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*PART 1 – ADMINISTRATION, PROCEDURES, ENFORCEMENT, PERMITS AND FEES*

*PART 1.A – GENERAL PROVISIONS*

( \* \* \* )

**§ 39.1015 ZONING MAP.**

(A) The designations, locations and boundaries of the respective districts and certain combinations thereof described in this Chapter are established as shown by appropriate color designations symbol or short title identification upon the Multnomah County Zoning Map. Zoning Maps are Geographic Information System (GIS) generated and shall be legislatively adopted. The GIS-generated Zoning Maps depicting districts and subdistricts shall be periodically readopted to reflect more accurate mapping information as it becomes available. The Zoning Map and all pertinent information shown thereon is incorporated herein and is to be deemed as much a part of this Chapter as if fully set forth; however, if a conflict appears between the Zoning Map and the written portion of this Chapter, the written portion shall control.

(B) A paper version of the Zoning Map and each amendment thereto shall be and remain on file with Multnomah County Land Use Planning.

(1) Multnomah County established a permanent Planning Commission in March 17, 1953. The County adopted its first Interim Ordinance on May 26, 1953 and a second Interim Ordinance on August 4, 1955. Zoning was applied to the lands under the County's jurisdiction in the following order:

Northeast	April 19, 1955
Southeast	July 3, 1956
Southwest	November 27, 1957
East	July 11, 1957
North	May 8, 1958
Northwest	July 10, 1958
Columbia Gorge	July 10, 1958
Far East	July 18, 1958
Orient	July 18, 1958
Springdale – Corbett	December 11, 1958
Re-adoption of all County Zoning Maps	May 12, 1960
Ordinance #100	November 15, 1962

(1) The set of Zoning Maps with the cover page dated the 15<sup>th</sup> of November, 1962 and signed by the Board shall be deemed to be the accurate depiction of:

(a) The Zoning Maps first adopted for successive geographic areas from April 19, 1955 through December 11, 1958; and

(b) The Zoning Maps in effect from the date of first adoption through November 15, 1962.

(2) Unless clearly shown otherwise, a zoning district boundary that follows a public right-of-way shall be deemed to follow the centerline of the public right-of-way.

**§ 39.1020 EXPIRATION OF PRIOR PERMITS AND DECISIONS.**

(A) All Type I permits issued prior to September 29, 2018 (Ord. 1262) shall expire on September 29, 2024, unless a different timeframe was specifically included in the permit or the use or development has been established according to all specifications and conditions of approval in the permit by September 29, 2024.

(1) Expiration of a Type I permit means that a new application is required for uses and development that are not established within the approval period.

(B) All land use decisions authorized prior to January 1, 2001 (Ord. 953 & Ord. 997) shall expire on January 1, 2003, unless:

(1) A different timeframe was specifically included in the decision, or

(2) The decision was for “residential development,” as specified in MCC 39.1195(B)(1)(d), which have the expiration timeframes of MCC 39.1195(B)(1)(c).

#### **§ 39.1025 EXISTENCE AND DISCONTINUANCE OF SPECIFIC USES**

(A) Existing conforming commercial, industrial, conditional use and community service uses may continue so long as used in the same manner and for the same purpose as was lawfully established in compliance with the land use decision(s), approval(s), and conditions of approval, except:

(1) The Planning Director may authorize the alteration or modification of the use or its structure(s) if it is necessary to comply with state or local health or safety requirements. The authorization shall be completed through the provisions of MCC 39.1030.

(2) If discretion is necessary to determine the existence of a use in subsection (A) above, the Planning Director shall make a determination as described in subsection (C) below.

(B) Discontinuance. If the use has been abandoned or interrupted for a continuous two-year period. Proof of intent to abandon is not required to determine that an existing use or use of a structure has been discontinued.

(1) An existing use with more than one legally established use may discontinue one of the uses without discontinuing the others.

(2) An existing use shall become discontinued if the use or the use of the structure changes for a continuous two-year period and the County has not authorized the change.

(3) If discretion is necessary to determine the discontinuance of a use in subsection (A) above, the Planning Director shall make a determination as described in subsection (C) below.

(C) Planning Director’s Decision to determine if a use associated with a business in subsection (A) above has been reduced in scope and intensity, or discontinued pursuant to subsection (B).

(1) The property owner(s) or their representative shall submit a Type II application for a Planning Director’s Decision as outlined in MCC 39.1110 and MCC 39.1135.

(2) The Planning Director may require documentation be provided that demonstrates the use has not ceased for a continuous two-year period for the last 15 years from the date of the application.

(D) A discontinued use may only be reestablished or replaced within a structure or on a property by obtaining approvals required by the Zoning Code.

#### **§ 39.1030 AUTHORIZATION OF OCCUPANCY FOR BUSINESSES**

(A) No building or structure, except residential development, and no land shall be used or occupied, and no change in the existing occupancy of a building, structure or land or portion thereof shall be made until a Zoning Approval has been issued by Land Use Planning through the Type I review process in combination with any other required approvals.

(B) Changes in the use of a building, structure or of land shall not be made except in compliance with the Zoning Code ~~or~~ existing land use decision.

(C) An application for occupancy shall include the following:

(1) Address of the building and/or property

Commented [CL1]: Switch to “and any applicable...”?

- (2) The name of the business owner
- (3) The name and signature of the property owner
- (4) The name the business will be operating under
- (5) Information to demonstrate compliance with the land use decision authorizing the land use. The Planning Director may request information regarding hours of operation, number of employees, activities that will occur within the building or on the property, etc.

**§ 39.1035 FEES.**

Fees shall be imposed for land use services provided pursuant to this Chapter. The amount of the fees will be set by Multnomah County Board resolution.

***PART 1.B - PROCEDURES***

**§ 39.1100 APPLICABILITY.**

(A) This subpart provides the procedures by which Multnomah County reviews and decides upon applications for all permits relating to the use of land authorized by ORS chapters 92, 197, and 215 and those other permits processed through the Multnomah County Land Use Planning Division. These permits include all forms of land divisions, land use, and legislative enactments and amendments to the Multnomah County Comprehensive Plan and Multnomah County Zoning Code. The provisions of MCC 39.1105 through 39.1245 supersede all conflicting provisions in the Multnomah County Code except as provided in MCC Chapter 38 for the Columbia River Gorge National Scenic Area.

(B) The procedures in this subpart do not apply to permits authorized in Multnomah County Code Chapter 38 or to permits reviewed by a city on behalf of the County pursuant to intergovernmental agreement.

(C) No person shall engage in or cause development to occur without first obtaining the necessary land use approvals required by Chapter 39, and according to the procedures in MCC 39.1105 through 39.1245.

(D) Where the procedures in MCC 39.1105 through MCC 39.1245 conflict with other provisions of Chapter 39, the more specific provisions shall take precedence.

**§ 39.1105 PRE-APPLICATION MEETING.**

(A) Prior to submitting an application for a Type II, Type III or Type IV application, the applicant shall schedule and attend a pre-application meeting with County staff to discuss the proposal. The pre-application meeting shall follow the procedure set forth by the Planning Director and may include a filing fee, notice to neighbors, neighborhood organizations, and other organizations and agencies.

(1) To schedule a pre-application meeting, the applicant shall follow the current process used by the Land Use Planning Division, provide requested materials and pay the appropriate fees.

(2) The Planning Director may provide the applicant with a written summary of the pre-application conference prior to or within 10 days after the pre-application meeting.

(B) Notwithstanding any representations by County staff at a pre-application meeting, staff is not authorized to waive any requirements of the Multnomah County Zoning Code. Any omission or failure by staff to identify all relevant applicable land use requirements shall not constitute a waiver by the County of any standard, criteria, or requirement.

(C) A pre-application meeting shall be valid for a period of 1 year from the date it is held.

(1) If no application is filed within 1 year of the meeting, the applicant must schedule and attend another meeting before they can submit an application.

(2) If the regulations change prior to the applicant filing the application, the applicant must schedule and attend another pre-application meeting before they can submit an application.

(3) If the proposed use, layout, or design of the proposed development changes significantly or the prior meeting was for another individual or applicant, the applicant must schedule and attend a new pre-application meeting before they can submit an application.

(D) The Planning Director may waive or modify the pre-application meeting requirements if, in the Director's opinion, the development does not warrant these steps. The title of the meeting and the above procedures may change at the discretion of the Planning Director as the needs arise.

**§ 39.1110 APPLICATION REQUIREMENTS FOR TYPE I – IV APPLICATIONS.**

(A) Except as provided in MCC 39.1200 and 39.9700, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser, or by a government agency that has the power of eminent domain. PC (legislative) actions may only be initiated by the Board, Planning Commission, or Planning Director.

(B) All applications shall be submitted to the Land Use Planning Division via the most current digital application intake process utilized by the County or as otherwise deemed appropriate by the Planning Director. Unless stated elsewhere in the Multnomah County Zoning Code, all applications at the time of submittal shall include the following:

(1) Application Form. One copy of a completed current county application form that includes the following information:

(a) Property Identification. An accurate address of the property(ies), if assigned, tax account number(s), and/or location of all properties that are the subject of the application.

(b) Property Owner Authorization and Information. Name, address, telephone number, email address, and authorization signature of all property owners or contract owners of record, or a representative for the government agency that has the power of eminent domain.

(i) If the property owner is a corporation, LLC, government or other entity that is not an individual, documentation that the person signing for the entity is authorized to sign.

(c) Applicant Information. Name, address and telephone number of the applicant, if different from the property owner(s), contract owners or the government agency.

(d) Property Owner Representative Information. Name, address and telephone number of any representative, if different from the applicant and an explanation of what the role and purpose of the representative is as part of the application process.

(e) Permits / Reviews Requested. A complete list of the permit(s) / review(s) approvals sought by the applicant as part of the current application proposed.

(2) Narrative. A complete and detailed narrative that describes the proposed development, existing site conditions, existing buildings, public facilities and services and other natural features. The narrative shall also explain how the criteria are or can be met, and address any other information indicated by staff as being required.

(3) Site Plan. At least one copy of a scaled site plan and all related scaled drawings in a readable/legible format as outlined in the latest procedure for the permit type.

(4) Additional Information. All required information listed in the applicable code to address the approval criteria for the requested application(s).

(5) Fees. All required application fees.

(C) The Planning Director may:

(1) Waive the submission of any of the required materials if not deemed to be applicable to the specific review sought.

(2) Require additional information, beyond that listed in this section or elsewhere in the Multnomah County Zoning Code, such as a report prepared by an appropriate expert, where needed to address relevant approval criteria.

(D) The applicant has the burden of demonstrating, with evidence, that all applicable approval criteria are, or can be met. The applicant is responsible for the completeness and accuracy of the application and all of the supporting documentation. An application shall not be approved unless it meets the applicable approval criteria.

(E) Applications shall be for contiguous lots and/or parcels and shall not include multiple noncontiguous properties. The Planning Director may choose to require separate applications, fees materials, forms for complex projects.

(F) An application for a permit or decision is not received and accepted for submission until all required application fees have been paid and the information required above is provided. Insufficient applications will be voided based upon the timeline policy of the Planning Director.

#### **§ 39.1115 CODE COMPLIANCE AND APPLICATIONS.**

Except as provided in subsection (A) below, the County shall not make a land use decision or permit approving development, including land divisions and property line adjustments, or issue a building permit or zoning review approval of development or any other approvals authorized by this code for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.

(A) A land use decision, permit, or other approval may be authorized if:

(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or

(2) It is necessary to protect public safety; or

(3) It is for work related to and within a valid easement over, on or under an affected property; or

(4) It brings a nonconforming structure or nonconforming use into compliance with current regulations; or

(5) The Planning Director determines the development qualifies as a minor project. For purposes of this provision, a minor project is defined as small in scale, located outside a Flood Hazard zone or Geologic Hazard overlay, intended for the primary benefit of the residents, farm uses, or natural habitat on the subject property and will meet all other applicable zoning and building regulations. A minor project may qualify under at least one of the following categories:

(a) Request for trade permits (such as electrical, mechanical and/or plumbing) that does not change the use of a structure or property; or

(b) Accessory structure(s) with an individual footprint(s) up to 200 square feet. This includes a structural addition(s) or modification(s); or

(c) Free standing renewable energy and heating systems up to 400 square feet ground coverage including, but not limited to solar (including solar panels), geothermal and wind generated systems; or

(d) Roof mounted solar renewable (including solar panels) and solar heating systems not exceeding the size of a structure's roof area, or roof height; or

(e) Mechanical equipment such as heating and air conditioning units, heat pumps, ventilation and air filtration systems, electrical boxes, back-up power generators, energy storage systems, water pumps, and similar equipment; or

(f) Heating oil, propane and similar tanks; or

(g) Development requests to protect or enhance natural resources, such as but not limited to water quality or wildlife habitat.

(h) Projects similar in type or scale to the above.

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

**§ 39.1120 CONSOLIDATION OF APPLICATIONS.**

(A) When an applicant applies for more than one type of land use or development permit for the same one or more contiguous parcels of land, the Planning Director may require the proceedings be consolidated for review and decision.

(1) An applicant may also request to consolidate applications for two or more related permits needed for a single development project.

(B) When proceedings are consolidated, required notices may be consolidated, provided the notice shall identify each application to be decided.

(C) When more than one application is reviewed in a hearing, separate findings and decisions shall be made on each application.

(D) When multiple applications are consolidated into a single application, all applications will be processed through the highest procedural and appeal process.

***PART 1.B.1 – PERMITS AND DECISIONS***

**§ 39.1125 REVIEW PROCESS TYPES - GENERALLY.**

(A) The Type I process in MCC 39.1130 shall be used for, but not limited to:

(1) Zoning Review, Final Design Review, and Uses identified as 'Allowed Uses' in a base zone;

(2) Application(s) identified under the "Type I" section of the County's current fee schedule, unless determined by the Planning Director to require a Type II process.



(B) The Type II process in MCC 39.1140 shall be used for, but not limited to:

- (1) Uses identified as 'Review Uses' in a base zone;
- (2) Application(s) identified under the 'Type II' section of the County's current fee schedule;
- (3) Applications consolidated by the applicant pursuant to MCC 39.1120;
- (4) Planning Director Interpretations;
- (5) Lot of Record Verifications;
- (6) Other applications as determined by the Planning Director

(C) The Type III process in MCC 39.1145 shall be used for, but not limited to:

- (1) Uses identified as 'Conditional Uses' in a base zone;
- (2) Uses identified as 'Community Service Uses';
- (3) Application(s) identified under the 'Type III' section of the County's current fee schedule;
- (4) Creation of parcels that do not abut a public road;
- (5) Applications consolidated by the applicant pursuant to MCC 39.1120;
- (6) Other applications as determined by the Planning Director.

(D) The Type IV process in MCC 39.1150 shall be used for, but not limited to:

- (1) Application(s) identified under the 'Type IV' section of the County's current fee schedule,
- (2) Demolition of historic building or structure before 120-day permit delay;
- (3) Quasi-judicial zone changes;
- (4) Quasi-judicial plan amendments;
- (5) Applications consolidated by the applicant pursuant to MCC 39.1120;
- (6) Other applications as determined by the Planning Director.

(E) In the event that the procedure type for a land use permit application is not identified, specified elsewhere in this Ordinance, or otherwise required by law, the Planning Director shall determine the applicable procedure based on the guidelines in MCC 39.1130 through 39.1150. Questions regarding the appropriate procedure shall be resolved in favor of the procedure type providing the greatest notice and opportunity to participate by the public.

(F) Notwithstanding MCC 39.1125(B), except for Planning Director's Interpretations, the Planning Director or applicant may choose to process a Type II land use application using the Type III procedure, and the Hearings Officer shall be the reviewing authority for the initial decision. The decision of the Hearings Officer shall be the final decision of the County. The fee for a Type II application initially processed using the Type III procedure shall be converted to the Other Hearing Case Deposit and be a full cost recovery permit.

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**§ 39.1130 COMPLETENESS REVIEW PROCESS FOR TYPE I APPLICATIONS AND TYPE I REVIEW PROCESS.**

(A) Completeness Review

(1) Upon submission of a Type I application, the Planning Director shall verify that the appropriate application fee(s) has been submitted. The Planning Director will then review the application and evaluate whether the application is complete.

(a) Within 30 days of receipt of the application, the Planning Director shall complete the initial review and issue to the applicant a completeness letter indicating whether the application is complete.

(b) If the application is not complete, the Planning Director shall advise the applicant what information must be submitted to make the application complete.

(2) Incomplete Application. Upon receipt of a letter indicating the application is incomplete, the applicant has 180 days from the original application submittal date within which to submit the missing information or the application shall be void and fees forfeited on the 181<sup>st</sup> day.

(a) If the applicant submits the requested information within the 180-day period from date the application fee(s) is paid, the Planning Director shall again verify whether the application, as augmented, is complete. The 180-day period shall not restart with each resubmittal of new or augmented information.

(b) Each such review and verification shall follow the procedure in subsection (1) of this section.

(c) The County will not deem the application complete until all information required by the Planning Director has been submitted.

(d) A Type I Permit shall remain incomplete until such time as the County deems the application complete.

(e) Neither the applicant nor property owner may deem the application complete.

(3) Complete Application. If the Planning Director determines the application is complete, the County may begin processing it.

(a) The approval criteria and standards which control the County's review and decision on a complete application are those which were in effect on the date the application was first submitted.

(b) A Type I permit may only be issued if the application demonstrates compliance with the approval criteria for the permit or a condition of approval involving no discretion can be imposed to ensure compliance with the criteria.

(c) A Type I permit cannot be issued unless any required Type II, III or IV land use decision is approved authorizing the land use of the subject property.

(B) Type I Permits. The review of these applications do not require interpretation or the exercise of policy or legal judgment in evaluating approval standards and issuance of the permit. Type I permits, include, but are not limited to, site plan approval of building or other specialty permits, and final land

division and development plans where there are no material deviation from the approved preliminary plans.

- (1) The Planning Director shall render all Type I permits.
- (2) Because no discretion is involved, Type I permits do not qualify as land use or limited land use decisions. The process requires no notice to any party other than the applicant, unless otherwise specifically stated in the permit approval criteria.
- (3) The Planning Director's decision is the County's final decision and not appealable by any party to the Hearings Officer, Board of County Commissioners or Land Use Board of Appeals. Type I permits may only be appealed through a writ of review proceeding to circuit court.

**§ 39.1135 COMPLETENESS REVIEW PROCESS FOR TYPE II – IV APPLICATIONS.**

(A) Upon submission of a Type II, Type III, or a Type IV application, the Planning Director shall verify that the appropriate application fee(s) has been submitted. The Planning Director will then review the application and evaluate whether the application is complete.

- (1) Within 30 days of receipt of the application, the Planning Director shall complete the initial review and issue to the applicant a completeness letter indicating whether the application is complete.
- (2) If the application is not complete, the Planning Director shall advise the applicant what information must be submitted to make the application complete.
- (3) The County will not deem the application complete until all information required by the Planning Director has been submitted.

(B) Incomplete Application. Upon receipt of a letter indicating the application is incomplete, the applicant has 180 days from the original application submittal date within which to submit the missing information or the application shall be void and fees forfeited on the 181<sup>st</sup> day.

- (1) If the applicant submits the requested information within the 180-day period from the date the application fee is paid, the Planning Director shall again verify whether the application, as augmented, is complete. The 180-day period shall not restart with each subsequent resubmittal of new or augmented information.
- (2) Each such review and verification shall follow the procedure in subsection (A) of this section.

(C) Complete Application. Once the Planning Director determines the application is complete, or the applicant provides written notice that no additional information will be provided and they deem the application complete, the County shall document the date the application was deemed complete and take final action on the application within 150 days of that date unless the applicant waives or extends the 150-day period. The 150-day period, however, does not apply in the following situations:

- (1) Any hearing continuance or other process delay requested by the applicant shall be deemed an extension or waiver, as appropriate, of the 150-day period.
- (2) The 150-day period shall be replaced with a 120-day period on all lands within an Urban Growth Boundary or applications involving mineral extraction under State Goal 5.
- (3) The 150-day period does not apply to any application for an amendment to the County's comprehensive plan or land use regulations nor to any application for a permit, the approval of which depends upon a plan amendment.

(D) Extension of the 150-day or 120-day period

(1) The 150-day period may be extended for a specified period of time at the written request of the applicant. The total of all extensions may not exceed 215 days.

(2) The 120-day period on all lands within an Urban Growth Boundary or for applications involving mineral extraction under State Goal 5 may be extended for a specified period of time at the written request of the applicant. The total of all extensions may not exceed 215 days.

(E) The approval criteria and standards which control the County's review and decision on a complete application are those which were in effect on the date the application was first submitted.

#### **§ 39.1140 TYPE II APPLICATION REVIEW.**

##### **(A) Type II Decisions.**

(1) The Planning Director shall render the initial decision on all Type II applications. The Planning Director's decision is the County's final decision unless appealed to the Hearings Officer.

(a) The Hearings Officer decision on such an appeal is the County's final decision on a Type II application and is appealable to LUBA.

(b) If the Planning Director appeals the Hearings Officer decision to the Board, the Board's decision is the County's final decision on a Type II application and may be appealed to LUBA.

(2) Type II decisions involve the exercise of some interpretation and discretion in evaluating approval criteria. Applications evaluated through this process may be permissible in the underlying zone provided the use and development meets applicable requirements. County Review typically focuses on what form the use will take, where it will be located in relation to other uses and natural features and resources, and how it will look and function. An application shall not be approved unless it is consistent with the applicable siting standards and in compliance with approval requirements.

##### **(B) Review Process**

(1) Application Notice. Upon receipt of a complete application, notice of application and an invitation to comment is mailed to the applicant, recognized neighborhood associations, property owners within 750 feet of the subject tract and other parties requesting written notice of the application.

(a) The Planning Director accepts written comments for 14 days after the notice of application is mailed.

(2) Decision. The Planning Director's decision is appealable to the Hearings Officer. If no appeal is filed the Planning Director's decision shall become final at the close of business on the 14th day after the issuance date listed on the decision.

##### **(C) Appeals**

(1) If there is an appeal of the Planning Director's decision, the Hearings Officer shall conduct a public hearing on the application pursuant to MCC 39.1170 through 39.1180.

(a) After the Hearings Officer issues a signed decision, the Planning Director may appeal the decision to the Board within seven days. If there is no appeal by the Planning Director, the signed Hearings Officer decision shall be mailed to those who submitted written comment, those who requested the decision in writing or provided oral testimony at a hearing on the matter, and DLCD at the discretion of the County.

(i) For those parties that have provided written comment without a mailing address, the Planning Director may provide a copy of the Hearings Officer Decision via other means available.

(b) The mailed decision is the County's final decision on the application and may be appealed to the Land Use Board of Appeals (LUBA) within 21 days of the date the Hearings Officer decision is mailed.

(2) If the Planning Director appeals the Hearings Officer decision, then notice of the appeal and public hearing before the Board shall be mailed as required in MCC 39.1175.

(a) A staff report by the Planning Director shall be available 14 days before the hearing.

(b) The Board shall conduct a public hearing on the application under the provisions of MCC 39.1180.

(c) The Board's decision shall be mailed to those who submitted written comment, requested the decision in writing or provided oral testimony at a hearing on the matter.

(i) The mailed decision is the County's final decision on the application and may be appealed to LUBA within 21 days of when the signed decision is mailed. Any person who participated orally or in writing in the proceeding before the Hearings Officer or Board may appeal the final decision.

**§ 39.1145 TYPE III APPLICATION REVIEW.**

(A) Type III Decisions.

(1) The Hearings Officer shall render all Type III decisions. The Hearings Officer decision is the County's final decision on a Type III application and is appealable to LUBA.

(a) If the Planning Director appeals the Hearings Officer decision to the Board, the Board's decision is the County's final decision on a Type III application and may be appealed to LUBA.

(2) Type III decisions involve the greatest amount of discretion and evaluation of subjective approval criteria, yet are not required to be heard by the Board. Applications evaluated through this process primarily involve conditional uses and some land divisions applications. The process for these decisions is controlled by ORS 197.797.

(B) Review Process

(1) Application Notice. At the discretion of the Planning Director, upon receipt of a complete application, notice of application and an invitation to comment may be mailed to the applicant, recognized neighborhood associations, property owners within 750 feet of the subject tract and other parties requesting written notice of the application.

(a) The Planning Director accepts written comments for 14 days after the notice of application is mailed.

(2) Hearing Notice. Notice of the application and Hearings Officer hearing is mailed to the applicant, recognized neighborhood associations, property owners within 750 feet of the subject tract, and other parties requesting written notice of the application.

(a) The Hearing Notice shall be issued at least 20 days prior to the hearing, and the staff report shall be available at least 7 days prior to the hearing.

(3) Hearing. The Hearings Officer shall conduct a public hearing pursuant to the procedures in MCC 39.1170.

(a) The Hearings Officer shall accept into the record all testimony and evidence relevant to the matter, prior to the close of the hearing.

(C) Appeals

(1) After the Hearings Officer issues a signed decision, the Planning Director may appeal the decision to the Board within seven days.

(a) If there is no appeal by the Planning Director, the signed Hearings Officer decision shall be mailed to those persons entitled to notice of a Type III decision under MCC 39.1175. The mailed decision is the County's final decision on the application and may be appealed to the LUBA within 21 days of the date the decision is mailed.

(i) For those parties that have provided written comment without a mailing address, the Planning Director may provide a copy of the Hearings Officer Decision via other available means.

(2) If the Planning Director appeals the Hearings Officer decision, then notice of the appeal and hearing before the Board shall be mailed as required in MCC 39.1175.

(a) A staff report by the Planning Director shall be available 14 days before the hearing.

(b) The Board shall conduct a public hearing on the application under the provisions of MCC 39.1180.

(c) The Board's decision shall be mailed to those who submitted written comment, requested the decision in writing or provided oral testimony at a hearing on the matter.

(i) The mailed decision is the County's final decision on the application and may be appealed to LUBA within 21 days of when the signed decision is mailed.

**§ 39.1150 TYPE IV APPLICATION REVIEW.**

(A) Type IV Decisions.

(1) The Planning Commission shall render the initial decision on all Type IV applications. If the Planning Commission denies the Type IV application, that decision is final unless appealed to the Board in accordance with MCC 39.1165. The process for Type IV land use decisions is controlled by ORS 197.797.

(a) If the Planning Commission recommends approval of the application, that recommendation is forwarded to the Board. The Board's decision is the County's final decision on a Type IV application and is appealable to LUBA.

(B) Review Process

(1) Application Notice. At the discretion of the Planning Director, upon receipt of a complete application, notice of application and an invitation to comment may be mailed to the applicant, recognized neighborhood associations, property owners within 750 feet of the subject tract and other parties requesting written notice of the application.

(a) The Planning Director accepts written comments for 14 days after the notice of application is mailed.

(2) Hearing Notice. Notice of the application and Planning Commission hearing is mailed to the applicant, recognized neighborhood association, property owners within 750 feet and other parties requesting written notice of the application.

(a) Notice must be issued at least 20 days prior to the hearing, and the staff report must be available at least 7 days prior to the hearing.

(3) Planning Commission Hearing. At the evidentiary hearing held before Planning Commission all testimony and evidence relevant to the matter shall be accepted prior to the close of the hearing.

(a) If the Planning Commission denies the application, any party who appeared before the Planning Commission either in person or in writing, may appeal the Planning Commission's denial to the Board within 14 days after the decision is signed.

(i) If no appeal is filed, the Planning Commission's denial shall become final upon the close of business on the last day of the appeal period.

(b) If the Planning Commission votes to approve the application, that decision is forwarded as a recommendation to the Board for final consideration.

(4) Board Hearing. Any review by the Board is de novo, as if new, and all issues relevant to the applicable approval criteria may be considered.

(a) Hearing Notice. Notice of the Board Hearing shall follow the process listed in MCC 39.1175.

(b) The Board's decision is the County's final decision and is appealable to LUBA within 21 days of when the signed Board order is mailed.

(C) Type IV Quasi-Judicial Plan and Zone Change Approval Criteria

(1) Quasi-judicial Plan Revision. The burden of proof is upon the person initiating a quasi-judicial plan revision. That burden shall be to persuade that the following standards are met:

(a) The plan revision is consistent with the standards of ORS 197.732 if a goal exception is required, including any OAR's adopted pursuant to these statutes; the Planning Commission recommends adoption of some form of the proposal, the Planning Commission shall prepare and forward to the Board of Commissioners a report and recommendation to that effect. If the Planning Commission recommends rejection of the proposal, the matter is terminated and may not be appealed unless otherwise provided by law. If the Board of Commissioners has initiated the proposal, the Planning Commission shall prepare and forward to the Board of Commissioners a report and recommendation of rejection.

(b) The proposal conforms to the intent of relevant policies in the comprehensive plan or that the plan policies do not apply. In the case of a land use plan map amendment for a commercial, industrial, or public designation, evidence must also be presented that the plan does not provide adequate areas in appropriate locations for the proposed use; and

(c) The uses allowed by the proposed changes will:

(i) Not destabilize the land use pattern in the vicinity;

(ii) Not conflict with existing or planned uses on adjacent lands; and

(iii) That necessary public services are or will be available to serve allowed uses.

**Commented [LE3]:** If 2 evidentiary hearings are allowed, notice can be reduced to 10 days per ORS 197.797(3)

(d) Proof of change in a neighborhood or community or mistake in the planning or zoning for the property under consideration are additional relevant factors to be considered under this subsection.

(2) Quasi-Judicial Zone Change. The burden of proof is upon the person initiating a zone change request. That burden shall be to persuade that:

(a) Granting the request is in the public interest;

(b) There is a public need for the requested change and that need will be best served by changing the classification of the property in question as compared with other available property;

(c) The proposed action fully accords with the applicable elements of the Comprehensive Plan; and

(d) Proof of change in a neighborhood or community or mistake in the planning or zoning for the property under consideration are additional relevant factors to be considered under this subsection. The existence of home occupations shall not be used as justification for a zone change.

#### **§ 39.1155 INTERPRETATIONS AND REQUESTS FOR LOT OF RECORD VERIFICATION.**

(A) The Planning Director has the authority to decide all questions of interpretation or applicability to specific properties of any provision of the comprehensive plan, or other land use code.

(1) A person may specifically request an interpretation of a provision in the code or request verification of the Lot of Record status of a lot or parcel.

(2) An application for an interpretation or Lot of Record Verification shall be processed as a Type II application.

(3) Any interpretation of a provision of the comprehensive plan, or other land use code shall consider applicable provisions of the comprehensive plan and the purpose and intent of the ordinance adopting the particular code section in question.

(B) The Planning Director may refuse to accept an application for an interpretation or Lot of Record verification if:

(1) The Planning Director determines that the question presented or Lot of Record verification can be decided in conjunction with approving or denying a pending land use action application or if in the Planning Director's judgment the requested determination should be made as part of a decision on an application for a quasi-judicial land use or zone change permit not yet filed; or

(2) The Planning Director determines that there is an enforcement case pending in which the same issue necessarily will be decided.

(C) A determination by the Planning Director not to accept an application under paragraph (B) of this section is not a land use decision and shall be the County's final decision.

#### **§ 39.1160 CONDITIONS OF APPROVAL AND NOTICE OF DECISION.**

(A) All county decision makers have the authority to impose reasonable conditions of approval designed to ensure that all applicable approval standards are, or can be, met.

**Commented [LE4]:** Do we want to break out these two things and put permit requirements in for LOR?



(1) The applicant has the burden of demonstrating that the application complies with the approval criteria or will comply with the approval criteria through the imposition of conditions of approval. The applicant must submit evidence demonstrating that an approval criteria can be met with the imposition of conditions as well as demonstrate a commitment to comply with conditions of approval.

(2) As a condition of approval, the County may require the recording of the notice of decision at the applicant's expense. The notice of decision shall run with the land and shall be placed in the County deed records prior to the issuance of any building permits or development activity pursuant to the approval.

(a) Proof or recording shall be provided to the County Land Use Planning Division prior to the issuance of any building permits or the start of any development activity.

(3) Failure to comply with any condition of approval shall be grounds for revocation of the permit(s) and grounds for instituting code enforcement proceedings pursuant to the County code.

(B) Notice of decision. The County shall send, by first class mail, a notice of all decisions rendered under a Type II, Type III, or Type IV process.

(1) For Type II decisions, notice shall be mailed to all property owners within 750 feet of the subject tract, to those persons who have identified themselves in writing and to any County-recognized neighborhood association or identified agency whose territory includes the subject property.

(2) For Type III and Type IV decisions, notice of decision shall be mailed to those who submitted written comment, requested the decision in writing or provided oral testimony at a hearing on the matter, and at the discretion of the applicant, to DLCD.

(a) For those parties that have provided written comment without a mailing address, the Planning Director may provide a copy of the Hearings Officer Decision via other available means.

(3) The notice of decision shall include the following information:

(a) The file number and effective date of decision;

(b) The name of the applicant and appellant (if different);

(c) The street address or other easily understood location of the subject property;

(d) A brief summary of the decision, and if an approval, a description of the permitted use approved;

(e) A statement that the decision is final at the close of the appeal period unless appealed, and description of the requirements for perfecting an appeal;

(f) A statement that a person receiving notice cannot appeal a Type II or Type IV decision directly to LUBA unless all local appeals are exhausted;

(g) Contact information whereby a copy of the final decision may be obtained;

(h) A statement that a digital copy of the application record and applicable criteria are available at no cost, and that paper copies can be obtained on a per/page fee basis.

***PART 1.B.2 – HEARINGS AND APPEALS***

**§ 39.1165 APPEALS**

Appeals of any decisions of the County must comply with the requirements of this section.

(A) Appeals by applicants or opponents of an application.

(1) Type I decisions by the Planning Director are not appealable to any other decision maker within the County.

(2) A Notice of Appeal of a Type II decision by the Planning Director or Type IV decision by the Planning Commission must be received in writing by the Land Use Planning Division within 14 calendar days from the issuance date listed on the notice of the challenged decision.

(a) Information on how and where to submit an appeal with the Land Use Planning Division will be listed on the notice of Decision.

(b) Late or improperly filed appeals shall be deemed a jurisdictional defect and will result in the automatic rejection of any appeal so filed.

(c) The following must be included as part of the Notice of Appeal:

(i) The County case file number and date the decision to be appealed was rendered.

(ii) The name, mailing address, and telephone number for each appellant.

(iii) A statement of how each appellant has an interest in the matter and standing to appeal.

(iv) A statement of the specific grounds for the appeal.

(v) The appropriate appeal fee. Failure to include the appeal fee within the appeal period is deemed to be a jurisdictional defect and will result in the automatic rejection of any appeal so filed.

(3) Standing to Appeal. Those who are entitled to appeal a Type II or Type IV decision include those who are entitled to notice under MCC 39.1175.

(4) The Land Use Planning Division shall issue notice of the appeal hearing to all parties entitled to notice had the initial decision been subject to a hearing under MCC 39.1175. Notice of the appeal hearing shall contain the following information:

(a) The case file number and date of the decision being appealed;

(b) The time, date and location of the public hearing;

(c) The name of the applicant, owner and appellant (if different);

(d) The street address or other easily understood location of the subject property;

(e) A description of the permit requested and the applicant's development proposal;

(f) A brief summary of the decision being appealed and the grounds for appeal listed in the Notice of Appeal;

(g) A general explanation of the requirements for participation and the County's hearing procedures.

(6) Appeal hearing, scope of review. Appeal hearings to a Hearings Officer shall comply with the procedural requirements of MCC 39.1170. Appeal hearings shall be de novo, as if new, and all issues relevant to the applicable approval criteria may be considered. However, written Planning Director interpretations, pursuant to MCC 39.1155, are to be given deference pursuant to MCC 39.1155.

(B) Appeals by the Planning Director of Hearings Officer Decisions.

(1) The Planning Director may appeal a Hearings Officer decision on a Type II or Type III Permit to the Board. That opportunity to appeal the decision is during the seven days following the signing of the decision by the Hearings Officer.

(2) A Notice of Appeal and Notice of Hearing before the Board shall be mailed at least 14 days prior to the hearing to those who submitted written comment, requested the decision in writing or provided oral testimony at a hearing on the matter, and DLCD at the discretion of the applicant. The following must be included as part of the Notice of Appeal and Notice of the Hearing (which may be one notice):

- (a) The county's case file number and date the decision to be appealed was rendered;
- (b) The name, mailing address and daytime telephone number of the Planning Director or designee;
- (c) A statement of the specific grounds for the appeal.

(3) Standing to Appeal. An appeal of a Hearings Officer decision on a Type II Permit or Type III Permit may only be filed by the Planning Director to the Board.

(4) Appeal hearing, scope of review. Appeal hearings to the Board shall comply with the procedural requirements of MCC 39.1180. The appeal hearing shall be on the record and the Board may substitute its decision for the decision of the Hearings Officer.

### § 39.1170 HEARINGS PROCESS

All public hearings on Type II, Type III, or Type IV applications shall be quasi-judicial and comply with the procedures of this section.

(A) After the Planning Director determines that an application for a Type III or Type IV decision is complete, or once an appeal of a Planning Director's decision on a Type II application has been properly filed, the Land Use Planning Division shall schedule a hearing.

(B) Notice of the hearing shall be issued in accordance with MCC 39.1175.

(C) The property subject to a Type III or Type IV application shall be posted in accordance with MCC 39.1175.

(D) The Planning Director shall prepare a staff report on the application which lists the applicable approval criteria, describes the application and the applicant's proposal, summarizes all relevant County department, agency and public comments, describes all other pertinent facts as they relate to the application and the approval criteria, and makes a recommendation as to whether each of the approval criteria are met.

(E) At the beginning of the initial public hearing authorized under these procedures, a statement shall be announced to those in attendance, that:

- (1) Lists the applicable substantive criteria;

(2) The hearing will proceed in the following general order: staff report, applicant's presentation, testimony in favor of the application, testimony in opposition to the application, rebuttal, record closes, deliberation and decision;

(3) That all testimony and evidence submitted, orally or in writing, must be directed toward the applicable approval criteria. If any person believes that other criteria apply in addition to those addressed in the staff report, those criteria must be listed and discussed on the record. The decision maker may reasonably limit oral presentations in length or content depending upon time constraints. Any party may submit written materials of any length while the public record is open;

(4) Failure to raise an issue on the record, with sufficient specificity and accompanied by statements or evidence sufficient to afford the County and all parties to respond to the issue, may preclude appeal on that issue to the Land Use Board of Appeals;

(5) Any party wishing a continuance or to keep open the record must make that request while the record is still open;

(6) That the decision maker shall disclose any ex parte contacts, conflicts of interest or bias before the beginning of each hearing item and provide an opportunity for challenge. Advised parties must raise challenges to the procedures of the hearing at the hearing and raise any issue relative to ex parte contacts, conflicts of interest or bias, prior to the start of the hearing.

(F) Requests for continuances and to keep open the record. The decision maker(s) may continue the hearing from time to time to allow the submission of additional information or for deliberation without additional information. New notice of a continued hearing need not be given so long as the decision maker(s) establishes a time certain and location for the continued hearing. Similarly, the decision maker may close the hearing but keep open the record for the submission of additional written material or other documents and exhibits. The decision maker(s) may limit the factual and legal issues that may be addressed in any continued hearing or open-record period.

(G) Denial by a Hearings Officer of a Type III application, such as a Conditional Use or a Community Service Use, shall result in denial of all associated Type II decisions applied for at the same time that are subject to some part of the Type III decision. The Type II decisions for which this applies include, but are not limited to Design Review, Variances, Significant Environmental Concern, Willamette River Greenway, and Geologic Hazards Permits.

#### **§ 39.1175 HEARINGS NOTICE**

Except for appeals of Hearings Officer decisions by the Planning Director which have different notice requirements in MCC 39.1165, notice for all public hearings for Type III, IV or an appeal of a Type II application shall conform to the requirements of this section.

(A) Parties to Notice. At least 20 days prior to the hearing, the County shall prepare and send, by first class mail, notice of the hearing to all owners of record, based upon the most recent Multnomah County records, of property within 750 feet of the subject tract and to any county-recognized neighborhood association or identified agency whose territory includes the subject property.

(1) The County shall further provide notice at least 20 days prior to a hearing to those persons who have identified themselves in writing as aggrieved or potentially aggrieved or impacted by the decision prior to the required mailing of such notice.

(2) For Type IV applications, the County shall also publish notice in a newspaper of general circulation within the county at least 10 days prior to the hearing.

(B) Notice of the hearing shall include the following information:

(1) The time, date and location of the public hearing;

(2) Street address or other easily understood location of the subject property and County assigned case file number;

(3) A description of the applicant's proposal, along with a list of citations of the approval criteria that the County will use to evaluate the proposal;

(4) A statement that any interested party may testify at the hearing or submit written comments on the proposal at or prior to the hearing, and that a staff report will be prepared and made available to the public at least 7 days prior to the hearing;

(5) A statement that any issue which is intended to provide a basis for an appeal to the Land Use Board of Appeals must be raised before the close of the public record. Issues must be raised and accompanied by statements or evidence sufficient to afford the County and all parties to respond to the issue;

(6) A statement that the application and all supporting materials and evidence submitted in regard to the application may be requested, and that copies may be obtained at cost from the Multnomah County Land Use Planning Division; and

(7) Instructions for submitting questions about the application prior to the hearing.

(8) Notice published in a newspaper shall include the information in (1), (2) and (7) above, along with a brief description of the applicant's proposal, and a statement that all interested parties may testify at the hearing or submit written comments on the proposal at, or prior to the hearing.

Commented [CL5]: State law requirement?

(C) Posting of Notices. The requirements of this subsection shall apply to Type III and Type IV hearings except those hearings resulting from an appeal of a Hearings Officer decision by the Planning Director.

(1) The County shall supply all of the notices which the applicant is required to post on the subject property, and shall specify the dates the notices are to be posted. The date of posting is ten days prior to the date of hearing. Failure to post the notice shall not be a procedural error.

Commented [CL6]: If it is not a procedural error, then can we revise this subsection to posting may be required at the discretion of the Planning Director?

(2) The applicant must place the notice along the frontage of any improved public right-of-way abutting the subject property. If a property's frontage exceeds 300 feet, the applicant shall post one copy of the notice for each 300 feet or fraction thereof, not to exceed four signs per frontage. Notices shall be posted within 10 feet of the right of way and shall be clearly visible to pedestrians and motorists, but shall not obstruct the vision clearance of any intersection or driveway. To the extent practicable, all signs on each frontage shall be equally spaced. Notices shall not be posted within the public right of way nor on trees. The applicant shall remove all signs within 10 days following the event announced in the notice. The Planning Director may waive or modify the posting requirements if there are practical barriers to meeting the requirements.

(3) For applications involving the public right-of-way, at least two, no more than four signs shall be posted in the public right-of-way. Exact locations shall be determined by Transportation Division to in order to address safety concerns.

### **§ 39.1180 APPEAL OF A HEARINGS OFFICER DECISION ON A TYPE II OR TYPE III APPLICATION.**

Review by the Board of County Commissioners (Board) of a Planning Director's appeal of a Hearings Officer decision on a Type II or Type III application shall be pursuant to the Multnomah County Home Rule Charter and implementing Rules, with the following additional requirements:

(A) Notice of the hearing shall be given as required by MCC 39.1175.

(B) A staff report by the Planning Director shall be available 14 days before the hearing. The scope of argument and information in the staff report shall be limited to the record made before the Hearings Officer.

(C) Any written testimony submitted by others shall be available 7 days before the hearing. The scope of argument and information in the written testimony shall be limited to the record made before the Hearings Officer and the staff report described in (B) above.

(D) A written response to (C) is not allowed.

(E) The following persons may present oral testimony:

(1) By the applicant (and/or the applicant's representative) and the Planning Director;

(2) Limited to the issues, evidence and arguments on the record that were made before the Hearings Officer;

(3) Limited to 10 minutes of argument on each side, with the provision that the Planning Director may reserve time from that 10 minutes for a rebuttal.

(F) The Board will then deliberate and deliver an oral decision before the end of the hearing. The Board shall then direct staff to prepare an Order and Opinion that reflects the decision and direct the Chair to sign the same. Staff will then mail the signed Order and Opinion to those who submitted written comment, requested the decision in writing or provided oral testimony at a hearing on the matter. The mailed decision is the county's final decision on the application and may be appealed to LUBA within 21 days of the date the decision is mailed.

#### ***PART 1.B.3 – POST DECISION PROCEDURES***

##### **§ 39.1185 REAPPLICATION LIMITED.**

If an application is denied or withdrawn following the close of the public hearing or the end of the appeal period, no reapplication for the same or substantially similar proposal may be made for one year following the date of final decision denying the permit or the date of withdrawal.

##### **§ 39.1190 PERFORMANCE GUARANTEES.**

When conditions of permit approval require the applicant to construct certain improvements, the County may allow the applicant to submit a financial guarantee in order to postpone construction, or to guarantee construction to certain standards. Financial guarantees shall be governed by this section.

(A) Form of guarantee. Guarantees shall be in a form approved by the County Attorney, including an irrevocable stand-by letter of credit issued by a recognized lending institution to the benefit of the County, a certified check, dedicated bank account or allocation of a construction loan held in reserve by the lending institution for the benefit of the County. The guarantee shall be filed with the Land Use Planning Division.

(B) Amount of guarantee. The amount of the performance guarantee shall be equal to at least 110% of that estimated cost of constructing the improvement in question. The amount of the performance guarantee may be larger than 110% if deemed necessary by the Planning Director. The cost estimate substantiating the amount of the guarantee must be provided by the applicant supported by either an engineer's or an architect's estimate or written estimates by three contractors with their names and addresses. The estimates shall separately itemize all materials, labor, and other costs.

(C) Duration of the guarantee. The guarantee shall remain in effect until the improvement is actually constructed and accepted by the County. Once the County has inspected and accepted the improvement,

the County shall release the guarantee to the applicant. If the improvement is not completed to the County's satisfaction within the time limits specified in the permit approval or the guarantee, the Director may draw upon the guarantee and use the proceeds to construct or complete construction of the improvement and for any related administrative and legal costs incurred by the County. Once constructed and approved by the County, any remaining funds shall be refunded to the applicant.

(D) If the applicant elects to defer construction of improvements by using a financial guarantee, the applicant shall agree to construct those improvements upon written notification by the County, or at some other mutually agreed-to time. If the applicant fails to commence construction of the required improvements within 6 months of being instructed to do so, the County may, without further notice, undertake the construction of the improvements and draw upon the applicant's performance guarantee to pay those costs as provided in paragraph (C) above.

#### **§ 39.1195 EXPIRATION AND EXTENSION OF DECISIONS.**

##### **(A) Type I Permits**

(1) Expiration. Type I permits issued pursuant to this Chapter shall expire six (6) years after the date the permit was issued, unless the use or development was established according to all specifications and conditions of approval in the permit.

(a) The Planning Director may specify a shorter expiration period in the permit in order to align with the expiration period for another permit associated with the same use or development or for any other reason determined by the decision maker.

(b) Expiration of a Type I permit means that a new application is required for uses that are not established within the approval period.

(c) Expiration is automatic. Failure to give notice of expiration shall not affect the expiration of a Type I permit.

(2) Extension. Type I permits shall only be considered for extension when the use or development to be established under the Type I permit is contingent on a Type II, III, or IV permit associated with the same use or development.

(a) A Type I permit shall not be granted an extension beyond the expiration period of the Type II, III, or IV permit associated with the same use or development.

(b) An extension request for a Type I permit is not a land use decision as described in ORS 197.015, and is not subject to appeal as a land use decision. The extension request may be approved provided:

(i) An applicant makes a written request for an extension of the approval period;

(ii) The request is submitted to the county prior to the expiration of the approval period; and

(iii) The requested extension aligns with and does not extend beyond the expiration period of a Type II, III, or IV permit associated with the same use or development.

(3) Notwithstanding Subsections (1) or (2) of this section, for uses in Chapter 39 with different specified timelines contained in their approval criteria, those codes shall govern over these provisions.

##### **(B) Type II or III Land Use Approvals**

(1) Expiration. Type II or III Land Use Approvals shall expire as follows:

(a) For a use or development that does not include a structure, the approval shall expire two (2) years after the date of the final decision, unless the use or development was established according to all specifications and conditions of approval in the land use approval.

(i) Expiration of an approval means that a new application is required for uses that are not established during the approval period. For land divisions, "established" means the final deed or plat has been recorded with the county recorder.

(b) Except for approval of residential developments as specified in (c) below, for a use or development that includes a structure, the approval shall expire as described below:

(i) When construction has not commenced within two (2) years of the date of the final decision. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.

(1) For utilities and developments without a frame or foundation, commencement of construction shall mean actual construction of support structures for an approved above ground utility or development or actual excavation of trenches for an approved underground utility or development.

(2) For roads, commencement of construction shall mean actual grading of the roadway.

(b) When the structure has not been completed within four (4) years of the date of commencement of construction. Completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.

(c) Residential development on land zoned for Exclusive Farm Use or Commercial Forest Use outside of an urban growth boundary is subject to the following provisions:

(i) The approval shall expire as described below:

(1.) When construction has not commenced within four (4) years of the date of the final decision. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.

(2.) When the structure has not been completed within four (4) years of the date of commencement of construction. Completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.

(ii) For the purposes of this section, the expiration provisions in (i) shall also apply to all other Type II or III decisions associated with approval of the residential development, such as SEC or GH permits.

(iii) The provisions in (c) shall only apply to residential development for which a decision of approval:

(1.) Was valid (not expired) on January 1, 2002, or

(2.) Was issued after January 1, 2002 (the effective date of Senate Bill 724, 2001).



(d) For the purposes of this section, “residential development” only includes dwellings as provided for under:

(i) ORS 215.283(1)(s) – alteration, restoration or replacement of a lawfully established dwelling in the EFU zones as provided in MCC 39.4220(J), (L) & (M); and

(ii) ORS 215.284 – dwelling not in conjunction with farm use in the EFU zones (not currently provided for in this Zoning Code); and

(iii) ORS 215.705 (1) to (3) – “Heritage Tract Dwelling” in the EFU zones as provided for in MCC 39.4265(D) and 39.4230 (L) and (M); and

(iv) ORS 215.705 through ORS 215.730 – “Heritage Tract Dwelling” in the CFU zones as provided in MCC 39.4095; and

(v) ORS 215.740 – “Large Acreage Dwelling” in the CFU zones as provided for in MCC 39.4085; and

(vi) ORS 215.750 – “Template Dwelling” in the CFU zones as provided for in MCC 39.4090; and

(vii) ORS 215.755 (1) – alteration, restoration or replacement of a lawfully established dwelling in the CFU zones as provided in MCC 39.4070 (D); and MCC 39.4075(A); and

(viii) ORS 215.755 (3) a caretaker residence for a public park or public fish hatchery in the CFU zones as provided for in MCC 39.4070(G).

(2) Expiration under above is automatic. Failure to give notice of expiration shall not affect the expiration of a Type II or III approval.

(a) Notwithstanding Subsection (1) of this section, on exception lands the Planning Director may set forth in the written decision specific instances or time periods when a permit expires.

(b) If a decision is appealed beyond the jurisdiction of the County, the expiration period shall not begin until review before the Land Use Board of Appeals and the appellate courts have been completed, including any remand proceedings.

(c) Notwithstanding Subsections (1) and (2) of this section, for uses in Chapter 39 with different specified timelines contained in their approval criteria, those codes shall govern over these provisions.

(3) Extension. Type II or III Land Use Approvals may be considered for extension as follows:

(a) The Planning Director shall grant one extension period of 24 months for approvals of dwellings listed in MCC 39.1195(B)(1)(d) and shall grant one extension period of up to 12 months for all other approvals provided:

(i) An applicant makes a written request for an extension of the development approval period;

(ii) The request is submitted to the county prior to the expiration of the approval period;

(iii) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and

(iv) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

(b) Pursuant to OAR 660-033-0140, approval of an extension in EFU and CFU districts is an administrative decision, is not a land use decision as described in ORS 197.015, and is not subject to appeal as a land use decision. All other extension requests authorized by this section are land use decisions and shall be reviewed under the Type II procedures set forth in MCC 39.1135 through 39.1140.

(c) Except for approvals of dwellings listed in MCC 39.1195(B)(1)(d), the Planning Director may authorize additional one-year extensions where applicable criteria for the decision have not changed. For each additional extension, the Planning Director shall confirm compliance with the standards in MCC 39.1195.

### **§ 39.1200 REVOCATION OF DECISIONS.**

In the event an applicant, or the applicant's successor in interest, fails to fully comply with all conditions of approval or otherwise does not comply fully with the County's approval, the County may institute a revocation or modification proceeding under this section.

(A) All Type I, Type II, Type III and Type IV decisions may be revoked or modified if the Planning Director determines a substantial likelihood that any of the following situations exists:

- (1) One or more conditions of the approval have not been implemented or have been violated; or
- (2) The activities of the use, or the use itself, are substantially different from what was approved or represented by the applicant.

(B) Revocation or modification shall be processed as a Type III decision. The Land Use Planning Division or any private complaining party shall have the burden of proving, based on substantial evidence in the whole record, that the applicant or the applicant's successor has in some way violated the County's approval.

(C) Possible actions at the revocation hearing. Depending on the situation, the Hearings Officer may take any of the actions described below. The Hearings Officer may not approve the new use or a use that is more intense than originally approved unless the possibility of this change has been stated in the public notice. Uses or development which are alleged to have not fulfilled conditions, violate conditions or the use is not consistent with the County's approval may be subject to the following actions:

- (1) The Hearings Officer may find that the use or development is complying with the conditions of the approval or is as approved by the county. In this case, the use or development shall be allowed to continue;
- (2) The Hearings Officer may modify the approval if the Officer finds that the use or development does not fully comply with the conditions of approval, that the violations are not substantial enough to warrant revocation, and that the use can comply with the original approval criteria if certain conditions are met. In this case, the Hearings Officer may modify the existing conditions, add new conditions to ensure compliance with the approval criteria, or refer the case to the code compliance officer for enforcement of the existing conditions;
- (3) The Hearings Officer may revoke the approval if the Officer finds there are substantial violations of conditions or failure to implement land use decisions as represented by the applicant in the decision approved, such that the original approval criteria for the use or development are not being met.

(D) Effect of revocation. In the event that the permit approval is revoked, the use or development becomes illegal. The use or development shall be terminated within thirty days of the date the revocation

final order is approved by the Hearings Officer, unless the decision provides otherwise. In the event the decision maker's decision on a revocation request is appealed, the requirement to terminate the use shall be stayed pending a final, unappealed decision.

**§ 39.1205 TRANSFER OF APPROVAL RIGHTS AND RESTRICTIONS.**

Unless otherwise stated in the County's decision, any approval granted under this code runs with the land and is transferred with ownership of the land. Any conditions, time limits or other restrictions imposed with a permit approval shall bind all subsequent owners of the property for which the permit was granted.

**§ 39.1210 MODIFICATIONS OF CONDITIONS AND DECISIONS**

(A) Modification of Conditions. Except as provided by subsection (B) below, any request to modify a condition of permit approval shall be processed in the same manner, and shall be subject to the same standards, as was the original application provided the standards and criteria used to approve the decision are consistent with the current code.

(1) The Planning Director may, at their sole discretion, consider a modification request and limit its review of the approval criteria to those issues or aspects of the application that are proposed to be changed from what was originally approved.

(B) Modifications to Land Use Decisions.

(1) Any change to a current decision that is within the active expiration period, which represents an immaterial deviation and/or reduction in footprint / scope from the approved development action, shall be reviewed by the County for consistency with the applicable criteria and the findings and conclusions of the original approval.

(a) An immaterial deviation could include reductions to any exterior dimension, without increasing any other dimension and without altering any approved exterior structural colors and materials.

(b) The formal request shall include a revised site plan and any other information the Planning Director requires to review the proposed change.

(c) If the Planning Director approves a modification, a new notice of decision indicating the approved change shall be given to all parties that would have standing to appeal the change, including the applicant and anyone who submitted comments during the comment period on the original land use application.

(d) Any approved modification is subject to appeal, if the application type includes appeal rights, under the same timeframes applicable to the original decision.

(2) Modifications under these provisions shall be reviewed as a Type II permit.

(C) Modifications to Land Use Decisions rendered for Consolidated Applications

(1) The following procedures pertain to applications consolidated through the provisions of MCC 39.1120.

(a) Any changes to the authorized physical improvements, the Planning Director may decide if the modifications may be processed through the Type I or Type II review processes as specified in MCC 39.1130 through 1140.

(b) Any changes to the approved land use must be processed through the Type III or Type IV process specified in MCC 39.1145 through 39.1150.

***PART 1.B.4 – LEGISLATIVE PROCESS***

§ 39.1215 **PLANNING COMMISSION (PC) ACTIONS AND REVIEWS.**

**Commented [CL7]:** This is my attempt to combine existing language from what was 39.1105 and 39.1110.

(A) Legislative (PC) actions may only be initiated by the Board, Planning Commission, or Planning Director.

(B) PC Actions. The Planning Commission shall review all PC actions. If the Planning Commission adopts a resolution to recommend an action, the Planning Commission refers the resolution to the Board for final action.

(1) The Board's decision is the county's final decision on a PC application and is appealable to LUBA.

(C) PC Reviews. Include legislative actions that involve the adoption or amendment of the county's land use regulations, comprehensive plan, map inventories and other policy documents that affect the entire county, large areas, or multiple properties. These applications involve the greatest amount of discretion and evaluation of subjective approval criteria, and must be referred by the Planning Commission onto the Board for final action prior to adoption by the county.

(1) The Board's decision is the county's final decision and is appealable to LUBA within 21 days of the date that the signed Board order or ordinance is mailed.

§ 39.1220 **(PC) LEGISLATIVE HEARING PROCESS.**

(A) Purpose. Legislative actions involve the adoption or amendment of the County's land use regulations, comprehensive plan, map inventories and other policy documents that affect the entire County or large portions of it. Legislative actions which affect land use must begin with a public hearing before the Planning Commission.

(B) Planning Commission Review:

(1) Hearing Required. The Planning Commission shall hold at least one public hearing before adopting a recommendation on a proposal for legislative action. Any interested person may provide written or oral testimony on the proposal at or prior to the hearing.

(2) Planning Director's Report. The Planning Director shall prepare and make available a staff report on the proposal for legislative action at least 7 days prior to the hearing described in paragraph (B)(1) of this section.

(3) Planning Commission Recommendation. At the conclusion of the hearing on a proposal for legislative action, the Planning Commission shall adopt a recommendation to the Board of Commissioners on the proposal. The Planning Commission may recommend adoption of the proposal as presented to or modified by the Planning Commission or rejection of the proposal. If the Planning Commission recommends adoption of some form of the proposal, the Planning Commission shall prepare and forward to the Board of Commissioners a report and recommendation to that effect. If the Planning Commission recommends rejection of the proposal, the matter is terminated and may not be appealed unless otherwise provided by law. If the Board of Commissioners has initiated the proposal, the Planning Commission shall prepare and forward to the Board of Commissioners a report and recommendation of rejection.

(C) Board of Commissioners Review:

(1) Board of Commissioners Action. Upon a recommendation from the Planning Commission on a proposal for legislative action, the Board of Commissioners shall hold at least one public hearing on the proposal. Any interested person may provide written or oral testimony on the proposal at or prior to the hearing. At the conclusion of the hearing, the Board of Commissioners

may adopt, modify or reject the proposal, or it may remand the matter to the Planning Commission for further consideration. If the decision is to adopt at least some form of the proposal, and thereby amend the County's land use regulations, comprehensive plan, official zoning maps or some component of any of these documents, the Board of Commissioners decision shall be enacted as an ordinance and final upon signing. The Board of Commissioner's decision is appealable to LUBA in accordance with OAR Chapter 661, Division 10 and ORS 197.830 or current applicable state statutes.

(2) Notice of Final Decision. Not later than 5 days following the Board of Commissioner's final decision on a proposal for legislative action, the Planning Director shall mail notice of the decision to DLCD in accordance with ORS 197.615 or current applicable state statutes.

#### **§ 39.1225 NOTICE OF LEGISLATIVE HEARINGS.**

(A) Notice of the date, time, place and subject of a legislative hearing before the Planning Commission shall be published in a newspaper of general circulation within the County at least 10 days prior to the hearing and as required by law. The Planning Director shall also notify the Oregon Department of Land Conservation and Development (DLCD) 35 days prior to the initial public hearing or as required by law.

(B) Notice of the date, time, place and subject of a legislative hearing before the Board of Commissioners shall be published in a newspaper of general circulation within the County at least 10 days prior to the hearing and as required by law.

(C) Individual notice of a legislative hearing before the Planning Commission that amends the Comprehensive Plan, adopts a new Comprehensive Plan, or rezones property shall be mailed at least 20 days but not more than 40 days prior to the hearing to the owners of all affected properties. Such notice shall adhere to the format provided in ORS 212.503.

(D) For the purpose of this section, property is rezoned when the County:

- (1) Changes the base zoning classification of the property; or
- (2) Adopts or amends an ordinance in a manner that limits or prohibits land uses previously allowed in the affected zone.

(E) The provisions of subsection (2) above do not apply to legislative acts by the County resulting from action by the Legislative Assembly or the Land Conservation and Development Commission for which notice is provided under ORS 197.047.

#### **§ 39.1230 CONTINUANCE OF PC HEARINGS.**

The decision maker(s) may continue the hearing from time to time to allow the submission of additional information or for deliberation without additional information. New notice of a continued hearing need not be given so long as the decision maker establishes a time certain and location for the continued hearing. Similarly, the decision maker may close the hearing but keep open the record for the submission of additional written material or other documents and exhibits. The decision maker(s) may limit the factual and legal issues that may be addressed in any continued hearing or open-record period.

#### **§ 39.1235 NOTICE TO OTHER PARTIES OF ADOPTED CHANGES.**

(A) On the same day notice of an adopted change to the Comprehensive Plan or land use regulation(s) is submitted to DLCD notice shall also mail or otherwise deliver notice of the decision to persons that:

- (1) Participated in the County proceedings that led to the decision to adopt the change to the Comprehensive Plan or the land use regulation; and

(2) Requested in writing to be provided with notice of the change to the Comprehensive Plan or the land use regulations.

(B) The notice to persons who participated and requested notice as required by subsection (A) above must:

- (1) Clearly describe the decision;
- (2) State the date of the decision;
- (3) Indicate how and where the materials described in OAR 660-018-0040(3) may be obtained;
- (4) Include a statement by the individual delivering the notice that identifies the date on which the notice was delivered and the individual delivering the notice;
- (5) List the locations and times at which the public may review the decision and findings; and
- (6) Explain the requirements for appealing the land use decision under ORS 197.830 to 197.845.

#### **§ 39.1240 EX PARTE CONTACT, CONFLICT OF INTEREST AND BIAS.**

The following rules and procedures govern a decision maker's participation in a quasi-judicial or legislative proceeding or action affecting land use:

(A) Ex Parte Contacts. Any factual information obtained by a decision maker from anyone other than staff outside the context of a quasi-judicial hearing shall be deemed an ex parte contact. Prior to the close of the record in any particular matter, any decision maker that has obtained any material factual information through an ex parte contact shall declare the content of that contact and allow any interested party to rebut the substance of that contact. This paragraph does not apply to legislative proceedings or contacts between county staff and the decision maker.

(B) Conflict of Interest.

(1) Planning Commission. A member of the Planning Commission shall not participate in any Commission proceeding or action in which any of the following has a direct or substantial financial interest: the member or the spouse, sibling, child, parent, parent-in-law of the member; any business in which the member is then serving or has served within the previous two years; or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the meeting of the Planning Commission where the action is being taken.

(2) Board of Commissioners. With respect to a potential or actual conflict of interest, a member of the Board of Commissioners shall participate in Board proceedings and actions in accordance with the Rules for Board Meetings.

(C) Bias. All decisions in quasi-judicial matters shall be fair, impartial and based on the applicable approval standards and the evidence in the record. Any decision maker who is unable to render a decision on this basis in any particular matter shall refrain from participating in the deliberation or decision on that matter. This paragraph does not apply to legislative proceedings.

#### **§ 39.1245 PROCEDURAL OBJECTIONS.**

Any party who objects to the procedure followed in a quasi-judicial or legislative proceeding or action affecting land use must make a procedural objection prior to the County's rendering a final decision. Procedural objections may be raised at any time prior to a final decision, after which they are deemed waived. In making a procedural objection, the objecting party must identify the procedural requirement that was not properly followed and identify how the alleged procedural error harmed that person's

substantial rights. No decision or action of the Planning Commission or Board of Commissioners shall be voided solely by reason of the failure of a member thereof to disclose an actual or potential conflict of interest.

( \* \* \* )

**PART 2 – DEFINITIONS**

**§ 39.2000 DEFINITIONS.**

As used in this Chapter, unless the context requires otherwise, the following terms and their derivations shall have the meanings provided below:

( \* \* \* )

**Commercial Use** – Commercial use means the use of land for the retail sale of products or services, including offices. It does not include warehouses, freight terminals, or wholesale distribution centers.

( \* \* \* )

**Industrial Use** – Industrial use means the use of land for the manufacture, processing, storage, or wholesale distribution of products, goods, or materials. It does not include commercial uses.

( \* \* \* )

**Commercial Use** – Commercial use means the use of land for the retail sale of products or services, including offices. It does not include warehouses, freight terminals, or wholesale distribution centers.

( \* \* \* )

**Temporary Use / Structure**– A use that is temporary in nature and not intended to be a permanent installation allowed to be placed on a lot or parcel for a limited amount of time. A temporary use/structure to be used during the construction of an approved land use shall be removed from the lot or parcel upon the commencement of use or operation of the approved land use.

( \* \* \* )

**8.D.6 – TEMPORARY DWELLING FOR A HEALTH HARDSHIP PERMIT**

**§ 39.8700 TEMPORARY DWELLING FOR A HEALTH HARDSHIP PERMIT.**

(A) Decision Review Process

(1) A Temporary Dwelling For a Health Hardship Permit may be authorized through the Type I process of MCC 39.1130 if an application meets all of the criteria in (B) below. The Permit shall be subject to the restrictions and requirements in (C) below.

(2) The purpose of the Temporary Dwelling for a Health Hardship Permit is to allow the convenient provision of supervision and/or assistance with daily care to a person or persons with a demonstrated health hardship by allowing the placement of one temporary dwelling on a lot with a single-family dwelling on a renewable term. This use is temporary in nature.

(B) Approval Criteria. The Planning Director may grant a Temporary Dwelling for a Health Hardship Permit subject to the following:

(1) The proposed temporary dwelling will be located on a lot in conjunction with a lawfully established single-family dwelling.

(2) The person with the health hardship is either one of the property owners or is a relative of one of the property owners.

(a) If the person with the health hardship is one of the property owners, then the care provider in the other residence is not required to be a relative.

(b) If the person with the health hardship is a relative of one of the property owners, then the care provider must be a relative.

(c) For the purposes of this section, a relative is defined as child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either.

(3) For each person with a health hardship, a written statement by a licensed physician dated within 90 days of submittal of the initial application, verifying the following information:

(a) The person identified in the application has a health hardship as defined in MCC 39.2000; and

(b) The person needs supervision and/or assistance with daily care as that term is defined in MCC 39.2000; and

(c) The proposed care provider is capable of providing the supervision and/or assistance with daily care needed by the person with the health hardship.

(4) Each proposed care provider shall provide a written statement dated within 90 days of submittal of the initial application that the provider understands the physician's determination of the extent of daily care required and is capable of providing and will provide the necessary supervision and/or assistance during implementation of the Temporary Health Hardship Permit.

(5) Temporary Dwelling Type:

(a) The temporary dwelling shall be either a mobile home, park-model recreational vehicle or travel trailer.

(b) The temporary dwelling shall be located within 100 feet of the single-family dwelling on the subject lot, unless an adjustment or variance pursuant to MCC 39.8200 through 39.8215 is approved. This distance shall be measured from the closest portion of each building.

(c) The temporary dwelling shall be connected to the same utilities (on-site sewage disposal, power main, well/water meter) as the single-family dwelling. In addition, the temporary dwelling shall be accessed by the same driveway entrance as the single-family dwelling, although the driveway may be extended.

(d) The temporary dwelling will not require any attached or detached accessory structures other than features deemed medically necessary by a physician, such as wheelchair ramps.

(C) Restrictions and Requirements.

(1) Prior to installation of the temporary dwelling on the site, the property owner shall:

(a) Obtain the necessary permits to place the temporary dwelling on the site and connect utilities,

(b) The property owner shall record a covenant that states that the dwelling is temporary and must be removed as set forth in (G) below and that the Temporary Health Hardship Permit is not transferable to another party.



(c) In the EFU and CFU zones, the property owner shall record a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules and to conduct accepted farming practices.

(d) The temporary dwelling shall not be used for any other use or dwelling type than a health hardship dwelling. Use of the health hardship dwelling for non-approved use shall require its immediate removal within three (3) months and no new health hardship permit may be authorized.

(2) The Planning Director shall mail notification to the property owners that are contiguous to the subject lot of the approval of a Temporary Health Hardship Permit. Notification shall include the type of structure to be used.

(3) Expiration of the Temporary Dwelling for a Health Hardship Permit. The Temporary Dwelling for a Health Hardship Permit expires automatically two years after the date of final approval of the permit unless an extension is approved as set forth in (4) below.

(4) Extension of the Temporary Dwelling for a Health Hardship Permit. The expiration date of a Temporary Dwelling for a Health Hardship Permit may be extended upon satisfaction of the requirements in (B) above.

(a) More than one extension may be granted, but each extension is limited to a period of two years from the date the permit would have otherwise expired.

(b) To obtain an extension, the property owner shall use the forms provided by the Planning Director and shall submit the application at least 30 days prior to expiration of the permit.

(c) Upon approval of an extension, the Planning Director shall mail notification to the property owners that are contiguous to the subject lot.

(5) Occupancy of the Temporary Dwelling. Occupancy of the temporary dwelling may occur only while the person for which the Temporary Health Hardship Permit was granted lives on the property.

(6) Removal of Temporary Dwelling. The temporary dwelling shall be removed and utility and septic connections shall be terminated within 30 days of expiration of the Temporary Health Hardship Permit, end of the health hardship or the provision of supervision or assistance with daily care.

( \* \* \* )

#### ***8.D.6 – TEMPORARY PERMITS FOR CERTAIN USES***

#### **§ 39.8750 TEMPORARY PERMITS FOR CERTAIN USES.**

(A) Decision Process.

(1) Except as provided in subsection (C) below, Temporary Permits authorized through this section shall follow the Type I review process of MCC 39.1135 through 39.1140.

(2) Temporary Uses identified in subsection (C) authorized through this section shall follow the Type I review process of MCC 39.1130.

(B) Temporary Permits - Generally.

(1) Notwithstanding the limitations of use as established by this Chapter in each of the base zones, the Planning Director may issue temporary permits for structures, or uses which are of a temporary nature, such as:

(a) Temporary structures, temporary uses or temporary storage of equipment located on a parcel that has not been approved for the associated land use (i.e. to be located off site);

(b) Temporary storage of structures or equipment regardless of location (on or off site), to be used for extended human occupation, such as a construction office, security trailer, real estate sales trailer, etc. For purposes of this policy, extended occupation is considered more than four hours in any 24-hour period. This is not intended to provide a permitting path for a temporary dwelling use;

(c) Temporary housing due to an Emergency Declaration by the Board of County Commissioners; or;

(d) Except within the Exclusive Farm Use (EFU) zone, Temporary Placement of a Travel Trailer for use as a Temporary Dwelling on a lot in the following circumstances;

(i) When Multnomah County Land Use Planning has authorized a building permit for a new or replacement dwelling for the lot.

(ii) When a lawfully established dwelling on the lot has been damaged and/or destroyed by a fire, casualty, or other natural disaster and the property owner is in the process of obtaining authorization for a replacement.

(e) Other uses of a temporary nature when approved by the Planning Director through a Type II decision.

(2) A temporary permit issued under subsection (B) shall be valid for a period of not more than one year after issuance, unless a different timeframe is identified for temporary uses associated with construction projects that will take more than one year to complete.

(3) The same use or structure for a property or site may not be authorized through a temporary permit for more than a cumulative period of five (5) years, unless otherwise determined to be necessary through a Type II Planning Director Determination.

(4) In the event of a Multnomah County Board of County Commissioners emergency declaration involving a wildfire, flood event, mass landslide, earthquake, or similar natural disaster, the limitation outlined in (B)(3) above may be waived by the Planning Director.