



Oregon

Theodore R. Kubongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

06/22/2009

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Bend Plan Amendment
DLCD File Number 009-08

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Monday, July 06, 2009

This amendment was submitted to DLCD for review prior to adoption. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

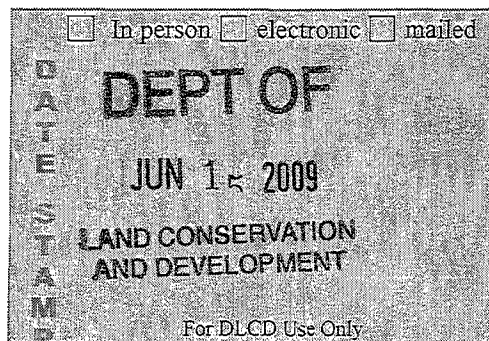
Cc: Aaron Henson, City of Bend
Gloria Gardiner, DLCD Urban Planning Specialist
Mark Radabaugh, DLCD Regional Representative

<paa> YA/

DLCD

Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: **City of Bend**

Local file number: **PZ 08-308**

Date of Adoption: **June 3, 2009**

Date Mailed: **June 12, 2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **8/7/08**

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

A package of amendments to the text of Chapter 1.1, General Administration; Chapter 1.2, Definitions; Chapter 1.3, Enforcement; Chapter 2.0, Land Use District Administration; Chapter 3.6, Special Standards for Certain Uses; Chapter 4.1, Land Use Review & Procedures; and Chapter 4.2, Site Development and Design Review of the Development Code (Ordinance No. NS-2016), which are intended to clarify definitions, eliminate inconsistencies, and ensure that the City of Bend's development review procedures conform to state law and the City's customer service objectives.

Does the Adoption differ from proposal? **Yes**

The ordinance includes additional changes to Chapter 1.2 including new definitions for Applicant, Application, Attached, Community Development Director, and Neighborhood Association; revisions to Chapters 2.0 & 4.1 to allow Hearings Officers to approve or deny quasi-judicial zone changes when the zoning is proposed to be consistent with the General Plan map; changes to Chapter 3.6 to allow larger accessory structures in residential zones; changes to Chapter 4.1 including increased notice requirements, revised appeals procedures, and longer durations of approval; and changes to Chapter 4.2 to reflect longer durations of approval.

Plan Map Changed from: **Not Applicable**

to:

Zone Map Changed from: **Not Applicable**

to:

Location: **Citywide**

Acres Involved:

Specify Density: Previous: **Not Applicable**

New:

Applicable statewide planning goals:

1 **2** **3** **4** **5** **6** **7** **8** **9** **10** **11** **12** **13** **14** **15** **16** **17** **18** **19**

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. See First page

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Not Applicable

Local Contact: **Aaron Henson, AICP**

Phone: **(541) 383-4885** Extension:

Address: **710 NW Wall Street**

Fax Number: **(541) 388-5519**

City: **Bend**

Zip: **97701**

E-mail Address: **ahenson@ci.bend.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**

per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO Complete Copies (documents and maps) of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, or by emailing **larry.french@state.or.us**.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **twenty-one (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **larry.french@state.or.us** - **Attention: Plan Amendment Specialist**.

ORDINANCE NO. NS-2122

AN ORDINANCE AMENDING THE CITY OF BEND DEVELOPMENT CODE BY CHANGING THE TEXT OF CHAPTERS 1.1, 1.2, 1.3, 2.0, 3.6, 4.1, AND 4.2 TO CLARIFY DEFINITIONS, ELIMINATE INCONSISTENCIES, AND ENSURE THAT THE CITY'S DEVELOPMENT REVIEW PROCEDURES CONFORM TO STATE LAW AND THE CITY'S CUSTOMER SERVICE OBJECTIVES.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council has held a public hearing, considered the testimony, the record, and the Planning Commission's recommendation, and has found that there is a public need and benefit for the proposed text amendments to the City of Bend Development Code. The Bend City Council adopts the Recommendation of the Planning Commission, approved on March 23, 2009, file number PZ 08-309.

Section 2. Chapters 1.1, 1.2, 1.3, 2.0, 3.6, 4.1, and 4.2 of the City of Bend Development Code (Ordinance NS-2016) are hereby amended by changing the text therein as detailed in "Exhibit A".

Section 3. The Bend City Council adopts the Planning Commission's "Findings for Development Code Text Amendment" as findings in support of this ordinance.

Read for the first time the 20th day of May, 2009.

Read for the second time the 3rd day of June, 2009.

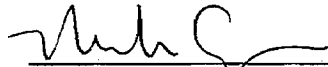
Placed upon its passage the 3rd day of June, 2009.

YES: 6

NO: 1

ABSTAIN: 0

Authenticated by the Mayor the 3rd day of June, 2009.


Mark Capell, Mayor Pro Tem

Attest:


Patricia Stell, City of Bend Recorder

EXHIBIT A

**City of Bend
Development Code
Tune-Up Package #1A**

**City Council – 2nd Reading
June 3, 2009**

Prepared by:
City of Bend Planning Division

Note:

Text in underlined typeface is proposed to be added.

Text in ~~strikethrough~~ typeface is proposed to be deleted.

Text in ***Bold Italic*** typeface is staff commentary.

*** Indicates where text from the existing code has been omitted.

Chapter 1.1

General Administration

Sections:

| | |
|---------|--|
| 1.1.100 | Severability |
| 1.1.200 | Compliance and Scope |
| 1.1.300 | Consistency with Plan and Laws |
| 1.1.400 | Use of a Development |
| 1.1.500 | Pre-Existing Approvals |
| 1.1.600 | Building Permit and Certificate of Occupancy |
| 1.1.700 | Official Action |
| 1.1.800 | Fees |
| 1.1.900 | Miscellaneous Provisions |

1.1.200 Compliance and Scope.

A. **Compliance with the Provisions in the Development Code.** Land and structures may be used, developed by construction, reconstruction, alteration, occupancy, and use, or otherwise, only as this Development Code ("Code") or any amendment thereto permits. No plat shall be recorded or no building permit shall be issued without compliance with the provisions of this Code.

C. **Most Restrictive Regulations Apply.** Where this Code contains conflicting standards, or Where this Code imposes greater restrictions than those imposed or required by other rules or regulations, the most restrictive or that imposing the higher standard shall govern.

1.1.300 Consistency with Plan and Laws.

Each development and use application and other procedure initiated under this Code shall be consistent with the adopted comprehensive plan of the City of Bend as implemented by this Code, all applicable local ordinances, state and federal laws and regulations. All provisions of this Code shall be construed in conformity with the adopted Bend Area General Plan.

This ordinance is intended to promote health, safety, welfare and economy by coordinating the complex relationships between people, land, resources and facilities to meet the future needs of the citizens and to protect the livability of the community.

1.1.500 Pre-Existing Approvals.

B. **Subsequent Development Applications.** All development proposals and applications received by the Community Development Planning Director after the adoption of this Code shall be subject to review for conformance with the standards under this Code or as otherwise provided by state law.

1.1.600 Building Permit and Certificate of Occupancy.

A. **Building Permit.** A building permit shall not be issued until ~~the Community Development Director has issued~~ a development permit has been issued in accordance with the provisions of Chapter 4.1.900; ~~Land Use Action Decisions~~, or the Community Development Director has otherwise found that a development permit is not required.

1.1.800 Fees Required.

The City's fees are established by the City Council in the adopted Fees Resolution. Fees shall be required for all applications, appeals and services. Payment of fees shall be made at the time of filing by cash, check, money order, credit card, or other acceptable methods as identified in the adopted Fees Resolution, except that local governmental agencies may supply a purchase order at the time of filing.

1.1.8900 Miscellaneous Provisions.

A. Intergovernmental Agreements. Outside the City limits where authorized by an intergovernmental agreement, the functions of the Community Development Director and City Review Authority identified herein ~~may be exercised by their counterparts~~ will be defined in accordance with the respective intergovernmental agreements.

Chapter 1.2 Definitions

Affordable Housing means housing that is affordable for households earning up to 100 percent of the area median income (gross), as defined by the Federal Department of Housing and Urban Development, so that the household spends to a certain percentage of the population earning a specified level of income and spending no more than 30 percent of their gross household income on housing related expenses (e.g., rent, mortgage, and essential utilities).

Applicant means a person submitting an application; the owner of affected property, or the owner's duly authorized representative. The Community Development Director may require proof of the sufficiency of the representative's authorization by the owner to act as applicant on the owner's behalf.

Application means all materials and information submitted for action authorized under this code and on related administrative forms and checklists.

Argument means assertions and analysis by a party regarding the satisfaction or violation of legal standards or policy believed to be relevant to the decision. "Argument" does not include ~~assertion of facts not already in the record.~~

Attached means connected to the primary structure with a continuous foundation and attached by common wall with openings that allow for internal access through habitable space to the primary structure.

Certified Family Child Care Home ~~means where child care is offered in the home of the provider to not more than 16 children, including children of the provider, regardless of full time or part time status. Certified Family Child Care shall be considered a permitted residential use of the property for zoning purposes. See ORS Chapter 657A for state certification requirements.~~

Community Development Director means the Director of the City of Bend Community Development Department or his or her designee. For the purposes of this Ordinance, the terms Community Development Director and Planning Director shall be interchangeable.

Development Application, Type I also known as "Development action" means a development application that is reviewed administratively without public notice or an opportunity for parties to comment, unless elevated to a Type II application by the Community Development Director when there is a need to interpret or exercise policy or legal judgment, or to apply discretionary land use standards. Type I applications are identified in Table 1.2.100. A Type I decision includes any review of any permit,

authorization or determination that the City of Bend Development Services Community Development Department is requested to issue, give or make that either:

1. Is made under land use standards that do not require interpretation or the exercise of policy or legal judgment; or
 2. Approves or denies a building permit issued under clear and objective land use standards; or
 3. Determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with the comprehensive plan and land use regulations.
-
1. Involves the application of the City zoning ordinance or the City Land Division ordinance and is not a land use action as defined below; or
 2. Involves the application of standards other than those referred to in subsection 1, above.

For illustrative purposes, the term "development action" includes review of any condominium plat, permit extension, duplex or triplex units under 3,600 square feet where permitted as an outright use, road name change, sidewalk permit, setback determination, and lot coverage determination.

Development Application, Type II also known as "Land use permit" means a development application that is reviewed following public notice and an opportunity for parties to comment but without a public hearing, unless elevated to a Type III application by the Community Development Director. Type II applications are identified in Table 1.2.100. any approval of a proposed development of land under the standards in the City zoning ordinances or Land Division ordinances involving the exercise of significant discretion in applying these standards.

By way of illustration, "land use permit" includes review of conditional use permits, partition, master plan, commercial design review, riverfront design review, site plan, site plan change of use, modification of approval, administrative determination, declaratory ruling, subdivision variance, subdivision, and variance, but does not include Type I actions.

Development Application, Type III also known as "Land use action" means a development application where the final decision that is made by the Planning Commission or Hearings Officer after a public hearing following the quasi-judicial procedures required and described in Section 4.1.800. Type III applications are identified in Table 1.2.100. any consideration for approval of a quasi-judicial plan amendment or zone change, any consideration for approval of a land use permit, which requires a public hearing and any consideration of a request for a declaratory ruling (including resolution of any procedural questions raised in any of these actions).

Development Application, Type IV also known as a "Legislative change" means a legislative decision that is made after public notice, public hearings, and a recommendation by the Planning Commission to the City Council. Such applications generally involve broad public policy decisions that apply to other than an individual property. Type IV applications are identified in Table 1.2.100. owner. These include, without limitation, amendments to the text of the comprehensive plans, zoning ordinances, or the subdivision or partition ordinance and changes in zoning maps not directed at a small number of properties.

Development standards means land use regulations that guide how sites and buildings can be developed. In commercial zones, these ~~These~~ standards deal with allowed uses, building heights, densities, parking, building setbacks, etc.

Dwelling, multi-family see "Multi-family housing".

Dwelling, single-family attached housing means two or more single-family dwellings on their own lots or parcels, sharing a with common end-walls side-wall also known as townhomes or rowhouses.

Dwelling, single-family detached zero lot line house (see Courtyard Housing) see "Courtyard Housing".

Evidence means facts, documents, data or other information offered by a party to demonstrate compliance or noncompliance with the standards believed to be relevant to the decision.

Family day care see "child care center / family child care." "Registered or Certified Family Child Care Home / Child Care Facility".

Grade (ground level) means the average elevation of the existing ground elevation at the centers of all walls of a building, walk; the sidewalk elevation nearest the center of the wall shall constitute the ground elevation.

Land use district means a land use district is the same as a zoning district.

Mixed use buildings or developments means a mix of residential and neighborhood commercial uses that are mixed "vertically," meaning that a residential use is developed above the commercial use, or mixed "horizontally," meaning commercial and residential uses both occupy ground floor space. For all mixed use buildings or developments in the commercial districts, commercial/office uses shall occupy at least 20% of the total floor area of the development, or the floor area equivalent to the entire ground floor area of the development, whichever is greater. For all mixed use buildings or developments in the residential districts, commercial/office uses shall occupy no more than 20% of the total floor area of the development, or up to 100% of the ground floor area of the development, provided that at least 40% of the total floor area of the development is residential.

Neighborhood Association means an organization that has been formally recognized by council resolution which offers an opportunity for citizens to participate in decision-making for their neighborhood.

Party means one who takes part or participates in a land use action Type II, III, or IV application or a legislative action. A party includes any person who has standing. A person can become a party by appearing on the record at a hearing (including appeals) or presenting written evidence in conjunction with an administrative action or hearing, or by being a property owner who's whose property would be burdened by a solar access permit. The City may designate a representative for persons whose participation consists only of signing a petition.

Personal services means a land use where individual customers rather than businesses receive a form of service, i.e., Bank finances, dry cleaning, hair salon, or similar, in return for a form of payment.

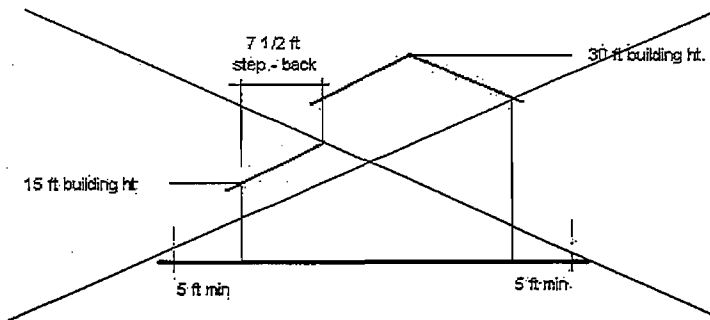
Personal and professional service uses means businesses such as dry cleaners and cafes that primarily provide services to customers from the immediate surrounding area.

Proceeding means the review of a land use action either administratively by the Community Development Planning Director or through the public hearing process by the Hearings Body.

Registered or Certified Family Child Care Home means a location where child care is offered in the home of the provider to not more than 16 children, including children of the provider, regardless of full-time or part-time status. **Registered or Certified Family Child Care Homes shall be considered a permitted residential use of the property for zoning purposes. See ORS Chapter 657A for state certification requirements.**

Setback means the minimum allowable horizontal distance from a given point or line of reference, such as a property line, to the nearest vertical wall or other element of a building or structure as defined herein. Note: Where a public access easement abuts the street in lieu of r.o.w., the interior easement line shall become an assumed property boundary for the purposes of setbacks.

Step-back means an additional setback over the first floor of a structure in addition to the minimum yard setback as illustrated below.



Utilities mean water and sewer facilities, electric, telephone, natural gas, and other services providing for energy or communication needs.

**Table 1.2.100
Summary of Development Application Types**

| Development Application | Type I | Type II | Type III | Type IV |
|---|---------------|----------------|-----------------|----------------|
| Change of Use – Site Conforms to All Existing Standards | X | | | |
| Condo Plat/Condo Change of Use | X | | | |
| Design Review CB Zone – Minor Façade Change | X | | | |
| Design Review – Minor Alteration | X | | | |
| Final Plat – Partition or Subdivision | X | | | |
| Home Occupation Type I (Minor) | X | | | |
| Keeping of Farm Animal Permit | X | | | |
| Lot of Record Verification | X | | | |
| Property Line Adjustment | X | | | |
| Site Plan – Mini (ADU, 2nd Dwelling) | X | | | |
| Site Plan Minor Alteration | X | | | |
| Temporary Use | X | | | |
| Vacation Home Rental | X | | | |
| Cemetery Subdivision | | X | | |
| Change of Use – Site Does Not Conform to All Existing Standards | | X | | |
| Conditional Use Permit | | X | | |
| Declaratory Ruling- Administrative Decision | | X | | |
| Design Review CB Zone – Track 1 | | X | | |
| Design Review Deschutes River, Administrative | | X | | |
| Design Review for New Construction/Major Alterations | | X | | |
| Home Occupation Type II (Major) | | X | | |
| Partition (Tentative Plan) | | X | | |
| Planned Unit Development (PUD) Modification | | X | | |
| Residential Compatibility Exception, Administrative | | X | | |
| Site Plan Major Alteration | | X | | |
| Site Plan New Development | | X | | |
| Solar Access Permit | | X | | |
| Solar Shade Exemption | | X | | |
| Subdivision (Tentative Plan) | | X | | |
| Surface Mining Permit | | X | | |
| Temporary Permit | | X | | |
| Duplex or Triplex Review | | X | | |
| Variance (Class A, B, C) | | X | | |
| Declaratory Ruling – Hearings Officer or Planning Commission | | | X | |
| Design Review CB Zone – Track 2 | | | X | |
| Deschutes River Design Review – Planning Commission Hearing | | | X | |
| Master Development Plan or Special Planned District | | | X | |
| MR Zone Review – Facilities or Master | | | X | |
| Residential Compatibility Exception, Hearings Officer | | | X | |
| River Setback Exception | | | X | |
| Zone Change | | | X | |
| General Plan Map Amendment | | | | X |
| General Plan Text Amendment | | | | X |
| Refinement Plan/Development Agreement per ORS Chapter 94 | | | | X |
| Urban Growth Boundary (UGB) Expansion | | | | X |

*Unless elevated by the Community Development Director as authorized in Chapter 4.1.

Chapter 1.3 Enforcement

Sections:

- 1.3.100 Provisions of this Code Declared to be Minimum Requirements
- 1.3.200 Violation of Code Prohibited
- 1.3.300 Penalty

- 1.3.100 Provisions of this Code Declared to be Minimum Requirements.

B. Most Restrictive Requirements Apply. When the requirements of this Code vary from or conflict with other provisions of this Code or with other applicable standards, the most restrictive or ~~that imposing~~ the highest standard shall govern.

Chapter 2.0 Land Use District Administration

Sections:

- 2.0.100 Classification of Land Use Districts
- 2.0.200 Land Use District Map
- 2.0.300 Determination of Land Use District Boundaries

- 2.0.200 Land Use District Map

A. Consistency with Zoning Map. The boundaries of each of the land use districts contained within this chapter shall coincide with the land use district boundaries identified on the City's official zoning map, retained by the Community Development Director or designee. Said map by this reference is made a part of this Development Code. A certified print of the adopted zoning map, and any map amendments, shall be maintained by the City. Refinement Plan maps are included in Chapter 2.7, Special Planned Districts.

B. Applicability of Zoning Requirements. Each lot, tract and parcel of land or portion thereof within the land use district boundaries as designated and marked on the zoning map, is classified, zoned and limited to the uses as hereinafter specified and defined for the applicable district classification.

- 2.0.300 Determination of Land Use District Boundaries

A. Land Use District Map Amendments. All amendments to the City land use district (zoning) map shall be made in accordance with the provisions of Chapter 4.1; Land Use Review and Procedures.

1. Copies of all map amendments shall be dated with the effective date of the ordinance or order adopting the map amendment, and shall be maintained without change, together with the adopting documents, on file at the City; and
2. The City shall make available for public inspection a current copy of the revised zoning map, so that it accurately portrays changes of zone boundaries or classification.
3. Refinement Plans must go through the process described in Chapter 4.1; Land Use Review and Procedures.

Chapter 3.6 Special Standards for Certain Uses

Sections:

Ordinance NS-2122

| | |
|---------|----------------------|
| 3.6.100 | Purpose |
| 3.6.200 | Residential Uses |
| 3.6.300 | Non-residential Uses |
| 3.6.400 | Temporary Uses |

3.6.200 Residential Uses

This section supplements the standards contained in Chapter 2.0 and provides standards for the following land uses in order to control the size, scale and compatibility of those uses within the applicable zone all the Residential Districts.

3.6.300 Non-residential Uses

This section supplements the standards contained in Chapter 2.0 and provides standards for the certain land uses in order to control the scale and compatibility of those uses within the applicable zone commercial districts.

D. Accessory Uses and Structures. Accessory uses and structures are those of a nature customarily incidental and subordinate to the principal use or structure on the same lot. Typical accessory structures include detached garages, sheds, workshops, green houses and similar structures not intended for habitation by people. (This section does not apply to Accessory Dwellings. *For standards applicable to Accessory Dwellings see subsection 3.6.200.B of this Chapter.*) Accessory uses and structures are allowed subject to Site Development Review for all permitted land uses within the Commercial and Industrial Districts except the CB Zone and are permitted outright in conformance with the provisions of Chapter 2.1. All accessory structures shall obtain a building permit if required and comply with all of the following development standards:

1. Primary use required. An accessory structure or use shall not be allowed on a lot before an allowed primary use is established.
2. Restrictions. A structure shall not be placed over an easement that prohibits such placement. No accessory use or structure shall encroach into the public right-of-way without an approved revocable permit.
3. Compliance with land division standards. The owner may be required to remove an accessory structure as a condition of land division approval when removal of the structure is necessary to comply with setback standards.
4. Floor Area. The maximum floor area of the accessory structure in a residential zoning district shall not exceed 1,500 600 square feet or 65% of the total floor area of the primary structure, whichever is less.
5. Building Height. The building height of a detached accessory structure in a residential zoning district on a lot or parcel at least 15,000 square feet in area shall not exceed 25 feet. The building height of a detached accessory structure in a residential zoning district on a lot or parcel less than 15,000 square feet in area shall not exceed 25 feet or the height of the primary structure, whichever is less, as measured in accordance with Section 2.1.700; in no instance shall an accessory structure exceed the height of the primary structure unless approved as a conditional use permit.
6. Setback Standards. Accessory structures shall comply with the setback standards of the underlying zone.

Chapter 4.1 Land Use Development Review and Procedures

Sections:

| | |
|----------|--|
| 4.1.100 | Purpose |
| 4.1.200 | General Provisions |
| 4.1.300 | Legislative Procedures |
| 4.1.3400 | Type I Ministerial Procedures |
| 4.1.4500 | Type II Limited Land Use and Type III Quasi Judicial Applications Procedures |
| 4.1.5300 | Type IV Legislative Procedures |
| 4.1.600 | Deschutes River Corridor Design Review Procedures |
| 4.1.700 | Refinement Plan Review Procedures |
| 4.1.800 | Land Use Action Quasi-Judicial Hearings |
| 4.1.900 | Land Use Action Decisions |
| 4.1.1000 | Reconsideration |
| 4.1.1100 | Appeals |
| 4.1.1200 | Proceedings on Remand |
| 4.1.1300 | Limitations on Approvals |
| 4.1.1400 | Declaratory Ruling |
| 4.1.1500 | Development Agreements |

4.1.100 Purpose

This ordinance Chapter is enacted to provides a uniform procedures for the granting or denial and processing of applications, approvals and determinations by the City of Bend under the applicable State of Oregon statues and rules, Bend Area General Plan City comprehensive plan, Bend Development Code land use regulations, subdivision and partition ordinance, and other ordinances which by their terms incorporate by reference the procedures in this Chapter ordinance. This ordinance shall be known as the City of Bend Land Use Review and Procedures Ordinance.

The provisions of this ordinance Chapter do not apply to the issuance, suspension, or revocation of any on-site sewage disposal, sign, building, electrical or plumbing permits, except as they relate to Planning Division consideration of permitted uses.

Notwithstanding any reference to the contrary, this ordinance shall not apply to applications for land use or development approval for lands lying outside the city limits of the City of Bend. Outside the City limits where authorized by an intergovernmental agreement, the functions of the City Planning Director and City Review Authority identified herein may be exercised by their counterparts in accordance with the respective For lands located inside the Bend Urban Growth Boundary, but outside the city limits, the applicability of this Code shall be set forth through intergovernmental agreements.

4.1.200 General Provisions

Sections:

| | |
|-----------|---|
| 4.1.210 | Pre-application Conference |
| 4.1.215 | <u>Public Meeting</u> |
| 4.1.24520 | Application Requirements |
| 4.1.22025 | Acceptance of Application |
| 4.1.225 | Incomplete Applications |
| 4.1.230 | False Statements on Application and Supporting Documents |
| 4.1.235 | Withdrawal of Application |
| 4.1.240 | Applicable Standards |
| 4.1.245 | Notice to Public Agencies |
| 4.1.250 | Conflicting Procedures |
| 4.1.255 | Time Computation |
| 4.1.260 | Lot of Record |

4.1.210 Pre-application Conference

~~A. Pre-application Conference.~~ A pre-application conference with the City of Bend is required highly recommended for complex applications or for applicants who are unfamiliar with the land use process. The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of the Development Code ~~applicable land use ordinances, to provide for an exchange of information regarding applicable requirements of the comprehensive plan, zoning ordinance or land division ordinance~~ and to identify issues likely to arise in processing an application. ~~The city zoning ordinance may require that a pre-application conference be held for particular types of applications.~~

4.1.215 Public Meeting

~~BA. Public Meeting.~~ The applicant for a Land Use Action for a Bend Area General Plan Map Amendment, Zoning Map Amendment, Conditional Use Permit, Subdivision or Site Plan Review for new development or an alteration/addition to ~~an existing one or more~~ buildings exceeding containing a total of 10,000 square feet or more shall present the proposal at a public meeting prior to submitting the land use respective application to the City Planning Division. The presentation shall be made at either, a regular or special meeting with a neighborhood association recognized by the City of Bend whose boundaries the subject property lies within, or a public meeting arranged and conducted by the applicant. The presentation at the public meeting shall include the following:

1. A map depicting the location of the subject property proposed for development.
2. A visual description of the project including a site plan, tentative subdivision plan and elevation drawings of any structures if applicable.
3. A description of the nature of the use including but not limited to, sizes and heights of structures, proposed lot sizes, density, etc.
4. The expected or anticipated impacts from the development.
5. Any mitigation proposed by the applicant to alleviate the expected/anticipated impacts.
6. Provide An opportunity for the public to provide comments. Applicants are encouraged to reconcile as many public concerns as possible prior to submittal of their application.

~~CB. Public Meeting Notification.~~ If any part of a proposed new development as referenced in subsection 4.1.2105(BA) ~~above~~ is to be constructed within the boundaries of a recognized neighborhood association of the City of Bend, the applicant shall notify the administrative body designated representative of such association of the presentation. It shall be the responsibility of the applicant to schedule the meeting/presentation and provide adequate notification to the residents of the affected neighborhood of the date, time and location of the meeting/presentation. It shall be the applicant's responsibility to provide the information listed in subsection 4.1.2105(CB) (1) (a - c) below to the administrative body for designated representative of the neighborhood association. Such meeting shall be held no less than 15 days and no more than 45 days from the date that the applicant notifies the administrative body designated representative of the affected neighborhood association. The following provisions shall be applicable to the applicant's obligation to notify the residents of the area affected by the new development application, whether the proposed development is within the boundaries of a recognized neighborhood association or not:

1. The applicant shall send mailed notice of the public meeting to all property owners within 500 feet of the boundaries of the subject property, and, if any part of the subject property is within the boundaries of a neighborhood association recognized by the City of Bend or within 500 feet of any other neighborhood association recognized by the City of Bend, notice shall be sent by Priority Mail with Delivery Confirmation mailed to the administrative body designated representative(s) of such neighborhood association(s). The property owner list shall be compiled from the Deschutes County Tax Assessor's property owner list from the most recent property tax assessment roll. The address for the administrative body designated representative(s) of the affected neighborhood association(s) shall be obtained from the City of Bend. The notice shall be sent a minimum of 15 days prior to the public meeting, and shall include at a minimum:
 - a. Date, time and location of the public meeting.
 - b. A brief written description of the proposal and proposed use, but with enough specificity so that the project is easily discernable.
 - c. The location of the subject property, including address (if applicable), nearest cross streets and any other easily understood geographical reference, and a map (such as a tax assessors map) which depicts the subject property.

4.1.24520 Application Requirements

- A. **Property Owner.** For the purposes of this section, the term "property owner" shall mean the owner of record or the contract purchaser and does not include a person or organization that holds a security interest.
- B. Applications ~~for development or land use actions~~ shall:
 1. Be submitted by the property owner or a person who has written authorization from the property owner as defined herein to make the application;
 2. Be completed on a form prescribed by the ~~e-City~~;
 3. Include supporting information required by ~~the zoning or land division ordinances this Code~~ and that any other information necessary to, in the judgment of the Community Development Planning Director, demonstrate compliance with applicable criteria;
 4. Be accompanied by the appropriate filing fee as set forth in the adopted Fees Resolution;
 5. Provide proof of ownership in the form of a deed, or other recorded document; and
 6. In the case of applications for a quasi-judicial plan amendment or zone change, may be accompanied by applications for a specific development proposal.
 7. For applications that require a public meeting under Section 4.1.215(A), include a copy of the Delivery Confirmation receipt and include a Public Meeting Verification of Compliance form signed by an affidavit from the applicant and a representative of the Neighborhood Association(s), attesting to the contents of the materials provided at the meeting that the public meeting required by Section 4.1.210(B) of this ordinance was conducted in accordance with the provisions listed therein. If no representatives of the Neighborhood Association(s) are present at the meeting, the applicant may submit a statement to that effect. If the public meeting was arranged and conducted by the applicant, the notification materials listed in Section 4.1.2105 (CB) (1) (a-c) must also be submitted.
- C. The following applications are not subject to the ownership requirement set forth in subsection 4.1.24520(B)(1) of this section:
 1. Applications submitted by or on behalf of a public entity or public utility having the power of eminent domain with respect to the property subject to the application; or
 2. Applications for development proposals sited on lands owned by the state or the federal government.

4.1.2205 Acceptance of Application.

- A. **Completeness.** Type I, II, and III applications shall not be accepted as complete until the Community Development Planning Director has determined that the requirements of Section 4.1.24520 of this Chapter have been met and the application is complete or the application is deemed to be complete under state law. A pre-submittal meeting Completeness Check Meeting shall be required for all Type II, III and IV land use applications as defined in Chapter 1.2 unless exempted by the Community Development Director. The purpose of the pre-submittal meeting Completeness Check Meeting is to determine whether the proposed development application is complete prior to acceptance of the application for processing by the City.

- B. An application is complete when, in the judgment of the Community Development Planning Director, complete information to address all criteria has been provided by the applicant.
- C. Acceptance of an application as complete shall not preclude a determination at a later date that additional criteria needs to be addressed or a later determination that additional information is needed to adequately address applicable criteria.

4.1.225 — ~~Incomplete Applications. (Replaced with 4.1.412)~~

- ~~A. If an application is incomplete, the Planning Director shall, within thirty (30) days of receipt of the application, notify the applicant in writing of exactly what information is missing. The applicant may amend the application or submit a new application supplying the missing information.~~
- ~~B. The applicant shall have thirty (30) days from the date of notice from the Planning Director to supply the missing information. Additional time, up to 180 days, may be granted upon request of the applicant pursuant to ORS 227.178.~~
- ~~C. If the applicant submits the missing information within the 30-day period specified in subsection (B) above, the application shall be deemed complete upon receipt of the missing information.~~
- ~~D. If an applicant does not submit the missing information within the 30-day period specified in subsection B above, the application may be processed in accordance with Section 4.1.500, Review of Type II or Type III Applications.~~

4.1.230 — ~~False Statements on Application and Supporting Documents.~~

~~If the applicant or the applicant's representative or apparent representative makes a misstatement of fact on the application regarding property ownership, authority to submit the application, acreage, or any other fact material to the acceptance or approval of the application, and such misstatement is relied upon by the Review Authority in making a decision whether to accept or approve the application, the Planning Director may upon notice to the applicant and subject to an applicant's right to a hearing, declare the application void.
 Revised and moved to Section 4.1.1335, Revocation of Approvals.~~

4.1.235 ~~Withdrawal of Application.~~

~~An applicant may withdraw an application in writing at any time prior to the time a land use action decision becomes final. If the land owner is not the applicant, no consent to withdraw the application is needed from the land owner.~~

4.1.240 ~~Applicable Standards.~~

~~The standards and criteria applicable to an application shall be the standards and criteria applicable at the time the application was first submitted if the application and requested information, if any, are received within one hundred eighty (180) days of the time the application was first submitted. *Provided for in 4.1.412*~~

4.1.245 ~~Notice to Public Agencies.~~

~~In addition to any notice required by this ordinance, written notice shall be provided to public agencies as prescribed below.~~

- ~~A. Division of State Lands. The City shall notify the Oregon Division of State Lands (DSL) of any application that involves lands that are wholly or partially within areas that are identified as a significant wetland on the city's Local Wetland Inventory. Notice shall be in writing using the DSL Wetland Land Use Notification Form, and shall be sent within five working days of acceptance of a complete application. [See ORS 227.350]~~
- ~~B. Department of Fish and Wildlife. The City shall notify the Oregon Department of Fish and Wildlife (ODFW) in writing of any application for development activities within the riparian corridor. A mitigation recommendation shall be obtained from ODFW. Approval of the proposed development shall include a condition requiring compliance with the ODFW mitigation recommendations. [See OAR 635-415]~~
- ~~C. Parks and Recreation Department. The City shall notify the Oregon Parks and Recreation Department (OPRD) in writing of any application for a proposed change, improvement, or~~

activity within the ¼ mile boundary of either the Upper Deschutes Scenic Waterway or the Middle Deschutes Scenic Waterway. A landowner proposing a change, improvement, or activity within a State Scenic Waterway shall notify OPRD using the form provided by OPRD. The proposed change, improvement, or activity shall not be approved by the city unless either OPRD has given its written approval, or OPRD has not responded within one year from the date of notification. [See OAR 736-40]

- D. Other agencies. The City shall notify other public agencies, as appropriate, that have statutory or administrative rule authority to review or issue state permits for associated with local land use actions development applications.

4.1.250 Conflicting Procedures.

Notwithstanding the provisions of this section, where other provisions of the City of Bend Code or City of Bend ordinances specify procedures with greater opportunity for public notice and comment, those procedures shall apply.

4.1.255 Time Computation.

Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, legal holiday or any day on which the City is not open for business pursuant to a City ordinance, in which case it shall also be excluded.

4.1.260 Lot of Record

Not all units of land are "lots of record". The City of Bend will not issue any permits on a unit of land until it is determined that it is a lot of record. If a unit of land is not in an approved subdivision or partition, has not been issued a land use permit, or has never been determined to be a lot of record, a declaratory ruling for a lot of record will need to be filed. A Declaratory Ruling will determine if and when a unit of land was created and if it was created in accordance with the law in effect at the time of creation. For units of land created in Deschutes County prior to annexation into the City, the Deschutes County Lot of Record Ordinance shall apply.

A. What is a lot of record? A unit of land held in separate ownership as shown on the records of the Deschutes County Clerk, which conforms to all zoning and subdivision/partition requirements in effect on the date the unit of land was created.

B. What is not a lot of record?

1. A unit of land created solely by a tax lot segregation because of an assessors role change or for the convenience of the assessor;
2. A unit of land created by an intervening section or township line or right of way;
3. A unit of land created by the foreclosure of a security interest.

C. Remedy for parcels found not to be lots of record.

1. In accordance with Chapter 4.3, consolidate the unit of land with a contiguous unit of land that is a determined to be a lot of record. Both units of land must be held in the same ownership as shown on the records of the Deschutes County Clerk.
2. Apply for and obtain approval for a single lot partition in conformance with the ORS 92.177 and Sections 4.3.200, 4.3.300 and 4.3.400.
3. Apply for and obtain approval of a lot of record under ORS 92.176.

[Section 4.1.260 added by Ord NS-2068, adopted August 15, 2007]

4.1.3400 TYPE I MINISTERIAL PROCEDURES

Sections:

- 4.1.3410** Type I Applications
- 4.1.3420** Completeness Check
- 4.1.34205** Type I Decision
- 4.1.3430** Type I Actions-Appeals

4.1.3410 Type I Applications.

- A. A Type I application may be handled administratively by the Community Development Planning Director without public notice or hearing because a Type I decision is neither a land use decision nor a limited land use decision under ORS 197.015.
- B. The Community Development Director may elevate a Type I application to a Type II application when there is a need to interpret or exercise policy or legal judgment, or to apply discretionary land use standards. Planning Director has the discretion to determine that for the purposes of this ordinance a Type I application should be treated as if it were a Type II application. The Community Development Director's decision to elevate a Type I application to a Type II application shall not be an appeal-able decision.

4.1.320 Completeness Check.

- A. Type I applications shall be subject to the completeness check procedures found in Section 4.1.412.
- B. Once accepted as complete, an applicant may place the application on "hold" for a period of no longer than 60 days, which may be extended by the Community Development Director for good cause, up to a total 245 days.

4.1.34205 Decision.

- A. Type I applications acted upon without notice or hearing shall be approved or denied by the Community Development Planning Director or his/or her designee within 30 days of the Planning Director's acceptance of the application.
- B. Notice of a decision shall be provided to the applicant or the applicant's representative.
- C. The decision may be appealed by the applicant under Section 4.1.1100430 of this ordinance.
- D. A Type I decision becomes final when no further appeal under this ordinance is available.

4.1.3430 Type I Actions: Appeal.

~~If the authority under which a Type I action is undertaken provides a means of review or appeal of a decision independent from this procedures ordinance, the review or appeal shall be in accordance with the procedures independently provided and not in accordance with this ordinance. If the authority under which a Type I action is reviewed does not provide a means of review or appeal of a decision, then review or Any appeal shall be in accordance with Section 4.1.1100 of this ordinance.~~

4.1.4500 TYPE II OR AND TYPE III APPLICATIONS

Sections:

| | |
|----------|--|
| 4.1.4510 | Effect of Determinations Made Outside of Established Processes |
| 4.1.412 | Completeness Check |
| 4.1.4515 | Process for Type II or Type III Applications Application Procedures |
| 4.1.4520 | Administrative Land Use Decisions with Prior Notice |
| | <u>Mailed Notice of Type II Applications</u> |
| 4.1.423 | <u>Mailed Notice of Type III Applications</u> |
| 4.1.525 | Administrative Decision without Prior Notice |
| 4.1.424 | Contents of Mailed Notices |
| 4.1.425 | Posted Notice of Type II or Type III Applications |
| 4.1.426 | Type III - Quasi Judicial Procedures |
| 4.1.427 | Site Specific Plan Amendments and Zone Changes |
| 4.1.429 | Hearings Officer as Review Authority |
| 4.1.4530 | Final Action in Type II or Type III Actions |
| 4.1.4535 | Temporary Approval |
| 4.1.540 | Supplementation of Application within First 30 Days of Submittal |
| 4.1.4545 | Modification of Application |

4.1.410 Effect of Determinations Made Outside of Established Processes.

Any informal interpretation or determination, or any statement describing the uses to which a property may be put, made outside the declaratory ruling process in accordance with Section 4.1.1400 or outside the process for approval or denial of a Type II or III permit application in conformance with Section 4.1.4500-900 shall be deemed to be a supposition only. Such informal interpretations, determinations, or statements shall not be deemed to constitute final City action effecting a change in the status of a person's property or conferring any rights, including any reliance rights, on any person.

4.1.412 Completeness Check.

- A. Except as provided in subsections (C) and (D) below, the City shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals, within 120 days after the application is deemed complete.
- B. Except as otherwise provided for through a Completeness Check Meeting, if an application for a permit, limited land use decision or zone change is incomplete, the City shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (A) of this section upon receipt by the City of:
 - 1. All of the missing information;
 - 2. Some of the missing information and written notice from the applicant that no other information will be provided; or
 - 3. Written notice from the applicant that none of the missing information will be provided.
- C. On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (B) of this section and has not submitted:
 - 1. All of the missing information;
 - 2. Some of the missing information and written notice that no other information will be provided; or
 - 3. Written notice that none of the missing information will be provided.
- D. The 120-day period set in subsection (A) of this section may be extended for a specified period of time at the written request of the applicant. The total of all extensions may not exceed 245 days.
- E. Except as provided under the Completeness Check Meeting process, an applicant shall not submit any evidence to supplement its application during the 30 days following submittal of its application, except when requested by the Community Development Director. Any evidence submitted by an applicant in violation of this section will not be considered in determining whether the application is complete and will be returned to the applicant.
Moved from 4.1.540

4.1.415 ~~Process for Type II or Type III Applications~~ Application Procedures.

- A. ~~Except for comprehensive plan amendments and zone changes and other instances where a hearing is required by state law or by other ordinance provision, the Planning Director may decide upon a Type II application administratively either with prior notice, as prescribed under Section 4.1.520 or without prior notice, as prescribed under Section 4.1.525 or may refer the application to the Hearings Body for hearing as a Type III. The Planning Director shall take such action within 45 days of the date the application is accepted or deemed accepted as complete. This time limit may be waived at the option of the applicant. Type II decisions are made by the Community Development Director following public notice and an opportunity for parties to comment but without a public hearing unless the Community Development Director elevates the application to the Hearings Body for hearing as a Type III.~~
- B. The Community Development Planning Director's choice between or among administrative or hearing procedures to apply to a particular application or determination shall not be an appeal-able decision.
- C. ~~Quasi-judicial zone change and plan amendment applications shall be reviewed as a Type III and referred to a hearing before the Review Authority. **Moved to 4.1.427**~~

4.1.420 Mailed Notice of Type II Applications.

- A. Notice of Type II applications shall be mailed at least fourteen (14) days prior to the issuance of a decision to persons entitled to notice under Section 4.1.423. Such notice shall include all the information specified under Section 4.1.424 except for the information specified in subsections 7 and 10 of Section 4.1.424(A). Written notice shall be sent by mail to the following persons:
1. The applicant.
 2. Owners of record of property as shown on the most recent property tax assessment roll of property located:
 - a. Within 250 feet of the property that is the subject of the notice and where any structure being proposed is less than or equal to 50 feet in height. The notice boundary shall increase by 250 feet for every 25-foot increment of structure height above 50 feet.
 - b. The applicant shall bear the cost (i.e. mailing, etc.) of any notice.
 3. The designated representative(s) of a neighborhood association recognized by the City of Bend, where any property within the notice area specified in subsection 4.1.420(A)(2) is within the boundaries of a recognized neighborhood association.
 4. The notice requirements of this section shall be deemed met when the Planning Division can provide an affidavit or other certification that such notice was given.
 5. The Community Development Director may increase the minimum notice area up to 400 feet beyond what is otherwise required under subsection 4.1.420(A)(2)(a) above, at his or her sole discretion.
- B. Any person may comment in writing on a Type II application within fourteen (14) days from the date notice was mailed or a longer period as specified in the notice.
- C. Notice of the Community Development Director's Type II decision and the appeal period shall be mailed to all parties to the record.
- D. Any party can appeal a Type II decision in accordance with Section 4.1.1100, Appeals.

4.1.423 Mailed Notice of Type III Applications.

- A. Except as otherwise provided for herein, notice of a Type III application shall be mailed at least twenty (20) days prior to the evidentiary hearing for those matters set for one evidentiary hearing, or ten (10) days prior to the first evidentiary hearing where two or more evidentiary hearings are held. Written notice shall be sent by mail to the following persons:
1. The applicant.

2. Owners of record of property as shown on the most recent property tax assessment roll of property located:
 - a. Within 250 feet of the property that is the subject of the notice and where any structure being proposed is less than or equal to 50 feet in height. The notice boundary shall increase by 250 feet for every 25-foot increment of structure height above 50 feet.
 - b. The applicant shall bear the cost (i.e. mailing, etc.) of any notice.
 3. The tenants of a mobile home park when the application is for the rezoning of any part or all of a mobile home park.
 4. The designated representative(s) of a neighborhood association recognized by the City of Bend, where any property within the notice area specified in subsection 4.1.423(A)(2) is within the boundaries of a recognized neighborhood association.
- ~~B. Notwithstanding subsection 4.1.423(A)(2)(a) above, all owners of property and all recognized neighborhood associations within 250 feet of property that is the subject of a plan amendment application or zone change application shall receive mailed notice.~~
- B. The notice requirements of this section shall be deemed met when the Planning Division can provide an affidavit or other certification that such notice was given.
- C. The Community Development Director may increase the minimum notice area up to 400 feet beyond what is otherwise required under subsection 4.1.423(A)(2)(a) above, at his or her sole discretion.

4.1.424 Contents of Mailed Notices.

- A. All mailed notices ~~of a land use action hearing~~ shall:
1. Describe the nature of the applicant's request and the nature of the proposed uses that could be authorized.
 2. List the criteria from the ~~zoning ordinance~~ Development Code and the general plan applicable to the application at issue.
 3. Set forth the street address or easily understood geographical reference to the subject property.
 4. State the date, time and location of any hearing or date by which written comments must be received.
 5. State that any person may comment in writing and include a general explanation of the requirements for submission of testimony and the procedures for conduct of testimony, including, but not limited to, a party's right to request a continuance or to have the record held open.
 6. If a hearing is to be held, state that any interested person may appear and provide evidence.
 7. State that failure to raise an issue in person at a hearing or in writing precludes appeal by that person to the Land Use Board of Appeals (LUBA), and that failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue.
 8. State the name of a city representative to contact and the telephone number where additional information may be obtained.
 9. State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.
 10. State 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 a reasonable cost.
- B. All mailed notices concerning applications necessitating an exception to one of the statewide land use planning goals shall state that a goal exception is proposed and shall summarize the issues in an understandable manner.

4.1.425 Posted Notice of Type II or Type III Applications.

1. Notice of a Type II or III application for which prior notice procedures are required shall be posted on the subject property by the applicant/property owner for at least 10 continuous days prior to any date set for receipt of comments. Such notice shall, where practicable, be visible from any adjacent public way. Failure of applicant/property owner to maintain posting of the sign for 10 continuous days shall not invalidate a land use approval.
2. Posted notice of an application for a utility facility line approval shall be by posting the proposed route at intervals of not less than 500 feet. The notice shall be posted as close as practicable to, and be visible from, any public way in the vicinity of the proposed route.

4.1.426 Type III - Quasi Judicial Procedures.

Type III decisions are made by the Planning Commission or Hearings Officer after a public hearing following the quasi-judicial hearings procedures of Section 4.1.800.

4.1.427 Site Specific Plan Amendments and Zone Changes. (Moved from 4.1.320)

Any Type III change initiated by an individual that includes a plan amendment and/or zone change for specific real property may be accompanied by the appropriate applications for a specific development proposal. Approval of such a plan amendment and/or zone change accompanied by a specific development proposal may be conditioned upon initiation of the development proposal within a specified time period, at the discretion of the Hearings Body, to ensure no greater intensity of use than that contemplated in the Type III proceeding. Approvals of Type III site specific plan amendments and/or zone changes and zone changes that are not accompanied by applications for a specific development proposal shall be based on evaluation of the highest impact uses authorized in the proposed zone.

Because site specific plan amendments require an alteration of the Bend Area General Plan by action of the City Council, they shall be processed through the Type III quasi-judicial proceeding where the initial Hearings Body makes a recommendation to the City Council for a final decision.

4.1.429 Hearings Officer as Review Authority.

The Hearings Officer shall be the Review Authority for site specific zone change requests which bring the zoning into conformance with the Bend Area General Plan designation. Approvals of site specific zone changes that are not accompanied by applications for a specific development proposal shall be based on evaluation of the highest impact uses authorized in the proposed zone.

4.1.430 Final Action in Type II or III Actions.

- A. Except as otherwise Where provided by this Code or state statute, the City shall take final action, including consideration of appeals to the council, in Type II or III actions within one hundred twenty (120) days after the application is deemed complete.
- B. If the applicant refuses or fails to submit missing information within the 30 days specified in Section 4.1.225 of this ordinance, the application shall be deemed complete, for purposes of processing the application, on the 31st day after the application was first submitted, and final action of City Council, if required, shall be taken within one hundred fifty one (151) days after the application was first received unless otherwise provided. Moved to 4.1.412
- BC. The periods set forth in this section during which a final decision on an application must be made may be extended for a reasonable period of time to a date certain at the written request of the applicant. The total of all extensions cannot exceed 245 days. Set by statute.
- CD. Applications for the following determinations or approvals are exempt from the 120-day time limit established by this section:
 1. Quasi-judicial comprehensive plan amendments;
 2. Revocation proceedings;
 3. Declaratory Rulings; ~~Verification of nonconforming uses;~~
 4. ~~Lot of record determinations;~~
 5. ~~Initiation of approval determinations;~~

- 46. Consideration of remanded applications; and
- 57. Legislative Actions.

4.1.4535 Temporary Approval.

- A. The purpose of temporary land use approval is to allow an applicant in certain hardship or emergency situations to proceed without notice to those ordinarily entitled to notice with a land use action proposed in an application made to the Planning Division before the Division completes its review of the proposed use. In all cases, an applicant receiving temporary approval must obtain final approval on the submitted application pursuant to the procedures specified in this ordinance.
- B. Subject to subsection (E) below, the City Council or the Community Development Planning Director may authorize a temporary land use approval, provided all of the following are met:
 - 1. An application for the land use approval has been accepted as complete.
 - 2. A fee for review of the temporary approval has been paid.
 - 3. The applicant has demonstrated good and sufficient cause for such a temporary approval.
 - 4. It appears that the application will be given final approval in substantially the form submitted by the applicant.
 - 5. The applicant accepts each and every risk of loss and damage that may result if the application is denied, and further agrees in writing to hold City, its officers, agents and employees harmless from such loss and damage.
 - 6. The applicant agrees in writing to restore the site to its original condition if the application for the land use approval is denied.
 - 7. The applicant posts a bond or other form of security acceptable to the Review Authority in an amount sufficient to cover the costs of restoration of the site, required by Section 4.1.530 above.
- C. For the purposes of this section, "good cause" shall include only hardship or emergency situations arising due to factors that, through the exercise of ordinary diligence, the applicant could not have foreseen. "Good cause" does not include an applicant's request for a temporary permit for reasons of convenience only.
- D. A temporary use approval shall not be granted for variances, zone changes or plan amendments.
- E. The scope of the temporary approval shall be limited to allow the applicant to proceed only with that portion of the proposed use justifying the applicant's claim of hardship or emergency.
- F. A temporary use approval shall expire as follows:
 - 1. Six months from the date of approval, if no decision has been reached on the underlying application.
 - 2. On the date the appeal period runs on the decision on the underlying application.
 - 3. On the date that all appeals of the decision on the underlying application are decided and final.
- G. A decision to approve a temporary use application is not appealable.

4.1.540 ~~Supplementation of Application within First 30 Days of Submittal.~~

~~An applicant shall not submit any evidence to supplement its application during the 30 days following submittal of its application, except to respond to a request for additional information made under Section 4.1.225. Any evidence submitted by an applicant in violation of this section will not be considered in determining whether the application is complete and will be returned to the applicant. Moved to 4.1.412~~

4.1.4545 Modification of Application.

- A. An applicant may modify an application at any time during the approval process up until the issuance of an administrative decision, or the close of the record for an application reviewed under a hearings process, subject to the provisions of Section 4.1.412 540 and this Chapter.
- B. The Review Authority shall not consider any evidence submitted by or on behalf of an applicant that would constitute modification of an application (as that term is defined in Chapter 1.2, Definitions unless the applicant submits an application for a modification, pays

all required modification fees and agrees in writing to restart the 120-day review period time clock as of the date the modification is submitted. The 120-day review period time clock for an application, as modified, may be restarted as many times as there are modifications up to a total of 365 days from the day the application was accepted as complete.

- C. The Review Authority may require that the application be re-noticed and additional hearings be held.
- D. Up until the day a hearing is opened for receipt of oral testimony, the Community Development Planning Director shall have sole authority to determine whether an applicant's submittal constitutes a modification. After such time, the Hearings Body shall make such determinations. The Review Authority's determination on whether a submittal constitutes a modification shall be appealable only to LUBA and shall be appealable only after a final decision is entered by the City on an application.

4.1.5300 TYPE IV LEGISLATIVE PROCEDURES

Sections:

| | |
|-----------------|--|
| <u>4.1.505</u> | <u>Type IV Applications</u> |
| <u>4.1.5310</u> | <u>Hearing Required</u> |
| <u>4.1.5315</u> | <u>Notice</u> |
| <u>4.1.5320</u> | <u>Initiation of Legislative Changes</u> |
| <u>4.1.5325</u> | <u>Review Authority</u> |
| <u>4.1.5330</u> | <u>Final Decision</u> |
| <u>4.1.5335</u> | <u>Corrections</u> |

4.1.505 Type IV Applications

Legislative decisions are made after public notice, public hearings and a recommendation by the Planning Commission to the City Council. Such applications generally involve broad public policy decisions that apply to other than an individual property.

4.1.5310 Hearing Required

No legislative change shall be adopted without review by the Planning Commission or Hearing Officer and a final public hearing before the City Council. Public hearings before the Planning Commission shall be set at the discretion of the Community Development Planning Director, unless otherwise required by state law.

4.1.5315 Notice

A. Published Notice.

1. Notice of a Type IV legislative change shall be published in a newspaper of general circulation in the City at least twenty (20) days prior to each public hearing.
2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.

B. Posted Notice. Notice shall be posted at the discretion of the Community Development Planning Director.

C. Individual Notice. For site-specific applications, individual notice to property owners, as defined in Section 4.1.24520(A) of this Chapter, shall be provided ~~in conformance with ORS 227.~~

D. Neighborhood Associations. Notice of Type IV legislative changes shall be mailed to the designated representative administrative body of any neighborhood association recognized by the City of Bend, where the legislative change affects any land within the boundary of such neighborhood association.

4.1.5320 Initiation of a Legislative Change.

Requests for a plan map or text amendment of the Bend Urban Area General Plan or its implementing documents may be initiated by an individual, corporation, or public agency. ~~A Type IV legislative change may be initiated by application of individuals upon submittal of an application, supporting documentation and payment of required fees, as well as by the The City Council, or the Planning Commission or Community Development Director may also initiate legislative changes. *Site Specific Plan Amendments moved to 4.1.427*~~

4.1.5325 Review Authority.

~~A. The following shall serve as hearings or review body for legislative changes in this order:~~

- ~~1. The Planning Commission or Hearings Officer.
 - a. ~~For Type III actions the Hearings Officer shall serve as the initial Hearings Body.~~
 - b. ~~For Type IV actions the Planning Commission shall serve as the initial Hearings Body.~~~~

~~2. The City Council, subject to Section 4.1.1100 of this ordinance.~~

~~BA Any Type III or Type IV change initiated by the City Council shall be reviewed by the Planning Commission or Hearings Officer prior to action being taken by the City Council.~~

4.1.5330 Final Decision.

All Legislative changes shall be adopted by ordinance.

4.1.5335 Corrections.

The City's ~~General Plan comprehensive plans and Development Code zoning ordinances, subdivision ordinance, and development procedures ordinance~~ may be corrected by order of the City Council to cure editorial and clerical errors. A public Hearing on a corrections order is not required.

For all property subject to the Deschutes River Design Review process pursuant to the Bend Development Code City Zoning Ordinance, the following procedures shall apply:

- A. There shall be two review tracks for Deschutes River Design Review depending on the level and type of activity proposed. Notwithstanding these provisions, the Community Development Planning Director may refer any application to the Planning Commission for approval. The Planning Commission's consideration shall follow the quasi judicial procedures set forth in Section 4.1.800 ~~be subject to land use permit procedures~~
1. Review Track ~~† A~~: A Type II administrative review shall be performed by the Planning Community Development Director for the following activities:
 - a. Minor alterations of 10 percent or less to an existing building facade facing river, including roof.
 - b. Changes in window or door placement visible from the river.
 - c. Changes in parking locations.
 - d. Fill or removal activity within 10 feet of the ordinary high water mark of the Deschutes River.
 - e. New construction or additions that is not visible from the river due to topography, vegetation or existing development.
 2. Review Track ~~† B~~: ~~Notwithstanding Section 4.1.815, a~~ Type III review shall be performed by the Planning Commission for the following activities:
 - a. Appeal of a Type II administrative review decision.
 - b. New construction and new development.
 - c. Master Plan approval for large scale projects.
 - d. Variances to an application in conformance with Chapter 5.1, Variances.
 - e. Fill and removal activities associated with new development or for creation of fire breaks in association with appropriate fire prevention authorities.
- B. ~~Procedures:~~ The applicant shall ~~request approval for a procedure~~ submit an application in writing to the Planning Division on forms provided by the City. The request shall include a site plan containing the relevant components listed in Section 4.2.200 and a description of work and materials that will be used. The Review Authority shall review the request and respond to the applicant in writing of the decision and any conditions placed on the decision.
- C. ~~Land Use Permit Procedures:~~ ~~Land Use permit review~~ Track B applications shall be ~~conducted~~ reviewed by the Planning Commission as follows:
1. Notice for ~~land use permit~~ applications shall be as set forth in ~~Section 4.1.820~~ Section 4.1.423, ~~Notice of Hearing or Administrative Action~~, and ~~Section 4.1.825~~ Section 4.1.424, ~~Contents of Notice~~. The Commission may shall hold a public hearing for any ~~Land Use Action~~ Type III applications. The hearings procedure shall be as set forth in ~~Section 4.1.800~~, Quasi Judicial Land Use Action Hearings.
 2. The Planning Commission shall review the entire project, even if only a portion of the project falls within the Deschutes River Corridor Design Review Combining Zone.
 23. Appeals of the decision of the Planning Commission shall be to the City Council, subject to the procedures and restrictions set forth in Section 4.1.1100, Appeals.
- D. Where the procedures in this section conflict with other provisions of this ordinance with respect to Deschutes River Corridor Design Review, the provisions of this section shall prevail.

4.1.700 REFINEMENT PLAN REVIEW PROCEDURES

A. Refinement Plan Development and Approval Process.

1. Initiation. The process to establish a refinement plan shall be initiated by the City Council. The Planning Commission or interested property owners may submit requests to the City Council to initiate the refinement plan process. If owners request initiation of a refinement plan process, ~~it will be subject to the established application fee, the City Council may require an application fee to cover the cost of creating the plan.~~
2. Public Involvement Plan: The Planning Commission shall approve a public involvement plan which may include ~~the appointment of a Steering Committee. The City Council may appoint a steering committee to guide development of the plan.~~ The steering committee may include persons representing affected property owners, neighbors, city staff, agencies, special districts and the community at large. The role of the steering Committee is advisory to the Planning Commission and the City Council. ***Planning Commission is the City's Citizen Involvement Committee***

B. Refinement Plan Content. At a minimum, a refinement plan shall include the following text and diagrams:

1. Plan Objectives. A narrative shall set forth the goals and objectives of the plan.
2. Site and Context. A map of the site and context shall identify the project area.
3. Land Use Diagram. The land use diagram shall indicate the distribution and location of planned land uses, including open space and parks, within the area covered by the refinement plan.
4. Density. If residential uses are proposed, a narrative shall describe planned residential densities.
5. Facilities Diagram Plan. The facilities ~~diagram~~ plan shall depict the general location and extent of major components of sanitary sewer, water, and other essential facilities proposed to be located within the area covered by the refinement plan and needed to support the land uses described in the plan.
6. Circulation/Transportation Diagram Plan. The circulation ~~diagram~~ plan shall indicate the proposed street pattern for the refinement plan area, including pedestrian pathways and bikeways. Design standards and street cross sections shall be included, if different than normal City standards.
7. Design and Development Standards. If standards differ from normal City standards, design and development standards shall be included in the plan.

C. Criteria. In order to approve a refinement plan, the City Council shall adopt findings demonstrating conformance the criteria set forth in Section 4.6.200.

CD. Land Use Review. Except as set forth below, the review procedures for Land Use Activity Categories outlined in Chapter 4.1.300; Legislative Procedures, of this code shall apply to the adoption of ~~for all property subject to a Refinement Plan overlay zone.~~

1. Administrative Review. After adoption of a refinement plan, the following activities shall be reviewed either administratively ~~or by a Hearings Body.~~
 - a. Type I applications.
 - b. Type II/III applications conforming to the standards of the refinement plan.
 - c. Administrative amendments to the refinement plan.
 - d. Minor amendments to the refinement plan.
 - e. Lot line Property line adjustments consistent with the refinement plan.
 - f. Variances.
2. Planning Commission Review. The Planning Commission shall review the following activities:
 - ~~a. Class B or C Variance.~~
 - ba. Lot line Property line adjustments that are not consistent with the refinement plan.
 - b. Type III applications conforming to the standards of the refinement plan.

3. City Council Review. The following activities shall be reviewed by the City Council as either a quasi-judicial or legislative amendment.
 - a. Major amendments to the refinement plan.
 - b. Appeals of land use decisions.

DE. Amendments and Adjustments to the Refinement Plan. Amendments to an approved refinement plan are classified as administrative, minor, or major amendments.

1. Administrative Amendments. Administrative amendments ~~may~~ shall be reviewed approved by the Community Development City-Planning Director pursuant to development action following the Type I procedures, unless elevated to a Type II procedure. Public notice of administrative amendments is not required. Administrative amendments include:
 - a. Street, easement, sidewalk, and trail relocations that result in a location change of less than 50 feet from what is depicted on refinement plan diagrams.
 - b. Public park relocations that result in a location change of less than 100 feet from what is depicted on refinement plan diagrams.
 - c. Increases in the size of public neighborhood parks, provided that transportation connections remain consistent with the refinement plan.
 - d. Reductions in the size of public neighborhood parks, provided the reductions are less than 10% of park area depicted on refinement plan diagrams and that the reductions do not result in a park that is less than 20,000 square feet in size.
 - e. Changes related to street trees, street furniture, fencing, or signage that was approved as part of the refinement plan.
 - f. A change in the facilities utility plan other than what would be necessary for other authorized adjustments.

2. Minor Amendments. A minor amendment to a refinement plan shall be processed as a Type II application. Notice of the pending decision shall be provided to all owners of land within or abutting the Refinement Plan district(s) in question. The ~~Hearings-Body Community Development Director's~~ decision shall include findings demonstrating that the change will not affect adversely:

- the purpose and objectives of the refinement plan,
- the functioning of the refinement plan, or
- the coordination of transportation and infrastructure provision to properties within the refinement plan area.

Minor amendments are those that result in any of the following:

- a. A change in the circulation/transportation plan that requires an identified transportation element to be moved 50 to 100 feet from the location depicted on the refinement plan circulation/transportation diagram.
 - b. A change in the circulation/transportation plan that requires a required transportation element including local street, easement, sidewalk or trail to be shifted 50 to 100 feet in any direction from what is depicted on the refinement plan circulation/transportation diagram.
 - c. A change in the land use diagram that reduces the size of a public park or facility more than 10%, or moves the location more than 100 feet from the location depicted on the land use diagram.
3. Major Amendment. A major amendment to a refinement plan shall be processed as a comprehensive plan amendment affecting the existing refinement plan. The amendment shall follow either quasi-judicial or legislative procedures and meet plan amendment and zone change criteria. Findings must additionally demonstrate that the change will not affect adversely:
 - the purpose and objectives of the refinement plan,
 - the functioning of the refinement plan, or
 - the coordination of transportation and infrastructure provision to properties within the refinement plan area.

Major amendments are those that result in any of the following:

- a. A change in land use general plan designation boundary or density, unless as part of the original approvals an alternative design was approved outlining acceptable plan designation options (for example, a residential designation may be approved as an alternative use for a park site).
- b. A change in the circulation/transportation plan that causes a required transportation element, including a trail, to be added, eliminated or moved more than 100 feet from the location depicted on the refinement plan circulation/transportation diagram.
- c. A change in the land use diagram that adds or eliminates a designated public park or facility.
- d. A change in development standards, except those set forth as minor or administrative amendments.

4.1.800 ~~LAND USE ACTION QUASI JUDICIAL HEARINGS~~

Sections:

- 4.1.810 Filing of Staff Report for Hearing
- 4.1.815 Hearings Body
- ~~4.1.820 Notice of Hearing or Administrative Action~~
- ~~4.1.825 Contents of Notice~~
- 4.1.830 Burden of Proof
- 4.1.835 Nature of Evidence
- 4.1.840 Limitation on Oral Presentations
- 4.1.845 Standing
- 4.1.850 Record
- 4.1.855 Disclosure of Ex Parte Contacts
- 4.1.860 Disclosure of Personal Knowledge
- 4.1.865 Challenge for Bias, Prejudgment of Personal Interest
- 4.1.870 Hearings Procedure
- 4.1.875 Setting the Hearing
- 4.1.880 Close of the Record
- 4.1.885 Continuances or Record Extensions
- 4.1.890 Objections to Jurisdiction, Procedure, Notice or Qualifications
- 4.1.895 Reopening the record

4.1.810 Filing of Staff Report for Hearing.

- A. At the time an application, that in the judgment of the Community Development Planning Director requires a hearing, is deemed complete, a hearing date shall be set.
- B. A staff report shall be completed seven days prior to the hearing. If the report is not completed by such time, the hearing shall be held as scheduled, but any party may at the hearing or in writing prior to the hearing request a continuance of the hearing to a date that is at least seven days after the date the initial staff report is complete. ~~Pursuant to Section 4.1.885, Continuances or Record Extensions, The granting of a continuance under these circumstances shall be at the discretion of the Hearings Body.~~
- C. A copy of the staff report shall be mailed to the applicant, shall be made available at a reasonable cost to such other persons who request a copy and shall be filed with the Hearings Body.
- D. Notwithstanding subsection 4.1.810(B) above, oral or written modifications and additions to the staff report shall be allowed prior to or at the hearing.

4.1.815 Hearings Body.

- A. The following shall serve as the Hearings Body as determined by the Community Development Planning Director:
 - 1. Hearings Officer.
 - 2. Planning Commission, for matters of interpretation of this Code, Appeals of Type II decisions, where the Hearings Officer cannot hear the matter due to a conflict of interest, or as otherwise specified by provisions of City Code.
 - 3. City Council subject to Section 4.1.1100, Appeals.

~~4.1.820 Notice of Hearing or Administrative Action~~

~~A. Individual Mailed Notice.~~

- ~~1. Except as otherwise provided for herein, notice of a Type II or III application shall be mailed at least ten (10) days prior to the hearing for those matters set for hearing, or at least fourteen (14) days prior to issuance of a written decision for those matters to be processed administratively with notice. Written notice shall be sent by mail to the following persons:
 - ~~a. The applicant.~~
 - ~~b. Owners of record of property as shown on the most recent property tax assessment roll of property located:~~~~

- i. ~~Within 100 feet of the property that is the subject of the notice and where any structure being proposed is less than or equal to 45 feet in height. The notice boundary shall increase by 200 feet for every 15-foot increment of structure height above 45 feet.~~
 - ii. ~~The required notice area boundary shall be measured from the opposite side of any street rights-of-way, rivers, and/or canals adjacent to the subject property from which the notice area originates.~~
 - iii. ~~The applicant shall bear the cost (i.e. mailing, etc.) of any increased notice area required by a structure with height in excess of 45 feet.~~
- e. ~~The tenants of a mobile home park when the application is for the rezoning of any part or all of a mobile home park.~~
 - d. ~~The administrative body of a neighborhood association recognized by the City of Bend, where any part of the proposed development is within the boundaries of a recognized neighborhood association.~~
- 2. ~~Notwithstanding subsection 4.1.820(A)(1)(b)(i) above, all owners of property within 250 feet of property that is the subject of a plan amendment application or zone change application shall receive notice.~~
 - 3. ~~Mailed notice per ORS 227.160-227.185 shall be provided to all property owners affected by a proposed text or plan amendment.~~
 - 4. ~~The failure of a property owner to receive mailed notice shall not invalidate any land use approval if the Planning Division can show by affidavit that such notice was given.~~
 - 5. ~~The Planning Director may increase the minimum notice area required under subsection 4.1.820(A)(1)(b)(i) above, at his or her sole discretion.~~

B. ~~Posted Notice.~~

- 1. ~~Notice of a land use action application for which prior notice procedures are required shall be posted on the subject property by the applicant/property owner for at least 10 continuous days prior to any date set for receipt of comments. Such notice shall, where practicable, be visible from any adjacent public way. Failure of applicant/property owner to maintain posting of the sign for 10 continuous days shall not invalidate a land use approval.~~
- 2. ~~Posted notice of an application for a utility facility line approval shall be by posting the proposed route at intervals of not less than 500 feet. The notice shall be posted as close as practicable to, and be visible from, any public way in the vicinity of the proposed route.~~

C. ~~Published Notice.~~ ~~In addition to notice by mail and posting, notice of an initial hearing shall be published in a newspaper of general circulation in the City at least ten (10) days prior to the hearing.~~

4.1.825 ~~Contents of Notice.~~

A. ~~All mailed notices of a land use action hearing shall:~~

- 1. ~~Describe the nature of the applicant's request and the nature of the proposed uses that could be authorized.~~
- 2. ~~List the criteria from the zoning ordinance and the general plan applicable to the application at issue.~~
- 3. ~~Set forth the street address or easily understood geographical reference to the subject property.~~
- 4. ~~State the date, time and location of any hearing or date by which written comments must be received.~~
- 5. ~~State that any person may comment in writing and include a general explanation of the requirements for submission of testimony and the procedures for conduct of testimony, including, but not limited to, a party's right to request a continuance or to have the record held open.~~

- ~~6. If a hearing is to be held, state that any interested person may appear and provide evidence.~~
- ~~7. State that failure to raise an issue in person at a hearing or in writing precludes appeal by that person to the Land Use Board of Appeals (LUBA), and that failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue.~~
- ~~8. State the name of a city representative to contact and the telephone number where additional information may be obtained.~~
- ~~9. State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.~~
- ~~10. State 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 a reasonable cost.~~
- ~~11. All mailed notices shall contain the following statement:~~

~~**ORS 197 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.**~~

- ~~B. All mailed and published notices for hearings shall contain a statement that recipients may request a copy of the staff report at a reasonable cost.~~
- ~~C. All mailed and published notices concerning applications necessitating an exception to one of the statewide land use planning goals shall state that a goal exception is proposed and shall summarize the issues in an understandable manner.~~

Reorganized, revised, and moved to 4.1.420-425

4.1.830 Burden of Proof.

Throughout all local land use proceedings the burden of proof rests on the applicant.

4.1.835 Nature of Evidence.

All relevant evidence shall be received.

4.1.840 Limitation on Oral Presentations.

The Hearings Body may set reasonable time limits on oral testimony.

4.1.845 Standing.

- A. Any interested person may appear and be heard in a land use action-Type III hearing, except that in appeals heard on the record, a person must have participated in a previous proceeding on the subject application.
- B. Any person appearing on the record at a hearing (including appeals) or presenting written evidence in conjunction with an administrative action or hearing shall have standing and shall be a party. A person whose participation consists only of signing a petition shall not be considered a party.

4.1.850 Record.

- A. An audio tape recording of the hearing shall be made.
- B. All exhibits presented shall be marked to show the identity of the person offering the exhibit.
- C. Exhibits shall be numbered in the order presented, and shall be dated.
- D. When exhibits are introduced, the exhibit number or letter shall be read into the record.
- E. When a digital storage device such as a compact disc is submitted into the record, a transcript of the contents shall also be submitted.

4.1.855 Disclosure of Ex Parte Contacts.

A. Prior to making a decision, the Hearings Body or any member thereof shall not communicate directly or indirectly with any party or his or her representative in connection with any issue involved in a pending hearing except upon notice and opportunity for all parties to participate. Should such communication - whether written or oral - occur, the Hearings Body member shall:

1. Publicly announce for the record the substance of such communication; and
2. Announce the parties' right to rebut the substance of the ex parte communication during the hearing.
3. Communication between City staff and the Hearings Body shall not be considered to be an ex parte contact.

4.1.860 Disclosure of Personal Knowledge.

- A. If the Hearings Body or any member thereof uses personal knowledge acquired outside of the hearing process in rendering a decision, the Hearings Body or member thereof shall state the substance of that knowledge on the record and allow all parties the opportunity to rebut such statement on the record.
- B. For the purposes of this section, a site visit by the Hearings Body shall be deemed to fall within this rule. After the site visit has concluded, the Hearings Body must disclose its observations and conclusions gained from the site visit in order to allow for rebuttal by the parties.

4.1.865 Challenge for bias, prejudice or personal interest.

- A. Prior to or at the commencement of a hearing, any party may challenge the qualification of the Hearings Body, or a member thereof, for bias, prejudice or personal interest. The challenge shall be made on the record and be documented with specific reasons supported by facts. Should qualifications be challenged, the Hearings Body or the member shall disqualify itself, withdraw or make a statement on the record of its capacity to hear. A Planning Commission member with a conflict identified under ORS 197 must disqualify him or herself after disclosure.

4.1.870 Hearings Procedure.

A. A hearing shall be conducted as follows:

1. The Hearings Body shall explain the purpose of the hearing and announce the order of proceedings, including reasonable time limits on presentations by parties.
2. A statement by the Hearings Body regarding pre-hearing contacts, bias, prejudice or personal interest shall be made.
3. Any facts received, noticed or recognized outside of the hearing shall be stated for the record.
4. Challenges to the Hearings Body's qualifications to hear the matter shall be stated and challenges entertained.
5. ~~The Hearings Body or his or her designee shall list applicable substantive criteria, explain that testimony and evidence must be directed toward that criteria or other criteria in the comprehensive plan or land use regulations that the person believes to apply to the decision, and that failure to address an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond precludes appeal to LUBA based on that issue. The failure of the applicant to raise a constitutional or other issues related to the proposed conditions of approval with sufficient specificity to allow the Hearings Body to respond to the issue precludes the applicant from pursuing an action for damages in circuit court.~~

5. At the commencement of a hearing under a comprehensive plan or land use regulation, the Hearings Body or his or her designee shall make a statement to those in attendance that:

- a. Lists the applicable substantive criteria;
- b. States that testimony, arguments and evidence must be directed toward that criteria or other criteria in the comprehensive plan or land use regulations which the person believes to apply to the decision; and

c. States that failure to raise an issue accompanied by statements or evidence sufficient to afford the Hearings Body and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.

6. At the commencement of the initial public hearing, the Hearings Body or his or her designee shall make a statement to the applicant that the failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the local government or its designee to respond to the issue precludes an action for damages in circuit court. An applicant is not required to raise constitutional or other issues relating to proposed conditions of approval unless the conditions of approval are stated with sufficient specificity to enable the applicant to respond to the conditions prior to the close of the final local hearing.

7. An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the City Council, Planning Commission, Hearings Body or Hearings Officer, and the parties an adequate opportunity to respond to each issue.

68. Order of presentation:

- a. Explanation of procedural requirements
- ab. Open the hearing
- c. Statement of pre-hearing contacts, bias, prejudice or personal interest
- d. Challenge for bias, prejudgment or personal interest
- ba. Staff report
- f. Applicant Testimony
- eg. Proponents' presentation Testimony by those in favor of the application
- dh. Opponents' presentation Testimony by those neutral
- i. Testimony by those opposed to the application
- ej. Proponents Applicant rebuttal
- fk. Opponents' rebuttal Rebuttal by those opposed may be allowed at the Hearings Body's discretion
- gl. Staff comment
- hm. Questions from or to the chair may be entertained at any time at the Hearings Body's discretion
- in. Close the hearing
- o. Deliberation
- p. Decision

9. In appeal proceedings, the "applicant" is the party who initiated the application which is under appeal. Those person(s) opposed to the application shall testify under the "Testimony by those opposed to the application" portion of the appeal proceeding. Those persons in favor of the application shall testify under the "Testimony by those in favor of the application" portion of the appeal proceeding.

710. The record shall be available for public review at the hearing.

~~8. A form of preliminary statement incorporating the provisions of this section is set forth as Appendix A to this Chapter for use by the City Council.~~

4.1.875 Setting the Hearing.

- A. After an application is deemed accepted a hearing date shall be set. A hearing date may be changed by the city staff, or the Hearings Body up until the time notice of the hearing is mailed. Once the notice of hearing is mailed any changes in the hearing date shall be processed as a continuance in accordance with Subsection 4.1.885 of this chapter.
- B. If an applicant requests that a hearing date be changed, such request shall be granted only if the applicant agrees that the extended time period for the hearing shall not count against the 120-day time limit set forth in ORS 227.178, Section 4.1.530, Final Action in Type II or III Actions, of this ordinance.

4.1.880 Close of the Record.

- A. Except as set forth herein, the record shall be closed to further testimony or submission of further argument or evidence at the end of the presentations before the Hearings Body.

- B. If the hearing is continued or the record is held open under Section 4.1.885, further evidence or testimony shall be taken only in accordance with the provisions of that section.
- C. Otherwise, further testimony or evidence will be allowed only if the record is reopened under Section 4.1.895; Reopening the Record, below.
- D. An applicant shall be allowed, unless waived, to submit final written arguments in support of its application after the record has closed within such time limits as the Hearings Body shall set. The Hearings Body shall allow applicant at least seven days to submit its argument, which time shall not be counted against the 120-day clock.

4.1.885 Continuances or Record Extensions.

A. Grounds.

- 1. ~~Prior to or at the date set for an initial hearing, an applicant shall receive a continuance upon any request if accompanied by a corresponding extension of the 120-day review period, clock. If a continuance request is made after the published or mailed notice has been provided by the City, the Hearings Body shall take evidence at the scheduled hearing date from any party wishing to testify at that time after notifying those present of the continuance. If a continuance request is made after the published or mailed notice has been provided by the City, but at least 7 days prior to the hearing, the hearing place shall be posted with notification of cancellation and a revised notice with the new hearing date, place and time shall be mailed to all persons who received the original notification. The applicant shall be responsible for any costs for providing notice of the continuance. If a continuance request is made less than 7 days prior to the hearing, the Hearings Body shall take evidence at the scheduled hearing date from any party wishing to testify at that time after notifying those present of the continuance.~~
- 2. Any party is entitled to a continuance of the initial evidentiary hearing or to have the record left open in such a proceeding in the following instances:
 - a. Where additional documents or evidence are submitted by any party; or
 - b. Upon a party's request made prior to the close of the hearing for time to present additional evidence or testimony.

For the purposes of subsection 4.1.885(A)(2) above, "additional documents or evidence" shall mean documents or evidence containing new facts or analysis that are submitted after notice of the hearing.

~~3. The grant of a continuance or record extension shall be at the discretion of the Hearings Body.~~

- B. Except for continuance requests made under subsection (A)(1) above, the choice between granting a continuance or leaving the record open shall be at the discretion of the Hearings Body. After a choice has been made between leaving the record open and or granting a continuance, the hearing shall be governed thereafter by the provisions that relate to the path chosen.

C. Hearing Continuances.

- 1. If the Hearings Body grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial hearing.
- 2. An opportunity shall be provided at the continued hearing for persons to rebut new evidence and testimony received at the continued hearing.
- 3. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least 7 days to allow submittal of additional written evidence or testimony. Such additional written evidence or testimony shall be limited to evidence or testimony that rebuts the new written evidence or testimony.

- D. Leaving record open. If at the conclusion of the hearing the Hearings Body leaves the record open for additional written evidence or testimony, the Hearings Body shall allow for response to written evidence or testimony submitted during the period the record is held open.

- E. A continuance or record extension granted under this section shall be subject to the 120-day time limit unless the continuance or extension is requested or otherwise agreed to by the applicant. When the record is left open or a continuance is granted after a request by an applicant, the time period during which the 120-day review period ~~clock~~ is suspended shall include the time period made available to the applicant and any time period given to parties to respond to the applicant's submittal.

4.1.890 Objections to Jurisdiction, Procedure, Notice or Qualifications.

- A. Any objections not raised prior to the close of oral testimony are waived. Parties alleging procedural error shall have the burden of proof at LUBA as to whether the error occurred and whether the error has prejudiced the party's substantial rights.

4.1.895 Reopening the Record.

- A. The Hearings Body may at its discretion reopen the record, either upon request or on its own initiative. The Hearings Body shall not reopen the record at the request of an applicant unless the applicant has agreed in writing to an extension or a waiver of the 120-day time limit.
- B. Procedures.
1. Except as otherwise provided for in this section, the manner of testimony (whether oral or written) and time limits for testimony to be offered upon reopening of the record shall be at the discretion at the Hearings Body.
 2. The Hearings Body shall give written notice to the parties that the record is being reopened, stating the reason for reopening the record and how parties can respond. The parties shall be allowed to raise new issues that relate to the new evidence, testimony or criteria for decision-making that apply to the matter at issue.

4.1. 900 LAND USE ACTION TYPE II AND III DECISIONS

Sections:

- 4.1.910 Decision**
- 4.1.915 Findings as to Application Acceptance Date**
- 4.1.920 Findings as to Legal Lot of Record Status**
- 4.1.925 Notice of Decision**
- 4.1.930 Decision on Plan Amendments and Zone Changes**
- 4.1.935 Reapplication Limited**
- 4.1.940 Proposed Order**
- 4.1.945 Compliance with ORS 227.350**
- 4.1.950 Correction of Clerical Errors**

4.1.910 Decision.

- A. Approval or denial of a Type II or III application shall be based upon and accompanied by a written statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based upon the criteria standards and facts set forth.
- B. Any portion of an application not addressed in a Review Authority's decision shall be deemed to have been denied.
- C. A decision on a Type II or III application is not final until the Review Authority issues a written decision, the decision or notice of the decision has been mailed and the appeal period to the next higher Review Authority within the City has run.
- D. Unless a temporary use permit has been issued, no building permit shall be issued until a decision is final. Appeal of a final decision to LUBA does not affect the finality of a decision for purposes of issuing building permits. If an applicant elects at his or her own discretion to proceed under a land use action with a pending LUBA appeal, he or she shall proceed only if:
 - 1. The applicant accepts each and every risk of loss and damage that may result if the application is denied, and further agrees in writing to hold City, its officers, agents and employees harmless from such loss and damage.
 - 2. The applicant agrees in writing to restore the site to its original condition if the application for the land use approval is denied.
 - 3. The applicant posts a bond or other form of security acceptable to the Review Authority in an amount sufficient to cover the costs of restoration of the site to its pre-approval condition.

4.1.915 Findings as to Application Acceptance Date.

Each decision shall include findings as to when the proposed Type II or III action application was deemed complete and formally accepted as such by the Community Development Planning Director.

4.1.920 Findings as to Legal Lot of Record Status.

Each decision shall include a finding that the property subject to the proposed land use action is a legal lot of record as that term is defined in the Bend Development Code City of Bend Zoning Ordinance.

4.1.925 Notice of Decision.

Notice of the ~~A-~~ Review Authority's decision shall be in writing and mailed to all parties; however, one person may be designated by the Review Authority to be the recipient of the decision for a group, organization, group of petitioners or similar collection of individual participants.

4.1.930 Decision on Plan Amendments and Zone Changes.

~~Except as set forth herein, the~~ The Hearings Body Officer shall have authority to make decisions ~~on~~ approve or deny all Type III quasi judicial zone changes when the zoning is proposed to be changed to be consistent with the General Plan map and plan amendments. ~~No Type III or IV~~

~~plan amendment or zone change shall be effective unless adopted~~ Plan amendments shall require adoption by ordinance. Zone changes processed concurrently with plan amendments shall also be adopted by ordinance.

4.1.935 Reapplication Limited.

- A. If a specific application is denied on its merits, reapplication for substantially the same proposal may be made at any time after the date of the final decision denying the initial application.
- B. Notwithstanding subsection (A) of this above, a final decision bars any reapplication for a nonconforming use verification or for a determination on whether an approval has been initiated, unless the applicant comes forward with new evidence that was not available at the time the decision was made, and which could not, through reasonable diligence, have been discovered by the applicant prior to the decision. A lot of record determination shall be subject to reapplication under subsection (A) above, only if the applicant presents new factual evidence not submitted with the prior application.

4.1.940 Proposed Order.

The Review Authority may request that any prevailing party ~~to~~ draft a set of proposed findings and conclusions.

4.1.945 Compliance with ORS 227.350.

- A. Final approval of any activity referred to in ORS 227.350(1) regarding state-identified wetlands must include the notice statements required by ORS 227.350(3).
- B. Individual notice to the applicant and the owner of record consistent with ORS 227.350(5) shall be provided, unless notice in the written decision notice satisfies that requirement.
- C. Failure of the City to provide notice as required in this section shall not invalidate City approval.
- D. This section shall not become operative until the Division of State Lands makes available to the City a copy of the applicable portion of the Statewide Wetland Inventory.

4.1.950 Correction of clerical errors.

Upon its own motion or the motion of a party, the City Council may, subject to any applicable public notice and hearing requirements, enact an ordinance correcting clerical or typographical errors in plan amendment or zone change ordinances and any maps appended thereto implementing decisions of the Review Authority. Such changes shall be entered only if the council is able to make a finding that the decision of the Review Authority, including appendices, is not accurately reflected in the implementing ordinances.

4.1. 1000 RECONSIDERATION

Sections:

- 4.1.1010 Request for Reconsideration.
- 4.1.1020 Procedure.
- 4.1.1030 Limitation on Reconsideration.

4.1.1010 Reconsideration.

- A. An applicant may request that the Review Authority's decision be reconsidered as set forth herein. A request for reconsideration shall be accompanied by a fee established by the City and by applicant's written consent that the 120-day review period time clock will not run during the period of the reconsideration and the resulting extended appeal period. The fee will be waived ~~where when~~, in the opinion of the Community Development Planning Director, the reconsideration is requested to correct a clerical or technical error that is the City's fault.
- B. Grounds for reconsideration of an administrative decision are limited to the following instances:
 - 1. The applicant's submission of additional documents or evidence, that merely clarifies or supports the pending application, directed to one or more discreet aspects of the approval. The new information shall not constitute a modification of application as defined herein.
 - 2. Correction of an error in a condition established by the Review Authority where the condition is not supported by the record or is not supported by law;
 - 3. Correction of errors that are technical or clerical in nature.

C. Grounds for reconsideration of the Hearing Body's decision are limited to the following instances where an alleged error substantially affects the rights of the applicant:

- 1. Correction of an error in a condition established by the Review Authority where the condition is not supported by the record or is not supported by law;
- 2. Correction of errors that are technical or clerical in nature.

4.1.1020 Procedure.

- A. A request for reconsideration shall be filed with the Community Development Planning Director within twelve (12) days of the date the decision was mailed. The request shall identify the condition or issue to be considered and shall specify how the applicant would be adversely affected if the issue were to remain uncorrected.
- B. Upon receipt of a request for reconsideration of a ~~Type II Hearings Body's~~ decision, the Community Development Director Planning Director shall notify all parties to the proceeding ~~of the request and allow for a ten-day comment period on the request. At the end of the comment period, the Hearings Body shall determine whether the request for reconsideration has merit. No comment period or prior notice shall be required for an administrative reconsideration.~~
- C. Upon receipt of a request for reconsideration of a Type III decision, the Community Development Director shall notify all parties to the proceeding of the request and allow for a ten-day comment period on the request. In those instances in which the only grounds for reconsideration of a Type III decision are technical or clerical in nature, at the end of the comment period, the Community Development Director shall determine whether the request for reconsideration has merit. In all other instances, at the end of the comment period, the Hearings Body shall determine whether the request for reconsideration has merit.
- ~~D.~~ The Review Authority shall modify the decision upon a determination that the request has merit and the issue substantially affects the applicant. Notice of the modification shall be sent to all parties to the proceeding. If the Review Authority determines that no modification is warranted, a determination shall issue to that effect denial shall be issued and sent to all parties to the proceeding.
- ~~E.~~ Filing a request for a reconsideration shall not be a precondition for appealing a decision.

FF. Filing a request for reconsideration stays the deadline for any party to file an appeal of the Review Authority's decision. A new 12-day appeal period for all parties to the proceeding shall commence upon mailing of a modification or upon mailing a determination that a modification is not warranted. The new 12-day appeal period shall not be calculated as part of the 120-day review period. If an opponent files an appeal and an applicant has requested reconsideration, the opponent's appeal shall be stayed pending disposition of the request for modification. If the decision is not modified, the appeal will be processed in accordance with the procedures set forth in Section 4.1.1100. If the decision is modified, the appellant must, within 12 days of the mailing of the modified decision, file in writing a statement requesting that its appeal be activated or the appeal will be invalidated.

4.1.1030 Limitation on Reconsideration.

No decision shall be reconsidered more than once before the same Review Authority.

4.1.1100 APPEALS

Sections:

| | |
|---------------------|---|
| 4.1.1110 | Who May Appeal |
| 4.1.1115 | Filing Appeals |
| 4.1.1120 | Notice of Appeal |
| 4.1.1125 | Determination of Jurisdictional Defects |
| 4.1.1130 | Transcript Requirement for Appeals to City Council |
| 4.1.1135 | Consolidation of Multiple Appeals |
| 4.1.1140 | Scope of Review |
| 4.1.1145 | Hearing on Appeal |
| 4.1.1150 | Type I Appeals |
| 4.1.1155 | Rehearing |
| 4.1.1160 | Remands |
| 4.1.1165 | Withdrawal of an Appeal |

4.1.1110 Who May Appeal.

A. The following may file an appeal:

1. A party; or
- ~~2. In the case of an appeal of an administrative decision without prior notice, a person entitled to notice, a person adversely affected or aggrieved by the administrative decision, or any other person who has filed comments on the application with the Planning Division; and "Decision as notice" is proposed for elimination.~~
- ~~3. A person entitled to notice and to whom no notice was mailed; and~~

B. A person to whom notice is mailed is deemed notified even if notice is not received.

4.1.1115 Filing appeals.

A. To file an appeal, an appellant must file a completed notice of appeal on a form prescribed by the Planning Division and pay an appeal fee.

B. Unless a request for reconsideration has been filed, the notice of appeal and appeal fee must be received at the offices of the City services by the Community Development Department no later than 5:00 PM the close of the public counter on the twelfth day following mailing of the decision. If a decision has been modified on reconsideration, an appeal must be filed no later than 5:00 PM the close of the public counter on the twelfth day following mailing of the decision as modified. Notices of Appeals shall not be received by facsimile machine or e-mail.

C. In the case of an appeal of an administrative (Type II) decision to a Hearings Officer or to the Planning Commission, the Hearings Body's decision on appeal shall become final 12 days after the decision is mailed. Except that, within 12 days after the decision is mailed, the City Council may, on its own motion and at its discretion, call up the decision of the Hearings Officer or Planning Commission and conduct an on the record review of the decision limited to issues identified in the Council's motion. Statutes only require one local public hearing. Council review is discretionary. An appellant may appeal a HO or PC decision directly to LUBA without asking for Council review.

~~C. If the City Council is the Hearings Body and the council declines review, 75% of the appeal fee will be refunded when City Council does not hear the appeal and when the appellant does not appeal the issue to the Land Use Board of Appeals.~~

D. In the case of an appeal of a Type III decision, the City Council's decision whether to grant review shall be discretionary. If the City Council declines review, the appellant may be entitled to a partial refund in accordance with the city's adopted Fees Resolution.

~~D. The appeal fee shall be paid by cash or check or money order, except that local, state or federal governmental agencies may supply a purchase order at the time of filing.~~

4.1.1120 Notice of Appeal.

A. The Notice of Appeal shall contain:

1. A description of the decision which is being appealed, including the date of decision.

2. A statement describing the interest the person who is appealing has in the decision. Only persons who have proper standing as provided by the law, and who have participated in the decision being appealed (if provision for such participation was provided in the previous proceeding) may appeal the decision. The statement of interest must demonstrate the person's standing and participation.
3. A description of the issues sought to be raised by the appeal; and a statement that the issues were raised during the proceeding that produced the decision being appealed. This description must include the specific criteria relied upon as the basis for the appeal, and an explanation of why the decision has not complied with the standards or requirements of the criteria. The issues raised by the appeal must be stated with sufficient specificity to afford the reviewing authority an opportunity to resolve each issue raised.
4. In the case of an appeal ~~a discretionary appeal request~~ to the City Council, the Notice of Appeal shall include the following additional information to assist the Council in deciding whether to grant discretionary review of the decision being appealed:
 - a. How the appeal presents issues that have significant public policy or community wide implications for the City, as opposed to more limited issues which primarily involve the directly affected property or persons involved in the land use decision being appealed.
 - b. Why it is necessary or desirable for the City Council to review these issues; and why the issues cannot be adequately and fairly reviewed by the Land Use Board of Appeals.

~~B. If the appeal asks for City Council discretionary review of the decision being appealed, and the person appealing wants to present additional evidence (beyond that already in the record made as part of the decision being appealed), then the Notice of Appeal shall also contain:~~

- ~~1. A statement summarizing the new evidence and the criteria to which it will relate.~~
- ~~2. An explanation why the proposed new evidence was not submitted as part of the record made in the decision being appealed. Evidence that is substantially similar to evidence already in the record of the decision being appealed will not be allowed. Evidence that could have been submitted in the record of the decision being appealed will not be allowed unless there is a compelling reason that justifies its presentation as part of the appeal.~~

4.1.1125 Determination of Jurisdictional Defects.

- A. Any failure to conform to the requirements of Sections 4.1.1115; Filing Appeals and 4.1.1120; Notice of Appeal, above shall constitute a jurisdictional defect.
- B. Determination of jurisdictional defects in an appeal shall be made by the Review Authority to which an appeal has been made.

4.1.1130 ~~Transcript Requirement for Appeals to City Council.~~

- ~~A. Except as otherwise provided in this section, appellants shall provide a complete transcript of any hearing appealed from the Hearings Officer or Planning Commission, from audio recordings provided by the City, below.~~
- ~~B. Appellants shall submit the transcript to the Planning Division no later than the close of the day 5 days prior to the date set for a de novo appeal hearing or, in on the record appeals, the date set for receipt of written arguments. Unless excused under this section, an appellant's failure to provide a transcript shall cause the Council to decline to consider the appellant's appeal further and shall, upon notice mailed to the parties, cause the lower Hearings Body's decision to become final.~~
- ~~C. An appellant shall be excused from providing a complete transcript if appellant was prevented from complying by:

 - ~~1. The inability of the Planning Division to supply appellant with an audio recording of the prior proceeding; or~~~~

~~2. Defects on the audio recording of the prior proceeding that make it not reasonably possible for applicant to supply a transcript. Appellants shall comply to the maximum extent reasonably and practicably possible.~~

4.1.1135 Consolidation of Multiple Appeals.

- A. If more than one party files a notice of appeal on a land use action decision, the appeals shall be consolidated and noticed and heard as one proceeding.
- B. In instances of multiple appeals where separate appellants have asked for a differing scope of review, any grant of de novo review shall control over a separate request for a more limited review on appeal.

4.1.1140 Scope of Review.

- A. Before Hearings Officer or Planning Commission: The review on appeal before the Hearings Officer or Planning Commission shall be de novo.
- B. Before the Council:
 - 1. Review of land use decisions by the City Council on appeal shall be discretionary. A decision by the City Council to not grant discretionary review of the appeal shall be the final determination of the City, and the appeal of the decision application shall be to the Land Use Board of Appeals as provided by law. The City Council's decision whether to grant discretionary review shall be made without testimony or argument from persons interested in the appeal, ~~except as specifically permitted by the City Council.~~
 - 2. The scope of review for appeals that are granted discretionary review by the City Council shall be:
 - a. Restricted to the issues raised in the Notice of Appeal, or as prescribed by the City Council.
 - b. Be conducted during an appeal hearing before the City Council on the record made as part of the decision being appealed, ~~unless the City Council has permitted the presentation of new evidence as part of the appeal.~~
 - c. ~~De novo review if the City Council so chooses.~~
 - 3. The record for discretionary review by the City Council shall include:
 - a. The land use application or request which is the subject of the appeal, any staff report, and all written comments, exhibits, or any other materials or information considered by the decision maker in the proceedings that produced the decision being appealed.
 - b. A written transcript of all proceedings before the decision maker, or a stipulated written summary of the proceedings submitted by all of the parties to the appeal.
 - c. Appellants shall submit the transcript or stipulated written summary of the proceedings to the Planning Division no later than the close of the day 5 days prior to the date set for receipt of written arguments.
 - d. An appellant shall be excused from providing a transcript or stipulated written summary of the proceedings if the appellant was prevented from complying by:
 - i. The inability of the Planning Division to supply the appellant with an audio recording of the prior proceeding; or
 - ii. Defects on the audio recording of the prior proceeding that make it not reasonably possible for the appellant to supply a transcript. Appellants shall comply to the maximum extent reasonably and practicably possible.
 - 4. An appeal hearing before the City Council shall be conducted according to such procedures as the City Council shall prescribe, which may include an opportunity for presentations by the parties to the appeal.
 - 5. Decisions reviewed by the City Council can be affirmed, remanded, reversed, or modified in whole or in part by the City Council.

4.1.1145 Hearing on appeal.

- A. The appellant and all other parties to the decision below shall be mailed notice of the hearing on appeal at least ten (10) days prior to any de novo hearing or deadline for submission of written arguments.
- B. Except as otherwise provided in this chapter, the appeal shall be heard as provided in Section 4.1.800, Land Use Action Hearings. The applicant shall proceed first in all appeals.
- C. The order of Hearings Body shall be as provided in Section 4.1.815; Hearings Body of this ordinance.
- D. The record of the proceeding from which appeal is taken shall be a part of the record on appeal.
- E. The record for a review on the record shall consist of the following:
 - 1. ~~A written transcript of any prior hearing~~ Minutes and audio recordings of any prior hearing, if available;
 - 2. All written and graphic materials that were part of the record below;
 - 3. The Review Authority's decision appealed from;
 - 4. Written arguments, based upon the record developed below, submitted by any party to the decision;
 - 5. ~~Written comments submitted by the Planning Commission or individual Planning Commissioners, based upon the record developed below; and~~
 - 6. A staff report and staff comment based on the record; and
 - 7. Other information deemed relevant by the Review Authority.
- F. ~~No oral evidence, argument or comment other than staff comment based on the record shall be taken.~~ The council shall not consider any new factual information in an "on the record" proceeding. Brief oral argument by the applicant and the appellant on the record may be allowed by the council.

4.1.1150 Type I appeals.

Notice of the hearing date set for appeal shall be sent only to the applicant. Only the applicant, his or her representatives, and his or her witnesses shall be entitled to participate. Continuances shall be at the discretion of the Hearings Body, and the record shall close at the end of the hearing.

4.1.1155 Re-hearing.

Re-hearings shall not be allowed.

4.1.1160 Remands.

Applications shall not be remanded to a lower level Review Authority after appeal, except by City Council as provided in subsection 4.1.1140(5), above.

4.1.1165 Withdrawal of an appeal.

An appeal may be withdrawn in writing by an appellant at any time prior to the rendering of a final decision. Subject to the existence of other appeals on the same application, in such event the appeal proceedings shall terminate as of the date the withdrawal is received. An appeal may be withdrawn under this section regardless of whether other non-filing parties have relied upon the appeal filed by the appellant.

4.1.1200 PROCEEDINGS ON REMAND

Sections:

- 4.1.1210 Purpose.**
- 4.1.1215 Hearings Body.**
- 4.1.1020 Notice and Hearings Requirements.**
- 4.1.1225 Scope of Proceeding.**
- 4.1.1230 Effect of Reversal.**

4.1.1210 Purpose.

This chapter shall govern the procedures to be followed where a decision of the City has been remanded by LUBA or the appellate courts ~~or a decision has been withdrawn by the City following an appeal to LUBA.~~

4.1.1215 Hearings Body.

~~The Hearings Body Review Authority for a remanded or withdrawn decision shall be the Hearings Body Review Authority from which the appeal to LUBA was taken, except that in voluntary or stipulated remands, the council may decide that it will hear the case on remand. If the remand is to the Hearings Officer, the Hearings Officer's decision may be appealed under this ordinance to the council, subject to the limitations set forth herein.~~

4.1.1220 Notice and Hearings Requirements.

- A. The City shall conduct a review hearing on any remanded ~~or withdrawn~~ decision. ~~++The scope of remand procedure~~ which shall be determined in accordance with the applicable provisions of this section, the LUBA or Appellate Court decision, and applicable state law. Unless state law requires otherwise, only those persons who were parties to the proceedings before the City shall be entitled to notice and be entitled to participate in any hearing on remand.
- B. The ~~hearing review~~ procedures shall comply with the minimum requirements of state law and due process for ~~hearings on remand~~ and need comply with the requirements of this Code Section 4-1-800; Land Use Action Hearings, only to the extent that such procedures are applicable to remand proceedings under state law.

4.1.1225 Scope of Proceeding.

- A. On remand, the ~~Hearings Body Review Authority~~ shall review those issues that LUBA or the Appellate Court required to be addressed. ~~In addition, ++The Council Review Authority~~ shall have the discretion to reopen the record in instances in which it deems it to be appropriate.
- B. At the ~~Council's Review Authority's~~ discretion, a remanded application ~~for a land use permit~~ may be modified to address issues involved in the remand ~~or withdrawal~~ to the extent that such modifications would not substantially alter the proposal and would not have a significantly greater impact on surrounding neighbors. Any greater modification would require a new application.
- C. If additional testimony is required to comply with the remand, parties may raise new, unresolved issues that relate to new evidence directed toward the issue on remand. Other issues that were resolved by LUBA or the Appellate Court or that were not appealed shall be deemed to be waived and may not be reopened.

4.1.1230 Effect of Reversal.

A land use decision reversed by LUBA or the Court of Appeals that results in a final appellate judgment or order of reversal cannot be further heard by the City in the absence of an amended or a new application. Submission of a revised application shall be governed by the time limit set forth in Section 4.1.935; Reapplication Limited.

4.1.1300 LIMITATIONS ON APPROVALS.

Sections:

- 4.1.1310 Expiration of Approval.
- 4.1.1315 Initiation of Use.
- 4.1.1320 Extensions to Avoid Environmental or Health Hazards.
- 4.1.1325 Modification of Approval.
- 4.1.1330 Transfer of Permit Approval.
- 4.1.1335 Revocation of Approvals.

4.1.1310 Expiration of Approval.

A. Scope.

1. Except as otherwise provided herein, this section shall apply to and describe the duration of all development approvals of land use permits provided for under this Code, ordinance, the zoning ordinances and the land division ordinance.
2. This section does not apply to:
 - a. Those determinations made by declaratory ruling, such as verifications of nonconforming uses, lot of record determinations and expiration determinations that involve a determination of the legal status of a property, land use or land use permit rather than whether a particular application for a specific land use meets the applicable standards of the zoning ordinance. Such determinations, whether favorable or not to the applicant or land owner, shall be final unless appealed and shall not be subject to any time limits;
 - b. Temporary use permits of all kinds, which shall be governed by applicable ordinance provisions specifying the duration of such permits; or
 - c. Quasi-judicial and legislative plan and map amendments.

B. Duration of Approvals.

1. Except as otherwise provided under this Code section or under applicable zoning ordinance provisions, a development approval land use permit is void one two years after the date the discretionary decision becomes final if the use approved in the permit is not initiated within that time period.
2. Except as otherwise provided in this Code under applicable ordinance provisions, preliminary approval of tentative land division plats or master plans shall be void after one two years from the date of preliminary approval, unless the final plat has been submitted to the Planning Division for final approval within that time period recorded with Deschutes County, unless an A one year extension may be is sought approved by the Community Development Director under this Section or the preliminary plat or master plan approval has been initiated as defined herein. if the applicant can demonstrate sufficient progress to reasonably assure the plat will be recorded at the end of the third year, and if:
 - a. An applicant makes a written request for an extension of the development approval period; and
 - b. The request is submitted to the city prior to the expiration of the approval period.
3. In the case of a land use development approval authorized under applicable approval criteria to be completed in phases, each phase must be initiated consistent within the time specified in the approval, or initiated within one (1) year of completion of the prior phase if no timetable is specified. In no case shall the total time period for all phases be greater than five years.

C. Extensions.

1. The Community Development Director may grant one extension of up to one year for a development approval that contained a one year initial duration of approval or a phase of a development approval, if:
 - a. An applicant makes a written request for an extension of the development approval period; and

- b. The request is submitted to the city prior to the expiration of the approval period.
- 2. The Community Development Director may grant one or more additional extensions beyond one year if authorized by a City Council resolution which recognizes a city-wide need for an additional limited-duration extension, not to exceed two years. The additional extension may be granted if:
 - a. The applicant has exhausted all other extension opportunities; and
 - b. The applicant satisfies the submittal requirements of (1)(a) and (b) of this section makes a written request for an extension of the development approval period; and
 - c. The request is submitted to the city prior to the expiration of the approval period.
- 3. Approval of an extension granted under this section is an administrative decision, and is not a land use decision or a limited land use decision as described in ORS 197.015 or this Code. An extension is not subject to appeal and shall be processed as a Type I application.

D. Procedures.

- 1. ~~A determination of whether a land use has been initiated shall be processed as a declaratory ruling. **Moved to Section 4.1.1315(D).**~~
- 2. ~~Approval of an extension granted under this section is an administrative decision, is not a land use decision described in ORS 197.015 or this ordinance. An extension is not subject to appeal as a land use decision and shall be processed under this ordinance as a development action, except to the extent it is necessary to determine whether the use has been initiated. **Revised and moved to Section 4.1.1310(C)(3).**~~

DE. Effect of Appeals. The time period set forth in subsection B of this section shall be tolled upon filing of an appeal to LJBA, until all appeals are resolved.

4.1.1315 Initiation of Use.

- A. For the purposes of this Chapter, development ~~action~~ undertaken under a ~~land use development~~ approval described in Section 4.1.1310; Expiration of Approval, above has been "initiated" if it is determined that:
 - 1. The proposed use has lawfully occurred;
 - 2. Substantial construction toward completion of the ~~land use development~~ approval has taken place; or
 - 3. Where construction is not required by the approval, the conditions of a permit or approval have been substantially exercised and any failure to fully comply with the conditions is not the fault of the applicant.
- B. For the purposes of this section, "substantial construction" has occurred when the holder of an ~~land use~~ approval has physically altered the land or structure or changed the use thereof and such alteration or change is directed toward the completion and is sufficient in terms of time, labor or money spent to demonstrate a good faith effort to complete the development.

C. Initiation of use shall not be granted in lieu of a phased approval.

D. A determination of whether a land use has been initiated shall be processed as a declaratory ruling.

4.1.1320 Extensions to Avoid Environmental or Health Hazards.

- A. In addition to extensions granted pursuant to subsection 4.1.1310(C) and notwithstanding any other provision of the Bend Code, a one-time extension may be granted to a tentative plat approval and any associated ~~development approvals land use permits~~ regarding the time for final plat approval where conditions of the approval, or extensions thereof, require or can be read to require approvals from other agencies for sewer or water systems and (1) the applicant can show that without such extension or extensions, a health or environmental hazard or risk thereof would continue to exist, be exacerbated or likely would be created and (2) the applicant submits a time frame and plan for meeting the outstanding conditions with

the concurrence of a homeowner's association having an ownership interest in project lands and such concurrence is demonstrated in the application.

- B. Such an extension shall be administrative, in writing, and not subject to appeal and shall, subject to the termination provisions of subsection 4.1.1320(C) below, be granted for a time period not to exceed one year.
- C. In lieu of submittal of the time frame and plan and concurrence of the homeowner's association with the application, that requirement of Section (A) above may be satisfied by conditioning approval of the extension to require establishment of the agreed-to time frame and plan within the first 60 days of the extension period, which time line and plan shall thereupon be deemed to be a condition of the extension approval.
- D. An extension under this section shall be conditioned upon adherence to the time lines and plan proposed in the extension application or as agreed to pursuant to subsection 4.1.1320(C) above.
- E. Failure to demonstrate compliance with any extension condition shall, after notice and hearing under this ordinance, result in termination of the extension granted under this section.

4.1.1325 Modification of Approval.

- A. An applicant may apply to modify an approval at any time after a period of 60 days has elapsed from the time a development approval ~~land-use-action approval~~ has become final.
- B. Unless otherwise specified in this Code ~~a particular zoning ordinance provision~~, the grounds for filing a modification shall be that a change of circumstances since the issuance of the approval makes it desirable to make changes to the proposal, as approved. A modification shall not be filed as a substitute for an appeal or to apply for a substantially new proposal or one that would have significant additional impacts on surrounding properties.
- C. An application to modify an approval shall be directed to one or more discrete aspects of the approval, the modification of which would not amount to approval of a substantially new proposal or one that would have significant additional impacts on surrounding properties. Any proposed modification, as defined in this section, shall be reviewed only under the criteria applicable to that particular aspect of the proposal. Proposals that would modify an approval in a scope greater than allowable as a modification shall be treated as an application for a new proposal.
- D. An application for a modification of a Type I approval shall be processed as a Type I application. All other modifications shall be processed as a Type II application unless elevated to a Type III process by the Community Development Director ~~land-use-action~~.
- E. The effect, if any, of a modification upon the original approval time limitation shall be established in the modification decision.
- F. For modification of approval of a PUD or Master Planned Subdivision issued prior to the adoption of this ordinance, any proposed modification shall be subject to the criteria in Chapter Section 4.5.300.

4.1.1330 Transfer of Permit Approval.

- A. A ~~land-use action permit~~ development approval shall be deemed to run with the land and be transferable to applicant's successors in interest.
- ~~B. The Planning Division may require that an applicant record a notice of land use permit and conditions of approval agreement in the Deschutes County Records. Such an agreement shall set forth a description of the property, describe the permit that has been issued and set forth the conditions of approval. The Planning Director is authorized to sign the notice and agreement on behalf of the City.~~
- ~~C. The terms of the approval agreement may be enforced against the applicant and any successor in interest.~~

4.1.1335 Revocation of Approvals.

A. ~~Approvals shall be subject to revocation according to standards set forth in the applicable zoning ordinances. Proceedings to revoke a development approval shall be initiated by the Community Development Director by giving notice of intent to revoke to the property owner.~~

B. The Community Development Director may revoke a development approval for the following reasons:

1. The conditions or terms of development approval are violated; or
2. The project is not in substantial conformance with the approved plans or decision; or
3. The applicant or the applicant's representative made a material misstatement of fact in the application or supporting documents and such misstatement was relied upon by the Review Authority in making its decision whether to accept or approve the application.

~~BC. Revocations shall be processed as a Type II declaratory ruling under this ordinance. Section 4.1.515; Process for Type II or III Applications notwithstanding, a public hearing shall be held in all revocation proceedings.~~

4.1.1400 DECLARATORY RULING

Sections:

- 4.1.1410 Availability of Declaratory Ruling
- 4.1.1415 Persons Who May Apply
- 4.1.1420 Procedures
- 4.1.1425 Effect of Declaratory Ruling
- 4.1.1430 ~~Interpretation~~

4.1.1410 Availability of Declaratory Ruling.

- A. Subject to the other provisions of this section, there shall be available for the City's ~~comprehensive plans~~ General Plan and this Code ~~zoning ordinances, the subdivision and partition ordinance and this ordinance~~ a process for:
1. Interpreting a provision of ~~a comprehensive plan~~ the General Plan or implementing ~~ordinances~~ (and other documents incorporated by reference) in which there is doubt or a dispute as to its meaning or application;
 2. Interpreting a provision or limitation ~~in of a development approval~~ land use permit issued by the City ~~or quasi-judicial plan amendment or zone change~~ in which there is doubt or a dispute as to its meaning or application;
 3. Determining whether an approval has been initiated or considering the revocation of a previously issued development approval ~~land use permit, quasi-judicial plan amendment or zone change~~;
 4. Determining the validity and scope of a nonconforming use; and
 5. Lot of Record
 6. ~~Determination of other similar status situations under a comprehensive plan, zoning ordinance or land division ordinance that do not constitute the approval or denial of an application for a permit.~~
- Such a determination or interpretation shall be known as a "declaratory ruling" and shall be processed in accordance with this chapter. In all cases, as part of making a determination or interpretation the Community Development Planning Director (where appropriate) or Hearings Body (where appropriate) shall have the authority to declare the rights and obligations of persons affected by the ruling.
- B. A declaratory ruling shall be available only in instances involving a fact-specific controversy and to resolve and determine the particular rights and obligations of particular parties to the controversy. Declaratory proceedings shall not be used to grant an advisory opinion on a specific quasi-judicial land use development application. Declaratory proceedings shall not be used as a substitute for seeking an amendment of general applicability to a legislative enactment.
- C. Declaratory rulings shall not be used as a substitute for an appeal of a decision ~~in a land use action~~ or for a modification of an approval. In the case of a ruling on a City development approval ~~land use action~~ a declaratory ruling shall not be available until 60 days after a decision ~~in the land use action~~ is final.
- D. The Community Development Planning Director may refuse to accept and the Hearings ~~Officer~~ Body may deny an application for a declaratory ruling if:
1. The Community Development Planning Director or Hearings ~~Officer~~ Body determines that the question presented can be decided in conjunction with approving or denying a pending ~~land use action~~ application or if in the Community Development Planning Director or Hearings ~~Officer~~ Body's judgment the requested determination should be made as part of a decision on a development application ~~for a quasi-judicial plan amendment or zone change or a land use permit not yet filed~~; or
 2. The Community Development Planning Director or Hearings ~~Officer~~ Body determines that there is an enforcement case pending in circuit court in which the same issue necessarily will be decided as to the applicant and the applicant failed to file the request for a declaratory ruling within two weeks after being cited or served with a compliant.

The Community Development Planning Director or ~~Hearings Officer~~ Body's determination to not accept or to deny an application under this section shall be the City's final decision.

4.1.1415 Persons Who May Apply.

- A. Subsection 4.1.215(B); Application Requirements notwithstanding, the following persons may initiate a declaratory ruling under this chapter:
1. The owner of a property requesting a declaratory ruling relating to the use of the owner's property;
 2. In cases where the request is to interpret a previously issued ~~quasi-judicial plan amendment, zone change or land use permit~~ development approval, the holder of the ~~permit approval~~; or
 3. In all cases arising under Section 4.1.1410; Availability of Declaratory Ruling, the Community Development Planning Director.

No other person shall be entitled to initiate a declaratory ruling.

- B. A request for a declaratory ruling shall be initiated by filing an application with the Planning Division and, except for applications initiated by the Community Development Planning Director, shall be accompanied by such fees as have been set by the Planning Division. Each application for a declaratory ruling shall include the precise question on which a ruling is sought. The application shall set forth whatever facts are relevant and necessary for making the determination and such other information as may be required by the Planning Division.

4.1.1420 Procedures.

~~Except as set forth in this chapter or in applicable provisions of a zoning ordinance, the procedures for making declaratory rulings shall be the same as set forth in this ordinance for land use actions. Where the Planning Division is the applicant, the Planning Division shall bear the same burden that applicants generally bear in pursuing a land use action. Declaratory rulings shall be processed as either a Type II or Type III application.~~

4.1.1425 Effect of declaratory ruling.

- A. A declaratory ruling shall be conclusive on the subject of the ruling and bind the parties thereto as to the determination made.
- B. Section 4.1.935, Reapplication Limited, notwithstanding, and except as specifically allowed therein, parties to a declaratory ruling shall not be entitled to reapply for a declaratory ruling on the same question.
- C. Except when a declaratory ruling is made by the City Council, the ruling shall not constitute a final policy of the City of Bend.

~~**4.1.1430 Interpretation.**~~

~~Interpretations made under this chapter shall not have the effect of amending the interpreted language. Interpretation shall be made only of language that is ambiguous either on its face or in its application. Any interpretation of a provision of the comprehensive plan or other land use ordinance shall consider applicable provisions of the comprehensive plan and the purpose and intent of this Code the ordinance as applied to the particular section in question.~~

4.1.1500 DEVELOPMENT AGREEMENTS

Sections:

| | |
|-----------------|-----------------------|
| <u>4.1.1510</u> | <u>Purpose.</u> |
| <u>4.1.1520</u> | <u>Applicability.</u> |
| <u>4.1.1530</u> | <u>Initiation.</u> |
| <u>4.1.1540</u> | <u>Negotiations.</u> |
| <u>4.1.1550</u> | <u>Adoption.</u> |
| <u>4.1.1560</u> | <u>Hearings Body.</u> |

A. Purpose.

4.1.1510 Purpose.

The purpose of this section is to clarify the authority and procedures for City Council consideration of Development Agreements authorized by Oregon Revised Statute (ORS) 94 outside the land use process.

B. Applicability.

4.1.1520 Applicability.

The City Council may establish a Development Agreement between the City and any person having a legal or equitable interest in real property for the development of that property. Development Agreements that do not include a "land use decision" development application are not governed by the City's ~~land use ordinances~~ Development Code, and may be established in any manner deemed appropriate by the Council, consistent with the Council's authority under the City's Charter. Development Agreements that contain a ~~legislative or quasi-judicial land use decision or request a final decision on a "land use action"~~ development application are governed by this section. The following include but are not limited to situations that may require a Development Agreement as described by this section:

- 1A. Multiple party or partnership situations
- 2B. Large infrastructure requirements
- 3C. Timing issues
- 4D. Litigation
- 5E. Urban Renewal

C. Initiation.

4.1.1530 Initiation.

Development Agreements governed by this section may be initiated by the Council on its own motion or in response to a request by city staff, following consultation with any person having a legal or equitable interest in the property that is the subject of the proposed Development Agreement. Neither city staff nor the Council are required to proceed with consideration of a request for a Development Agreement.

D. Negotiations.

4.1.1540 Negotiations.

Negotiations between the parties to a Development Agreement shall commence upon a request by the City Council to identified City staff to establish a Memorandum of Understanding (MOU) regarding the anticipated scope of the Development Agreement.

E. Adoption.

4.1.1550 Adoption.

The provisions of ORS 94.504 – 94.528 shall be followed in the adoption of a Development Agreement under this section. Once a preliminary agreement is reached between the parties, the owner or owners of the property that is the subject of the Development Agreement shall submit an application to the Community Development Planning Director for adoption of the

Development Agreement and for any development application ~~land use decisions~~ requested in connection with the Development Agreement.

F. ~~Hearings Body.~~

4.1.1560 Hearings Body.

Notwithstanding any other provision of this Code to the contrary, the City Council shall be the Hearings Body for a Development Agreement ~~and any land use actions requested as part of, or pursuant to, a Development Agreement subject to this section.~~ The Council may appoint a Hearings Officer or the Planning Commission to serve as the Hearings Body for specific development applications ~~land use decisions~~ associated with a proposed Development Agreement, prior to the final decision on the Development Agreement as a whole. In that event, the Council shall establish a schedule for such decisions, and shall consider, but shall not be bound by, such decisions.

APPENDIX

PRELIMINARY STATEMENT IN LAND USE ACTION HEARINGS OR APPEALS BEFORE THE COUNCIL

Introduction

This is a hearing on (insert application type and number).

Applicant requested (set forth what the applications are and what is being requested.)

(If an appeal) These applications were previously considered by the (Planning Director). [or, if Hearings Officer or Planning Commission after a public hearing held on (insert date). Evidence and testimony were received at that hearing.] The (Planning Director, Hearings Officer or Planning Commission) (denied/approved) the applicant's requests.

Burden of Proof and Applicable Criteria

The applicant has the burden of proving that he/she is entitled to the land use approval sought. The standards applicable to the application(s) before us are as follows: (list applicable criteria)

Hearings Procedure

The procedures applicable to this hearing provide that the (Hearings Body) will hear testimony, receive evidence and consider the testimony, evidence and information submitted into the record on appeal as well as that evidence constituting the record in the prior proceeding. The record as developed to this point is available for public review at this hearing.

Testimony and evidence at this hearing must be directed toward the criteria set forth in the notice of this hearing and listed in this statement. Testimony may be directed to any other criteria in the comprehensive land use plan of the City or land use regulations which any person believes apply to this decision.

Failure on the part of any person to raise an issue with sufficient specificity to afford the (Hearings Body) and parties to this proceeding an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals on that issue.

The failure of the applicant to raise a constitutional or other issues related to the proposed conditions of approval with sufficient specificity to allow the Hearings Body to respond to the issue precludes the applicant from pursuing an action for damages in circuit court.

Order of Presentation

The hearing will be conducted in the following order. The staff will give a report of the prior proceedings and the issues raised by the applications on appeal. The applicant will then have an opportunity to make a presentation and offer testimony and evidence. Opponents will then be given a chance to make a presentation. After both proponents and opponents have made a presentation, the proponents will be allowed to make a rebuttal presentation. At the Hearings Body's discretion, opponents may be recognized for a rebuttal presentation. At the conclusion of this hearing, the staff will be afforded an opportunity to make any closing comments. The Hearings Body may limit the time period for presentations.

Questions to and from the Hearings Body may be entertained at any time at the Hearings Body's discretion. Cross examination of witnesses will not be allowed. However, if any person wishes a question be asked of any person during that person's presentation, please direct such question to the Hearings Body after being recognized. The Hearings Body is free to decide whether or not to ask such questions of the witness.

Pre-hearing Contacts

I will now direct a question to the other members of the Hearings Body. If any member of the Hearings Body, including myself, has had any pre hearing contacts, now is the time to state the substances of those pre hearing contacts so that all persons present at this hearing can be fully advised of the nature and context of those contacts and with whom contact was made. Are there any contacts that need be disclosed?

At this time, do any members of the Hearings Body need to set forth the substance of any ex parte observations or facts of which this body should take notice concerning this appeal?

~~Any person in the audience has the right during the hearings process to rebut the substance of any communication or observation that has been placed in the record.~~

~~Challenges for Bias, Prejudgment, or Personal Interest~~

~~Any party prior to the commencement of the hearing may challenge the qualifications of the Hearings Body or any member thereof of bias, prejudgment or personal interest. This challenge must be documented with specific reasons supported by facts.~~

~~I will accept challenges now.~~

~~Should any Hearings Body member be challenged, the member may disqualify himself or herself, withdraw from the hearing or make a statement on the record of their capacity to hear the appeal.~~

~~(Hearing no challenges, I shall proceed.)~~

Chapter 4.2 Site Development and Design Review

Sections:

| | |
|---------|--|
| 4.2.100 | Purpose |
| 4.1.200 | Site Development Review Applicability and Procedures |
| 4.2.300 | Site Design Review Applicability and Procedures |
| 4.2.400 | Bonding and Assurances |
| 4.2.500 | Development in Accordance with Permit Approval |

4.2.200 Site Development Review Applicability and Procedure.

D. **Site Development Approval Criteria.** Prior to issuance of building permits, the City shall approve, approve with conditions or disapprove the proposed site development plan. In approving the plan, the City shall find that all provisions of the ordinance are met. The following criteria shall be considered:

1. The proposed land use is permitted by the underlying land use district;
2. The land use, building/yard setback, lot area, lot dimension, density, lot coverage, building height and other applicable standards of the underlying land use district are met;
3. The minimum standards in Section 3.2.200; Landscape Conservation, Section 3.2.300; New Landscaping, 3.2.500; Fences and Walls and Chapter, 3.3; Vehicle and Bicycle Parking are met;
4. All applicable building and fire code standards are met.
5. All required public facilities have adequate capacity as determined by the City, to serve the proposed use.

In accordance with Chapter 4.1, the land use approval shall lapse, and a new application shall be required, if a building permit has not been issued within the duration ~~one year~~ of Development Review approval, or if development of the site is in violation of the approved plan or other applicable codes.

EXHIBIT B

**BEND PLANNING COMMISSION FINDINGS
FOR DEVELOPMENT CODE TEXT AMENDMENT**



**PROJECT
NUMBER:**

08-308

INITIAL PUBLIC

HEARING DATE: December 8, 2008

APPLICANT:

City of Bend
710 NW Wall Street
Bend, OR 97701

PROPOSAL:

A package of amendments to the text of Chapters 1.1, 1.2, 1.3, 2.0, 3.6, 4.1 & 4.2 of the Bend Development Code (Ord. No. NS-2016), which are intended to clarify definitions, eliminate inconsistencies, and ensure that the City of Bend's development review procedures conform to state law and the City's customer service objectives.

STAFF:

Aaron Henson, AICP, Senior Planner
Colin Stephens, AICP, Current Planning Manager

I. APPLICABLE CRITERIA, STANDARDS & PROCEDURES:

APPLICABLE CRITERIA:

Bend Development Code, Section 4.6.200(B), Criteria for Legislative Amendments;
Bend Area General Plan; Oregon's Statewide Planning Goals

APPLICABLE PROCEDURES:

Bend Development Code, Chapter 4.1, Land Use Review and Procedures

II. PROCEDURAL FINDINGS:

PUBLIC NOTICE AND COMMENTS:

The Bend Planning Division published notice of the Planning Commission public hearing for the proposed Development Code text amendments in the Bend Bulletin on November 16, 2008. The Commission conducted a public hearing to accept testimony on the request on December 8, 2008. The hearing was continued to January 26, 2009 and the written record was left open through February 2, 2009. Deliberations were conducted on March 9, 2009 and concluded on March 23, 2009. Testimony and comments received by the Commission are included in the record.

**CONFORMANCE WITH CITY OF BEND COMMUNITY DEVELOPMENT CODE,
CHAPTER 4.6, LAND USE DISTRICT MAP AND TEXT APMENDMENTS**

4.6.200 Legislative Amendments.

A. Applicability, Procedure and Authority. Legislative amendments generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plan and map, Development Code and changes in the zoning map not directed at a small number of properties. They are reviewed using the Type IV procedure in accordance with Chapter 4.1, Land Use Review and Procedures and shall conform to Section 4.6.600, Transportation Planning Rule Compliance. A Legislative Amendment may be approved or denied.

FINDING: The recommended amendments to the text of the Development Code involve broad public policy rather than an individual property owner. Therefore, the Legislative Amendment Procedures of this section are the appropriate procedures for review.

III. APPLICATION OF THE CRITERIA:

B. Criteria for Legislative Amendments. The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve or to deny an application for a Legislative Amendment shall be based on all of the following criteria:

1. The request is consistent with the applicable State land use law;

FINDING: The proposed amendments to the General Administration, Definitions, Enforcement, Land Use District Administration, Special Standards for Certain Uses and Development Review and Procedures sections of the Development Code are consistent with applicable State land use laws. In particular, the proposed amendments will satisfy Goal 1, Citizen Involvement, and Goal 2, Land Use Planning.

- Goal 1 will be satisfied through the City's text amendment process, which includes a Planning Commission public hearing followed by a City Council public hearing.
- Goal 2 requires all implementation ordinances such as the Development Code to be reviewed and, as needed, revised on a periodic cycle to take into account changing public policies and circumstances.
- Statewide Goals 3 through 19 were reviewed and are not applicable to this proposal.

Based on the above discussion, the Planning Commission finds that the proposed text amendments to the Development Code comply with the above criterion.

2. The request is consistent with the applicable Bend Area General Plan goals and policies;

FINDINGS: The "goals" established in the general plan express the desires of the residents of Bend as the City progresses into the future. The "goals" are generally carried out through "policies", which are statements of public policy. The Planning Commission reviewed the Comprehensive Plan and found only Chapter 1 to be directly applicable to the proposed text amendments.

Chapter 1 of the Bend Area General Plan includes the following goal:

- Public/Civic Involvement* – Encourage involvement by all citizens, corporate and individual, to keep the city vital and the Plan an "evolving vision".
- Implementing Consistent Ordinances* – Implement the plan through effective, clear and consistent ordinances and language that reflect the intent of the vision.

Chapter 1 also includes the following public policies:

15. The city shall continue to use advisory committees in their planning process, members of which are selected by an open process, and who are widely representative of the community.
16. The city will use other mechanisms, such as, but not limited to, meetings with neighborhood groups, planning commission hearings, design workshops, and public forums, to provide an opportunity for all the citizens of the area to participate in the planning process.

Chapters 4.1 and 4.6 of the Development Code together require the Planning Commission and the City Council to hold public hearings prior to acting on amendments to the text of the Development Code. Prior to any public hearings, the proposed text amendments were posted on the City's website, and the public was invited to submit written comments on the draft amendments. On July 21, 2008, the City's Customer Service Task Force also met with Planning Division staff to review and discuss the proposed text amendments. The Planning Commission's initial public hearing was held on December 8, 2008. The hearing was continued to January 26, 2009 and the record was left open through February 2, 2009. The Planning Commission's deliberations were conducted on March 9, 2009 and concluded on March 23, 2009. A City Council public hearing on the proposed amendments will be held in 2009. Implementation of the public involvement procedures identified in the Development Code will ensure compliance with the Citizen Involvement Goals and Policies of the General Plan.

Based on the findings stated above, the Planning Commission concludes that the proposed text amendments are consistent with the applicable General Plan goals and policies.

3. The applicant can demonstrate a public need or benefit for the proposed amendment.

FINDING: There is a public need and benefit for clear and consistent development regulations and review procedures that conform to state law and the City's customer service objectives.

4.6.500 Record of Amendments.

The City Recorder shall maintain a record of amendments to the text of this Code and the land use districts map in a format convenient for public use.

FINDING: At such time as the Development Code text amendments are adopted by ordinance, compliance with this Section will be required.

4.6.600 Transportation Planning Rule Compliance.

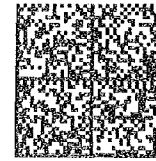
When a development application includes a proposed comprehensive plan amendment or land use district change, or both, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.

FINDING: The Planning Commission recommendation is for a text amendment to the Bend Development Code, a functional component of the comprehensive plan. The City staff have analyzed the proposed text amendments and have found that none of the changes would cause a "significant effect" under ORS 660-012-0060.

IV. CONCLUSIONS:

Based on the above Findings of Fact and Conclusions of Law, the Planning Commission finds that the proposed Development Code text amendments can meet, with maintenance of a record, all applicable criteria for adoption.

CITY OF BEND
P.O. BOX 431
BEND, OR 97709



UNITED STATES POSTAGE



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JUN 12 2009

MAILED FROM ZIP CODE 97701

Attention: Plan Amendment Specialist (Larry French)
Department of Land Conservation & Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540