

**Chapter 18.390**  
**DECISION-MAKING PROCEDURES**

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**18.390.010 Purpose**

- A. Purpose. The purpose of this chapter is to establish a series of standard decision-making procedures that will enable the City, the applicant, and all interested parties to reasonably review applications and participate in the local decision-making process in a timely and effective way. Each permit or action set forth in Chapters 18.320—18.385 has been assigned a specific procedure type.

**18.390.020 Description of Decision-Making Procedures**

- A. General. All development permit applications shall be decided by using one of the following procedure types. The procedure type assigned to each action governs the decision-making process for that permit, except to the extent otherwise required by applicable state or federal law. The Director shall be responsible for assigning specific procedure types to individual permit or action requests, as requested. Special alternative decision-making procedures have been developed by the City in accordance with existing state law, and are codified in Section 18.390.070.

- B. Types defined. There are four types of decision-making procedures, as follows:

1. Type I Procedure. Type I procedures apply to ministerial permits and actions containing clear and objective approval criteria. Type I actions are decided by the Director without public notice and without a public hearing.
2. Type II Procedure. Type II procedures apply to quasi-judicial permits and actions that contain some discretionary criteria. Type II actions are decided by the Director with public notice and an opportunity for a hearing. If any party with standing appeals a Director's Type II decision, the appeal of such decision will be heard by the Hearings Officer.
3. Type III Procedure. Type III procedures apply to quasi-judicial permits and actions that predominantly contain discretionary approval criteria. Type III actions are decided by the Hearings Office (Type III-HO), the Planning Commission (Type III-PC), or Design Review Board (Type III-C) with appeals to or review by the City Council.
4. Type IV Procedure. Type IV procedures apply to legislative matters. Legislative matters involve the creation, revision, or large-scale implementation of public policy. Type IV matters are considered initially by the Planning Commission with final decisions made by the City Council.

C. Summary of permits by decision-making procedure type. Table 18.390.1 summarizes the various land use permits by the type of decision-making procedure.

**TABLE 18.390.1  
SUMMARY OF PERMITS BY TYPE OF DECISION-MAKING PROCEDURE**

<b>Type</b>	<b>Permit/Land</b>	<b>Cross-Reference(s)</b>
I (18.390.030)	Accessory Residential Units	18.710
	Development Adjustments	18.370.020.B.2
	Design Review Compliance Letter (Track 1)	18.610
	Home Occupation/Type I	18.742
	Landscaping Adjustments	
	- Existing Street Trees	18.370.020.C.4.a; 18.745
	- New Street Trees	18.370.020.C.4.b; 18.745
	Lot Line Adjustment	18.410.040
	Minimum Residential Density Adjustment	18.370.020.C.2; 18.430; 18.715
	Nonconforming Use Confirmation	18.385.030.A; 18.760
	Parking Adjustments	
	- Reduction of Minimum Parking Ratios in Existing Developmts/Transit Imp.	18.370.020.C.5.c; 18.765
	- Reduction in Stacking Lane Length	18.370.020.C.5.g; 18.765
	Signs	
	- New	18.780
	- Existing	18.780
	Site Development/Minor Modification	18.360.090
	Temporary Uses	
	- Emergency Uses	18.785
	- Seasonal/Special Uses	18.785
- Temporary Building	18.785	
- Temporary Sales Office/Home	18.765	
Tree Removal		
- Removal Adjustment	18.370.020.C.7; 18.790	
- Removal Permit	18.790	
Wireless Communications Facilities -- Setback from Other Towers	18.370.040.C.8.b; 18.798	
Conditional Use/Minor Modification	18.330.030	

<b>Type</b>	<b>Permit/Land</b>	<b>Cross-Reference(s)</b>
II (18.390.040)	Access/Egress Adjustment	18.370.020.C.3.b
	Downtown Design Administrative Review (Track 2)	18.610
	Historic Overlay	
	- Exterior Alternation	18.740
	- New Construction	18.740
	- Demolition	18.740
	Home Occupation/Type II	18.742
	Land Partitions <sup>1</sup>	18.420.050
	Parking Adjustments	
	- Reduction in Minimum Parking Ratios	18.370.020.C.5.a; 18.765
	- Reduction of Minimum Parking Ratios in New Developments/Transit Imp	18.370.020.C.5.b; 18.765
	- Increase in Maximum Parking Ratios	18.370.020.C.5.d; 18.765
	- Reduction in Bicycle Parking	18.370.020.C.5.e; 18.765
	- Alternate Parking Garage Layout	18.370.020.C.5.f; 18.765
	Sensitive Lands Permits	
	- In 25%+ Slope	18.775
	- Within Drainageways	18.775
	- Within Wetlands <sup>1</sup>	18.775
	Sign Code Adjustment	18.370.020.C.6; 18.780
	Site Development Review	
- New Construction	18.360.090	
- Major Modification	18.360.090	
Subdivision Without Planned Development <sup>1</sup>	18.430.070	
Variances	18.370.010.C	
Wireless Communication Facilities -- Adjustment to Setback from Residences	18.370.020.C.8.a; 18.798	
Appeals to Hearings Officer	18.390.040.G	
IIIA (18.390.050) (Hearings Officer)	Conditional Use	
	- Initial	18.330.030
	- Major Modification	18.330.030
	Sensitive Lands	
	- Within 100-Year Floodplain	18.775
- In 25%+ Slope <sup>1</sup>	18.775	

Type	Permit/Land	Cross-Reference(s)
	- Within Drainageways <sup>1</sup>	18.775
	- Within Wetlands <sup>1</sup>	18.775
IIIB (18.390.050) (Planning Comm.)	Historic Overlay	
	- District Overlay	18.385.010.A; 18.740
	- Removal of District Overlay	18.385.010.B; 18.740
	Planned Development	
	- With Subdivision	18.350.100; 18.430
	- Without Subdivision	18.350.100
	Zone Map/Text Change/Quasi-Judicial	18.380.030.B
IIIC (18.390.050) (Design Review Board)	Downtown Design Review (Track 3)	18.610
IV (18.390.060)	Annexation	18.320
	Zone Map/Text Change/Legislative	18.380.020

<sup>1</sup>These may be processed as either Type II or III procedures, pursuant to Section 18.775.020.D and E. (Ord. 10-02 § 2; Ord. 09-13)

### **18.390.030 Type I Procedure**

- A. Preapplication conference. A preapplication conference is not required for a Type I action.
- B. Application requirements.
1. Application forms. Type I applications shall be made on forms provided by the Director as provided by Section 18.390.080.E.1.
  2. Application requirements. Type I applications shall:
    - a. Include the information requested on the application form;
    - b. Address the relevant criteria in sufficient detail for review and action; and
    - c. Be accompanied by the required fee.
- C. Administrative decision requirements. The Director's decision shall address all of the relevant approval criteria. Based on the criteria and the facts contained within the record, the Director shall approve, approve with conditions or deny the requested permit or action.
- D. Final decision. The Director's decision is final for purposes of appeal on the date it is mailed or otherwise provided to the applicant, whichever occurs first. The Director's decision is not appealable locally, and is the final decision of the City.
- E. Section not used.

F. Section not used.

G. Effective date. The Director's decision is effective on the day after it is final.

#### **18.390.040 Type II Procedure**

A. Preapplication conference. A preapplication conference is required for Type II actions. Preapplication conference requirements and procedures are set forth in Section 18.390.080.C.

B. Application requirements.

1. Application forms. Type II applications shall be made on forms provided by the Director as provided by Section 18.390.080.E.1;
2. Submittal information. The application shall:
  - a. Include the information requested on the application form;
  - b. Address the relevant criteria in sufficient detail for review and action;
  - c. Be accompanied by the required fee;
  - d. Include two sets of pre-stamped and pre-addressed envelopes for all property owners of record as specified in Section 18.390.040.C. The records of the Washington County Department of Assessment and Taxation are the official records for determining ownership. The applicant shall demonstrate that the most current assessment records have been used to produce the notice list;
  - e. Include an impact study. The impact study shall quantify the effect of the development on public facilities and services. The study shall address, at a minimum, the transportation system, including bikeways, the drainage system, the parks system, the water system, the sewer system, and the noise impacts of the development. For each public facility system and type of impact, the study shall propose improvements necessary to meet City standards and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users. In situations where the Community Development Code requires the dedication of real property interests, the applicant shall either specifically concur with the dedication requirements, or provide evidence which supports the conclusion that the real property dedication requirement is not roughly proportional to the projected impacts of the development.

C. Notice of pending Type II Administrative Decision.

1. Prior to making a Type II Administrative Decision, the Director shall provide notice to:
  - a. All owners of record within 500 feet of the subject site;
  - b. Any City-recognized neighborhood group whose boundaries include the site;
  - c. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the City which includes provision for such notice or who is otherwise entitled to such notice.

2. The purpose of such notice is to provide nearby property owners and other interested parties with an opportunity to submit written comments concerning the application, prior to issuance of the Type II Administrative Decision. The goal of this notice is to invite relevant parties of interest to participate early in the decision-making process;
3. Notice of a pending Type II Administrative Decision shall:
  - a. Provide a 14-day period for the submission of written comments prior to issuance of a decision on the permit;
  - b. List by commonly used citation, the approval criteria relevant to the decision;
  - c. State the place, date and time the comments are due, and the person to whom the comments should be addressed;
  - d. Include the name and telephone number of the person who will make the Administrative Decision;
  - e. Identify the specific permits or approvals requested;
  - f. Describe the street address or other easily understandable geographic reference to the subject site;
  - g. Indicate that failure of any party to address the relevant approval criteria with sufficient specificity may preclude subsequent appeals to the Land Use Board of Appeals or Circuit Court on that issue. Comments directed at the relevant approval criteria are what constitute relevant evidence;
  - h. Indicate that all evidence relied upon by the Director to make this decision shall be contained within the record, and is available for public review. Copies of this evidence can be obtained at a reasonable cost from the Director;
  - i. Indicate that after the comment period closes, the Director shall issue a Type II Administrative Decision. The Director's decision shall be mailed to the applicant and to owners of record of property located within 500 feet of the subject site, and to anyone else who submitted written comments or who is otherwise entitled to notice;
  - j. Contain the following notice: "Notice to mortgagee, lienholder, vendor, or seller: The Tigard Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

D. Administrative decision requirements. The Director's Decision shall address all of the relevant approval criteria. Based upon the criteria and the facts contained within the record, the Director shall approve, approve with conditions or deny the requested permit or action.

E. Notice of Decision.

1. Within five days after signing the decision, a Notice of Decision shall be sent by mail to:
  - a. The applicant and all owners or contract purchasers of record of the site which is the subject of the application;

- b. All owners of record of property as shown on the most recent property tax assessment roll, located within 500 feet of the site;
    - c. Any City-recognized neighborhood group whose boundaries include the site;
    - d. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the City which includes provision for such notice or who is otherwise entitled to such notice.
  2. The Director shall cause an affidavit of mailing of such notice to be prepared and make a part of the file, which indicates the date the notice was mailed and demonstrates that the required notice was mailed to the necessary parties in a timely manner;
  3. The content of the Type II Notice of Decision shall contain:
    - a. The nature of the application in sufficient detail to apprise persons entitled to notice of the applicant's proposal and of the decision;
    - b. The address or other geographic description of the subject property, including a map of the site in relation to the surrounding area, where applicable;
    - c. A statement of where the Director's decision can be obtained;
    - d. The date the Director's decision shall become final, unless appealed;
    - e. A statement that all persons entitled to notice or who are otherwise adversely affected or aggrieved by the decision may appeal the decision;
    - f. A statement briefly explaining how an appeal can be taken, the deadline for filing such an appeal, and where further information can be obtained concerning the appeal; and
    - g. A statement that unless the applicant is the appellant, the hearing on an appeal from the Director's decision shall be confined to the specific issues identified in the written comments submitted by the parties during the comment period. Additional evidence concerning issues properly raised in the Notice of Appeal may be submitted by any party during the appeal hearing, subject to any additional rules of procedure that may be adopted from time to time by the appellate body.
- F. Final decision and effective date. A Type II Administrative Decision is final for purposes of appeal when notice of the decision is mailed. A Type II Administrative Decision becomes effective on the day after the appeal period expires, unless an appeal is filed. If an appeal is filed and dismissed after the appeal period has expired, the Type II Administrative Decision becomes effective on dismissal of the appeal.
- G. Appeal. A Type II administrative decision may be appealed as follows:
  1. Standing to appeal. The following parties have standing to appeal a Type II Administrative Decision:
    - a. The applicant;
    - b. Any party who was mailed written notice of a pending Type II administrative decision;

- c. Any other party, who demonstrates by clear and convincing evidence that they participated in the proceeding through the submission of written or verbal testimony;

2. Appeal procedure.

- a. Notice of appeal. Any party withstanding, as provided in Subsection G.1 above, may appeal a Type II Administrative Decision by filing a Notice of Appeal according to the following procedures:

- (1) Time for filing. A Notice of Appeal shall be filed with the Director within 10 business days of the date the Notice of Decision was mailed.

- (2) Content of Notice of Appeal. The Notice of Appeal shall contain:

- (a) An identification of the decision being appealed, including the date of the decision;

- (b) A statement demonstrating the party filing the Notice of Appeal has standing to appeal;

- (c) A detailed statement of the specific issues raised on appeal;

- (d) A statement demonstrating that the specific issues raised on appeal were raised during the comment period, except when the appeal is filed by the applicant;

- (e) Filing fee.

- (3) All Notices of Appeal for Type II Administrative Appeals shall be filed with the Director, together with the required filing fee. The amount of the filing fee shall be established by the Director. The maximum fee for an initial hearing shall be the cost to the local government for preparing and for conducting the hearing, or the statutory maximum, whichever is less.

- b. Scope of appeal. The appeal of a Type II Administrative Decision by a person with standing shall be limited to the specific issues raised during the written comment period, as provided under Section 18.390.040.C, unless the Hearings Officer, at his or her discretion, allows additional evidence or testimony concerning any other relevant issue. The Hearings Officer may allow such additional evidence if he or she determines that such evidence is necessary to resolve the case. The intent of this requirement is to limit the scope of Type II Administrative Appeals by encouraging persons with standing to submit their specific concerns in writing during the comment period. The written comments received during the comment period will usually limit the scope of issues on appeal. Only in extraordinary circumstances should new issues be considered by the Hearings Officer on appeal of a Type II Administrative Decision;

- c. Appeal procedures. Type III notice and hearing procedures shall be used for all Type II Administrative Appeals, as provided in Sections 18.390.050.C—F;

H. Final decision and effective date. The decision of the Hearings Officer with regard to any appeal of a Type II Administrative Decision is the final decision of the City. The decision of the Hearings Officer is final for purposes of appeal on the day the decision is mailed. The decision is effective on the day after the appeal period expires, unless an appeal is filed. If an appeal is filed, the decision is effective on the day after the appeal is resolved.

### **18.390.050 Type III Procedure**

- A. Preapplication conference. A preapplication conference is required for all Type III actions. The requirements and procedures for a preapplication conference are described in Section 18.390.080.C.
- B. Application requirements.
1. Application forms. Type III applications shall be made on forms provided by the Director as provided by Section 18.390.080.E.1.
  2. Content. Type III applications shall:
    - a. Include the information requested on the application form;
    - b. Address the relevant criteria in sufficient detail for review and action;
    - c. Be accompanied by the required fee;
    - d. Include two sets of pre-stamped, pre-addressed envelopes for all persons who are property owners of record as specified in Section 18.390.050.C. The records of the Washington County Department of Assessment and Taxation shall be the official records for determining ownership. The applicant shall demonstrate that the most current assessment records have been used to produce the notice list;
    - e. Include an impact study. The impact study shall quantify the effect of the development on public facilities and services. The study shall address, at a minimum, the transportation system, including bikeways, the drainage system, the parks system, the water system, the sewer system, and the noise impacts of the development. For each public facility system and type of impact, the study shall propose improvements necessary to meet City standards and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users. In situations where the Community Development Code requires the dedication of real property interests, the applicant shall either specifically concur with the dedication requirements, or provide evidence which supports the conclusion that the real property dedication requirement is not roughly proportional to the projected impacts of the development.
- C. Notice of hearing.
1. Mailed notice. Notice of a Type II Administrative Appeal hearing or Type III hearing shall be given by the Director in the following manner:
    - a. At least 20 days prior to the hearing date, notice shall be sent by mail to:
      - (1) The applicant and all owners or contract purchasers of record of the site which is the subject of the application;
      - (2) All property owners of record within 500 feet of the site;
      - (3) Any affected governmental agency which has entered into an intergovernmental agreement with the City which includes provision for such notice, or who is otherwise entitled to such notice;

- (4) Any City-recognized neighborhood group whose boundaries include the site;
  - (5) Any person who has submitted a written request, and who has paid a fee established by the City Council; and
  - (6) In actions involving appeals, the appellant and all parties to the appeal.
- b. The Director shall cause an affidavit of mailing of notice to be prepared and made a part of the file, which demonstrates the date that the required notice was mailed to the necessary parties.
  - c. At least 10 business days prior to the hearing, notice of the hearing shall be given in a newspaper of general circulation in the City. An affidavit of publication concerning such notice shall be made part of the administrative record.
  - d. At least 10 business days prior to the hearing, notice of the hearing shall be posted on the site by the applicant, pursuant to Subsection C.2 below. An affidavit of posting concerning such notice shall be prepared by the applicant and shall be submitted and made part of the administrative record.
2. Content of notice. Notice of a Type II Administrative Appeal hearing or Type III hearing to be mailed, posted and published as provided in Subsection 1 above shall contain the following information:
- a. Explain the nature of the application and the proposed use or uses which could be authorized;
  - b. List the applicable criteria from the zoning ordinance that 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 the failure to raise an issue at the hearing, 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;
  - f. Include the name of a City representative to contact and the telephone number where additional information may be obtained;
  - g. State that a copy of the application and all documents and evidence submitted by or on behalf of the applicant and the applicable criteria are available for inspection at no cost and that copies shall be provided at a reasonable cost;
  - h. State that a copy of the staff report shall be available for inspection at no cost at least seven days prior to the hearing, and that a copy shall be provided at a reasonable cost;
  - i. Include a general explanation of the requirements for submission of testimony and the procedure for conducting hearings;

- j. Contain the following notice: “Notice to mortgagee, lienholder, vendor, or seller: The Tigard Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser.”

D. Conduct of the hearing.

1. At the commencement of the hearing, a statement shall be made to those in attendance that:
  - a. Lists the applicable substantive criteria;
  - b. States that testimony and evidence shall be directed toward the relevant approval criteria described in the staff report or other criteria in the plan or land use regulation which the person testifying believes to apply to the decision;
  - c. States that failure to raise an issue with sufficient specificity to afford the decision-maker and the parties an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals on that issue.
2. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional relevant evidence or testimony regarding the application so long as that evidence and testimony is within the scope of the hearing. The local hearing authority shall grant such request by continuing the public hearing pursuant to paragraph 4.a. of this Subsection D or by leaving the record open for additional written evidence or testimony pursuant to paragraph 4.b. of this subsection.
3. If the hearing authority grants a continuance, the hearing shall be continued to a date, time, and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence and testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days, to submit additional written evidence or testimony for the purpose of responding to the new written evidence.
4. If the hearing authority leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the City for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearing authority shall reopen the record pursuant to paragraph 5 of this Subsection D.
  - a. A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 227.178, unless the continuance or extension is requested or agreed to by the applicant;
  - b. Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application period. The applicant’s final submittal shall be considered part of the record, but shall not include any new evidence.
5. When a local governing body, planning commission, hearing body, or hearings officer re-opens a record 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.

6. The record.
  - a. The record shall contain all testimony and evidence that is submitted and not rejected.
  - b. The Review Authority may take official notice of judicially cognizable facts pursuant to the applicable law. If the review authority takes official notice, it must announce its intention and allow the parties to the hearing to present evidence concerning the fact.
  - c. The Review Authority shall retain custody of the record as appropriate, until a final decision is rendered.
7. Parties to a Type II Administrative Appeal hearing or Type III hearing are entitled to an impartial review authority as free from potential conflicts of interest and pre-hearing ex parte contacts as reasonably possible. It is recognized, however, that the public has a countervailing right of free access to public officials. Therefore:
  - a. Review authority members shall disclose the substance of any pre-hearing ex parte contacts with regard to the matter at the commencement of the public hearing on the matter. The member shall state whether the contact has impaired the impartiality or ability of the member to vote on the matter and shall participate or abstain accordingly.
  - b. Any member of the Review Authority shall not participate in any proceeding or action in which any of the following has a direct or substantial financial interest: The member or member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the meeting of the Review Authority where the action is being taken.
  - c. Disqualification of a review authority member due to contacts or conflict may be ordered by a majority of the members present and voting. The person who is the subject of the motion may not vote.
  - d. If all members abstain or are disqualified, the administrative rule of necessity shall apply. All members present who declare their reasons for abstention or disqualification shall thereby be re-qualified to act.
  - e. In cases involving the disqualification or recusal of a hearings officer, the City shall provide a substitute hearings officer in a timely manner subject to the above impartiality rules.
8. Ex parte communications.
  - a. Members of the Review Authority shall not:
    - (1) Communicate, directly or indirectly, with any party or representative of a party in connection with any issue involved in a hearing, except upon giving notice, and an opportunity for all parties to participate;

- (2) Take notice of any communication, report, or other materials outside the record prepared by the proponents or opponents in connection with the particular case unless the parties are afforded an opportunity to contest the materials so noticed.
  - b. No decision or action of the Review Authority shall be invalid due to ex parte contacts or bias resulting from ex parte contacts with a member of the decision-making body if the member of the decision-making body receiving contact:
    - (1) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and
    - (2) Makes a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action shall be considered or taken on the subject to which the communication is related.
  - c. Members of Review Authority shall be governed by the provisions of ORS 244.135 and the provisions of this section.
  - d. A communication between City staff and the Review Authority shall not be considered an ex parte contact.
9. Presenting and receiving evidence.
- a. The Review Authority may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant or personally derogatory testimony.
  - b. No oral testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing, but only pursuant to the schedule and procedure announced by the Review Authority prior to the close of the public hearing, or as otherwise provided by this section.
  - c. The Review Authority may visit the site and the surrounding area, and may use information obtained during the site visit to support their decision, provided the information relied upon is disclosed at the hearing and that an opportunity is provided to rebut such evidence. In the alternative, a site visit may be conducted by the Review Authority for the purpose of familiarizing the Review Authority with the site and the surrounding area, but not for the purpose of independently gathering evidence. In such a case, at the commencement of the hearing, members of the Review Authority shall disclose the circumstances of their site visit and shall provide the parties with an opportunity to question each member of the Review Authority concerning their site visit.

E. The decision process.

1. Basis for decision. Approval or denial of a Type II Administrative Appeal or Type III action shall be based on standards and criteria, which shall be set forth in the Development Ordinance, and which shall relate approval on denial of a discretionary permit application to the Development Ordinance and, when appropriate, to the Comprehensive Plan for the area in which the development would occur and to the Development Ordinance and Comprehensive Plan for the City as a whole.

2. Findings and conclusions. Approval or denial of a Type II Administrative Appeal or Type III action shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards, and facts set forth.
  3. Form of decision. The Review Authority shall issue a final order containing the above-referred findings and conclusions, which either approves, denies, or approves the permit or action with conditions. The Review Authority may also issue any intermediate rulings as they see fit.
  4. Decision-making time limits. A final order for any Type II Administrative Appeal or Type III action shall be filed with the Director within 10 business days after the close of the deliberation.
- F. Notice of decision. Notice of a Type II Administrative Appeal decision or a Type III decision shall be mailed to the applicant and to all parties of record within five business days after the decision is filed by the Review Authority with the Director. Failure to receive mailed notice shall not invalidate the action, provided that a good faith attempt was made to mail such notice.
- G. Final decision.
1. Final decision, effective date and appeal. The decision of the Planning Commission or Hearings Officer in a Type III action is final for purposes of appeal on the date notice of the decision is mailed. Any party with standing may appeal a Type III decision to the City Council by filing a Notice of Appeal with the Director within 10 business days of the date notice of the decision is mailed. The Notice of Appeal shall be in the form specified in Section 18.390.040.G.2.a.(2). The procedures of Sections 18.390.050.C—F shall be forwarded in the appeal.
  2. Final decision on appeal. The decision of the City Council on any Type III appeal is the final decision of the City and is final and effective on the date notice of the decision is mailed. (Ord. 09-13)

#### **18.390.060 Type IV Procedure**

- A. Pre-Application conference. A pre-application conference is required for all Type IV actions. The requirements and procedures for a preapplication conference are described in Section 18.390.080.C.
- B. Timing of requests. The Director shall receive proposed Type IV actions twice yearly. A completed application shall be submitted not more than 75 days and not less than 45 days before the first commission meeting in April and October. The Director may waive any of the above periods.
- C. Application requirements.
1. Application forms. Type IV applications shall be made on forms provided by the Director as provided by Section 18.390.080.E.1.
  2. Submittal information. The application shall:
    - a. Contain the information requested on the form;
    - b. Address the appropriate criteria in sufficient detail for review and action;
    - c. Be accompanied by the required fee; and

- d. Be accompanied by 18 copies of the narrative.

D. Notice of hearing.

1. Required hearings. Two hearings, one before the Commission and one before the Council, are required for all Type IV actions, except annexations where only a hearing by the City Council is required.
2. Notification requirements. Notice of the public hearings for the request shall be given by the Director in the following manner:
  - a. At least 10 days prior to the scheduled hearing date, notice shall be sent to:
    - (1) The applicant;
    - (2) Any affected governmental agency;
    - (3) Any City-recognized neighborhood group whose boundaries include the site; and
    - (4) Any person who requests notice in writing and pays a fee established by Council resolution.
  - b. At least 10 business days prior to the scheduled public hearing date, notice shall be given in a newspaper of general circulation in the City.
  - c. The Director shall:
    - (1) For each mailing of notice, cause an affidavit of mailing to be filed and made a part of the record as provided by Subsection D.2.a; and
    - (2) For each published notice, cause an affidavit of publication to be filed and made part of the record as provided by Subsection D.2.b.
3. Content of notice. The notice given to persons entitled to mailed or published notice pursuant to this section shall include the following information:
  - a. The number and title of the file containing the application and the address and telephone number of the Director's office where additional information can be obtained;
  - b. A description of the location of the proposal reasonably calculated to give notice as to the location of the affected geographic area;
  - c. A description of the substance of the proposal in sufficient detail for people to determine that a change is contemplated and the place where all relevant materials and information may be obtained or reviewed;
  - d. The time(s), place(s), and date(s) of the public hearing(s); a statement that public oral or written testimony is invited; and a statement that the hearing will be held under this title and rules of procedure adopted by the Council and available at City Hall or the rules of procedure set forth in Section 18.390.060.E;

- e. Each mailed notice required by this section of the ordinance shall contain the following statement: “Notice to mortgagee, lienholder, vendor, or seller: The Tigard Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser.”
- 4. Failure to receive notice. The failure of any person to receive notice as required under Subsections B and C of this section shall not invalidate the action, providing:
  - a. Personal notice is deemed given where the notice is deposited with the United States Postal Service;
  - b. Published notice is deemed given on the date it is published.

E. Hearing process and procedure.

- 1. Unless otherwise provided in the rules of procedure adopted by the City Council:
  - a. The presiding officer of the Commission and of the Council shall have the authority to:
    - (1) Regulate the course, sequence, and decorum of the hearing;
    - (2) Dispose of procedural requirements or similar matters; and
    - (3) Impose reasonable time limits for oral presentations.
  - b. No person shall address the Commission or the Council without:
    - (1) Receiving recognition from the presiding officer; and
    - (2) Stating their full name and residence address.
  - c. Disruptive conduct such as audience demonstrations in the form of applause, cheering, or display of signs shall be cause for expulsion of a person or persons from the hearing, termination or continuation of the hearing, or other appropriate action determined by the presiding officer.
- 2. Unless otherwise provided in the rules of procedures adopted by the Council, the presiding officer of the Commission and of the Council, shall conduct the hearing as follows:
  - a. The hearing shall be opened by a statement from the presiding officer setting forth the nature of the matter before the body, a general summary of the procedures set forth in this section, a summary of the standards for decision-making, and whether the decision which will be made is a recommendation to the City Council or whether it will be the final decision of the Council;
  - b. A presentation of the Director’s report and other applicable staff reports shall be given;
  - c. The public shall be invited to testify;
  - d. The public hearing may be continued to allow additional testimony or it may be closed; and

- e. The body's deliberation may include questions to the staff, comments from the staff, or inquiries directed to any person present.
- F. Continuation of the public hearing. The Commission or the Council may continue any hearing and no additional notice shall be required if the matter is continued to a place, date, and time certain.
- G. Decision-making considerations. The recommendation by the Commission and the decision by the Council shall be based on consideration of the following factors:
- 1. The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197;
  - 2. Any federal or state statutes or regulations found applicable;
  - 3. Any applicable METRO regulations;
  - 4. Any applicable comprehensive plan policies; and
  - 5. Any applicable provisions of the City's implementing ordinances.
- H. Approval process and authority.
- 1. The Commission shall:
    - a. After notice and a public hearing, formulate a recommendation to the Council to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative; and
    - b. Within 10 business days of determining a recommendation, cause the written recommendation to be signed by the presiding officer of the Commission and to be filed with the Director.
  - 2. Any member of the Commission who voted in opposition to the recommendation by the Commission on a proposed change may file a written statement of opposition with the Director prior to any Council public hearing on the proposed change. The Director shall transmit a copy to each member of the Council and place a copy in the record;
  - 3. If the Commission fails to formulate a recommendation to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative a proposed legislative change within 60 days of its first public hearing on the proposed change, the Director shall:
    - a. Report the failure together with the proposed change to the Council; and
    - b. Cause notice to be given, the matter to be placed on the Council's agenda, a public hearing to be held, and a decision to be made by the Council. No further action shall be taken by the Commission.
  - 4. The Council shall:
    - a. Have the responsibility to approve, approve with modifications, approve with conditions, deny or adopt an alternative to an application for the legislative change or to remand to the

Commission for rehearing and reconsideration on all or part of an application transmitted to it under this title;

- b. Consider the recommendation of the Commission, however, it is not bound by the Commission's recommendation; and
- c. Act by ordinance which shall be signed by the Mayor after the Council's adoption of the ordinance.

I. Vote required for a legislative change.

1. A vote by a majority of the qualified voting members of the Commission present shall be required for a recommendation for approval, approval with modifications, approval with conditions, denial or adoption of an alternative.
2. A vote by a majority of the qualified members of the Council present shall be required to decide any motion made with respect to the proposed change.

J. Notice of decision. Notice of a Type IV Decision shall be mailed to the applicant and to all parties of record within five business days after the decision is filed by the Review Authority with the Director. The City shall also provide notice to all persons according to other applicable laws.

K. Final decision and effective date. Type IV decision shall take effect and shall become final as specified in the enacting ordinance, or if not approved, upon mailing of the notice of decision to the applicant.

L. Record of the public hearing.

1. A verbatim record of the proceeding shall be made by stenographic or mechanical means. It shall not be necessary to transcribe testimony. The minutes and other evidence presented as a part of the hearing shall be part of the record;
2. All exhibits received and displayed shall be marked so as to provide identification and shall be part of the record;
3. The official record shall include:
  - a. All materials considered by the hearings body;
  - b. All materials submitted by the Director to the hearings body with respect to the application;
  - c. The verbatim record made by the stenographic or mechanical means, the minutes of the hearing, and other documents considered;
  - d. The final ordinance;
  - e. All correspondence; and
  - f. A copy of the notice which was given as provided by section 18.390.060, accompanying affidavits and list of persons who were sent mailed notice. (Ord. 09-13)

### **18.390.070 Special Procedures**

- A. Expedited Land Divisions. An Expedited Land Division (“ELD”) shall be defined and may be used in the manner set forth in ORS 197.360, as may be amended from time to time, which is expressly adopted and incorporated by reference here.
1. Selection. An applicant who wishes to use an ELD procedure for a partition, subdivision or planned development instead of the regular procedure type assigned to it, must request the use of the ELD at the time the application is filed, or forfeit his/her right to use it;
  2. Review procedure. An ELD shall be reviewed in accordance with the procedures set forth in ORS 197.365, as may be amended from time to time, which are expressly adopted and incorporated by reference here;
  3. Appeal procedure. An appeal of an ELD shall be in accordance with the procedures set forth in ORS 197.375, as may be amended from time to time, which are expressly adopted and incorporated by reference here. Pursuant to ORS 97.375(3), the referee appointed by the City to conduct the appeal may use any procedure for decision-making consistent with the interests of the parties to ensure a fair opportunity to present information and argument.
- B. Limited Land Use Decisions. A Limited Land Use Decision (LLD) shall be defined and may be used in the manner set forth in ORS 197.015(12), as may be amended from time to time, which is expressly adopted and incorporated by reference here.
1. Selection. An applicant for a permit who wishes to use an LLD procedure instead of the regular procedure type assigned to it, must request the use of the LLD at the time the application is filed, or forfeit his/her right to use it;
  2. Decision-making procedure. An LLD shall be reviewed in accordance with the procedures set forth in ORS 197.195, as may be amended from time to time, which are expressly adopted and incorporated by reference here. The City shall follow the review procedures applicable to the City's Type II procedures, as set forth in Section 18.390.040 except to the extent otherwise required by applicable state law.

### **18.390.080 General Provisions**

- A. General provisions.
1. Special definitions. For purposes of this section, the following definitions apply:
    - a. “Argument” means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. “Argument” does not include facts.
    - b. “Evidence” means facts, documents, data, or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision.

- c. “Final for purposes of appeal” means the point at which an action or decision by any local decision-making body constitutes the final action or decision by that particular body. Because certain actions or decisions may be appealed or reviewed by other decision-making bodies within the City, an action or decision may be “final for purposes of appeal,” without being the “final” action or decision of the City.
    - d. “Effective date” means the date on which a particular action or decision may be undertaken or otherwise implemented. For decisions which are subject to review or appeal by any city council, board, or officer, the effective date will normally be the day after the appeal period expires. If an appeal is dismissed after the appeal period has expired, the decision that was the subject of the appeal becomes effective at the moment of dismissal. Final decisions of the City (those that are not subject to any further appeal or review within the City) are normally effective when they become final.
  2. Time computation. In computing any period of time prescribed or allowed by this chapter, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or legal holiday, including Sunday, in which event, the period runs until the end of the next day which is not a Saturday or legal holiday.
- B. Determination of decision-making type. The Director shall have the initial authority to determine the proper decision-making type relevant to the permit or actions requested. The decision of the Director may be appealed only as a relevant issue through the process assigned by the Director to the underlying permits or actions. If the Director's determination regarding the proper decision-making type is not raised as an issue within the process assigned by the Director to the permit or action requested, the Director's decision shall be final concerning the applicable decision-making type.
- C. Pre-application conferences.
  1. Participants. When a preapplication conference is required, the applicant shall meet with the Director or his/her designee(s);
  2. Information provided. At such conference, the Director shall:
    - a. Cite the applicable comprehensive plan policies and map designation;
    - b. Cite the applicable substantive and procedural ordinance provisions;
    - c. Provide technical data and assistance which will aid the applicant;
    - d. Identify other policies and regulations that relate to the application; and
    - e. Identify other opportunities or constraints that relate to the application.
  3. Disclaimer. Failure of the Director to provide any of the information required by this chapter shall not constitute a waiver of the standards, criteria or requirements of the applications;
  4. Changes in the law. Due to possible changes in federal, state, regional, and local law, information given by staff to the applicant during the preapplication conference concerning these laws must be verified by the applicant to ensure that such laws are current on the date the application is submitted. The applicant is responsible for ensuring that its application complies with all of the law applicable on the day the application is deemed complete.

D. Applications.

1. Initiation of applications.
  - a. Applications for approval under this chapter may be initiated by:
    - (1) Order of Council;
    - (2) Resolution of the Commission;
    - (3) The Director;
    - (4) Application of a recorded owner of property or contract purchasers.
  - b. Any persons authorized by this title to submit an application for approval may be represented by an agent authorized in writing to make the application.
2. Consolidation of proceedings. Whenever an applicant requests more than one approval and more than one approval authority is required to decide the applications, the proceedings shall be consolidated so that one approval authority shall decide all applications in one proceeding;
  - a. When a request which contains more than one approval is consolidated, the hearings shall be held by the approval authority having original jurisdiction over one of the applications under Section 18.390.100.C in the following order of preference: the Council, the Commission, the Hearings Officer, or the Director.
  - b. Where there is a consolidation of proceedings:
    - (1) The notice shall identify each action to be taken;
    - (2) The decision on a plan map amendment shall precede the decision on the proposed zone change and other actions; and
    - (3) Separate actions shall be taken on each application.
3. Check for acceptance and completeness. In reviewing an application for completeness, the following procedure shall be used:
  - a. Acceptance. When an application is received by the City, the Director shall immediately determine whether the following essential items are present. If the following items are not present, the application shall not be accepted; and shall be immediately returned to the applicant:
    - (1) The required form;
    - (2) The required fee;
    - (3) The signature of the applicant on the required form.
  - b. Completeness.

- (1) Review and notification. When the application is accepted, the Director shall review the application for completeness. If the application for a permit, limited land use, or zone change is incomplete, the Director shall notify the applicant of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information.
  - (2) When application deemed complete. The application shall be deemed complete upon the receipt by the Director of the missing information. If the applicant refuses to submit the missing information, the application shall be deemed to be complete on the 31st day after the Director first reviewed the application.
  - (3) Standards and criteria apply to the application. If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted, and the City has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application, shall be based upon the standards and criteria that were applicable at the time the application was first submitted.
4. Changes or additions to the application during the review period. Once an application is deemed complete:
- a. All documents and other evidence relied upon by the applicant, but submitted after the application has been deemed complete, shall be submitted to the Director at least seven days before the notice of action or hearing is mailed. Documents or other evidence submitted after that date shall be received by Director, but may be too late to be considered by the Director in the staff report or Director's decision, as the case may be.
  - b. When documents or other evidence are submitted by the applicant during the review period, but after the application is deemed complete, the assigned review body may determine whether or not the new documents or other evidence submitted by the applicant, significantly changes the application.
  - c. If the assigned review body determines that the new documents or other evidence significantly changes the application, the assigned review body shall make a written determination that a significant change in the application has occurred as part of the review body's decision. In the alternate, the review body or the Director may inform the applicant either in writing, or orally at a public hearing, that such changes will likely constitute a significant change, and provide the applicant with the opportunity to withdraw the new materials submitted, in order to avoid a determination of significant change.
  - d. If the applicant's new materials are determined to constitute a significant change in an application that was previously deemed complete, the City shall take one of the following actions:
    - (1) Continue to process the existing application and allow the applicant to resubmit a new application with the proposed significant changes. In this situation, both the old and the new applications will be allowed to proceed, but each will be deemed complete on different dates and may therefore be subject to different laws;

- (2) Suspend the existing application and allow the applicant to submit a new application with the proposed significant changes. In this situation, before the existing application can be suspended, the applicant must consent to a waiver of the 120-day rule on the suspended application. If the applicant does not consent, the City shall not select this option;
  - (3) Reject the new documents or other evidence that has been determined to constitute a significant change, and continue to process the existing application without considering the materials that would constitute a significant change. In this situation, the City will complete its initial decision-making process without considering the new evidence.
- e. If a new application is resubmitted by the applicant, that application shall be subject to a separate check for acceptance and completeness and may be subject to new standards and criteria, pursuant to the law in effect at the time the new application is deemed complete.
- E. Director's duties. With regard to processing applications submitted under this chapter, the Director shall:
- 1. Prepare application forms made pursuant to the standards contained in the applicable state law, comprehensive plan, and implementing ordinance provisions;
  - 2. Prepare information sheets for each permit, detailing the specific information which must be contained in the application including format and number of copies. These information sheets may only be amended once a year;
  - 3. Accept all development applications which comply with the provisions of Section 18.390.080.D.3;
  - 4. Prepare a staff report or notice to the proposal and found by the Director to be true:
    - a. In the case of an application subject to a Director's decision, make the staff report and all case-file materials available at the time the notice of the decision is given;
    - b. In the case of an application subject to a hearing, make the staff report available seven days prior to a scheduled hearing date and the case-file materials available when notice is mailed, as provided by Sections 18.390.040.C, 18.390.050.C or 18.390.060.D;
  - 5. Administer the hearings process;
  - 6. Maintain a register of all applications which have been filed for a decision. The register shall identify at what stage the applicant is in the process;
  - 7. File notice of the final decision in the records of the Planning Division and mail a copy of the notice of the final decision to the applicant and all parties and to those persons requesting copies of such notices who pay the necessary fees;
  - 8. Maintain and preserve the file for each application. The file shall include, as applicable, a list of persons required to be given notice and a copy of the notice given, and the accompanying affidavits, the application and all supporting information, the staff report, the final decision, including the findings, conclusions and conditions, if any, all correspondence, and minutes of any meeting at which the application was considered and any other exhibit, information or documentation which was considered by the hearing body with respect to the application; and

9. Administer the appeals and review process.

F. Amended decision process.

1. The Director or Hearings Officer may issue an amended decision issued by the review body after the notice of final decision has been issued but before the appeal period has expired. If such a decision is amended, the decision shall be issued within 10 business days after the original decision would have become final, but in no event beyond the 120-day period required by state law.
2. The notice for an amended decision shall be the same as that which applies to a Type II procedure as governed by Section 18.390.040.E.
3. The purpose of an amended decision is to provide the Director the ability to correct typographical errors, rectify inadvertent omissions and/or make other minor changes which do not materially alter the decision.

G. Re-submittal of application following denial. An application which has been denied or an application which was denied and which on appeal or review has not been reversed by a higher authority, including the Land Use Board of Appeals, the Land Conservation and Development Commission or the courts, may not be resubmitted for the same or a substantially similar proposal or for the same or substantially similar action for a period of at least 12 months from the date the final City action is made denying the application unless there is substantial change in the facts or a change in City policy which would change the outcome. (Ord. 09-13) ■