An explanation of appeal rights.
 - (g) The location where the record may be reviewed.

SECTION 3.700 APPEAL PROVISIONS

An appeal issue shall be raised at the time of the review or hearing, either in person or by letter. The appeal issue raised must be specific and shall be presented with enough clarity to afford the decision body an opportunity to adequately respond to the issue. Failure to raise the issue at the review or hearing or failure to clearly define the issue shall preclude appeal to the City Council or to the Land Use Board of Appeals (LUBA) on that issue.

- (1) Written notice of the appeal shall be filed with the City on forms provided by the City along with the applicable fee. An Appeal request shall contain:
 - (a) The name of the appellant(s) and a statement by the appellant that they were a party to the initial proceedings.
 - (b) Identification of the decision being appealed.
 - (c) The date of the decision being appealed.
 - (d) The form and basis of the appeal and the criteria relied upon for the appeal request.
- (2) An action or ruling of the City Administrator or designee pursuant to this Code may be appealed to the Planning Commission within 15 days after the decision is made. If an appeal is not filed within the above specified period, the decision of the City Administrator or designee shall be final. If the appeal is filed, the Planning Commission shall receive a report and recommendation thereon from the City Administrator or designee and shall hold public hearing on the appeal.
- (3) An action or ruling of the Planning Commission pursuant to this Code may be appealed to the City Council within 15 days after the Planning Commission decision is mailed.

Written notice of the appeal shall be filed with the City. If the appeal is not filed within the above specified period, the decision of the Planning Commission shall be final. If the appeal is filed, the City Council shall request a report and recommendation thereon from the Planning Commission and shall hold a public hearing on the appeal. The City Council may continue the hearing for good cause. Following the hearing, the City Council may sustain any recommendations or ruling of the Planning Commission, provided such action complies with the provisions of this Code, or the City Council may decide the issue.

- (4) **Notice.** A "Notice of Appeal" shall be provided in the same manner as provided for in the original Application and Notice of Decision including all parties to the previous proceedings. A "Notice of Appeal" shall contain:
 - (a) The name of the appellant and a statement that they were a party to the initial proceedings.
 - (b) Identification of the decision being appealed.
 - (c) The date of the decision being appealed.

- (d) The form and basis of the appeal and the criteria relied upon for the appeal.
- (5) **Scope of Review.** The hearing body shall determine the scope of review on the appeal to be one of the following:
- (a) Review on specific issues relative to the decision being appealed.
 - (b) Review only on the official record of the decision being appealed.
 - (c) A "de novo" hearing as if the request had not been previously heard, except that all testimony, evidence and other materials in the record of the previous review or hearing may be included in the new record of review.
- (6) A party aggrieved by the City's final determination in a proceeding for a land use decision, limited land use decision or discretionary permit may have the determination reviewed by the Land Use Board of Appeals (LUBA) under **ORS 197.828 to 197.845** by filing a notice of intent to appeal with LUBA not later than 21 days after the decisions becomes final.

SECTION 3.800 REVOCATION

A decision on a land use application may be overturned, revoked or modified by the City on any one or more of the following grounds after a public hearing on the issue:

- (1) A material misrepresentation or mistake of fact was made in the application or evidence submitted, either intentionally or unintentionally.
- (2) The use for which approval was granted has ceased to exist.
- (3) Failure to comply with the terms and conditions of approval.
- (4) The use is in violation of a provision of this Code or other applicable statutes, ordinances, or regulations.
- (5) The approval decision was overturned on appeal.

