

# ARTICLE 1

## INTRODUCTION & PROCEDURES

### 10.1.000 HOW TO USE THIS CODE

This Development Code (Code) is organized as a reference document and is not intended to be read from cover to cover. Instead, it is organized so you may look up only the parts you need. The list of articles in the table of contents is very important, as are the section listings at the beginning of each article. Tables and charts are used in many places to summarize information.

The Code is divided into nine articles, with each article containing related information. Note that numbers 9 – 11 are held for future articles:

- Article 1 - Introduction & Procedures
- Article 2 - Land Use Reviews
- Article 3 - Zoning Districts
- Article 4 - Overlay Districts
- Article 5 - Special Provisions
- Article 6 - Land Divisions
- Article 7 - Miscellaneous Provisions
- Article 8 - General Development Standards
- Article 12 - Use Categories & Definitions

**Article 1** provides basic information on the purpose and legal framework of the Code and describes how land use permits are classified for review under four different categories of procedure (Type I – Type IV). Information on application requirements, application review, public notice, public hearings and appeals are included in this article along with general provisions on administering the Code.

**Article 2** describes the various land use reviews and assigns decision authority. Some reviews may be applied for at the discretion of the applicant, such as a conditional use or adjustment request. Other reviews are mandatory in certain situations, such as design review. Article 2 includes the approval criteria for the land use reviews and cross-references the applicable procedures from Article 1.

**Article 3** contains the standards for the different zoning districts. The districts are grouped into the following categories:

- Residential Zones
- Institutional Zone
- Commercial Zones
- Town Center Zones
- Industrial Zones

**Article 3** states which uses are permitted in each district, which uses are allowed in limited situations, which are conditional uses, and which are prohibited. The general development

standards for each district are also included in Article 3. The development standards include requirements such as maximum building heights and setbacks.

**Article 4** contains the standards for overlay districts. Overlay districts consist of regulations that address specific subjects that may be applicable in a variety of areas in the City. The Code includes two overlay districts:

- Master Plan
- Planned Developments

Overlay districts apply in conjunction with the base zoning district and can modify the regulations and standards of the base district. The Official Zoning Map identifies the location of the zoning districts and overlay districts.

**Article 5** establishes the Natural Resource Areas process to protect environmentally sensitive areas. Special provisions and standards for historic landmarks, manufactured home parks and tree protection are also included in this Article:

- Natural Resource Areas
- Historic Landmarks
- Tree Protection
- Manufactured Dwelling Parks
- Solar Access
- Recreational Vehicle Parks

Review procedures, approval criteria and development and design standards for special provisions are cross-referenced or included in this article.

**Article 6** deals with land divisions. This article describes submittal requirements, approval criteria and design standards for lot line adjustments, partitions and subdivisions. Article 1 procedures for review of land divisions are cross-referenced. Article 8 standards for public improvements are also cross-referenced.

**Article 7** contains the regulations for specific uses (such as home occupations and accessory structures) that may be developed in several zoning districts. The regulations in Article 7 generally supplement the regulations of the Article 3 zoning districts.

**Article 8** describes the general development standards that are applicable to all new development or intensification of existing development (including land divisions and development on existing lots). This article includes standards for parking, landscaping, public improvements, signs, and other topics. The general development standards are grouped in Article 8 to provide consolidated information and less repetition in code language.

**Articles 9 – 11** are held for future topics.

**Article 12** describes the framework for the classification of individual uses into broad land use categories. This article also includes definitions of words that are not in common use or that have a specific meaning in the Code.

### **10.1.005      OVERVIEW OF ARTICLE 1**

This Article establishes the framework for the review of land use permits. It explains the procedures that the City follows for different types of reviews and how hearings and appeals are conducted. The following list summarizes topics covered in this Article:

- General Administration
- Application Process and Procedures
- Review Processes and Procedures
- Type I Process – Administrative Decisions
- Type II Process – Limited Land Use Decisions
- Type III Process – Quasi-Judicial Land Use Decisions
- Type IV Process – Legislative Land Use Decisions
- Enforcement

These headings can assist the user in locating information. The table of contents contains a complete list of the material included in this Article.

## **GENERAL ADMINISTRATION**

### **10.1.100 OFFICIAL NAME**

The official name of this Code is: “Forest Grove Development Code, Chapter 10 of the Municipal Code.” It may be referred to as the “Development Code” or “this Code.”

### **10.1.105 PURPOSE**

The general purpose of this Code is to set forth and coordinate City regulations governing the development and use of land. The Code is more specifically intended to do the following:

- A. Serve as the principle tool for implementing the City’s Comprehensive Plan in a manner that protects the health, safety, and welfare of the citizens of Forest Grove.
- B. Satisfy relevant requirements of federal, state and regional law, goals and rules.
- C. Facilitate prompt review of development proposals and the application of clear and specific standards.
- D. Provide for public information, review, and comment on development proposals that may have a significant impact on the community.
- E. Guide public and private planning policies and actions to ensure provision of adequate water, sewerage, transportation, drainage, parks, open space and other public facilities for each development.
- F. Provide for the review of the transportation impacts of land development, with particular emphasis on not exceeding the planned capacities of the transportation system.
- G. Require that permitted uses and development designs provide reasonable protection from fire, flood, landslide, erosion, or other natural hazards.
- H. Require that development provides for reasonable preservation, enhancement or mitigation of sensitive resources.

### **10.1.110 SCOPE AND COMPLIANCE**

A parcel of land or a structure may be developed or used only as this Code permits. The requirements of this Code apply to the property owner(s), the person(s) undertaking a development, the user(s) of a development, and to their successors in interest.

### **10.1.115 SEVERABILITY**

The provisions of this Code are severable. If any portion of this Code is declared invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the Code.

### **10.1.120 INTERPRETATION**

- A. Except as otherwise specified; the definitions included in Article 12 shall be used to interpret the provisions of this Code.
- B. The Director shall have the authority and responsibility to interpret terms, provisions and requirements of this Code. A person requesting an interpretation shall submit it in writing to the Director as described in Section 10.2.500.
- C. The terms of this Code shall be interpreted in the context of the general purpose set forth in Section 10.1.105.
- D. Where two or more requirements of this Code apply, the most restrictive requirement shall govern.

### **10.1.125 CONSISTENCY WITH PLANS AND LAWS**

Actions initiated under this Code shall be consistent with the adopted Comprehensive Plan of the City of Forest Grove and with applicable regional, state and federal laws. The City of Forest Grove Comprehensive Plan and implementing regulations have been acknowledged by the Land Conservation and Development Commission as being in compliance with the statewide goals. Therefore, any action taken in conformance with this Code shall be deemed in compliance with the statewide goals and the Comprehensive Plan. Unless stated otherwise within this Code, specific findings demonstrating compliance with the Comprehensive Plan are not required for approval of a land use application.

### **10.1.130 WHEN LAND USE PERMITS ARE REQUIRED**

Land use permits are required when a development or lot line adjustment as defined by this Code is proposed unless exempted under specific provision. However, exempt activities and developments may be subject to other applicable provisions of the Code. When a land use permit is required, then:

- A. No person shall initiate a development until a land use permit has been approved.
- B. The City shall not issue any other permit for the development until the land use permit has been approved. Concurrent review of building permit applications and other applications related to the land use permit are allowed under the following conditions:
  - 1. Final approval of building and other permits are not allowed without land use permit approval; and
  - 2. The applicant acknowledges the risk that a land use permit may be denied, the land use permit could change, and/or the outcome of the land use permit could alter other permit requirements.
- C. A land use permit shall not be approved for the division, improvement, or use of land that has been divided or otherwise developed in violation of this Code unless the violation is corrected prior to or concurrent with issuance of a land use permit.

- D. No action may be taken in reliance upon a decision approving a land use permit until all applicable appeal periods have expired or while an appeal to a City review body is pending.
- E. A land use or building permit that would allow for the construction of a structure shall not be issued unless all applicable and needed services including vehicular access, power, sewerage, domestic and fire water supply and storm water drainage are available to the site where the structure is to be built. This provision does not apply to permits for a structure that do not require such services (such as a storage shed).
- F. All land use permits, with the exception of a subdivision, shall expire one year from the date of issuance unless:
  - 1. Substantial construction or operation of the development has begun within that time and has continued toward final completion; or
  - 2. Development is proceeding in accordance with an approved phasing plan; or
  - 3. A written extension is granted by the Director under the Type I review process.
- G. A subdivision is subject to the following time limits:
  - 1. The tentative plat for a subdivision expires two years after the date of approval unless:
    - a. Application for the final plat has been filed with the City; or
    - b. A time extension is approved pursuant to Section 10.1.135; or
    - c. The tentative plat has been approved with a phasing plan consistent with the provisions of Section 10.6.005(D).
  - 2. The final plat for a subdivision shall be recorded within one year after the plat has been submitted to the City.

**10.1.135 EXTENSION OF LAND USE PERMIT**

The Director, at the applicant’s request, may extend a land use permit under the Type I review process. Requests for extension must be filed with the Director prior to the expiration date of the original approval or subsequent extension. No single extension of time shall exceed a one (1)-year period. Extensions shall not be approved where the effect of the extension would violate any provisions of this Code or any amendments made following the effective expiration date. In addition, the Director may require a new application for a permit if conditions on the site or adjacent property have changed substantially since the original permit approval. Except for a land division, in no instance shall the extension(s) exceed a total of two (2) years from the effective date of project approval. For a land division, the time extension for a tentative map shall not exceed four (4) years from the effective date of project approval. Final maps are not eligible for time extensions. Extensions shall not modify the original decision. A land use permit shall expire at the end of the time extension period unless the provisions of Section 10.1.130 F. 1.or 2. are met or Section 10.1.130 G.1 for subdivisions.

**10.1.140 FEES**

The City Council shall establish land use permit fees by resolution for the performance of the actions and reviews required by this Code.

## **APPLICATION PROCESS AND PROCEDURES**

### **10.1.200 PURPOSE**

This section of the Code describes the general procedures that apply to land use permit reviews. It contains the step-by-step land use application processing requirements.

### **10.1.205 CONSOLIDATED REVIEW**

Where a proposal involves more than one application for the same property, the applicant may submit concurrent applications. The applications shall be consolidated for review in accordance with the highest numbered procedure. For example, a minor adjustment (Type I) can be consolidated with a conditional use (Type III), but it will be subject to Type III procedures.

### **10.1.210 INITIATION AND WITHDRAWAL OF LAND USE APPLICATION**

Land use applications shall be initiated by one of the following:

- A. 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 owner or contract purchasers;
- B. The City Council;
- C. The Planning Commission;
- D. The Community Development Director; or
- E. Public agencies or utilities that have statutory rights of eminent domain for projects they have the authority to construct.

The Director may withdraw any application at the written request of the applicant, prior to the final written decision. Fees for applications withdrawn at the request of the applicant shall be refunded, less the actual costs incurred by the City in processing the application.

### **10.1.215 PRE-APPLICATION CONFERENCE**

The director shall not accept a Type II, III or IV land use application for processing unless the applicant or the applicant's representative has attended a pre-application conference, or the Director has, in his or her discretion, signed a waiver of the pre-application conference.

The purpose of the pre-application conference is to acquaint the applicant with the requirements of this Code, 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 a pre-application conference. It is impossible, however, for the pre-application conference to be an exhaustive review of all potential issues and the conference shall not prevent the City from enforcing all applicable regulations.

To schedule a pre-application conference, the applicant shall submit a completed and signed conference request form and the following information:

- A. A short narrative describing the proposal, including at minimum:
  - 1. Proposed use,
  - 2. Size of buildings and/or number and types of residential units,
  - 3. Approximate building heights, and
  - 4. Other information as applicable, such as
    - a. Number of employees,
    - b. Use of hazardous materials (including general quantity and type), and
    - c. Any known special conditions applicable to the site or proposed development,
- B. A conceptual site plan; and
- C. The appropriate fee.

The Director shall schedule the pre-application conference within seven (7) working days of the request. The Director shall identify and prepare a summary of topics to be discussed and shall provide the applicant with a written summary of the conference.

If a complete application relating to the proposed development action that was the subject of the pre-application conference has not been submitted within one (1) year of the conference, a new pre-application conference or waiver is required.

#### **10.1.220 NEIGHBORHOOD MEETING**

When the Director determines that a proposed project has the potential to raise concerns of neighborhood or community impact, the applicant shall initiate, attend and conduct a neighborhood meeting. The purpose of the neighborhood meeting is to allow the neighbors and other interested parties to become familiar with the proposal and to identify issues that may be associated with an application. The Director shall identify the need for the meeting within seven days after the pre-application conference is held.

The neighborhood meeting is intended to result in an application that is responsive to neighborhood concerns, reducing the likelihood for delays and appeals of the application. The City expects an applicant to take the reasonable concerns and recommendations of the neighborhood into consideration when preparing an application. The City expects the neighbors will work with the applicant to provide such input.

Neighborhood meetings must be conducted before the City will accept an application on any portion of the proposal. The applicant can request a sign-in sheet from the Community Development Department or provide his or her own sign-in sheet, which must be completed on the night of the neighborhood meeting and submitted to the City at the time of application as verification that the meeting was held. The sign-in sheet should indicate the date, time and location of the meeting, a brief heading describing the subject of the proposal, and the signatures of those in attendance at the meeting. The City shall retain the sign-in sheet as part of the record in the land use case file.

Those notified of the neighborhood meeting shall, at minimum, include all surrounding property owners and residents located at the notification distance of the greatest level permit or 300 feet if the permit type is not known, as well as any other interested parties identified by the Director.

#### **10.1.225 APPLICATION CONTENTS**

A land use application shall consist of at least the following:

- A. A completed city application form with the following information:
  - 1. Property description and assessor map parcel number(s);
  - 2. Name, address, telephone number of the applicant(s), property owner(s) or contract purchaser(s), and, if applicable, the same information of the authorized agent of the applicant, property owner or contract purchaser
  - 3. A complete list of the approvals sought by the applicant.
- B. A narrative description of the proposed development, existing site conditions, and pertinent background information.
- C. Findings that discuss how the approval criteria of the Code are or can be met.
- D. Transportation study may be required by the Director when determined at the pre-application conference the proposed project would have potential circulation or safety impacts, need for off-site street improvements or would increase traffic on City streets by at least 50 peak hourly trips, or a Transportation Impact Study is required by the Oregon Department of Transportation. The Director may also require a transportation study for any one project or multiple projects where there may be cumulative traffic impacts from two or more projects affecting one or more transportation facilities.
- E. Duplicates of the above information as required by the Director. (Note: The pre-application conference summary will provide guidance on what specific information is required and how many copies must be submitted.)
- F. All required application fees.
- G. An 8 ½ x 11 copy of the site plan for the public notice.
- H. Additional applicable information required by other sections of this Code.

**10.1.230 APPLICATION SUBMITTAL AND ACCEPTANCE**

- A. Applications shall be submitted on the proper form provided by the City, signed by the owner(s) of all properties involved in the application, and accompanied by the required fee(s).
- B. The date the application and fee is received by the City shall be recorded on the application form.
- C. The City shall conduct an initial review within thirty (30) days of receipt to determine if the application is complete. The City shall issue a written, dated statement to the applicant indicating whether the application is complete and, if not, what information must be submitted to make the application complete.
- D. Rejection by the Director for incompleteness shall be based solely on failure to address the development standards or supply information required by Code and by the Director, in a pre-application conference or otherwise, as the Director determines is necessary to adequately evaluate the proposal. Rejection shall not be based on differences of opinion as to quality or accuracy. Acceptance indicates only that the application is ready for review.
- E. Information submitted by the applicant to the City after the date the application is deemed complete that results in a substantial change from the original application shall require review as a new application or waiver of 120 days. The Director shall determine whether a submission constitutes a substantial change from the original application.

**10.1.235 RECOGNITION OF INTERESTED PARTIES TO RECEIVE NOTICES**

- A. Sections 10.1.515 and 10.1.610 provide that notices for Type II and Type III permits be sent to recognized interested parties. To be recognized, an interested party must submit a form to be provided by the Community Development Department. The completed form must at least include:
  - 1. The name of the person or group requesting notices;
  - 2. If a group, the name of the officers of the group;
  - 3. The name and address of the person to receive the notice;
  - 4. An indication of either the type's projects or geographical area of interest to receive notification. If a location, a map of sufficient clarity to identify the boundaries of the area of interest shall accompany the form.
- B. The Community Development Department shall have up to 30 calendar days after the receipt of the form to add the interested party to a notification list. Inclusion on the notification list shall be for a period of three (3) years unless the interested party notifies the City to remove from the notification list.
- C. It shall be the responsibility of the interested party to notify the Community Development Department of any changes or to request any renewal to continue inclusion on the notification list.

- D. While it is the intent of the Community Development Department to notify all relevant interested parties, failure to receive a notice shall not invalidate a decision if a good faith attempt was made to notify the interested party.

## **REVIEW PROCESSES AND PROCEDURES**

### **10.1.300 OVERVIEW OF REVIEW TYPES**

The City of Forest Grove classifies land use permit reviews into one of four procedure types (Types I, II, III and IV). The procedures vary according to the level of discretion involved in making the decision, the extent to which the public may become involved in the decision-making process, and the opportunity to appeal a decision to a local review authority.

The general procedures and provisions applicable to all procedure types are described below. Detail on each of the four procedures is presented in Sections 10.1.400 et seq.

### **10.1.305 STAFF REPORT**

A staff report is not required for a Type I or Type II land use review. The Director shall document the decision on Type I and Type II reviews with the following information:

- A. A statement that explains the criteria and standards considered relevant to the request;
- B. A statement of the facts relied upon in making the decision; and
- C. An explanation of the justification for the decision based on the criteria, standards and facts set forth.

No decisions on Type III and IV land use applications, or the appeal of a Type II decision, shall be made without a staff report. The staff report shall, at minimum, address A. through C. above. The Director shall have the authority to develop the content and organization of the report.

The staff report shall be provided to the applicant and the review authority without charge. All others may obtain a copy upon request and payment of a reasonable fee to cover costs of copying and mailing. A staff report shall be available no later than seven (7) calendar days before a Type III or IV hearing, or any hearing on appeal of a Type II decision.

The staff report may be amended as necessary to address issues or information not reasonably known at the time the report is due.

### **10.1.310 CONDITIONS OF APPROVAL**

All review bodies have the authority to impose reasonable conditions of approval to ensure that all applicable approval criteria are, or can be, met. Conditions shall only be imposed where the applicant has the ability to comply without depending upon the actions of other parties that are not associated with the project unless agreements with the other parties are in place prior to submittal. This requirement excludes a review or approval required by a public agency. Failure to comply with any condition of approval shall be grounds for revocation of the permit(s) and grounds for instituting code enforcement proceedings.

### **10.1.315 MODIFICATION OF CONDITIONS**

An applicant may request modification of a condition of approval after the final written decision is issued. A modification to condition(s) of approval shall be processed in the same manner and subject to the same standards as the original application. However, the review body may consider a modification request and limit review of the approval criteria to those issues or aspects of the application that are proposed to be changed from what was originally approved.

### **10.1.320 REVOCATION OF A PREVIOUSLY APPROVED PERMIT**

In the event an applicant, or the applicant's successor in interest, fails to comply with all conditions of permit approval; the City Council, Planning Commission or Director may institute a revocation proceeding for Type I, II, III or IV permits if it is determined there is substantial likelihood that any of the following situations exist:

- A. One or more conditions of approval have not been implemented or have been violated; or
- B. The activities, or the use itself, are substantially different from what was approved.

Revocation or modification of a previously approved permit shall be considered and decided by the City Council. Type III notice procedures shall be followed. The Director or any private complaining party shall have the burden to prove, based on substantial evidence in the whole record, that the applicant or the applicant's successor has violated the city's approval.

### **10.1.325 TRANSFER OF APPROVAL RIGHTS**

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

## **TYPE I PROCESS – ADMINISTRATIVE DECISIONS**

### **10.1.400 DEFINITION**

An administrative decision is one that requires no interpretation or exercise of policy or legal judgment in evaluating approval criteria. Because the decision is made according to specific criteria where no discretion is involved, administrative decisions do not qualify as land use or limited land use decisions as defined by ORS 197.015.

### **10.1.405 TYPE I APPLICATIONS AND APPROVAL CRITERIA**

Applications so designated throughout the Development Code are reviewed under the Type I process, based on the requirements and criteria set forth for each application in other sections of this Code. Examples of actions subject to a Type I application and review process include:

- Certain types of Zoning Standard Adjustments
- Certain projects within an approved Master Plan
- Tree Permit
- Lot Line Adjustment
- Final partition plat
- Final subdivision plat
- Accessory Dwelling Units
- Certain Bed and Breakfast Inns
- Home Occupations
- Certain types of Wireless Communication Facilities
- Landscape Review not subject to Site Development or Design Review
- Parking Plan not subject to Site Development or Design Review
- Existing and New Signs

Any application that is not specifically designated in the Code as being under one of the four review processes, and which the Director determines is similar in impact and scope to other Type I applications, shall be processed as a Type I application.

### **10.1.410 NOTICE**

A Type I application does not require notice to anyone other than the applicant.

### **10.1.415 DECISION AUTHORITY**

The Director or his designee shall make all Type I decisions. The Director may approve, approve with conditions, or deny the application. The Director's decision shall be based on standards set forth within this Code and shall be accompanied by brief findings as required under Section 10.1.305 A. through C., and provided in writing to the applicant.

**10.1.420 APPEALS OF TYPE I DECISION**

A Type I decision by the Director is final unless appealed. The appeals will be heard by the Planning Commission, under the following conditions:

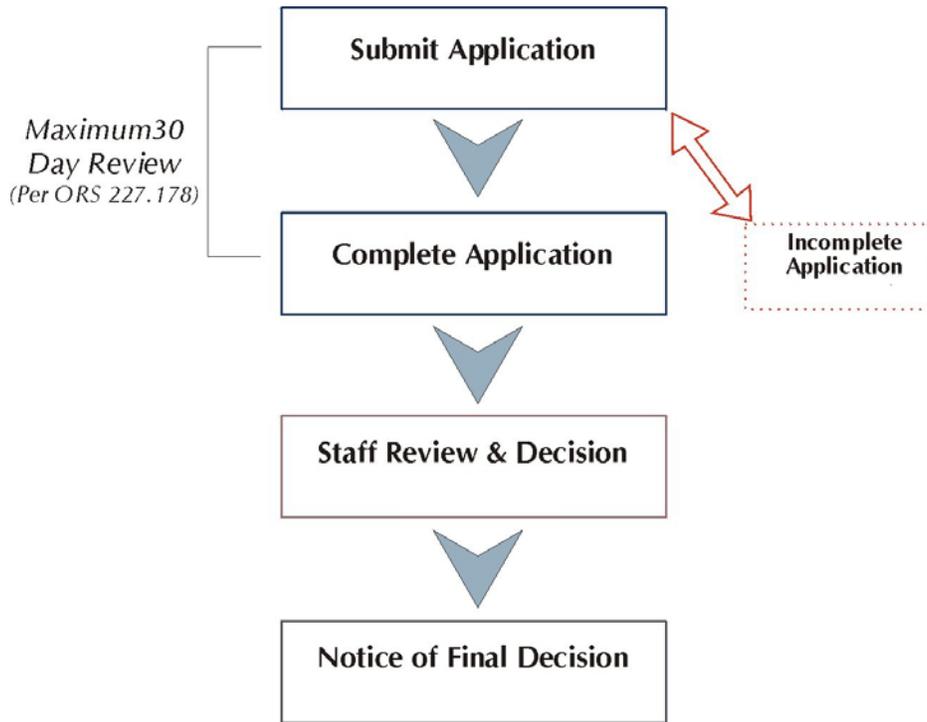
- A. The applicant must submit a written appeal petition and pay the required fee to the City within fourteen (14) calendar days of the written notice of the decision. The written petition shall specifically state the issues being appealed.
- B. Notice of the appeal hearing shall be provided as required for quasi-judicial (Type III) public hearings.
- C. The Planning Commission shall conduct a de novo appeal hearing.
- D. The Planning Commission decision on an appeal is the City’s final decision, unless an optional second appeal to the City Council is filed by the applicant, as specified in Section 10.1.425.

**10.1.425 SECOND APPEAL OPTION OF TYPE I DECISION**

A second appeal of an administrative decision can be heard by the City Council, under the following conditions:

- A. The applicant is the only party with standing to file a second appeal. The City must receive an appeal petition in writing and the required fee within fourteen (14) calendar days of the written notice of the decision. The written petition shall specifically state the issues being appealed and the City Council shall be limited to the consideration of those issues.
- B. Only issues on the record at the Planning Commission hearing submitted in writing or orally can be appealed to the City Council.
- C. Notice of the appeal hearing shall be provided to parties having standing.
- D. The City Council hearing shall be limited only to those issues raised in the appeal petition.
- E. The City Council decision on an appeal is the City’s final decision.

**Figure 1-1  
Type I Application Process**



## **TYPE II PROCESS – LIMITED LAND USE DECISIONS**

### **10.1.500 DEFINITION**

A limited land use decision involves the exercise of limited interpretation and discretion in evaluating approval criteria, where approval or denial is based on discretionary standards that regulate the physical characteristics of an outright use. The review typically focuses on what form the use will take or how it will look.

### **10.1.505 TYPE II APPLICATIONS AND APPROVAL CRITERIA**

Applications so designated throughout the Development Code are reviewed under the Type II process, based on the requirements and criteria set forth for each application in other sections of this Code. Examples of these applications include:

- Certain types of Zoning Standard adjustments
- Minor Modification to a Conditional Use Permit
- Certain type of Design Review
- Site Development Review
- Certain projects within an approved Master Plan
- Final Plan for Planned Development
- Tentative partition plat
- Tentative subdivision plat
- Adjustments to public improvement requirements

Any application that is not specifically designated in the Code as being under one of the four review processes, and which the Director determines is similar in impact and scope to other Type II applications, shall be processed as a Type II application.

### **10.1.510 ELEVATION OF TYPE II APPLICATION TO TYPE III PROCESS**

If, in the opinion of the Director, there is potential for neighborhood or community concern about a proposal, the applicant or the Director may elevate a Type II application to the Type III process to provide greater notice and opportunity to participate than would otherwise be required by this Code.

Elevation to a Type III process will result in a public hearing and decision by the Planning Commission or other review body rather than a decision by the Director. An applicant may request that a Hearings Officer consider any land use review subject to Type III procedures, including a Type II application that is elevated to a Type III procedure. The applicant shall pay all extra costs associated with the Hearings Officer review.

**10.1.515 NOTICE**

Notice of Type II applications shall be provided as follows:

- A. A Notice of Application and invitation to comment shall be mailed to the applicant, owner(s) of the subject property, property owners within 300 feet of the perimeter of the subject property, and to any recognized interested party.
- B. Notice should also be provided to public agencies or utilities whose property, services or facilities may be affected by the proposed development. The Director shall determine the extent of notice to public agencies or utilities based on cooperative agreements, perceived interest or impact.
- C. The applicant shall also post the subject property with a Notice of Application in conformance with posting requirements set forth by City Council Resolution.

Failure to receive notice shall not invalidate a decision if a good faith attempt was made to notify all persons entitled to notice. A 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.

**10.1.520 NOTICE CONTENT**

- A. The notice shall state that comments must be specific and raised in writing prior to the expiration of the comment period.
- B. The notice shall briefly summarize the local decision making process.
- C. The notice shall include at least the following information:
  - 1. The criteria to be used in making the decision;
  - 2. A brief description of the proposal, including the street address, tax lot number, or other legal means of identifying the subject property and the action that would occur upon approval;
  - 3. A specific place, date and time that comments are due;
  - 4. Information as to where and when the application and supporting documents may be reviewed; and
  - 5. The name and phone number of the City contact person.

**10.1.525 14-DAY COMMENT PERIOD**

From the date of mailed notice, a 14-day comment period shall be provided during which any party may submit written comments before a decision is made. Staff shall consider all comments in the final decision and shall have the authority to impose any conditions deemed necessary in order for all approval standards and criteria to be met.

**10.1.530 DECISION AUTHORITY**

The Director or his designee shall make all Type II decisions. The Director may approve, approve with conditions, or deny the application. Decisions shall be based on standards and criteria set forth within this Code and shall be accompanied by brief, written findings and a notice of decision.

**10.1.535 NOTICE OF DECISION**

The Notice of Decision shall be provided, in writing, to the applicant and all parties who submitted comments within the 14-day comment period. The notice shall include:

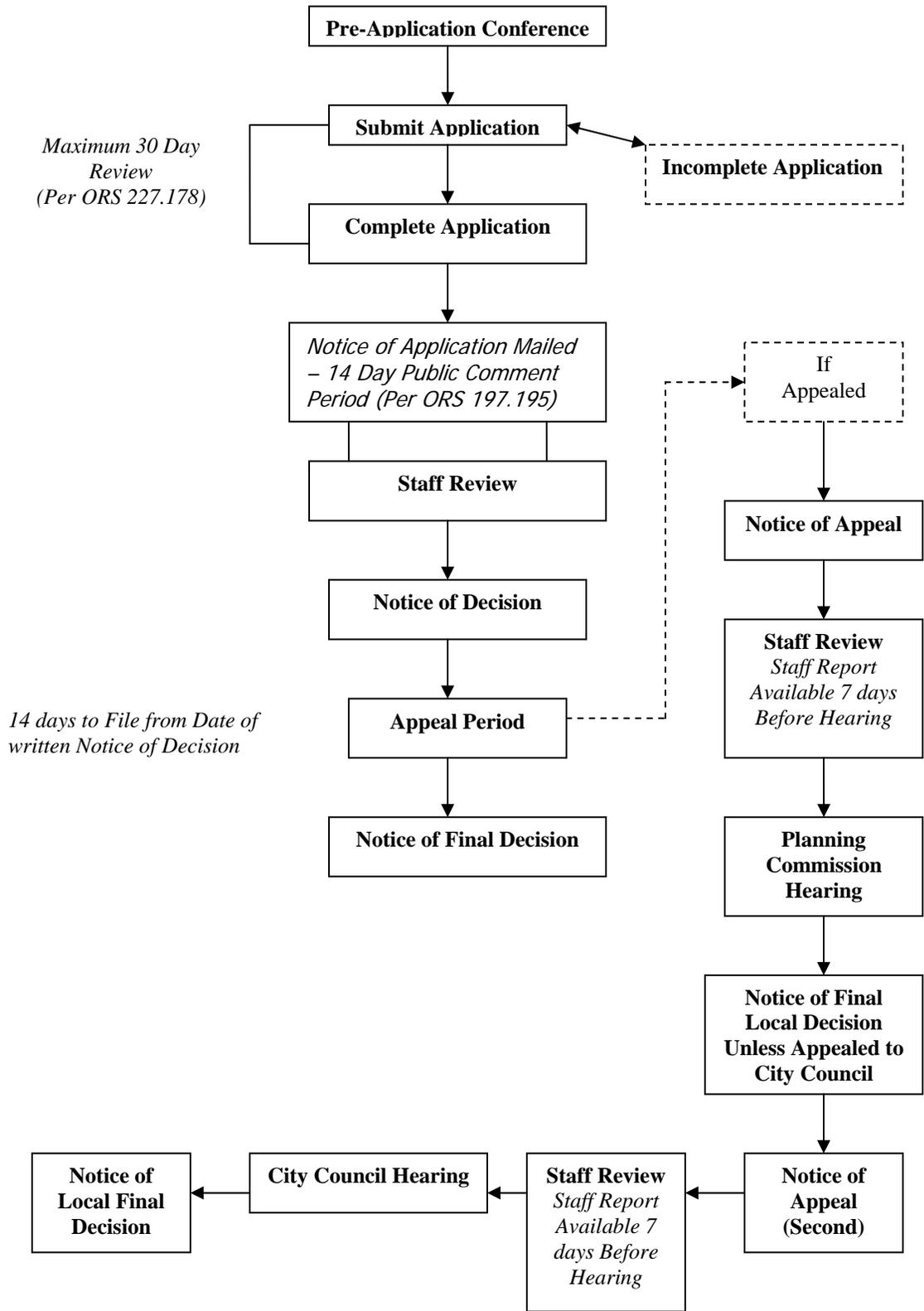
- A. A brief statement explaining the criteria and standards considered relevant to the decision;
- B. A statement of the standards and facts relied upon in rendering the decision;
- C. Findings or justification for the decision based on the criteria, standards and facts set forth; and
- D. An explanation of appeal rights and appeal deadlines.

**10.1.540 APPEALS**

A Type II decision by the Director is final unless appealed. The appeals will be heard by the Planning Commission, under the following conditions:

- A. The party must have standing, and submit a written appeal petition and pay the required fee to the City within fourteen (14) calendar days of the written notice of the decision. The written petition shall specifically state the issues being appealed.
- B. Notice of the appeal hearing shall be provided as required for quasi-judicial (Type III) public hearings.
- C. The Planning Commission shall conduct a de novo appeal hearing.
- D. The Planning Commission decision on an appeal is the City’s final decision, unless an optional second appeal to the City Council is filed by the applicant, as specified in Section 10.1.545.

**Figure 1-2  
Type II Application Process**



#### **10.1.545 SECOND APPEAL**

A second appeal of an administrative decision can be heard by the City Council, under the following conditions:

- A. Any party with standing may file a second appeal. The City must receive an appeal petition in writing and the required fee within fourteen (14) calendar days of the written notice of the decision. The written petition shall specifically state the issues being appealed and the City Council shall be limited to the consideration of those issues.
- B. Only issues on the record at the Planning Commission hearing submitted in writing or orally can be appealed to the City Council.
- C. Notice of the appeal hearing shall be provided to parties who participated in the first appeal hearing or requested notice.
- D. The City Council hearing shall be limited only to those issues raised in the appeal petition.
- E. The City Council decision on an appeal is the City's final decision.

## **TYPE III PROCESS – QUASI-JUDICIAL LAND USE DECISIONS**

### **10.1.600 DEFINITION**

A land use decision, as defined in ORS 197.015(10), includes final decisions or determinations concerning the adoption, amendment or application of the goals, a comprehensive plan provision, a land use regulation, or a new land use regulation.

In general, land use decisions require the greatest amount of discretion and the evaluation of subjective approval standards. Land use decisions that are site-specific in nature are classified as Type III quasi-judicial decisions and land use decisions that apply to the general population and prescribe policy are classified as Type IV legislative decisions.

### **10.1.605 TYPE III APPLICATIONS AND APPROVAL CRITERIA**

Applications so designated throughout the Development Code are reviewed under the Type III process based on the requirements and criteria for each application set forth in other sections of this Code. Examples of these applications include:

- Quasi-Judicial Zoning Map Amendments with review by Planning Commission and approval by City Council
- New Conditional Use Permit or Major Modification of Use Permit
- Certain types of Design Review
- Variance
- Elevation by Director of a Type II permit
- Preliminary Plan for Planned Development
- Demolition or relocation of Historic Landmark
- Manufactured Dwelling Parks
- Removal of Registered Tree from the Register
- Certain Types of Wireless Communication Facilities

Any application that is not specifically designated in the Code as being under one of the four review processes, and which the Director determines is similar in impact and scope to other Type III applications, shall be processed as a Type III application.

### **10.1.610 NOTICE**

Notice of the public hearing on Type III applications shall be provided in accordance with the provisions of ORS 197.763 and as follows:

- A. Notice shall be published in a newspaper of general circulation at least five (5) days before the hearing.
- B. Notice shall be posted in three (3) conspicuous public places in the City at least twenty (20) days before the hearing.
- C. Notice shall be sent by mail at least twenty (20) days before the hearing to:

1. The applicant or representative;
  2. All property owners of record within three hundred (300) feet of the boundaries of the subject property;
  3. Any recognized interested party;
  4. Any public agency or utility whose property, services or facilities may be affected by the proposed development. The Director shall determine the extent of notice to public agencies or utilities based on cooperative agreements, perceived interest or impact.
- D. The applicant shall also post the subject property with a Notice of Application in conformance with posting requirements set forth by City Council Resolution.

Failure to receive notice shall not invalidate a decision if a good faith attempt was made to notify all persons entitled to notice. A 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.

#### **10.1.615 NOTICE CONTENT**

The public notice shall contain:

- A. The name of the applicant or representative and City case file number;
- B. A description of the subject property to inform the reader of its location;
- C. A concise description of the proposed development action and a listing of review criteria;
- D. A statement that the complete application, standards and other information are available at City Hall for review, and the phone number of a City contact person;
- E. Designation of the Review Body (e.g., Planning Commission, Design Review Commission, Historic Landmarks Board, and Community Forestry Commission) and the time, date and place of the hearing;
- F. A statement that all interested persons may appear and provide testimony and that only those making an appearance of record shall be entitled to appeal; and
- G. A statement that a copy of the staff report will be available for inspection at least seven (7) days prior to the hearing.

#### **10.1.620 DECISION AUTHORITY**

The appropriate commission shall make all Type III decisions.

After review of all evidence submitted into the record the designated review authority may, approve with conditions, or deny all or part of the application.

**10.1.625 ANNOUNCEMENT OF DECISION**

No Type III decision is final for the purposes of appeal until it has been reduced to writing and signed by the designated review authority or its designee. The review body may announce a tentative decision at the close of the public hearing.

**10.1.630 BASIS FOR DECISION**

The approval or denial of any Type III land use application shall be based upon substantial evidence in the record that addresses the pertinent standards and criteria set forth within this Code.

**10.1.635 NOTICE OF DECISION**

Written notice of the decision shall be provided within fourteen (14) days of the decision to the applicant and all parties who submitted comments orally or in writing. The notice of the decision shall clearly set forth deadlines, criteria and fees for filing an appeal, and shall contain all of the information set forth in Section 10.1.535 A. through D.

**10.1.640 APPEALS**

A Type III decision may be appealed only if, within fourteen (14) calendar days after written notice of the decision is provided to the parties:

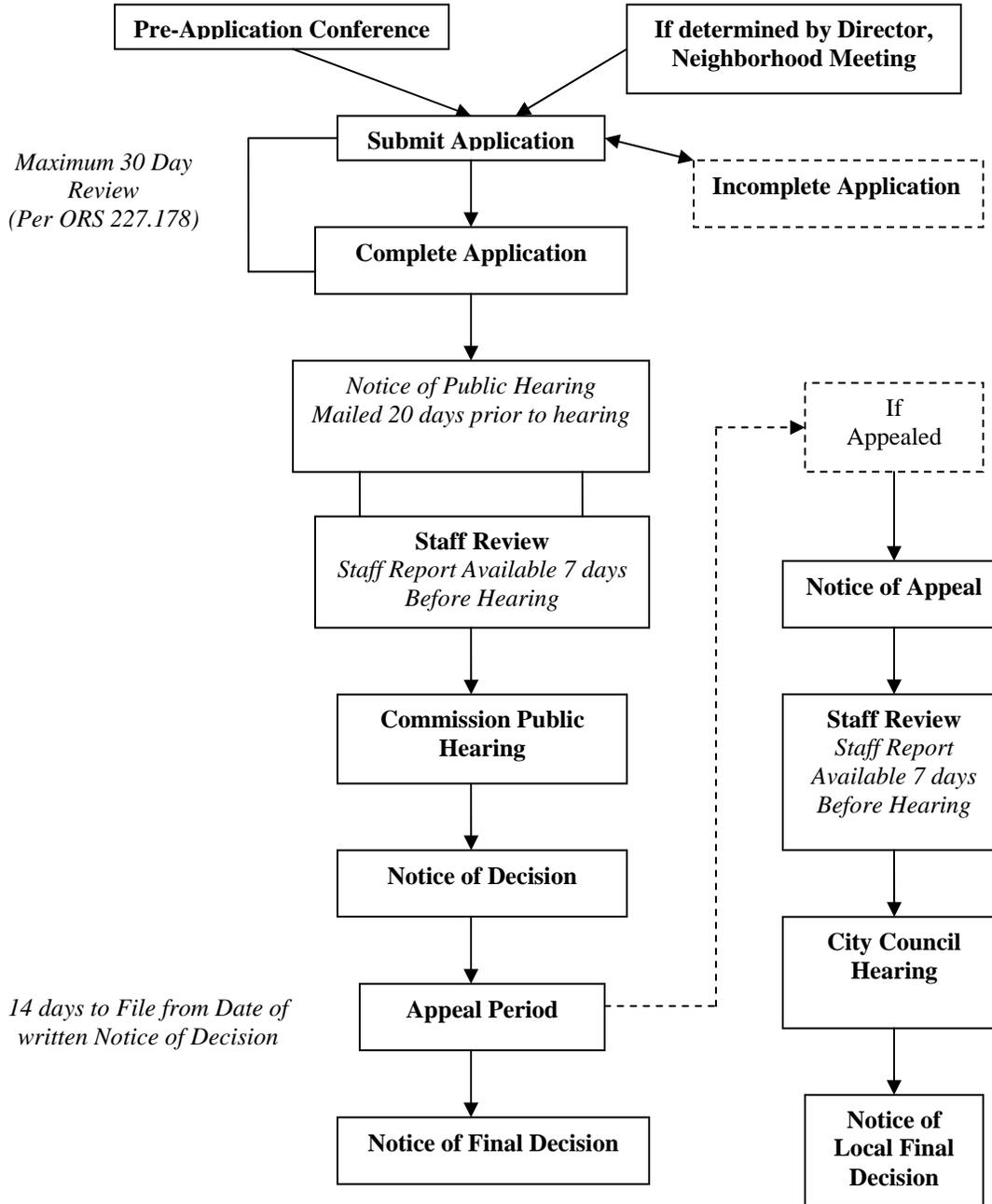
- A. A party files an appeal petition, identifies the specific issues being appealed, and pays the required fee; or
- B. The City Council directs that an appeal be initiated within the fourteen (14) day appeal period.

The City Council shall consider appeals of Type III decision by conducting an appeal hearing on the record. Only issues in the record, whether raised in writing or orally, shall be raised before the City Council and the hearing may be limited only to those issues raised in the appeal petition.

Notice of the appeal hearing shall be provided to all parties who participated in the initial hearing and requested notice.

Written notice of the decision on the appeal shall be provided to all parties to the proceeding within seven (7) days of the Council decision. The decision of the City Council on an appeal is the City's final decision.

**Figure 1-3: Type III Application Process**



## **TYPE IV PROCESS – LEGISLATIVE LAND USE DECISION**

### **10.1.700 DEFINITION**

The Type IV review process generally applies to Legislative decisions, land use decisions that apply to the general population and prescribe policy. Certain quasi-judicial land use applications are also reviewed under the Type IV process. Type IV decisions require the greatest amount of discretion and evaluation of subjective approval criteria and must be heard by the City Council for final action.

### **10.1.705 TYPE IV APPLICATIONS AND APPROVAL CRITERIA**

Applications so designated throughout the Development Code are reviewed under the Type IV process, based on the requirements and criteria set forth for each application in other sections of this Code. Examples of these applications include:

- Legislative Zoning Map Amendment
- Development Code Text Amendment
- Establishment of Historic Landmark Designation
- Removal of Historic Landmark Designation
- Designation of Registered Trees

Any application that is not specifically designated in the Code as being under one of the four review processes, and which the Director determines is similar in impact and scope to other Type IV applications, shall be processed as a Type IV application.

### **10.1.710 NOTICE OF TEXT AMENDMENTS**

Notice of the Planning Commission and City Council hearings on a proposed amendment to the text of the Comprehensive Plan or Development Code shall be provided as follows:

- A. By publication of a notice giving the time, date, place, and purpose of the hearing in a newspaper of general circulation within the City not less than five (5) days prior to the date of the hearing;
- B. By posting a notice in three (3) conspicuous public places in the City not less than twenty (20) days prior to the date of the hearing;
- C. By such other notice as required by statute and as the Planning Commission or City Council may deem desirable.

### **10.1.715 NOTICE OF MAP AMENDMENTS**

Notice of quasi-judicial amendments to the Comprehensive Plan Map or Zoning Map shall be provided in accordance with the notice provisions for Type III decisions. Notice of the Planning Commission and City Council hearings on legislative amendments to the Comprehensive Plan Map or Zoning Map shall be provided as follows:

- A. By publication of a notice giving the time, date, place and nature of the proposed legislative map amendment in a newspaper of general circulation within the City not less than five (5) days prior to the date of the hearing;
- B. By posting notice in three (3) conspicuous public places in the City not less than twenty (20) days prior to the date of the hearing;
- C. By mail to the owners of any property that is included in the proposed amendment not less than twenty (20) days prior to the date of the hearing; and
- D. By such other notice as required by statute and as the Planning Commission or City Council may deem desirable.

### **10.1.720 NOTICE CONTENT**

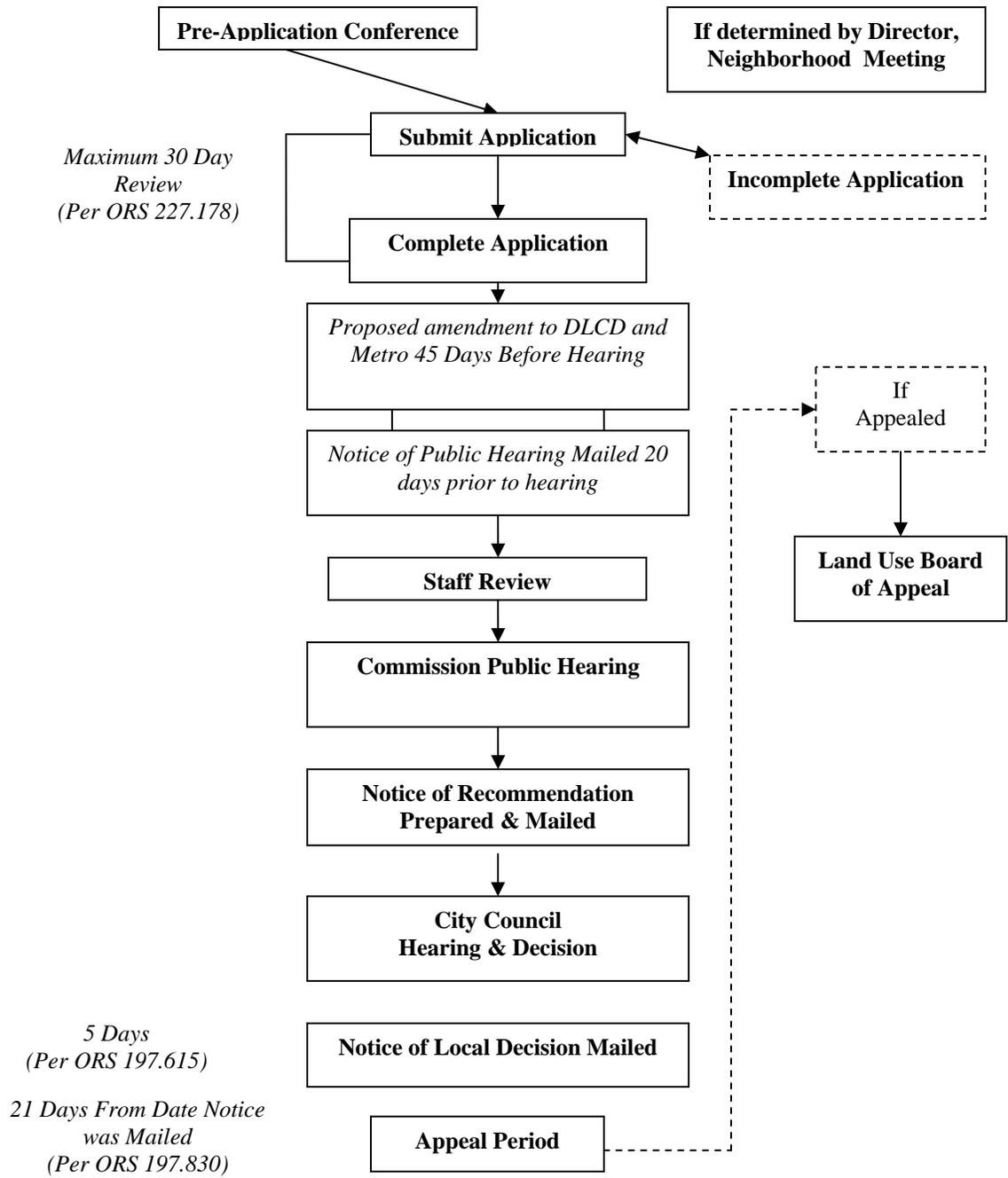
The public notice shall contain:

- A. The City case file number;
- B. A description of the proposed amendment, including the specific text to be changed, or in the case of a map amendment, the specific properties to be rezoned or redesignated;
- C. A listing of review standards;
- D. A statement that the complete application, standards and other such information are available at City Hall for review, and the phone number of a City contact person;
- E. Designation of the Review Authority and the time, date and place of the hearing;
- F. A statement that all interested persons may appear and provide testimony and that only those making an appearance of record shall be entitled to appeal the decision; and
- G. A statement that a copy of the staff report will be available for inspection at least seven (7) days prior to the hearing.

**10.1.725 DECISION AUTHORITY**

The appropriate commission shall conduct an initial public hearing on Type IV applications and shall make a recommendation to the City Council to approve, approve with conditions, or deny the application. The City Council shall conduct a final public hearing and shall adopt a final local decision on Type IV applications.

**Figure 1-4: Type IV Application Process**



**10.1.730 ANNOUNCEMENT OF DECISION**

No decision is final for the purposes of appeal until it has been reduced to writing and signed by the City Council or its designee. The Planning Commission and City Council may announce a tentative recommendation or decision at the close of each public hearing.

**10.1.735 FINDINGS AND CONCLUSIONS**

The decision shall include brief and concise findings of fact and conclusions. The findings 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.

**10.1.740 NOTICE OF DECISION**

Written notice of the decision shall be provided to the applicant and all parties who submitted comments orally or in writing. The notice of the decision shall clearly set forth deadlines, criteria and fees for filing an appeal.

## **ENFORCEMENT**

### **10.1.800 VIOLATION OF CODE PROHIBITED**

No person shall erect, construct, alter, maintain or use any building or structure or shall use, divide or transfer any land in violation of this Code or any amendment thereto.

### **10.1.810 PENALTY**

- A. A violation of this Code shall constitute a Class 1 civil infraction, which shall be processed according to the procedures, established in the Forest Grove Municipal Code.
- B. Each violation of a separate provision of this Code shall constitute a separate infraction, and each day that a violation is committed or permitted to continue shall constitute a separate infraction.
- C. A finding of a violation of this Code shall not relieve the responsible party of the duty to abate the violation. The penalties imposed by this section are in addition to and not in lieu of any remedies available to the City.
- D. If a firm or corporation violates a provision of this Code, the officer or officers, or person or persons responsible for the violation shall be subject to the penalties imposed by this section.

### **10.1.820 COMPLAINTS REGARDING VIOLATIONS**

- A. Whenever a violation of this Code occurs, or is alleged to have occurred, any person may file a signed, written complaint.
- B. Such complaints, stating fully the causes and basis thereof, shall be filed with the Director. The Director shall properly record such complaints, investigate and take action thereon as provided by this Code.

### **10.1.830 INSPECTION AND RIGHT OF ENTRY**

- A. Whenever the Director has reasonable cause to suspect a violation of any provision of this Code exists, or when necessary to investigate an application for or revocation of any approval under any of the procedures described in this Code, the Director may enter on any site or into any structure for the purpose of investigation, provided that no premises shall be entered without first attempting to obtain the consent of the owner or person in control of the premises if other than the owner.
- B. If consent cannot be obtained, the Director shall secure a search warrant from the City's municipal court before further attempts to gain entry, and shall have recourse to every other remedy provided by law to secure entry.

**10.1.840 ABATEMENT OF VIOLATIONS**

Any development or use, which occurs contrary to the provisions of this Code or contrary to any permit or approval issued or granted under this Code, is unlawful, and may be abated by appropriate proceedings.

**10.1.850 STOP-ORDER HEARING**

- A. Whenever any work is being done in violation of the provisions of the Code or a condition or any permit or other approval granted pursuant hereto, the Director may order the work stopped by notice in writing served on persons engaged in doing such work or causing such work to be done. All work under the permit or approval shall cease until it is authorized to continue.
  
- B. The Director shall schedule a hearing if requested on the stop order for the earliest practicable date, but not more than seven (7) days after the effective date of any required notice. At the discretion of the Director, such hearing may be:
  - 1. Part of a hearing on revocation of the underlying permit or approval pursuant to Section 10.1.320; or
  
  - 2. Solely to determine whether a violation has occurred. The Planning Commission or a Hearings Officer shall hold this hearing and shall make written findings as to the violation within seven (7) days. Upon a finding of no violation, the Planning Commission or Hearings Officer shall require the issuance of a resume work order. Upon finding a violation, the stop order shall continue to be effective until the violating party furnishes sufficient proof that the violation has been abated. The Planning Commission or Hearings Officer decision is subject to review by the City Council.