



## City of Coburg Land Use Application Guidelines

### Type III Procedure (Quasi-Judicial)

(ORDINANCE A-200G, ARTICLE X.D. Administration and Enforcement)

The purpose of land use applications is to establish standard decision-making procedures that will enable the City, the applicant, and the public to reasonably review applications and participate in the local decision-making process in a timely and effective way. **Table X.1** of the Coburg Zoning Code (ORD. A-200G) provides a key for determining the review procedure and the decision-making body for particular approvals. The procedure “type” assigned to each application governs the decision-making process for that permit or approval. There are four types of permit/approval procedures: Type I, II, III, and IV.

Type III decisions are made by the Planning Commission after a public hearing, with appeals reviewed by the City Council. Type III decisions generally use discretionary approval criteria.

1. **Pre-application Conference.** A pre-application conference is required for all Type III applications. The requirements and procedures for a pre-application conference are described in Section F.3
2. **Application Requirements.**
  - a. Application forms. Type III applications shall be made on forms provided by the City Planning Official or designee; if a Type II application is referred to a Type III hearing, either voluntarily by the applicant or staff, or upon appeal, no new application is required.
  - b. Submittal Information. When a Type III application is required, it shall:
    - (1) Include the information requested on the application form;
    - (2) Be filed with one copy of a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision-making.  
Note: additional information may be required under the specific application requirements for each approval;
    - (3) Be accompanied by the required fee; and

- (4) Include one set of pre-stamped and pre-addressed envelopes for all real property owners of record who will receive a notice of the application as required in Section 3. The records of the Lane County Assessor's Office are the official records for determining ownership. The applicant shall produce the notice list. At the applicant's request, and upon payment of a fee noted on the City's fee list, the City shall prepare the public notice mailing list. The City or the applicant shall use the most current County real property assessment records (RLID) to produce the notice list. The City shall mail the notice of application.

### 3. Notice of Hearing.

- a. Mailed notice. The City shall mail the notice of the Type III action. The records of the Lane County Assessor's Office are the official records for determining ownership and can be accessed by RLID – Regional Land Use Information Database [www.rlid.org](http://www.rlid.org). Notice of a Type III application hearing or Type II appeal hearing shall be given by the City Planning Official or designee in the following manner:
  - (1) At least 10 days before the hearing date, notice shall be mailed to:
    - (i) The applicant and all owners or contract purchasers of record of the property that is the subject of the application;
    - (ii) All property owners of record within 100 feet of the site;
    - (iii) Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies. The City shall notify the road authority, and rail authority and owner, when there is a proposed development abutting or affecting their transportation facility and allow the agency to review, comment on, and suggest conditions of approval for the application;
    - (iv) Owners of airports in the vicinity shall be notified of a proposed zone change in accordance with ORS 227.175;
    - (x) Any neighborhood or community organization recognized by the City Council and whose boundaries include the property proposed for development;
    - (xi) Any person who submits a written request to receive notice;
    - (xii) For appeals, the appellant and all persons who provided testimony in the original decision; and

- (xiii) For a land use district change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.
  - (2) The City Planning Official or designee shall have an affidavit of notice be prepared and made a part of the file. The affidavit shall state the date that the notice was mailed to the persons who must receive notice.
  - (3) At least 14 business days before the hearing, notice of the hearing shall be printed in a newspaper of general circulation in the City. The newspaper's affidavit of publication of the notice shall be made part of the administrative record.
- b. Content of Notice. Notice of appeal of a Type II Administrative decision or notice of a Type III hearing to be mailed and published per Subsection 1 above shall contain the following information:
- (1) The nature of the application and the proposed land use or uses that could be authorized for the property;
  - (2) The applicable criteria and standards from the development code(s) that apply to the application;
  - (3) The street address or other easily understood geographical reference to the subject property;
  - (4) The date, time, and location of the public hearing;
  - (5) A statement that the failure to raise an issue in person, or by letter at the hearing, or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue, means that an appeal based on that issue cannot be filed with the State Land Use Board of Appeals;
  - (6) The name of a City representative to contact and the telephone number where additional information on the application may be obtained;
  - (7) A statement that a copy of the application, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards can be reviewed at Coburg City Hall at no cost and that copies shall be provided at a reasonable cost;
  - (8) A statement that a copy of the City's staff report and recommendation to the hearings body shall be available for review at no cost at least seven days before the hearing, and that a copy shall be provided on request at a reasonable cost;
  - (9) A general explanation of the requirements to submit testimony,

and the procedure for conducting public hearings; and

- (10) The following notice: “Notice to mortgagee, lien holder, vendor, or seller: The City of Coburg Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser.”

#### **4. Conduct of the Public Hearing.**

- a. At the commencement of the hearing, the hearings body shall state to those in attendance:
  - (1) The applicable approval criteria and standards that apply to the application or appeal;
  - (2) A statement that testimony and evidence shall concern the approval criteria described in the staff report, or other criteria in the comprehensive plan or land use regulations that the person testifying believes to apply to the decision;
  - (3) A statement that failure to raise an issue with sufficient detail to give the hearings body and the parties an opportunity to respond to the issue, means that no appeal may be made to the State Land Use Board of Appeals on that issue;
  - (4) Before the conclusion of the initial evidentiary hearing, any participant may ask the Planning Commission for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing. The hearings body shall grant the request by scheduling a date to finish the hearing (a “continuance”) per paragraph 2 of this subsection, or by leaving the record open for additional written evidence or testimony per paragraph 3 of this subsection.
- b. If the Planning Commission grants a continuance, the completion of the hearing shall be continued to a date, time, and place at least seven days after the date of the first evidentiary hearing. An opportunity shall be provided at the second hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the second hearing, any person may request, before the conclusion of the second hearing, that the record be left open for at least seven days, so that they can submit additional written evidence or testimony in response to the new written evidence;
- c. If the Planning Commission leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days after the hearing. Any participant may ask the City in writing for an opportunity to respond to new evidence

submitted during the period that the record was left open. If such a request is filed, the Planning Commission shall reopen the record.

- (1) When the Planning Commission reopens the record to admit new evidence or testimony, any person may raise new issues that relate to that new evidence or testimony;
- (2) An extension of the hearing or record granted pursuant to Section D is subject to the limitations of ORS 227.178 (“120-day rule”), unless the continuance or extension is requested or agreed to by the applicant;
- (3) If requested by the applicant, the City shall allow the applicant at least seven days after the record is closed to all other persons to submit final written arguments in support of the application, unless the applicant expressly waives this right. The applicant's final submittal shall be part of the record but shall not include any new evidence;
- (4) The record shall contain all testimony and evidence that is submitted to the City and that the hearings body has not rejected;
- (5) In making its decision, the hearings body may take notice of facts not in the hearing record (e.g., local, state, or federal regulations; previous city decisions; case law; staff reports). The review authority must announce its intention to take notice of such facts in its deliberations, and allow persons who previously participated in the hearing to request the hearing record be reopened, if necessary, to present evidence concerning the noticed facts;
- (6) The review authority shall retain custody of the record until the City issues a final decision.

d. Participants in the appeal of a Type II Administrative decision or participants in a Type III hearing are entitled to an impartial review authority as free from potential conflicts of interest and pre-hearing ex parte contacts (see Section D(6)below) as reasonably possible. However, the public has a countervailing right of free access to public officials. Therefore:

- (1) At the beginning of the public hearing, hearings body members shall disclose the substance of any pre-hearing ex parte contacts (as defined in Section D(5) below) concerning the application or appeal. He or she shall state whether the contact has impaired their impartiality or their ability to vote on the matter and shall participate or abstain accordingly;

- (2) A member of the hearings body shall not participate in any proceeding in which they, or any of the following, has a direct or substantial financial interest: their spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which they are then serving or have served within the previous two years, or any business with which they are negotiating for or have an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the hearing where the action is being taken;
- (3) Disqualification of a member of the hearings body due to contacts or conflict may be ordered by a majority of the members present and voting. The person who is the subject of the motion may not vote on the motion to disqualify;
- (4) If a member of the hearings body abstains or is disqualified, the City shall provide a substitute in a timely manner subject to the impartiality rules in Sections 4.1.400.D(4-5). In this case, a member of the City Council appointed by the Mayor may substitute for a member of the Planning Commission.
- (5) If all members of the Planning Commission abstain or are disqualified, the City Council shall be the hearing body. If all members of the City Council abstain or are disqualified, a quorum of those members present who declare their reasons for abstention or disqualification shall be re-qualified to make a decision;
- (6) Any member of the public may raise conflict of interest issues prior to or during the hearing, to which the member of the hearings body shall reply in accordance with this section.

e. Ex parte communications.

- (1) Members of the hearings body shall not:
  - (i) Communicate directly or indirectly with any applicant, appellant, other party to the proceedings, or representative of a party about any issue involved in a hearing without giving notice per Section C above;
  - (ii) Take official notice of any communication, report, or other materials outside the record prepared by the proponents or opponents in connection with the particular case, unless all participants are given the opportunity to respond to the noticed materials.
- (2) No decision or action of the hearings body shall be invalid due to ex parte contacts or bias resulting from ex parte contacts, if the person receiving contact:

- (i) Places in the record the substance of any written or oral ex parte communications concerning the decision or action; and
  - (ii) Makes a public announcement of the content of the communication and of all participants' right to dispute the substance of the communication made. This announcement shall be made at the first hearing following the communication during which action shall be considered or taken on the subject of the communication.
- (3) A communication between City staff and the hearings body is not considered an ex parte contact.

f. Presenting and receiving evidence.

- (1) The hearings body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant or personally derogatory testimony or evidence;
- (2) No oral testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing, only as provided in Section D;
- (3) Members of the hearings body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.

**5. The Decision Process.**

- a. Basis for decision. Approval or denial of an appeal of a Type II Administrative decision or of a Type III application shall be based on standards and criteria in the development code. The standards and criteria shall relate approval or denial of a discretionary development permit application to the development regulations and, when appropriate, to the comprehensive plan for the area in which the development would occur and to the development regulations and comprehensive plan for the City as a whole;
- b. Findings and conclusions. Approval or denial shall be based upon the criteria and standards considered relevant to the decision. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts;

- c. Form of decision. The Planning Commission shall issue a final written order containing the findings and conclusions stated in subsection 2, which either approves, denies, or approves with specific conditions. The Planning Commission may also issue appropriate intermediate rulings when more than one permit or decision is required;
- d. Decision-making time limits. A final order for any Type II Administrative Appeal or Type III action shall be filed with the City Planning Official or designee within ten business days after the close of the deliberation;
- e. Notice of Decision. Written notice of a Type II Administrative Appeal decision or a Type III decision shall be mailed to the applicant and to all participants of record within ten business days after the hearings body decision. Failure of any person to receive mailed notice shall not invalidate the decision, provided that a good faith attempt was made to mail the notice.
- f. Final Decision and Effective Date. The decision of the hearings body on any Type II appeal or any Type III application is final for purposes of appeal on the date it is mailed by the City. The decision is effective on the day after the appeal period expires. If an appeal is filed, the decision becomes effective on the day after the appeal is decided by the City Council. The notification and hearings procedures for Type III applications on appeal to the City Council shall be the same as for the initial hearing. An appeal of a land use decision to the State Land Use Board of Appeals must be filed within 21 days of the City Council's written decision or, in the case of Type I decision, within 21 days of the administrative decision date.