

# SECTION 11.0500

## TYPE III QUASI-JUDICIAL PROCEDURES

### 11.0500 Type III Quasi-Judicial Procedures

11.0501 General Description

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#### 11.0501 General Description

Type III applications are subject to criteria that require the exercise of discretion and judgment and about which there may be broad public interest. Impacts may be significant and development issues complex. Extensive conditions of approval may be imposed to mitigate impacts or ensure compliance with this code or the Community Development Plan. The Type III procedure provides for a quasi-judicial review of an application by the Hearings Officer, Planning Commission or the Design Commission. The application process includes notice to nearby property owners, and a public hearing before the appropriate decision authority. The following are Type III applications:

- Those identified in this code as Type III applications;
- Those identified in **Table 11.0204** as Type III applications; or
- Those identified by the Manager as Type III applications, based on the guidelines for classification of applications by procedure in **Section 11.0203**.

#### 11.0502 Type III Procedures

- A. Pre-Application Conference, Optional Early Assistance Design Advice and Optional Design Commission Consult
  1. **Table 11.0204** identifies all Type III applications that require a pre-application conference.
  2. Pre-application conference procedures are included in **Section 11.0700**.
  3. Optional Early Assistance Design Advice
    - a. An applicant of a Type III proposal that is to be reviewed by the Design Commission may choose to meet with the Design Commission before the Pre-Application Conference and prior to the formal application submittal for advice on the proposal.
    - b. Optional Early Assistance Design Advice procedures are included in **Section 11.0700**.
  4. Optional Design Commission Consult
    - a. An applicant of a Type III proposal that is to be reviewed by the Design Commission may choose to meet with the Design Commission after the Pre-Application Conference and prior to the formal application submittal for advice on the proposal.
    - b. Optional Design Commission Consult procedures are included in **Section 11.0700**.
- B. Neighborhood Meeting
  1. A neighborhood meeting is required for those Type III applications which require a pre-application conference, as indicated in **Table 11.0204**.
  2. Neighborhood meeting procedures are included in **Section 11.0800**.

- C. Type III Application Requirements
  - 1. Type III applications shall be made on forms provided by the Manager and shall include all of the information required by **Section 11.0900**.
  - 2. Type III applications shall:
    - a. Include the information requested on the application form;
    - b. Include the information requested in a submittal checklist, if any;
    - c. Address the relevant criteria in sufficient detail for review and action; and
    - d. Be accompanied by the required fee.
- D. Type III Public Hearing Schedule. Once the City determines that an application is complete, the City shall schedule a public hearing on a Type III application.
- E. Type III Public Notice
  - 1. The city shall mail notice of Type III plan map amendments to the Department of Land Conservation and Development at least 35 days prior to the first public hearing on the application.
  - 2. At least 20 days prior to the hearing, the city shall mail written notice of the public hearing for all Type III applications to:
    - a. The applicant and/or authorized representative;
    - b. The owner(s) of record of the subject property;
    - c. Any City-recognized neighborhood association whose boundaries include or are within 300 feet of the subject property; and the Presidents and Land Use Chairs of all City-recognized neighborhood associations when the development is proposed in the GBSV District;
    - d. Owners of property located within three hundred (300) feet of the perimeter of the subject property and owners or record within five hundred (500) feet of the perimeter of the subject property when the development is proposed in the GBSV District;
    - e. Affected city departments, and any governmental agency which is entitled to notice under an intergovernmental agreement with the City which includes provision for such notice or is otherwise entitled to such notice. Such departments and agencies may request up to a 15-day extension to their comment period if the application involves unusual circumstances. The department or agency is assumed to have no comments if no comments are received within the specified time period; and
    - f. Tenants of a manufactured home park when a request for a Type III plan map amendment would change the land use designation of the property which includes all or part of the manufactured home park.
  - 3. The mailed notice of public hearing shall include all of the following:
    - a. The name and address of the applicant or the applicant's representative;
    - b. The case file number and nature of the proposed use or development;
    - c. The designation of the decision authority and the date, time, and place of the hearing;
    - d. A description of the subject property reasonably sufficient to inform the public of the location;
    - e. The applicable criteria for the decision, listed by commonly used citation;

- f. A statement that all interested persons may appear and provide testimony and that only those participating at the hearing, or in writing, shall be entitled to appeal;
  - g. A statement that failure to raise an issue at the hearing, in person or by letter, or failure to provide sufficient specificity to enable the decision authority to respond to the issue, precludes an appeal based on that issue;
  - h. The name and telephone number of a city representative to contact for information on the application;
  - i. A statement that copies of the application and all evidence and documents submitted by or on behalf of the applicant are available for review, and copies can be obtained at cost;
  - j. A statement that a copy of the staff report will be available for inspection at no cost at least seven (7) days prior to the hearing, and copies will be provided at reasonable cost; and
  - k. A general explanation of the requirements for submission of testimony and the procedure for conduct of public hearings.
4. The Manager shall cause an affidavit of mailing of notice to be prepared and made a part of the file, which demonstrates the date that the required notice was mailed to the necessary parties.
  5. Notice of the public hearing for a Type III application shall be published in a newspaper of general circulation in the city at least 20 days prior to the scheduled hearing date. An affidavit of publication concerning such notice shall be made part of the administrative record.
  6. At least 20 days prior to the hearing, notice of the hearing shall be posted on the site by the applicant. The Manager shall provide at least one (1) sign and the instructions for posting. The sign shall be posted in a conspicuous place visible from the street. For properties that abut more than one improved street, separate signs shall be posted facing each improved street. The sign shall include the case file number and the telephone number where city staff can be contacted for more information about the application. An affidavit of posting shall be submitted by the applicant and made part of the administrative record.
- F.** Type III Decision Authority. **Table 11.0204** identifies the decision authority for each Type III land use application.
- G.** Type III Notice of Decision
1. A written decision in the form of a land use order shall be prepared regarding the Type III application within approximately 60 days from the date the application is deemed complete unless the applicant chooses to extend the application. For Design District applications to be reviewed and decided upon by the Design Commission, the applicant may choose to request a continuance of the hearing in order to make the requested modifications to the application. In this circumstance, the applicant shall return to the Design Commission at a later date for a final decision. The land use order shall include:
    - a. A listing of the applicable approval criteria by code section number;
    - b. A statement or summary of the facts upon which the decision authority relied to find the application does or does not comply with each applicable approval criterion and to justify any conditions of approval. The decision authority may adopt or incorporate a staff report or written findings prepared by any party to the proceeding into the land use order to satisfy this requirement;

- c. A statement of conclusions based on the facts and findings; and
  - d. A decision to deny or to approve the application and, if approved, any conditions of approval necessary to ensure compliance with applicable criteria.
- 2. Within approximately seven (7) days from the date that the decision authority adopts a land use order, a notice of decision shall be sent by mail to:
  - a. The applicant and/or authorized representative;
  - b. The owner(s) of record of the subject property;
  - c. Any governmental agency which is entitled to notice under an intergovernmental agreement with the city which includes provision for such notice or is otherwise entitled to such notice; and
  - d. Any group or participant who submitted oral or written public testimony for the hearing or requested notice of the decision.
- 3. The notice shall contain:
  - a. A brief summary of the decision, and conditions of approval, if any, and the case file number;
  - b. A description of the subject property reasonably sufficient to inform the public or its location; and
  - c. A statement that the decision is final, unless appealed or called up for review by City Council as described in 11.1106(F) within twelve (12) calendar days of the notice of decision, or, in the case of weekends and holidays, by the end of the next business day. The notice shall state in boldface type the date and time by which an appeal must be filed. The statement shall describe the requirements for filing an appeal of the decision. The statement shall note that only those persons who made an appearance on the record are entitled to appeal the decision.

**H. Appeal of a Type III Decision**

- 1. The decision of the Hearings Officer, Planning Commission, or Design Commission in a Type III action may be appealed to the appeal authority identified in **Table 11.0204**. Only the applicant or persons who submitted comments or made an appearance on the record at the public hearing before the Hearings Officer, Planning Commission, or Design Commission have standing to appeal a Type III decision. Additionally, the City Council may initiate review of a Type III Decision made by the designated “Decision Authority” as indicated in Table 11.0204, as provided in Section 11.1106.F.
- 2. Appeal requirements and procedures are outlined in **Section 11.1100**.
- 3. The appeal authority decision shall be the final local decision on all appeals of Type III quasi-judicial decisions from the Planning Commission, Hearings Officer or Design Commission. Any further appeal shall be to the Land Use Board of Appeals (LUBA).