

QUASI-JUDICIAL TRAINING

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1. Structure: 7 members; meets at least monthly 8

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b. Quasi-judicial: 8, 16

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letter of credit, or other form acceptable to the City. Indemnity agreements may be used by other governmental agencies. Guarantees must be accompanied by a contract. The form of the guarantee and contract must be approved by the City Attorney. The Director of BDS is authorized to accept and sign the contract for the City, and to accept the guarantee. The guarantee must be filed with the City Auditor.

- C. Amount of guarantee.** The amount of the performance guarantee must be equal to at least 110 percent of the estimated cost of performance. The applicant must provide written estimates by three contractors with their names and addresses. The estimates must include as separate items all materials, labor, and other costs of the required action.
- D. Completion.** An inspection and approval of the action or improvement covered by the performance guarantee is required before the performance guarantee is returned. The inspection is done by BDS or other appropriate City bureaus. If the action or improvement is not completed satisfactorily within the stated time limits, the City may have the necessary action or improvement completed and seek reimbursement for the work from the performance guarantee. Any remaining funds will be returned to the applicant.

33.700.060 Covenants with the City

- A. Content of the covenant.** A covenant required by this Title or a condition of a land use approval must state that:
 - 1. The owner will comply with all applicable code requirements and conditions of approval; and
 - 2. If the owner fails to perform under the covenant, the City may terminate occupancy of the site and seek all necessary injunctive relief, including seeking to prevent future occupancy of the site while a violation of the covenant exists.
 - 3. Where the development rights of one site are dependent on the performance of conditions by the owner of another site (such as the transfer of development rights), the covenants are judicially enforceable by the owner of one site against the owner of another.
- B. Adopting the covenant.** The form of all covenants must be approved by the City Attorney. The covenant must run with the land. The covenant must be attached to the deed and be recorded in the appropriate records of the county in which the site is located. Proof of the recording must be made prior to the issuance of any building permits.

33.700.070 General Rules for Application of the Code Language

The rules of this section apply to this Title and any conditions of a land use approval granted under this Title.

- A. Reading and applying the code.** Literal readings of the code language will be used. Regulations are no more or less strict than as stated. Applications of the regulations that are consistent with the rules of this section are nondiscretionary actions of the Director of BDS to implement the code. The action of the Director of BDS is final.
- B. Ambiguous or unclear language.** Where the language is ambiguous or unclear, the Director of BDS may issue a statement of clarification processed through a Type III procedure, or

initiate an amendment to Title 33 as stated in Chapter 33.835, Goal, Policy, and Regulation Amendments.

- C. Situations where the code is silent.** Proposals for uses, development, or land divisions where the Code is silent or where the rules of this section do not provide a basis for concluding that the proposal is allowed are prohibited. The Planning and Sustainability Director may initiate an amendment to Title 33 to add a new use category, or make other amendments, as stated in Chapter 33.835, Goal, Policy, and Regulation Amendments.
- D. Terms.**
1. Defining words. Words used in the zoning code have their dictionary meaning unless they are listed in Chapter 33.910, Definitions. Words listed in the Definitions chapter have the specific meaning stated, unless the context clearly indicates another meaning.
 2. Tenses and usage.
 - a. Words used in the singular include the plural. The reverse is also true.
 - b. Words used in the present tense include the future tense. The reverse is also true.
 - c. The words "must," "will," and "may not" are mandatory.
 - d. "May" is permissive.
 - e. "Prohibited" means that an adjustment, conditional use, or other land use review may not be requested in order to allow an exception to the regulation in question. This does not preclude requests for zone changes or Comprehensive Plan map amendments.
 - f. When used with numbers, "Up to x," "Not more than x" and "a maximum of x" all include x.
 3. Conjunctions. Unless the context clearly indicates otherwise, the following conjunctions have the following meanings:
 - a. "And" indicates that all connected items or provisions apply;
 - b. "Or" indicates that the connected items or provisions may apply singly or in combination;
 - c. "Either...or" indicates that the connected items or provisions apply singly, but not in combination.
 4. Lists. Lists of items that state "including the following," "such as," or similar language are not limited to just those items. The lists are intended to provide examples, but not to be exhaustive of all possibilities.

E. Hierarchy of regulations.

1. Different levels of regulations. In general, an area with base zoning, overlay zoning, or an area in a plan district is subject to all of the regulations of each. Where a land division is requested, the regulations of the 33.600s series of chapters also must be met.

When the regulations conflict, unless specifically indicated otherwise, the following rules apply:

- a. The regulations in a plan district supersede regulations in overlay zones, base zones, and regulations in the 600s series of chapters;
 - b. The regulations in an overlay zone supersede regulations in base zones and regulations in the 600s series of chapters;
 - c. The regulations for plan districts and overlay zones also supersede conflicting regulations for a specific use or development stated in the 200s series of chapters; and
 - d. The regulations in the 200s series of chapters supersede regulations in the 600s series of chapters.
2. Regulations at the same level. When regulations at the same level conflict, those that are more specific to the situation apply. An example would be the parking space requirement for houseboats in moorages, two spaces per unit, which is stated in the Floating Structures chapter. This would supersede the standard residential requirement of one space per unit stated in the Parking chapter. When the regulations are equally specific or when it is unclear which regulation to apply, the most restrictive applies. Regulations at the same level include such situations as two different standards in a base zone or regulations from separate chapters in the 200s series of chapters.
 3. Figures, tables, and maps. Where there are differences of meaning between code text and figures or tables, the code text controls. When there are differences between code text and maps, the maps control.

F. Sites in more than one zone. When a site is in more than one zone, the development standards of each zone apply to the portion of the site in that zone.

G. Applying the code to specific situations. Generally, where the code cannot list every situation or be totally definitive, it provides guidance through the use of descriptions and examples. In situations where the code provides this guidance, the descriptions and examples are used to determine the applicable regulations for the situation. If the code regulations, descriptions, and examples do not provide adequate guidance to clearly address a specific situation, the stated intent of the regulation and its relationship to other regulations and situations are considered.

H. Determining whether a land use request is quasi-judicial or legislative. Quasi-judicial and legislative are terms describing two different types of land use actions. In general, legislative actions involve the adoption of law or policy applicable Citywide or to a broad geographical area of the City. Quasi-judicial actions involve the application of existing law

or policy to a small area or a specific factual situation. There are different legal requirements for the processing of these two types of actions. In general, quasi-judicial actions require greater notice and procedural protections than do legislative actions. If there are questions as to whether a specific request for a land use review is quasi-judicial or legislative, the decision will be made by the City Attorney. The decision will be based on current law and legal precedent. Requests for decisions on this issue must be in writing and must be filed with the Director of BDS, who will forward the request to the City Attorney.

33.700.075 Automatic Changes to Specified Dollar Thresholds

The sections listed below include dollar thresholds. These thresholds will be increased or decreased each year on March 1. The change will occur automatically, and the new dollar amount will be placed in the Zoning Code without being subject to the procedures for amending the Zoning Code. The change will be based on the annual national average of the Construction Cost Index (CCI), as published in the second January issue of the Engineering News-Record.

- A. The following sections are subject to this regulation.** Any increase or decrease that is not a multiple of \$50 will be rounded to the nearest multiple of \$50:
1. 33.258.070.D.2.a;
 2. 33.258.070.D.2.d(2);
 3. 33.440.230.D.1;
 4. 33.510.253.D.1.a;
 5. 33.515.278.B.17.a(1);
 6. 33.560.020
 7. 33.565.310.B.2
 8. Table 846-1; and
 9. Table 846-3
- B. The following sections are subject to this regulation.** Any increase or decrease that is not a multiple of \$0.10 will be rounded to the nearest multiple of \$0.10:
1. 33.510.205.C.2.f.; and
 2. 33.510.210.D.2.b(6)

Timeliness of Regulations

33.700.080 Regulations That Apply at the Time of an Application

The regulations of this section apply to applications for land use reviews and building or development permits.

33.710 Review Bodies

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Sections:

- 33.710.010 Purpose
- 33.710.020 Delegation of Authority
- 33.710.030 Commissions, Committees, and Boards Generally
- 33.710.040 Planning and Sustainability Commission
- 33.710.050 Design Commission
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- 33.710.070 Adjustment Committee
- 33.710.080 Land Use Hearings Officer
- 33.710.090 Director of the Bureau of Development Services
- 33.710.100 City Council
- 33.710.120 Healy Heights Radiofrequency Advisory Board

33.710.010 Purpose

Review bodies are established to make decisions on land use actions and to recommend land use policy to the City Council. The review bodies provide an opportunity for citizen involvement and provide expertise for specialized topic areas. Review bodies that make quasi-judicial decisions do so on authority delegated by the City Council. The provisions of this chapter define the powers and duties for each review body and state how each body will operate.

33.710.020 Delegation of Authority

The commissions, committees, boards, and officers established in this chapter are empowered to perform all duties assigned to them by State law or this Title on behalf of the City Council.

33.710.030 Commissions, Committees, and Boards Generally

- A. Length of terms.** Members of commissions, committees, and boards provided under this chapter may be appointed to terms of not more than 4 years. Initial appointments for newly formed commissions, committees, and boards must include a sufficient number of appointments for less than the maximum 4 year term of office to provide overlap and a continuity of membership. Members of commissions are limited to a maximum of two full terms. Vacancies which may occur must be filled for the unexpired terms.
- B. Required attendance.** If a member fails to attend three consecutive meetings or misses 20 percent or more of the meetings held during a calendar year, the Mayor may declare the position vacant.
- C. Officers and rules.** Each commission, committee, or board elects its own presiding officers and adopts rules of procedure that are necessary to fulfill its duties. The rules of procedure must be in writing and comply with the Oregon Public Meetings law, Statutory land use hearing requirements, and this Title.
- D. Voting.** A majority of the members present must vote affirmatively in order to take action. Individual members may not have more than one vote for the conduct of commission or committee business.

- E. Pay.** All members on a commission, committee, or board serve without pay.
- F. Public meetings.** All meetings, including briefing sessions, must be open to the public and comply with the Oregon Public Meetings law.
- G. Staff.**
 - 1. Planning and Sustainability Commission. The Director of the Bureau of Planning and Sustainability must provide the Planning and Sustainability Commission with staff assistance necessary to enable it to discharge its duties.
 - 2. Design Commission, Historic Landmarks Commission, Adjustment Committee. The Director of the Bureau of Development Services must provide the Design Commission, Historic Landmarks Commission, and Adjustment Committee with staff assistance necessary to enable them to discharge their duties.
- H. Records.**
 - 1. Planning and Sustainability Commission. The Director of the Bureau of Planning and Sustainability keeps an accurate record or minutes of all proceedings of the Planning and Sustainability Commission.
 - 2. Design Commission, Historic Landmarks Commission, Adjustment Committee. The Director of the Bureau of Development Services keeps an accurate record or minutes of all proceedings of the Design Commission, Historic Landmarks Commission, and Adjustment Committee.
- I. Conflict of interest.** A member of any commission, committee, board, or review body except City Council may not participate as a member in deciding any land use action in which the member has a direct or substantial financial interest. A member may not participate if the member's spouse, brother, sister, child, parent, father-in-law, or mother-in-law have a direct or substantial financial interest, or if any business in which the member is then serving or has served within the previous two years or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment, has a direct or substantial financial interest. Any actual or potential interest must be disclosed at the hearing or meeting where the action is scheduled.
- J. Commission coordination.** The chairs, or their delegates, of the Planning and Sustainability Commission, Design Commission, and Historic Landmarks Commission meet quarterly to discuss trends and issues relevant to their respective commissions and, as appropriate, to coordinate the Commissions' programs. The chairs will share a summary of their meeting with their respective Commissions.

33.710.040 Planning and Sustainability Commission

- A. Purpose.** The Planning and Sustainability Commission advises City Council on the City's long-range goals, policies, and programs for land use, planning, and sustainability. In making recommendations and decisions, it considers the economic, environmental, and social well-being of the city in an integrated fashion. The Commission has specific responsibility for the stewardship, development and maintenance of the City's

Comprehensive Plan, Climate Action Plan, and zoning code. The Commission is committed to effective public involvement and leadership in its work and in the decisions it considers.

- B. Membership.** The Planning and Sustainability Commission consists of eleven members, none of whom may hold public elective office. The members are appointed by the Mayor and confirmed by the City Council. The membership of the Planning and Sustainability Commission should include broad representation of Portland's community and reflect the dynamic nature of this changing city. No more than two members of the Planning and Sustainability Commission may be engaged in the same occupation, business, trade, or profession. No more than two members of the Commission may be individuals, or members of any partnership, or officers or employees of any corporation that engages principally in the buying, selling, leasing, or developing of real estate for profit.
- C. Meetings, officers, and subcommittees.**
1. The Planning and Sustainability Commission meets at least once a month. Meetings are conducted in accordance with adopted rules of procedure. Six members constitute a quorum at a meeting. The election of officers takes place at the first meeting of each calendar year.
 2. The Planning and Sustainability Commission may divide its membership into special subcommittees which are authorized to act on behalf of the Commission for an assigned purpose. Three members of the Commission constitute a quorum on such subcommittees. Subcommittee actions require the affirmative vote of at least three members.
- D. Powers and duties.** The Planning and Sustainability Commission has all of the powers and duties which are now or may in the future be imposed upon City planning commissions by State law, by this Title, by the City Council, or by the City Charter. The Commission's powers and duties include:
1. Holding hearings and making recommendations on all policy matters related to the Comprehensive Plan; the Climate Action Plan, the zoning code; significant transportation and sustainable development policies, projects, and issues; street vacations; sign regulations, and renaming city streets;
 2. Advising the City Council on plans and policies regarding such issues as land use, zoning, housing, energy, transportation, urban renewal, urban design, equity, economic development, public buildings, climate change, sustainable development, environmental protection, resource conservation, and other policies of City-wide interest;
 3. Articulating and guiding the City's long-range goals, policies, and programs for developing and achieving sustainable communities; and
 4. Developing opportunities for community members to learn about principles, policies, and programs that promote sustainable practices and development.
- E. Communications on appeals.** The Planning and Sustainability Commission may submit written responses or appear in person on appeals of quasi-judicial land use decisions to the City Council.

- F. Annual report.** The Planning and Sustainability Commission must make an annual report of its actions and accomplishments for each fiscal year. The report must be filed with the Planning and Sustainability Director by the first working day of September. The Planning and Sustainability Director may combine the report with annual reports of other bodies for transmission to the City Council.

33.710.050 Design Commission

- A. Purpose.** The Design Commission provides leadership and expertise on urban design and architecture and advances the purpose of the Design overlay zone.
- B. Membership.** The Design Commission consists of seven members, none of whom may hold public elective office. The Commission must include:
1. One representative of the Regional Arts and Culture Council;
 2. One person representing the public at-large. The public-at-large member must not be employed in one of the areas of expertise listed in Paragraph B.3; and
 3. Five members experienced in either urban planning, design, architecture, landscape architecture, natural resource management, sustainable building practices, engineering, financing, construction or management of buildings, or land development. No more than two members may be appointed from any one of these areas of expertise.

The Regional Arts and Culture Council member is nominated by the Regional Arts and Culture Council chair and approved by the Mayor. The other members are appointed by the Mayor and confirmed by the City Council.

- C. Meetings, officers, and subcommittees.**
1. The Design Commission meets at least once a month and as necessary to act on reviews assigned to them by this Title. Meetings are conducted in accordance with adopted rules of procedure. Four members constitute a quorum at a meeting. The election of officers takes place at the first meeting of each calendar year.
 2. The Design Commission may divide its membership into special subcommittees which are authorized to act on behalf of the Commission for an assigned purpose. Three members of the Commission constitute a quorum on such subcommittees. Subcommittee actions require the affirmative vote of at least three members.
- D. Powers and duties.** The Design Commission has all of the powers and duties which are assigned to it by this Title or by City Council. The Commission powers and duties include:
1. Reviewing major developments within Design overlay zones except those projects involving or located within the following:
 - a. Historic Districts;
 - b. Conservation Districts;
 - c. Historic Landmarks; and
 - d. Conservation Landmarks.

2. Recommending the establishment, amendment, or removal of the Design overlay zone and design districts to the Planning and Sustainability Commission;
 3. Recommending design guidelines for adoption by City Council except for guidelines for Historic Districts and Conservation Districts;
 4. Reviewing other land use requests assigned to the Design Commission; and
 5. Providing advice on design matters to the Hearings Officer, Planning and Sustainability Commission, Historic Landmarks Commission, Portland Development Commission, City Council, and other City Bureaus or public agencies when necessary or requested.
- E. Annual report.** The Commission must make an annual report of its actions and accomplishments for each calendar year. The report must be filed with the Director of BDS by the first working day of April of the following year. The Director of BDS may combine the report with annual reports of other bodies for transmission to City Council.

33.710.060 Historic Landmarks Commission

- A. Purpose.** The Historic Landmarks Commission provides leadership and expertise on maintaining and enhancing Portland's historic and architectural heritage. The Commission identifies and protects buildings and other properties that have historic or cultural significance or special architectural merit. The Commission provides advice on historic preservation matters, and coordinates historic preservation programs in the City. The Commission is also actively involved in the development of design guidelines for historic districts.
- B. Membership.** The Historic Landmarks Commission consists of seven members, none of whom may hold public elective office. All members must have demonstrated interest, competence, or knowledge of historic preservation. At least two members must have professional experience in historic preservation, local history, architectural history, or architecture. At least three of the additional members must have professional experience or working knowledge of historic preservation, local history, architectural history, architecture, landscape architecture, real estate, economics, construction, community development, urban planning, archeology, law, finance, cultural geography, cultural anthropology, cultural resources management, or related disciplines. The Commission may have up to two members at-large. No more than two members of the Commission may be in the business of buying, selling, leasing, or developing real estate for profit, or be officers of such a business. The members are appointed by the Mayor and confirmed by the City Council.
- C. Meetings, officers, and subcommittees.**
1. The Historic Landmarks Commission meets at least once a month and as necessary to act on reviews assigned to them by this Title. Meetings are conducted in accordance with adopted rules of procedure. Four members constitute a quorum at a meeting. The election of officers takes place at the first meeting of each calendar year.
 2. The Historic Landmarks Commission may divide its membership into special subcommittees which are authorized to act on behalf of the Commission for an assigned purpose. Three members of the Commission constitute a quorum on such

subcommittees. Subcommittee actions require the affirmative vote of at least three members.

- D. Powers and duties.** The Historic Landmarks Commission has all of the powers and duties which are assigned to it by this Title or by City Council. The Commission powers and duties include:
1. Establishing, amending, or removing Historic Landmark and Conservation Landmark designations and amending Historic District and Conservation District designations in quasi-judicial reviews;
 2. Recommending the establishment, amendment, or removal of Historic Landmark and Conservation Landmark designations and Significant Resource identification to the City Council in legislative actions;
 3. Providing advice on the establishment, amendment, or removal of Historic Districts and Conservation Districts to the Planning and Sustainability Commission in legislative actions;
 4. Recommending design guidelines for Historic Districts and Conservation Districts to the City Council in legislative actions;
 5. Reviewing development proposals for Historic Landmarks and Conservation Landmarks and in Historic Districts and Conservation Districts in quasi-judicial reviews;
 6. Reviewing demolition and relocation requests for certain Historic Landmarks, Conservation Landmarks, and resources in Historic Districts and Conservation Districts in quasi-judicial reviews;
 7. Providing advice on historic preservation matters to the Hearings Officer, Design Commission, Planning and Sustainability Commission, Portland Development Commission, other City commissions and committees, and City Council; and
 8. Initiating and coordinating historic preservation and public outreach programs in the City, including making recommendations on National Register of Historic Places nominations and making recommendations to other governmental agencies regarding historic preservation programs and issues.
- E. Annual report.** The Commission must make an annual report of its actions and accomplishments for each calendar year. The report must be filed with the Director of BDS by the first working day of April. The Director of BDS may combine the report with annual reports of other bodies for transmission to City Council.

33.710.070 Adjustment Committee

- A. Purpose.** The Adjustment Committee reviews adjustment requests to the development standards of Title 33. The Committee provides the opportunity for a public forum in the review of these requests.
- B. Membership.** The Adjustment Committee consists of seven members, none of whom may hold public elective office. The Committee must include three persons representing the public at large, two members in either urban design, architecture, or landscape architecture, and two members experienced in either engineering, financing, construction,

management of buildings, or land development. The members are appointed by the Mayor and confirmed by the City Council.

- C. Second Committee.** If the Director of BDS determines that the number of adjustment requests exceeds the capacity of the Adjustment Committee to review in a timely manner, the Director of BDS may recommend to the Mayor that a second Committee be formed. The second Committee may be dissolved by the Mayor if the number of reviews can be adequately handled by one Committee. The second committee is also subject to all the regulations in this section.
- D. Meeting and officers.** The Adjustment Committee meets at least once a month and as necessary to act on adjustment requests. Meetings are conducted in accordance with adopted rules of procedure. Four members constitute a quorum at a meeting. The election of officers takes place at the first meeting of each calendar year.
- E. Powers and duties.** The Adjustment Committee has all of the powers and duties which are assigned to it by this Title or by City Council. The Committee powers and duties include:
 - 1. Reviewing requests to adjust the development standards of Title 33, when no other land use reviews are associated with the project; and
 - 2. Providing advice on adjustment matters to the Hearings Officer, Planning and Sustainability Commission, Historic Landmarks Commission, Portland Development Commission, and City Council.
- F. Annual report.** The Committee must make an annual report of its actions and accomplishments for each fiscal year. The report must be filed with the Director of BDS by the first working day of September. The Director of BDS may combine the report with annual reports of other bodies for transmission to City Council.

33.710.080 Land Use Hearings Officer

- A. Purpose.** The position of the Land Use Hearings Officer is established to perform quasi-judicial reviews of most land use applications. This frees the City Council and Planning and Sustainability Commission from a large quasi-judicial case load and allows for prompt decision-making. It also assigns quasi-judicial reviews to a body with expertise in applying law and policy to specific situations and in meeting legal requirements for considering and processing such reviews.
- B. Short name.** The Land Use Hearings Officer is also called the Hearings Officer.
- C. Appointment.** The Hearings Officer is appointed by the City Auditor in conformance with City rules.
- D. Hearings.** The Hearings Officer must conduct hearings as necessary to review and make decisions on land use requests.
- E. Powers and duties.**
 - 1. The Hearings Officer acts on behalf of the City Council as a review body to decide matters assigned by this Title.

2. The Hearings Officer has the power to request, receive, and examine available information; conduct public hearings; prepare a record; and enter findings and conclusions on all matters for which the Hearings Officer is assigned by this Title to act as review body.

- F. Annual report.** An annual report of the Hearings Officers' actions and accomplishments for each fiscal year must be made. The report must be filed with the Planning and Sustainability Commission by the first working day of September for transmission to the City Council. This report may contain recommendations for Planning and Sustainability Commission and City Council consideration.

33.710.090 Director of the Bureau of Development Services

The Director of BDS directs and manages the staff of BDS. The Director of BDS provides staff services to the commissions, committees, and boards as specified in this chapter. The Director of BDS is responsible for the decisions and recommendations required of the Director of BDS by this Title. The Director of BDS is in charge of implementing this Title. The Director of BDS may delegate review and decision-making authority to BDS staff.

33.710.100 City Council

The City Council acts as a review body for land use reviews which specifically need final Council action, the appeals of certain land use reviews, and for all legislative actions.

33.710.120 Healy Heights Radiofrequency Advisory Board

- A. Purpose.** The Healy Heights Radiofrequency (RF) Advisory Board provides technical expertise and advice to applicants and review bodies when Radio Frequency Transmission Facility development is proposed in the plan district. The board will recommend when monitoring of radiofrequency power density or surveying of radiofrequency interference (RFI) is necessary and may recommend assessment of the Radio Frequency Transmission Facility owners and operators to cover the costs incurred. The board will also provide information on radiofrequency emissions and interference in the vicinity of the Healy Heights plan district, and respond to other related citizen inquiries.
- B. Membership.**
1. The advisory board will consist of five members: two representatives from the recognized neighborhood associations within 2,000 feet of the plan district; two representatives from the broadcast or communications industry within the plan district; and one member at-large, not from or affiliated with the recognized neighborhood associations within 2,000 feet of the plan district or the broadcast and communications industries within the plan district. The at-large member should have either some background with the communications and broadcast industry, or in a related academic field, or related regulatory experience, or mediation experience.
 2. Nominations. Before the Planning and Sustainability Director makes nominations to the Mayor for membership on the advisory board, he must solicit recommendations, by letter, from the presidents of all active neighborhood associations within 2,000 feet and from the tower owners and operators of major facilities. The four members selected from the industry and surrounding neighbors will make recommendations to the Planning and Sustainability Director for the member at-large.

3. Appointments. The Mayor must appoint board members from the nominations tendered, but may reject individuals nominated to serve on the advisory board and request additional nominations.
 4. Terms. Advisory board members serve for four years, except during the initial terms. For those persons first selected to this advisory board, one neighborhood representative and one industry representative will serve for two years, the other three members will serve the full four-year term. Consecutive terms are not allowed. Multiple terms are allowed.
 5. Staffing. The Planning and Sustainability Director or designee will staff the board, in accordance with 33.710.030.
- C. Meetings.** The advisory board will meet at least once every three months. The advisory board will meet with the City of Portland/Multnomah County Health Officer at least annually; this meeting will include a discussion of any new information regarding the human health aspects of non-ionizing electromagnetic energy.
- D. Powers and duties.** The duties, responsibilities, and authority of the advisory board include, but are not limited to:
- Initiation of monitoring or measurement of radiofrequency emissions in the vicinity of the plan district;
 - Initiation of survey of the radiofrequency interference levels in the vicinity of the plan district;
 - Recommendation to the City Council for assessment and collection of fees, for measurement or monitoring of the radiofrequency environment, survey of RFI, maintenance of records, distribution of information, liaison with the City, and other board duties;
 - Advice to the Planning and Sustainability Commission, City Council, and Land Use Hearings Officer on legislative and quasi-judicial matters affecting RF operations in the plan district and to the Code Hearings Officer for enforcement;
 - Provision of leadership and expertise in problem-solving;
 - Counseling of citizens and facility operators when conflicts arise, such as radiofrequency interference or wind noise;
 - Provision of a point of contact for citizen inquiries or complaints;
 - Provision and initiation of communication, notification, and information for affected residents; and
 - Maintenance of records of complaints, surveying or monitoring results, and other information pertinent to the operation of the RF facilities within the Healy Heights Plan District and/or mitigation of the effects of that operation.

(Amended by: Ord. No. 166921, effective 10/1/93; Ord. No. 169987, effective 7/1/96; Ord. No. 171718, effective 11/29/97; Ord. No. 174263, effective 4/15/00; Ord. No. 175164, effective 12/14/00; Ord. No. 184046, effective 9/10/10; Ord. No. 185915, effective 5/1/13; Ord. No. 186639, effective 7/11/14; Ord. No. 190477, effective 8/1/21; Ord. No. 190687, effective 3/1/22.)

33.720 Assignment of Review Bodies

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Sections:

- 33.720.010 Purpose
- 33.720.020 Quasi-Judicial Land Use Reviews
- 33.720.030 Legislative Land Use Reviews

33.720.010 Purpose

This chapter assigns a review body to all land use reviews. It also specifies the procedure when more than one review is requested simultaneously.

33.720.020 Quasi-Judicial Land Use Reviews

Quasi-judicial land use reviews are assigned to the review bodies stated below.

- A. Director of BDS.** All land use reviews that are subject to a Type II or Type IIX procedure are assigned to the Director of BDS.
- B. Hearings Officer.** All appeals of land use reviews that were processed as an Expedited Land Division, a Type II or Type IIX procedure and all land use reviews subject to a Type III procedure, unless stated otherwise in Subsection C., or D., or E. below, are assigned to the Hearings Officer.
- C. Design Commission.** The following land use reviews, when subject to a Type III procedure or when they are appeals of a Type II procedure, are assigned to the Design Commission:
 - 1. Design review, except as provided for in Paragraph D.2 below;
 - 2. Adjustments in a Design zone, except historic districts and historic landmarks;
 - 3. Adjustments associated with a design review required by City Council outside of a Design zone;
 - 4. Reviews in the Central City plan district for height and FAR bonuses and transfers; and
 - 5. South Waterfront Greenway Reviews in the South Waterfront subdistrict of the Central City plan district; and
 - 6. Planned developments in the commercial/mixed use zones using the Planned Development Bonus provisions of 33.130.212.E; and
 - 7. Central City Master Plan reviews.
- D. Historic Landmarks Commission.** Generally, the Historic Landmarks Commission will consider matters related to historic resources. However, because they primarily involve use issues, historic preservation incentive reviews, when subject to a Type III procedure or when they are appeals of a Type II procedure, are assigned to the Hearings Officer. The following land use reviews, when subject to a Type III procedure or when they are appeals of a Type II procedure, are assigned to the Historic Landmarks Commission.

1. Landmark designations, and the removal of landmark designations;
 2. Historic resource review of Historic, Conservation, and National Register Landmarks and resources in Historic, Conservation, and National Register Districts;
 3. Demolition review of Historic, Conservation, and National Register Landmarks and contributing resources in Historic, Conservation, and National Register Districts; and
 4. Adjustments associated with Historic, Conservation, and National Register Landmarks and Historic, Conservation, and National Register Districts.
- E. Adjustment Committee.** Appeals of adjustment reviews that were processed as a Type II procedure where no other land use review is involved are assigned to the Adjustment Committee.
- F. City Council.** Both Comprehensive Plan amendments and Statewide Planning Goal exceptions which are quasi-judicial require final City Council action in addition to the regular Type III procedure. All appeals of land use reviews subject to a Type III procedure are assigned to the City Council. All land use reviews subject to a Type IV procedure are assigned to the City Council.
- G. Applications for more than one land use review request on a site may be consolidated into a single application package.** If the reviews are not assigned to the same review body, they are assigned in the manner stated below;
1. When more than one review is requested and the reviews have different procedures, the overall application is reviewed by the review body assigned to the highest procedure. See 33.730.042, Concurrent Reviews.
 2. When three or more different kinds of land use reviews are requested, and at least three of the land use reviews are assigned to a Type II procedure, if none of the reviews are assigned to a Type III procedure, the overall application is processed using the Type II procedure. If any of the reviews are assigned to a Type III procedure, the overall application is processed using the Type III procedure.
 3. When the requested reviews have the same highest procedure but are assigned different review bodies, the reviews may be processed simultaneously with a joint hearing before the applicable review bodies, except in the case of adjustments. If an adjustment is being reviewed concurrently with other land use reviews, then the review body is the body or bodies assigned to the other land use reviews. For the purposes of this chapter, a joint hearing includes holding consecutive public hearings at the same location.
 4. When more than one review is requested and any of the reviews are assigned to a Type IV procedure, the reviews not subject to the Type IV procedure are reviewed and assigned to review bodies as specified in Paragraphs G.1 through G.3. The review subject to the Type IV procedure is assigned to the City Council.
 5. If an appeal is filed, the appellant must identify the specific approval criteria that the decision violates. The appeal hearing will be before the review body assigned to review the specified criteria that are being appealed. If approval criteria from more

than one review are appealed, separate appeal hearings before the review bodies assigned the reviews may be held.

33.720.030 Legislative Land Use Reviews

- A.** Legislative land use reviews, unless stated otherwise in Subsections B through D, are assigned to the Planning and Sustainability Commission, who will make a recommendation to City Council.
- B.** Design guidelines for Historic Districts and Conservation Districts are assigned to the Historic Landmarks Commission, who will make a recommendation to City Council.
- C.** Design guidelines for the Design overlay zone are assigned to the Design Commission, who will make a recommendation to City Council. In some cases, a joint hearing with the Design and Planning and Sustainability commissions is required. See 33.740.020.
- D.** Historic Landmark and Conservation Landmark designation and removal and Significant Resource identification and removal are assigned to the Historic Landmarks Commission, who will make a recommendation to City Council.
- E.** Final action on all legislative land use reviews is by the City Council.

(Amended by: Ord. No. 169987, effective 7/1/96; Ord. No. 174263, effective 4/15/00; Ord. Nos. 175965 and 176333, effective 7/1/02; Ord. No. 176469, effective 7/1/02; Ord. No. 176587, effective 7/20/02; Ord. No. 178832, effective 10/21/04; Ord.No.183518, effective 03/05/10; Ord. No. 185915, effective 5/1/13; Ord. No. 188177, effective 5/24/18; Ord. No. 188958, effective 5/24/18; Ord. No. 189000, effective 7/9/18; Ord. No. 190023, effective 8/10/20; Ord. No. 190477, effective 8/1/21; Ord. No. 190687, effective 3/1/22; Ord. No. 190851, effective 6/30/22.)

33.730 Quasi-Judicial Procedures

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General

33.730.010 Purpose

This chapter states the procedures and requirements for quasi-judicial reviews. It contains the step-by-step processing requirements. The chapter also describes the rules of conduct for all people involved in the quasi-judicial review process. The assignment of procedures to specific reviews is done in the chapter that establishes the review. The assignment of the review body is done in Chapter 33.720, Assignment of Review Bodies.

The regulations provide standardized methods for processing quasi-judicial land use reviews. The requirements provide clear and consistent rules to ensure that the legal rights of individual property owners and the public are protected. The rules implement state law, including the requirement that most quasi-judicial reviews must be completed within 120 days of filing a complete application. The Type II, Type IIx, Type III, and Type IV procedures, with their varying levels of review, provide the City with options when assigning procedures to each quasi-judicial review in this Title. The Type I and Type Ix procedures are administrative procedures.

The Type I and Ix procedures, or limited land use review, allows local decisions to be made administratively for such reviews as minor design and historic resource cases. The Type II procedure is the shortest and simplest of the other three quasi-judicial reviews. It is intended for reviews which involve lesser amounts of discretion, lower potential impacts, or both. The Type Iix procedure is used primarily for land divisions. It provides more time to make the administrative decision than the Type II procedure. The Type III procedure is a longer and more in-depth review. It is intended for reviews which involve substantial discretion or high impacts. The Type IV procedure is used to review proposals to demolish certain significant historic resources.

Basic Procedures

33.730.013 Expedited Land Division Procedure

An Expedited Land Division (ELD) is an administrative process with public notice but no hearing. The Expedited Land Division (ELD) procedure provides an alternative to the standard procedures for some land divisions. In some cases the zoning code assigns this procedure. In other cases, the applicant may choose to use the ELD process if the land division request meets all of the elements specified in ORS 197.360.

- A. Pre-application conference.** A pre-application conference is required for all land division requests processed through the ELD procedure, except for middle housing land divisions. See 33.730.050.A., Pre-Application Conference. The pre-application conference must be held before applying for an ELD review.
- B. Neighborhood contact.**
 - 1. When the ELD includes four to ten lots, the applicant is required to meet the neighborhood contact requirements specified in 33.705.020.A., Neighborhood contact I. If the proposed expedited land division is a middle housing land division or is in an EG or I zone, it is exempt from the neighborhood contact requirements.
 - 2. When the ELD includes eleven or more lots, the applicant is required to meet the neighborhood contact requirements specified in 33.705.020.A., Neighborhood contact II. If the proposed expedited land division is a middle housing land division or is in the EG1, EG2, or an I zone, it is exempt from the neighborhood contact requirements.
- C. Application.** The applicant must submit an application on the appropriate form and accompanied by the correct fee. The application must contain all information required by 33.730.060, Application Requirements, and any additional information required for the specific type of land use review.
- D. Preliminary notice.** Upon receipt of a complete application, the Director of BDS will mail a notice of the request to the owner, the applicant if different, any state agency, local government or special district responsible for providing public facilities or services, all property owners within 100 feet of the site when within the Urban Growth Boundary (UGB) and within 500 feet when outside the UGB, to the recognized organization(s) in which the site is located, and to all recognized organizations within 400 feet of the site. See 33.730.070.B, Expedited Land Division, Type I and Type Ix notice of request.
- E. Processing time.** Upon determining that the application is complete, the Director of BDS will make a decision on the case as follows:

1. The Director of BDS will not make the decision until 14 days after the notice required by Subsection D, above, is mailed.
2. The Director of BDS will make a final decision on the case and mail a notice of decision within 63 days after receiving a completed application.

F. Administrative decision.

1. In making the decision, the Director of BDS may consult with the owner, applicant, other citizens, City agencies, and other public and private organizations to solicit information relevant to the request. The decision is based on the Director of BDS's findings, which are based on an evaluation of the facts and the applicable code regulations.
2. The decision report will be prepared as provided in 33.730.090, Reports and Record Keeping, and must be kept with the public record of the case.

G. Notice of decision (pending appeal). The Director of BDS will mail the notice of the decision to the owner, the applicant if different, any state agency, local government or special district responsible for providing public facilities or services, all property owners within 100 feet of the site when within the Urban Growth Boundary (UGB) and within 500 feet when outside the UGB, to the recognized organization(s) in which the site is located, to all recognized organizations within 400 feet of the site, and to any person who submitted written comments. See 33.730.070.F, Expedited Land Division, Type I, Type Ix and Type IV notice of decision (pending appeal).

H. Ability to appeal. The Director of BDS's decision is final unless appealed. The decision may be appealed by the applicant, the owner, and any person who submitted written comments. The appeal must be submitted to the Director of BDS within 14 days of the day the notice of decision is mailed.

I. When no appeal is filed. If no one appeals the decision, the decision is final and effective on the day after the last day to appeal.

J. When an appeal is filed. Appeals must comply with this subsection.

1. Content of the appeal. The appeal must be submitted on forms provided by the Director of BDS. All information requested on the form must be submitted in order for the appeal form to be accepted. The appeal request must include:
 - The file number and land use review(s) appealed;
 - The appellant's name, address, signature, phone number;
 - A statement of the allegations of the appeal; and
 - The required fee.
2. Valid appeal allegation. The appeal must be based solely on one or more of the following allegations:
 - a. The decision violates the substantive provisions of the applicable land use regulations;
 - b. The decision is unconstitutional;

- c. That the application is not eligible for review under ORS 197.360 to 197.380 or ORS 92.031 and should be reviewed as a land use decision or limited land use decision; or
 - d. That the appellant's substantive rights have been substantially prejudiced by an error in procedure by the local government.
 3. Notification of appeal hearing. The Hearings Officer, or its designee, will mail a copy of the appeal within 3 working days of its receipt to the applicant, unless the applicant is also the appellant, and the owner. Within 7 working days of the receipt of the appeal, the Hearings Officer, or its designee, will mail a notice of the appeal hearing to the owner, the applicant if different, and all persons and recognized organizations that received the notice of the decision. See 33.730.070 H, Notice of an appeal hearing.
 4. Scheduling of hearing. The Hearings Officer will schedule a public hearing to take place at least 21 days from the mailing of the notice of an appeal hearing.
 5. Appeal hearing. Appeal hearings must comply with the provisions of 33.730.100, Public Hearing Requirements, and 33.730.110, Ex Parte Contact.
 6. Appeal decision. The Hearings Officer may approve the decision of the Director of BDS, modify it, or reject it based on information presented at the hearing and in the record.
 - a. If the Hearings Officer determines that the application does not qualify as an expedited land division as described in Chapter 33.644, the Hearings Officer shall remand the application for consideration as a land use decision or limited land use decision.
 - b. The Hearings Officer will make a written decision in the form of a report and mail notice of the decision within 14 days of the close of the record.
 7. Notice of final decision. Within 14 days of the close of the record, the Hearings Officer will mail notice of the final decision to the applicant, owner, and to any recognized organizations or persons who responded in writing to the appeal notice, testified at the appeal hearing, or requested notice of the decision. In the case of multiple signatures on a letter or petition, the person who submitted the letter or petition or the first signature on the petition will receive the notice. See 33.730.070.I, Notice of final decision.
 8. Date that decision is final and effective. The decision of the Hearings Officer is final and effective on the day the notice of decision is mailed.
 9. Appeal decision final. The appeal decision of the Hearings Officer is final and may not be appealed to another review body within the City.

33.730.014 Type I Procedure

The Type I procedure is an administrative process with public notice but no hearing.

- A. Pre-application conferences.** A pre-application conference is not required.
- B. Neighborhood Contact**
 - 1. When the proposed development associated with the land use review will result in the addition of at least 10,000 square feet and not more than 25,000 square feet of net building area to the site, the neighborhood contact steps of 33.705.020.A., Neighborhood contact I, are required. If the proposed development is in the EG1, EG2, or an I zone, or if it has already met the neighborhood contact requirements as part of a building permit process, it is exempt from the neighborhood contact requirements.
 - 2. When the proposed development associated with the land use review will result in the addition of more than 25,000 square feet of net building area to the site, the neighborhood contact steps of 33.725.020.B., Neighborhood contact II, are required. If the proposed development is in the EG1 , EG2, or an I zone, or if it has already met the neighborhood contact requirements as part of a building permit process, it is exempt from the neighborhood contact requirements.
- C. Application.** The applicant must submit an application on the appropriate form and accompanied by the correct fee. The application must contain all information required by 33.730.060, Application Requirements, and any additional information required for the specific type of land use review. Type I procedures are intended for such reviews as minor historic resource cases.
- D. Notice of a request.** Upon receipt of a complete application, the Director of BDS will mail a notice of the request to the owner, the applicant if different, all property owners within 100 feet of the site, and to the recognized organization(s) in which the site is located. The notice will contain all information listed in 33.730.070.B, Type I and Type Ix notice of request.
- E. Processing time.** Upon determining that the application is complete the Director of BDS will make a decision on the case as follows:
 - 1. The director of BDS will not make the decision until at least 14 days after the notice required by Subsection D is mailed; and
 - 2. The Director of BDS will make the final decision on the case and mail a notice of decision within 21 days after the application is determined to be complete. The applicant may extend this time limit.
- F. Administrative decision.**
 - 1. In making the decision the Director of BDS may consult with the owner, applicant, other citizens, City agencies, other public and private organizations, to solicit information relevant to the request. The decision is based on the Director of BDS's findings. The Director of BDS's findings are based on an evaluation of the facts, the applicable code regulations, and the applicable design guidelines.

2. The decision report will be prepared as provided in 33.730.090, Reports and Record Keeping, and must be kept with the public record of the case.
 3. The decision of the Director of BDS is final.
- G. Notice of decision.** The Director of BDS will mail notice of the decision to the owner, the applicant if different, and to any person or organization who submitted written comments. See 33.730.070.F, Type I, Type Ix, and Type IV notice of decision.
- H. Date that decision is final and effective.** The decision of the BDS Director is final and effective on the day the notice of decision is mailed.

33.730.015 Type Ix Procedure

The Type Ix procedure is an administrative process with public notice but no hearing.

- A. Pre-application conferences.** A pre-application conference is optional.
- B. Neighborhood contact.**
1. When the proposed development associated with the land use review will result in the addition of at least 10,000 square feet and not more than 25,000 square feet of net building area to the site, the neighborhood contact steps of 33.705.020.A., Neighborhood contact I, are required. If the proposed development is in the EG1, EG2, or an I zone, or if it has already met the neighborhood contact requirements as part of a building permit process, it is exempt from the neighborhood contact requirements.
 2. When the proposed development associated with the land use review will result in the addition of more than 25,000 square feet of net building area to the site, the neighborhood contact steps of 33.705.020.B., Neighborhood contact II, are required. If the proposed development is in the EG1, EG2, or an I zone, or if it has already met the neighborhood contact requirements as part of a building permit process, it is exempt from the neighborhood contact requirements.
- C. Application.** The applicant must submit an application on the appropriate form and accompanied by the correct fee. The application must contain all information required by 33.730.060, Application Requirements, and any additional information required for the specific type of land use review. Type Ix procedures are intended for such reviews as minor design cases.
- D. Notice of a request.** Upon receipt of a complete application, the Director of BDS will mail a notice of the request to the owner, the applicant if different, all property owners within 100 feet of the site, and to the recognized organization(s) in which the site is located. The notice will contain all information listed in 33.730.070.B, Type I and Type Ix notice of request.
- E. Processing time.** Upon determining that the application is complete the Director of BDS will make a decision on the case as follows:
1. The director of BDS will not make the decision until at least 30 days after the notice required by Subsection D is mailed; and

2. The Director of BDS will make the final decision on the case and mail a notice of decision within 45 days after the application is determined to be complete. The applicant may extend this time limit.

F. Administrative decision.

1. In making the decision the Director of BDS may consult with the owner, applicant, other citizens, City agencies, other public and private organizations, to solicit information relevant to the request. The decision is based on the Director of BDS's findings. The Director of BDS's findings are based on an evaluation of the facts, the applicable code regulations, and the applicable design guidelines.
2. The decision report will be prepared as provided in 33.730.090, Reports and Record Keeping, and must be kept with the public record of the case.
3. The decision of the Director of BDS is final.

G. Notice of decision. The Director of BDS will mail notice of the decision to the owner, the applicant if different, and to any person or organization who submitted written comments. See 33.730.070.F, Type I, Type IX, and Type IV notice of decision.

H. Date that decision is final and effective. The decision of the BDS Director is final and effective on the day the notice of decision is mailed.

33.730.020 Type II Procedure

The Type II procedure is an administrative process, with the opportunity to appeal the Director of BDS's decision to another review body.

A. Pre-application conference. A pre-application conference is optional unless it is a specific requirement of a review. See 33.730.050.A., Pre-Application Conference.

B. Neighborhood contact.

1. When the proposed development associated with the land use review will result in the addition of at least 10,000 square feet and not more than 25,000 square feet of net building area to the site and no portion of the site is in the Design overlay zone, the neighborhood contact steps of 33.705.020.A., Neighborhood contact I, are required. If the proposed development is in the EG1, EG2, or an I zone, or if it has already met the neighborhood contact requirements as part of a building permit process, it is exempt from the neighborhood contact requirements.
2. When the proposed development associated with the land use review will result in the addition of more than 25,000 square feet of net building area to the site and no portion of the site is in the Design overlay zone, the neighborhood contact steps of 33.705.020.B., Neighborhood contact II, are required. If the proposed development is in the EG1, EG2, or an I zone, or if it has already met the neighborhood contact requirements as part of a building permit process, it is exempt from the neighborhood contact requirements.
3. When the proposed development associated with the land use review will result in the addition of more than 10,000 square feet of net building area to the site and the site is in the Design overlay zone, the neighborhood contact steps of 33.705.020.C,

Neighborhood contact III, are required. If the proposed development is in the EG1, EG2, or an I zone, or if it has already met the neighborhood contact requirements as part of a building permit process, it is exempt from the neighborhood contact requirements.

- C. Application.** The applicant must submit an application on the appropriate form and accompanied by the correct fee. The application must contain all information required by 33.730.060, Application Requirements, and any additional information required for the specific type of land use review.
- D. Preliminary notice.** Upon receipt of a complete application, the Director of BDS will mail a notice of the request to the owner, the applicant if different, all property owners within 150 feet of the site when within the Urban Growth Boundary (UGB) and within 500 feet when outside the UGB, to the recognized organization(s) in which the lot is located, and to all recognized organizations within 400 feet of the lot. See 33.730.070.C, Type II and Type IIX notice of request.
- E. Processing time.** Upon determining that the application is complete, the Director of BDS will make a decision on the case as follows:

 - 1. The Director of BDS will not make the decision until 21 days after the notice required by Subsection D, above, is mailed.
 - 2. The Director of BDS will make a final decision on the case and mail a notice of decision within 28 days after the notice required by Subsection D. above is mailed. The applicant may extend this time limit.
- F. Administrative decision.**

 - 1. In making the decision, the Director of BDS may consult with the owner, applicant, other citizens, City agencies, and other public and private organizations to solicit information relevant to the request. The decision is based on the Director of BDS's findings, which are based on an evaluation of the facts and the applicable code regulations.
 - 2. The decision report will be prepared as provided in 33.730.090, Reports and Record Keeping, and must be kept with the public record of the case.
- G. Notice of decision (pending appeal).** The Director of BDS will mail the notice of the decision to the owner, the applicant if different, all property owners within 150 feet of the site when within the Urban Growth Boundary (UGB) and within 500 feet when outside the UGB, to the recognized organization(s) in which the site is located, to all recognized organizations within 400 feet of the site, and to any person who submitted written comments. See 33.730.070.G, Notice of Type II, Type IIX or Type III decision (pending appeal).
- H. Ability to appeal.** The Director of BDS's decision is final unless appealed. The decision may be appealed by the applicant, the owner, and those entitled to notice, and any person adversely affected or aggrieved by the decision. The appeal must be submitted to the Director of BDS within 14 days of the day the notice of decision is mailed. The review body for the appeal will be as stated in 33.720, Assignment of Review Bodies.

- I. **When no appeal is filed.** If no one appeals the decision, the decision is final and effective on the day after the last day to appeal.
- J. **When an appeal is filed.** Appeals must comply with this subsection.
 1. Content of the appeal. The appeal must be submitted on forms provided by the Director of BDS. All information requested on the form must be submitted in order for the appeal form to be accepted. The appeal request must include:
 - The file number and land use review(s) appealed;
 - The appellant's name, address, signature, phone number;
 - A statement of which sections of the Zoning Code or which approval criteria the decision violates; and
 - The required fee.
 2. Notification of appeal hearing. The Director of BDS will mail a copy of the appeal within 3 working days of its receipt to the applicant, unless the applicant is also the appellant, and the owner. Within 5 working days of the receipt of the appeal, the Director of BDS will mail a notice of the appeal hearing to the owner, the applicant if different, and all persons and recognized organizations who received the notice of the decision. See 33.730.070.H, Notice of a Type II or Type III appeal hearing.
 3. Scheduling of hearing. The Director of BDS will schedule a public hearing to take place at least 21 days from the mailing of the notice of appeal.
 4. Submit report to review body. The Director of BDS will forward the decision report and a copy of the appeal to the review body and make the report and copy of the appeal available to the public at least 7 days prior to the date of the hearing.
 5. Appeal hearing. Appeal hearings must comply with the provisions of 33.730.100, Public Hearing Requirements, and 33.730.110, Ex Parte Contact.
 6. Appeal decision. The review body may adopt the decision report of the Director of BDS, modify it, or reject it based on information presented at the hearing and in the record.
 - a. The Hearings Officer will make a written decision in the form of a report and mail notice of the decision within 17 days of the close of the record.
 - b. Other review bodies. Other review bodies will make all deliberations and decisions at the hearing.
 7. Amended decision report. If the review body modifies or rejects the decision report, an amended report with findings supporting the decision must be prepared. For review bodies other than the Hearings Officer, the Director of BDS will prepare the amended decision report and mail notice of the decision within 17 days of the hearing. The report must comply with 33.730.090, Reports and Record Keeping.
 8. Notice of final decision. When the Hearings Officer is the review body, the Hearings Officer will mail notice of the decision. For other review bodies, the Director of BDS

will mail notice of the decision. Within 17 days of the close of the record, the Hearings Officer or Director of BDS will mail notice of the review body's final decision to the applicant, owner, and to any recognized organizations or persons who responded in writing to the appeal notice, testified at the hearing, or requested notice of the decision. In the case of multiple signatures on a letter or petition, the person who submitted the letter or petition or the first signature on the petition will receive the notice. See 33.730.070 I, Notice of final decision.

9. Date that decision is final and effective. The decision of the review body is final and effective on the day the notice of decision is mailed.
10. Appeal decision final. The appeal decision of the review body is final and may not be appealed to another review body within the City.

33.730.025 Type IIx Procedure

The Type IIx procedure is an administrative process, with the opportunity to appeal the Director of BDS's decision to another review body.

- A. Pre-application conference.** A pre-application conference is optional. See 33.730.050.A., Pre-Application Conference.
- B. Neighborhood contact.**
 1. The neighborhood contact steps of 33.705.020.A., Neighborhood contact I, are required when:
 - a. The application is for a land division that includes four to ten lots; or
 - b. The application is for a land use review other than a land division and the proposed development associated with the land use review will result in the addition of at least 10,000 square feet and not more than 25,000 square feet of net building area to the site. If the proposed development is in the EG1, EG2, or an I zone, or if it has already met the neighborhood contact requirements as part of a building permit process, it is exempt from the neighborhood contact requirements.
 2. When the application is for a land use review other than a land division and the proposed development associated with the land use review will result in the addition of more than 25,000 square feet of net building area to the site, the neighborhood contact steps of 33.705.020.B., Neighborhood contact II, are required. If the proposed development is in the EG1, EG2, or an I zone, or if it has already met the neighborhood contact requirements as part of a building permit process, it is exempt from the neighborhood contact requirements.
- C. Application.** The applicant must submit an application on the appropriate form and accompanied by the correct fee. The application must contain all information required by 33.730.060, Application Requirements, and any additional information required for the specific type of land use review.
- D. Preliminary notice.** Upon receipt of a complete application, the Director of BDS will mail a notice of the request to the owner, the applicant if different, all property owners within 150 feet of the site when within the Urban Growth Boundary (UGB) and within 500 feet

when outside the UGB, to the recognized organization(s) in which the site is located, and to all recognized organizations within 400 feet of the site. See 33.730.070 C, Type II and Type IIx notice of request.

- E. Processing Time.** Upon determining that the application is complete the Director of BDS will make a final decision on the case as follows:
1. The Director of BDS will not make the decision until at least 30 days after the notice required by Subsection D is mailed; and
 2. The Director of BDS will make the final decision on the case and mail a notice of decision within 42 days after the application is determined to be complete. The applicant may extend this time limit.
- F. Administrative decision.**
1. In making the decision, the Director of BDS may consult with the owner, applicant, other citizens, City agencies, and other public and private organizations to solicit information relevant to the request. The decision is based on the Director of BDS's findings, which are based on an evaluation of the facts and the applicable code regulations.
 2. The decision report will be prepared as provided in 33.730.090, Reports and Record Keeping, and must be kept with the public record of the case.
- G. Notice of decision (pending appeal).** The Director of BDS will mail a notice of the decision to the owner, the applicant if different, all property owners within 150 feet of the site when within the Urban Growth Boundary (UGB) and within 500 feet when outside the UGB, to the recognized organization(s) in which the site is located, to all recognized organizations within 400 feet of the site, and to any person who submitted written comments. See 33.730.070.G, Notice of Type II, Type IIx or Type III decision (pending appeal).
- H. Ability to appeal.** The Director of BDS's decision is final unless appealed. The decision may be appealed by the applicant, the owner, those entitled to notice, and any person adversely affected or aggrieved by the decision. The appeal must be submitted to the Director of BDS within 14 days of the day the notice of decision is mailed. The review body for the appeal will be as stated in 33.720, Assignment of Review Bodies.
- I. When no appeal is filed.** If no one appeals the decision, the decision is final and effective on the day after the last day to appeal.
- J. When an appeal is filed.** Appeals must comply with this subsection.
1. Content of the appeal. The appeal must be submitted on forms provided by the Director of BDS. All information requested on the form must be submitted in order for the appeal form to be accepted. The appeal request must include:
 - The file number and land use review(s) appealed;
 - The appellant's name, address, signature, and phone number;
 - A statement of which sections of the Zoning Code or which approval criteria the decision violates; and

- The required fee.
2. Notification of appeal hearing. The Director of BDS will mail a copy of the appeal within 3 working days of its receipt to the applicant, unless the applicant is also the appellant, and the owner. Within 5 working days of the receipt of the appeal, the Director of BDS will mail a notice of the appeal hearing to the owner, the applicant if different, and all persons and recognized organizations that received the notice of the decision. See 33.730.070 H, Notice of an appeal hearing.
 3. Scheduling of hearing. The Director of BDS will schedule a public hearing to take place at least 21 days from the mailing of the notice of an appeal hearing.
 4. Submit report to review body. The Director of BDS will forward the decision report and a copy of the appeal to the review body and make the report and copy of the appeal available to the public at least 7 days prior to the date of the hearing.
 5. Appeal hearing. Appeal hearings must comply with the provisions of 33.730.100, Public Hearing Requirements, and 33.730.110, Ex Parte Contact.
 6. Appeal decision. The review body may adopt the decision report of the Director of BDS, modify it, or reject it based on information presented at the hearing and in the record.
 - a. The Hearings Officer will make a written decision in the form of a report and mail notice of the decision within 14 days of the close of the record.
 - b. Other review bodies. Other review bodies will make all deliberations and decisions at the hearing.
 7. Amended decision report. If the review body modifies or rejects the decision report, an amended report with findings supporting the decision must be prepared. For review bodies other than the Hearings Officer, the Director of BDS will prepare the amended decision report and mail notice of the decision within 14 days of the hearing. The report must comply with 33.730.090, Reports and Record Keeping.
 8. Notice of final decision. When the Hearings Officer is the review body, the Hearings Officer will mail notice of the decision. For other review bodies, the Director of BDS will mail notice of the decision. Within 14 days of the close of the record, the Hearings Officer or Director of BDS will mail notice of the review body's final decision to the applicant, owner, and to any recognized organizations or persons who responded in writing to the appeal notice, testified at the hearing, or requested notice of the decision. In the case of multiple signatures on a letter or petition, the person who submitted the letter or petition or the first signature on the petition will receive the notice. See 33.730.070 I, Notice of final decision.
 9. Date that decision is final and effective. The decision of the review body is final and effective on the day the notice of decision is mailed.
 10. Appeal decision final. The appeal decision of the review body is final and may not be appealed to another review body within the City.

33.730.030 Type III Procedure

A Type III procedure requires a public hearing before an assigned review body. Subsections A through D apply to all sites. If the site is within the City of Portland, Subsections E through H also apply. If the site is in the portion of unincorporated Multnomah County that is subject to City zoning, Subsection I also applies.

- A. Pre-application conference.** A pre-application conference is required for all requests processed through a Type III procedure, except applications for historic designation review and historic designation removal review. See 33.730.050.A., Pre-Application Conference.
- B. Neighborhood contact.**
 - 1. The neighborhood contact steps of 33.705.020.A., Neighborhood contact I, are required when:
 - a. The application is for a land division that includes four to ten lots and does not include an environmental review; or
 - b. The application is for a land use review other than a land division and the proposed development associated with the land use review will result in the addition of at least 10,000 square feet and not more than 25,000 square feet of net building area to the site and no portion of the site is in the Design overlay zone. If the proposed development is in the EG1, EG2, or an I zone, or if it has already met the neighborhood contact requirements as part of a building permit process, it is exempt from the neighborhood contact requirements.
 - 2. The neighborhood contact steps of 33.705.020.B., Neighborhood contact II, are required when:
 - a. The application is for a land division that includes eleven or more lots and does not include an environmental review; or
 - b. The application is for a land use review other than a land division and the proposed development associated with the land use review will result in the addition of more than 25,000 square feet of net building area to the site and no portion of the site is in the Design overlay zone. If the proposed development is in the EG1, EG2, or an I zone, or if it was subject to a building permit process, it is exempt from the neighborhood contact requirements.
 - 3. The neighborhood contact steps of 33.705.020.C., Neighborhood contact III, are required when:
 - a. The application is for a land division that includes an environmental review; or
 - b. The application is for a land use review other than a land division and the proposed development associated with the land use review will result in the addition of more than 10,000 square feet of net building area to the site and the site is in the Design overlay zone. If the proposed development is in the EG1, EG2, or an I zone, it is exempt from the neighborhood contact requirements.
- C. Application.** The applicant must submit an application on the appropriate form and accompanied by the correct fee. The application must contain all information required by

33.730.060, Application Requirements, and any additional information required for the specific type of land use review.

- D. Processing time.** Upon determining that the application is complete, the Director of BDS will schedule a public hearing to take place within 51 days. The applicant may extend the time limit.
- E. Notice of a request.**
1. Mailed notice. At least 20 days before the scheduled hearing, the Director of BDS will mail a notice of the request to the regional transit agency, Metro, the Oregon Department of Transportation, the owner, the applicant if different, all property owners within 400 feet of the site when inside the Urban Growth Boundary (UGB) and within 500 feet when outside the UGB, to the recognized organization(s) in which the lot is located, and to all recognized organizations within 1,000 feet of the lot. See 33.730.070 D, Type III and Type IV notice of request.
 2. Posting notice on the site. The applicant must place a public notice about the request on the site. The posting must meet the standards of 33.730.080 below.
- F. Decision by review body if site is in City of Portland.**
1. BDS recommendation. The Director of BDS will prepare a report with recommendations, and file the report with the review body and make the report available to the public at least 10 days prior to the hearing. A copy will be mailed to the applicant and to any recognized organizations whose boundaries include the site.
 2. Public hearing. The public hearing will be conducted by the assigned review body. It will be held in accordance with the requirements of 33.730.100, Public Hearing Requirements.
 3. Review body decision. The review body may adopt the Director of BDS's report and recommendation, modify it, or reject it based on information presented at the hearing and in the record.
 - a. Hearings Officer.
 - (1) Generally. The Hearings Officer will make a written decision in the form of a report and mail notice of the decision within 17 days of the close of the record;
 - (2) Comprehensive Plan Map Amendments. For Comprehensive Plan Map Amendments and land use reviews processed concurrently with Comprehensive Plan Map Amendments, the Hearings Officer will make a written recommendation in the form of a report to City Council and mail notice of the recommendation within 30 days of the close of the record.
 - b. Other review bodies. Other review bodies will make all deliberations and decisions at the hearing.
 4. Amended decision report. If the review body modifies or rejects the Director of BDS's report, an amended report with findings supporting the decision will be prepared. For

review bodies other than the Hearings Officer, the Director of BDS will prepare the amended decision report and mail notice of the decision within 17 days of the close of the record. The report must comply with 33.730.090, Reports and Record Keeping.

5. Mailed notice of decision (pending appeal). When the Hearings Officer is the review body, the Hearings Officer will mail notice of the decision. For other review bodies,

the Director of BDS will mail notice of the decision. Within 17 days of the close of the record, or within 30 days for Comprehensive Plan Map Amendments and land use reviews processed concurrently with Comprehensive Plan Map Amendments, the Hearings Officer or Director of BDS will mail notice of the review body's decision (pending appeal) to the owner, the applicant if different, and all recognized organizations or persons who responded in writing to the notice of the request, testified at the hearing, or requested notice of the decision. In the case of multiple signatures on a letter or petition, the person who submitted the letter or petition or the first signature on the petition will receive the notice. See 33.730.070.G, Notice of Type II, Type IIx or Type III decision (pending appeal).

- G. Ability to appeal.** The review body's decision is final unless appealed. The decision may be appealed by the applicant, the owner, and those who have testified orally or in writing at the hearing, provided that the testimony was directed to a specific approval criterion. The appeal must be submitted to the Director of BDS within 14 days of the day the notice of decision is mailed. The review body for the appeal will be the City Council.
- H. When no appeal is filed.** If no one appeals the decision, the decision is final and effective on the day after the last day to appeal.
- I. When an appeal is filed.** Appeals must comply with this subsection.
 1. Content of the appeal. The appeal must be submitted on forms provided by the Director of BDS. All information requested on the form must be submitted in order for the appeal form to be accepted. The appeal request must include:
 - The file number and land use review(s) appealed;
 - The appellant's name, address, signature, phone number, and relationship to the land use action;
 - A statement of which sections of the Zoning Code or which approval criteria the decision violates; and
 - The required fee.
 2. Mailed notice of the appeal hearing. The Director of BDS will mail a copy of the appeal within 3 working days of its receipt to the applicant, unless the applicant is also the appellant, and the owner. Within 5 working days of the receipt of the appeal, the Director of BDS will mail a notice of the appeal hearing to the owner, the applicant if different, the review body, and all persons and recognized organizations that received the notice of the decision. See 33.730.070.H, Notice of a Type II, Type IIx, or Type III appeal hearing. No notice of the appeal hearing is required to be posted on the site.
 3. Scheduling of hearing. The City Auditor will schedule a public hearing to take place at least 21 days from the mailing of the notice of appeal.

4. Submit report to City Council. The Director of BDS will forward the appeal as filed, the review body's decision report, and a transcript if requested and paid for, to City Council at least 7 days prior to the date of the hearing.
5. Appeal hearing. Appeal hearings must comply with the provisions of 33.730.100, Public Hearing Requirements, and 33.730.110, Ex Parte Contact. Appeals heard by City Council may be heard "on the record" and must also conform to any rules of procedure adopted by Council for their use. The Director of BDS will represent the review body in appeals heard by City Council.
6. Appeal decision and findings.
 - a. The City Council may adopt the review body's decision report, modify it, or reject it based on information presented at the hearing and in the record. If City Council modifies or rejects the decision report, an amended report with findings supporting the decision must be prepared as provided in Subparagraph b. below. The report must comply with 33.730.090, Reports and Record Keeping.
 - b. The Council may make a tentative action and direct that proposed findings and a decision be prepared. If the prevailing party is represented by a land use professional or attorney, the prevailing party must provide findings and conclusions to support the Council's decision. If the prevailing party is not represented by a planning professional or attorney, the Director of BDS will provide findings and conclusions to support the Council's decision. Prior to final Council adoption, all findings must be reviewed and approved by the City Attorney. The findings and decision must be adopted by Council vote. An additional public hearing is not required if the vote is at a subsequent public meeting. City Council decisions are in the form of an Order of the Council except when an ordinance is required due to the type of land use request (Comprehensive Plan Map amendments or Statewide Planning Goal exceptions). In these instances, the ordinance serves in lieu of the Order of Council.
7. Notice of the final decision. Within 5 days of final Council action, the City Auditor will mail the notice of final decision to the applicant, owner, and to any recognized organizations or persons who responded in writing to the appeal notice, testified at the hearing, or requested notice of the decision. In the case of multiple signatures on a letter or petition, the person who submitted the letter or petition or the first signature on the petition will receive the notice. See 33.730.070 I, Notice of final decision.
8. Date that decision is final and effective. The decision of City Council is final and effective on the day notice of decision is mailed by the City Auditor.
9. Appeal decision final. The appeal decision of City Council is final and may not be appealed to another review body in the City.

J. Decision by review body if site is not in City of Portland.

1. BDS recommendation. The Director of BDS will prepare a report with recommendations, and file the report with the review body and make the report available to the public at least 10 days prior to the hearing. A copy will be mailed to

the owner, the applicant if different and to any recognized organizations whose boundaries include the site.

2. Public hearing. The public hearing will be conducted by the assigned review body. It will be held in accordance with the requirements of 33.730.100, Public Hearing Requirements.
3. Review body decision. The review body may adopt the Director of BDS's report and recommendation, modify it, or reject it based on information presented at the hearing and in the record.
 - a. Hearings Officer.
 - (1) Generally. The Hearings Officer will make a written decision in the form of a report and mail notice of the decision within 17 days of the close of the record;
 - (2) Comprehensive Plan Map Amendments. For Comprehensive Plan Map Amendments and land use reviews processed concurrently with Comprehensive Plan Map Amendments, the Hearings Officer will make a written recommendation in the form of a report to City Council and mail notice of the recommendation within 30 days of the close of the record.
 - b. Other review bodies. Other review bodies will make all deliberations and decisions at the hearing.
4. Amended decision report. If the review body modifies or rejects the Director of BDS's report, an amended report with findings supporting the decision will be prepared. For review bodies other than the Hearings Officer, the Director of BDS will prepare the amended decision report and mail notice of the decision within 17 days of the close of the record. The report must comply with 33.730.090, Reports and Record Keeping.
5. Notice of final decision. When the Hearings Officer is the review body, the Hearings Officer will mail notice of the decision. For other review bodies, the Director of BDS will mail notice of the decision. Within 17 days of the close of the record, or within 30 days for Comprehensive Plan Map Amendments and land use reviews processed concurrently with Comprehensive Plan Map Amendments, the Hearings Officer or Director of BDS will mail notice of the review body's final decision to the applicant, owner, and to any recognized organizations or persons who commented in writing, testified at the hearing, or requested notice of the decision. In the case of multiple signatures on a letter or petition, the person who submitted the letter or petition or the first signature on the petition will receive the notice. See 33.730.070.I, Notice of final decision.
6. Effective date of decision. The review body's decision takes effect on the day the notice is mailed.
7. Decision final. The decision of the review body is final and may not be appealed to another review body within the City.

33.730.031 Type IV Procedure

- A. Pre-application conference.** A pre-application conference is required for all requests processed through a Type IV procedure. See 33.730.050.A., Pre-Application Conference.
- B. Application.** The applicant must submit an application on the appropriate form and accompanied by the correct fee. The application must contain all information required by 33.730.060, Application Requirements, and any additional information required for the specific type of land use review.
- C. Processing time.** Upon determining that the application is complete, the Director of BDS will schedule a public hearing to take place within 71 days. The applicant may extend the time limit.
- D. Notice of a request.**
 - 1. Mailed notice. At least 20 days before the scheduled hearing, the Director of BDS will mail a notice of the request to the regional transit agency, Metro, the Oregon Department of Transportation, the owner, the applicant if different, all property owners within 400 feet of the site when inside the Urban Growth Boundary (UGB) and within 500 feet when outside the UGB, to the recognized organization(s) in which the lot is located, and to all recognized organizations within 1,000 feet of the lot. See 33.730.070.D, Type III and IV notice of request.
 - 2. Posting notice on the site. The applicant must place a public notice about the request on the site. The posting must meet the standards of 33.730.080, below.
- E. Advice from Historic Landmarks Commission.** BDS staff will ask the Historic Landmarks Commission to review the proposal at a public meeting where members of the public may comment. The Historic Landmarks Commission may offer comments or suggestions, in the form of a letter or testimony, to the review body. Such comments or suggestions are advisory to the review body and are not a land use decision. In addition to any comments or suggestions, the Historic Landmarks Commission will forward to the review body tapes or transcripts of any public meetings at which the Historic Landmarks Commission reviewed the proposal, and any correspondence or other documents received at such meetings.
- F. Decision by review body.**
 - 1. BDS recommendation. The Director of BDS will prepare a report with recommendations, and file the report with the review body and make the report available to the public at least 10 days prior to the hearing. A copy will be mailed to the owner, the applicant if different, and to any recognized organizations whose boundaries include the site.
 - 2. Public hearing. The public hearing will be conducted by the assigned review body. It will be held in accordance with the requirements of 33.730.100, Public Hearing Requirements.
 - 3. Review body decision.
 - a. The review body may adopt the Director of BDS' report and recommendation, modify it, or reject it based on information presented at the hearing and in the

record. If the review body modifies or rejects the report and recommendation, an amended report with findings supporting the decision must be prepared as provided in Subparagraph b., below. The report must comply with 33.730.090, Reports and Record Keeping.

- b. The review body may make a tentative action and direct that proposed findings and a decision be prepared. If the prevailing party is represented by a land use professional or attorney, the prevailing party must provide findings and conclusions to support the review body's decision. If the prevailing party is not represented by a planning professional or attorney, the Director of BDS will provide findings and conclusions to support the review body's decision. Prior to final adoption, all findings must be reviewed and approved by the City Attorney. The findings and decision must be adopted by review body vote. An additional public hearing is not required if the vote is at a subsequent public meeting.
4. Notice of the final decision. Within 5 days of final review body action, the City Auditor will mail the notice of final decision to the applicant, owner, and to any recognized organizations or persons who responded in writing to the notice, testified at the hearing, or requested notice of the decision. In the case of multiple signatures on a letter or petition, the person who submitted the letter or petition or the first signature on the petition will receive the notice. See 33.730.070.I, Notice of final decision.
5. Date that decision is final and effective. The decision of the review body is final and effective on the day the notice of decision is mailed by the City Auditor.
6. Decision final. The decision of the review body is final and may not be appealed to another review body within the City.

33.730.040 Final Council Action Required

In the case of certain quasi-judicial land use reviews, such as Comprehensive Plan Map amendments and Statewide Planning Goal exceptions, final City Council action is required in addition to the normal Type III procedure. In these cases, the initial processing of the land use review is the same except the decision of the initial review body becomes a recommendation to Council. The post-acknowledgment procedures required by ORS 197.610 through 197.650 are followed, and the case is scheduled for a public hearing before City Council. The 120-day review period required by ORS 227.178(1) does not apply to Comprehensive Plan Map amendments, including Statewide Planning Goal Exceptions, or to land use reviews processed concurrently with Comprehensive Plan Map amendments.

General Information on Procedures

33.730.042 Concurrent Reviews

The following regulations apply to applications for more than one land use review on a site:

- A. Applications for more than one land use review on a site may be consolidated into a single application package;

- B. When more than one review is requested and the reviews have different procedures, the overall application is processed using the highest procedure type. A Type III procedure is the highest, followed by Type IIx, Type II, Type Ix and then Type I;
- C. When three or more different kinds of land use reviews are requested, and at least three of the land use reviews are assigned to a Type II procedure, the overall application is processed using the Type IIx procedure, unless any of the reviews are assigned to a Type III procedure. If any of the reviews are assigned to a Type III procedure the overall application is processed using the Type III procedure.
- D. When more than one review is requested and any of the reviews are assigned to a Type IV procedure, the reviews not subject to the Type IV procedure are reviewed as specified in Subsections B and C. The review subject to the Type IV procedure is reviewed under the provisions of 33.730.031.
- E. When a land division proposal requires an adjustment, the adjustment must be processed concurrently with the land division.

33.730.050 Pre-Application Conference and Other Early Assistance Meetings

A. Pre-Application Conference.

1. Purpose. The pre-application conference informs the applicant of the substantive and procedural requirements of this Title, provides for an exchange of information regarding applicable requirements of other City Codes, and identifies policies and regulations that create opportunities or pose significant problems for a proposal. Technical and design assistance is available at the conference which will aid in the development of an application. The pre-application conference also informs recognized organizations about the proposal and promotes communication between the organizations and the applicant.
2. Requirements. Forms for pre-application conferences are available from the Director of BDS. A fee is required and must be paid at the time the request for a pre-application conference is submitted. The applicant must submit a written proposal or sketched site plan of the proposal. A pre-application conference must be held within 42 days of receipt of a completed request form.
3. Participants. The applicant meets with BDS staff at the pre-application conference. In addition, City urban service or technical representatives and representatives of affected recognized organizations are invited to attend.
4. Pre-application conference recommendations. The BDS staff will mail the applicant a written summary of the pre-application conference within 21 days of the conference. The written summary will include suggestions and information that were raised at the conference for inclusion in an application. If the approval criteria for the land use review involve a determination of adequacy of the transportation system, the Office of Transportation may require a Transportation Impact Study to be submitted with the land use application.
5. Pre-application conference prior to application submittal. Application for a land use review may not be submitted before the required pre-application conference is held.

This allows information obtained at the conference to be incorporated in the application submittal.

6. Time limit. A pre-application conference is valid for two years. If more than two years has elapsed between the date of the pre-application conference and the date the land use review application is submitted, a new pre-application conference is required.

B. Design advice requests

1. Purpose. Design advice requests provide a public forum for the preliminary discussion and exchange of information between the applicant, BDS staff, the public, and the representative commission. An applicant may request advice from the Design Commission or Historical Landmarks Commission prior to submitting a land use request. In some cases, a design advice request may be required by a provision of this title. These requests do not substitute for a required pre-application conference with the BDS staff and other City urban service or technical representatives.
2. Requirements. Forms for design advice requests are available from the Director of BDS. A fee is required and must be paid at the time of the submittal for the design advice request. The applicant must submit a written proposal, information on the physical and social characteristics of the area, a conceptual site plan and elevations of the project. The applicant may also include details of the project that are associated with specific questions they may have as part of the design advice request. The design advice request must be held within 56 days of receipt of a completed request form.
3. Notification. The following notification will be provided prior to the design advice request meeting:
 - a. Mailed notice. At least 20 days before the scheduled meeting, the Director of BDS will mail a notice of the request to the owner, the applicant if different, all property owners within 400 feet of the site, and to recognized organizations in which the site is located. The notice should include the file number, the name of the person requesting the advice, the name of the property owner, the name and phone number of the BDS staff member assigned to the file, the date of the meeting, the address or geographic location of the request, the current zoning of the site, a brief description of the proposal, and a conceptual site plan.
 - b. Posting notice on the site. At least 20 days before the scheduled meeting, the person requesting the advice must place a public notice of the design advice request adjacent to each street frontage on the site. The notice should include the file number, the date of the meeting, the name and phone number of the BDS staff member assigned to the file, the current zoning of the site, and a brief description of the proposal.
4. Meeting. Meeting. The design advice request meetings are limited to one meeting per application. Additional meetings may be granted for proposals that include more than one building proposed on a site.
5. Design advice request recommendations. BDS staff will mail the applicant a written summary of the design advice request within 21 days of the meeting. The written

Notices are not required along street frontages that are not improved and allow no motor vehicle access.

- B. Placing notice.** When BDS sends a confirmation of a complete application to the applicant, it will also send the following material regarding the posting notice:
- The message that must be placed on the notice;
 - The number of notices required;
 - The latest date that the notice may be posted; and
 - A statement (to be signed and returned) to certify that the notice was posted on the site, and that a failure to post the notice constitutes an agreement by the owner to defer the 120 day process limit, and an acknowledgment that failure to post will result in the automatic postponement of the hearing date.
- C. Standards and timing.** The applicant must prepare the notice to BDS standards and post it on the site at least 30 days before the first scheduled evidentiary hearing before the Hearings Officer or other assigned review body. At least 14 days before the hearing, the applicant must file with BDS a signed statement affirming that the posting was made. Failure to post the notice and affirm that the posting was done will result in automatic postponement of the hearing until the property has been posted for 30 days.
- D. Removal.** The applicant may not remove the notice before the first evidentiary hearing before the Hearings Officer or other assigned review body. Except when final City Council action is required by section 33.730.040, the applicant must remove the posted notice within 2 weeks of the Hearings Officer's or other assigned review body's decision on the request. When final council action is required by section 33.730.040, the applicant must remove the posted notice within 2 weeks of the City Council's decision on the request.
- E. Content of the notice.** The posted notice must contain the following information:
- The file number;
 - The date of the hearing;
 - A summary of the key items of the request;
 - A statement that further information is available from BDS; and,
 - The phone number and address of BDS.

33.730.090 Reports and Record Keeping

Required reports and records must contain the information stated below.

- A. Decisions.** Decisions include any conditions, time limits, or other restrictions that may apply to the land use action.
- B. Reports.** Reports must include:
- The file number;
 - The owner's and applicant's name and address;
 - The legal description and site location;
 - A brief description of the request;

- The review body;
 - The relevant approval criteria;
 - The findings applying the facts to the criteria;
 - The decision; and
 - Any additional information relevant to the case.
- C. The public record.** The total public record for a case includes, but is not limited to, the application; the decision report; all additional information, correspondence and other items considered as part of the case which were not printed in the report; and the appeal report if applicable.

33.730.100 Public Hearing Requirements

- A. Rules of Procedure.** All public hearings must conform to the rules of procedure adopted by the review body. The rules of procedure must comply with the Oregon Public Meetings law, statutory land use hearing requirements, and this Title.
- B. Initial hearing statements.** At the beginning of each hearing, the review body must state:
1. That testimony can only address the applicable approval criteria;
 2. The applicable approval criteria;
 3. That any party can request the record be kept open for 7 days;
 4. That any party is entitled to request a continuance if new information is submitted in support of the application; and
 5. That in order to be able to appeal an issue to the Land Use Board of Appeals, the issue must be stated clearly and with enough detail for the review body to consider the testimony in making the decision.
- C. Hearing record.** Written minutes must be prepared as required by ORS 192.650. A record of all public hearings must be made and retained in written or electronic form for at least 3 years. If a case is appealed beyond the jurisdiction of the City, the record must be retained until the final disposition of the case. Verbatim transcripts will not be produced unless requested and paid for as provided by Chapter 33.750, Fees.

33.730.110 Ex parte Contact

- A. Private contacts.** Prior to rendering a decision, a member of a review body may not communicate, directly or indirectly, with any person interested in the outcome concerning the decision or action pending before the review body. "Person interested in the outcome" means a person who has some concern, interest in, or relationship to the decision or action pending before the review body. Should such communication occur, at the beginning of the first hearing after which the communication occurs, the member of the review body must:
1. Publicly announce the content of the communication and provide any person an opportunity to rebut the substance of the communication; and
 2. If the communication was in written or tangible form, place a copy of the communication into the record.

- B. BDS contact.** The Director of BDS and BDS staff may communicate with applicants, owners, their representatives, citizens, City agencies and other public and private organizations as part of the processing of land use applications.

After the Final Decision

33.730.120 Recording an Approval

To record a final decision for approval, the applicant pays the recording fee to the County Recorder. The County Recorder records the final decision in the appropriate county records. The decision must be recorded before the approved use is permitted, any permits are issued, or any changes to the Comprehensive Plan Map or Zoning Map are made.

33.730.130 Expiration of an Approval

- A. Expiration of unused land use approvals issued prior to 1979.** All unused land use approvals issued prior to 1979, except for zoning map or Comprehensive Plan map amendments, where the proposed development is not constructed or where a subdivision or partition is not recorded, are void.
- B. When approved decisions expire.**
1. Land use approvals, except as otherwise specified in this section, expire if:
 - a. Generally.
 - (1) Within 3 years of the date of the final decision a City permit has not been issued for approved development; or
 - (2) Within 3 years of the date of the final decision the approved activity has not commenced.
 - b. Exception. Within the City, final decisions that became effective between March 8, 2017 and January 1, 2021 expire if a City permit has not been issued for approved development or the approved activity has not commenced by January 1, 2024. Within the portion of unincorporated Multnomah County that is subject to City zoning, final decisions that became effective between August 10, 2017 and January 1, 2021 expire if a City permit has not been issued for approved development or the approved activity has not commenced by January 1, 2024.
 2. Zoning map and Comprehensive Plan map amendments do not expire.
 3. Conditional Use Master Plans, Impact Mitigation Plans, and Transportation Impact Reviews expire as specified in Chapters 33.820, 33.848, and 33.852, or in the plans themselves.
 4. Multiple developments.
 - a. Generally. Where a site has received approval for multiple developments, and a City permit is not issued for all development within 3 years of the date of the final decision, the approval does not expire but no additional development may occur without another review. All conditions of approval continue to apply.

33.800 General Information on Land Use Reviews

800

Sections:

- 33.800.010 General
- 33.800.020 Explanation of Discretionary Reviews
- 33.800.030 Procedures and Review Bodies for Discretionary Reviews
- 33.800.040 The Land Use Review Chapters
- 33.800.050 The Function of Approval Criteria
- 33.800.060 The Burden of Proof
- 33.800.070 Conditions of Approval
- 33.800.080 Land Use Reviews Involving Signs

33.800.010 General

The zoning code uses a combination of nondiscretionary and discretionary reviews to evaluate land use proposals for compliance with the use and development requirements of the code. The combination is necessary to provide a comprehensive set of implementation tools. The nondiscretionary reviews provide the certainty needed in most situations by providing straight-forward, clear, and objective standards. Discretionary reviews provide needed flexibility by allowing more subjective standards and objectives, and providing for the modification of regulations in response to specific site conditions. This chapter addresses discretionary reviews. Nondiscretionary reviews are addressed in 33.700.010.

33.800.020 Explanation of Discretionary Reviews

A discretionary review is one that involves judgment or discretion in determining compliance with the approval requirements. The review is discretionary because not all of the approval requirements are objective. That is, they are not easily definable or measurable. The amount of discretion and the potential impact of the request varies among different reviews. Some have less discretion or impact, such as the reduction of a garage setback for a house on a hillside. Others may involve more discretion or potential impacts, such as the design review of a new downtown building or the siting of a new school in a residential zone. Discretionary reviews must provide opportunities for public involvement.

33.800.030 Procedures and Review Bodies for Discretionary Reviews

Procedures are the type of processing a land use case receives. Discretionary reviews are assigned either to a quasi-judicial or legislative procedure. The type of procedure is stated with the review. A description of the procedures are stated in Chapter 33.730, Quasi-Judicial Procedures and Chapter 33.740, Legislative Procedure. The assignment of review bodies is stated in Chapter 33.720, Assignment of Review Bodies. A description of quasi-judicial and legislative decisions is found in 33.700.070. When formulating zoning regulations, the determination of which of the quasi-judicial procedures to assign a review to is based on consideration of the type of approval criteria, the potential impacts, and a balance between the need for prompt decision-making and the need for public involvement.

33.800.040 The Land Use Review Chapters

The land use review chapters state the review process and approval criteria for most of the discretionary reviews. They include the reviews that apply to many zones or situations. Some

reviews, which relate only to a specific topic or to a limited area, are located in the chapter on that topic. The information in this chapter applies to all discretionary reviews regardless of where they are located in this Title.

33.800.050 The Function of Approval Criteria

- A.** The approval criteria that are listed with a specific review reflect the findings that must be made to approve a request. The criteria set the bounds for the issues that must be addressed by the applicant and which may be raised by the City or affected parties. A proposal that complies with all of the criteria will be approved. A proposal that can comply with the criteria with mitigation measures or limitations will be approved with conditions. A proposal that cannot comply with the criteria outright or cannot comply with mitigation measures will be denied.
- B.** The approval criteria have been derived from and are based on the Comprehensive Plan. Reviews against the goals and policies of the Comprehensive Plan are not required unless specifically stated. Fulfillment of all requirements and approval criteria means the proposal is in conformance with the Comprehensive Plan.
- C.** When approval criteria refer to the request meeting a specific threshold, such as adequacy of services or no significant detrimental environmental impacts, the review body will consider any proposed improvements, mitigation measures, or limitations proposed as part of the request when reviewing whether the request meets the threshold. All proposed improvements, mitigation measures, and limitations must be submitted for consideration prior to a final decision by a review body.

33.800.060 The Burden of Proof

The burden of proof is on the applicant to show that the approval criteria are met. The burden is not on the City or other parties to show that the criteria have not been met.

33.800.070 Conditions of Approval

The City may attach conditions to the approval of all discretionary reviews. However, conditions may be applied only to ensure that the proposal will conform to the applicable approval criteria for the review or to ensure the enforcement of other City regulations.

33.800.080 Land Use Reviews Involving Signs

The discretionary review processes and approval criteria described in the land use review chapters may also be applied to signs. Signs are regulated under Title 32, Signs and Related Regulations. Modifications may be made to the objective standards of Chapters 32.32 and 32.34 of the Sign Code, as described in the land use review chapters. In addition, conditions of approval may be adopted as part of a land use review which modify the objective standards of Chapters 32.32 and 32.34 of the Sign Code.

1. Writing a Land Use Decision (Findings)

- A. State law establishes the basic requirements for a written decision on a land use application:

“Approval or denial of a permit application *** shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.”

[ORS227.173(3)]

- B. Our zoning code contains similar requirements (See PCC 33.730.090.B).
- C. There is no single “right” form for findings. As the Oregon Supreme Court emphasized:

“No particular form is required, and no magic words need be employed. What is needed for adequate judicial review is a clear statement of what, specifically, the decision-making body believes, after hearing and considering all the evidence, to be the-relevant and important facts on which its decision is based. Conclusions are not sufficient.” *Sunnyside Neighborhood v. Clackamas Co. Comm.*, 280 Or 3, 26--27, 569-P2d 1063 (1977)

- D. Key elements of adequate findings:

- Identify the applicable approval criteria
- Describe the relevant facts
- Apply the facts to each approval criterion and explain whether or not the applicant has carried its burden of proof to show the approval criterion is satisfied
- Clearly state your decision (approval or denial) and any conditions of approval that you are imposing or recommending

- E. Cautions:

- **Use care with a multi-part approval criterion! Address each sub-part of the approval criterion in your findings.**

Example: For conditional uses in R zones, one of the approval criteria is: "The overall residential appearance and :function of the area will not be significantly lessened due to the increased proportion of uses not in the Household Living category in the residential area. Consideration includes the proposal by 'itself and in combination with other uses in the area not in the Household Living category and is based on:

1. The number, size, and location of other uses not in the Household Living category in the residential area; and
 2. The intensity and scale of the proposed use and of existing Household Living uses and other uses." (PCC 33.815.105.A) This approval criterion actually contains at least 7 subparts and requires you to:
 - Describe the applicable residential area
 - Describe the overall appearance and function of the residential area
 - Describe the proportion of Household Living uses and other uses in this area
 - Describe how much the proposed conditional use will increase the proportion of uses not in the Household Living category
 - Describe the intensity and scale of the proposed conditional use; existing Household Living uses and "other uses"
 - Consider the proposed conditional use, but itself and in combination with other non-Household Living uses, and all of the above and explain why it will/will not significantly lessen the overall residential appearance function of the area.
- **Rely on relevant facts and evidence in making your decision.**
- **Where there is conflicting evidence relevant to an approval criterion, explain what evidence you are relying on and why it is more persuasive.**
- **Apply the code language as it is written. Avoid reading words into the code that are not there and overlooking words that are there.**

See PCC 33.700.070 (General Rules for Application of the Code Language), especially subsection A:

"Literal readings of the code language will be used. Regulations are no more or less strict than as stated.***"

See also subsection D (Terms) of the same code section.

- **If code language is ambiguous and can be interpreted in multiple ways, explain how you are interpreting it and why that interpretation is consistent with the language and purpose of the particular code provision or chapter.**

- **If an issue or potentially applicable approval criterion is raised by a commenter or during a public hearing, address it in your findings.**
- **Address procedural issues that may arise and could be raised on appeal.**
Examples: Notice, continuing a hearing, keeping the record open
- **If you refer to exhibits in your findings, make sure you refer to the right exhibit numbers.**
- **Your findings/decision should consist of one complete document; avoid relying on multiple documents as your findings/decision.**

2. Statutory Timelines for Decision Making

A. Final Decision

- Under state law, the City has 120 days to make a final decision on an application for a discretionary permit (conditional use, adjustment, etc.), zone change or limited land use decision. All local decision-making, including any appeals, must take place within this time period.

Note: The 120-day deadline does not apply to comprehensive plan amendments (quasi-judicial or legislative) or to legislative matters.

- The 120 days begin to run on the date an application is deemed to be complete.
- The applicant may extend the 120-day period for a maximum of an additional 245 days. The applicant is the only person who can extend this 120-day deadline.
- Consequences of failing to meet the 120-day deadline:

Fee refund to applicant (50%)

Applicant can go to court for a writ of mandamus; if City loses, we pay applicant's attorney fees.

B. Completeness

- If the City receives an incomplete land use application; we must notify the applicant of what information is missing. If the applicant submits the missing information within 180 days of the date the application was first submitted, the application must be approved or denied based on the standards and approval criteria in place at the time of first submittal ("No changing the goalposts" rule).

State law: City has 30 days after first submittal to determine whether an application is complete.

City code: City has 14 days (Type II) or 21 days (all other land use reviews) to determine completeness.

- An application will be considered complete on the date that BDS receives one of the following responses from the applicant:

All of the missing information;

Some of the missing information and a written statement that no other information will be provided; or

A written statement that none of the missing information will be provided.

If the applicant does not provide any of these responses within the 180-day period, the City may void the application on the 181st day.

OREGON'S PUBLIC MEETINGS LAW

1) Meetings Subject to the Law

"All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided [in the Public Meetings Law]." (ORS 192.630(1)).

- a. "Governing body" – "the members of any public body which consists of two or members, *with authority to make decisions for or recommendations* to a public body or administration." ORS 192.610(3) (Emphasis supplied).
- b. "Public Body" – "the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, *commission*, council, bureau, *committee*, or *subcommittee*, or *advisory group or agency thereof*." ORS 192.610(4)
- c. "Meeting" – "the convening of a governing body of a public body *for which a quorum is required* in order to *make a decision or deliberate toward* a decision on any matter." ORS 192.610(5)(Emphasis supplied).

2) Gatherings Exempt from the Law

"Meeting" does not include an on-site inspection of a project or program; attendance of members of a governing body at any national, regional or state association to which the public body or the members belong; or gatherings of a quorum of a board or commission where no official business is discussed.

3) Quorum Requirement

If a quorum of a public body gets together and deliberates on official business, regardless of the setting, there is a violation of the public meetings law if the required notice was not provided. If gathering is less than a quorum of the body, there is no public meeting.

4) Other Situations

Purely social gatherings of a public body do not create a public meeting unless there is quorum and it decides to discuss matters relevant to its work. It is best not to discuss business at all during a social gathering. If you have a quorum present, even if the sole purpose of the meeting is to gather information to serve as the basis of future decisions or recommendations, then it is a public meeting.

In addition, electronic communication among a quorum of the public body could constitute a public meeting, especially if the communications are sent within a short time frame.

5) What Is Required for a Public Meeting

- **Notice**

- Calculated to give actual notice to interested persons
- States time and place, lists principle subjects
- Special and emergency meetings have different requirements

- **Location**

Meetings of governing bodies of public bodies shall be held within the geographic boundaries of the area over which the public body has jurisdiction, at the public body's administrative offices (if any) or "at the other nearest practical location."

Must be at a place largest enough to hold the anticipated attendance and must be a place that does not discriminate on the basis or race, color, creed, sex, sexual orientation, national origin, age or disability. Site must be one that people with disabilities can access.

- **Public Attendance**

As a general rule, the right to know about and attend a public meeting does not include a right to testify. The public meetings law is a public attendance law, not a public participation law

- **Control**

The presiding officer is authorized to keep order at a meeting and, where there will be public participation, may determine the length of time people may speak and in what order the testimony will be taken.

- **Voting**

- All official action must be by public vote.
- No secret ballots.
- The vote of each member must be recorded unless there are 26 or more members.
- Written ballots are allowed but each ballot must identify the member voting and the vote must be announced.
- As a general rule, no proxy voting.
- No absentee voting. That is, no voting by a member who did not participate whether in person or electronically as by telephone.

- **Minutes**

There shall be sound, video, written notes or digital recordings of all meetings. These need not be verbatim but must "give a true reflection of the matters discussed at the meeting and the views of the participants." ORS 192.650(1). There are minimum requirements for the minutes and these include who was present, the substance of discussion and the results of the vote.

6) Executive Sessions

An executive session is a meeting or portion of a meeting of a governing body that is closed to the general public. An executive session is not closed to the media. However, the governing body may require that the media not disclose specified information.

There are limited purposes for an executive session which include employment, employee discipline, labor and real estate negotiations, and consultation with legal counsel regarding current or potential litigation. A governing body may also go into executive session to consider records exempt from public inspection. For example, a governing body may meet in executive session to discuss written legal advice from counsel because the written advice is exempt from public inspection as a privileged document.

A governing body may not make a final decision in executive session. To make a final decision, the chair must continue the decision to a public meeting or call the executive session into open session. A governing body may not remain in executive session to discuss or deliberate on matters other than the matter for which the session was convened.

Disclaimer: This document is intended to provide general information for city employees and volunteers and should not be construed or relied upon as legal advice. For specific questions, please contact the City Attorney's Office at (503) 823-4047.

ETHICS: STATE AND CITY REQUIREMENTS

2022 Training by City Attorney's Office

Outline of Discussion

- Gifts (ORS 244, City Code 1.03 and BHR Admin Rules 4.07, 11.01-.03)
- Conflict of interest (ORS 244, City Code 1.03 and BHR 11.01-.03)
- Subsequent employment (ORS 244 and City Code Sec 2.12. 080)
- Nepotism (ORS 244, City Code 1.03 and BHR 3.10, 11.01-.03)
- Political Activities (ORS 260.432, City Code 1.03 and BHR 4.06)
- Other topics: Lobbying code, political consulting reporting code, SEI forms

I. GIFTS

Use of official position and gifts

Under state law, you may not use your official position to obtain financial gain or avoid financial loss except:

1. Official compensation.
2. Reimbursements from employer.
3. Unsolicited award for professional achievement.
4. Gifts cumulatively valued at \$50 or less from source with legislative/administrative interest per calendar year.
5. Gifts from source without legislative/administrative interest.
6. The receipt of any item, regardless of value, that is excluded from the definition of gift in ORS 244.020.

Under state law, regardless of whether or not you are using your official position, you may not accept within one calendar year gifts of more than \$50 from a source with a legislative or administrative interest.

HOWEVER, the BHR administrative rules regarding gifts are more restrictive than state law in some respects.

Under the City's administrative rules, you may not use your position to receive a gift of any value offered due to your position and work for the City or that would not have been available but for your position and work for the City, regardless of whether the source of the gift has a legislative or administrative interest, with limited exceptions described below.

What is a gift?

A gift is something of economic value given to you or relative/household members without valuable consideration of equivalent value that is not extended to others who are not public officials on same terms and conditions.

What is a legislative/administrative interest?

Legislative/administrative interest is:

An economic interest, distinct from that of the general public, in any matter subject to the decision or vote of the public official acting in public official's capacity as a public official.

Under state law, the focus is on the scope of a public official's decision making authority.

Under City administrative rules, the focus is on whether you received the gift because of your City position.

What items are excluded from the definition of gift?

The following are not gifts and are exempt from the state \$50 limit and the City's gift prohibition:

1. Campaign contributions.
2. Gifts from relatives/household.
3. Engraved plaques, trophies, desk items unless valuable material.
4. Admission, food or beverage if representing government at a reception, meal or meeting. This exemption does not authorize private meals.
5. Expenses for food, lodging, travel paid by government, membership organization to which City pays dues for attendance or non-profit at convention, fact finding mission, trip or other meeting if you represent City. **Requires prior written authorization from supervisor.**
6. Expenses for food, lodging, travel paid by anyone if fact finding, trade promotion or economic development mission. **Requires prior written authorization from supervisor.**
7. Waiver or discount of registration materials/expenses at continuing education event to satisfy professional licensing.
8. Expenses provided by another public official for in-state travel (carpool). Not included in City administrative rule, but if travel is for work purposes, City would not consider it a gift to the public official.
9. Food or beverage at reception where no cost is placed on food.

(Continued on next page)

10. Incidental entertainment.
11. Entertainment received by public official or staff where public official appears for ceremonial purposes.

City HR administrative rule 4.07 includes the following additional exceptions:

1. Officials may accept promotional items of little or no value that are offered to all attendees at an event.
2. Officials may accept raffle items or other incentives from the City at a City-sponsored event, but should not accept raffle items at other events where the official is attending due to position and work with the City or while the official is on the job during working hours.
3. Offices or bureaus may accept small gifts under \$25 on behalf of the office that are meant to be shared by employees, such as food or flowers. However, officials must be mindful of state law limitations.
4. Gifts of other benefits as result of volunteer service. Receipt is OK under certain conditions, including the official did not receive the volunteer position or gift because of the official's City position.

NOTES:

- If public official is owner or manager of private business and had that position before becoming a public official, the official may accept certain gifts where there is a usual and customary business practice and the gift bears no relationship to the official's holding of office.
- Government agencies may use own resources on own public officials for food, travel etc., if allowed by City policy.

II. CONFLICTS OF INTEREST

What is a conflict of interest?

A public official is met with a conflict of interest when participating in official action which could (potential conflict) or would (actual conflict) result in a financial benefit or detriment to the public official, a relative of the public official or a business with which either is associated.

What do you do when you have a conflict?

1. Elected officials or board and commission members

When an elected or appointed public official serving on a board or commission has a **potential** conflict of interest, the official must announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official

When an elected or appointed public official serving on a board or commission has an **actual** conflict of interest, the official must announce publicly the nature of the actual conflict and refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue. Note that there are special rules for planning commission members.

2. City employees

City employees must notify their immediate supervisor of a conflict of interest **in writing** and request that the supervisor dispose of the matter giving rise to the conflict or give approval to the employee to take action.

III. SUBSEQUENT EMPLOYMENT

- a. State law: May not use confidential information gained as public official to further personal gain after leaving public position.
- b. State law: Public officials who authorized or had significant role in a contract may not have a direct, beneficial, financial interest in the contract for two years after leaving position.
- c. City Code 2.12.080: No former city employee may lobby a city official for consideration regarding a contract if the employee exercised contract management authority over that contract. This prohibition is for the duration of the contract. Elected officials, at-will staff of elected officials and City directors are subject to additional lobbying limitations.

Significant role = approving, recommending approval, serving on selection committee

IV. NEPOTISM

- a. Public official may not appoint, employ or promote a relative or member of household from position with public body that official serves unless official complies with conflict of interest regulations.
- b. May not participate in interviews, discussion or debate re: appointment, employment or promotion of relative from position with public body unless complies with conflict of interest regulations.
- c. May not directly supervise relative or member of household we already have HR Administrative Rule 3.10 doing much the same.

V. POLITICAL ACTIVITIES

For comprehensive information, please refer to the election law memorandum on the employee page of City Attorney website.

Non-elected City employees and volunteers:

- May not spend time on the job promoting or opposing candidates or ballot measures.
- May not spend time on the job promoting or opposing political committees or the gathering of signatures for proposed ballot measures.
- May not use City resources to promote or oppose candidates, ballot measures or political committees or the gathering of signatures for a proposed ballot measure.
- May not require or attempt to require or coerce another City employee to engage in any political activity.

Non-elected City employees and volunteers:

- May express personal political views, subject to bureau rules.
- May engage in political activities outside of work, subject to bureau rules.

Elected City officials:

- May not require or attempt to require or coerce a City employee or volunteer to engage in political activity of any kind at any time.
- May not use City property, City funds, or City staff to promote or oppose ballot measures, signatures on proposed measures, political committees, or election or recall of officials or candidates.
- May not serve on or under any committee of a political party.

VI. OTHER REQUIREMENTS

Lobbying code: City Code Chapter 2.12 (city official quarterly reporting of gifts, calendars)

Political Consultant code: City Code Chapter 2.14 (city elected quarterly reporting of political consultants)

State SEI Form

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RESOURCES

BHR Admin Rules

Available at <https://www.portland.gov/bhr/employee-relations/about-bhr/hr-administrative-rules>

- BHR-4.05 - Outside Employment and Unpaid Activities
- BHR-4.06 - Political Activity
- BHR-4.07 - Awards, Gifts, Prizes and Promotional Items
- BHR-4.08 - Information Technologies
- BHR-4.09 - Use of City Resources
- BHR-4.10 - Travel

- BHR-11.01 - Statement of Ethical Conduct
- BHR-11.02 - Prohibited Conduct
- BHR-11.03 - Duty to Report Unlawful or Improper Actions

City's Code of Ethics - PCC Chapter 1.03

<https://www.portland.gov/code/1/03>

City Auditor's Explanation of Code of Ethics

<https://www.portlandoregon.gov/auditor/article/279370>

Oregon Government Ethics Commission

www.oregon.gov/OGEC

- Staff opinions and advisory opinions since 2017:
<https://apps.oregon.gov/OGEC/CMS/Advice>
- Staff opinions and advisory opinions before 2017:
<https://www.oregon.gov/ogec/public-records/Pages/Advisory-Opinion-Chart~-2010-to-2016.aspx>

Oregon Revised Statutes Chapter 244 (2013 Edition) Government Ethics

https://www.oregonlegislature.gov/bills_laws/ors/ors244.html

Oregon Administrative Rules Chapter 199

<https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=143>

Government Ethics

ORS 244.020

Definitions

As used in this chapter, unless the context requires otherwise:

- (1) “Actual conflict of interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person’s relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (13) of this section.
- (2) “Business” means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official or a relative of the public official is associated only as a member or board director or in a nonremunerative capacity.
- (3) “Business with which the person is associated” means:
 - (a) Any private business or closely held corporation of which the person or the person’s relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person’s relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding calendar year;
 - (b) Any publicly held corporation in which the person or the person’s relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;
 - (c) Any publicly held corporation of which the person or the person’s relative is a director or officer; or
 - (d) For public officials required to file a statement of economic interest under ORS 244.050 (Persons required to file statement of economic interest), any business listed as a source of income as required under ORS 244.060 (Form of statement of economic interest) (3).
- (4) “Candidate” means an individual for whom a declaration of candidacy, nominating petition or certificate of nomination to public office has been filed or whose name is printed on a ballot or is expected to be or has been presented, with the individual’s consent, for nomination or election to public office.
- (5) “Development commission” means any entity that has the authority to purchase, develop, improve or lease land or the authority to operate or direct the use of land. This authority must be more than ministerial.

- (6)** “First Partner” means the spouse or domestic partner of the Governor, or an individual who primarily has a personal relationship with the Governor as determined by the Oregon Government Ethics Commission by rule. “First Partner” encompasses any alternative title that the Governor may publicly substitute for “First Partner,” including, but not limited to, “First Lady,” “First Husband” or “First Spouse.”
- (7)** (a) “Gift” means something of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:
- (A)** Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or candidates or the relatives or members of the household of public officials or candidates on the same terms and conditions; or
 - (B)** For valuable consideration less than that required from others who are not public officials or candidates.
- (b)** “Gift” does not mean:
- (A)** Contributions as defined in ORS 260.005 (Definitions).
 - (B)** Gifts from relatives or members of the household of the public official or candidate.
 - (C)** An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than \$25.
 - (D)** Informational or program material, publications or subscriptions related to the recipient’s performance of official duties.
 - (E)** Admission provided to or the cost of food or beverage consumed by a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, at a reception, meal or meeting held by an organization when the public official represents state government as defined in ORS 174.111 (“State government” defined), a local government as defined in ORS 174.116 (“Local government” and “local service district” defined) or a special government body as defined in ORS 174.117 (“Special government body” defined).
 - (F)** Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 (“Public body” defined) pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111 (“State government” defined), a local government as defined in ORS 174.116 (“Local government” and “local service district” defined) or a special government body as defined in ORS 174.117 (“Special government body” defined).
 - (G)** Contributions made to a legal expense trust fund established under ORS 244.209 (Application to establish fund) for the benefit of the public official.

- (H)** Reasonable food, travel or lodging expenses provided to a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, when the public official is representing state government as defined in ORS 174.111 (“State government” defined), a local government as defined in ORS 174.116 (“Local government” and “local service district” defined) or a special government body as defined in ORS 174.117 (“Special government body” defined):

 - (i)** On an officially sanctioned trade-promotion or fact-finding mission; or
 - (ii)** In officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance.
- (I)** Food or beverage consumed by a public official acting in an official capacity:

 - (i)** In association with the review, approval, execution of documents or closing of a borrowing, investment or other financial transaction, including any business agreement between state government as defined in ORS 174.111 (“State government” defined), a local government as defined in ORS 174.116 (“Local government” and “local service district” defined) or a special government body as defined in ORS 174.117 (“Special government body” defined) and a private entity or public body as defined in ORS 174.109 (“Public body” defined);
 - (ii)** While engaged in due diligence research or presentations by the office of the State Treasurer related to an existing or proposed investment or borrowing; or
 - (iii)** While engaged in a meeting of an advisory, governance or policy-making body of a corporation, partnership or other entity in which the office of the State Treasurer has invested moneys.
- (J)** Waiver or discount of registration expenses or materials provided to a public official or candidate at a continuing education event that the public official or candidate may attend to satisfy a professional licensing requirement.
- (K)** Expenses provided by one public official to another public official for travel inside this state to or from an event that bears a relationship to the receiving public official’s office and at which the official participates in an official capacity.
- (L)** Food or beverage consumed by a public official or candidate at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.
- (M)** Entertainment provided to a public official or candidate or a relative or member of the household of the public official or candidate that is incidental to the main purpose of another event.
- (N)** Entertainment provided to a public official or a relative or member of the household of the public official where the public official is acting in an official capacity while representing state government as defined in ORS 174.111 (“State government” defined), a local government as defined in ORS 174.116 (“Local government” and “local service district” defined) or a special government body as defined in ORS 174.117 (“Special government body” defined) for a ceremonial purpose.

- (O) Anything of economic value offered to or solicited or received by a public official or candidate, or a relative or member of the household of the public official or candidate:

 - (i) As part of the usual and customary practice of the person's private business, or the person's employment or position as a volunteer with a private business, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, not-for-profit corporation or other legal entity operated for economic value; and
 - (ii) That bears no relationship to the public official's or candidate's holding of, or candidacy for, the official position or public office.
- (P) Reasonable expenses paid to a public school employee for accompanying students on an educational trip.
- (8) "Honorarium" means a payment or something of economic value given to a public official in exchange for services upon which custom or propriety prevents the setting of a price. Services include, but are not limited to, speeches or other services rendered in connection with an event.
- (9) "Income" means income of any nature derived from any source, including, but not limited to, any salary, wage, advance, payment, dividend, interest, rent, honorarium, return of capital, forgiveness of indebtedness, or anything of economic value.
- (10) "Legislative or administrative interest" means an economic interest, distinct from that of the general public, in:

 - (a) Any matter subject to the decision or vote of the public official acting in the public official's capacity as a public official; or
 - (b) Any matter that would be subject to the decision or vote of the candidate who, if elected, would be acting in the capacity of a public official.
- (11) "Member of the household" means any person who resides with the public official or candidate.
- (12) "Planning commission" means a county planning commission created under ORS chapter 215 or a city planning commission created under ORS chapter 227.
- (13) "Potential conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

 - (a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.
 - (b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.
 - (c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

- (14)** “Public office” has the meaning given that term in ORS 260.005 (Definitions).
- (15)** “Public official” means the First Partner and any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 (“Public body” defined) as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.
- (16)** “Relative” means:
- (a)** The spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the public official or candidate;
 - (b)** The parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the spouse of the public official or candidate;
 - (c)** Any individual for whom the public official or candidate has a legal support obligation;
 - (d)** Any individual for whom the public official provides benefits arising from the public official’s public employment or from whom the public official receives benefits arising from that individual’s employment; or
 - (e)** Any individual from whom the candidate receives benefits arising from that individual’s employment.
- (17)** “Statement of economic interest” means a statement as described by ORS 244.060 (Form of statement of economic interest) or 244.070 (Additional statement of economic interest).
- (18)** “Zoning commission” means an entity to which is delegated at least some of the discretionary authority of a planning commission or governing body relating to zoning and land use matters. [1974 c.72 §2; 1975 c.543 §1; 1977 c.588 §2; 1979 c.666 §5; 1987 c.566 §8; 1989 c.340 §2; 1991 c.73 §1; 1991 c.770 §5; 1993 c.743 §8; 1995 c.79 §85; 1997 c.249 §75; 2001 c.200 §1; 2003 c.14 §115; 2005 c.574 §1; 2007 c.865 §8; 2007 c.877 §16a; 2009 c.68 §2; 2009 c.689 §§1,2; 2013 c.42 §1; 2015 c.620 §1; 2015 c.665 §1]

Location: https://oregon.public.law/statutes/ors_244.020

Original Source: Section 244.020 — Definitions, https://www.oregonlegislature.gov/bills_laws/ors/ors244.html (last accessed Jun. 26, 2021).

Government Ethics

ORS 244.025

Gift limit

- (1) During a calendar year, a public official, a candidate or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift or gifts with an aggregate value in excess of \$50 from any single source that could reasonably be known to have a legislative or administrative interest.
- (2) During a calendar year, a person who has a legislative or administrative interest may not offer to the public official or a relative or member of the household of the public official any gift or gifts with an aggregate value in excess of \$50.
- (3) During a calendar year, a person who has a legislative or administrative interest may not offer to the candidate or a relative or member of the household of the candidate any gift or gifts with an aggregate value in excess of \$50.
- (4) This section does not apply to public officials subject to the Oregon Code of Judicial Conduct. [2007 c.877 §18; 2009 c.68 §3]

Location: https://oregon.public.law/statutes/ors_244.025

Original Source: Section 244.025 — Gift limit, https://www.oregonlegislature.gov/bills_laws/ors/ors244.html (last accessed Jun. 26, 2021).

Government Ethics

ORS 244.040

Prohibited use of official position or office

- **exceptions**
 - **other prohibited actions**
-

- (1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.
- (2) Subsection (1) of this section does not apply to:
 - (a) Any part of an official compensation package as determined by the public body that the public official serves.
 - (b) The receipt by a public official or a relative or member of the household of the public official of an honorarium or any other item allowed under ORS 244.042 (Honoraria).
 - (c) Reimbursement of expenses.
 - (d) An unsolicited award for professional achievement.
 - (e) Gifts that do not exceed the limits specified in ORS 244.025 (Gift limit) received by a public official or a relative or member of the household of the public official from a source that could reasonably be known to have a legislative or administrative interest.
 - (f) Gifts received by a public official or a relative or member of the household of the public official from a source that could not reasonably be known to have a legislative or administrative interest.
 - (g) The receipt by a public official or a relative or member of the household of the public official of any item, regardless of value, that is expressly excluded from the definition of "gift" in ORS 244.020 (Definitions).
 - (h) Contributions made to a legal expense trust fund established under ORS 244.209 (Application to establish fund) for the benefit of the public official.
- (3) A public official may not solicit or receive, either directly or indirectly, and a person may not offer or give to any public official any pledge or promise of future employment, based on any understanding that the vote, official action or judgment of the public official would be influenced by the pledge or promise.

- (4) A public official may not attempt to further or further the personal gain of the public official through the use of confidential information gained in the course of or by reason of holding position as a public official or activities of the public official.
- (5) A person who has ceased to be a public official may not attempt to further or further the personal gain of any person through the use of confidential information gained in the course of or by reason of holding position as a public official or the activities of the person as a public official.
- (6) A person may not attempt to represent or represent a client for a fee before the governing body of a public body of which the person is a member. This subsection does not apply to the person's employer, business partner or other associate.
- (7) The provisions of this section apply regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed under ORS 244.120 (Methods of handling conflicts). [1974 c.72 §3; 1975 c.543 §2; 1987 c.566 §9; 1989 c.340 §3; 1991 c.146 §1; 1991 c.770 §6; 1991 c.911 §4; 1993 c.743 §9; 2007 c.877 §17; 2009 c.68 §4]

Location: https://oregon.public.law/statutes/ors_244.040

Original Source: Section 244.040 — *Prohibited use of official position or office; exceptions; other prohibited actions*, https://www.oregonlegislature.gov/bills_laws/ors/ors244.html (last accessed Jun. 26, 2021).

Government Ethics

ORS 244.045

Regulation of subsequent employment of public officials

• lobbying by former members of Legislative Assembly

- (1) A person who has been a Public Utility Commissioner, the Director of the Department of Consumer and Business Services, the Administrator of the Division of Financial Regulation, the Administrator of the Oregon Liquor Control Commission or the Director of the Oregon State Lottery may not:
 - (a) Within one year after the public official ceases to hold the position become an employee of or receive any financial gain, other than reimbursement of expenses, from any private employer engaged in the activity, occupation or industry over which the former public official had authority; or
 - (b) Within two years after the public official ceases to hold the position:
 - (A) Be a lobbyist for or appear as a representative before the agency over which the person exercised authority as a public official;
 - (B) Influence or try to influence the actions of the agency; or
 - (C) Disclose any confidential information gained as a public official.
- (2) A person who has been a Deputy Attorney General or an assistant attorney general may not, within two years after the person ceases to hold the position, lobby or appear before an agency that the person represented while employed by the Department of Justice.
- (3) A person who has been the State Treasurer or the Deputy State Treasurer may not, within one year after ceasing to hold office:
 - (a) Accept employment from or be retained by any private entity with whom the office of the State Treasurer or the Oregon Investment Council negotiated or to whom either awarded a contract providing for payment by the state of at least \$25,000 in any single year during the term of office of the treasurer;
 - (b) Accept employment from or be retained by any private entity with whom the office of the State Treasurer or the Oregon Investment Council placed at least \$50,000 of investment moneys in any single year during the term of office of the treasurer; or
 - (c) Be a lobbyist for an investment institution, manager or consultant, or appear before the office of the State Treasurer or Oregon Investment Council as a representative of an investment institution, manager or consultant.

- (4)** A public official who as part of the official's duties invested public funds may not within two years after the public official ceases to hold the position:
- (a)** Be a lobbyist or appear as a representative before the agency, board or commission for which the former public official invested public funds;
 - (b)** Influence or try to influence the agency, board or commission; or
 - (c)** Disclose any confidential information gained as a public official.
- (5)** (a) A person who has been a member of the Department of State Police, who has held a position with the department with the responsibility for supervising, directing or administering programs relating to gaming by a Native American tribe or the Oregon State Lottery and who has been designated by the Superintendent of State Police by rule may not, within one year after the member of the Department of State Police ceases to hold the position:
- (A)** Accept employment from or be retained by or receive any financial gain related to gaming from the Oregon State Lottery or any Native American tribe;
 - (B)** Accept employment from or be retained by or receive any financial gain from any private employer selling or offering to sell gaming products or services;
 - (C)** Influence or try to influence the actions of the Department of State Police; or
 - (D)** Disclose any confidential information gained as a member of the Department of State Police.
- (b)** This subsection does not apply to:
- (A)** Appointment or employment of a person as an Oregon State Lottery Commissioner or as a Tribal Gaming Commissioner or regulatory agent thereof;
 - (B)** Contracting with the Oregon State Lottery as a lottery game retailer;
 - (C)** Financial gain received from personal gaming activities conducted as a private citizen; or
 - (D)** Subsequent employment in any capacity by the Department of State Police.
- (c)** As used in this subsection, "Native American tribe" means any recognized Native American tribe or band of tribes authorized by the Indian Gaming Regulatory Act of October 17, 1988 (Public Law 100-497), 25 U.S.C. 2701 et seq., to conduct gambling operations on tribal land.
- (6)** A person who has been a member of the Legislative Assembly may not, within one year after ceasing to be a member of the Legislative Assembly, receive money or any other consideration for lobbying as defined in ORS 171.725 (Definitions for ORS 171.725 to 171.785). [1987 c.360 §1; 1993 c.743 §10; 1995 c.79 §86; 1997 c.750 §1; 2007 c.877 §15; 2011 c.68 §3; 2017 c.17 §21; 2019 c.52 §1]

Location: https://oregon.public.law/statutes/ors_244.045

Original Source: Section 244.045 — Regulation of subsequent employment of public officials; lobbying by former members of Legislative Assembly, https://www.oregonlegislature.gov/bills_laws/ors/ors244.html (last accessed Jun. 26, 2021).

Government Ethics

ORS 244.047

Financial interest in public contract

- (1) As used in this section:
 - (a) “Public body” has the meaning given that term in ORS 174.109 (“Public body” defined).
 - (b) “Public contract” has the meaning given that term in ORS 279A.010 (Definitions for Public Contracting Code).
- (2) Except as provided in subsection (4) of this section, a person who ceases to hold a position as a public official may not have a direct beneficial financial interest in a public contract described in subsection (3) of this section for two years after the date the contract was authorized.
- (3) Subsection (2) of this section applies to a public contract that was authorized by:
 - (a) The person acting in the capacity of a public official; or
 - (b) A board, commission, council, bureau, committee or other governing body of a public body of which the person was a member when the contract was authorized.
- (4) Subsection (2) of this section does not apply to a person who was a member of a board, commission, council, bureau, committee or other governing body of a public body when the contract was authorized, but who did not participate in the authorization of the contract.
[2007 c.877 §23a; 2009 c.689 §4a]

Location: https://oregon.public.law/statutes/ors_244.047

Original Source: Section 244.047 — *Financial interest in public contract*, https://www.oregonlegislature.gov/bills_laws/ors/ors244.html (last accessed Jun. 26, 2021).

Government Ethics

ORS 244.120

Methods of handling conflicts

- **Legislative Assembly**
 - **judges**
 - **appointed officials**
 - **other elected officials or members of boards**
-

- (1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall:
 - (a) If the public official is a member of the Legislative Assembly, announce publicly, pursuant to rules of the house of which the public official is a member, the nature of the conflict before taking any action thereon in the capacity of a public official.
 - (b) If the public official is a judge, remove the judge from the case giving rise to the conflict or advise the parties of the nature of the conflict.
 - (c) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.
- (2) An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:
 - (a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or
 - (b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:
 - (A) Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.
 - (B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

- (3) Nothing in subsection (1) or (2) of this section requires any public official to announce a conflict of interest more than once on the occasion which the matter out of which the conflict arises is discussed or debated.
- (4) Nothing in this section authorizes a public official to vote if the official is otherwise prohibited from doing so. [1974 c.72 §10; 1975 c.543 §7; 1987 c.566 §15; 1993 c.743 §15]

Location: https://oregon.public.law/statutes/ors_244.120

Original Source: Section 244.120 — *Methods of handling conflicts; Legislative Assembly; judges; appointed officials; other elected officials or members of boards*, https://www.oregonlegislature.gov/bills_laws/ors/ors244.html (last accessed Jun. 26, 2021).

Government Ethics

ORS 244.130

Recording of notice of conflict

- **effect of failure to disclose conflict**

- (1) When a public official gives notice of an actual or potential conflict of interest, the public body as defined in ORS 174.109 (“Public body” defined) that the public official serves shall record the actual or potential conflict in the official records of the public body. In addition, a notice of the actual or potential conflict and how it was disposed of may in the discretion of the public body be provided to the Oregon Government Ethics Commission within a reasonable period of time.
- (2) A decision or action of any public official or any board or commission on which the public official serves or agency by which the public official is employed may not be voided by any court solely by reason of the failure of the public official to disclose an actual or potential conflict of interest. [1974 c.72 §11; 1975 c.543 §8; 1993 c.743 §16; 2007 c.865 §9]

Location: https://oregon.public.law/statutes/ors_244.130

Original Source: Section 244.130 — Recording of notice of conflict; effect of failure to disclose conflict, https://www.oregonlegislature.gov/bills_laws/ors/ors244.html (last accessed Jun. 26, 2021).

Government Ethics

ORS 244.175

Definitions for ORS 244.177 and 244.179

As used in ORS 244.177 (Employment of relative or member of household) and 244.179 (Supervision of relative or member of household):

- (1) “Governing body” has the meaning given that term in ORS 192.610 (Definitions for ORS 192.610 to 192.690).
- (2) “Public body” has the meaning given that term in ORS 174.109 (“Public body” defined).
[2007 c.865 §26b; 2009 c.689 §3; 2013 c.42 §2]

Location: https://oregon.public.law/statutes/ors_244.175

Original Source: Section 244.175 — Definitions for ORS 244.177 and 244.179, https://www.oregonlegislature.gov/bills_laws/ors/ors244.html (last accessed Jun. 26, 2021).

Government Ethics

ORS 244.177

Employment of relative or member of household

• exceptions

- (1) Except as provided in subsections (2) to (4) of this section:
 - (a) A public official may not appoint, employ or promote a relative or member of the household to, or discharge, fire or demote a relative or member of the household from, a position with the public body that the public official serves or over which the public official exercises jurisdiction or control, unless the public official complies with the conflict of interest requirements of this chapter.
 - (b) A public official may not participate as a public official in any interview, discussion or debate regarding the appointment, employment or promotion of a relative or member of the household to, or the discharge, firing or demotion of a relative or member of the household from, a position with the public body that the public official serves or over which the public official exercises jurisdiction or control. As used in this paragraph, “participate” does not include serving as a reference, providing a recommendation or performing other ministerial acts that are part of the normal job functions of the public official.
- (2) A member of the Legislative Assembly may appoint, employ, promote, discharge, fire or demote, or advocate for the appointment, employment, promotion, discharge, firing or demotion of, a relative or member of the household to or from a position on the personal legislative staff of the member of the Legislative Assembly.
- (3)
 - (a) A public official may appoint, employ, promote, discharge, fire or demote, or advocate for the appointment, employment, promotion, discharge, firing or demotion of, a relative or member of the household to or from a position as an unpaid volunteer with the public body that the public official serves or over which the public official exercises jurisdiction or control.
 - (b) Paragraph (a) of this subsection does not apply to the appointment, employment, promotion, discharge, firing or demotion of a relative or member of the household to a position as an unpaid member of a governing body of the public body that the public official serves or over which the public official exercises jurisdiction or control.
 - (c) A relative or member of the household described in paragraph (a) of this subsection may receive reimbursement of expenses provided in the ordinary course of business to similarly situated unpaid volunteers.
- (4) This section does not prohibit a public body from appointing, employing, promoting, discharging, firing or demoting a person who is a relative or member of the household of a public official serving the public body. [2007 c.865 §26c]

Location: https://oregon.public.law/statutes/ors_244.177

Original Source: *Section 244.177 — Employment of relative or member of household; exceptions*, https://www.oregonlegislature.gov/bills_laws/ors/ors244.html (last accessed Jun. 26, 2021).

Government Ethics

ORS 244.179

Supervision of relative or member of household

• exceptions

- (1) Notwithstanding ORS 659A.309 (Discrimination solely because of employment of another family member prohibited) and except as provided in subsections (2) to (4) of this section, a public official acting in an official capacity may not directly supervise a person who is a relative or member of the household.
- (2) A member of the Legislative Assembly may directly supervise a person who:
 - (a) Is a relative or member of the household; and
 - (b) Serves as a public official in a position on the personal legislative staff of the member of the Legislative Assembly.
- (3)
 - (a) A public official acting in an official capacity may directly supervise a person who is a relative or member of the household if the person serves as an unpaid volunteer.
 - (b) Paragraph (a) of this subsection does not apply to service by a person in a position as an unpaid member of a governing body that a public official of whom the person is a relative or member of the household serves or over which the public official exercises jurisdiction or control.
 - (c) A relative or member of the household serving as an unpaid volunteer described in paragraph (a) of this subsection may receive reimbursement of expenses provided in the ordinary course of business to similarly situated unpaid volunteers.
- (4) A public body may adopt policies specifying when a public official acting in an official capacity may directly supervise a person who is a relative or member of the household.
[2007 c.865 §26d]

Location: https://oregon.public.law/statutes/ors_244.179

Original Source: Section 244.179 — Supervision of relative or member of household; exceptions, https://www.oregonlegislature.gov/bills_laws/ors/ors244.html (last accessed Jun. 26, 2021).

260.432 Solicitation of public employees; activities of public employees during working

hours. (1) No person shall attempt to, or actually, coerce, command or require a public employee to influence or give money, service or other thing of value to promote or oppose any political committee or to promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder.

(2) No public employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder while on the job during working hours. However, this section does not restrict the right of a public employee to express personal political views.

(3) Each public employer shall have posted in a conspicuous place likely to be seen by its employees the following notice in printed or typewritten form:

ATTENTION ALL PUBLIC EMPLOYEES:

The restrictions imposed by the law of the State of Oregon on your political activities are that “No public employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder while on the job during working hours. However, this section does not restrict the right of a public employee to express personal political views.”

It is therefore the policy of the state and of your public employer that you may engage in political activity except to the extent prohibited by state law when on the job during working hours.

(4) Nothing in this section prohibits an employee of the legislative branch from explaining the vote of a member of the Legislative Assembly on:

(a) An Act that has been referred to the people by law or petition under section 1 (3), Article IV of the Oregon Constitution;

(b) An Act for which a prospective referendum petition has been filed under ORS 250.045; or

(c) A constitutional amendment or revision proposed under section 1 or 2, Article XVII of the Oregon Constitution.

(5) As used in this section:

(a) “Public employee” does not include an elected official or a person appointed as a director to the board of a pilot education service district under ORS 334.108.

(b) “Public employer” includes any board, commission, committee, department, division or institution in the executive, administrative, legislative or judicial branch of state government, and any county, city, district or other municipal corporation or public corporation organized for a public purpose, including a cooperative body formed between municipal or public corporations.