



City of Coburg Land Use Application Guidelines

Type IV Procedure (Legislative)

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

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

Type 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 that apply to entire districts, not just one property). Type IV matters are considered initially by the Planning Commission with final decisions made by the City Council. Appeals are submitted to the Oregon State Land Use Board of Appeals (LUBA).

1. **Pre-Application Conference.** A pre-application conference is required for all Type IV applications initiated by a party other than the City of Coburg. The requirements and procedures for a pre-application conference are described in Section F.
2. **Timing of Requests.** The City accepts legislative requests twice yearly, meeting January and July application timeline requirements. The City Council may initiate its own legislative proposals at any time.
3. **Application Requirements.**
 - a. Application forms. Type IV applications shall be made on forms provided by the City Planning Official or designee.
 - 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) One copy of a letter or narrative statement that explains how the application satisfies each and all of the relevant approval criteria and standards.

4. 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 Planning Official or designee in the following manner:
 - (1) At least 10 days, but not more than 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 227.175 and mailed to:
 - (i) Each owner whose property would be rezoned in order to implement the ordinance (including 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);
 - (ii) Any affected governmental agency;
 - (iii) Any person who requests notice in writing;
 - (iv) For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175;
 - (2) At least 10 days before the scheduled Planning Commission public hearing date, and 10 days before the City Council hearing date, public notice shall be published in a newspaper of general circulation in the City.
 - (3) The City Planning Official or designee shall:
 - (i) For each mailing of notice, file an affidavit of mailing in the record as provided by subsection 1; and
 - (ii) For each published notice, file in the record the affidavit of publication in a newspaper that is required in subsection 2.

- (4) The Oregon Department of Land Conservation and Development (DLCD) shall be notified in writing of proposed comprehensive plan and development code amendments at least 45 days before the first public hearing at which public testimony or new evidence will be received. The notice to DLCD shall include a DLCD Certificate of Mailing.
 - (5) Notifications for annexation shall follow the provisions of this Chapter.
- 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 Planning Official or designee's office where additional information about the application can be obtained;
 - (2) The proposed site location;
 - (3) A description of the proposed site and the proposal in enough detail for people to determine what 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 shall contain the following statement: "Notice to mortgagee, lien holder, vendor, or seller: The Coburg Zoning 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.

5. Hearing Process and Procedure.

- a. Unless otherwise provided in the rules of procedure adopted by the City Council:
 - (1) The presiding officer of the Planning Commission and of the City

Council shall have the authority to:

- (i) Regulate the course, sequence, and decorum of the hearing;
 - (ii) Direct procedural requirements or similar matters; and
 - (iii) Impose reasonable time limits for oral presentations.
- (2) No person shall address the Commission or the Council without:
- (i) Receiving recognition from the presiding officer; and
 - (ii) Stating their full name and 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 procedures 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 Planning Official or designee's 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.
6. **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.
7. **Decision-Making Criteria.** The recommendation by the Planning Commission and the decision by the City Council shall be based on the

following factors:

- a. Approval of the request is consistent with the Statewide Planning Goals;
- b. Approval of the request is consistent with the Comprehensive Plan; and
- c. The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property.

8. 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
- 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 Planning Official or designee before the Council public hearing on the proposal. The City Planning Official or designee 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 60 days of its first public hearing on the proposed change, the City Planning Official or designee 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 for the City Council to hold a public hearing make a decision. 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, the City Council 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.

9. 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.

10. Notice of Decision. Notice of a Type IV decision shall be mailed to the applicant, all 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 Planning Official or designee. The City shall also provide notice to all persons as required by other applicable laws.

11. 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 if not approved, upon mailing of the notice of decision to the applicant.

12. Record of the Public Hearing.

- a. A record of the proceeding shall be made by a minutes recorder, 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 Planning Official or designee to the hearings body regarding the application;
- (3) The v record made by the minutes recorder, 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 that were given as required by this Chapter.

F. General Provisions: 120-day Rule; Time Computation; Pre-application Conferences; Acceptance and Review; Planning Official's Duties, Amended Applications; Re-submittal; Appeals

1. **120-day Rule.** The City shall take final action on Type I, II, and III permit applications that are subject to this Chapter, including resolution of all appeals, within 120 days from the date the application is deemed as complete, unless the applicant requests an extension in writing. Any exceptions to this rule shall conform to the provisions of ORS 227.178. (The 120-day rule does not apply to Type IV legislative decisions - plan and code amendments - under ORS 227.178.)
2. **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.
3. **Pre-application Conferences.**
 - a. Participants. When a pre-application conference is required, the applicant shall meet with the City Planning Official or his/her designee(s) and other parties as appropriate;
 - b. Information provided. At such conference, the City Planning Official or designee 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 that 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 Planning Official or his/her designee to provide any of the information required by this Section 4.1.600.C shall not constitute a waiver of any of the standards, criteria or requirements for the application;
- d. 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.

4. **Acceptance and Review of Applications.**

- a. Initiation of applications:
- (1) Applications for approval under this Chapter may be initiated by:
 - (i) Order of City Council;
 - (ii) Resolution of the Planning Commission;
 - (iii) The City Planning Official or designee;
 - (iv) 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 shall be consolidated for review and decision.
- (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 Planning Official or designee.

(2) When proceedings are consolidated:

- (i) The notice shall identify each application to be decided;
- (ii) The decision on a 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
- (iii) 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 Planning Official or designee 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;
 - (i) The required form;
 - (ii) The required fee;
 - (iii) 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.
 - (i) Review and notification. After the application is accepted, the City Planning Official or designee shall review the application for completeness. If the application is incomplete, the City Planning Official or designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant 180 days to submit the missing information, or 14 days to submit a refusal statement;
 - (ii) Application deemed complete for review. In accordance

with the application submittal requirements of this Chapter, the application shall be deemed complete upon the receipt by the City Planning Official or designee of all required information. The applicant shall have the option of withdrawing the application, or refusing to submit information requested by the City Planning Official or designee, see above. For the refusal to be valid, the refusal shall be made in writing and received by the City Planning Official or designee no later than 14 days after the date on the City Planning Official or designee's letter of incompleteness. If the applicant refuses in writing to submit the missing information, the application shall be deemed complete on 31st day after the City Planning Official or designee first accepted the application.

(iii) 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 it was first accepted.

(3) Agency Referral. The City shall also submit the application for review and comment to the City Engineer, road authority, and other applicable County, State, and federal review agencies.

d. 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 Planning Official or designee 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 Planning Official or designee, 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 change 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 (see (4), below), 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:
 - (i) 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;
 - (ii) 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 120-day rule on the existing application. If the applicant does not consent, the City shall not select this option;
 - (iii) 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.

5. **City Planning Official's Duties.** The City Planning Official or designee shall:
 - a. Prepare application forms based on the criteria and standards in applicable state law, the City's comprehensive plan, and implementing ordinance provisions;
 - b. Accept all development applications that comply with Section F;
 - 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 may 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:
 - (1) In the case of an application subject to a Type I or II review process, the City Planning Official or designee 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 Planning Official or designee 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, as provided by the respective application type.
- 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 all 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.

6. Amended Decision Process.

- a. The purpose of an amended decision process is to allow the City Planning Official or designee to correct typographical errors, rectify inadvertent omissions and/or make other minor changes that do not materially alter the decision.
- b. The City Planning Official or designee 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 14 business days after the original decision would have become final, but in no event beyond the 120-

day period required by state law. A new 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 in Section X.VI. All other changes to decisions that are not modifications under Section X.VI follow the appeal process.
7. **Re-submittal of Application Following Denial.** An application that has been denied, or an application that was denied and 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 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 that would change the outcome, as determined by the City Planning Official or designee.
8. **Appeal Process.** An appeal by a person with standing shall be a hearing *de novo* and following the Type III procedure under Article X.I, Section D. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the proceeding below. The Planning Commission or City Council may allow additional evidence, testimony, or argument concerning any standard, criterion, condition, or issue relevant to the original application.

G. Special Procedures.

1. **Expedited Land Divisions.** An Expedited Land Division (“ELD”) shall be defined and may be used as provided under ORS 197.360 through 197.380.
- a. Selection. An applicant who wishes to use an ELD procedure for a partition, subdivision or planned development instead of the regular procedure type assigned to it, must request the use of the ELD in writing at the time the application is filed, or forfeit his/her right to use it;
 - b. Review procedure. All applications for Expedited Land Divisions shall comply with ORS 197.360 through 197.380 and the Coburg Comprehensive Plan; ORS 197.360 through ORS 197.380 details the

criteria, application and notice requirements, and action and appeal procedures for expedited land divisions.

- c. Appeal procedure. An appeal of an ELD shall follow the procedures in ORS 197.375. Where the City has not otherwise appointed a hearings officer (referee) for such appeals, and the City Attorney is a Contractor (not a city employee), the City Attorney shall serve as the referee for ELD appeals.