

Title 16: LAND USE PROCEDURES

Chapters:

- 16.04 Hearings Officer and Planning Commission Standards
- 16.06 Administration and Procedures

Chapter 16.04: HEARINGS OFFICER AND PLANNING COMMISSION STANDARDS

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16.04.010 Title.

The ordinance codified in Title 16 shall be known as the "land use procedures ordinance" and may be so cited and pled.

16.04.020 Hearings Officer-Appointment.

The Mayor, subject to the approval of the City Council, shall appoint a planning and zoning Hearings Officer to serve at the pleasure of the City Council. Such Hearings Officer shall conduct hearings; make decisions or recommendations on applications for such matters as approved in this chapter.

16.04.030 Hearings Officer-Qualification-Compensation.

The Hearings Officer shall be a member in good standing of the Oregon State Bar Association and shall be paid such compensation as agreed between such Hearings Officer and the City Council.

16.04.040 Hearings Officer-Adoption of rules for conduct of hearings.

The Hearings Officer is authorized to adopt rules of procedure for the conduct of hearings pursuant to this chapter, provided such rules do not conflict with state law, the City charter and ordinances, or the Comprehensive Plan. A copy of such rules shall be filed with the City Recorder and shall be made available for inspection to those appearing before such Hearings Officer prior to the hearing.

16.04.070 Hearings Officer-Rules of evidence at public hearings.

Public hearings before the Hearings Officer shall be subject to the following rules of evidence:

- A. All evidence offered and not objected to may be received, unless excluded by the Hearings Officer on the Hearings Officer's own motion. Evidence received at any hearing shall be of the quality that reasonable persons rely upon in the conduct of their everyday affairs.

- B. The Hearings Officer may exclude irrelevant, unduly repetitious, immaterial or cumulative evidence, but erroneous admission of evidence by the officer shall not preclude action by the officer or cause reversal on appeal unless shown to have substantially prejudiced the rights of a party. When a hearing will be expedited, any part of the evidence may be received in written form.
- C. All evidence shall be offered and made a part of the record in the case; and, except for matters stipulated to and except as provided in subsection D of this section, no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies of excerpts or by incorporation by reference.
- D. The Hearings Officer may take notice of judicially cognizable facts and the Hearings Officer may take notice of general, technical or scientific facts within the Hearings Officer's specialized knowledge.
- E. Every party is entitled to an opportunity to be heard and present and rebut evidence.
- F. All interested persons shall be allowed to testify. A verbatim record of the proceeding shall be made by written, mechanical or electronic means, which record need not be transcribed except upon review on the record.

16.04.090 Hearings Officer--Challenge of decision.

- A. A party may challenge the hearings officer on the grounds of bias, ex-parte contact, or that such officer has a legal conflict of interest.
- B. A written challenge must be delivered by personal service to the City Recorder and the Hearings Officer not less than three days preceding the time set for public hearing.
- C. A challenge of the Hearings Officers decision shall be entered in the record of the action.

16.04.100 Planning Commission-Created-Composition-Compensation.

- A. There is created a City Planning Commission for the City of Molalla. The commission shall consist of at least three but no more than nine members to be appointed by the Council, not more than two of who may be non-residents of the City.
- B. The composition of the Planning Commission shall meet the requirements of ORS 227.030. Commission members shall receive no compensation.

16.04.110 Planning Commission-Terms of members.

- A. Each member of the Planning Commission shall be appointed to a four-year term. Any vacancies shall be filled by the Council for the un-expired portion of the term.
- B. Unexcused absences from three consecutive regular meetings shall disqualify a member, and the Council shall appoint a replacement.

16.04.120 Planning Commission-Quorum-Rules of procedure.

A majority of the commission may constitute a quorum. The commission is authorized to adopt rules of procedure for the conduct of its meetings and hearings, provided such rules do not conflict with state law, City charter, ordinances, and the Comprehensive Plan. A copy of such rules shall be filed with City Recorder and made available for inspection to those appearing before the Planning Commission prior to their appearance. When exercising the function of the Hearings Officer, the Planning Commission shall follow the rules of the Hearings Officer in

performing such function. A majority vote of the commission members present shall be sufficient for taking any action authorized by ordinance.

16.04.130 Planning Commission-Purpose.

The purpose of the Planning Commission shall be to conduct the review of the Comprehensive Plan and implementing ordinances, hold hearings and make recommendations to the City Council on major plan and implementing ordinance amendment applications.

16.04.140 Planning Commission-Meetings-Officers.

The Planning Commission shall meet from time to time, as it shall decide. At the first meeting of each calendar year, the commission shall select a chair and vice chair. The chair, or vice chair in the chair's absence, shall preside over the commission's meetings and hearings.

16.04.150 Planning Commission-Record of proceedings.

A verbatim record of the proceedings shall be made by written, mechanical or electronic means, which record need not be transcribed, except upon review on the record.

16.04.160 Planning Commission-Right of parties to present evidence at hearings.

At public hearings before the Planning Commission, all interested persons and organizations shall be allowed an opportunity to be heard and to present and rebut evidence.

16.04.170 Citizens Advisory Committee-Appointment and terms of members.

The Planning Commission is appointed as the citizens' advisory committee. At the discretion of the Council or on petition by resolution from the Planning Commission, the Council may establish a separate citizens' advisory committee. Terms of members shall run concurrently with their membership on the Planning Commission. If a separate citizens' advisory committee is established, the Council shall appoint to it at least nine citizens who reside within the City's urban growth boundary. Such appointments shall be for a term of one year.

16.04.180 Citizens Advisory Committee-Meetings-Quorum-Officers.

The Citizens Advisory Commission shall operate under the same rules and policies as those established for the planning commission.

16.04.190 Citizens Advisory Committee-Purpose.

The purpose of the Citizens Advisory Committee is to assist in determining the community's interest in land use proposals and present such view at public hearings before the Hearings Officer, Planning Commission and City Council. A Citizens Advisory Committee meeting shall be for the purpose of reviewing current land use applications, ordinance and Comprehensive Plan amendments, and preparing written or oral testimony regarding such proposals to be presented at the appropriate public hearing. The committee is authorized to file appeals from a decision of the City staff, Hearings Officer or Planning Commission.

CHAPTER 16.06: ADMINISTRATION AND PROCEDURES

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16.06.010 Purpose

- A. This chapter provides the procedures by which the City of Molalla reviews and decides upon applications for all permits relating to the use of land authorized by ORS Chapters 92, 197 and 227.
- B. These permits include all forms of land divisions, land use, limited land use and expedited land division and legislative enactments and amendments to the Molalla Comprehensive Plan and Titles 16 through 18 of the Molalla City Municipal Code.
- C. Pursuant to ORS 227.175, any applicant may elect to consolidate applications for two or more related permits needed for a single development project.

16.06.020 Definitions

The following definitions shall apply to Titles 16 through 18.

A

- 1. *Access*: The way or means by which pedestrians and vehicles shall have ingress and egress to the property.
- 2. *Accessory dwelling*: a second dwelling unit either within or added to an existing dwelling or over a garage which functions as a complete, independent living facility with provisions within the unit for a separate kitchen, bathroom and sleeping area.
- 3. *Accessory structure or use*: a structure or use customarily incidental and subordinate to the principal use or structure, and located on the same lot or tract.
- 4. *Adjacent*: Near or close, but not necessarily abutting or contiguous. For example, a parcel next to, or across the street from, another parcel shall be considered "adjacent."

5. *Adjustments*: modifications and reductions or additions to code standards, which do not include variances.
6. *Adult foster care*: any family home or facility in which twenty-four hour care is provided for five or fewer adults who are not related to the provider by blood or marriage.
7. *Advertising sign*: any structure or portion thereof that is intended for advertising purposes or on which letters, figures, or pictorial matter are, or are intended to be displayed, other than on a business sign.
8. *Alley*: a narrow street primarily for vehicular service access to the rear of side of properties otherwise abutting on another street.
9. *Alteration*: An "alteration" may be a change, addition or modification in construction or a change of occupancy including a change from one trade or use to another.
10. *Alteration, Structural*: A "structural alteration" is any change or repair which would tend to prolong the life of the supporting members of a building or structure, such as alteration of bearing walls, foundation, columns, beams, or girders or any change in the external dimensions of the building.
11. *Apartment house*: See "multiple-family dwelling."
12. *Applicant*: The party or parties who submit an application for approval of a quasi-judicial permit under Titles 16 through 18.
13. *Application*: any request for approval of a permit or a legislative amendment to the City's land use regulations, Comprehensive Plan or related maps.
14. *Approval criteria and approval standards*: all standards, which must be met in order to approve an application. Depending upon the specific application, approval criteria include standards contained in the Molalla City Municipal Code, the Molalla Comprehensive Plan and applicable state law.
15. *Arterial*: roadways that are primarily intended to serve traffic entering and leaving the urban area. While arterials may provide access to adjacent land, that function is subordinate to the travel service provided to major traffic movements. Arterials are the longest-distance, highest-volume roadways within the urban growth boundary. Although the streets focus on serving longer distance trips, pedestrian and/or bicycle activities often are also associated with the arterial streetscape.
16. *Automobile service station*: any premises used primarily for supplying motor fuel, oil, minor servicing, excluding body and fender repair, and for the sale of accessories as a secondary service for automobiles at retail direct to the customer.
17. *Automobile wrecking*: the dismantling or wrecking of used motor vehicles, or the storage, sale or dumping of dismantled, partially dismantled, obsolete or wrecked vehicles or their parts.

B

1. *Basement*: the portion of a building included between a floor with its level two feet or more below the finished grade and the ceiling next above said floor.
2. *Bed and Breakfast Inn*: a structure occupied as a single-family residence in which sleeping rooms and a breakfast meal for overnight guests are provided on a daily or weekly basis for a fee.

3. *Billboard*: a sign with a display surface area of 300 square feet or more per sign face.
4. *Boarding, lodging or rooming house*: a residential type building or portion thereof, other than a hotel or motel, used to provide lodging for compensation, with or without meals, for not less than four nor more than ten people, not including members of the owner-occupant family.
5. *Boundary change*: either a major or minor boundary change.
6. *Boundary change application*: a petition or any other form of initiatory action for an annexation or boundary change.
7. *Boundary change, Major*: the formation, merger, consolidation or dissolution of a City or district.
8. *Boundary change, Minor*: an annexation or withdrawal of territory to or from a City or district or from a City-county to a district or an extra-territory extension or water or sewer service by a City or district.
9. *Boundary change procedure*: the procedure defined and required by ORS Chapter 222.
10. *Breezeway*: a structure for the principal purpose of connecting the main building or buildings on a property with other main buildings or accessory buildings.
11. *Buffer area*: the horizontal distance generally adjacent to a property line, which includes vertical elements, which may include berms, plants; fences or wall and which may be occupied by screening, utilities, and landscaping materials.
12. *Building*: any structure built or used for the support, shelter, or enclosure of any use or occupancy.
13. *Building footprint*: the total area of the building ground floor measured from the exterior faces of the building.
14. *Building height*: the vertical distance measured from the level of the first floor above finished grade to the highest point of the roof beams in the case of flat roofs, to the deck line of mansard roofs, or the center height between eaves and ridges for gable, hip, or gambrel roofs.
15. *Building line*: a line established by this title to govern the placement of a building with respect to the street lot line through the setback requirements of a minimum street yard.
 - a. A building line is ordinarily parallel to the street lot line and at a distance in accordance with the setback requirement.
 - b. For lots contained in an official subdivision plat recorded before the effective date of the ordinance codified in this title, the building line may be taken as shown therein.
16. *Bulk plant*: any establishment where commodities, including both liquids and solids, are received by pipe lines, tank car, tank vehicle, or other container, and are stored or blended in bulk for the purposes of distribution by pipe line, tank car, tank vehicle, or container.
17. *Business sign*: any sign, structure, or device which directs attention to the premises in which located, or the occupant of the premises or the goods or services manufactured, produced, or available on the premises.

C.

1. *Camping*: the overnight use or stay in a camping facility, but does not include recreational vehicle camping.
2. *Camping facility*: any establishment open to the public or any segment of the Public for camping, but does not mean an area allowing only isolated, occasional, or infrequent camping when the area has a primary or principal use other than as a camping facility.
3. *Clinic*: a building or portion of a building containing facilities for providing medical, dental, and psychiatric services for outpatients only, including veterinarian clinics.
4. *City*: the City of Molalla.
5. *Collector Street*: facilitate the movement of city traffic within the urban growth boundary of the city. Collectors provide some degree of access to adjacent properties, while maintaining circulation and mobility for all users. Major collectors are distinguished by their connectivity and higher traffic volumes, although they are designed to carry lower traffic volumes at slower speeds than arterials. Major collector streets are characterized by two or three-lane facilities. Minor collectors carry lower volumes than major collectors and have two-lane cross-sections.
6. *Commission*: the City Planning Commission of the City of Molalla.
7. *Common Wall*: A structural wall shared with another dwelling or use.
8. *Comprehensive Plan*: the Comprehensive Plan for the City of Molalla, comprising plans, maps or reports, or any combination thereof relating to the future economic and physical growth and development or redevelopment of the City.
9. *Council*: the City Council of the City of Molalla.
10. *Court*: an open, uncovered, and unoccupied space contained within, or surrounded, or partly surrounded by buildings.

D.

1. *Day care center*: a facility which provides regular day care services for six or more persons during part of the day, with or without compensation, including nursery schools, preschools, family day care group homes or centers or similar facilities, but not including services provided by a physician or nurse, or facilities operated primarily for education or supervised training, or day care provided by a babysitter.
2. *Development*: Any man-made change to improved or unimproved real estate, including but not limited to construction, installation or alteration of buildings or other structures; condominium conversion, land division; establishment or termination of a right of access; storage on real property; tree cutting; clearing, mining, dredging, filling, grading, paving, excavation or drilling operations.
3. *Development Permit*: a permit issued by the City for a development, which is in compliance with the requirements of the Molalla City Municipal Code and the Comprehensive Plan.
4. *Development Plan*: any plan adopted by the Planning Commission for the guidance of growth and improvement of the City, including modifications or refinements which may be made from time to time.
5. *Director*: the Director of Public Works or the Director's designee approved by the City Council.

6. *Display surface area*: the total area of a sign that is available for displaying advertising or an informational message, subject to the provisions of this code.
7. *District*: an entity described in ORS 198.010, 198.710(1) to (4) or 199.420.
8. *Duplex dwelling or two-family dwelling*: a detached structure containing two dwelling units.
9. *Dwelling unit*: an independent living unit within a dwelling structure designed and intended for occupancy by not more than one family and having its own housekeeping and kitchen facilities. Hotel, motel, rooming, and boarding units, which are used primarily for transient tenancy, shall not be considered as dwelling units.

E.

1. *Easement*: a right of usage of real property granted by an owner to the public or to specific persons, firms and corporations.
2. *Erect or erected*: to construct, build, assemble, alter, place, affix, attach, create, recreate, paint, draw or in any way bring into being or establish.
3. *Established grade*: the curb line grade established by the City.

F.

1. *Family*: any one of the following groups when living together in a single dwelling unit:
 - a. Persons related by blood, marriage, legal adoption or guardianships, plus not more than six (6) additional persons, including foster and shelter care children; or
 - b. Up to six (6) unrelated persons; or
 - c. Members of a "residential home," as defined in this chapter.
2. *Fence*: an accessory structure, including landscape planting, designed and intended to serve as a barrier or as a means of enclosing a yard or other area, or other structure; or to serve as a boundary feature separating two or more properties.
3. *Final action and final decision*:
 - a. The City's final decision on a permit application for which there is either no appeal to another decision maker within the City, or, if there is the possibility of a local appeal, an appeal was not timely perfected in accordance with section 16.06.180 of the chapter.
 - b. A decision is deemed to be final on the date that written notice of the decision is mailed to those entitled to notice of the decision.
4. *Finished Grade (ground level)*: the average of finished ground levels at the center of all walls of the building unless otherwise specified.
5. *Flag lot*: a lot, the major portion of which has access to a public road or street by means of a narrow strip of the lot.
6. *Flood or Flooding*: a general and temporary condition of partial or complete inundation or normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation of runoff of surface waters from any source.
7. *Floor area*: the area included in the surrounding walls of a building, or portion thereof, exclusive of vent shafts or courts.

8. *Freestanding sign*: a sign supported from the ground by its own structure.
9. *Frontage*: the continuous distance along one street right-of-way line of one premise, provided such street is improved for public travel.

G.

1. *Grade*: the level of the nearest sidewalk or road pavement.
2. *Gross area*: the total usable area, including accessory space dedicated to such things as streets, easements, and uses out of character with the principal use, but within a unit of area being measured.
3. *Guesthouse*: an accessory, detached dwelling unit occupied solely by nonpaying guests or by servants employed on the premises.

H.

1. *Half-story*: a space under a sloping roof which has the line of intersection of roof decking and exterior wall face not more than four feet above the top floor level. A half-story containing one or more dwelling units shall be counted as a full story.
2. *Half street*: a portion of the width of a street, usually along the edge of a subdivision where the remaining portion of the street could be provided in another subdivision.
3. *Height of building*. See "building height," 16.06.020 (B) (14).
4. *Home occupation*: an occupation or craft which is carried on in a dwelling place or premises by members of a family with no other employees or persons being engaged therein and complies with the terms and conditions of the Molalla Comprehensive Plan and is incidental to the use of the premises as a dwelling place.
5. *Hospital*: means an establishment that provides sleeping and eating facilities to persons receiving medical, obstetrical, or surgical care and nursing services on a continuous basis.
6. *Hotel*: a building in which lodging is provided for ten (10) or more guests for compensation and in which no provision is made for cooking in the rooms.

I

1. *Improved real property*: property, which contains a building or other man made structure.
2. *Incidental sign*: a sign identifying or advertising associated goods, products, services or facilities available on the premises, including but not limited to, trading stamps, credit cards accepted, brand names or price signs.
3. *Interior lot*: a lot other than a corner lot.
4. *Interior lot line*: any property lines not a street lot line.
5. *Interior yard*: a yard lying between the nearest points of a building and the interior lot line and measured at right angles to the interior lot line.

J

1. *Junkyard*: an area of more than two hundred (200) square feet used for the dismantling, storage or handling in any manner of junked vehicles or other machinery, or for the purpose

of storage of dismantled material, junk, and scrap, if such activity is not incidental to the principal use on the same lot.

K

1. *Kenel*: any premises or building in which four (4) or more dogs or cats at least four months of age are kept commercially for board, propagation, or for sale.

L

1. *Land Division*: the process of dividing land to create lots or parcels.
2. *Landscaping*: site improvements which include lawn, groundcover, trees, plants and other natural and decorative features, including but not limited to, patios or plazas open to the public or open commonly to residents and street furniture and walkways which are contiguous and integrated with plant material landscaped areas. Mulch may be used only as a temporary groundcover at the time of planting.
3. *Legislative action*: Any final decision of the City that approves or denies a request to amend the City's land use regulations, Comprehensive Plan or related maps and does not pertain to a particular property or small set of properties.
4. *Limited land use decision*: A final decision or determination made by the City pertaining to a site, which concerns the approval or denial of a subdivision or partition, as described in ORS Chapter 92, or the approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.
5. *Lot*: a parcel of land under one ownership used or capable of being used under the regulations of this title, including both the building site and all required yards and open spaces. A "lot" need not, necessarily coincide with the "lot of record" which refers to land designated as a separate and distinct parcel on a legally recorded subdivision plat or in a legally recorded deed filed in the records of the City.
6. *Lot area*: the total horizontal area within the lot lines of a lot.
7. *Lot coverage*: the portion of a lot that is occupied by the principal and accessory buildings, including all projections except eaves, expressed as a percentage of the total lot area.
8. *Lot depth*: the horizontal distance from the midpoint of the front lot line to the midpoint of the rear lot line.
9. *Lot dimension*: a measurement along any side of a lot.
10. *Lot line*: the property line bounding a lot.
11. *Lot of Record*: a lawfully created lot or parcel established by plat, deed, or contract as duly recorded in the Clackamas County property records.
12. *Lot width*: the horizontal distance between the interior lot lines at the building line.

M

1. *Maintained or Maintaining*: activities, such as upkeep and repair of signs or sign structures and the replacement of sign messages or advertisement displayed on a sign, and an activity by which a sign or sign structure are permitted to exist.

2. *Major Arterial*: a street with four travel lanes for inter-city trips and with volumes in excess of 16,000 vehicles per day.
3. *Manufactured Home*: a single-family dwelling structure constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction, constructed after June 15, 1976, being or intended to be used for residential purposes and constructed, and permanently installed after transport.
4. *Manufactured/Mobile Home Park*: a development pursuant to ORS 446.003 (32).
5. *Marginal access street*: a minor street parallel and adjacent to a major arterial street providing access to abutting properties, but protected from through traffic.
6. *Minor Arterial*: a street with four travel lanes or less for distributing inter-City trips and with volumes ranging from 10,000 to 16,000 vehicles per day.
7. *Minor street*: a street intended exclusively for access to abutting properties.
8. *Mobile home*:
 - a. A vehicle or structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, is intended for human occupancy and is being used for residential purposes.
 - b. For the purposes of this chapter and as used in the Molalla Municipal Code, a manufactured home is not a mobile home.
9. *Motel*: a building or group of buildings on the same lot containing guest units with separate entrances and consisting of individual sleeping quarters, detached or in connected rows, with or without cooking facilities, for overnight or other short-term rental.
10. *Multiple-family dwelling*: a dwelling containing three (3) or more dwelling units.

N

1. *Natural materials*: wood, stone, brick and rock or any combination thereof.
2. *Neighborhood Collector*: a street with two travel lanes to discourage through trips, a low volume of between 1,000 and 4,000 vehicles per day, and meant to serve residential and community service uses in residential districts.
3. *Nonconforming building or use*: "Nonconforming building or use" means a dwelling, structure or use which:
 - a. Was legally established prior to the adoption of any preclusive zoning provision; and
 - b. Does not comply with the provisions of this title.
4. *Non-final decision*:
 - a. Any informal interpretation or determination or any statement describing the uses to which the property may be put or made outside the declaratory ruling process in 16.06.030 or outside the process for approval or denial of a land use permit in 16.06.030.
 - b. Such informal interpretations, determinations or statements shall be deemed to be supposition only and shall not constitute final City action affecting a change in the status

of a person's property or conferring any rights, including any reliance rights on any person.

5. *Non-sight obscuring fence*: a fence constructed for containment of persons, animals or chattels that does not obstruct vision and, therefore, is allowed to exceed forty-two inches in height within street yard area.
6. *Nursing home (intermediate care)*: a facility licensed by the state which provides, for a period exceeding twenty-four hours, nursing care to two (2) or more patients who are not related to the owners or nursing home administrator by blood or marriage.
 - a. Such intermediate care nursing home must provide nursing service to those patients who, in the judgment of the physician, registered nurse, and nursing home administrator, require primarily supportive and preventative nursing measures.
 - b. "Intermediate care" does not include persons who are actually ill and persons requiring continuous licensed professional nursing care.
7. *Nursing home (skilled care)*: a facility licensed by the state which provides, for a period exceeding twenty-four hours, the continuous services of licensed nursing personnel to care for two (2) or more chronically ill or infirm patients exclusive of those patients related to the owner or nursing home administrator by blood or marriage. Such skilled nursing home must provide nursing services to those patients who, in the judgment of the physician, registered nurse, and nursing home administrator, require primarily remedial and restorative nursing measures and secondarily supportive and preventative nursing measures.

O

1. *Obsolete sign*: a sign that calls attention to a business or other activity or a profession, commodity, product, service or entertainment no longer carried on, produced, sold or offered.
2. *Owner*: the owner of record of real property as shown in the records of Clackamas County, on a property deed or title, or a person purchasing the particular real property under contract.
3. *120-day period*: the 120-day period within which ORS 227.178 requires the City to take final action on a complete application.

P

1. *Partition*: means either an act of partitioning land or an area or tract of land partitioned as defined in this title.
2. *Partition land*: "Partition land" means to divide land into two or three parcels of land within a calendar year, but does not include:
 - a. A division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots;
 - b. An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance;
 - c. The division of land resulting from the recording of a subdivision or condominium plat;
 - d. A sale or grant by a person to a public agency or public body for state highway, county road, city street or other right of way purposes provided that such road or right of way complies with the applicable comprehensive plan and ORS 215.213 (2)(p) to (r) and 215.283 (2)(p) to (r). However, any property divided by the sale or grant of property for

state highway, county road, city street or other right of way purposes shall continue to be considered a single unit of land until such time as the property is further subdivided or partitioned; or

- e. A sale or grant by a public agency or public body of excess property resulting from the acquisition of land by the state, a political subdivision or special district for highways, county roads, city streets or other right of way purposes when the sale or grant is part of a property line adjustment incorporating the excess right of way into adjacent property. The property line adjustment shall be approved or disapproved by the applicable local government. If the property line adjustment is approved, it shall be recorded in the deed records of the county where the property is located.
3. *Pedestrian way*: a right-of-way for pedestrian traffic.
 4. *Permit*: any form of quasi-judicial approval pertaining to the use of land rendered by the City under Titles 16 through 18 of this code, including subdivisions, partitions, property line adjustments and abandonment's, zone changes and plan amendments.
 5. *Person*: any individual, firm, partnership, association, company, social or fraternal organization, corporation, estate, trust, receiver, syndicate, branch or government, trustee, receiver, assignee, or any other group or combination acting as a unit.
 6. *Planning Commission*: the Planning Commission of the City of Molalla, Oregon.
 7. *Plat*: includes a final subdivision plat, replat or partition plat.
 8. *Premises*: a lot or number of lots on which are situated a business, or a building or group of buildings designed as a unit.
 9. *Private garage*: a portion of a main building or an accessory building, shelter or carport used for the parking or temporary storage of private automobiles, trailers, manufactured homes, boats, or other vehicles owned or used by occupants of the main building.
 10. *Projecting sign*: a sign projecting more than one (1) foot from the wall of a building.
 11. *Property Line adjustment*: a relocation of a common boundary between two adjoining legal lots of record.
 12. *Public garage*: a building other than a private garage used for the care and repair of motor vehicles or where such vehicles are parked or stored for compensation, hire or sale.
 13. *Public Works*: the planning division of the City.

Q

1. *Quasi-judicial action*: any final decision of the City that applies the provisions of Titles 16 through 18 of this code in response to an application, pertains to a specific property or small set of properties and which is legally required to result in a decision by the City.

R

1. *Record*: the public record compiled for each quasi-judicial and legislative action and includes the written minutes of all public meetings, audio tape recordings, if any, of public meetings, the application and all materials submitted by the applicant, all documents, evidence, letters and other materials submitted by any party to the decision making proceeding, staff reports, public notices, and all decisions rendered by City decision makers.

2. *Recreational vehicle camping*: the overnight use or stay in a recreational vehicle camping park in a vacation trailer or a self-propelled vehicle or structure equipped with wheels for highway use, and which is intended for human occupancy.
3. *Recreational vehicle camping park*: any establishment open to the public or any segment of the public for recreational vehicle camping, and includes any such establishment which is open to use free of charge or through payment of a fee or membership dues, or by virtue of any rental, lease, license, membership, association or common ownership. "Recreational vehicle camping park" does not mean an area allowing only isolated, occasional, or infrequent recreational vehicle camping when the area has a primary or principal use other than as a recreational vehicle camping park.
4. *Reserve Strip*: a strip of land at the end of a street at a property boundary that is dedicated to the City as a means of controlling access to City streets.
5. *Residential care facility*: a residence, boardinghouse, apartments or home for the aged operated for the purpose of providing room, board, and/or care, and when appropriate, a planned treatment or training program of counseling, therapy, or other rehabilitative social service, for persons of similar or compatible conditions of circumstances.
 - a. A "residential home" for six (6) or more elderly, or physically or mentally handicapped persons, and foster and shelter care homes for seven (7) or more children are "residential care facilities."
 - b. Facilities, which require regular on-premises supervision by a registered physician or registered nurse, are not "residential care facilities."
6. *Residential home*: a single-family dwelling, manufactured home, or apartment in which five or fewer related or unrelated elderly, or physically or mentally handicapped persons, plus necessary staff persons who need not be related to each other or to any other home resident, live together as a single dwelling unit as defined in this chapter.
 - a. An adult foster home, as defined in this chapter, is a residential home.
 - b. A facility, which requires regular on-premise supervision by a registered physician or registered nurse, is not a "residential home."
7. *Right-of-way*: the area between lines of a street or other easement.
8. *Roadway*: the portion or portions of a street right-of-way developed for vehicular traffic.
9. *Row Houses*: A building that has single family dwelling units erected in a row as a single building on adjoining lots, each being separated from the adjoining unit or units by a common wall or walls extending from the basement floor to the roof along the dividing lot line, and each building being separated from any other building by space on all sides. The common wall or walls of a row house shall consist of a structural wall, which is shared for at least fifty (50) percent of the length of the side of the dwelling. Each dwelling unit in a row house development shall have no more than two (2) common walls.

S

1. *Security fence*: a fence constructed to prohibit passage of persons or animals.
2. *Senior citizen/handicapped housing facility*: a multi-unit housing center with common facilities and services provided for elderly or handicapped residents who require or desire a more supportive living environment than typically afforded to residents in apartments or single-

family residential housing. Nursing care and personal services may be provided on a limited basis.

3. *Setback*: the distance between a specified lot line and the foundation or exterior wall of a building or structure.
 - a. *Setback, Front*: The horizontal distance measured at right angles from the front lot line to the nearest point of a building on a lot.
 - b. *Setback, Rear*: The horizontal distance measured at right angles from the rear lot line to the nearest point of a building on lot.
 - c. *Setback, Side*: The horizontal distance measured at right angles from the side lot line to the nearest point of a building on a lot.
4. *Sidewalk*: A pedestrian walkway with permanent surfacing built to city standards, adjacent to a roadway.
5. *Sight obscuring fence*: a fence or evergreen planting of such density and so arranged as to obstruct vision.
6. *Sign*: any sign, display message, emblem, device, figure, painting, drawing, placard, poster, billboard or other thing that is designed, used or intended for advertising purposes or to inform or attract the attention of the public, and the term includes the sign structure, display surface and all other component parts of a sign; when dimensions of a sign are specified, the term includes panels and frames; and the term includes both sides of a sign of specified dimensions or display surface area.
7. *Sign face*: the total of display surface area visible from one side of a sign.
8. *Sign official*: the person designated by the City to enforce the provisions of this chapter, including the review of permit applications, the interpretation of the provisions of this chapter and the issuance of permits.
9. *Single-family dwelling*: a detached building containing one dwelling unit, including manufactured homes, which in all respects meet the standards set forth in Title 18.56.
10. *Story*: that portion of a building included between the upper surface on any floor and the upper surface of the floor next above, except that the top story shall be that portion of a building included between the upper surface of the top floor and the ceiling above.
11. *Street*: the entire width between the boundary lines of every way which provides for public use for the purpose of vehicular or pedestrian traffic or the placement of utilities, and including the terms "road," "highway," "lane," "place," and "avenue" or other similar designations.
12. *Street lot line*: the lot line separating the lot from a street other than an alley.
13. *Structure*: that which is built or constructed; an edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner.

14. *Structural alteration*: any change to the supporting members of a building including foundations, bearing walls or partitions, columns, beams, or girders, or any structural change to the roof.
15. *Subdivide land*: means to divide land into four or more lots within a calendar year.
16. *Subdivision*: either an act of subdividing land or a tract of land subdivided as defined in this chapter.
17. *Sub divider*. A Sub divider is a person submitting an application to subdivide property.
18. *Subject property*: the real property or properties that is/are the subject of a quasi-judicial permit application.

T

1. *Telecommunications facilities*: the sites, structures, equipment, and appurtenances used to transmit, receive, distribute, provide or offer telecommunication services, including but not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, electronics and switching equipment.
2. *Telecommunications systems*: the sending and receiving of radio frequency transmissions and the connection and/or relaying of these signals to land lines and other sending and receiving stations, and includes cellular radiotelephone, personal communications services, enhanced/specialized mobile radio, and commercial paging services.
3. *Temporary sign*: a sign that will become obsolete after the occurrence of an event or series of events which shall extend no more than three months in any calendar year. Temporary signs include, but are not limited to, for sale and lease signs, garage sale signs and political campaign signs.
4. *Through lot*: a lot having frontage on two parallel or approximately parallel streets.
5. *Traffic Circulation*. A general term denoting provisions to accommodate or encourage all modes of travel and movement, which include, but are not limited to motor vehicle, pedestrian and bicycle travel.
6. *Traffic control sign or device*: an official route marker, guide sign, warning sign or sign directing or regulating traffic or pedestrians which has been erected by or under order of the City of Molalla, the state or federal governments.

U

1. *Undersized lot or parcel*: a lot, parcel or tract of land that does not satisfy the area requirements of the underlying zoning district.
2. *Unimproved property*: property, which is not improved as defined in this section.
3. *Use*: an activity or purpose for which land or a structure is designed, arranged, or intended, or for which it is occupied or maintained.

V

1. *Vision clearance area*: a triangular area on a lot at the intersection of two streets, or a street and an alley, or a street and a railroad, two sides of which are lot lines measured from their corner intersection for a distance specified in the title.

- a. The third side of the triangle is a line across the corner of the lot adjoining the ends of the other two sides.
- b. Where the lot lines at intersections have rounded corners, the lot lines will be extended in a straight line to a point of intersection.

W

- 1. *Wall*: A structure made of stone, brick, or other materials intended for security or for an enclosure.
- 2. *Wall sign*: a sign erected on a wall.
- 3. *Wetlands*: area inundated by surface or groundwater sufficient to support a prevalence of vegetation or aquatic life, which requires saturation or seasonally saturated soil conditions for growth and reproduction.
 - a. Wetlands generally include swamps, marshes, bogs, sloughs, wet meadows, river overflows, mud flats, natural ponds and other similar areas.
 - b. Except when provided as a mitigation measure to satisfy City, state or federal regulations, wetlands do not include areas of private property which otherwise satisfy the above definition if it was created by human activity as part of an approved development project after the date of initial acknowledgment of the City of Molalla's Comprehensive Plan under ORS 197.251.
- 4. *Withdrawal*: the detachment, disconnection, or exclusion of territory from the City or district.

Y

- 1. *Yard*: an open space on a lot which is unobstructed, provided, however that fences, walls, poles, posts, and other customary yard accessories, ornaments and furniture or other allowed accessory structures or uses may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility.

16.06.030 The City's decision-making processes

- A. No person or organization shall engage in any development within the City of Molalla without first having obtained a land use permit.
- B. No building permit shall be issued for development within the City of Molalla unless a use permit has first been obtained.
- C. The following decision-making processes chart shall control the City's review of the indicated permits:

TABLE 1: APPROVAL PROCESS

Permit Type	Type I	Type II	Type III	Type IV	Type V	ELD
Code Interpretation 16.06.220 and Similar Use Determination 16.06.240		D				
Revocation- 16.06.260				PC-CC		
Subdivision Preliminary Plat Under 25 lots 17.12			HO			D
Subdivision Preliminary Plat 25 lots or more 17.12					HO-CC	

Final Plat – Sub Division- 17.16	D					
Partition 17.32	D					D
Property Line Adjustment- 17.34	D					
Design Review 18.45		D				
Conditional Use Permit 18.76			HO			
Temporary Uses- 18.80		D				
Nonconforming Use- 18.84		D				
Variance 18.88			HO			
Zone Change 18.92 And Plan Amendment				PC-CC		
Annexations- 18.93				PC-CC		

*HO = Hearings Officer PC = Planning Commission ELD = Expedited Land Division
CC = City Council D = Director*

A. Type I decisions:

1. Type I decisions do not require interpretation or the exercise of policy or legal judgment in evaluating approval criteria, and include partitions and property line adjustments, and final subdivision plats where there are no material deviations from the approved preliminary plans.
2. The process requires no notice to any party other than the applicant.
3. The Director's decision is appeal able to the City Council by any party with standing.

B. Type II decisions:

1. Type II decisions involve the exercise of limited interpretation and discretion in evaluating approval criteria, similar to limited land use decision making process under state law.
2. Applications evaluated through this process are assumed to be allowable in the underlying zone, and the inquiry typically focuses on what form the use will take or how it will look and include design review.
3. Notice of the application shall be as provided in 16.06.080.
4. The Director accepts comments for fourteen (14) days and renders a decision.
5. The Director's decision is appeal able to the City Council by any party with standing (*i.e.*, applicant and any party who submitted comments during the 14-day period).
6. The City Council's decision is the City's final decision and is appeal able to the Land Use Board of Appeals (LUBA) within twenty-one (21) days of when the decision becomes final.

C. Type III Decisions:

1. Type III decisions involve a greater amount of discretion and evaluation of subjective approval standards and are decided by either a Hearings Officer or the Planning Commission as provided in 16.06.030 (C).

2. Applications evaluated through this process include conditional use permits, variances, and subdivision preliminary plats.
3. ORS 197.763 controls the process for these land use decisions.
4. Notice of the application shall be as provided in 16.06.080.
5. Notice must be issued at least twenty (20) days prior to the hearing, and the staff report must be available at least seven (7) days prior to the hearing.
6. At the evidentiary hearing held before the Hearings Officer or Planning Commission, all issues are addressed.
7. The Hearings Officer's or Planning Commission's decisions are appeal able to the City Council by any party with standing (*i.e.*, applicant and any party who submitted comments or testimony prior to or during the hearing).
8. The City Council's decision is the City's final decision and is appeal able to the Land Use Board of Appeals (LUBA) within twenty-one (21) days of when the decision becomes final.

D. Type IV Decisions.

1. Type IV decisions include zone changes and plan amendments (both quasi-judicial and legislative).
2. These applications involve the greatest amount of discretion and evaluation of subjective approval standards, and must be heard, after recommendation by the Planning Commission, by the City Council for final action.
3. The process for these land use decisions is controlled by ORS 197.763 (Quasi Judicial) and 227.186(Legislative).
4. Notice of the application shall be as provided in 16.06.080.
5. The staff report must be available at least seven (7) days prior to the hearing.
6. At the evidentiary hearing held before the Planning Commission all issues are addressed.
7. Unless the City Council votes to review the decision denovo, any review by the City Council is on the record, and only issues raised before the Planning Commission may be raised before the City Council.
8. The City Council's decision is the City's final decision and is appeal able to the Land Use Board of Appeals (LUBA) within twenty-one (21) days of when the decision becomes final.

E. Type V Decisions.

1. Type V decisions are for subdivision preliminary plats when 25 or more lots are proposed.
2. These applications are first heard by the hearings office, which makes a recommendation to the City Council. The City Council shall then either approves or denies, or may remand the decision to the hearings officer for further proceedings.

3. The process for these land use decisions is controlled by ORS 197.763.
4. Notice of the application shall be as provided in 16.06.080.
5. The staff report must be available at least seven (7) days prior to the hearing.
6. After the hearings officer issues a recommendation upon the application the City Council shall review the application denovo.
7. The City Council's decision is the City's final decision and is appeal able to the Land Use Board of Appeals (LUBA) within twenty-one (21) days of when the decision becomes final.

F. The Expedited Land Division (ELD) Process

1. The Expedited Land Division is set forth in ORS 197.360 to 197.380. To qualify for this type of process, the development must meet the basic criteria in ORS 197.360(1)(a) or (b).
2. While the decision making process is controlled by state law, the approval criteria are found in the Molalla City Municipal Code.
3. The procedure for processing an ELD application shall be that specified in ORS 197.360 to 197.380.

G. Determination of Proper Procedure. The Director shall determine the proper procedure for all land use actions and shall resolve any question in favor of the higher procedure type number.

H. Consolidated Procedure:

1. An application that involves two (2) or more procedures may be processed collectively under the highest numbered procedure required for any part of the application or processed individually under each of the procedures identified in the code.
2. The applicant may determine whether the application shall be processed collectively or individually.
3. If the application is processed under the individual procedure option, the highest numbered type procedure must be processed prior to the subsequent lower numbered procedure unless otherwise determined by the Director.
4. If the application is processed collectively with two (2) or more of the same highest numbered procedure but assigned to different hearing bodies, the highest hearing body only shall hear the application.
5. The City Council is the highest hearing body, followed by the Planning Commission, then the Hearings Officer, then and the Director.

16.06.040 Pre-application Conference

- A. Prior to submitting an application for any form of permit, the applicant shall schedule and attend a pre-application conference with City staff to discuss the proposal. The City Council shall set the pre-application conference fee by resolution.

1. The Director may waive the pre-application requirements if, in the Director's opinion, the development does not warrant it.

B. Pre-application Conference:

1. To schedule a pre-application conference, the applicant shall contact the Director, submit the required materials, and pay the appropriate conference fee.
2. At a minimum, an applicant shall submit a short narrative describing the proposal and a proposed site plan, drawn to a scale acceptable to the Director, which identifies the proposed land uses, traffic circulation, and public rights-of-way.
3. The purpose of the pre-application conference is to provide staff from all affected public agencies with a summary of the applicant's development proposal and an opportunity for staff to provide the applicant with information on the likely impacts, limitations, requirements, approval standards, fees and other information that may affect the proposal.
4. The Director shall provide the applicant with a written summary of the pre-application conference.
5. Notwithstanding any representations by City staff at a pre-application conference, staff is not authorized to waive any requirements of this Municipal Code, and any omission or failure by staff to recite to an applicant all relevant applicable land use requirements shall not constitute a waiver by the City of any standard or requirement.

- C. A pre-application conference shall be valid for a period of six (6) months from the date it is held. If no application is filed within six (6) months of the conference or meeting, the applicant must schedule and attend another conference, meeting or both before the City will accept a permit application.

16.06.050 Application requirements.

- A. A permit application may be initiated only by the record property owner or contract purchaser (or their representatives), the City Council or Planning Commission.
- B. If there is more than one record owner, the City will not accept an application without signed authorization from all record owners.
- C. All permit applications must be submitted on the form provided by the City, along with the appropriate fee and all necessary supporting documentation and information, sufficient to demonstrate compliance with all applicable approval criteria.
- D. The applicant has the burden of demonstrating, with evidence, that all applicable approval criteria are, or can be, met.

16.06.060 Completeness review and 120-day rule.

- A. Upon submission, the Director shall date stamp the application form and verify that the appropriate application fee has been submitted.
 1. The Director will then review the application and all information submitted with it and evaluate whether the application is complete enough to process.
 2. Within thirty (30) days of receipt of the application, the Director shall complete this initial review and issue to the applicant a written statement indicating whether the application is complete enough to process, and, if not, what information must be submitted to make the

application complete.

- B. Upon receipt of a letter indicating the application is incomplete, the applicant has 180 days within which to submit the missing information or the application shall be rejected and all materials and the unused portion of the application fee returned to the applicant.
 - 1. If the applicant submits the requested information within the 180-day period, the Director shall again verify whether the application, as augmented, is complete.
 - 2. Each such review and verification shall follow the procedure in subsection A of this section.
- C. Once the Director determines the application is complete enough to process, or the applicant refuses to submit any more information, the City shall declare the application complete and take final action on the application within 120 days of that date unless the applicant waives or extends the 120-day period.
- D. The 120-day period, however, does not apply in the following situations:
 - 1. Any hearing continuance or other process delay requested by the applicant shall be deemed an extension or waiver, as appropriate, of the 120-day period.
 - 2. Any delay in the decision making process necessitated because the applicant provided an incomplete set of mailing labels for the record property owners entitled to notice.
 - 3. The 120-day period does not apply to any application for a permit that is not wholly within the City's authority and control.
 - 4. The 120-day period does not apply to any application for an amendment to the City's Comprehensive Plan or land use regulations nor to any application for a permit, the approval of which depends upon a plan amendment.
- E. The approval standards which control the City's review and decision on a complete application are those which were in effect on the date the application was first submitted.

16.06.070 Complete Application - required information.

- A. Unless stated elsewhere in Titles 16 through 18, a complete application includes all the materials listed in this subsection.
- B. The Director may waive the submission of any of these materials if not deemed to be applicable to the specific review sought.
- C. Likewise, within thirty (30) days of when the application is first submitted, the Director may require additional information, beyond that listed in this subsection or elsewhere in Titles 16 through 18, such as a traffic study or other report prepared by an appropriate expert.
- D. In any event, the applicant is responsible for the completeness and accuracy of the application and all of the supporting documentation, and the City will not deem the application complete until all information required by the Director has been submitted.
- E. At a minimum, the applicant must submit the following:
 - 1. One copy of a completed City application form that includes and may not be accepted without the following information:

- a. An accurate legal description, tax account number(s), map and location of all properties that are the subject of the application.
 - b. Name, address, telephone number and authorization signature of all record property owners or contract owners, and the name, address and telephone number of the applicant, if different from the property owner(s).
2. A complete list of the permit approvals sought by the applicant.
3. Proof of ownership of the property, to the Directors satisfaction.
4. A complete and detailed narrative description of the proposed development that describes existing site conditions, existing buildings, public facilities and services, presence of wetlands, steep slopes and other natural features, a discussion of the approval criteria for all permits required for approval of the development proposal that explains how the criteria are or can be met, and any other information indicated by staff at the pre-application conference as being required.
5. The identity and contact person for any affected City-recognized neighborhood association.
6. Up to twelve (12) copies of all reports, plans, site plans and other documents required by the section of this code corresponding to the specific approval(s) sought.
7. Site Plan:
 - a. The applicant shall submit with the application a site plan showing the following:
 - 1) All building locations with overhangs and critical dimensions;
 - 2) Vehicle circulation;
 - 3) Parking areas;
 - 4) Landscaped areas;
 - 5) Walkways;
 - 6) Contours;
 - 7) Utility lines;
 - 8) Adjacent streets and right-of-ways; and,
 - 9) Location of additional right-of-way dedication to improve that portion street.
 - b. At least one copy of the site plan and all related drawings shall be in a readable/legible 8½ by 11 inch format for inclusion into the City's bound record of the application.
8. Mailing labels:

- a. The applicant shall submit five (5) sets of mailing labels in a format specified by the Director, for notice to all parties entitled under section 16.06.080 to receive mailed notice of the application.
 - b. The applicant shall use the names and addresses of property owners within the notice area indicated on the most recent property tax rolls.
9. All required application fees.

16.06.080 Public notices.

- A. All public notices issued by the City with regard to a land use matter, announcing applications or public hearings of quasi-judicial or legislative actions shall comply with the requirements of this section.
- B. Type I applications require no public notices.
- C. Notice of Type II applications:
 1. Once the Director has deemed a Type II application complete, the City shall prepare and send notice of the application, by first class mail, to all record owners of property within 500 feet of the subject property and to any City-recognized neighborhood association whose territory includes the subject property.
 2. Pursuant to section 16.06.070 (E) (9), the applicant is responsible for providing five (5) accurate and complete sets of mailing labels for these property owners and neighborhood associations and for posting the subject property with the City-prepared notice in accordance with section 16.06.090.
 3. At least 20 days prior to the hearing, notice shall be sent to affected governmental entities, special districts, providers of urban services, Oregon Department of Transportation, any affected recognized neighborhood associations and any party who has requested in writing such notice.
 4. The City's Type II notice shall:
 - a. Explain the nature of the application and the proposed use or uses which could be authorized;
 - b. List the applicable criteria from the ordinance and the plan that apply to the application at issue;
 - c. Set forth the street address or other easily understood geographical reference to the subject property;
 - d. State the date, time and location of the hearing;
 - e. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue;
 - f. Include the name of a local government representative to contact and the telephone number where additional information may be obtained;

- g. State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;
- h. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and
- i. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

D. Notice of public hearing on a Type III or IV quasi-judicial application

1. Notice for all public hearings concerning a Type III or IV quasi-judicial application shall conform to the requirements of this subsection.
2. At least twenty (20) days prior to the hearing, the City shall prepare and send, by first class mail, notice of the hearing to all record owners of property within 500 feet of the subject property and to any City-recognized neighborhood association whose territory includes the subject property.
3. At least 20 days prior to the hearing, notice shall be sent to affected governmental entities, special districts, providers of urban services, Oregon Department of Transportation, any affected recognized neighborhood associations and any party who has requested in writing such notice.
4. The City shall also publish the notice in a newspaper of general circulation within the City at least twenty (20) days prior to the hearing.
5. Pursuant to section 16.06.070(E) (9), the applicant is responsible for providing five (5) accurate and complete sets of mailing labels for these property owners and for posting the subject property with the City-prepared notice in accordance with section 16.06.090.
6. Notice of the application hearing shall include the following information:
 - a. Explain the nature of the application and the proposed use or uses, which could be authorized;
 - b. List the applicable criteria from the ordinance and the plan that apply to the application at issue;
 - c. Set forth the street address or other easily understood geographical reference to the subject property;
 - d. State the date, time and location of the hearing;
 - e. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue;
 - f. Include the name of a local government representative to contact and the telephone number where additional information may be obtained;
 - g. State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;

- h. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and
 - i. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.
 - j. For Type IV hearings notice of the hearing before the City Council shall be sent to all parties who participated in the hearing before the planning commission. Such notice shall be sent to the participants when notice of the planning commissions decision is mailed.
- E. Notice of public hearing on a Type V quasi-judicial application
 - 1. Notice for all public hearings concerning a Type V quasi-judicial application shall conform to the requirements of this subsection.
 - 2. At least twenty (20) days prior to the hearing, the City shall prepare and send, by first class mail, notice of the hearing to all record owners of property within 500 feet of the subject property and to any City-recognized neighborhood association whose territory includes the subject property.
 - 3. At least 20 days prior to the hearing, notice shall be sent to affected governmental entities, special districts, providers of urban services, Oregon Department of Transportation, any affected recognized neighborhood associations and any party who has requested in writing such notice.
 - 4. The City shall also publish the notice in a newspaper of general circulation within the City at least twenty (20) days prior to the hearing.
 - 5. Pursuant to section 16.06.070(E) (9), the applicant is responsible for providing five (5) accurate and complete sets of mailing labels for these property owners and for posting the subject property with the City-prepared notice in accordance with section 16.06.090.
 - 6. Notice of the application hearing shall include the following information:
 - a. Explain the nature of the application and the proposed use or uses, which could be authorized;
 - b. List the applicable criteria from the ordinance and the plan that apply to the application at issue;
 - c. Set forth the street address or other easily understood geographical reference to the subject property;
 - d. State the date, time and location of the hearing before the hearing officer;
 - e. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue;
 - f. Include the name of a local government representative to contact and the telephone number where additional information may be obtained;

- g. State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;
 - h. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and
 - i. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.
 - j. Notice of the hearing before the City Council shall be sent to all parties who participated in the hearing before the hearings officer. Such notice shall be sent to the participants when notice of the hearing officers decision is mailed.
- F. Notice of public hearing on a legislative proposal.
- 1. At least forty-five (45) days prior to the first evidentiary hearing on a legislative proposal, a copy of the proposal shall be forwarded to the Director of the Department of Land Conservation and Development in accordance with ORS 197.610.
 - 2. At least twenty (20) days prior to a public hearing at which a legislative proposal to amend or adopt the City's land use regulations or Comprehensive Plan is to be considered, the Director shall issue a public notice that conforms to the requirements of this subsection.
 - 3. At least 20 days prior to the hearing, notice shall be sent to affected governmental entities, special districts, providers of urban services, Oregon Department of Transportation, any affected recognized neighborhood associations and any party who has requested in writing such notice, and shall be published in a newspaper of general circulation within the City.
 - 4. Notice issued under subsection 3 shall include the following information:
 - a. The time, date and location of the public hearing;
 - b. The City-assigned planning file number and title of the proposal;
 - c. A description of the proposal in sufficient detail for people to determine the nature of the change being proposed, including a description of the geographic range, area or location of the land that will be affected by the proposal;
 - d. A statement that any interested party may testify at the hearing or submit written comments on the proposal at or prior to the hearing;
 - e. A statement that all comments sent by facsimile or e-mail must be sent and addressed to the City's Planning staff no later than 12:00 noon the day of the hearing in order to be considered timely filed;
 - f. The name and telephone number of the planning staff person responsible for the proposal and who interested people may contact for further information; and
 - g. A statement that failure of any person entitled to notice under this subsection to receive notice shall not invalidate the action, provided that the City can demonstrate by a certificate of mailing that such notice was sent.

- h. If the legislative proposal involves a rezone or a change that limits or prohibits land uses previously allowed in the affected zone, individual notice shall be mailed in accordance with ORS 227.186.

16.06.090 Notice posting requirements.

- A. Where this chapter requires notice of a pending or proposed permit application or hearing to be posted on the subject property, the requirements of this subsection shall apply.
- B. City guidance and the applicant's responsibility:
 - 1. The City shall supply all of the notices, which the applicant is required to post on the subject property, and shall specify the dates the notices are to be posted and the earliest date on which they may be removed.
 - 2. The City shall also provide a statement, to be signed and returned by the applicant, certifying that the notice(s) were posted at the correct time and that, if there is any delay in the City's land use process caused by the Applicant's failure to correctly post the subject property for the required period of time and in the correct location, the applicant agrees to extend the 120-day period in a timely manner
- C. Number and location of postings.
 - 1. The applicant must place the notices on each frontage of the subject property.
 - 2. If a property's frontage exceeds six hundred (600) feet, the applicant shall post one copy of the notice for each six hundred (600) feet or fraction thereof.
 - 3. Notices shall be posted at a location as specified by the Director.
 - 4. The applicant shall remove all signs within ten (10) days following the event announced in the notice.

16.06.110 Quasi-judicial hearing process.

- A. General requirements.
 - 1. All public hearings pertaining to quasi-judicial permits, whether before the Hearings Officer, Planning Commission or City Council, shall comply with the procedures of this section.
 - 2. In addition, all public hearings held pursuant to this chapter shall comply with the Oregon Public Meetings Laws, the applicable provisions of ORS 197.763 and any other applicable law.
- B. Once the Director determines that an application for a Type III, IV or V decision is complete, and once an appeal of a Director's decision on a Type I or II application has been properly filed under section 16.06.180, the planning department shall schedule a hearing before the appropriate decision maker.
- C. Notice of the hearing shall be issued in accordance with section 16.06.080.
- D. The Director shall prepare a staff report on the application which lists the applicable approval criteria, describes the application and the applicant's development proposal, summarizes all relevant City department, agency and public comments, describes all other pertinent facts as they relate to the application and the approval criteria, and makes a recommendation as to whether each of the approval criteria are met.

- E. At the beginning of the initial public hearing for any quasi-judicial application a statement describing the following shall be announced to those in attendance:
1. The hearing will proceed in the following general order: staff report, applicant's presentation, testimony in favor of the application, testimony in opposition to the application, rebuttal, record closes, decision maker deliberation and decision;
 2. A list of the applicable substantive criteria.
 3. All testimony, arguments and evidence must be directed toward the applicable substantive criteria, or other criteria in the Comprehensive Plan or Land Use Regulations, which the person believes to apply to the decision.
 4. If any person believes that other criteria apply in addition to those addressed in the staff report, those criteria must be listed and discussed on the record.
 5. The decision maker may reasonably limit oral presentations in length or content depending upon time constraints.
 6. Any party may submit written materials of any length while the public record is open.
 7. Failure to raise an issue on the record, with sufficient specificity and accompanied by statements or evidence sufficient to afford the City and all parties to respond to the issue, will preclude appeal on that issue to the Land Use Board of Appeals (LUBA);
 8. Failure by the applicant to raise constitutional or other issues relating to the proposed conditions of approval, with sufficient specificity to allow the local government or its designee to respond to the issue, under ORS 197.796, precludes an action for damages in Circuit Court.
 9. Any party wishing a continuance or to keep open the record must make that request while the record is still open.
 10. The Hearings Officer or chair shall call for any ex-parte contacts, conflicts of interest or bias before the beginning of each hearing item.
- F. Requests for continuances and to keep open the record.
1. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The hearings authority shall grant such request by continuing the public hearing pursuant to subsection 2 of this section or leaving the record open for additional written evidence, arguments or testimony pursuant to subsection 3 of this section.
 2. If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. 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. If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any

participant may file a written request with the City for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection 6 of this section.

4. A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 227.178 and 227.179, unless the continuance or extension is requested or agreed to by the applicant.
5. Unless waived by the applicant, the City shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the limitations of ORS 227.178 and 227.179.
6. When a hearings authority reopens a record to admit new evidence, arguments or testimony, any person may raise new issues, which relate to the new evidence, arguments, testimony or criteria for decision-making, which apply to the matter at issue.
7. New notice of a continued hearing need not be given so long as the decision maker establishes a time certain and location for the continued hearing.

16.06.120 Conditions of approval and Notice of Decision.

- A. All City decision makers have the authority to impose reasonable conditions of approval designed to ensure that all applicable approval standards are, or can be, met.
- B. Failure to comply with any condition of approval shall be grounds for revocation of the permit(s) and grounds for instituting code enforcement proceedings pursuant to 16.06.290 of this code and ORS 30.315.
- C. Notice of decision:
 1. The City shall send, by first class mail, a notice of all decisions rendered under this Chapter to all persons with standing; *i.e.*, the applicant, all others who participated either orally or in writing before the close of the public record and those who specifically requested notice of the decision.
 2. The notice of decision shall include the following information:
 - a. The file number and date of decision;
 - b. The name of the applicant, owner and appellant (if different);
 - c. The street address or other easily understood location of the subject property;
 - d. A brief summary of the decision, and if an approval, a description of the permit approved;
 - e. A statement that the decision is final unless appealed, and a description of the requirements for perfecting an appeal;
 - f. The contact person, address and a telephone number whereby a copy of the final decision may be inspected or copies obtained.
- D. Modification of approved applications:

1. The Director may approve a modification of an approved application only if the proposed modification:
 - a. Is consistent with the prior approval;
 - b. Is consistent with all ordinance provisions in effect at the time of the modification; and,
 - c. Does not result in any of the following:
 - 1) A change in the category of use (e.g., commercial, industrial, etc.);
 - 2) An increase greater than five percent (5%) of the original approved building floor area, or an increase in the overall lot coverage exceeding five percent (5%) of the original approved plan.
 - 3) An increase in the density of development (residential or recreational uses), or intensity of use, as demonstrated by a change in occupancy rating requiring substantial modifications to structures;
 - 4) Any discernible increase in traffic congestion or use of public facilities;
 - 5) A reduction in approved open space;
 - 6) A reduction of off-street parking and loading spaces;
 - 7) A reduction in required pavement widths or a change in major access locations, except as required by the City.
2. All other requests to modify an approved application shall be processed in the same manner, and shall be subject to the same standards, as was the original application.
3. The decision maker may at its sole discretion, consider a modification request and limit its review of the approval criteria to those issues or aspects of the application that are proposed to be changed from what was originally approved.

16.06.130 Performance guarantees.

- A. When conditions of permit approval require the applicant to construct certain improvements, the City may allow the applicant to submit a financial guarantee in lieu of actual construction of the improvement.
- B. This section shall govern financial guarantees.
- C. Form of guarantee:
 1. Guarantees shall be in a form approved by the City Attorney, including an irrevocable stand-by letter of credit issued by a recognized lending institution to the benefit of the City, a certified check, dedicated bank account or allocation of a construction loan held in reserve by the lending institution for the benefit of the City.
 2. The guarantee shall be filed with the City Recorder after approval of the Director.
- D. Amount of Guarantee:
 1. The amount of the performance guarantee shall be equal to at least one hundred ten

percent (110%) of that estimated cost of constructing the improvement in question.

2. The amount of the performance guarantee may be larger than one hundred ten percent (110%) if deemed necessary by the Director.
3. The cost estimate substantiating the amount of the guarantee must be provided by the applicant supported by either an engineer's or architect's estimate or written estimates by three contractors with their names and addresses.
4. The estimates shall separately itemize all materials, labor, and other costs.

E. Duration of the guarantee:

1. The guarantee shall remain in effect until the improvement is actually constructed and accepted by the City.
2. Once the City has inspected and accepted the improvement, the City shall release the guarantee to the applicant.
3. If the improvement is not completed to the City's satisfaction within the time limits specified in the permit approval or the guarantee, the Director may, at the Director's discretion, draw upon the guarantee and use the proceeds to construct or complete construction of the improvement and for any related administrative and legal costs incurred by the City.
4. Once constructed and approved by the City, any remaining funds shall be refunded to the applicant

16.06.140 Covenant with the City.

- A. The City may impose as a condition of final approval of a quasi-judicial permit, the requirement that the applicant execute a covenant with the City agreeing to comply with all conditions of approval.
- B. Any such covenant shall include the following elements:
 1. An agreement.
 - a. The applicant shall agree to comply with all applicable code requirements, conditions of approval and any representations made to the City by the applicant or the applicant's agents during the application review process, either orally or in writing.
 - b. This commitment shall be binding on the applicant and all of the applicant's successors, heirs and assigns;
 2. Revocation.
 - a. If the owner fails to perform under the covenant the City may immediately institute revocation of the approval or any other enforcement action available under state law or the Municipal Code.
 - b. The covenant may also provide for payment of attorney fees and other costs associated with any such enforcement action.
 3. Judicial enforcement - Where the development rights of one site are dependent on the

performance of conditions by the owner of another property (such as joint access), the covenants are judicially enforceable by the owner of one site against the owner of another.

C. Adopting the Covenant.

1. The City Attorney shall approve the form of all covenants. The covenant shall run with the land and shall be placed in the county deed records prior to the issuance of any permits or development activity pursuant to the approval.
2. Proof of recording shall be made prior to the issuance of any permits and filed with the planning division.
3. Recording shall be at the applicant's expense.
4. Any covenant required under this section shall be properly signed and executed within thirty (30) days after permit approval with conditions; provided, however, that the Director may grant reasonable extensions, not to exceed an additional thirty (30) days, in cases of practical difficulty.
5. Failure to sign and record the covenant within the prescribed period shall require a new application for any use of the subject property.

16.06.150 Ex parte contact, conflict of interest and bias.

The following rules shall govern any challenges to a decision maker's participation in a quasi-judicial or legislative action:

A. Ex parte contacts:

1. Any factual information obtained by a decision maker outside the context of a quasi-judicial hearing shall be deemed an ex parte contact.
2. Prior to the close of the record in any particular matter, any decision maker that has obtained any material factual information through an ex parte contact shall declare the content of that contact and allow any interested party to rebut the substance of that contact.
3. This rule does not apply to legislative proceedings.

B. Conflict of interest - Whenever a decision maker, or any member of a decision maker's immediate family or household, has a financial interest in the outcome of a particular quasi-judicial or legislative matter, that decision maker shall not participate in the deliberation or decision on that matter.

C. Bias:

1. All decisions in quasi-judicial matters shall be fair, impartial and based on the applicable approval standards and the evidence in the record.
2. Any decision maker who is unable to render a decision on this basis in any particular matter shall refrain from participating in the deliberation or decision on that matter.
3. This rule does not apply to legislative proceedings.

16.06.160 Legislative hearing process.

A. Purpose.

1. Legislative actions involve the adoption or amendment of the City's land use regulations, Comprehensive Plan, maps inventories and other policy documents that affect the entire City or large portions of it.
2. Legislative actions shall be processed pursuant to a Type IV procedure.

B. Planning Commission Review:

1. Hearing required:

- a. The Planning Commission shall hold at least one public hearing before recommending action on a legislative proposal.
- b. Any interested person may appear and provide written or oral testimony on the proposal at or prior to the hearing.
- c. The Director shall notify the Oregon Department of Land Conservation and Development (DLCD) as required by the post acknowledgment procedures of ORS 197.610 to 197.625, as applicable.

2. Staff Report - Once the Planning Commission's hearing has been scheduled and noticed in accordance with section 16.06.080(D) and any other applicable laws, the staff shall prepare and make available a report on the legislative proposal at least seven (7) days prior to the hearing.

3. Planning Commission recommendation

- a. At the conclusion of the hearing, the Planning Commission shall adopt a recommendation on the proposal to the City Council.
- b. The Planning Commission shall prepare and forward to the City Council a report and recommendation on its approval or denial of the application.

C. City Council review.

1. Upon a recommendation from the Planning Commission on a legislative action, the City Council shall hold at least one public hearing on the proposal.
2. Any interested person may provide written or oral testimony on the proposal at or prior to the hearing.
3. At the conclusion of the hearing, the City Council may adopt, modify or reject the legislative proposal, or it may remand the matter to the Planning Commission for further consideration.
4. If the decision is to adopt at least some form of the proposal, and thereby amend the City's land use regulations, Comprehensive Plan, official zoning maps or some component of any of these documents, the City Council's decision shall be enacted as an ordinance.
5. Not later than five (5) days following the City Council's final decision, the Director shall mail notice of the decision to DLCD in accordance with ORS 197.615 (2).

16.06.170 Objections to procedure.

- A. Any party who objects to the procedure followed in any particular matter, including bias, conflict of interest and undisclosed ex parte contacts, must make a procedural objection prior to the City's rendering a final decision.
- B. Procedural objections may be raised at any time prior to a final decision, after which they are deemed waived.
- C. In making a procedural objection, the objecting party must identify the procedural requirement that was not properly followed and identify how the alleged procedural error harmed that person's substantial rights.

16.06.180 Appeals.

- A. Appeals of any non-final decisions by the City must comply with the requirements of this section.
- B. Appeal of Type 1, II, and III decisions.
 - 1. A Notice of Appeal of a Type I, II or III decision must be received in writing by the Director within twelve (12) calendar days from the date notice of the challenged decision is mailed.
 - 2. Late filing of any appeal shall be deemed a jurisdictional defect and will result in the automatic rejection of any appeal so filed.
- C. The following must be included as part of the Notice of Appeal:
 - 1. The City planning file number and date the decision to be appealed was rendered.
 - 2. The name, mailing address and daytime telephone number for each appellant.
 - 3. A statement of how each appellant has an interest in the matter and standing to appeal.
 - 4. A statement of the specific grounds for the appeal.
 - 5. Failure to include the appeal fee within appeal period is deemed to be a jurisdictional defect and will result in the automatic rejection of any appeal so filed.
- D. Standing to Appeal. - The following rules prescribe who has standing to appeal.
 - 1. Type I and II decisions:
 - a. Only the applicant and those persons who submitted written comments have standing to appeal.
 - 2. Type III decisions:
 - a. Only the applicant and those persons who participated either orally or in writing have standing to appeal a Type III decision.
 - b. Grounds for appeal are limited to those issues raised either orally or in writing before the close of the public record.
- E. Notice of the appeal hearing.
 - 1. The City shall issue notice of the appeal hearing to all parties who participated either orally or in writing before the close of the public record.

2. Notice of the appeal hearing shall contain the following information:
 - a. The file number and date of the decision being appealed;
 - b. The time, date and location of the public hearing;
 - c. The name of the applicant, owner and appellant (if different);
 - d. The street address or other easily understood location of the subject property;
 - e. A description of the permit requested and the applicant's development proposal;
 - f. A brief summary of the decision being appealed and the grounds for appeal listed in the Notice of Appeal;
 - g. For Type I and II applications, a statement that the appeal hearing is confined to the issues raised in the notice of appeal;
 - h. A general explanation of the requirements for participation and the City's hearing procedures.
 - i. A statement that the failure of an issue to be raised in the hearing, in person, or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes an appeal to the Land Use Board of Appeals based on that issue.

F. Appeal hearing, scope of review. Appeal hearings shall comply with the procedural requirements of section 16.06.110.

16.06.190 Expiration of an approval.

- A. Unless otherwise stated in an approval decision, all quasi-judicial permit approvals, except for zoning map or Comprehensive Plan map amendments, automatically become void if any of the following events occur:
 1. If, within one (1) year of the date of the final decision, a building permit has not been issued; or
 2. If, within one (1) year of the date of the final decision, the activity approved in the permit has not commenced or, in situations involving only the creation of lots, the land division has not been approved by the Director and recorded.
- B. Expiration of an approval shall require a new application for any use on the subject property that is not otherwise allowed outright.
- C. Deferral of the expiration period due to appeals.
 1. If a permit decision is appealed beyond the jurisdiction of the City, the expiration period shall not begin until review before the Land Use Board of Appeals (LUBA) and the Appellate Courts has been completed, including any remand proceedings before the City.
 2. The expiration period provided for in this section will begin to run on the date of final disposition of the case (the date when an appeal may no longer be filed).

16.06.200 Extension of an approval.

- A. Director's extension.
 - 1. The Director may extend, prior to its expiration, any approved permit for a period of six (6) months up to an aggregate period of one year; provided, however, that there has been substantial implementation of the permit.
 - 2. Any request for an extension shall be reviewed and decided upon by the Director as a Type II decision.
- B. Substantial implementation of a permit shall require at a minimum, for each six (6) month extension, demonstrable evidence in a written application showing:
 - 1. The permit holder has applied for all necessary additional approvals or permits required as a condition of the land use or limited land use permit;
 - 2. Further commencement of the development authorized by the permit could not practicably have occurred for reasons beyond the reasonable control of the permit holder;
 - 3. The request for an extension is not sought for purposes of avoiding any responsibility imposed by this code or the permit or any condition there under; and
 - 4. There have been no changes in circumstances or the law likely to necessitate significant modifications of the development approval of conditions of approval.

16.06.210 Reapplication limited.

If an application is denied following the close of the public hearing, no reapplication for the same or substantially similar proposal may be made for one (1) year following the date of final decision denying the permit.

16.06.220 Interpretation.

- A. Where provision of Titles 16 through 18 conflicts with another city ordinance or requirement, the provision or requirement that is more restrictive or specific shall control.
- B. Questions of interpretation or applicability to specific properties of any provision of titles 16 through 18 shall be decided pursuant to a type II procedure.

16.06.230 Conformity of permits.

The City shall not accept any application for a permit, certificate or other approval, including building permit applications, for any property that is not in full compliance with all applicable provisions of Titles 16 through 18 and any permit approvals previously issued by the City. This provision shall not apply to permits, certificates, or other approval sought in order to correct violations of the provisions of Titles 16 through 18.

16.06.240 Authorization of similar uses.

- A. A use not specifically listed in the allowed uses of a district, may nonetheless be allowed if it is deemed to be similar in nature and impact to the uses allowed in the applicable zone. Applications for similar use determinations shall be processed pursuant to a Type II procedure.
 - 1. Any similar use so authorized must be similar to, or of the same type as, the uses allowed in the underlying district.

2. This section does not, however, allow the authorization of a use, which is allowed in some other zone.

16.06.250 Reconsideration of a final decision.

- A. Under this section, parties with standing may seek reconsideration of a final decision.
- B. Reconsideration is warranted where the City's decision indicates the decision maker failed to understand or consider certain relevant facts or misinterpreted the application in some material way.
- C. The City must receive any request for reconsideration within ten (10) days of when the decision in question was rendered and must specifically describe the alleged misunderstanding or misinterpretation.
- D. A request for reconsideration shall not stay the effectiveness of the City's final decision, nor shall it affect any applicable appeal deadlines to the Land Use Board of Appeals (LUBA).
- E. If the request is granted, the Director shall notify all affected parties that the decision will be reconsidered.
- F. If the reconsideration is based upon new evidence or information. All parties with standing shall have the opportunity to review and comment on the new evidence or information.
- G. Any request for reconsideration by the applicant shall be deemed a waiver of the 120-day deadline under Section 16.06.060.

16.06.260 Revocation of a previously approved permit.

- A. In the event an applicant, or the applicant's successor in interest, fails to fully comply with all conditions of permit approval or otherwise does not comply fully with the City's approval, the City may institute a revocation or modification proceeding under this section.
- B. All quasi-judicial permits may be revoked or modified if the Planning Commission determines a substantial likelihood that any of the following situations exists:
 1. One or more conditions of the approval have not been implemented or have been violated;
 2. The activities of the use, or the use itself, are substantially different from what was approved; or,
 3. The use is subject to the nonconforming use regulations, if the applicant has not obtained approval, and has substantially changed its activities or substantially increased the intensity of its operations since the use became nonconforming.
- C. Revocation or modification shall be processed as a Type IV decision and the City or any private complaining party shall have the burden of proving, based on substantial evidence in the whole record, that the applicant or the applicant's successor has in some way violated the City's approval.
- D. Possible Actions at the Revocation Hearing.
 1. Depending on the situation, the Planning Commission may take any of the actions described in section (D)(3), below.
 2. The Planning Commission may not approve the new use or a use that is more intense

than originally approved unless the possibility of this change has been stated in the public notice.

3. Uses or developments which are alleged to have not fulfilled conditions, violate conditions or the use is not consistent with the City's approval may be subject to the following actions:
 - a. The use continues as is:
 - 1) The Planning Commission may find that the use or development is complying with the conditions of the approval.
 - 2) In this case, the use or development shall be allowed to continue.
 - b. The Planning Commission may modify the approval if it finds that the use or development does not fully comply with the conditions of approval, that the violations are not substantial enough to warrant revocation, and that the use can comply with the original approval criteria if certain conditions are met. In this case, the Planning Commission may modify the existing conditions, add new conditions to ensure compliance with the approval criteria, or refer the case to the code compliance officer for enforcement of the existing conditions.
 - c. The Planning Commission may revoke the approval if it finds there are substantial violations of conditions or failure to implement conditions of prior land use decisions, such that the original approval criteria for the use or development are not being met.
- E. In the event that the permit approval is revoked, the use or development becomes illegal.
 1. The use or development shall be terminated within thirty (30) days of the date of the Planning Commission decision, unless the decision provides otherwise.
 2. In the event the decision maker's decision on a revocation request is appealed, the revocation action shall be stayed pending the final outcome of the appeal.

16.06.270 Transfer of approval rights.

- A. Unless otherwise stated in the City's permit decision, any approval granted under Titles 16 through 18 of this code runs with the land and is transferred with ownership of the land.
- B. Any conditions, time limits or other restrictions imposed with a permit approval shall bind all subsequent owners of the property for which the permit was granted.

16.06.280 Fees.

- A. The City may adopt by resolution, and revise from time to time, a schedule of fees for applications and appeals.
- B. Unless limited by state law, fees shall be based upon the City's actual or average cost of processing the application or conducting the appeal process and shall be credited to the general fund of the City.
- C. The requirements of this section shall govern the payment, refund and reimbursement of fees.
- D. Payment.

1. All fees shall be due and payable at the time the application or appeal is submitted.
 2. No application or appeal shall be accepted without the proper fee being paid.
- E. Refunds. Fees will only be refunded as provided in this subsection:
1. When a fee is paid for an application, which is later found to not be required, the City shall refund the fee.
 2. Errors. When an error is made in calculating a fee, overpayments will be refunded.
 3. Refund upon withdrawal of an application.
 - a. In the event an applicant withdraws an application, the planning department shall refund the unused portion of the fee.
 - b. In this case, the planning department will deduct from the fee the City's actual costs incurred in processing the application prior to withdrawal.
- F. Fee waivers.
1. The Director may waive all or any portion of an application or appeal fee if, in the opinion of the Director, an application must be resubmitted because of an error made by the City.
 2. No fee or transcript payment, however, shall be required for applications or appeals filed by the City or by a Citizens Advisory Committee.

16.06.290 Enforcement actions

- A. Any interested person or organization having knowledge of a violation of the Comprehensive Plan and implementing ordinances, may report such violation on the forms provided by the Director.
- B. Upon submission of a violation report, the Director or the City Attorney may investigate the alleged violation take the appropriate legal action to correct the violation, if found to exist.
- C. Violations of Titles 16 through 18 constitute nuisances and may be abated by appropriate proceedings.
- D. Upon request from the Director or direction by the City Council, the City Attorney, at the City Attorney's discretion, may employ any appropriate legal remedy at law or equity, including criminal prosecution, when applicable, to enforce the provisions of the Comprehensive Plan, zoning, subdivision, land use procedures, and development ordinances, and any other Comprehensive Plan implementing ordinance.
- E. No intent, knowledge or other mental element is required to be proven in a prosecution under this chapter.
- F. Any person or corporation who violates any provision of Titles 16 through 18 shall be subject to a fine of not more than one thousand (\$1,000.00) dollars.
- G. Each day a violation continues or occurs shall be deemed to be a separate offense.
- H. Enforcement remedies not affected by issuance of a development permit.

1. The issuance of a development permit shall not preclude the City from later seeking enforcement of any ordinance or Comprehensive Plan violation occurring as a result of the development permit without regard as to whether such violation could have been discovered prior to the issuance of the permit or expiration of the period for appeal of such permit.
2. The review of the permit application by the Director is intended to assist the developer in avoiding obvious violations before they occur, and is not intended because of the time restrictions and nature of the material reviewed, to be a final determination of the compliance with municipal ordinances or the Comprehensive Plan.