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Article 3: Land Use Decision and Development Permit Procedures

3.010 Purpose

Land use decisions and development permits are issued to assure property owners that the use and development of land is consistent with the provisions of this Code. The development permit replaces various land use permits previously required prior to adoption of this Code, while simplifying and regularizing the permit procedure.

3.020 Code Compliance Required

3.021 Land Use Decision and Permit Issuance. Land Use Decisions and Development Permits shall be issued according to the provisions of this Code.

Neither the City Building Official nor any other state or local official shall issue a permit for use, development or occupation of a structure which has not been approved according to this Code. Notwithstanding the above, valid prior approvals shall be allowed to proceed as provided in Section 1.080, Validity and Prior approval.

3.022 Lands in Violation. The Director shall not issue a Land Use Approval or Development Permit for the partitioning, subdivision, development, or use of land that has been previously divided in violation of state or local codes then in effect, or divided in violation of this Code subsequent to its adoption, or otherwise developed in violation of this Code, regardless of whether the applicant created the violation, unless the violation can be rectified as part of the proposed development in a manner provided by this Code.

3.030 Land Use Approval Required, Exceptions

- (1) Any use, development, or activity identified in Section 2.033 of this Code as “Exempt” (Type I-EX Procedure) does not require a permit, land use decision, or Development Permit, but shall comply with the provisions of this Code. An optional process that provides a land use decision is described in Section 3.050.
- (2) Any use, development, or activity identified in Section 2.034 of this Code as requiring an Administrative Use Permit (Type I-AU Procedure) does not require a land use decision or Development Permit, but requires a Use Permit in accordance with the provisions of this Code, and shall comply with the provisions of this Code. ⁴An optional process that provides a land use decision is described in Section 3.050.
- (3) Any use, development, or activity identified in Section 2.035 of this Code, which allows the Building Permit to serve as Development Permit (Type I-A Procedure), does not require a written land use decision, but shall comply with the conditions set forth as part of the Building Permit, and shall comply with

the provisions of this Code. ⁴An optional process that provides a land use decision is described in Section 3.050.

- (4) Except as provided in Subsection (5) of this Section, any use, development, or activity identified in Sections 2.036 (Type I-B Procedure), 2.037 (Type I-C Procedure), 2.038 (Type I-D Procedure), 2.040 (Type II Procedure), 2.050 (Type III Procedure), 2.060 (Type IV Procedure), or 2.070 (Type V Procedure) requires a written land use approval issued in accordance with the procedures of Article 2.
- (5) Certain applications, such as Lot Line Vacations, are reviewed through a Type IV-A Procedure, and approval is granted by City Council by Ordinance. The ordinance serves as the approval and there is no separate written land use approval.

3.040 Land Use Decision Procedures

3.041 Pre-Application Conference

- (1) A pre-application conference is required for all applications in Schedule 2-1, 'Application Procedures' identified as requiring a pre-application, unless the Director finds the conference is not needed.

An applicant or the applicant's authorized representative shall request the Director to arrange a pre-application conference, unless the Director finds the conference is not needed.

- (2) The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of this Code; to provide for an exchange of information regarding applicable elements of the Comprehensive Plan and Development Code requirements, and to otherwise identify policies and regulations that create opportunities or pose significant constraints for the proposed development.
- (3) Any pre-application for site plan review, subdivision, or PUD requires a rough sketch conceptual plan to be reviewed in the pre-application conference.
- (4) Upon the request of the applicant, the Director shall provide the applicant with a written summary of the conference including 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.

3.042 Director Coordination. The Director shall be responsible for the coordination of the land use application and decision making procedure.

3.043

Submittal of Application Materials. Land use applications together with all application materials shall be submitted to the Director during the normal working hours of the Department. The Director shall indicate the date of submittal on each copy of the materials submitted.

A complete application shall consist of only the items required by this Code, as follows:

- (1) A completed application, on a form provided by the Director.
- (2) Legal description, assessor map page number and tax lot number for all properties included in the application.
- (3) Evidence that the property included in the application is owned by the applicant, or that the applicant is the duly authorized agent of the owner.
- (4) Additional information, including maps, plans, sketches, calculations, and traffic analysis as required by other Articles and Sections of this Code.
- (5) Where applicable, a statement of intent, explaining the nature and proposed use of the development, pertinent background information and other information that may have a bearing in determining the action to be taken.
- (6) As many duplicates of the above information as may be requested by the Director to facilitate expeditious review of the application.
- (7) Submission of application fees as established by the City Council by separate resolution.

3.044

Determination of Procedure Types

- (1) Procedure Types. A land use application shall be processed under a Type I, II, III, IV, or V procedure, as provided in this Code in Article 2, Procedure Types.
- (2) Determination of Procedure Types. When a complete application is submitted, or following the pre-application conference, the Director shall determine the type of procedure the Code specifies for its processing. Where there is a question as to the appropriate type of procedure, the Director shall determine the procedure to be utilized based upon the most similar development permit procedure specified by this Code.
- (3) Consolidated Procedures. An applicant may apply at one time for all permits or approvals required for a development, such as zone map amendment and comprehensive plan map amendment, subdivision, variance, and site plan review, provided all application materials for each permit are submitted simultaneously. In such circumstances, the procedure type followed shall be

determined by the Director and may be the highest required for any of the individual applications.

- (4) Consolidation Process for Transportation Facilities.
Whenever more than one land use decision is required to permit a transportation facility, review of such decisions shall be consolidated, provided all application materials for each permit are submitted simultaneously. In such circumstances, the procedure type followed shall be determined by the Director and may be the highest required for any of the individual applications.

3.050 Application Completeness and Processing Timelines

- (1) Except as provided in subsections (3), (5) and (11) of this section, the review body shall take final action on any application, including resolution of all local appeals under ORS 227.180, within 120 days after the application is deemed complete.

The timelines specified in Article 2 for processing an application, including noticing, scheduling a hearing, and issuing a decision shall begin on the date the application is deemed complete.

Notwithstanding ORS 227.178 (Final action on certain applications required within 120 days) (1), a city with a population greater than 5,000 shall take final action on an application qualifying under subsection (3) of ORS 197.311, including resolution of all local appeals under ORS 227.180, within 100 days after the application is deemed complete.

An application qualifies for final action within the 100-day timeline as described in ORS 197.311(2) if:

- (a) the application is submitted to the city under ORS 227.175 (Application for permit or zone change);
- (b) the application is for development of a multifamily residential building containing five or more residential units within the Urban Growth Boundary (UGB);
- (c) at least 50 percent (50%) of the residential units included in the development will be sold or rented as affordable housing; **and**
- (d) the development is subject to a covenant appurtenant that restricts the owner and each successive owner of the development or a residential unit within the development from selling or renting any residential unit described in paragraph (c) of this subsection as housing that is not affordable housing for a period of 60 years from the date of the certificate of occupancy.

If an application is for a qualifying site plan review within a Regionally Significant Industrial Area (RSIA) Overlay, as an option to the procedure type specified in Schedule 12-2, the applicant may request an Expedited Industrial Site Plan Review, subject to the Type I-D procedures specified in Section 2.038 of the Development Code. Applicable fees and appeal procedures also apply as specified.

- (2) Within 5 days of receiving an application, the Director will review the application materials and make a determination of whether the application is complete.

If an application is deemed complete, the Director shall process the application in accordance with the provisions of this Code, including the referral and review provisions of this Article and the applicable procedure type of Article 2.

If an application is deemed incomplete, the Director shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application, 21 days if a RSIA overlay application, and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section or ORS 197.311 (Final action on application for certain residential developments required within 100 days) upon receipt by the Director of:

- (a) All of the missing information; or
 - (b) Some of the missing information and 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) Applicable Standards and Criteria.
 - (a) If the application was deemed complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.
 - (b) If the application is for industrial or traded sector development of a site identified under Section 12, Chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this section.

- (c) Except for construction of a new single-family dwelling or duplex, for any application which requires a Type I-EX, Type I-AU, or Type I-A procedure described in Section 2.030 which is decided without a written land use decision, the applicant has the option of submitting an application for a formal land use decision, in which case the application shall be reviewed using a Type I-B procedure.

The Director shall establish fees associated with the additional review.

If the applicant chooses to file an application through the optional procedure, the applicable standards and criteria shall be in accordance with paragraph (a) of this Section. If the application was deemed complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted. The applicable submittal requirements, standards, and criteria shall be the same as those that would apply if the application was reviewed through the Type I-EX, Type I-AU, or Type I-A procedure.

If the application is reviewed through the standard Type I-EX, Type I-AU, or Type I-A procedure, the applicable standards and criteria:

- (i) Shall be those in effect at the time of submittal of a complete building permit application for a Type I-A application; or
- (ii) Shall be those in effect at the time a grading permit application is submitted for work that requires a grading permit; or
- (iii) Shall be those in effect at the time of submittal of a complete Administrative Use Permit application for a Type I-AU application; or
- (iv) Shall be those in effect at the time a use, activity, or construction legally commences for a Type I-EX application.

The land use decision shall expire as provided in Section 3.075.

The decision need not include written findings, but shall include the items required in Section 2.036 for a decision on a Type I-B application. The decision shall also include a copy of the plan, shall state the expiration date of the decision, and shall reference the provisions of Section 3.075 governing expiration of the decision.

The optional procedure above is in addition to any other applicable application, such as a building permit application, grading permit application,

or Administrative Use Permit application, and does not substitute for that application.

- (4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:
 - (a) All of the missing information; or
 - (b) Some of the missing information and written notice that no other information will be provided; or
 - (c) Written notice that none of the missing information will be provided.
- (5) The 120-day period set in subsection (1) of this section or ORS 197.311 (Final action on application for certain residential developments required within 100 days) may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (11) of this section for mediation, may not exceed 245 days.
- (6) The 120-day period set in subsection (1) of this section applies:
 - (a) Only to decisions wholly within the authority and control of the governing body of the City; and
 - (b) Unless the parties have agreed to mediation as described in ORS 197.319(2)(b).
- (7) Notwithstanding subsection (6) of this section, the 120-day period set in subsection (1) of this section and the 100-day period set in ORS 197.311 (Final action on application for certain residential developments required within 100 days) does not apply to an amendment to an acknowledged comprehensive plan or land use regulation, or adoption of a new land use regulation that was forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610(1) in accordance with post-acknowledgment plan amendment procedures.
- (8) Except when an applicant requests an extension under subsection (5) of this section, if the review body does not take final action on an application within 120 days after the application is deemed complete, the city shall refund to the applicant, subject to subsection (9) of this section, either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

- (9) Refund Process.
- (a) To obtain a refund under subsection (8) of this section, the applicant may either:
 - (i) Submit a written request for payment, either by mail or in person, to the city.
 - (ii) Include the amount claimed in a mandamus petition filed under ORS 227.179. The court shall award an amount owed under this section in its final order on the petition.
 - (b) Within seven (7) calendar days of receiving a request for a refund, the city or its designee shall determine the amount of any refund owed. Payment, or notice that no payment is due, shall be made to the applicant with 30 calendar days of receiving the request. Any amount due and not paid within 30 calendar days of receipt of the request shall be subject to interest charges at the rate of one percent (1%) per month, or a portion thereof.
 - (c) If payment due under paragraph (b) of this subsection is not paid within 120 days after the city or its designee receives the refund request, the applicant may file an action for recovery of the unpaid refund. In an action brought by a person under this paragraph, the court shall award to a prevailing applicant, in addition to the relief provided in this section, reasonable attorney fees and costs at trial and on appeal. If the city or its designee prevails, the court shall award reasonable attorney fees and costs at trial and on appeal if the court finds the petition to be frivolous.
- (10) A city may not compel an applicant to waive the 120-day period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section governing refunds or ORS 197.311 (Final action on application for certain residential developments required within 100 days) or ORS 227.179 governing mandamus proceedings, as a condition for taking any action on an application except when such applications are filed concurrently and considered jointly with a plan amendment.
- (11) The periods set forth in subsections (1) and (5) of this section and ORS 197.311 may be extended by up to 90 additional days, if the applicant and the city agree that a dispute concerning the application will be mediated.

3.061 Referral. Within five (5) working days of accepting a complete application, the Director shall:

- (1) Transmit one copy of the application, or appropriate parts of the application, to each City department identified by the Director as having possible interest in commenting on the proposal pursuant to the requirements of this Code.
- (2) Transmit the application, or appropriate parts of the application, to other governmental bodies where approval of other governmental bodies is required prior to granting a development permit.
- (3) Transmit the application, or appropriate parts of the application, to public agencies which provide transportation facilities and services, such as Josephine County and the Oregon Department of Transportation (ODOT) for all partitions, and other applications which affect private access to roads.

3.062 Review

- (1) The Director shall include in the transmissions noted in Section 3.061(1) above, the date of site plan review scheduled for the application, or if no site plan review is required, some other date for submission or comment. If no comment is forthcoming by the date of site plan review, or by the other date provided if no site plan review is required, the referral agency or City department is presumed to have no comments and objections.
- (2) The Director may extend the deadline for comment by the referral agency or City department up to 10 working days, but only if the application involves unusual circumstances.

3.065 Decision or Recommendation

The Director shall review the application, applicable criteria and standards of this Code, other applicable laws, comments from the Site Plan Review Committee, and any testimony received.

- (1) For a Type I-B, Type I-C or Type I-D Procedure, the Director shall issue a decision and provide notice of the decision in accordance with Article 2.
- (2) For a Type II, III, IV, or V Procedure, the Director shall issue a staff report with a recommendation to the review body and provide notice as provided in Article 2. The review body shall issue a decision, and notice of the decision shall be provided in accordance with Article 2.

3.070 Fulfillment of Conditions of Land Use Approval

- (1) If the land use application is approved, the decision shall identify:
 - (a) Any conditions that must be completed prior to issuance of a Development Permit, for applications which require a Development Permit.
 - (b) Any conditions that must be completed prior to occupancy or final plat approval.
 - (c) When the decision expires.
- (2) If the Director or Review Body approves the land use application, the decision shall become final on the effective date as specified in Article 2. Once a land use decision becomes final, it shall expire as provided in Section 3.075. The applicant shall obtain a Development Permit prior to expiration of the land use decision. If the conditions do not require a Development Permit, the applicant shall complete all other conditions or obtain an extension prior to expiration of the land use approval.

3.075 Expiration and Extension of Land Use Approval

3.076 Expiration of Land Use Approval

- (1) Tentative/Preliminary Plans. Expiration of a land use approval for a tentative plan shall be governed by Article 17: Section 17.213 for Property Line Adjustments, Section 17.313 for Partitions, Section 17.415 for Subdivisions and Section 18.046 for Planned Unit Development.
- (2) All Other Applications. Except as provided in Subsection (1), a land use approval shall expire 18 months from the effective date of the decision, unless:
 - (a) The applicant has obtained a Development Permit, or
 - (b) When a Development Permit is not required, the applicant has completed all conditions of approval, or
 - (c) When authorized in Section 3.077 of this Code, the applicant received a written extension from the Director prior to expiration of the land use approval.

3.077 Extension of Land Use Approval

- (1) Tentative/Preliminary Plans. Extension of a land use approval for a tentative plan shall be governed by Article 17: Section 17.213 for Property Line Adjustments, Section 17.313 for Partitions, Section 17.415 for Subdivisions and Section 18.046 for Planned Unit Development.

- (2) All Other Applications. The Director may grant up to two extensions of the land use approval of six months each, in accordance with the provisions of this Section. The Director may grant an extension for less than six months if there are reasons a six month extension would be contrary to the purposes of this Code.
- (a) At least 30 days prior to the expiration of the decision, the applicant shall submit a written request for an extension. The request shall identify all of the following:
 - (i) Progress the applicant has made toward completion of the conditions necessary to obtain a Development Permit.
 - (ii) An estimate of the time the applicant will need to complete the remaining conditions to obtain a Development Permit.
 - (iii) Evidence that the applicant is vigorously pursuing the Development Permit and has the resources necessary to complete conditions necessary to obtain a Development Permit within the time provided by an extension.
 - (b) To grant an extension, the Director shall make written findings that all of the following are satisfied:
 - (i) There have not been significant changes in this Code, other regulations, the facts upon which the approval was based, the recommendations that existed at the time the land use decision was issued, or other circumstances that would warrant refileing the plan.
 - (ii) No other development approval would be affected.
 - (iii) The applicant is vigorously pursuing a Development Permit and has made substantial progress toward obtaining a Development Permit.
 - (iv) The remaining work necessary to obtain a Development Permit can be reasonably completed within the amount of time granted by an extension.
 - (v) No useful purpose would be served by requiring resubmittal.
 - (c) The extension shall be in writing and shall specify the new expiration date.

3.080 Action on Resubmission of Denied Application.

An applicant may make appropriate alterations to a proposal which has previously been denied by the review body and resubmit it with payment of the required fee.

3.090 Development Permits

3.091 Development Permit Required.

- (1) Except as provided in Subsection (2), any development activity or land division requires a Development Permit prior to commencement of any work. Except as provided in Subsection (2), no person shall engage in or cause to occur a development, including the partitioning and subdivision of land, for which a development permit has not been issued.
- (2) A Development Permit is not required for:
 - (a) Any development or activity identified in one of the following Code sections that do not require a written land use approval: Section 2.033 Type I-EX (Exempt), Section 2.034 Type I-AU (Administrative Use Permit), or Section 2.035 Type I-A (Building Permit as Development Permit).
 - (b) Any development or activity that requires a written land use approval, but does not involve physical modification to the property, such as a Property Line Adjustment, and the written decision does not require a Development Permit as a condition of approval.
 - (c) A Type IV decision where the approval is by Ordinance and does not involve physical modification to the property, such as a Property Line Vacation or Zoning Map Amendment.
- (3) Development permits shall be in a form prescribed by the Director.

3.092 Development Permit Expiration.

- (1) Tentative/Preliminary Plans. Expiration of a Development Permit for a tentative plan shall be governed by Article 17: Section 17.213 for Property Line Adjustments, Section 17.313 for Partitions, Section 17.415 for Subdivisions and Section 18.046 for Planned Unit Development.
- (2) All Other Development Activities. For all other activities, all development permits shall expire 18 months from the date of issuance, unless an extension has been granted as provided in Section 3.093.

To prevent the development permit from expiring, the applicant shall complete construction, fulfill all conditions, and obtain all approvals for final inspection and occupancy, prior to expiration of the Development Permit.

- (3) The expiration date for the Development Permit shall be shown on the Development Permit.

3.093 Development Permit Extension.

- (1) Tentative/Preliminary Plans. Extension of a Development Permit for a tentative plan shall be governed by Article 17: Section 17.213 for Property Line Adjustments, Section 17.313 for Partitions, Section 17.415 for Subdivisions and Section 18.046 for Planned Unit Development.
- (2) All Other Development Activities. A development permit shall expire upon the expiration date shown on the permit unless:
 - (a) An extension has been granted by the review body as provided in applicable Sections of this Code, or
 - (b) A written extension is granted by the Director. Extensions may be granted by the Director when:
 - (i) Construction of the development has begun and is being vigorously pursued toward completion, or
 - (ii) The Director determines that the circumstances, this Code and other regulations, and the recommendations that existed at the time of the issuance of the permit have not significantly changed and no useful purpose would be served by requiring resubmittal.

REVISIONS

DATE	ORD #
8/1/84	4518
10/7/92	4747
11/15/95	4843
9/4/02	5152
4/20/05	5285
6/7/06	5359
12/3/14	5632
2/17/16	5673
6/6/18	5735
4/17/19	5757