

ARTICLE II PROCEDURES

Chapter 8-6.16

DEVELOPMENT PERMIT

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8-6.16.010 Permit Required

Except as excluded in Section 8-6.16.020, no person shall engage in or cause a development to occur, as defined in Chapter 8-6.08, without first obtaining a development permit through the procedures set forth in this title. The Administrator shall not issue any permit for the construction, reconstruction, or alteration of a structure or a part thereof without first verifying that a valid development permit has been issued. Development authorized by a development permit shall occur only as approved by the City.

8-6.16.020 Exclusions from Permit Requirement

Except as provided in Section 8-6.16.030, the following activities are permitted in each district but are excluded from the requirement of obtaining a development permit. Exclusion from the permit requirement does not exempt the activity from otherwise complying with all applicable standards, conditions, and other provisions of this title.

- A. Landscaping or other treatment or use of the land surface outside the flood plain and not involving a structure or paved parking lot.
- B. Any change or repair to a building or other structure that does not alter or expand the use thereof or require a building permit.
- C. An emergency measure necessary for immediate safety of persons or protection of property, provided however, that an application for a development permit shall be promptly filed if the measure otherwise would require such a permit.
- D. The establishment, construction, maintenance, preservation, or termination of public roads, transportation facilities, and other public facilities including sewer and water lines, storm drainage facilities, electrical and gas distribution lines, and telephone and television transmission lines that are substantially in the public right-of-way directly serving development. These exclusions do not apply to development permits that are required by the provisions in Chapters 8-6.120, 8-6.124, 8-6.128, or 8-6.132 or work in the I-84 or U. S. 30 right-of-way, for which an Oregon Department of Transportation permit is required.

Above ground electrical transmission, distribution, communication and signal lines on a single pole system where a single pole system is defined as above ground electrical lines and their supporting concrete, wood or metal poles, but does not include self-supporting steel lattice-type structures.

- E. Construction, maintenance, or demolition of an accessory structure not requiring a building permit.
- F. The following excavations or fills, unless a development permit is required by the provisions in Chapters 8-6.120, 8-6.124, 8-6.128, or 8-6.132:
 - 1. Excavations below finish grade for basements and footings of a building, retaining wall, or other structure authorized by a valid development permit;
 - 2. Excavations or fills for public and private roads, wells, tunnels, or utilities;
 - 3. Excavations or fills for public projects, conducted by or under contract of the City;
 - 4. Exploratory excavations affecting or disturbing areas of less than 6,000 square feet, under the direction of soil engineers or engineering geologists;
 - 5. A fill less than 1 foot in depth and placed on natural terrain with a slope flatter than 5 horizontal to 1 vertical, or, a fill less than 3 feet in depth, not intended to support structures, which does not exceed 150 cubic yards on any one lot and does not obstruct a drainage course; and
- G. Continued use of a valid nonconforming use or exercise of a vested right, except that any change, alteration, restoration, or replacement of a nonconforming use shall require a development permit as provided in Chapter 8-6. 156.
- H. Family day care provider as defined in Chapter 8-6.08 and as allowed in the zoning districts in Article III.

8-6.16.030 Hazard and Sensitive Areas

Notwithstanding the excluded activities noted in Section 8-6.16.020, activities within the following hazard and sensitive areas shall obtain a development permit as provided in this title:

- A. Flood Plain (FP) Overlay Zone (Chapter 8-6.120);
- B. Geological Hazard (GH) Overlay Zone (Chapter 8-6.124);
- C. Wetland and Riparian Areas (Chapter 8-6.128); or
- D. Above ground structures that will exceed the height limits of the Airport Protection (AP) Overlay Zone (Chapter 8-6.132).

8-6.16.040 Issuance and Effective Date

- A. The Administrator shall issue a development permit within 7 calendar days of any Administrative approval. The development permit shall be effective upon issuance.
- B. For City Administrator, Planning Commission, and City Council decisions, the City Administrator shall not issue a development before:
 - 1. The appeal period for the decision has expired; and
 - 2. The conditions of approval for the decision have been satisfied.
- C. In the event that a final approval of the Council is appealed to a body of competent jurisdiction, the development permit shall be issued after notice of the decision is provided. It shall be the responsibility of the person appealing the Council decision to seek appropriate judicial remedies halting action upon the permit. Notwithstanding

issuance, however, the holder of the permit may proceed at the permit holder's own risk. If the permit holder proceeds, the holder shall be deemed to have expressly assumed all risk of proceeding and shall save and hold harmless the City of Cascade Locks from any responsibility or liability for proceeding with development. If a holder proceeds at his/her own risk and the development permit is ultimately reversed by a body of competent jurisdiction, the holder shall restore the property to its original condition to the maximum extent possible.

- D. Every development permit shall be specific as to the approval granted or development authorized. It shall be subject to the standards and conditions set forth in this title, excepting only those variances or exceptions authorized by the approval authority, together with any conditions imposed by the approval authority. The development permit shall be effective immediately unless otherwise conditioned.

8-6.16.050 Expiration

Except as otherwise specifically provided in this title, a development permit shall expire automatically 2 years from the date of issuance unless one of the following occurs first:

- A. The development permit is revoked as provided for in Section 8-6.16.080 or as otherwise invalidated by a body of competent jurisdiction;
- B. An application for an extension is filed and approved pursuant to Section 8-6.16.060; or
- C. The development has commenced as provided in Section 8-6.16.070.

8-6.16.060 Extension and Modification

- A. If an extension is desired, the holder of the development permit must file an application for an extension. Extension requests shall be processed as a administrative action. Only one extension may be granted for a maximum of 1 year.
- B. The City Administrator shall, upon written request by the applicant, grant an extension of the approval period not to exceed 1 year, provided that:
 - 1. No changes are made on the original plan as approved by the approval authority;
 - 2. The applicant can show intent of initiating construction on the site within the 1 year extension period; and
 - 3. There have been no changes to the applicable Comprehensive Plan policies and ordinance provisions on which the approval was based.
- C. Notice of the decision shall be provided to the applicant. The City Administrator's decision may be appealed by the applicant as provided by Chapter 8-6.36.

8-6.16.070 When a Development Has Commenced

- A. The authorized development has commenced when the holder of the development permit has met applicable conditions of approval and has physically altered the land or structure or changed the use thereof and such alteration or change is directed toward completion of the approved project. In the case of development requiring a building permit, issuance of the building permit shall be conclusive evidence of commencing development. Nothing herein, however, shall be deemed to extend the life of said building permit as provided by law. A development permit which otherwise would have expired but for issuance of a building permit shall expire automatically upon expiration of the building permit.
- B. In the case of development authorized to be done in phases, each phase must be commenced within the time frame specified in the approval, or commenced within 1 year

of completion of the prior phase if no time table is specified. The date of phase completion in the case of a structure or structures shall be the date of issuance of an occupancy permit for 80 percent or more of the structure or structures of the development phase.

- C. The determination of commencement shall be made by the Administrator as an administrative decision.

8-6.16.080 Revocation of Development Permit

- A. Revocation shall be processed by the Administrator as an administrative action. A development permit may be revoked upon a finding of:
 - 1. Noncompliance with the standards or conditions set forth in this title, or any special conditions imposed upon the permit;
 - 2. Intentional fraud, misrepresentation or deceit upon the part of the applicant as to an issue material to the issuance of the development permit;
 - 3. Abandonment or discontinuance as determined by failure to make reasonable progress toward completion of a commenced development for a continuous period of 1 year. Bona fide good faith efforts to market the development shall not constitute abandonment or discontinuance; or
 - 4. A change in this title, the Comprehensive Plan, or state law which would make the approved development unlawful or not permitted, prior to the development obtaining a vested right or nonconforming use status.
- B. Revocation shall be effective immediately upon the City providing written notice thereof to the holder of the development permit. Unless provided otherwise by the revoking authority, revocation terminates the authority to continue the use. Continued use without a current valid development permit shall be a violation of this title.
- C. The holder of a revoked development permit may reapply for a new permit at any time as an entirely new application.
- D. Revocation is available in addition to and not in lieu of any other remedy provided by law and is not a condition precedent to any such remedy.

8-6.16.090 Transferability of Development Permit

Unless otherwise provided in the development permit, it shall apply to the property and may be transferred to a new property owner.

Chapter 8-6.20

TYPES OF DEVELOPMENT ACTIONS AND DETERMINATION OF PROPER PROCEDURE

Sections

- 8-6.20.010 Application Review Procedures
- 8-6.20.020 Administrative Actions
- 8-6.20.030 City Administrator Review
- 8-6.20.040 Planning Commission Review
- 8-6.20.050 City Council Review
- 8-6.20.060 Determination of Proper Procedure Type

8-6.20.010 Application Review Procedures

Applications in this title will be processed as an Administrative, City Administrator, Planning Commission, or City Council action in accordance with the standards set forth in this chapter.

8-6.20.020 Administrative Actions

Administrative actions involve permitted uses or development governed by clear and objective review criteria. Administrative actions do not encompass discretionary land use decisions. Impacts have been recognized by the development and public facility standards. The intent and purpose of a zoning district is not a consideration for approving these uses.

8-6.20.030 City Administrator Review

Land use actions by the City Administrator are presumed by this title to be appropriate. They generally involve uses or development for which review criteria are reasonably objective, requiring only limited discretion. Impacts on nearby properties may be associated with these uses which may necessitate imposition of specific conditions of approval to minimize those impacts to ensure compliance with this title.

8-6.20.040 Planning Commission Review

- A. Planning Commission actions involve development or uses which may be approved or denied, thus requiring the exercise of discretion and judgment when applying the development criteria contained in this title or the Comprehensive Plan. Impacts may be significant and the development issues complex. Extensive conditions of approval may be imposed to mitigate impacts or ensure compliance with this title and the Comprehensive Plan.
- B. Legislative plan amendments and annexation. Prior notice shall be given as provided in Chapter 8-6.28. Legislative plan amendments and annexations shall be reviewed by the Planning Commission after a public hearing. The Planning Commission recommendation shall be forwarded to the City Council for its consideration in making a final decision.

8-6.20.050 City Council Review

- A. City Council actions are generally legislative. They involve the creation, broad scale implementation, or revision of public policy. These include amendments to the text of the Comprehensive Plan or the Community Development Code.

- B. These actions are made through adoption of City ordinances. The following are City Council review actions:
1. Comprehensive Plan map amendment to more than one property;
 2. Comprehensive Plan text amendment;
 3. Community Development Code text amendment; and
 4. Annexation.
- C. Appeals of Planning Commission decisions shall be reviewed by the City Council as a quasi-judicial action described in this title.

8-6.20.060 Determination of Proper Procedure Type

- A. Whenever an applicant requests more than one approval and more than one approval authority is required to decide the applications, the proceedings may be consolidated at the discretion of the City or the applicant, so that one approval authority shall decide all applications in one proceeding. In such cases, the Administrative, City Administrator, Planning Commission, or City Council decisions shall be performed by the approval authority having original jurisdiction over one of the applications in the following order of preference: the City Council, the Planning Commission, or the City Administrator.

Questions as to the appropriate procedures shall be resolved by the City Administrator in favor of the process providing the greatest notice and opportunity to participate. The decision of the Administrator is not subject to appeal on its own, but may be alleged as an error in an appeal of the decision on the proposed development. Upon appeal of the decision on the merits of a development action not specifically classified in this title, the Planning Commission may determine that a different procedure type should have been used and direct that the proposed development action be processed accordingly.

- B. Notwithstanding any other provision, an applicant may choose to have the proposal processed under the procedure type which provides greater notice and opportunity to participate than would otherwise be required.

Chapter 8-6.24

PROCESSING DEVELOPMENT ACTIONS

Sections

8-6.24.010	Initiation and Withdrawal of Action
8-6.24.020	Pre-Application Conference
8-6.24.025	Pre-Application applicant sponsored meeting
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8-6.24.070	Decisions
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8-6.24.090	Vested Rights

8-6.24.010 Initiation and Withdrawal of Action

- A. Development actions may be initiated only by:
1. Application by all the owners or all the contract purchasers of the subject property, or any person authorized in writing to act as agent of the owners or contract purchasers. Contract purchasers shall indicate in writing that the contract vendor(s) has been notified of the application;
 2. The City Council;
 3. The Planning Commission; or
 4. The City Administrator.
- B. No application shall be deemed complete and further processed if it is determined that any necessary authorization to file has not been obtained.
- C. The City Administrator may withdraw any application, petition for review, or motion for reconsideration at the request of the applicant or petitioner. Once accepted as complete, however, the applicant or petitions shall be entitled to withdraw by right only if the City Administrator determines that written consent to withdraw an application has been obtained from a majority of the owners or contract purchasers or the majority interest holders in the property, or all signers of the petition for review.
- D. If an application, petition for review, or motion for reconsideration is withdrawn after public notice has been provided and the approval authority has not rendered a decision, the City Administrator shall provide written notification of the withdrawal to all persons that were entitled to be mailed a public notice of pending review and all persons who submitted written comments.
- E. Fees for applications and petitions for review, withdrawn at the request of the applicant shall be refunded, less the actual costs incurred by the City.
- F. The city shall take final action on permit applications which are subject to this chapter, including resolution of all appeals, within 120 days from the date the application is deemed as complete. Any exceptions to this rule shall conform to state and local regulations.
- G. In computing any period of time prescribed or allowed by this chapter, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or legal

holiday, including Sunday, in which event, the period runs until the end of the next day which is not a Saturday or legal holiday.

8-6.24.020 Pre-Application Conference

- A. No application for a City Administrator, Planning Commission, or City Council action shall be received by the Administrator unless the applicant or the applicant's representative has:
 - 1. Attended a pre-application conference with the City Administrator; or
 - 2. Signed a waiver, on a written statement prepared by the City Administrator, waiving the pre-application conference requirement.
- B. The purpose of the pre-application conference is to acquaint the applicant or representative with the requirements of this title, the Comprehensive Plan and other relevant criteria. It is designed to assist the applicant. The applicant assumes the risk for delays or other problems caused by failure to attend. It is impossible, however, for the conference to be an exhaustive review of all potential issues and failure of the City Administrator to provide any information required by this title shall not constitute a waiver of the policies, standards, or criteria relevant to the application.
- C. Pre-application conferences shall be scheduled by the City Administrator at the earliest reasonable time.
- D. Information given by the City Administrator and/or staff to the applicant during the preapplication conference is valid for no longer than 6 months. Another preapplication conference is required if an application is submitted more than 6 months after the preapplication conference is held.

8-6.24.025 Pre-application applicant sponsored meeting

- A. No application for a land use approval that requires a hearing and decision by the Planning Commission, not including action on appeal of a City Administrator decision, shall be received by the Administrator unless the applicant or the applicant's representative has held a public meeting inviting all property owners, residents, and business owners within the applicable notification area for the required public hearing. Pre-application meetings will be held no more than six months in advance of the filing of the subject application.
- B. The purpose of the Pre-application meeting is to allow the applicant to present the proposed land use action to those owning or residing in the notification area, answer questions from those in attendance, learn from those in attendance about concerns, issues, and ideas about the proposed land use action, and work toward agreement on any points of concern. It is not a requirement of this Code Section to require agreement amongst the parties on points of concern, but rather to require that the meeting is held so the public and the applicant can understand the proposal and the issues.
- C. Written notification of the public meeting will be provided to all property owners, residents, and business owners within the applicable notification area for the required public hearing. The meeting must be open to all who choose to attend, including those outside the notification area. A written record of the major points of the discussion, along with a list of those in attendance, will be created and preserved. An audio or video recording will be made that successfully creates a record of the entire meeting.
- D. Pre-application meetings will be held at a reasonable time and at a reasonable place so as to allow the greatest possibility of participation by those in the notification area. The City Administrator will judge the reasonableness of the timing and place of the meeting in reviewing the application for completeness and can reject the application if a finding is

made demonstrating the lack of reasonableness in holding the meeting.

- E. The applicant or applicant's representative will facilitate the public meeting. Nothing in this Code section precludes the applicant or applicant's representative from ejecting a participant who is disruptive to the ability of the rest of the participants to listen and participate.
- F. The City will have no role in sponsoring, convening, or facilitating a Pre-application meeting. City participation is at the discretion of the City Administrator. A Pre-application meeting is not an official part of the land use process.

8-6.24.030 Application

- A. Applications for development actions shall be submitted in accordance with the format and upon such forms as may be established by the City Administrator.
- B. A complete application is one which contains the information required to address the relevant standards of the Comprehensive Plan and this title. It shall consist of the following:
 - 1. A completed original application form, signed by all persons required for initiating an application under Section 8-6.24.010;
 - 2. A current Hood River County tax map(s) showing the subject property(ies) and all properties within 250 feet of the subject property;
 - 3. Relevant public facilities information;
 - 4. Additional information required by other provisions of this title and the Comprehensive Plan;
 - 5. Additional information directly related to the applicable standards of this title or the Comprehensive Plan as deemed essential by the City Administrator to evaluate adequately the specific application for compliance with those criteria and standards; and
 - 6. The applicable fees adopted by the City Council are hereby incorporated by reference as the fees herein. These fees may be amended by resolution and order by the Council.
 - 7. When a Applicant Sponsored Pre-Application meeting has been held, copies of the Meeting Notice, distribution list for the notice, Meeting Record, and audio or video recording will be submitted with the land use application.

8-6.24.040 Application Submittal and Acceptance

- A. Applications shall be submitted to the City Administrator in the number specified on the application form. The City Administrator, however, may waive copies of specific documents, maps, or exhibits upon a determination that the difficulty or burden of copying outweighs the usefulness of the copies.
- B. No application shall be received by the City for determination of completeness without the appropriate application fee.
- C. The date of submission shall be recorded. Within 7 calendar days for Administrative decisions and 14 calendar days for all others, the City Administrator shall determine whether the application is complete. The City Administrator shall notify the applicant

when the application is accepted as complete or rejected as incomplete if deficiencies are found. Resubmitted applications shall be subject to another 7 or 14 calendar day completeness check.

- D. Upon determination of completeness, applications shall be accepted immediately. The date of acceptance shall be recorded. The 120-day clock for processing the application shall start the day the application is deemed complete as evidenced in the completeness letter to the applicant. Except for Administrative decisions, the City Administrator shall notify the applicant that the application is complete. Unless otherwise directed by the City Council, applications shall be processed in the order accepted.
- E. Rejection by the City Administrator for incompleteness shall be based solely on failure to address the relevant standards or supply required information and shall not be based on differences of opinion as to quality or accuracy. Acceptance indicates only that the application is ready for review.
- F. Upon rejection for incompleteness, the applicant may object in writing to any alleged deficiencies and direct that the application be processed.
- G. All documents or evidence relied upon by the applicant shall be submitted to the City and made available to the public at least 20 calendar days before a Planning Commission hearing. If additional documents or evidence are provided in support of the application, any party shall be entitled to a continuance of the hearing. Such a continuance shall not be subject to the limitations of ORS 215.428 or 227.178. However, the 120 day clock will only be tolled if the applicant agrees. An applicant may not significantly change an application, such as a change in design involving more than a ten percent change in measurable dimensions or density, a change in phasing, a substantial change in architectural character, adding an additional request such as a variance, or other similar change, within fewer than 20 days before a hearing except in response to new evidence or arguments filed by the City or third parties unless the applicant tolls the 120 day clock for a sufficient period to allow the parties to respond to the new evidence and the applicant sufficient time to respond to that response.
- H. If additional documents or evidence is provided in opposition to the application, the applicant shall be entitled to a continuance of the hearing providing the applicant tolls the 120 day clock for a sufficient period to allow the parties to respond to the new evidence and the applicants sufficient time to respond to that response.

8-6.24.050 Notice of Development Actions

A. General Provisions

1. All public notices shall be deemed to have been provided or received upon the date the notice is deposited in the mail or personally delivered, whichever occurs first.
2. The records of the Hood River County Department of Assessment and Taxation shall be used for determining the property owner of record. Persons not on file with that department at the time an application is filed need not be notified. Failure actually to receive notice shall not invalidate an action if a good faith attempt was made to notify all persons entitled to notice. A sworn certificate of mailing issued by the person conducting the mailing shall be conclusive evidence of a good faith attempt to contact all persons listed in the certificate. Mortgagees, lien holders, vendors, and sellers receiving notice shall promptly forward a copy by mail to the purchaser.
3. For notice purposes, the boundary of the subject property shall be the property which is the subject of the application, together with all contiguous property under identical ownership.

B. Administrative Actions

1. No public notice of review is required.
2. Written notice of the decision of the City Administrator shall be provided to the applicant.
3. Notification of pending actions and decisions shall be provided to affected jurisdictions upon request.

C. City Administrator Review

1. A public notice of pending review shall be mailed to:
 - a. The applicant and/or representative;
 - b. All property owners of record within 250 feet of the subject property; and
 - c. Affected jurisdictions.
2. The public notice shall contain:
 - a. The name of the applicant or representative and the City case file number;
 - b. A description of the subject property reasonably sufficient to inform the reader of its location;
 - c. A concise description of the proposed development action and a listing of review standards;
 - d. A statement that the complete application, standards, and other such information are available at the City for review, and the City phone number for more information;
 - e. A statement that:
 - i. This is an opportunity for interested parties to submit written comments about the proposed request;
 - ii. Prior to making a decision, the City Administrator will consider any written comments actually received by the City within a 14 calendar day comment period;
 - iii. Written comments may be received after the comment period, but the City Administrator does not have to consider these comments prior to making a decision;
 - iv. The City Administrator will then make a decision and send a summary of the decision to those persons whose written comments are received by the City, including comments received after the comment period, and those persons who were entitled to be mailed a public notice of pending review of the City Administrator action pursuant to Chapter 8-6.24.050 C.1.; and
 - v. Any person entitled to a notice of the decision may appeal or request reconsideration of the decision as provided in Chapters 8-6.32 and 8-6.36.

- f. The comment closing date, which ends at 5:00 p.m. that day, in bold letters; and
 - g. The following statement in bold letters: **NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR, OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER.**
3. Unless the applicant requests an opportunity to respond to comments, the Administrator shall promptly issue a decision based upon review of the use of development in light of the applicable standards and the comments received after close of the 14 calendar day comment period.
 4. Notice of the decision shall be provided to the applicant, all persons who submitted written comments, and all persons who are entitled to be mailed a public notice of pending review of the City Administrator action pursuant to Subsection 8-6.24.050 C.1.
 - a. A brief summary of the nature of the action, the decision, and conditions of approval, if any;
 - b. A description of the subject property reasonably sufficient to inform the public of its location;
 - c. The date the decision was provided and the due date for an appeal;
 - d. A statement that the decision may be appealed and a public hearing held by filing a signed petition for review within 14 calendar days of the date the decision was provided. The statement shall note that the petition shall be filed with the City by 5:00 p.m. of the closing date of the appeal period. The elements of a petition for review set forth in Chapter 8-6.36, and the fee, shall be listed. The statement shall note that only those persons who responded in writing to the notice of pending review and all persons who were entitled to be mailed a public notice of pending review of the City Administrator action pursuant to Subsection 8-6.24.050 C.1. are entitled to appeal or request reconsideration of the decision;
 - e. A statement that a motion for reconsideration may be filed as provided in Chapter 8-6.32, but that filing a motion does not stop the appeal period from running; and
 - f. A statement that the complete case, including findings and conclusions and conditions of approval, if any, are available for review at the City.
- D. Planning Commission or City Council Review
1. Notice of public hearing shall be sent by mail at least 20 calendar days before the hearing.
 2. The notice of public hearing shall be mailed to:
 - a. The applicant or representative;
 - b. All property owners of record within 250 feet of the subject property;
 - c. Tenants of a mobile home or manufactured dwelling park when a request for a zone change or plan amendment which would change the land use designation of the property which includes all or part of the park. Failure of a tenant to receive a notice which was mailed shall not invalidate any

- plan amendment; and
 - d. Affected jurisdictions.
3. The notice of public hearing shall contain:
- a. The name of the applicant or owner;
 - b. The nature of the proposed development;
 - c. A description of the subject property reasonably sufficient to inform the public of its location;
 - d. The designation of the approval authority and the time, date, and place of hearing;
 - e. A statement that all interested persons may appear and provide testimony that only those who submit written comments or testify at the hearing shall be entitled to appeal;
 - f. A statement that the hearing will be conducted in accordance with the Rules of Procedure adopted by the City Council;
 - g. The following statement: NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR, OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER;
 - h. The applicable review criteria that apply to the application;
 - i. A statement that failure of an issue to be raised in the hearing, in person or by letter, or failure to provide sufficient specificity to afford the approval authority an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue;
 - j. The City telephone number where additional information may be obtained;
 - k. A statement that a copy of the application, all documents and evidence relied upon by the applicant, and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;
 - l. A statement that a copy of the staff report will be available for inspection at no cost at least 7 calendar days prior to the hearing and will be provided at reasonable cost; and
 - m. A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings. A statement that the record of the hearing shall remain open if a request is made before the close of the public hearing.
4. In addition to all other notice, at least 10 calendar days before a Planning Commission public hearing for a quasi-judicial plan amendment, notice shall be provided in a newspaper of general circulation in the city.
5. Additional notice of any hearing may be required by the City Council.
6. Notice of the decision shall be provided to all persons who submitted written comments or testified during the hearing. The notice shall contain:

- a. A brief summary of the decision and conditions of approval, if any;
- b. A description of the subject property reasonably sufficient to inform the public of its location;
- c. The date the decision was provided and the due date for an appeal;
- d. A statement that the decision may be appealed and a public hearing held by filing a signed petition, along with the required fee, for review within 14 calendar days of the date the decision was provided. The statement shall note that the petition shall be filed with the City by 5:00 p.m. of the closing date of the appeal period. The elements of a petition for review set forth in Chapter 8-6.36, and the fee shall be listed. The statement shall note that only those persons who made an appearance of record are entitled to appeal or request reconsideration of the decision;
- e. A statement that a motion for reconsideration may be filed as provided in Chapter 8-6.32, but that filing a motion does not stop the appeal period from running; and
- f. A statement that the complete case, including findings and conclusions, and conditions of approval, if any, are available for review at the City.

E. Notice of Hearing and Notice of Decision on Appeal

Notice of a public hearing conducted by the approval authority to review a decision by the City Administrator or the Planning Commission shall be provided in the same manner as required for Planning Commission and City Council actions. Notice of decision on appeal shall be provided to all parties of record. In addition, notice of hearing on appeal to the City Council shall be provided to all parties to the hearing conducted by the approval authority.

8-6.24.060 Staff Report

- A. A staff report is not required for Administrative decisions.
- B. City Administrator, Planning Commission, or City Council decisions on proposed developments shall be made with a staff report. This report shall be provided to the applicant without charge. All others may obtain a copy upon request and payment of a reasonable fee to cover the cost of reproduction, overhead, and mailing.
- C. A staff report shall be available no later than 7 calendar days before a Planning Commission hearing or any hearing on appeal. Staff reports are mailed approximately 7 calendar days prior to the public hearings to the applicant and interested parties who request them. Mailing the report does not guarantee sufficient time prior to the public hearing to respond to the conditions of approval. Obtaining a copy of the staff report in person at the City best assures ample time for review and comment at the public hearing.
- D. Notwithstanding the above, the staff report may be amended as necessary to address issues or information not reasonably known at the time the report is due.
- E. If staff submits additional evidence or an amended staff report in support of the application, any party shall be entitled to a continuance of the hearing. Such a continuance shall not be subject to the limitations of ORS 215.428 or 227.178.
- F. If staff submits additional evidence or an amended staff report in opposition to the application, the applicant shall be entitled to a continuance of the hearing.

8-6.24.070 Decisions

A. Decision Types

After review of all evidence is submitted to the record, the approval authority may:

1. Approve or deny all or part of the application;
2. Approve all or part with modifications or conditions of approval as described in Section 8-6.24.070 F.;
3. Defer a decision as provided in Subsection 8-6.24.070 G.; and
4. Dismiss without prejudice due to procedural error or remand to correct a procedural error.

B. Announcement of Decision

No decision is final for the purposes of reconsideration or appeal until it has been reduced to writing and signed by the approval authority or its designee. If a public hearing has been held, the approval authority may announce a tentative decision at the close of the public hearing, but shall in any case announce a date certain on which the decision shall be adopted or issued. If no public hearing has been held, the decision shall be announced in writing and made available to all parties as simultaneously as reasonably possible.

C. Basis for Decision

An approval or denial of a development action shall be based upon substantial evidence in the record that addresses the pertinent standards and criteria set forth in the applicable provisions of state law, the Comprehensive Plan, this title, and other applicable laws as determined by the approval authority.

D. Findings and Conclusions

For City Administrator, Planning Commission, and City Council decisions, the approval authority shall provide brief and concise findings of fact, conclusions of law, and an order for all development approvals, conditional approvals, or denials. The findings and order shall set forth the criteria and standards considered relevant to the decision, state the facts relied upon, and briefly indicate how those facts support the decision. In the case of denial, it shall be sufficient to address only those standards upon which the applicant failed to carry the burden of proof or, when appropriate, the facts in the record that support denial.

E. Re-application

No new application for a development action that is the same or substantially similar to an action that has been denied shall be accepted for a period of 1 year from the date of the City's final decision of denial.

F. Conditions of Approval

1. The approval authority may impose conditions on any City Administrator, Planning Commission, or City Council development approval. Such conditions shall be designed to protect the public from potential adverse impacts of the proposed use or development or to fulfill an identified need for public services within the impact area of the proposed development. Conditions shall not restrict residential densities to less than that authorized by the development standards of

this title.

2. In addition to conditions imposed pursuant to Section 8-6.24.070 F.1., a condition is valid and enforceable when the applicant has:
 - a. Requested the condition;
 - b. Consented to the condition in writing or testimony at a public hearing; or
 - c. Established or commenced the development or use (other than a valid nonconforming use) prior to approval.

3. Assurance of Compliance with Conditions

A bond, cash deposit, or other security acceptable to the approval authority may be required from the applicant in an amount sufficient to ensure compliance with a condition of approval.

4. Time Limits on Conditions

Conditions shall be fulfilled within the time limitations set forth or prior to completion of the development approved by the City if no time limitations are specified. Failure to fulfill a condition within said time may result in initiation of revocation of the approval, citation, or such other enforcement action as the City deems appropriate.

5. Failure to Fulfill Previous Conditions

Notwithstanding any other provision, the approval authority shall refuse to issue an approval with conditions, and deny an application, upon a determination that the applicant, or any officer, or principal of the applicant, willfully has failed to fulfill conditions of approval imposed in any previous development action and a determination that such a decision would encourage compliance or is necessary to protect the public from future noncompliance.

6. Modification or Removal of Conditions

Modification or removal of conditions of approval may be sought on appeal or as a new development action. A new development action shall be processed through the same procedure as was used to impose the conditions.

G. Deferral

1. The approval authority may continue the public hearing and defer a decision to a date certain. No new notice is required for hearings continued to a date certain. Any deferral to a date certain that exceeds 90 days without consent of the applicant shall be in the form of an order setting forth the reasons for deferral.
2. An indefinite deferral shall require new notice to all persons identified in Chapter 8-6.24.050. An indefinite deferral without the consent of the applicant shall be in the form of an order setting forth the reason for deferral and may be treated by the applicant as a denial for purposes of reconsideration and appeal if the applicant files a petition for review within 14 calendar days of written notice of the deferral.

H. Date of Final Decision

1. Decisions of the Administrator or Planning Commission on an application shall be deemed final and effective upon expiration of the appeal period if no petition for review is filed within that time. Once final and effective, the decision cannot

be appealed.

2. Decisions of the Council on an application shall be deemed final as follows:
 - a. If no petition for reconsideration is filed within 7 calendar days, the decision shall be deemed final on the date notice of the decision was provided to the parties; or
 - b. If no appeal has been filed with the Oregon Land Use Board of Appeals (LUBA) within 21 calendar days of the Council's final order.

8-6.24.080 Burden of Proof

Except as otherwise provided, the applicant initially, or the appealing party on appeal, shall bear the burden of proof that the proposal is in compliance with the applicable standards.

8-6.24.090 Vested Rights

- A. Through a Planning Commission review procedure, in the course of any city land use process, the Commission may decide whether a vested right exists.
- B. Whether a vested right is found to exist shall be based on the consideration of the following factors as well as any guidance from the Oregon Courts:
 1. The ratio of expenditures incurred to the total cost of the project;
 2. The good faith of the landowner;
 3. Whether or not the landowner had notice of any proposed zoning or amendatory zoning before starting the improvements;
 4. Whether the expenditures have any relation to the project or could apply to various other uses of the land;
 5. The kind of project, the location and ultimate cost; and
 6. Whether the acts of the landowner rise beyond mere contemplated use of preparation, such as leveling of land, boring test holes or preliminary negotiations with contractors or architects.
- C. The City shall not decide an issue of whether a vested right exists unless it is associated with a development action or a legislative process. A vested right issue not associated with an accompanying action shall not be decided by the City and may be subject to the jurisdiction of the Circuit Court of the state of Oregon.

8-6.28.060 Presentations

- A. The approval authority may set reasonable time limits for oral presentations. The approval authority may determine not to receive cumulative repetitious, immaterial, derogatory, or abusive testimony. Persons may be required to submit written testimony in lieu of oral if the approval authority determines that a reasonable opportunity for oral presentations has been provided.
- B. No testimony shall be accepted after the close of the public hearing unless the approval authority sets a deadline for such testimony and provides an opportunity for review and rebuttal, oral or written, at the direction of the approval authority. However, the 120 day clock will only be tolled if the applicant agrees.
- C. Unless there is a continuance, if a participant so requests before the conclusion of the hearing, the record shall remain open for at least 7 days after the hearing. Such an extension shall not be subject to the limitations of ORS 215.428 or 227.178.
- D. When the approval authority reopens a record to admit new evidence or testimony, any person may raise new issues which relate to the new evidence, testimony, or criteria for decision-making which apply to the matter at issue.
- E. Counsel for the approval authority may be consulted solely on legal issues without reopening the public hearing. Objections alleging that counsel is discussing or testifying as to factual matters shall be heard.
- F. The presiding officer shall preserve order at all public hearings and shall decide questions of order subject to a majority vote of the approval authority. Persons who become disruptive or abusive may be ejected from the hearing.

8-6.36.050 Nature of Hearing

- A. All hearings on appeal shall be conducted as public hearing according to Chapter 8-6.28.
- B. Review of the final decision of administrative and City Administrator actions shall be de novo. At the public hearing before the Planning Commission of an appeal of an administrative or City Administrator action, participants shall be limited to the applicant, those who made the appeal and those persons who were entitled to be mailed a public notice of pending review of the action pursuant to Section 8-6.24.050, and those who made written comments as prescribed in Chapter 8-6.24.
- C. Except as provided in Sections 8-6.36.050 D. through F., appeal to the Council of all final decisions of the Planning Commission shall be confined to the record unless the Council grants a de novo hearing according to Section 8-6.36.050 D.
- D. The request for a de novo hearing shall be decided by the Council. The Council may make such provision for notice to the parties and may take such testimony as it deems necessary to fully and fairly address significant procedural or substantive issues raised. The Council shall grant the request only upon findings that:
 - 1. A de novo hearing is necessary to fully and properly evaluate a significant issue relevant to the proposed development action;
 - 2. The substantial rights of the parties will not be significantly prejudiced; and
 - 3. The request is not necessitated by improper or unreasonable conduct of the requesting party or by a failure to present evidence that was available at the time of the previous review.
 - 4. The de novo hearing and decision can occur within the 120-day timeline, or the applicant has agreed to toll the timeline for an adequate amount of time to fully hear and consider the application.
- E. Hearings before the City Council on items on appeal, either on the record, partial de novo, or de novo hearings, may have time limitations for parties to testify, which are announced at the beginning of the hearing.
- F. Notwithstanding the above, the Council may solicit or admit new evidence during a hearing on the record after considering the factors listed in Section 8-6.36.050 D.

**[SECTION 8-6.24 PROCESSING DEVELOPMENT ACTIONS AMENDED BY
ORDINANCE NO. 396, ADOPTED BY THE CITY COUNCIL ON SEPTEMBER 8, 2008,
AMENDED BY ORDINANCE NO. 405, ADOPTED BY THE CITY COUNCIL ON
APRIL 12, 2010.]**

Chapter 8-6.28

PUBLIC HEARINGS

Sections

8-6.28.010	Notice
8-6.28.020	Rules of Procedure
8-6.28.030	Parties
8-6.28.040	Record
8-6.28.050	Procedural Rights
8-6.28.060	Presentations
8-6.28.070	Evidence

Public hearing on all development actions including appeals, but not including legislative actions, shall be conducted in accordance with this chapter.

8-6.28.010 Notice

Notice of public hearing shall be provided in accordance with Chapter 8-6.24.050 of this title and the rules of procedure adopted by the City Council.

8-6.28.020 Rules of Procedure

- A. Public hearings shall be conducted in accordance with the rules of procedure adopted by the applicable approval authority.
- B. At the beginning of the hearing for an application, a statement shall be made to those in attendance that:
 1. Lists the applicable substantive criteria;
 2. States that testimony and evidence must be directed toward the criteria described in B.1. of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision; and
 3. States that failure to raise an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.

8-6.28.030 Parties

- A. The following persons, or their authorized representatives, may participate during the comment period or public hearing:
 1. The applicant or applicant's representative and the owners of the subject property;
 2. Those persons entitled to notice; and
 3. Any other person who demonstrates to the approval authority that the person's rights may be adversely affected or aggrieved by the decision.

- B. Appearance of record shall mean:

1. An oral statement made at the hearing sufficiently identifying the speaker and the speaker's address; or
2. A written statement giving the name and address of the maker of the statement and introduced into the record prior to or at the public hearing. A person's name and address on a petition introduced into the record constitutes an appearance of record.

8-6.28.040 Record

- A. Absent mechanical failure or inadvertent error, a verbatim written or mechanical record of the hearing may be made. In addition, written minutes giving a true reflection of the matters discussed and the views of the participants shall be taken. Such minutes shall substitute for a verbatim record in the event of mechanical failure or inadvertent error.
- B. Failure to comply with Section 8-6.28.040 A. shall not invalidate any action provided that a de novo appeal or other relief is available.

8-6.28.050 Procedural Rights

Subject to the specific standards and limitations set forth in this title, the following procedural entitlements shall be provided at the public hearing.

- A. A reasonable opportunity for those persons entitled to notice or who may be adversely affected or aggrieved by the decision to present evidence.
- B. A reasonable opportunity for the applicant to rebut evidence submitted by opponents.
- C. An impartial approval authority as free from potential conflicts of interest and prehearing ex parte contacts as reasonably possible. It is recognized, however, that the public has a countervailing right of free access to public officials:
 1. Approval authority members shall disclose the substance of any significant pre-hearing ex-parte contacts with regard to the matter at the commencement of the public hearing on the matter. The member shall state whether the contact has impaired the impartiality or ability of the member to vote on the matter and shall participate or abstain accordingly.
 2. A member of the approval authority shall not participate in any proceeding or action in which any of the following has a direct or substantial financial interest: The member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which the member is serving or has served within the previous 2 years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interests shall be disclosed at the meeting of the review authority where the action is being taken.
 3. Disqualification of an approval authority member due to contacts or conflict may be ordered by a majority of the members present and voting. The person who is the subject of the motion may not vote.
 4. If all members abstain or are disqualified, the administrative rule of necessity shall apply. All members present who declare their reasons for abstention or disqualification shall thereby be requalified to act.

8-6.28.060 Presentations

- A. The approval authority may set reasonable time limits for oral presentations. The approval authority may determine not to receive cumulative repetitious, immaterial, derogatory, or abusive testimony. Persons may be required to submit written testimony in lieu of oral if the approval authority determines that a reasonable opportunity for oral presentations has been provided.
- B. No testimony shall be accepted after the close of the public hearing unless the approval authority sets a deadline for such testimony and provides an opportunity for review and rebuttal, oral or written, at the direction of the approval authority.
- C. Unless there is a continuance, if a participant so requests before the conclusion of the hearing, the record shall remain open for at least 7 days after the hearing. Such an extension shall not be subject to the limitations of ORS 215.428 or 227.178.
- D. When the approval authority reopens a record to admit new evidence or testimony, any person may raise new issues which relate to the new evidence, testimony, or criteria for decision-making which apply to the matter at issue.
- E. Counsel for the approval authority may be consulted solely on legal issues without reopening the public hearing. Objections alleging that counsel is discussing or testifying as to factual matters shall be heard.
- F. The presiding officer shall preserve order at all public hearings and shall decide questions of order subject to a majority vote of the approval authority. Persons who become disruptive or abusive may be ejected from the hearing.

8-6.28.070 Evidence

- A. The approval authority may place any person submitting testimony under oath or affirmation. Once sworn or affirmed, all testimony subsequently given by the person during the hearing or a continuation thereof shall be deemed to be under oath.
- B. Cumulative, repetitious, immaterial, or irrelevant evidence may be excluded. Evidence shall be admissible if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of serious affairs. Evidence may be received subject to a later filing regarding its admissibility. Erroneous admission or evidence shall not invalidate or preclude action unless shown to have prejudiced the substantial rights of a party.
- C. Members of the approval authority may take official notice of judicially cognizable facts of general, technical, or scientific facts within their specialized knowledge. Such notice shall be stated and may be rebutted.
- D. Exhibits shall be marked to provide identification upon review. Unless required for an appeal, all exhibits shall be retained by the City for a period of not less than 30 calendar days after expiration of all appeals. Exhibits may be disposed of as approved by the Administrator.
- E. Any member of the approval authority may visit the subject property and may use information gained to reach a decision, provided the information relied upon is disclosed and an opportunity to rebut provided.

Chapter 8-6.32

RECONSIDERATION OF DECISIONS

Sections

8-6.32.010	Reconsideration as Extraordinary Remedy
8-6.32.020	Motion for Reconsideration
8-6.32.030	Motion for Reconsideration Does Not Stop Appeal Period from Running
8-6.32.040	Motion for Reconsideration as Nonpublic Hearing Item
8-6.32.050	Process for Reconsideration
8-6.32.060	Reconsideration and Appeals
8-6.32.070	Limited Reconsiderations

8-6.32.010 Reconsideration as Extraordinary Remedy

Reconsideration of Administrative, City Administrator, Planning Commission, or City Council decision is available only as an extraordinary remedy upon a determination by the approval authority that:

- A. The party requesting reconsideration has sufficiently alleged in writing that a mistake of law or fact occurred;
- B. The alleged mistake, if found to have occurred, was a substantial factor in the decision; and
- C. Reconsideration is appropriate to avoid delay or hardship which may be caused by an appeal.

8-6.32.020 Motion for Reconsideration

A motion for reconsideration must be filed in writing with the Administrator within 7 calendar days of the date the notice of decision is provided. The motion shall address the factors set forth in Section 8-6.32.010 above. The applicable fee adopted by the City Council shall be submitted with the request.

A motion for reconsideration may be filed by the applicant, a party of record, the Administrator, or the approval authority.

8-6.32.030 Motion for Reconsideration Does Not Stop Appeal Period from Running

Filing a motion for reconsideration is not a precondition to appealing the decision and does not stay the deadline for filing an appeal. To preserve the right to appeal, a party must file a petition for review as provided in Chapter 8-6.36. If the initial approval authority grants reconsideration, and ultimately rules in favor of the party filing for reconsideration, the party may terminate its appeal.

8-6.32.040 Motion for Reconsideration as Nonpublic Hearing Item

Motions seeking reconsideration of a Planning Commission or City Council decision shall be summarily decided by the approval authority as a nonpublic hearing item at the first reasonably available opportunity. Motions seeking reconsideration of a City Administrator decision shall be summarily decided by the Administrator within 7 calendar days of the receipt of the motion. The approval authority shall issue a written notice of the decision to grant or deny the motion for reconsideration to the party requesting reconsideration. The decision as to whether to reconsider is not subject to appeal.

8-6.32.050 Process for Reconsideration

- A. Upon granting the motion to reconsider a Planning Commission or City Council decision, the Administrator shall schedule and notify the parties of a new public hearing on the merits of the issues raised. The reconsideration of the decision shall be limited to the issues raised in the motion for reconsideration and the merits of the issues raised. Such a hearing shall be held at the next reasonably available opportunity.
- B. Upon granting the motion to reconsider a City Administrator decision, the Administrator shall notify the parties of the reconsideration of the application on the merits of the issues raised. The reconsideration of the decision shall be limited to the issues raised in the motion for reconsideration and the merits of the issues raised. The review shall be done at the next reasonably available opportunity.

8-6.32.060 Reconsideration and Appeals

If the motion for reconsideration is denied or the decision is not altered upon reconsideration, any appeal timely filed shall be processed in accordance with Chapter 8-6.36. If the motion is granted and the approval authority modifies the previous decision, the parties to the initial decision shall be notified within 7 calendar days of the decision and may appeal the modified decision pursuant to Chapter 8-6.36.

8-6.32.070 Limited Reconsiderations

No decision shall be reconsidered more than once.

Chapter 8-6.36

APPEALS

Sections

- 8-6.36.010 Decision
- 8-6.36.020 Appeal Authority
- 8-6.36.030 Petition for Review
- 8-6.36.040 Minutes and Transcripts Required
- 8-6.36.050 Nature of Hearing
- 8-6.36.060 Decisions of the Council

8-6.36.010 Decision

A decision of the approval authority may be appealed only if within 14 calendar days after written notice of the decision is provided to the parties in which:

- A. A party files a complete petition for review with the Administrator;
- B. The Administrator files a complete petition for review; or
- C. The City Council directs that an appeal be initiated. The grounds for directing an appeal shall be set forth by the Council.

8-6.36.020 Appeal Authority

- A. The Planning Commission shall hear appeals of administrative and City Administrator decisions.
- B. The City Council shall hear appeals of Planning Commission decisions.

8-6.36.030 Petition for Review

A petition for review shall contain the following:

- A. The name of the applicant and the City case file number.
- B. The name and signature of each petitioner and statement of the interest of each petitioner to determine party status. Multiple parties may join in filing a single petition for review, but each petitioner shall designate a single contact representative for all contact with the City. All City communications regarding the petition, including correspondence, shall be with this contact representative.
- C. The date that notice of the decision was sent as specified in the notice.
- D. The nature of the decision and the specific grounds for appeal. Unless otherwise directed by the appellate authority, the appeal of City Administrator and Planning Commission decisions shall be limited to the issue(s) raised in the petition.
- E. The appeal fee adopted by the City Council.
- F. In appeals to the Council, a request for a partial or full de novo hearing as provided in Section 8-6.36.050 if desired.
- G. Failure to file a signed and complete original petition with the City by 5:00 p.m. on the due date, with the proper fee, shall be a jurisdictional defect.

8-6.36.040 Minutes and Transcripts Required

- A. The City shall prepare minutes of all public hearings.
- B. Transcripts
 - 1. A transcript shall only be prepared at the request of the appellant, and at the cost of the appellant for all appeals of public hearing items.
 - 2. In all cases where a transcript is requested by the appellant, the Administrator shall promptly provide the appellant with a written estimate of the cost. Failure to pay the estimated cost within 14 calendar days of being provided the estimate shall be a jurisdictional defect. Failure to pay the total balance due in excess of the estimate within 7 calendar days of billing shall be a jurisdictional defect. Any amount paid in excess of the actual cost shall be refunded by the Administrator within 30 calendar days of determination of the actual cost.

8-6.36.050 Nature of Hearing

- A. All hearings on appeal shall be conducted as public hearing according to Chapter 8-6.28.
- B. Review of the final decision of administrative and City Administrator actions shall be de novo. At the public hearing before the Planning Commission of an appeal of an administrative or City Administrator action, participants shall be limited to the applicant, those who made the appeal and those persons who were entitled to be mailed a public notice of pending review of the action pursuant to Section 8-6.24.050, and those who made written comments as prescribed in Chapter 8-6.24.
- C. Except as provided in Sections 8-6.36.050 D. through F., appeal to the Council of all final decisions of the Planning Commission shall be confined to the record unless the Council grants a de novo hearing according to Section 8-6.36.050 D.
- D. The request for a de novo hearing shall be decided by the Council. The Council may make such provision for notice to the parties and may take such testimony as it deems necessary to fully and fairly address significant procedural or substantive issues raised. The Council shall grant the request only upon findings that:
 - 1. A de novo hearing is necessary to fully and properly evaluate a significant issue relevant to the proposed development action;
 - 2. The substantial rights of the parties will not be significantly prejudiced; and
 - 3. The request is not necessitated by improper or unreasonable conduct of the requesting party or by a failure to present evidence that was available at the time of the previous review.
- E. Hearings before the City Council on items on appeal, either on the record, partial de novo, or de novo hearings, may have time limitations for parties to testify, which are announced at the beginning of the hearing.
- F. Notwithstanding the above, the Council may solicit or admit new evidence during a hearing on the record after considering the factors listed in Section 8-6.36.050 D.

8-6.36.060 Decisions of the Council

- A. Decisions of the Council are governed by Section 8-6.24.070.
- B. In addition to the decisions listed in Section 8-6.24.070 A., the Council may remand the matter to the Planning Commission for further proceedings as the Council directs. The decision on whether to remand shall not be appealable. Upon remand, the applicant shall be entitled to return of the appeal fee. Appeal from a decision on remand shall be taken as any other appeal.

Chapter 8-6.40

ENFORCEMENT

- 8-6.40.010 Abatement and Penalty
- 8-6.40.020 Buildings and Structures

8-6.40.010 Abatement and Penalty

Violation of any provision or amendment of this title is punishable upon conviction by a fine of not more than \$100.00 for each day of violation. Where the offense is a continuing offense, such fine may not exceed \$1,000.00.

8-6.40.020 Buildings and Structures

In case a building, other structure, or land is or is proposed to be located, constructed, maintained, repaired, altered, or used in violation of this title, the building or land thus in violation shall constitute a nuisance and the City may, as an alternative to other remedies that are legally available for enforcing this title, institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, enjoin temporarily or permanently, abate or remove the unlawful location, construction, maintenance, repair, alteration, or use.

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