

5.1 - Development Review and Procedures

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5.1.100 Purpose and Applicability

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5.1.105 Purpose

- (A) This section of the Springfield Development Code (SDC) provides uniform procedures for the granting or denial of applications and determinations by the City of Springfield under the applicable State of Oregon statutes and rules, Springfield Comprehensive Plan, Springfield Development Code, and other ordinances which by their terms incorporate by reference the procedures in this section.
- (B) All applications required by this Code are reviewed using Type 1, 2, 3, and 4 procedures. The procedure "type" assigned to each application governs the decision-making process for that application. SDC 5.1.300, 5.1.400 and 5.1.600 describe the four review procedure types. SDC 5.1.1200 lists the applications' procedure types.

5.1.110 Applicability

- (A) The provisions of this section do not apply to the issuance, suspension, or revocation of any on-site sewage disposal, sign, building, electrical or plumbing permits, except as they relate to consideration of permitted uses.
- (B) For lands located inside the Springfield Urban Growth Boundary, but outside the City limits, the applicability of this Code is set forth through intergovernmental agreements.
- (C) The following developments and activities do not require Type 1, 2, 3, or 4 review procedures, but must conform to all other applicable provisions of this Code or any other applicable Code as determined by the Director.

- (1) Normal maintenance, replacement, or enhancement of existing landscaping, or normal maintenance or minor repair of parking surfaces, consistent with approved plans.

Development approval may be required for replacement or enhancement of landscaping as specified in SDC 3.3.300, 3.3.500, 5.17.100, 4.1.100, 5.12.100 and 5.19.100.

- (2) An emergency measure necessary for the safety or protection of life or property when authorized by the Director. An emergency measure may be conditioned by the requirement to obtain Development Approval at a later date.
- (3) Special Events sponsored by non-profit organizations and public agencies that conform to all applicable statutes, ordinances, or regulations necessary to protect the public health and safety. A Special Event is an activity sponsored by a non-profit organization or public agency that is 14 calendar days or less in duration and includes, but is not limited to school carnivals, benefit dinners, concerts, bazaars, festivals, neighborhood fairs, and revival meetings.
- (4) Agricultural uses and structures on any lot or parcel two acres or larger where the underlying land use district allows this use and on any size lot or parcel with a valid farm deferral tax classification from the Oregon State Department of Revenue.
- (5) The establishment, construction, or termination of certain public facilities authorized by the City Engineer including streets, driveways, drainage ways, sewers, pump stations, and traffic control devices, but not including substations, treatment facilities, storage tanks, reservoirs, electrical transmission structures, and communications towers, unless specified elsewhere in this Code. Underground public or private facilities, including but not limited to, water lines, electrical power distribution lines, gas distribution lines, telecommunications lines and cable system lines are also exempt. See SDC 4.3.145 for additional information concerning siting standards and the review process for certain wireless telecommunications systems facilities.
- (6) Excavation or filling of land as specified in Springfield Municipal Code except for any excavation or filling of land within the Flood Plain Overlay District within the Willamette Greenway Overlay District, or where an inventoried and locally-significant Goal 5 resource is present, that is subject to the standards of this Code.
- (7) A change of use that does not increase demand on public facilities, change property access or circulation, or require additional parking spaces, provided that, prior to granting building occupancy, the property complies with applicable requirements related to landscaping in [code citation], parking lot striping in [code], on-site lighting in [code section], and bicycle parking in [code citation]. This exemption does not apply when the change of use includes development that otherwise requires Development Approval under this code, such as additions or expansions of buildings or impervious surfaces for which site plan review or minimum development standards review is required.

- (D) The Building Official will not issue a Building Permit for which Development Approval is required and has not been obtained.

5.1.200 General Provisions

Subsections:

- 5.1.205 Effect of Determinations Made Outside of Established Processes
- 5.1.210 Pre-Development Meetings
- 5.1.215 Submission of Materials
- 5.1.220 Application Submittal Standards
- 5.1.225 Acceptance of Application
- 5.1.230 Withdrawal of Application
- 5.1.235 Applicable Standards
- 5.1.240 Development Review Committee
- 5.1.245 Notice to Public Agencies
- 5.1.250 Conflicting Procedures
- 5.1.255 Time Computation

5.1.205 Effect of Determinations Made Outside of Established Processes

- (A) Any informal interpretation or determination, or any statement made outside the declaratory ruling process according to SDC 5.1.1100 or outside the process for approval or denial of a Type 2 or 3 application in conformance with SDC 5.1.400 is considered to be only a statement of opinion and not a final action. Such informal interpretations, determinations, or statements are not deemed to constitute final City action affecting a change in the status of a person's property or conferring any rights, including any reliance rights, on any person.

5.1.210 Pre-Development Meetings

- (A) The City has established three pre-development meeting processes to assist prospective applicants through the application review process.
- (1) **Development Initiation Meeting (DIM).** The purpose of a Development Initiation Meeting is to give a prospective applicant the opportunity to discuss a limited number of development topics with City staff. The discussions can be general or specific depending on the questions submitted with the application. The Development Initiation Meeting is voluntary, unless specifically required elsewhere in this Code.
 - (2) **Pre-Application Meeting.** A pre-application meeting is highly recommended for complex applications or for applicants who are unfamiliar with the land use process. The purpose of the meeting is to acquaint the applicant with the substantive and procedural standards of the Development Code and to identify issues likely to arise in processing an application.

The Pre-Application Meeting is required for a Master Plan application as specified in SDC 5.13.115.

- (3) **Application Completeness Check Meeting.** The purpose of the Completeness Check Meeting is to determine whether the proposed development application is complete prior to acceptance of the application for processing by the City. A complete application is required for the review process. The Completeness Check

Meeting will examine if the submittal standards of SDC 5.1.220 are met. A Completeness Check Meeting is required for all Type 2, 3 and 4 land use applications. The Pre-Submittal Meeting is required even if the meeting specified in Subsection (1)) have been utilized. An application will be reviewed for completeness according to SDC 5.1.405.

5.1.215 Submission of Materials

(A) General. The submission of any materials by any party including application materials, supplemental information, written comments, testimony, evidence, exhibits, or other documents that are entered into the record of any land use application must be submitted either at the offices of the Director or at a public hearing, unless specified otherwise by the hearing notice or Hearings Authority prior to the close of the record. Materials are considered submitted when received in compliance with the requirements of this section SDC 5.1.215, or in the case of materials submitted at a public hearing, placed before the Hearings Authority.

(B) Electronic Materials

- (1)** When application or appeal materials are over 20 pages in length, an applicant or appellant must provide an identical electronic version and hard copy of the submitted materials. Any other party submitting materials into the record that are over 20 pages is also encouraged to submit identical electronic and hard copies. Any electronic materials must be in a portable document format (PDF). This provision should not be interpreted to prohibit electronic submittals of materials less than 20 pages in length. The Director will scan submitted materials upon request for a fee set by Resolution of the Council.
- (2)** When electronic materials over 20 pages in length are submitted by any party for inclusion in an application record, an identical hard copy of the materials must also be submitted unless this requirement is waived by the Director.

(C) Deadline. Where any materials, including both hard and electronic copies, are required to be submitted to the offices of the Director subject to a date-certain deadline, the materials must be received by the Director by 5:00 PM on that date.

5.1.220 Application Submittal Standards

(A) Property Owner. For the purposes of this section, the term 'property owner' means the owner of record and does not include a person or organization that holds a security interest.

(B) Applications must:

- (1)** Be submitted by the property owner or a person who has written authorization from the property owner as defined herein to make the application;
- (2)** Be submitted to the Director;
- (3)** Be completed on an application form prescribed by the Director;

- (4) Contain all applicable information requested on the application form;
 - (5) Include supporting information required by this code ;
 - (6) Be accompanied by the appropriate filing fee or documentation of an approved fee waiver as provided in this Code;
 - (7) Provide proof of ownership in the form of a deed, or other recorded document; and
 - (8) Include concurrent applications where a proposal involves more than one application for the same property.
- (C) The following applications are not subject to the ownership requirement set forth in subsection (B)(1) of this section:
- (1) Applications submitted by or on behalf of a public entity or public utility having the power of eminent domain with respect to the property subject to the application;
 - (2) Applications for development proposals sited on lands owned by the State or the Federal government; or
 - (3) Applications for Development Initiation Meetings.

5.1.225 Acceptance of Application

- (A) An application submitted to the Director will not be considered accepted for processing solely because of having been received. Upon receipt of an application, the Director will date stamp the application and verify that the appropriate application fee and materials have been submitted before accepting the application for processing.
- (B) Acceptance of an application for processing will not preclude a later determination that the application is incomplete.
- (C) An application will be reviewed for completeness according to SDC 5.1.405.

5.1.230 Withdrawal of Application

- (A) An applicant may withdraw an application in writing at any time prior to the time a decision becomes final. If the property owner is not the applicant, no consent to withdraw the application is needed from the property owner.

5.1.235 Applicable Standards

- (A) If an application was complete when first submitted, or the applicant submits additional information according to SDC 5.1.410 within 180 days of the date the application was first submitted, review of the application will be based upon the standards that were applicable at the time the application was first submitted.

5.1.240 Development Review Committee

- (A) The Development Review Committee (DRC) is chaired by the Director and composed of representatives from City Departments and Divisions. When applicable, agencies including, but not limited to, Springfield Utility Board, utilities, the Lane Transit District, Lane Regional Air Pollution Authority, and the Oregon Department of Transportation may also participate. The DRC reviews development applications and provides technical assistance and input to the Approval Authority regarding the standards and criteria of this Code.

5.1.245 Notice to Public Agencies

- (A) In addition to any notice required by this Code, written notice must be provided to public agencies as prescribed below.
- (1) **Department of Land Conservation and Development.** The City must notify the Department of Land Conservation and Development (DLCD) according to ORS 197.610 when any application proposes a change to an acknowledged comprehensive plan or land use regulation. The City must provide this notice within the time period designated by DLCD rule.
 - (2) **Oregon Department of State Lands.** The City must notify the Oregon Department of State Lands (DSL) in writing of any development application that involves lands that are wholly or partially within areas that are identified on the Statewide Wetlands Inventory. Notice will be in writing using the DSL Wetland Land Use Notification Form, and must be sent within five working days of acceptance of a complete application. (See ORS 227.350)
 - (3) **Department of Fish and Wildlife.** The City will notify the Oregon Department of Fish and Wildlife (ODFW) in writing of any development application that involves lands that are wholly or partially within the riparian corridor. ODFW may make recommendations to the Approval Authority on strategies to avoid or replace habitat that is damaged by the proposed development, consistent with the standards and criteria of approval of this Code. (See OAR chapter 635, division 415)
 - (4) **Parks and Recreation Department.** The City will notify the Oregon Parks and Recreation Department (OPRD) in writing of any development application that involves lands that are wholly or partially within the Willamette River Greenway.
 - (5) **Lane County.** The City must notify Lane County in writing of any development application or any appeal outside City limits but within the Springfield Urban Growth Boundary, except for applications for annexation to the City. Lane County will automatically be considered a party to such applications.
 - (6) **Other Agencies.** The City will notify other public agencies, as appropriate, that have statutory or administrative rule authority to review or issue State permits associated with local development applications.

5.1.250 Conflicting Procedures

- (A) Notwithstanding the provisions of this section, where other provisions of the Springfield Development Code, Springfield Municipal Code, or other City of Springfield ordinances specify procedures that provide greater public notice and comment opportunities, the procedures that provide the most public notice and/or comment opportunity will apply.

5.1.255 Time Computation

- (A) Except when otherwise provided, the time within which an act is required to be done is computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, legal holiday, or any day on which the City is not open for business pursuant to a City ordinance, in which case it will also be excluded.
- (B) For the purposes of determining whether a person has complied with a time limitation in this Code for filing any document with the Director, the time prescribed by this Code does not include the day on which the specific period begins to run. The designated period also does include the last day unless the last day is:
 - (1) A legal holiday or Saturday;
 - (2) A day in which the offices of the Director are closed for the purpose of filing development applications and other documents;
 - (3) A day on which the offices of the Director are closed by order of the City Manager, to the extent provided by the order; or
 - (4) A day on which the offices of the Director are closed before the end of the normal hours during which development applications and other documents may be filed.
- (C) If the last day of a designated period is excluded under the subsection (B) of this section, the act must be performed on the next day that the offices of the Director are open for the purpose of filing pleadings and other documents.

5.1.300 Type 1 Procedures

Subsections:

- 5.1.305 Type 1 Application**
- 5.1.310 Completeness Check**
- 5.1.315 Decision**
- 5.1.320 Appeal**

5.1.305 Type 1 Application

- (A) The Type 1 application involves the ministerial review of an application based on clear and objective standards. In general, potential impacts of development allowed through a Type 1 application have been recognized through the adoption of standards. The Type 1 procedure does not require interpretation or exercise of policy or legal judgement when

evaluating development standards. A Type 1 determination is made by the Director without public notice or a hearing.

- (B) The Director may elevate a Type 1 application to a Type 2 application when there is a need to interpret or exercise policy or legal judgment, or to apply discretionary land use standards. The Director's decision to elevate a Type 1 application to a Type 2 application is not an appealable decision.
- (C) The applicant may elevate a Type 1 application to a Type 2 application by submitting a Type 2 application and paying the applicable fee associated with the Type 2 process.
- (D) A Type 1 application is reviewed according to the following procedures.

5.1.310 Completeness Check

- A. The Director must determine application completeness according to SDC 5.1.405.

5.1.315 Decision

- (A) The Director's decision must address all the applicable approval criteria and/or development standards. The Director may approve, approve with conditions, or deny the application.
- (B) The Director's decision for a Type 1 application is the final decision of the City. The Director's decision is effective on the day it is mailed or otherwise provided to the applicant.

5.1.320 Appeal

- (A) A Type 1 determination is not appealed at the City level except as otherwise provided in the Springfield Development Code or if found to constitute a permit and authorized by the Director.

5.1.400 Type 2 and Type 3 Procedures

Subsections:

- 5.1.405 Completeness Check**
 - 5.1.410 Timelines**
 - 5.1.415 Type 2 Application**
 - 5.1.420 Type 3 Application**
 - 5.1.425 Mailed Notice of Application**
 - 5.1.430 Contents of Mailed Notice**
 - 5.1.435 Posted Notice of Application**
 - 5.1.440 Published Notice of Application**
 - 5.1.445 Type 2 and 3 Review and Decision**
 - 5.1.450 Modification of Application**
 - 5.1.455 Site Specific Plan Amendment and Zone Change**
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- 5.1.405 Completeness Check**

- (A) Within 30 days of an application being received, the Director will evaluate the application for completeness according to subsections (1) through (5) below.
- (1) An application must be submitted to the Director as provided in SDC 5.1.215, 5.1.220, and 5.1.225.
 - (2) An application will be evaluated for completeness with applicable application submittal standards of SDC 5.1.220.
 - (3) **Supplementation of Application within First 30 days of Submittal.** An applicant may not submit any supplemental information for an application within the first 30 days following acceptance of the application or until the application has been deemed complete, whichever is first, except when requested according to (5) below, or otherwise authorized by the Director. Any supplemental information submitted by an applicant in violation of this section will not be considered in determining whether the application is complete and will be returned to the applicant.
 - (4) **Complete Application.** An application will be deemed complete if the application submittal standards have been fully satisfied upon initial filing or through the procedures set forth in subsection (5)(a)-(c) below. When the Director deems the application complete, the Director will notify the applicant in writing. If the Director has not issued in writing a completeness determination within 30 days from the date the application is received by the Director, the application is automatically deemed complete on the 31st day after it was received.
 - (5) **Incomplete Application.** Except as otherwise provided for through a Completeness Check Meeting, if a Type 2 or Type 3 application is incomplete, the City must notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application will be deemed complete for the purpose of SDC 5.1.410(1) upon receipt by the Director of:
 - (a) All of the missing information;
 - (b) Some of the missing information and written notice from the applicant that no other information will be provided; or
 - (c) Written notice from the applicant that none of the missing information will be provided.

5.1.410 Timelines

(A) 120-day Time Limit

- (1) Except as provided in subsections (B) through (D) of this section, the City must take final action on a Type 2 or Type 3 application, including resolution of all local appeals, within 120 days after the application is deemed complete according to SDC 5.1.405.
- (2) Applications for the following determinations or approvals are exempt from the 120-day time limit established by this section:

- (a) A Type 2 or Type 3 application submitted concurrently with a comprehensive plan amendment;
- (b) Revocation proceedings;
- (c) Declaratory rulings;
- (d) Consideration of remanded applications; and
- (e) Adoption and modification of Master plans.

(B) 100-day Time Limit

- (1) Except as provided in subsection (C) and (D) of this section, the City must take final action on a qualifying application, including resolution of all local appeals, within 100 days after the application is deemed complete according to SDC 5.1.405.
- (2) Definitions. For the purposes of this section only, the following definitions apply:
 - (a) “Affordable housing” means housing that is affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the development is built or for the state, whichever is greater.
 - (b) “Multifamily residential building” means a building in which three or more residential units each have space for eating, living and sleeping and permanent provisions for cooking and sanitation.
- (3) An application qualifies for a final action within 100 days under this subsection if:
 - (a) The application is for development of a multifamily residential building containing five or more residential units within the urban growth boundary;
 - (b) At least 50 percent of the residential units included in the development will be sold or rented as affordable housing; and
 - (c) The development is subject to a covenant appurtenant that restricts the owner and each successive owner of the development or a residential unit within the development from selling or renting any residential unit described in paragraph (c) of this subsection as housing that is not affordable housing for a period of 60 years from the date of the certificate of occupancy.

(C) Void Application. On the 181st day after first being submitted, an incomplete application is void if the applicant has been notified of missing information and the application has not been deemed complete according to SDC 5.1.405(5)(a)-(c).

(D) Extension. The 120-day time limit in subsection (A) or the 100-day time limit in subsection (B) may be extended for a specified period of time at the written request of the applicant. The total of all extensions cannot exceed 245 days.

5.1.415 Type 2 Application

(A) A Type 2 application involves the Director’s interpretation and exercise of discretion when evaluating approval standards. Uses or development evaluated through this process are

uses that are conditionally permitted or allowed after Director review that may require the imposition of conditions of approval to ensure compliance with development and approval standards.

- (B) A Type 2 decision is made by the Director after public notice, but without a public hearing, unless appealed. A Type 2 application is reviewed according to the procedures below, unless the Director determines that the application should be reviewed as a Type 3 decision. A Type 2 decision may be appealed according to SDC 5.1.800.

5.1.420 Type 3 Application

- (A) A Type 3 quasi-judicial application involves discretion but implement established policy. A request will generally be considered a quasi-judicial decision if it involves the following factors:

- (1) The process is bound to result in a decision;
- (2) The decision is bound to apply preexisting criteria to concrete facts; and
- (3) The action is customarily directed at a closely circumscribed factual situation or small number of persons.

Although no factor is considered determinative and each must be weighed, the more definitively these factors are answered affirmatively, the more it will be considered a quasi-judicial decision.

- (B) A Type 3 decision is made by the following Hearings Authority after a public hearing following the quasi-judicial hearings procedures of SDC 5.1.500:

- (1) A Type 3 application that does not require adoption of an ordinance and that involve property entirely within City limits are made by the Planning Commission.
- (2) A Type 3 application that involves property entirely or partially outside of City limits and entirely within the Springfield Urban Growth Boundary are made by the Hearings Officer.
- (3) The City Council is the sole approval authority for vacations and annexations.
- (4) The City Council is the final decision maker in a Type 3 development application that require the adoption of an ordinance and are within City limits, including but not limited to site-specific comprehensive plan or refinement plan amendments. Except for vacations and annexations, the Planning Commission will conduct a quasi-judicial public hearing and make a recommendation to the City Council to approve, approve with conditions, or deny the application.
- (5) The City Council and Lane County Board of Commissioners are the final decision-makers for a Type 3 development application that requires adoption of an ordinance and are entirely or partially outside City limits but within the Springfield Urban Growth Boundary, including but not limited to site-specific comprehensive plan or refinement plan amendments, according to the procedures in SDC 5.14.130.

5.1.425 Mailed Notice of Application

(A) Notice of a Type 2 application must be mailed at least 14 days prior to the issuance of a decision to persons listed below. Notice of a Type 3 application must be mailed at least 20 days before the hearing, or, if more than one hearing is provided, at least 10 days before the first hearing. The applicant is responsible for the cost (i.e., mailing, etc.) of any notice. The notice must include all the applicable information specified under SDC 5.1.430. Written notice must be sent by mail to the following persons:

- (1)** The Applicant.
- (2)** Owners of record of property, as shown on the most recent property tax assessment roll, located within 300 feet of the property that is the subject of the notice.
- (3)** The designated land use chair(s) of a neighborhood association recognized by the City of Springfield, where any property within the notice area specified in subsection (A)(2) of this section is within the boundaries of a recognized neighborhood association.

(B) The notice requirements of this section will be deemed met when the Director can provide an affidavit or other certification that such notice was given.

(C) The Director may increase the minimum notice area up to 400 feet beyond what is otherwise required under subsection (A)(2) of this section, at their sole discretion.

5.1.430 Contents of Mailed Notice

(A) All required mailed notices must contain the following:

- (1)** A map locating the subject property;
- (2)** Identification of the application by City case number;
- (3)** Identification of the subject property by reference to the Lane County assessment map and tax lot number, and the property address/location;
- (4)** Identification of the property owner and applicant;
- (5)** An explanation of the nature of the application and the proposed use or uses that could be authorized by the decision;
- (6)** The applicable approval criteria from this Code or from an applicable comprehensive plan, functional plan, or refinement plan that applies to the decision;
- (7)** The name and phone number of the assigned planner;
- (8)** If the application proposes a change to a zoning map, refinement plan map, or comprehensive plan map, a copy of the map that is to be altered;

- (9) A statement that the application, all documents and evidence relied upon by the applicant, and the applicable standards are available for inspection at no cost and that copies will be provided at reasonable cost;
- (10) The date, time, and location of any hearing or date by which written comments must be received.
- (11) A statement that any person may comment in writing and include a general explanation of the requirements for submission of testimony and the procedures for conduct of testimony including, but not limited to, a party's right to request a continuance or to have the record held open;
- (12) A statement briefly summarizing the local decision-making process for the particular application;
- (13) For Type 2 applications, a statement that issues which may provide the basis for an appeal must be raised in writing prior to the expiration of the comment period, and that issues must be raised with sufficient information to enable the Approval Authority to respond to the issue; and
- (14) For Type 3 applications, a statement that failure to raise an issue in a hearing, in person or in writing, or failure to provide statements or evidence sufficient to afford the Approval Authority an opportunity to respond to the issue preclude appeal to the Oregon Land Use Board of Appeals based on that issue.

5.1.435 Posted Notice of Application

Notice of a Type 2 or Type 3 application must be posted on the subject property by the applicant/property owner throughout the duration of the required public comment period. The applicant must post one sign, approved by the Director, on the subject property that is located within ten feet of any abutting public way. Failure of applicant/property owner to maintain posting of the sign throughout the duration of the required public comment period does not invalidate a land use approval.

5.1.440 Published Notice of Application

- (A) Notice of a Type 3 application must be published in a newspaper of general circulation in the city of Springfield at least 20 days before the hearing, or, if more than one hearing is provided, at least 10 days before the first hearing.
- (B) The published notice must include the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.

5.1.445 Type 2 and 3 Review and Decision

- (A) **Review and Decision.** Upon determination of completeness required by SDC 5.1.405, a Type 2 or 3 application will be reviewed according to the following procedures:
 - (1) Notice of application will be made if required or elected by the Director or applicant, as provided in SDC 5.1.425, 5.1.435, and 5.1.440.

- (2) Any person may comment in writing on an application within 14 days from the date notice was mailed or a longer period as specified in the notice for a Type 2 application, or until the close of the public record for a Type 3 application.
 - (3) The Director must distribute the application to the Development Review Committee and the Historic Commission for comments as applicable.
 - (4) At the conclusion of the comment period specified by the notice of application, or upon determination of application completeness if notice of application is not required or elected by the Director or applicant, the application and written comments will be reviewed and a written decision prepared.
 - (5) Each decision must include a finding as to when the proposed Type 2 or 3 application was deemed complete and formally accepted as such by the Director.
 - (6) Each decision must include a finding that the property subject to the proposed land use action is a lot of record as that term is defined in this Code.
 - (7) Approval or denial of a Type 2 or 3 application must be based upon and accompanied by a written statement that explains the standards considered relevant to the decision, states the facts relied upon in rendering the decision, and explains the justification for the decision based upon the standards and facts set forth.
 - (8) Any portion of an application not addressed in a Approval Authority's decision is deemed to have been denied.
 - (9) Notice of the Hearings Authority's decision must be in writing and mailed to all parties within two days of the date of the written decision. However, one person may be designated by the Approval Authority to be the recipient of the decision for a group, organization, group of petitioners or similar collection of individual participants.
 - (10) If the decision changes an acknowledged comprehensive plan or land use regulation, notice must be provided to the Department of Land Conservation & Development according to ORS 197.615.
 - (11) A Type 2 or 3 decision may be appealed according to the procedures in SDC 5.1.800.
- (B) **Final Decision.** A decision on a Type 2 or 3 application is not final until the Approval Authority issues a written decision, the decision or notice of the decision has been mailed, and the appeal period to the next higher Approval Authority within the City has expired.
- (C) **Appeal to the Oregon Land Use Board of Appeals (LUBA).** Appeals of the final City decision by the Hearings Officer or City Council may be appealed to the Land Use Board of Appeals according to ORS 197.830, as further described at SDC 5.1.800.
- (D) Unless a temporary use permit has been issued, no building permit will be issued until a decision is final. Appeal of a final decision to LUBA does not affect the finality of a decision for purposes of issuing building permits, unless stayed by LUBA or by court order. If an

applicant elects at their own discretion to proceed under a land use action with a pending LUBA appeal, they must proceed only if:

- (1) The applicant accepts each and every risk of loss and damage that may result if the application is reversed or modified or denied upon remand, and further agrees in writing to hold the City, its officers, agents, and employees harmless from such loss and damage.
- (2) The applicant agrees in writing to restore the site to its original condition if the application for the land use approval is reversed or denied upon remand, or to modify or restore any portions of the site as required by a decision that is modified upon remand.
- (3) The applicant posts a bond or other form of security acceptable to the Approval Authority in an amount sufficient to cover the costs of restoration of the site to its pre-approval condition.

5.1.450 Modification of Application

- (A) An applicant may modify an application at any time during the approval process up until the issuance of a Type 2 decision, or the close of the record for a Type 3 decision, subject to the provisions of SDC 5.1.405 and this section.
- (B) The Approval Authority must not consider any evidence submitted by or on behalf of an applicant that would constitute modification of an application (as that term is defined in SDC 6.1.100, Definitions), unless the applicant submits an application for a modification, pays all required modification fees and agrees in writing to restart the 120-day time limit as of the date the modification is submitted. The 120-day time limit for an application, as modified, may be restarted as many times as there are modifications up to a total of 365 days from the day the application was accepted as complete.
- (C) The Approval Authority may require that the application be re-noticed and additional hearings be held.
- (D) Up until the issue of a Type 2 decision or the day a hearing is opened for receipt of oral testimony for a Type 3 decision, the Director has the sole authority to determine whether an applicant's submittal constitutes a modification. After such time, the Hearings Authority makes any modification determination. For both Type 2 and Type 3 decisions, the Approval Authority's determination on whether a submittal constitutes a modification is appealable only to LUBA and is appealable only after a final decision is entered by the City on an application.

5.1.455 Site-Specific Plan Amendments and Zone Changes

- (A) Any change initiated by an individual that includes a plan amendment and zone change for specific real property may be accompanied by the appropriate applications for a specific development proposal. Approval of such a plan amendment and zone change accompanied by a specific development proposal may be conditioned upon initiation of the development proposal within a specified time period, at the discretion of the Hearings Authority, to ensure no greater intensity of use than that contemplated in the proceeding. Approvals of site-specific plan amendments and zone changes that are not accompanied

by applications for a specific development proposal must be based on evaluation of the highest impact uses authorized in the proposed zone.

5.1.500 Quasi-Judicial Hearings

Subsections:

- 5.1.505 Filing of Staff Report for Hearing**
- 5.1.510 Burden of Proof**
- 5.1.515 Nature of Evidence**
- 5.1.520 Limitation on Oral Presentations**
- 5.1.525 Standing**
- 5.1.530 Record**
- 5.1.535 Disclosure of Ex Parte Contacts**
- 5.1.540 Disclosure of Personal Knowledge**
- 5.1.545 Challenge for Bias, Prejudgment or Personal Interest**
- 5.1.550 Hearings Procedure**
- 5.1.555 Setting the Hearing**
- 5.1.560 Close of the Record**
- 5.1.565 Continuances or Record Extensions**
- 5.1.570 Reopening the Record**

5.1.505 Filing of Staff Report for Hearing

- (A)** The Director will set a hearing date at the time an application is deemed complete as provided in SDC 5.1.560, if the application requires a hearing in the judgment of the Director.
- (B)** A staff report must be completed seven days prior to the first hearing. If the report is not completed by such time, the hearing must be held as scheduled, but at the hearing or in writing prior to the hearing, any party may request a continuance of the hearing to a date that is at least seven days after the date the initial staff report is complete. The Hearings Authority has discretion whether to grant a continuance under these circumstances .
- (C)** A copy of the staff report must be mailed to the applicant, made available at a reasonable cost to such other persons who request a copy, and filed with the Hearings Authority.
- (D)** Notwithstanding subsection (B) of this section, oral or written modifications and additions to the staff report must be allowed prior to or at the hearing.

5.1.510 Burden of Proof

- (A)** Throughout all local land use proceedings the burden of proof rests on the applicant.

5.1.515 Nature of Evidence

- (A)** All relevant evidence must be received according to SDC 5.1.215.

5.1.520 Limitation on Oral Presentations

- (A)** The Hearings Authority may set reasonable time limits on oral testimony.

5.1.525 Standing.

- (A) Any interested person may appear and be heard in a Type 3 hearing, except that in appeals heard on the record, a person must have participated in a previous proceeding on the subject application.
- (B) Any person appearing on the record at a hearing (including appeals) or presenting written evidence in conjunction with an administrative action or hearing has standing and is a party. A person whose participation consists only of signing a petition will not be considered a party.

5.1.530 Record

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

5.1.535 Disclosure of Ex Parte Contacts

- (A) Prior to making a decision, the Hearings Authority or any member thereof must not communicate directly or indirectly with any party or their representative in connection with any issue involved in a pending hearing except upon notice and opportunity for all parties to participate. Should such communication – whether written or oral – occur, the Hearings Authority member must:
 - (1) Publicly announce for the record the substance of such communication; and
 - (2) Announce the parties' right to rebut the substance of the ex parte communication during the hearing.
 - (3) Communication between City staff and members of the Planning Commission or City Council is not considered to be an ex parte contact.

5.1.540 Disclosure of Personal Knowledge

- (A) If the Hearings Authority or any member thereof uses personal knowledge acquired outside of the hearing process in rendering a decision, the Hearings Authority or member thereof must state the substance of that knowledge on the record and allow all parties the opportunity to rebut such statement on the record.
- (B) For the purposes of this section, a site visit by the Hearings Authority or member thereof is deemed to fall within this rule. After the site visit has concluded, the Hearing Authority or

member thereof must disclose its observations and conclusions gained from the site visit on the record and allow all parties the opportunity to rebut such observations or conclusions.

5.1.545 Challenge for Bias, Prejudgment or Personal Interest

Prior to or at the commencement of a hearing, any party may challenge the qualification of the Hearings Authority, or a member thereof, for bias or conflict of interest. The challenge must be made on the record and be documented with specific reasons supported by facts. Should qualifications be challenged, the Hearings Authority or the member must disqualify themselves, withdraw, or make a statement on the record of their capacity to hear the matter.

5.1.550 Hearings Procedure

(A) A hearing must be conducted as follows:

- (1)** The Hearings Authority must explain the purpose of the hearing and announce the order of proceedings, including reasonable time limits on presentations by parties.
- (2)** A statement by the Hearings Authority must declare any ex parte contacts, bias, or conflicts of interest.
- (3)** Any facts received, noticed, or recognized outside of the hearing must be stated for the record.
- (4)** Challenges to the Hearing Authority's or its member's qualifications to hear the matter must be stated and challenges entertained.
- (5)** At the commencement of a hearing in a quasi-judicial Type 3 decision, the Hearings Authority or their designee must make a statement to those in attendance that:
 - (a)** Lists the applicable substantive criteria;
 - (b)** States that testimony, arguments, and evidence must be directed toward that criteria or other criteria in the Comprehensive Plan or land use regulations which the person believes to apply to the decision;
 - (c)** States that failure to raise an issue accompanied by statements or evidence sufficient to afford the Hearings Authority and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.
- (6)** At the commencement of the initial public hearing, the Hearings Authority or its designee must make a statement to the applicant that the applicant's failure to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the Hearings Authority to respond to the issue precludes an action for damages in circuit court. An applicant is not required to raise constitutional or other issues relating to proposed conditions of approval unless the conditions of approval are stated with sufficient specificity to enable the applicant to respond to the conditions prior to the close of the final local hearing.

- (7) An issue which may be the basis for an appeal to the Oregon Land Use Board of Appeals must be raised not later than the close of the record at or following the final hearing on the proposal before the local government. Such issues must be raised and accompanied by statements or evidence sufficient to afford the Hearings Authority and the parties an adequate opportunity to respond to each issue.
- (8) Order of Presentation.
 - (a) Explanation of procedural requirements.
 - (b) Open the hearing.
 - (c) Statement of ex parte contacts, bias, or conflicts of interest.
 - (d) Challenge for bias or conflicts of interest.
 - (e) Staff report.
 - (f) Applicant testimony.
 - (g) Testimony by those in favor of the application.
 - (h) Testimony by those neutral.
 - (i) Testimony by those opposed to the application.
 - (j) Applicant rebuttal.
 - (k) Staff comment.
 - (l) Questions from or to the chair may be entertained at any time at the Hearings Authority's discretion prior to close of hearing.
 - (m) Close the hearing.
 - (n) Close of the record.
 - (o) Deliberation.
 - (p) Decision.
- (9) In appeal proceedings, the applicant is the party who initiated the application which is under appeal. Those person(s) opposed to the application must testify under the "Testimony by those opposed to the application" portion of the appeal proceeding. Those persons in favor of the application must testify under the "Testimony by those in favor of the application" portion of the appeal proceeding.
- (10) The record must be available for public review at the hearing.

5.1.555 Setting the Hearing

- (A) After an application is deemed accepted a hearing date must be set. A hearing date may be changed by the City staff, or the Hearings Authority up until the time notice of the hearing is mailed. After the notice of hearing is mailed, changes in the hearing date must be processed as a continuance in accordance with SDC 5.1.570, unless a new notice of hearing is provided at the City's expense.
- (B) If an applicant requests that a hearing date be changed before notice of hearing is mailed, such request can be granted only if the applicant agrees that the extended time period for the hearing will not count against the 120-day time limit set forth in ORS 227.178.

5.1.560 Close of the Record

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

- (B) If the hearing is continued or the record is held open under SDC 5.1.570, further evidence or testimony must be taken only according to the provisions of that section.
- (C) Otherwise, further testimony or evidence will be allowed only if the record is reopened under SDC 5.1.580, Reopening the Record.
- (D) An applicant must be allowed, unless waived, to submit final written arguments in support of its application after the written record has closed to other parties, within such time limits as the Hearings Authority sets. The Hearings Authority must allow applicant at least seven days to submit their argument, which time is not counted against the 120-day time limit.

5.1.565 Continuances or Record Extensions

(A) Grounds

- (1) Prior to or at the initial hearing, an applicant must receive a continuance upon any request if accompanied by a corresponding extension of the 120-day time limit. If a continuance request is made after the published or mailed notice has been provided by the City, but at least seven days prior to the hearing, the hearing place must be posted with notification of cancellation and a revised notice with the new hearing date, place and time must be mailed to all persons who received the original notification. The applicant is responsible for any costs for providing notice of the continuance. If a continuance request is made less than seven days prior to the hearing, the Hearings Official must take evidence at the scheduled hearing date from any party wishing to testify at that time after notifying those present of the continuance.
 - (2) Any party is entitled to a continuance of the initial evidentiary hearing or to have the record left open in such a proceeding in the following instances: upon the party's request made prior to the close of the hearing for time to present additional evidence or testimony.
 - (3) Any party is entitled to a continuance of the initial evidentiary hearing where additional documents or evidence containing new facts or analysis are submitted by any party less than seven days before the hearing, or upon a showing that denying a continuance would prejudice the party's substantial procedural rights.
- (B) Except for continuance requests made under subsection (A)(1)-(3) of this section, the choice between granting a continuance or leaving the record open is at the discretion of the Hearings Authority. After a choice has been made between leaving the record open or granting a continuance, the hearing is governed thereafter by the provisions that relate to the path chosen.

(C) Hearing Continuances

- (1) If the Hearings Authority grants a continuance, the hearing must be continued to a date, time, and place certain at least seven days from the date of the initial hearing.
- (2) An opportunity must be provided at the continued hearing for persons to rebut new evidence and testimony received at the continued hearing.

- (D) **Leaving Record Open.** If the Hearings Authority leaves the record open for additional written evidence or testimony after the conclusion of the hearing, the Hearings Authority must allow for response to written evidence or testimony submitted during the period the record is held open.
- (E) A continuance or record extension granted under this section is subject to the 120-day time limit unless the continuance or extension is requested or otherwise agreed to by the applicant. When the record is left open or a continuance is granted after a request by an applicant, the time during which the 120-day time limit is suspended includes the time period made available to the applicant and any time period given to parties to respond to the applicant's submittal.

5.1.570 Reopening the Record

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

5.1.600 Type 4 Procedures

- 5.1.605 Type 4 Application – Legislative Procedures**
- 5.1.610 Hearing Required, Procedure**
- 5.1.615 Notice**
- 5.1.620 Initiation of a Legislative Change**
- 5.1.625 Approval Authority**
- 5.1.630 Final Decision**
- 5.1.635 Corrections**

Subsections:

5.1.605 Type 4 Legislative Application

- (A) A Type 4 application applies to a legislative matter involving the creation, revision, or large-scale implementation of public policy including, but not limited to adoption of land use regulations that apply to entire districts, the annexation of large areas initiated by the City, and comprehensive plan, functional plan, or refinement plan amendments that are not quasi-judicial in nature.

- (B) A Type 4 Legislative decision is made after public notice, public hearings, and a recommendation by the Planning Commission to the City Council, except the City Council is the sole approval authority for vacations and annexations.

5.1.610 Hearing Required, Order of Procedure

- (A) No legislative change can be adopted without review by the Planning Commission and a final public hearing before the City Council, except the City Council is the sole approval authority for vacations and annexations. Public hearings are set at the discretion of the Director, unless otherwise required by State law.

- (B) Order of Presentation.

- (1) Explanation of procedural requirements.
- (2) Open the hearing.
- (3) Staff report.
- (4) Testimony from interested parties.
- (5) Questions from or to the chair may be entertained at any time at the Hearings Authority's discretion prior to close of hearing.
- (6) Close the hearing.
- (7) Close of the record.
- (8) Deliberation.
- (9) Decision.

5.1.615 Notice

(A) Published Notice

- (1) Notice of a Type 4 legislative change must be published in a newspaper of general circulation in the City of Springfield at least 20 days prior to each public hearing, or, if more than one hearing is provided, at least 10 days before the first hearing.
- (2) The published notice must state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.

- (B) **Posted Notice.** Notice must be posted at the discretion of the Director.

- (C) **Individual Notice.** Notice must be mailed as provided in ORS 227.186 prior to the first hearing on an ordinance to rezone property or the first hearing on an ordinance to adopt or amend a comprehensive plan that would require property to be rezoned to comply with the amended or new plan.

- (D) **Neighborhood Associations.** Notice of a Type 4 legislative change must be mailed to the designated land use chair of any neighborhood association recognized by the City of Springfield, where the legislative change affects any land within the boundary of such neighborhood association.

- (E) The Director will distribute the application to the Development Review Committee or the Historic Commission for comments, where applicable.

5.1.620 Initiation of a Legislative Change

- (A) Requests for a plan map or text amendment of the Springfield Comprehensive Plan or its implementing documents may be initiated by an individual, corporation, or public agency upon submittal of an application, supporting documentation and payment of required fees. The City Council, Planning Commission, or Director may also initiate legislative changes.

5.1.625 Approval Authority

- (A) A Type 4 legislative change entirely within City limits must be reviewed by the Planning Commission prior to action being taken by the City Council, except the City Council is the sole approval authority for annexations and vacations.
- (B) A Type 4 legislative change to a comprehensive plan that is entirely or partially outside City limits and within the Springfield Urban Growth boundary must be reviewed jointly with Lane County as provided in SDC 5.14-130.
- (C) A Type 4 legislative change to land use regulations that apply entirely or partially outside City limits must be reviewed by the Planning Commission, and Lane County Planning Commission at Lane County's discretion, prior to action being taken jointly by the City Council and Lane County Board of Commissioners.

5.1.630 Final Decision

- (A) A Type 4 legislative change must be adopted by ordinance.
- (B) The Planning Commission must make a recommendation to the City Council to approve, approve with conditions, or deny the application. The Planning Commission's recommendation must address all of the applicable approval standards and criteria and any written or oral testimony.
- (C) The City Council may approve, approve with conditions, or deny the application. The City Council's decision must include findings that address all the applicable approval standards and/or development standards and any written or oral testimony.
- (D) The City Council's decision is the City's final decision. The decision becomes effective 30 days after the decision is made if there is no emergency clause in the adopting Ordinance, unless provided otherwise on the face of the ordinance. Notwithstanding the effective date of an ordinance as specified above, the effective date of annexations must be as prescribed in ORS 222.040, 222.180, or 222.465. Notice of decision is mailed to the applicant, property owner, those persons who submitted written or oral testimony, those who requested notice, and as required by ORS 222 State law and SDC 5.7.150. Where required, the notice of decision must also be mailed to the Department of Land Conservation and Development as specified in ORS 197.615 and by DLCD rule.
- (E) For Metro Plan amendments that require adoption by the City, Eugene and/or Lane County, the City Council decision is final only upon concurrence of the Lane County Commissioners and the City of Eugene City Council, as appropriate.
- (F) The City Council's decision may be appealed within 21 calendar days to the Land Use Board of Appeals as specified in ORS 197.830 and SDC 5.1.800.

5.1.635 Corrections

- (A) The City Attorney may renumber sections and parts of sections of ordinances, change the wording of titles, rearrange sections, change reference numbers to agree with renumbered chapters, sections, or other parts, substitute the proper subsection, section, or chapter or other division numbers, strike out figures or words that are merely repetitious, change capitalization for the purpose of uniformity, and correct clerical or typographical errors. In preparing revisions described herein, the City Attorney shall not alter the sense, meaning, effect, or substance of any ordinance.

5.1.700 Reconsideration

Subsections:

- 5.1.705 Reconsideration**
- 5.1.710 Procedure**
- 5.1.715 Limitation on Reconsideration**

5.1.705 Reconsideration

- (A) An applicant may request that the Approval Authority’s decision be reconsidered as set forth herein. A request for reconsideration must be accompanied by a fee established by the City and by applicant’s written consent that the 120-day time limit will not run during the period of the reconsideration and the resulting extended appeal period. The fee will be waived when, in the opinion of the Director, the reconsideration is requested to correct a clerical or technical error that is the City’s fault.
- (B) Grounds for reconsideration of a Type 1 or Type 2 decision are limited to the following instances:
 - (1) The applicant’s submission of additional documents or evidence, that merely clarifies or supports the pending application, directed to one or more discreet aspects of the decision. The new information must not constitute a modification of application as defined herein.
 - (2) Correction of an error in a condition established by the Approval Authority where the condition is not supported by the record or is not supported by law.
 - (3) Correction of errors that are technical or clerical in nature.
- (C) Grounds for reconsideration of the Hearing Authority’s decision are limited to the following instances where an alleged error substantially affects the rights of the applicant:
 - (1) Correction of an error in a condition established by the Hearings Authority where the condition is not supported by the record or is not supported by law;
 - (2) Correction of errors that are technical or clerical in nature.

5.1.710 Procedure

- (A) A request for reconsideration must be filed with the Director within 12 days of the date the decision was mailed. The request must identify the condition or issue to be considered and must specify how the applicant would be adversely affected if the issue were to remain uncorrected.
- (B) Upon receipt of a request for reconsideration of a Type 1 or 2 decision, the Director must determine whether the request for reconsideration has merit. No comment period or prior notice is required for an administrative reconsideration.
- (C) Upon receipt of a request for reconsideration of a Type 3 decision, the Director must notify all parties to the proceeding of the request and allow for a 10-day comment period on the request. In those instances, in which the only grounds for reconsideration of a Type 3 decision are technical or clerical in nature, at the end of the comment period, the Director must determine whether the request for reconsideration has merit. In all other instances, at the end of the comment period, the Hearings Authority must determine whether the request for reconsideration has merit.
- (D) The Approval Authority must modify the decision upon a determination that the request has merit and the issue substantially affects the applicant. Notice of the modification must be sent to all parties to the proceeding. If the Approval Authority determines that no modification is warranted, a denial must be issued and sent to all parties to the proceeding.
- (E) Filing a request for a reconsideration is not be a precondition for appealing a decision.
- (F) Filing a request for reconsideration stays the deadline for any party to file an appeal of the Approval Authority's decision. A new 12-day appeal period for all parties to the proceeding commences upon mailing of a modification or upon mailing a determination that a modification is not warranted. The new 12-day appeal period will not be calculated as part of the 120-day time limit. If an opponent files an appeal and an applicant has requested reconsideration, the opponent's appeal must be stayed pending disposition of the request for modification. If the decision is not modified, the appeal will be processed according to the procedures set forth in SDC 5.1.800. If the decision is modified, the appellant must, within 12 days of the mailing of the modified decision, file in writing a statement requesting that its appeal be activated or the appeal will be automatically dismissed.

5.1.715 Limitation on Reconsideration

- (A) No decision can be reconsidered more than once before the same Approval Authority.

5.1.800 Appeals

Subsections:

- 5.1.805 Who May Appeal**
- 5.1.810 Filing Appeals**
- 5.1.815 Notice of Appeal**
- 5.1.820 Determination of Jurisdictional Defects**
- 5.1.825 Consolidation of Multiple Appeals**

- 5.1.830** **Scope of Review**
- 5.1.835** **Hearing on Appeal**
- 5.1.840** **Re-hearing**
- 5.1.845** **Remands**
- 5.1.850** **Withdrawal of an Appeal**

5.1.805 **Who May Appeal**

- (A) The following may file an appeal:
 - (1) A party; or
 - (2) A person entitled to notice and to whom no notice was mailed.
- (B) A person to whom notice is mailed is deemed notified even if notice is not received.

5.1.810 **Filing Appeals**

- (A) To file an appeal, an appellant must file a completed notice of appeal on a form prescribed by the Director and pay an appeal fee.
- (B) Unless a request for reconsideration has been filed, the notice of appeal and appeal fee must be received by the Community Development Director no later than the close of the public counter on the 12th day following mailing of the decision. If a decision has been modified on reconsideration, an appeal must be filed no later than the 12th day following mailing of the decision as modified. Notices of appeals must not be received by facsimile machine or e-mail.
- (C) In the case of an appeal of a Type 2 decision to the Hearings Officer or to the Planning Commission, the Hearings Authority's decision on appeal is final 12 days after the decision is mailed. Except that, within 12 days after the decision is mailed, the City Council may, on its own motion and at its discretion, call up a decision of the Planning Commission and conduct an on the record review of the decision and limit issues identified in the Council's motion.
- (D) In the case of an appeal of a Type 3 decision, the City Council's decision whether to grant review is discretionary. If the City Council declines review, the appellant may be entitled to a partial refund according to the City's adopted Fees Resolution.
- (E) The Hearings Officer's decision on a Type 3 decision or upon appeal of a Type 2 decision is the City's final decision and is appealable only.

5.1.815 **Notice of Appeal**

- (A) The Notice of Appeal must contain:
 - (1) A description of the decision which is being appealed, including the date of decision.
 - (2) A statement describing the interest the person who is appealing has in the decision. Only persons who have proper standing as provided by the law, and who have participated in the decision being appealed (if provision for such participation was

provided in the previous proceeding), may appeal the decision. The statement of interest must demonstrate the person's standing and participation.

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

5.1.820 Determination of Jurisdictional Defects

- (A) Any failure to conform to the requirements of SDC 5.1.810, Filing Appeals, and 5.1.815, Notice of Appeal, will constitute a jurisdictional defect and the appeal will be dismissed.
- (B) Determination of jurisdictional defects in an appeal must be made by the Approval Authority to which an appeal has been made.

5.1.825 Consolidation of Multiple Appeals

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

5.1.830 Scope of Review

- (A) **Before Hearings Official or Planning Commission.** The review of a Type 2 decision on appeal before a Hearings Authority is de novo.
- (B) **Before the Council.**
 - (1) Review of land use decisions by the City Council on appeal is discretionary. A decision by the City Council to not grant discretionary review of the appeal is the final determination of the City and will be considered to be an adoption by the Council of

the decision being appealed, including any interpretations of this code or of the plan provisions included in the decision. The final decision may be appealed to the Land Use Board of Appeals as provided by law. The City Council's decision whether to grant discretionary review will be made without testimony or argument from persons interested in the appeal.

- (2)** The scope of review for appeals that are granted discretionary review by the City Council must be:
 - (a)** Restricted to the issues raised in the Notice of Appeal, or as prescribed by the City Council; and
 - (b)** Be conducted during an appeal hearing before the City Council on the record made as part of the decision being appealed.
- (3)** The record for discretionary review by the City Council must include:
 - (a)** The land use application or request which is the subject of the appeal, any staff report, and all written comments, exhibits, or any other materials or information considered by the decision-maker in the proceedings that produced the decision being appealed.
 - (b)** A written transcript of all proceedings before the decision-maker, or a stipulated written summary of the proceedings submitted by all of the parties to the appeal.
 - (c)** Appellants must submit the transcript or stipulated written summary of the proceedings to the Community Development Division no later than the close of the day five days prior to the date set for receipt of written arguments.
 - (d)** An appellant is excused from providing a transcript or stipulated written summary of the proceedings if the appellant was prevented from complying by:
 - (i)** The Director's inability to supply the appellant with an audio recording of the prior proceeding; or
 - (ii)** Defects on the audio recording of the prior proceeding that make it not reasonably possible for the appellant to supply a transcript. Appellants must comply to the maximum extent reasonably and practicably possible.
- (4)** An appeal hearing before the City Council must be conducted according to such procedures as the City Council prescribes, which may include an opportunity for presentations by the parties to the appeal.
- (5)** Decisions reviewed by the City Council can be affirmed, remanded, reversed, or modified in whole or in part by the City Council.

5.1.835 Hearing on Appeal

- (A) The appellant and all other parties to the decision below must be mailed notice of the hearing on appeal at least 20 days prior to any de novo hearing or deadline for submission of written arguments.
- (B) Except as otherwise provided in this section, the appeal must be heard as provided in SDC 5.1.500, Quasi-Judicial Hearings. The applicant must proceed first in all appeals.
- (C) The order of Approval Authority must be as provided in SDC 5.1.510, Hearings Authority.
- (D) The record of the proceeding from which appeal is taken must be a part of the record on appeal.
- (E) The record for a review on the record must consist of the following:
 - (1) Minutes and audio recordings of any prior hearing, if available;
 - (2) All written and graphic materials that were part of the record below;
 - (3) The Approval Authority's decision appealed from;
 - (4) Written arguments, based upon the record developed below, submitted by any party to the decision;
 - (5) A staff report and staff comment based on the record; and
 - (6) Other information deemed relevant by the Approval Authority.
- (F) The City Council must not consider any new factual information in an "on the record" proceeding. Brief oral argument by the applicant and the appellant on the record may be allowed by the City Council.

5.1.840 Re-hearing

- (A) Re-hearings are not allowed.

5.1.845 Remands

- (A) Applications must not be remanded to a lower level Approval Authority after appeal, except by City Council as provided in SDC 5.1.830(B)(5).

5.1.850 Withdrawal of an Appeal

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

5.1.900 Proceedings on Remand

Subsections:

- 5.1.905 Purpose**
- 5.1.910 Hearings Official**
- 5.1.915 Notice and Hearings Requirements**
- 5.1.920 Scope of Proceeding**
- 5.1.925 Effect of Reversal**

5.1.905 Purpose

- (A) This section governs the procedures to be followed where a decision of the City has been remanded by the Land Use Board of Appeals (LUBA), the Department of Land Conservation and Development (DLCD), the Land Conservation and Development Commission (LCDC), or the Appellate Courts.

5.1.910 Approval Authority

- (A) The Approval Authority for a remanded decision must be the last Approval Authority from which the appeal to LUBA or submittal to DLCD was taken, except that in voluntary or stipulated remands, the City Council may decide that it will hear the case on remand.

5.1.915 Notice and Hearings Requirements

- (A) The City must conduct a review on any remanded decision if requested by the applicant in writing or initiated by the City for a City project. The remand procedure must be according to the applicable provisions of this section and the decision by LUBA, DLCD, LCDC, or Appellate Court, and applicable State law. Unless State law requires otherwise, only those persons who were parties to the proceedings before the City are entitled to notice and entitled to participate in any hearing on remand.
- (B) The review procedures must comply with State law and with the requirements of this Code for either legislative or quasi-judicial procedures, whichever was employed for the initial decision or as required by the remand.

5.1.920 Scope of Proceeding

- (A) On remand, the Approval Authority must review only those issues that LUBA, DLCD, LCDC, or an appellate court required to be addressed. The Approval Authority has the discretion to reopen the record as it deems appropriate.
- (B) If additional testimony is required to comply with the remand, parties may raise new, unresolved issues that relate to new evidence directed toward the issue on remand. Other issues that were resolved by LUBA, DLCD, LCDC, or the Appellate Court or that were not appealed are deemed to be waived and may not be reopened.
- (C) Notwithstanding subsections (A) and (B) above, for remands of City-initiated legislative amendments or for any voluntary or stipulated remand reviewed by the City Council, the City Council may allow the introduction and processing of new work tasks, issues,

evidence, and testimony if the Council determines that the information or task is necessary and/or valuable.

5.1.925 Effect of Reversal

- (A) A decision reversed by LUBA, DLCD, LCDC, or an appellate court that results in a final appellate judgment or order of reversal cannot be further heard by the City in the absence of an amended or new application. Submission of a revised application is governed by the time limit set forth in SDC 5.1.1030, Limitation on Refiling Applications.

5.1.1000 Limitations on Approvals

Subsections:

- 5.1.1005 Expiration of Approval**
- 5.1.1010 Initiation of Use**
- 5.1.1015 Modification of Approval**
- 5.1.1020 Transfer of Approval**
- 5.1.1025 Revocation of Approval**
- 5.1.1030 Limitations on Refiling Applications**

5.1.1005 Expiration of Approval

(A) Scope

- (1) Except as otherwise provided herein, this section applies to and describes the duration of all development approvals provided for under this code.
- (2) This section does not apply to:
 - (a) Those determinations made by declaratory ruling, such as verifications of nonconforming uses and lot of record determinations that involve a determination of the legal status of a property, rather than whether a particular application for a specific land use meets the applicable standards of the code. Such determinations are final unless appealed and are not subject to any time limits;
 - (b) Temporary use permits of all kinds, which are governed by applicable ordinance provisions specifying the duration of such permits;
 - (c) Quasi-judicial and legislative plan and map amendments;
 - (d) Master Plans, which are governed by SDC 5.13.100, Master Plans; or
 - (e) Annexations; or
 - (f) Vacations.

(B) Duration of Approvals

- (1) A permit for a discretionary approval is void two years after the date of the final decision if the use approved in the permit is not initiated within that time period, unless otherwise specified in the approval, by other provisions of this Code, and or unless the approval period is extended pursuant to subsection (C) below.
- (2) Approval of tentative land division plats is void two years after the date of preliminary approval, if the final plat has not been recorded with Lane County, unless otherwise specified in the approval, by other provisions of this Code, and or unless the approval period is extended pursuant to subsection (C) below.

A one-year extension may be approved by the Director if the applicant can demonstrate sufficient progress to reasonably assure the plat will be recorded at the end of the third year, and if:

- (a) An applicant makes a written request for an extension of the development approval period; and
 - (b) The request is submitted to the Director prior to the expiration of the approval period.
- (3) In the case of a development approval authorized under applicable approval standards to be completed in phases, each phase must be consistent with the time specified in the approval. In no case can the total time period for all phases be greater than five years.

(C) Time Extensions

- (1) Unless prohibited by the approval or other provisions of this Code, the Director may grant one extension of up to one year for a development approval that contained a two-year initial duration of approval, if:
 - (a) An applicant makes a written request on the form provided by the Director for an extension of the development approval period, accompanied by the required fee; and
 - (b) The request for extension is submitted to the Director prior to the expiration of the approval period, but not earlier than six months before the expiration date of the permit.
- (2) The Director may grant one or more additional extensions if authorized by a City Council resolution which recognizes a City-wide need for an additional limited-duration extension, not to exceed two years. The additional extension may be granted if:
 - (a) The applicant has exhausted all other extension opportunities;
 - (b) The applicant makes a written request for an extension of the development approval period; and
 - (c) The request is submitted to the Director prior to the expiration of the approval period.

- (3) In addition to, or in lieu of, the extensions provided under subsections (C)(1) and (C)(2) above, the Director may grant an additional extension based upon good cause, provided that:
 - (a) The request for an extension is made in writing prior to expiration of the original approval;
 - (b) There are special or unusual circumstances that exist which warrant an extension;
 - (c) No material changes of surrounding land uses or zoning has occurred; and
 - (d) No new land use regulations have been adopted that affect the applicant's proposed development.
 - (4) Approval of an extension granted under this section is an administrative decision and is not a land use decision or a limited land use decision as described in ORS 197.015 or this code. An extension is not subject to appeal and will be processed as a Type 1 application.
- (D) Effect of Appeals.** The time period set forth in subsection (B) of this section will be tolled upon filing of an appeal to LUBA, until all appeals are resolved.

5.1.1010 Initiation of Use

- (A) For the purposes of this Section, development undertaken under a development approval described in SDC 5.1.1005, Expiration of Approval, has been "initiated" if it is determined that:
 - (1) The proposed use has lawfully occurred;
 - (2) Substantial construction toward completion of the development approval has taken place; or
 - (3) Where construction is not required by the approval, the conditions of a permit or approval have been substantially exercised and any failure to fully comply with the conditions is not the fault of the applicant.
- (B) For the purposes of this section, substantial construction has occurred when the holder of an approval has physically altered the land or structure or changed the use thereof and such alteration or change is directed toward the completion and is sufficient in terms of time, labor or money spent to demonstrate a good faith effort to complete the development.
- (C) Initiation of use must not be granted in lieu of a phased approval.
- (D) A determination of whether a land use has been initiated must be processed as a declaratory ruling.

5.1.1015 Modification of Approval

- (A) An approval may be modified at any time after a decision becomes final.
- (B) Modification of Type 2 Approval Procedures
 - (1) A modification of a Type 2 approval that does not have significant additional impacts on surrounding properties must be reviewed only under the standards applicable to the aspect(s) of the proposal that are to be modified.
 - (2) A modification that has significant additional impacts on surrounding properties must be reviewed under all standards applicable to the entire approval and may, at the discretion of the Director, require the filing of a new application.
 - (3) A modification must not be considered to have significant additional impacts on surrounding properties if the identified impacts could be addressed under the applicable provisions of this code at the time of future development (e.g., a future site plan review or conditional use permit application).
 - (4) A modification that is a new proposal must be filed as a new application.
- (C) An application for a modification of a Type 1 approval must be processed as a Type 1 application. All other modifications must be processed as a Type 2 application unless elevated to a Type 3 process by the Director.
- (D) The original approval time limitation is governed by SDC 5.1.1005.
- (E) Modifications of development approvals must meet the approval standards required in subsection (B) of this section in the appropriate corresponding section of this code (e.g., modification of a site plan review approval is subject to SDC 5.17; modification of a discretionary use permit is subject to SDC 5.9, modification of a master plan is subject to the applicable sections in SDC 5.13).

5.1.1020 Transfer of Approval

- (A) Except as otherwise provided in this code, a development approval is deemed to run with the land and be transferable to applicant's successors in interest.

5.1.1025 Revocation of Approval

- (A) Proceedings to revoke a development approval must be initiated by the Director by giving notice of intent to revoke to the property owner.
- (B) The Director may revoke a development approval for the following reasons:
 - (1) The conditions or terms of development approval are violated; or
 - (2) The project is not in substantial conformance with the approved plans or decision; or
 - (3) The applicant or the applicant's representative made a material misstatement of fact in the application or supporting documents and such misstatement was relied upon

by the Approval Authority in making its decision whether to accept or approve the application.

(C) Revocations must be processed as a declaratory ruling according to SDC 5.1.1100.

5.1.1030 Limitations on Refiling Applications

(A) An application for a property owner-initiated Plan Amendment, which a substantially similar application relating to the same property or tract has been denied within the previous year, will not be accepted. At the Director's discretion, an earlier refiling may be allowed if it can be demonstrated that the basis for the original denial has been eliminated.

5.1.1100 Declaratory Ruling

Subsections:

5.1.1105 Availability of Declaratory Ruling

5.1.1110 Who May Apply

5.1.1120 Procedures

5.1.1130 Effect of Declaratory Ruling

5.1.1105 Availability of Declaratory Ruling

(A) Subject to the other provisions of this section, the Declaratory Ruling process is available for the City's comprehensive plan and this Code for the following categories of rulings. Such a determination or interpretation is known as a "declaratory ruling" and will be processed according to this section. In all cases, as part of making a determination or interpretation the Approval Authority Director (where appropriate) or Hearings Official (where appropriate) has the authority to declare the rights and obligations of persons affected by the ruling.

- (1) Interpreting a provision of the Springfield Comprehensive Plan, Metro Plan, functional plan, or refinement plan, or implementing ordinances (and other documents incorporated by reference) in which there is doubt or a dispute as to its meaning or application;
- (2) Interpreting a provision or limitation of a development approval issued by the City in which there is doubt or a dispute as to its meaning or application;
- (3) Determining whether an approval has been initiated or considering the revocation of a previously issued development approval; and
- (4) Determining lot of record status as defined in SDC 5.8.135.

(B) A declaratory ruling is available only in instances involving a fact-specific controversy and to resolve and determine the particular rights and obligations of particular parties to the controversy. Declaratory proceedings must not be used to grant an advisory opinion on a specific quasi-judicial development application. Declaratory proceedings must not be used as a substitute for seeking an amendment of general applicability to a legislative enactment.

- (C) Declaratory rulings must not be used as a substitute for an appeal of a decision or for a modification of an approval. In the case of a ruling on a City development approval, a declaratory ruling is not available until 60 days after a decision is final.
- (D) The Director may refuse to accept, and the Hearings Authority may deny an application for a declaratory ruling if:
 - (1) The Director or Hearings Authority determines that the question presented can be decided in conjunction with approving or denying a pending application or if in the Director or Hearings Official's Authority's judgment the requested determination should be made as part of a decision on a development application not yet filed; or
 - (2) The Director or Hearings Authority determines that there is an enforcement case pending in circuit court in which the same issue necessarily will be decided as to the applicant and the applicant failed to file the request for a declaratory ruling within two weeks after being cited or served with a complaint. The Director or Hearings Authority's determination to not accept or to deny an application under this section will be the City's final decision.

5.1.1110 Who May Apply

- (A) The following may initiate a declaratory ruling under this section:
 - (1) The owner of a property requesting a declaratory ruling relating to the use of the owner's property;
 - (2) In cases where the request is to interpret a previously issued development approval, the holder of the approval; or
 - (3) In all cases arising under SDC 5.1.1105, Availability of Declaratory Ruling, the Director.

No other person is entitle to initiate a declaratory ruling.

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

5.1.1120 Procedures

- (A) Declaratory rulings will be processed as either a Type 2 or Type 3 application.

5.1.1130 Effect of Declaratory Ruling

- (A) A declaratory ruling will be conclusive on the subject of the ruling and bind the parties thereto as to the determination made.

- (B) SDC 5.1.1030 Limitations on Refiling Applications notwithstanding, and except as specifically allowed therein, parties to a declaratory ruling are not entitled to reapply for a declaratory ruling on the same question.
- (C) Except when a declaratory ruling is made by the City Council, the ruling does not constitute a final policy of the City of Springfield.

5.1.1200 Development Agreements

Subsections:

- 5.1.1205 Purpose**
- 5.1.1210 Applicability**
- 5.1.1215 Initiation**
- 5.1.1220 Negotiations**
- 5.1.1225 Adoption**
- 5.1.1230 Hearings Official**

5.1.1205 Purpose

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

5.1.1210 Applicability

- (A) The City Council may establish a Development Agreement between the City and any person having a legal or equitable interest in real property for the development of that property. Development Agreements that do not include a development application are not governed by the City’s Development Code and may be established in any manner deemed appropriate by the Council, consistent with the Council’s authority under the City’s Charter. Development Agreements that contain a development application are governed by this section. The following include but are not limited to situations that may require a Development Agreement as described by this section:

- (1) Multiple party or partnership situations;
- (2) Large infrastructure requirements;
- (3) Timing issues;
- (4) Litigation;
- (5) Urban renewal.

5.1.1215 Initiation

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

5.1.1220 Negotiation

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

5.1.1225 Adoption

(A) The provisions of ORS 94.504 through 94.528 must be followed in the adoption of a Development Agreement under this section. Once a preliminary agreement is reached between the parties, the owner or owners of the property that is the subject of the Development Agreement must submit an application to the Director for adoption of the Development Agreement and for any development application requested in connection with the Development Agreement.

5.1.1230 Hearings Authority

(A) Notwithstanding any other provision of this code to the contrary, the City Council is the Hearings Authority for a Development Agreement. The Council may appoint the Planning Commission to serve as the Hearings Authority for specific development applications associated with a proposed Development Agreement, prior to the final decision on the Development Agreement as a whole. In that event, the Council must establish a schedule for such decisions, and must consider, but will not be bound by, such decisions.

5.1.1300 Summary of Development Application Types

There are four types of procedures: Type 1, 2, 3, and 4. Table 5.1.1300 lists the City's development applications and their required types of procedure(s).

Type of Application	Decision Type	Applicable SDC Sections
Accessory Dwelling Unit	Type 1 or Type 2	3.2.275
Amendment of Development Code Text	Type 4	5.6-100
Amendment of Refinement Plan Text or Diagram	Type 4	5.6-100
Annexation	Type 4	5.7-100
Appeal of a Type II Director's Decision	Type 3	5.1.800
Appeal of Type III Decision to City Council	Type 4	5.1.800
Appeal of an Expedited Land Division	Type 3	5.12.240
Conceptual Development Plan	Type 3	Applicable Section
Conceptual Development Plan Amendment	Type 3	Applicable Section
Demolition of Historic Landmark	Type 3	3.3-900
Determination of Nonconforming Use Status	Type 1	5.8-100
Development Initiation Meeting	Type 1	5.1.210

Discretionary Use	Type 3	5.9-100
Drinking Water Protection Overlay District Development	Type 1	3.3-200
Duplex and Detached Single-Family Dwelling Design Standards	Type 1	3.2.245
Emergency Medical Hardship	Type 2	5.10-100
Establishment of Historic Landmark Inventory	Type 3	3.3-900
Expansion/Modification of a Non-Conforming Use	Type 2	5.8-100
Expedited Land Division	Type 2	5.12.200
Extraterritorial Extension of Water or Sewer Service	Type 4	3.3-825
Final Site Plan Equivalent	Type 1	5.17-100
Final Site Plan Review/Development Agreement	Type 1	5.17-100
Floodplain Development	Type 1	3.3-400
Hillside Development Overlay District	Type 2	3.3-500
Historic Commission Review—Major Alteration	Type 2	3.3-900
Historic Commission Review—Minor Alterations	Type 1	3.3-900
Home Business	Type 1	4.7.365
HS Hospital Support Overlay District	Type 2	3.3-1100
Interpretation involving policy	Type 4	5.11-100
Interpretation not involving policy	Type 3/no formal review	5.11-100/3.4-260
Land Use Compatibility Statement	Type 1	3.1-100
Major or Minor Replat Tentative Plan	Type 2	5.12-100
Major or Minor Replat Plat	Type 1	5.12-100
Major Variance	Type 3	5.21-100
Manufactured Dwelling Park	Type 2	4.7.345
Multiple Unit Housing Discretionary Review	Type 2 or Type 3	3.2.385
Multiple Unit Housing Variance	Type 2	3.2.390
Master Plan	Type 3	5.13-100
Master Plan Amendment	Various	5.13-100
Metro Plan Amendment Type I (text) or Type II (diagram)	Type 4	5.14-100
Middle Housing (Triplex, Fourplex, Cottage Cluster, Townhomes)	Type 3	3.2.250 to 3.2.265
Minimum Development Standards	Type 1	5.15-100
Minor Variance	Type 2	5.21-100
Partition Tentative Plan	Type 2	5.12-100
Pre-Application Report	Type 1	5.1.120
Property Line Adjustment—Single	Type 1	5.16-100
Property Line Adjustment—Serial	Type 2	5.16-100
Site Plan Modification—Minor	Type 1	5.17-100
Site Plan Review Modification—Major	Type 2	5.17-100
Site Plan Review	Type 2	5.17-100
Short Term Rental Type 1	Type 1	
Short Term Rental Type 2	Type 3	
Solar Access Protection	Type 2	5.18-100

Subdivision Tentative Plan	Type 2	5.12-100
Tree Felling Permit	Type 2	5.19-100
Vacation of Plats, Public Right-of-Way, or Other Public Property	Type 4	5.20-100
Vacation of Public Easements	Type 2	5.20-100
Willamette Greenway Overlay District Development	Type 3	3.3-300/3.4-280
Wireless Telecommunications Systems Facilities	Type 1, 2, or 3	4.3-145
Land Use District Map Amendment	Type 3	5.22-100