

# SECTION 11.0600

## TYPE IV LEGISLATIVE PROCEDURES

### 11.0600 Type IV Legislative Procedures

11.0601 General Description

11.0602 Type IV Procedures

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#### 11.0601 General Description

Type IV applications are legislative and typically involve the adoption, implementation or amendment of policy by ordinance. These include amendments to the text of the Gresham Community Development Plan. Large scale changes in planning and development maps also may be characterized as legislative where a larger number of property owners are directly affected. The Type IV process includes public hearing before a recommendation authority like the Planning Commission or Design Commission, which forwards a recommendation to the City Council. The City Council holds a public hearing before making a final decision. The following are Type IV applications:

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

#### 11.0602 Type IV Procedures

- A. Pre-Application Conference. A pre-application conference is not required for Type IV legislative applications.
- B. Neighborhood Meeting. A neighborhood meeting is not required for Type IV legislative applications. However, the city may schedule general neighborhood or public meetings to provide information on the Type IV legislative application in advance of the formal notice and public hearing process.
- C. Application Initiation
  1. The City Council may initiate a Type IV legislative application to amend the text of the Gresham Community Development Plan or Code by motion.
  2. A property owner or their authorized representative may initiate a Type IV legislative application that does not involve a text amendment.
- D. Type IV Public Notice
  1. For Comprehensive Plan Amendments, the public notice is as follows:
    - a. A Type IV proposal to amend the Community Development Plan or Code or to adopt a new land use regulation shall be submitted to the Manager of the Department of Land Conservation and Development (DLCD) along with appropriate forms at least 35 days prior to the initial evidentiary hearing on adoption. Notice to DLCD is not required when the city determines that the goals do not apply to a particular proposed amendment or new regulation. Notice shall be given to 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.

- b.** Not more than forty (40) nor less than twenty (20) days before the initial evidentiary hearing on the Type IV proposal, the Manager shall mail notice to owners of property within the city for which the proposed ordinance, if adopted, may in the Manager’s opinion affect the permissible uses of land. The notice of the initial evidentiary hearing for a Type IV procedure shall include at least the following information:

    - 1.** If required by ORS 227.186, a statement in bold type across the top of the first page of the notice that reads as follows: “This is to notify you that the City shall consider a proposed land use regulation that may affect the permissible uses of your land”;
    - 2.** The date, time, and location of the hearing;
    - 3.** The nature and purpose of the hearing;
    - 4.** The casefile number or title of the proposed ordinance to be considered at the hearing;
    - 5.** A listing of the applicable approval criteria by Community Development Plan and/or Code section numbers;
    - 6.** A statement that a copy of the staff report will be available for inspection at no cost at least seven (7) days before the hearing, and a copy will be provided at reasonable cost, and the name and telephone number of a city representative to contact about the ordinance;
    - 7.** A statement that failure to raise an issue in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision making authority an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals on that issue;
    - 8.** Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings; and
    - 9.** If applicable, a statement that the ordinance is a result of an order of the Land Conservation and Development Commission or Metro.
  - c.** At least ten (10) days before the initial hearing in a Type IV procedure, the Manager shall:

    - 1.** Publish in a newspaper of general circulation in the City of Gresham a summary of the hearing notice, including the date, time, and location of the hearing and the number and nature of the ordinance to be considered; and
    - 2.** Make copies of the hearing notice available in City Hall.
- 2.** For all other Type IV applications, such as vacations and historic resource designations, the public notice is as follows:

    - a.** At least 20 days prior to the hearing, the city shall mail written notice of the public hearing to:

      - 1.** The applicant and/or authorized representative;

2. The owner(s) of record of the subject property;
  3. Any City-recognized neighborhood association whose boundaries include or are within 300 feet of the subject property;
  4. Owners of property located within three hundred (300) feet of the perimeter of the subject property;
  5. 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.
- b.** The mailed notice of public hearing shall include all of the following:
1. The name and address of the applicant or the applicant's representative;
  2. The case file number and nature of the proposed use or development;
  3. The designation of the review authority and the date, time, and place of the hearing;
  4. A description of the subject property reasonably sufficient to inform the public of the location;
  5. The applicable criteria for the decision, listed by commonly used citation;
  6. 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;
  7. 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 review authority to respond to the issue, precludes an appeal based on that issue;
  8. The name and telephone number of a city representative to contact for additional information;
  9. 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;
  10. 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
  11. A general explanation of the requirements for submission of testimony and the procedure for conduct of public hearings.
- c.** 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.
- d.** Notice of the public hearing 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.

- e. 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 of the city representative to contact about the application. An affidavit of posting shall be submitted by the applicant and made part of the administrative record.

**E. Type IV Decision Authority**

- 1. The recommendation authority shall conduct the initial evidentiary hearing and provide a recommendation to the City Council for all Type IV proposals. The recommendation authority may recommend that the City Council reject or adopt the ordinance with or without certain changes, conditions or both, together with a written justification for the recommendation.
- 2. At least ten (10) days before the City Council consideration of the Type IV proposal, the Manager shall publish in a newspaper of general circulation in the City of Gresham a summary of the hearing notice, including the date, time, and location of the hearing and the number and nature of the ordinance to be considered.
- 3. At the conclusion of the City Council consideration of the Type IV proposal, the Council shall take one of the following actions:
  - a. Continue the matter to a date, time, and location certain;
  - b. Remand the matter back to the recommendation authority for additional deliberation;
  - c. Approve the proposal, with or without certain changes. The City Attorney shall prepare the ordinance with written findings which demonstrate that adoption will comply with applicable approval criteria; or
  - d. Reject the proposed ordinance.
- 4. The City Council shall adopt or approve written findings which demonstrate that adoption of the proposed ordinance will or will not comply with applicable approval criteria.

**F. Type IV Notice of Decision**

- 1. Not more than twenty (20) days after the date of the adoption or rejection of an ordinance subject to Type IV procedures, the Manager shall mail or otherwise submit notice to the Department of Land Conservation and Development (DLCD) on forms provided for such notice.
- 2. Not more than seven (7) days after the date of the adoption or rejection of an ordinance, the Manager shall mail or otherwise submit notice to persons who testified orally or in writing to the recommendation authority or City Council while the public record was open regarding the proposed ordinance. The notice shall include at least the following information:
  - a. A brief summary of the ordinance;
  - b. The date of the decision on the ordinance;
  - c. The place where and the time when the ordinance and related findings may be reviewed; and
  - d. A summary of the requirements for appealing the City Council decision to LUBA.

- G. Appeal of a Type IV Decision. The final decision of the City Council on a Type IV ordinance may be appealed to the Land Use Board of Appeals (LUBA).