

CHAPTER 300
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AND LEGISLATIVE LAND USE PROPOSALS

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300.001. Purpose. The purpose of this Chapter is to establish uniform procedures for the review and processing of land use applications, and to establish procedures for legislative land use proposals. This Chapter is intended to make the land use application review process clear and understandable for applicants; to facilitate timely review of land use applications by the City; and to enable the public to effectively participate in the local land use decision making process. (Ord No. 1-10)

300.010. Scope and Applicability. This Chapter applies to all land use actions and all legislative land use proceedings under the Salem Revised Code. (Ord No. 1-10)

300.020. General Rule. No person shall engage in or cause development, as defined under SRC 111.050(f), to occur without first obtaining the necessary land use approvals required by, and according to the procedures in, this Chapter. (Ord No. 1-10)

APPLICATION PROCEDURE TYPES AND REVIEW AUTHORITIES

300.100. Procedure Types.

(a) All land use actions required under the Salem Revised Code are classified as one of four procedure types in Table 300.100-1. The procedure type governs the decision-making process for the specific land use application.

Table 300.100-1: Land Use Procedure Types			
Procedure Type	Decision Process	Decision Type	Process Description
Type I	Ministerial	Permit	Type I procedure is used when there are clear and objective standards and criteria that do not require interpretation or the exercise of policy or legal judgment in their application. Decisions on Type I applications are made by staff. Public notice and hearing are not required.
Type II	Administrative	Limited Land Use	Type II procedure is used when the standards and criteria require limited discretion or legal judgment in their application. Decisions on Type II applications are made by staff. Public notice and opportunity to comment prior to issuance of a decision is provided. A public hearing is not required unless the decision is appealed.
Type III	Quasi-Judicial	Land Use	Type III procedure is used when the standards and criteria require discretion or legal judgment in their application. Decisions on Type III applications are made by the Hearings Officer, Historic Landmarks Commission, or Planning Commission. Public notice and hearing are required. The decision may be appealed.
Type IV	Quasi-Judicial	Land Use	Type IV procedure is used for site-specific land use actions initiated by an applicant, the Historic Landmarks Commission, Planning Commission, or City Council. Type IV applications result in a recommendation from the Planning Commission or Historic Landmarks Commission to the City Council, which then makes the final decision. Public notice and hearings are required for both the initial hearing making recommendation and subsequent hearing taking final action.

(b) The specific procedure type assigned to a land use application is specified in Table 300.100-2.

(c) When the procedure type for a land use application is not identified in Table 300.100-2, specified elsewhere in the Salem Revised Code, or otherwise required by law, the Planning Administrator shall determine the applicable procedure based on the guidelines in this subsection. Questions as to the appropriate procedure shall be resolved in favor of the procedure type providing the greatest notice and opportunity to participate by the public.

(1) Type I procedures shall be used when the land use action will be based on standards and criteria that do not require interpretation or the exercise of policy or legal judgment.

(2) Type II procedures shall be used when the land use action will be based on standards or criteria that require only limited discretion or legal judgment.

(3) Type III procedures shall be used when the land use action will be based on standards and criteria that require the exercise of discretion or legal judgment.

(4) Type IV procedures shall be used when the land use action will be based on standards and criteria that require the exercise of discretion or legal judgment, and where the land use application must first be referred to an advisory body for review and recommendation to the City Council, which then makes the decision.

(d) Notwithstanding any other provision in this section, and upon payment of the applicable fee, an applicant may choose to process a land use application that would be a Type I procedure as a Type II or Type III procedure, or to process a land use application that would be a Type II procedure as a Type III procedure. (Ord No. 1-10; Ord No. 20-11)

Table 300.100-2: Land Use Applications by Procedure Type

Application	Procedure Type	Pre-App. Required	Review Authority		Applicable Code Chapter(s)
			Decision	Appeal	
ADJUSTMENT	II	N	PA	HO	SRC 116
ADMINISTRATIVE CONDITIONAL USE	II	N	PA	HO	SRC 116
CODE INTERPRETATION	III	N	PC	CC	SRC 110
COMPREHENSIVE PLAN CHANGE					
-Minor Plan Change (Applicant Initiated)	III	Y	PC	CC	SRC 64
-Minor Plan Change (City Initiated)	IV	N	PC – Recommendation; CC – Decision	-	SRC 64
CONDITIONAL USE	III	Y	HO	PC	SRC 117
DESIGN REVIEW					
-Administrative - Standards	I	Y	PA	-	SRC 120
-Discretionary - Guidelines	III	Y	PC	CC	SRC 120
FAIRVIEW MIXED-USE ZONE					
-Fairview Plan	III	Y	PC	CC	SRC 143C
-Fairview Plan Amendment – Minor	II	Y	PA	PC	SRC 143C
-Fairview Plan Amendment – Major	III	Y	PC	CC	SRC 143C
-Refinement Plan	III	Y	PC	CC	SRC 143C
-Refinement Plan Amendment – Minor	II	Y	PA	PC	SRC 143C
-Refinement Plan Amendment – Major	III	Y	PC	CC	SRC 143C
FLOOD PLAIN OVERLAY ZONE					
-Floodplain Development Permit	I	N	BO & PWD	-	SRC 140

Table 300.100-2: Land Use Applications by Procedure Type

Application	Procedure Type	Pre-App. Required	Review Authority		Applicable Code Chapter(s)
			Decision	Appeal	
-Floodplain Overlay Zone Variance	III	N	HO	CC	SRC 140
HISTORIC REVIEW					
-Historic Design Review (Minor)	I	N	PA	HLC	SRC 230
-Historic Design Review (Major)	III	N	HLC	HO	SRC 230
-Historic Resource Adaptive Reuse	III	N	HO	PC	SRC 230
-Historic Resource DEMOLITION	III	N	HLC	CC	SRC 230
-Local Historic Resource Designation	IV	N	HLC – Recommendation; CC – Decision	-	SRC 230
-Local Historic Resource Designation Removal (Class 1)	I	N	PA	-	SRC 230
-Local Historic Resource Designation Removal (Class 2)	IV	N	HLC – Recommendation; CC – Decision	-	SRC 230
MANUFACTURED DWELLING PARK PERMIT	II	Y	PA	HO	SRC 123
NEIGHBORHOOD CENTER MASTER PLAN					
-Class 1 NCMP	III	Y	PC	CC	SRC 215
-Class 2 NCMP	III	Y	PC	CC	SRC 215
-Class 2 NCMP Detailed Plan (Subsequent Phases)	II	N	PA	PC	SRC 215
-Class 3 NCMP (First Subarea)	III	Y	PC	CC	SRC 215
-Class 3 NCMP (Subsequent Subareas)	III	Y	PC	CC	SRC 215
-NCMP Minor Amendment	II	N	PA	PC	SRC 215
-NCMP Major Amendment	III	N	PC	CC	SRC 215
NEIGHBORHOOD PLANS					
-Neighborhood Plan Change (Applicant Initiated)	III	Y	PC	CC	SRC 64
-Neighborhood Plan Change (City Initiated)	IV	N	PC – Recommendation; CC – Decision	-	SRC 64

Table 300.100-2: Land Use Applications by Procedure Type

Application	Procedure Type	Pre-App. Required	Review Authority		Applicable Code Chapter(s)
			Decision	Appeal	
PARTITION					
-Tentative Plan	II	N	PA	PC	SRC 63
-Final Plat	Exempt	N	PA	-	SRC 63
PLANNED UNIT DEVELOPMENT					
-Tentative Plan	III	Y	PC	CC	SRC 121
-Tentative Plan w/ Subdivision	III	Y	PC	CC	SRC 121
-Final Plan	I	N	PA	-	SRC 121
PROPERTY LINE ADJUSTMENT	I	N	PA	-	SRC 63
PROPERTY LINE VERIFICATION	I	N	PA	-	SRC 63
REPLAT	II	N	PA	PC	SRC 63
SIGNS					
-Sign Permit	I	N	CDD	-	SRC 62
-Sign Adjustment	II	N	CDD	-	SRC 62
-Sign Conditional Use Permit	III	N	HO	PC	SRC 62
-Sign Variance	III	N	HO	PC	SRC 62
SITE PLAN REVIEW					
-Type I Limited	I	N	PA	-	SRC 163
-Type I	I	N	PA	-	SRC 163
-Type II	II	N	PA	HO	SRC 163
SPECIFIC CONDITIONAL USE	III	Y	HO	PC	SRC 118
SUBDIVISION					
-Tentative Plan	II	N	PA	PC	SRC 63
-Final Plat	Exempt	N	PA	-	SRC 63
-Subdivision of Manufactured Dwelling Park	II	N	PA	PC	SRC 63
TREE & VEGETATION REMOVAL					
-Tree Conservation Plan	I	N	PA	-	SRC 68
-Tree Conservation Plan Adjustment	I	N	PA	-	SRC 68
-Tree & Vegetation Removal Permit	I	N	PA	-	SRC 68
-Hardship Variance	II	N	PA	HO	SRC 68
-Economical Use Variance	II	N	PA	HO	SRC 68

Table 300.100-2: Land Use Applications by Procedure Type

Application	Procedure Type	Pre-App. Required	Review Authority		Applicable Code Chapter(s)
			Decision	Appeal	
URBAN GROWTH MANAGEMENT					
-Urban Service Area Amendment	IV	N	CC	-	SRC 66
-UGA Development Permit Preliminary Declaration	II	N	PA	CC	SRC 66
-UGA Development Permit	I	N	PWD	-	SRC 66
VALIDATION OF UNITS OF LAND	III	Y	HO	PC	SRC 63
VARIANCE	III	Y	HO	PC	SRC 115
WILLAMETTE GREENWAY					
-Greenway Development Permit – Outside Compatibility Review Boundary	II	N	PA	HO	SRC 141
-Greenway Development Permit – Inside Compatibility Review Boundary	III	Y	HO	PC	SRC 141
ZONE CHANGE					
-Zone Change (Applicant Initiated)	III	Y	HO	PC	SRC 113
-Zone Change (City Initiated)	IV	N	PC – Recommendation; CC – Decision	-	SRC 113
ZONE CHANGE W/ COMPREHENSIVE PLAN CHANGE	III	Y	PC	CC	SRC 113; SRC 64

LEGEND

PA – Planning Administrator; **BO** – Building Official; **CDD** – Community Development Director; **PWD** – Public Works Director; **HO** – Hearings Officer; **HLC** – Historic Landmarks Commission; **PC** – Planning Commission; **CC** – City Council

300.110. Review Authorities.

(a) Review Authorities, Generally. Review authorities are those designated individuals or bodies that make recommendations or decisions regarding land use actions. The applicable review authorities for specific land use actions are identified under Table 300.100-2. The Review Authority shall review an application following the applicable procedure type for the

application and according to the applicable approval standards and criteria.

(b) Review Authority Hierarchy. Review authorities are organized under the following hierarchy, from lowest to highest:

- (1) Staff, including, but not limited to, the Planning Administrator, Community Development Director, Public Works Director, Building Official;
- (2) Historic Landmarks Commission;
- (3) Hearings Officer;
- (4) Planning Commission;
- (5) City Council.

(c) Historic Landmarks Commission Jurisdiction over Certain Applications.

Notwithstanding any other provision of this section, the Historic Landmarks Commission shall have exclusive jurisdiction over those land use applications under SRC Chapter 120A requiring Historic Landmarks Commission review. (Ord No. 1-10)

300.120. Procedures for Review of Multiple Applications. When multiple land use actions are required or desired by an applicant, the applications may be processed individually in sequence, concurrently, or collectively through the consolidated procedure provided in this section. The applicant shall elect how the land use applications are to be processed; provided, however, that in those situations where the land use applications are subject to the same procedure type and decided upon by the same review authority, the land use applications shall be processed collectively.

(a) Applications Processed Individually in Sequence. Multiple applications processed individually require the filing of separate applications for each land use action. Each application shall be reviewed separately according to the applicable procedure type and processed sequentially, as follows:

- (1) Applications with the highest numbered procedure type must be processed first;
- (2) Notwithstanding any other provision in this subsection, where a particular sequence for the review of land use applications is established by another section of the Salem Revised Code, the applications shall be processed in that sequence; and
- (3) Notwithstanding any other provision in this subsection, where one land use application is dependent upon the approval of another land use application (e.g. conditional use permit is subject to prior approval of a zone change), the land use application upon which the other is dependant shall be processed first.

(b) Applications Processed Concurrently. Multiple applications processed concurrently require the filing of separate applications for each land use action. Each application shall be reviewed separately according to the applicable procedure type and processed simultaneously.

(c) Applications Processed Collectively. Multiple applications processed collectively require filing a single application for all land use actions. The application shall be accompanied by the information and supporting documentation required for each individual land use action. Review of the application shall be according to the highest numbered procedure type required for any of the land use applications. The Review Authority shall be the highest applicable Review Authority under the highest numbered procedure type required for any of the land use applications. Notwithstanding the provisions of this subsection, where multiple applications processed collectively include an application subject to review by the Historic Landmarks Commission, the application that is subject to Historic Landmarks Commission review shall be processed individually or concurrently. (Ord No. 1-10)

APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

300.200. Initiation of Applications.

(a) Type I, Type II, Type III, and Type IV land use applications may be submitted by one or more of the following persons:

- (1) The owner of the subject property;
 - (2) The contract purchaser of the subject property, when the application is accompanied by proof of the purchaser's status as such and by the seller's written consent;
 - (3) A lessee in possession of the property, when the application is accompanied by the owners' written consent; or
 - (4) The agent of any of the foregoing, when the application is duly authorized in writing by a person authorized to submit an application by paragraphs (1), (2) or (3) of this subsection, and accompanied by proof of the agent's authority.
- (b) Type IV applications may be initiated by the City. (Ord No. 1-10)

300.210. Application Submittal.

(a) Land use applications shall be submitted on forms prescribed by the Planning Administrator. A land use application shall not be accepted in partial submittals. All of the following must be submitted to initiate completeness review under SRC 300.220. All information supplied on the application form and accompanying the application shall be complete and correct as to the applicable facts.

- (1) The completed application form shall contain, at a minimum, the following information:
 - (A) The names and addresses of the applicant(s), the owner(s) of the subject property, and any authorized representative(s) thereof;
 - (B) The address or location of the subject property and its assessor's map and tax lot number;
 - (C) The size of the subject property;
 - (D) The comprehensive plan designation and zoning of the subject property;
 - (E) The type of application(s);
 - (F) A brief description of the proposal; and
 - (G) Signatures of the applicant(s), owner(s) of the subject property, and/or the duly authorized representative(s) thereof authorizing the filing of the application(s).
- (2) Recorded deed/land sales contract with legal description;
- (3) For applications where the applicant and/or property owner is a legal entity, including, but not limited to, a partnership, corporation, or limited liability company, a list of all the members who have authority to bind the legal entity and who have authority to sign the application on behalf of the entity. For applications submitted by an agent, a copy of the authorization to act as an agent;
- (4) Pre-application conference written summary, if a pre-application conference was required under SRC 300.310(a) and Table 300-100-2; or copy of the approved pre-application conference waiver, if such approval was granted pursuant to SRC 300.310(b);
- (5) A statement as to whether any City-recognized neighborhood associations whose boundaries include, or are adjacent to, the subject property were contacted in advance of filing the application and, if so, a summary of the contact. The summary shall include the date when contact was made, the form of the contact and who it was with (e.g. phone conversation with neighborhood association chairperson, meeting with land use committee, presentation at neighborhood association meeting), and the result;
- (6) A statement as to whether the Salem-Keizer Transit District was contacted in advance of filing the application; and if so, a summary of the contact. The summary shall include the date when contact was made, the form of the contact, who it was with, and the result;
- (7) A written statement addressing each applicable approval criterion and standard;
- (8) Any additional information required under the Salem Revised Code for the specific land use action sought; and
- (9) Payment of the applicable application fee(s) pursuant to SRC 300.240.

(b) Each application, when received, shall be date-stamped with the date the application was received, and designated with a receipt number and a notation of the staff person who received the application. (Ord No. 1-10)

300.220. Completeness Review.

(a) The Planning Administrator shall review the submitted application and, within thirty days of its receipt, notify the applicant in writing as to whether the application is complete or incomplete.

(b) Determination of completeness shall be based upon the information required under SRC 300.210 and shall not be based on opinions as to quality or accuracy. A determination that an application is complete indicates only that the application is ready for review on its merits, not that the City will make a favorable decision on the application.

(c) If an application is determined to be complete, written notice shall be provided to the applicant stating that the application has been deemed complete and that review of the application has commenced.

(d) If an application is determined to be incomplete, written notice shall be provided to the applicant identifying the specific information that is missing and allowing the applicant the opportunity to submit the missing information. An application which has been determined to be incomplete upon initial filing shall be deemed complete for purposes of this section 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.

(e) If an application was complete at the time it was first submitted, or if the applicant submits additional required information within one hundred and eighty 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 in effect at the time the application was first submitted.

(f) An application shall be deemed void if the application has been on file with the City for more than one hundred and eighty days and the applicant has not provided the missing information or otherwise responded, as provided in subsection (d) of this section. (Ord No. 1-10)

300.230. Withdrawal of Application.

(a) An application may be withdrawn by the applicant at any time prior to the issuance of the decision if the owner or contract purchaser consents in writing to withdraw the application; and

(b) If an application is withdrawn after the mailing of public notice, the Planning Administrator shall send written notice stating the application has been withdrawn to all persons who were provided mailed notice of the application or public hearing. (Ord No. 1-10)

300.240. Fees. Fees for land use applications and other related services provided by the City shall be set by resolution of the City Council. Fees shall be paid at the time the application is submitted, or, if no application is required, at the time the request for a particular service is made. Payment of the application fee shall be necessary for an application to be deemed submitted. For land use applications or services requiring payment of a deposit, the amount of the deposit shall be credited against the exact final calculated costs. If applicable, any unused portion of the deposit shall be refunded once all incurred fees are paid. (Ord No. 1-10)

PRE-APPLICATION CONFERENCE

300.300. Purpose. Pre-application conferences are intended to familiarize applicants with the requirements of the Salem Revised Code; to provide applicants with an opportunity to meet with city staff to discuss proposed projects in detail; and to identify approval criteria, standards, and procedures prior to filing a land use application. The pre-application conference is intended to be a tool to orient applicants and assist them in navigating the land use process, but is not intended to be an exhaustive review that identifies or resolves all potential issues, and does not bind or preclude the City from enforcing all applicable regulations or from applying regulations in a manner differently than may have been indicated at the time of the pre-application conference. (Ord No. 1-10)

300.310. Applicability & Waiver of Pre-Application Requirement.

(a) Pre-application conferences are mandatory for those land use actions identified under Table 300.100-2 as requiring a pre-application conference. Nothing in this section shall preclude an applicant from voluntarily requesting a pre-application conference for any other land use action.

(b) Notwithstanding the provisions of this section, a mandatory pre-application conference may be waived by the Planning Administrator if the application is relatively simple, and good cause is shown by the applicant. An application for a waiver shall be made on forms provided by the Planning Administrator. The applicant for a waiver shall acknowledge that waiving the pre-application conference increases the risk of an application being rejected or processing delayed due to insufficient, incomplete, or incorrect information being provided. The decision of the Planning Administrator on an application to waive a pre-application conference is not appealable. (Ord No. 1-10)

300.320. Pre-Application Conference Procedures.

(a) Application Requirements.

(1) **Application Form.** Pre-application conference requests shall be made on forms provided by the Planning Administrator.

(2) **Submittal Requirements.** Pre-application conference requests shall:

(A) Include a completed application form;

(B) Include payment of the application fee;

(C) Be accompanied by the information required, if any, for the specific pre-application conference sought; and

(D) Be accompanied by any additional information the applicant deems necessary to demonstrate the nature and scope of the proposal in sufficient detail to allow City staff to review and comment.

(b) **Scheduling of Pre-Application Conference.** Upon receipt of a complete application, the Planning Administrator shall schedule the pre-application conference. The Planning Administrator shall coordinate the involvement of other city departments, as appropriate, in the pre-application conference. Pre-application conferences are not open to the general public.

(c) **Pre-Application Conference Summary.** Subsequent to the pre-application conference, the Planning Administrator will provide the applicant with a written summary of the conference. The purpose of the written summary is to provide a preliminary assessment of the proposal, but shall not be deemed to be a recommendation by the City or any other outside agency or service provider on the merits of the proposal.

(d) Validity Period for Mandatory Pre-Application Conferences; Follow-Up. Conferences.

A follow-up conference is required for those mandatory pre-application conferences that have already been held when:

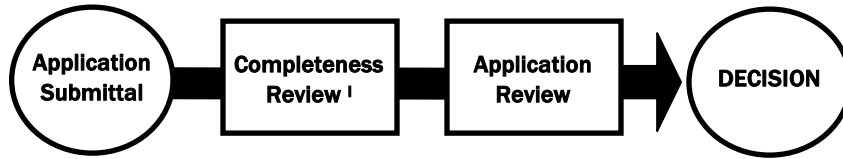
(1) A complete application relating to the proposed development that was the subject of the pre-application conference has not been submitted within eighteen months of the pre-application conference;

- (2) The proposed use, layout, and/or design of the proposal have significantly changed; or
- (3) The owner and/or developer of a project changes after the pre-application conference and prior to application submittal. (Ord No. 1-10)

TYPE I APPLICATION PROCEDURES

300.400 General Description. Type I applications are ministerial in nature, and involve land use actions governed by clear and objective approval criteria and non-discretionary standards. A Type I application is an administrative review process, where the Review Authority reviews the application for conformance with the applicable standards and approval criteria and issues a decision. The Type I application process is illustrated in Figure 300.400-1. (Ord No. 1-10)

Figure 300.400-1 - Type I Procedure



Completeness review conducted within 30 days of application submittal.

300.410. Type I Applications. The following land use actions are Type I applications:

- (a) Those identified in Table 300.100-2 as Type I applications;
- (b) Those identified in the Salem Revised Code as Type I applications; and
- (c) Those identified by the Planning Administrator as Type I applications based upon the guidelines for classification of applications under SRC 300.100(c). (Ord No. 1-10)

300.420. Type I Procedure.

(a) **Application Requirements.**

(1) **Application Form.** Type I applications shall be made on forms provided by the Planning Administrator.

(2) **Submittal Requirements.** Type I applications shall include the information required under SRC 300.210.

(b) **Public Notice and Comment Period.** Public notice and opportunity for comment is not provided for Type I applications.

(c) **Decision.** The Review Authority shall approve or deny the application according to the applicable standards and criteria. The decision shall be a written order.

(d) **Notice of Decision.**

(1) Except as provided under subsection (2) of this section, notice of the decision for Type I applications shall be mailed to the applicant.

(2) Notice of the decision on a Minor Historic Design Review application shall be mailed to the applicant, the owner of the subject property, any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property, and property owners of record, as shown on the most recent property tax assessment roll, within two hundred and fifty feet of the subject property.

(e) **Appeal and Review.**

(1) Except as provided under subparagraphs (A) and (B) of this paragraph, the decision on a Type I application shall be the final decision of the City, may not be appealed and is not subject to City Council review under SRC 300.1050, and shall become effective on the date when written notice of the decision is mailed to the applicant.

(A) The decision on a Minor Historic Design Review application may be appealed,

pursuant to SRC 300.1010. Only the applicant, the owner of the subject property, or any person entitled to notice of the decision have standing to appeal the decision on a Minor Historic Design Review application.

(B) The decision of the Review Authority on appeal of a Minor Historic Design Review application shall be the final decision of the City. The decision shall become effective on the date when written notice of the decision is mailed to the persons entitled to notice of the decision.

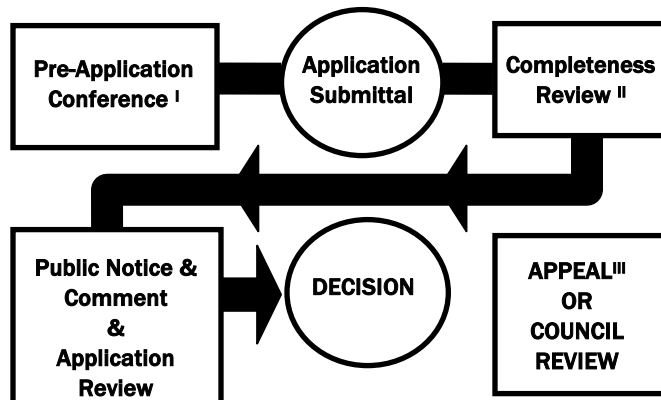
(2) Appeal of the City’s final decision is to the Oregon Land Use Board of Appeals.

(f) **Expiration.** Approval of a Type I application does not expire, unless otherwise provided under SRC 300.860(a) or another provision of the Salem Revised Code. (Ord No. 1-10; Ord No. 34-10)

TYPE II APPLICATION PROCEDURES

300.500. General Description. Type II applications are administrative in nature, and involve land use actions governed by approval criteria and standards which require the exercise of limited discretion. Impacts on nearby properties associated with the land use action may require imposition of conditions of approval to minimize those impacts or to ensure compliance with the Salem Revised Code. A Type II application is an administrative review process where the Review Authority reviews the application for conformance with the applicable standards and approval criteria and issues a decision. The Type II process is illustrated in Figure 300.500-1. (Ord No. 1-10)

Figure 300.500-1 - Type II Procedure



- I Pre-application conferences required for applications identified under Table 300.100-2.
- II Completeness review conducted within 30 days of application submittal.
- III Appeal period of 15 days from decision mailing date.

300.510. Type II Applications. The following land use actions are Type II applications:

- (a) Those identified in Table 300.100-2 as Type II applications;
- (b) Those identified in the Salem Revised Code as Type II applications; or
- (c) Those identified by the Planning Administrator as Type II applications based upon the guidelines for classification of applications under SRC 300.100(c). (Ord No. 1-10)

300.520. Type II Procedure

(a) **Application Requirements.**

(1) **Application Form.** Type II applications shall be made on forms provided by the Planning Administrator.

(2) **Submittal Requirements.** Type II applications shall include the information required under SRC 300.210.

(b) Public Notice and Comment. Public notice is required for Type II applications. The purpose of the notice is to provide property owners in the area and other interested parties with the opportunity to submit written comments concerning the application and invite affected parties to participate in the process prior to the issuance of the decision. Public notice shall be by first class mail. Posted notice on the subject property is required for Subdivisions, Administrative Conditional Uses, and Manufactured Dwelling Park Permits. All Type II applications include a comment period of fourteen days from the date notice is mailed.

(1) Mailed Notice. Mailed notice shall be provided as follows:

(A) The City shall mail notice of the application within ten days after the application is deemed complete. An affidavit of mailing shall be prepared and made part of the file.

(B) Notice of the application shall be mailed to:

- (i)** The applicant(s) and/or the applicant's authorized representative(s);
- (ii)** The owner(s) or contract purchaser(s) of record of the subject property;
- (iii)** Any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property;
- (iv)** Property owners of record, as shown on the most recent property tax assessment roll, within two hundred and fifty feet of the subject property;
- (v)** Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City; and
- (vi)** Any community organizations, public utilities, agencies, or individuals who have submitted written requests for notification to the City.

(C) Mailed notice shall include:

- (i)** The names of the applicant(s), any representative(s) thereof, and the owner(s) of the subject property;
- (ii)** The type of application and a concise description of the nature of the land use action;
- (iii)** The proposed site plan;
- (iv)** The street address, or other easily understood geographical reference, for the subject property;
- (v)** A vicinity map identifying the subject property with relation to nearby major streets or other landmarks;
- (vi)** A list of the approval criteria by name and code section;
- (vii)** A statement that the application and all documents and evidence submitted by the applicant are available for review and that copies can be obtained at reasonable cost;
- (viii)** A brief summary of the decision making process for the application;
- (ix)** The place, date, and time that written comments are due, and the person to whom the comments should be addressed;
- (x)** A statement that comments received after the close of the public comment period will not be considered;
- (xi)** A statement that issues which may provide the basis for an appeal to the Oregon Land Use Board of Appeals must be raised in writing prior to the expiration of the comment period and with sufficient specificity to enable the applicant and Review Authority to respond to the issue;
- (xii)** A statement that subsequent to the closing of the public comment period a decision will be issued and mailed to the applicant, property owner, everyone entitled to the initial notice of the application, anyone who submitted written comments on the application, and to any other persons otherwise legally entitled to notice of the decision; and
- (xiii)** The name and contact information for the staff case manager.

- (2) **Posted Notice.** Posted notice shall be provided, when required, as follows:
- (A) The applicant shall post notice on the subject property no earlier than fourteen and no later than ten days prior to the end of the fourteen day comment period. The notice shall remain in place throughout the comment period. The applicant shall file an affidavit of posting with the City no later than five days after the date of original posting. The affidavit shall be made a part of the file.
 - (B) Notice shall be posted on each street frontage of the subject property, in a conspicuous place that is visible from the public right-of-way. If no street abuts the subject property, the notice shall be placed as near as possible to the subject property in a conspicuous place that can be readily seen by the public.
 - (C) Posted notice shall be on signs prepared by the Planning Administrator.
 - (D) To replace signs that are lost or damaged to the extent they can no longer be reused, the Planning Administrator shall establish a refundable sign deposit fee required for each sign, to be paid by the applicant at the time signs are issued to the applicant.
 - (E) The applicant shall remove the signs from the subject property and return them to the Planning Administrator within seven days after the date the decision is issued. The Planning Administrator shall refund the sign deposit fee if the sign is returned within the required seven days, in an undamaged and reusable condition.
- (c) **Application Review.** The Review Authority shall review the application, all written comments submitted during the public comment period, and the applicant's response to the comments, if any. Written comments received after the expiration of the public comment period shall not be considered by the Review Authority.
- (d) **Decision.** The Review Authority shall approve, conditionally approve, or deny the application based upon the facts contained within the record and according to the applicable standards and criteria. The decision of the Review Authority shall be a written order containing findings that explain the criteria and standards applicable to the decision, stating the facts relied upon in rendering the decision, and explaining the justification for the decision.
- (e) **Notice of Decision.** Notice of the decision shall be mailed within five days after the decision is signed. An affidavit of mailing shall be prepared and made part of the file.
- (1) Notice of the decision shall be mailed to:
 - (A) The applicant(s) and/or authorized representative(s);
 - (B) The owner(s) or contract purchaser(s) of record of the subject property;
 - (C) Any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property;
 - (D) Any group or individual who submitted written comments during the comment period;
 - (E) Property owners of record, as shown on the most recent property tax assessment roll, within two hundred and fifty feet of the subject property;
 - (F) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City, and any governmental agency which submitted written comments during the comment period; and
 - (G) Any community organizations, agencies, or individuals who have submitted written requests to the City for notice of the decision.
 - (2) Notice of the decision shall include:
 - (A) A brief description of the application;
 - (B) A description of the site sufficient to inform the reader of its location, including site address, if available, map and tax lot number, and its comprehensive plan designation and zoning;
 - (C) A brief summary of the decision, and conditions of approval, if any;
 - (D) A statement of the facts relied upon;

- (E) The date the Review Authority's decision becomes effective, unless appealed;
- (F) The date and time by which an appeal must be filed, a brief statement explaining how to file an appeal, and where further information may be obtained concerning the appeal process;
- (G) A statement that all persons entitled to notice of the decision may appeal the decision; and
- (H) A statement that the complete case file, including findings, conclusions, and conditions of approval, if any, is available for review. The notice shall state where the case file is available and the name and telephone number of the staff case manager to contact about reviewing the case file.

(f) Appeal and Review.

- (1) Unless appealed pursuant to SRC 300.1010, or review is initiated by the City Council pursuant to SRC 300.1050, a Type II approval shall become effective on the date when written notice of the decision is mailed to persons entitled to notice of the decision.
- (2) Only the applicant, persons who provided comments during the public comment period, and persons entitled to notice of the decision have standing to appeal the decision.
- (3) The Review Authorities for appeals are identified under Table 300.100-2. Except as otherwise provided in subparagraphs (A) and (B) of this paragraph, the decision of the Review Authority on appeal, or, if review is initiated by the City Council, the City Council on review, shall be the final decision of the City.

(A) Upon receipt of an appeal of a Type II Site Plan Review decision, notice of the appeal shall be provided to the City Council at its next regular meeting. The Council may, pursuant to SRC 300.1050, assume jurisdiction for review pursuant to SRC 300.1040. If the City Council does not assume jurisdiction, then the decision of the Review Authority is the final decision of the City.

(B) The decision on a zoning adjustment is not subject to Council review. The decision of the Review authority is the final decision of the City.

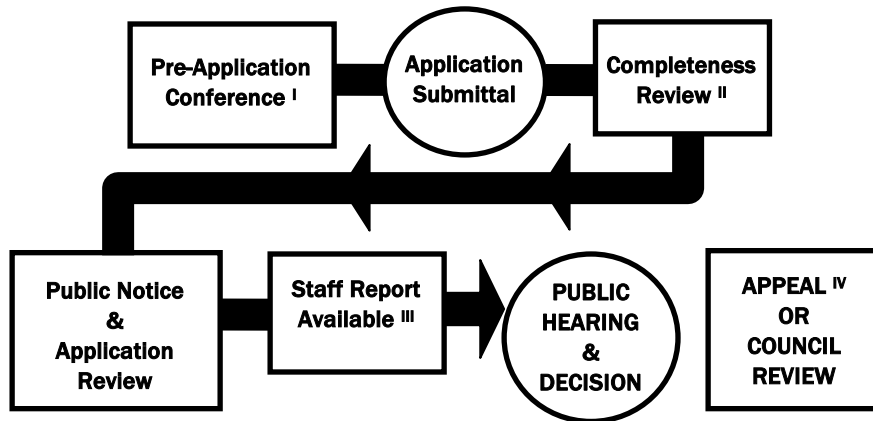
- (4) Appeal of the City's final decision is to the Oregon Land Use Board of Appeals.

(g) Expiration of Approval. Approval of a Type II application expires automatically as provided by SRC 300.860(a). (Ord No. 1-10)

TYPE III APPLICATION PROCEDURES

300.600. General Description. Type III applications are quasi-judicial in nature, and involve land use actions governed by criteria and standards that require the use of discretion and judgment. The issues associated with the land use action may be complex and the impacts significant, and conditions of approval may be imposed to mitigate the impacts and ensure compliance with the Salem Revised Code and Salem Area Comprehensive Plan. A Type III application is a quasi-judicial review process where the Review Authority receives evidence and testimony, reviews the application for conformance with the applicable standards and approval criteria and issues a decision. The Type III application process is illustrated in Figure 300.600-1. (Ord No. 1-10)

Figure 300.600-1 - Type III Procedure



- I Pre-application conferences required for applications identified under Table 300.100-2.
- II Completeness review conducted within 30 days of application submittal.
- III Staff report available 7 days prior to public hearing.
- IV Appeal period of 15 days from decision mailing date.

300.610. Type III Applications. The following land use actions are Type III applications:

- (a) Those identified in Table 300.100-2 as Type III applications;
- (b) Those identified in the Salem Revised Code as Type III applications; or
- (c) Those identified by the Planning Administrator as Type III applications based upon the guidelines for classification of applications under SRC 300.100(c). (Ord No. 1-10)

300.620. Type III Procedure.

(a) Application Requirements.

(1) Application Form. Type III applications shall be made on forms provided by the Planning Administrator.

(2) Submittal Requirements. Type III applications shall include the information required under SRC 300.210.

(b) Public Notice. Public notice is required for Type III applications. The purpose of the notice is to provide property owners in the area and other interested parties with the opportunity to submit written comments concerning the application and to present evidence and testimony as part of the hearing process. Public notice shall be by first class mail and by posting on the subject property.

(1) Oregon Department of Land Conservation and Development Notice. Notice to the Oregon Department of Land Conservation and Development is required for certain Type III applications, pursuant to ORS 197.610. Notice to the Oregon Department of Land Conservation and Development is provided as follows:

(A) The City shall mail notice of the application to the Oregon Department of Land Conservation and Development a minimum of forty-five days prior to the first public hearing on the application. An affidavit of mailing shall be prepared and made part of the file.

(B) Notice to the Oregon Department of Land Conservation and Development shall be made on forms provided by the Oregon Department of Land Conservation and Development. Notice shall be accompanied by information of sufficient detail to convey the nature and effect of the application, and a certificate of mailing.

(2) Mailed Notice. Mailed notice shall be provided as follows:

(A) The City shall mail notice of the public hearing not less than twenty days prior to the public hearing. An affidavit of mailing shall be prepared and made part of the file.

- (B)** Notice of public hearing shall be mailed to:
- (i)** The applicant(s) and/or authorized representative(s);
 - (ii)** The owner(s) or contract purchaser(s) of record of the subject property;
 - (iii)** Any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property;
 - (iv)** Property owners of record, as shown on the most recent property tax assessment roll, within two hundred and fifty feet of the subject property;
 - (v)** Any governmental agency entitled to notice by law or under an intergovernmental agreement with the City;
 - (vi)** Any community organizations, public utilities, agencies, or individuals who have submitted written requests for notification to the City;
 - (vii)** The tenants of a manufactured home or mobile home park, for applications involving a Comprehensive Plan map change and/or Zone change affecting all or part of the manufactured home or mobile home park; and
 - (viii)** All property owners within the historic district, for Major Historic Design Review applications within a historic district and historic resource demolition applications.
- (C)** Mailed notice shall include:
- (i)** The names of the applicant(s), any representative(s) thereof, and the owner(s) of the subject property;
 - (ii)** The type of application and a concise description of the nature of the request;
 - (iii)** The proposed site plan, if any;
 - (iv)** The street address or other easily understood geographical reference to the subject property;
 - (v)** A vicinity map identifying the subject property with relation to nearby major streets or other landmarks;
 - (vi)** A list of the applicable criteria by name and code section;
 - (vii)** The date, time, and place of the public hearing;
 - (viii)** A statement that the application and all documents and evidence submitted by the applicant are available for review and that copies can be obtained at reasonable cost;
 - (ix)** A brief summary of the decision making process for the application;
 - (x)** A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;
 - (xi)** A statement that all interested persons may appear either in person or with representation by an attorney and provide testimony; and that only those participating at the hearing, in person or by submission of written testimony, have the right to appeal the decision;
 - (xii)** A statement that failure to raise an issue prior to the close of the public hearing, in person or in writing, or failure to provide statements or evidence with sufficient specificity to afford the applicant and Review Authority to respond to the issue precludes an appeal to the Oregon Land Use Board of Appeals on that issue;
 - (xiii)** A statement that a copy of the staff report with recommendation to the Review Authority will be available for inspection at no cost at least seven days prior to the hearing, and that copies will be provided at reasonable cost;
 - (xiv)** A statement that after the close of the public hearing a decision shall be made that will be mailed to the applicant, property owner, affected neighborhood association, anyone who participated in the hearing, either in person or in writing, and anyone who requested to receive notice of the decision; and

(xv) The name and contact information for the staff case manager.

(3) **Posted Notice.** Posted notice shall be provided as follows:

(A) The applicant shall post notice on the subject property no earlier than fourteen and no later than ten days prior to the public hearing. The notice shall remain in place through the day of the public hearing. The applicant shall file an affidavit of posting with the City no later than five days after the date of the original posting. The affidavit shall be made a part of the file.

(B) Notice shall be posted on each street frontage of the subject property in a conspicuous place that is visible from the public right-of-way. If no street abuts the subject property, the notice shall be placed as near as possible to the subject property in a conspicuous place that can be readily seen by the public.

(C) Posted notice shall be on signs prepared by the Planning Administrator.

(D) To replace signs that are lost or damaged to the extent they can no longer be reused, the Planning Administrator shall establish a sign deposit fee required for each sign, to be paid by the applicant at the time signs are issued to the applicant.

(E) The applicant shall remove the signs from the subject property and return them to the Planning Administrator within seven days after the close of the public hearing. The Planning Administrator shall refund the sign deposit fee if the sign is returned within the required seven days in an undamaged and reusable condition.

(c) **Application Review and Staff Report.** Staff shall review the application and written comments and evidence submitted prior to the public hearing and prepare a staff report summarizing the application, comments received to-date, and relevant issues associated with the application; and making a recommendation to the Review Authority. The staff report shall be made available to the public for review a minimum of seven days prior to the hearing.

(d) **Public Hearing.** A public hearing shall be held before the Review Authority for the purpose of receiving evidence and testimony regarding the application. The hearing shall be conducted in accordance with the public hearing procedures established under SRC 300.900. The Review Authority shall consider in its review the application, all evidence and testimony submitted for the record, and the recommendation of staff.

(e) **Decision.** The Review Authority shall approve, conditionally approve, or deny the application based upon the facts contained within the record and according to the applicable standards and criteria. The decision shall be a written order and include:

(1) A list of the approval criteria by section number;

(2) A statement of facts upon which the Review Authority relied to find the application does or does not comply with each approval criterion and to justify any conditions of approval. The Review Authority may direct the party whose position is adopted to prepare the statement of facts, and may adopt or incorporate a staff report or written findings prepared by any party to the proceeding into the order;

(3) A statement of conclusions based on the statement of facts; and

(4) An order approving, approving with conditions, or denying the application.

(f) **Notice of Decision.** Notice of the decision shall be mailed within seven days from the date the Review Authority adopts the written order. An affidavit of mailing shall be prepared and made part of the file.

(1) Notice of decision shall be mailed to:

(A) The applicant(s) and/or authorized representative(s);

(B) The owner(s) or contract purchaser(s) of record of the subject property;

(C) Any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property;

(D) Any group or individual who submitted testimony for the record prior to the close of the public hearing;

- (E) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City, and any governmental agency that submitted testimony prior to the close of the public hearing;
- (F) Any community organizations, agencies, or individuals who submitted written requests for notice of the decision to the City; and
- (G) The Oregon Department of Land Conservation and Development, for decisions which required notice to the Oregon Department of Land Conservation and Development.

(2) Notice of decision shall include:

- (A) A brief description of the application;
- (B) A description of the site sufficient to inform the reader of its location, including site address, if available, map and tax lot number, and its comprehensive plan designation and zoning;
- (C) A brief summary of the decision, and conditions of approval, if any;
- (D) A statement of the facts relied upon;
- (E) The date the Review Authority's decision becomes effective, unless appealed;
- (F) The date, time, and place by which an appeal must be filed, a brief statement explaining how to file an appeal, and where further information may be obtained concerning the appeal process;
- (G) A statement that all persons who presented evidence or testimony as part of the hearing may appeal the decision; and
- (H) A statement that the complete case file, including findings, conclusions, and conditions of approval, if any, is available for review. The notice shall state where the case file is available and the name and telephone number of the staff case manager to contact about reviewing the case file.

(g) Appeal and Review.

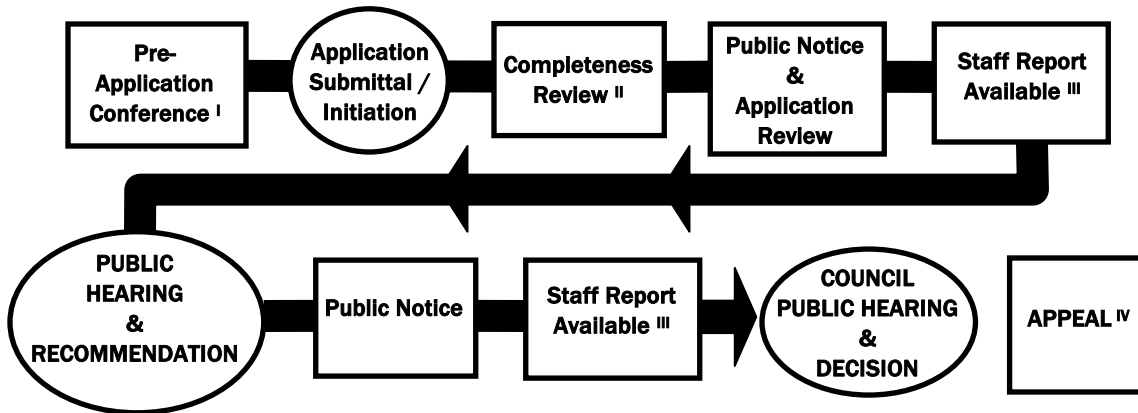
- (1) Unless appealed pursuant to SRC 300.1010, or review is initiated by the City Council pursuant to SRC 300.1050, the decision on a Type III application shall become effective on the date when written notice of the decision is mailed to persons entitled to notice.
- (2) Only the applicant and persons who provided evidence or testimony prior to the close of the public hearing have standing to appeal a Type III application.
- (3) The Review Authorities for appeals are identified under Table 300.100-2. Except as otherwise provided in paragraph (4) of this subsection, the decision of the Review Authority on appeal, or, if review is initiated by the City Council, the City Council on review, shall be the final decision of the City.
- (4) The decision on a Major Historic Design Review application is not subject to Council review.
- (5) Appeal of the City's final decision is to the Oregon Land Use Board of Appeals.

(h) Expiration of Approval. Approval of a Type III application expires automatically as provided under SRC 300.860(a). (Ord No. 1-10; Ord No. 34-10)

TYPE IV APPLICATION PROCEDURES

300.700. General Description. Type IV applications are quasi-judicial in nature, and involve land use actions governed by criteria that require the use of discretion and judgment. Type IV applications may be applicant-initiated or city-initiated. The Type IV application procedure is a quasi-judicial review process where Historic Landmarks Commission or Planning Commission makes recommendation to the City Council for final decision. The Type IV application process is illustrated in Figure 300.700-1. (Ord No. 1-10)

Figure 300.700-1 - Type IV



- I Pre-application conferences required for applications identified under Table 300.100-2. Does not apply to City initiated applications.
- II Completeness review conducted within 30 days of application submittal. Does not apply to City initiated applications.
- III Staff report available 7 days prior to public hearing.
- IV Appeal to the Oregon Land Use Board of Appeals. Appeal period of 21 days from decision mailing date.

300.710. Type IV Applications. The following land use actions are Type IV applications:

- (a) Those identified in Table 300.100-2 as Type IV applications;
- (b) Those identified in the Salem Revised Code as Type IV applications; or
- (c) Those identified by the Planning Administrator as Type IV applications based upon the guidelines for classification of applications by procedure under SRC 300.100(c). (Ord No. 1-10)

300.720. Type IV Procedure.

(a) Application Requirements.

(1) Applicant Initiated. If the Type IV application is applicant initiated, the following shall apply.

(A) Application Form. Type IV applications shall be made on forms provided by the Planning Administrator.

(B) Submittal Requirements. Type IV applications shall include the information required under SRC 300.210.

(2) City Initiated. If the Type IV application is City initiated, application shall be initiated by resolution of the City Council, Planning Commission, or Historic Landmarks Commission.

(b) Public Notice. Public notice is required for Type IV applications. The purpose of this notice is to provide property owners in the area and other interested parties with the opportunity to participate in the public hearing process through the submission of written and oral testimony. Because Type IV applications require evidentiary public hearings before the initial Review Authority and before the City Council, public notice is required for each hearing. Public notice shall be mailed and posted on the subject property.

(1) Oregon Department of Land Conservation and Development Notice. Notice to the Oregon Department of Land Conservation and Development is required for certain Type IV applications, pursuant to ORS 197.610. Notice to the Oregon Department of Land Conservation and Development shall be provided as follows:

(A) The City shall mail notice to the Oregon Department of Land Conservation and Development not less than forty-five days prior to the first evidentiary public hearing. An affidavit of mailing shall be prepared and made part of the file.

(B) Notice to the Oregon Department of Land Conservation and Development shall be provided on forms provided by the Oregon Department of Land Conservation and Development. The notice shall be accompanied by information of sufficient detail to convey the nature and effect of the application and approval being sought, and the certificate of mailing of the notice.

(2) **Mailed Notice.** Mailed notice shall be provided as follows:

(A) **Applicant Initiated Applications.**

(i) **Initial Public Hearing.** When a Type IV application is applicant initiated, the City shall mail notice of the initial evidentiary hearing a minimum of twenty days prior to the hearing. Affidavits of mailing shall be prepared and made part of the file. Notice of the initial public hearing shall be mailed to:

(aa) The applicant(s) and/or authorized representative(s);

(bb) The owner(s) or contract purchaser(s) of record of the subject property, if different from the applicant;

(cc) Any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property;

(dd) Property owners of record, as shown on the most recent property tax assessment roll, within two hundred and fifty feet of the subject property;

(ee) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City;

(ff) Any community organizations, public utilities, agencies, or individuals who have submitted written requests for notification to the City; and

(gg) The tenants of a manufactured home or mobile home park for applications involving a comprehensive plan map change and/or zone change affecting all or part of the manufactured home or mobile home park.

(ii) **Subsequent Public Hearings.** The City shall mail notice of a subsequent public hearing, including, but not limited to, a final hearing, a minimum of ten days prior to the hearing. Affidavits of mailing shall be prepared and made part of the file. Notice of any subsequent public hearing shall be mailed to:

(aa) The applicant(s) and/or authorized representative(s);

(bb) The owner(s) or contract purchaser(s) of record of the subject property, if different from the applicant;

(cc) Any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property;

(dd) Property owners of record, as shown on the most recent property tax assessment roll, within two hundred and fifty feet of the subject property;

(ee) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City;

(ff) Any community organizations, public utilities, agencies, or individuals who have submitted written requests for notification to the City;

(gg) The tenants of a manufactured home or mobile home park for applications involving a comprehensive plan map change and/or zone change affecting all or part of the manufactured home or mobile home park;

(hh) Any group or individual who submitted testimony for the record prior to the close of the initial public hearing; and

(ii) Any group or individual who requested notice of the initial decision of the Review Authority making recommendation to the City Council.

(B) **City Initiated Applications.**

(i) **Initial Public Hearing.** When a Type IV application is City initiated, the City shall mail notice of the initial evidentiary hearing a minimum of twenty days prior to

the hearing. The City shall mail notice of the final public hearing a minimum of ten days prior to the hearing. Affidavits of mailing shall be prepared and made part of the file. Notice of the initial public hearings shall be mailed to:

- (aa) The owner(s) or contract purchaser(s) of record of the subject property;
- (bb) Any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property;
- (cc) Property owners of record, as shown on the most recent property tax assessment roll, within two hundred and fifty feet of the subject property;
- (dd) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City;
- (ee) Any community organizations, public utilities, agencies, or individuals who have submitted written requests for notification to the City;
- (ff) The tenants of a manufactured home or mobile home park for applications involving a comprehensive plan map change and/or zone change affecting all or part of the manufactured home or mobile home park.

(ii) Subsequent Public Hearings. The City shall mail notice of any subsequent public hearing, including, but not limited to, a final public hearing, a minimum of ten days prior to the hearing. Affidavits of mailing shall be prepared and made part of the file. Notice of any subsequent public hearing shall be mailed to:

- (aa) The owner(s) or contract purchaser(s) of record of the subject property;
- (bb) Any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property;
- (cc) Property owners of record, as shown on the most recent property tax assessment roll, within two hundred and fifty feet of the subject property;
- (dd) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City;
- (ee) Any community organizations, public utilities, agencies, or individuals who have submitted written requests for notification to the City;
- (ff) The tenants of a manufactured home or mobile home park for applications involving a comprehensive plan map change and/or zone change affecting all or part of the manufactured home or mobile home park;
- (gg) Any group or individual who submitted testimony for the record prior to the close of the initial public hearing; and
- (hh) Any group or individual who requested notice of the initial decision of the Review Authority making recommendation to the City Council.

(C) Contents. Mailed notice of each public hearing on a Type IV application shall include:

- (i) The names of the applicant(s) and any representative(s) of the applicant, if applicable, and the owner(s) of the subject property;
- (ii) The type of application and a concise description of the nature of the request;
- (iii) Site plan, if applicable;
- (iv) The street address or other easily understood geographical reference to the subject property;
- (v) A vicinity map identifying the subject property with relation to nearby major streets or other landmarks;
- (vi) A list of the approval criteria by name and code section;
- (vii) The date, time, and place of the public hearing;
- (viii) A statement that the application and/or all documents and evidence submitted are available for review, and that copies can be obtained at a reasonable cost;
- (ix) A brief summary of the decision making process for the application;

- (x) A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;
- (xi) A statement that all interested persons may appear either in person or with representation by an attorney and provide testimony and that only those participating at the hearing, or in writing, shall be entitled to appeal;
- (xii) A statement that failure to raise an issue prior to the close of the public hearing, in person or in writing, or failure to provide statements or evidence with sufficient specificity to afford the applicant and Review Authority to respond to the issue precludes an appeal to the Oregon Land Use Board of Appeals on that issue;
- (xiii) A statement that a copy of the staff report with recommendation to the Review Authority will be available for inspection at no cost at least seven days prior to the hearing, and that copies will be provided at reasonable cost;
- (xiv) For the initial public hearing, a statement that subsequent to the close of the hearing a recommendation will be forwarded to the City Council; and for the final public hearing a statement that subsequent to the close of the hearing notice of the decision will be mailed to the applicant, if applicable, the property owner, affected neighborhood association, anyone who participated in the hearing, either in person or in writing, and anyone who requested notice of the decision; and
- (xv) The name and contact information for the staff case manager.

(3) Posted Notice. Posted notice is required for Type IV applications. Posted notice shall be provided for each public hearing as follows:

- (A) The applicant, or City, if application is City-initiated, shall post notice on the subject property no earlier than fourteen and no later than ten days prior to the public hearing. The notice shall remain in place through the day of the public hearing. An affidavit of posting shall be filed no later than five days after the date of the original posting.
- (B) Notice shall be posted on each street frontage of the subject property in a conspicuous place that is visible from the public right-of-way. If no street abuts the subject property, the notice shall be placed as near as possible to the subject property in a conspicuous place that can be readily seen by the public.
- (C) Posted notice shall be on signs prepared by the Planning Administrator.
- (D) To replace signs that are lost or damaged to the extent they can no longer be reused, the Planning Administrator shall establish a sign deposit fee required for each sign, to be paid by the applicant at the time signs are issued to the applicant.
- (E) The applicant shall remove the signs from the subject property and return them to the Planning Administrator within seven days after the close of the public hearing. The Planning Administrator shall refund the sign deposit fee if the sign is returned within the required seven days in an undamaged and reusable condition.

(c) Application Review and Staff Report. Staff shall review the application and written comments and evidence submitted prior to each public hearing and prepare staff reports summarizing the application, comments received to-date, and the relevant issues associated with the application. Each staff report shall make a recommendation to the Review Authority. The staff reports shall be made available to the public for review a minimum of seven days prior to each public hearing.

(d) Public Hearings. An initial evidentiary public hearing shall be held before the applicable Review Authority. The purpose of the initial evidentiary public hearing is for the Review Authority to receive evidence and testimony on the application and to forward a recommendation to the City Council. A final public hearing shall be held before the City Council. The purpose of the final public hearing before the City Council is to receive additional evidence and testimony and the recommendations of the Review Authority and staff and to make

a final decision on the application. Each hearing shall be conducted as provided in SRC 300.900.

(e) Recommendation. Subsequent to the close of the initial public hearing, the Review Authority shall make a recommendation to approve, approve with conditions, or deny the application, based upon the facts contained in the record and according to the applicable standards and criteria. The recommendation of the Review Authority shall be a written order that shall include:

- (1) A list of the approval criteria by section number;
- (2) A statement of the facts relied upon by the Review Authority in making its recommendation. The Review Authority may direct the party whose position is adopted to prepare the statement of facts, or adopt or incorporate a staff report or written findings prepared by any party to the proceeding into the order;
- (3) A statement of conclusions based on the statement of facts; and
- (4) The recommendation of the Review Authority.

(f) Notice of Recommendation. Notice of the recommendation shall be mailed within seven days from the date the Review Authority adopts its order. An affidavit of mailing shall be prepared and made part of the file.

- (1) Notice of recommendation shall be mailed to:
 - (A) The applicant(s) and/or authorized representative(s), if applicable;
 - (B) The owner(s) or contract purchaser(s) of record of the subject property;
 - (C) Any City-recognized neighborhood association whose boundaries include, or are adjacent to the subject property;
 - (D) Any group or individual who submitted testimony prior to the close of the public hearing;
 - (E) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City, and any governmental agency which submitted testimony prior to the close of the public hearing; and
 - (F) Any community organizations, agencies, or individuals who submitted written requests for notice of the recommendation.
- (2) Notice of recommendation shall include:
 - (A) A brief description of the application;
 - (B) A description of the site sufficient to inform the reader of its location, including site address, if available, map and tax lot number, and the comprehensive plan designation, and zoning;
 - (C) A brief summary of the recommendation;
 - (D) A statement of the facts relied upon by the Review Authority in making its recommendation;
 - (E) A brief statement explaining the next steps in the Type IV application process; and
 - (F) A statement that the complete case file is available for review. The notice shall state where the case file is available and the name and telephone number of the staff case manager to contact about reviewing the case file.

(g) Decision. Subsequent to the close of the final public hearing, the City Council shall approve, approve with conditions, or deny the application, taking into consideration the recommendations of the Review Authority and staff; and based upon the facts contained within the record and according to the applicable standards and criteria; or refer the matter back to the Review Authority for further consideration. The decision of the City Council shall be a written order that shall include:

- (1) A list of the applicable approval criteria by section number;
- (2) A statement of the facts relied upon by the City Council in making its decision. The City Council may direct the party whose position is adopted to prepare the statement of

facts, or adopt or incorporate a staff report or written findings prepared by any party to the proceeding into the order;

(3) A statement of conclusions based on the statement of facts; and

(4) An order approving, approving with conditions, or denying the application.

(h) Notice of Decision. Notice of the decision shall be mailed within seven days from the date the City Council adopts its written order. An affidavit of mailing shall be prepared and made part of the file.

(1) Notice of decision shall be mailed to:

(A) The applicant(s) and/or authorized representative(s), if applicable;

(B) The owner(s) or contract purchaser(s) of record of the subject property;

(C) Any City-recognized neighborhood association whose boundaries include, or are adjacent to the subject property;

(D) Any group or individual who submitted testimony for the record prior to the close of the public hearing;

(E) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City, and any governmental agency which submitted testimony prior to the close of the public hearing;

(F) Any community organizations, agencies, or individuals who submitted written requests for notice of the decision to the City; and

(G) The Oregon Department of Land Conservation and Development for decisions which required initial notice to the Oregon Department of Land Conservation and Development.

(2) Notice of decision shall include:

(A) A brief description of the application;

(B) A description of the site sufficient to inform the reader of its location, including site address, if available, map and tax lot number, and the comprehensive plan designation and zoning;

(C) A brief summary of the decision, and conditions of approval, if any;

(D) A statement of the facts relied upon by the City Council in making its decision;

(E) The date the City Council's decision becomes the City's final decision;

(F) The date, time, and place by which an appeal must be filed and where further information may be obtained concerning the appeal process; and

(G) A statement that the complete case file, including findings, conclusions, and conditions of approval, if any, is available for review. The notice shall state where the case file is available and the name and telephone number of the staff case manager to contact about reviewing the case file.

(i) Appeals. The decision of the City Council on a Type IV application shall become the City's final decision on the date when written notice of the decision is mailed to persons entitled to notice of the decision. Appeals of Type IV applications are to the Oregon Land Use Board of Appeals.

(j) Expiration of Approval. Approval of a Type IV application does not expire. (Ord No. 1-10; Ord No. 34-10; Ord No. 17-11)

GENERAL PROVISIONS

300.800. Computation of Time. For the purposes of this Chapter, unless otherwise specifically provided, days mean calendar days. In calculating a specific time period, the day on which the period begins to run shall not be included; and the day on which the period ends shall be included. In the event the last day falls on a Saturday, Sunday, or legal holiday, the period of time shall end on the next following day which is not a Saturday, Sunday, or legal holiday. (Ord No. 1-10)

300.810. Public Notice Compliance; Waiver of Notice. Notice of land use approval under the procedures of this Chapter shall be deemed to have been satisfied as follows:

(a) **Compliance.** The requirements for notice shall be deemed satisfied for any person who, prior to the public hearing and in any manner, obtains actual knowledge of the date, time, place, and subject matter of the hearing. Requirements for the provision of mailed, posted or published public hearing notice shall be deemed satisfied as follows:

(1) **Mailed Notice.** Mailed notice shall be deemed to have been provided upon the date the notice is deposited in the mail. Failure of the addressee to receive such notice shall not invalidate the proceedings if it can be demonstrated by affidavit that such notice was deposited in the mail.

(2) **Posted Notice.** Posted notice shall be deemed to have been provided upon the date when the sign is first posted. Subsequent removal of or damage to the sign by anyone other than the applicant or an officer of the City shall not invalidate the proceeding.

(3) **Published Notice.** Published notice shall be deemed to have been provided upon the date when the notice appears within a newspaper of general circulation within the City of Salem.

(b) **Waiver of Notice.** The appearance or provision of testimony or comments on an application by any person subsequent to the initiation of the application or prior to the close of the record after a public hearing shall be deemed a waiver of such person to any claim of defect in the provision of notice. (Ord No. 1-10)

300.820. 120-Day Rule. The City shall take final action on land use actions subject to ORS 227.178, including resolution of all local appeals, within one hundred and twenty days after the application has been deemed complete pursuant to SRC 300.220, unless the applicant provides written request or consent to an extension of such period pursuant to ORS 227.178(5). (Ord No. 1-10)

300.830. Conditions of Approval.

(a) **Imposition of Conditions.** The Review Authority may impose conditions on land use actions to the extent allowed by law in order to protect the public and adjacent property owners from adverse impacts resulting from the proposed development, to fulfill an identified need for public services or infrastructure caused by or required for the proposed development, or to ensure conformance with the applicable development standards and criteria in the Salem Revised Code. A condition of approval shall be valid and enforceable from and after the date the decision becomes effective.

(1) Conditions of approval should be stated in clear and unambiguous terms; be reasonably related to the public health, safety, and welfare; and be designed to reasonably effectuate the intended purpose.

(2) The Review Authority shall not impose any permanent condition which would limit use of the subject property to one particular owner, tenant, or business. Permanent conditions may limit the subject property as to use, but shall not be so restrictive that other occupants who might devote the property to the same or substantially similar use would be unable to reasonably comply with the conditions.

(b) **Effect of Conditions.** Conditions of approval shall be construed and enforced, in all respects, as provisions of the Salem Revised Code relating to the use and development of land. (Ord No. 1-10)

300.840. Amended Decisions.

(a) After notice of a decision on a land use action has been provided, an amended decision may be issued correcting typographical errors, rectifying inadvertent omissions, and/or making other minor changes that do not materially alter the decision if the amended decision is issued prior to

the expiration of the appeal period of the original decision, but in no event beyond the one hundred and twenty day period set forth under ORS 227.178 unless the applicant otherwise agrees to and requests an extension pursuant to ORS 227.178(5).

(b) Notice of an amended decision shall be given using the same mailing and distribution list as for the original notice of the decision.

(c) A new appeal period equal to that of the original decision shall be provided from the date of mailing the amended decision. (Ord No. 1-10)

300.850. Issuance; Effective Date.

(a) Each decision shall be specific as to the approval granted and shall be subject to the standards and conditions set forth in Salem Revised Code, including any variances or conditions authorized pursuant to the Salem Revised Code.

(b) Decisions on land use actions become effective on:

(1) The day the decision is issued, if no appeal is allowed;

(2) The day after the appeal period expires, if an appeal is allowed, but no notice of appeal is timely filed; or

(3) The day the decision is issued by the final appeal body, if an appeal is allowed and notice of appeal is timely filed. (Ord No. 1-10)

300.860. Expiration and Extensions.

(a) Approval Expiration and Termination.

(1) Unless a different period of time is established in the Salem Revised Code or in the decision, all approvals of land use actions shall expire automatically upon the dates set forth in Table 300.860-1 unless one of the following has occurred:

(A) Development has commenced in compliance with the land use approval;

(B) An extension has been granted pursuant to SRC 300.860(b); or

(C) The land use approval has been revoked as provided under SRC 300.870 or is otherwise invalidated by an administrative board or court of competent jurisdiction.

(2) Where the decision involves work for which a building permit is required, no exercise of the rights granted under the land use action shall be deemed to have commenced until a building permit has been issued. Unless otherwise extended, the approval of the land use action shall automatically expire if the approval has expired as set forth in Table 300.860-1, and all required building permits issued for the land use action have expired.

(b) Extensions.

(1) Whenever the decision requires exercise of approval rights or satisfaction of conditions of approval within a particular period of time, the approval period may be extended for the times set forth in Table 300.860-1 through filing an application for extension prior to the expiration date.

(2) Requests for extensions shall be processed as Type I applications and shall be granted if there have been no modifications to the standards and criteria used to approve the original application.

(3) While an application for extension is pending, no further action to develop the subject property or expand any use dependent upon the approval shall be taken subsequent to the expiration of the approval period; but existing established uses may continue during the time the extension request is pending.

(4) The decision granting an extension shall revive all rights under the original approval as they existed prior to the expiration of the original approval period. (Ord No. 1-10; Ord No. 34-10)

Table 300.860-1: Expiration and Extension of Approvals

Procedure Type	Expiration Period ¹	Extensions Allowed	Maximum Period for Each Extension ²
Type I³	No Expiration Period	N/A	N/A
Type II⁴	2 Years	2	2 Years
Type III⁵	2 Years	2	2 Years
Type IV	No Expiration Period	N/A	N/A

1. The expiration period is calculated from the effective date of the decision on the land use action or permit. If the decision is appealed to a body of competent jurisdiction, the expiration period shall be tolled until a final decision is issued on the appeal.
2. The extension period is calculated from the date of the expiration of the approval.
3. Sign Permits requiring a building permit shall be valid for 180 days. All other Sign Permits shall be valid for ninety days. Sign Permits may receive one extension for up to ninety days.
4. Type I and Type I Limited Site Plan approvals shall be valid for four years. No extensions of Site Plan approvals are allowed. If a valid building permit application is submitted, the Site Plan approval shall remain valid until the building permit expires.
5. Administrative Design Review approvals shall be valid for two years and may receive two extensions for up to two years.
6. Minor Historic Design Review approvals shall be valid for two years and may receive two extensions for up to two years.
7. Type II Site Plan approvals shall be valid for four years. No extensions of Site Plan approvals are allowed. If a valid building permit application is submitted, the Site Plan approval shall remain valid until the building permit expires.
8. Comprehensive Plan Change and Zone Change approvals have no expiration period.

300.870. Revocation of Approval.

- (a) Any approval of a land use action may be revoked by the Planning Administrator, as provided in this section.
- (b) Revocation of approval shall follow a Type I procedure. A land use approval may be revoked at any time upon a finding of:
 - (1) False, inaccurate, or incomplete statements of material fact in the application;
 - (2) Development contrary to the proposal embodied in the application, the provisions of the Salem Revised Code, or the conditions imposed in the decision;
 - (3) Abandonment or discontinuance; or failure to make reasonable progress toward completion for a continuous period of two years. Bona fide good faith efforts to market, secure financing, or to take other measures demonstrating intent to complete the development shall not constitute abandonment or discontinuance; or

- (4) A change in the Salem Revised Code or the Salem Area Comprehensive Plan that would make the approved development unlawful or not permitted and occurring prior to the development obtaining vested rights or non-conforming use status.
- (c) Notice of revocation shall be given, in writing, to the applicant or the applicant's assigns or successors in interest, stating the grounds for revocation, the date upon which the revocation becomes effective, and the right to appeal.
- (d) Any person entitled to notice under subsection (c) of this section may appeal the revocation to the Hearings Officer by filing written notice of appeal with the Planning Administrator within ten days of the date the notice of revocation was mailed.
- (e) Revocation shall be effective immediately upon the mailing of notice. Unless otherwise provided in the notice, revocation terminates all rights to continue the use or development under the approval of the land use action. It is unlawful to continue any use or development for which approval has been revoked.
- (f) Revocation of approval of a land use action on the basis of false, inaccurate, or incomplete statements of material fact in the application shall not bar, nor otherwise prejudice the right of the applicant to resubmit a new application containing accurate and complete statements of material fact. Revocation on any other grounds shall be treated as a basis for denial of the application on its merits and resubmission of application shall be made as provided in SRC 300.880.
- (g) Revocation is in addition to, and not in lieu of, any other remedy provided by law or equity, and is not a condition precedent to any such remedy. (Ord No. 1-10)

300.880. Resubmission Following Denial. Denial of an application shall bar refiling of the same or substantially similar application for a period of one year from the date of the decision. An exception may be granted by the original Review Authority if, upon a showing of good cause, the application is so amended that the substantive basis for denial no longer exists; the proposal has been so mitigated that a new application should be given consideration; or there has been a substantial change in the facts or a change in City policy which would change the outcome. (Ord No. 1-10)

PUBLIC HEARINGS

300.900. Public Hearings, Generally. The provisions of SRC 300.900-300.990 apply to all public hearings held pursuant to this Chapter. Where the provisions of SRC 300.900–300.990 conflict with other sections of the Salem Revised Code the provisions of SRC 300.900–300.990 shall control. (Ord No. 1-10)

300.910. Responsibilities of the Planning Administrator. For all public hearings held pursuant to this Chapter, the Planning Administrator shall:

- (a) Schedule the public hearing before the applicable Review Authority.
- (b) Provide public notice of the hearing.
- (c) Prepare and make available to the public a staff report summarizing the proposal, the relevant issues, and any comments received as of the date of the report; and making recommendation based upon the proposal's conformance, or lack thereof, with the standards and criteria.
- (d) Mail notice of the decision to those entitled to notice under this Chapter.
- (e) Maintain and prepare the record of the proceedings as required under SRC 300.980. (Ord No. 1-10)

300.920. Rules of Procedure. Public hearings shall be conducted in accordance with the provisions of this section and rules of procedure adopted by the Review Authority.

- (a) Any party may speak in person, through an attorney, or elect to have a representative from an officially recognized neighborhood association present the party's case.

- (b) A copy of any written testimony or physical evidence which a party desires to have introduced into the record at the time of hearing shall be submitted to the clerk of the Review Authority prior to, or at the time the party makes his or her presentation. If the testimony or evidence is not submitted to the secretary, it shall not be included in the record for the proceeding.
- (c) No person may speak more than once without obtaining permission from the Review Authority.
- (d) Upon being recognized by the presiding officer of the Review Authority, any member of the Review Authority, city staff or the City Attorney may question any person who testifies.
- (e) Testimony shall be directed towards the applicable standards and criteria which apply to the proposal.
- (f) The Review Authority may exclude or limit cumulative, repetitious, or immaterial testimony. To expedite hearings, the Review Authority may call for those in favor and those in opposition to rise, and the secretary of the Review Authority shall note the numbers of such persons for the record in the minutes. (Ord No. 1-10)

300.930. Conflicts of Interest; Ex Parte Contact; Challenges to Impartiality; and Abstention or Disqualification.

- (a) A member shall not participate in the discussion or vote in a quasi-judicial land use matter if:
 - (1) The member has an actual conflict of interest as defined by SRC 12.015(1), ORS 244.020(1), or ORS 244.120 or is prohibited from participating under Section 62 of the Salem City Charter;
 - (2) The member was not present during the public hearing; provided, however, the member may participate if the member has reviewed the evidence, including recordings of the hearing, and declares such fact for the record.
- (b) Members shall reveal any ex parte contacts with regard to the proceeding at the commencement of the hearing, or any continuance thereof, of any quasi-judicial land use matter. If such contacts impair the member's impartiality, the member shall state this fact, and abstain from participation in the matter.
- (c) Upon a challenge to the qualifications or impartiality of a member of a Review Authority, the challenged member shall be given an opportunity to respond orally or in writing to the challenge. The challenge and response shall be included in the record of the proceeding.
- (d) An abstaining or disqualified member of a Review Authority shall be counted for purposes of forming a quorum. A member who represents a personal interest at a hearing may do so only by making full disclosure to the Review Authority, abstaining from voting on the proposal, vacating the seat on the Review Authority, and physically joining the audience. A member representing a personal interest at a hearing shall not be counted for purposes of forming a quorum. (Ord No. 1-10)

300.940. Burden of Proof.

- (a) The proponent has the burden of proof on all elements of the proposal, and the proposal must be supported by proof that it conforms to all applicable standards and criteria.
- (b) The decision shall be based on the applicable standards and criteria set forth in the Salem Revised Code, the Salem Area Comprehensive Plan, and, if applicable, any other land use standards imposed by state law or administrative rule.
- (c) The applicant and any opponents may submit to the Review Authority a set of written findings or statements of factual information which are intended to demonstrate the proposal complies or fails to comply with any or all applicable standards and criteria. (Ord No. 1-10)

300.950. Evidence; Witnesses; Site Visits; Official Notice.

(a) The technical rules relating to evidence and witnesses set forth in the Oregon Evidence Code shall not apply in hearings under this Chapter, and any relevant evidence may be received by the Review Authority. Relevant evidence is any evidence having a tendency to make the existence or non-existence of a fact that is of consequence to the land use approval more or less probable than it would without the evidence.

(b) For hearings under this Chapter, evidence shall be any thing offered for the record in the form of written or oral communication; or offered into the record as a representation or illustration of a fact or idea. The Review Authority shall be the exclusive judge as to what evidence may be received.

(c) Witnesses shall not be sworn, provided that evidence of a factual nature in the form of a sworn affidavit may be given greater weight than unsworn contradictory evidence.

(d) No decision shall be deemed invalid on the basis that any evidence was excluded, except where such exclusion was in error and caused harm to the substantive rights of the person offering the evidence.

(e) Members of the Review Authority may inspect the subject property, provided that the date, time and place of the inspection are disclosed at the commencement of the hearing, along with the material facts observed during the inspection.

(f) The Review Authority may take official notice either before or after the hearing, of official records, statutes, administrative rules and regulations, and ordinance. Any party may request on the record that official notice be taken of general, technical and scientific facts within the knowledge of the reviewing body. Any such general, technical and scientific facts need not be established by evidence and may be considered by the Review Authority in the determination of the matters. All other parties shall be given the opportunity to present rebuttal evidence for any general, technical or scientific fact for which official notice is requested. (Ord No. 1-10)

300.960. Order of Proceedings. The order of proceeding for a hearing will depend in part on the nature of the hearing. The following shall be supplemented by the adopted rules of procedure of the Review Authority as appropriate.

(a) Before receiving the staff report, testimony or evidence on the proposal, any objections on jurisdictional grounds shall be noted in the record and if there is objection, the Review Authority has the discretion to proceed or terminate the hearing.

(b) **Land Use Hearing Disclosure Statement.** The secretary of the Review Authority shall read the land use disclosure statement, which shall include:

(1) A list of the applicable criteria;

(2) A statement that testimony, arguments and evidence must be directed toward the applicable criteria or other criteria in the plan or land use regulation which the person believes to apply to the decision;

(3) A statement 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 appeal to the Oregon Land Use Board of Appeals based on that issue; and

(4) If applicable, a statement that a failure to raise constitutional issues relating to proposed conditions of approval precludes an action for damages in circuit court.

(c) **Call for ex parte contacts.** The presiding officer of the Review Authority should inquire whether any member has had ex parte contacts. Any member announcing an ex parte contact shall state for the record the nature and content of the contact.

(d) **Call for Abstentions.** The presiding officer of the Review Authority should inquire whether any member must abstain from participation in the hearing due to conflicts of interest or due to any of the circumstances set forth in the Salem City Charter, Section 62. Any member announcing a conflict of interest shall state the nature of the conflict, and shall not participate in

the proceeding, unless the vote is necessary to meet a requirement of a minimum number of votes necessary to take official action; provided, however, that the member shall not participate in any discussion or debate on the issue out of which the conflict arises.

(e) **Staff summary.** City staff shall present a summary and recommendation concerning the proposal.

(f) **Presentation of the case.**

(1) Applicant's case.

(2) Persons in favor.

(3) Neighborhood Associations. Appearance by a representative from any officially recognized neighborhood association which includes the affected area to present the association's position on the proposal.

(4) Persons opposed.

(5) Other interested persons.

(6) Rebuttal and Surrebuttal. Rebuttal may be presented by the applicant. The scope of rebuttal is limited to matters which were introduced during the hearing. If new evidence is submitted by the applicant during rebuttal, all other persons shall have the opportunity for surrebuttal.

(g) **Close of hearing.** No further information shall be received after the close of the hearing, except for specific questions directed to staff. If the response to any such questions requires the introduction of new factual evidence, all parties shall be afforded an opportunity to respond to the new factual evidence.

(h) **Reopened hearings.** The hearing may be reopened by the Review Authority, upon majority vote, prior to decision, to receive additional testimony, evidence or argument. Notice shall be provided to the same persons who received notice of the original hearing.

(i) **Deliberations and Decision.** Deliberations shall immediately follow the hearing, except that the Review Authority may delay deliberations to a subsequent date and time certain.

(j) **Findings and Order.** The Review Authority may approve, approve with conditions, or deny an application. The Review Authority shall adopt findings to support its decision. The Review Authority may incorporate findings proposed by the applicant, an opponent, staff, the hearings officer or the planning commission in its decision, or may direct the prevailing party to prepare draft findings for consideration by the Review Authority. (Ord No. 1-10)

300.970. Continued Hearing; Extension of the Record.

(a) **Procedure When Hearing Does Not Constitute the First Evidentiary Hearing.** If additional evidence or documents are provided by any party after the date the staff report is made available to the public, the Review Authority may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any continuance or extension of the date for closing the record requested by an applicant shall result in a corresponding extension of the one hundred and twenty day time limitations set forth under ORS 227.178-227.179.

(b) **Procedure When Hearing Constitutes the First Evidentiary Hearing.** Prior to the conclusion of a quasi-judicial land use proceeding which constitutes the first evidentiary hearing on the matter, any party may request an opportunity to present additional evidence, arguments or testimony regarding the proposal. Upon such request, the Review Authority shall either continue the hearing or hold the record open as provided in this subsection.

(c) **Continuances.**

(1) If the Review Authority grants a continuance, the hearing shall be continued to a time certain at least seven days after the date of the hearing. The continued hearing shall provide an opportunity for persons to present and rebut new evidence, arguments and testimony.

(2) 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, arguments or testimony for the purpose of responding to the new written evidence.

(3) Only one continuance is available of right under this subsection; provided, however, nothing in this subsection shall restrict the Review Authority, in its discretion, from granting additional continuances.

(d) Holding the Record Open.

(1) If the Review Authority holds the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days after the close of the hearing.

(2) Any participant may file a written request with the City Recorder for an opportunity to respond to any new evidence submitted during the period the record was left open. Any such request shall be filed no later than the end of the last business day the record is held open. If such a request is filed, the Review Authority shall reopen the record.

(e) Reopening the Record. If the record is reopened, any person may submit additional evidence, arguments or testimony to respond to the new evidence or new testimony submitted during the period the record was left open, or raise new issues or make new arguments which relate to the new evidence, new arguments or new testimony. Notice of the reopened record shall be provided to any person who presented evidence or testimony in the proceedings prior to the date the record was reopened.

(f) Presentation of Final Written Argument. Prior to the close of the record, the applicant may, in writing, request an opportunity to submit final written argument. If an applicant makes such a request, as provided in this subsection, the applicant shall have at least seven days after the record is closed to all other parties to submit final written argument in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. A failure by an applicant to make a request to submit final written argument, as provided by this subsection, shall be deemed a waiver by the applicant of this right.

(g) Effect on 120-Day Rule. Any continuance of the hearing or extension of the date for closing the record which is agreed to or requested by the proponent shall result in a corresponding extension of the one hundred and twenty day time limitations imposed by ORS 227.178-227.179. A seven-day period for submittal of final written argument provided to the proponent shall likewise result in a corresponding extension of the one hundred and twenty day time limitations. Any other continuance or extension shall be subject to the one hundred and twenty day time limitations.

(h) As used in this subsection:

(1) "Argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent of a decision. "Argument" does not include facts.

(2) "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards and criteria believed by the proponent to be relevant to the proposal. (Ord No. 1-10)

300.980. Record of Proceedings.

(a) Record Content. A record of the proceedings shall be prepared and maintained for all public hearings. The record of proceedings is comprised of:

(1) The Charter of the City of Salem, the Salem Area Comprehensive Plan, and the Salem Revised Code, all of which shall be automatically incorporated into the record by virtue of this subsection;

(2) The application, resolution, or other action which initiated the proceeding;

(3) All testimony, evidence, and exhibits submitted prior to the close of the record of the proceeding. Where practicable, exhibits submitted shall be marked to show the identity of

the person offering the item and whether the person is in favor, or opposed to, the application;

- (4) Any staff reports submitted prior to and after the hearing;
- (5) An electronic recording of the hearing;
- (6) Minutes of the hearing;
- (7) Minutes of any public meeting after the close of the hearing at which the proceeding is discussed or acted upon by the hearing body; and
- (8) The written decision.

(b) **Access to Record.** Access to the record shall be made available to the public at a reasonable time and place; any person may obtain copies of the record at the person's own expense.

300.990. Withdrawal. At any point prior to the issuance of the written decision, the applicant may submit a notice of withdrawal of the application. Upon receipt of a notice of withdrawal, the application shall be deemed dismissed without further action by the Review Authority. A withdrawal shall not bar filing a new application; withdrawal shall not be deemed a final decision for any purpose. A new application, upon payment of a new fee, may be filed unless the filing is barred by another provision of the Salem Revised Code. Withdrawals under this subsection cannot be appealed. (Ord No. 1-10)

APPEALS AND REVIEW

300.1000. General. SRC 300.1000–300.1090 apply to all appeals, and to review by City Council, of land use actions under this Chapter. Table 300.100-2 identifies those land use actions that may be appealed and the applicable Review Authority for appeals. SRC 300.1050 identifies those land use actions subject to review by the City Council. (Ord No. 1-10)

300.1010. Appeal Filing. A decision on a land use action may be appealed by a person or entity with standing to appeal by filing a notice of appeal with the Planning Administrator within fifteen days of the date notice of the decision is mailed. (Ord No. 1-10)

300.1020. Notice of Appeal. Notice of appeal shall be made on forms provided by the Planning Administrator and shall be accompanied by the appeal fee. The notice of appeal shall contain:

- (a) Identification of the decision sought to be appealed, including its assigned case number, the title or caption of the decision, and the decision date.
- (b) The name and mailing address of the appellant and a statement establishing the appellant's standing to appeal the decision as provided under SRC 300.1010. (Ord No. 1-10)

300.1030. Proper Filing of Notice of Appeal to be Jurisdictional. The timely and complete filing of the notice of appeal and payment of the appeal fee are jurisdictional, and the Planning Administrator shall not accept a notice of appeal that does not comply with this section. The Planning Administrator's determination that an appellant has failed to comply with this section shall be final. (Ord No. 1-10)

300.1040. Appeal Procedures; Scope. Appeal Procedures; Scope. Appeals shall be conducted in accordance with the procedures set forth in this section.

(a) **Appeal Hearing.** Appeals shall be de novo. In a de novo review, all issues of law and fact are heard anew, and no issue of law or fact decided by the lower level Review Authority is binding on the parties in the hearing. New parties may participate, and any party may present new evidence and legal argument by written or oral testimony. The record of the initial proceeding shall be made a part of the record. For purposes of this subsection, the record consists of:

- (1) All staff reports, exhibits, materials, pleading, memoranda, stipulations, and motions

submitted by any party and reviewed or considered in reaching the original decision that is being appealed.

(2) An electronic recording or transcript of the original hearing.

(b) Public Notice.

(1) **Mailed Notice.** The City shall mail notice of a public hearing to all persons who had standing to appeal the decision not less than twenty days prior to the hearing. An affidavit of mailing shall be prepared and made part of the file. Mailed notice shall include:

- (A) The names of the applicant(s), any representative(s) thereof, and the owner(s) of the subject property;
- (B) The type of land use action, and concise description of the nature of the land use action;
- (C) The proposed site plan, if any;
- (D) The street address or other easily understood geographical reference to the subject property;
- (E) A vicinity map identifying the subject property with relation to nearby major streets or other landmarks;
- (F) A list of the approval criteria by name and code section;
- (G) The specific issues raised by the appellant;
- (H) The date, time, and place of the hearing;
- (I) A statement that the application and all documents and evidence submitted as part of the original proceeding, and any new documents and evidence, are available for review, and that copies can be obtained at a reasonable cost;
- (J) A brief summary of the decision making process for the appeal;
- (K) A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;
- (L) A statement that all interested persons may appear either in person or with representation by an attorney and provide testimony and that only those participating at the appeal hearing, or in writing, shall be entitled to appeal the decision to the Oregon Land Use Board of Appeals;
- (M) A statement that failure to raise an issue prior to the close of the public hearing, in person or in writing, or failure to provide statements or evidence with sufficient specificity to afford the applicant and Review Authority to respond to the issue precludes an appeal to the Oregon Land Use Board of Appeals on that issue;
- (N) A statement that a copy of the staff report with recommendation to the Review Authority will be available for inspection at no cost at least seven days prior to the hearing, and that copies will be provided at a reasonable cost;
- (O) A statement that subsequent to the close of the public hearing a copy of the decision will be mailed to the appellant, the applicant, if other than the appellant, the property owner, affected neighborhood associations, anyone who participated in the appeal hearing, either in person or in writing, and anyone who requested to receive notice of the decision; and
- (P) The name and contact information for the staff case manager.

(2) **Posted Notice.** The City shall post notice of the appeal hearing on the subject property no earlier than fourteen days, but not later than ten days, prior to the public hearing. The notice shall remain in place through the day of the public hearing. An affidavit of posting shall be made part of the file. Posted notice shall:

- (A) Be posted on each street frontage of the subject property in a conspicuous place so as to be visible from the public right-of-way. If no street abuts the subject property, the notice shall be placed as near as possible to the subject property in such a manner to be readily seen by the public.

- (B) Be provided on signs prepared by the Planning Administrator.
- (c) **Staff Report.** The Planning Administrator shall prepare a staff report and make it available a minimum of seven days prior to the appeal hearing.
- (d) **Continuances.** The appeal body may continue the hearing to a date, time, and location certain. Additional notice of a continued hearing is not required, unless the hearing is continued without announcing a date, time, and location certain, in which case notice of the continued hearing shall be given as though it was the initial hearing. Actions by the appeal body holding the record open or continuing the hearing shall be consistent with ORS 197.763.
- (e) **Decision.**

- (1) The appeal body may affirm the decision, affirm the decision with additional conditions or modifications, remand the decision to the lower level Review Authority for further action, or reverse the decision.
- (2) The appeal body shall adopt a written order, which shall be signed, dated, and mailed to the appellant, the applicant, if other than the appellant, the property owner, affected neighborhood associations, anyone who appeared either orally or in writing before the close of the public record on the appeal, and anyone who requested to receive notice of the decision. The order shall contain:
 - (A) A statement of facts relied upon by the appeal body in reaching its decision.
 - (B) Conclusions of how the standards or criteria are satisfied, based on the statement of facts.
 - (C) An order affirming, modifying, remanding or reversing the decision of the lower body.
- (3) The appeal body may direct the party whose position prevails in the appeal to prepare the order, or any part thereof, for its consideration and adoption.
- (4) The decision upon appeal shall become final on the date when written notice of the decision is mailed to persons entitled to notice of the decision. Any further appeal shall be to the Oregon Land Use Board of Appeals. (Ord No. 1-10; Ord No. 34-10)

300.1050. Review by the City Council.

- (a) Whether or not an appeal is filed pursuant to SRC 300.1010, and unless otherwise provided in this Chapter, the City Council may, by majority vote, initiate the review of a Type II application or a Type III application, or any other land use application where City Council review pursuant to this section is specifically authorized.
- (b) City Council review shall be de novo, and shall follow the procedures set forth in SRC 300.1040 and SRC 300.1050. In de novo review before the City Council, all issues of law and fact are heard anew, and no issue of law or fact decided by the lower level Review Authority is binding on the parties in the hearing. New parties may participate, and any party may present new evidence and legal argument by written or oral testimony.
- (c) City Council review shall be initiated prior to the adjournment of the first regular City Council meeting following City Council notification of the land use approval.
- (d) Unless subsequently discontinued by majority vote, City Council review pursuant to this section shall replace any appeal filed under SRC 300.1010.
- (e) The decision upon City Council review shall become final on the date when written notice of the decision is mailed to persons entitled to notice of the decision. Any further appeal shall be to the Oregon Land Use Board of Appeals. (Ord No. 1-10)

300.1060. Effect of Appeal or Review by City Council. The filing of a notice of appeal under SRC 300.1010, or initiation of review by the City Council under SRC 300.1050, shall stay the decision until the decision on appeal or review has become final. No right or benefit accorded by the original decision may be exercised until the decision on appeal or review has become final. (Ord No. 1-10)

300.1070. Effect of Judicial or Administrative Review. Except as provided by law or order of a court or administrative tribunal having jurisdiction, a decision of the City shall remain valid and effective notwithstanding the initiation of judicial or administrative review of such decision; provided, however, that any building permit dependent upon such decision shall be issued only with the applicant's written acknowledgement in a form approved by the City Attorney, that such review has been initiated and may result in the reversal of the decision, in which event the permit shall be revoked, as well as any temporary occupancy permit, and the premises shall thereafter be brought into conformity with the applicable standards and criteria by appropriate means. No permanent occupancy certificate shall be issued by the building official until such review has concluded through the adoption of a decision making such occupancy in all respects lawful. (Ord No. 1-10)

300.1080. Remand from the Land Use Board of Appeals. The City shall take final action on decisions remanded by the Oregon Land Use Board of Appeals within ninety days of the effective date of the final order, pursuant to ORS 227.181. (Ord No. 1-10)

LEGISLATIVE PROCEDURES

300.1100. General Description. Legislative land use proceedings include proposals to amend the Salem Area Comprehensive Plan, the City's land use regulations, and large scale changes to the Salem Area Comprehensive Plan and zoning maps, and involve the creation, revision, or implementation of broad public policy generally affecting more than one property owner or a large number of individual properties. The final decision in a legislative land use proceeding is an ordinance enacted by the City Council. (Ord No. 1-10; Ord No. 17-11)

300.1110. Legislative Procedure.

(a) Initiation. Legislative land use proceedings may be initiated by the City Council, Planning Commission, Historic Landmarks Commission, or staff.

(1) The City Council may initiate a legislative land use proceeding by the adoption of a resolution, which shall state whether the matter is to be referred to another Review Authority for public hearing and recommendation.

(2) The Planning Commission or Historic Landmarks Commission may initiate a legislative land use proceeding by the adoption of a resolution referring the matter to public hearing for review and recommendation to the City Council.

(3) Staff may initiate a legislative land use proceeding by preparing an ordinance bill and placing the ordinance on the City Council agenda for first reading. The City Council may schedule a public hearing on the ordinance bill, may refer the ordinance bill to public hearing before the Planning Commission or Historic Landmarks Commission, as applicable, for its review and recommendation, may refer the ordinance to a subcommittee for further review, prior to holding a public hearing, or may decline to advance the ordinance to second reading.

(b) Concurrence Requirement. The Comprehensive Plan requires concurrent review and action on certain legislative land use proceedings initiated by one jurisdiction sharing the Salem/Keizer Urban Growth Boundary be coordinated with one or more of the other regional jurisdictions. The regional jurisdictions within the Salem/Keizer Urban Growth Boundary include the City of Salem, the City of Keizer, Marion County, and Polk County. Land use decisions identified by the Salem Area Comprehensive Plan as requiring concurrence are defined as "Regional Planning Actions" and "Non-Regional Planning Actions." The review of regional and non-regional planning actions shall be conducted as provided in the Salem Area Comprehensive Plan.

(c) Public Notice. Public notice is required for public hearings in legislative land use proceedings. The purpose of this notice is to provide citizens, affected property owners and

other interested parties with the opportunity to submit written comments concerning the proposal and to invite participation in the public hearing process.

(1) Oregon Department of Land Conservation and Development Notice. Notice to the Oregon Department of Land Conservation and Development is required for all legislative land use proceedings. The City shall mail notice to the Oregon Department of Land Conservation and Development a minimum of forty-five days prior to the first evidentiary public hearing on the proposal. An affidavit of mailing shall be prepared and made part of the file. Notice shall be on forms provided by the Oregon Department of Land Conservation and Development and be accompanied by information of sufficient detail to convey the nature and effect of the proposal; and the certificate of mailing of the notice.

(2) Mailed Notice.

(A) First Evidentiary Hearing. The City shall mail notice of the first evidentiary public hearing in a legislative land use proceeding not more than forty days, but not less than twenty days, prior to the first evidentiary hearing. Affidavits of mailing shall be prepared and made part of the file. Notice of the first evidentiary public hearing shall be mailed to:

- (i) The Boards of Commissioners of Marion and Polk Counties;
- (ii) All City-recognized neighborhood associations;
- (iii) The owner(s) or contract purchaser(s) of record of each property that will be rezoned, as defined by ORS 227.186(9), in order to comply with the proposal, if adopted;
- (iv) The Oregon State Department of Parks and Recreation for all comprehensive plan and zone code text amendments relating to the goals and policies of the Willamette River Greenway and the Willamette Greenway Zone; and for all proposed modifications to the boundaries of such zone;
- (v) The Oregon State Department of Geology and Mineral Resources for all zone code text amendments relating to mining, quarry operations, or mineral aggregate extraction;
- (vi) The Capitol Planning Commission for every zone code text amendment relating to a Public zone;
- (vii) The Federal Insurance Administration, U.S. Department of Housing and Urban Development, for all zone code text amendments relating to the Flood Plain Overlay Zones; and for all proposed modifications to the boundaries of such zones;
- (viii) The tenants of manufactured home or mobile home parks for comprehensive plan map and/or zone changes affecting all or part of a manufactured home or mobile home park;
- (ix) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City; and
- (x) Any community organizations, public utilities, agencies, or individuals who have submitted written requests for notification of legislative land use proceedings.

(B) Subsequent Public Hearings. The City shall mail notice of each subsequent evidentiary public hearing in a legislative land use proceeding a minimum of ten days prior to the evidentiary hearing. Affidavits of mailing shall be prepared and made part of the file. Notice of each subsequent evidentiary hearing shall be mailed to:

- (i) Any group or individual who submitted testimony prior to the close of first evidentiary hearing.
- (ii) All City-recognized neighborhood associations;
- (iii) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City; and
- (iv) Any community organizations, public utilities, agencies, or individuals who

have submitted written requests for notification of subsequent evidentiary hearings.

(C) Mailed notice of a public hearing shall include:

- (i)** A concise description of the proposal;
- (ii)** A map identifying the property affected by the proposal, if applicable, in relation to major streets or other landmarks;
- (iii)** A list of the applicable standards or criteria;
- (iv)** The date, time, and location of the public hearing;
- (v)** A brief summary of the decision making process;
- (vi)** A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;
- (vii)** A statement that all interested persons may appear either in person or with representation by an attorney and provide testimony and that only those participating at the hearing, in person or by submission of written testimony, have the right to appeal the decision;
- (viii)** A statement that a copy of the staff report with recommendation will be available for inspection at no cost at least seven days prior to the hearing, and that copies will be provided at reasonable cost;
- (ix)** The information required under ORS 227.186, if the hearing is the first evidentiary hearing and the final decision by the City Council would require the rezoning of land, as defined by ORS 227.186.
- (x)** If the hearing is the first evidentiary hearing and held before the Planning Commission or the Historic Landmarks Commission, a statement that subsequent to the close of the hearing a recommendation will be forwarded to the City Council;
- (xi)** For the final public hearing before the City Council, if held, a statement that subsequent to the close of the hearing notice of a decision adopting a new land use regulation will be mailed to all neighborhood associations, anyone who participated in the hearing, either in person or in writing, and anyone who requested to receive notice; and
- (xii)** The name and contact information for the staff case manager.

(3) Published Notice. The City shall cause notice of each hearing in a legislative land use proceeding to be published in a newspaper of general circulation within the City at least once a week for two consecutive weeks prior to the hearing, with the second notice to be published at least two days immediately preceding the hearing. An affidavit of publication from the newspaper shall be obtained and made part of the file.

(d) Application Review and Staff Report. Staff shall review the proposal and the written comments and evidence submitted and, prior to each hearing prepare a staff report summarizing the proposal, the comments received to-date, and the relevant issues associated with the proposal; and making recommendation on the proposal. Staff reports shall be made available to the public for review a minimum of seven days prior to the hearing.

(e) Public Hearings. At least one hearing shall be held for the purpose of receiving evidence and testimony in all legislative land use proceedings. The hearing may be held by the Planning Commission, the Historic Landmarks Commission, or the City Council.

(f) Recommendation. If the proposal has been referred to the Planning Commission or Historic Landmarks Commission for review and recommendation, subsequent to the close of the hearing, the Planning Commission or Historic Landmarks Commission, as the case may be, shall adopt a recommendation to adopt, to adopt with modifications, or to not adopt the proposal based upon the facts in the record and according to applicable standards or criteria. The recommendation shall be a written order and include:

- (1)** A list of the applicable standards or criteria;

- (2) A statement of facts relied upon in making the recommendation. The order may adopt or incorporate a staff report or written findings prepared by any party to the proceeding into the order; and
 - (3) The recommendation.
- (g) Notice of Recommendation.** Notice of the recommendation shall be mailed within seven days from the date the Planning Commission or Historic Landmarks Commission adopts its written order. An affidavit of mailing shall be prepared and made part of the file.
- (1) Notice of recommendation shall be mailed to:
 - (A) Any group or individual who submitted testimony prior to the close of the public hearing;
 - (B) All City-recognized neighborhood associations;
 - (C) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City, and any governmental agency which submitted testimony for the record prior to the close of the public hearing; and
 - (D) Any community organizations, agencies, or individuals who submitted written requests for notice of the recommendation to the City.
 - (2) Notice of recommendation shall include:
 - (A) A brief description of the proposal;
 - (B) A brief summary of the recommendation;
 - (C) A brief statement explaining the next steps in the review process; and
 - (D) A statement that the complete case file is available for review. The notice shall state where the case file is available and the name and telephone number of the staff case manager to contact about reviewing the case file.
- (h) Decision.** City Council action on legislative land use proposals shall, in addition to the requirements of this Chapter, conform to the Salem City Charter and City Council Rules.
- (1) Subsequent to receiving a recommendation, the City Council may in its sole discretion:
 - (A) Proceed with enactment of an ordinance;
 - (B) Refer the proposal back to the Planning Commission or Historic Landmarks Commission for additional deliberation;
 - (C) Abandon the proposal; or
 - (D) Hold a public hearing on the proposal, and, after the hearing, proceed as provided in subparagraphs (a)-(c) of this paragraph.
 - (2) Decisions in legislative land use proceedings may be accompanied by findings demonstrating the proposal's conformance with any applicable standards or criteria.
- (i) Notice of Decision.** Notice of final decision in a legislative land use proceeding shall be mailed within seven days from the date the ordinance is enacted. An affidavit of mailing shall be prepared and made part of the file. Notice of the final decision shall be provided as follows:
- (1) Notice of final decision shall be mailed to:
 - (A) Any group or individual who submitted testimony prior to the close of the public hearing;
 - (B) All City-recognized neighborhood associations;
 - (C) Any governmental agency which is entitled to notice by law or under an intergovernmental agreement with the City, and any governmental agency which submitted testimony prior to the close of the public hearing;
 - (D) Any community organizations, agencies, or individuals who submitted written requests for notice of the decision; and
 - (E) The Oregon Department of Land Conservation and Development, on forms provided by the Oregon Department of Land Conservation and Development.
 - (2) Notice of final decision shall include:
 - (A) A brief description of the proposal;

- (B) A brief summary of the final decision and any modifications to the proposal;
- (C) The date, time, and place by which an appeal must be filed and where further information may be obtained concerning the appeal process;
- (D) A statement that the complete case file, including findings, conclusions, modifications, and conditions of approval, if any, is available for review. The notice shall state where the case file is available and the name and telephone number of the staff case manager to contact about reviewing the case file.

(j) Appeals. Appeals of final decisions in legislative land use proceedings are sent to the Oregon Land Use Board of Appeals and must be filed with the Oregon Land Use Board of Appeals within twenty-one days of the mailing date of the notice of enactment of the ordinance. (Ord No. 1-10; Ord No. 17-11)