

## **CHAPTER 20 REVIEW PROCEDURES**

### **ARTICLE 20 BASIC PROVISIONS**

#### **20.010 - PURPOSE OF REVIEW PROCEDURES**

The purpose of this chapter is to establish uniform procedures for reviewing permit applications and for making decisions on matters pertaining to the use and development of lands within Klamath County. It is the intent of this chapter to provide Review Procedures ensuring that the amount of private and public resources devoted to reaching a particular decision is commensurate with its complexity and potential impact. These procedures are designed to encourage public familiarity with and understanding of how land use decisions are reached, and increase the overall speed by which land use decisions are made.

#### **20.020 - TYPES OF REVIEW PROCEDURES**

All reviewing bodies shall be governed by the Comprehensive Plan policies, in order to achieve the purposes set forth above, the following procedures are established:

- A. Pre-application Conference Procedure
- B. Administrative Review Procedure
- C. Hearings Officer Review Procedure
- D. Planning Commission Review Procedure
- E. Board of County Commissioners Review Procedure

#### **20.030 STATEMENT SUPPORTING DECISION** (ORS 215.416(9)-(10))

Written notice of the approval or denial will be given to all parties to the proceeding. Approval or denial of any quasi-judicial permit application under this code will be based on and accompanied by a brief statement that:

- A. Explains the criteria and standards considered relevant to the decision;
- B. States the facts relied on in rendering the decision; and
- C. Explains the justification for the decision based on the criteria, standards and facts set forth.

#### **20.040 - CONDITIONS OF APPROVAL**

- A. General Authorization to Impose Conditions of Approval

In approving any type of development application, the Review Body is authorized to impose such conditions as may be necessary to assure compliance with the applicable provisions of this code, the Comprehensive Plan, or other requirements of law. Any conditions attached to approvals will be directly related to the impacts of the proposed use or development and will be roughly proportional in both extent and amount to the anticipated impacts of the proposed use or development.

B. Compliance with Conditions Required

An applicant who has received development approval will comply with all conditions of approval in a timely manner. The County may modify, alter, suspend, or revoke an approved application for noncompliance with conditions of approval.

C. Enforcement and Penalties for Noncompliance with Conditions

If the County modifies, alters, suspends, or revokes an approved application for noncompliance with conditions of approval, it may proceed under the penalty provisions of Article 14 and/or schedule a public hearing before the Board of Commissioners. At the conclusion of any such hearing, and based on findings of fact and conclusions of law, the Review Body shall take such action on the application as it deems appropriate under the provisions of this code. Notice of any hearing scheduled under this Section will be served on the owner of record of the subject property and, if different from the owner, the applicant or operator under the application in the same manner as summons is served under Oregon Rules of Civil Procedure. Notice to all others will be accomplished pursuant to KCLDC.

D. Modification of Conditions Previously Approved

At an applicant's request, the County may modify or amend one or more conditions of approval for an application previously approved and final. Decisions to modify or amend final conditions of approval that do not qualify as ministerial decisions under KCLDC Section 22.040 will be made by the Review Body with initial jurisdiction over the original application using the same type of review procedure as the original review.

## **ARTICLE 21 PRE-APPLICATION CONFERENCE PROCEDURE**

### **21.010 - PURPOSE**

The purpose of the pre-application conference is to acquaint potential applicants with the procedures and requirements for filing, processing, and reviewing a development permit governed by this code prior to submission of an application. Pre-application conferences shall take place prior to filing an application and may be subject to a fee as established by the Board of Commissioners.

### **21.020 - SCHEDULING**

At the time an inquiry into a development permit is directed to the Planning Department, a meeting may be scheduled at the discretion of the Planning Director or his/her designee for a time mutually acceptable to the applicant and planning staff. Failure to conduct a pre-application conference shall not prohibit the applicant from submitting an application.

### **21.030 - CONTENT**

During the pre-application conference, the following issues may be discussed, as appropriate.

- A. Requirements for filing an application including application forms, fees, and the submission of factual documentation about the proposal;
- B. Procedural requirements for review and/or a public hearing on the proposal;
- C. Substantive review criteria contained in the Comprehensive Plan and Land Development Code; and
- D. Opportunities and constraints relating to the proposal resulting from policies and regulations contained in the Comprehensive Plan and Land Development Code.

### **21.040 - NOTICE, HEARING AND APPEAL**

Because a pre-application conference is not a land use decision, no notice, hearing or appeals shall be provided. The discussions of a pre-application conference shall not be binding on any party.

## **ARTICLE 22 ADMINISTRATIVE REVIEW PROCEDURE**

### **22.010 - PURPOSE**

The purpose of the Administrative Review Procedure is to provide for ministerial review of certain change of land use and development proposals, and to provide for the expeditious review of actions involving limited discretionary judgment for which notice may be required by Oregon law. The changes of land use or development permits reviewed under this procedure generally have minimal impact on adjacent lands or persons and may be subject to a fee as established by the Board of Commissioners. (ORS 215.042; ORS 215.416(1))

### **22.020 - RULES OF PROCEDURE**

- A. The Planning Department shall be governed by Chapter 30 of this Code for the conduct of administrative reviews. Chapter 30 shall be available upon request to all individuals.
- B. Submitted applications will be reviewed by the Planning Department as specified in this Article. Applicants whose applications are found to be incomplete will be notified in writing of identified deficiencies and processed in accordance with ORS 215.427
- C. The Planning Department relies on the integrity of the applicant and the veracity of the application. If the applicant, the applicants representative, or apparent representative, makes a misstatement of fact on the application regarding factual material that is relied upon by the Planning Director, his/her designee or a Review Body in making a decision to approve the application, the Planning Director may, upon notice to the applicant and subject to hearing rights, declare the application denied.
- D. A consolidated permit review procedure shall be available for use at the option of the applicant. Under the consolidated procedure an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 215.427, except when such applications are filed concurrently and considered jointly with a comprehensive plan amendment. (ORS 215.416(2))

### **22.030 - TYPE I REVIEW**

- A. Unless referred to hearing by the Planning Director in accordance with this Section, Type I Review, which is limited to review for compliance with clear and objective standards of this code, shall be conducted without notice or a public hearing.
- B. Review and Decision
  - 1. The Planning Director or his/her designee shall review the Type I application within 15 days of receipt of a complete application and determine its compliance with applicable standards and other relevant provisions of this code.
  - 2. An authorized signature showing compliance or non-compliance shall constitute the final decision.

3. The Planning Director, at his/her discretion, may refer review of the application to a Type II Review procedure in accordance with ORS 215.416 and ORS 215.427, or to an appropriate Review Body for a full quasi-judicial hearing in accordance with ORS 197.763.
4. A tentative decision reached under a referred Type II Review procedure may be appealed to the Board of County Commissioners within 12 days of mailed notice of the tentative decision in accordance with procedures set forth in Article 33.

### **22.040 - TYPE II REVIEW (ORS 215.416 and ORS 215.427)**

#### A. Public Hearing and Notice.

1. Unless referred to public hearing by the Planning Director in accordance with this Section, Type II Review shall be conducted without a public hearing.
2. Notice shall be provided prior to the review in accordance with Article 32 and ORS 215.416.

#### B. Review and Decision.

1. The Planning Director or his/her designee shall review the application within 30 days of receipt of a land use permit application and determine whether the application is complete as submitted. Noncompliance with applicable provisions of this Code shall be identified in writing and incorporated into the official application file (ORS 215.427(2)).
2. In accordance with Section 31 120, the Planning Director shall reduce a tentative decision to writing within 90 days of the application being deemed complete.
3. The Planning Director, at his/her discretion, or if requested by a person receiving a request for comment notice or otherwise demonstrably affected by the proposed action, may refer review of the application to an appropriate Review Body for a quasi-judicial hearing.

#### C. Appeal.

A decision reached under the Type II Review procedure may be appealed to the Board of County Commissioners within 12 days of the mailing of notification of the tentative decision as set forth in Article 33.

### **22.050 - REGISTRY**

The Planning Director shall maintain a data base of land use decisions made within the previous 12 months without providing advance notice of the review and an opportunity for a hearing. (ORS 215.416(12))

## **ARTICLE 24 HEARINGS OFFICER REVIEW PROCEDURE**

### **24.010 - PURPOSE**

The purpose of the Hearings Officer Review Procedure is to provide for the conduct of evidentiary, quasi-judicial hearings involving discretionary judgment in the application of standards and review criteria to specific factual situations. The Hearings Officer Review Procedure allows for an impartial tribunal, the opportunity to present evidence, assurance against ex parte contacts, and the means to create a record of hearings providing findings of fact and conclusions of law.

### **24.020 - APPOINTMENT AND DUTIES**

- A. The Board of County Commissioners may appoint the Hearings Officer to serve at the pleasure of the Board (ORS 215.406). The Hearings Officer may appoint a Deputy as is necessary, subject to confirmation by the Board of County Commissioners.
- B. The Hearings Officer and the Deputy Hearings Officer shall be appointed solely with regard to their qualifications for the duties of their position and shall have such training and experience as will qualify them to conduct hearings on land use matters and other duties conferred upon them.
- C. The Hearings Officer may act on behalf of the Board of County Commissioners in hearing and deciding land use matters governed by this code. The Deputy Hearings Officer shall assist the Hearings Officer in the performance of appointed duties, and shall have all the duties and powers of the Hearings Officer in the event of the absence or the inability of the Hearings Officer to act.
- D. The Hearings Officer shall consider land use issues pursuant to Article 14 (Enforcement), and Article 44 (Conditional Use Permit) of the Klamath County Land Development Code. Issues referred by the Planning Director in accordance with Section 22.040 may also be heard by the Hearings Officer.
- E. In the absence of a hearings officer a planning commission or the governing body may serve as hearings officer with all the powers and duties of a hearings officer. (ORS 215.406(2))

### **24.030 - RULES OF PROCEDURE**

- A. The Hearings Officer shall follow Chapter 30 and 31 of this Code for the conduct of hearings.
- B. The Hearings Officer relies on the integrity of the applicant and the veracity of the application.
- C. If the applicant, the applicants representative, or apparent representative, makes a misstatement of fact on an application regarding factual material that is relied upon in making a decision, the decision maker may, upon notice to the applicant and subject to hearing rights, declare the application void.

- D. In the event of emergencies, public disorder in any hearing or meeting, or public speakers who refuse to recognize the chair or yield the floor at the Hearings Officer's request, the Hearings Officer may, at his/her discretion, exercise any of the following measures:
1. Immediately declare a recess.
  2. Adjourn or continue the hearing to a place and time certain.
  3. Request appropriate assistance in securing removal of uncooperative persons from the hearing or public meeting.

#### **24.040 - PUBLIC HEARING AND NOTICE**

- A. The Planning Department shall schedule public hearings and provide notice of Hearings Officer Review as provided by Articles 31 and 32. (ORS 197.763 & ORS 215.416)
- B. At a scheduled hearing, the Hearings Officer may, upon request by the applicant, continue or reschedule a public hearing to a date and time certain. The applicant or a representative for the applicant must be present at the hearing. If no person is present to represent the applicant, the application may be denied at the discretion of the Hearings Officer. A new application would then have to be made.

#### **24.050 - REVIEW AND DECISION** (ORS 197.763)

- A. Public hearings conducted by the Hearings Officer shall be called to order at the date and time specified in the public notice and shall proceed in accordance with Section 31 100.
- B. The Hearings Officer may impose a 15 minute time limit upon witnesses.
- C. The Hearings Officer will officially open the hearing by stating the name of the applicant, the case number, then ask for the staff report from the Planning Department staff.
- D. The Hearings Officer will ask the applicant and supporting proponents to come forward, be sworn in, and then testify.
- E. The Hearings Officer will then call for opponents to come forward, be sworn in and then testify.
- F. The Hearings Officer will then provide an opportunity for proponent rebuttal. Generally, surrebuttal to the proponent or opponent's rebuttal is allowed, at the discretion of the Hearings Officer, provided a final rebuttal opportunity is provided the proponent in accordance with ORS 197 763.
- G. After all testimony is taken, the Hearings Officer shall close or continue the hearing.
- H. The Hearings Officer may, upon good cause, continue the hearing to a date and time certain without further notice in accordance with ORS 197.763(6).
- i. If the Hearings Officer is not present, the Planning Director or his/her designee shall open the hearing on the agenda items and continue the hearing to a date and time certain, to be posted on location at the time of the hearing by Planning Department staff.

- J. At the conclusion of the final evidentiary hearing, the Hearings Officer may make a decision to approve, conditionally approve, or deny the request based on review standards and criteria set forth in this code, or shall continue the matter to a date and time certain for a decision.
- K. A decision of the Hearings Officer shall incorporate findings of fact and conclusions of law based on substantial evidence in the whole record. The application shall not be approved if the proposed use of land is found to be in conflict with the comprehensive plan and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by statute or county legislation. (ORS 215.416(4))
- L. A decision of the Hearings Officer shall not be final, subject to 24.050 below, until it is reduced to writing in the form of a final order in accordance with Section 31.120. The Hearings Officer will render a final order within 15 days of the hearing.
- M. An application before the Hearings Officer may be reopened to consider new information which was unavailable to the applicant at the time of the original hearing. Any request to reopen the hearing must be made in writing and received by the Planning Department within 5 days of the date the order was mailed. In the request to reopen the hearing the applicant must state the grounds for re-opening. In addition, the applicant must also provide the nature of the new information, how it affects the application, and why this information was unavailable at the time of the original hearing.

**24.060 - APPEAL**

An order of the Hearings Officer may be appealed to the Board of County Commissioners within 7 days of its mailing as set forth in Article 33. (ORS 215.422)

## **ARTICLE 26 PLANNING COMMISSION REVIEW PROCEDURE**

### **26.010 - PURPOSE**

The purpose of the Planning Commission Review Procedure is to provide for the conduct of public hearings necessary to reach quasi-judicial decisions involving discretionary judgment in the application of standards and review criteria to factual situations, or to make legislative recommendations involving the balancing of divergent positions. The change of land use associated with development proposals reviewed under this procedure may have significant impacts on adjacent lands or persons, or involve policy decisions affecting a broad range of lands or persons. (ORS 215.020; ORS 215.110)

### **26.020 - RULES OF PROCEDURE**

#### **A. Organization of the Planning Commission.**

1. The Planning Commission shall, at its regular meeting in July each year, elect and install one of its members to serve as Chairman and another to serve as Vice Chairman, provided, however, a member shall not be eligible for election as Chairman for two consecutive terms, except as approved by unanimous consent of the Planning Commission members voting on the question.
2. Nominations for officers shall be by oral motion duly made and seconded, placing a name for Planning Commission consideration. At the close of nominations, the Planning Commission shall vote orally upon the names, which were nominated for the relevant office.
3. When a matter is called for a vote, the Presiding Officer shall, before a vote is taken, state the question before the Planning Commission in general terms and shall announce the decision of the Planning Commission after such vote.

#### **B. Meetings.**

1. The Planning Commission shall meet regularly on the fourth Tuesday of each month beginning at 6:00 p.m. Planning Commission meetings will conclude at 10:00 p.m, unless the Commission by unanimous vote agrees to extend the time. Unconcluded agenda items will be continued by vote to a date and time certain prior to adjournment of the Planning Commission.
2. The Planning Commission may cancel or reschedule any of its regular meetings and provide for special meetings by action at its regular meeting.
3. Any matters not covered herein shall be in accordance with Klamath County standards as determined by legal counsel.

#### **C. Conduct of Hearing before the Planning Commission.**

1. Insofar as possible, the Planning Commission members should remain free from personal interest or pre-hearing contacts on matters heard by them. Planning Commission members shall reveal any substantial interest or pre-hearing contact

made to them with regard to the proceeding at the commencement of such proceeding. If such interest or contact impairs the ability to vote on the matter, he/she shall so state and shall abstain there from. Any Planning Commissioner abstaining from a hearing will also remove him/her self from the table/dais.

2. After opening the public hearing in accordance with Article 31, the Chairman will request a Planning Staff report on the matter before the commission. 15 minutes will be allocated for the report from staff and additional time may be allowed for questions and answers posed by the commission. Following the staff report, the chairman will call for testimony in the following order:
  - a) The applicant, who will be allowed 15 minutes to present testimony;
  - b) Others in favor of the application, who will be allowed five minutes each;
  - c) Those opposed to the application, who will be allowed five minutes each,
  - d) Those neutral to the application, agencies and special districts, who will be allowed five minutes each; and
  - e) Rebuttal by the applicant or the applicant's representative, who will be allowed 10 minutes to orally rebut testimony provided at the hearing.

#### D. Agenda

1. The order of business at all meetings shall be determined by the agenda, which shall be delivered in advance of the meeting to the Planning Commission members in accordance with ORS 197 763.
2. Any item may be taken out of order by a majority vote of the Planning Commission.
3. Actions of the Planning Commission are limited to the prepared agenda. Non-action informational items may be included on the night of the meeting at the oral request of the Planning Director or a Planning Commissioner in attendance.

#### E. Attendance, Quorum, and Voting.

1. Attendance of at least five (5) of the (9) Planning Commission members shall be necessary for a quorum. (ORS 215.030)
2. Voting on any action shall be by majority vote of the total Planning Commission Members present and with a minimum of 3 votes necessary to carry any decision.
3. Voting shall be expressed by the raising of the right hand when called for by the Presiding Officer. Planning Commission members not voting negatively or specifically abstaining shall be counted as voting affirmatively. All votes shall be recorded by the Secretary.
4. If a tie vote results that item shall be continued for decision to the next regular meeting of the Planning Commission or to a special meeting determined by the Planning Commission to which notice of such item can be duly given.

## **26.030 - PUBLIC HEARING AND NOTICE**

- A. The Planning Director shall schedule public hearings and provide notice of Planning Commission Review in accordance with state law, as provided by Article 31 and Article 32.
- B. At the scheduled hearing, the Planning Commission may, upon request by the applicant, continue or reschedule a public hearing to a date and time certain. The applicant or a representative for the applicant must be present at the hearing. If no person is present to represent the applicant, the application may be denied at the discretion of the Planning Commission.

## **26.040 - REVIEW AND DECISION**

Public hearings conducted by the Planning Commission shall be called to order by the Chairperson at the date and time specified in the public notice. The order of proceedings shall conform to Section 31.100.

- A. The Planning Commission may continue an evidentiary hearing to a date and time certain on a matter before it, if in its judgment, additional time is necessary to review the proposal or to receive additional information regarding the proposal. Before continuing or rescheduling an application the Planning Commission will determine a decision will be made within the required time period as stipulated by Article 30, Section 30.020 of the Klamath County Land Development Code and ORS 215.427. In the alternative, the applicant may voluntarily waive time period requirements to allow for a continued hearing. (ORS 215.427(4))
- B. If a quorum of the Planning Commission is not present, the hearing is automatically continued to a date and time certain, to be posted on location at the time of the hearing by the Planning Department staff.
- C. Quasi-judicial hearings
  - 1. At the conclusion of the final evidentiary hearing, the Planning Commission may make its decision to approve, conditionally approve, or deny the request based on review standards and criteria set forth in this code, or shall continue the matter to a date and time certain for a decision.
  - 2. A decision of the Planning Commission shall incorporate findings of fact and conclusions of law based on substantial evidence in the whole record.
  - 3. A decision of the Planning Commission shall not be final until it is reduced to writing in the form of a final order in accordance with Section 31 120.
- D. Subdivision and Planned Unit Development Review.
  - 1. At the conclusion of the final evidentiary hearing, the Planning Commission shall make its decision based on review standards and criteria set forth in the code.
  - 2. A decision of the Planning Commission shall incorporate findings of fact and conclusions of law based on substantial evidence of the whole record.

3. A decision of the Planning Commission shall not be final until it is reduced to writing in the form of a final order in accordance with Section 31.120.
- E. Hearings for legislative changes to the Comprehensive Plan, Comprehensive Plan Maps, Land Development Code or Zoning Map.
1. At the close of the public hearing, the Planning Commission shall make a recommendation to the Board of County Commissioners on the action before it. (ORS 215.110)

**26.050 - APPEAL**

An order of the Planning Commission may be appealed to the Board of County Commissioners within 7 days of its mailing as set forth in Article 33. (ORS 215.422)

## **ARTICLE 28**

### **BOARD OF COUNTY COMMISSIONERS REVIEW PROCEDURE**

#### **28.010 - PURPOSE**

The purpose of the Board of County Commissioners Review Procedure is to provide for the conduct of hearings to reach quasi-judicial decisions involving discretionary judgment in the application of standards and review criteria to factual situations, to adjudicate decisions of other review bodies, or to make legislative decisions involving the balancing of divergent positions. Changes of land use resulting from proposals reviewed under this procedure may have significant impacts on adjacent lands or persons, or involve policy decisions affecting a broad range of lands or persons.

#### **28.020 - RULES OF PROCEDURE**

- A. The Board of County Commissioners shall be governed by Chapter 30 of this Code for the conduct of land use hearings. Chapter 30 shall be available upon request to all individuals at any hearing.
- B. Chapter 30 shall guarantee to all parties the opportunity to be heard, to present evidence, to have a record developed, and to have a decision rendered incorporating findings of fact and based on conclusions of law supported by substantial evidence in the whole record.
- C. The Board of County Commissioners relies on the integrity of the applicant and the veracity of the application. If the applicant, the applicants representative, or apparent representative, makes a misstatement of fact on the application regarding factual material that is relied upon by the Review Body in making a decision whether to approve the application, the Review Body may, upon notice to the applicant and subject to hearing rights, declare the application denied.

#### **28.030 PUBLIC HEARING AND NOTICE**

- A. The Planning Director shall schedule public hearings and provide notice of Board of County Commissioners Review in accordance with state law and as provided by Article 31 and Article 32.
- B. At the scheduled hearing, the Board of County Commissioners may, upon request by the applicant, continue or reschedule a public hearing to a date and time certain. The applicant or a representative for the applicant must be present at the hearing. If no person is present to represent the applicant, the application may be denied at the discretion of the Board of County Commissioners.

#### **28.040 - REVIEW AND DECISION**

- A. Public hearings conducted by the Board of County Commissioners shall be called to order by the Chairperson at the time and date specified in the public notice. The order of proceedings shall conform to Section 31 100.

- B. The Board of County Commissioners may continue an evidentiary hearing to a date and time certain on a matter before it if, in its judgment, additional time is necessary to review the proposal or to receive additional information regarding the proposal.
- C. If a quorum of the Board of Commissioners is not present, the hearing agenda is automatically continued to a date and time certain, to be posted on location at the time of the hearing by Planning Department staff.
- D. Quasi-judicial and appeal hearings.
  - 1. At the conclusion of the final evidentiary hearing, the Board of County Commissioners may make its decision to approve conditionally approve, or deny an application based on review standards and criteria set forth in this code; affirm, reverse or remand an appeal; or shall continue the matter to a date and time certain for a decision.
  - 2. A decision of the Board of County Commissioners shall incorporate findings of fact and conclusions of law based on substantial evidence in the whole record.
  - 3. A decision of the Board of County Commissioners shall not be final until it is reduced to writing in the form of a final order in accordance with Section 31 120.

#### **28.050 - APPEAL**

A land use decision of the Board of County Commissioners shall be final unless appealed to the Oregon Land Use Board of Appeals (LUBA) as set forth in ORS 197.805 through 197.860. An appeal to the Oregon Land Use Board of Appeals does not stay the Board of County Commissioner decision unless LUBA grants a stay in accordance with ORS 197.845.