

## **CHAPTER 2.19 APPEALS**

### **Section 2.19.10 - BACKGROUND**

This Code is intended to permit flexibility in achieving the goals of the Comprehensive Plan. Some provisions of this Code, therefore, allow considerable discretion in decisions made by the City Council and its agencies and officers.

Criteria and standards have been adopted as part of this Code to ensure consistency in land use and limited land use decisions. To ensure due process it is also necessary to provide for review of land use and limited land use decisions that are perceived to be inconsistent with the Comprehensive Plan and/or the requirements of this Code.

### **Section 2.19.20 - PURPOSES**

Procedures and requirements in this Chapter are established for the following purposes:

- a. Provide an Appeal process wherein parties affected by land use decisions may request review of such decisions;
- b. Establish the basis for valid Appeals;
- c. Establish who may appeal a land use and limited land use decision; and
- d. Provide for timely review of Appeals.

### **Section 2.19.30 - PROCEDURES**

Appeals shall be filed and reviewed in accordance with the following procedures:

#### **2.19.30.01 - General Provisions**

- a. Every decision relating to the provision of this Code substantiated by findings of every board, commission, committee, hearings officer, and official of the City is subject to review by Appeal in accordance with the provisions of this Chapter.
- b. **Staying of Decisions -**
  1. The filing of an Appeal to a higher level of City hearing authority, in accordance with the provisions of this Chapter, shall initiate the

Appeal process and stay the order or decision appealed. The process shall include adequate public notice, a public hearing, and preparation of findings by the hearing authority that affirms, amends, or reverses the decision appealed.

2. A final decision by the City that is appealed to a state agency shall be stayed only through the relevant state procedures. When State procedures do not require the stay of a final decision, applicants may obtain development and/or site improvement permits. However, applicants will be proceeding at their own risk, pending the outcome of the Appeal.
- c. All hearings on Appeals shall be held de novo (as a new public hearing). For any Appeal, the record of the decision made before the lower level of City hearing authority shall be part of the staff report on Appeal.

#### **2.19.30.02 - Hearings Authority**

- a. Appeals of decisions of the Director shall be reviewed by the Land Development Hearings Board, except that:
1. Appeals of Historic Preservation Permit decisions by the Director shall be reviewed by the Historic Resources Commission;
  2. Appeals of Residential Subdivision decisions by the Director shall be reviewed by the Planning Commission;
  3. Appeals of Administrative District Change decisions by the Director shall be reviewed by the City Council. The definition of an Administrative District Change is contained within Section 2.2.50.b; and
  4. Appeals of decisions made by the Director on Conceptual Plan Nullification requests on residentially zoned property shall be reviewed by the City Council.
- b. Appeals of decisions of the Building Official that relate to the enforcement of this Code's requirements shall be reviewed by the Land Development Hearings Board.
- c. Appeals of decisions by the City Engineer and the Floodplain Administrator shall be reviewed by the Land Development Hearings Board.

- d. Appeals of decisions of the Planning Commission, the Land Development Hearings Board, or the Historic Resources Commission shall be reviewed by the City Council.
- e. Appeals of decisions of the City Council shall conform with applicable ORS provisions, as amended.

### **2.19.30.03 - Standing**

Appeals may only be filed by parties affected by a land use or limited land use decision. For purposes of this Chapter affected parties shall include any of the following:

- a. The applicant or the applicant's authorized agent.
- b. Any person who testified orally or in writing before the hearing authority whose decision is being appealed.
- c. Any neighborhood organization that testified orally or in writing before the hearing authority whose decision is being appealed.
- d. Any City agency, officer, or department that is responsible for provision of City facilities and services to the proposed development.
- e. Ten registered voters who are City residents.
- f. Any person who was mailed a copy of the Notice of Disposition for a Director-level Historic Preservation Permit.
- g. Any person who is entitled to appeal a land use or limited land use decision pursuant to state law.

### **2.19.30.04 - Appeal Periods**

Appeals must have been filed within 12 days after a decision is signed. In the case of a legislative interpretation of this Code or the Comprehensive Plan, an Appeal must have been filed within 12 days of a published Notice of such Interpretation. Appeals to the State Land Use Board of Appeals shall be made in accordance with the provisions of state law.

Appeals must be filed by 5:00 p.m. on the final day of the appeal period. Where the final day of an appeal period falls on a weekend or holiday the appeal period shall be extended to 5:00 p.m. on the next work day.

#### **2.19.30.05 - Filing Requirements**

Appeals shall be filed in writing with the City Recorder and shall include the following:

- a. Name and address of the appellant;
- b. Reference to the subject development and case number, if any;
- c. Statement of the specific grounds for the Appeal, stated in terms of specific review criteria applicable to the case;
- d. Statement of the appellant's standing to appeal as an affected party; and
- e. Appropriate filing fee.

#### **2.19.30.06 - Notice and Hearing**

- a. The Director shall schedule a public hearing for complete and properly filed Appeals. Such hearing is to be held not later than 60 days after the receipt of the notice of Appeal. Incomplete or improperly filed Appeals shall be referred to the hearing authority for dismissal as noted in "b," below.
  - 1. The hearing authority shall give notice of time, place, and particular nature of the Appeal. At least 20 days prior to the hearing, notice shall be sent by mail to the appellant(s), to the applicant, to the property owner(s) if different from the applicant, to persons and neighborhood organizations that originally received notice of the application, and to anyone who testified or submitted written information for the record of the case. If the decision being appealed was the Director's administrative decision, notice shall be provided to residents and owners of properties within 100 feet of the subject property.
  - 2. Public hearings shall be conducted in accordance with Chapter 2.0 - Public Hearings.

- b.** Appeals that are incomplete, filed late, or improperly filed may be denied by the hearing authority without further review.

#### **2.19.30.07 - Effective Date of Decision**

Unless an Appeal has been filed, approval of any development request shall become effective upon expiration of the appeal period. Where the hearing authority is the City Council, the effective date for filing an Appeal with the State Land Use Board of Appeals (LUBA) shall be in accordance with the provisions of state Law.

