

**CHAPTER 18.710
LAND USE REVIEW PROCEDURES**

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18.710.010 Purpose

The purpose of this chapter is to establish a standard review procedure for land use applications. This chapter is intended to make the land use review process clear and understandable, to facilitate timely review by the city, and to enable the public to participate in the local land use decision-making process. (Ord. 17-22 §2)

18.710.020 Summary of Land Use Applications

Table 18.710.1 Summary of Land Use Applications			
Abbreviation	Land Use Application Type	Applicable Section	Review Type
ADU	Accessory Dwelling Unit	18.220	I
MIS	Adequate Public Facilities Exception (inside River Terrace)	18.640	II
ADJ	Adjustment - Inside River Terrace - Inside TMU zone - Citywide	18.640 18.660 18.715	II
ZCA	Annexation	18.720	III-Modified, Legislative
(N/A)	Appeal	18.710	III-various
CPA	Comprehensive Plan Map Amendment	18.790	III-Modified, Legislative
CPA	Comprehensive Plan Text Amendment	18.790	Legislative
CUP	Conditional Use	18.740	III-HO
DCA	Development Code Text Amendment	18.790	Legislative
DIR	Director Determination	18.730	I
DDR	Downtown Design Review	18.650	I, II, III-DR
(N/A)	Extension	18.745	I, II

**Table 18.710.1
Summary of Land Use Applications**

Abbreviation	Land Use Application Type	Applicable Section	Review Type
MIS	Historic Resource Designation or Alteration	18.750	II, III-PC
HOP	Home Occupation Permit	18.760	I, II
MLP	Land Partition	18.820	II
LLA	Lot Line Adjustment or Lot Consolidation	18.810	I
MAR	Marijuana Facility Permit	18.430	I
MMD	Modification	18.765	I, II
PDR	Planned Development	18.770	II, III-PC
SLR	Sensitive Lands Review	18.510	I, II, III-HO
SGN	Sign Permit	18.435	I
SDR	Site Development Review	18.780	I, II
SUB	Subdivision	18.830	II
TUP	Temporary Use Permit	18.440	I
MIS	Transportation Mitigation (inside TMU zone)	18.660	II
UFR	Urban Forestry Plan Modification or Discretionary Review	18.420	I, III-HO, III-PC
ZON	Zoning Map Amendment - Quasi-Judicial (site specific) - Legislative (citywide)	18.790	III-PC, III-Modified, Legislative

(Ord. 18-28 §1; Ord. 18-23 §2; Ord. 17-25 §3; Ord. 17-22 §2)

18.710.030 General Provisions

- A. Pre-application conferences. A pre-application conference is required for all Type II and Type III applications. Legislative applications are exempt from a pre-application conference.
1. To request a pre-application conference, the person considering filing an application must submit a pre-application request form, a brief description of the proposed uses, a vicinity map, and a site plan.
 2. When a pre-application conference is required, the person must meet with the city for the purpose of identifying policies and regulations that relate to the proposed development, providing technical data and assistance that will aid the person, and identifying other opportunities or constraints that relate to the proposed development.
 3. Failure of the Director to provide any of the information required by this chapter does not constitute a waiver of the standards, criteria, or requirements of the applications.
 4. Due to possible changes in applicable law, the facts and circumstances of the property, and the information developed during the review process and other factors, information provided by the city during the pre-application conference is not binding. Applicants are solely responsible for demonstrating compliance with all applicable standards.
 5. The person has one year from the date of the pre-application conference to submit a land use application for the proposed development.

- B. Neighborhood meetings. A person considering filing an application must hold a neighborhood meeting prior to filing the following applications: comprehensive plan map amendment (quasi-judicial), conditional use, planned development review, sensitive lands review, site development review, subdivision, and zoning map amendment (quasi-judicial).
1. The location of the meeting must be open to the public and accessible in compliance with the Americans with Disabilities Act. The facility must be located as close to the proposed development site as possible.
 2. The meeting must be held in the evening on a Monday through Thursday.
 3. The person must provide a written and posted notice for the meeting.
 - a. A written notice to the city's interested parties list and property owners within 500 feet of the proposed development site must be mailed not less than 2 weeks but no more than 4 weeks from the date of the meeting. The notice must include:
 - i. Description and location of the proposal;
 - ii. Applicant contact information;
 - iii. Date, time and location of the meeting; and
 - iv. A vicinity map that clearly identifies the property or properties included in the proposal.
 - b. A notice must be posted at the proposed development site, not less than 2 weeks but not more than 4 weeks from the meeting date, in a location where the notice is visible from each street frontage. The notice must include:
 - i. Description and location of the proposal;
 - ii. Applicant contact information;
 - iii. Date, time and location of the meeting; and
 - iv. A vicinity map that clearly identifies the development site included in the proposal.
 - c. The person must complete an affidavit of mailing and posting of the notice.
 4. At the meeting, the person must:
 - a. Read the "Statement of Purpose" letter provided by the city to the attendees;
 - b. Present the proposal, including at least a site plan;
 - c. Provide a handout with a contact name and phone number; and
 - d. Provide a sign in sheet to document the names and addresses of all individuals who attend the meeting and take meeting minutes of all comments, concerns, and issues raised at the meeting.

5. The affidavits, meeting minutes, and other meeting materials must be submitted to the city with the application.

C. Application submittal.

1. Applications may be initiated by:
 - a. All of the property owners, contract purchasers of the subject property, or any agent authorized to represent the property owners or contract purchasers. Easement holders are not considered owners for this section. If the subject property was divided without a partitioning or subdivision approval required by law at the time of the division, an application for approval of the land division may be filed by the owner, contract purchaser, or representative of one of the units of land created by the division;
 - b. The Director;
 - c. Tigard City Council;
 - d. Tigard Planning Commission; or
 - e. A public entity that has the right of eminent domain for projects the entity has the authority to construct.
2. Multiple applications for a single proposed development will be consolidated unless the applicant specifies otherwise in the application. A concurrent application review consolidates the review of multiple applications into a single review process. The applications will be processed using the highest review type required for any part of the proposed development.
3. The application must include, at a minimum, the following items. The Director may waive items listed if they are not applicable to the proposed application.
 - a. Application form, including signature of the property owner or public agency initiating the application.
 - b. Deed, title report, or other proof of ownership.
 - c. Detailed and comprehensive description of existing site conditions and all existing and proposed uses and structures, including a summary of all information contained in any site plans.
 - d. Narrative that demonstrates how the proposal meets all applicable approval criteria, regulations, and development standards.
 - e. Site plans, landscape plans, grading plans, elevation drawings, preliminary plat, final plat, or similar to scale.
 - f. Any other materials required by a specific land use application.
 - g. Any required service provider letters, including, but not limited to, Clean Water Services, waste disposal company, or other entity.

- h. Any required studies or reports, including, but not limited to, a traffic impact analysis, wetland delineation report, or geotechnical report.
- i. Copy of any existing and proposed restrictions or covenants.
- j. Payment of all fees, based on the fee schedule in effect at time of submittal, as adopted by City Council.
- k. Copy of the pre-application conference notes, if applicable.
- l. Copy of the mailed neighborhood meeting letter, the mailing list, affidavits of mailing and posting, copy of the meeting sign-in sheets, meeting minutes, and any handouts provided at the meeting, including the site plan, if applicable.

D. Application completeness.

- 1. When the application is accepted, the Director will review the application for completeness. If the application is incomplete, the Director will 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. The application will be deemed complete upon the receipt of:
 - a. All of the missing information;
 - b. Some of the missing information and a written notice from the applicant that no other information will be provided; or
 - c. Written notice from the applicant that none of the missing information will be provided.
- 3. If the applicant does not submit the missing information or provide written notice that no additional information will be provided, the application will be deemed void on the 181st day after submittal.

E. Modifications of applications. A modification of application means the applicant's submittal of new information after an application has been deemed complete and prior to close of the record on a pending application that would modify a development proposal by changing one or more of the following components: proposed uses, operating characteristics, intensity, scale, or site layout, in a manner that requires the application of new criteria to the proposal or that would require a substantial change to the findings of fact. It does not mean a submittal of new evidence that merely clarifies or supports the pending application.

- 1. A Type I or Type II application may be modified up until the decision is issued. A Type II application that is appealed or Type III application may be modified up until the close of the record.
- 2. The approval authority will not consider any evidence submitted by the applicant that would constitute a modification of an application, as defined above, unless a new application is submitted for the modification. The modification constitutes a new application and restarts the 120-day clock for the application being modified.

3. Prior to the first public hearing or if a hearing is not required, the Director will have sole authority to determine whether an applicant's submittal constitutes a modification. After such a time, the hearing authority will make such determination. The determination on whether a submittal constitutes a modification is appealable only to the Land Use Board of Appeals and only after a final decision on the application is issued.

F. Amended decision process.

1. The purpose of an amended decision is to provide the Director the ability to correct typographical errors, rectify inadvertent omissions, or make other minor changes that do not materially alter the decision.
2. The approval authority may issue an amended decision after the notice of final decision has been issued but before the appeal period has expired.
3. The notice of an amended decision is the same as that which applies to a Type II procedure, as provided in Section 18.710.060.

G. Withdrawal of an application. An application may be withdrawn prior to issuance of a decision.

H. Re-submittal of application following denial. Applications that have been denied, excluding applications denied solely on procedural grounds, may not be resubmitted for the same or a substantially similar proposal unless one or more of the following are met:

1. Twelve months has passed since the denial became final;
2. Substantial changes are made to the application that resolve all findings for denial of the application; or
3. Standards and criteria relative to the findings of the original denial have changed.

I. Receipt of submittals. Any submittals for which a deadline is provided for in this chapter must be addressed to the recipient department designated in the notice and actually and physically received by the designated recipient department on or before the close of business on the due date, except that if the due date falls on a state or federal holiday, a regular weekday that the Community Development Department, or its successor, is not open for business, or a weekend, will be extended to the close of business on the next day that the department is open for business. Emails are considered received at the time shown on the city's email system. Submittals received after the deadline will not be considered or effective.

J. Conformance with application. Unless provided otherwise in the decision, development must conform in all material respects to the approved application and submittals in support of the application. (Ord. 18-28 §1; Ord. 18-23 §2; Ord. 17-22 §2)

18.710.040 Types of Reviews

A. General. This section defines the review types and establishes the approval and appeal authority for each.

B. Review types defined. There are four review procedure types: Type I, Type II, Type III, and Legislative. Table 18.710.1 contains the city's land use application types and associated review types.

The review types are defined as follows:

1. Type I procedures apply to land use applications that are governed by clear and objective approval criteria or development standards that may require the exercise of professional judgment about technical issues only. Type I actions are decided by the Director without public notice and without a public hearing.
2. Type II procedures apply to land use applications that are governed by subjective approval criteria or development standards that may require the exercise of limited discretion. Type II actions are decided by the Director with public notice. If any party with standing appeals a Type II decision, the appeal of such decision will be heard by the Hearings Officer.
3. Type III procedures apply to land use applications that are governed by approval criteria that require the exercise of discretion and judgment and about which there may be broad public interest. Type III applications are decided by the Hearings Officer (Type III-HO), the Planning Commission (Type III-PC), or Design Review Board (Type III-DR) with appeals to the City Council. Type III-Modified are decided by the City Council with a recommendation from the Planning Commission.
4. Legislative actions involve the establishment and modification of land use plans, policies, and regulations. The Legislative procedure includes two public hearings; the first by the Planning Commission and then by the City Council. The hearings provide opportunities for public comment and input on actions that may affect large areas of the city.

C. Approval and appeal authorities. The approval and appeal authorities for each review type are provided in Table 18.710.2. The decision of the appeal authority is the city’s final decision. Parties with standing may appeal the city’s final decision to the Oregon Land Use Board of Appeals.

Table 18.710.2 Review Types and City Appeal Authorities		
Review Type	Approval Authority	Appeal Authority
Type I	Community Development Director	None/Land Use Board of Appeals
Type II	Community Development Director	Hearings Officer
Type III-HO	Hearings Officer	City Council
Type III-PC	Planning Commission	City Council
Type III-DR	Design Review Board	City Council
Type III-Modified	City Council, with initial hearing and recommendation by Planning Commission	None/Land Use Board of Appeals
Legislative	City Council, with initial hearing and recommendation by Planning Commission	None/Land Use Board of Appeals

D. Determination. The Director will determine the most appropriate review type for land use applications or actions requested. The Director determination is the final local decision and will favor the review type that provides the most appropriate public notice and opportunity for public comment.

E. Notice.

1. A failure of any person to receive actual notice that was mailed does not invalidate the decision or action. In all other cases, failure to receive notice or irregularities in providing notice is grounds for invalidation only if the party demonstrates substantial prejudice. The city may require re-

notification, grant a continuance, or take other actions to avoid prejudice without requiring that a new application be filed.

2. The city may provide notice in excess of the minimum requirement.
3. Public notices required by this section will be sent to the names and addresses of owners as shown on the current Washington County property tax records. The boundary of the subject property includes all contiguous property under the same ownership of as the subject property. All notices will be deemed delivered on the date the notice is deposited in the U.S. Mail or personally delivered, whichever first occurs.

F. Burden of proof and procedural error.

1. Unless expressly provided otherwise in this title or by law, the applicant has the burden of proof to demonstrate compliance with all applicable criteria and standards, including on appeal.
2. Unless expressly identified as jurisdictional, failure to comply with a provision of this chapter invalidates an action only if the person alleging the error demonstrates that the error occurred and that person's substantial rights have been prejudiced.

G. Remanded and withdrawn decisions. The approval authority for a remanded or withdrawn decision will be the approval authority from which the appeal to the Land Use Board of Appeals was taken, except that in voluntary or stipulated remands, the City Council may decide that it will hear the case on remand. (Ord. 18-23 §2; Ord. 17-22 §2)

18.710.050 Type I Procedure

- A. Decision requirements. The Director will approve, approve with conditions, or deny the requested application or action based on the applicable approval criteria and development standards.
- B. 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.
- C. Effective date. The Director's decision is effective on the day after it is final. (Ord. 18-23 §2; Ord. 17-22 §2)

18.710.060 Type II Procedure

- A. Notice of application. 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 decision. The goal of this notice is to invite parties of interest to participate early in the review process.
 1. Prior to making a decision, a notice of application must be mailed to:
 - a. All owners of record within 500 feet of the proposed development site;
 - b. City's interested parties who have requested to receive notice of all land use notices;

- c. Any city-recognized neighborhood group or community organization whose boundaries include the proposed development site; and
 - d. Any governmental agency that is entitled to notice.
 2. The Director will prepare an affidavit of mailing such notice that indicates the date that the notice was mailed to the necessary parties. The affidavit will be made part of the record.
 3. A notice of application must include:
 - a. An explanation of the application, including case number and the proposed use or uses that could be authorized;
 - b. A description of the proposed development site, including street address, map and tax lot number, or other easily understood geographical reference to the proposed development site and zoning designation;
 - c. List of criteria and development standards applicable to the application;
 - d. Include the name and telephone number of the city contact person to obtain additional information;
 - e. A statement that the city will consider written comments submitted prior to the issuance of the decision and the place, date, and time that comments are due;
 - f. Indicate that all evidence relied upon by the approval authority to make this decision is contained within the record and is available for public review. Copies of this evidence may be obtained from the Director;
 - g. Indicate that after the comment period closes, the approval authority will issue a decision; and
 - h. 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.”
- B. Decision requirements. The approval authority will approve, approve with conditions, or deny the requested application based on the applicable approval criteria and development standards.
- C. Notice of decision.
 1. Within 7 days after signing the decision, a notice of decision must be mailed to:
 - a. The applicant and all owners or contract purchasers of record of the proposed development site;
 - b. All owners of record within 500 feet of the proposed development site;
 - c. Any person or group who submitted written comments during the comment period;
 - d. Any person or group who requested to be notified of the decision;

- e. Any city-recognized neighborhood group or community organization whose boundaries include the proposed development site; and
 - f. Any governmental agency that is entitled to notice.
2. The Director will prepare an affidavit of mailing such notice that indicates the date that the notice was mailed to the necessary parties. The affidavit will be made part of the record.
 3. A notice of decision must include:
 - a. An explanation of the decision, including case number;
 - b. A description of the proposed development site, including street address, map and tax lot number, or other easily understood geographical reference to the proposed development site and zoning designation;
 - c. A statement that the complete case file is available for review, including when and where the case file is available and the name and telephone number of the city contact person to obtain additional information;
 - d. The date the decision will become final, unless appealed;
 - e. A statement that any person entitled to notice or who are adversely affected or aggrieved by the decision may appeal the decision; and
 - f. A statement briefly explaining how an appeal may be filed, the deadline for filing an appeal, and a reference to where further information about filing an appeal can be obtained.

D. Final decision and effective date. A Type II decision is final for purposes of appeal on the date the notice is mailed. A Type II decision becomes effective on the day after the appeal period expires, unless an appeal is filed. (Ord. 18-23 §2; Ord. 17-22 §2)

18.710.070 Type III Procedure

A. Notice of hearing.

1. A notice of hearing must be provided as follows:
 - a. At least 20 days prior to the hearing date, a notice of hearing must be mailed to:
 - i. The applicant and all owners or contract purchasers of record of the proposed development site;
 - ii. All property owners of record within 500 feet of the proposed development site;
 - iii. City’s interested parties who have requested to receive notice of all land use notices;
 - iv. Any city-recognized neighborhood group and community organizations whose boundaries include the proposed development site;
 - v. Any affected governmental agency that is entitled to such notice; and

- vi. In actions involving appeals, the appellant and all parties to the appeal.
 - b. The Director will prepare an affidavit of mailing such notice that indicates the date that the notice was mailed to the necessary parties. The affidavit will be made part of the record.
 - c. At least 14 days prior to the hearing date, a notice of the hearing must be posted on the proposed development site by the applicant. An affidavit of posting such notice must be prepared by the applicant and submitted as part of the record.
2. A mailed notice of hearing must include:
- a. An explanation of the application, including case number and the proposed use or uses that could be authorized;
 - b. A description of the proposed development site, including street address, map and tax lot number, or other easily understood geographical reference to the proposed development site and zoning designation;
 - c. List of criteria and development standards applicable to the application;
 - d. Include the name and the telephone number of the city contact person to obtain additional information;
 - e. State the date, time, and location of the hearing;
 - f. 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 approval authority an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue;
 - 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 may be provided at a reasonable cost;
 - h. State that a copy of the staff report will be available for inspection at no cost at least 7 days prior to the hearing, and that a copy may be provided at a reasonable cost;
 - i. Include a general explanation of the requirements for submittal of testimony and the procedure for conducting hearings; and
 - 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.”
3. A posted notice of hearing must include:
- a. An explanation of the application, including case number and the proposed use or uses that could be authorized;
 - b. A description of the proposed development site, including street address, map and tax lot number, or other easily understood geographical reference to the proposed development site and zoning designation;

- c. List of criteria and development standards applicable to the application;
 - d. Include the name and the telephone number of the city contact person to obtain additional information;
 - e. State the date, time, and location of the hearing;
 - f. 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 may be provided at a reasonable cost; and
 - g. State that a copy of the staff report will be available for inspection at no cost at least 7 days prior to the hearing, and that a copy may be provided at a reasonable cost.
- B. Hearing requirements. Hearings before the appropriate approval authority, as provided in Table 18.710.2, will be conducted in compliance with the quasi-judicial hearing requirements in Section 18.710.100.
- C. Decision requirements. The approval authority will approve, approve with conditions, or deny the requested application based on the applicable approval criteria and development standards.
- D. Notice of decision. Notice of decision must be mailed to the applicant and to all parties of record within 7 days after the decision is filed by the approval authority with the Director. The notice must be provided in compliance with Paragraphs 18.710.060.C.2 and 3.
- E. Final decision and effective date. The decision of a Type III application is final for purposes of appeal on the date the notice of decision is mailed. The decision is effective on the day after the appeal period expires, unless an appeal is filed. (Ord. 18-23 §2; Ord. 17-22 §2)

18.710.080 Type III-Modified Procedure

All applications subject to the Type III-Modified review will follow the procedures provided in Section 18.710.070. (Ord. 18-23 §2; Ord. 17-22 §2)

18.710.090 Appeals

- A. Filing an appeal. A Type II or III decision may be appealed as follows:
- 1. The following parties have standing to appeal a decision:
 - a. The applicant;
 - b. For appeals of a Type II decision, any person who is adversely affected or aggrieved or who was entitled to written notice of the Type II decision; and
 - c. Any party, who demonstrates that the person participated in the proceeding through the submittal of written or verbal testimony.
 - 2. An appeal must be filed with the Director within 15 days of the date the notice of decision was mailed.

3. An appeal must include:
 - a. The date and case file number of the decision being appealed;
 - b. Documentation that the person filing the appeal has standing to appeal;
 - c. A detailed statement describing the basis of appeal; and
 - d. Payment of the required fee, based on the fee schedule in effect at time of submittal, as adopted by City Council. The fee is established by the Director. The maximum fee for an appeal hearing is the cost to the local government for preparing and for conducting the hearing, or the statutory maximum, whichever is less. Failure to timely pay the required fee is a jurisdictional defect.

B. Procedure for Type II and III appeals.

1. All appeals must provide notice of hearing in compliance with Type III notice requirements, as provided in Subsection 18.710.070.A.
2. Appeal hearings before the appropriate appeal authority, as provided in Table 18.710.2, will be conducted in compliance with the quasi-judicial hearing requirements in Section 18.710.100.
3. Appeal hearings are de novo. A de novo hearing allows for the presentation of new evidence, testimony, and argument by any party. The appeal authority will consider all relevant evidence, testimony, and argument that are provided at the hearing by the appellant or any party. The scope of the hearing is not limited to the issues that were raised on appeal.
4. The decision of the appeal authority is the final local decision and is final and effective on the date the decision is mailed. (Ord. 18-23 §2; Ord. 17-22 §2)

18.710.100 Quasi-Judicial Hearings

A. Procedures. The following procedures apply to all quasi-judicial hearings:

1. At the commencement of the hearing, a statement will be made to those in attendance that:
 - a. Lists the applicable substantive criteria;
 - b. States that testimony and evidence must be directed toward the relevant approval criteria described in the staff report, or other criteria in the plan or land use regulation that the person testifying believes to apply to the decision; and
 - c. States that failure to raise an issue with sufficient specificity to afford the approval authority and the parties an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals on that issue and that failure of the applicant to object to a condition of approval may preclude an action for damages in circuit court.
2. Parties to a quasi-judicial hearing are entitled to an impartial hearing 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. Hearing authority members must 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 must state whether the contact has impaired the impartiality or ability of the member to vote on the matter and provide the parties the right to rebut the substance of the communication. The member will participate or abstain accordingly.
 - b. Any member of the hearing authority may 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, or partner; any business in which the member is then serving or has served within the previous 2 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 must be disclosed at the meeting of the hearing authority where the action is being taken.
 - c. Disqualification of a hearing 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 will apply. All members present who declare their reasons for abstention or disqualification will thereby be re-qualified to act.
 - e. In cases involving the disqualification or recusal of a Hearings Officer, the city will provide a substitute Hearings Officer in a timely manner subject to the above impartiality rules.
3. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional relevant evidence or testimony. The local hearing authority may grant such request by continuing the public hearing in compliance with Subparagraph 18.710.100.A.4.a or by leaving the record open for additional written evidence or testimony as provided in Subparagraph 18.710.100.A.4.b.
 4. If the hearing authority grants a continuance, the hearing will be continued to a date, time, and place certain at least 7 days from the date of the initial evidentiary hearing. An opportunity will 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 7 days, to submit additional written evidence or testimony for the purpose of responding to the new written evidence.
 5. If the hearing authority leaves the record open for additional written evidence or testimony, the record must be left open for at least 7 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 must reopen the record in compliance with Paragraph 18.710.100.A.5.
 - a. A continuance or extension granted is 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 city will allow the applicant at least 7 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 will be considered part of the record but may not include any new evidence.

B. The record.

1. The record contains all testimony and evidence that is submitted and not rejected.
2. The hearing authority may take official notice of judicially cognizable facts in compliance with the applicable law. If the hearing authority takes official notice, it must announce its intention and allow the parties to the hearing to present evidence concerning the fact.
3. The hearing authority must retain custody of the record as appropriate, until a final decision is rendered.
4. When a hearing authority re-opens a record to admit new evidence, arguments, or testimony, any person may raise new issues that relate to the new evidence, arguments, or testimony, or criteria that apply to the matter at issue.

C. Ex parte communications.

1. Members of the hearing authority may not:
 - a. 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 rebut the substance of the communication; or
 - b. 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.
2. No decision or action of the hearing authority will be invalid due to ex parte contacts or bias resulting from ex parte contacts with a member of the approval authority if the member of the approval authority receiving contact:
 - a. Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and
 - b. 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 will be considered or taken on the subject to which the communication is related.
3. Members of the hearing authority are subject to the provisions of ORS 244 and the provisions of this section.
4. A communication between city staff and the hearing authority is not considered an ex parte contact.

D. Presenting and receiving evidence.

1. The hearing authority may set reasonable time limits for oral presentations and may limit or

exclude cumulative, repetitious, irrelevant, or personally derogatory testimony.

2. Oral testimony will not be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing, but only in compliance with the schedule and procedure announced by the hearing authority prior to the close of the public hearing, or as otherwise provided by this section. (Ord. 18-23 §2; Ord. 17-22 §2)

18.710.110 Legislative Procedure

Legislative actions typically involve adoption of an ordinance. In addition to any requirements imposed by the city charter, the following procedures apply. In the event of a conflict, the charter governs.

A. Notice of hearing.

1. All Legislative applications require two hearings, one before the Planning Commission and one before the City Council.
2. A notice of hearing will be provided as required by state law, and an affidavit of mailing will be included in the record that identifies the mailing date and the names and addresses of the mailing recipients.

B. Hearing process and procedure. Unless otherwise provided in the rules of procedure adopted by the City Council, the presiding officer of the Planning Commission and of the City Council 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.

C. Continuation of the public hearing. The Planning Commission or the City Council may continue any hearing and no additional notice is required if the matter is continued to a date, time and location certain.

D. Adoption process and authority.

1. The Planning Commission may:
 - a. After the public hearing, formulate a recommendation to the City Council to adopt, adopt with modifications, adopt an alternative, or deny the Legislative application; and
 - b. Within 14 days of determining a recommendation, the written recommendation must be signed by the presiding officer of the Planning Commission and filed with the Director.
2. The City Council may:
 - a. Adopt, adopt with modifications, adopt an alternative, deny, or remand to the Planning Commission for rehearing and reconsideration on all or part of the Legislative application;
 - b. Consider the recommendation of the Planning Commission, however, it is not bound by the

Planning Commission's recommendation; and

- c. Act by ordinance, which must be signed by the Mayor after the City Council's adoption of the ordinance.

E. Vote.

1. A vote by a majority of the qualified voting members of the Planning Commission present is required for a recommendation for adoption, adoption with modifications, adoption of an alternative, or denial.
2. The concurrence of a majority of the members of the City Council present and voting, when a quorum is present, is necessary to decide and question before the City Council.

F. Notice of decision. Notice of decision must be mailed within 7 days after the decision is filed with the Director to all persons who testified orally or in writing.

G. Final decision and effective date. The decision of a Legislative application is final and effective on the date specified in the enacting ordinance. (Ord. 18-28 §1; Ord. 18-23 §2; Ord. 17-22 §2)

18.710.120 Special Procedures

A. Expedited land divisions. The expedited land division (ELD) procedure provides an alternative to the standard procedures for some land divisions. The applicant may choose to use the ELD process if the land division request meets all of the elements specified in ORS 197.360. The steps of this procedure are in ORS 197.365 through 197.375. The application submittal requirements are provided in Section 18.710.030.

B. Limited land use decisions. A limited land use decision (LLD) is defined and may be used in the manner set forth in ORS 197.015(12).

1. An applicant 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 their right to use it;
2. An LLD will be reviewed in compliance with ORS 197.195. The city will follow the city's Type II procedure, as provided in Section 18.710.060, except to the extent otherwise required by applicable state law.

C. Affordable housing developments. Applications for affordable housing developments qualify for a reduced review time of 100 days from the date the application is deemed complete, provided the following are met:

1. The application is for apartment or rowhouse development containing five or more residential units;
2. At least 50 percent of the residential units included in the development will be sold or rented as affordable to households with incomes equal to or less than 60 percent of the median family income for Washington County, or for the state, whichever is greater; and
3. The development is conditioned on the recording of a covenant appurtenant, prior to the issuance

of a certificate of occupancy, that prohibits the sale or rental of any affordable residential unit used to meet the standard of Paragraph 18.710.120.C.2, except as housing that meets that standard, for a period of 60 years from the date of the certificate of occupancy. (Ord. 18-28 §1; Ord. 18-23 §2; Ord. 17-22 §2) ■