

CHAPTER 2 - PROCEDURES FOR DECISION-MAKING

- 2.005 Types of Procedures for Taking Public Action. Three separate procedures are established for processing development applications and one procedure is established for public actions (legislative) which do not involve land use permits or require consideration of a plan amendment, land use regulation, or City policies. These are Types I-III and Type IV respectively (see Table below):

DECISION-MAKING PROCEDURE

Type I Procedure

- Ministerial permits and actions
- Clear and objective criteria
- No public notice or hearing required

Type II Procedure

- Some discretion based on Code criteria
- Public notice

Type III Procedure

- Complex or subjective decisions of predominantly discretionary approval criteria
- Public hearing

Type IV Procedure

- Legislative decisions
- Creation, revision, or large-scale implementation of public policy
- Public hearing

- 2.010 Procedures for Processing Permits.

- A. An application shall be processed under a Type I, II, III, or IV procedure as they are described in Sections 2.050 to 2.065 of this chapter. The differences between the procedures are generally associated with the different nature of the decisions as described in the table in Section 2.005 of this Chapter.
- B. When an application and proposed development is submitted, the Director shall determine the type of procedure the Code specifies for its processing and the potentially affected agencies. When there is a question as to the appropriate type of procedure, or if the Director contemplates that persons being notified of the application can be expected to question the application's compliance with the Code, the application proposal shall be processed under the higher type procedure. An application shall be processed under the highest numbered procedure required for any part of the development proposal.

- C. When an application will potentially have a significant effect on a County or State roadway/transportation facility, Multnomah County or ODOT shall be invited to participate in the pre-application conference, if one is held, and shall be notified when the application is complete so as to allow for coordinated review of the application.
- 2.015 Computation of Time. In computing any period of time prescribed or allowed by these rules, by the local rules of any court or by order of court, the day of the act, event, or default 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 a legal holiday, including Sunday, in which event the period runs until the end of the next day which is not a Saturday or a legal holiday. If the period so computed relates to serving a public officer or filing a document at a public office, and if the last day falls on a day when that particular office is closed before the end of or for all of the normal work day, the last day shall be excluded in computing the period of time within which service is to be made or the document is to be filed, in which event the period runs until the close of office hours on the next day the office is open for business. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays and legal holidays, including Sundays, shall be excluded in the computation. As used in this rule, "legal holiday" means legal holiday as defined in ORS 187.010 and 187.020. This Section does not apply to any time limitation governed by ORS 174.120. (Source: Oregon Rules of Civil Procedure 2015)
- 2.020 Coordination of Permit Procedure. The Director shall be responsible for the coordination of the permit application and decision-making procedure, and shall issue any necessary permits to an applicant whose application and proposed development is in compliance with the provisions of this Code. Combined applications reviewing a single project are permitted but shall be reviewed as the highest Type level.
- 2.025 Pre-Application Conference. A pre-application conference shall be required for all Type III applications. For other applications, the applicant or authorized representative may request, or the Director may suggest, a pre-application conference. The conference shall be held within 30 days of the request. The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of the Code, provide for an exchange of information regarding applicable elements of the Comprehensive Land Use Plan and development requirements, arrange such technical and design assistance which will aid the applicant, and to otherwise identify policies and regulations that create opportunities or pose significant constraints for the proposed development. The Director, if requested by the applicant, shall provide the applicant with a written summary of the conference within ten days of the conference. The summary should include confirmation of the procedures to be used to process the application, a list of materials to be submitted, and

the criteria and standards which may apply to the approval of the application. The summary shall be a best effort to identify all criteria.

2.030 Application Materials. A land use application shall consist of the materials specified in this Section, plus any other materials required on the application form.

- A. A completed application form.
- B. An explanation of intent, stating the nature of the proposed development, reasons for the request, and any other evidence showing compliance with applicable criteria of the Troutdale Development Code.
- C. Proof that the property affected by the application is in the exclusive fee ownership of the applicant, or that the applicant has the consent of all parties in ownership of the affected property.
- D. County Tax lot numbers and legal description of the affected properties; a copy of the recorded deed with description and County Tax Lot numbers of the affected property.
- E. Additional information required by other Sections of this Code because of the type of development proposal or the area involved.
- F. Payment of all applicable application fees.

2.035 Submission of Application.

- A. Application materials shall be submitted to the Director who shall have the date of submission indicated on the land use application form. Within 30 days from the date of submission, the Director shall determine and shall notify the applicant in writing whether an application is complete. If the Director determines that the application is incomplete or otherwise does not conform to the provisions of this Code, the Director shall notify the applicant in writing of what information is missing, and shall allow the applicant to submit the missing information.
- B. The application shall be deemed complete for the purpose of rendering a final action as required under ORS 227.178 upon receipt of:
 - 1. All of the missing information;
 - 2. Some of the missing information and written notice from the applicant that no other information will be provided; or

3. Written notice from the applicant that none of the missing information will be provided.
- C. On the 181st day after first being submitted, the application shall be void if the applicant has been notified of the missing information as required under Subsection (A) of this Section and has not submitted:
1. All of the missing information;
 2. Some of the missing information and written notice that no other information will be provided; or
 3. Written notice that none of the missing information will be provided.
- D. The application fee that was submitted with an application that has been determined to be void, shall be forfeited.

2.040 Referral and Review of Applications. Within five days of deeming an application complete, the Director shall do the following:

- A. Transmit one copy of the application, or appropriate parts of the application, to applicable City departments and referral agencies for review and comment, including those responsible for determination of compliance with state and federal requirements. If a notified department or referral agency does not comment within 14 days, it is presumed to have no comment.
- B. Provide written notice to surrounding property owners as set forth in this chapter.

2.045 Responsibility of Director for Hearings.

- A. Schedule and assign the matter for review and hearing.
- B. Conduct the correspondence of the hearing body.
- C. Give notice as required by this Code.
- D. Maintain a record, and enter into the record, relevant dates such as those of giving notice, hearings, postponement, and continuances, and a summary of action taken by the hearing body.
- E. Prepare minutes to include the decision on the matter heard and the reasons for the decision.
- F. Reduce the decisions of the hearing body to writing within a reasonable time.

- G. Mail a copy of the decision to the party requesting the same upon payment of a reasonable fee, if a fee has been established.

2.050 Type I Procedure.

- A. Under the Type I procedure, an application shall be processed without a need for a public hearing or notification of other property owners.
- B. Within 30 days of the date of acknowledging an application complete as set forth in Section 2.035 of this chapter, the Director shall approve, conditionally approve, or deny the request. The decision of the Director shall be based upon the application, evidence, comments from City departments and referral agencies, and approvals required by others. The Director shall notify the applicant, and if required, others entitled to notice of the decision. The notice shall indicate the date that the decision will take effect and describe the right of appeal.
- C. The Director shall approve a development if he or she finds that applicable approvals by others have been granted and the proposed development, with or without conditions, otherwise conforms to the requirements of this Code.
- D. The Director shall deny the development if required approvals are not obtained or the application otherwise fails to comply with Code requirements. The notice shall describe the reason for denial.
- E. Appeal of a decision of the Director under the Type I procedure shall be de novo to the Planning Commission.

2.055 Type II Procedure.

- A. Under the Type II procedure, an application shall be processed without a need for a public hearing; however, the Director shall provide written notice. The form of notice and persons to receive notice are as required by the relevant Sections of this Code. The notice shall invite persons to submit information relevant to the criteria and standards that are pertinent to the proposal within 14 days, giving reasons why the application should or should not be approved, or proposing modifications the person believes are necessary for approval according to the standards.
- B. Within 45 days of the date of acknowledging an application complete as set forth in Section 2.035 of this Chapter, the Director shall review any information received under Subsection (A) of this Section. The Director may attach conditions of approval to assure compliance with applicable criteria and standards, to mitigate potential adverse impacts where such mitigation is consistent with established policy of the City, and to conform

to confirm with applicable legal requirements. If the application is approved, the Director will issue any necessary permits when the applicant has complied with the conditions set forth in the final order and other requirements of this Code. Appeals of the Director's decision shall be de novo to the Planning Commission.

2.060 Type III Procedure.

- A. Under the Type III procedure, an application is scheduled for public hearing before the Planning Commission which may approve, approve with conditions, or deny an application. The form of notice and persons to receive notice are as required by the relevant Sections of this Code. At the public hearing, the staff, applicant, and interested persons may present information relevant to the criteria and standards pertinent to the proposal, giving reasons why the application should or should not be approved, or proposing modifications and the reasons the person believes the modifications are necessary for approval. The Planning Commission may attach conditions of approval to assure compliance with applicable criteria and standards, to mitigate potential adverse impacts where such mitigation is consistent with an established policy of the City, and to conform to applicable legal requirements. If the application is approved, the Director will issue any necessary permits when the applicant has complied with the conditions set forth in the final order and other requirements of this Code.
- B. Appeals of a decision of the Planning Commission shall be to the City Council.

2.065 Type IV Procedure. The City Council is the decision-making body under this procedure after the Planning Commission has forwarded its recommendation to the Council. This procedure is for legislative actions.

- A. Under the Type IV procedure, the Director shall first schedule a public hearing before the Planning Commission. Following action by the Planning Commission, the Director shall schedule a public hearing before the City Council. The form of notice and persons to receive notice are as required by the relevant Sections of this Code. At the public hearings the staff and interested persons may present testimony relevant to the proposal, give information on whether the proposal does or does not meet appropriate criteria and standards for approval, or they may give proposals for modifications they consider necessary for approval. If criteria are involved, the Planning Commission shall make a finding for each of the applicable criteria, including whether the proposal conforms to applicable Comprehensive Land Use Plan goals and policies. A written report and recommendation shall be submitted to the City Council. The decision of the City Council shall also address each of the applicable criteria.

- B. The City Council shall conduct a public hearing. The Director shall set a date for the hearing. The form of notice and persons to receive notice are as required by the relevant Sections of this Code. At the public hearing, the staff shall review the report of the Planning Commission and provide other pertinent information. Interested persons shall be given the opportunity to present new testimony and information relevant to the proposal that was not heard before the Planning Commission, make final arguments why the matter should or should not be approved and, if approved, the nature of the provisions to be contained in approving action
- 2.070 Legislative Enactments Not Restricted. Nothing in this Chapter shall limit the authority of the City Council to make changes in zoning districts' boundaries or development regulations as part of some more extensive revision of the Comprehensive Land Use Plan or the implementing ordinances. Nothing in this Chapter shall relieve a use or development from compliance with other applicable laws.
- 2.075 Notice of Hearing. The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before the hearing body on application for a land use decision, and shall be incorporated into the Comprehensive Land Use Plan and land use regulations. Notice of hearings governed by this Section shall be provided to the applicant and owners of record of property on the most recent property tax assessment roll where such property is located.
- A. For property which is the subject of a Type II application process, notice shall be provided to all owners of property within 250 feet of the project property.
- B. For property which is the subject of a Type III application process, notice shall be provided to all owners of property within 500 feet of the project property.
- C. Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries are within the notice area of the project.
- D. Interested parties such as counties, state agencies, public utilities, etc., which may be affected by the specific development proposal, shall receive notice of the scheduled public hearing.
- 2.080 Contents of Notice. Quasi-judicial notice provided by the City shall:
- A. Explain the nature of the application and the proposed use or uses which could be authorized.

- B. List the applicable criteria from this Code and the Plan 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 that failure of an issue to be raised in a 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 board based on that issue.
 - F. Be mailed at least:
 - 1. Twenty days before the evidentiary hearing; or
 - 2. If two or more evidentiary hearings are allowed, ten days before the first evidentiary hearing.
 - G. Include the name of a local government representative to contact and the telephone number where additional information may be obtained.
 - H. State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant, and applicable criteria are available for inspection at no cost and will be provided at a reasonable cost.
 - I. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at a reasonable cost.
 - J. Include a general explanation of the requirements for submission of testimony and the procedures for conduct of hearings.
- 2.085 Procedure for Mailed Notice. Unless otherwise provided, addresses for a mailed notice shall be obtained from the County's real property tax records. Unless the address is on file with the Director, a person whose name is not in the tax records at the time of filing of an application, or of initiating other action not based on an application, need not be furnished mailed notice. The failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to comply with the requirements of this Code for notice. In addition to receiving notice as required by the matter under consideration, the Director shall provide notice to others he or she has reason to believe are affected or otherwise represent an interest that may be affected by the proposed development.

2.090 Procedure for Posted or Published Notice.

- A. Posted Notice – Posted notice shall be required of all applications requiring a hearing before the Planning Commission or City Council. This requirement shall not apply to appeals heard by these bodies. By submitting an application which requires the posting of notice, an applicant shall hereby allow the posting on the subject private property. Specific requirements shall be as follows:
1. The notice shall be posted in at least one conspicuous place within the boundary of the parcel under consideration. If the property frontage exceeds 500 feet, one additional notice shall be posted on the property. Posting shall occur a minimum of 10-days prior to the hearing date.
 2. The size, construction and features of the posted notice shall be determined by the Planning Director and installed by the City. At a minimum, the posting shall include information on the hearing location, date, and time; identify the applicable planning file; and include contact information.
- B. Publication - If a published notice is required, it shall be published at least once in a newspaper of general circulation at least 10-days prior to the hearing date or as otherwise required by law.

2.095 Applicant's Documents and Evidence. All documents or evidence relied upon by the applicant shall be submitted to the local government and made available to the public.

2.100 Staff Report. Any staff report used at a quasi-judicial hearing shall be available at least seven days prior to the hearing. If additional documents or evidence are provided by any party, the local government may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations of ORS 227.178.

2.105 Explanation at Commencement of a Quasi-Judicial Hearing. At the commencement of a Quasi-Judicial Hearing, a statement shall be made to those in attendance that:

- A. Lists the applicable criteria;
- B. States that testimony and evidence must be directed toward the criteria described in Subsection (A) of this Section or other criteria in the Comprehensive Land Use Plan or land use regulations which the persons believes to apply to the decision; and

- C. States that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision-maker and the parties an opportunity to respond to the issue precludes an appeal on that issue.
- 2.110 Request to Present Additional Evidence. Prior to the conclusion of the initial quasi-judicial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The hearing body shall grant such request by either continuing the public hearing or leaving the record open for additional written evidence or testimony.
- 2.115 Continuance of the Hearing. If the quasi-judicial hearing body 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.
- 2.120 Leaving the Record Open. If the quasi-judicial hearing body 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 is left open. If such a request is filed, the hearing body shall reopen the record.
- 2.125 Applicant's Right to Submit Final Arguments. Unless waived by the applicant, the City shall allow the applicant at least seven days after the quasi-judicial record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence.
- 2.130 Reopening a Hearing. When the quasi-judicial hearing body reopens the 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.
- 2.135 Failure to Receive Notice. The failure of the property owner to receive notice as provided in this Chapter shall not invalidate such proceedings if the local government can demonstrate, by affidavit, that such notice was given. The notice provisions of this Chapter shall not restrict the giving of notice by other means, including posting, newspaper publication, radio, and television.

- 2.140 Ex Parte Contacts. The general public has a right to have hearing body members free from ex parte contacts in quasi-judicial hearings. It is recognized that a countervailing public right is free access to public officials on any matter. Therefore, hearing body members shall reveal all ex parte contacts with regard to a matter that comes before the hearing body member at a quasi-judicial proceeding at the earliest possible time. If ex parte contacts have not impaired the member's ability to make a fair and impartial decision based on the information presented during the quasi-judicial proceeding, the member shall so state and may participate in the hearing and decision. Ex parte contacts with a member of the decision-making body shall not invalidate a final decision or action of the decision-making body, provided that the member receiving the ex parte contact places on the record the substance of any written or oral ex parte communications concerning the decision or action and makes a public announcement of the content of the communication and of the right of the parties to rebut the substance of the communication at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.
- 2.145 Challenges to Impartiality. A party to a quasi-judicial hearing, or a member of the hearing body, may challenge the qualifications of a member of the hearing body to participate in a quasi-judicial hearing or decision. A challenge shall identify the facts and basis for concluding that the member being challenged cannot make a fair and impartial decision due to bias, prejudgment, a direct and substantial personal interest in the outcome, or other similar circumstances.
- 2.150 Conflicts of Interest. No officer or employee of the City shall participate in a hearing or decision if the officer or employee has an actual conflict of interest as defined by state law, unless otherwise authorized by state law. An officer or employee of the City may participate in a land use hearing or decision if the officer or employee has a potential conflict of interest as defined by state law. Officers and employees shall disclose actual and potential conflicts of interest.
- 2.155 Disqualification. A member of a hearing body shall not participate in the discussion or decision on a matter in which any of the following have a direct or substantial financial interest: The member or member's spouse, brother, sister, child, parent, father-in-law or mother-in-law; 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.
- 2.160 Abstention or Disqualification. Except for Type IV hearings conducted by the governing body, disqualification for reasons other than the member's own judgment may be ordered by a majority of the members of a hearing body present and voting. The member who is the subject of the motion for disqualification may not vote on the motion.

2.165 Rights of Disqualified Member of the Hearing Body.

- A. An abstaining or disqualified member of the hearing body may be counted for purposes of forming a quorum. A member who represents his or her personal interest at a hearing may do so only by physically joining the audience and vacating the seat on the hearing body. The member shall make full disclosure of the member's status and position at the time of addressing the hearing body and shall not vote.
- B. Except for Type IV legislative hearings conducted by the governing body, a member absent during the presentation of evidence in a hearing may not participate in the deliberations or final decision regarding the matter of the hearing unless the member has reviewed the evidence received.

2.170 Burden and Nature of Proof. Except for legislative determinations, the burden of proof is upon the proponent. The proposal must be supported by proof that it conforms to the applicable elements of the Comprehensive Land Use Plan and to provisions of this Code, especially the specific criteria set forth for the particular type of decision under consideration. Additionally, the following factors are deemed relevant and material, and shall be considered by the hearing body in reaching its decision on a proposal:

- A. Mistakes in the original designation or provision.
- B. Change of conditions within the vicinity in which the development is proposed.

2.175 Order of Proceedings. An order of proceedings for a hearing will depend in part on the nature of the hearing. The following shall be supplemented by administrative procedures as appropriate:

- A. Before receiving information on the issue, the following shall be determined:
 - 1. Any objections on jurisdictional grounds shall be noted in the record and if there is an objection, the person presiding has the discretion to proceed or terminate.
 - 2. Any abstentions or disqualifications shall be determined.
- B. The person presiding at the hearing may take official notice of known information related to the issue, such as the following:
 - 1. Provisions of the charter or state law, or of an ordinance, resolution, rule, or officially promulgated policy of the City.

2. Other public records and facts judicially noticeable by law.
- C. Matters officially noticed need not be established by evidence and may be considered by the hearing body in the determination of the matters. Parties requesting notice shall do so on the record; provided, however, that the hearing body may take notice of matters listed in Subsection (B) of this Section if stated for the record. Any matter given official notice may be rebutted.
 - D. The hearing body may view the property subject to the application. At the quasi-judicial public hearing, the members shall place the time, manner, and circumstances of such viewing in the record.
 - E. Information shall be received from the staff and from proponents and opponents. The presiding officer may approve or deny a request from a person attending the hearing to ask a question. Unless the presiding officer specifies otherwise, if the request to ask a question is approved, the presiding officer will direct the question to the person submitting testimony.
 - F. When the hearing has ended, the hearing body shall openly discuss the issue and may further question a person submitting information or the staff, if opportunity for rebuttal is provided.
- 2.180 Decision. Following the hearing procedure, the hearing body shall approve or deny the application; or, if the hearing is in the nature of an appeal, affirm, reverse, or remand the decision that is on appeal. A decision on a permit or zone change shall be made within 120 days of the date the application is deemed complete. If the hearing body and an applicant agree to an extension, processing of a matter under consideration may be extended. An applicant may request an extension beyond the 120-day legal limit. An applicant whose application has not been acted upon within 120 days after the application was initiated may seek a writ of mandamus.
- 2.185 Findings and Order. The quasi-judicial hearing body shall prepare findings of fact and an order which shall include:
- A. A statement of the applicable criteria and standards against which the proposal was tested, and of the hearing body's interpretation of what would be required to achieve compliance with the criteria and standards.
 - B. A statement of the facts which the hearing body found establishing compliance or noncompliance with each applicable criteria and assurance of compliance with applicable standards.
 - C. The reasons for a conclusion to approve or deny.

- D. The decision to deny or approve the proposed change with or without conditions.
- 2.190 Record of Proceedings. The secretary to the hearing body shall be present at each hearing and shall cause the proceedings to be recorded stenographically or electronically.
- A. Testimony shall be transcribed if required for judicial review or if ordered by the hearing body.
- B. The hearing body shall, where practicable, retain as part of the hearing record each item of physical or documentary evidence presented, and shall have the items marked to show the identity of the person offering the same and whether presented on behalf of a proponent or opponent. Exhibits received into evidence shall be retained in the hearing file until after the applicable appeal period has expired, at which time the exhibits may be released to the person identified thereon, or otherwise disposed.
- C. The findings and order shall be included in the record.
- D. A person shall have access to the record of the proceeding at reasonable times, places, and circumstances. A person shall be entitled to make copies of the record at the person's own expense.
- 2.195 Request for Review - Appeal of Decision.
- A. Type I or II Procedure. A decision on a land use proposal or permit may be appealed to the Planning Commission by an affected party by filing an appeal and paying the applicable fee with the Director within ten (10) days of notice of the decision as provided in this Chapter.
- B. Type III Procedure. A decision of the Planning Commission may be appealed to the City Council by an affected party by filing an appeal and paying the applicable fee within ten (10) days of notice of the decision as provided in this Chapter.
- C. Type IV Procedure. A decision of the City Council may be appealed to the Land Use Board of Appeals, or to the legal authority governing land use regulations and issues, by an affected party by filing an appeal within twenty-one (21) days of notice of the decision.
- 2.200 Raising Issues for Appeal. An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised before the close of the record at the final evidentiary hearing on the proposal. Such issues shall be raised with sufficient specificity to afford the final reviewing body and the parties an adequate opportunity to respond to each issue.

2.205 Appeal Requirements.

- A. A notice of appeal shall contain:
 - 1. An identification of the decision sought to be reviewed, including the date of the decision.
 - 2. A statement of the interest of the person seeking review and that the person was a party to the initial proceedings.
 - 3. The specific grounds relied upon for review, including an explanation of the errors the person seeking review believes exist in the decision that is being appealed.
- B. An appeal of a decision rendered under a Type I procedure without a public hearing shall be a de novo hearing before Planning Commission.
- C. An appeal of a decision rendered under a Type II procedure shall be limited to a review of the record supplemented by oral arguments relevant to the record presented by parties to the prior deliberations.
- D. An appeal of a decision rendered under a Type III or IV procedure shall automatically be conducted as a de novo review and subject to a de novo hearing.

2.210 De Novo Hearing.

- A. The reviewing body may consider new evidence that is applicable to the criteria and standards and may consider all the testimony, evidence, and other material that is in the record.
- B. For purposes of a de novo hearing, the record shall include:
 - 1. A report prepared by the Director.
 - 2. All prior staff reports, decisions, the application, and any exhibits, materials, reports, letters, memoranda, and stipulations submitted by any party that were received and considered by the decision-maker in reaching the decision under review.
 - 3. The transcript of prior hearings, if previously prepared, or the tapes and minutes from the prior hearings.
- C. At a de novo hearing, the applicant for the land use proposal or permit which is the subject of the appeal shall have the right of final rebuttal to any arguments, evidence, or testimony raised by an opposing party.

- 2.215 Reviewing Body Decision. Upon review, the reviewing body may by order affirm, reverse, or modify in whole or in part, a determination or requirement of the decision that is under review. When the reviewing body modifies or renders a decision that reverses a decision of the hearing body, the reviewing body, in its order, shall set forth its finding and state its reasons for taking the action encompassed in the order. When the reviewing body elects to remand the matter back to the hearing body for such further consideration as it deems necessary, it shall include a statement explaining the error found to have materially affected the outcome of the original decision and the action necessary to rectify it.
- 2.220 Expiration of a Decision.
- A. Except as otherwise specifically provided in a specific decision or in this Code, a final decision on a Type I, II or III application made pursuant to this Code shall expire automatically on the following schedule unless the approval is enacted either through construction, establishment of use, or recordation of plat or survey within the specified time period.
1. No expiration date:
 - Comprehensive Plan Text Amendment (6.100)
 - Comprehensive Plan Map Amendment (6.200)
 - Director's Interpretation (Section 6.400)
 - Text Amendment (Section 6.1100)
 - Vacation (Section 6.1200)
 - Zoning Map Amendment (Section 6.1400)
 2. Five (5) years from the effective date of decision where phasing of the development is proposed.
 - Planned Unit Development (Section 6.700)
 - Preliminary Subdivision (Section 7.030.B)
 3. Two (2) years from the effective date of decision:
 - Alteration to a Historic Landmark (Section 6.515.C.)
 - Conditional Use (Section 6.300)
 - Demolition or Relocation of a Historic Landmark (Section 6.515.D.)
 - Expansion of a Non-Conforming Structure or Development (Section 6.615.C.)
 - Expansion of a Non-Conforming Use - Major (Section 6.615.B.)
 - Expansion of a Non-Conforming Use - Minor (Section 6.615.A.)
 - Historic Landmark Designation (Section 6.515.A.)
 - Planned Unit Development (Section 6.700) when there is no phasing to the development.

Preliminary Partition (Section 7.030.A)
Property Line Adjustment (Section 7.180)
Removal of a Historic Landmark Designation (Section 6.515.B.)
Site Development Review (Section 6.900)
Variance (Section 6.1300)

4. One (1) year from the effective date of the decision:

Temporary Structure (Section 6.1000)
5. Any final decision that is not listed herein shall expire within two (2) years from the effective date of the decision.

B. The effective date of the decision for Type I, Type II, or Type III applications shall be the date that the signed land use order is dated and mailed, unless appealed. If a Type I, Type II, or Type III application is appealed, the effective date of the decision shall be the date of the appellate decision making authority's signed land use order is dated and mailed. The effective date of decision for a Type IV application is thirty (30) days after the Mayor signs the ordinance, unless an emergency is declared in which case the ordinance is effective immediately upon signature of the Mayor.

C. A decision shall expire according to Section 2.220.A. unless one of the following occurs prior to the date of expiration:

1. An application for an extension is filed pursuant to Section 2.225; or
2. The development authorized by the decision has commenced as defined herein.
 - a. The use of the subject property has changed as allowed by the approval; or
 - b. In the case of development requiring construction, a construction permit has been issued and substantial construction pursuant thereto has taken place.
 - c. The approval time begins from the effective date of the decision. Appeal of a decision to LUBA does not extend the time.

2.225 Extension of a Decision.

- A. An application to extend the expiration date of a decision made pursuant to this Code may be filed only before the decision expires as provided in Section 2.220.
- B. A land use decision may be extended no more than two (2) times.
- C. Requests for extension of a decision shall be as follows:
 - 1. The first request for extension of a decision shall follow the Type II process.
 - 2. The second request for extension of a decision shall follow the Type III process.
- D. Extension requests shall provide mailed public notice to those parties identified in Section 2.085. In addition, the notice shall be mailed to the parties of record contained in the initial land use decision and any prior extension of time decision.
- E. In order to approve an extension of time application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:
 - 1. It is not practicable to commence development within the time allowed for reasons beyond the reasonable control of the applicant.
 - 2. There has been no change in circumstances or the applicable regulations or statutes likely to necessitate modification of the decision or conditions of approval since the effective date of the decision for which the extension is sought.
 - 3. The previously approved land use decision is not being modified in design, use, or conditions of approval.

2.230 Modification of a Decision.

- A. An applicant or successor in interest may file with the Director an application to modify a prior decision that was the subject of a Type I, Type II or Type III procedure. In addition to other requirements, such an application to modify a prior decision shall describe the nature of the proposed change to the original decision and the basis for that change, including the applicable facts and law, together with the fee prescribed for that application type necessary to modify the prior decision. Such an application to modify a prior decision shall be subject to the approval

criteria and development regulations in effect when the Director receives a complete application for the modification.

- B. An application for modification is subject to pre-application conference and completeness review; provided, the Director shall only require an application for modification to contain information that is relevant or necessary to address the requested change or the facts and regulations on which it is based. An application for modification is not subject to the neighborhood review meeting requirement.
- C. An application for modification does not extend the deadline for filing an appeal and does not stay appeal proceedings. An application for modification is subject to the 120-day requirement pursuant to ORS 227.178.
- D. Only a decision that approves or conditionally approves an application can be modified. A decision denying an application cannot be modified.
- E. An application for modification shall be subject to a Type I, Type II, or Type III procedure as determined by the Director.
- F. The process type for an application to modify a decision shall be based upon the scope of the proposed modification. In all cases, when a proposed modification involves a condition of approval, that condition of approval can be modified or removed only by the same decision making authority that issued the original decision and through the same procedure that was followed to establish the condition to be modified. Modification or removal of a condition of approval shall only be granted if the decision making authority determines any one of the following:
 - 1. The applicant or owner has demonstrated that a mistake of law or fact occurred, and that the mistake was substantial enough to warrant modification or removal of the condition to correct the mistake.
 - 2. The condition could not be implemented for reasons beyond the control of the applicant and the modification will not require a significant modification of the original decision.
 - 3. The circumstances have changed to the extent that the condition is no longer needed or warranted.
 - 4. A new or modified condition would better accomplish the purpose of the original condition.