Title 19 LAND USE PROCEDURES

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Chapter 19.04 GENERAL PROVISIONS

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19.04.010 Purpose.

The purpose of this title (Land Use Procedures) is to establish standard decision-making procedures that will enable the city, the applicant, and the public to review applications and participate in the local decision-making process in a timely and effective way.

(Ord. 1287 § 1 (part), 2001)

19.04.020 Definitions.

"City Manager" shall mean the city manager or the manager's designee.

(Ord. 1287 § 1 (part), 2001)

19.04.030 Description of permit/decision-making procedures.

All land use and development permit applications, except building permits, shall be decided by using the procedures contained in this title unless specified to the contrary. General procedures for all permits are contained in Chapter 19.24. Specific procedures for certain types of permits are contained in Chapters 19.08—19.20. The procedure "type" assigned to each permit governs the decision-making process for that permit. There are four types of permit/decision-making procedures: Type I, II, III, and IV. These procedures are described in Sections 19.04.030(A)—(D) below. In addition, the table in Section 19.04.040 lists all of the city's land use and development applications and their required permit procedure(s).

A. Type I Procedure (Ministerial). Type I decisions are made by the city manager without public notice and without a public hearing. The Type I procedure is used when there are clear and objective approval criteria, and applying city standards and criteria requires no use of discretion.

B. Type II Procedure (Administrative). Type II decisions are made by the city manager with public notice and an opportunity for a public hearing. The appeal of a Type II decision is heard by the planning commission.

C. Type III Procedure (Quasi-Judicial). 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.

D. Type IV Procedure (Legislative). Type IV procedures apply to legislative matters. Legislative matters involve the creation, revision, or large-scale implementation of public policy (e.g., adoption of land use regulations, zone changes, and comprehensive plan amendments which apply to entire districts). Type IV matters are considered initially by the planning commission with final decisions made by the city council.

(Ord. 1287 § 1 (part), 2001)

19.04.040 Summary of development decisions/permits by type of decision-making procedure.

Access Permit (public street)	Type I	Chapter 17.48
Annexation	Type III/IV	Comprehensive Plan, Oregon Revised Statutes or city/county intergovernmental agreement(s), as applicable.
Building Permit	N/A	Building Code
Code Interpretation	Type II	Chapter 17.84
Code Amendment	Type IV	Chapter 17.80
Comprehensive Plan Amendment	Type IV	Comprehensive Plan
Conditional Use Permit	Type III	Chapter 17.64
Development Review	Type I	Chapter 17.60
Drainage Permit	Type I	Chapter 15.20

Excavation/Fill Permit	Type I	Chapter 15.20
Flood Plain Development Permit	Type I	Chapter15.16 (may require Riparian Modification permit first)
Home Occupation Permit	Type I	Chapter 17.08
(Business License Required)		
Planned Development	Type III	Chapter 16.16
Comprehensive Plan and Zoning Map	Type III/IV	Chapter 17.80
Change		
Lot Line Adjustment	Type I	Oregon Revised Statutes Chapter 92
Lot Line Covenant, Restrictive	Type II	Chapter 17.72
Non-Conforming Use or Development Confirmation	Type I	Chapter 17.56
Partition	Type III	Chapter 16.08
Replat, Minor	Type II	Chapter 16.24
Riparian Modification Permit	Type I	Chapter 18.04
Subdivision	Type III	Chapter 16.12

Temporary Use Permit	Type II	Chapter 17.76
Tree Removal/Placement (In public right-of-way)	Specified by Municipal Code	Chapter 2.16
Variance		
Class A	Type I	Section 17.68.030
Class B	Type II	Section 17.68.040
Class C	Type III	Section 17.68.050

* Note: The chapters referenced above in the right-hand column describe the types of land uses and development activity that require permits under each type of decision-making procedure.

(Ord. 1287 § 1 (part), 2001)

Chapter 19.08 TYPE I PROCEDURE (MINISTERIAL)

Sections:

19.08.010 Application requirements.

19.08.020 Administrative decision requirements.

19.08.030 Final decision.

19.08.040 Effective date.

19.08.010 Application requirements.

A. Application Forms. Type I applications shall be made on forms provided by the city manager.

B. Application Requirements. Type I applications shall:

1. Include the information requested on the application form;
2. Address the criteria in sufficient detail for review and action; and
3. Be filed with the required fee.

(Ord. 1287 § 1 (part), 2001)

19.08.020 Administrative decision requirements.

The city manager's decision shall address all of the approval criteria. Based on the criteria and the facts contained within the record, the city manager shall approve, approve with conditions, or deny the requested permit or action. A written record of the decision shall be provided to the applicant and kept on file at city hall.

(Ord. 1287 § 1 (part), 2001)

19.08.030 Final decision.

The decision shall be final on the date it is mailed or otherwise provided to the applicant, whichever occurs first. The decision is the final decision of the city. It cannot be appealed to city officials.

(Ord. 1287 § 1 (part), 2001)

19.08.040 Effective date.

The decision is effective the day after it is final.

(Ord. 1287 § 1 (part), 2001)

Chapter 19.12 TYPE II PROCEDURE (ADMINISTRATIVE)

Sections:

19.12.010 Preapplication conference.

19.12.020 Application requirements.

19.12.030 Notice of application for Type II administrative decision.

19.12.040 Administrative decision requirements.

19.12.050 Notice of decision.

19.12.060 Final decision and effective date.

19.12.070 Appeal.

19.12.090 Appeal to city council.

19.12.010 Preapplication conference.

A preapplication conference is required for Type II applications. Preapplication conference requirements and procedures are in Section 19.24.030.

(Ord. 1287 § 1 (part), 2001)

19.12.020 Application requirements.

A. Application forms. Type II applications shall be made on forms provided by the city manager;

B. Submittal information. The application shall:

1. Include the information requested on the application form;

2. Be filed with 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;
3. Be accompanied by the required fee;
4. Include additional information as required by the relevant municipal code section(s) applicable to the application.

(Ord. 1287 § 1 (part), 2001)

19.12.030 Notice of application for Type II administrative decision.

A. Before making a Type II administrative decision, the city manager shall mail notice to:
   1. All owners of record of real property within one hundred fifty (150) feet of the subject site;
   2. All city-recognized neighborhood groups or associations whose boundaries include the site;
   3. Any person who submits a written request to receive a notice; and
   4. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the city. The city may notify other affected agencies, as appropriate, for review of the application.

B. The purpose of the notice is to give nearby property owners and other interested people the opportunity to submit written comments about the application, before the Type II decision is made. The goal of this notice is to invite people to participate early in the decision-making process;

C. Notice of a pending Type II administrative decision shall:
   1. Provide a fourteen (14) day period for submitting written comments before a decision is made on the permit.
   2. List the relevant approval criteria by name and number of code sections;
   3. State the place, date and time the comments are due, and the person to whom the comments should be addressed;
   4. Include the name and telephone number of a contact person regarding the administrative decision;
   5. Identify the specific permits or approvals requested;
   6. Describe the street address or other easily understandable reference to the location of the site;
   7. State that if any person fails to address the relevant approval criteria with enough detail, they may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue. Only comments on the relevant approval criteria are considered relevant evidence;
   8. State that all evidence relied upon by the city manager to make this decision is in the public record, available for public review, and that copies of this evidence can be obtained at a reasonable cost from the city;
   9. State that after the comment period closes, the city manager shall issue a Type II administrative decision. The decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice;
   10. Contain the following notice: "Notice to mortgagee, lienholder, vendor, or seller: The Toledo Municipal Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

(Ord. 1287 § 1 (part), 2001)

19.12.040 Administrative decision requirements.

The city manager shall make Type II written decisions addressing all of the relevant approval criteria and standards. Based upon the criteria and standards, and the facts contained within the record, the city manager shall approve, approve with conditions, or deny, the requested permit or action.

(Ord. 1287 § 1 (part), 2001)

19.12.050 Notice of decision.

A. Within five days after the city manager signs the decision, a notice of decision shall be sent by mail to:

1. Any person who submits a written request to receive notice, or provides comments during the application review period;
2. The applicant and all owners or contract purchasers of record of the site which is the subject of the application;
3. Any person who submits a written request to receive notice, or provides comments during the application review period;
4. Any city-recognized neighborhood group or association whose boundaries include the site;
5. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the city, and other agencies which were notified or provided comments during the application review period.

B. The city manager shall cause an affidavit of mailing the notice to be prepared and made a part of the file. The affidavit shall show the date the notice was mailed and shall demonstrate that the notice was mailed to the applicable people in Section 19.12.050(A) within the time required by law.

C. The Type II notice of decision shall contain:

1. A description of the applicant's proposal and the city's decision on the proposal (i.e., may be a summary);
2. The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area, where applicable;
3. A statement of where the city's decision can be obtained;
4. The date the decision shall become final, unless appealed;
5. A statement that all persons entitled to notice or who are otherwise adversely affected or aggrieved by the decision may appeal the decision;
6. A statement briefly explaining how an appeal can be filed, the deadline for filing an appeal, and where further information can be obtained concerning the appeal process; and
7. A statement that unless appellant (the person who files the appeal) is the applicant, the hearing on the appeal shall be limited to the specific issues identified in the written comments submitted during the comment period. Additional evidence related to the notice of appeal (see Section 19.12.060(B)(2)) may be submitted by any person during the appeal hearing, subject to any rules of procedure adopted by the planning commission.

(Ord. 1287 § 1 (part), 2001)

19.12.060 Final decision and effective date.

A Type II administrative decision is final for purposes of appeal, when it is mailed by the city. A Type II administrative decision is effective on the day after the appeal period expires. If an appeal is filed, the decision is effective when the appeal is decided.

(Ord. 1287 § 1 (part), 2001)

19.12.070 Appeal.

A Type II administrative decision may be appealed to the planning commission as follows:

A. Who May Appeal. The following people have legal standing to appeal a Type II administrative decision:

1. The applicant;
2. Any person who was mailed written notice of the Type II administrative decision;
3. Any other person who participated in the proceeding by submitting written comments.

B. Appeal Procedure.

1. Notice of Appeal. Any person with standing to appeal, as provided in Section 19.12.070(A), may appeal a Type II administrative decision by filing a notice of appeal according to the following procedures;

   a. Time for filing. A notice of appeal shall be filed with the city manager within fourteen (14) days of the date the notice of decision was mailed;

   b. Content of notice of appeal. The notice of appeal shall contain:

      1. An identification of the decision being appealed, including the date of the decision;
      2. A statement demonstrating the person filing the notice of appeal has standing to appeal;
      3. A statement explaining the specific issues raised on appeal;
      4. If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period;
      5. Filing fee.

   c. The amount of the filing fee shall be established by the city. The maximum fee for an initial hearing shall be the city's cost for preparing and for conducting the hearing, or the statutory maximum, whichever is less.

2. Scope of Appeal. The appeal of a Type II administrative decision by a person with standing shall be limited to the specific issues raised during the written comment period, as provided under Section 19.12.030(C), unless the hearings body allows additional evidence or testimony concerning any other relevant issue. The hearings body may allow such additional evidence if it determines that such evidence is necessary to resolve the case. The purpose of this requirement is to limit the scope of Type II administrative appeals by encouraging persons with standing to submit their specific concerns in writing during the comment period. The written comments received during the comment period will usually limit the scope of issues on appeal. Only in extraordinary circumstances should new issues be considered by the hearings body on appeal of a Type II administrative decision;

3. Appeal Procedures. Type III notice and hearing procedures shall be used for all Type II administrative appeals, as provided in Sections 19.16.030—19.16.070.

(Ord. 1287 § 1 (part), 2001)

19.12.090 Appeal to city council.

The decision of the planning commission regarding an appeal of a Type II administrative decision is the final decision of the city unless appealed to city council within fourteen (14) days of the final decision. An appeal to city council shall follow the same appeal procedures as for the planning commission.

(Ord. 1287 § 1 (part), 2001)

Chapter 19.16 TYPE III PROCEDURE (QUASI-JUDICIAL)

Sections:

19.16.010 Preapplication conference.

19.16.020 Application requirements.

19.16.030 Notice of hearing.

19.16.040 Conduct of the public hearing.

19.16.050 The decision process.

19.16.060 Notice of decision.

19.16.070 Final decision and effective date.

19.16.080 Appeals.

19.16.010 Preapplication conference.

A preapplication conference is required for all Type III applications. The requirements and procedures for a preapplication conference are described in Section 19.24.030.

(Ord. 1287 § 1 (part), 2001)

19.16.020 Application requirements.

A. Application forms. Type III applications shall be made on forms provided by the city manager.

B. Content. Type III applications shall:

1. Include the information requested on the application form;
2. Be filed with a narrative statement that explains how the application satisfies each and all of the relevant criteria in sufficient detail for review and action;
3. Be accompanied by the required fee;
4. Include additional information as required by the relevant municipal code section(s) applicable to the application.

(Ord. 1287 § 1 (part), 2001)

19.16.030 Notice of hearing.

A. Mailed notice. Notice of a Type III application hearing or Type II appeal hearing shall be given by the city manager in the following manner:

1. At least twenty (20) days before the hearing date, notice shall be mailed to:

a. The applicant and all owners or contract purchasers of record of the property which is the subject of the application;

b. All property owners of record within three hundred (300) feet of the site;

c. Any governmental agency which has entered into an intergovernmental agreement with the city which includes provision for such notice, or who is otherwise entitled to such notice. Owners of airports shall be notified of a proposed zone change in accordance with ORS 227.175;

d. Any neighborhood or community organization recognized by the city council and whose boundaries include the property proposed for development;

e. Any person who submits a written request to receive notice;

f. For appeals, the appellant and all persons who provided testimony; and

g. 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 manager 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 six 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 an appeal of a Type II administrative decision or a Type III hearing to be mailed and published per Section 19.16.030 above shall contain the following information:

1. The nature of the application and the proposed land use or uses which 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 Lose 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 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;

10. The following notice: "Notice to mortgagee, lienholder, vendor, or seller: The Toledo Municipal Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

(Ord. 1287 § 1 (part), 2001)

19.16.040 Conduct of the public hearing.

A. At the commencement of the hearing, the hearings body shall state to those in attendance that:

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 which 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 hearings body 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 Section 19.16.040(B), or by leaving the record open for additional written evidence or testimony per Section 19.16.040(C).

B. If the hearings body 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 hearings body 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 the record was left open. If such a request is filed, the hearings body shall reopen the record:

1. When the hearings body reopens the record to admit new evidence or testimony, any person may raise new issues which relate to that new evidence or testimony;
2. An extension of the hearing or record granted pursuant to Sections 19.16.040(B) or (C) 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. 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. Unless a time period of greater than seven days is requested by the applicant and approved by the hearing body prior to the close of the evidentiary hearing, seven days shall be the time limit for submittal of the applicant's final written argument. The applicant's final submittal shall be part of the record but shall not include any new evidence.

D. The record.

1. The record shall contain all testimony and evidence that is submitted to the city and the hearings body and not rejected;
2. The hearings body may take official notice of judicially cognizable facts under the applicable law. If the hearings body takes official notice, it must announce its intention and allow persons participating in the hearing to present evidence concerning the noticed facts;
3. The hearings body shall retain custody of the record until the city issues a final decision.

E. Participants in the appeal of a Type II administrative decision or a Type III hearing are entitled to an impartial review authority as free from potential conflicts of interest and pre-hearing ex parte contacts Section 19.16.040(F) 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 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 all members abstain or are disqualified, those members present who declare their reasons for abstention or disqualification shall be re-qualified to make a decision;
5. 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.

F. Ex parte communications.

1. Members of the hearings body shall not:
   a. 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, except upon giving notice, per Section 19.16.040(E);
   b. 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:
   a. Places in the record the substance of any written or oral ex parte communications concerning the decision or action; and
   b. 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.

G. 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 19.16.040(C);
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 hearing and an opportunity is provided to dispute the evidence. In the alternative, a member of the hearings body may visit the property to familiarize him or herself with the site and surrounding area, but not to independently gather evidence. In the second situation, at the beginning of the hearing, he or she shall disclose the circumstances of the site visit and shall allow all participants to ask about the site visit.

(Ord. 1287 § 1 (part), 2001)

19.16.050 The decision process.

A. Basis for decision. Approval or denial of an appeal of a Type II Administrative decision or a Type III application shall be based on standards and criteria in the municipal 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 hearings body shall issue a final written order containing the findings and conclusions stated in subsection B, which either approves, denies, or approves with specific conditions. The hearings body 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 manager within ten (10) business days after the close of the deliberation.

(Ord. 1287 § 1 (part), 2001)

19.16.060 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 five 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.

(Ord. 1287 § 1 (part), 2001)

19.16.070 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. Unless specified elsewhere in the municipal code, the appeal period is fourteen (14) days. If an appeal is filed, the decision becomes effective on the day after the appeal is decided by the city council.

(Ord. 1287 § 1 (part), 2001)

19.16.080 Appeals.

A Type III decision may be appealed to the city council (or as specified by ordinance for the particular land use application) as follows:

A. Who may appeal. The following people have legal standing to appeal a Type III decision:

1. The applicant;
2. Any person who has been substantially affected by the decision;
3. Any person who participated in writing or in person at the commission hearing.

B. Appeal procedure.

1. Notice of Appeal. Any person with standing to appeal, as provided in Section 19.16.080(A), may appeal a Type III decision by filing a Notice of Appeal according to the following procedures:
   a. Time for filing. A Notice of Appeal shall be filed with the city manager within fourteen (14) days of the date the decision became effective;
   b. Content of Notice of Appeal. The Notice of Appeal shall contain:
      1. An identification of the decision being appealed, including the date of the decision;
      2. A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
      3. A statement explaining the specific issues raised on appeal;
      4. If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the commission hearing;
      5. Filing fee.
   c. The amount of the filing fee shall be established by the city council.
2. Scope of appeal. The appeal of a Type III decision by a person with standing shall be limited to the specific issues raised during the planning commission hearing, unless the hearings body allows additional evidence or testimony concerning any other relevant issue. The hearings body may allow such additional evidence if it determines that such evidence is necessary to resolve the case. The purpose of this requirement is to limit the scope of Type III appeals by encouraging persons with standing to submit their specific concerns in writing or in person during the commission hearing. The comments received during the commission hearing will usually limit the scope of issues on appeal. Only in extraordinary circumstances should new issues be considered by the city council on appeal of a Type III decision;
3. Appeal procedures. The notification and hearings procedures for Type III applications on appeal to the city council shall be the same as for the initial hearing.

(Ord. 1287 § 1 (part), 2001)

Chapter 19.20 TYPE IV PROCEDURE (LEGISLATIVE)

Sections:

19.20.010 Preapplication conference.

19.20.020 Timing of requests.

19.20.030 Application requirements.

19.20.040 Notice of hearing.

19.20.050 Hearing process and procedure.

19.20.060 Continuation of the public hearing.

19.20.070 Decision-making considerations.

19.20.080 Approval process and authority.

19.20.090 Vote required for a legislative change.

19.20.100 Notice of decision.

19.20.110 Final decision and effective date.

19.20.120 Record of the public hearing.

19.20.010 Preapplication conference.

A preapplication conference is required for all Type IV applications. The requirements and procedures for a preapplication conference are described in Section 19.24.030.

(Ord. 1287 § 1 (part), 2001)

19.20.020 Timing of requests.

The city manager shall review proposed Type IV actions based on the city's approved schedule for such actions.

(Ord. 1287 § 1 (part), 2001)

19.20.030 Application requirements.

A. Application forms. Type IV applications shall be made on forms provided by the city manager.

B. Submittal information. The application shall contain:

1. The information requested on the application form;
2. A map and/or plan addressing the appropriate criteria and standards in sufficient detail for review and decision (as applicable);
3. The required fee; and
4. A letter or narrative statement that explains how the application satisfies each and all of the relevant approval criteria and standards.

(Ord. 1287 § 1 (part), 2001)

19.20.040 Notice of hearing.

A. Required hearings. A minimum of two hearings, one before the planning commission and one before the city council, are required for all Type IV applications, except annexations where only a hearing by the city council is required.

B. Notification requirements. Notice of public hearings for the request shall be given by the city manager in the following manner:

1. At least twenty (20) days, but not more than forty (40) days, before the date of the first hearing on an ordinance that proposes to amend the comprehensive plan or any element thereof, or to adopt an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.186 and mailed to:

    a. Each owner whose property would be rezoned in order to implement the ordinance (i.e., owners of property subject to a comprehensive plan amendment shall be notified if a zone change would be required to implement the proposed comprehensive plan amendment);

    b. Any affected governmental agency;

    c. Recognized neighborhood groups or associations affected by the ordinance;

    d. Any person who requests notice in writing;

e. For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175; and

f. Owners of airports shall be notified of a proposed zone change in accordance with ORS 227.175.

2. At least ten (10) days before the scheduled planning commission public hearing date, and seven days before the city council hearing date, notice shall be published in a newspaper of general circulation in the city.

3. The city manager shall:

a. For each mailing of notice, file an affidavit of mailing in the record; and

b. For each published notice, file the affidavit of publication in a newspaper in the record.

4. The Department of Land Conservation and Development (DLCD) shall be notified in writing of proposed comprehensive plan and land use municipal code amendments at least forty-five (45) days before the first public hearing at which public testimony or new evidence will be received.

5. Notifications for annexation shall follow the provisions of this chapter, except as required for local government boundary commissions (ORS 199).

C. Content of notices. The mailed and published notices shall include the following information:

1. The number and title of the file containing the application, and the address and telephone number of the city office where additional information about the application can be obtained;

2. A description of the location of the proposal reasonably calculated to give notice of the location of the geographic area;

3. A description of the proposal in enough detail for people to determine that a change is proposed, and the place where all relevant materials and information may be obtained or reviewed;

4. The time(s), place(s), and date(s) of the public hearing(s); a statement that public oral or written testimony is invited; and a statement that the hearing will be held under this title and rules of procedure adopted by the council and available at City Hall; and

5. Each mailed notice required by Section 19.20.040(B)(1) shall contain the following statement: "Notice to mortgagee, lienholder, vendor, or seller: The Toledo Municipal Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

D. Failure to receive notice. The failure of any person to receive notice shall not invalidate the action, providing:

1. Personal notice is deemed given where the notice is deposited with the United States Postal Service.

2. Published notice is deemed given on the date it is published.

(Ord. 1287 § 1 (part), 2001)

19.20.050 Hearing process and procedure.

A. Unless otherwise provided in the rules of procedure adopted by the city council:

l. The presiding officer of the planning commission and of the city council shall have the authority to:

a. Regulate the course, sequence, and decorum of the hearing;

b. Direct procedural requirements or similar matters; and

c. Impose reasonable time limits for oral presentations.

2. No person shall address the commission or the council without:
   a. Receiving recognition from the presiding officer; and
   b. Stating their full name and residence address.
3. Disruptive conduct such as applause, cheering, or display of signs shall be cause for expulsion of a person or persons from the hearing, termination or continuation of the hearing, or other appropriate action determined by the presiding officer.

B. Unless otherwise provided in the rules of procedure adopted by the council, the presiding officer of the commission and of the council, shall conduct the hearing as follows:
1. The presiding officer shall begin the hearing with a statement of the nature of the matter before the body, a general summary of the procedures, a summary of the standards for decision-making, and whether the decision which will be made is a recommendation to the city council or the final decision of the council;
2. The city manager's (staff) report and other applicable staff reports shall be presented;
3. The public shall be invited to testify;
4. The public hearing may be continued to allow additional testimony or it may be closed; and
5. The body's deliberation may include questions to the staff, comments from the staff, and inquiries directed to any person present.

(Ord. 1287 § 1 (part), 2001)

19.20.060 Continuation of the public hearing.

The planning commission or the city council may continue any hearing, and no additional notice of hearing shall be required if the matter is continued to a specified place, date, and time.

(Ord. 1287 § 1 (part), 2001)

19.20.070 Decision-making considerations.

The recommendation by the planning commission and the decision by the city council shall be based on consideration of the following factors:

A. The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197 (for comprehensive plan amendments only);
B. Comments from any applicable federal or state agencies regarding applicable statutes or regulations;
C. Any applicable intergovernmental agreements; and
D. Any applicable comprehensive plan policies and provisions of the municipal code that implement the comprehensive plan. Compliance with Toledo Municipal Code 17.80 shall be required for legislative amendments such as Comprehensive Plan Amendments and for quasi-judicial amendments.

(Ord. 1287 § 1 (part), 2001)

19.20.080 Approval process and authority.

A. The planning commission shall:

1. After notice and a public hearing, vote on and prepare a recommendation to the city council to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative; and
2. Within ten (10) business days of determining a recommendation, the presiding officer shall sign the written recommendation, and it shall be filed with the city manager.

B. Any member of the planning commission who votes in opposition to the planning commission's majority recommendation may file a written statement of opposition with the city manager before the council public hearing on the proposal. The city manager shall send a copy to each council member and place a copy in the record;

C. If the planning commission fails to adopt a recommendation to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative proposal, within ten (10) days of its first public hearing on the proposed change, the city manager shall:

1. Report the failure together with the proposed change to the city council; and
2. Provide notice and put the matter on the city council's agenda, a public hearing to be held, and a decision to be made by the council. No further action shall be taken by the commission.

D. The city council shall:

1. Approve, approve with modifications, approve with conditions, deny, or adopt an alternative to an application for legislative change, or remand the application to the planning commission for rehearing and reconsideration on all or part of the application;
2. Consider the recommendation of the planning commission; however, it is not bound by the commission's recommendation; and
3. Act by ordinance, which shall be signed by the mayor after the council's adoption of the ordinance.

(Ord. 1287 § 1 (part), 2001)

19.20.090 Vote required for a legislative change.

A. A vote by a majority of the qualified voting members of the planning commission present is required for a recommendation for approval, approval with modifications, approval with conditions, denial or adoption of an alternative.

B. A vote by a majority of the qualified members of the city council present is required to decide any motion made on the proposal.

(Ord. 1287 § 1 (part), 2001)

19.20.100 Notice of decision.

Notice of a Type IV decision shall be mailed to the applicant, any participants of record, and the Department of Land Conservation and Development, within five business days after the city council decision is filed with the city manager. The city shall also provide notice to all persons as required by other applicable laws.

(Ord. 1287 § 1 (part), 2001)

19.20.110 Final decision and effective date.

A Type IV decision, if approved, shall take effect and shall become final as specified in the enacting ordinance or as specified in the city charter, or if not approved, upon mailing of the notice of decision to the applicant.

(Ord. 1287 § 1 (part), 2001)

19.20.120 Record of the public hearing.

A. A verbatim record of the proceeding shall be made by stenographic, mechanical, or electronic means. It is not necessary to transcribe an electronic record. The minutes and other evidence presented as a part of the hearing shall be part of the record;

B. All exhibits received and displayed shall be marked to provide identification and shall be part of the record;

C. The official record shall include:

1. All materials considered by the hearings body;
2. All materials submitted by the city manager to the hearings body regarding the application;
3. The verbatim record made by the stenographic, mechanical, or electronic means; the minutes of the hearing; and other documents considered;
4. The final ordinance;
5. All correspondence; and
6. A copy of the notices which were given as required by this title.

(Ord. 1287 § 1 (part), 2001)

Chapter 19.24 GENERAL PROVISIONS

Sections:

19.24.010 120-day rule.

19.24.020 Time computation.

19.24.030 Preapplication conferences.

19.24.040 Changes in the law.

19.24.050 Applications.

19.24.060 City manager duties.

19.24.070 Amended decision process.

19.24.080 Resubmittal of application following denial.

19.24.010 120-day rule.

The city shall take final action on permit applications which are subject to this title, including resolution of all appeals, within one hundred twenty (120) days from the date the application is deemed as complete. Any exceptions to this rule shall conform to the provisions of ORS 227.178. (The one hundred twenty (120) day rule does not apply to Type IV legislative decisions-plan and code amendments under ORS 227.178.)

(Ord. 1287 § 1 (part), 2001)

19.24.020 Time computation.

In computing any period of time prescribed or allowed by this chapter, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or legal holiday, including Sunday, in which event, the period runs until the end of the next day which is not a Saturday or legal holiday.

(Ord. 1287 § 1 (part), 2001)

19.24.030 Preapplication conferences.

A. Participants. When a preapplication conference is required, the applicant shall meet with the city manager.

B. Information provided. At such conference, the city manager shall:

1. Cite the comprehensive plan policies and map designations applicable to the proposal;
2. Cite the ordinance provisions, including substantive and procedural requirements, applicable to the proposal;
3. Provide available technical data and assistance which will aid the applicant;
4. Identify other governmental policies and regulations that relate to the application; and
5. Reasonably identify other opportunities or constraints concerning the application.

C. Disclaimer. Failure of the city manager to provide any of the information required by this section shall not constitute a waiver of any of the standards, criteria or requirements for the application.

(Ord. 1287 § 1 (part), 2001)

19.24.040 Changes in the law.

Due to possible changes in federal, state, regional, and local law, the applicant is responsible for ensuring that the application complies with all applicable laws on the day the application is deemed complete.

(Ord. 1287 § 1 (part), 2001)

19.24.050 Applications.

A. Initiation of applications:

1. Applications for approval under this title may be initiated by:
   a. Resolution of city council;
   b. Resolution of the planning commission;
   c. The city manager; or
   d. A record owner of property (person(s) whose name is on the most recently recorded deed), or contract purchaser with written permission from the record owner.
2. Any person authorized to submit an application for approval may be represented by an agent authorized in writing to make the application on their behalf.

B. Consolidation of proceedings. When an applicant applies for more than one type of land use or development permit (e.g., Type II and III) for the same one or more parcels of land, the proceedings may be consolidated for review and decision by choice of the applicant.

1. If more than one approval authority would be required to decide on the applications if submitted separately, then the decision shall be made by the approval authority having original jurisdiction over one of the applications in the following order of preference: the council, the commission, or the city manager.

2. When proceedings are consolidated:

   a. The notice shall identify each application to be decided;

   b. The decision on a comprehensive plan map amendment shall precede the decision on a proposed land use district change and other decisions on a proposed development. Similarly, the decision on a zone map amendment shall precede the decision on a proposed development and other actions; and

   c. Separate findings and decisions shall be made on each application.

C. Check for acceptance and completeness. In reviewing an application for completeness, the following procedure shall be used:

1. Acceptance. When an application is received by the city, the city manager shall immediately determine whether the following essential items are present. If the following items are not present, the application shall not be accepted and shall be immediately returned to the applicant:

   a. The required form;

   b. The required fee;

   c. The signature of the applicant on the required form, and signed written authorization of the property owner of record if the applicant is not the owner.

2. Completeness.

   a. Review and notification. After the application is accepted, the city manager shall review the application for completeness. If the application is incomplete, the city manager shall notify the applicant in writing of exactly what information is missing within thirty (30) days of receipt of the application and allow the applicant one hundred eighty (180) days to submit the missing information;

   b. When application deemed complete for review. In accordance with the application submittal requirements in this title, the application shall be deemed complete upon the receipt by the city manager of all required information. The applicant shall have the option of withdrawing the application, or refusing to submit information requested by the city manager in (a), above. For the refusal to be valid, the refusal shall be made in writing and received by the city manager no later than fourteen (14) days after the date on the city manager's letter of incompleteness. If the applicant refuses in writing to submit the missing information, the application shall be deemed complete on the 31st day after the city manager first accepted the application.

D. Standards and criteria that apply to the application. Approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first accepted.

E. Changes or additions to the application during the review period. Once an application is deemed complete:

1. All documents and other evidence relied upon by the applicant shall be submitted to the city manager at least seven days before the notice of action or hearing is mailed, if possible. Documents or other evidence submitted after that date shall be received by city manager, and transmitted to the hearings body, but may be too late to include with the staff report and evaluation;

2. When documents or other evidence are submitted by the applicant during the review period, but after the application is deemed complete, the assigned review person or body shall determine

whether or not the new documents or other evidence submitted by the applicant significantly change the application;

3. If the assigned reviewer determines that the new documents or other evidence significantly changes the application, the reviewer shall include a written determination that a significant change in the application has occurred as part of the decision. In the alternate, the reviewer may inform the applicant either in writing, or orally at a public hearing, that such changes may constitute a significant change, and allow the applicant to withdraw the new materials submitted, in order to avoid a determination of significant change;

4. If the applicant's new materials are determined to constitute a significant change in an application that was previously deemed complete, the city shall take one of the following actions, at the choice of the applicant:

   a. Continue to process the existing application and allow the applicant to submit a new second application with the proposed significant changes. Both the old and the new applications will proceed, but each will be deemed complete on different dates and may therefore be subject to different criteria and standards and different decision dates;

   b. Suspend the existing application and allow the applicant to submit a new application with the proposed significant changes. Before the existing application can be suspended, the applicant must consent in writing to waive the one hundred twenty (120) day rule (Section 19.24.010) on the existing application. If the applicant does not consent, the city shall not select this option;

   c. Reject the new documents or other evidence that has been determined to constitute a significant change, and continue to process the existing application without considering the materials that would constitute a significant change. The city will complete its decision-making process without considering the new evidence.

5. If a new application is submitted by the applicant, that application shall be subject to a separate check for acceptance and completeness and will be subject to the standards and criteria in effect at the time the new application is accepted.

(Ord. 1287 § 1 (part), 2001)

19.24.060 City manager duties.

The city manager shall:

A. Prepare application forms based on the criteria and standards in applicable state law, the city's comprehensive plan, and implementing municipal code provisions;

B. Accept all development applications which comply with the applicable application requirements;

C. Prepare a staff report that summarizes the application(s) and applicable decision criteria, and provides findings of conformance and/or non-conformance with the criteria. The staff report should also provide a recommended decision of: approval, denial or approval with specific conditions that ensure conformance with the approval criteria;

D. Prepare a notice of the proposal decision;

   l. In the case of an application subject to a Type I or II review process, the city manager shall make the staff report and all case-file materials available at the time that the notice of the decision is issued;

   2. In the case of an application subject to a hearing (Type III or IV process), the city manager shall make the staff report available to the public at least seven days prior to the scheduled hearing date, and make the case-file materials available when notice of the hearing is mailed.

E. Administer the hearings process;

F. File notice of the final decision in the city's records and mail a copy of the notice of the final decision to the applicant, all persons who provided comments or testimony, persons who requested copies of the notice, and any other persons entitled to notice by law;

G. Maintain and preserve the file for each application for the time period required by law. The file shall include, as applicable, a list of persons required to be given notice and a copy of the notice given, the affidavits of notice, the application and any supporting information, the staff report the final decision including the findings, conclusions and conditions (if any), all correspondence, minutes of any meeting at which the application was considered, and any other exhibit, information or documentation which was considered by the decision-maker(s) on the application; and

H. Administer the appeals and review process.

(Ord. 1287 § 1 (part), 2001)

19.24.070 Amended decision process.

A. The purpose of an amended decision process is to allow the city manager to correct typographical errors, rectify inadvertent omissions and/or make other minor changes which do not materially alter the decision.

B. The city manager may issue an amended decision after the notice of final decision has been issued but before the appeal period has expired. If such a decision is amended, the decision shall be issued within ten (10) business days after the original decision would have become final, but in no event beyond the one hundred twenty (120) day period required by state law. A new ten (10) day appeal period shall begin on the day the amended decision is issued.

C. Notice of an amended decision shall be given using the same mailing and distribution list as for the original decision notice.

D. Modifications to approved plans or conditions of approval requested by the applicant shall follow the procedures and criteria as established for the original application.

(Ord. 1287 § 1 (part), 2001)

19.24.080 Resubmittal of application following denial.

An application which has been denied, or an application which was denied and which on appeal or review has not been reversed by a higher authority, including the Land Use Board of Appeals, the Land Conservation and Development Commission or the courts, may not be resubmitted as the same or a substantially similar proposal for the same land for a period of at least twelve (12) months from the date the final city action is made denying the application, unless there is substantial change in the facts or a change in city policy which would change the outcome, as determined by the city manager.

(Ord. 1287 § 1 (part), 2001)