

## ARTICLE 3                    DECISION PROCESSES

### SECTION 3.110                BASIS FOR DECISION

The basis for a decision on a land use application and the reasons for approval or denial are contained in **ORS 227.173**.

- (1) Approval or denial of a discretionary permit application shall be based on standards and criteria contained in the City's Comprehensive Plan and implementing ordinances.
- (2) Except for Legislative Land Use Decisions, approval or denial of a land use application shall be based upon and accompanied by:
  - (a) A brief statement that explains the criteria and standards considered relevant to the decision.
  - (b) A statement of the facts relied upon in rendering the decision.
  - (c) An explanation of the justification for the decision based on the criteria, standards and facts set forth.
- (3) An application shall not be approved unless the proposed development of land would be in compliance with the City Comprehensive Plan, this Code and other applicable land use regulations or ordinance provisions. The approval may include such conditions as are authorized by **ORS 227.215** or any city legislation.

### SECTION 3.120                FORM OF DECISION

A land use decision will take one of three forms:

- (1) **Approval.** Approval means the review or hearing body found the approval criteria were satisfied by the presented facts.
- (2) **Approval with Conditions.** Approval with conditions means the review or hearing body found the approval criteria could be satisfied with the application of specified conditions of approval as authorized in this Code.
- (3) **Denial.** Denial means the review or hearing body found the approval criteria were not satisfied by the presented facts and could not be made to comply with attached conditions of approval.

### SECTION 3.200                TYPE OF DECISIONS

**ORS 197 and ORS 227** define four types of decisions utilized by cities to address land use applications. Each type of decision has its own procedural requirements. The four types of decisions are:

- (1) **Administrative Decisions**  
An administrative decision is a decision that correlates the adopted code or ordinance requirements and standards to an individual issue. These interpretations are usually provided by the City Manager or designee. The City Manager shall have decision authority for:

- (a) Property Line Adjustments specified in **Section 2.310**.
- (b) Site Plan Review specified in **Section 2.400**.
- (c) Authorization of Similar Use specified in **Section 4.070**.
- (d) Temporary Manufactured Dwelling Placements specified in **Section 6.144**.
- (e) Final Plat signature specified in **Section 2.337**.
- (f) Flood Plain development permits as specified in **Section 4.210**.

(2) **Legislative Decisions**

A legislative decision produces a general rule, law or policy applicable to everyone under similar circumstances. Legislative decisions have a "presumption of validity." They are the laws that apply to everyone in similar situations.

An example of a Legislative Decision was the adoption of the City's Comprehensive Plan and its implementing ordinances, including this Code. Other legislative decisions provided for in this Code include text amendments and zone change map amendments that affect a group or class of properties within the City. Legislative Amendments to this Code are provided for in **Section 2.700**.

(3) **Quasi-judicial Decisions**

A Quasi-judicial Decision involves a discretionary judgment applying the adopted rules, laws or policies to a specific individual land use situation like determining the permissible use of a specific piece of property. The action is judicial in nature and the hearing body must conduct a fair and impartial hearing. The decision must be based upon demonstrated compliance with the applicable criteria or standards contained in the City Comprehensive Plan, this Code, and other City ordinances or policies, as determined by the factual evidence presented in the public hearing. The applicant for a change in the use of land specified in the Comprehensive Plan and implementing ordinances bears the burden of proof for the requested change.

Examples of Quasi-judicial Decisions provided for in this Code include, but are not limited to, Conditional Uses as provided in **Section 2.500**, Variances as provided in **Section 2.600** or a zone change map amendment for a specific property as provided in **Section 2.700**.

(4) **Limited Land Use Decision**

A Limited Land Use Decision is a form of discretionary decision that does not require a public hearing and is not subject to the requirements of ORS 197.763 for quasi-judicial public hearings.

An example of a limited land use decision in this Code that requires a review by the Planning Commission includes a Tentative Partition Plan specified in **Section 2.320**.

### SECTION 3.300 NOTIFICATION

- (1) **Administrative** actions and interpretations authorized by this Code do not require notifications.
- (2) **Legislative** actions authorized by this Code require one or more public hearings and notification to the general public. In addition to Notice otherwise required by ORS 227.186, any means of notification that provides the general public and organizations believed to have an interest in the legislative issue with reasonable opportunity to be aware of the hearing on the issue is permitted and encouraged.
- (3) **Limited Land Use** reviews or **Quasi-judicial** public hearings authorized by this Code require notification to the applicant and to owners of property within a minimum of 100 feet of the property which is the subject of the notice as identified on the most recent property tax assessment roll where such property is located. Notice shall also be provided to public agencies known to be affected and to any community organization recognized by the City whose boundaries include the site.

The applicant shall provide the City with a list of property owners of record within 100 feet, or greater if specified, of the property subject to the review or hearing.

- (4) **State Ballot Measure 56** requires local governments to mail written individual notice to land owners when the governing body changes the base zoning classification of property, or adopts or amends an ordinance in a manner that limits or prohibits land uses previously allowed in the affected zone.
- (5) The notice of review or hearing shall be mailed at least twenty (20) days prior to the date of the review or hearing; or if two or more reviews or hearings are allowed, ten (10) days before the first review or hearing. For notices that are sent as a result of a new or amendment to a state administrative rule or statute notice shall be mailed within 30 days of the effective date of the administrative rule or statute.
- (6) Notification may be expanded to include properties beyond 100 feet if the Planning Commission or City Council finds that the extent of potential impacts from a proposed development may exceed the 100 foot boundary area.
- (7) The failure of a person to receive the notice as provided in this section shall not invalidate such proceedings if the City can validate by affidavit that such notice was given.
- (8) The notice provided by the City 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 Code and the Plan that apply to the application at issue or indicate where to find criteria.
  - (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 review or public hearing.
  - (e) State that failure of an issue to be raised in a review or hearing, in person or by letter, or failure to provide sufficient detail to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals (LUBA) based on that issue.
  - (f) Include the name and address of the City Manager and the telephone number where additional information may be obtained.
  - (g) State that a copy of the application, all documents and evidence relied upon by the applicant and the applicable criteria are available for inspection at the Tangent City Hall 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 review or hearing and copies will be provided at reasonable cost.
  - (i) Include a general explanation of the requirements for submission of testimony and the procedures for the conduct of reviews or public hearings by the City.
  - (j) The City shall provide written notice of the decision to the Applicant and all parties to the proceeding. The notice shall briefly summarize the decision making process and contain an explanation of appeal rights.
- (9) **Wetland Notice.** The City shall provide the Oregon Division of State Lands, the Applicant and Owner with notice of applications for developments located within areas identified as "Wetlands" on the Tangent Wetlands and Riparian Areas Inventory. No physical alteration shall occur within defined wetland areas until a notice or permit is received from the Division. If the Division fails to respond within thirty days of notice, City approval may be granted with written notice to the applicant and owner that their proposal may require state or federal permits.
- (10) **DLCD Notice of Proposed Amendment.** The City shall notify the Department of Land Conservation and Development (DLCD) of a pending adoption or amendment to the City Comprehensive Plan, Implementing Ordinances, or any other land use ordinance or regulation.
- (a) The notice shall be provided at least 45 days prior to the first evidentiary hearing per ORS197.610, OAR Chapter 660 – Division 18 and Senate Bill 543. The City may consider an amendment or new regulation with less than 45 days' notice if the City Council determines that there are emergency circumstances requiring expedited review.
  - (b) The notice shall include the text of the amendment and any other information the local government believes is necessary to advise DLCD of the proposal. "Text" means the specific language being added to or deleted from the acknowledged plan or land use regulation.
  - (c) Submittal of proposed "map" amendments must include a map of the affected area showing existing and proposed plan and zone designations. The map should be on 8-1/2x11 inch paper. A legal description, tax account number, address or general description is not adequate.

- (d) Submittal of proposed amendments which involve a goal exception must include the proposed language of the exception.
- (e) If the City determines that the statewide goals do not apply to a proposed amendment or new regulation, notice is not required.
- (f) The amendment or new regulation shall be submitted after adoption as provided in **ORS 197.615 (1) and (2)**.

(11) **Manufactured Dwelling Park Notice.** If an application would change the zone of property that includes all or part of a Manufactured Dwelling Park, the City shall provide written notice by first class mail to each existing mailing address for tenants of the Manufactured Dwelling Park at least 20 days prior to the date of the first hearing on the application.

**SECTION 3.400 LIMITED LAND USE REVIEW PROCEDURES**

The following procedures govern the conduct of Limited Land Use Reviews by the Tangent Planning Commission for Tentative Partition Plans. Additional actions may be identified for limited land use review as determined by the City Manager, unless otherwise specified in this code. Written comments may be submitted prior to the review decision. No oral comment or testimony is permitted at the review unless the Planning Commission finds that clarification from the Applicant is needed. If the Planning Commission permits the Applicant to provide additional evidence, rebuttal from other participants shall be permitted.

- (1) At the commencement of a review the Chairperson announces the purpose of the review and shall request a summary of the Staff Report that:
  - (a) States the address or geographic location of the subject property.
  - (b) Explains the nature of the application and the proposed use or uses which could be authorized.
  - (c) Lists the applicable criteria from the ordinance and the plan that apply to the application at issue.
  - (d) State that written testimony and evidence must be directed toward the criteria or other criteria in the plan or ordinances which the person believes to apply to the decision.
  - (e) State that a failure to raise an issue with sufficient detail to afford the decision maker and the parties an opportunity to respond to the issue including failure of the Applicant to raise constitutional or other issues relating to Conditions of Approval precludes appeal to LUBA or to bringing an action for damages in Circuit Court based on that issue. An Applicant is not required to raise an issue unless the Condition of Approval is stated with sufficient specificity to enable the applicant to respond to the condition prior to the close of the final local hearing.

- (f) State that the City shall provide written notice of the decision to the Applicant and all parties to the proceeding. The notice shall briefly summarize the decision making process and contain an explanation of appeal rights.
- (2) The Chair shall request members of the hearing body to declare and identify any actual or potential conflict of interest or any ex-parte contacts on the issue. Members shall place on the record the substance of any written or oral ex-parte communications concerning the decision or action.
- (3) The Tangent Planning Commission may choose to schedule a public hearing to receive testimony if it determines that the proposed development may present possible adverse impacts on surrounding properties, the neighborhood or the City.

**SECTION 3.500 QUASI-JUDICIAL PUBLIC HEARING PROCEDURES**

The following procedures govern the conduct of Quasi-judicial Public Hearings by the Tangent Planning Commission or the Tangent City Council on an application for a land use decision requiring a public hearing:

- (1) A Quasi-judicial Public Hearing is required by the Planning Commission for discretionary land use decisions including, but not limited to: Conditional Uses, Subdivisions, and Variances. Written testimony may be provided at the hearing or prior to the hearing. Oral testimony may be provided at the hearing.
- (2) Quasi-judicial Public Hearings are required by both the Planning Commission and City Council for discretionary land use decisions for a Text or Map Amendment to the Code or Comprehensive Plan initiated by the City or an applicant for a specific property. Written testimony may be provided at the hearing or prior to the hearing. Oral testimony may be provided at the hearing.
- (3) The Planning Commission and City Council may choose to combine their hearings into a single joint public hearing. The Mayor or President of the City Council shall preside at joint hearings. Following the joint public hearing, the Planning Commission will deliberate and make a recommendation to the City Council. The City Council will consider the recommendation of the Planning Commission and following deliberation, make a final decision on the amendment considering the public testimony, factual evidence presented, and compliance with the City Comprehensive Plan and the Statewide Land Use Goals and Guidelines.
- (4) An issue which may be the basis for an appeal to the Land Use Board of Appeals (LUBA) shall be raised not later than the close of the record following the final evidentiary hearing on the proposal before the City. Such issues shall be raised with sufficient detail so as to afford the City Council or Planning Commission, and the parties, an adequate opportunity to respond to each issue.
- (5) At the commencement of a hearing the Chairperson of the Hearing Body shall:
  - (a) Announce the purpose of the hearing.

- (b) State that the applicable substantive criteria will be presented in the Staff Report.
  - (c) State that testimony and evidence must be directed toward the criteria or other criteria in the plan or ordinances which the person believes to apply to the decision.
  - (d) State that a failure to raise an issue with sufficient detail to afford the decision maker and the parties an opportunity to respond to the issue including failure of the Applicant to raise constitutional or other issues relating to Conditions of Approval precludes appeal to LUBA or to bringing an action for damages in Circuit Court based on that issue.
- (6) The Chair shall request members of the hearing body to declare and identify any actual or potential conflict of interest or any ex-parte contacts on the issue:
- (a) Members shall place on the record the substance of any written or oral ex-parte communications concerning the decision or action.
  - (b) Members shall make a public announcement of the content of the communication.
  - (c) Parties in opposition have a right to rebut the substance of any ex parte communication at the first hearing following disclosure.
  - (d) In accordance with **ORS 227.180**, no decision or action by the Planning Commission or City Council shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body if the member makes the declarations cited above.
- (7) The Chair shall request presentation of the Staff Report.
- (8) The Chair shall request reports or testimony from any Governmental Agencies.
- (9) The Chair shall make the following statements before presentation of testimony:
- (a) A person shall first stand and state his full name and address.
  - (b) The Chair, members of the Hearing Body, or others, with the recognition of the Chair may question a witness.
- (10) The Chair shall call for the Applicant's Presentation.
- (11) The Chair shall call for other Proponent testimony in favor of the Request.
- (12) The Chair shall call for Opponent's testimony in opposition to the Request.
- (13) The Chair shall call for general comments.
- (14) The Chair shall call for the Applicant's rebuttal to opponent's testimony. The Applicant has the right of rebuttal - Opponents do not.

- (15) The Chair shall close the hearing or continue it to an announced time and place.
- (16) Unless there is a continuance, if a participant so requests, before the conclusion of the initial evidentiary hearing, the record shall remain open for at least 7 days after the hearing. When a record remains open to admit new evidence or testimony, any person may raise new issues that relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue. In addition, if requested, the Applicant will be allowed an additional 7 days to provide final written rebuttal argument.
- (17) The Hearing Body may continue the hearing to gather additional evidence, to consider the application fully, to give notice to additional persons, or for any purpose allowed by this Code. If written or oral notice of the rescheduling of a hearing is provided at the originally scheduled hearing, no additional notice is required. The hearing shall be rescheduled to a specific date, time, and place. If written or oral notice of a continued hearing was not provided, then re-notification is required.
- (18) The Chair shall call for deliberation by the Hearing Body following the close of the Record. The Hearing Body may close the Record and make its decision following the hearing, or may close the Record and continue its deliberation to a subsequent meeting. The time and place of the subsequent meeting shall be announced.

**SECTION 3.600                    LEGISLATIVE PUBLIC HEARING PROCEDURES**

The following procedures govern the conduct of Legislative land use public hearings conducted before the Tangent Planning Commission or the Tangent City Council:

- (1) Legislative public hearings are required by both the Planning Commission and City Council for text amendments or zone change map amendments that affect a group or class of properties. Written testimony may be provided at the hearing or prior to the hearing. Oral testimony may be provided at the hearing.
- (2) The Planning Commission and City Council may choose to combine their hearings into a single joint public hearing. The Mayor or President of the City Council shall preside at joint hearings. Following the joint public hearing, the Planning Commission will deliberate and make a recommendation to the City Council. The City Council will consider the recommendation of the Planning Commission and following deliberation, make a final decision on the amendment considering the public testimony, factual evidence presented and compatibility and compliance with the City Comprehensive Plan and the Statewide Land Use Goals and Guidelines.
- (3) The Hearing is a De Novo Hearing in which all evidence and comment is accepted for consideration. Approval of a Legislative Decision may be appealed to the Land Use Board of Appeals (LUBA) for Review in accordance with ORS 197.830. Denial of a Legislative Decision is not subject to Review by LUBA.
- (4) At the commencement of a hearing a statement by the Chairperson shall be made to those in attendance that:
  - (a) Announces the purpose of the hearing.



- (b) Asks if any member of the deciding body has an actual or potential conflict of interest in the matter before the Hearing Body.
  - (c) States that the applicable criteria will be presented in the Staff Report.
  - (d) States that all testimony and evidence relevant to the decision criteria will be accepted for consideration by the Hearing Body.
- (5) The Chair shall request presentation of the Staff Report.
  - (6) The Chair shall request reports or testimony from any Governmental Agencies.
  - (7) The Chair shall make the following statements before presentation of testimony:
    - (a) A person shall first stand and state his full name and address.
    - (b) The Presiding Officer, members of the Hearing Body, or others, with the recognition of the chair may question a person giving testimony.
  - (8) The Chair shall call for public testimony in any order determined by the Hearing Body.
  - (9) The Chair shall call for any general comments.
  - (10) The Chair shall close the hearing or continue it to another announced time and place, in the same manner as specified in **Sections 3.500(16)** and **(17)** for Quasi-Judicial actions.
  - (11) The Chair shall call for deliberation by Hearing Body following close of the Hearing. The Hearing Body may make its decision following the hearing or may close the Record and continue its deliberation to a subsequent meeting. The time and place of the subsequent meeting shall be announced.

**SECTION 3.700 DECISION**

Applicants and participants in a land use proceeding are entitled to a decision based upon a fair and impartial review or hearing of the factual evidence presented in conformance with the relevant standards and criteria contained in the City's Comprehensive Plan, Codes and Ordinances.

- (1) **Decision Justification.** The review or hearing body shall make a decision on a land use application and, except for legislative land use decisions, provide a brief statement that explains the standards and criteria considered relevant to decision, states the facts relied upon and explains the justification for the decision, with findings that summarize the facts believed by the review or hearing body and how the standards and criteria are satisfied by the accepted facts.
- (2) **Findings.** Findings are based on the information presented in the application, the staff report and evidence presented in the proceedings. **ORS 227.173** requires:

- (a) An explanation of the relevant criteria applicable to the decision.
  - (b) A statement of the facts supporting the decision.
  - (c) An explanation of how the standards and criteria are satisfied by the accepted facts and justify the decision.
- (3) **Findings for Approval.** The findings must contain a statement that all applicable policies and/or criteria are satisfied by the accepted facts presented.
- (4) **Findings for Approval with Conditions.** The findings must contain a statement that the applicable policy or criteria cannot be satisfied by the facts presented without the application of conditions of approval as authorized in this Code.
- (5) **Findings for Denial.** The findings must contain a statement that the applicable policy or criteria are not satisfied by the facts presented and cannot be made to comply with the application of conditions of approval as authorized in this Code.
- (6) **Notice of Decision.** Written notice shall be given to the Applicant and all parties to the proceedings. The notice shall contain the following information:
- (a) The name of the Applicant and Owner of the subject property.
  - (b) The address or geographic description of the subject property.
  - (c) A description of the requested action.
  - (d) The date of decision.
  - (e) A summary of the decision made.
  - (f) Identification of any actual or potential conflict of interest or any ex parte contacts on the issue by any member of the decision body.
  - (g) An explanation of appeal rights.
  - (h) The location where the record may be reviewed.
- (7) The failure of a property owner to receive notice shall not invalidate the action provided a good-faith attempt was made to notify all persons entitled to notice.
- (8) Personal notice is deemed given when the notice is deposited with the United States Postal Service.
- (9) The records of the Linn County Assessor's Office shall be the official records used for giving notice required by this Ordinance. A person's name and address which is not on file at the time the notice mailing list is initially prepared shall not be deemed a person entitled to notice.

### **SECTION 3.800 APPEAL PROVISIONS**

An appeal issue shall be raised at the time of the review or hearing orally or in writing. The appeal issue raised must be specific and shall be presented with enough clarity to afford the decision body an opportunity to adequately respond to the issue. Failure to raise the issue at the review or hearing or failure to clearly define the issue, including failure of the Applicant to raise constitutional or other issues relating to Conditions of Approval, shall preclude appeal to the City Council or to the Land Use Board of Appeals (LUBA) on that issue.

- (1) Written notice of the appeal shall be filed with the City on forms provided by the City. An Appeal request shall contain:
  - (a) The name of the appellant(s) and a statement by the appellant that they were a party to the initial proceedings.
  - (b) Identification of the decision being appealed.
  - (c) The date of the decision being appealed.
  - (d) The form and basis of the appeal and the criteria relied upon for the appeal request.
- (2) An action or ruling of the City Manager or designee pursuant to this Code may be appealed to the Planning Commission within 10 days of mailing after the decision is made. If an appeal is not filed within the above specified period, the decision of the City Manager or designee shall be final. If the appeal is filed, the Planning Commission shall receive a report and recommendation thereon from the City Manager or designee and shall hold public hearing on the appeal in a Quasi-Judicial action as specified in **Section 3.500**.
- (3) An action or ruling of the Planning Commission pursuant to this Code may be appealed to the City Council within 10 calendar days after the Planning Commission decision is mailed.

Written notice of an appeal shall be filed with the City. If the appeal is not filed within the above specified period, the decision of the Planning Commission shall be final. If the appeal is filed, the City Council shall hold a public hearing on the appeal as specified in **Section 3.500**.

Following the hearing, the City Council may sustain any recommendations or ruling of the Planning Commission, provided such action complies with the provisions of this Code, or the City Council may decide the issue.

- (4) An action or ruling of the City Council pursuant to this Code may be appealed to the Land Use Board of Appeals (LUBA) under **ORS 197.828 to 197.845** by filing a notice of intent to appeal with LUBA not later than 21 days after the City's decisions becomes final.
- (5) **Notice.** A "Notice of Appeal" shall be provided in the same manner as the Notice of Decision including all parties to the previous proceedings. A "Notice of Appeal" shall contain:
  - (a) The name of the appellant and a statement that they were a party to the initial proceedings.
  - (b) Identification of the decision being appealed.

- (c) The date of the decision being appealed.
  - (d) The form and basis of the appeal and the criteria relied upon for the appeal.
- (6) **Scope of Review.** Prior to opening the Appeal Hearing the hearing body shall determine the scope of review on the appeal to be one of the following:
- (a) Review on specific issues relative to the decision being appealed with additional testimony and evidence limited to those issues.
  - (b) Review on specific issues and only on the official record of the decision being appealed.
  - (c) A "de novo" hearing as if the request had not been previously heard, except that all testimony, evidence and other materials in the record of the previous review or hearing may be included in the new record of review.

### **SECTION 3.900            REVOCATION**

A decision on a land use application may be overturned, revoked or modified by the City on any one or more of the following grounds after a public hearing on the issue:

- (1) A material misrepresentation or mistake of fact was made in the application or evidence submitted, either intentionally or unintentionally;
- (2) The use for which approval was granted has ceased to exist;
- (3) There has been a demonstrated failure to comply with the terms and conditions of approval;
- (4) The use is in violation of a provision of this Code or other applicable statutes, ordinances, or regulations; or
- (5) The approval decision was overturned on appeal.