

202 PROCEDURE TYPES AND DETERMINATION OF PROPER PROCEDURE

All land use actions shall be classified as one of the following unless State law mandates different or additional procedures for particular land use actions or categories of land use actions or specified otherwise by Article VII of this Code:

202-1 Type I

202-1.1 Type I development actions involve permitted uses or development governed by clear and objective review criteria. Type I actions do not encompass discretionary land use decisions. Impacts have been recognized by the development and public facility standards. The intent and purpose of the District is not a consideration of approval in Type I uses.

202-1.2 The following are Type I actions:

- A. Those identified in this Code as Type I actions;
- B. Notwithstanding any other provision, structures or uses proposed to implement an approved Planned Development, if consistent with the approval:
 - (1) For purposes of this Section, consistency shall mean that the use or development was contemplated by and conforms with the prior approval.
 - (2) As regards public facilities impacts, the use or structure shall be processed as a Type I action only if the impacts, as measured by the accepted standard used in the prior approval, are less than or equal to the impacts identified in the prior approval. For example, trip generation of the proposed use or structure is less than or equal to the trip generation projected in the planned development approval.
 - (3) If the Director determines that the proposed use or structure was not contemplated, does not conform or requires the application of discretionary review criteria or conditions of approval, it shall be processed as listed in the applicable district. The Director's determination shall not be subject to appeal.

202-1.3 Type I development actions shall be decided by the Director without public notice or hearing. Notice of a decision shall be provided to the applicant or the applicant's representative and owners of the subject property. The decision may be reconsidered pursuant to Section 208 or appealed by the applicant as provided in Section 209. The hearing shall be conducted as a Type III hearing except that only the applicant and owners of the subject property shall be entitled to notice.

202-2 Type II

202-2.1 Type II land use actions are presumed to be appropriate in the District. They generally 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.

202-2.2 The following are Type II actions:

- A. Those identified in this Code as Type II;
- B. In all districts other than residential, agricultural or forestry, development or uses not specifically identified or classified in this Code which are determined by the Director to be substantially similar with similar impacts to uses listed as Type I or Type II in the applicable land use district or other provisions of this Code, and probably would have been included in the District if considered during adoption of this Code. The determination may be challenged in the appeal of the decision on the proposed development but is not subject to appeal on its own.
- C. In the EFU, EFC and AF-20 Districts, development or uses specifically allowed by ORS 215.203 and ORS 215.213, or OAR 660, Division 6 or 33, may be determined by the Director to be allowed.

202-2.3 Notice of proposed Type II actions shall be sent as provided in Section 204. A fourteen (14) calendar day written comment period shall be provided from the time notice is mailed to provide interested persons with an opportunity to submit written comments about the proposed action before the Director makes a decision on the request. Upon close of the comment period the Director shall review all written comments actually received by the Department within the comment period and the applicant's response to the comments. The Director may also consider responses to questions by staff which clarify or amplify information which does not change the original request. Written comments received after the comment period and prior to issuance of a decision do not have to be considered by the Director. The Director shall then issue a decision. The Notice of the Decision shall be mailed pursuant to Section 204-3.4. Any party as defined by Section 205-3.2 may appeal the decision as provided in Section 209.

202-3 Type III

202-3.1 Type III actions involve development or uses which may be approved or denied, thus requiring the exercise of discretion and judgment when applying the development criteria contained in this Code or the applicable Community Plan. Impacts may be significant and the development issues complex. Extensive conditions of approval may be imposed to mitigate impacts or ensure compliance with this Code and the Comprehensive Plan.

202-3.2 The following are Type III actions:

- A. Those identified in this Code as Type III;
- B. Those not identified or otherwise classified which are determined by the Director to be substantially similar to the uses or development designated as Type III, require the exercise of significant discretion or judgment, involve complex development issues, or which likely will have significant impact. The determination may be challenged on appeal of the decision on the proposed development but is not subject to appeal on its own; and

C. Quasi-judicial plan amendments.

- 202-3.3 Type III actions shall be decided by the Hearings Officer or Planning Commission after a Public Hearing, except that the Board shall decide Type III actions for quasi-judicial plan amendments which are required by state law to be decided by the governing body. Prior notice shall be given as provided in Section 204. Only decisions on quasi-judicial plan amendments shall be subject to reconsideration pursuant to Section 208. Decisions on Type III actions may be appealed to the Board of Commissioners pursuant to Sections 209 and 210, except Type III actions where the Hearings Officer or the Planning Commission is the final decision-maker.

Decisions of the Hearings Officer or Planning Commission for Type III development actions in transit oriented districts shall be subject to appeal to the Board of Commissioners pursuant to Section 209. Decisions of the Hearings Officer or Planning Commission for all other Type III development actions shall be the County's final decision.

202-4 Type IV

- 202-4.1 Type IV actions are legislative. They involve the creation, broad scale implementation or revision of public policy. These include amendments to the text of the Comprehensive Plan, Community Plans or the Community Development Code. Large scale changes in planning and development maps also may be characterized as legislative where a larger number of property owners are directly affected.

- 202-4.2 Type IV actions are made through adoption of County Ordinances.

- 202-4.3 Unless specifically provided otherwise, the procedures of this Article do not apply to legislative action which shall be adopted in accordance with the Washington County Charter and State law.

202-5 Determination of Proper Procedure Type

- 202-5.1 The Director shall determine whether an application or decision is a Type I, II or III action in accordance with the standards set forth above. Questions as to the appropriate procedure shall be resolved in favor of the Type providing the greatest notice and opportunity to participate. The decision of the Director is not subject to appeal on its own, but may be alleged as an error in an appeal of the decision on the proposed development. Upon appeal of the decision on the merits of a development action not specifically classified in this Code, the appeals authority may determine, based on the standards set forth in Section 202, that a different procedure type should have been used and direct that the proposed development action be processed accordingly.

- 202-5.2 The determination as to whether a matter is a Type IV Legislative matter shall be made by the Director in accordance with the standards of this Code and the County Charter. Concurrent actions involving legislative and nonlegislative actions shall be separated for proper processing. The decision of the Director is not subject to appeal on its own, but may be alleged as an error on appeal of the decision on the proposed development. Upon appeal of the final decision on the merits of the action, the appeals authority may determine, based on the standards set forth in Section

- 202 of this Code and the County Charter, that a different procedure type should have been used, and direct that the proposed development action be processed accordingly.
- 202-5.3 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 legislative) which provides greater notice and opportunity to participate than would otherwise be required.
- 202-5.4 Notwithstanding any other provision, and, at no additional cost to the applicant, the Director may choose to process a Type II application under the Type III procedure in order to provide greater notice and opportunity to participate than would otherwise be required, or in order to comply with the time requirements for reviewing development applications in ORS 215.428.