

ARTICLE 11 PROCEDURES

SECTION 11.0100

DEVELOPMENT PERMIT REQUIREMENTS

11.0100 Development Permit Requirements

- 11.0101 Development Permit Required
- 11.0102 Exclusions from Development Permit
- 11.0103 Issuance and Effective Date of Development Permit
- 11.0104 Development Permit Conditions of Approval and Modifications of Approvals
- 11.0105 Expiration of Development Permit
- 11.0106 Extension of Development Permit
- 11.0107 Application for Staff Interpretation
- 11.0108 Modifications to Approved DR-E Applications

11.0100 Development Permit Requirements

11.0101 Development Permit Required

- A. Except as excluded by **Section 11.0102**, no person may engage in or cause a development to occur, as defined in **Section 3.0103**, without first obtaining a Development Permit through the procedures set forth in this code.
- B. A building permit shall constitute a Development Permit, and all use of the property and construction done under a valid building permit shall comply with all requirements of this code.
- C. The Manager shall not issue a Development Permit that does not meet the minimum requirements of this code. The Manager shall not issue a Development Permit if the subject land was divided or otherwise developed in violation of this code, regardless of whether the permit applicant or its predecessor created the violation, unless the violation can be rectified as part of the development.

11.0102 Exclusions from Development Permit

The following activities do not require a Development Permit except as noted.

- A. Landscaping not involving a structure. Landscaping does not include the paving of a parking lot. Landscaping in the Habitat Conservation Area Overlay District may require a development permit, as described in **Section 5.0400**.
- B. An internal change to a building or other structure that does not substantially affect the use of the building or structure or a sign that does not require design review approval;
- C. An emergency measure necessary for the immediate safety of persons or protection of property. An application for a Development Permit shall be filed promptly if the action otherwise would require a Development Permit but for the emergency;

D. The following activities do not require a Development Permit, except in the Habitat Conservation Area Overlay District.

1. Erection of a tent or similar portable structure for non-commercial use not exceeding 10 days.
2. Expansion or continuation of an existing farming operation.
3. An alteration that does not substantially affect the use or appearance of land or a structure.
4. A helicopter landing facility when established for the support of an emergency in progress or when established for the occasional demonstration and/or training of emergency service operations.
5. A modular unit or trailer used as a construction office on a job site during construction activities that is removed before final occupancy is approved for the project.
6. Commercial structures of under 200 square feet not visible from a public place.

E. The following activities do not require a Development Permit, except in the Habitat Conservation Area, Floodplain, Hillside Physical Constraint Overlay District, Environmentally Sensitive/Restoration Area – Pleasant Valley (ESRA-PV), and Environmentally Sensitive Resource Area – Springwater (ESRA-SW):

1. The establishment, construction, maintenance, or termination of minor basic utilities and the following authorized public facilities: public streets, public sidewalks, sanitary sewers, storm sewers, water lines, electrical power and gas lines, communication and data lines, and telephone and television cable lines; and public paths and trails which are identified in the Gresham Community Development Plan as a transportation facility, constructed by a public agency, and are within a public right-of-way or a public access easement.
2. Construction, maintenance, or demolition of an accessory structure that does not require a building permit.
3. Excavation or filling of land not exceeding 50 cubic yards within any 1 year period and the following activities:
 - a. Excavations below finish grade for basements and footings of a building, retaining walls
 - b. Cemetery graves
 - c. Excavations for wells, tunnels, or utilities
 - d. Exploratory excavations under the direction of a soils engineer or engineering geologist
 - e. An excavation which is less than 2 feet in depth or which does not create a cut slope greater than 5 feet in height and steeper than 2 horizontal to 1 vertical
 - f. A fill less than 1 foot in depth, and placed on natural terrain with a slope flatter than 5 horizontal to 1 vertical; or less than 3 feet in depth, not to exceed 50 cubic yards on any one lot and does not obstruct a drainage course
 - g. Grading for a parcel that conforms to an approved grading plan

F. Wireless Communication Facilities located in the public rights-of-way under the jurisdiction or control of the City of Gresham.

- G.** The following activities do not require a Planning Development Permit but will require a Building Permit:
 - 1.** Roof-top solar energy systems where the system meets the following:
 - a.** Is installed on the roof of a residential, commercial/mixed-use or industrial structure; and
 - b.** Does not exceed the peak height of the portion of the roof on which it is installed; and
 - c.** Does not increase the footprint of the residential, commercial/mixed-use or industrial structure; and
 - d.** Is installed parallel to the slope of the roof; and
 - e.** Is not listed in the exceptions of **Section 11.0102.H.**
- H.** There are conditions under which certain roof-top solar energy systems may require both a Building Permit and a Planning Development Permit. Exceptions to the roof-top solar energy system exclusions of **Section 11.0102.G.1** include any solar energy system which is:
 - 1.** Located on a federally or locally designated historic building or landmark; or
 - 2.** Located in a federally or locally designated historic district; or
 - 3.** Located on a conservation landmark designated by the city or county because of the historic, cultural, archeological or similar merit of the landmark; or
 - 4.** Located within the boundaries of a locally established conservation district; or
 - 5.** Installed on a frame structure and is not generally parallel to the roof or is more than 18” off the roof of the building on which it is installed.

11.0103 Issuance and Effective Date of Development Permit

- A.** A development permit becomes effective on the day after the appeal period expires or, if appealed, final and effective upon a decision by the final appeal body.
- B.** Every Development Permit shall be specific as to the approval granted or development authorized. It shall be subject to the standards and conditions set forth in this code, excepting only those variances or exceptions authorized by the decision authority, together with any conditions imposed by the decision authority.

11.0104 Development Permit Conditions of Approval and Modifications of Approvals

- A.** Imposition of Conditions. The decision authority may impose conditions on any development permit. Such conditions shall be designed to ensure the Development Code requirements are met, protect the public from potential adverse impacts of the proposed use or development or to fulfill an identified need for public services within the impact area of the proposed development.

In addition to conditions imposed above, a condition is valid and enforceable when the applicant:

- 1.** Requested the condition;
- 2.** Consented to the condition in writing or on the record; or
- 3.** Allowed the decision to become final.

- B.** Assurance of Compliance with Conditions. A bond, cash deposit or other security acceptable to the decision authority may be required from the applicant in an amount sufficient to ensure compliance with a condition of approval. Such security shall be posted prior to the issuance of the appropriate construction permit.
- C.** Modification of Approvals and Conditions. Except for modifications to approved DR-E applications which are described in Section 11.0108, modification of conditions of approval may be sought on appeal or as a new development permit. The level of review for the modification shall be the same as the review level for the applicable component of the application unless noted otherwise in the Code. Modification of conditions of approval shall only be granted if the decision authority determines that:

 - 1.** The condition(s) could not be implemented for reasons beyond reasonable control of the permit holder and the modification will not require a significant modification of the original decision; or
 - 2.** The circumstances have changed to the extent that the condition(s) is no longer needed or warranted; or
 - 3.** The different condition(s) would better accomplish the purpose of the original condition.

11.0105 Expiration of Development Permit

- A.** Unless a different expiration date is specifically provided in the Development Code, a Development Permit shall expire automatically one (1) year from the effective date unless one of the following occurs first:

 - 1.** For design review permits except for phased design reviews as provided in **Section 7.0004** of the Development Code, a structural or grading permit for each proposed structure has been submitted to the City and is active or in review.
 - 2.** For tentative land division plans, except for phased plans as provided in **Section 6.0211** of the Development Code, a final plat or map application has been submitted to the City.
 - 3.** For final land division plats or final survey maps, a final plat or final survey map is signed by the Manager pursuant to **Section 6.0403(C)** of the Development Code within one year of the submittal of the final land division plat or final survey map.
 - 4.** For final land division plats or final survey maps signed by the Manager, final land division plats or final survey maps must be recorded within one year of signature.
 - 5.** For all development permits, an application for an extension is filed and granted pursuant to **Section 11.0106**.
- B.** Upon final approval by the city of a Development Permit, if the permit is appealed beyond the local level, the one-year permit period shall be tolled until a decision by a review authority with final jurisdiction is made that is not appealed.

11.0106 Extension of Development Permit

- A.** Except as noted in **Section 11.0106(B)**, if an extension is desired, the holder of the Development Permit must file an application for an extension prior to the expiration of the Development Permit. Unless approved, an extension request does not extend the expiration date. Extension requests shall be processed as a Type I action. An extension may be granted for one (1) year from the original date of expiration unless noted otherwise in the Development Code.

Extensions shall be granted only upon findings that:

1. Commencement of development could not practically occur for reasons beyond control of the permit holder;
 2. The request for extension is not sought for purposes of avoiding any responsibility imposed by this code or the Development Permit;
 3. There has been no change in the Development Code since approval of the Development Permit that would require significant modification of the Development Permit or conditions of approval; and
 4. There has been no change of the Plan Map designation of the property since approval of the development permit that would prevent approval under the plan map designation in effect at the time of the extension request.
- B.** A holder of a Development Permit for a tentative land division plan or for a single-family attached design review approval associated with a tentative land division plan may file an application for an extension of the permit prior to its expiration. Unless approved, an extension request does not extend the expiration date. Extension requests shall be processed as a Type I procedure. Extensions may be granted for one (1) year periods. Phased subdivisions, as described in **Section 6.0211**, shall follow **Section 11.0106(A)**.

Extensions shall be granted only upon findings that:

1. The request for extension is not sought for purposes of avoiding any responsibility imposed by this code or the Development Permit;
2. There has been no change in the Development Code since approval of the Development Permit that would require significant modification of the Development Permit or conditions of approval;
3. There has been no change that would alter the need for public facilities; and
4. There has been no change of the Plan Map designation of the property since approval of the Development Permit that would prevent approval under the Plan Map designation in effect at the time of the extension request.

11.0107 Application for Staff Interpretation

An application for staff interpretation shall follow the Type II procedure per **Section 11.0400**, including the opportunity for appeal. A staff interpretation is not binding upon the Hearings Officer, Design Commission, Planning Commission or City Council. Only the City Council has the ultimate authority to interpret the Gresham Community Development Code.

- A. Application.** In addition to any other requirements established by the Manager for the application, the following shall be provided by the applicant:
1. The applicant shall identify the specific section(s) of the Gresham Community Development Code for which the applicant is seeking Interpretation.
 2. The applicant may submit an assumed set of hypothetical facts that can be used to inform the application. Any interpretation decision that utilizes an assumed set of hypothetical facts will not determine the truth or falsity of such facts and such facts shall not be subject to any substantial evidence in the record determination. Factual determinations will not be made in an Application for Staff Interpretation. Such factual determinations are left to any later proceedings where a specific application is made for a development permit or application.

- B. Criteria for Staff Interpretation.** The criteria for staff interpretation are:
1. The Interpretation is consistent with the context of the applicable Gresham Community Development Plan, including, particularly, the land use district in which the use is proposed, if applicable.
 2. The Interpretation is consistent with the text of the applicable Gresham Community Development Code provisions. In interpreting the section or sections, the Gresham Community Development Code **Section 3.0100** shall apply.
 3. The Interpretation is consistent with the legislative intent of the section and for the words or phrases at issue. The intent is based on the legislative record for the ordinance that adopted or amended the section or sections at issue as well as any related sections.
 4. The Interpretation will not vary or modify any clear and unambiguous language of the section or sections at issue in the Gresham Community Development Code.
 5. The Interpretation is consistent with the stated purpose of the land use district or other purpose or intent statement or general provision applicable to the section or sections at issue, if available.

11.0108 Modifications to Approved DR-E Applications

Proposed modifications to approved DR-E applications will be reviewed as follows:

- A. Modifications not necessitating changes to Design Standards, Design Guidelines, conditions of approval or specific discretionary guidelines discussed as part of the DR-E approval may be modified by staff as part of the Building Permit review.
- B. Modifications necessitating changes to Design Standards, Design Guidelines, conditions of approval or specific discretionary standards discussed as part of the DR-E review will be reviewed and decided upon by the Design Commission. Written notice of the Design Commission meeting will be provided to all parties of record 20 days prior to the meeting at which the Design Commission will consider these changes.

SECTION 11.0200

INITIATION AND CLASSIFICATION OF APPLICATIONS

11.0200 Initiation and Classification of Applications

- 11.0201 Initiation of Application
- 11.0202 Withdrawal of Application
- 11.0203 Classification of Applications by Procedure
- 11.0204 Review Authorities

11.0200 Initiation and Classification of Applications

11.0201 Initiation of an Application

- A. An application subject to a Type I, II, III or IV procedure may be initiated by:
 - 1. The owner of the subject property, or any person authorized in writing to act as agent of the owner; or
 - 2. The City Council.
- B. Only the City Council may initiate a Type IV legislative application to amend the text or map of the Gresham Community Development Plan or Code.

11.0202 Withdrawal of an Application

- A. An applicant may withdraw an application before it is deemed complete or may withdraw an application previously deemed complete at any time prior to adoption of a final city decision if the Manager determines that:
 - 1. The owner or authorized agent request in writing to withdraw the application; and
 - 2. No violation of this code has been identified on the subject property, or processing of the application would not correct the identified violation.
- B. The Manager may withdraw any city initiated application at any time.
- C. If an application is withdrawn after public notice of a hearing has been mailed, the Manager shall send written notice stating the application has been withdrawn to all persons who were provided mailed notice of the application or public hearing. This provision shall not apply to Type IV legislative applications that require city-wide mailed notice.

11.0203 Classification of Applications by Procedure

- A. Procedure Types. An application shall be subject to the procedure type specified in the code. **Table 11.0204** identifies the procedure type for the majority of the land use applications described in this code. If the code does not specify a procedure type for a given application and another procedure is not required by law, the Manager shall determine the appropriate procedure based on the following guidelines:
 - 1. Type I procedures apply to ministerial permits and applications based on clear and objective approval criteria or criteria that require the exercise of professional judgment only about technical issues.

2. Type II procedures apply to administrative permits and applications based on approval criteria that are reasonably objective, requiring only limited discretion.
3. Type III procedures apply to quasi-judicial permits and applications based on approval criteria that require the exercise of discretion and judgment and about which there may be broad public interest.
4. Type IV procedures are legislative and typically involve the adoption, implementation or amendment of policy by ordinance. The Type IV procedure generally applies to a relatively large geographic area containing many property owners.

B. Determination of Proper Procedure Type and Concurrent Reviews

1. The Manager shall determine whether a permit or application is categorized as Type I, II, III or IV in accordance with the guidelines set forth above. Questions as to the appropriate procedure shall be resolved in favor of the procedure type providing the greatest notice and opportunity to participate.
2. An application that involves two or more procedures may be processed collectively under the highest numbered procedure required for any part of the application or processed individually or concurrently under the procedures identified by the code, with the reviews ordered from highest level of review to lowest level of review. When a new or revised Future Street Plan is done concurrently with a Design Review Type E, it must be done as a Type II with a Manager’s decision.
3. The applicant may determine whether the application will be processed collectively or individually, with the exception of single family attached dwellings which require a combined (concurrent) review consisting of design review and land division and with the exception of a new or revised Future Street Plan, done concurrently with a Design Review Type E, which shall be done as a Type II.
4. In the event that the completed applications that are processed collectively involve applications where the decision making authority is a combination of the Manager, the Hearings Officer, Design Commission or Planning Commission, the decision making authority will be the highest decision authority assigned by **Table 11.0204**.
5. Notwithstanding any other provision, and, upon payment of the proper fee, an applicant may choose to have the proposal processed under a procedure type (except Type IV) which provides greater notice and opportunity to participate than would otherwise be required and with the exception of a new or revised Future Street Plan, done concurrently with a Design Review Type E, which must be done as a Type II.

11.0204 Review Authorities

- A. Purpose.** Review authorities are established to make recommendations and decisions on land use applications and to recommend land use policy to the City Council. The review authorities provide an opportunity for citizen involvement and provide expertise for specialized topic areas. Review authorities that make quasi-judicial decisions do so under authority delegated by the City Council.

The review authorities identified in **Table 11.0204** are empowered to perform the powers and duties as assigned in Chapter 2 of the Gresham Revised Code.

Table 11.0204

Land Use Applications and Review Authorities

R = Recommendation D = Decision Authority A = Appeal Authority

Code Citation	Application	Pre-app required?	Type	Manager	Hearings Officer	Urban Forestry Comm.	Historic Resources Committee	Design Commission	Planning Commission	City Council
RESIDENTIAL										
10.0100	Accessory Dwelling Units	N	II	D	A					
10.0300	Ancillary Dwelling Units	N	I	D	A					
10.0410	Conversion of Elderly Housing	Y	II	D	A					
10.0400	Conversion of Residential Units	N	II	D	A					
10.0502	Home Occupation	N	I	D	A					
10.0502	Home Occupation	N	II	D	A					
10.1300	Health Hardship Dwelling Unit	N	I	D	A					
4.0135	Single Family Dwelling/Duplex on a Lot	N	I	D	A					
LOTS AND PARCELS (6.0000)										
6.0020	Condominium Creation	Y	II	D	A					
6.0020	Condominium - Final Plat	N	I	D	A					
6.0200	Partition	Y	II	D	A					
6.0300	Planned Developments	Y	III		D				A	
6.0100	Property Line Adjustments and Lot Consolidations	N	I	D	A					
6.0200	Subdivision - Preliminary	Y	II	D	A					
6.0001	Land Division - Final Plat	N	I	D	A					
6.0410	Extension of land use decision	N	I	D	A					

Table 11.0204

Land Use Applications and Review Authorities

R = Recommendation D = Decision Authority A = Appeal Authority

Code Citation	Application	Pre-app required?	Type	Manager	Hearings Officer	Urban Forestry Comm.	Historic Resources Committee	Design Commission	Planning Commission	City Council
OVERLAY DISTRICTS (5.0000 and A4.000)										
5.0000	Special Purpose District Boundary Revisions	Y	III		D				A	
5.0300	Historic Landmarks									
5.0327	Removal from List	Y	II	D	A		R			
5.0322	Demolition of Historic Landmark	Y	III		D		R	A		
5.0321	Alteration of Historic Landmark	N	III		D		R	A		
5.0326	Addition to list	N	IV				R			D
5.0400	Habitat Conservation Area									
5.0411, 5.0412	Development in HCA	Y	II	D	A					
5.0413	Minor HCA Variance (5.0413.D or 5.0413.E)	Y	II	D	A					
5.0413	Major HCA Variance (5.0413.D or 5.0413.E)	Y	III		D					A
5.0414	City-initiated modification/correction of HCA map	N	I	D	A					
5.0414	Applicant-initiated modification/correction of HCA map	Y	II	D	A					
5.0500	Open Space									

[11.02]4

Table 11.0204

Land Use Applications and Review Authorities

R = Recommendation D = Decision Authority A = Appeal Authority

Code Citation	Application	Pre-app required?	Type	Manager	Hearings Officer	Urban Forestry Comm.	Historic Resources Committee	Design Commission	Planning Commission	City Council
5.0500	Open Space Dedication, in Open Space or Natural Resource Site	N	I	D	A					
5.0500	Open Space Dedication in other areas	N	II	D	A					
5.0100	Floodplain Development Permit	Y	II	D	A					
5.0100	Floodplain Development Permit (if restoration)	N	I	D	A					
RENEWABLE ENERGY SYSTEMS										
10.0910	<u>Solar Energy Systems</u>									
	Small (Scale) Solar Energy System	N	I	D	A					
	Medium (Scale) Solar Energy System	N	I	D	A					
	Large (Scale) Solar Energy System	Y	II	D	A					
10.0920	<u>Wind Energy Systems</u>									
	Small (Scale) Wind Energy System	Y	II	D	A					
	Medium (Scale) Wind Energy System	Y	II	D	A					
	Large (Scale) Wind Energy System	Y	III		D				A	
10.0930	<u>Biomass Energy Systems</u>									
	Small (Scale) Biomass Energy System	N	I	D	A					
	Large (Scale) Biomass Energy System	Y	II	D	A					
10.0940	<u>Geothermal Energy Systems</u>									
	Small (Scale) Geothermal Energy System	N	I	D	A					
	Large (Scale) Geothermal Energy System	Y	II	D	A					

Table 11.0204

Land Use Applications and Review Authorities

R = Recommendation D = Decision Authority A = Appeal Authority

Code Citation	Application	Pre-app required?	Type	Manager	Hearings Officer	Urban Forestry Comm.	Historic Resources Committee	Design Commission	Planning Commission	City Council
10.0950	<u>Micro-Hydro Energy Systems</u>									
	Small (Scale) Micro-Hydro Energy System	Y	II	D	A					
	EV Charging Unit ¹ ¹ Building permit only is required	N	I	D	A					
MODIFICATIONS AND VARIANCES										
10.1520	Adjustment to Regulations	N	II	D	A					
11.0107	Application for Staff Interpretation	N	II	D	A					
3.0206	Determination of Similar Use	N	II	D	A					
10.1530	Major Variance***	Y	III		D					A
10.1510	Minor Variance	N	II	D	A					
11.0104	Modification of Conditions****	N	*							
10.1521	Modification of Regulations	N	II	D	A					
9.0110	Alternative Buffers	N	II	D	A					
7.0212	Solid Waste Collection Standard exception	N	II	D	A					
TREES (9.1000)										
	Tree removal of:									
9.1000	Hazard Trees	N	I	D	A					
9.1000	Hazard Trees in Overlays and Significant Trees	N	II	D	A					
9.1000	Imminent Hazard Trees	N	I	D	A					

[11.02]6

(09/17)

Table 11.0204

Land Use Applications and Review Authorities

R = Recommendation D = Decision Authority A = Appeal Authority

Code Citation	Application	Pre-app required?	Type	Manager	Hearings Officer	Urban Forestry Comm.	Historic Resources Committee	Design Commission	Planning Commission	City Council
	Tree removal <u>during development</u> for all uses:									
9.1000	Removal of Regulated Trees in excess of the number exempt from a permit and Significant Trees	N	II	D	A					
9.1000	Removal of 3 or fewer Regulated Trees in certain overlay districts	N	I	D	A					
9.1000	Removal of other Regulated Trees in certain overlay districts	N	II	D	A					
	Tree removal <u>post development</u> for all uses and land designated for those uses:									
9.1000	Tree Removal of Regulated Trees in excess of the number exempt from a permit and Significant Trees	N	II	D	A					
9.1000	Removal of Required Trees; and 3 or fewer non-native or invasive Regulated Trees In certain overlay districts	N	I	D	A					
9.1000	Removal of other Regulated Trees in certain overlay districts	N	II	D	A					
9.1000	Significant Tree Designation	N	II	D	A	R				
9.1000	Significant Tree Designation Removal	N	II	D	A	R				

[11.02]-7

Table 11.0204

Land Use Applications and Review Authorities

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Code Citation	Application	Pre-app required?	Type	Manager	Hearings Officer	Urban Forestry Comm.	Historic Resources Committee	Design Commission	Planning Commission	City Council
DESIGN REVIEW (7.0000)										
7.0003	Design Review A	N	I	D	A					
7.0003	Design Review B	N	I	D	A					
7.0003	Design Review C	N	II	D	A					
7.0003	Design Review D, Non-Design District	Y	II	D	A					
7.0003	Design Review D, Design District	Y	II	D				A		
7.0003	Design Review D, Design District, Exempt from Design Standards and Guidelines	Y	II	D	A					
7.0003	Design Review E, Design District	Y	III					D		A
SPECIAL USE REVIEW (8.0100)										
8.0110	Special Use Review II	Y	II	D	A					
8.0140	Special Use Review III**	Y	III		D				A	
	Design District	Y	III					D		A
NON-CONFORMING USES (8.0200)										
8.0250	Establishment	N	I	D	A					
8.0220	Replacement	N	I, II	D	A					
8.0200	Expansion	Y	II	D	A					

[11.02]8

Table 11.0204

Land Use Applications and Review Authorities

R = Recommendation D = Decision Authority A = Appeal Authority

Code Citation	Application	Pre-app required?	Type	Manager	Hearings Officer	Urban Forestry Comm.	Historic Resources Committee	Design Commission	Planning Commission	City Council
INSTITUTIONAL MASTER PLANS (8.0300)										
8.0303	Institutional Master Plan	Y	III						D	A
8.0303	Institutional Master Plan Final	N	I	D					A	
8.0303	Institutional Master Plans Modifications	Y	III						D	A
8.0303	Institutional Master Plans Limited Review	Y	II	D					A	
TEMPORARY, INTERMITTENT AND INTERIM USES (10.1400) AND FOOD AND BEVERAGE CARTS (10.1600)										
10.1400	Temporary or Intermittent Use Permit	N	I	D	A					
10.1400 10.1600	Interim Use or Food and Beverage Cart Permit									
10.1400 10.1600	Applications for replacement Agricultural Product Sales; Commercial Stands, Long Term; or Food and Beverage Carts at sites previously approved for that purpose	N	I	D	A					
10.1400 10.1600	All reviews for Other Interim Uses Initial review for new sites for Agricultural Product Sales; Commercial Stands, Long Term; or Food and Beverage Carts or for sites where the number of Interim Uses or Food and Beverage Carts is proposed to exceed that previously approved	N	II	D	A					

[11.02]9

Table 11.0204

Land Use Applications and Review Authorities

R = Recommendation D = Decision Authority A = Appeal Authority

Code Citation	Application	Pre-app required?	Type	Manager	Hearings Officer	Urban Forestry Comm.	Historic Resources Committee	Design Commission	Planning Commission	City Council
TRANSPORTATION										
9.0700	Future Street Plans									
9.0700	New or revised, in conjunction with a land division and/or design review	Y	II	D	A					
9.0700	New or revised future street plan, independent of other land use review	Y	III		D					A
9.0700	Revision in conjunction with the Community Development Plan	N	IV						R	D
A13.000	Street Name Change	N	IV						R	D
OTHER										
11.0106	Extension of land use approval	N	I	D	A					
A1.0000	Annexation	Y	IV							D
12.0000	Code or Plan Map Amendment									
12.0000	One parcel or small group of parcels	Y	III						R	D
12.0000	Conditioned	Y	III						R	D
12.0000	Large area/multiple ownerships	N	IV						R	D
11.0206	Code or Plan Text Amendment	N	IV						R	D
4.1470-4.1486, 4.1530-4.1535	Master Plans	Y	III						D	A

[11.02]-10

Table 11.0204

Land Use Applications and Review Authorities

R = Recommendation D = Decision Authority A = Appeal Authority

Code Citation	Application	Pre-app required?	Type	Manager	Hearings Officer	Urban Forestry Comm.	Historic Resources Committee	Design Commission	Planning Commission	City Council
A6.010	Sign Permit (Design Commission review if sign is part of a project requiring Commission review)	N	I	D	A			R		
A7.000	Vacations	Y	IV						R	D
4.1432, 4.1452, 4.1572 & 4.1592	ESRA Modification		II	D	A					
10.0700	Resource Utilization Permit	Y	III		D					A
	Miscellaneous Type I	N	I	D	A					
	Miscellaneous Type II	N	II	D	A					
	Miscellaneous Type III	Y	III		D					A
*	Level of review for modification shall be the same level of review as for the component of the application for which the modification is sought, unless specified otherwise.									
**	Unless noted in Section 8.0100 that the Planning Commission is the decision authority. In that case, the City Council is the appeal authority.									
***	All variances to height in the GBSV District are Major Variances. The decision authority is the Planning Commission, with appeals heard by the City Council.									
****	Modifications to DR-E application approvals are governed by the provisions of Section 11.0108.									

SECTION 11.0300

TYPE I MINISTERIAL PROCEDURES

11.0300 Type I Ministerial Procedures

11.0301 General Description

11.0302 Type I Procedures

11.0300 Type I Ministerial Procedures

11.0301 General Description

Type I applications involve permitted uses or development governed by clear and objective approval criteria or criteria that require the exercise of professional judgment only about technical issues. The Type I procedure provides for a ministerial review of an application by the Manager and does not include public notice.

The following are Type I applications:

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

11.0302 Type I Procedures

- A. Pre-Application Conference. A pre-application conference is not required for Type I applications.
- B. Neighborhood Meeting. A neighborhood meeting is not required for Type I applications.
- C. Type I Application Requirements
 1. Type I applications shall be made on forms provided by the Manager and shall include all of the information required by **Section 11.0900**.
 2. Type I 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.
 3. Type I applications are subject to completeness review procedures set forth in **Section 11.0903**.
- D. Type I Public Notice. A public notice is not required for Type I applications.
- E. Type I Decision Authority.
 1. The decision authority for all Type I applications shall be the Manager.
 2. The Manager shall approve, approve with conditions, or deny an application subject to a Type I procedure within approximately 45 days after the application was determined to be complete.

- F.** Type I Notice of Decision. Written notice of the decision for Type I applications shall be mailed to the applicant and property owner of record and shall include the following information:
1. A brief summary of proposal and the application which is the subject of the decision;
 2. A description of the site reasonably sufficient to inform the reader of its location, including site address, if available, map and tax lot number, and site zoning;
 3. A statement of the facts upon which the Manager relied to determine whether the application satisfied or failed to satisfy each applicable approval criterion;
 4. The decision to approve or deny the application, and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria; and
 5. A statement that the decision is final, unless a Notice of Appeal is filed within twelve (12) days of the notice of decision. 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.
- G.** Appeal of a Type I Decision
1. The applicant may appeal a Type I decision by filing a Notice of Appeal within 12 days of the date the Notice of Decision was mailed. Appeal authorities are identified in **Table 11.0204**.
 2. Appeal requirements and procedures are outlined in **Section 11.1100**.
 3. The written decision of the appeal authority with regard to any appeal of a Type I ministerial decision is the final local decision.

SECTION 11.0400

TYPE II ADMINISTRATIVE PROCEDURES

11.0400 Type II Administrative Procedures

11.0401 General Description

11.0402 Type II Procedures

11.0400 Type II Administrative Procedures

11.0401 General Description

Type II applications involve uses or development for which review criteria are reasonably objective, requiring only limited discretion. Impacts on nearby properties may be associated with these uses which may necessitate imposition of specific conditions of approval to minimize those impacts or ensure compliance with this code. The Type II procedure provides for an administrative review of an application by the Manager or Design Commission and the process includes notice to nearby property owners to allow for public comments prior to the decision. The process does not include a public hearing unless the decision is appealed.

The following are Type II applications:

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

11.0402 Type II Procedures

A. Pre-Application Conference and Optional Design Commission Consult

1. **Table 11.0204** identifies all Type II applications that require a pre-application conference.
2. Pre-application conference procedures are included in **Section 11.0700**.
3. The Optional Design Consult procedures for those projects within a Design District are described in **Section 11.0700**.

B. Neighborhood Meeting

1. A neighborhood meeting is required for those Type II applications which require a pre-application conference, as indicated in **Table 11.0204**, except as otherwise noted, including industrial uses identified in **Section 7.0003(D)(6)(a)** and DR-C reviews as noted in **Section 7.0003.C**.
2. Neighborhood meeting procedures are included in **Section 11.0800**.

C. Type II Application Requirements

1. Type II applications shall be made on forms provided by the Manager and shall include all of the information required by **Section 11.0900**.
2. Type II 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 II Public Notice

1. Except as provided for in **Subsection (2)** below, within approximately ten (10) calendar days after the application has been determined to be complete, written notice of the Type II application shall be mailed to:
 - a. The applicant and/or authorized representative; and
 - b. The owner(s) of record of the subject property; and
 - 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; and
 - d. Owners of record within three hundred (300) feet of the perimeter of the subject property and owners of record within five hundred (500) feet of the perimeter of the subject property when the development is proposed in the GBSV District; and
 - 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.
2. Notice of industrial uses that are reviewed under **Section 7.0003(D)(6)(a)** shall be provided as follows:
 - a. Within two business days of receiving an application, the City will mail notice of an application submittal to the President and Land Use Chair of any city-recognized neighborhood associations whose boundaries include or are within 300 feet of a site with a proposed industrial review. This notice shall include a copy of the Development Permit Application cover sheet and plans.
 - b. Within two business days of an application being submitted, notice of application shall be posted on the site. The Manager shall determine the number and locations of signs and issue posting instructions. There shall be at least one sign per frontage posted in a conspicuous place visible from the street. The sign shall include the case file number, telephone number where city staff can be contacted for more information about the application, and a webpage (if available) to review a proposed project description and site plan. The sign shall be posted for 30 calendar days or until the 14-day public comment period poster is placed on the property as per **Section 11.0402(D)(5)**, whichever comes first.
 - c. Within three business days of determining the application to be complete, notice will be mailed to the parties described in **Subsection (1)** above.
3. The purpose of the public notice is to provide nearby property owners and other interested parties with an opportunity to submit written comments concerning the application prior to issuance of the Type II Administrative Decision. The goal of this notice is to invite relevant parties of interest to participate in the process.

4. The written notice of the pending Type II application shall:
 - a. Provide fourteen (14) calendar days from the date of notice for submission of written comments prior to issuance of a decision on the Type II application;
 - b. State that issues which may provide the basis for an appeal to the Land Use Board of Appeals shall be raised in writing prior to the expiration of the comment period. Issues shall be raised with sufficient specificity to enable the Manager to respond to the issue;
 - c. List, by commonly used code citation, the applicable criteria for the decision;
 - d. The case file number;
 - e. Set forth the street address or other easily understood geographical reference to the subject property;
 - f. State the place, date, and time that comments are due;
 - g. State that all evidence relied upon by the applicant is available for review, and that copies can be obtained at cost;
 - h. Include the name and phone number of the city representative to contact for additional information;
 - i. Briefly summarize the decision making process for the Type II application being considered; and
 - j. Include the following notice: “Notice to mortgagee, lienholder, vendor or seller: The Gresham Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser.”
5. Within 10 calendar days after the application has been determined to be complete, notice of the application shall be posted on the site by the applicant, except for industrial uses described in **Section 7.0003(D)(6)(a)**, in which notice shall be posted within three business days. 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.

E. Type II Decision Authority

1. The decision authority for Type II applications shall be the Manager. In the case of Design Districts, the Design Commission may operate as the decision authority under the clear and objective standards once in place.
2. The decision authority shall review all written comments received prior to or on the comment closing date and the applicant’s response to the comments, if any. The decision authority may also consider responses to questions by staff which clarify or amplify information but which do not change the original request. Written comments received after the comment period and prior to issuance of a decision shall not be considered by the decision authority.
3. The decision authority shall approve, approve with conditions, or deny an application subject to a Type II procedure after the close of the public comment period and within 60 calendar days after the application was determined to be complete. For industrial reviews as

described in **Section 7.0003(D)(6)(a)**, this decision shall be made within 30 calendar days after the application was determined to be complete.

F. Type II Notice of Decision

1. Upon signing the decision for a Type II application, 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 group or individual who submitted written comments during the comment period;
 - d. 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
 - e. Any group or individual who requested notice of the decision.
2. The written decision shall include:
 - a. The case file number;
 - b. The nature of the application in sufficient detail to apprise persons entitled to notice of the applicant's proposal and of the decision;
 - c. A description of the site reasonably sufficient to inform the reader of its location, including site address, if available, map and tax lot number, and site zoning;
 - d. A statement of the facts upon which the decision authority relied to determine whether the application satisfied or failed to satisfy each applicable approval criterion;
 - e. The decision to approve or deny the application, and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria;
 - f. The date the decision shall become final, unless appealed within twelve (12) calendar days of the notice of decision. The notice of decision 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; and
 - g. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for review. The notice shall list when and where the case file is available and the name and telephone number of the City representative to contact about reviewing the case file.

G. Appeal of a Type II Decision

1. The Type II administrative decision may be appealed by the applicant and any person providing written comments during the 14-day comment period by filing a notice of appeal within 12 calendar days of the date the notice of decision was mailed. Appeal authorities are identified in **Table 11.0204**.
2. Appeal requirements and procedures are outlined in **Section 11.1100**.
3. The decision of the appeal authority with regard to any appeal of a Type II administrative decision is the final decision of the City. Any further appeal shall be to the Land Use Board of Appeals (LUBA).

SECTION 11.0500

TYPE III QUASI-JUDICIAL PROCEDURES

11.0500 Type III Quasi-Judicial Procedures

11.0501 General Description

11.0502 Type III Procedures

11.0500 Type III Quasi-Judicial Procedures

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 within twelve (12) calendar days of the notice of decision. 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 of 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 of record at the public hearing before the Hearings Officer, Planning Commission, or Design Commission have standing to appeal a Type III decision.
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).

SECTION 11.0600

TYPE IV LEGISLATIVE PROCEDURES

11.0600 Type IV Legislative Procedures

11.0601 General Description

11.0602 Type IV Procedures

11.0600 Type IV Legislative Procedures

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.

SECTION 11.0700

OPTIONAL CONFERENCES AND PRE-APPLICATION CONFERENCE

11.0700 Optional Conferences and Pre-Application Conference

11.0701 Purpose

11.0702 Applicability

11.0703 Optional Conferences and Pre-Application Conference Procedures

11.0700 Optional Conferences and Pre-Application Conference

11.0701 Purpose

- A. Optional Early Assistance Design Advice. The purpose of the Optional Early Assistance Design Advice meeting is to permit a conversation with the Design Commission prior to the applicant beginning the Development Permit process by submitting for a Pre-Application meeting. The Design Commission is not rendering a decision at this meeting on whether the proposal meets the Design Principles, Guidelines and Standards of the Design District nor is this meeting an exhaustive review of all potential issues. The conference does not bind or preclude the City from enforcing all applicable regulations or from applying regulations in a manner differently than may have been indicated in the Optional Early Assistance Design Advice.
- B. Pre-Application Conference. The purpose of the pre-application conference is to acquaint the applicant or representative with the requirements of this code, including relevant approval criteria, standards and procedures. It is designed to assist the applicant. The pre-application conference is not an exhaustive review of all potential issues, and the conference does not bind or preclude the city from enforcing all applicable regulations or from applying regulations in a manner differently than may have been indicated in the pre-application conference.
- C. Optional Design Commission Consult. The purpose of the Design Commission consult is to provide an opportunity for the applicant to gain initial insight into the Design Commission's preliminary evaluation of whether the proposal appears to meet the Design Principles, Guidelines and Standards of the Design District. The Design Commission is not rendering a decision at this meeting nor is this meeting an exhaustive review of all potential issues. The conference does not bind or preclude the City from enforcing all applicable regulations or from applying regulations in a manner differently than may have been indicated in the Design Commission consult.

11.0702 Applicability

Table 11.0204 identifies all applications that require a pre-application conference. The Optional Early Assistance Design Advice and the Optional Design Commission Consult meetings are optional for the applicant and not a requirement.

11.0703 Optional Conferences and Pre-Application Conference Procedures

- A.** Initiation and scheduling of Optional Early Assistance Design Advice, Pre-Application Conference and Optional Design Commission Consult
1. The applicant shall submit a completed form provided by the Manager for that purpose, the relevant fee, and copies of information required on the form.
 2. The City will schedule and conduct the Optional Early Assistance Design Advice, the Pre-application Conference and the Optional Design Commission Consult within approximately twenty (20) calendar days of receipt of a request for the meeting. For industrial reviews as described in **Section 7.0003(D)(6)(a)**, a pre-application conference shall be scheduled and conducted within 10 calendar days of receipt of a request for the meeting.
 3. The Manager shall coordinate the involvement of City staff responsible for planning, development review, roads, drainage, and other subjects, as appropriate, in the meetings. The Optional Early Assistance Design Advice and the Optional Design Commission Consult meetings with the Design Commission are open to the public. The Pre-application conference is not open to the general public.

The Manager shall coordinate the involvement of City staff and the Design Commission members responsible for providing consult meeting input.

- B.** Optional Early Assistance Design Advice, Pre-Application Conference and Optional Design Commission Consult Summary
1. Within approximately fourteen (14) calendar days after an Optional Early Assistance Design Advice, Pre-application Conference or Optional Design Commission consult, the Manager may provide to the applicant, or the applicant's agent, a written summary of the conference. The purpose of the written summary is to provide a preliminary assessment of a proposal and is not to be construed as a final recommendation by the City, by the Design Commission or by any other outside agency or service provider on the merits of the proposal.
 2. The written Optional Early Assistance Design Advice summary should:
 - a. Summarize the proposed use and relevant characteristics of the proposal;
 - b. Identify Design Commission comments on the proposal; and
 - c. Identify the applicant's response to the Design Commission comments.
 3. The written Pre-application Conference summary should:
 - a. Summarize the proposed use and relevant characteristics of the proposal;
 - b. Identify necessary application submittal requirements;
 - c. Identify the relevant approval criteria and development standards, with a disclaimer that the approval criteria and development standards in effect at the time an application is received will control;
 - d. Identify specific additional information that is needed to respond to the relevant criteria and development standards or is recommended to respond to other issues; and
 - e. Identify applicable application fees, with a disclaimer that fees are subject to change and that the fees in effect at the time a complete application is received will control.

4. The written Optional Design Commission Consult summary should:
 - a. Summarize the proposed use and relevant characteristics of the proposal;
 - b. Identify Design Commission comments on the proposal with regard to the relevant Design Principles, Guidelines and Standards; and
 - c. Identify the applicant's response to the Design Commission comments.
- C. Pre-Application Conference Validity Period, Optional Design Commission Consult Validity Period and Follow-Up
 1. If a complete application relating to a proposed development action that was the subject of a pre-application conference has not been submitted within eighteen (18) months of the conference, the applicant shall schedule a follow-up pre-application conference.
 2. An applicant may request a follow-up pre-application conference, if desired.
 3. A new or follow-up pre-application conference is required in the following instances:
 - a. The number of residential units increases by twenty percent (20%) or more;
 - b. The proposed use changes between residential, mixed-use, commercial, industrial, or institutional;
 - c. There is a significant change in circulation; or
 - d. Additional application reviews that require a pre-application conference as per **Table 11.0204** are needed to accommodate the proposal.

A new or follow-up pre-application conference is not needed if these instances were discussed in the pre-application conference and incorporated in the City's meeting notes.

SECTION 11.0800

NEIGHBORHOOD MEETING

11.0800 Neighborhood Meeting

11.0801 Purpose

11.0802 Applicability

11.0803 Procedures and Evidence of Compliance

11.0800 Neighborhood Meeting

11.0801 Purpose

The purpose of the neighborhood meeting is to provide an opportunity for the applicant, surrounding neighbors, interested parties, and representatives from a recognized neighborhood association to meet and to review a development proposal and identify any associated issues. The neighborhood meeting is intended to assist the applicant with preparing an application that considers neighborhood interests and is consistent with the requirements of the Development Code to reduce the likelihood of delays and appeals. The city expects the neighbors and neighborhood association will work with the applicant to provide reasonable concerns and recommendations. The city expects that the applicant will attempt to accommodate the reasonable concerns of the neighbors and recognized neighborhood association.

11.0802 Applicability

A neighborhood meeting is required for all applications that require a pre-application conference as indicated in **Table 11.0204**, unless otherwise noted. Industrial use reviews as described in **Section 7.0003(D)(6)(a)** and DR-C applications requiring a pre-application conference as described in **Section 7.0003.C** do not require a Neighborhood Meeting.

11.0803 Procedures and Evidence of Compliance

The applicant shall comply with the following neighborhood meeting procedures.

A. Scheduling of Meeting

1. The neighborhood meeting shall be held after the pre-application conference and before a land use application is submitted to the City.
2. The applicant is required to hold one neighborhood meeting prior to submitting an application for a specific site. Additional meetings may be held at the applicant's discretion.
3. Applications shall be submitted to the City within 180 calendar days of the neighborhood meeting. If an application is not submitted in this time frame, the applicant shall be required to hold a new neighborhood meeting.
4. If the development proposal is modified to an extent that it requires a new or follow-up pre-application conference with City staff, a second neighborhood meeting is required.
5. The date, time and location of the neighborhood meeting shall be coordinated with the recognized neighborhood association in which the proposal is located.
 - a. The applicant shall contact the President and Land Use Chair of the neighborhood association via email to coordinate the early neighborhood meeting. The contact information for the neighborhood association shall be obtained from the City.

- b. The neighborhood association designees must respond within 5 business days of the request.
 - c. If the neighborhood association designees fail to respond in the time allotted, the applicant may select the date, time and location of the meeting.
 - d. The neighborhood association designees and the applicant must agree upon a date, time and location within 10 business days. If no agreement can be reached, the Manager shall decide on the date, time and location within three business days after discussions with the applicant and neighborhood association President and Land Use Chair.
- B. Meeting Location and Time.** Neighborhood meetings shall be held at a location in reasonable proximity to the subject site. The meeting shall be held at a location open to the public or at a public facility that is ADA accessible. The neighborhood meeting may be combined with a regularly scheduled meeting of the recognized neighborhood association in which the project is located, if feasible. An 8 ½ x 11” sign shall be posted at the entry of the building before the meeting. The sign will announce the meeting, state that the meeting is open to the public and that interested persons are invited to attend. The starting time for the meeting shall be limited to weekday evenings between the hours of 6 pm and 8 pm or Saturdays between the hours of 10 am and 4 pm. Neighborhood meetings shall not be held on national holidays. If no one arrives within 30 minutes of the scheduled starting time for the neighborhood meeting, the applicant may leave.
- C. Mailed Notice.** The applicant shall mail notice of the neighborhood meeting to owners of properties within 300 feet of the perimeter of the subject property, the President and Land Use Chair of any recognized neighborhood associations whose boundaries are within 300 feet of the subject property and the Manager. The notice mailed to the President and Land Use Chair of the recognized neighborhood associations within 300 feet of the subject property shall be by certified mail.

In the GBSV District, the applicant shall mail notice of the neighborhood meeting to owners of properties within 500 feet of the perimeter of the subject property, and the Presidents and Land Use Chairs of all recognized neighborhood associations. The notice mailed to the Presidents and Land Use Chairs shall be by certified mail.

1. Notice shall be mailed at least 14 and not more than 20 calendar days prior to the scheduled neighborhood meeting.
2. An official list for the mailed notice may be obtained from the City of Gresham for the applicable fee and within 10 business days. A mailing list may also be obtained from other sources such as a title company, provided that the list shall be based on the most recent tax assessment rolls of the Multnomah County Department of Taxation and Assessment. A mailing list is valid for use up to 45 days from the date the mailing list was generated.
3. The mailed notice shall:
 - a. State the date, time and location of the neighborhood meeting and invite people for a conversation on the proposal.
 - b. Briefly describe the nature of the proposal (i.e., approximate number of lots or units, housing types, approximate building dimensions and heights, and proposed development action). The description shall take into consideration information provided by city staff at the pre-application conference.

- c. Include the website for viewing pre-application meeting notes, and the pre-application conference number.
 - d. Include the name of the neighborhood association in which the subject property is located.
 - e. Include a copy of the tax map or a GIS map that clearly identifies the location of the proposed development and a conceptual site plan. The conceptual site plan shall take into consideration information provided by city staff at the pre-application conference.
- 4. A signed and notarized affidavit of the mailed notice is required to demonstrate compliance with this section.
- 5. Failure of a property owner to receive mailed notice shall not invalidate the neighborhood meeting proceedings.
- D.** Posted Notice. The applicant shall also provide notice of the meeting by posting a waterproof sign on the frontage of the subject property at least 14 and not more than 20 calendar days prior to the meeting. The sign and posting requirements will be provided by the City at the pre-application conference but it is the applicant's responsibility to post the sign within 30 feet of the adjacent right-of-way, viewable from the right-of-way, make sure the sign remains posted until the meeting and remove it following the meeting. A signed and notarized affidavit of the posting is required to demonstrate compliance with this section. If the posted sign is inadvertently removed (i.e., by weather, vandals, etc.), that shall not invalidate the neighborhood meeting proceedings.
- E.** Agenda for Meeting. At the neighborhood meeting, the applicant shall provide a conceptual site plan and describe the major elements of the proposal. Depending on the type and scale of the particular application, the applicant should be prepared to discuss proposed land uses and densities; proposed building size and height; proposed access and parking; and proposed landscaping, buffering and/or protection of natural resources. Attendees will have an opportunity to speak at the meeting and may identify any issues that they believe should be addressed.
- F.** Meeting Notes. The applicant shall take notes of the discussion at the neighborhood meeting, including a summary of issues raised. Notes will indicate how many people attended the meeting. Within seven (7) calendar days of the neighborhood meeting and before submitting an application to the City, the applicant shall send a copy of the meeting notes by certified mail to the President and Land Use Chair of the recognized neighborhood association in which the project is to be located. The neighborhood association may also prepare and submit notes of the neighborhood meeting. The purpose of the notes is to demonstrate that the meeting occurred.
- G.** Evidence of Compliance. To comply with the neighborhood meeting requirements, the following evidence shall be submitted with the application:
 - 1. A copy of the information mailed to surrounding property owners and the recognized neighborhood association(s);
 - 2. A copy of the mailing list used to send out meeting notices;
 - 3. A certified mail receipt indicating mailing of the meeting notice to the President and Land Use Chair of the recognized neighborhood association(s) within 300 feet of the subject property;

4. Affidavits for the mailed and posted notices;
5. One copy of the written materials and 8 ½ x 11” plans presented by the applicant at the neighborhood meeting;
6. Notes of the meeting, including the meeting date, time and location, the names and addresses of those attending, and a summary of oral and written comments received; and
7. A certified mail receipt indicating mailing of the meeting notes to the President and Land Use Chair of the neighborhood association(s).

An application will not be accepted as complete for processing unless all of the evidence of compliance listed in **subsection G (1)-(7)** has been submitted with the application.

SECTION 11.0900

APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

11.0900 Application Submittal and Completeness Review

11.0901 Application Forms and Checklists

11.0902 Application Submittal

11.0903 Completeness Review

11.0904 Resubmittal of Application following Denial

11.0900 Application Submittal and Completeness Review

11.0901 Application Forms and Checklists

- A. The Manager shall supply land use application forms pursuant to the standards contained in the applicable state law, comprehensive plan, and implementing ordinance provisions.
- B. The Manager shall supply checklists or information sheets for applications, which shall detail the specific information which must be contained in the application, including format and number of copies.

11.0902 Application Submittal

- A. Applications for development permits shall be submitted upon forms established by the Manager. Applications will not be accepted in partial submittals. All of the following items must be submitted to initiate the completeness review:
 - 1. Application form, including required notarized signature(s) that demonstrate consent of all owners of the affected property;
 - 2. Deed, title report or other proof of ownership;
 - 3. Completed checklist provided in **11.0901**, including all required materials;
 - 4. Evidence of compliance with neighborhood meeting procedures, if required by **Section 11.0800** for the particular type of application;
 - 5. Plans required for the particular type of application as noted by staff on the completed application checklist;
 - 6. Special reports or plans required to demonstrate that the specific proposal and its site constraints comply with applicable codes. These are noted on the application checklist;
 - 7. Application narrative to address applicable code approval criteria and standards as noted by staff on the completed application checklist; and
 - 8. Payment for the appropriate land use application fee(s) and deposit(s), based on the fee schedule in effect on the date of application submittal.

11.0903 Completeness Review

- A. The Manager shall review the application submittal and advise the applicant in writing whether the application is complete or incomplete within thirty (30) calendar days after the city receives the application submittal, except for industrial reviews as described in **Section 7.0003(D)(6)(a)**, which shall have such a determination made within 14 calendar days after the City receives the application submittal.
- B. Incompleteness shall be based solely on failure to pay required fees, failure of the applicant's narrative to address the relevant criteria or development standards, or failure to supply the required information listed in the checklist and shall not be based on differences of opinion as to quality or accuracy. Determination that an application is complete indicates only that the application contains the information necessary for a qualitative review of compliance with the Development Code standards.
- C. If the application was complete when first submitted or the applicant submits the additional information within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were in effect at the time the application was first submitted.
- D. If an application is incomplete, the completeness notice shall list what information is missing and allow the applicant to submit the missing information. The completeness notice shall include a form, designed to be returned to the Manager by the applicant, indicating whether or not the applicant intends to amend or supplement the application.
- E. The application will be deemed complete for purposes of this section upon receipt by the city of:
 - 1. All of the missing information;
 - 2. Some of the missing information and written notice from the applicant that no other information will be provided; or
 - 3. Written notice from the applicant that none of the missing information will be provided.
- F. The application will be deemed void if the application has been on file with the city for more than 180 calendar days and the applicant has not met the obligations of **subsection E** above.
- G. Pursuant to ORS 227.178, the city will reach a final decision on an application within 120 calendar days from the date that the application is determined to be or deemed complete unless the applicant agrees to extend the 120 calendar day time line pursuant to **subsection H** below or unless State law provides otherwise.
- H. The 120 calendar day time line may be extended at the written request of the applicant. The total of all extensions may not exceed 245 calendar days.

11.0904 Resubmittal of Application Following Denial

An application which has been denied or an application which was denied and which on appeal or review has not been reversed by a higher authority, including the Land Use Board of Appeals, the Land Conservation and Development Commission or the courts, will be rejected for the same or a substantially similar proposal or for the same or substantially similar action for a period of at least 12 months from the date the final city action is made denying the application unless there is substantial change in the facts, a change in the Development Code, or a change in city policy which would change the outcome.

SECTION 11.1000 PUBLIC HEARINGS

11.1000 Public Hearings

- 11.1001 Responsibility of Manager
- 11.1002 General Public Notice Requirements
- 11.1003 Rules of Procedure
- 11.1004 Challenges to Impartiality
- 11.1005 Disqualification
- 11.1006 Participation by Interested Officers or Employees
- 11.1007 Ex Parte Contacts
- 11.1008 Abstention or Disqualification
- 11.1009 Rights of Abstaining or Disqualified Member
- 11.1010 Burden and Nature of Proof
- 11.1011 Order of Proceedings
- 11.1012 Continuance of Hearing
- 11.1013 Decision
- 11.1014 Findings and Order
- 11.1015 Record of Proceedings

11.1000 Public Hearings

11.1001 Responsibility of Manager for Public Hearings

The Manager shall:

- A. Schedule land use applications for review and public hearing before the appropriate review authority as required for the particular application procedure by **Table 11.0204**.
- B. Provide public notice of the public hearing or appeal hearing.
- C. Prepare minutes to include the decision on the matter heard at the public hearing, and the reasons for the decision.
- D. Mail a copy of the decision to those required to receive such information as specified for the particular application procedure.

11.1002 General Public Notice Requirements

- A. Notice of public hearings, either issued by mail, by site posting, and/or publication in a newspaper of general circulation in the city, shall be provided for Type I – IV applications as described in the following code sections:
 - 1. **Section 11.1100** for notice requirements for a public hearing on an appeal of a Type I decision.
 - 2. **Section 11.1100** for notice requirements for a public hearing on an appeal of a Type II decision.

- 3. **Section 11.0500** for notice requirements for a public hearing on a Type III application and **Section 11.1100** for notice requirements for a public hearing on an appeal of a Type III decision.
- 4. **Section 11.0600** for notice requirements for a public hearing on a Type IV application.
- B. All public notices shall be deemed to have been provided or received upon the date the notice is deposited in the mail or personally delivered, whichever occurs first.
- C. Cost of the initial public notice shall be included in the development permit application fee.

11.1003 Rules of Procedure

Public hearings shall be conducted in accordance with the rules of procedure adopted by the hearing body. Provisions regarding challenges to impartiality, disqualification, abstention, participation by interested officers or employees, ex parte contacts, burden of proof, and the order of proceedings, as referenced in the Gresham Revised Code and below are applicable to all public hearings.

11.1004 Challenges to Impartiality

- A. Except for Type IV hearings, a party to a hearing or a member of a hearing body may challenge the qualifications of a member of the hearing body to participate in the hearing and decision. The challenge shall state by affidavit the facts relied upon by the challenger relating to a person’s bias, prejudgment, personal interest, or other facts from which the challenger has concluded that the member of the hearing body cannot participate in an impartial manner. Except for good cause shown, the challenge shall be delivered by personal service to the Manager not less than 48 hours preceding the time set for the public hearing.
- B. The Manager shall attempt to notify the person whose qualifications are challenged prior to the meeting. The challenged person shall have an opportunity to respond orally and in writing to the challenge. The challenge shall be incorporated into the record of the hearing.

11.1005 Disqualification

Except for Type IV hearings, no member of a hearing body may participate in a discussion of the proposal or vote on the proposal when any of the following conditions exist:

- A. Any of the following have a direct or substantial financial interest in the proposal: the member or the member’s spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.
- B. The member owns property within the area entitled to receive notice of the public hearing.
- C. The member has a direct private interest in the proposal.
- D. For any other valid reason, the member has determined that participation in the hearing and decision cannot be in an impartial manner.

11.1006 Participation by Interested Officers or Employees

No officer or employee of the City who has a financial or other private interest in a proposal may participate in discussion with or give an official opinion to the hearing body on the proposal without first declaring for the record the nature and extent of such interest.

11.1007 Ex Parte Contacts

Except for Type IV hearings, the general public has a right to have the hearing body members free from prehearing or ex parte contacts on matters heard by them. It is recognized that a countervailing public right is free access to public officials on any matter. Therefore, hearing body members shall reveal any significant prehearing or ex parte contacts with regard to any matter at the commencement of the public hearing on the matter. If such contacts have impaired the member's impartiality or ability to vote on the matter, the member shall so state and shall abstain from voting. In addition, parties who had the communication with the member have the right to rebut the substance of the communication, on the subject to which the communication relates, with the member at the commencement of the public hearing on the matter.

11.1008 Abstention or Disqualification

Except for Type IV hearings, disqualification for reasons other than the member's own judgment may be ordered by a majority of the members of a hearing body present and voting. The member who is the subject of the motion for disqualification may not vote on the motion.

11.1009 Rights of Abstaining or Disqualified Member of the Hearing Body

- A.** An abstaining or disqualified member of the hearing body shall be counted for purposes of forming a quorum. A member who represents a personal interest at a hearing may do so only by abstaining from voting on the proposal, vacating the seat on the hearing body, physically joining the audience, making full disclosure to the hearing body.
- B.** If all members of a hearing body abstain or are disqualified, all members present after stating their reasons for abstention or disqualification shall be requalified and shall proceed to resolve the issues.
- C.** Except for Type IV hearings, a member absent during the presentation of evidence in a hearing may not participate in the deliberations or decision unless the member has reviewed the evidence received.

11.1010 Burden and Nature of Proof

Except for Type IV determinations, the applicant shall bear the burden of proof and persuasion that the proposal is in compliance with applicable provisions of the Gresham Community Development Plan and this Code.

11.1011 Order of Proceedings

The order of proceeding for a hearing will depend in part on the nature of the hearing. The following shall be supplemented by rules of procedure of the hearing body as appropriate.

- A.** Before receiving information on the issue, the following shall be determined:
 - 1.** Any objections on jurisdictional grounds shall be noted in the record and if there is objection, the hearing body has the discretion to proceed or terminate; and
 - 2.** Any abstentions or disqualifications shall be determined.
- B.** The presiding officer may take official notice of known information related to the issue, such as:
 - 1.** A provision of the charter, state law, ordinance, resolution, rule, or officially promulgated policy of the City.
 - 2.** Other public records and facts judicially noticeable by law.

- C. Matters officially noticed need not be established by evidence and may be considered by the hearing body in the determination of the matters. Parties requesting notice shall do so on the record. However, the hearing body may take notice of matters listed in **subsection B** of this section if stated for the record. Any matter given official notice may be rebutted.
- D. The hearing body may view the area in dispute with or without notification to the parties, but shall place the time, manner, and circumstances of such view in the record.
- E. Information shall be received from the staff and from proponents and opponents. The presiding officer may approve or deny a request from a person attending the hearing to ask a question. Unless the presiding officer specifies otherwise, if the request to ask a question is approved, the presiding officer will direct the question to the person submitting testimony.
- F. When the hearing has closed, the review authority shall openly deliberate and may further question a person submitting information or the staff if opportunity for rebuttal is provided.

11.1012 Continuance of Hearing

- A. All documents or evidence relied upon by the applicant shall be submitted to the City and be made available to the public. If additional documents or evidence are provided by any party at the hearing, the hearing body may allow a continuance or leave the record open for at least seven (7) days to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record requested by the applicant shall result in a corresponding extension of the time limitations of ORS 227.
- B. Prior to closing the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The hearing body shall grant such request by continuing the public hearing or leaving the record open for additional written evidence or testimony pursuant to **subsection C** below.
- C. If the hearing body grants a continuance, the hearing shall be continued to a date, time and place certain at least seven (7) days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence and testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven (7) days to submit additional written evidence or testimony for the purpose of responding to the new written evidence.
- D. If the hearing body leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven (7) days. Any participant may file a written request with the hearing body for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearing body shall reopen the record and any person may raise new issues which relate to the new evidence, testimony, or criteria for decision-making.
- E. A continuance or extension granted pursuant to **Section 11.1012** shall be subject to the limitations of ORS 227 unless the continuance or extension is requested or agreed to by the applicant.
- F. Unless waived by the applicant, the hearing body shall allow the applicant at least seven (7) days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. For purposes of this section, "argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. "Argument" does not include facts. "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards

believed by the proponent to be relevant to the decision.

11.1013 Decision

- A.** Following the order of proceedings described in **Section 11.1011**, the hearing body shall approve, conditionally approve, or deny the application. If the hearing is an appeal, the hearing body shall affirm, reverse or remand the decision that is on appeal.
- B.** A final local decision on an application for a development permit shall be made within 120 days from the date the application was deemed to be complete, except that, with the agreement of the hearing body and an applicant or appellant, the processing of a matter under consideration may be extended for a reasonable period of time as determined by the hearing body, but not to exceed 6 months from the date of the first hearing on the matter.

11.1014 Findings and Order

The hearing body shall prepare findings of fact and an order, which shall include:

- A.** A statement of the applicable criteria against which the proposal was tested.
- B.** A statement of the facts that the hearing body found establishing compliance or noncompliance with each applicable criterion, and assurance of compliance with applicable standards.
- C.** The reasons for, and decision to, approve, conditionally approve, or deny a proposal.

11.1015 Record of Proceedings

The secretary to the hearing body shall be present at each hearing, and shall cause the proceedings to be recorded stenographically or electronically.

- A.** Testimony shall be transcribed if required for judicial review.
- B.** The hearing body shall, where practicable, retain as part of the hearing record each item of physical or documentary evidence presented, and shall have the items marked to show the identity of the person offering the item and whether presented on behalf of a proponent or opponent. Exhibits received into evidence shall be retained in the hearing file until after the applicable appeal period has expired, at which time the exhibits may be released to the person identified on the exhibit, or otherwise disposed of.
- C.** Included in the record shall be a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision, and explains the justification for the decision based on the criteria, standards and facts set forth.
- D.** A person shall have access to the record of the proceedings at reasonable times, places, and circumstances. A person shall be entitled to make copies of the record at the person's own expense.

SECTION 11.1100

APPEALS

11.1100 Appeals

- 11.1101 General
- 11.1102 Notice of Appeal
- 11.1103 General Procedures Applicable to All Appeals
- 11.1104 Specific Provisions for Appeals of a Type I Decision
- 11.1105 Specific Provisions for Appeal of a Type II Decision
- 11.1106 Specific Provisions for Appeal of a Type III Decision
- 11.1107 Remand from the Land Use Board of Appeals

11.1100 Appeals

11.1101 General

A decision on the issuance of a Type I, II or III development permit may be appealed by an affected party by filing a Notice of Appeal with the Manager within 12 calendar days of the date on the written Notice of Decision. **Table 11.0204** identifies the decision authority and appeal authority for each application type.

11.1102 Notice of Appeal

- A. A notice of appeal shall contain:
 - 1. Identification of the decision sought to be reviewed, including the date of the decision.
 - 2. Statement of the appellant documenting that they were a party to the initial proceedings.
 - 3. Detailed statement of the decision that is being appealed and a statement regarding the basis of the appeal, including what approval criteria were improperly evaluated or applied to the decision.
- B. The notice of appeal shall be filed with the Manager, together with the filing fee.
- C. Timely filing of the notice of appeal and filing fee are jurisdictional acts. If these items are not filed within the time period as provided for in **Section 11.1101**, or if the notice of appeal does not contain the required content items specified in **Section 11.1102(A)**, the notice of appeal shall not be accepted by the Manager. A decision by the Manager to not accept an appeal within the specified appeal period shall be considered final.

11.1103 General Procedures Applicable to All Appeals

- A. **Public Hearing.** Appeal hearings before the appropriate appeal authority as specified in **Table 11.0204** shall be conducted in accordance with the public hearing provisions in **Section 11.000** of this code.
- B. **Staff Report.** Not less than 7 days before the date of the appeal hearing, the Manager shall prepare and make available to the public a copy of the staff report regarding the appeal. A copy of the staff report and recommendation shall be provided to the appeal authority, the applicant and to the appellant. The Manager shall provide a copy of the staff report to the public at reasonable cost upon request.

- C. Action of Appeal Authority. At the conclusion of the hearing on the appeal, the appeal authority shall take one of the following actions:
 - 1. Continue the hearing to a date, time, and location certain, which shall be announced by the presiding officer. Notice of the date, time, and location certain of the continued hearing is not required to be mailed, published, or posted, unless the hearing is continued without announcing a date, time and location certain, in which case notice of the continued hearing shall be given as though it was the initial hearing.
 - 2. Reverse or affirm the decision under appeal, with or without conditions or changes.
 - 3. Provisions for holding a record open or continuing a hearing set forth in ORS 197.763 shall apply under this Code in a manner consistent with state law.
- D. Written Decision of Appeal Authority. After the public record on the appeal closes, a written decision regarding the application shall be prepared and contain the following:
 - 1. A statement of the facts that the appeal authority has relied on which demonstrate the decision under appeal is reversed or affirmed based on the criteria relevant to the appeal.
 - 2. A statement of conclusions based on the findings.
 - 3. If the appeal authority changes conditions of approval, changes denial to approval, changes denial to approval subject to conditions, or changes approval to denial, the written decision shall include findings explaining the basis for such change.
 - 4. Within approximately 14 days from the date that the appeal authority adopts a decision on the appeal, the Manager shall cause the decision to be signed, dated, and mailed to the appellant and other persons who appeared orally or in writing before the public record closed.

11.1104 Specific Provisions for Appeal of a Type I Decision

- A. A Type I decision may only be appealed by the applicant, who is the property owner or the property owner's representative.
- B. The Manager shall mail written notice of the appeal hearing to the applicant/appellant not less than 20 days prior to the appeal hearing. The appeal shall be posted on the subject property.
- C. The appeal hearing shall be *de novo*, which means new evidence and argument can be introduced in writing, orally, or both.
- D. The scope of the appeal hearing shall be focused on the specific approval criteria, condition, or both being appealed, and reasons why a finding, condition, or both is or is not in error as a matter of fact, law or both.
- E. The decision of the designated appeal authority for appeals of Type I decisions shall be the final local decision.

11.1105 Specific Provisions for Appeal of a Type II Decision

- A. A Type II decision may be appealed by the applicant or by any other person who submitted written comments prior to the decision of the Manager.
- B. The Manager shall mail written notice of the appeal hearing to the parties listed in **Section 11.1105(A)** not less than 20 days prior to the appeal hearing. The appeal shall be posted on the subject property.
- C. The appeal hearing shall be *de novo*, which means new evidence and argument can be introduced in writing, orally, or both.

- D. The decision of the designated appeal body for appeals of Type II decisions shall be the final local decision.

11.1106 Specific Provisions for Appeal of a Type III Decision

- A. A Type III decision may be appealed only by the applicant or any other person who participated by providing either oral or written evidence on the record leading to the decision by the decision authority.
- B. The Manager shall mail written notice of the appeal hearing to the parties listed in **Section 11.1106(A)** not less than 20 days prior to the appeal hearing. The appeal shall be posted on the subject property.
- C. The scope of review for an appeal of a Type III decision shall be a review of the record with the right of argument.
- D. The record shall include:
 - 1. A factual report prepared by the Manager.
 - 2. All exhibits, materials, pleadings, memoranda, stipulations, and motions submitted by any party and reviewed or considered in reaching the decision under review.
 - 3. The transcript of the hearing and a detailed summary of the evidence.
- E. The decision of the designated appeal authority for the appeal of a Type III decision shall be the final local decision.

11.1107 Remand from the Land Use Board of Appeals

City of Gresham decisions remanded by the Land Use Board of Appeals (LUBA) shall be heard and decided within 90 calendar days from the date of the remand following the procedures of **Section 11.1100**.

