

## Chapter 17.04

### GENERAL PROVISIONS

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## Article I. General Provisions

### 17.04.010 Title.

This title shall be known as the “zoning ordinance” of the city of Port Orford. (Ord. 278 § 1.010, 1977)

### 17.04.020 Purposes.

The several purposes of this title are: to encourage the most appropriate use of land; to conserve and stabilize the value of property; to encourage any legitimate use of the land to locate in such a place in the city that it may prosper without harm to its neighbors or to the economy of the city as a whole; to aid in the rendering of fire and police protection; to provide for adequate light and air; to lessen congestion; to encourage the orderly growth of the city; to prevent undue concentration of the population; to facilitate adequate provisions for community utilities and facilities such as water, sewerage and transportation; and in general to promote public health, safety, convenience and general welfare. (Ord. 278 § 1.020, 1977)

### 17.04.030 Definitions

As used in this chapter the masculine includes the feminine and neuter and the singular includes the plural. The following words and phrases, unless the context otherwise requires, shall mean:

“Accessory structure or use” means a structure or use incidental and subordinate to the main use of the property, and which is located on the same lot with the main use.

“Alley” means a street which affords only a secondary means of access to property.

“Average Slope” means the average of percent slope between the highest and lowest points where development activity is to occur on the property resulting from

the division of the increase in elevation in feet by the actual distance between the two points as measured in feet in flat plane on a map.

“Building” means a structure built for the support, shelter or enclosure of persons, animals, chattels or property of any kind.

“Building footprint” means the outline of a building, as measured around its foundation.

“Childcare facility” means an establishment or place, not a part of a public school system, in which more than three children not of common parentage, under the age of 14 years, are commonly received for a period not exceeding 12 hours per day, for the purpose of being given board, care, or training apart from their parents or guardians.

“Cluster residential” means a development technique wherein house sites or structures are grouped closer together with the remainder of the tract left in its natural state or as landscaped open space. It does not necessarily have a mixture of housing types and uses, and is done in a unit, rather than planned phases. Structures can be in single ownership, be individually owned, or be in condominium ownership.

“Comprehensive Plan” means comprehensive development strategies related to the future economic and physical growth and development of the City that are relied on by the City of Port Orford, including plans, maps and reports, or any combination thereof.

“Conditional use” means the relaxation of strict terms of this ordinance to permit uses in districts where such uses require additional controls and safeguards not required for outright permitted uses.

“Condominium” means property submitted under the provisions of ORS Chapter 100.

“Development activity” means any use or proposed use of land that requires disturbance of the vegetation or spoil or which requires action of the Planning Division or Building Division to allow the construction or

modification of structures or other improvements or to allow the division of the land.

“Director” means City Planning Director

“Drive-through/drive-up facility” means a facility or structure that is designed to allow drivers to remain in their vehicles before and during an activity on the site. Drive-through facilities are a type of site development that is usually found in conjunction with a retail sales and service use. Drive-through facilities may serve the primary use of the site or may serve accessory uses.

“Dwelling” means a building or portion thereof designed for occupancy by one or more families.

“Dwelling, single-family” means a detached building containing one dwelling unit.

“Dwelling, two-family” means a building designed for occupancy by two families, living separately, including duplex and semi-detached dwellings. A two-family dwelling may also be referenced as a duplex.

“Dwelling, Multifamily” means a building containing three or more dwelling units on an individual lot, including, but not limited to multiplexes, apartments and condominiums.

“Engineer” a certified geotechnical engineer or a registered professional engineer licensed by the State of Oregon with knowledge and experience relating to geology and geotechnical principles.

“Family” means an individual, or two or more persons related by blood, marriage, legal adoption or guardianship, living together in a dwelling unit in which board and lodging may also be provided for not more than four additional persons, excluding servants; or a group of not more than five persons, who need not be related by blood, marriage, legal adoption or

guardianship living together in a dwelling unit.

“Farming” or “farm use” means the commercial cultivation of the ground; the raising or harvesting of crops or other plants including trees or the feeding, breeding or management of animals including fowl, fish and bees, or any combination thereof and including uses and structures incidental to the above uses.

“Fill” means the placement by man of sand, sediment, soil, rock, concrete, bricks, wood, glass, garbage, plastics, metal, or other material, usually in submerged lands or wetlands, to create new uplands or raise the elevation of land, subject to State law administered by the Oregon Division of State Lands.

“Floor area” means the area included in surrounding walls of a building, or portion thereof, exclusive of vent shafts and courts.

“Gable” means the upper, usual triangular part of an end wall enclosed by the sloping ends of a ridged roof.

“Geologic hazard areas.” Geologic Hazard Areas in Port Orford are areas shown on the Natural Hazard Inventory Maps adopted into the Goal 7 Element of the Port Orford Comprehensive Plan, including the Oregon Department of Geology and Mineral Industries (DOGAMI) Bulletin 90 Land-Use Geology of Western Curry County, Oregon and the DOGAMI maps known variously as “Further Review Areas.” Geologic Hazard Areas include, but are not limited to:

a) earthflow and slump topography with moderately sloping terrain and irregularities of slope, drainage, or soil distribution;

b) areas of recent earth movement shown by tension cracks, bowed trees and other indicators;

c) steep slope mass movement areas which are areas subject to localized debris slide, debris flow, rockfall, or rock slide;

d) other areas as may be identified in the preparation of assessments and reports pursuant to the requirements of Section 17.16.080.

Geologic Hazard Areas specifically include those areas, which, because of their relation to or location with respect to Geologic Hazard Areas, are in jeopardy of rapidly moving landslides.

“Geologist” means a certified engineering geologist licensed by the State of Oregon as provided by ORS 672.505 to 672.705.

“Grade (ground level)” means the average of the finished ground level at the center of all walls of the building. In case a wall is parallel to and within five feet of a sidewalk, the ground level shall be measured at the sidewalk.

“Health care established” means an establishment which provides sleeping and eating facilities to persons receiving medical, obstetrical or surgical care and nursing service on a continuous basis.

“Height of buildings” means the vertical distance from the “grade” to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitch or hip roof.

“Hip” means the external angle in which adjacent roof slopes meet each other.

“Home occupation” means a lawful occupation carried on within a dwelling or an enclosure of less than four hundred (400) square feet in a dwelling or building accessory to a dwelling, by members of a family occupying the dwelling as a residence provided the residential character of the building is maintained and the occupation conducted in such a way as to not give an outward appearance of a business in the ordinary meaning of the term, except as provided in Section

17.16.050, nor infringe upon the right of neighboring residents to enjoy the peaceful occupancy of their homes.

“Homeowner’s Association” means the organization of owners of lots in a planned community, created under ORS 94.625.

“Kennel” means a lot or building in which four or more dogs or cats four months of age or older are kept commercially for board, propagation or sale.

“Landscaping” means any combination of living plants such as trees, shrubs, plants, vegetative ground cover or turf grasses, and may include structural features such as walkways, fences, benches, plazas, works of art, reflective pools, fountains or the like. Also includes irrigation systems, mulches, topsoil, and re-vegetation or the preservation, protection and replacement of trees.

“Landscaping coverage” means the area of a lot covered by landscaping.

“Lot” means a unit of land that is created by a subdivision of land (ORS 92.010) in compliance with all applicable zoning and the City of Port Orford Subdivision Ordinance; or a lot of record created by deed or land sales contract and duly recorded in Curry County property records prior to applicable zoning, subdivision and partitioning ordinances, exclusive of units of land created solely to establish a separate tax account.

“Lot area” means the total horizontal area within the lot lines of a lot.

Lot, Corner. “Corner lot” means a lot abutting on two intersecting streets neither of which is an angle greater than one hundred thirty-five (135) degrees.

Lot, Depth. “Lot depth” means the horizontal distance from the midpoint of the front lot line to the midpoint of the rear lot line.

Lot, Interior. “Interior lot” means a lot other than a corner lot.

Lot Line, Front. “Front lot line” means, in the case of an interior lot, the lot lines separating the lot from the street other than an alley, and in the case of a corner lot, the shortest line along a street other than an alley.

Lot Line, Rear. “Rear lot line” means a lot line which is opposite and most distant from the front lot line and in the case of an irregular, triangular, or other shaped lot, a line ten feet in length within the lot parallel to and at a maximum distance from the front lot lines.

Lot Line, Side. “Side, lot line” means any lot line not a front or rear lot line.

“Lot line” means the property line bounding a lot.

“Lot width” means the average horizontal distance between the side lot lines, excluding appendages of less than (30) feet in width.

“Manufactured home” means a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction.

“Manufactured home park” means any place where four or more manufactured dwellings are located within 500 feet of one another on a lot, parcel or unit of land under the same ownership on a tenancy or lease basis, provided that each manufactured dwelling is not located on a single platted lot located within a subdivision, as defined in ORS Chapter 446.

“Manufacture, light or light manufacture” means the production or manufacture of small-scale goods such as crafts, electronic

equipment, bakery products, printing and binderies, furniture, and similar goods.

“Mobile home” means a vehicle or structure constructed with wheels for movement on public highways, that has sleeping, cooking and plumbing facilities; is intended for human occupancy and permanent residential purposes and that met the Oregon mobile home law in effect at the time of construction. The removal of the wheels does not alter this definition. A mobile home shall only be sited within an established mobile home park.

“Mobile home park” means a place where four or more mobile homes are located within five hundred (500) feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person.

“Nonconforming structure or use” means a lawful existing structure or use at the time the ordinance codified in this title or any amendment thereto becomes effective, which does not conform to the requirements of the zone in which it is located.

“Parking space” means a rectangle not less than twenty (20) feet long and eight and one-half feet wide together with maneuvering and access space required for a standard full-size American automobile to park within the rectangle.

“Person” means a natural person, firm, partnership, association or corporation.

“Planned Community” means any subdivision under ORS 92.010 to 92.190 that results in a pattern of ownership of real property and all the buildings, improvements and rights located on or belonging to the real property and which is created under ORS 94.550 to 94.783.

“Planned unit development” means a single development in which a combination of uses

compatible with the comprehensive plan and with neighboring properties is permitted subject to the procedural requirements of this title. Some examples are: a planned housing project including single and multiple-family homes, apartment houses, and a shopping center; or a recreation complex including the principle use, parking, sanitary facilities and concessions or other similar uses.

“Prefabricated structure” means a building or subassembly which has been in whole or substantial part manufactured or assembled using closed construction at an off-site location to be wholly or partially assembled on-site; but does not include a manufactured structure. (Ord. 2004-05 § New, 2004)

“Projection” means eaves, cornices, platforms, porches, or any type of structure attached to the main building.

“Property Association” means an association of unit owners provided for under ORS 100.405.

“Recreational vehicle” means a vacation trailer or self-propelled vehicle or structure designed for frequent or constant highway use and for vacation recreational purposes, but not for normal residential purposes, and may be equipped with plumbing, sink or toilet.

“Recreational vehicle park” means a place where two or more recreational vehicles, camping vehicles or trailers are located within 500 feet of one another on a lot, tract or parcel of land under common ownership and having as its primary purpose, the renting of space and related facilities for charge or fee, or the provision of space for free in connection with securing the patronage of a person.

“Residential care facility” means a residential care facility, residential training facility, or residential treatment facility as defined in ORS 443.400, licensed by the Oregon Department of Human Services

that provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related to each other or to any other resident of the facility.

“Residential care home” means a residential treatment or training or an adult foster home licensed by or under the authority of the Oregon Department of Human Services that provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related to each other or to any resident of the residential home.

“Retail use, professional office or service use” means uses involved in the sale, lease or rent of new or used products to the general public; personal care services; entertainment; provision of small product repair or services for consumer and business goods. Examples include art, bicycle, dry goods, garden shops; dance classes or trade schools; financial services; contractor office; hair salon; office equipment repair; upholsterer. Such uses do not include automobile-dependent uses that serve motor vehicles, such as vehicle repair, gas station, car wash, auto and truck sales.

“Retirement home” means a facility providing housing for retired persons, which may include provisions for dining, health care, recreation, etc.

“Roadside stand” means a temporary structure designed for the purpose of retail sale of farm commodities grown on the premises.

“Sign” means a presentation or representation, other than a house number, by word, letters, figures, designs, pictures or colors publicly displayed so as to give notice relative to a person, a business, an article of merchandise, a service, and assemblage, a solicitation or a request for aid or other type of advertising. This includes the surface face upon which the representation is displayed.

Stable, Private. “Private stable” means an accessory building where not more than one horse per twenty thousand (20,000) square feet of property is kept for the noncommercial use of owner and guests.

“Street” means the entire width between the boundary lines of every way which provides for public use for the purpose of vehicular and pedestrian traffic and including, but not limited to, “roads,” “highways,” “lanes,” “places,” “avenues” and “alleys.”

“Structural alteration” means any change to the supporting members of a structure including foundation, bearing walls, or partitions, columns, beams or girders, or any structural change in the roof.

“Structure” means that which is built or constructed. An edifice or building or piece of work artificially built up or composed of parts joined together in some definite manner and which requires location on the ground or which is attached to something having location on the ground.

“Substantial improvement” means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either before the improvement or repair is started; or if the structure has been damaged and is being restored, before the damage occurred.

“Tourist facility” means hotels, motels, trailer parks and restaurants, etc.

“Trailer or camping vehicle park” means a lot upon which two or more occupied trailer or camping vehicles are sited or parked for consideration.

“Unified development” means a planned commercial development, designed for multiple uses or multiple structures on a lot more than half acre in size (21,780 square feet), and which share common parking areas, points of access, and pedestrian accommodations.

“Use” means the purpose for which land or a structure is designed, arranged or intended, or for which it is occupied or maintained.

“Wireless telecommunications facility” means an unstaffed facility for the transmission or reception of radio frequency (RF) signals usually consisting of an equipment shelter, cabinet or other enclosed structure containing electronic equipment, a support structure such as a self supporting monopole or lattice tower, antennas, microwave dishes or other transmission and reception devices. This definition includes a “personal wireless services facility” as defined under the Telecommunications Act of 1996.”

Yard, Front. “Front yard” means a yard between side lot lines and measured horizontally at right angles to the front lot line to the nearest point of any building.

Yard, Rear. “Rear yard” means a yard extending between side lot lines and measured horizontally at right angles to the rear lot line from the rear lot line to the nearest point of any building.

Yard Side. “Side yard” means an open space between the front and rear yards measured horizontally and at right angles from the side lot line to the nearest point of any building.(Ord. 411-94 Att. A (part), 1994; Ord. 278 § 1.030, 1977; Ord. 2006-09 § 1.030, 2006) (Ord. 2008-04 § 1.030, 2007)

**17.04.040 Compliance with provisions.**

No structure or lot shall hereafter be used or occupied and no structure or part thereof shall be erected, moved, reconstructed, extended, enlarged or altered contrary to the provisions of this title. (Ord. 278 § 1.040, 1977)

**17.04.050 Classification of zones.**

For the purpose of this title, the city or portion thereof is divided into zones designated as follows:

<b>Zones</b>	<b>Abbreviated Designation</b>
Residential 1	1-R
Residential 2	2-R
Commercial	4-C
Industrial	5-I
Controlled Development	6-CD
Marine Activity	7-MA
Public Facilities and Park	8-PF
Battle Rock Mixed Use	10-MU

(Amended during 1996 codification; Ord. 278 § 1.050, 1977) (Ord. 2008-04 § 1.050, 2007)

**17.04.060 Location of zones.**

The boundaries for the zones listed in this title are indicated on the city zoning map which is adopted and made a part of this title by this reference. The boundaries may be modified in accordance with zoning map amendments which may be adopted by reference. (Ord. 278 § 1.060, 1977) (Ord. 278 § 1.060 by Ord 2008-05, 2007)

**17.04.070 Zoning Map.**

A zoning map or zoning map amendment adopted by Section 17.04.060 or by an amendment thereto shall be prepared by authority of the planning commission or be a modification by the city council of a map or map amendment so prepared. The map or map amendment shall be dated with the effective date of the ordinance that adopts the map or map amendment. A certified print of the adopted map or map amendment shall be maintained in the office of the city administrator as long as this ordinance remains in effect. (Ord. 278 § 1.070, 1977)

**17.04.075 Consolidated Application**

Concurrent Processing. Any application for discretionary permits for one development may be processed

concurrently with other permits under this ordinance as a consolidated application at the applicant's request. All applicable fees shall apply. (Ord. 2009-03 § 085, 2008)

**17.04.080 Interpretation.**

The provisions of this title shall be held to the minimum requirements fulfilling its objectives. Where the conditions imposed by a provision of this title are less restrictive than comparable conditions imposed by any other provision of this title or of any other city ordinance, resolution or regulation, the provisions which are more restrictive shall govern.

(Ord. 278 § 10.010, 1977)

**17.04.085 Minor Text Corrections.**

The planning Commission may correct Chapter 16 and 17 of the Municipal Code in a public meeting without prior notice or a public hearing for the purposes of correcting the arrangement of information and numbering, correcting misspellings, typographical, clerical or grammatical errors, or changing the name of an agency by reason of a name change prescribed by law, provided that the correction does not alter the sense, meaning, effect or substance of this ordinance. If any correction to Chapter 16 and 17 made pursuant to this Section differs in sense, meaning, effect, or substance from any adopted ordinance, the adopted ordinance shall prevail. The City Manager/Recorder shall maintain a record, available for public access, of all corrections made under this Section. (Ord. 2009-03 § 085, 2008)

**Article II. Procedures for Land Use Actions**

**17.04.90 General.**

The following procedures govern the conduct of public hearings for land use actions in the city of Port Orford. (Ord. 99-05 § 1, 1999)

**17.04.100 Notice.**

**A. Published Notice.**

1. When published notice is required to be given, such notice shall include the following information:

a. Date, time, and place of hearing on the proposed action;

b. The type of action to be considered, including, but not limited to changes in the text of the zoning or subdivision ordinances, changes in the comprehensive plan, or changes in the comprehensive plan map or zoning map;

c. A brief summary of the proposed action;

d. A statement the hearing is open to the public and all interested parties are encouraged to attend.

2. Published notice for proposed ordinance text amendments and legislative zone changes shall be advertised in a newspaper of general circulation once a week for two consecutive weeks. The last publication shall be at least seven calendar days prior to the date of the hearing.

**B. Written Notice to Affected Property Owners and Interested Parties.**

1. When required to be given, written notice to affected property owners and interested parties shall include the following information:

a. Date, time and place of hearing;

b. The type of action being considered, including but not limited to, applications for conditional use permits, variances, or amendments to the zoning ordinance;

c. A reasonably written description of the location of the subject property, which may include but is not limited to any one of the following: a map, postal address, legal description, or tax map designation;

d. The nature of the pending issue or proposed use;

e. A list of the applicable criteria upon which a decision will be based;

f. A statement that written comments addressing the findings necessary for a decision may be submitted.

g. A statement that failure to raise an issue during a hearing, in person or by letter, or failure to provide sufficient detail to afford the decision maker and opportunity to respond to the issue precludes appeal on that issue.

h. A general explanation of the requirements for testimony and conduct of the hearing:

i. A statement that the application materials are available for inspection or can be copied at a reasonable cost and staff reports may likewise be inspected seven days prior to the hearing;

j. A name of an officer or employee of the city, along with phone number, from whom additional information can be obtained.

2. Written notice shall be mailed to all property owners within two hundred fifty (250) feet of the external boundaries of the legally described property in the application for all permits and variances.

3. Written notice of a public hearing on a zone use application shall be provided to the owner of an airport, defined by the Department of Transportation as a "public use airport," if the property subject to the zone use hearing is:

a. Within five thousand (5,000) feet of the side or end of a runway of an airport determined by the Department of Transportation to be a "visual airport," or

b. Within ten thousand (10,000) feet of the side or end of the runway of an airport determined by the Department of Transportation to be an "instrument airport."

4. Written notice of a proposed change in zone designation for a mobile home or a manufactured dwelling park shall be mailed to the mailing address for each tenant in the park. Written notice shall be mailed at least twenty (20) days before a hearing.

5. Property Owners.

a. For the purposes of this subsection (B)(5), "property owner" is defined as the person identified as the owner of record on the latest adopted tax rolls of Curry County.

b. Written notice shall be mailed to the property owners identified in subsection (B)(2) of this section. Failure of a property owner to receive written notice shall not invalidate any

action taken by the planning commission or city council, if a good faith attempt was made to comply with the requirements of this article for notice. (Ord. 99-05 § 2, 1999)

#### **17.04.110 Hearing authority.**

The planning commission shall be the initial hearings authority for development proposals which require a quasi-judicial hearing. (Ord. 99-05 § 3, 1999)

#### **17.04.120 Disqualification.**

A. No member of a hearings body shall participate as a hearings officer in a discussion of the proposal or vote on the proposal when any of the following conditions exist:

1. Any of the following have a direct or substantial financial interest in the proposal: the hearings body member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment;

2. The member has a direct private interest in the proposal;

3. For any other valid reason, the member has determined that participation in the hearing and decision cannot be in an impartial manner.

B. A member of a hearings body who owns property within the area entitled to receive notice of the public hearing shall state this fact as a potential conflict of interest. If the member's impartiality or ability to vote on the matter is not impaired, the member shall so state and may either participate or abstain.

C. Any proponent or opponent of a proposal to be heard by the hearings body may challenge the qualification of any member to participate in the hearing and decision. This challenge must state facts by

affidavit in writing relating the member's bias, personal interest, or other facts which would preclude the member from participating in an impartial manner. This challenge shall be delivered to the city recorder not less than forty-eight (48) hours preceding the time set for public hearing. The challenge shall be incorporated into the record of the hearing.

D. No officer or employee of the city who has a financial or other private interest in a proposal shall participate in discussion or give an official opinion to the hearings body without first declaring for the record the nature and extent of such interest.

E. Hearings body members shall reveal any significant pre-hearing or ex parte contacts with regard to any matter at the commencement of the public hearing on the matter. If such contacts have not impaired the member's impartiality or ability to vote on the matter, the member shall so state and may either participate or abstain. Disqualification for reasons other than the member's own judgment may be ordered by a majority of the members of a hearings body present and voting. The member who is the subject of the motion for disqualification may not vote on the motion.

F. An abstaining or disqualified member of the hearings body may be counted for purposes of forming a quorum. A member who represents personal interest at a hearing may do so only by abstaining from voting on the proposal, physically joining the audience and vacating the seat on the hearings body, and making full disclosure of status or position at the time of addressing the hearings body.

G. A member absent during the presentation of evidence in a hearing may not participate in the deliberations or final decision regarding the matter of the hearing unless the member states that he or she has reviewed the evidence received. (Ord. 99-05 § 4, 1999)

**17.04.130 General rules for hearing.**

A. Persons may speak only after being recognized by the presiding officer and must state their full name and address for the record.

B. The hearings body will consider only testimony and information that is relevant to the issue of the requested change and will not allow immaterial or repetitious testimony. (Ord. 99-05 § 5, 1999)

**17.04.140 Burden of Proof and Criteria for Decision.**

A. The burden of proof is upon the proponent. The more drastic the change or the greater the impact of the proposal in the area, the greater is the burden upon the proponent.

B. The proposal must be supported by proof that it conforms to the applicable elements of the comprehensive plan and to applicable provisions of this ordinance, especially the specific criteria set forth for the particular type of decision under consideration.

C. The applicant and any opponent may submit to the hearings body a set of written findings or statements of factual information which are intended to demonstrate the request is in compliance or noncompliance with the required criteria.

D. All of the documents or evidence relied on by an applicant must be submitted to and available from the local government at least twenty (20) days in advance of the hearing, and the staff report to be used at the hearing must be available at least seven days in advance of the hearing. Any party to the application may request and receive a continuance for failure to comply with these requirements. (Ord. 99-05 § 6, 1999)

**17.04.150 Order of proceedings.**

A. The presiding officer will call the public hearing to order and state the case. The presiding officer may establish the time allowed for the presentation of information.

B. Any objections on jurisdictional grounds shall be noted in the record.

C. Disqualifications shall be determined. Members shall announce all potential conflicts of interest.

D. Staff shall present a report which includes the applicable criteria which must be addressed. Staff shall also state that testimony and evidence must be directed toward the applicable criteria or other criteria in the plan or land use regulation which the person believes is applicable to the decision and that failure to raise an issue with sufficient detail to afford the decision makers and parties an opportunity to respond to the issue. City staff may also present additional information whenever allowed by the presiding officer during the proceedings.

E. The hearings body may inspect the area in dispute for purposes of evaluating the proposal.

F. The applicant or those representing the applicant shall present information.

G. Evidence or inquiries by those persons who support the proposed change shall be presented.

H. Evidence or inquiries by those persons who oppose the proposed change shall be presented.

I. Evidence or inquiries by those persons who do not necessarily support or oppose the proposed change shall be presented.

J. Rebuttal testimony may be presented by representatives of those supporting or opposing the proposed change. The scope of material presented during rebuttal shall be limited to matters which were brought up during the course of the hearing. Rebuttal shall be first presented by the applicant or his or her representative and then by those opposed to the proposed change. The presiding officer shall limit rebuttal to avoid redundancy. If new evidence is submitted by the applicant, opponents have the opportunity to rebut. Any participant may request and receive approval for the record to remain open seven days after the hearing.

K. At the close of presentation of information, rebuttal, and written argument, the presiding officer shall declare that the hearing is closed. Thereafter, no further information shall be received except for

specific questions from the hearings body to clarify earlier evidence directed to staff or one of the parties. The opportunity for brief rebuttal shall also be afforded to adverse parties.

L. Once a hearing has been closed, it shall be reopened only upon vote of the hearings body, and only after a showing that:

1. A clarification of testimony is needed by the hearings body; or

2. There is evidence which was not reasonably available at the time of the hearing, the information is now available to the person seeking to reopen the hearing; and the information is factual, substantive, and material.

M. If the hearing is reopened to admit new evidence, then any person may raise new issues relating to the new evidence. (Ord. 99-05 § 7, 1999)

#### **17.04.155 Final action on certain applications required within 120 days.**

A. Except as provided in subsections (B) and (F) of this section, the City shall take final action on an application for a permit or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

B. If an application for a permit, land use decision or zone change is incomplete, the City planner shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section upon receipt by the governing body or its designee of:

1. All of the missing information;

2. Some of the missing information and written notice from the applicant that no other information will be provided; or

3. Written notice from the applicant that none of the missing information will be provided.
- C. If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.
- D. If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.
- E. On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:
1. All of the missing information;
  2. Some of the missing information and written notice that no other information will be provided; or
  3. Written notice that none of the missing information will be provided.
- F. The 120-day period set in subsection (1) of this section may be extended for a specified period of time at the written request of the applicant. Except in the case of an amendment to the Comprehensive Plan or a consolidated application that includes a Comprehensive Plan Amendment under ORS 197.610 (1), the total of all extensions may not exceed 245 days.
- G. ORS 227.178 provides further regulations concerning time frames,

exceptions and refunds that apply in specific circumstances. (Ord. 2009-03 § 155, 2008)

**17.04.160 Decision.**

Following the hearing, the hearings body shall approve, conditionally approve, or deny the application or if the hearing is an appeal, affirm, reverse, or remand that decision that is on appeal. A decision for a development permit shall be made by the hearings body or designate within the time period required by ORS 227.178 and 227.180. The date of decision is the date upon which the final order is signed. (Ord. 99-05 § 8, 1999)

**17.04.170 Findings and Order.**

The hearings body shall prepare findings of fact and a written order which shall include;

- A. Notice of the decision to deny or approve the proposed change;
- B. A statement of the applicable criteria and standards against which the proposal was tested, a statement of the facts which the hearings body used to conclude compliance or noncompliance with the criteria and standards and a statement as to whether the proponent has met the burden of proof;
- C. Special conditions or time limits placed upon approval and a specific statement of what is required to achieve compliance with the conditions;
- D. Notification of rights to appeal;
- E. Limitation on re-application in cases of denial. (Ord. 99-05 § 9, 1999)

**17.04.180 Disposition.**

Within fourteen (14) business days of the adoption of findings of fact and conclusions, the applicant and all other parties to the decision, whether they appeared orally or in writing, shall receive written notice of the final action. The

notice shall state the disposition of the final action, contain instructions for obtaining a copy of the full written final order for the action and contain information for filing an appeal. (Ord. 99-05 § 10, 1999)

#### **17.04.190 Record of Proceedings.**

The secretary to the hearings body shall be present at each hearing and shall have the proceedings recorded stenographically or electronically.

A. Testimony shall be transcribed if required for judicial review or if ordered by the hearings body. Ordinarily, minutes of each hearing shall be written and then approved by the hearings body.

B. The hearings body shall, where practicable, retain as part of the record each item of physical or documentary evidence presented and shall have the items marked to show the identity of the person offering the evidence and whether it was presented on behalf of a proponent or opponent. Exhibits received into evidence shall be retained in the hearing file until after the applicable appeal period has expired, at which time the exhibits may be released to the owner.

C. The findings and order shall be included in the record.

D. A person shall have access to the record of the proceedings at reasonable times, places and circumstances. A person shall be entitled to make copies of the record at the person's own expense. (Ord. 99-05 § 11, 1999)

#### **17.04.200 Right of Review.**

A. A decision regarding a planning commission action may be appealed to the city council by an appellant with standing to appeal by filing a notice of appeal with the city council within fifteen (15) days of the date the notice was mailed.

B. The council may review a planning commission decision on its own motion in accordance with all of the procedural provisions for appeals in this article. (Ord. 99-05 § 12, 1999)

#### **17.04.210 Requirements of Notice of Appeal.**

A notice of appeal shall contain all of the following:

A. Identification of the decision to be reviewed.

B. Statement of the interest of the appellant and whether the appellant has "standing to appeal" as follows:

1. In the case of administrative decision, the person:

a. Was a person entitled to receive mailed notice of the decision, or

b. Was a person whose interests are adversely affected by the decision.

2. In the case of quasi-judicial decisions by the Planning Commission, the person:

a. Appeared before the Planning Commission orally or in writing, or

b. Was a person entitled to receive mailed notice of the hearing prior to the decision or anyone requesting notice of the decision and was a person whose interests are adversely affected by the decision.

3. A person is "adversely affected" by a decision if the decision infringes upon the use and enjoyment of his or her property or otherwise detracts from his or her personal interests. For the purposes of council review under Section 17.04.190B, the city is "adversely affected."

C. Reasons the appellant feels aggrieved by the decision, and how the appellant feels the reviewing body erred in its decision. (Ord. 99-05 § 13, 1999)

#### **17.04.220 Notification of Appeal.**

Written notice of the public hearing to review an appeal shall be provided to the applicant; appellant, and all parties entitled to receive mailed notice prior to or after the original decision. This notification shall comply with Section 17.04.100B of this article. (Ord. 99-05 § 14, 1999)

**17.04.230 Scope of Review.**

A. The reviewing body may limit the scope of the review to the record and receive oral and written arguments based on the record from any party of the initial proceedings. The record presented to the reviewing body shall include:

1. A factual report prepared by the person or body who rendered the decision after initial review;

2. All written and illustrative material submitted by any party and considered in reaching the decision under review, including the staff report;

3. A transcript or minutes of a hearing.

B. During the review of the appeal, the reviewing body may admit new testimony and other evidence. (Ord. 99-05 § 15, 1999)

**17.04.240 Decision.**

A. The reviewing body may affirm, reverse, or modify in whole or in part the decision being appealed. When the reviewing body reverses or modifies a decision, it shall set forth its findings and state its reasons for taking this action as applied to the relevant required criteria and standards set forth in this ordinance. If a matter is remanded back to the planning commission for further consideration, the council shall state its reasons for so doing.

B. The appellant and affected property owners shall receive written notice for the final action within fourteen days of the decision. (Ord. 99-05 § 16, 1999)

**17.04.250 Findings and Order.**

The findings and order shall be prepared in accordance with Section 17.04.170 of this chapter.

**17.04.260 Re-application Following Denial.**

Upon final denial of a development proposal, a new application and fee for the same area or any portion may not be submitted for a period of one year from the date of

denial. However, the applicant may submit a written statement to the planning officer showing how the proposal has been sufficiently modified to overcome the findings for denial or that conditions have changed sufficiently to justify reconsideration of the original or a similar proposal. Upon consideration of the statement, the planning officer may waive the one year waiting period. (Ord. 99-05 § 18, 1999)

**17.04.270 Enforcement.**

A. The location, erection, construction, maintenance, repair, alteration, occupancy, or use of any building, structure, sign, or land, including subdividing or partitioning, contrary to the provisions of this ordinance or to any permit issued hereunder, is an unlawful public nuisance.

B. Method of Enforcement.

1. The city, in addition to other remedies, may institute appropriate actions or proceedings to abate, correct, remove, prevent or restrain the unlawful location, erection, construction, maintenance, repair, alteration, occupancy or use.

2. The owner of the land, building, or premises where a violation has been committed or the lessee or tenant of a building where such a violation has been committed or exists, or the general agent, architect, builder, contractor, or any other person who commits, takes part in, or who assists in any such violation or who maintains any land, building, or premises in which such violations exist, shall be guilty of a violation of this ordinance and shall be subject upon conviction to a fine or not more than two hundred dollars (\$200.00). Each day under which the violation continues shall be considered a separate offense. (Ord. 99-05 § 19, 1999)