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**Article 10: Appeals**

**10.010 Purpose.**

The purpose of this Article is to provide appeal procedures for the review of decisions on land use and development matters by the Director, Hearings Officer, Planning Commission, Historic Buildings and Sites Commission, and City Council.

**10.015 Appeal Procedures and Hearing Types.**

The appeal procedures are summarized in Schedule 10-1, 'Summary of Appeal Procedures'. The detailed procedural requirements for each appeal type are contained in the following Sections of this Article.

An appeal hearing shall be 'de novo', 'limited to issues', or 'on the record' as specified in this Article.

Each of the hearing types is summarized below.

- (1) de novo: Anyone may testify. Issues are not limited to those raised in the appeal. New evidence and argument may be presented.
- (2) limited to issues: Anyone may testify. Issues are limited to those raised in the appeal. New evidence and argument may be presented, but it must only be used to consider the issues raised in the appeal.

Rather than hold a de novo hearing to consider issues not raised in the appeal, the review body may hold a hearing to consider an expanded scope of issues. In this case, the review body may consider issues raised on appeal plus additional issues specified by the review body. Prior to, or at the outset of the hearing, the review body shall specify which additional issues can be considered. New evidence and argument may be presented, but it must only be used to consider the issues raised in the appeal and the additional issues specified by the review body.

- (3) on the record:
  - (a) Anyone may testify. Issues are limited to those raised in the appeal. New evidence may not be presented. New argument may be presented.
  - (b) The Council may admit additional testimony and other evidence without holding a de novo hearing if it is satisfied that the testimony or other evidence could not have been presented at the initial hearing. In deciding such admission, the Council shall consider:
    - (i) Prejudice to parties

- (ii) Convenience of locating the evidence at the time of initial hearing.
  - (iii) Surprise to opposing parties.
  - (iv) When notice was given to the other party as to the attempt to admit.
  - (v) The competency and relevancy of the proposed testimony.
- (c) If additional evidence is admitted, then upon request, any other party may submit additional rebuttal evidence at that time, or for a period of 7 calendar days thereafter, and may also require that the decision of the review body be delayed for a period of not less than 14 calendar days to allow for consideration of the rebuttal evidence. The submission of additional evidence that results in a delay shall constitute a 30 day waiver of the 120 day decision making time frame, both by the party submitting the new evidence and by the party submitting the rebuttal evidence.

SEE Section 10.036 for appeal procedures for Expedited Industrial Site Plan Review.

**Schedule 10-1. Summary of Appeal Procedures**

Type I-B	Type I-C	Type I-D	Type II		
<p><b>Initial Decision by Director</b> (no hearing, no comment period, notice of decision is mailed)</p> <p align="center">↓</p>	<p><b>Initial Decision by Director</b> (no hearing, comment period, notice of decision is mailed)</p> <p align="center">↓</p>	<p><b>Initial Decision by Director</b> (no hearing, comment period, notice of decision is mailed)</p> <p align="center">↓</p>	<p><b>Initial Decision by Hearings Officer</b> (de novo hearing)</p>	<p align="center">Type III</p>	<p align="center">Type IV &amp; V</p>
<p><b>Director’s Decision is Appealed to Planning Commission</b></p> <p><u>Who may appeal?</u> Any person who is adversely affected or aggrieved or anyone entitled to written notice of decision (SEE ORS 197.830(4)(b) – persons not entitled to notice appeal rights</p> <p><u>What type of Planning Commission hearing?</u> De novo hearing required</p> <p align="center">↓</p>	<p><b>Director’s Decision is Appealed to Planning Commission</b></p> <p><u>Who may appeal?</u> Any person who is adversely affected or aggrieved, anyone entitled to written notice of decision, or anyone who provided written comments during the comment period (SEE ORS 197.830(4)(b) – persons not entitled to notice appeal rights</p> <p><u>What type of Planning Commission hearing?</u> De novo hearing required</p> <p align="center">↓</p>	<p><b>Director’s Decision is Appealed to Referee</b></p> <p><u>Who may appeal?</u> The Applicant or anyone who provided written comments during the comment period</p> <p><u>What type of Review?</u> The referee appointed by the local government may use any procedure for decision-making consistent with the interests of the parties to ensure a fair opportunity to present information and argument</p> <p align="center"><b>Cannot be appealed to LUBA</b></p>	<p><b>Hearings Officer’s Decision is Appealed to Planning Commission</b></p> <p><u>Who may appeal?</u> Anyone who provided written or oral testimony in the record for the initial decision</p> <p><u>What type of Planning Commission hearing?</u> De novo hearing, unless, at the outset of the hearing, the Commission specifies that it will be: -limited to issues, or -on the record</p> <p align="center">↓</p>	<p><b>Initial Decision by Planning Commission</b> (de novo hearing)</p> <p align="center">↓</p>	<p><u>Type IV-A</u> <b>(No Planning Commission Recommendation)</b></p> <p><u>Type IV-B</u> <b>Recommendation by Planning Commission</b> (de novo hearing)</p> <p><u>Type V</u> <b>Recommendation by Planning Commission</b> (de novo hearing)</p>
<p><b>Planning Commission’s Decision is Appealed to City Council</b></p> <p><u>Who may appeal the Planning Commission’s decision to City Council?</u> Anyone who previously provided written or oral testimony in the record, whether for the initial decision or for the Planning Commission hearing on appeal.</p> <p><u>What type of City Council hearing?</u> De novo hearing, unless, at the outset of the hearing, the Council specifies that it will be: -limited to issues, or -on the record</p> <p align="center">↓</p>					<p><u>Type IV-A, IV-B</u> <b>Initial Decision by City Council</b> (de novo hearing)</p> <p><u>Type V</u> <b>Initial Decision by City Council and Board of County Commissioners</b> (de novo hearing)</p> <p align="center">↓</p>
<p><b>City Council’s Decision is Appealed to LUBA, or City Council/Board of County Commissioners Decision is Appealed to LUBA</b></p> <p>In accordance with ORS 197.805-860.</p>					

10.020 Appeal of Final Action by the Director on Type I-B Decision (without Public Comment Period).

10.021 Appeal. A final action of the Director on a Type I-B decision (without public comment period) may be appealed to the Planning Commission, provided that the procedures of this Section are followed.

10.022 Procedures.

- (1) Any person who is adversely affected or aggrieved or who is entitled to written notice of the decision may appeal the decision by filing a written appeal. The appeal must be filed with the Director within 12 calendar days from the date the written notice of decision is mailed, on a form provided by the Director. (SEE also ORS 197.830(4)(b)).

The appeal shall contain:

- (a) A reference to the application or matter sought to be appealed to the Planning Commission, and the date of the decision.
  - (b) The name, address, and phone number of the appellant.
  - (c) The specific grounds relied upon in the request for appeal, including a statement of the specific criteria the appellant contends have or have not been satisfied.
  - (d) The required appeal fee.
- (2) Not later than 2 business days hours after receiving an appeal, the Director shall make a determination whether or not the appeal is and whether or not it has been filed on time. A negative determination by the Director shall nullify the appeal. If no valid appeals have been received within the time frame given, the Director's decision shall become final and is not subject to local appeal.
  - (3) Notice of the appeal hearing shall be mailed to the applicant, the appellant, any adversely affected or aggrieved party requesting notice in writing, and all persons previously mailed written notice of the decision. The manner and content of notice shall be as provided in Section 2.053.
  - (4) The appeal shall be reviewed by the Planning Commission under the Type III procedure as provided in Section 2.050.

10.023 Planning Commission Action.

- (1) Review. The hearing shall be “de novo” as required by ORS 227.175(10)(a)(D). The de novo hearing shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board

of Appeals. At the de novo hearing:

- (a) The applicant and other parties shall have the same opportunity to present testimony, arguments, and evidence as they would have had in a hearing before the decision was issued.
  - (b) The presentation of testimony, arguments, and evidence shall not be limited to the issues raised in a notice of appeal; and
- (2) The Planning Commission shall consider the record, all relevant testimony, arguments, and evidence that are accepted at the hearing.
  - (3) Commission Action. The Planning Commission may affirm, amend, or reverse the final action of the Director.

10.024 Notice of Decision. Within 10 calendar days of the written decision, written notice of the decision shall be mailed to the applicant, appellant, and all parties who appeared, either orally or in writing, before the hearing who requested such notice in writing. The notice of decision shall state the right of appeal of the decision as provided in this Code.

10.025 Appeal. Any appeal of the Planning Commission's decision on the appeal shall follow the procedures for appeal of a Type III decision.

10.030 Appeal of Final Action by the Director on Type I-C Decision (with Public Comment Period).

10.031 Appeal. A final action of the Director on a Type I-C decision (with public comment period) may be appealed to the Planning Commission, provided that the procedures of this Section are followed.

10.032 Procedures.

- (1) Any person who is adversely affected or aggrieved, anyone who is entitled to written notice of the decision, or anyone who provided written comments during the comment period may appeal the decision by filing a written appeal. The appeal must be filed with the Director within 12 calendar days from the date the written notice of decision is mailed, on a form provided by the Director. (SEE also ORS 197.830(4)(b)).

The appeal shall contain:

- (a) A reference to the application or matter sought to be appealed to the Planning Commission, and the date of the decision.
- (b) The name, address, and phone number of the appellant.

- (c) The specific grounds relied upon in the request for appeal, including a statement of the specific criteria the appellant contends have or have not been satisfied.
  - (d) The required appeal fee.
- (2) Not later than 2 business days after receiving an appeal, the Director shall make a determination whether or not the appeal is complete and whether or not it has been filed on time. A negative determination by the Director shall nullify the appeal. If no valid appeals have been received within the time frame given, the Director's decision shall become final and is not subject to local appeal.
  - (3) Notice of the appeal hearing shall be mailed to the applicant, the appellant, any adversely affected or aggrieved party requesting notice in writing, and all persons previously noticed as part of the process leading to the Director's final action. The manner and content of notice shall be as provided in Section 2.053.
  - (4) The appeal shall be reviewed by the Planning Commission under the Type III procedure as provided in Section 2.050.

10.033 Planning Commission Action.

- (1) Review. The hearing shall be “de novo” as required by ORS 227.175(10)(a)(D). The de novo hearing shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:
  - (a) The applicant and other parties shall have the same opportunity to present testimony, arguments, and evidence as they would have had in a hearing before the decision was issued.
  - (b) The presentation of testimony, arguments, and evidence shall not be limited to the issues raised in a notice of appeal; and
- (2) The Planning Commission shall consider the record, all relevant testimony, arguments, and evidence that are accepted at the hearing.
- (3) Commission Action. The Planning Commission may affirm, amend, or reverse the final action of the Director.

10.034 Notice of Decision. Within 10 calendar days of the written decision, written notice of the decision shall be mailed to the applicant, appellant, and all parties who appeared, either orally or in writing, before the hearing who requested such notice in writing. The notice of decision shall state the right of appeal of the decision as provided in this Code.

10.035 Appeal. Any appeal of the Planning Commission’s decision on the appeal shall follow the procedures for appeal of a Type III decision.

10.036 Appeal of Regionally Significant Industrial Area (RSIA) Review.

10.037 Appeal. A final action of the Director on a Type I-D decision (with public comment period) may be appealed to a local government appointed referee in accordance with the statutory procedures for an Expedited Industrial Site Plan Review (ORS 197.375) which are only available for application types authorized by statute (Expedited Industrial Site Plan Review). If the application for a land use permit does not meet the criteria for review under an Expedited Industrial Site Plan Review and is processed in accordance with ORS 197.724 (Review of Land Use Permit within a Regionally Significant Industrial Area (RSIA)), then an appeal to a local government appointed referee for a land use permit shall follow the statutory procedures as outlined in ORS 197.726.

10.038 Procedures.

- (1) The applicant or any person or organization who files written comments in the time period established under ORS 197.365 (Application for Expedited Land Division) or ORS 197.724 (Application for Land Use Permit within a Regionally Significant Industrial Area (RSIA)) may appeal the decision by filing a written appeal and paying the applicable deposit for costs. The appeal must be filed with the Director within 14 calendar days from the date the written notice of decision is mailed on a form provided by the Director. The appeal shall be based solely on allegations:
  - (a) Of violation of the substantive provisions of the applicable land use regulations;
  - (b) Of unconstitutionality of the decision;
  - (c) That the application is not eligible for review under ORS 197.360 (Expedited Land Division Defined) to 197.380 (Application fees for Expedited Land Division) and should be reviewed as a land use decision or limited land use decision; or
  - (d) That the parties’ substantive rights have been substantially prejudiced by an error in procedure by the local government.
- (2) The local government shall appoint a referee to decide the appeal of a decision made under ORS 197.360 (Expedited Land Division Defined) and ORS 197.365 (Application for Expedited Land Division). The referee shall not be an employee or official of the local government. However, the local government which has a designated hearings officer under ORS 215.406 (Planning and Zoning Hearings Officers) or 227.165 (Planning and Zoning Hearings Officers) may designate the hearings officer as the referee for appeals of a decision made



under ORS 197.360 (Expedited Land Division Defined) and ORS 197.365 (Application for Expedited Land Division).

- (3) The referee shall, within seven (7) days of being appointed, notify the applicant, the local government, the appellant if other than the applicant, any person or organization entitled to notice under ORS 197.365 (Application for Expedited Land Division)(2) that provided written comments to the local government and all providers of public facilities and services entitled to notice under ORS 197.365 (Application for Expedited Land Division)(2) and advise them of the manner in which they may participate in the appeal. A person or organization who provided written comments but did not file an appeal may participate only with respect to the issues raised in the written comments submitted by that person or organization. The referee may use any procedure for decision-making consistent with the interests of the parties to ensure a fair opportunity to present information and argument. (ORS 197.375(3)). See ORS 197.726(2) for applications that do not meet the criteria for an expedited land use permit. The referee shall provide the local government an opportunity to explain its decision, but is not limited to reviewing the local government decision and may consider information not presented to the local government.
- (4)
  - (a) The referee shall apply substantive requirements of the local government's land use regulations and ORS 197.360 (Expedited Land Division Defined). If the referee determines the application does not qualify as an expedited land Division as described in ORS 197.360 (Expedited Land Division Defined), the referee shall remand the application for consideration as a land use decision or limited land use decision. In all other cases, the referee shall seek to identify means by which the application can satisfy the applicable requirements.
  - (b) The referee may not reduce the density of the land division application. The referee shall make a written decision approving or denying the application or approving it with conditions designed to ensure that the application satisfies the land use regulations, within 42 days (ORS 197.375(4)(b)) or within 56 days (ORS 197.726(2)(c)) of the filing of the appeal. The referee may not remand the application to the local government for any reason other than as set forth in this subsection.
- (5) Unless the governing body of the local government finds exigent circumstances, a referee who fails to issue a written decision with 42 days (ORS 197.375(5)) or within 56 days (ORS 197.726(2)(c)) of the filing of an appeal shall receive no compensation for services as referee in the appeal.
- (6) Notwithstanding any other provision of law, the referee shall order the local government to refund the deposit for costs to an appellant who materially improves his or her position from the decision of the local government. The referee shall assess the cost of the appeal in excess of the deposit for costs, up to a maximum of \$500, including the initial deposit, against an appellant who

does not materially improve his or her position from the decision of the local government. The local government shall pay the portion of the costs of the appeal not assessed against the appellant. The costs of the appeal include the compensation paid the referee and costs incurred by the local government, but not the costs of other parties.

- (7) The Land Use Board of Appeals (LUBA) does not have jurisdiction to consider any decision, aspects of decisions or action made under ORS 197.360 (Expedited Land Division Defined) to 197.380 (Application fees for Expedited Land Division) or ORS 197.722 (Definitions for ORS 197.722 to 197.728) to ORS 197.728 (Rules).
- (8) Any party to a proceeding before a referee under this Section may seek judicial review of the referee's decision in the manner provided for review of final orders of the Land Use Board of Appeals under ORS 197.850 (Judicial Review of Board Order) and 197.855 (Deadline for Final Court Order). The Court of Appeals shall review the decision of the referee in the same manner as provided for review of final orders of the Land Use Board of Appeals in those statutes. However, notwithstanding ORS 197.850 (Judicial Review of Board Order)(9) or any other provision of law, the court shall reverse or remand the decision only if the court finds:
  - (a) That the decision does not concern an expedited land division as described in ORS 197.360 (Expedited Land Division Defined) or ORS 197.722 (Definitions for ORS 197.722 to 197.728) and the appellant raised this issue in proceedings before the referee;
  - (b) That there is a basis to vacate the decision as described in ORS 36.705 (Vacating Award)(1)(a) to (d), or a basis for modification or correction of an award as described in ORS 36.710 (Modification or Correction of Award) (ORS 197.375(8)(b));
  - (c) That the referee's decision contains a clear, material error of fact based on the record, and the appellant raised the issue in proceedings before the referee (ORS 197.726(3)(b) – *use only for those applications for land use permit within a Regionally Significant Industrial Area that do not meet the criteria in ORS 197.365 (Application for expedited land division)*);
  - (d) That the referee's decision contains a clear, material error of law, giving deference to any interpretations of law by the referee, and the appellant raised the issue in proceedings before the referee (ORS 197.726(3)(c) – *use only for those applications for land use permit within a Regionally Significant Industrial Area that do not meet the criteria in ORS 197.365 (Application for expedited land division)*); **or**
  - (e) That the decision is unconstitutional.

10.040 Appeal of Final Action by the Hearings Officer on Type II Decision.

10.041 Appeal. A final action of the Hearings Officer on a Type II decision may be appealed to the Planning Commission, provided that the procedures of this Section are followed.

10.042 Procedures.

- (1) Any adversely affected or aggrieved person who provided written or oral testimony in the record may appeal the decision by filing a written appeal.

The appeal must be filed with the Director within 12 calendar days from the date the written decision is mailed, on a form provided by the Director. The appeal shall contain:

- (a) A reference to the application or matter sought to be appealed to the Planning Commission, and the date of the decision.
  - (b) The name, address, and phone number of the appellant, and a statement showing that the appellant was a party to the proceedings.
  - (c) The specific grounds relied upon in the request for appeal, including a statement of the specific criteria the appellant contends have or have not been satisfied.
  - (d) The required appeal fee.
- (2) Not later than 2 business days after receiving an appeal, the Director shall make a determination whether or not the appeal is complete, whether or not it has been filed on time, and whether or not the appellant was a party to the proceedings. A negative determination by the Director shall nullify the appeal. If no valid appeals have been received within the time frame given, the Hearings Officer's decision shall become final and is not subject to local appeal.
  - (3) Notice of the appeal hearing shall be mailed to the applicant, the appellant, any adversely affected or aggrieved party requesting notice in writing, and all persons previously noticed as part of the process leading to the Hearings Officer's written decision. The manner and content of notice shall be as provided in Section 2.053.
  - (4) The appeal shall be reviewed by the Planning Commission under the Type III procedure as provided in Section 2.050.

10.043 Planning Commission Action.

- (1) Review.

The hearing shall be “de novo”, unless prior to or at the outset of the hearing, the Planning Commission specifies that the hearing will be a “limited to issues” hearing or an “on the record” hearing, as described in Section 10.015. This decision will govern who may testify, whether the hearing is limited to issues raised in the appeal, and whether new evidence will be permitted.

- (2) The Planning Commission shall review the appeal and consider the record, all relevant evidence and arguments that are accepted at the hearing, or that are already in the record if the hearing is limited to the record.
- (3) Commission Action. The Planning Commission may affirm, amend, or reverse the final action of the Hearings Officer.

10.044 Notice of Decision. Within 10 calendar days of the written decision, written notice of the decision shall be mailed to the applicant, appellant, and all parties who appeared, either orally or in writing, before the hearing who requested such notice in writing. The notice of decision shall state the right of appeal of the decision as provided in this Code.

10.045 Appeal. Any appeal of the Planning Commission’s decision on the appeal shall follow the procedures for appeal of a Type III decision.

10.050 Appeal of Final Action by the Planning Commission on Type III Decision.

A final action of the Planning Commission on a Type III decision may be appealed to the City Council provided that the procedures of this section are followed.

10.051 Procedures.

- (1) Filing an Appeal. Any adversely affected or aggrieved person who provided written or oral testimony in the record may appeal the decision by filing a written appeal.

The appeal must be filed with the Director within 12 calendar days from the date the written notice of decision is mailed, on a form provided by the Director. The appeal shall contain:

- (a) A reference to the application or matter sought to be appealed to the Council, and the date of the written decision.
- (b) The name, address, and phone number of the appellant, and a statement showing that the appellant was a party to the proceedings.
- (c) The specific grounds relied upon in the request for appeal, including a statement of the specific criteria the appellant contends have or have not been satisfied.

- (d) The required appeal fee.
- (2) Not later than 2 business days after receiving an appeal, the Director shall make a determination whether or not the appeal is complete, whether or not it has been filed on time, and whether or not the appellant was a party to the proceedings. A negative determination by the Director shall nullify the appeal. If no valid appeals have been received within the time frame given, the Planning Commission’s decision shall become final and is not subject to local appeal.
- (3) Notice. Notice of the appeal hearing shall be mailed to the applicant, appellant, any adversely affected or aggrieved party requesting notice in writing, and all persons previously noticed as part of the process leading to the Planning Commission’s written decision. The manner and content of notice shall be as provided in Section 2.053.
- (4) Procedure Type. The appeal shall be reviewed by the City Council using the “Action Hearing Before City Council” portion of the Type IV procedure as provided in Section 2.060.
- (5) Review Request by City Council.

Any final action of the Planning Commission may be reviewed by the City Council on its own motion, which motion shall be made no later than 12 calendar days from the Planning Commission’s written decision.

City Council review of the Planning Commission’s decision initiated by the City Council on its own motion shall be reviewed using the same notice and hearing procedures in Subsection (3) and (4) of this Section.

10.052 City Council Action.

- (1) Review.  
  
The Council shall hear the appeal “de novo”, unless, prior to or at the commencement of the hearing, the Council specifies that the hearing will be a “limited to issues” hearing or an “on the record” hearing, as described in Section 10.015. This decision will govern who may testify, whether the hearing is limited to issues raised in the appeal, and whether new evidence will be permitted.
- (2) The City Council shall review the appeal and consider the record, all relevant evidence and arguments that are accepted at the hearing, or that are already in the record if the hearing is limited to the record.

(3) City Council Action. The City Council may affirm, amend, or reverse the Planning Commission's decision under appeal.

10.053 Notice of Decision. Within 10 calendar days of the written decision, written notice of the decision shall be mailed to the applicant, appellant, and all parties who appeared, either orally or in writing, before the hearing or provided oral or written testimony in the record leading up to the appeal hearing who requested such notice in writing. The notice of decision shall state the right of appeal of the decision as provided in this Code.

10.054 Appeal. Any appeal shall follow the procedures for appeal of a Type IV decision.

10.060 Appeal of Final Action on Type IV Decision or Type V Decision

A final action of the City Council on a Type IV decision or a final action of the City Council and Board of Commissioners on a Type V decision may be appealed to the Oregon Land Use Board of Appeals within 21 days of the written decision as provided in ORS 197.830.

10.070 Waiver of Right to Appeal

If all parties to a decision waive in writing their right to appeal, the appeal period shall terminate immediately and the written decision of the review body shall be the City's final decision.

10.080 County Automatic Party Status.

The County shall be deemed to have automatic party status for quasi-judicial proceedings within the Urbanizing Area and for legislative proceedings, as specified in the 1998 Intergovernmental Agreement. The County may appeal a decision in accordance with the appeal provisions of this Article.

10.090 City Council Initiation of Review.

Prior to expiration of the appeal period of a Type I or Type II decision, the City Council on its own motion may require that the Planning Commission review the decision of the previous review body. The motion initiating review of the decision does not include a statement of grounds for appeal, but shall summarize the general reasons for sending the decision to the Planning Commission for review. The review shall be processed in accordance with a Type III procedure.

This authority shall have the same purpose as the City Council review of a Planning Commission decision provided in Section 10.051(6) of this Code, but shall allow for a decision of a lower review body to be considered by the Planning Commission first, rather than directly by the City Council. The City Council then has the opportunity to review the decision of the Planning Commission in accordance with Section 10.051(6). The City Council shall not initiate said review on behalf of a party to the proceedings

who has standing to file an appeal but shall reserve this authority for situations where further review may be necessary to ensure a decision adequately represents the public interest.

10.100 Final Action Following LUBA Remand.

(1) Final Action Required Within 120 Days. Pursuant to a final order of the Land Use Board of Appeals under ORS 197.830 remanding a decision to a city, the City Council shall take final action on an application within 120 days of the effective date of the final order issued by the board. For purposes of this subsection, the effective date of the final order is the last day for filing a petition for judicial review of a final order of the board under ORS 197.850 (3). If judicial review of a final order of the board is sought under ORS 197.830, the 120-day period established under this subsection shall not begin until final resolution of the judicial review.

(2) 120-day Period Begins Upon Written Request by Applicant. In addition to the requirements of subsection (1) of this section, the 120-day period established under subsection (1) of this section shall not begin until the applicant requests in writing that the city proceed with the application on remand, but if the City does not receive the request from the applicant to proceed with the application on remand within 180 days of the effective date of the final order or the final resolution of the judicial review, the City shall deem the application terminated.

The 120-day period established under Subsection (1) of this Section may be extended for up to an additional 365 days if the parties enter into mediation as provided by ORS 197.860 prior to the expiration of the initial 120-day period. The City shall deem the application terminated if the matter is not resolved through mediation prior to the expiration of the 365-day extension.

(3) The 120-day period established under subsection (1) of this section applies only to decisions wholly within the authority and control of the City Council.

(4) Subsection (1) of this section does not apply to a remand proceeding concerning an amendment to an acknowledged comprehensive plan or land use regulation or the 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.

(5) Procedures

(a) The City Council may use any procedure permitted by law to consider the issues on remand. Where LUBA's remand does not require an evidentiary hearing, the City Council is not required to conduct an evidentiary hearing, but may choose to do so.

- (b) Absent instructions from LUBA, the City Council may limit the scope of the remand proceedings to correcting the deficiencies that were the basis for LUBA’s remand, although it may also choose to expand the scope of remand proceedings beyond the scope of LUBA’s remand.

If the City Council chooses to limit the scope of the remand proceedings to correcting the deficiencies that were the basis for LUBA’s remand, the Council may also limit testimony to those parties who participated in the LUBA proceedings, including the petitioner, respondent, their authorized agents, and intervenors who spoke on behalf of a party to the LUBA proceedings.

- (c) The City Council shall provide notice consistent with the nature of the proceeding. If the City Council provides an evidentiary hearing, prior to or at the outset of the hearing, the City Council shall specify the scope of issues to be considered and the parties who will be permitted to provide testimony.

(6) Writ of Mandamus

- (a) If the governing body of a City or its designee fails to take final action on an application for a permit, limited land use decision or zone change within 120 days as provided in ORS 227.181, the applicant may file a petition for a writ of mandamus as provided in ORS 34.105 to 34.240. The court shall set the matter for trial as soon as practicable but not more than 15 days from the date a responsive pleading pursuant to ORS 34.170 is filed, unless the court has been advised by the parties the matter has been settled.
- (b) A writ of mandamus issued under this section shall order the governing body of the city or its designee to make a final determination on the application. The court, in its discretion, may order such remedy as the court determines appropriate.
- (c) In a mandamus proceeding under this section the court shall award court costs and attorney fees to an applicant who prevails on a petition under this section.

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REVISIONS

DATE	ORD #
2/16/94	4787
11/15/95	4843
4/20/05	5285
12/3/14	5632
9/21/16	5697
6/6/18	5735
4/17/19	5757