

Chapter 16.89

APPLICATION AND REVIEW PROCEDURES

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16.89.010 Purpose.

The purpose of this chapter is to establish standard decision-making procedures that will enable the City, the applicant, and the public to review applications and participate in the decision-making process in a timely and effective way. (Ord. 1080, 2001)

16.89.020 Description and Summary of Processes.

All land use and development applications shall be decided by using the procedures contained in this Chapter. Specific procedures for each type of permit are contained in Sections 16.89.030 through 16.89.060. The procedure type assigned to each permit governs the decision-making process for that permit. Additional requirements may be found in the individual chapters governing each permit type. The four types of procedure are described below. Table 16.89.020 lists the City's land use and development applications and their required procedures.

- A. Type I Procedure (Ministerial). Type I decisions are made by the Planning Director without public notice and without a public hearing. The Type I procedure is used when there are clear and objective approval criteria or provisions and applying those criteria or provisions requires no use of discretion. The appeal of a Type I Planning Director's decision is heard by the Planning Commission.
- B. Type II Procedure (Administrative). Type II decisions are made by the Planning Director with public notice and an opportunity for a public hearing. The appeal of a Type II decision is heard by the Planning Commission.

- C. Type III Procedure (Quasi-Judicial/Legislative). Type III decisions are made by the Planning Commission after a public hearing, with appeals reviewed by the City Council. Type III procedures generally use discretionary approval criteria.
- D. Type IV procedure (Council Decision). Type IV decisions generally apply to legislative matters, but include certain other applications as well. Legislative matters involve the creation, revision, or large-scale implementation of public policy (e.g., adoption of land use regulations, zone changes, and comprehensive plan amendments that apply to entire districts). Type IV matters are considered initially by the Planning Commission with final decisions made by the City Council. Annexations and certain quasi-judicial applications are also processed under the Type IV process. (Ord. 1080, 2001; Ord 1237, 2007; Ord. 1514, 2019)

**TABLE 16.89.020
Land Use and Development Application Procedures**

Application Type	Process Type	Notice Radius (Feet)	Neighborhood Meeting Required
Access permit to public street	I	n/a	No
Administrative Review	I	n/a	No
Administrative Review	II	100	No
Amendments to Zoning Map	IV	500	Yes
Annexation, Minor and Major	IV	500	Yes
Appeals	III	200	No
Building Permit	I	n/a	No
Comprehensive Plan Amendment	IV	500	Yes
Conditional Use Permit	III	500	No
Condominium Construct. (less than 6 units)*	I	n/a	No
Interpretation	See Section 16.05.020		
Lot Line Adjustment**	II	100	No
Modification	See Section 16.89.090		
Non-Conforming Structure/Use	II	100	No
Parking Lot/Paving projects	I	n/a	No
Partition	II	100	No

Application Type	Process Type	Notice Radius (Feet)	Neighborhood Meeting Required
Planned Unit Development	III	200	Yes
Sign Permit (non-SDR)	I	n/a	No
Sign Permit – Discretionary Monument Sign or A-Frame Sign Permit (16.42.040)	II	100	No
Site and Design Review – Type II	II	100	No
Site and Design Review – Type III	III	500	Yes
Site Plan Review	I	n/a	No
Temporary Permit (16.44.090)	See Chapter 16.44		
Temp. Hardship Permit (16.44.100)	II	100	No
Subdivision	III	500	Yes
Text Amendment	IV	500	Yes
Variance, Minor	II	200	No
Variance, Major	III	200	No

NOTES: * See also Chapter 16.78

** See also Chapter 16.58.

16.89.030 Type I procedure.

- A. Application requirements. Type I applications shall be made on forms provided by the Planning Director. The application shall be accompanied by all required information and fees.
- B. Decision requirements. The Planning Director's decision shall address all of the approval criteria. Based on the criteria and the facts contained within the record, the Planning Director shall approve, approve with conditions, or deny the requested permit or action. A written record of the decision shall be provided to the applicant and kept on file at the City.
- C. Final decision. The decision shall be final on the date it is mailed or otherwise provided to the applicant, whichever occurs first. (Ord. 1080, 2001)

16.89.040 Type II procedure.

- A. Pre-application conference. A pre-application conference may be required by the Planning Director for Type II applications.
- B. Application requirements. Type II applications shall be made on forms provided by the Planning Director. The application shall be accompanied by all required information and fees.

C. Public notice.

1. Before making a Type II decision, the Planning Director shall mail notice meeting the requirements of state law to:
 - i. All owners of real property and, if the owner's address is different from the site address, all residents of property, within the distance prescribed in Table 16.89.020.
 - ii. Any person who submits a written request to receive notice; and
 - iii. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies, as appropriate, for review of the application.
 - iv. Any application that involves access to OR 99E or that is expected to impact the state highway system must be provided to the Oregon Department of Transportation for their review and comment regarding conformance with state access management and mobility standards and requirements.
 - v. Any application that is expected to impact a road under the jurisdiction of Clackamas County must be provided to Clackamas County for review and comment regarding county standards.
2. Notice of any proposal that includes a new transportation facility or improvement and where these facilities or improvements included or may impact a collector or arterial street, will be sent to the ODOT and Clackamas County or any special interest transportation groups as appropriate. Special interest transportation groups could include trucking organizations, bicycles and pedestrian interest groups, and interest groups for people with disabilities. Information that should be conveyed with the notice includes the following:
 - a. Project location
 - b. Proposed land use action
 - c. Location of project access point(s)
3. The public notice shall allow a 10-day period for submitting written comments before a decision is made on the permit.
4. The City shall prepare an affidavit of mailing for the public notice and make the affidavit part of the application file.

D. The Planning Director shall make Type II decisions in writing addressing all of the relevant approval criteria and standards. Based upon the criteria and standards, and the facts contained within the record, the Planning Director shall approve, approve with conditions, or deny the requested permit or action.

E. Notice of Decision.

1. Within five days of making a final decision on a Type II application, a notice of decision shall be sent to:

i. All owners of real property and, if the owner's address is different from the site address, all residents of property, within the distance prescribed in Table 16.89.020;

ii. Any person who submits a written request to receive notice; and

iii. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the City.

2. The notice of decision shall include information on the application, the City's decision, and a statement explaining how an appeal of the decision may be filed.

F. Effective Date. A Type II decision is final for purposes of appeal when it is mailed by the City.

G. Appeal. A Type II decision may be appealed to the Planning Commission as follows:

1. The following persons have legal standing to appeal a Type II decision:

i. The applicant;

ii. Any person who was mailed notice of the decision; and

iii. Any other person who participated in the proceeding by submitting written comments.

2. Procedure.

a. A Notice of Appeal shall be filed in writing, on forms provided for the purpose by the Planning Director, within 10 days of the date the Notice of Decision was mailed.

b. The Notice of Appeal shall be accompanied by all required information and fees.

- c. An appeal of a Type II decision shall be made following the Type III public notice procedures, as described in Section 16.89.050.D.
 - d. The appeal shall be limited to the specific issues raised during the written comment period unless the hearings body allows additional evidence or testimony concerning any other relevant issue. The hearings body may allow additional evidence if it determines that such evidence is necessary to resolve the case. The purpose of this requirement is to limit the scope of Type II appeals by encouraging persons to submit specific concerns in writing during the comment period. Only in extraordinary circumstances should new issues be considered by the hearings body on appeal of a Type II decision.
3. The decision of the Planning Commission regarding an appeal of a Type II decision is the final decision of the City unless appealed to the City Council. An appeal to the City Council shall follow the same notification and hearing procedures as for the appeal of the staff decision.
- H. Any decision or interpretation of this title made by staff that is not a Type II decision may be appealed to the Planning Commission without fee, provided that such appeal is filed in writing within ten days of the staff decision. Such appeals shall be heard as a new business item. The Planning Commission's decision on such appeals may be appealed to the City Council following the Type III public notice procedures, as described in Section 16.89.050.D. (Ord. 1080, 2001; Ord 1237, 2007; Ord. 1340, 2011)

16.89.050 Type III Decision.

- A. Pre-application conference. A pre-application conference may be required by the Planning Director for Type III applications.
- B. Neighborhood meetings. As directed in Table 16.89.020, the applicant may be required to present their development proposal at a neighborhood meeting before the City accepts the application as complete. See Section 16.89.070.
- C. Application requirements. Type III applications shall be made on forms provided by the Planning Director. The application shall be accompanied by all required information and fees.
- D. Public notice.
 - 1. At least 20 days prior to a public hearing on a Type III decision or a Type II appeal decision, the Planning Director shall mail notice meeting the requirements of state law to:
 - a. All owners of real property and, if the owner's address is different from the site address, all residents of property, within the distance prescribed in Table 16.89.020;

- b.** The appointed chair of any neighborhood association whose boundaries include the subject property;
 - c.** Any person who submits a written request to receive notice; and
 - d.** Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the City.
 - e.** For appeals, the appellant and all persons who provided testimony.
- 2.** Notice of any proposal that includes a new transportation facility or improvement, and where these facilities or improvements included or may impact a collector or arterial street, will be sent to the ODOT and Clackamas County or any special interest transportation groups as appropriate. Special interest transportation groups could include trucking organizations, bicycle and pedestrian interest groups, and interest groups for people with disabilities. Information that should be conveyed with the notice includes the following:
 - a.** Project location
 - b.** Proposed land use action
 - c.** Location of project access point(s)
- 3.** The City shall prepare an affidavit of mailing for the public notice and make the affidavit part of the application file. Failure of any individual to receive notice as prescribed in this section does not invalidate the proceedings.
- 4.** Written notice shall be published in a newspaper of general circulation in Canby once in either of the two consecutive weeks prior to the hearing.
- 5.** At least ten (10) days before the hearing, written notice shall be posted at City Hall and such other conspicuous locations as the Council may determine to be appropriate.
- 6.** At least ten (10) days before the hearing, the applicant shall post notice of the hearing on the property as directed by the Planning Director.
- 7.** The Planning Director may expand the notice area or take other steps to assure that affected property owners or residents are made aware of the pending public hearing.
- 8.** Any application that involves access to the state highway system must be provided to the Oregon Department of Transportation for their review and comment regarding conformance with state access management standards and requirements.

E. Conduct of public hearing.

1. In all evidentiary hearings required by this title the following procedures shall be followed:
 - a. All interested persons in attendance shall be heard on the matter of hearing, and this fact shall be communicated to those in attendance;
 - b. A summary of the application or other matter for hearing shall be given by the presiding officer or their designee;
 - c. The staff report shall be made followed by questions, if any, of the staff by the hearings body;
 - d. The public hearing shall be opened and testimony shall be received in the following order:
 - i. Applicant;
 - ii. Proponents;
 - iii. Opponents; and
 - iv. Rebuttal by proponents or applicant;
 - e. Close public hearing;
 - f. Questions and discussion by hearing body;
 - g. Decision by the hearing body except that further discussions, decision, or reopening of the public hearing may be postponed to another meeting, the time, date, and place of which shall be announced before adjournment.
2. All persons who speak at the hearing shall identify themselves by name, address, and interest in the matter. Attorneys or other agents shall be allowed to speak on behalf of all participants.
3. Physical evidence in the form of written documents, photographs, or other exhibits may be accepted by the hearing body if deemed to be pertinent.
4. A record made at any prior evidentiary hearing may be accepted, considered, and used by the hearing body at any subsequent hearing, and said body, by majority vote of a quorum present, may deny to accept or hear any repetitious matter.
5. The hearing body may recess a hearing in order to obtain additional information or to serve further notice upon other property owners or persons it decides may be interested. Upon recessing for these purposes, the hearing body shall announce the time and date when the hearing will be resumed.

6. Before the conclusion of the initial evidentiary hearing, any participant may ask the hearings body for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing. The hearings body shall grant the request by scheduling a date to finish the hearing as follows:
 - a. If the hearings body grants a continuance, the completion of the hearing shall be continued to a date, time, and place at least seven days after the date of the first evidentiary hearing. An opportunity shall be provided at the second hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the second hearing, any person may request, before the conclusion of the second hearing, that the record be left open for at least seven days, so that they can submit additional written evidence or testimony in response to the new written evidence; or
 - b. If the hearings body leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days after the hearing. Any participant may ask the City in writing for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings body shall reopen the record as follows:
 - i. When the hearings body re-opens the record to admit new evidence or testimony, any person may raise new issues which relate to that new evidence or testimony.
 - ii. An extension of the hearing or record granted pursuant to this subsection is subject to the limitations of ORS 227.178 (120-day rule), unless the continuance or extension is requested or agreed to by the applicant.
 - iii. If requested by the applicant, the City shall allow the applicant at least seven days after the record is closed to all other persons to submit final written arguments in support of the application, unless the applicant expressly waives this right. The applicant's final submittal shall be part of the record but shall not include any new evidence.

F. Decision process.

1. Approval or denial of a Type III decision or appeal of a Type II decision shall be based on standards and criteria located in the code.
2. The hearings body shall issue a final written order containing findings and conclusions that approve, approve with conditions, or deny the application.

3. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts.
4. In cases involving attorneys, the prevailing attorney shall prepare the findings, conclusions, and final order. Staff shall review and, if necessary, revise, these materials prior to submittal to the hearings body.

G. Notice of Decision.

1. The written findings shall be sent to:
 - a. Any person who submits a written request to receive notice, provides written comments during the application review period, or provides written or oral testimony in the public hearing;
 - b. The applicant and owner of the subject property;
 - c. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the City.
2. The written findings shall include information on the application, the City's decision, and a statement explaining how an appeal of the decision may be filed.

H. Effective Date. A Type III decision is final for purposes of appeal when it is mailed by the City.

I. Appeal. The Planning Commission's decision on a Type III decision or Type II appeal may be appealed to the City Council as follows:

1. The following have legal standing to appeal:
 - a. The applicant;
 - b. Any person who was mailed notice of the decision;
 - c. Any other person who participated in the proceeding by testifying or submitting written comments; and
 - d. The City Council, on its own motion.
2. Procedure.
 - a. A Notice of Appeal shall be filed in writing, on forms provided for the purpose by the Planning Director, within 10 days of the date the Notice of Decision was mailed.

- b. The Notice of Appeal shall be accompanied by all required information and fees.
 - c. The appeal shall be limited to the specific issues raised during the comment period and public hearing process unless the hearings body allows additional evidence or testimony concerning any other relevant issue. The hearings body may allow additional evidence if it determines that such evidence is necessary to resolve the case. The purpose of this requirement is to limit the scope of appeals by encouraging persons to be involved in the public hearing. Only in extraordinary circumstances should new issues be considered by the hearings body on an appeal.
3. The City Council shall overturn the decision of the Planning Commission only when one or more of the following findings are made:
 - a. That the Commission did not correctly interpret the requirements of this title, the Comprehensive Plan, or other requirements of law;
 - b. That the Commission did not observe the precepts of good planning as interpreted by the Council; or
 - c. That the Commission did not adequately consider all of the information which was pertinent to the case.
 4. The Council's action on an appeal shall be governed by the same general regulations, standards, and criteria as apply to the Commission in the original consideration of the application.
- J.** Any decision of the Planning Commission may be appealed to the City Council unless otherwise specified in this Title. Such appeals will be processed using the Type III procedures unless otherwise specified in this Title.
- K.** The decision of the City Council regarding a Type IV decision, appeal of a Planning Commission decision, or any other process contained within this title, is the final decision of the City. (Ord. 1080, 2001; Ord. 1111 section 5, 2003; Ord 1237, 2007)

16.89.060 Type IV decision.

For certain applications, the City Council makes a final decision after a recommendation by the Planning Commission. These application types are referred to as Type IV decisions.

- A. Pre-application conference.** A pre-application conference may be required by the Planning Director for Type IV applications.
- B. Neighborhood meetings.** The applicant may be required to present their development proposal at a neighborhood meeting (see Section 16.89.070). Table 16.89.020 sets the minimum guidelines for neighborhood review but the Planning Director may require other applications to go through neighborhood review as well.

- C. Application requirements.** Type IV applications shall be made on forms provided by the Planning Director. The application shall be accompanied by all required information and fees.
- D. Public notice and hearings.** The public notice and hearings process for the Planning Commission's review of Type IV applications shall follow that for Type III applications, as provided in subsections 16.89.050.D and 16.89.050.E.
- E. Decision process.**
1. Approval or denial of a Type IV decision shall be based on the standards and criteria located in the code.
 2. The hearings body shall issue a final written order containing findings and conclusions recommending that the City Council approve, approve with conditions, or deny the application.
 3. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts.
 4. In cases involving attorneys, the prevailing attorney shall prepare the findings, conclusions, and final order. Staff shall review and, if necessary, revise, these materials prior to submittal to the hearings body.
- F. City Council proceedings:**
1. Upon receipt of the record of the Planning Commission proceedings, and the recommendation of the Commission, the City Council shall conduct a review of that record and shall vote to approve, approve with conditions, or deny the recommendation of the Planning Commission.
 2. The City Council may question those individuals who were a party to the public hearing conducted by the Planning Commission if the Commission's record appears to be lacking sufficient information to allow for a decision by the Council. The Council shall hear arguments based solely on the record of the Commission.
 3. The City Council may choose to conduct public hearings on Comprehensive Plan amendments, amendments to the text of this title, zone map amendments, and annexations. If the Council elects to conduct such hearings, it may do so in joint session with the Planning Commission or after receiving the written record of the Commission. (Ord. 1080, 2001)

16.89.070 Neighborhood Meetings.

- A. Applicants are encouraged to meet with adjacent property owners and neighborhood representatives prior to submitting their application in order to solicit input, identify issues, and exchange information about the proposed meeting.
- B. The Planning Commission or Planning Director may require an applicant to hold a meeting in the neighborhood prior to accepting an application as complete. A neighborhood meeting is required for some application types, as shown in Table 16.89.020, unless this requirement is waived by the Planning Director.
- C. At least two weeks prior to the neighborhood meeting, the applicant shall mail notice of the meeting to:
 - 1. The appointed chair of any neighborhood association in whose boundaries the application lies; and
 - 2. All of those who would receive notice of the application's public hearing before the Planning Commission.
- D. The meeting shall be held in a fully accessible location approved by the City.
- E. Following a required neighborhood meeting, applicants shall prepare a written summary of pertinent issues raised and shall prepare a detailed response to each issue. This material shall be submitted to the Planning Department in electronic format at least two weeks before the initial public hearing.
- F. Applicants or attendees may make audio or video recordings of the neighborhood meeting if desired. (Ord. 1080, 2001; Ord. 1111 section 5, 2003; Ord 1237, 2007; Ord. 1514, 2019)

16.89.080 Application Requirements and Completeness.

- A. Submittal. Applications for land use and development permits shall be filed on forms provided by the purpose by the Planning Director. The application shall be made with all required information and fees.
- B. Fees. Fees shall be set out by resolution adopted by the City Council. Fees shall differentiate between various processes and applications and no part of the fee shall be refunded unless approved by the Planning Director.
- C. Amendments to forms. Application forms may be amended by the Planning Director. The Planning Commission shall first review and approve all proposed amendments as New Business Items.
- D. Completeness. In reviewing an application for completeness, the following procedure shall be used:

1. When an application is received by the City, the Planning Director shall immediately determine whether the following essential items are present. If they are not, the Planning Director may choose not to accept the application, in which case the application shall be immediately returned to the applicant:
 - a. The required form;
 - b. The required fee; and
 - c. The signature of the applicant on the form, and signed written authorization of the property owner of record if the applicant is not the owner.
2. Completeness.
 - a. After the application is accepted, the Planning Director shall review the application for completeness. If the application is incomplete, the Planning Director shall notify the applicant in writing exactly what information is missing within thirty (30) days of the application and allow the applicant 180 days to submit the missing information;
 - b. In accordance with the application submittal requirements, the application shall be deemed complete upon the receipt by the Planning Director of all required information. The applicant shall have the option of withdrawing the application or refusing to submit information requested under (a), above. For the refusal to be valid, it shall be made in writing and received by the Planning Director no later than fourteen (14) days after the date on the letter of incompleteness. If the applicant refuses in writing to submit the missing information, the application shall be deemed complete for the purposes of processing on the 31st day after first acceptance of the application.
- E. The City shall take final action on permit applications which are subject to this chapter, including resolution of all appeals, within 120 days from the date the application is deemed complete. Any exceptions to this rule shall conform to the provisions of ORS 227.178. This 120-day rule does not apply to legislative comprehensive plan and text amendment applications as defined under ORS 227.178.
- F. Standards and criteria. Approval or denial of a complete application shall be based upon the standards and criteria that were applicable at the time the application was first accepted. (Ord. 1080, 2001)

16.89.90 Modifications.

Any proposed modification to previously approved land use applications, including site plans, elevations, or conditions of approval, shall be reviewed by the Planning Director to determine if they are minor, intermediate, or major. Factors to be considered in this determination include the date of the original application, the impact on neighboring properties, and the impact on public service provision. Modifications shall be processed as indicated in

subsections A through D below. Modification applications shall be made on forms provided for the purpose by the Planning Director.

- A. Minor Modification. Minor modifications have a negligible impact on an approved site plan, land use decision, or condition of approval. The Planning Director will review all minor modifications under the Type I process.
- B. Intermediate Modification. Intermediate modifications are those that do not fit the definitions in 16.89.090(A) or (C). The Planning Director will review intermediate modifications under the Type II process. If the Planning Director approves an intermediate modification, notice of the decision will be made in accordance with the Type II process. The individuals noticed may obtain a public hearing on the issue by filing a request in writing within ten days of the notice mailing date. Any additional costs of such hearings shall be paid by the modification applicant. Hearing notice shall follow the requirements of the procedure type of the original application.
- C. Major Modification. Any modification that would result in a substantial impact to an approved site plan, land use decision, or condition of approval is a major modification. Major modifications shall be processed using the procedure type of the original application.
- D. Modification criteria. Modification applications shall be evaluated based on the criteria pertaining to the original application being modified. (Ord. 1111, 2003; Ord 1237, 2007)

16.89.100 Administrative Reviews.

Where a determination about a proposed use, structure or the legality of a parcel cannot be made without interpretation or the exercise of factual, policy or legal judgment, the proposed use, structure, or the legality of a lot or parcel may be reviewed as an administrative review subject to submittal of an application as provided in this chapter. The administrative review procedures, as provided below, shall be followed in making these decisions.

- A. The decision shall be made on the basis of the applicable city comprehensive plan and applicable standards and criteria in the City Of Canby land development and planning ordinance. The Planning Director or designee may attach any conditions of approval deemed necessary to ensure conformance of the use, structure, lot or parcel to the standards or criteria. Administrative Review Applications may be submitted and shall be signed as required in this chapter. Notwithstanding any other provisions of this title, the Planning Director or designee may forward any land use permit or application to the planning commission for a public hearing and initial decision.
- B. Notice of a decision shall be sent to the applicant, the owner(s) of the subject property, the co-tenants if the subject property is owned by tenants in common, and all property owners within the notification area prescribed by this chapter or as required by state law or administrative rule.

- C.** The applicant or any persons aggrieved or affected by the decision may file a request for a hearing to the City Planning Department within 10 days of the date the decision was rendered. The request must follow procedures in Sections 16.89.030 and 040.
- D.** The applicant may file a request for reconsideration without a hearing to the Planning Department within 10 days of the date the decision was rendered. The request must be in writing and received in the Planning Department office prior to the decision being final, and should explain wherein the decision is factually or legally incorrect, or state new facts material to the decision that were not available to the Planning Director, or propose modifications that will better conform the proposal to the requirements of this title. The request for reconsideration shall include a signed 30-day waiver of the 120-day time limit in the Oregon Revised Statutes.

Applicants shall be limited to one request for reconsideration per application. The Planning Director shall reconsider the matter and provide notice to the person requesting reconsideration and as required in subsection (B) of this section.

- E.** When reconsideration has been requested, the decision is stayed until final action is taken. (Ord. 1514, 2019)