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***1.1 - GENERAL PROVISIONS***

**§ 39.1000 TITLE**

This Chapter shall be known and may be cited as the *Zoning Code of Multnomah County, Oregon*.

## **§ 39.1005 POLICY, PURPOSE AND SCOPE**

(A) The Board of County Commissioners of Multnomah County, Oregon, recognized that planning for county and community development is vital to:

- (1) Protect the citizenry from fire, flood, pollution and other health or safety hazards;
- (2) Prevent overcrowding and inefficient use of land;
- (3) Safeguard natural resources;
- (4) Provide communities and neighborhoods with a variety of living choices, adequate housing, amenities, stores, schools, parks and other public and private facilities;
- (5) Provide a transportation system meeting the needs of all citizens;
- (6) Provide for the location of industry and the creation of new and varied employment opportunities; and
- (7) Provide a framework and process in which decisions by individuals and governmental agencies can be coordinated and made in the best interests of the general public.

(B) Therefore, in accordance with ORS chapter 197 and 215 and the County Charter, the Board has determined that all decisions made by Multnomah County with respect to County development shall be predicated upon a comprehensive plan adopted and revised in the manner described in this Chapter.

## **§ 39.1010 SEVERABILITY**

If any section, subsection, subdivision, phrase, clause, sentence or word in this Chapter shall for any reason be held invalid or unconstitutional by a court of competent jurisdiction, that holding shall not invalidate the remainder of this Chapter, but shall be confined to the section, subsection, subdivision, clause, sentence or word held invalid or unconstitutional.

### ***1.2 - PROCEDURES***

## **§ 39.1100 APPLICABLE ADMINISTRATION AND PROCEDURES PROVISIONS**

(A) This subpart of MCC Chapter 39 provides the procedures by which Multnomah County reviews and decides upon applications for all permits relating to the use of land authorized

by ORS chapters 92, 197, and 215 and those other permits processed through the Multnomah County Land Use Planning Division. These permits include all forms of land divisions, land use, and legislative enactments and amendments to the Multnomah County Comprehensive Plan and Multnomah County Zoning Code. The provisions of MCC 39.1105 through 39.1240 supersede all conflicting provisions in the Multnomah County Code except as provided in MCC Chapter 38 for the Columbia River Gorge National Scenic Area.

(B) When an applicant applies for more than one type of land use or development permit for the same one or more contiguous parcels of land, the Planning Director may require the proceedings be consolidated for review and decision. When proceedings are consolidated, required notices may be consolidated, provided the notice shall identify each application to be decided. When more than one application is reviewed in a hearing, separate findings and decisions shall be made on each application. An applicant may also request to consolidate applications for two or more related permits needed for a single development project.

(C) The procedures in this subpart do not apply to permits authorized in Multnomah County Code Chapter 38 or to permits reviewed by a city on behalf of the county pursuant to intergovernmental agreement.

**§ 39.1105 SUMMARY OF DECISION MAKING PROCESSES**

The following decision making processes chart shall control the County's review of the indicated permits:

<b>APPROVAL PROCESS</b>					
<b>Permit Type</b>	<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>	<b>PC</b>
<b>Initial Approval Body</b>	<b>(Not a "land use decision")</b>	<b>(Planning Director)</b>	<b>(Hearings Officer)</b>	<b>(Planning Commission)</b>	<b>(Legislative)</b>
Allowed Uses	<b>X</b>				
Review Uses		<b>X</b>			
Conditional Uses			<b>X</b>		
Community Service			<b>X</b>		

APPROVAL PROCESS					
Permit Type	I	II	III	IV	PC
Initial Approval Body	(Not a "land use decision")	(Planning Director)	(Hearings Officer)	(Planning Commission)	(Legislative)
Design Review		X			
Plan/Zone Change (single tract) quasi-judicial				X	
Demolition of historic building or structure before 120 day permit delay				X	
Plan/Zone Changes-legislative					X
Zone Code Text Changes (Initiated by county only)					X
Creation of a parcel/lot not abutting a street			X		
Adjustment		X			
Variance			X		
Non-conforming Uses/Determination of Non-conforming Use		X			

Extensions of Decisions in EFU & CFU Zones	X				
All other Extensions of Decisions		X			
Revocation of Decision		X			
Property Line Adjustments		X			
Planned Developments			X		

<b>APPROVAL PROCESS</b>					
<b>Permit Type</b>	<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>	<b>PC</b>
	<b>(Not a "land use decision")</b>	<b>(Planning Director)</b>	<b>(Hearings Officer)</b>	<b>(Planning Commission)</b>	<b>(Legislative)</b>
Category 1 & 2 Land Divisions			X		
Category 3 & 4 Land Divisions		X			
Significant Environmental Concern		X			
Geologic Hazards Permit		X			
Willamette River Greenway		X			

APPROVAL PROCESS					
Permit Type	I	II	III	IV	PC
Initial Approval Body	(Not a "land use decision")	(Planning Director)	(Hearings Officer)	(Planning Commission)	(Legislative)
Zoning Code Interpretations		X			
Temporary Permits		X			
Temporary Dwelling Health Hardship Permit		X			
Temporary Health Hardship Renewal	X				
Bus Shelter		X			
Lot of Record Verification		X			
Lot of Exception		X			
Exceptions		X			
Post Emergency response to emergency/disaster event		X			
Lot Consolidation	X				
Replat		X			
All other discretionary decisions		X			

APPROVAL PROCESS					
Permit Type	I	II	III	IV	PC
Initial Approval Body	(Not a "land use decision")	(Planning Director)	(Hearings Officer)	(Planning Commission)	(Legislative)
First response to emergency/disaster event	X				
Grading and Erosion Control	X				
Floodplain Development	X				
Property Addressing	X				
Street Naming & Renaming			X		
Type A Home Occupation	X				

(A) Type I decisions do not require interpretation or the exercise of policy or legal judgment in evaluating approval standards. Type I decisions include, but are not limited to, site plan approval of building or other specialty permits and final subdivision and planned unit development plans where there are no material deviation from the approved preliminary plans. Because no discretion is involved, Type I decisions do not qualify as land use or limited land use decisions. The process requires no notice to any party other than the applicant. The Planning Director's decision is final and not appealable by any party through the normal land use process. Type I decisions may only be appealed through a writ of review proceeding to circuit court.

(B) Type II decisions involve the exercise of some interpretation and discretion in evaluating approval criteria. Applications evaluated through this process are assumed to be allowable in the underlying zone. County Review typically focuses on what form the use

will take, where it will be located in relation to other uses and natural features and resources, and how it will look. However, an application shall not be approved unless it is consistent with the applicable siting standards and in compliance with approval requirements. Upon receipt of a complete application, notice of application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750 feet of the subject tract. The Planning Director accepts comments for 14 days after the notice of application is mailed and renders a decision. The Planning Director's decision is appealable to the Hearings Officer. If no appeal is filed the Planning Director's decision shall become final at the close of business on the 14th day after the date on the decision.

(1) If there is an appeal of the Planning Director's decision, the Hearings Officer shall conduct a public hearing on the application pursuant to MCC 39.1140. After the Hearings Officer issues a signed decision, the Planning Director may appeal the decision to the Board within seven days. If there is no appeal by the Planning Director, the signed Hearings Officer decision and the information required in MCC 39.1170 (D)(1) through (7) shall be mailed to those who submitted written comment, those who requested the decision in writing or provided oral testimony at a hearing on the matter, and DLCD at the discretion of the applicant. The mailed decision is the county's final decision on the application and may be appealed to the Land Use Board of Appeals (LUBA) within 21 days of the date the decision is mailed.

(2) If the Planning Director appeals the Hearings Officer decision, then notice of the appeal and public hearing before the Board shall be mailed as required in MCC 39.1160 (B)(2). A staff report by the Planning Director shall also be available 14 days before the hearing. The Board shall then conduct a public hearing on the application under the provisions of MCC 39.1145. The Board's decision shall be mailed to those who submitted written comment, requested the decision in writing or provided oral testimony at a hearing on the matter. The mailed decision is the county's final decision on the application and may be appealed to LUBA within 21 days of when the signed decision is mailed. Any person who participated orally or in writing in the proceeding before the Hearings Officer or Board may appeal the final decision.

(C) Type III decisions involve the greatest amount of discretion and evaluation of subjective approval criteria, yet are not required to be heard by the Board. Applications evaluated through this process primarily involve conditional uses and some land divisions

applications. The process for these decisions is controlled by ORS 197.763. Notice of the application and Hearings Officer hearing is published and mailed to the applicant, recognized neighborhood associations and property owners within 750 feet of the subject tract. Notice must be issued at least 20 days pre-hearing, and the staff report must be available at least 7 days pre-hearing. The Hearings Officer shall accept into the record all testimony and evidence relevant to the matter, prior to the close of the hearing.

After the Hearings Officer issues a signed decision, the Planning Director may appeal the decision to the Board within seven days. If there is no appeal by the Planning Director, the signed Hearings Officer decision shall be mailed to those persons entitled to notice of a Type III decision under MCC 39.1170(D). The mailed decision is the county's final decision on the application and may be appealed to the LUBA within 21 days of the date the decision is mailed.

If the Planning Director appeals the Hearings Officer decision, then notice of the appeal and hearing before the Board shall be mailed as required in MCC 39.1160(B)(2). A staff report by the Planning Director shall also be available 14 days before the hearing. The Board shall then conduct a public hearing on the application under the provisions of MCC 39.1145. The Board's decision shall be mailed to those who submitted written comment, requested the decision in writing or provided oral testimony at a hearing on the matter. The mailed decision is the county's final decision on the application and may be appealed to LUBA within 21 days of when the signed decision is mailed.

(D) Type IV decisions include plan amendment and/or zone change applications of an individual parcel or tract. These applications involve substantial discretion and evaluation of subjective approval criteria. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and Planning Commission hearing is published and mailed to the applicant, recognized neighborhood association and property owners within 750 feet. Notice must be issued at least 20 days pre-hearing, and the staff report must be available at least 7 days pre-hearing. At the evidentiary hearing held before Planning Commission all testimony and evidence relevant to the matter shall be accepted prior to the close of the hearing. If the Planning Commission denies the application, any party who appeared before the Planning Commission either in person or in writing, may appeal the Planning Commission's denial to the Board within 14 days after the decision is signed. If no appeal is filed, the Planning Commission's denial shall become final upon the close of business on the last day of the appeal period. If the Planning Commission votes to approve

the application, that decision is forwarded as a recommendation to the Board for final consideration. In either case, any review by the Board is de novo, as if new, and all issues relevant to the applicable approval criteria may be considered. The Board's decision is the county's final decision and is appealable to LUBA within 21 days of when the signed Board order is mailed.

(E) PC reviews are legislative actions which involve the adoption or amendment of the county's land use regulations, comprehensive plan, map inventories and other policy documents that affect the entire county, large areas, or multiple properties. These applications involve the greatest amount of discretion and evaluation of subjective approval criteria, and must be referred by the Planning Commission onto the Board for final action prior to adoption by the county. The Board's decision is the county's final decision and is appealable to LUBA within 21 days of the date that the signed Board order or ordinance is mailed.

#### **§ 39.1110 ASSIGNMENT OF DECISION MAKERS**

The following county entity or official shall decide the following types of applications:

(A) Type I Decisions. The Planning Director shall render all Type I decisions. The Planning Director's decision is the county's final decision on a Type I application.

(B) Type II Decisions. The Planning Director shall render the initial decision on all Type II permit applications. The Planning Director's decision is the county's final decision unless appealed to the Hearings Officer. Unless the Planning Director appeals the decision to the Board, the Hearing Officer decision on such an appeal is the county's final decision on a Type II application and is appealable to LUBA. If the Planning Director appeals the decision to the Board, the Board's decision is the county's final decision on a Type II application and may be appealed to LUBA.

(C) Type III Decisions. The Hearings Officer shall render all Type III decisions. Unless the Planning Director appeals the decision to the Board, the Hearings Officer decision is the county's final decision on a Type III application and is appealable to LUBA. If the Planning Director appeals the decision to the Board, the Board's decision is the county's final decision on a Type III application and may be appealed to LUBA.

(D) Type IV Decisions. The Planning Commission shall render the initial decision on all Type IV permit applications. If the Planning Commission denies the Type IV application, that decision is final unless appealed to the Board in accordance with MCC 39.1160(A). If the Planning Commission recommends approval of the application, that recommendation is forwarded to the Board. The Board's decision is the county's final decision on a Type IV application and is appealable to LUBA.

(E) PC Actions. The Planning Commission shall review all PC actions. If the Planning Commission adopts a resolution to recommend an action, the Planning Commission refers the resolution to the Board for final action. The Board's decision is the county's final decision on a PC application and is appealable to LUBA.

### **§ 39.1115 INIATION OF ACTION**

Except as provided in MCC 39.1200 and 39.9700, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser, or by a government agency that has the power of eminent domain. PC (legislative) actions may only be initiated by the Board, Planning Commission, or Planning Director.

### **§ 39.1120 PRE-APPLICATION CONFERENCE MEETING**

(A) Prior to submitting an application for a Type II, Type III or Type IV application, the applicant shall schedule and attend a pre-application conference with County staff to discuss the proposal. The pre-application conference shall follow the procedure set forth by the Planning Director and may include a filing fee, notice to neighbors, neighborhood organizations, and other organizations and agencies.

(B) To schedule a pre-application conference, the applicant shall contact the Land Use Planning Division and pay the appropriate conference fee. The purpose of the pre-application conference is for the applicant to provide a summary of the applicant's development proposal to staff and in return, for staff to provide feedback to an applicant on likely impacts, limitations, requirements, approval standards, fees and other information that may affect the proposal. The Planning Director may provide the applicant with a

written summary of the pre-application conference within 10 days after the pre-application conference.

(C) Notwithstanding any representations by County staff at a pre-application conference, staff is not authorized to waive any requirements of the County Zoning Code. Any omission or failure by staff to recite to an applicant all relevant applicable land use requirements shall not constitute a waiver by the County of any standard or requirement.

(D) A pre-application conference shall be valid for a period of 6 months from the date it is held. If no application is filed within 6 months of the conference or meeting, the applicant must schedule and attend another conference before the County will accept a permit application. The Planning Director may waive the pre-application requirements if, in the Director's opinion, the development does not warrant these steps.

#### **§ 39.1125 APPLICATION REQUIREMENTS FOR TYPE II – IV APPLICATIONS**

All permit applications must be submitted at the Land Use Planning Division office on the most current form provided by the county, along with the appropriate fee and all necessary supporting documentation and information, sufficient to demonstrate compliance with all applicable approval criteria. The applicant has the burden of demonstrating, with evidence, that all applicable approval criteria are, or can be met.

#### **§ 39.1130 COMPLETE APPLICATION – REQUIRED INFORMATION**

Unless stated elsewhere in the Multnomah County Zoning Code, a complete application includes all the materials listed in this section. The Planning Director may waive the submission of any of these materials if not deemed to be applicable to the specific review sought. Likewise, within 30 days of when the application is first submitted, the Planning Director may require additional information, beyond that listed in this section or elsewhere in the County Zoning Code, such as a traffic study or other report prepared by an appropriate expert, where needed to address relevant approval criteria. In any event, the applicant is responsible for the completeness and accuracy of the application and all of the supporting documentation. The County will not deem the application complete until all information required by the Planning Director has been submitted. Unless specifically waived by the Planning Director, the following must be submitted:

(A) One copy of a completed county application form that includes the following information:

(1) An accurate legal description, tax account number(s), map and location of all properties that are the subject of the application.

(2) Name, address, telephone number and authorization signature of all record property owners or contract owners or a representative for the government agency that has the power of eminent domain, and the name, address and telephone number of the applicant, if different from the property owner(s) or the government agency.

(B) A complete list of the permit approvals sought by the applicant.

(C) A current (within 30 days prior to application) preliminary title report for the subject property(ies).

(D) A complete and detailed narrative description that describes the proposed development, existing site conditions, existing buildings, public facilities and services and other natural features. The narrative shall also explain how the criteria are or can be met, and address any other information indicated by staff at the pre-application conference as being required.

(E) Copy of the pre-application meeting notes.

(F) Up to 10 copies of all reports, plans, site plans and other documents required by the section of this Zoning Code corresponding to the specific approval(s) sought.

(G) At least one copy of the site plan and all related drawings shall be in a readable/legible 8 ½ by 11 inch format for inclusion into the County's record of the application.

(H) All required application fees.

### **§ 39.1135      COMPLETENESS REVIEW AND 150-DAY RULE**

(A) Upon submission of a Type II or Type III application, or a Type IV zone change application, the Planning Director shall date stamp the application form and verify that the appropriate application fee has been submitted. The Planning Director will then review the application and evaluate whether the application is complete. Within 30 days of receipt of the application, the Planning Director shall complete this initial review and issue to the

applicant a completeness letter indicating whether the application is complete. If not complete, the Planning Director shall advise the applicant what information must be submitted to make the application complete.

(B) Upon receipt of a letter indicating the application is incomplete, the applicant has 180 days from the original application submittal date within which to submit the missing information or the application shall be void and all materials returned to the applicant. If the applicant submits the requested information within the 180 day period, the Planning Director shall again verify whether the application, as augmented, is complete. Each such review and verification shall follow the procedure in subsection (A) of this section.

(C) An applicant shall file within 30 days of the mailing of the initial completeness letter, a statement accepting the 180 day time period to complete the application. Failure of an applicant to accept the time to complete the application within 30 days of the mailing of the completeness letter will constitute a refusal to complete the application.

(D) Once the Planning Director determines the application is complete, or the applicant refuses to submit any more information, the County shall declare the application complete and take final action on the application within 150 days of that date unless the applicant waives or extends the 150-day period. The 150-day period, however, does not apply in the following situations:

- (1) Any hearing continuance or other process delay requested by the applicant shall be deemed an extension or waiver, as appropriate, of the 150-day period.
- (2) The 150-day period shall be replaced with a 120-day period on all lands within an Urban Growth Boundary or applications involving mineral extraction.
- (3) The 150-day period does not apply to any application for an amendment to the County's comprehensive plan or land use regulations nor to any application for a permit, the approval of which depends upon a plan amendment.
- (4) The 150 day period may be extended for a specified period of time at the written request of the applicant. The total of all extensions may not exceed 215 days.
- (5) The 120-day period on all lands within an Urban Growth Boundary or for applications involving mineral extraction may be extended for a specified period of time

at the written request of the applicant. The total of all extensions may not exceed 215 days.

(E) The approval criteria and standards which control the County's review and decision on a complete application are those which were in effect on the date the application was first submitted.

### **§ 39.1140 HEARINGS PROCESS – TYPE II APPEALS, TYPE III OR TYPE IV APPLICATIONS**

All public hearings on Type II, Type III, or Type IV applications shall be quasi-judicial and comply with the procedures of this section.

(A) Once the Planning Director determines that an application for a Type III or Type IV decision is complete, or once an appeal of a Planning Director's decision on a Type II application has been properly filed, the Land Use Planning Division shall schedule a hearing.

(B) Notice of the hearing shall be issued in accordance with MCC 39.1150.

(C) The property subject to a Type III or Type IV application shall be posted in accordance with MCC 39.1155.

(D) The Planning Director shall prepare a staff report on the application which lists the applicable approval criteria, describes the application and the applicant's proposal, summarizes all relevant County department, agency and public comments, describes all other pertinent facts as they relate to the application and the approval criteria, and makes a recommendation as to whether each of the approval criteria are met.

(E) At the beginning of the initial public hearing authorized under these procedures, a statement shall be announced to those in attendance, that:

(1) Lists the applicable substantive criteria;

(2) The hearing will proceed in the following general order: staff report, applicant's presentation, testimony in favor of the application, testimony in opposition to the application, rebuttal, record closes, deliberation and decision;

(3) That all testimony and evidence submitted, orally or in writing, must be directed toward the applicable approval criteria. If any person believes that other criteria apply in addition to those addressed in the staff report, those criteria must be listed and discussed on the record. The decision maker may reasonably limit oral presentations in length or content depending upon time constraints. Any party may submit written materials of any length while the public record is open;

(4) Failure to raise an issue on the record, with sufficient specificity and accompanied by statements or evidence sufficient to afford the County and all parties to respond to the issue, may preclude appeal on that issue to the Land Use Board of Appeals;

(5) Any party wishing a continuance or to keep open the record must make that request while the record is still open;

(6) That the decision maker shall disclose any ex parte contacts, conflicts of interest or bias before the beginning of each hearing item and provide an opportunity for challenge. Advised parties must raise challenges to the procedures of the hearing at the hearing and raise any issue relative to ex parte contacts, conflicts of interest or bias, prior to the start of the hearing.

(F) Requests for continuances and to keep open the record. The decision maker(s) may continue the hearing from time to time to allow the submission of additional information or for deliberation without additional information. New notice of a continued hearing need not be given so long as the decision maker(s) establishes a time certain and location for the continued hearing. Similarly, the decision maker may close the hearing but keep open the record for the submission of additional written material or other documents and exhibits. The decision maker(s) may limit the factual and legal issues that may be addressed in any continued hearing or open-record period.

(G) Denial by a Hearings Officer of a Type III decision permit application, such as a Conditional Use or a Community Service Use, shall result in denial of all associated Type II decisions applied for at the same time that are subject to some part of the Type III decision. The Type II decisions for which this applies include, but are not limited to Design Review, Variances, Significant Environmental Concern, Willamette River Greenway, and Geologic Hazards Permits.

**§ 39.1145 REVIEW PROCEDURES BEFORE THE BOARD OF COUNTY COMMISSIONERS OF AN APPEAL OF A HEARINGS OFFICER DECISION ON A TYPE II OR TYPE III PERMIT**

Review by the Board of County Commissioners (Board) of a Planning Director's appeal of a Hearings Officer decision on a Type II or Type III Permit shall be pursuant to the Multnomah County Home Rule Charter and implementing Rules, with the following additional requirements:

- (A) Notice of the hearing shall be given as required by MCC 39.1160 (B)(2).
- (B) A staff report by the Planning Director shall be available 14 days before the hearing. The scope of argument and information in the staff report shall be limited to the record made before the Hearings Officer.
- (C) Any written testimony submitted by others shall be available 7 days before the hearing. The scope of argument and information in the written testimony shall be limited to the record made before the Hearings Officer and the staff report described in (B) above.
- (D) A written response to (C) is not allowed.
- (E) The following persons may present oral testimony:
  - (1) By the applicant (and/or the applicant's representative) and the Planning Director;
  - (2) Limited to the issues, evidence and arguments on the record that were made before the Hearings Officer;
  - (3) Limited to 10 minutes of argument on each side, with the provision that the Planning Director may reserve time from that 10 minutes for a rebuttal.
- (F) The Board will then deliberate and deliver an oral decision before the end of the hearing. The Board shall then direct staff to prepare an Order and Opinion that reflects the decision and direct the Chair to sign the same. Staff will then mail the signed Order and Opinion to those who submitted written comment, requested the decision in writing or provided oral testimony at a hearing on the matter. The mailed decision is the county's final decision on the application and may be appealed to LUBA within 21 days of the date the decision is signed by the Chair.

**§ 39.1150 HEARINGS NOTICE – TYPE II APPEALS, TYPE III OR TYPE IV APPLICATIONS**

Except for appeals of Hearings Officer decisions by the Planning Director which have different notice requirements in MCC 39.1160(B), notice for all public hearings for Type III, IV or an appeal of a Type II application shall conform to the requirements of this section. At least 20 days prior to the hearing, the county shall prepare and send, by first class mail, notice of the hearing to all owners of record, based upon the most recent Multnomah County records, of property within 750 feet of the subject tract and to any county-recognized neighborhood association or identified agency whose territory includes the subject property. The county shall further provide notice at least 20 days prior to a hearing to those persons who have identified themselves in writing as aggrieved or potentially aggrieved or impacted by the decision prior to the required mailing of such notice. The county shall also publish notice in a newspaper of general circulation within the county at least 20 days prior to the hearing. Notice of the hearing shall include the following information:

- (A) The time, date and location of the public hearing;
- (B) Street address or other easily understood location of the subject property and County assigned case file number;
- (C) A description of the applicant's proposal, along with a list of citations of the approval criteria that the County will use to evaluate the proposal;
- (D) A statement that any interested party may testify at the hearing or submit written comments on the proposal at or prior to the hearing, and that a staff report will be prepared and made available to the public at least 7 days prior to the hearing;
- (E) A statement that any issue which is intended to provide a basis for an appeal to the Land Use Board of Appeals must be raised before the close of the public record. Issues must be raised and accompanied by statements or evidence sufficient to afford the County and all parties to respond to the issue;
- (F) A statement that the application and all supporting materials and evidence submitted in regard to the application may be inspected at no charge, and that copies may be obtained at cost, at the Multnomah County Land Use Planning Division during normal business hours; and

(G) The name and telephone number of the planning staff person responsible for the application and who is otherwise available to answer questions about the application.

(H) Notice published in a newspaper shall include the information in (A), (B) and (G) above, along with a brief description of the applicant's proposal, and a statement that all interested parties may testify at the hearing or submit written comments on the proposal at, or prior to the hearing.

### **§ 39.1155 POSTING NOTICE REQUIREMENTS – TYPE III, TYPE IV HEARINGS**

The requirements of this subsection shall apply to Type III and Type IV hearings except those hearings resulting from an appeal of a Hearings Officer decision by the Planning Director.

(A) The county shall supply all of the notices which the applicant is required to post on the subject property, and shall specify the dates the notices are to be posted. The date of posting is ten days prior to the date of hearing. Failure to post the notice shall not be a procedural error.

(B) The applicant must place the notice along the frontage of the subject property. If a property's frontage exceeds 300 feet, the applicant shall post one copy of the notice for each 300 feet or fraction thereof, not to exceed four signs. Notices shall be posted within 10 feet of the right of way and shall be clearly visible to pedestrians and motorists. To the extent practicable, all signs shall be equally spaced. Notices shall not be posted within the public right of way or on trees. The applicant shall remove all signs within 10 days following the event announced in the notice.

### **§ 39.1160 APPEALS**

Appeals of any decisions of the county must comply with the requirements of this section.

(A) Appeals by applicants or opponents of an application.

(1) Type I decisions by the Planning Director are not appealable to any other decision maker within the county.

(2) A Notice of Appeal of a Type II decision by the Planning Director or Type IV decision by the Planning Commission must be received in writing by the Land Use Planning

Division within 14 calendar days from the date notice of the challenged decision is provided to those entitled to notice. If the county's notice of decision is mailed, any appeal must be received by and at the Land Use Planning Division within 14 calendar days from the date of mailing. Late or improperly filed appeals shall be deemed a jurisdictional defect and will result in the automatic rejection of any appeal so filed.

(3) The following must be included as part of the Notice of Appeal:

- (a) The county's case file number and date the decision to be appealed was rendered.
- (b) The name, mailing address and daytime telephone number for each appellant.
- (c) A statement of how each appellant has an interest in the matter and standing to appeal.
- (d) A statement of the specific grounds for the appeal.
- (e) The appropriate appeal fee. Failure to include the appeal fee within appeal period is deemed to be a jurisdictional defect and will result in the automatic rejection of any appeal so filed.

(4) Standing to Appeal. Those who are entitled to appeal a Type II or Type IV decision include those who are entitled to notice under MCC 39.1150.

(5) The Land Use Planning Division shall issue notice of the appeal hearing to all parties entitled to notice had the initial decision been subject to a hearing under MCC 39.1150. Notice of the appeal hearing shall contain the following information:

- (a) The case file number and date of the decision being appealed;
- (b) The time, date and location of the public hearing;
- (c) The name of the applicant, owner and appellant (if different);
- (d) The street address or other easily understood location of the subject property;
- (e) A description of the permit requested and the applicant's development proposal;
- (f) A brief summary of the decision being appealed and the grounds for appeal listed in the Notice of Appeal;

(g) A general explanation of the requirements for participation and the county's hearing procedures.

(6) Appeal hearing, scope of review. Appeal hearings to a Hearings Officer shall comply with the procedural requirements of MCC 39.1140. Appeal hearings shall be de novo, as if new, and all issues relevant to the applicable approval criteria may be considered. However, written Planning Director interpretations, pursuant to MCC 39.1225, are to be given deference pursuant to MCC 39.1225(A).

(B) Appeals by the Planning Director of Hearings Officer Decisions.

(1) The Planning Director may appeal a Hearings Officer decision on a Type II or Type III Permit to the Board. That opportunity to appeal the decision is during the seven days following the signing of the decision by the Hearings Officer.

(2) A Notice of Appeal and Notice of Hearing before the Board shall be mailed at least 14 days prior to the hearing to those who submitted written comment, requested the decision in writing or provided oral testimony at a hearing on the matter, and DLCD at the discretion of the applicant. The following must be included as part of the Notice of Appeal and Notice of the Hearing (which may be one notice):

- (a) The county's case file number and date the decision to be appealed was rendered;
- (b) The name, mailing address and daytime telephone number of the Planning Director or designee;
- (c) A statement of the specific grounds for the appeal.

(3) Standing to Appeal. An appeal of a Hearings Officer decision on a Type II Permit or Type III Permit may only be filed by the Planning Director to the Board.

(4) Appeal hearing, scope of review. Appeal hearings to the Board shall comply with the procedural requirements of MCC 39.1145. The appeal hearing shall be on the record and the Board may substitute its decision for the decision of the Hearings Officer.

### **§ 39.1165 REAPPLICATION LIMITED**

If an application is denied or withdrawn following the close of the public hearing or the end of the appeal period, no reapplication for the same or substantially similar proposal may be

made for one year following the date of final decision denying the permit or the date of withdrawal.

### **§ 39.1170      CONDITIONS OF APPROVAL AND NOTICE OF DECISION**

(A) All county decision makers have the authority to impose reasonable conditions of approval designed to ensure that all applicable approval standards are, or can be, met.

(B) The applicant has the burden of demonstrating that the application complies with the approval criteria or will comply with the approval criteria through the imposition of conditions of approval. The applicant must submit evidence demonstrating that an approval criteria can be met with the imposition of conditions as well as demonstrate a commitment to comply with conditions of approval.

(C) Failure to comply with any condition of approval shall be grounds for revocation of the permit(s) and grounds for instituting code enforcement proceedings pursuant to the County Code.

(D) Notice of decision. The County shall send, by first class mail, a notice of all decisions rendered under a Type II, Type III, or Type IV process. For Type II decision, notice shall be mailed to all property owners within 750 feet of the subject tract, to those persons who have identified themselves in writing and to any County-recognized neighborhood association or identified agency whose territory includes the subject property. For Type III and Type IV decisions, notice shall be mailed to those who submitted written comment, requested the decision in writing or provided oral testimony at a hearing on the matter, and DLCD at the discretion of the applicant. The notice of decision shall include the following information:

- (1) The file number and effective date of decision;
- (2) The name of the applicant, owner and appellant (if different);
- (3) The street address or other easily understood location of the subject property;
- (4) A brief summary of the decision, and if an approval, a description of the permitted use approved;

(5) A statement that the decision is final at the close of the appeal period unless appealed, and description of the requirements for perfecting an appeal;

(6) A statement that a person receiving notice cannot appeal a Type II or Type IV decision directly to LUBA unless all local appeals are exhausted;

(7) The contact person, address and a telephone number whereby a copy of the final decision may be inspected or copies obtained.

(E) Modification of Conditions. Any request to modify a condition of permit approval shall be processed in the same manner, and shall be subject to the same standards, as was the original application provided the standards and criteria used to approve the decision are consistent with the current code. However, the decision maker may at its sole discretion, consider a modification request and limit its review of the approval criteria to those issues or aspects of the application that are proposed to be changed from what was originally approved.

#### **§ 39.1175 RECORDING OF DECISION**

The County may impose as a condition of final approval of a Type II, Type III, or Type IV decision, the requirement that the applicant record with the County the Notice of Decision. The Notice of Decision shall run with the land and shall be placed in the county deed records prior to the issuance of any permits or development activity pursuant to the approval. Proof of recording shall be made prior to the issuance of any permits and filed with the Land Use Planning Division. Recording shall be at the applicant's expense.

#### **§ 39.1180 PERFORMANCE GUARANTEES**

When conditions of permit approval require the applicant to construct certain improvements, the County may allow the applicant to submit a financial guarantee in order to postpone construction, or to guarantee construction to certain standards. Financial guarantees shall be governed by this section.

(A) Form of guarantee. Guarantees shall be in a form approved by the County Attorney, including an irrevocable stand-by letter of credit issued by a recognized lending institution to the benefit of the County, a certified check, dedicated bank account or allocation of a

construction loan held in reserve by the lending institution for the benefit of the County. The guarantee shall be filed with the Land Use Planning Division.

(B) Amount of guarantee. The amount of the performance guarantee shall be equal to at least 110% of that estimated cost of constructing the improvement in question. The amount of the performance guarantee may be larger than 110% if deemed necessary by the Planning Director. The cost estimate substantiating the amount of the guarantee must be provided by the applicant supported by either an engineer's or architect's estimate or written estimates by three contractors with their names and addresses. The estimates shall separately itemize all materials, labor, and other costs.

(C) Duration of the guarantee. The guarantee shall remain in effect until the improvement is actually constructed and accepted by the County. Once the County has inspected and accepted the improvement, the County shall release the guarantee to the applicant. If the improvement is not completed to the County's satisfaction within the time limits specified in the permit approval or the guarantee, the Director may draw upon the guarantee and use the proceeds to construct or complete construction of the improvement and for any related administrative and legal costs incurred by the County. Once constructed and approved by the County, any remaining funds shall be refunded to the applicant.

(D) If the applicant elects to defer construction of improvements by using a financial guarantee, the applicant shall agree to construct those improvements upon written notification by the County, or at some other mutually agreed-to time. If the applicant fails to commence construction of the required improvements within 6 months of being instructed to do so, the County may, without further notice, undertake the construction of the improvements and draw upon the applicant's performance guarantee to pay those costs as provided in paragraph (C) above.

### **§ 39.1185 EXPIRATION OF TYPE II OR TYPE III DECISIONS**

(A) Type II or Type III land use approval issued pursuant to this Chapter for a use or development that does not include a structure shall expire two years after the date of the final decision, unless the use or development was established according to all specifications and conditions of approval in the land use approval. Expiration of an approval means that a new application is required for uses that are not established during the approval period.

For land divisions, “established” means the final deed or plat has been recorded with the county recorder.

(B) Except for approval of residential developments as specified in (C) below, a Type II or Type III land use approval issued pursuant to this Chapter for a use or development that includes a structure shall expire as described in 1 or 2 below:

(1) When construction has not commenced within two years of the date of the final decision. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure. For utilities and developments without a frame or foundation, commencement of construction shall mean actual construction of support structures for an approved above ground utility or development or actual excavation of trenches for an approved underground utility or development. For roads, commencement of construction shall mean actual grading of the roadway.

(2) When the structure has not been completed within four years of the date of commencement of construction. Completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.

(C) A Type II or III decision approving residential development on land zoned for Exclusive Farm Use or Commercial Forest Use outside of an urban growth boundary is subject to the following provisions:

(1) The approval shall expire as described in (a) or (b) below:

(a) When construction has not commenced within four years of the date of the final decision. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.

(b) When the structure has not been completed within four years of the date of commencement of construction. Completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.

(2) For the purposes of this section, the expiration provisions in (a) and (b) shall also apply to all other Type II or III decisions associated with approval of the residential development, such as SEC or GHP permits.

(3) The provisions in (C) shall only apply to residential development for which a decision of approval:

(a) Was valid (not expired) on January 1, 2002, or

(b) Was issued after January 1, 2002 (the effective date of Senate Bill 724, 2001).

(4) For the purposes of this section, “residential development” only includes dwellings as provided for under:

(a) ORS 215.283(1)(s) – alteration, restoration or replacement of a lawfully established dwelling in the EFU zones as provided in MCC 39.4220(J), (L) & (M); and

(b) ORS 215.284 – dwelling not in conjunction with farm use in the EFU zones (not currently provided for in this Zoning Code); and

(c) ORS 215.705 (1) to (3) – “Heritage Tract Dwelling” in the EFU zones as provided for in MCC 39.4265(D) and 39.4230 (L) and (M); and

(d) ORS 215.705 through ORS 215.730 – “Heritage Tract Dwelling” in the CFU zones as provided in MCC 39.4095; and

(e) ORS 215.740 – “Large Acreage Dwelling” in the CFU zones as provided for in MCC 39.4085; and

(f) ORS 215.750 – “Template Dwelling” in the CFU zones as provided for in MCC 39.4090; and

(g) ORS 215.755 (1) – alteration, restoration or replacement of a lawfully established dwelling in the CFU zones as provided in MCC 39.4070 (D); and

(h) ORS 215.755 (3) a caretaker residence for a public park or public fish hatchery in the CFU zones as provided for in MCC 39.4070(G).

(D) Expiration under (A), (B), or (C) above is automatic. Failure to give notice of expiration shall not affect the expiration of a Type II or III approval.

(E) Notwithstanding Subsections (A), (B), or (C) of this section, on exception lands the decision maker may set forth in the written decision specific instances or time periods when a permit expires.

(F) Deferral of the expiration period due to appeals. If a permit decision is appealed beyond the jurisdiction of the County, the expiration period shall not begin until review before the Land Use Board of Appeals and the appellate courts have been completed, including any remand proceedings.

**§ 39.1190 EXPIRATION OF PRIOR LAND USE DECISIONS**

All land use decisions authorized prior to January 1, 2001 (Ord. 953 & Ord. 997) shall expire on January 1, 2003, unless:

- (A) A different timeframe was specifically included in the decision, or
- (B) The decision was for “residential development,” as specified in MCC 39.1185(C), which have the expiration timeframes of MCC 39.1185 (C)(1).

**§ 39.1195 EXTENSION OF A TYPE II OR TYPE III DECISION**

(A) The Planning Director shall grant one extension period of 24 months for approvals of dwellings listed in MCC 39.1185 (C) and shall grant one extension period of up to 12 months for all other approvals provided:

- (1) An applicant makes a written request for an extension of the development approval period;
- (2) The request is submitted to the county prior to the expiration of the approval period;
- (3) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and
- (4) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

(B) Pursuant to OAR 660-033-0140, approval of an extension in EFU and CFU districts is an administrative decision, is not a land use decision as described in ORS 197.015, and is not subject to appeal as a land use decision. All other extension requests authorized by this section are land use decisions and shall be reviewed under the Type II procedures set forth in MCC 39.1125.

(C) Additional one year extensions shall be authorized where applicable criteria for the decision have not changed. For each additional extension the Planning Director shall confirm compliance with the standards in MCC 39.1195 (A) (1-4).

### **§ 39.1200 REVOCATION OF DECISIONS**

In the event an applicant, or the applicant's successor in interest, fails to fully comply with all conditions of approval or otherwise does not comply fully with the County's approval, the County may institute a revocation or modification proceeding under this section.

(A) All Type II, Type III and Type IV decisions may be revoked or modified if the Planning Director determines a substantial likelihood that any of the following situations exists:

- (1) One or more conditions of the approval have not been implemented or have been violated; or
- (2) The activities of the use, or the use itself, are substantially different from what was approved or represented by the applicant.

(B) Revocation or modification shall be processed as a Type III decision. The Land Use Planning Division or any private complaining party shall have the burden of proving, based on substantial evidence in the whole record, that the applicant or the applicant's successor has in some way violated the County's approval.

(C) Possible actions at the revocation hearing. Depending on the situation, the Hearings Officer may take any of the actions described below. The Hearings Officer may not approve the new use or a use that is more intense than originally approved unless the possibility of this change has been stated in the public notice. Uses or development which are alleged to have not fulfilled conditions, violate conditions or the use is not consistent with the County's approval may be subject to the following actions:

- (1) The Hearings Officer may find that the use or development is complying with the conditions of the approval or is as approved by the county. In this case, the use or development shall be allowed to continue;
- (2) The Hearings Officer may modify the approval if the Officer finds that the use or development does not fully comply with the conditions of approval, that the violations are not substantial enough to warrant revocation, and that the use can comply with the

original approval criteria if certain conditions are met. In this case, the Hearings Officer may modify the existing conditions, add new conditions to ensure compliance with the approval criteria, or refer the case to the code compliance officer for enforcement of the existing conditions;

(3) The Hearings Officer may revoke the approval if the Officer finds there are substantial violations of conditions or failure to implement land use decisions as represented by the applicant in the decision approved, such that the original approval criteria for the use or development are not being met.

(D) Effect of revocation. In the event that the permit approval is revoked, the use or development becomes illegal. The use or development shall be terminated within thirty days of the date the revocation final order is approved by the Hearings Officer, unless the decision provides otherwise. In the event the decision maker's decision on a revocation request is appealed, the requirement to terminate the use shall be stayed pending a final, unappealed decision.

#### **§ 39.1205 TYPE IV QUASI-JUDICIAL PLAN AND ZONE CHANGE APPROVAL CRITERIA**

(A) Quasi-judicial Plan Revision. The burden of proof is upon the person initiating a quasi-judicial plan revision. That burden shall be to persuade that the following standards are met:

(1) The plan revision is consistent with the standards of ORS 197.732 if a goal exception is required, including any OAR's adopted pursuant to these statutes;

(2) The proposal conforms to the intent of relevant policies in the comprehensive plan or that the plan policies do not apply. In the case of a land use plan map amendment for a commercial, industrial, or public designation, evidence must also be presented that the plan does not provide adequate areas in appropriate locations for the proposed use; and

(3) The uses allowed by the proposed changes will:

(a) Not destabilize the land use pattern in the vicinity;

(b) Not conflict with existing or planned uses on adjacent lands; and

(c) That necessary public services are or will be available to serve allowed uses.

(4) Proof of change in a neighborhood or community or mistake in the planning or zoning for the property under consideration are additional relevant factors to be considered under this subsection.

(B) Quasi-Judicial Zone Change. The burden of proof is upon the person initiating a zone change request. That burden shall be to persuade that:

(1) Granting the request is in the public interest;

(2) There is a public need for the requested change and that need will be best served by changing the classification of the property in question as compared with other available property;

(3) The proposed action fully accords with the applicable elements of the Comprehensive Plan; and

(4) Proof of change in a neighborhood or community or mistake in the planning or zoning for the property under consideration are additional relevant factors to be considered under this subsection. The existence of home occupations shall not be used as justification for a zone change.

### **§ 39.1210 (PC) LEGISLATIVE HEARING PROCESS**

(A) Purpose. Legislative actions involve the adoption or amendment of the County's land use regulations, comprehensive plan, map inventories and other policy documents that affect the entire County or large portions of it. Legislative actions which affect land use must begin with a public hearing before the Planning Commission.

(B) Planning Commission Review:

(1) Hearing Required. The Planning Commission shall hold at least one public hearing before adopting a recommendation on a proposal for legislative action. Any interested person may provide written or oral testimony on the proposal at or prior to the hearing.

(2) Planning Director's Report. The Planning Director shall prepare and make available a staff report on the proposal for legislative action at least 7 days prior to the hearing described in paragraph (B)(1) of this section.

(3) Planning Commission Recommendation. At the conclusion of the hearing on a proposal for legislative action, the Planning Commission shall adopt a recommendation to the Board of Commissioners on the proposal. The Planning Commission may recommend adoption of the proposal as presented to or modified by the Planning Commission or rejection of the proposal. If the Planning Commission recommends adoption of some form of the proposal, the Planning Commission shall prepare and forward to the Board of Commissioners a report and recommendation to that effect. If the Planning Commission recommends rejection of the proposal, the matter is terminated and may not be appealed unless otherwise provided by law. If the Board of Commissioners has initiated the proposal, the Planning Commission shall prepare and forward to the Board of Commissioners a report and recommendation of rejection.

(C) Board of Commissioners Review:

(1) Board of Commissioners Action. Upon a recommendation from the Planning Commission on a proposal for legislative action, the Board of Commissioners shall hold at least one public hearing on the proposal. Any interested person may provide written or oral testimony on the proposal at or prior to the hearing. At the conclusion of the hearing, the Board of Commissioners may adopt, modify or reject the proposal, or it may remand the matter to the Planning Commission for further consideration. If the decision is to adopt at least some form of the proposal, and thereby amend the County's land use regulations, comprehensive plan, official zoning maps or some component of any of these documents, the Board of Commissioners decision shall be enacted as an ordinance and final upon signing. The Board of Commissioner's decision is appealable to LUBA in accordance with OAR Chapter 661, Division 10 and ORS 197.830 or current applicable state statutes.

(2) Notice of Final Decision. Not later than 5 days following the Board of Commissioner's final decision on a proposal for legislative action, the Planning Director shall mail notice of the decision to DLCD in accordance with ORS 197.615 or current applicable state statutes.

**§ 39.1215 NOTICE OF LEGISLATIVE HEARINGS**

(A) Notice of the date, time, place and subject of a legislative hearing before the Planning Commission shall be published in a newspaper of general circulation within the County at

least 20 days prior to the hearing and as required by law. The Planning Director shall also notify the Oregon Department of Land Conservation and Development (DLCD) 35 days prior to the initial public hearing or as required by law.

(B) Notice of the date, time, place and subject of a legislative hearing before the Board of Commissioners shall be published in a newspaper of general circulation within the County at least 10 days prior to the hearing and as required by law.

(C) Individual notice of a legislative hearing before the Planning Commission that amends the Comprehensive Plan, adopts a new Comprehensive Plan, or rezones property shall be mailed at least 20 days but not more than 40 days prior to the hearing to the owners of all affected properties. Such notice shall adhere to the format provided in ORS 212.503.

(D) For the purpose of this section, property is rezoned when the County:

- (1) Changes the base zoning classification of the property; or
- (2) Adopts or amends an ordinance in a manner that limits or prohibits land uses previously allowed in the affected zone.

(E) The provisions of subsection (2) above do not apply to legislative acts by the County resulting from action by the Legislative Assembly or the Land Conservation and Development Commission for which notice is provided under ORS 197.047.

### **§ 39.1220 CONTINUANCE OF PC HEARINGS**

The decision maker(s) may continue the hearing from time to time to allow the submission of additional information or for deliberation without additional information. New notice of a continued hearing need not be given so long as the decision maker establishes a time certain and location for the continued hearing. Similarly, the decision maker may close the hearing but keep open the record for the submission of additional written material or other documents and exhibits. The decision maker(s) may limit the factual and legal issues that may be addressed in any continued hearing or open-record period.

### **§ 39.1225 INTERPRETATIONS AND REQUESTS FOR LOT OF RECORD VERIFICATION**

(A) The Planning Director has the authority to decide all questions of interpretation or applicability to specific properties of any provision of the Comprehensive Plan or other land use code. Any interpretation of a provision of the Comprehensive Plan or other land use code shall consider applicable provisions of the Comprehensive Plan and the purpose and intent of the ordinance adopting the particular code section in question.

(B) A person may specifically request an interpretation of a provision in the code. An application for an interpretation shall be processed as a Type II application.

(C) A person may request verification of the Lot of Record status of a lot or parcel. The application shall be processed as a Type II application.

(D) The Planning Director may refuse to accept an application for an interpretation or Lot of Record verification if:

(1) The Planning Director determines that the question presented or Lot of Record verification can be decided in conjunction with approving or denying a pending land use action application or if in the Planning Director's judgment the requested determination should be made as part of a decision on an application for a quasi-judicial land use or zone change permit not yet filed; or

(2) The Planning Director determines that there is an enforcement case pending in which the same issue necessarily will be decided.

(E) A determination by the Planning Director not to accept an application under paragraph (B) or (C) of this section is not a land use decision and shall be the county's final decision.

### **§ 39.1230      TRANSFER OF APPROVAL RIGHTS**

Unless otherwise stated in the County's decision, any approval granted under this code runs with the land and is transferred with ownership of the land. Any conditions, time limits or other restrictions imposed with a permit approval shall bind all subsequent owners of the property for which the permit was granted.

### **§ 39.1235      EX PARTE CONTACT, CONFLICT OF INTEREST AND BIAS**

The following rules and procedures govern a decision maker's participation in a quasi-judicial or legislative proceeding or action affecting land use:

(A) Ex Parte Contacts. Any factual information obtained by a decision maker from anyone other than staff outside the context of a quasi-judicial hearing shall be deemed an ex parte contact. Prior to the close of the record in any particular matter, any decision maker that has obtained any material factual information through an ex parte contact shall declare the content of that contact and allow any interested party to rebut the substance of that contact. This paragraph does not apply to legislative proceedings or contacts between county staff and the decision maker.

(B) Conflict of Interest.

(1) Planning Commission. A member of the Planning Commission shall not participate in any Commission proceeding or action in which any of the following has a direct or substantial financial interest: the member or the spouse, sibling, child, parent, parent-in-law of the member; 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. Any actual or potential interest shall be disclosed at the meeting of the Planning Commission where the action is being taken.

(2) Board of Commissioners. With respect to a potential or actual conflict of interest, a member of the Board of Commissioners shall participate in Board proceedings and actions in accordance with the Rules for Board Meetings.

(C) Bias. All decisions in quasi-judicial matters shall be fair, impartial and based on the applicable approval standards and the evidence in the record. Any decision maker who is unable to render a decision on this basis in any particular matter shall refrain from participating in the deliberation or decision on that matter. This paragraph does not apply to legislative proceedings.

## **§ 39.1240 PROCEDURAL OBJECTIONS**

Any party who objects to the procedure followed in a quasi-judicial or legislative proceeding or action affecting land use must make a procedural objection prior to the County's rendering a final decision. Procedural objections may be raised at any time prior to a final decision, after which they are deemed waived. In making a procedural objection, the objecting party must identify the procedural requirement that was not properly followed and identify how the alleged procedural error harmed that person's substantial rights. No decision or action of

the Planning Commission or Board of Commissioners shall be voided solely by reason of the failure of a member thereof to disclose an actual or potential conflict of interest.

### **§ 39.1245 FEES**

Fees shall be imposed for land use services provided pursuant to this Chapter. The amount of the fees will be set by resolution.

## ***1.3 - VIOLATIONS, ENFORCEMENT AND FINES***

### **§ 39.1500 TITLE**

MCC 39.1500–MCC 39.1565, shall be known as the Enforcement Code and may be so cited and referred to.

### **§ 39.1505 DEFINITIONS**

As used in MCC 39.1505 –39.1565, the following words mean:

**Days** - Calendar days, not business days unless specifically provided otherwise.

**Director** - The Director of the Department of Community Services or their delegates.

**Hearings Officer Order** - The imposition of a fine according to criteria set by the Director or a decision in the appeal of a Notice of Violation, which shall be signed by the respondent and property owner, if different.

**Notice of Violation** - A written notice given to a person whose action or failure to act constitutes a violation under MCC 39.1510 and the property owner, if different. The Notice shall include assessed fines for such violation and the appeal rights and requirements.

**Person** means:

- (1) The owner, title holder, contract seller, contract buyer, possessor or user of the land upon which the violation is occurring; and/or, the person taking the action, or responsible for the conduct or omission which constitutes a violation under MCC 39.1510;

(2) The United States or agencies thereof, any state or state agency, public or private corporation, local governmental unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity, contractor, subcontractor or combination thereof; or

(3) For the purposes of this Enforcement Code, "person" also includes individuals who reside or conduct business or other activities in the unincorporated areas of Multnomah County.

**Respondent** means: The person alleged to have committed a violation or to be responsible for such violation.

**Violation:** Any act or failure to act that is prohibited or not allowed, including any failure to take any required action, under the goals, laws, rules, regulations or permits specified in MCC 39.1510.

## **§ 39.1510 VIOLATIONS**

Any use of land, land division, adjustment to property boundaries, work within a County right-of-way, or other activity by a person in violation of any provision of:

(A) MCC Chapter 39, MCC 29.001 through 29.207 and MCC 29.500 through 29.583; Multnomah County Road Rules or the terms and conditions of any permit issued under those code provisions; or

(B) Any statute adopted by the Oregon Legislature and those land use planning goals and rules of the Land Conservation and Development Commission (LCDC) that apply directly to the County through ORS 197.646 may be subject to enforcement and fines as provided in this Enforcement Code.

## **§ 39.1515 CODE COMPLIANCE AND APPLICATIONS**

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or

(2) It is necessary to protect public safety; or

(3) It is for work related to and within a valid easement over, on or under an affected property.

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

#### **§ 39.1520 POLICY; PURPOSE; POWERS OF DIRECTOR**

It is county policy and the Director shall:

(A) Seek voluntary compliance in addressing violations and to use an enforcement approach when voluntary compliance fails or is not practicable. The purpose of the Enforcement Code is to implement this policy in a prompt, effective and efficient manner.

(B) Adopt rules necessary for the administration of the Enforcement Program.

(C) Exercise the county's authority under the Enforcement Code and all rules adopted under it. The Director may appoint one or more Code Compliance Specialists (CCS) for purposes of administering the county's authority under the Enforcement Code and all rules adopted under it. The Director may delegate the duties of the CCS to other staff of Department of Community Services.

#### **§ 39.1525 VOLUNTARY COMPLIANCE AGREEMENT**

(A) The County may enter into a written voluntary compliance agreement with respondent, and the property owner, if different, before or after a Notice of Violation is issued. The agreement shall include the applicable code provision(s), required corrective action, time limits for compliance, fines if applicable and shall be binding.

(B) As part of a voluntary compliance agreement, the Director may agree to accept in full satisfaction of any fine, costs, fees or other debt due and owing to the County under the Enforcement Code payment in an amount less than the total amount due and owing and may agree to terms of payment. The Director shall establish factors to be considered prior to making the agreement authorized in this paragraph.

(C) The fact that a person alleged to have committed a violation enters into a voluntary compliance agreement shall not be considered an admission of having committed the violation.

(D) The CCS will delay further processing of the alleged violation during the time allowed in the voluntary compliance agreement for the completion of the required corrective action.

(E) Failure to comply with any term of the voluntary compliance agreement constitutes a separate violation, and shall be handled in accordance with the procedures established by these provisions, except no further notice after the voluntary compliance agreement has been signed need be given before further enforcement proceedings are initiated. The CCS may also proceed on the alleged violation that gave rise to the voluntary compliance agreement.

### **§ 39.1530 NOTICE OF VIOLATION, ABATEMENT, FINE AND RIGHT TO APPEAL**

(A) The CCS may issue respondent, and property owner, if different, a Notice of Violation and may require the respondent and property owner, if different, to abate the violation and/or enter into a voluntary compliance agreement within a specified time period. The Notice of Violation shall contain: name and address of the person committing the violation and property owner, if different; address or location of the alleged violation; nature of violation, including, County Code provisions, statute or administrative rules section violated; relief sought; department initiating procedure, and the fine to be paid as a result of committing the violation.

(B) Respondent or property owner, if different, may admit the existence of a violation by paying the fine and correcting the violation. Payment of the fine does not relieve respondent or property owner of the requirement to correct the violation.

(C) An appeal, if any, from a Notice of Violation shall be made in accordance with MCC 39.1550(A) and by submitting to the CCS a written request for an appeal hearing together with the appeal fee indicated in the Notice of Violation within 14 days of the date of service of the Notice of Violation.

(D) Notice of Violation may be served by personal service on respondent and property owner, if different. Notice of Violations may also be served by certified mail, return receipt requested through the United States Postal Service.

(E) The CCS may proceed directly into the state court system in any matter to secure compliance with the requirements of this Enforcement Code if efforts to secure voluntary compliance have failed.

### **§ 39.1535      EMERGENCY ENFORCEMENT**

If the CCS determines that the violation presents an immediate danger to the public health, safety, welfare of persons or property; or if there is any evidence of harm to the environment including but not limited to, any discharge of pollutants to waters of the state that cause or contribute to a violation of applicable water quality standards, the CCS may require immediate remedial action, and/or may issue a Stop Work Order. If the CCS is unable to serve a Notice of Violation on the respondent or, if after such service, the respondent refuses or is unable to remedy the violation, the CCS may proceed to remedy the violation by any means available under law, and the County shall be entitled to recover its actual costs of remediation, its reasonable administrative costs, as well as its attorney fees and costs for its enforcement actions, including appeals.

### **§ 39.1540      STOP WORK ORDERS**

A Stop Work Order may be issued whenever the code enforcement staff or other Department of Community Services staff has determined that non-permitted construction and/or land use is occurring on property or within any County right-of-way, or has

determined that construction and/or land use is occurring not in compliance with any land use or building permit issued for a property or a transportation permit within a County right of way. Failure to comply with a Stop Work Order may result in a Notice of Violation.

**§ 39.1545 NO APPEAL**

If the respondent or property owner does not file a written appeal of the violation within 14 days of the date when the Notice of Violation is served or mailed, the CCS shall forward the Notice of Violation to the Compliance Hearings Officer for review and issuance of a final order.

(A) If the Hearings Officer affirms the violation, the Hearings Officer shall set a time within which the responsible party must comply. The order may require such person to do any of the following:

- (1) Obtain any and all necessary permits, inspections and approvals;
- (2) Install any equipment necessary to achieve compliance;
- (3) Make any and all necessary repairs, modifications, and/or improvements to the structure, real property, or equipment involved;
- (4) Reimburse the County for actual costs of remediation, its reasonable administrative costs, as well as its attorney fees and costs for its enforcement actions, including appeals;
- (5) Pay a civil fine for the violation and any fees and costs to the County;
- (6) Pay a reduced fine;
- (7) Undertake any other action reasonably necessary to remedy the violation.

(B) The Hearing Officer's order shall be in writing and may be accompanied by an opinion.

**§ 39.1550 APPEAL**

(A) Persons Authorized to Appeal Notice of Violation

- (1) The Notice of Violation may be appealed by the respondent, owner of the subject property, the property owner's representative or other person who has been included as part of the Notice of Violation.

(2) A representative of the property owner must have documentation demonstrating that they are an authorized agent of the property owner.

(B) Notice of Hearing

(1) The notice shall contain the time, date, and place of the hearing. A copy of the Notice of Violation and a description of the appeal process and associated rights shall be attached to the notice.

(2) Notice shall be served on the respondent and property owner, if different, by personal service or certified mailed, return receipt requested at least 15 days prior to the hearing date. Notice is considered complete on the date of personal delivery or upon deposit in the U.S. mail. Notice will also be provided to surrounding properties within 750 feet of the subject property, complainant if known and other known interested parties who have made a written request for notice. Written notice includes email and faxes in addition to surface mail or hand-delivered documents.

(3) Failure of any person to receive notice properly given shall not invalidate or otherwise affect the proceedings under this Enforcement Code.

(C) Appeal Hearing

(1) Hearings to determine whether a violation has occurred shall be held before the Hearings Officer. The County must prove the violation alleged by a preponderance of the evidence.

(2) The Hearings Officer shall set a time within which the respondent must comply. The order may require the respondent to do any of the following:

- (a) Obtain any and all necessary permits, inspections and approvals;
- (b) Install any equipment necessary to achieve compliance;
- (c) Make any and all necessary repairs, modifications, and/or improvements to the structure, real property, or equipment involved;
- (d) Reimburse the County for actual costs of remediation, its reasonable administrative costs, as well as its attorney fees and costs for its enforcement actions, including appeals;
- (e) Pay a civil fine for the violation and any fees and costs to the County;

(f) Pay a reduced fine;

(g) Undertake any other action reasonably necessary to remedy the violation.

(3) The Hearing Officer's order shall be in writing and may be accompanied by an opinion.

### **§ 39.1555 ENFORCEMENT OF HEARINGS OFFICER ORDER**

(A) Fines, fees and costs are payable on the effective date of the order and are a debt owed to the County, under ORS 30.460, and may be collected in the same manner as any other debt allowed by law. If fines, fees or costs are not paid within 60 days after payment is ordered, the County may file and record the order in the County Clerk Lien Record.

(B) The County may institute appropriate suit or legal action, in law or equity, in any court of competent jurisdiction to enforce the provisions of any order of the Hearings Officer, including, an action to obtain judgment for any civil fine, fees or costs imposed by such order.

### **§ 39.1560 CIVIL FINE**

Violations as defined in MCC 39.1510 may be subject to fines and liens. Fines may be assessed for each violation each day.

(A) The maximum fines per violation shall not exceed \$3,500 for each day of noncompliance; the minimum fine per violation shall not be less than \$45 for each day of noncompliance.

(B) The Director shall set criteria for determining the fines, appeal fees and administrative fees as appropriate.

### **§ 39.1565 JUDICIAL REVIEW**

Review of the final order of a Hearings Officer under this subchapter by any aggrieved party, including Multnomah County, shall be by writ of review as provided in ORS 34.010 through 34.100, unless the Hearings Officer makes a land use decision, in which case the land use decision may be reviewed by the Land Use Board of Appeals pursuant to ORS Chapter 197.

Any appeal of a Hearings Officer decision in the National Scenic Area may be reviewed by the Columbia River Gorge Commission.

#### ***1.4 – Planning Commission***

### **§ 39.1600 PLANNING COMMISSION**

The Planning Commission is designated as the land use planning advisory body to the Board and shall have the powers and duties described in this subpart and such other powers and duties as may be imposed on it by state, federal or local law, rule or regulation.

### **§ 39.1605 MEMBERSHIP OF COMMISSION**

(A) The Commission shall consist of nine members, who shall be appointed pursuant to law and the charter of Multnomah County to fill designated positions numbered 1 through 9.

(B) Members of the Commission shall be residents of the various geographic areas of the county and shall serve without compensation, except for reimbursement for duly authorized expenses.

(C) A member who ceases to be a resident of Multnomah County shall then cease to be a member of the Commission.

(D) No more than two members of the Commission shall be engaged principally, whatever be the form of doing business, in the buying, selling or developing of real estate for profit. No more than two members shall be engaged in the same kind of business, trade or profession.

### **§ 39.1610 TERMS OF OFFICE OF COMMISSION MEMBERS**

(A) Terms of office of Commission members shall be a maximum of four years, and the term of no more than three Commission members shall expire in any year. The term of a Commissioner may continue until a successor is appointed. The term of a newly appointed Commissioner shall be designated such that a staggered term expiration scheme is maintained.

(B) No Commission member shall serve more than two consecutive terms excluding completion of an unexpired term of less than two years, unless otherwise provided by unanimous concurrence of the Board.

(C) Appointments to uncompleted terms shall be limited to the remainder of the expiring Commissioner's term.

#### **§ 39.1615 VACANCIES AND REMOVAL OF COMMISSION MEMBERS**

(A) Upon resignation, permanent disqualification or removal of any member of the Commission, the Chair of the Board shall, pursuant to the County Charter, appoint a successor to fill the remainder of the term.

(B) After a hearing, the Board or the Planning Commission may remove any member for cause, which may include misconduct or nonperformance of duty. Nonperformance may include lack of attendance, as defined by three consecutive absences from Commission meetings, or five absences total during a calendar year.

#### **§ 39.1620 OFFICERS AND STAFF**

(A) The Commission shall, at or before its first meeting in April each year, elect and install from among its members a chair and vice-chair. The Commission may elect and install from among its members a second vice-chair. If there is a vacancy in any officer position, the Commission shall fill such vacancy by appointing an officer at the first regular meeting following the vacancy.

(B) The Planning Director shall serve as staff for the Commission and its committees and shall provide such administrative and technical assistance as may be required.

#### **§ 39.1625 COMMITTEES**

The presiding officer of the Commission shall appoint advisory and other subcommittees as considered appropriate or as directed by the Commission or the Board.

#### **§ 39.1630 ADMINISTRATION**

(A) The conduct of meetings of the Commission shall be according to rules of order adopted by the Commission and filed with the Planning Director. The rules shall be effective 15 days after filing.

(B) The Planning Director shall maintain an accurate and permanent record of all proceedings before the Commission, including a verbatim recording of such proceedings. Failure to maintain an accurate and permanent record does not invalidate any action taken by the Commission except as otherwise provided at law.

(C) Five members of the Commission shall constitute a quorum for the conduct of business. Notwithstanding a lack of quorum, the Commission may act to continue a hearing or matter to a time and date certain for consideration by a quorum.

(D) The affirmative vote of at least five members of the Commission is required for approval of motions relating to a matter classified in MCC 39.1105 as a Type IV or PC matter or a matter concerning a proposal to name or rename a street. Except as otherwise provided, the affirmative vote of the majority of those members of the Commission present is required for all other action by the Commission. A member of the Commission that abstains or is disqualified from participating or voting in a matter before the commission is not "present" for purposes of determining the number of votes required to take action on a matter.

### **§ 39.1635 MEETINGS**

(A) The Commission shall schedule meetings on a regular monthly basis. The Planning Commission may schedule special meetings at the request of the Planning Director. Any meeting may be cancelled for lack of quorum or agenda item. All meetings are open to the public, except executive sessions, and notice shall be given as required by law or rule. Failure to provide an open meeting or notice as required by law or rule does not invalidate any action taken by the Commission except as otherwise provided at law.

(B) The Commission may continue any proceeding. A proceeding continued to a date certain requires no additional notice unless additional notice is required by law or rule or is ordered by the Commission.

(C) The Commission may meet in executive session in accordance with state law. At the beginning of each executive session, the statutory authority for the meeting must be stated.

The Commission will require that representatives of the news media and all other attendees are specifically directed not to disclose specified information that is the subject of the executive session.

**§ 39.1640 COORDINATION**

(A) The Commission shall advise and cooperate with other planning commissions, hearings officers, agencies or bodies within the state, and shall, upon request or on its own initiative, make available advice or reports to the state or federal government or any regional association of governments, city, county, public officer or department on any problem comprehended within its powers and duties.

(B) All County officials, departments and agencies having information, maps and data considered by the Commission to be pertinent to its powers and duties shall make that information available for the use of the Commission upon request.

**§ 39.1645 POWERS AND DUTIES OF COMMISSION**

The Commission shall:

(A) Recommend to the Board the adoption, revision or repeal of a comprehensive plan or portions thereof;

(B) Report and recommend to the board the adoption, revision, amendment or repeal of zoning, subdivision, and other regulatory ordinances and regulations, intended to carry out part or all of a plan adopted by the board,

(C) Where appropriate, initiate actions under MCC Chapter 39, as amended;

(D) On request, provide written advisory opinions to the Board and Hearings Officer on the application of the Comprehensive Plan, zoning ordinance or other matter or regulation within the jurisdiction of the Commission to any proposed action before the Board or the Hearings Officer;

(E) Recommend to the Board the institution of injunction, mandamus, abatement or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate or remove any existing or proposed unlawful location, construction, maintenance, repair, alteration or

use of any building or structure or the existing or proposed unlawful subdivision or other unlawful partitioning or use of any land;

(F) Enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers on the land, as required to perform its functions;

(G) Consult with advisory committees, as appropriate, in regard to any matter within the powers and duties of the Commission; and

(H) Exercise such other powers and perform such other duties as may be given to the Commission by federal or state law or by this chapter or other ordinance.

### ***1.5 – PLANNING DIRECTOR***

#### **§ 39.1700 PLANNING DIRECTOR**

Subject to the direction of the Board, the Planning Director or the Director's delegate shall perform the following duties:

(A) Schedule and assign proposed actions for hearings and review;

(B) Conduct all correspondence of the Planning Commission and Hearings Officer;

(C) Give notices as required by law and by this Chapter;

(D) Maintain dockets and minutes of all hearings;

(E) Compile and maintain all necessary records, files and indexes;

(F) Record all continuances, postponements, dates of giving notices and minutes and summaries of all actions taken by the Planning Commission;

(G) Record the decision of the Planning Commission and the Hearings Officer on each matter heard and the vote of each member of the Planning Commission, members absent or failing to vote, and the reasons for the decision;

(H) Provide copies of records to any party requesting the same upon the payment of a fee therefore established by the Director of the Department of Community Services and approved by the Board of County Commissioners;

(I) File orders and decisions of the Planning Commission and Hearings Officer with the Clerk of the Board;

(J) Perform such other functions as may be assigned by the Board.

**§ 39.1705 ENFORCEMENT**

The Director of the Department of Community Services and the Director's delegates shall be responsible for securing the enforcement of the provision of MCC Chapter 39.

***1.6 - HEARINGS OFFICER***

**§39.1800 HEARINGS OFFICER ESTABLISHMENT**

The Planning Director is authorized to appoint one or more planning and zoning hearings officers, to serve at the pleasure of the Planning Director. The Planning Director may make such appointments by executing one or more contracts for planning and zoning hearings officer services and the term of any such appointments shall be as set forth in such contract.

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