ARTICLE 11. DEVELOPMENT APPROVAL PROCEDURES

SECTION 11.005. Purpose. The purpose of this chapter is to establish procedures for approval of development required by this ordinance, appeals from aggrieved persons and parties, and review of any decision by a higher authority.

SECTION 11.010. Review Process. An application for development approval required by this ordinance shall be processed by quasi-judicial public hearing or administrative action, pursuant to applicable sections of this ordinance. Quasi-judicial hearings shall be held on all regulations, except that hearings shall not be held in those matters the City Manager has authority to act upon, unless appealed pursuant to the provisions of this chapter.

SECTION 11.020. Form of Petitions, Applications and Appeals. Petitions, applications, and appeals provided for in this ordinance shall be made on forms prescribed by the city. Applications shall be accompanied by plans and specifications, drawn to scale, showing the actual shape and dimensions of the lot to be built upon; the size and relationship on the lot of all existing and proposed structures; the intended use of each structure; the number of families, if any, to be accommodated thereon; the relationship of the property to the surrounding area; and such other information as is needed to determine conformance with this ordinance. In the matter of residential facilities, the residential facility application shall also be accompanied by a copy of the state licensing application.

SECTION 11.030. Authorization of Similar Uses. The City Manager may permit in a particular zone a use not listed in this ordinance provided the use is of the same general type as the uses permitted there by this ordinance. However, this section does not authorize the inclusion, in a zone where it is not listed, a use specifically listed in another zone which is of the same general type and is similar to a use specifically listed in another zone.

SECTION 11.040. Coordination of Development Approval.

1. The City Manager shall be responsible for the coordination of all development applications and decision making procedures, and shall approve developments when proper application is made and the proposed development is in compliance with the provisions of this ordinance and the City of Winston Comprehensive Plan. Before approving any development, the City Manager shall be provided with information by the applicant sufficient to establish full compliance with the requirements of this ordinance.

2. After an application has been submitted, no building permit for the proposed use shall be issued until final action has been taken. Following final action on the application, the issuance of a building permit shall be in conformance with the provisions of this ordinance, and any conditions of development approval.

SECTION 11.050. Who May Apply.

1. An application for development approval may be initiated by one or more of the following:

   a. The owner of the property which is the subject of the application; or
b. The purchaser of such property who submits a duly executed written contract or copy thereof; or

c. A lessee in possession of such property who submits written consent of the owner to make such application; or

d. Resolution of the City Council.

Any of the above may be represented by an agent who submits written authorization by his principal to make such application.

SECTION 11.060. **Pre-Application Conference.** An applicant shall request a pre-application conference prior to submitting a request for development approval. The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of the ordinance, provide for an exchange of information regarding applicable elements of the Comprehensive Plan and development requirements, arrange such technical and design assistance as will aid the applicant, and to identify policies and regulations that create opportunities or pose significant constraints for the proposed development. The requirements of this section may be waived at the discretion of the City Manager.

SECTION 11.065. **Application.** Application for development approval shall be made pursuant to applicable sections of this ordinance on forms provided by the city. An application shall be complete, contain the information required by these regulations, and address the appropriate criteria for review and approval of the request. All applications shall be accompanied by the required fee.

1. The City Manager shall check an application for completeness as per this section. The Manager shall notify the applicant of any missing materials within 30 days of receipt of the application. The applicant shall have 180 days from the date the applicant was informed what materials were missing to submit the missing materials. The application shall be deemed complete when all required materials are received, when 180 days have expired since the applicant was notified of the missing material(s) or on the 31st day after submittal of any incomplete application if the applicant has submitted a written statement that the missing materials will not be submitted.

2. **Concurrent Processing** - Any application for discretionary permits applied for under this ordinance or under Subdivision Ordinance No. 591, for one development, at the applicant's request shall be processed concurrently.

3. **Time Limit on Decisions** - The final decision, including any appeals to the City Council, on any applications for discretionary permits applied for under this ordinance or under Subdivision Ordinance 591, or any combination thereof, shall be made within 120 days of the date the application(s) is (are) deemed complete. The 120 days applies only to the decisions wholly within the authority and control of the city and not to plan and land use regulation decisions required to be forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610(1). The 120-day period may be extended at the request of the applicant.
4. **Review** - Approval or denial for an application shall be based upon the comprehensive plan and standards and criteria that were applicable for that land use regulation at the time the application was first submitted.

   a. Denied applications cannot be resubmitted within twelve (12) months after the date of the final order on the action denying the application, unless documentation or evidence is provided, which demonstrates the applicant has mitigated or addressed all the points for the basis of denial.

5. An applicant whose application has not been acted upon finally within the 120 days after the application was deemed complete by the City Manager may seek a writ of mandamus to compel issuance of the permit or zone change application or a determination that the appeal would violate the city's plan or land use regulations.

**SECTION 11.070. Fee to Accompany Annexation Petitions.** At the time of filing any annexation petition, the Petitioner shall deposit with the City an annexation fee. Upon presentation of the petition the City Manager shall review it and determine whether an election may be required for the petition. This fee shall be used to pay expenses to the city in processing the annexation application, including but not limited to, reasonable charge for staff time, election expenses, engineering, and posting or publication costs. If, at the conclusion of the annexation process, any balance is left remaining after payment of the above expenses, the remainder shall be refunded to the applicant.

**SECTION 11.075. Land Use Actions.**

1. **Ministerial Actions.** The City Manager shall have the authority to review the following applications as Ministerial actions, and shall follow the procedures provided by this ordinance to accomplish such review.

   a. Issuance of building permits and mobile home placement permits.

   b. Issuance of sign permits.

   c. Property line adjustments.

   d. Family Hardship Variance (Temporary Use of Mobile Home)

2. **Administrative Actions.** The City Manager shall have the authority to review the following applications as Administrative actions, and shall follow the procedures provided by this ordinance to accomplish such review. The following applications shall be processed as Administrative Actions:

   a. Conditional use permit.

   b. Variance.

   c. Land partition.

The Planning Commission shall be provided with a copy of Administrative land Use Decisions. The Planning Commission may at a regular meeting, if within the appeal
period, request a public hearing on the decision. Any hearing shall be scheduled for
the next regular meeting which allows a 10 day notice to the applicant and others who
participated in the action. If no hearing is requested by the Planning Commission
then the decision shall be final unless otherwise appealed as provided in this
ordinance.

3. **Quasi-Judicial Actions.** Within forty-five (45) days after accepting a completed
application for Quasi-judicial action pursuant to this section of this ordinance, the
City Manager shall act upon, or cause a hearing to be held upon, the application,
unless such time limitation is extended with the consent of the applicant. The
following matters shall be heard by the Planning Commission, pursuant to the
procedures established in this Article.

   a. Zone change
   b. Planned Unit Development
   c. Subdivision preliminary plat
   d. Mobile home park preliminary plan review
   e. Comprehensive plan map amendment
   f. Review of annexation petition
   g. Review of an administrative action requested within the appeal period
   k. Appeals of a decision by the City Manager
   l. Matters referred to the Commission by the City Manager or City Council
   m. Review of Historic Structures or Sites alteration or demolition

**SECTION 11.080. Notice.**

1. At least twenty (20) days prior to the date of a quasi-judicial public hearing under
Section 11.075(3.), and within 60 days of receipt of an administrative action under
Section 11.075(2.), notice shall be sent by mail to: The applicant and all owners of
record of the property which is the subject of the applications; all owners of property
within one hundred fifty feet (150’) of the property; applicable utility providers,
Oregon Department of Transportation Region 3; Douglas County Planning
Department; Douglas County Public Works Department; Umpqua Transit; and
Oregon State Historic Preservation Office (SHPO).

2. Mobile home park tenants shall be noticed in writing at least 20 days, but not more
than 40 days prior to the hearing date, for a proposed re-zone of the park within
which they reside.
3. The records of the Douglas County Assessor's Office shall be used for notice required by this ordinance. Persons whose names and addresses are not on file at the time of the filing of the application need not be notified of the action. The failure of a property owner to receive notice shall not invalidate the action if a good-faith attempt was made to notify all persons entitled to notice.

4. Any person who requests, in writing, and pays a fee established by the city, shall be entitled to receive copies of notices for administrative actions, either on an urban area wide or site-specific basis, as specified by such person.

SECTION 11.090. Contents of Notice.

1. Notice of an application given pursuant to Section 11.080 shall include the following information:

   a. The name of the applicant.

   b. A description of the subject property, reasonably calculated to give notice as to its actual location, and for the purpose of this section, shall include, but not be limited to the tax map designations of the Douglas County Assessor's Office.

   c. The nature of the application.

   d. The scheduled date and time of the public hearing.

   e. The deadline for filing comments on the application.

   f. A statement explaining the standards and procedures for establishing party status as provided in Section 11.100.

   g. List the applicable criteria from this Ordinance and the plan that apply to the application at issue.

   h. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the approving authority an opportunity to respond to the issue precludes appeal based on that issue.

   i. Include the name of a City representative to contact and the telephone number where additional information may be obtained.

   j. State 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.

   k. State 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.
l. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

SECTION 11.100. Establishment of Party Status.

1. In order to have standing under this chapter, a person shall be recognized as a party by the Planning Commission. Party status, when recognized as by the Planning Commission establishes the right of the person to be heard, either orally or in writing, and pursue a review or appeal under this chapter.

2. A written request for establishment of party status shall be made at least seven (7) days before the date set for a quasi-judicial public hearing by any person filing with the City Manager a written statement regarding the application being considered. Such statement shall include:
   a. The name, address and telephone number of the person filing the statement;
   b. How the person qualifies as a party;
   c. Comments which the party wishes to make with respect to application under consideration; and,
   d. Whether the person desires to appear and be heard at the hearing.

3. Five (5) or more days before the date set for a public hearing, the City Manager shall mail the applicant a copy of any statements that have been filed to date.

4. Other persons may be granted party status by the Planning Commission at the time of the public hearing upon a finding that the person requesting party status is specially, personally, adversely and substantially affected by the subject matter. The burden for showing that party status should be granted shall rest with the person requesting party status.


1. In the conduct of a public hearing, the Planning Commission shall have the authority, pursuant to the provisions of this ordinance, to:
   a. Dispose of procedural requirements or similar matters.
   b. Determine for the record those person who have standing in the subject matter and rule on requests for granting party status.
   c. Rule on offers of proof and relevancy of evidence and testimony.
   d. Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentation, cross-examination of witnesses and rebuttal testimony.
e. Take such other action appropriate for conduct commensurate with the nature of the hearing.

f. Grant, deny, or in appropriate cases, attach conditions to the matter being heard.

2. In the event the applicant or his authorized representative is not present at the time set for the hearing, the Planning Commission may postpone the matter to a later time or date. Upon receipt of a signed written statement by the applicant or his authorized representative requesting that the hearing be conducted in his absence the Planning Commission may, at its discretion, proceed with the hearing as otherwise provided for in this chapter.

3. The applicant or any party wishing to subpoena witnesses to a hearing may do so by application to the City Manager. Such subpoenas shall be enforceable upon proper completion and inclusion of those fees applicable to civil cases in the Douglas County Circuit Court. Payment of fees and services shall be the responsibility of the party desiring such service.

4. **Order of Procedure**: Unless otherwise specified, the Planning Commission shall:

   a. At the commencement of the hearing, read a statement to those in attendance that:

      (i) Lists the applicable substantive criteria;

      (ii) States that testimony and evidence must be directed toward the applicable criteria in the plan or this Ordinance which the person believes to apply to the decision; and,

      (iii) States that failure to raise an issue with sufficient specificity to afford the approving authority and the parties an opportunity to respond to the issue precludes appeal based on that issue.

   b. Announce the nature and purpose of the hearing and summarize the rules for conducting the hearing.

   c. Recognize parties to hearing.

   d. Prior to taking any action at the hearing, all members of the Planning Commission shall disclose the content of any significant pre-hearing or ex parte contacts with regard to the matter being heard. Any party to such contact shall be given the opportunity to rebut the substance of the ex parte disclosure.

   e. Request the City Manager to present the introductory report of the City Manager and explain any graphic or pictorial displays which are a part of the report. Request the City Manager to read findings and recommendations, if any, and provide such other information as may be requested by the Planning Commission.
f. Allow the applicant to be heard first, on his behalf or by representative.

g. Allow parties or witnesses in favor of the applicant's proposal to be heard.

h. Allow other parties or witnesses to be heard next in the same manner as in the case of the applicant.

i. Upon failure of any party to appear, the Planning Commission may take into consideration, written material submitted by such party.

j. Allow the parties to offer rebuttal evidence and testimony, and to respond to any additional evidence. The scope and extent of rebuttal shall be determined by the Chairman.

k. Conclude the hearing.

5. Questions may be asked at any time by members of the Planning Commission. Questions by the parties or City Manager may be allowed by the President upon request. Upon recognition by the President questions may be submitted directly to the witnesses or parties. The witnesses or parties shall be given a reasonable amount of time to respond solely to the questions.

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 days after the hearings. When the chair reopens the 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.

7. At the conclusion of the hearing, the Planning Commission shall either make a decision and state findings which may incorporate findings proposed by any party, or the City Manager, or may take the matter under advisement. The Planning Commission may request proposed findings and conclusions from any party to the hearing. The Planning Commission, before finally adopting findings and conclusion, may circulate the same in the proposed form to the parties for written comment. All actions taken by the Planning Commission pursuant to adopting findings and conclusions which support the decision of the Planning Commission shall not be final until reduced to writing and signed by the Chairman. The Planning Commission shall grant, deny, or in appropriate cases, attach conditions to the proposal being heard, and the City Manager shall notify by mail the parties of the decision.

8. **General Conduct of Hearing.** The following rules apply to the general conduct of the hearing:

a. No person shall be disorderly, abusive or disruptive of the orderly conduct of the hearing.

b. No person shall testify without first receiving recognition from the President and stating his full name and address.
c. No person shall present irrelevant, immaterial or unduly repetitious testimony or evidence. Formal rules of evidence as used in courts of law shall not apply. Evidence received at any hearing shall be of the quality that reasonable persons rely upon in the conduct of their everyday affairs.

d. Audience demonstrations such as applause, cheering and display of signs, or other conduct disruptive of the hearing, shall not be permitted. Any such conduct may be cause for immediate suspension of the hearing.

SECTION 11.201. Quasi-Judicial Hearings/Challenges to Impartiality.

1. Any party to a matter to be heard under this Article and any member of the approving authority or of the City Council may challenge the qualification of any other member of that authority or body to participate in the hearing and decision regarding the matter. The challenge shall state by affidavit the facts relied upon by the challenger as the basis for the challenge.

   a. Except for good cause shown, the challenge shall be delivered by personal service to the City Recorder and the person whose qualification is challenged, not less than 48 hours preceding the time set for the hearing.

   b. The challenge shall be made a part of the record of the hearing.

2. No member of the approving authority or of the City Council may discuss or vote on a matter when:

   a. Any of the following has a direct or substantial pecuniary interest in the matter: the member of his or her spouse, brother, sister, child, parent, father-in-law, or mother-in-law; any organization in which the member is then serving as an officer or director or has so served within the previous two years; or any business with which the member is negotiating for or has an arrangement or understanding concerning a prospective partnership, employment or other business affiliation.

   b. The member owns all or a portion of the property that is the subject of the matter before the approving authority or City Council or owns abutting or adjacent property.

   c. The member has a direct personal interest in the matter or for any other reason cannot participate in the hearing and decision impartially. This includes matters where by past conduct or statements the member: has a bias which in the exercise of sound judgment the member cannot vote upon the matter impartially and without prejudice to the substantial rights of the challenging party; owes a present or future fiduciary duty to one of the parties; shares the member’s residence with a party which has a pecuniary interest in the matter; or has a personal bias or prejudice against a party.

3. Because of the importance of preserving public confidence in decisions made by the approving authority or City Council, a member of that authority or body may elect to abstain from a particular hearing when in fact the member is not disqualified but
simply desires to avoid the mere appearance of partiality. Abstention in such an instance shall be solely a matter of the member’s own judgment. A member who feels that abstention may be necessary or desirable under this section shall seek the advice of the authority or body and then state the member’s decision and the reasons therefore.

4. No other officer or employee of the City who has a financial or other private interest in a matter before the approving authority or City Council may participate in discussion of the matter with, or give an official opinion on the matter to, the authority or body without first declaring for the record the nature and extent of that interest.

5. At the commencement of the hearing on a matter, members of the approving authority or of the City Council shall reveal all significant pre-hearing and ex parte contacts they have had about the matter. If the contacts have not impaired the member’s impartiality, the member shall so state that fact and participate or abstain in accordance with Subsection 4 of this Section and with the member’s own judgment.

6. Notwithstanding any other rule, an abstaining or disqualified member shall constitute part of a quorum and may represent the member’s interest at a hearing, provided the member joins the audience, makes full disclosure of the member’s status and position when addressing the approving authority or City Council and abstains from discussion and from voting on the matter as a member of the authority or body.

7. Whenever the qualifications of a member of the approving authority or of the City Council are challenged, the presiding officer of the authority or body shall give precedence to the challenge by first giving the challenged member an opportunity to respond and then, if necessary, putting the challenge to the authority or board for decision.

8. Disqualification for reasons set forth in Subsections 1, 2, 3 or 5 of this Section may be ordered by a majority of the approving authority or City Council. The member who is the subject of the motion for disqualification may not vote on the motion.

9. If all members of the body abstain or are disqualified and consequently cannot reach a decision while so abstaining or disqualified, all members present, after stating their reasons for abstention or disqualification, shall by so doing be re-qualified and proceed to resolve the issues.

10. A member absent during the presentation of any evidence in a hearing may not participate in the deliberations or final decision regarding the matter of the hearing unless he or she has reviewed the evidence received.


1. The Planning Commission may take official notice of the following:

   a. All facts which are judicially noticeable. Judicially noticed facts shall be stated and made part of the record.
b. The Comprehensive Plan and other officially adopted plans, ordinances, rules and regulations.

2. Matters officially noticed need not be established by evidence, and may be considered by the Planning Commission in the determination of the application.

SECTION 11.220. Record of Proceeding.

1. A verbatim record of the proceeding shall be made. It shall not be necessary to transcribe testimony except as provided for in Section 11.310. In all cases, the tape, transcript of testimony or other evidence of the proceedings shall be part of the record.

2. All exhibits received shall be marked so as to provide identification upon review.

3. A complete record of the hearing, including all exhibits received, shall become part of the official records of the city and shall be maintained in accordance with state laws.

SECTION 11.230. Decision.

1. The Planning Commission may approve the application, deny the application, or grant approval subject to special conditions necessary to carry out the purpose and intent of this ordinance.

2. The Planning Commission shall make its decision upon the close of its hearing or upon continuance of the matter to a specified date.

3. The City Manager shall send a copy of the Planning Commission's final written decision to all parties to the proceeding within seven (7) days of said decision, and shall at the same time, file a copy of the Planning Commission's final order in the official records of the city.

SECTION 11.300. Appeals of City Manager Decision.

1. Any Administrative Action by the City Manager pursuant to Section 11.075.2 shall be subject to review by the Planning Commission.

2. Any person or entity who would have been entitled to notice, or a person who is adversely affected or aggrieved by the City Manager decision, may file a timely written statement to appeal a decision of the City Manager relative to an administrative action. In the conduct of an appeal hearing, the Planning Commission shall establish that the appellant is qualified as a party as defined by this ordinance, or the appeal shall not be heard and the contested decision shall become final.

3. The Planning Commission may review the action of the City Manager upon its own motion by resolution filed within fourteen (14) days of the City Manager's decision, or upon receipt of a Notice of Appeal as prescribed herein. For the purpose of this section, an appeal shall be filed with the City Manager no later than fourteen (14) days following the date of the decision or action of the City Manager.
4. Every notice of appeal shall contain:
   a. A reference to the application sought to be appealed.
   b. The date of the final decision on the action.
   c. A statement as to how the petitioner qualifies as a party.
   d. The specific facts from the record of the hearing which form the basis of the petitioner's request for review.

5. The appeal shall be accompanied by the required fee.

6. At least twenty (20) days prior to the date of the Planning Commission meeting, the City Manager shall give notice as provided by Section 11.080 (1) of this chapter of the time and place of the meeting to all parties to the case.

7. Members of the Planning Commission shall neither:
   a. Communicate, directly or indirectly, with any party or representative in connection with any issue related to the appeal except upon notice and opportunity for all parties to participate; nor
   b. Take notice of any communication, reports, staff memoranda, or any other materials prepared in connection with the particular case, unless the parties are afforded an opportunity to review the material so noticed.

8. During the course of the review, the City Manager shall first present to the Planning Commission the decision and the reasons for such action. The appellant then may present its argument and may call witnesses to give additional testimony.

9. Appeal of an administrative decision to the Planning Commission shall be conducted as a new hearing without prejudice.

10. The review shall be accomplished in accordance with the provisions of this ordinance. The Planning Commission may continue the appeal hearing to a specified time to gather additional evidence or to consider the application fully. Unless otherwise provided by the Planning Commission, no additional notice need be given of continued hearings if the matter be continued to a specific date.

11. The majority of the Planning Commission shall act upon appeal within thirty (30) days of filing thereof, unless such time limitation be extended with the consent of the applicant; provided that, unless otherwise ordered by the Planning Commission, the City Manager shall forward such appeals in the order in which they are filed.

12. Any person wishing to subpoena or depose witnesses to an appeal may do so by application to the City Manager not less than seven (7) days prior to the hearing, and by showing that the witness resides in Oregon, is unable or unwilling to appear, and his testimony is material and relevant. Such subpoenas or depositions shall be
enforceable, upon proper completion and inclusion of those fees applicable to civil cases in the Douglas County Circuit Court.

13. All evidence offered may be received. Evidence received at any hearing shall be of the quality that reasonable persons rely upon in the conduct of their everyday affairs. All evidence received shall become a part of the record of the hearing.

14. The Planning Commission may affirm, reverse or modify the action of the City Manager and may reasonably grant approval subject to conditions necessary to carry out the purpose and intent of this ordinance.

a. For all cases, the Planning Commission shall make a decision based upon the findings and conclusions from the record of the hearing.

b. The Planning Commission shall make its decision upon the close of its hearing, or upon continuance of the matter to a specific date.

c. The City Manager shall send a copy of the Planning Commission's final written decision to all parties to the appeal within seven (7) days of said decision and shall, at the same, file a copy of the Planning Commission's final order in the records of the City.

SECTION 11.310. **Review of the Decision of the Planning Commission.** Fifteen (15) days from the date of the written decision of the Planning Commission, the decision shall become effective, unless review is sought pursuant to this section.

1. Review of the decision of the Planning Commission:

a. Shall be made by the City Council upon any party filing a Notice of Review with the City Manager within fourteen (14) days of the filing of the written decision sought to be reviewed. Review by the City Council shall be conducted pursuant to Section 11.320.

b. May be made by the City Council on its own motion passed within fourteen (14) days of the filing of the written decision sought to be reviewed. Review by the City Council shall be conducted pursuant to Section 11.320.

2. Notice of the time and place of the review, together with any Notice of Review filed, shall be mailed to all parties at least fourteen (14) days prior to the date of review by the City Council.

3. A record of the review shall be made and shall be the same as that required at the hearing before the Planning Commission, pursuant to Section 11.220.

4. Every Notice of Review shall contain:

a. A reference to the decision sought to be reviewed.

b. The date of the decision sought to be reviewed.
c. A statement as to how the petitioner qualifies as a party.

d. The specific facts from the record of the hearing which form the basis of the petitioner's request for review.

5. Except when filed by the City Council, a Notice of Review shall be accompanied by the required fee.

   a. If the City Council does not desire a transcript, the applicant or any party may request a transcript. Any such transcript request shall be paid for by the person requesting it in the manner provided in this section. The estimated cost of the transcript shall be specified by the City Manager. Within five (5) days of such estimate, the person making the request for a transcript shall deposit the estimated cost with the City Manager. Any deposit excess shall be returned to the depositing person.

   b. If a transcript is desired by the City Council, the costs shall be borne by the city.

SECTION 11.320. Review by the City Council.

1. The review of the Planning Commission's decision by the City Council shall be confined to the record of the original hearing, which will include the following:

   a. All materials, pleadings, memoranda, stipulations and motions submitted by any party to the proceeding and recorded or considered by the Planning Commission as evidence.

   b. All materials submitted by the City Manager to the Planning Commission with respect to the application.

   c. The transcript of the hearing, if desired by the City Council, or the tape recording of the hearing or other evidence of the proceedings before the Planning Commission.

   d. The written findings, conclusions and decision of the Planning Commission.

   e. Argument by the parties and/or their legal representatives on the record is permitted pursuant to Section 11.200 at the time of review by the City Council.

2. Review by the City Council upon appeal by a party shall be limited to the facts from record of the hearing which forms the basis of the petitioner's request for review. New materials or testimony containing facts which were not made part of the original hearing shall not be received.

3. The City Council may affirm, reverse or modify the action of the Planning Commission, and may approve or deny the request, or grant approval subject to special conditions necessary to carry out the purpose and intent of this ordinance.
a. For all cases, the City Council shall make a decision based upon the findings and conclusions from the record of the original hearing.

b. The City Council shall enter such findings, conclusions and final orders upon the close of its hearings or upon continuance of the matter to a specific time.

c. The City Council shall, within seven (7) days of its final order, cause copies of its final written order to be sent to all parties participating in the review before it.

4. The City Council may remand the matter to the Planning Commission if it is satisfied that testimony or other evidence could not have been presented at the initial hearing. In deciding such remand, the City Council shall consider and make findings and conclusions:

   a. That substantial prejudice to parties resulted;

   b. That material, relevant and competent evidence at the time of the initial hearing was unavailable through no lack of diligence of the party offering such testimony and evidence; or

   c. That surprise to opposing parties occurred.

5. Only those members of the City Council reviewing the record may act on the matter reviewed. The agreement of a majority of those reviewing is necessary to amend, reverse or remand the action of the Planning Commission. Upon failure of a majority of those reviewing to agree, the decision of the Planning Commission shall stand.

6. City Council decisions for discretionary permits may be appealed to the Land Use Board of Appeals (LUBA), as provided in ORS 197.830.

**SECTION 11.330 Amendments to Land Use Actions.**

1. "Minor Amendment" means a change which:

   a. Does not increase the intensity of the approved land use;

   b. Does not change the general location or amount of land devoted to an approved land use; or

   c. Includes only minor shifting of established lines, location of buildings, proposed public or private streets, pedestrian ways, utility easements, parks or other public open spaces.

2. "Major Amendment" means any change which is not a minor amendment.

3. Approval of Minor Amendments - A minor amendment to an approved ministerial, administrative or quasi-judicial land use action may be approved by the City Administrator.
4. Approval of Major Amendments - approval of a major amendment to an approved land use action requested within two years of the date of decision (or, within the extension period for the decision if an extension has been authorized) shall be an land use action subject to the provisions of Article 11 of this ordinance.