

204 NOTICE OF TYPE I, II OR III DEVELOPMENT ACTIONS

204-1 General Provisions

204-1.1 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, which ever occurs first.

204-1.2 The records of the Department of Assessment and Taxation shall be used for determining the property owner of record. Persons not on file with that Department at the time an application is filed need not be notified. Failure actually to receive notice shall not invalidate an action if a good faith attempt was made to notify all persons entitled to notice. A sworn certificate of mailing issued by the person conducting the mailing shall be conclusive evidence of a good faith attempt to contact all persons listed in the certificate. Mortgagees, lien holders, vendors and sellers receiving notice shall promptly forward a copy by mail to the purchaser.

204-1.3 For notice purposes, the boundary of the subject property shall be the property which is the subject of the application, together with all contiguous property under identical ownership.

For notice purposes for development actions for public transportation facilities or utilities within existing or proposed public rights of way or utility easements, the boundary of the subject area shall be the limits of the area of development within the existing or proposed right-of-way or easement.

For notice purposes for airport-related development actions within Public and Private Use Airport Overlay Districts, the boundary of the subject notice area shall be the limits of the associated Airport Safety Overlay District, or Airport Safety and Land Use Compatibility Overlay District (whichever is applicable).

204-1.4 Outside the UGB, in addition to any other notice for Type II and III development actions, the applicant shall post the subject property in conformance with standards as set forth by resolution and order of the Board of County Commissioners. Failure to post the subject property and file an affidavit of posting with the Director within twenty-eight (28) days of acceptance of a complete application shall result in denial of the application.

204-2 Type I Actions

204-2.1 No public notice of review is required.

204-2.2 Written notice of the decision of the Review Authority shall be provided to the applicant and property owner of record.

204-3 Type II Actions

204-3.1 A public notice of pending review shall be mailed to:

A. The applicant or representative and owners of the subject property;

- B. All property owners of record:
- (1) Within five hundred (500) feet of the subject property in the Urban area; or
 - (2) Within one thousand (1,000) feet of the subject property in the Rural area.
 - (3) When an access management plan is proposed, property owners within the study area defined in 501-8.5 C (3)(a); or
 - (4) When airport-related development is proposed on property within a Public or Private Use Airport Overlay District, property owners within the associated Airport Safety Overlay District, or Airport Safety and Land Use Compatibility Overlay District (whichever is applicable).
- C. The recognized Citizen Participation Organization in which subject property is located;
- D. The owner of an airport, defined by the Department of Transportation as a public use airport when:
- (1) The subject property is:
 - (a) Within five-thousand (5,000) feet of the side or end of a runway of an airport determined by the Department of Transportation to be a visual airport; or
 - (b) Within ten-thousand (10,000) feet of the side or end of the runway of an airport determined by the Department of Transportation to be an instrument airport.
 - (2) Notwithstanding the provisions of Subsection D. (1), a public notice need not be provided as set forth in Subsection D. (1) if the proposed action would:
 - (a) Allow a structure less than thirty-five (35) feet in height; and
 - (b) The subject property is outside the runway approach surface as defined by the Department of Transportation.
 - (3) Failure of an airport owner to receive notice which was mailed shall not invalidate any decision.
- E. The Oregon Department of Agriculture or the United States Department of Agriculture for applications for the propagation, cultivation, maintenance and harvesting of aquatic and insect species.
- F. The Oregon Department of Transportation and the appropriate railroad owner for applications in which a railroad-highway crossing provides or will provide the only access to a property.

204-3.2 The public notice shall contain:

- A. The name of the applicant or representative and the County case file number;
- B. A description of the subject property reasonably sufficient to inform the reader of its location;
- C. A concise description of the proposed development action and a listing of review standards;
- D. A statement that the complete application, standards and other such information are available at the County for review, and the phone number of a County contact person;
- E. A statement that this is an opportunity for interested parties to submit written comments about the proposed request; that prior to making a decision, the Director will consider any written comments actually received by the Department within a fourteen (14) calendar day comment period; that written comments may be received after the comment period, but that the Director does not have to consider these comments prior to making a decision; that the Director will then make a decision and send a summary of the decision to those persons whose written comments are received by the Department, including comments received after the comment period, and those persons that were entitled to be mailed a public notice of pending review of the Type II action pursuant to Section 204-3.1; and that any person entitled to a notice of the decision, may appeal the decision as provided in Section 209;
- F. The comment closing date, which ends at 5:00 p.m. that day, in bold letters; and
- G. The following statement in bold letters: **NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER.**

204-3.3 After close of the fourteen (14) calendar day comment period, the Director promptly shall issue a decision based upon review of the use of development in light of the applicable standards and the comments received. In addition to comments from those entitled to notice, the Director shall consider the written comments of persons who demonstrate that their substantial rights may be adversely affected or aggrieved by the decision.

204-3.4 Notice of the decision shall be provided to the applicant, all persons who submitted written comments, all persons that were entitled to be mailed a public notice of pending review of the Type II action pursuant to Section 204-3.1; and the Citizen Participation Organization in which the subject property is located. The notice shall contain:

- A. A brief summary of the nature of the action, the decision and conditions of approval, if any;

- B. A description of the subject property reasonably sufficient to inform the public of its location;
- C. The date the decision was provided and the due date for an appeal;
- D. A statement that the decision may be appealed and a public hearing held by filing a signed petition for review within ten (10) calendar days of the date the decision was provided. The statement shall note that the petition shall be filed with the Department of Land Use and Transportation by 5:00 p.m. of the closing date of the appeal period. The elements of a petition for review set forth in Section 209-3, and the fee, shall be listed. The statement shall note that only those persons who responded in writing to the notice of pending review and all persons that were entitled to be mailed a public notice of pending review of the Type II action pursuant to Section 204-3.1, are entitled to appeal the decision; and
- E. A statement that the complete case, including findings and conclusions and conditions of approval, if any, are available for review at the County.

204-4 Type III Actions

- 204-4.1 Notice of public hearing shall be sent by mail at least twenty (20) days before the hearing.
- 204-4.2 The notice of public hearing shall be mailed to:
 - A. The applicant or representative and owners of the subject property;
 - B. All property owners of record:
 - (1) Within five hundred (500) feet of the subject property in the Urban area; or
 - (2) Within one thousand (1,000) feet of the subject property in the Rural area.
 - (3) When a new exception area is proposed, all property owners within one thousand (1,000) feet of the perimeter of the proposed exception areas, in addition to all property owners within the proposed exception area;
 - (4) When an access management plan is proposed, all property owners within the study area defined in 501-8.5 C. (3)(a); or
 - (5) When airport-related development is proposed on property within a Public or Private Use Airport Overlay District, all property owners within the associated Airport Safety Overlay District or Airport Safety and Land Use Compatibility Overlay District (whichever is applicable).

- C. The recognized Citizen Participation Organization within which the subject property is located;
- D. The owner of an airport, defined by the Department of Transportation as a public use airport when:
 - (1) The subject property is:
 - (a) Within five-thousand (5,000) feet of the side or end of a runway of an airport determined by the Department of Transportation to be a visual airport; or
 - (b) Within ten-thousand (10,000) feet of the side or end of the runway of an airport determined by the Department of Transportation to be an instrument airport.
 - (2) Notwithstanding the provisions of Subsection D. (1) notice of hearing need not be provided as set forth in Subsection D. (1) if the proposed action would:
 - (a) allow a structure less than thirty-five (35) feet in height; and
 - (b) the subject property is outside the runway approach surface as defined by the Department of Transportation; and
 - (3) Failure of an airport owner to receive notice which was mailed shall not invalidate any decision.
- E. Tenants of a mobile home or manufactured dwelling park when a request for a plan amendment which would change the land use designation of the property which includes all or part of the park. Failure of a tenant to receive a notice which was mailed shall not invalidate any plan amendment.

204-4.3 The notice of public hearing shall contain:

- A. The name of the applicant or owner;
- B. The nature of the proposed development;
- C. A description of the subject property reasonably sufficient to inform the public of its location;
- D. The designation of the Review Authority and the time, date and place of the hearing;
- E. A statement that all interested persons may appear and provide testimony and that only those making an appearance of record shall be entitled to appeal;
- F. A statement that the hearing will be conducted in accordance with the Rules of Procedure adopted by the Board;

- G. The following statement: **NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER;**
 - H. The applicable review criteria that apply to the application;
 - I. A statement that failure of an issue to be raised in the hearing, in person or by letter, or failure to provide sufficient specificity to afford the Review Authority an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue;
 - J. The name of a County representative to contact and the telephone number where additional information may be obtained;
 - K. A statement that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;
 - L. 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 will be provided at reasonable cost; and
 - M. A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.
- 204-4.4 In addition to all other notice, at least ten (10) calendar days before a Type III public hearing for a quasi-judicial plan amendment, notice shall be provided in a newspaper of general circulation in the portion of the County affected.
- 204-4.5 Additional notice of any hearing may be required in accordance with the Rules of Procedure adopted by the Board.
- 204-4.6 Notice of the decision shall be provided to the applicant, the owners of the subject property and all persons who made an appearance of record. The notice shall contain:
- A. A brief summary of the decision, and conditions of approval, if any;
 - B. A description of the subject property reasonably sufficient to inform the public of its location;
 - C. The date the decision was provided and the due date for an appeal;
 - D. For quasi-judicial plan amendments, a statement that the decision may be appealed and a public hearing held by filing a signed petition for review within fourteen (14) calendar days of the date the decision was provided. The statement shall note that the petition shall be filed with the Department of Land Use and Transportation by 5:00 p.m. of the closing date of the appeal period. The elements of a petition for review set forth

in Section 209-3, and the fee, shall be listed. The statement shall note that only those persons who made an appearance of record are entitled to appeal or request reconsideration of the decision. A statement that a motion for reconsideration may be filed as provided in Section 208, but that filing a motion does not stop the appeal period from running.

For Type III development actions in transit oriented districts, a statement that the decision may be appealed and a public hearing held by filing a signed petition or review (appeal) within ten (10) calendar days of the date the decision was provided. The statement shall note that the petition shall be filed with the Department of Land Use and Transportation by 5:00 p.m. of the closing date of the appeal period. The elements of a petition for review set forth in Section 209-3, and the fee, shall be listed. The statement shall note that only those persons who made an appearance of record are entitled to appeal the decision; and

- E. For decisions on a development permit for which there is no local appeal:
 - (1) The date the written decision was signed by the review authority; and
 - (2) A statement that the decision is final when the written decision is signed by the review authority and that any appeal must be made to the Land Use Board of Appeals no later than twenty-one (21) days after the date the decision is final. The statement shall note that only those persons who made an appearance of record are entitled to appeal the decision.
- F. A statement that the complete case, including findings and conclusions, and conditions of approval, if any, are available for review at the County.

204-5 Notice of Hearing and Notice of Decision on Appeal

Notice of a public hearing conducted by the Review Authority to review a Type II decision by the Director, an appeal of a Type III quasi-judicial plan amendment decision to the Board, or an appeal of a decision on a Type III development action in transit oriented districts to the Board shall be provided in the same manner as required for Type III actions. Notice of hearing on appeal to the Board of Commissioners of a Type III request described above shall be provided as required for initial hearing on the Type III proposal. Notice of decision on appeal shall be provided to all parties of record. In addition, notice of hearing on appeal to the Board shall be provided to all parties to the hearing conducted by the Review Authority.

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205 PUBLIC HEARINGS

Public hearings on all development actions including appeals, but not including legislative actions, shall be conducted in accordance with this Section.

205-1 Notice

Notice of public hearing shall be provided in accordance with Section 204 of this Code and the Rules of Procedure adopted by the Board.

205-2 Rules of Procedure

Public hearings shall be conducted in accordance with the Rules of Procedure adopted by the applicable Review Authority.

At the beginning of the hearing for an application, a statement shall be made to those in attendance that:

- A. Lists the applicable substantive criteria;
- B. States that testimony and evidence must be directed toward the criteria described in A. of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision; and
- C. States that failure to raise an issue with sufficient specificity to afford the decision-maker and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.
- D. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the County to respond to the issue precludes an action for damages in circuit court.

205-3 Parties

205-3.1 The following persons, or their authorized representatives, may participate during the comment period or public hearing:

- A. The applicant or applicant's representative and the owners of the subject property;
- B. Those persons entitled to notice;
- C. Any other person who demonstrates to the Review Authority that the person's rights may be adversely affected or aggrieved by the decision; and
- D. At a public hearing on appeal, any person who made an appearance of record in the prior proceeding.

205-3.2 Only parties shall be entitled to appeal a decision. Only persons who make an appearance of record shall be parties to a Type I or Type III action. Only the applicant, persons who submitted written comments, persons entitled to notice of pending review, and the Citizen Participation Organization in which the subject property is located shall be deemed parties to a Type II action.

205-3.3 Appearance of record shall mean:

- A. An oral statement made at the hearing sufficiently identifying the speaker and the speaker's address; or
- B. A written statement giving the name and address of the maker of the statement and introduced into the record prior to or at the public hearing. A person's name and address on a petition introduced into the record constitutes an appearance of record.

205-4 Record

205-4.1 Absent mechanical failure or inadvertent error, a verbatim written or mechanical record of the hearing shall be made. In addition, written minutes giving a true reflection of the matters discussed and the views of the participants may be taken. Such minutes shall substitute for a verbatim record in the event of mechanical failure or inadvertent error.

205-4.2 Failure to comply with Section 205-4.1 shall not invalidate any action provided that a de novo appeal or other relief is available.

205-5 Procedural Rights

Subject to the specific standards and limitations set forth in this Code, the following procedural entitlements shall be provided at the public hearing:

205-5.1 A reasonable opportunity for those persons entitled to notice or who may be adversely affected or aggrieved by the decision to present evidence;

205-5.2 A reasonable opportunity to cross-examine witnesses, including staff, provided that right is asserted at the first reasonable opportunity. Staff similarly shall be entitled to reasonable cross-examination of witnesses. The decision to allow cross-examination shall be at the discretion of the Hearings Officer;

205-5.3 A reasonable opportunity for rebuttal of new material;

205-5.4 An impartial review authority as free from potential conflicts of interest and pre-hearing ex-parte contacts as reasonably possible. It is recognized, however, that the public has a countervailing right of free access to public officials:

- A. Review Authority members shall disclose the substance of any significant pre-hearing ex-parte contacts with regard to the matter at the

- commencement of the public hearing on the matter. The member shall state whether the contact has impaired the impartiality or ability of the member to vote on the matter and shall participate or abstain accordingly.
- B. A member of the Review Authority shall not participate in any proceeding or action in which any of the following has a direct or substantial financial interest: The member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which the member is then serving or has served within the previous two (2) years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interests shall be disclosed at the meeting of the Review Authority where the action is being taken.
 - C. Disqualification of a Review Authority member due to contacts or conflict may be ordered by a majority of the members present and voting. The person who is the subject of the motion may not vote.
 - D. If all members abstain or are disqualified, the administrative rule of necessity shall apply. All members present who declare their reasons for abstention or disqualification shall thereby be requalified to act.
 - E. Staff may confer with the Hearings Officer after the close of the record on technical review or procedural matters, but may not engage in argument or present additional evidence.

205-6 Presentations

- 205-6.1 The Review Authority may set reasonable time limits for oral presentations. The Review Authority may determine not to receive cumulative, repetitious, immaterial, derogatory or abusive testimony. Persons may be required to submit written testimony in lieu of oral if the Review Authority determines that a reasonable opportunity for oral presentations has been provided.
- 205-6.2 No testimony shall be accepted after the close of the public hearing unless the Review Authority sets a deadline for such testimony and provides an opportunity for review and rebuttal prior to making a decision.
- 205-6.3 Counsel for the Review Authority may be consulted solely on legal issues without reopening the public hearing. Objections alleging that counsel is discussing or testifying as to factual matters shall be heard at the discretion of the Review Authority.
- 205-6.4 The presiding officer shall preserve order at all public hearings and shall decide questions of order subject to a majority vote of the Review Authority. Persons who become disruptive or abusive may be ejected from the hearing.

205-7 Continuance

- 205.7-1 All documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public. If additional documents or evidence are provided by any party, the Review Authority 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 215.428.

- 205-7.2 Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The Review Authority shall grant such request by continuing the public hearing or leaving the record open for additional written evidence or testimony pursuant to Subsection B below.
- A. If the Review Authority 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.
 - B. If the Review Authority 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 Review Authority for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the Review Authority shall reopen the record and any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.
 - C. A continuance or extension granted pursuant to Section 205-7 shall be subject to the limitations of ORS 215.428 unless the continuance or extension is requested or agreed to by the applicant.
 - D. Unless waived by the applicant, the Review Authority 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.
- 205-7.3 For the purposes of Section 205-7:
- A. "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.
 - B. "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.

205-8 Evidence

- 205-8.1 The Review Authority may place any person submitting testimony under oath or affirmation. Once sworn or affirmed, all testimony subsequently given by the person during the hearing or a continuation thereof shall be deemed to be under oath.
- 205-8.2 Cumulative, repetitious, immaterial or irrelevant evidence may be excluded. Evidence shall be admissible if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of serious affairs. Evidence may be received subject to a later ruling regarding its admissibility. Erroneous admission or evidence shall not invalidate or preclude action unless shown to have prejudiced the substantial rights of a party.
- 205-8.3 Members of the Review Authority may take official notice of judicially cognizable facts of general, technical or scientific facts within their specialized knowledge. Such notice shall be stated and may be rebutted.
- 205-8.4 Exhibits shall be marked to provide identification upon review. Unless required for an appeal, all exhibits shall be retained by the County for a period of not less than thirty (30) calendar days after expiration of all appeals. Exhibits may be disposed of as provided by the Director.
- 205-8.5 Any member of the Review Authority may visit the subject property and may use information gained to reach a decision, provided the information relied upon is disclosed and an opportunity to rebut provided.

206 BURDEN OF PROOF

- 206-1 Except as otherwise provided, the applicant shall bear the burden of proof that the proposal is in compliance with the applicable standards. In addition, evidence of mistake in adoption of the plan designation or development regulations or subsequent change in the affected area are relevant considerations.
- 206-2 Unless specifically identified as jurisdictional, failure to comply with a provision of this Article shall invalidate an action only if it prejudices the substantial rights of the person alleging the error. Persons alleging procedural error shall have the burden of proof as to whether the error occurred and whether the error has prejudiced the person's substantial rights.

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