

ARTICLE 9

ADMINISTRATIVE PROCEDURES

9.010. APPLICATION INFORMATION AND PROCEDURES.

A. Content.

An application for a land use action or permit shall consist of:

1. A complete application form and all supporting documents and evidence.
2. Proof that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has the consent of all parties in ownership of the affected property.
3. Legal description of the property affected by the application.

B. Submittal.

A complete application and all supporting documents and evidence must be submitted at least 28 days prior to the date of a hearing. Exceptions may be made to this requirement by the Community Development Director on a case-by-case basis.

C. Complete Application.

If the application is complete when first submitted, or the applicant submits the requested additional information within 180 days from the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time a complete application was first submitted.

D. Incomplete Application.

If an application for a permit or zone change is incomplete, the City shall notify the applicant of the additional information required within 30 days of the receipt of the application. The applicant shall be given the opportunity to submit the additional information required. The application shall be deemed complete upon receipt of the additional information required. If the applicant refuses to submit the required additional information, the application shall be deemed complete on the 31st day after the governing body first received the application.

E. Multiple Requests.

Where a proposed development requires more than one development permit or zone change request from the City, the applicant may request that the City consider all necessary permit and zone change requests in a consolidated manner. If the applicant requests that the City consolidate its review of the development proposal, all necessary public hearings before the applicable Commission should be held on the same date if possible.

(Section 9.010.E amended by Ordinance 14-03, 4-21-14)

F. Staff Report.

Any staff report used at the hearing shall be available at least seven (7) days prior to the hearing. If additional documents or evidence is provided in support of the application, any party shall be entitled to a continuance of the hearing. Such a continuance shall not be subject to the limitations of ORS 227.178.

(Section 9.010.F amended by Ordinance 14-03, 4-21-14)

G. Pre-Application Meeting.

Prior to submittal of an application, a pre-application meeting with the Community Development Director and/or the Planner is required. The Community Development Director shall determine the classification and appropriate process for any application.

(Section 9.010.G added by Ordinance 13-10, 11-4-13; Amended by Ordinance 14-03, 4-21-14)

H. Determination of Permit Process.

The Community Development Director may determine that a permit should be reviewed by a Commission/Committee in lieu of an Administrative Review to protect the best interests of the surrounding property or neighborhood or the City as a whole.

(Section 9.010.H added by Ordinance 13-10, 11-4-13; amended by Ordinance 14-03, 4-21-14)

I. Applications for Development Review.

1. Applications for development review may be initiated by one or more of the following:

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- a. One or more owners of the property which is the subject of the application; or
- b. One or more purchasers or representatives of such property who submit a written approval of the property owner; or
- c. One or more lessees in possession of such property who submits written consent of one or more owner's to make such application; or
- d. Person or entity authorized by the Board or Commission; or
- e. A Department of the City of Astoria when dealing with land involving public works, economic development, or other City projects; or
- f. A public utility or transportation agency, when dealing with land involving the location of facilities necessary for public service; or
- g. Any of the above may be represented by an agent who submits written authorization by his principal to make such application.

(Section 9.010.I added by Ordinance 14-03, 4-21-14)

J. Coordinated Review.

1. In addition to the general notice provisions set forth in Section 9.020, the City shall invite the Oregon Department of Transportation (ODOT) and/or any other transportation facility and service providers potentially affected by the application to pre-application conferences, as applicable. The City shall provide notice of a public hearing or an administrative action to potentially affected transportation facility and service providers.
2. Coordinated review of applications with ODOT and/or any other applicable transportation facility and service providers may also occur through Traffic Impact Study provisions, pursuant to Subsection 3.015.A.5.

(Section 9.010.J added by Ordinance 14-03, 4-21-14)

9.020. PUBLIC NOTICE.

A. Mailed Notice - Content.

A notice of a public hearing or an administrative action shall contain the following information:

1. The name of the applicant.

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2. The date, time, place of hearing and who is holding the public hearing, or conducting the administrative action.
3. The street address or other easily understood geographical reference to the subject property.
4. The nature of the application and the proposed use or uses which could be authorized.
5. A list of the applicable criteria from the Development Code and Comprehensive Plan that apply to the application at issue.
6. A statement that a failure to raise an issue in person or by letter precludes appeal and that failure to specify which criterion the comment is directed precludes an appeal based on that criterion.
7. A statement describing where the complete application, criteria and other relevant information is available for review, how written comments may be submitted, applicable appeal procedures, and the name of a representative to contact and the telephone number where additional information may be obtained.
8. A statement that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.
9. A statement that a copy of the staff report will be available for inspection at no cost at least seven (7) days prior to the hearing and will be provided at reasonable cost.
10. A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

B. Mailed Notice - Distribution, Time Requirements.

1. Mailed notice shall be sent to property owners within the following distances from the exterior boundary of the subject property:
 - a. Legislative amendment to the Development Code text or Land Use and Zoning Map - None.
 - b. Quasi-judicial amendment to the Development Code text or Land Use and Zoning Map - 100 feet.
 - c. Conditional Use - 100 feet.

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- d. Variance - 100 feet.
- e. Miscellaneous Review - 100 feet.
- f. Historic Property Exterior Alterations, New Construction, Demolition or Moving Permits - 100 feet.
- g. Historic District Establishment - Owners of property abutting or within the boundaries of the proposed District.

(Section 9.020(B.1.g) amended by Ordinance 13-10, 11-4-13)

- h. Appeals - Parties to the record.

- i. Design Review - 100 feet.

(Section 9.020(B.i) added by Ordinance 98-04, 5-4-98)

- j. Wireless Communication Facility – 500 feet.

(Section 9.020(B.1.j) added by Ordinance 13-10, 11-4-13)

- k. Solar Facility, Administrative Conditional Use – 100 feet.

(Section 9.020(B.1.k) added by Ordinance 13-10, 11-4-13)

- l. Solar Facility, Planning Commission Conditional Use – 250 feet.”

(Section 9.020(B.1.l) added by Ordinance 13-10, 11-4-13)

2. Addresses for a mailed notice required by this Code shall be obtained from the County Assessor's real property tax records. Failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to comply with the requirements of this Code for notice. In addition to persons to receive notice as required by the matter under consideration, the Community Development Director may provide notice to others he has reason to believe are affected or otherwise represent an interest that may be affected by the proposed action.
3. Notice shall be mailed not less than 20 days prior to the hearing requiring the notice; or if two or more evidentiary hearings are allowed, 10 days prior to the first evidentiary hearing.

(Section 9.020(B.2.3 & 4) amended and renumbered by Ordinance 13-10, 11-4-13)

C. Published Notice.

Notice shall be given for any proposed quasi-judicial or legislative land use action by publication in a newspaper of general circulation in the City of Astoria.

9.030 QUASI-JUDICIAL PUBLIC HEARING PROCEDURES AND REQUIREMENTS.

A. Procedural Entitlements.

The following procedural entitlements shall be provided at the public hearing:

1. An impartial review as free from potential conflicts of interest and prehearing ex parte contact as is reasonably possible.
2. No member of a hearing body shall participate in a discussion of the proposal or vote on the proposal when any of the following conditions exist:
 - a. Any of the following have a direct or substantial financial interest in the proposal: the hearing body member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, 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.
 - b. The member has a direct private interest in the proposal.
 - c. For any other valid reason, the member has determined that participation in the hearing and decision cannot be in an impartial manner.
3. Body Members shall reveal any prehearing or ex parte contacts with regard to any matter and shall state the parties right to rebut the substance of the communication at the commencement of the first public hearing following the prehearing or ex parte contact where action will be considered or taken on the matter. If such contacts have not impaired the member's impartiality or ability to vote on the matter, the member shall so state and shall participate in the public hearing. If the member determines that such contact has affected his impartiality or ability to vote on the matter, the member shall remove himself from the deliberations.
4. A party to a hearing, or a member of a hearing body, may challenge the qualifications of a member of the hearing body to participate in the hearing

and decision regarding the matter. The challenge shall state the facts relied upon by the challenger relating to a person's bias, prejudice, personal interest, ex parte contact or other facts from which the challenger has concluded that the member of the hearing body cannot participate in an impartial manner. The hearing body shall deliberate and vote on such a challenge. The person who is the subject of the challenge may not vote on the motion.

5. No officer or employee of the City who has a financial or other private interest in a proposal shall participate in discussion with or give an official opinion to the hearing body on the proposal without first declaring for the record the nature and extent of each interest.
6. A reasonable opportunity for those persons potentially affected by the proposal to present evidence.
7. A reasonable opportunity for rebuttal of new material.

B. Rights of Disqualified Member of the Hearing Body.

1. An abstaining or disqualified member of the hearing body may be counted for purposes of forming a quorum. A member who represents his or her own personal interests at a hearing may do so only by abstaining from voting on the proposal, physically joining the audience and vacating the seat on the hearing body, and making full disclosure of his or her status and position at the time of addressing the hearing body.
2. Except for hearings on legislative actions conducted by the governing body, a member absent during the presentation of evidence in a hearing may not participate in the deliberations or final decision regarding the matter of the hearing unless the member has reviewed the evidence received.

C. Burden and Nature of Proof.

The burden of proof is upon the proponent. The proposal must be supported by proof that it conforms to the applicable provisions of this Code, especially the specific criteria set forth for the particular type of decision under consideration.

D. Nature of Proceedings.

An order of proceedings for a hearing will depend in part on the nature of the hearing. The following shall be supplemented by administrative procedures as appropriate.

1. Before receiving testimony on the issue, the following shall be addressed:

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- a. Any objections on jurisdictional grounds shall be noted in the record and if there is objection, the person presiding has the discretion to proceed or terminate.
 - b. Any abstentions or disqualification based on conflict of interest, personal bias, or ex parte contacts, shall be determined. Parties to the hearing shall have the opportunity to rebut the substance of an ex parte communication.
 - c. A statement by the chairperson presiding that:
 - 1) Testimony and evidence must be directed toward the applicable criteria.
 - 2) Failure to address a criterion during the hearing precludes an appeal based on that criteria.
 - d. Staff, in the context of a staff report, will describe the applicable criteria against which the application will be reviewed.
2. Presentations and Evidence.
- a. The presiding officer shall preserve order at the public hearing and shall decide questions of order subject to a majority vote.
 - b. The presiding person may set reasonable time limits for oral presentations. The presiding person may determine not to receive cumulative, repetitive, immaterial or abusive testimony.
3. Evidence shall be received from staff and from proponents and opponents.
- a. Evidence shall be admissible if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of serious affairs.
 - b. Members of the hearing body may take official notice of judicially cognizable facts of a general, technical or scientific nature. Such notice shall be stated and may be rebutted.
 - c. The presiding officer may approve or deny a request from a person attending the hearing to ask a question. If the request to ask a question is approved, the presiding officer will direct the question to the relevant person, unless the presiding officer specifies otherwise.

4. The hearing body may recess a hearing in order to obtain additional information or to serve further notice upon other property owners or persons it decides may be interested in the proposal being considered. The time and date when the hearing is to resume may be announced.
5. When the hearing has been closed the hearing body shall openly discuss the issue and may further question a person submitting information or the staff if opportunity for rebuttal is provided.
 - a. No testimony shall be accepted after the close of the public hearing unless the hearing body provides an opportunity for review and rebutting of that testimony.
6. Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven (7) days after the hearing. Such an extension shall not be subject to the limitations of ORS 227.178.
7. When the hearing body reopens a record to admit new evidence or testimony, any person may raise new issues which relate to the new evidence, testimony or criteria for decision making which apply to the matter at issue.

E. Decision.

Following the procedure described in Section 9.030, the hearing body shall approve, approve with conditions, or deny the application. If the hearing is in the nature of an appeal, the body may affirm with modifications or additional conditions, reverse or remand the decision that is on appeal.

1. The decision of the hearing body shall be by a written order signed by the entire hearing body present voting for the order.
2. The order shall incorporate findings of fact and conclusions that include:
 - a. A statement of the applicable criteria and standards against which the proposal was tested.
 - b. A statement of the facts upon which the hearing body relied in establishing compliance or noncompliance with each applicable criteria or standard, briefly stating how those facts support the decision.
 - c. In the case of a denial, it shall be sufficient to address only those criteria upon which the applicant failed to carry the burden of proof or, when appropriate, the facts in the record that support denial.

3. The written order is the final decision in the matter and the date of the order is the date that it is mailed.

F. Record of Proceedings.

The proceedings shall be recorded stenographically or electronically.

1. The hearing body shall, where practicable, retain as part of the hearing records, each item of physical or documentary evidence presented and shall have the items marked to show the identity of the person offering the same and whether presented on behalf of a proponent or opponent. Exhibits received into evidence shall be retained in the hearing file until the applicable appeal period has expired, at which time the exhibits may be released to the person identified thereon, or otherwise disposed of.
2. The findings shall be included in the record.
3. A person shall have access to the record of proceedings at reasonable times, places and circumstances. A person shall be entitled to make copies of the record at the person's own expense.

G. Notice of Decision.

Notice of decision by a hearing body shall be provided to all parties to the hearing. The notice of the decision shall include:

1. A brief description of the decisions reached.
2. A statement that the decision may be appealed by filing an appeal within 15 calendar days of the date that the final order was mailed.
3. A description of the requirements for an appeal, including the type of appeal that may be requested.
4. A statement that an appeal may only be filed concerning criteria that were addressed at the initial public hearing.
5. A statement that the complete case, including the final order is available for review at the City.

9.040. APPEALS.

A. Administrative Permit.

A decision on the issuance of an administrative permit or action concerning a land use matter may be appealed to the Commission by the applicant or by a party who responded in writing to the notice of the proposed development by filing an appeal with the Community Development Director within 15 days of the mailing of the decision Order. The notice of appeal that is filed with the City shall indicate the interpretation that is being appealed. The matter at issue will be a determination of the appropriateness of the interpretation of the requirements of the Code.

B. Commission or Committee Decision.

A decision of the Commission or Committee concerning a quasi-judicial land use matter may be appealed to the City Council by the applicant, a party to the hearing, or by a party who responded in writing, by filing an appeal within 15 days of the mailing of the Order. The notice of appeal filed with the City shall contain the information outlined in Section 9.040(D).

(Section 9.040(B) amended by Ordinance 98-04, 5-4-98)

C. Commission Recommendation.

In cases involving textual changes to the Development Code or Comprehensive Plan, or changes to the Land Use and Zoning Map, where the Commission action is limited to making a recommendation to the City Council, the recommendation is not subject to appeal. A final decision on the part of the City Council is, however, appealable to the Land Use Board of Appeals (LUBA).

D. Contents of Appeal.

A request for appeal of a Commission or Committee decision shall contain:

1. An identification of the decision sought to be reviewed, including the date of the decision.
2. A statement of the interest of the person seeking review and that he was a party to the initial proceedings.
3. The specific grounds relied upon for the review, including a statement that the criteria against which review is being requested were addressed at the Commission or Committee hearing.

(Section 9.040(D) amended by Ordinance 98-04, 5-4-98)

E. Review on the Record.

1. If an appeal is confined to the record of the proceeding, the record shall include:
 - a. All exhibits, materials, pleadings, memoranda, stipulations and motions submitted by any party and received or considered in reaching the decision under review.
 - b. The final order and findings of fact adopted in support of the decision being appealed.
 - c. The request for an appeal filed by the appellant.
 - d. The minutes of the public hearing.
2. Public notice shall indicate the date, time and place of the review and the issues that are the subject of the review.
3. The reviewing body shall make its decision based upon the record after first granting the right of argument, but not the introduction of additional evidence, to parties to the hearing.
4. In considering the appeal, the reviewing body need only consider those matters specifically raised by the appellant. The reviewing body may consider other matters if it so desires.
5. The appellant shall bear the burden of proof.

F. Review Consisting of Additional Evidence or De Novo Review.

1. The reviewing body may hear the entire matter de novo; or it may admit additional testimony and other evidence without holding a de novo hearing.
2. Hearings on appeal, either de novo or limited to additional evidence on specific issues, shall be conducted in accordance with the requirements of Section 9.030.

G. Review Body Decision.

1. Upon review, the reviewing body may affirm, reverse, or modify the decision of the lower body or staff.
2. Notice of the reviewing body decision shall be provided to all parties to the hearing. The notice of the decision shall include:
 - a. A brief description of the decision reached.

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- b. A statement that the decision may be appealed to the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days.
- c. A statement that the complete case, including the final order is available for review at the City.

9.050. FINAL ACTION ON APPLICATION FOR PERMIT OR ZONE CHANGE REQUEST.

The City shall take final action on an application for a permit or zone change within 120 days of the receipt of a complete application including resolution of all appeals. The 120 day period does not apply to an amendment to the Comprehensive Plan or Development Code, or the adoption of a new land use regulation. At the request of the applicant, the 120 day period may be extended for a reasonable period of time.

9.060. COMPLIANCE WITH CONDITIONS OF APPROVAL.

Compliance with conditions established for a request and adherence to the submitted plans, as approved, is required. Any departure from these conditions of approval and approved plans constitutes a violation of this Code. See Section 1.010 of the Astoria City Code concerning penalties.

9.070. LIMITATIONS ON REFILING OF APPLICATION.

Applications for which a substantially similar application has been denied will be heard by the Planning Commission only after a period of six (6) months has elapsed from date of the earlier decision, unless the Planning Commission finds that special circumstances justify earlier reapplication.

9.080. FILING FEES.

A schedule of permit fees shall be established by resolution and paid to the City upon the filing of an application. Such fees shall not be refundable.

9.090. ADDITIONAL COSTS.

Where the City Manager deems it necessary, in the interest of public health, safety or welfare, to incur additional costs, such as the hiring of independent geotechnical experts or other technical expertise during the course of land use proceedings, such costs shall be borne by the applicant or appellant, as determined by the City Manager. Such costs shall not exceed actual costs.

9.100. TIME LIMIT ON PERMITS.

A. Duration of Permits.

1. Except as otherwise provided in this Code, a permit shall expire two years from the date of Final Decision unless substantial construction has taken place or use has begun. However, extensions for permits may be granted as provided in this section. A permit remains valid, if a timely request for extension has been filed, until an extension is granted or denied with the following limitations:
 - a. Any work completed by the applicant after the date the permit would have expired, but for the extension request, is at the applicant's own risk; and
 - b. Any work completed after the date the permit would have expired shall not be considered in determining if substantial construction has been completed until a permit extension has been granted; and
 - c. No additional building and/or use permits associated with the permit may be issued until an extension has been granted.
2. Phased Permits.
 - a. The initial phase of a phased permit and/or project shall expire two years from the date of Final Decision unless substantial construction or use has begun.
 - b. Additional phases of an approved phased permit and/or project shall expire two years from the date of completion of construction for the previous phase, unless substantial construction or use has begun on that subsequent phase. Completion of construction of a phase shall be determined by issuance of a temporary and/or final Certificate of Occupancy from the Building Official.

B. Permit Extensions.

Permit extension may be granted for all land use permits. Extensions may also be granted for time limits applicable to non-conforming buildings and/or non-conforming uses located over water between 16th and approximately 54th Streets as described in Sections 3.180.D and 3.190.F. One year extensions may be granted in accordance with the requirements of this Section as follows:

(Section 9.100.B amended by Ord 14-09, 10-6-14; amended by Ord 15-09, 12-7-2015)

1. Permit Extension Time Limit.

- a. The Community Development Director may grant the first one-year permit extension.
- b. Following the first one-year permit extension by the Community Development Director, the original granting authority may grant subsequent one-year extensions.
- c. No more than three permit extensions may be granted. No variances may be granted from this provision. Temporary Use Permit extensions are exempt from this requirement and may exceed the three extensions limitation.
- d. This Ordinance shall apply to all permit extensions requested after the date of enactment regardless of the date of the original permit Final Decision. If a permit has been granted extensions prior to adoption of this Ordinance, subsequent extension requests shall be reviewed by the granting authority. Three additional extensions may be granted.

2. Permit Extension Criteria.

The granting authority may grant a permit extension upon written findings that the request complies with the following:

- a. The project proposal has not been modified in such a manner as to conflict with the original findings of fact for approval; and
- b. The proposed project does not conflict with any changes to the Comprehensive Plan or Development Code which were adopted since the last permit expiration date; and
- c. The applicant has demonstrated that progress has been made on the project since the date of the original decision on the permit with regard to items such as, but not limited to:
 - 1) Submittal of permit applications to City, State and Federal agencies;
 - 2) Contracts for geologic or other site specific reports have been signed and are in effect;
 - 3) Project site and/or building engineering, architectural design, or construction has begun.

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- d. In lieu of compliance with Section 2.c above, the applicant may demonstrate that poor economic conditions exist in the market that would advise against proceeding with the project.

3. Permit Extension Procedures.

- a. Applications for permit extensions shall be submitted in accordance with the Administrative Procedures in Article 9. Permit extension requests shall be submitted to the Community Development Department prior to permit expiration.
- b. Public notice and procedures on applications for permit extension requests shall be in accordance with the Administrative Procedures in Article 9. However, in addition to mailed notice as required in Article 9, notice shall be provided also to those on the record for the original permit, associated appeals, and associated extensions.
- c. The Administrative decision, public hearing, and/or Commission/Committee decision concerning a permit extension may occur after the permit would have expired but for a timely filed request for a permit extension.

4. Appeals.

The decision concerning a permit extension may be appealed. Appeals shall be made in accordance with Administrative Procedures in Article 9. Appeals on permit extensions shall be limited to the issues relevant to the permit extension criteria only and not to issues relevant to the original permit approval.

C. Amendments to Existing Permits.

When an approved permit is amended, the following shall apply concerning the Final Decision date for the permit:

1. If the amendment requires public notice as a land use decision, the Final Decision date of the amendment shall apply to the entire permit; or
2. If the amendment is a minor administrative decision and does not require public notice as a land use decision, the Final Decision date of the original permit, including any extensions, shall continue as the Final Decision date for the entire permit.

(Section 9.100, amended by Ordinance 10-06, 4-19-10)