

Action Proceedings

11.15.8205 Definition

Action means a proceeding, other than an enforcement proceeding pursuant to MCC .8135, in which the legal rights, duties or privileges of specific parties are determined only after a hearing in which such parties are entitled to appear and be heard, including requests for:

- A. Change of Zone Classification;
- B. Community Service Uses;
- C. Conditional Uses;
- D. Variances, Except as otherwise provided herein;
- E. Temporary Permits; and
- F. Other requests for permits and other contested cases determining permissible uses of specific property.

[Amended 1991, Ord. 690 § 2]

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11.15.8295 Procedure on Appeal

11.15.8210 Initiation

- A. An action, unless otherwise specifically provided by this Chapter, may only be initiated by order of the Board, a majority of the entire Planning Commission or by application of the record owner of the property which is the subject of the action or the authorized agent of the record owner.
- B. An action initiated by a record owner or owner's agent shall be filed with the Planning Director on application forms provided by the Director which shall contain all information requested. The Planning Director may require submission of a certified land survey as part of the application.

11.15.8215 Pre-Initiation Conference

Prior to initiating an action under MCC .8210(B), the property owner or owner's agent shall confer with the Planning Director regarding the requisites of formal initiation.

11.15.8220 Notice of Hearing Contents

- A. Notice of hearing before the Planning

Commission or Hearings Officer shall contain the following:

1. The date, time and place of the hearing;
2. A legal description of the subject property;
3. A street address or other easily understood geographical reference to the subject property; *[Amended 1990, Ord. 643 § 2]*
4. The nature of the proposed action and the proposed use or uses that could be authorized; *[Amended 1990, Ord. 643 § 2]*
5. A listing of the applicable Zoning Code and comprehensive plan policies that apply to the application;

[Amended 1990, Ord. 643 § 2]

6. A statement that all interested parties may appear and be heard;

[Amended 1990, Ord. 643 § 2]

7. A statement that failure to raise an issue, either in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue;

[Added 1990, Ord, 643 § 2]

8. A statement that the hearing shall be held pursuant to the adopted Rules of Procedure; *[Added 1990, Ord, 643 § 2]*

9. In the case of a hearing by the Planning Commission, the names of the members of the Commission and, in the case of a hearing by the Hearings Officer, the name of the Officer and the name of the staff representative to contact and the telephone number where additional information may be obtained; *[Added 1990, Ord, 643 § 2]*

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10. A statement that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost; *[Added 1990, Ord. 643 § 2]*
 11. A statement that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and *[Added 1990, Ord. 643 § 2]*
 12. A copy of the Planning Commission's Rules of Procedure. *[Added 1990, Ord. 643 § 2]*
- B. When the proposed action is a change of zone classification, the Planning Director may include in the notice of hearing a statement that the approval authority may consider classifications other than that for which the action is initiated.
- C. In addition to the notice required by MCC .8120(B) and any other notice required by law, notice shall be mailed at least ten days prior to the hearing to the following persons: *[Amended 1990, Ord. 643 § 2 and Amended 1998, Ord. 915 § II]*
1. The applicant;
 2. All record owners of property within :
 - a. 100 feet of the subject property on matters listed under MCC .8205(D) and (E), and on all other matters within the Urban Growth Boundary.
 - b. 250 feet of the subject property where the subject property is outside the Urban Growth Boundary and not within a farm or forest zone;
 - c. 500 feet of the subject property where the subject property is within a farm or forest zone.
[Amended 1990, Ord. 643 § 2]
 3. Owners of *Public Use Airports* when the property subject to a zone change application is:
 - a. Within 5,000 feet of the side or end runway of an airport determined by the Department of transportation to be a visual airport, or
 - b. Within 10,000 feet of the side or end runway of an airport determined by the Department of Transportation to be an *instrument airport*.
[Added 1990, Ord. 643 § 2]
 4. All tenants of a mobile home park when the proposed action is a zone change request involving all or part of that mobile home park.
[Added 1990, Ord. 643 § 2]
- D. The record of the Department of Administrative Services shall be used to determine who is entitled to mailed notice; and persons whose names and addresses are not on record at the time of the initiation of the proposed action need not be notified of the hearing. The failure of a property owner to receive notice shall not invalidate the action if a good faith attempt was made to notify all persons entitled to mailed notice.
- E. In addition to the notice required by MCC .8220(C), the party initiating an action under MCC .8205(A), (B), (C) or (F) shall, at the party's expense, post signs on the property conspicuously displaying notice of the pending hearing at least ten days prior to the date of the hearing. One sign shall be required for each 300 feet, or part thereof, of frontage of the subject property on any street. The content, design, size and location of the signs shall be as determined by the

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Planning Director to assure that the information thereon is legible from the public right-of-way. As a precondition to a hearing, the party shall file an Affidavit of such posting with the Planning Director not less than five days prior to the hearing.

- F. A hearing may be continued from time to time as necessary. If a hearing is adjourned to a date certain, no additional notice shall be given unless ordered by the approval authority.

11.15.8225 Parties

- A. The following persons only are *parties*, and shall be entitled either themselves or through their representatives or counsel, to make an appearance of record at a hearing before the approval authority and to seek review by the Board and the courts;
1. Those persons entitled to notice under MCC .8220(C) who also make an appearance of record before the approval authority; or
 2. Other persons who demonstrate to the approval authority at its hearing, under the Rules of Procedure, that they could be aggrieved or have interests adversely affected by the decision.
- B. Appearance of Record shall mean either:
1. Testimony by a party or the party's representative or counsel; or
 2. A written statement giving the name and address of the person making the appearance, and setting forth in detail the person's evidence and argument either for or against the application being reviewed, signed by the person or the person's counsel, and filed with the Planning Director, at or prior to the hearing. The written statement must also contain facts showing in what manner the interests of the person would be adversely affected or in what manner the person would be aggrieved by a decision contrary to that person's position on an application.
- C. As used in this section, the term *Approval Authority* has the meaning specified in MCC .0010.

[Amended 1985, Ord. 486 §2]

11.15.8230 Hearings

- A. The Hearings Officer or a quorum of at least three members of the Planning Commission, as is appropriate, shall conduct a hearing on the application within 90 days of the initiation thereof, under MCC .8210(B), unless such time is extended with the written consent of the one initiating the action. [Amended 1982, Ord. 351 § 2]
- B. Three members of the Planning Commission shall constitute a quorum in acting on applications under MCC .8115(B).
- C. No action shall be heard unless a Staff Report is completed and available at the office of the Planning Director at least seven days prior to the date fixed for hearing. A copy of the Report shall be mailed, upon completion, to the one initiating the action and to the Planning Commission or Hearings Officer, as appropriate. In addition, a copy shall be furnished to other persons who request the same upon payment of the appropriate fee. The Staff Report may be supplemented only at the hearing. [Amended 1998, Ord. 915 § II, and Amended 2000, Ord. 944 § 10]
- D. The burden of proof is upon the person initiating an action. Unless otherwise provided in this Ordinance, that burden shall be to persuade that:

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- 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. The factors listed in ORS 215.055 have been considered.
- E. 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 subpart (D) above.

11.15.8235 Findings of Fact Conclusions

In all cases, the Planning Commission or Hearings Officer shall cause written Findings of Fact and Conclusions, based upon the record, to be filed with Decisions. The Findings shall specifically address the relationships between the application and the factors listed in MCC .8230(D) and (E), to the extent they form the basis for decisions.

11.15.8240 Decisions

- A. The Planning Commission or Hearings Officer may approve an application as submitted, deny it, or approve it with such modifications or conditions as may be necessary to carry out the Comprehensive Plan or to obtain the objectives of subsection (D)(2) below.
- B. In the case of an action by the Planning Commission, a decision to approve a zone change, community service use or conditional use, shall be by majority vote of the entire Commission.
- C. The Planning Commission or Hearings Officer shall render a decision upon the close of the hearing or at the time to which the matter is continued. Within ten days after a decision is made, it shall be reduced to writing, signed by the Chairperson of the Planning Commission or by the Hearings Officer, filed by the Planning Director with the Clerk of the Board, and mailed to those persons entitled to mailed notice under MCC .8220(C), and to such other persons who request the same.
- D. The following limitations shall be applicable to conditional approvals:
 1. Conditions shall be fulfilled within a time limitation set forth in the approval thereof, or if no time limit is set, within a reasonable time.
 2. Conditions shall be reasonably designed to fulfill public needs emanating from the proposed land use in either of the following respects:
 - a. Protection of the public from the potentially deleterious effects of the proposed use; or
 - b. Fulfillment of the need for public services created by the proposed use.
 3. Failure to fulfill any conditions to the grant of a proposal within the time limitations provided may be grounds for initiation of an action.

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4. A bond, in a form acceptable to the Planning Director, or a cash deposit from the property owner in such an amount as will assure compliance with the conditions imposed pursuant to this subsection, may be required.
- E. Any change or alteration of conditions attached to conditional approvals shall be processed as a new action, except that the Planning Director may approve a change or alteration which does not:
1. Increase density;
 2. Change boundaries;
 3. Change any use; or
 4. Change the location or amount of land devoted to specific land uses.
- F. An alternative zoning classification may be substituted by the Planning Commission or Hearings Officer for the proposed action if the alternative classification is in the same general classification (i.e., residential, commercial, industrial) and the hearing notice included notification of this possibility as provided by MCC .8220(C).
- G. If the application is denied, either initially and no review taken, or upon review by the Board or by action of the courts, no new application for the same or substantially similar action shall be filed for at least six months from the date of the final action denying the application.
- H. Age, gender or physical disability shall not be an adverse consideration in making a land use decision. *[Added 1990, Ord. 643 § 2]*

11.15.8245 Record of Proceeding

A verbatim recording shall be made of the proceedings before the Planning Commission and Hearings Officer for any action appealed to the Board. In the absence of such recording, the Board shall conduct a *de novo* hearing on the appeal.

11.15.8250 Ex Parte Contact

- A. The members of the Planning Commission and the Hearings Officer shall not:
1. Communicate with any party or party's representative in connection with any action except upon notice and opportunity for all parties to participate; or
 2. Take notice of any communication, report, staff memorandum, or other material prepared in connection with an action and not part of the record, unless the parties are afforded an opportunity to be heard on the material so notice.
- B. In the event a member of the Planning Commission or the Hearings Officer has any pre-hearing *ex parte* contact with a party, the member or Officer shall disclose the occurrence and substance of such contacts and the persons involved, in a statement of capacity to hear.
- C. The statement shall also indicate any interest or independent knowledge of the member or Officer. The statement shall be made at the beginning of the hearing and placed in the record.
- D. Whether the *ex parte* contact, independent knowledge or interest will result in the member's or Officer's disqualification to act on that matter shall be publicly decided by the member or Officer, and placed in the record.

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- E. Any party to an action may, in relation to such action, challenge the impartiality of any member of the Planning Commission or of the Hearings Officer. A challenge must state, by affidavit, the facts relied upon by the submitting party relating to the member's or Officer's alleged bias, prejudice or personal interest, or other facts from which the party has concluded that the member or Officer cannot participate in a decision in an impartial manner.
- F. A written challenge must be delivered by personal service to the Planning Director and the member or Officer whose impartiality is challenged, not less than three days preceding the time set for public hearing.
- G. A challenge and the decision thereon by the challenged person shall be entered in the record of the action.
- H. In the event a challenge is submitted under MCC .8250(E), and the member of the Planning Commission or the Hearings Officer elects to participate in the action, the member or the Officer shall present a written statement of capacity to hear, as provided in MCC .8250(B), (C), and (D), which statement shall make reference to the challenge and include the reasons why the member or the Officer has elected to participate in the action.

11.15.8255 Notice of Decisions to Board

The written decision of the Planning Commission or the Hearings Officer shall be submitted to the Clerk of the Board by the Planning Director not later than ten days after the decision is announced. The Clerk shall summarize each decision on the agenda for the next Board meeting on planning and zoning matters for which notice can be given under the Charter.

11.15.8260 Notice of Review

- A. Decisions of the Planning Commission or the Hearings Officer shall be final at the close of business on the tenth day following submittal of the written decision to the Clerk of the Board under MCC .8255, unless:
 - 1. A Notice of Review from a party is received by the Planning Director within ten days after the decision has been submitted to the Clerk of the Board under MCC .8255; or
 - 2. The Board, on its own motion, orders review under MCC .8265.
- B. A Notice of Review shall contain:
 - 1. An identification of the decision sought to be reviewed, including the date of such decision;
 - 2. A statement of the interest of the person giving the Notice of Review;
 - 3. The specific grounds relied upon for review; and
 - 4. If *de novo* review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in MCC .8270(E).
- C. A Notice of Review shall be accompanied by the required fee and a deposit to cover the estimated costs of the transcript as specified by the Planning Director. Within ten days of notice from the Planning Director of a required transcript, the party seeking review shall transmit the balance due, if any, of any required transcript fee.

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Failure to comply with this subsection shall be a jurisdictional defect and shall preclude review by the Board.

D. Notice of Review shall be a condition precedent to judicial review of final orders, except in the case of Board review on its own motion.

11.15.8265 Board Order for Review

A Board Order for Review of a decision must be made at the meeting at which the Board's Agenda included a summary of that decision under MCC .8255, unless specifically continued, which continuance shall not be later than the next regular Board meeting on planning and zoning matters.

11.15.8270 Scope of Review

- A. The Board, upon receipt of Notice of Review or upon its own motion to grant review, shall, at the appropriate meeting, determine whether review shall be:
1. On the record; or
 2. Under subsection (E) below, *de novo* or by additional testimony and other evidence without full *de novo* review.
- B. Prior to such determination, the Board may conduct a hearing at which the parties shall be afforded an opportunity to appear and present argument On the Scope of Review under subsection (E) below. Notice of such hearing shall be mailed to the parties no less than ten days prior to the hearing.
- C. Unless otherwise provided by the Board under subsection (D) and (E) below, review of the action shall be confined to the record of the proceeding below, which shall include:
1. All materials, pleadings, memoranda, stipulations and motions submitted by any party and received or considered by the Planning Commission or Hearings Officer;
 2. All materials submitted by the Planning Director with respect to the proposal;
 3. The transcript of the hearing below;
 4. The findings and decision of the Planning Commission or Hearings Officer, and the Notice of Review, when applicable.
- D. When permitted by the Board, review before the Board may include argument by the parties or their authorized representatives.
- E. The Board may hear the entire matter *de novo*; or it may admit additional testimony and other evidence without holding a *de novo* hearing if it is satisfied that the additional testimony or other evidence could not reasonably have been presented at the prior hearing. The Board shall, in making such decision, consider:
1. Prejudice to parties;
 2. Convenience or availability of evidence at the time of the initial hearing;
 3. Surprise to opposing parties;
 4. The competency, relevancy and materiality of the proposed testimony or other evidence.

- F. *De Novo* Hearing means a hearing by the Board as if the action had not been heard by the Planning Commission or Hearings Officer, and as if no decision had been rendered, except that all testimony, evidence and other material received by the Planning Commission or Hearings Officer shall be included in the record.
- G. Review by the Board, if upon Notice of Review by an aggrieved party, shall be limited to the grounds relied upon in the Notice of Review under MCC .8260(B) and any hearing permitted under MCC .8270(B).
- H. At the meeting at which the Scope of Review is determined pursuant to MCC .8270(A) and (B), the Board shall further determine the time and place for the review, which shall not be later than 45 days from the date of the Board determination.

11.15.8275 Notice of Board Hearing

- A. Notice of Board hearing shall be given in the same manner as required for hearings by the Planning Commission and Hearings Officer on actions. The Board may continue a hearing. Unless otherwise provided by the Board, no additional notice shall be given of a continued hearing if the matter is continued to a time certain.
- B. Board Procedure. Review by the Board shall be in accordance with its Rules of Procedure.

11.15.8280 Board Decision

- A. The Board may affirm, reverse or modify the decision of the Planning Commission or Hearings Officer and may grant approval subject to such modifications or conditions as may be necessary to carry out the Comprehensive Plan or to achieve the objectives of MCC .8240(D).
- B. The Board shall state all decisions upon the close of its hearing or upon continuance of the matter to a time certain.
- C. Written findings of fact and conclusions, based upon the record, shall be signed by the Presiding Officer of the Board and filed with the Clerk of the Board with a decision within five business days following announcement of the decision under subsection (B) above.
- D. The Board's decision shall be final upon signing and filing of the Decision, Findings of Fact and Conclusions under subsection (C).*[Amended 1999, Ord. 928 § II]*

E. *[Added 1990, Ord. 643 § 2; Deleted 1998, Ord. 915 § II]*

11.15.8285 Rehearing *[Deleted 1999, Ord. 928 § II]*

11.15.8290 Appeal of Administrative Decision by the Planning Director

- A. A decision by the Planning Director on an administrative matter made appealable under this Section by ordinance provision, shall be final at the close of business on the tenth calendar day following the filing of the written Decision, Findings and Conclusions with the Director or the Department of Environmental Services, unless prior thereto, the applicant files a Notice of Appeal with the Department, under subsections (B) and (C).
- B. A Notice of Appeal shall contain:
 - 1. The name, address and telephone number of the person filing the Notice;

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2. An identification of the decision sought to be reviewed, including the date such decision was filed with the Director of the Department of Environmental Services; and
 3. The specific grounds relied on for reversal or modification of the decision.
- C. A Notice of Appeal shall be accompanied by the required fee. *[Amended 2000, Ord. 944 § 11]*
- D. Failure to:
1. File a Notice of Appeal within the time limit prescribed by subsection (A) above, or
 2. Pay the required fee under subsection (C) above, shall be a jurisdictional defect and shall preclude review by the Hearings Officer.
- E. On receipt of a Notice of Appeal, the Planning Director shall schedule a hearing on the agenda for the next meeting of the Hearings Officer, for which notice can be given under subsection (F), below.
- F. Notice of hearing on an appeal filed under MCC .8290(A) shall be as required by MCC .8220(A)(1), (2), (3), (5), (6) and (C)(1).

11.15.8295 Procedure on Appeal

Except as otherwise provided in this Section, proceedings before the Hearings Officer on matters appealed under MCC .8290(A) and appeals therefrom to the Board of County Commissioners shall be conducted according to the provisions of MCC .8230 through .8290.

- A. A hearing before the Hearings Officer on a matter appealed under MCC .8290(A) shall be limited to the specific grounds relied on for reversal or modification of the decision in the Notice of Appeal.
- B. The provisions of subsection MCC .8230(D) and (E) shall not apply to hearings on appeals filed under MCC .8290(A).
- C. The findings adopted by the Hearings Officer shall specifically address the relationships between the grounds for reversal or modification of the decision as stated in the Notice of Appeal and the criteria on which the Planning Director's decision was required to be based under this Chapter.