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Planning Commission Meeting
Public Work Session
City Council Chambers

November 1, 2017
7:00 p.m.

Public Work Session

AGENDA

- I. Call to Order
- II. Zoning Ordinance (No. 864) and Subdivision Ordinance (No. 713) Text Amendments, File No. TA-17-3.
 - A. Draft Amendments to Zoning Ordinance (No. 864), Article 9: Administrative Provisions
Nicholas Snead, Community Development Director
- III. Additional Discussion
- IV. Adjourn

Pursuant to ORS 192.640, this agenda includes a list of the principal subjects anticipated to be considered at the above referenced meeting; however, the agenda does not limit the ability of the Planning Commission to consider additional subjects. Meetings are subject to cancellation without notice. This meeting is open to the public and interested citizens are invited to attend. This is an open meeting under Oregon Revised Statutes, not a community forum; audience participation is at the discretion of the City Planning Commission. **Anyone wishing to address the Commission will need to register prior to the meeting.** The meeting will be audio taped; minutes of this and all public meetings are available for review at the Madras City Hall. The meeting place is handicapped accessible; those needing assistance please contact the City of Madras Community Development prior to the meeting.

SECTION 1.3 DEFINITIONS.

DECISION MAKER. "Decision Maker" is a generic reference to the person or hearings body charged with making a decision on a Land Use Approval or Planning Review. In general, the hierarchy of Decision Makers from lowest to highest is Community Development Director, Planning Commission, and City Council. References to a lower or higher Decision Maker refers to the Decision Maker's position in the hierarchy of Decision Makers.

LAND USE APPROVAL. "Land Use Approval" includes any approval of a proposed development of land under the applicable standards in this Ordinance involving the exercise of significant discretion in applying those standards. By way of illustration, "Land Use Approval" includes review of the following applications: conditional use, variance, partition, master plan, site plan, modification of approval, and subdivision.

PLANNING REVIEW. Means any type of approval or review conducted by the City other than a Land Use Approval, which an applicant might seek under this Zoning Ordinance.

ARTICLE 9: ADMINISTRATIVE PROVISIONS

SECTION 9.1 PRE-APPLICATION CONFERENCE. Unless the application is filed by the City, a pre-application conference is required for all Type III and Type IV applicants. Pre-application conferences are also highly recommended for complex applications and for applicants who are unfamiliar with the land use process. The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of this Ordinance and to identify issues likely to arise in processing an application.

SECTION 9.2 PUBLIC MEETING. The applicant for a Comprehensive Plan and Zoning Map amendment, conditional use permit, master plan, subdivision or site plan review for new development or an alteration/addition to one or more buildings containing a total of 10,000 square feet or more must present the proposal at a public meeting organized by the applicant prior to submitting the application. The presentation at the public meeting must include the following:

1. A map depicting the location of the subject property proposed for development.
2. A visual description of the project including a site plan, tentative subdivision plan and elevation drawings of any structures if applicable.
3. A description of the nature of the use including, but not limited to, sizes and heights of structures, proposed lot sizes, density, etc.
4. The expected or anticipated impacts from the development.

5. Any mitigation proposed by the applicant to alleviate the expected/anticipated impacts.

6. An opportunity for the public to provide comments. Applicants are encouraged to reconcile as many public concerns as possible prior to submittal of their application.

B. Public Meeting Notification. The applicant shall send mailed notice of the public meeting to all property owners within 250 feet of the boundaries of the subject property. The property owner list shall be compiled from the Jefferson County Tax Assessor's property owner list from the most recent property tax assessment roll. The notice shall be sent a minimum of 15 days prior to the public meeting, and shall include at a minimum:

a. Date, time and location of the public meeting.

b. A brief written description of the proposal and proposed use, but with enough specificity so that the project is easily discernible.

c. The location of the subject property, including address (if applicable), nearest cross streets and any other easily understood geographical reference, and a map (such as a tax assessor's map) which depicts the subject property.

SECTION 9.3 APPLICATIONS. No Land Use Approval or Planning Review shall be processed unless the applicant submits a complete application.

A. All applications shall:

1. Be submitted by the property owner or a person who has written authorization from the property owner to make the application;

2. Be completed on the applicable form prescribed by the City;

3. Include supporting information required by this code and any other information necessary to, in the judgment of the Development Services Director, demonstrate compliance with applicable standards;

4. Be accompanied by the appropriate application fee, and any applicable public hearing fee, established by the City from time to time; and

5. Provide proof of ownership in the form of a deed or other recorded document except this requirement shall not apply to:

a. Applications submitted by or on behalf of a public entity or public utility having the power of eminent domain with respect to the property subject to the application; or

b. Applications for development proposals sited on lands owned by the State or the Federal government.

6. For applications that require a public meeting, include a copy of the Public Meeting Verification of Compliance form signed by the applicant and an attendee of the meeting attesting to the contents of the materials provided at the meeting. If there are no attendees or no attendees are willing to sign the Public Meeting Verification of Compliance form, the applicant may submit a statement to that effect.

B. For purposes of this Zoning Ordinance a complete application refers to an application submitted in conformance with this Section 9.3 and any other requirements of the particular application set forth in this Zoning Ordinance. An application is not complete unless, in the judgment of the Community Development Director, the application contains sufficient information to address all applicable standards. Acceptance of an application as complete shall not preclude a determination at a later date that additional applicable standards need to be addressed or a later determination that additional information is needed to adequately address applicable standards.

SECTION 9.4 MODIFICATION OF APPLICATION.

A. Subject to this Section 9.4, an applicant may modify an application at any time during the approval process up until the issuance of an administrative decision, or the close of the record for an application requiring a public hearing.

B. The Decision Maker shall not consider any evidence submitted by or on behalf of an applicant that would constitute a Modification of Application, unless the applicant submits a complete application for a modification and agrees in writing to restart the applicable review period as of the date the modification is submitted.

C. A Modification of Application that constitutes a new proposal shall not be permitted as a modification, but shall instead require the filing of a new application.

D. For Type III decisions, the Decision Maker may require that the modified application be re-noticed and additional hearings be held.

E. Up until the issuance of an administrative decision or the day a public hearing is opened for receipt of oral testimony, the Community Development Director shall have sole authority to determine whether an applicant's submittal requires an application for Modification of Application or requires submittal of a new application. After such time, the higher Decision Maker shall make such determinations. The Decision Maker's determination shall be appealable only to LUBA and shall be appealable only after a final decision is entered by the City on the underlying application.

SECTION 9.5 WITHDRAWAL OF APPLICATION. An applicant may withdraw an application in writing at any time prior to the time a decision becomes final. If the

property owner is not the applicant, no consent to withdraw the application is needed from the property owner.

SECTION 9.6 BURDEN OF PROOF. The burden of proof to demonstrate compliance with the applicable standards is upon the applicant for all Land Use Approvals and Planning Reviews.

SECTION 9.7 APPLICABLE STANDARDS. The standards and criteria applicable to an application shall be the standards and criteria applicable at the time the application was first submitted.

SECTION 9.8 FINAL ACTION. The City shall take final action on all applications in accordance with the time limitations set forth in ORS 227.178 as the same may be amended from time to time.

SECTION 9.9 TIME COMPUTATION. Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, legal holiday or any day on which the City is not open for business pursuant to a City ordinance, in which case it shall also be excluded.

SECTION 9.10 CLASSIFICATION OF DECISIONS. All Land Use Approvals and Planning Reviews shall be processed based on the decision classification hierarchy set forth below. Except where the classification is expressly prescribed in this Zoning Ordinance, the Community Development Director shall have discretion as to how a particular application, request, or review shall be classified and which review procedures will be used, which shall not be an appealable decision.

A. Type I Decisions

1. A Type I decision may be handled administratively by the Community Development Director without public notice or hearing because a Type I decision is neither a land use decision nor a limited land use decision under ORS 197.015.
2. Type I decisions shall be elevated to a Type II decision when there is a need to interpret this Ordinance or any other applicable standard, exercise policy or legal judgment, or apply discretionary land use standards.
3. Type I decisions are not subject to appeals.

B. Type II Decisions

1. Type II decisions are made by the Community Development Director following public notice and an opportunity for parties to comment, but without a public hearing.

2. The Community Development Director has discretion to elevate an application for a Type II decision to a Type III decision.
3. If appealed, Type II decisions are reviewed by the Planning Commission and the Planning Commission's decision may be appealed to the City Council subject to the City Council's discretion to hear the appeal.

C. Type III Decisions

1. Type III decisions are made by the Planning Commission after a public hearing following quasi-judicial hearings procedures set forth in this Article 9.
2. Applications for Subdivision, Planned Unit Development, quasi-judicial zone change and Master Planned Community Development Plan shall be processed under Type III procedures.
3. If appealed, Type IV decisions may be appealed to the City Council subject to the City Council's discretion to hear the appeal.

D. Type IV Decisions

1. Type IV decisions are legislative decisions made by the City Council after public notice, public hearings and a recommendation by the Planning Commission to the City Council. Legislative applications generally involve broad public policy decisions that apply to other than an individual property. Type IV decisions can also include quasi-judicial decisions made directly by the City Council, as specified in this Ordinance, after public notice and a public hearing.
2. All changes to the text of the Comprehensive Plan and Zoning Ordinance text as well as legislative amendments to the City's Comprehensive Plan and Zoning Map shall be processed as a Type IV Decision. Notice of Type IV text and map amendments shall also be submitted to the Department of Land Conservation and Development in accordance with State law.
3. Type IV decisions are appealable to the Land Use Board of Appeals in accordance with State law.

E. Additional or alternative procedures for specific applications may be set forth in this Zoning Ordinance.

SECTION 9.11 HEARINGS OFFICERS. Where the Planning Commission or City Council feels that political or legal issues call for an independent review, the Planning Commission or City Council may appoint a special Hearings Officer to review an application or appeal in place of the Planning Commission or City Council.

SECTION 9.12 NOTICE OF APPLICATION.

A. No notice is required for the receipt of an application for a Type I decision.

B. Notice of an application for a Type II decision, shall be mailed within ten (10) days after City's receipt of such an application. Written notice shall also be mailed to the following persons:

1. The applicant;

2. Unless specified elsewhere in this Ordinance, to all owners of property within a distance of two hundred fifty feet (250) feet of the subject property at the owner's address of record.

3. Affected public agencies.

i. Division of State Lands. The City shall notify the Oregon Division of State Lands (DSL) of any application that involves lands that are wholly or partially within areas that are identified as wetlands. Notice shall be in writing using the DSL Wetland Land Use Notification Form, and shall be sent within five working days of acceptance of a complete application. (See ORS 227.350)

ii. Department of Fish and Wildlife. The City shall notify the Oregon Department of Fish and Wildlife (ODFW) in writing of any application for development activities within the riparian corridor. A mitigation recommendation shall be obtained from ODFW. Approval of the proposed development shall include a condition requiring compliance with the ODFW mitigation recommendations. (See OAR 635-415).

iii. Other Agencies. The City shall notify other public agencies, as appropriate, that have statutory or administrative rule authority to review or issue State permits associated with local development applications.

C. Notice of Type III decisions shall be the same as that required of Type II decisions except that the Community Development Director shall set the date of the initial public hearing and a notice of the public hearing shall be published in a newspaper of general circulation within the City, no less than twenty (20) days and no more than forty (40) days prior to the public hearing.

D. Notice of a Type IV decision shall be published in a newspaper of general circulation within the City, no less than twenty (20) days and no more than forty (40) days prior to each public hearing and, if applicable, any notice required by ORS 227.186 shall be provided. The Community Development Director shall set the date of the initial public hearing before each required Decision Maker.

E. The failure of a party to receive actual notice shall not invalidate any proceeding or any decision issued pursuant to this Ordinance.

F. Notwithstanding the provisions of this section, where other provisions of this Ordinance specify procedures with greater opportunity for public notice and comment, those procedures shall apply.

SECTION 9.13 CONTENTS OF PUBLIC NOTICE.

A. All required public notices shall provide a brief description of the applicant's request, a list of applicable standards, the location of the property, the date, time, and place of the public hearing (if applicable) and instructions on obtaining copies of the application and providing written comment.

B. All notices for public hearings shall also contain a statement that recipients may request a copy of the staff report.

SECTION 9.14 PUBLIC HEARING PROCEDURE.

A. A public hearing shall be conducted in the following order:

1. The Decision Maker shall explain the purpose of the public hearing and announce the order of proceedings, including reasonable time limits on presentations by parties.

2. A statement by the Decision Maker regarding pre-hearing contacts, bias, prejudice or personal interest shall be made.

3. Any evidence received outside of the hearing shall be stated in the record.

4. Challenges to the Decision Maker's qualifications to hear the matter must be stated.

5. Order of presentation:

a. Staff report

b. Proponent's presentation

c. Opponent's presentation

d. Interested parties

e. Proponent's rebuttal

f. Staff comments

g. Questions from or to the Decision Maker may be entertained at any time at the Decision Maker's discretion.

SECTION 9.15 FILING OF STAFF REPORT FOR PUBLIC HEARING.

- A. A staff report shall be completed at least seven (7) days prior to the hearing.
- B. A copy of the staff report shall be filed with the Decision Maker, mailed to the applicant, and made available to such other persons who request a copy.
- C. Oral or written modifications and additions to the staff report shall be allowed prior to or at the time of the public hearing.

SECTION 9.16 PROHIBITION ON PRE-HEARING (EX-PARTE) CONTACTS. The Decision Maker or any member thereof, shall not communicate directly or indirectly with any party or representative of a party in connection with any quasi-judicial application where a public hearing is scheduled. Any pre-hearing ex-parte contacts shall be disclosed on the record at the public hearing.

SECTION 9.17 CHALLENGE FOR BIAS, PREJUDGMENT OR PERSONAL INTEREST.

- A. Prior to or at the commencement of a quasi-judicial public hearing, any party may challenge the qualifications of the Decision Maker, or a member thereof, for bias, prejudice or personal interest. The challenge shall be documented with specific reasons supported by substantial evidence.
- B. Should qualifications be challenged, the Decision Maker, or the member thereof, shall disqualify themselves, withdraw or make a statement on the record of their capacity to hear the request and make a decision without bias, prejudice or personal interest.

SECTION 9.18 OBJECTIONS TO PROCEDURAL ISSUES.

Any objections to any procedural issue not raised prior to or during the public hearing are waived.

SECTION 9.19 LIMITATION ON ORAL PRESENTATIONS. The Decision Maker may set reasonable time limits on oral presentations at public hearings.

SECTION 9.20 RECORD.

- A. All evidence timely submitted and placed before the Decision Maker shall be entered into the record.
- B. For public hearings, an audio recording of the hearing shall be made.
- C. All exhibits presented shall be marked to show the application file number and the identity of the Party offering the evidence.

SECTION 9.21 NOTICE OF DECISION. The final decision of the Decision Maker shall be in writing, signed, and mailed to all parties; provided, however, only the point of contact provided to the City will be delivered notice for any group, entity, or similar collection of individuals constituting a party.

SECTION 9.22 RE-APPLICATION LIMITED. If a specific application is denied, no reapplication for substantially the same proposal may be made for six (6) months or the date specified elsewhere in this Zoning Ordinance, whichever is greater, following the date of the final decision.

SECTION 9.23 CALL UP BY CITY COUNCIL OR PLANNING COMMISSION.

A. Any decision may be called up for review at the discretion of a higher Decision Maker.

B. The review shall be initiated, if at all, by the higher Decision Maker filing a written request with the Community Development Director within fifteen (15) days from the date of the final written decision.

C. Such review shall be conducted in the same manner as an appeal.

SECTION 9.24 APPEAL

A. A decision shall be final unless a complete notice of appeal, compliant with Section 9.25, is received by the Community Development Department within fifteen (15) days of the mailing date of the final written decision and provided the challenged decision is subject to appeal.

B. Who may file an appeal:

1. A party.

2. A person to whom notice was to be mailed in accordance with Section 9.12 of this Ordinance, and to whom no notice was mailed.

3. Planning Commission. Provided, however, any appeal by the Planning Commission shall go directly to the City Council. No fee shall be required for an appeal filed by the Planning Commission.

C. If more than one party files a notice of appeal on the same decision, the appeals shall be consolidated, noticed, and heard as one proceeding.

D. An appeal may be withdrawn in writing by an appellant at any time prior to the rendering of a final decision on the appeal. Subject to the existence of other appeals on the same application, in such event the appeal proceedings shall terminate as of the date the withdrawal is received. An appeal may be withdrawn under this section

regardless of whether other non-filing parties have relied upon the appeal filed by the appellant.

F. Any failure to conform to the requirements of this Section 9.24 and Section 9.25 shall constitute a jurisdictional defect requiring dismissal of the appeal as untimely and/or unperfected.

G. Determination of jurisdictional defects in an appeal shall be made by the body to whom an appeal has been made.

SECTION 9.25 NOTICE OF APPEAL.

Every notice of appeal shall contain:

A. Proper identification of the decision subject to appeal

B. The specific grounds relied upon for appeal.

C. If a hearing was held below, a transcription of the proceedings.

D. Failure to submit a transcript shall render a notice of appeal incomplete and thus untimely. An appellant may cure an incomplete notice of appeal by submitting the transcript within ten (10) days of the date that the notice of appeal was filed.

E. All parties shall be mailed notice of the hearing on appeal within ten (10) days of scheduling the hearing.

SECTION 9.26 SCOPE OF REVIEW ON APPEAL.

A. The review of a Type II decision on appeal before the Planning Commission shall be de novo.

B. Except where review by the City Council is expressly required, the City Council has discretion whether to hear any appeal for which it has jurisdiction including, without limitation, review of a decision on appeal issued by the Planning Commission. A decision by the City Council to not grant discretionary review of the appeal is the final determination of the City and will be considered to be an adoption by the Council of the decision being appealed, including any interpretations of this Zoning Ordinance and the City Comprehensive Plan included in the decision. The final decision may be appealed to the Land Use Board of Appeals as provided by law.

C. If the City Council elects to hear to a discretionary appeal, the City Council has further discretion whether to hear the appeal de novo or on the record. Moreover, the City Council may elect to limit review of the appeal to specific issues set forth in the notice of appeal.

D. The City Council's decision whether to grant discretionary review of an appeal, and the scope of the discretionary review, will be made without testimony or argument from persons interested in the appeal and shall not.

SECTION 9.27 RE-HEARING. Re-hearings shall not be allowed.

SECTION 9.28 DURATION OF APPROVAL. Except as provided elsewhere in this Zoning Ordinance, all Land Use Approvals and Planning Reviews shall be valid for a period of one (1) year from the date of approval, unless a shorter or longer duration is granted or required as part of the approval. The date of the approval is the date that the Land Use Approval becomes final for all purposes (no longer subject to appeal or further appeals) or, for Planning Reviews, the date the Planning Review approval is issued.

SECTION 9.29 EXTENSION.

A. Any Land Use Approval or Planning Review may be extended, prior to expiration, by the Community Development Director for periods of six (6) months, but in no event by more than two (2) years. Such extensions shall be administrative, without notice, and in writing.

B. No Land Use Approval may be extended unless significant progress occurred during the duration of the Approval or prior extension, or circumstances occurred, which were out of the applicant's control. If the Land Use Approval is subject to conditions of approval, significant progress means, that some action must have commenced or occurred towards satisfaction of the conditions of approval.

SECTION 9.30 MODIFICATION OF APPROVAL.

A. Purpose. To provide the Decision Maker with an opportunity to correct errors and to provide the applicant a mechanism to request modification of conditions of approval or other aspects of an approved application.

B. Modification by Decision Maker. Unless an appeal of the decision has been sooner filed, the Decision Maker may, at its sole discretion, modify the decision within fifteen (15) days of the mailing date of the decision. If such modifications are made, a new notice of decision shall be issued and the fifteen (15) day appeal period shall be restarted based on the mailing date of the modified decision.

C. Modification by Request. A request to modify an approval may be filed by the applicant or any successor in interest to the decision with the Community Development Department any time after the decision became final.

D. Modification of Approval by Request Review Procedures.

1. A modification by request that does not have significant additional impacts on surrounding properties must be reviewed only under the criteria applicable to the aspect(s) of the proposal that are to be modified.
2. A modification by request that has significant additional impacts on surrounding properties must be reviewed under all applicable standards and may, at the discretion of the Community Development Director, require the filing of a new application.
3. A modification by request that, in the discretion of the Decision Maker, constitutes a new proposal must be filed as a new application.
4. The request to modify an approval shall be reviewed by the Decision Maker that made the initial decision.

SECTION 9.31 DECLARATORY RULING.

A. Subject to the other provisions of this Section 9.31, there shall be available for the City's Comprehensive Plan and Zoning Ordinance a process for:

1. Interpreting a provision of the Comprehensive Plan, Zoning Ordinance, or other implementing regulations in which there is doubt or a dispute as to its meaning or application;
2. Interpreting a provision or limitation of a Land Use Approval or Planning Review issued by the City in which there is doubt or a dispute as to its meaning or application;
3. Determining whether an approval has been initiated or considering the revocation of a previously issued approval;
4. Determining the validity and scope of a nonconforming use; and
5. Validating a lot of record.

Such a determination or interpretation shall be known as a "declaratory ruling" and shall be processed in accordance with this chapter. In all cases, as part of making a determination or interpretation the Decision Maker shall have the authority to declare the rights and obligations of persons affected by the ruling.

B. A declaratory ruling shall be available only in instances involving a fact-specific controversy and to resolve and determine the particular rights and obligations of particular parties to the controversy. Declaratory proceedings shall not be used to grant an advisory opinion. Declaratory proceedings shall not be used as a substitute for seeking an amendment of general applicability to a legislative enactment.

C. Declaratory rulings shall not be used as a substitute for an appeal of a decision or for a modification of an approval. In the case of a ruling on a City approval, a declaratory ruling shall not be available until 60 days after a decision is final.

D. The Community Development Director may refuse to accept, and the Decision Maker may deny, an application for a declaratory ruling if:

1. The Community Development Director or Decision Maker determines that the question presented can be decided in conjunction with approving or denying a pending application or should be made as part of a decision on an application not yet filed; or

2. The Community Development Director or Decision Maker determines that there is an enforcement case pending in circuit court in which the same issue necessarily will be decided as to the applicant and the applicant failed to file the request for a declaratory ruling within two weeks after being cited or served with a complaint.

E. The Community Development Director or Decision Maker determination to not accept or to deny an application for a declaratory ruling shall be the City's final decision.

F. Only the following persons may initiate a declaratory ruling under this chapter:

1. The owner of a property requesting a declaratory ruling relating to the use of the owner's property;

2. In cases where the request is to interpret a previously issued approval, the holder of the approval; or

3. The Community Development Director.

G. A request for a declaratory ruling shall be initiated by filing a complete application with the Community Development Department. Each application for a declaratory ruling shall include the precise question on which a ruling is sought. The application shall set forth whatever facts are relevant and necessary for making the determination and such other information as may be required by the City.

H. Declaratory rulings shall be processed as either a Type II or Type III application at the discretion of the Community Development Director.

I. A declaratory ruling shall be conclusive on the subject of the ruling and bind the parties thereto as to the determination made.

J. Parties to a declaratory ruling shall not be entitled to reapply for a declaratory ruling on the same question.

K. A declaratory ruling is not subject to modification by request under Section 9.30.

SECTION 9.32 LOT OF RECORD. Not all units of land are “lots of record.” The City will not issue any approvals for land divisions or physical development of real property unless the subject property constitutes a lot of record. The Community Development Director may require a lot of record verification whenever there is any question as to the origins or the lawfulness of the subject property. Such review will determine if and when a unit of land was created and if it was created in accordance with the law in effect at the time of creation.

A. For purposes of this Zoning Ordinance, a “lot of record” is a unit of land held in separate ownership as shown on the records of the Jefferson County Clerk, which conforms to all zoning and subdivision/partition requirements in effect on the date the unit of land was created.

B. What is not a lot of record?

1. A unit of land created solely by a tax lot segregation because of an assessor’s role change or for the convenience of the assessor;
2. A unit of land created by an intervening section or township line or right-of-way;
3. A unit of land created by the foreclosure of a security interest.

C. Remedy for Units of Land Found Not to Be Lots of Record.

1. The property owner may seek a property line adjustment to consolidate the unit of land with a contiguous unit of land that is determined to be a lot of record. Both units of land must be held in the same ownership as shown on the records of the Jefferson County Clerk.

2. Apply for and obtain approval for a single lot partition in conformance with ORS 92.177.

3. Apply for and obtain a lot of record validation under ORS 92.176.

SECTION 9.33 AUTHORIZATION OF SIMILAR USES. The Planning Commission may permit in a particular zone, after holding a public hearing, a use not listed in this Ordinance, provided the use is of the same general type as the uses permitted in that zoning district. However, this section does not authorize placement of a proposed use in a zone where the use is not listed, when that use is specifically listed in another zone, or when the proposed use is of the same general type as a use listed in another zone.

Other reference changes needed:

Section 3.4(L)(5)

Section 3.4(M)(5)
Section 3.5.3(I) and (J)
Section 3.6(C)(3)
Section 3.6.2(B)
Section 3.7(B)(1)
Section 3.7(F)
Section 3.12(D)(1)(b) and (c)
Section 4.8(D)
Section 5.4(E)
Section 6.2(C)

SECTION 1.3 DEFINITIONS.

DECISION MAKER. “Decision Maker” is a generic reference to the person or hearings body charged with making a decision on a Land Use Approval or Planning Review. In general, the hierarchy of Decision Makers from lowest to highest is Community Development Director, Planning Commission, and City Council. References to a lower or higher Decision Maker refers to the Decision Maker’s position in the hierarchy of Decision Makers.

LAND USE PERMIT APPROVAL. "Land Use Permit Approval" includes any approval of a proposed development of land under the applicable standards in the City land development and zoning ordinances this Ordinance involving the exercise of significant discretion in applying those standards. By way of illustration, "land-use permit Land Use Approval" includes review of the following applications: conditional use, variance, partition, master plan, exceptions, site plan, modification of condition approval, and subdivision.

PLANNING REVIEW. Means any type of approval or review conducted by the City other than a Land Use Approval, which an applicant might seek under this Zoning Ordinance.

ARTICLE 9: ADMINISTRATIVE PROVISIONS

~~SECTION 9.1 BUILDING PERMITS. No permit shall be issued by the building official for the construction, reconstruction, alteration, or change of use of a structure or lot that does not conform to the requirements of the Zoning Ordinance.~~

SECTION 9.1 PRE-APPLICATION CONFERENCE. Unless the application is filed by the City, a pre-application conference is required for all Type III and Type IV applicants. Pre-application conferences are also highly recommended for complex applications and for applicants who are unfamiliar with the land use process. The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of this Ordinance and to identify issues likely to arise in processing an application.

~~SECTION 9.2 LAND USE PERMIT. The words Land Use Permit, as used in this article, means any permitted use of land, other than a building, sign, sanitation, or utility connection permit.~~

SECTION 9.2 PUBLIC MEETING. The applicant for a Comprehensive Plan and Zoning Map amendment, conditional use permit, master plan, subdivision or site plan review for new development or an alteration/addition to one or more buildings containing a total of 10,000 square feet or more must present the proposal at a public meeting organized by the applicant prior to submitting the application. The presentation at the public meeting must include the following:

1. A map depicting the location of the subject property proposed for development.
2. A visual description of the project including a site plan, tentative subdivision plan and elevation drawings of any structures if applicable.
3. A description of the nature of the use including, but not limited to, sizes and heights of structures, proposed lot sizes, density, etc.
4. The expected or anticipated impacts from the development.
5. Any mitigation proposed by the applicant to alleviate the expected/anticipated impacts.
6. An opportunity for the public to provide comments. Applicants are encouraged to reconcile as many public concerns as possible prior to submittal of their application.

B. Public Meeting Notification. The applicant shall send mailed notice of the public meeting to all property owners within 250 feet of the boundaries of the subject property. The property owner list shall be compiled from the Jefferson County Tax Assessor's property owner list from the most recent property tax assessment roll. The notice shall be sent a minimum of 15 days prior to the public meeting, and shall include at a minimum:

- a. Date, time and location of the public meeting.
- b. A brief written description of the proposal and proposed use, but with enough specificity so that the project is easily discernible.
- c. The location of the subject property, including address (if applicable), nearest cross streets and any other easily understood geographical reference, and a map (such as a tax assessor's map) which depicts the subject property.

~~SECTION 9.3 ADMINISTRATIVE ACTIONS. An application for a Land Use Permit, other than a Subdivision, Site Plan, Planned Unit Development, Comprehensive Plan Map Amendment, Zone Change and Master Planned Community Development Plan, or as otherwise specified in this Zoning Ordinance may be decided as an administrative action.~~

~~A. Such an application shall be made to the Community Development Director who may act upon the application or refer the application to the Hearings Body for hearing.~~

~~B. Notice of the application shall be sent within ten (10) days of the receipt of the application to persons entitled to notice as provided in Section 9.8.~~

~~C. Any person may comment in writing on the application within ten (10) days from the date notice was mailed.~~

~~D. The Community Development Director's decision shall be made within twenty (20) days after the mailing of this notice.~~

~~E. The applicant and all persons commenting as provided in this section constitute parties to the administrative decision. Any party can appeal the decision in accordance with Section 9.21 of this article. On appeal, a de novo hearing shall be held.~~

SECTION 9.3 APPLICATIONS. No Land Use Approval or Planning Review shall be processed unless the applicant submits a complete application.

A. All applications shall:

1. Be submitted by the property owner or a person who has written authorization from the property owner to make the application;

2. Be completed on the applicable form prescribed by the City;

3. Include supporting information required by this code and any other information necessary to, in the judgment of the Development Services Director, demonstrate compliance with applicable standards;

4. Be accompanied by the appropriate application fee, and any applicable public hearing fee, established by the City from time to time; and

5. Provide proof of ownership in the form of a deed or other recorded document except this requirement shall not apply to:

a. Applications submitted by or on behalf of a public entity or public utility having the power of eminent domain with respect to the property subject to the application; or

b. Applications for development proposals sited on lands owned by the State or the Federal government.

6. For applications that require a public meeting, include a copy of the Public Meeting Verification of Compliance form signed by the applicant and an attendee of the meeting attesting to the contents of the materials provided at the meeting. If there are no attendees or no attendees are willing to sign the Public Meeting Verification of Compliance form, the applicant may submit a statement to that effect.

B. For purposes of this Zoning Ordinance a complete application refers to an application submitted in conformance with this Section 9.3 and any other requirements of the particular application set forth in this Zoning Ordinance. An application is not complete unless, in the judgment of the Community Development Director, the application contains sufficient information to address all applicable standards. Acceptance of an application as complete shall not preclude a determination at a later date that additional applicable standards need to be addressed or a later determination that additional information is needed to adequately address applicable standards.

SECTION 9.4 MODIFICATION OF APPLICATION.

A. ~~An~~ Subject to this Section 9.4, an applicant may modify an application at any time during the approval process up until the issuance of an administrative decision, or the close of the record for an application ~~reviewed under a hearings process, subject to the provisions of this Article 9 requiring a public hearing.~~

B. The ~~applicable review body~~ Decision Maker shall not consider any evidence submitted by or on behalf of an applicant that would constitute a Modification of Application, unless the applicant submits ~~an~~ a complete application for a modification, ~~pays all required modification fees~~, and agrees in writing to restart the 120-day applicable review period as of the date the modification is submitted. ~~The 120-day review period for an application, as modified, may be restarted as many times as there are modifications up to a total of 365 days from the day the application was accepted as complete.~~

C. A Modification of Application that constitutes a new proposal shall not be permitted as a modification, but shall instead require the filing of a new application.

~~C. The applicable review body~~ D. For Type III decisions, the Decision Maker may require that the modified application be re-noticed and additional hearings be held.

~~DE~~ E. Up until the issuance of an administrative decision or the day a public hearing is opened for receipt of oral testimony, the Community Development Director shall have sole authority to determine whether an applicant's submittal ~~constitutes a modification~~ requires an application for Modification of Application or requires submittal of a new application. After such time, the ~~Hearings Body~~ higher Decision Maker shall make such determinations. The ~~applicable review body's~~ Decision Maker's determination ~~on whether a submittal constitutes a modification~~ shall be appealable only to LUBA and shall be appealable only after a final decision is entered by the City on ~~an~~ the underlying application.

SECTION 9.5 MODIFICATION OF CONDITIONS.

~~A. Purpose. To provide the applicant and or property owner a reasonable time limit and mechanism to request modification of conditions placed in an approved application.~~

~~B. Time Limit. A request to modify conditions of an approved application may be filed with the Community Development Department, no less than 60 days after the decision became final.~~

~~C. The request to modify conditions must be made and submitted on a form prescribed by the Community Development Department and shall set forth one or more changes in circumstances from the time of application approval that warrant a modification to the conditions of approval. Changes in circumstances created by the Applicant, or its successors, heirs, or assigns, shall be insufficient to warrant a modification of conditions.~~

SECTION 9.5 WITHDRAWAL OF APPLICATION. An applicant may withdraw an application in writing at any time prior to the time a decision becomes final. If the

property owner is not the applicant, no consent to withdraw the application is needed from the property owner.

SECTION 9.6 BURDEN OF PROOF. The burden of proof to demonstrate compliance with the applicable standards is upon the applicant for all Land Use Approvals and Planning Reviews.

SECTION 9.7 APPLICABLE STANDARDS. The standards and criteria applicable to an application shall be the standards and criteria applicable at the time the application was first submitted.

SECTION 9.8 FINAL ACTION. The City shall take final action on all applications in accordance with the time limitations set forth in ORS 227.178 as the same may be amended from time to time.

SECTION 9.9 TIME COMPUTATION. Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, legal holiday or any day on which the City is not open for business pursuant to a City ordinance, in which case it shall also be excluded.

SECTION 9.10 CLASSIFICATION OF DECISIONS. All Land Use Approvals and Planning Reviews shall be processed based on the decision classification hierarchy set forth below. Except where the classification is expressly prescribed in this Zoning Ordinance, the Community Development Director shall have discretion as to how a particular application, request, or review shall be classified and which review procedures will be used, which shall not be an appealable decision.

A. Type I Decisions

1. A Type I decision may be handled administratively by the Community Development Director without public notice or hearing because a Type I decision is neither a land use decision nor a limited land use decision under ORS 197.015.

2. Type I decisions shall be elevated to a Type II decision when there is a need to interpret this Ordinance or any other applicable standard, exercise policy or legal judgment, or apply discretionary land use standards.

3. Type I decisions are not subject to appeals.

B. Type II Decisions

1. Type II decisions are made by the Community Development Director following public notice and an opportunity for parties to comment, but without a public hearing.

2. The Community Development Director has discretion to elevate an application for a Type II decision to a Type III decision.

~~D. The request to modify conditions shall be~~ 3. If appealed, Type II decisions are reviewed by the Planning Commission. ~~E. A request for a modification of conditions shall not be a substitute for an appeal, a~~ and the Planning Commission's decision may be appealed to the City Council subject to the City Council's discretion to hear the appeal.

C. Type III Decisions

1. Type III decisions are made by the Planning Commission after a public hearing following quasi-judicial hearings procedures set forth in this Article 9.

2. Applications for Subdivision, Planned Unit Development, quasi-judicial zone change

~~Modification of Application, or a re-application.~~ **SECTION 9.6 FILING OF STAFF REPORT FOR HEARING.**

~~A. At the time an application requiring a hearing is filed, a hearings date shall be determined.~~

~~B. A staff report shall be completed fifteen (15) days prior to the hearing.~~

~~C. A copy of the staff report shall be filed with the Hearings Body, mailed to the applicant, and made available to such other persons who request a copy.~~

~~D. Oral or written modifications and additions to the staff report shall be allowed prior to or at the time of the public hearing.~~

~~SECTION 9.7 HEARINGS BODY ORDER. The following shall serve as Hearings Body in this order:~~

~~A. Planning Commission.~~

~~B. City Council.~~

and Master Planned Community Development Plan shall be processed under Type III procedures.

3. If appealed, Type IV decisions may be appealed to the City Council subject to the City Council's discretion to hear the appeal.

D. Type IV Decisions

1. Type IV decisions are legislative decisions made by the City Council after public notice, public hearings and a recommendation by the Planning Commission to the City Council. Legislative applications generally involve broad public policy decisions that apply to other than an individual property. Type IV decisions can also include quasi-judicial decisions made directly by the City Council, as specified in this Ordinance, after public notice and a public hearing.

2. All changes to the text of the Comprehensive Plan and Zoning Ordinance text as well as legislative amendments to the City's Comprehensive Plan and Zoning

Map shall be processed as a Type IV Decision. Notice of Type IV text and map amendments shall also be submitted to the Department of Land Conservation and Development in accordance with State law.

3. Type IV decisions are appealable to the Land Use Board of Appeals in accordance with State law.

E. Additional or alternative procedures for specific applications may be set forth in this Zoning Ordinance.

~~C. Where the~~ SECTION 9.11 HEARINGS OFFICERS. Where the Planning Commission or City Council feels that political or legal issues call for an independent review, the Planning Commission or City Council may appoint a special Hearings Officer to review an application or appeal in place of the Planning Commission or City Council.

~~SECTION 9.8-9.12 NOTICE OF HEARING OR ADMINISTRATIVE ACTION~~ APPLICATION.

A. No notice is required for the receipt of an application for a Type I decision.

~~AB.~~ Notice of an application for a ~~Land Use Permit, other than a utility facility line~~ Type II decision, shall be mailed ~~at least ten (10) days prior to the hearing for those matters set for hearing, or~~ within ten (10) days after City's receipt of such an application ~~for administrative action~~. Written notice shall ~~be sent by mail~~ also be mailed to the following persons:

1. The applicant;
2. ~~All~~ Unless specified elsewhere in this Ordinance, to all owners of property ~~abutting the subject property for within~~ a distance of two hundred fifty feet (250) feet. ~~For the purpose of determining whether property abuts another property, intervening public and private ways and water courses shall not be considered.~~ of the subject property at the owner's address of record.

3. Affected public agencies.

~~3. All owners of property located within two hundred fifty feet (250') of the property which is the subject of a Plan Amendment Application or Zone Change Application.~~

~~4. Other persons or other properties within a larger notice radius entitled to notice as identified in this Ordinance.~~

i. Division of State Lands. The City shall notify the Oregon Division of State Lands (DSL) of any application that involves lands that are wholly or partially within areas that are identified as wetlands. Notice shall be in writing using the DSL Wetland Land Use Notification Form, and shall be sent within five working days of acceptance of a complete application. (See ORS 227.350)

ii. Department of Fish and Wildlife. The City shall notify the Oregon Department of Fish and Wildlife (ODFW) in writing of any application for development activities within the riparian corridor. A mitigation recommendation shall be obtained from ODFW. Approval of the proposed development shall include a condition requiring compliance with the ODFW mitigation recommendations. (See OAR 635-415).

iii. Other Agencies. The City shall notify other public agencies, as appropriate, that have statutory or administrative rule authority to review or issue State permits associated with local development applications.

~~B. In addition to notice by mail or posting, a notice of a~~ C. Notice of Type III decisions shall be the same as that required of Type II decisions except that the Community Development Director shall set the date of the initial public hearing and a notice of the public hearing shall be published in a newspaper of general circulation within the City, no less than twenty (20) days and no more than forty (40) days prior to the public hearing.

D. Notice of a Type IV decision shall be published in a newspaper of general circulation within the City, no less than twenty (20) days and no more than forty (40) days prior to each public hearing and, if applicable, any notice required by ORS 227.186 shall be provided. The Community Development Director shall set the date of the initial public hearing before each required Decision Maker.

~~CE.~~ The failure of ~~an adjacent property owner a party~~ to receive ~~mailed actual~~ notice shall not invalidate any ~~permit proceeding or any decision issued pursuant to this Ordinance.~~

F. Notwithstanding the provisions of this section, where other provisions of this Ordinance specify procedures with greater opportunity for public notice and comment, those procedures shall apply.

SECTION ~~9.9~~ 9.13 CONTENTS OF PUBLIC NOTICE.

A. All required public notices shall provide ~~the nature a brief description~~ of the applicant's request, a list of applicable ~~criteria standards~~, the location of the property, ~~public hearing date, time and place, and the right to comment in person or in writing~~ the date, time, and place of the public hearing (if applicable) and instructions on obtaining copies of the application and providing written comment.

B. All ~~notice notices~~ for public hearings shall also contain a statement that recipients may request a copy of the staff report.

~~SECTION 9.10 BURDEN OF PROOF. The burden of proof is upon the applicant.
SECTION 9.11 NATURE OF EVIDENCE. All relevant evidence shall be received.
SECTION 9.12 LIMITATION ON ORAL PRESENTATIONS. The Hearings Body may set reasonable time limits on oral presentations.~~

~~SECTION 9.13 STANDING. Any person appearing on the record at the hearing or presenting written evidence in conjunction with an administrative action or hearing shall have standing and shall be a party.~~

SECTION 9.14 ~~RECORD~~ PUBLIC HEARING PROCEDURE.

~~A. A magnetic tape record of the hearing shall be made.~~

~~B. All exhibits presented shall be marked to show the application file number and the identity of the person offering the evidence.~~

~~C. Exhibits shall be numbered in the order presented, in two (2) categories, Proponents and Opponents, and shall be dated.~~

~~D. When introduced, the Proponent or Opponent exhibit number or letter shall be read into the record.~~

A. A public hearing shall be conducted in the following order:

1. The Decision Maker shall explain the purpose of the public hearing and announce the order of proceedings, including reasonable time limits on presentations by parties.

2. A statement by the Decision Maker regarding pre-hearing contacts, bias, prejudice or personal interest shall be made.

3. Any evidence received outside of the hearing shall be stated in the record.

4. Challenges to the Decision Maker's qualifications to hear the matter must be stated.

5. Order of presentation:

a. Staff report

b. Proponent's presentation

c. Opponent's presentation

d. Interested parties

e. Proponent's rebuttal

f. Staff comments

g. Questions from or to the Decision Maker may be entertained at any time at the Decision Maker's discretion.

SECTION 9.15 FILING OF STAFF REPORT FOR PUBLIC HEARING.

A. A staff report shall be completed at least seven (7) days prior to the hearing.

B. A copy of the staff report shall be filed with the Decision Maker, mailed to the applicant, and made available to such other persons who request a copy.

C. Oral or written modifications and additions to the staff report shall be allowed prior to or at the time of the public hearing.

~~SECTION 9.15~~ **SECTION 9.16 PROHIBITION ON PRE-HEARING (EX-PARTE) CONTACTS.** The ~~Hearings Body~~ Decision Maker or any member thereof, shall not communicate directly or indirectly with any party or ~~his~~ representative of a party in connection with any ~~land use~~ quasi-judicial application ~~issue involved in where~~ a public hearing ~~except upon notice and opportunity for all parties to participate in~~ scheduled. Any pre-hearing ex-parte contacts shall be disclosed ~~prior to on~~ the record at the public hearing.

~~SECTION 9.16~~ **9.17 CHALLENGE FOR BIAS, PREJUDGMENT OR PERSONAL INTEREST.**

A. Prior to or at the commencement of a quasi-judicial public hearing, any party may challenge the qualifications of the ~~Hearings Body~~ Decision Maker, or a member thereof, for bias, prejudice or personal interest. The challenge shall be documented with specific reasons supported by ~~facts~~ substantial evidence.

B. Should qualifications be challenged, the ~~Hearings Body~~ Decision Maker, or the member thereof, shall disqualify themselves, withdraw or make a statement on the record of their capacity to hear the request and make a decision ~~with no~~ without bias, prejudice or personal interest.

~~SECTION 9.17 PUBLIC HEARING PROCEDURE.~~

~~A. A public hearing shall be conducted in the following order:~~

- ~~1. The Hearings Body shall explain the purpose of the public hearing and announce the order of proceedings, including reasonable time limits on presentations by parties.~~
- ~~2. A statement by the Hearings Body regarding pre-hearing contacts, bias, prejudice or personal interest shall be made.~~
- ~~3. Any facts received, notified or recognized outside of the hearing shall be stated in the record.~~
- ~~4. Challenges to the Hearings Body's qualifications to hear the matter shall be stated.~~
- ~~5. Order of presentation:~~

~~a. Staff report~~

~~b. Proponent's presentation~~

~~c. Opponent's presentation~~

~~d. Interested parties~~

~~e. Proponent's rebuttal~~

~~f. Staff comments~~

~~g. Questions from or to the Chair may be entertained at any time at the Hearings Body's discretion.~~

~~SECTION 9.18 OBJECTIONS TO JURISDICTION, PROCEDURE, NOTICE OR QUALIFICATIONS~~ PROCEDURAL ISSUES.

Any objections to any procedural issue not raised prior to or during the public hearing are waived.

~~SECTION 9.19~~ SECTION 9.19 LIMITATION ON ORAL PRESENTATIONS. The Decision Maker may set reasonable time limits on oral presentations at public hearings.

SECTION 9.20 RECORD.

A. All evidence timely submitted and placed before the Decision Maker shall be entered into the record.

B. For public hearings, an audio recording of the hearing shall be made.

C. All exhibits presented shall be marked to show the application file number and the identity of the Party offering the evidence.

SECTION 9.21 NOTICE OF DECISION. The final decision of the Decision Maker shall be in writing, signed, and mailed to all parties; provided, however, ~~one person may be designated by the Hearings Body to be the recipient of the decision for a group, organization, group of Petitioners~~ only the point of contact provided to the City will be delivered notice for any group, entity, or similar collection of individuals constituting ~~parties~~ a party.

~~SECTION 9.20~~ 9.22 RE-APPLICATION LIMITED. If a specific application is denied, no reapplication for substantially the same proposal may be made for six (6) months or the date specified elsewhere in this Zoning Ordinance, whichever is greater, following the date of the final decision.

~~SECTION 9.21 REVIEW~~ 9.23 CALL UP BY CITY COUNCIL OR PLANNING COMMISSION.

~~A. A review of an administrative action or a Hearings Body's decision may be initiated by a majority of the Planning Commission or City Council.~~

A. Any decision may be called up for review at the discretion of a higher Decision Maker.

B. The review shall be initiated ~~in writing, if at all, by the higher Decision Maker filing a written request with the Community Development Director~~ within fifteen (15) days from the date of the final written decision ~~of the Hearings Body~~.

C. ~~A~~ Such review shall be conducted in the same manner ~~provided for in appeals~~ as an appeal.

SECTION ~~9.22~~ 9.24 APPEAL

A. ~~The A~~ decision shall be final unless a complete ~~written~~ notice of appeal ~~and the applicable fee, compliant with Section 9.25,~~ is received by the Community Development Department within fifteen (15) days of the mailing date of the final written decision and provided the challenged decision is subject to appeal.

B. Who may file an appeal:

1. A party.

2. A person to whom notice was to be mailed in accordance with Section ~~9.8~~ 9.12 of this Ordinance, and to whom no notice was mailed.

3. Planning Commission. Provided, however, any appeal by the Planning Commission shall go directly to the City Council. No fee shall be required for an appeal filed by the Planning Commission.

~~4. Appeal of a City Council or Special Hearings Officer decision shall be appealed to the Land Use Board of Appeals (LUBA) pursuant to ORS 197.830. A notice of intent to appeal shall be filed with LUBA no later than twenty-one (21) days after a decision becomes final (Notice of Decision mailing date).~~

~~C. A person to whom notice is mailed is deemed notified, even if notice is not received.~~

~~DC.~~ If more than one party files a notice of appeal on the same ~~land use~~ decision, the appeals shall be consolidated, noticed, and heard as one proceeding.

~~ED.~~ An appeal may be withdrawn in writing by an appellant at any time prior to the rendering of a final decision on the appeal. Subject to the existence of other appeals on the same application, in such event the appeal proceedings shall terminate as of the date the withdrawal is received. An appeal may be withdrawn under this section regardless of whether other non-filing parties have relied upon the appeal filed by the appellant.

F. Any failure to conform to the requirements of this Section ~~9.22~~ 9.24 and ~~9.23~~ Section 9.25 shall constitute a jurisdictional defect requiring dismissal of the appeal as untimely and/or unperfected.

~~G,~~ G. Determination of jurisdictional defects in an appeal shall be made by the body to whom an appeal has been made.

SECTION ~~9.23~~ 9.25 NOTICE OF APPEAL.

Every notice of appeal shall contain:

A. Proper identification of the decision subject to appeal

AB. The specific grounds relied upon for appeal.

BC. If a hearing was held below, a transcription of the proceedings.

CD. Failure to submit a transcript shall render a notice of appeal incomplete and thus untimely. An appellant may cure an incomplete notice of appeal by submitting the transcript within ten (10) days of the date that the notice of appeal was filed.

~~SECTION 9.24 HEARING ON APPEAL.~~

AE. All parties shall be mailed notice of the hearing on appeal within ten (10) days of ~~the hearing.~~ scheduling the hearing.

SECTION 9.26 SCOPE OF REVIEW ON APPEAL.

~~**B.** The review on appeal shall be de novo, and shall be heard as provided in Section 9.10 through 9.19 of this Ordinance, except that redundant evidence shall not be allowed.~~

~~**C.** The record of the proceeding from which appeal is taken, shall be a part of the record on appeal.~~

A. The review of a Type II decision on appeal before the Planning Commission shall be de novo.

B. Except where review by the City Council is expressly required, the City Council has discretion whether to hear any appeal for which it has jurisdiction including, without limitation, review of a decision on appeal issued by the Planning Commission. A decision by the City Council to not grant discretionary review of the appeal is the final determination of the City and will be considered to be an adoption by the Council of the decision being appealed, including any interpretations of this Zoning Ordinance and the City Comprehensive Plan included in the decision. The final decision may be appealed to the Land Use Board of Appeals as provided by law.

C. If the City Council elects to hear to a discretionary appeal, the City Council has further discretion whether to hear the appeal de novo or on the record. Moreover, the City Council may elect to limit review of the appeal to specific issues set forth in the notice of appeal.

D. The City Council's decision whether to grant discretionary review of an appeal, and the scope of the discretionary review, will be made without testimony or argument from persons interested in the appeal and shall not.

~~SECTION 9.25~~ SECTION 9.27 RE-HEARING. Re-hearings shall not be allowed.

~~SECTION 9.26~~ 9.28 DURATION OF PERMIT APPROVAL. ~~All Land Use Permits~~ Except as provided elsewhere in this Zoning Ordinance, all Land Use Approvals and Planning Reviews shall be valid for a period of one (1) year from the date of approval, unless a shorter or longer duration is granted or required as part of the approval. The date of the approval is the date ~~the final written decision is mailed to the parties~~ that the Land Use Approval becomes final for all purposes (no longer subject to appeal or further appeals) or, for Planning Reviews, the date the Planning Review approval is issued.

~~SECTION 9.27~~ 9.29 EXTENSION.

A. Any Land Use ~~Permit~~ Approval or Planning Review may be extended, prior to expiration, by the Community Development Director for periods of six (6) months ~~up to not~~, but in no event by more than two (2) years. Such extensions shall be administrative, without notice, and in writing.

B. No ~~permit~~ Land Use Approval may be extended unless significant progress occurred during the duration of the ~~permit or~~ Approval or prior extension, or circumstances occurred, which were out of the applicant's control. If the ~~permit is conditional~~ Land Use Approval is subject to conditions of approval, significant progress means, that some action must have commenced or occurred towards satisfaction of the conditions of approval.

SECTION 9.30 MODIFICATION OF APPROVAL.

A. Purpose. To provide the Decision Maker with an opportunity to correct errors and to provide the applicant a mechanism to request modification of conditions of approval or other aspects of an approved application.

B. Modification by Decision Maker. Unless an appeal of the decision has been sooner filed, the Decision Maker may, at its sole discretion, modify the decision within fifteen (15) days of the mailing date of the decision. If such modifications are made, a new notice of decision shall be issued and the fifteen (15) day appeal period shall be restarted based on the mailing date of the modified decision.

C. Modification by Request. A request to modify an approval may be filed by the applicant or any successor in interest to the decision with the Community Development Department any time after the decision became final.

D. Modification of Approval by Request Review Procedures.

1. A modification by request that does not have significant additional impacts on surrounding properties must be reviewed only under the criteria applicable to the aspect(s) of the proposal that are to be modified.

2. A modification by request that has significant additional impacts on surrounding properties must be reviewed under all applicable standards and may, at the discretion of the Community Development Director, require the filing of a new application.

3. A modification by request that, in the discretion of the Decision Maker, constitutes a new proposal must be filed as a new application.

4. The request to modify an approval shall be reviewed by the Decision Maker that made the initial decision.

SECTION 9.31 DECLARATORY RULING.

A. Subject to the other provisions of this Section 9.31, there shall be available for the City's Comprehensive Plan and Zoning Ordinance a process for:

1. Interpreting a provision of the Comprehensive Plan, Zoning Ordinance, or other implementing regulations in which there is doubt or a dispute as to its meaning or application;

2. Interpreting a provision or limitation of a Land Use Approval or Planning Review issued by the City in which there is doubt or a dispute as to its meaning or application;

3. Determining whether an approval has been initiated or considering the revocation of a previously issued approval;

4. Determining the validity and scope of a nonconforming use; and

5. Validating a lot of record.

Such a determination or interpretation shall be known as a "declaratory ruling" and shall be processed in accordance with this chapter. In all cases, as part of making a determination or interpretation the Decision Maker shall have the authority to declare the rights and obligations of persons affected by the ruling.

B. A declaratory ruling shall be available only in instances involving a fact-specific controversy and to resolve and determine the particular rights and obligations of particular parties to the controversy. Declaratory proceedings shall not be used to grant an advisory opinion. Declaratory proceedings shall not be used as a substitute for seeking an amendment of general applicability to a legislative enactment.

C. Declaratory rulings shall not be used as a substitute for an appeal of a decision or for a modification of an approval. In the case of a ruling on a City approval, a declaratory ruling shall not be available until 60 days after a decision is final.

D. The Community Development Director may refuse to accept, and the Decision Maker may deny, an application for a declaratory ruling if:

1. The Community Development Director or Decision Maker determines that the question presented can be decided in conjunction with approving or denying a pending application or should be made as part of a decision on an application not yet filed; or

2. The Community Development Director or Decision Maker determines that there is an enforcement case pending in circuit court in which the same issue necessarily will be decided as to the applicant and the applicant failed to file the request for a declaratory ruling within two weeks after being cited or served with a complaint.

E. The Community Development Director or Decision Maker determination to not accept or to deny an application for a declaratory ruling shall be the City's final decision.

F. Only the following persons may initiate a declaratory ruling under this chapter:

1. The owner of a property requesting a declaratory ruling relating to the use of the owner's property;

2. In cases where the request is to interpret a previously issued approval, the holder of the approval; or

3. The Community Development Director.

G. A request for a declaratory ruling shall be initiated by filing a complete application with the Community Development Department. Each application for a declaratory ruling shall include the precise question on which a ruling is sought. The application shall set forth whatever facts are relevant and necessary for making the determination and such other information as may be required by the City.

H. Declaratory rulings shall be processed as either a Type II or Type III application at the discretion of the Community Development Director.

I. A declaratory ruling shall be conclusive on the subject of the ruling and bind the parties thereto as to the determination made.

J. Parties to a declaratory ruling shall not be entitled to reapply for a declaratory ruling on the same question.

K. A declaratory ruling is not subject to modification by request under Section 9.30.

SECTION 9.32 LOT OF RECORD. Not all units of land are “lots of record.” The City will not issue any approvals for land divisions or physical development of real property unless the subject property constitutes a lot of record. The Community Development Director may require a lot of record verification whenever there is any question as to the origins or the lawfulness of the subject property. Such review will determine if and when a unit of land was created and if it was created in accordance with the law in effect at the time of creation.

A. For purposes of this Zoning Ordinance, a “lot of record” is a unit of land held in separate ownership as shown on the records of the Jefferson County Clerk, which conforms to all zoning and subdivision/partition requirements in effect on the date the unit of land was created.

B. What is not a lot of record?

1. A unit of land created solely by a tax lot segregation because of an assessor’s role change or for the convenience of the assessor;

2. A unit of land created by an intervening section or township line or right-of-way;

3. A unit of land created by the foreclosure of a security interest.

C. Remedy for Units of Land Found Not to Be Lots of Record.

1. The property owner may seek a property line adjustment to consolidate the unit of land with a contiguous unit of land that is determined to be a lot of record. Both units of land must be held in the same ownership as shown on the records of the Jefferson County Clerk.

2. Apply for and obtain approval for a single lot partition in conformance with ORS 92.177.

3. Apply for and obtain a lot of record validation under ORS 92.176.

~~SECTION 9.28~~ **SECTION 9.33 AUTHORIZATION OF SIMILAR USES.** The Planning Commission may permit in a particular zone, after holding a public hearing ~~in~~

~~accordance with Article 6, in a particular zone~~, a use not listed in this Ordinance, provided the use is of the same general type as the uses permitted in that zoning district. However, this section does not authorize placement of a proposed use in a zone where the use is not listed, when that use is specifically listed in another zone, or when the proposed use is of the same general type as a use listed in another zone.

~~SECTION 9.29 PROPOSED AMENDMENTS. The City Council shall hold a public hearing on all changes to the Comprehensive Plan, Zoning Ordinance text and the Comprehensive Plan/Zoning Ordinance map. All proposed amendments shall be processed in accordance with the public hearing procedures under Section 9.7 of this Ordinance. Text and map amendments shall also be submitted to the Department of Land Conservation and Development forty-five (45) days prior to the date set for final action except as provided for under ORS 197.61 O.~~

~~SECTION 9.30 FINAL ACTION. Except as provided for under ORS 227.178, the Planning Commission shall take final action on Conditional Use Permits and Variances, including the resolution of all appeals to the City Council under ORS 227.180, within one-hundred twenty (120) days from the date a complete application is submitted to the City. Within thirty (30) days of receipt of an application, the City shall review the application to determine whether it is complete. The applicant shall be notified of any missing materials within the thirty (30) day period. The one-hundred twenty (120) day time period shall commence on the date the application is deemed complete.~~

Other reference changes needed:

[Section 3.4\(L\)\(5\)](#)

[Section 3.4\(M\)\(5\)](#)

[Section 3.5.3\(I\) and \(J\)](#)

[Section 3.6\(C\)\(3\)](#)

[Section 3.6.2\(B\)](#)

[Section 3.7\(B\)\(1\)](#)

[Section 3.7\(F\)](#)

[Section 3.12\(D\)\(1\)\(b\) and \(c\)](#)

[Section 4.8\(D\)](#)

[Section 5.4\(E\)](#)

[Section 6.2\(C\)](#)

Comparison Details	
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Modified Document	[#00858018.DOCX] [v3] Article 9 amendments.DOCX

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Deletions	32
Changes	79
Moves	0
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	261

Word Rendering Set Markup Options	
Name	Standard with bold for redlining
Insertions	
Deletions	
Moves / Moves	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.
Comments color	By Author.
Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	Formatting
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	False
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False

Flatten Field Codes	Word	True
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