

**ORDINANCE NO. 13-1005**

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**AN ORDINANCE OF THE CITY OF OREGON CITY AMENDING TITLE 17 ZONING,  
CHAPTER 17.50 – ADMINISTRATION AND PROCEDURES.**

**WHEREAS**, the Oregon City Municipal Code has an established process for land use decisions; and

**WHEREAS**, the proposed amendment to the Oregon City Municipal Code regarding Type II land use appeals establishes consistency with ORS 227.175(10)(a)(C); and

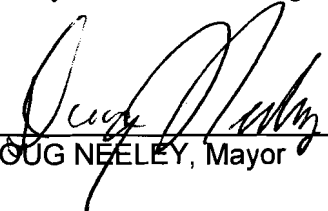
**WHEREAS**, the proposed amendment to the Oregon City Municipal Code regarding the appeals process corrects errors and establishes consistency throughout Chapter 17.50; and

**WHEREAS**, the proposed amendment complies and is consistent with state statutes, Statewide Planning Goals, and the goals and policies of the Oregon City Comprehensive Plan.

**NOW, THEREFORE, OREGON CITY ORDAINS AS FOLLOWS:**

**Section 1.** The Oregon City Zoning and Development Code is hereby amended, as provided in Exhibit 1, based on the findings contained in the Staff Report.

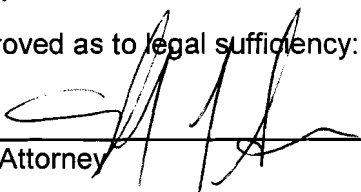
Read for the first time at a regular meeting of the City Commission held on the 20<sup>th</sup> day of February, 2013, and the City Commission finally enacted the foregoing ordinance this 6<sup>th</sup> day of March, 2013.

  
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DOUG NEELEY, Mayor

Attested to this 6th day of March 2013:

  
\_\_\_\_\_  
Nancy Ide, City Recorder

Approved as to legal sufficiency:

  
\_\_\_\_\_  
City Attorney

# Exhibit 1

## 17.50.030 - Summary of the city's decision-making processes.

The following decision-making processes chart shall control the City's review of the indicated permits:

**Table 17.50.030**

### PERMIT APPROVAL PROCESS

PERMIT TYPE	I	II	III	IV	Expedited Land Division
Compatibility Review	X				
Code Interpretation			X		
General Development Plan			X		
Conditional Use			X		
Detailed Development Plan <sup>1</sup>		X	X		
Extension		X			
Final Plat	X				
Geologic Hazards		X			
Historic Review			X		
Lot Line Adjustment and Abandonment	X				
Major Modification to a Prior Approval <sup>2</sup>	X	X	X	X	X
Minor Modification to a prior Approval	X				
Minor Partition		X			
Nonconforming Use, Structure and Lots Review	X	X			
Reconsideration	X				
Revocation				X	
Site Plan and Design Review		X			
Subdivision		X			X
Variance		X	X		
Zone Change & Plan Amendment				X	
Zone Change Upon Annexation with No Discretion	X			X	
Zone Change Upon Annexation with Discretion				X	
Natural Resource Exemption	X				
Natural Resource Review		X			

<sup>1</sup> If any provision or element of the master plan requires a deferred Type III procedure, the detailed development plan shall be processed through a Type III procedure.

<sup>2</sup> A major modification to a prior approval shall be considered using the same process as would be applicable to the initial approval.

A. Type I decisions do not require interpretation or the exercise of policy or legal judgment in evaluating approval criteria. Because no discretion is involved, Type I decisions do not qualify as a land use, or limited land use, decision. The decision-making process requires no notice to any party other than the applicant. The community development director's decision is final and not appealable by any party through the normal city land use process.

B. Type II decisions involve the exercise of limited interpretation and discretion in evaluating approval criteria, similar to the limited land use decision-making process under state law. Applications evaluated through this process are assumed to be allowable in the underlying zone, and the inquiry typically focuses on what form the use will take or how it will look. Notice of application and an invitation to comment is mailed to the applicant, recognized active neighborhood association(s) and property owners within three hundred feet. The community development director accepts comments for a minimum of fourteen days and renders a decision. The community development director's decision is appealable to the city commission with notice to the planning commission, by any party with standing (~~i.e., applicant and any party who submitted comments during the comment period~~) under ORS 227.175(10)(a)(C). The city commission decision is the city's final decision and is ~~appealable to~~ subject to review by the land use board of appeals (LUBA) within twenty-one days of when it becomes final.

C. Type III decisions involve the greatest amount of discretion and evaluation of subjective approval standards, yet are not ~~required to be heard~~ by the city commission, except upon appeal. In the event that any decision is not classified, it shall be treated as a Type III decision. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and the planning commission or the historic review board hearing is published and mailed to the applicant, recognized neighborhood association(s) and property owners within three hundred feet. Notice must be issued at least twenty days pre-hearing, and the staff report must be available at least seven days pre-hearing. At the evidentiary hearing held before the planning commission or the historic review board, all issues are addressed. The decision of the planning commission or historic review board is appealable to the city commission on the record pursuant to Section 17.50.190. The city commission decision on appeal ~~from the historic review board or the planning commission~~ is the city's final decision and is ~~appealable to~~ subject to review by LUBA within twenty-one days of when it becomes final, unless otherwise provided by state law.

D. Type IV decisions include only quasi-judicial plan amendments and zone changes. These applications involve the greatest amount of discretion and evaluation of subjective approval standards and must be heard by the city commission for final action. The process for these land use decisions is controlled by ORS 197.763.

~~Notice of the application and planning commission hearing is published and mailed to the applicant, recognized neighborhood association(s) and property owners within three hundred feet. Notice must be issued at least twenty days pre-hearing, and the staff report must be available at least seven days pre-hearing.~~ At the evidentiary hearing held before the planning commission, all issues are addressed. If the planning commission denies the application, any party with standing (i.e., anyone who appeared before the planning commission either in person or in writing within the comment period) may appeal the planning commission denial to the city commission. If the planning commission denies the application and no appeal has been received within fourteen ~~ten~~ days of the issuance of the final decision then the action of the planning commission becomes the final decision of the city. If the planning commission votes to approve the application, that decision is forwarded as a recommendation to the city commission for final consideration. In either case, any review by the city commission is on the record and only issues raised before the planning commission may be raised before the city commission. The city commission decision is the city's final decision and is ~~appealable to~~ subject to review by the land use board of appeals (LUBA) within twenty-one days of when it becomes final.

E. The expedited land division (ELD) process is set forth in ORS 197.360 to 197.380. To qualify for this type of process, the development must meet the basic criteria in ORS 197.360(1)(a) or (b). While the decision-making process is controlled by state law, the approval criteria are found in this code. The community development director has twenty-one days within which to determine whether an application is complete. Once deemed complete, the community development director has sixty-three days within which to issue a decision. Notice of application and opportunity to comment is mailed to the applicant, recognized neighborhood association and property owners within one hundred feet of the subject site. The community development director will accept written comments on the application for fourteen days and then issues a decision. State law prohibits a hearing. Any party who submitted comments may call for an appeal of the community development director's decision before a hearings referee. The referee need not hold a hearing; the only requirement is that the determination be based on the evidentiary record established by the community development director and that the process be "fair." The referee applies the city's approval standards, and has forty-two days within which to issue a decision on the appeal. The referee is charged with the general objective to identify means by which the application can satisfy the applicable requirements without reducing density. The

referee's decision is appealable only to the court of appeals pursuant to ORS 197.375(8) and 36.355(1).

#### **17.50.110 - Assignment of decision-makers. ✍**

The following city entity or official shall decide the following types of applications:

A. Type I Decisions. The community development director shall render all Type I decisions. The community development director's decision is the city's final decision on a Type I application.

B. Type II Decisions. The community development director shall render the city's decision on all Type II permit applications, which are then appealable to the city commission with notice to the planning commission. The city's final ~~commission~~ decision is ~~appealable to~~ subject to review by LUBA.

C. Type III Decisions. The planning commission or historic review board, as applicable, shall render all Type III decisions. Such decision is appealable to the city commission, on the record. The city commission's decision is the city's final decision ~~and is appealable and is subject to review by~~ to LUBA within twenty-one days of when it becomes final.

D. Type IV Decisions. The planning commission shall render the initial decision on all Type IV permit applications. If the planning commission denies the Type IV application, that decision is final unless appealed ~~to the city commission in~~ accordance with Section 17.50.190. If the planning commission recommends approval of the application, that recommendation is forwarded to the city commission. The city commission decision is the city's final decision on a Type IV application and is ~~appealable to~~ subject to review by LUBA.

E. ELD. The community development director shall render the initial decision on all ELD applications. The community development director's decision is the city's final decision unless appealed in accordance to ORS 197.375 to a city-appointed hearings referee. The hearings referee decision is the city's final decision which is appealable to the Oregon Court of Appeals.

#### **17.50.120 - Quasi-judicial hearing process. ✍**

All public hearings pertaining to quasi-judicial permits, whether before the Planning Commission, Historic Review Board, or City Commission, shall comply with the procedures of this section. In addition, all public hearings held pursuant to this chapter shall comply with the Oregon Public Meetings Law, the applicable provisions of ORS 197.763 and any other applicable law.

A. Once the community development director determines that an application for a Type III or IV decision is complete, the Planning Division shall schedule a hearing before the Planning Commission or Historic Review Board, as applicable. Once the community development director determines that an appeal of a Type II, Type III or Type IV decision has been properly filed under Section 17.50.190, the planning division shall schedule a hearing ~~before the city commission~~ pursuant to Section 17.50.190.

B. Notice of the Type III or IV hearing shall be issued at least twenty days prior to the hearing in accordance with Section 17.50.090B.

C. Written notice of an appeal hearing ~~before the city commission~~ shall be sent by regular mail no later than fourteen days prior to the date of the hearing to the appellant, the applicant if different from the appellant, the property owner(s) of the subject site, all persons who testified either orally or in writing before the hearing body and all persons that requested in writing to be notified.

D. The community development director shall prepare a staff report on the application which lists the applicable approval criteria, describes the application and the applicant's development proposal, summarizes all relevant city department, agency and public comments, describes all other pertinent facts as they relate to the application and the approval criteria and makes a recommendation as to whether each of the approval criteria are met.

E. At the beginning of the initial public hearing at which any quasi-judicial application or appeal is reviewed, a statement describing the following shall be announced to those in attendance:

1. That the hearing will proceed in the following general order: staff report, applicant's presentation, testimony in favor of the application, testimony in opposition to the application, rebuttal, record closes, commission deliberation and decision;
2. That all testimony and evidence submitted, orally or in writing, must be directed toward the applicable approval criteria. If any person believes that other criteria apply in addition to those addressed in the staff report, those criteria must be listed and discussed on the record. The meeting chairperson may reasonably limit oral presentations in length or content depending upon time constraints. Any party may submit written materials of any length while the public record is open;
3. Failure to raise an issue on the record with sufficient specificity and accompanied by statements or evidence sufficient to afford the city and all parties to respond to the issue, will preclude appeal on that issue to the state land use board of appeals;
4. Any party wishing a continuance or to keep open the record must make that request while the record is still open; and

5. That the commission chair shall call for any ex-parte contacts, conflicts of interest or bias before the beginning of each hearing item.

6. For appeal hearings, only those persons who participated either orally or in writing in the decision or review or who have standing pursuant to ORS 197.175(10)(a)(C) will be allowed to participate either orally or in writing on the appeal.

F. Requests for continuance and to keep open the record: The hearing may be continued to allow the submission of additional information or for deliberation without additional information. New notice of a continued hearing need not be given so long as a time-certain and location is established for the continued hearing. Similarly, hearing may be closed but the record kept open for the submission of additional written material or other documents and exhibits. The chairperson may limit the factual and legal issues that may be addressed in any continued hearing or open-record period.

## **17.50.190 - Appeals.**

Appeals of any non-final decisions by the city must comply with the requirements of this section.

A. Type I decisions by the planning manager are not appealable to any other decision-maker within the city.

B. A notice of appeal of any Type II, III or IV decision must be received in writing by the planning division within fourteen calendar days from the date notice of the challenged decision is provided to those entitled to notice. Late filing of any appeal shall be deemed a jurisdictional defect and will result in the automatic rejection of any appeal so filed.

C. The following must be included as part of the notice of appeal:

1. The city planning file number and date the decision to be appealed was rendered;

2. The name, mailing address and daytime telephone number for each appellant;

3. A statement of how each appellant has an interest in the matter and standing to appeal;

4. A statement of the specific grounds for the appeal;

5. The appropriate appeal fee. Failure to include the appeal fee within appeal period is deemed to be a jurisdictional defect and will result in the automatic rejection of any appeal so filed. If a city-recognized neighborhood association with standing to appeal has voted to request a fee waiver pursuant to Section 17.50.290C., no appeal fee shall be required for an appeal filed by that association. In lieu of the appeal fee, the neighborhood association shall

provide a duly adopted resolution of the general membership or board approving the request for fee waiver.

D. Standing to Appeal. The following rules prescribe who has standing to appeal:

1. For Type II decisions, only those persons or recognized Neighborhood Associations who have submitted written comments within the fourteen-day comment period have standing pursuant to ORS 197.175(10)(a)(C) may appeal a planning manager decision. Grounds for appeal are limited to those issues raised in writing during the fourteen-day comment period in filing an appeal to the city commission. Review of an appeal by the City Commission will be shall hold a de novo hearing on the appeal. New evidence and new issues may be raised at the hearing before the City Commission.

2. For Type III and IV decisions, only those persons or recognized Neighborhood Associations who have participated either orally or in writing have standing to appeal the decision of the planning commission or historic review board, as applicable. Grounds for appeal are limited to those issues raised either orally or in writing before the close of the public record. No new evidence shall be allowed.

E. Notice of the Appeal Hearing. The planning division shall issue notice of the appeal hearing to all parties who participated either orally or in writing before the close of the public record in accordance with Section 17.50.090B. Notice of the appeal hearing shall contain the following information:

1. The file number and date of the decision being appealed;
2. The time, date and location of the public hearing;
3. The name of the applicant, owner and appellant (if different);
4. The street address or other easily understood location of the subject property;
5. A description of the permit requested and the applicant's development proposal;
6. A brief summary of the decision being appealed and the grounds for appeal listed in the notice of appeal;
7. A statement that the appeal hearing is confined to the issues raised in the notice of appeal;
8. A general explanation of the requirements for participation and the city's hearing procedures.

F. Appeal Hearing—Scope of Review. Appeal hearings shall comply with the procedural requirements of Section 17.50.120. Appeal hearings shall be conducted by the city commission, planning commission or historic review board, as applicable. The decision shall be on the record and the issues under consideration shall be limited to those listed in the notice of appeal.