

CHAPTER 153: LAND DEVELOPMENT CODE

Updating Land Use Code Procedures

Yellow sections are unchanged and included for reference

Table of Contents shall be amended as follows:

General Provisions

...

~~153.017~~ — Permit Processing: Outright, Type I & II

Purpose: Moved to Administration section 153.250.030.

Specific Zone Requirements

...

[153.077 Marijuana & Medical Marijuana Overlay Zone \(Chapter 153A & B\)](#)

[153.078 Temporary Worker Housing \(Chapter 153C\)](#)

...

Purpose: Add references to other sub chapters of the code.

Administration and Enforcement

153.250 Introduction, ~~and~~ definitions, [permit process](#)

...

153.254 ~~Review of~~ and use action applications

...

Purpose: Simple change of section titles.

Section 153.005 shall be amended as follows:

153.005 COMPLIANCE.

A lot or parcel may only be used and a structure, or part of a structure, may only be constructed, reconstructed, altered, occupied or used as permitted by this chapter [or other applicable City Ordinance](#). [No dimensional requirement of these standards shall be violated after its terms become effective unless specifically provided for herein](#). No lot or parcel area, yard or other open space [which is required by these standards for one use shall be used as the required area for another use](#). ~~existing on or after the effective date of this chapter shall be reduced below the minimum required by the provisions set forth in this chapter.~~

Purpose: More detailed description of compliance to City code.

153.006 CITING.

This chapter may be so cited, or may be cited as "this chapter" and shall have the same force and effect as any city ordinance, resolution or other regulation.

153.007 EXISTING AGREEMENTS AND PERMITS.

This chapter does not repeal, abrogate or impair any existing easements, covenants, deed restrictions or permits such as preliminary subdivision plats and partitioning approvals, conditional use permits, nonconforming use permits, temporary use permits, special use permits, special exceptions or building permits issued or effective (and still valid) prior to the date of adoption hereof.

Section 153.008 shall be amended as follows:

153.008 ZONING/OTHER DEVELOPMENT PERMIT APPROVAL.

Prior to the construction, alteration, reconstruction, expansion or change of use of any structure, lot or parcel for which a [land use](#) permit or other ~~land development~~ approval [or license](#) is required by this chapter [or other applicable City Ordinance](#), the permit, ~~or approval~~ [or license](#) shall be obtained from the city, ~~or the designated official thereof prior to the construction, alteration, reconstruction, expansion or change of use.~~

Purpose: Expand language to include City Ordinances and license.

Section 153.009 shall be amended as follows:

153.009 COMPLIANCE WITH OTHER RULES AND REGULATIONS.

(A) Approval of any use or development proposal pursuant to the provisions of this chapter [or other City's Ordinances](#) shall require compliance with and consideration of all applicable city, county, state and federal rules and regulations.

(B) The compliance shall be evident prior to the final approval of any affected land use or development proposal; ~~for example, the~~ [or](#) compliance may be set forth as a condition of final approval.

...

Purpose: Expand language to include City Ordinances

153.010 APPLICABILITY OF CURRENT REGULATIONS.

An application for any use or activity requiring a permit or approval by any city land use document, ordinance or regulation, shall be processed and reviewed in accordance with the standards and criteria effective at the time the application was submitted providing that the initial application was complete or completion was accomplished in a timely manner.

153.011 INTERPRETATION.

Where the conditions imposed by any provision of this chapter are less restrictive than comparable conditions imposed by any other provisions of this chapter, or by any other city ordinance, resolution, regulation, policy or document, the provisions which are more restrictive shall govern.

153.012 CONSOLIDATED PERMIT PROCEDURE.

All applications or permit processes required by this chapter and other city planning ordinances, documents or regulations for a specific single land use development or use may be consolidated into a single permit processing procedure, including the public hearings, public notices and City and/or County Planning Commission(s) and/or City Council and/or County Court action requirements. For example, for a specific land use development proposal which may require a zone change (map or text amendment), a conditional use permit, a dimensional or area variance and a partitioning, all of these required permits and the respective hearing and notice requirements therefore may be consolidated into a single public hearing process, a single public notice and a single decision and order action record. Notice of the consolidated process option shall be given to the applicant, and upon request thereby, such a process shall be utilized.

153.013 ADMINISTRATION.

The City Council shall have the power and the duty to enforce the provisions of this chapter. The City Council may appoint City officials or other agents to issue zoning and other land development permits, process applications and fulfill other administrative functions required in the implementation of this chapter.

Section 153.015 shall be amended as follows:

153.015 AUTHORIZATION OF SIMILAR USES.

(A) The ~~city~~ Planning Director, Designee or Planning Commission may authorize a use ~~that is~~ not specifically listed in the allowed uses of a specific zone if the use is of the same general type and impact as other uses permitted in the subject zone, unless the city finds the following:-

...

- (1) The proposed use is specifically permitted in another zone; or
- (2) The proposed use is more similar to uses provided for in another zone; and
- (3) That the permitting of the proposed use in the zone requested would be detrimental to the intent and purpose of the zone and this chapter in general. The City shall consider the following factors.
 - (a) Size, scale, configuration, bulk, and other characteristics of the requested use.
 - (b) Physical and operational similarity of the use to uses now allowed in the zone.
 - (c) Potential on-site and off-site impacts of allowing the use (traffic, noise, odors, etc.) as compared to uses now allowed in the zone.

(B) The application for and processing procedure for a similar use approval shall be as required by the use it is determined to be similar too.

(C) Similar changes of uses that do not violate the Nonconforming use criteria 153.115 of this chapter and are of equal or lesser impact with regard to water, sewer, ~~and~~ traffic, noise, odor and other potential nuisance factors, as determined by the Planning Director and City Engineer, do not require a ~~planning application~~ and use permit. Sign off on a building permit or a Certificate of Occupancy from the Building Department or a City License may be required. See section 153.135 for transferability of a conditional use.

Purpose: Clarifying language and expansion of impacts to consider.

Section 153.017 shall be removed:

~~**153.017 PERMIT PROCESSING: OUTRIGHT, TYPE I & II.**~~

~~Uses set forth by this chapter may be classified as an Outright use or a Type I or II conditional use. If the classification is not set forth and the use is not classified as a similar use by the Planning Director, all such uses shall be processed in accordance with the type II processing requirements set forth hereinafter. Per section 153.245.020 any land use action may be referred to the Planning Commission by the Planning Director.~~

~~(A) Outright. Uses marked by an "O" in the City's use tables. Outright uses are processed in 4 different ways as follows:~~

~~(1) Similar use. Outright uses that comply with similar use criteria in 153.015.~~

~~(2) Counter review and sign off. The Planning Director has discretion on how to process outright uses that are considered inconsequential. The Director may choose to provide an over the counter review and sign off on a building permit with no application. A planning number shall be assigned with plans attached. A sign off worksheet may be developed for implementation. Developments considered inconsequential include, but are not limited to the following:~~

~~(a) Small structures such as breeze ways, architectural projections, solar panels or covered patios and similar structures well within setback and lot coverage standards.~~

~~(b) Small structures considered insignificant to the use as a whole, such as small storage or utility buildings on a large manufacturing sites.~~

~~(3) Application without notice. As defined in 153.250.020 the following uses when identified as outright in a zone are considered development actions and, therefore; not subject to the notice requirements: Sign permits, single family homes, duplexes, residential additions and accessory structures, boundary line adjustments, lot consolidations and similar applications.~~

~~(4) Application with notice. The City Planning Official shall, within 5 working days of the receipt of a completed application for an outright use, provide individual written notice of the application in accordance with the administrative notice requirements of 153.255.~~

~~(B) Type I conditional use. Uses marked by a "T1" in the City's use tables. The City Planning Official shall, within 5 working days of the receipt of a completed application for a type I conditional use provide individual written notice of the application in accordance with the administrative notice requirements of 153.255. If no objection is received within the response period the Planning Official may take action on the subject proposal for approval, approval with amendments, modifications and/or conditions for denial or may refer the subject application to the Planning Commission for public hearing. If one or more objections are received within the response period, the subject application shall be referred to the Commission for public hearing. The applicant shall be required to pay any additional hearing fees prior to scheduling the public hearing.~~

~~(C) Type II conditional use. Uses marked by a "T2" in the City's use tables. An application for a type II conditional use shall be subject to review by the Planning Commission in accordance with the public hearing requirements of 153.255.~~

~~Statutory reference: Application for permit or zone change, see O.R.S. 227.175~~

Purpose: Moved to 153.250.030, it's just not in a logical place.

Section 153.030 shall be amended as follows:

153.030 CLASSIFICATION OF ZONES.

...

| Section | Zone Title | Abbreviated Designation |
|----------------|---|--------------------------------|
| <u>153.077</u> | <u>Marijuana & Medical Marijuana (Chapters 153A & 153B)</u> | |
| <u>153.078</u> | <u>Temporary Worker Housing (Chapter 153C)</u> | |

...

Purpose: Add references to other sub chapters of the code.

153.031 LOCATION OF ZONES.

(A) The boundaries of the zones established and classified by this chapter are as indicated and set forth on the map entitled the "Zoning - City of Prineville" dated *May 24, 2011*, which is hereby adopted by reference as though set forth in full herein. The designations and boundaries of zones may be modified in accordance with Zoning Map amendments adopted in accordance with the provisions of this chapter which shall also be adopted by reference.

(B) The City of Prineville's first Comprehensive Plan was adopted on April 10th 2007 by Ordinance 1143. The map entitled "Adopted City Comprehensive Plan 2007" is adopted by reference and was based on Crook County's 1984 Comprehensive Plan Map as amended and expanded to meet the current UGB and zoning at that time. The designations and boundaries of zones may be modified in accordance with Comprehensive map amendments adopted in accordance with the provisions of this chapter which shall also be adopted by reference.

153.032 ZONING MAP AND AMENDMENTS.

A Zoning Map or Zoning Map Amendment adopted by 153.230 et. seq., or by an amendment thereto, shall be prepared by authority of the City Planning Commission and the City Council, or as may otherwise be provided for by the Urban Growth Management Agreement adopted by the city and the county. The Map or Map Amendments shall be dated with the effective date of the adoption thereof by the jurisdiction designated by the UGM agreement, and shall be signed by the respective highest elected official and attested to by the respective planning official of the jurisdiction. The signed original, together with a copy thereof, shall be maintained on file in the offices of the City Planning Official, the City Recorder, the County Planning Official and the County Clerk.

Section 153.033 shall be amended as follows:

153.033 ZONE BOUNDARIES.

Unless otherwise specified, zone boundaries are section lines, subdivision lines, lot lines, center lines of streets and other rights-of-way or utilities, water courses, ridges or rimrocks, contour lines, [other readily recognizable or identifiable natural features](#) or such lines extended. Whenever uncertainty exists as to the exact boundary of a zone as shown on the Zoning Map(s) or amendments thereto, the following provisions shall control:

...

(A) Where a boundary line is indicated as following a street, alley, canal or railroad right-of-way, it shall be construed as following the centerline of the right-of-way.

(B) Where a boundary line follows or approximately coincides with a section line or division thereof, lot or property ownership line, public utility easement, watercourse, ridge or rimrock or contour line, it shall be construed as following the line.

(C) If a zone boundary, as shown on the Zoning Map, divides a lot or parcel between two zones, the entire lot or parcel may be determined to be in the zone in which the greater area of the lot or parcel lies unless there is a specific statement set forth by this chapter or on the applicable Zoning Map as to the exact location of the boundary line, and if the adjustment is in compliance with the Comprehensive Plan use designating for the area. [The property owner may also file for a declaratory ruling to determine the exact location of the zone boundary. The determination shall be made by the Planning Commission, subject to appeal by City Council.](#)

...

(D) Where a public street, alley, canal or railroad right-of-way is officially vacated, the zoning regulations applicable to the abutting property on each side of the centerline of the right-of-way shall apply up to the centerline of the right-of-way as such existed prior to vacation on each respective side hereof. If the right-of-way is vacated in total to one property-owner, the zoning of that abutting property shall apply to the total vacated property.

Purpose: Clarifying language and process in case of dispute.

153.034 ZONING OF ANNEXED AREAS.

An area annexed to the city shall, upon annexation, assume the zoning classification determined by the city to be in compliance with the Comprehensive Plan and/or the City/County Urban Growth Management Agreement. The determination shall be made by the City Council upon receipt of a recommendation relative thereto from the City Planning Commission.

Sections 153.230 - 233 shall be amended as follows:

153.230 AUTHORIZATION TO INITIATE AMENDMENTS.

An amendment to the [Comprehensive Plan](#), text of this chapter or to a [zoning or plan](#) map may be initiated by the City Council, by the City Planning Commission, by the City Planning Official, by any planning advisory committees duly appointed by the city, by any planning board established by this chapter or by an application of a property owner or the authorized agent thereof.

Purpose: Reference to specific documents.

153.231 APPLICATION FOR AMENDMENTS.

An application for an amendment to the [Comprehensive Plan](#), text of this chapter or ~~for to~~ a zone ~~or plan map change~~ by a property owner or the authorized agent thereof shall be filed with the City Planning Official on forms prescribed by the city and shall be accompanied by the required filing fee as established by the City Council. [For all others authorized to initiate amendments the City shall be the applicant.](#) ~~The application shall be filed not less than 30 days prior to the date of the Commission hearing thereon. The applicant shall provide reasons for the requested change, and shall present facts showing that the amendment will substantially be in compliance with the goals, objectives and policies of the City Comprehensive Plan and with the applicable statewide planning goals and implementing administrative rules.~~

[\(A\) Criteria for Amendments – The burden of proof is upon the applicant. The applicant shall show the proposed change is:](#)

- [1. In conformity with all applicable State statutes;](#)
- [2. In conformity with Statewide planning goals and implementing administrative rules when determined to be applicable;](#)
- [3. In conformity with the goals, objectives and policies of the City's Comprehensive Plan;](#)
- [4. Due to of a change in circumstance or further studies justifying the amendment or mistake in the original zoning.](#)

Purpose: Adding reference to specific documents, authorizations and criteria.

153.232 PUBLIC HEARINGS ON AMENDMENTS.

The City Planning Commission shall, at its earliest practicable meeting date following ~~the a~~ 30 day ~~filing completeness~~ period, duly advertise and conduct a public hearing on the subject amendment application, and shall, within ~~five-5~~ working days of the conclusion of the hearing, recommend to the City Council: approval, ~~disapproval or modified~~-approval [with conditions or denial](#) of the proposed amendment. Within 30 days of receipt of the Commission's recommendations, the City Council (unless section 153.256.030 applies [for zone changes or plan amendments](#)) shall duly advertise and conduct a public hearing on the proposed amendment. ~~The Council shall approve, approve with modifications or disapprove the proposed amendment.~~ The Commission or Council may ~~recess or~~ continue a hearing in order to obtain additional information and input on a ~~subject~~ proposed amendment. [The Council shall approve, approve with conditions or deny the proposed amendment. If the applicant fails to abide by the conditions or modifications attached to a rezoning of property, the City Council may, at a later date, rezone the affected property to its original zoning.](#) (O.R.S. 227.175 (3) and (5))

Purpose: Clarify process and *add commonly used language*

153.233 PUBLIC NOTICE REQUIREMENTS.

Notwithstanding any other public notice requirements that may be set forth in this chapter or by applicable state statutes or administrative rules, the following public notice requirements shall apply to applications for an amendment to the text of this chapter or to an application for a zoning amendment provided for by this subchapter. (O.R.S. 227.175(3) and (5))

(A) Each notice of a public hearing regarding an amendment to the text of this chapter or to a zoning map shall be published ~~once a week for each of the two successive weeks~~ 10 days prior to the date of the initial hearing in a newspaper of general circulation in the city or other media readily available to the public.

(B) In addition to the notice requirements set forth by division (A) of this section, for an amendment that proposes to rezone property, individual notice shall be mailed or otherwise delivered to the owner of each lot or parcel of property that is proposed to be rezoned at least 20 days but not more than 40 days prior to the hearing. If such rezoning is for a single lot or parcel, notice shall also be mailed to all property owners within ~~250~~ 100 feet of the exterior boundaries of the subject property.

...

(C) Notice of an application for a zone change shall be provided to the owner of a public use airport if the property subject to the zone change is as follows.

(1) Within 5,000 feet of the side or end of a runway of a visual airport; or

(2) Within 10,000 feet of the side or end of the runway of an instrument airport; and

(3) If the zone change would allow a structure greater than 35 feet in height on property located inside the runway approach surface. (O.R.S. 227.175(6))

(D) Notice of an application for a zone change of property which includes all or part of a mobile or manufactured home park shall be given by first class mail to each existing mailing address for tenants of the mobile home park at least 20 days but not more than 40 days before the date of the first hearing. (O.R.S. 227.175(8))

(E) Notice of an application for a proposed zoning amendment, together with a copy or description of the proposed amendment, shall be provided to the State Department of Land Conservation and Development Commission (LCDGDLCD) at least ~~35-20~~ 35 days but not more than 35 days prior to first evidentiary hearing~~the date of the final hearing thereon~~. (O.R.S. 197.610)

Purpose: Align with requirements stated in the ORS and local standards of a 10 day newspaper notice.

153.234 RECORDS OF AMENDMENTS.

The duly approved and signed original and a copy thereof of an amendment to the text or zoning map(s) of this chapter shall be maintained without change on file in the office of the City Recorder. As applicable, a certified true copy thereof shall be maintained in the office of the City Planning Official. Copies of the amendments shall be available for public review and information.

153.235 LIMITATIONS ON REAPPLICATIONS.

No reapplication for an amendment to the text of this chapter or to a zoning map by a property owner shall be considered by the Planning Commission or Council within a 6 month period immediately following a previous denial of the application. However, if in the opinion of the Planning Commission, new evidence or a change in circumstances warrants the reapplication in a lesser time, the Commission may permit a new application.

153.236 ADOPTION OF AN AMENDMENT.

An amendment to the text of this chapter or a zoning map shall be approved by ordinance only.

Section 153.250 – 250.030 shall be amended to read as follows:

153.250 INTRODUCTION, ~~AND DEFINITIONS~~, PERMIT PROCESS

...

Purpose: Add permit process moved from 153.017

153.250.010. Introduction and application.

(A) Section 153.250 is enacted to provide a uniform procedure for the grant or denial and processing of applications, approvals and determinations by the Planning Department of the City of Prineville, under the applicable Comprehensive plan, land use regulations and other ordinances which by their terms incorporate by reference the procedures in this title.

(B) The provisions of Section 153.250 do not apply to the issuance, suspension, or revocation of any on-site sewage disposal, building, electrical or plumbing permits except as they relate to Planning Department consideration of permitted uses.

153.250.020. Definitions.

...

The following definitions apply to Section 153.250.

Argument. Means assertions and analysis by a party regarding the satisfaction or violation of legal standards. "Argument" does not include assertion of facts not already in the record. "De novo review" means a hearing by the review body as if the action had not previously been heard and as if no decision had been rendered, except that all testimony, evidence and other material from the record of the previous consideration will be considered a part of the record on review.

Development. Means all human caused change to improved or unimproved real estate including but not limited to: buildings, fences, decks, placement or replacement of manufactured or other structures, subdividing or partitioning property, parking and loading areas, landscaping, roadways, paved or graveled areas, grading, excavation or drilling operations and areas devoted to storage of equipment and materials.

Purpose: Add development definition to this section of the code for quick reference.

Development action. Includes decisions that do not require exercise of discretion and are based on clear and objective criteria including the following applications: ~~Means the review of any permit, authorization or determination that the City of Prineville Planning Department is requested to issue, give or make that either:~~

~~—(A)—~~ Involves the application of a City zoning ordinance and is not a land use action as defined below; or

~~(AB)~~ Involves the Those applications involving the ~~of~~ standards in other portion of the Land Usage Ordinance (Section 150 -152).

(B) Boundary or lot line adjustments including lot consolidations;

(C) Land use permit extensions;

(D) Sign permits;

(E) Setback and lot coverage determinations;

(1) Single family homes, duplexes

(2) Residential additions and accessory structures

(F) Temporary use permits;

(G) Other nondiscretionary approvals requiring the application of clear and objective criteria. For illustrative purposes, the term "development action" includes review of any lot line adjustment, permit extension, sign permit, setback determination, and lot coverage determination.

...

Purpose: Define more clearly what a development action is for permit processing purposes. "Development Action" is a commonly used term for certain types of applications.

Evidence. Means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed to be relevant to the decision.

Land use action. Includes any consideration for approval of a quasi-judicial plan amendment or zone change, and any consideration for approval of a land use permit not determined to be a development action, ~~and any consideration of a request for a declaratory ruling (including resolution of any procedural questions raised in any of these actions).~~ For illustrative purposes, the term "land use action" includes review of conditional use permit, variance, partition, subdivision, site plan review and other applications which require the exercise of discretion or policy judgment in applying and/or interpreting applicable criteria. Land use actions include the following applications:

- (A) Conditional Use Permits;
- (B) Alteration or Repair of a Nonconforming Use;
- (C) Variance;
- (D) Text or map amendment;
- (E) Declaratory Ruling;
- (F) Subdivision;
- (G) Partition;
- (H) Site and Design Review; and
- (I) Other applications which require the exercise of discretion or policy judgement in applying and/or interpreting applicable criteria.

Purpose: Define more clearly what a Land use action is for permit processing purposes. "Land use Action" is a commonly used term for certain types of applications.

Land use permit. Includes any approval of a ~~proposed~~ development ~~of land or use of land~~ under the standards ~~in the of~~ City zoning ordinances, ~~involving the exercise of significant discretion in applying those standards.~~ By way of illustration, "land use permit" includes review of conditional use permits, partition, master plan, site plan, site plan change of use, ~~modification of approval subdivision, and subdivision variance and variance.~~

...

Purpose: Properly define what a land use permit is for reference throughout the code.

Legislative changes. Generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plans, zoning ordinances, or changes in zoning maps not directed at a small number of property owners.

Modification of application. Means the applicant's submittal of new information after an application has been deemed complete and prior to the close of the record on a pending application that would modify a development proposal by changing one or more of the following previously described components: proposed uses, operating characteristics, intensity, scale, site lay out (including but not limited to changes in setbacks, access points, building design, size or orientation, parking, traffic or pedestrian circulation plans), or landscaping in a manner that requires the application of new criteria to the proposal or that would require the findings of fact to be changed. It does not mean an applicant's submission of new evidence that merely clarifies or supports the pending application.

Party. Any person appearing on the record at a hearing (including appeals) or presenting written evidence in conjunction with an administrative action or hearing shall have standing and shall be a party. A person whose participation consists only of signing a petition shall not be considered a party.

Purpose: Add definition of the term "Party" used throughout the code.

Quasi-judicial. Zone change or plan amendment generally refers to a plan amendment or zone change affecting a single or limited group of property owners and that involves the application of existing policy to a specific factual setting. (The distinction between legislative and quasi-judicial changes must ultimately be made on a case-by-case basis with reference to case law on the subject.)

153.250.030. PERMIT PROCESSING: OUTHRIGHT, TYPE I & II.

Uses set forth by this chapter may be classified as an Outright use or a Type I or II conditional use. If the classification is not set forth and the use is not classified as a similar use by the Planning Director, all such uses shall be processed in accordance with the type II processing requirements set forth hereinafter. Per section 153.245254.020 any land use action may be referred to the Planning Commission or Hearings Officer by the Planning Director.

(A) Outright. Uses marked by an "O" in the City's use tables. Outright uses ~~are~~ may be processed in 4 different ways ~~as at the discretion of the Planning Director as~~ follows:

(1) Similar changes of use. This decision is made when ~~Outright~~ uses ~~that~~ comply with the similar use criteria in 153.015(C). No land use permit or notice is required, a written decision may be issued to acknowledge this.

(2) ~~Counter review and sign-off.~~ Ministerial. ~~The Planning Director has discretion on how to process outright uses.~~ This decision is made when there are clear and objective standards and criteria that requires no exercise of discretion. These decisions are neither a land use decision nor a limited land use decision as defined in ORS 197.015. that are considered inconsequential.—The Planning Director may choose to provide a ministerial decision in writing or through a ~~an over the counter review and sign off~~ signature on a building permit with no land use application or notice

~~required application.~~ A planning number ~~shall~~ may be assigned with plans attached. A sign off worksheet may be developed for implementation. Examples ~~Developments considered inconsequential~~ include, but are not limited to the following:

(a) Small residential structures such as sheds, breeze ways, architectural projections, solar panels or covered patios and similar structures well within setback and lot coverage standards.

(b) Small commercial or industrial structures ~~that won't create a considered in~~ significant impact to the development or use as a whole, such as small storage or utility buildings on ~~a large commercial or industrial developments, manufacturing sites.~~

(3) Application without notice. This decision is made when an application is considered a Development action ~~As defined in 153.250.020. These uses require application but are the following uses when identified as outright in a zone are considered development actions and, therefore,~~ not subject to ~~the~~ notice requirements. ~~Sign permits, single family homes, duplexes, residential additions and accessory structures, boundary line adjustments, lot consolidations and similar applications.~~

(4) Application with notice. This decision is made when an application is considered a Land use action as defined in 153.250.020. (These include land use decisions and limited land use decisions as defined in ORS 197.015). The City Planning Official shall, ~~within 5 working days of the receipt of a completed application for an outright use,~~ provide ~~individual written~~ notice of the application in accordance with the administrative notice requirements of 153.254.0305.

(B) Type I conditional use. Uses marked by a "T1" in the City's use tables. This decision is made when an application is considered a Land use action as defined in 153.250.020. The City Planning Official shall, ~~within 5 working days of the receipt of a completed application for a type I conditional use~~ provide individual written notice of the application in accordance with the administrative notice requirements of 153.254.0305. If no objection is received within the response period the Planning Official may take action on the subject proposal to approve, approve with conditions, deny, or for approval, approval with amendments, modifications and/or conditions for denial or may refer the subject application to the Planning Commission or Hearings Officer for public hearing. If one or more objections are received within the response period based on applicable criteria that cannot be resolved by the parties, the subject application shall be referred to the Planning Commission or Hearings Officer for a public hearing. Notice of the public hearing shall be provided in accordance with 153.255. The applicant shall be required to pay any additional hearing fees prior to scheduling the public hearing.

(C) Type II conditional use. Uses marked by a "T2" in the City's use tables. This decision is made when an application is considered a Land use action as defined in 153.250.020. An application for a type II conditional use shall be subject to review by the Planning Commission or Hearings Officer in accordance with the public hearing requirements of 153.255.

Purpose: Clarify process and aligns our permit process with specific land use terms.

153.251 GENERAL PROVISIONS

153.251.005 Pre-application conference

A pre-application conference is encouraged for complex applications or for applicants who are unfamiliar with the land use process. The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of the applicable land use ordinances, to provide for an exchange of information regarding applicable requirements of the comprehensive plan, zoning ordinance or land division ordinance and to identify issues likely to arise in processing an application. The applicable zoning ordinance may require that a pre-application conference be held for particular types of applications.

Section 153.251.010 shall be amended as follows:

153.251.010 Application requirements

...

(A) Property Owner. For the purposes of this section, the term "property owner" shall mean the owner of record or the contract purchaser and does not include a person or organization that holds a security interest.

(B) Applications for development [actions](#) or land use actions shall:

...

(1) Be submitted by the property owner or a person who has written authorization from the property owner as defined herein to make the application;

(2) Be completed on a form prescribed by the City;

(3) Include supporting information required by the zoning ordinance and that information necessary to demonstrate compliance with applicable criteria (burden of proof); and

(4) Be accompanied by the appropriate filing fee, unless such fees are waived by the City Council.

[\(C\) Failure to include any of the required information may lead to a determination that the application is incomplete and may be rejected.](#)

[\(D\) Acceptance of the application indicates only that the application is ready for processing and review. It does not represent an acceptance of a complete application.](#)

[\(E\) Applications for uses or developments not specifically listed in the allowed uses of a zone or permitted by another chapter or authorized under 153.015 will not be accepted.](#)

Purpose: Clarify application acceptance.

153.251.015 Development Review Committee

(A) Within 10 days of the submittal of a land use application, notice shall be sent to the following persons, parties and agencies which shall constitute the membership of the City Development Review Committee.

(1) City Superintendent of Public Works.

(2) City Engineer.

(3) City Superintendent of Streets.

(4) City Police and County Sheriff as applicable

(5) Crook County Fire and Rescue

(6) Public utility representatives.

- (7) Ochoco Irrigation District as applicable.
- (8) School district representatives.
- (9) County Roadmaster as applicable.
- (10) County Planning representative.
- (11) Parks and Recreation District Director.
- (12) Any other person, party or agency deemed by City staff to be affected

by the land use proposal or to have specific knowledge or expertise in regard to the specific proposal.

(B) Development review conference. Within 30 days of submittal of a land use application, the Community Development Department shall schedule a meeting with the City Development Review Committee to discuss issues relevant to the proposal. At the request of the applicant, or as initiated by staff, the Development Review Committee may conduct a follow-up meeting with the applicant and applicant's representatives to discuss any issues identified in the development review conference.

(C) Committee review factors. In review of a proposed development, the Committee shall, at a minimum, consider the following factors.

- (1) Tentative plan, site plan or other relevant requirements.
- (2) Possible adverse effects on the development by natural hazards, or adverse effects on any natural or other Goal 5 resources by the development.
- (3) Quantity and quality of existing or proposed water supply, and the adequacy of the existing or proposed sewage disposal system.
- (4) Adequacy of public services to serve the development; including streets, schools, police, fire, public utilities and health or medical facilities.
- (5) Conformance with the design and improvement standards and requirements set forth in 153.190 et seq. and in any other applicable city ordinance, regulations or standards.
- (6) Conformance with applicable state regulations.
- (7) Provisions for the continuity of public services and access to adjoining lands.

153.251.020 Acceptance of application

(A) Development action and land use action applications shall not be accepted until the Planning Director has determined that (1) the requirements of 153.251.10 have been met and (2) the application is complete or the application is deemed to be complete under state law.

(B) An application is complete when in the judgment of the Planning Director all applicable issues have been adequately addressed in the application.

(C) Acceptance of an application as complete shall not preclude a determination at a later date that additional criteria need to be addressed or a later determination that additional information is needed to adequately address applicable criteria.

Section 153.251.030 & 153.251.040 shall be amended as follows:

153.251.030 Incomplete applications

(A) If an application is incomplete, the Planning Director or designee shall, within 30 days of receipt of the application, notify the applicant in writing of exactly what information is missing. ~~The applicant may amend his application or submit a new application supplying the missing information.~~

(B) The applicant shall have 30 days from the date of notice ~~from the planning director~~ to supply the missing information, continue to pursue a decision without the information or withdraw the application.

(C) If the applicant fails to respond within 30 days, at the discretion of the Planning Director, the City may return the application or continue through to final decision. If the application is returned a refund may be granted in accordance with 153.251.040. If an applicant does not submit the missing information within the 30-day period specified in 153.251.030(B), the application may be processed in accordance with 153.254.040.

(D) If the applicant or the applicant's representative or apparent representative makes a misstatement of fact on the application regarding property ownership, authority to submit the application, acreage, or any other fact material to the acceptance of the application, and such misstatement is relied upon by the Planning Director or designee or Hearings Body in making a decision whether to accept the application, the Planning Director or designee may upon notice to the applicant and subject to an applicant's right to a hearing declare the application void.

Purpose: Clarify and expand incomplete application language.

153.251.040 Withdrawal of application

An application may be formally withdrawn in writing by the property owner, the applicant, or applicant's representative at any time prior to the City's final written decision. Receipt by the City of a written request to withdraw the applications is final. Such request shall include a written statement waiving any statutory rights to pursue a writ of mandamus as provided under state law. A withdrawn application that is resubmitted to the City will be treated as a new application.

~~An applicant may withdraw an application in writing at any time prior to the time a land use action decision becomes final. If the landowner is not the applicant, no consent to withdraw the application is needed from the landowner.~~

Purpose: Expand application withdrawal language.

Refunds for withdrawn applications shall be determined from the following schedule;

(A) Refund request after file is made prior to acceptance of an application as complete and/or prior to the mailing of transmittals or public notice. 75%

(B) Refund after public notice or transmittals have been sent. 50%

(C) No refund shall be allowed after the preparation of a Decision or Staff Report.

153.251.050 Time computation

Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, legal holiday or any day on which the City is not open for business pursuant to a city or county ordinance, in which case it shall also be excluded.

153.251.060 Submission of documents

A document is "submitted" when it is received. Submittal shall be made either at a noticed hearing or at the offices of the Planning Division, unless specified otherwise by the Hearings Body or notice.

153.252 LEGISLATIVE PROCEDURES

Section 153.252.010 & 153.252.020 & 153.252.040 shall be amended as follows:

153.252.010 Hearing required.

No legislative change shall be adopted without review and approval by the ~~Planning Commission and a public hearing before the~~ City Council. Public hearings before the Planning Commission shall be set at the discretion of the Planning Director, unless otherwise required by state law.

153.252.020 Notice.

(A) Published Notice.

(1) Notice of a legislative change shall be made at least 10 days prior to the initial public hearing. Notice shall be published in a newspaper of general circulation in the city or other media readily available to the public. ~~at least 10 days prior to each public hearing.~~

(2) The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.

...

(B) Posted Notice. Notice shall be posted at the discretion of the Planning Director.

(C) Individual Notice. Individual notice to property owners, as defined in 153.251.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 227.186.

153.252.030 Initiation of legislative changes.

A legislative change may be initiated by application of individuals upon payment of required fees as well as by the City Council or the Planning Commission.

153.252.040 Hearings Body.

(A) The following shall serve as hearings or review body for legislative changes in this order:

(1) The Planning Commission or Hearings Officer.

(2) City Council.

(B) At the discretion of the City Council, ~~A~~any legislative change initiated by the City Council may be reviewed by the Planning Commission prior to action being taken ~~by the City Council, at the City Council's discretion.~~

Purpose: Review by the PC is not required but has been a general policy of the Council in the past. Published notice section, provides for an alternative to a newspaper notice should that become necessary due to changing media outlets. Adds Hearings officer as alternative to PC.

153.252.050 Final decision.

All legislative changes shall be adopted by ordinance.

153.253 DEVELOPMENT ACTION PROCEDURES

152.253.010 Review of development action applications.

(A) A development action application may be handled administratively by the Planning Director without public notice or hearing.

(B) The Planning Director has the discretion to determine that for the purposes of the land usage ordinance whether a development action application should be treated as if it were a land use action application.

153.253.020 Decision.

(A) Development action applications acted upon without notice or hearing shall be approved or denied by the Planning Director or his designee within 30 days of the application's acceptance by the Planning Director.

(B) Notice of a decision shall be provided to the applicant or the applicant's representative.

(C) The decision may be appealed under 153.258.

Section 153.254 - 254.070 shall be amended as follows:

153.254 ~~REVIEW OF~~ LAND USE ACTION APPLICATIONS

153.254.010. Effect of determinations made outside of established processes.

...

Purpose: Change title to be consistent with other titles.

Any informal interpretation or determination, or any statement describing the uses to which a property may be put, made outside the declaratory ruling process (City of Prineville Land Development Ordinance, Section 153.260) or outside the process for approval or denial of a land use permit (153.254 - 153.256) shall be deemed to be a supposition only. Such informal interpretations, determinations, or statements shall not be deemed to constitute final City action effecting a change in the status of a person's property or conferring any rights, including any reliance rights, on any person. 153.254.020. Action on land use action applications.

~~(A) Except for comprehensive plan amendments and zone changes and other instances where a hearing is required by state law or by other ordinance provisions, the Planning Director may decide upon a land use action application administratively either with prior notice, as prescribed under 153.254.030 or without prior notice, as prescribed under 153.254.040 or he/she may refer the application to the Planning Commission for hearing. The Planning Director shall take such action within 30 days of the date the application is accepted or deemed accepted as complete. This time limit may be waived at the option of the applicant.~~

~~(B) The Planning Director's choice between or among administrative or hearing procedures to apply to a particular application or determination shall not be an appealable decision.~~

~~(C) Zone change and plan amendment applications shall be referred to a hearing before the Planning Commission.~~

Purpose: Redundant language to section 153.254.020

153.254.020 Action on land use action applications.

(A) ~~Except for comprehensive plan amendments and zone changes and other instances where a hearing is required by state law or by other ordinance provisions, t~~The Planning Director or designee may decide upon a land use action application administratively either with prior notice, as prescribed under 153.254.030 or without prior notice, as prescribed under 153.254.040 or ~~he/she~~ may refer the application to the Planning Commission or Hearings Officer for a hearing. The Planning Director or designee shall take such action within 30 days of the date the application is ~~accepted or~~ deemed ~~accepted as~~ complete. (See 153.251.030 for incomplete applications). This time limit may be waived at the option of the applicant.

...
(B) The Planning Director's choice between or among administrative or hearing procedures to apply to a particular application or determination shall not be an appealable decision.

(C) ~~Zone change and plan a~~Amendment applications per section 153.232 or other instances where a hearing is required by State law or by other ordinance provisions shall be referred to a hearing before the Planning Commission or Hearings Officer.

Purpose: Exception language added to section (C), added Hearings Officer and designee and code section reference.

153.254.030 Administrative land use decisions with prior notice.

...
(A) Notice of the application shall be sent within 10 days of submittal of the application to persons entitled to notice under 153.255.030. Such notice shall include all the information specified under 153.255.040(A) except for the information specified in 153.255.040(A)(7) and (10).

(B) Any person may comment in writing on the application within ~~140~~ days from the date notice was mailed or a longer period as specified in the notice.

(C) The Planning Director's or designee's decision to approve, deny or send to a hearing shall be made within 30 days after an application is accepted as complete. This time limit may be waived by the written consent of the applicant.

(D) Notice of the Planning Director's or designee's decision and the appeal period shall be sent to all parties ~~persons entitled to notice under 153.255.030~~ and to all ~~persons who commented. Notice shall also be given to all~~ members of the Planning Commission. The Planning Commission shall ~~who~~ have the authority to call up any decision of the Planning Director or designee within the appeal period in accordance with section 153.258.010. ~~The notice shall contain the applicable information required under 153.255.040.~~

(E) The applicant, ~~all persons entitled to notice under 153.255.030~~ and all ~~other~~ persons commenting in writing as provided in ~~153.254.020~~this section constitute parties to the administrative decision. Any party can appeal the decision in accordance with 153.258 (Appeals).

Purpose: Adds designee language and clarifies who's entitled to the notice of decision.

153.254.040 Administrative decision without prior notice.

The procedures for administrative decisions without prior notice shall be the same as those set forth in 153.254.030, except that ~~no prior notice shall be given~~ [only the notice of decision and appeal period shall be given containing the information required under 153.255.040.](#)

Purpose: Clarifies that notice of decision shall be sent.

153.254.050 Final action in land use actions

(A) Except as otherwise provided, the City shall take final action, including consideration of appeals to the City Council, in land use actions within 120 days after the application is deemed complete. [ORS 227.178](#)

~~(B) If the applicant refuses or fails to submit missing information within the 30 days specified in 153.251.030, the application shall be deemed complete, for purposes of processing the application, on the 31st day after the application was first submitted, and final action of City Council, if required, shall be taken within one hundred fifty-one (151) days after the application was first received unless otherwise provided.~~

~~(B)~~ (C) The periods set forth in 153.254.050 during which a final decision on an application must be made may be extended for a reasonable period of time at the written request of the applicant.

Purpose: Section (B) is covered in section 153.251.030 (incomplete applications).

~~153.254.060 Supplementation of application within first 30 days of submittal.~~

~~An applicant shall not submit any evidence to supplement its application during the 30 days following submittal of its application, except to respond to a request for additional information made under 153.251.030. Any evidence submitted by an applicant in violation of 153.254.060 will not be considered in determining whether the application is complete and will be returned to the applicant.~~

Purpose: Unnecessary and contradictory to the next section.

153.254.0760 Modification of application.

(A) An applicant may modify an application at any time during the approval process up until the issuance of an administrative decision, or the close of the record for an application reviewed under a hearings process, ~~subject to the provisions of 153.254.060 and this section.~~

Purpose: Change number and delete unnecessary section reference.

(B) The Planning Director or Planning Commission shall not consider any evidence submitted by or on behalf of an applicant that would constitute modification of an application (as that term is defined in 153.250) unless the applicant submits an application for a modification, pays all required modification fees and agrees in writing to restart the 120-day time clock as of the date the modification is submitted. The 120-day time clock for an application, as modified, may be restarted as many times as there are modifications.

(C) The Planning Director or Planning Commission may require that the application be re-noticed and additional hearings be held.

(D) Up until the day a hearing is opened for receipt of oral testimony, the Planning Director shall have sole authority to determine whether an applicant's submittal constitutes a modification. After such time, the Planning Commission shall make such determinations. The Planning Director or Planning Commission determination on whether a submittal constitutes a modification shall be appealable only to LUBA and shall be appealable only after a final decision is entered by the City on an application.

153.255 LAND USE ACTION HEARINGS

Section 153.255.010 – 255.040 shall be amended as follows:

153.255.010 Filing of staff report for hearing.

(A) At the time an application, that in the judgment of the Planning Director or designee requires a hearing, and is deemed complete, a hearing date shall be set.

(B) Whenever possible, a staff report shall be made available 7 days prior to the hearing. ~~A staff report shall be completed seven days prior to hearing. If the report is not completed by such time, the hearing shall be held as scheduled, but any party may at the hearing or in writing prior to the hearing request a continuance of the hearing to a date that is at least seven days after the date the initial staff report is complete.~~

(C) A copy of the staff report shall be ~~mailed~~ made available to the applicant, ~~shall be made available~~ and to such other persons who request a copy and shall be filed with the Planning Commission or hearings officer based on local procedure.

...

Purpose: We almost always have staff reports available 7 days prior, occasionally we are waiting for information to include in the report and wouldn't want this section to derail a hearing. We generally use e-mail with applicants and the PC.

(D) Oral or written modifications and additions to the staff report shall be allowed prior to or at the hearing.

153.255.020 Hearings Body.

(A) The following shall serve as the hearings body:

- (1) Planning Commission.
- (2) City Council

...

(B) The Hearing's Body order shall be as set forth in 153.255.020(A), except that the Council may call up any ~~administrative decision~~ application for review without the necessity of an application going before the Planning Commission.

Purpose: Clarify that Council can call up any application before a decision and not just those done administratively by staff.

153.255.030 Notice of hearing ~~or administrative action.~~

(A) Individual Mailed Notice.

(1) Except as otherwise provided for herein, notice of a land use application shall be mailed at least 20 days prior to the hearing ~~for those matters set for hearing, or within 10 days after receipt of an application for those matters to be processed administratively with notice.~~ Written notice shall be sent by mail to the following persons:

...
(a) The applicant.

(b) Owners of record of property as shown on the most recent property tax assessment roll of property located within 100 feet of the property that is the subject of the notice where any part of the subject property is within an urban growth boundary;

(c) The owner of a public use airport if the airport is located within 10,000 feet of the subject property.

(d) The tenants of a mobile home park when the application is for the rezoning of any part or all of a mobile home park.

~~(e) The Planning Commission.~~

...
(f) Any neighborhood or community organization formally recognized by the City Council, whose boundaries include the site.

(2) The failure of a property owner to receive mailed notice shall not invalidate any land use approval if the ~~Planning Division~~City can show by affidavit that such notice was given.

(B) Published Notice. In addition to notice by mail ~~and posting~~, notice of an initial hearing shall be published at least 10 days prior to the hearing in a newspaper of general circulation in the City or other media readily available to the public. ~~at least 10 days prior to the hearing.~~

Purpose: Remove duplicate language from 153.254.030 and we don't mail PC notice. Published notice section, provides for an alternative to a newspaper notice should that become necessary due to changing media outlets.

153.255.040 Contents of notice.

(A) All mailed notices of a land use action hearing shall:

...
(1) Describe the nature of the applicant's request and the nature of the proposed uses that could be authorized.

(2) List the criteria from the zoning ordinance and the plan applicable to the application at issue.

(3) Set forth the street address or easily understood geographical reference to the subject property.

(4) State the date, time and location of any hearing or date by which written comments must be received.

(5) State that any person may comment in writing and include a general explanation of the requirements for submission of testimony and the procedures for conduct of testimony, ~~including, but not limited to, a party's right to request a continuance or to have the record held open.~~

...

(6) If a hearing is to be held, state that any interested person may appear.

(7) State that failure to raise an issue in person at a hearing or in writing precludes appeal by that person to the Land Use Board of Appeals (LUBA), and that failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue.

(8) State the name of a City representative to contact and the telephone number where additional information may be obtained.

(9) State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.

(10) State 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.

...

(B) All mailed and published notices for hearings shall contain a statement that recipients may request a copy of the staff report.

~~(C) All mailed and published notices concerning applications necessitating an exception to one of the statewide land use planning goals shall state that a goal exception is proposed and shall summarize the issues in an understandable manner.~~

Purpose: Unnecessary language in an already lengthy notice. Section (C) is a reference to County Planning issues.

153.255.050 Burden of proof

Throughout all local land use proceedings, the burden of proof rests on the applicant.

153.255.060 Standing

(A) Any interested person may appear and be heard in a land use action hearing, except that in appeals heard on the record; a person must have participated in a previous hearing on the subject application.

(B) Any person appearing on the record at a hearing (including appeals) or presenting written evidence in conjunction with an administrative action or hearing shall have standing and shall be a party. A person whose participation consists only of signing a petition shall not be considered a party.

153.255.070 Disclosure of ex parte contacts

Prior to making a decision, the Hearings Body or any member thereof shall not communicate directly or indirectly with any party or his representative in connection with any issue involved in a pending hearing except upon notice and opportunity for all parties to participate. Should such communication - whether written or oral - occur, the

Hearings Body member shall:

(A) Publicly announce for the record the substance of such communication; and

(B) Announce the parties' right to rebut the substance of the ex parte communication during the hearing. Communication between City staff and the Hearings Body shall not be considered to be an ex parte contact.

153.255.080 Disclosure of personal knowledge.

(A) If the Hearings Body or any member thereof uses personal knowledge acquired outside of the hearing process in rendering a decision, the Hearings Body or

member thereof shall state the substance of that knowledge on the record and allow all parties the opportunity to rebut such statement on the record.

(B) For the purposes of this section, a site visit by the Hearings Body shall be deemed to fall within this rule. After the site visit has concluded, the Hearings Body must disclose its observations and conclusions gained from the site visit in order to allow for rebuttal by the parties.

153.255.090 Challenge for bias, prejudice or personal interest.

Prior to or at the commencement of a hearing, any party may challenge the qualification of the Hearings Body, or a member thereof, for bias, prejudice or personal interest. The challenge shall be made on the record and be documented with specific reasons supported by facts. Should qualifications be challenged, the Hearings Body or the member shall disqualify itself, withdraw or make a statement on the record of its capacity to hear.

153.255.100 Hearings procedure.

A hearing shall be conducted as follows:

...

(A) The Hearings Body shall explain the purpose of the hearing and announce the order of proceedings, including reasonable time limits on presentations by parties.

(B) A statement by the Hearings Body regarding pre-hearing contacts, bias, prejudice or personal interest shall be made.

(C) Any facts received, noticed or recognized outside of the hearing shall be stated for the record.

(D) Challenges to the Hearings Body's qualifications to hear the matter shall be stated and challenges entertained.

(E) The Hearings Body shall list applicable substantive criteria, explain that testimony and evidence must be directed toward that criteria or other criteria in the comprehensive plan or land use regulations that the person believes to apply to the decision, and that failure to address an issue with sufficient specificity to afford the decision-maker and the parties an opportunity to respond precludes appeal to [City Council or the Land Use Board of Appeals](#) ~~LUBA~~ based on that issue.

(F) Order of presentation:

(1) Open the hearing.

(2) Staff report [& any Public Agency](#).

(3) ~~Proponents~~[Applicants'](#) presentation [& those in Support](#).

(4) Opponents' presentation [& others in opposition](#).

(5) [Neutral Comments and questions](#)

(6) ~~Proponents~~[Applicants'](#) rebuttal.

(7) ~~Opponents' rebuttal may be allowed~~[Process may continue](#) at the

Hearings Body's discretion.

(8) Staff comments.

(9) Questions from or to [Staff or the Hearings Body chair](#) may be entertained at any time at the Hearings Body's discretion.

(10) Close the hearing.

(11) [Hearings Body deliberation, comments to or from Staff are permitted](#).

(G) The record shall be available for public review at the hearing.

Purpose: Expand and clarify our hearing process.

153.255.110 Setting the hearing.

(A) After an application is deemed accepted a hearing date shall be set. A hearing date may be changed by the City staff, or the Hearings Body up until the time notice of the hearing is mailed. Once the notice of hearing is mailed any changes in the hearing date shall be processed as a continuance in accordance with 153.255.130.

(B) If an applicant requests that a hearing date be changed, such request shall be granted only if the applicant agrees that the extended time period for the hearing shall not count against the 120-day time limit set forth in 153.254.050.

153.255.120 Close of the record.

(A) Except as set forth herein, the record shall be closed to further testimony or submission of further argument or evidence at the end of the presentations before the Hearings Body.

(B) If the hearing is continued or the record is held open under 153.255.130, further evidence or testimony shall be taken only in accordance with the provisions of 153.255.130.

(C) Otherwise, further testimony or evidence will be allowed only if the record is reopened under 153.255.140.

(D) An applicant shall be allowed, unless waived, to submit final written arguments in support of its application after the record has closed within such time limits as the Hearings Body shall set. The Hearings Body shall allow applicant at least seven days to submit its argument, which time shall be counted against the 120-day clock.

153.255.130 Continuances or record extensions.

(A) Grounds.

(1) Prior to the date set for an initial hearing, an applicant shall receive a continuance upon any request if accompanied by a corresponding suspension of the 120 day clock. If a continuance request is made after the published or mailed notice has been provided by the City, the Hearings Body shall take evidence at the scheduled hearing date from any party wishing to testify at that time after notifying those present of the continuance.

(2) Any party is entitled to a continuance of the initial evidentiary hearing or to have the record left open in such a proceeding in the following instances:

(a) Where additional documents or evidence are submitted by any party; or

(b) Upon a party's request made prior to the close of the hearing for time to present additional evidence or testimony.

For the purposes of 153.255.130(2)(a), "additional documents or evidence" shall mean documents or evidence containing new facts or analysis that are submitted after notice of the hearing.

(3) The grant of a continuance or record extension in any other circumstance shall be at the discretion of the Hearings Body.

(B) Continuances.

(1) If the Hearings Body grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial hearing.

(2) An opportunity shall be provided at the continued hearing for persons to rebut new evidence and testimony received at the continued hearing.

(3) 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 days to allow submittal of additional written evidence or testimony. Such additional written evidence or testimony shall be limited to evidence or testimony that rebuts the new written evidence or testimony.

(C) Leaving record open.

If at the conclusion of the hearing the Hearings Body leaves the record open for additional written evidence or testimony, the record shall be left open for at least 14 additional days, allowing at least the first seven days for submittal of new written evidence or testimony and at least seven additional days for response to the evidence received while the record was held open. Written evidence or testimony submitted during the period the record is held open shall be limited to evidence or testimony that rebuts previously submitted evidence or testimony.

(D) A continuance or record extension granted under 153.255.130 shall be subject to the 120-day time limit unless the continuance or extension is requested or otherwise agreed to by the applicant. When the record is left open or a continuance is granted after a request by an applicant, the time period during which the 120-day clock is suspended shall include the time period made available to the applicant and any time period given to parties to respond to the applicant's submittal.

153.255.140 Reopening the record.

(A) The Hearings Body may at its discretion reopen the record, either upon request or on its own initiative. The Hearings Body shall not reopen the record at the request of an applicant unless the applicant has agreed in writing to a suspension of the 120-day time limit.

(B) Procedures.

(1) Except as otherwise provided for in this section, the manner of testimony (whether oral or written) and time limits for testimony to be offered upon reopening of the record shall be at the discretion at the Hearings Body.

(2) The Hearings Body shall give written notice to the parties that the record is being reopened, stating the reason for reopening the record and how parties can respond. The parties shall be allowed to raise new issues that relate to the new evidence, testimony or criteria for decision-making that apply to the matter at issue.

153.256 LAND USE ACTION DECISIONS

153.256.010 Decision.

(A) Approval or denial of a land use action shall be based upon and accompanied by 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 upon the criteria standards and facts set forth.

(B) Any portion of an application not addressed in a Hearings Body's decision shall be deemed to have been denied.

(C) A decision on a land use action is not final until the Planning Director or Hearings Body issues a written decision, the decision has been mailed and the appeal period to the next higher Hearings Body within the City has run.

(D) No building permit shall issue until a decision is final. Appeal of a final decision to LUBA does not affect the finality of a decision for purposes of issuing building permits.

153.256.020 Notice of decision.

A Hearings Body's decision shall be in writing and mailed to all parties; however, one person may be designated by the Hearings Body to be the recipient of the decision for a group, organization, group of petitioners or similar collection of individual participants.

153.256.030 Decision on plan amendments and zone changes.

(A) Except as set forth herein, the Planning Commission when acting as the Hearings Body shall have authority to make decisions on all quasi-judicial zone changes and plan amendments. Prior to becoming effective, all quasi-judicial plan amendments and zone changes shall be adopted by the City Council.

(B) In considering all quasi-judicial zone changes and those quasi-judicial plan amendments on which the Planning Commission has authority to make a decision, the City Council shall, in the absence of an appeal or review initiated by the Council, adopt the Planning Commission decision. No argument or further testimony will be taken by the Council.

153.256.040 Reapplication limited.

(A) If a specific application is denied on its merits, reapplication for substantially the same proposal may be made at any time after the date of the final decision denying the initial application.

(B) Notwithstanding 153.256.040(A), a final decision bars any reapplication for a non-conforming use verification or for a determination on whether an approval has been initiated.

153.256.050 Review by Council.

(A) Review of an administrative action or a Planning Commission decision may be initiated by the City Council. The Council shall consider calling up for review any administrative decision that a majority of the Planning Commission recommends be reviewed.

(B) Review by the Council shall be initiated by Council order within 12 days of the date of the mailing of the final written decision of the Planning Director or Planning Commission.

(C) Review shall be conducted in the same manner provided for in appeals, except that an appeal fee and transcript shall not be required. Any Council order calling up for review a decision shall specify whether the Council will review the decision called up on the record or de novo and whether it intends to limit the issues on review to certain specified issues.

153.256.060 Correction of clerical errors

Upon its own motion or the motion of a party, the Council may, subject to any applicable public notice and hearing requirements, enact an ordinance correcting clerical

or typographical errors in plan amendment or zone change ordinances and any maps appended thereto implementing decisions of the Planning Commission. Such changes shall be entered only if the Council is able to make a finding that the decision of the Planning Commission, including appendices, is not accurately reflected in the implementing ordinances.

153.257. RECONSIDERATION

153.257.010 Reconsideration.

(A) An applicant may request that the Planning Commission decision be reconsidered as set forth herein. A request for reconsideration shall be accompanied by a fee established by the City and by applicant's written consent that the 120-day time clock will not run during the period of the reconsideration.

(B) Grounds for reconsideration are limited to the following instances where an alleged error substantially affects the rights of the applicant:

- (1) Correction of an error in a condition established by the Planning Commission where the condition is not supported by the record or is not supported by law;
- (2) Correction of errors that are technical or clerical in nature.

153.257.020 Procedure.

(A) A request for reconsideration shall be filed with the Planning Director within 10 days of the date the decision was mailed. The request shall identify the alleged error in the Planning Commission decision and shall specify how the applicant would be adversely affected if the alleged error were to remain uncorrected.

(B) Upon receipt of a request for reconsideration, the Planning Director shall forward the request for reconsideration to the Planning Commission and notify the other parties to the proceeding of the request and allow for a 10-day comment period on the request. At the end of the comment period, the Planning Commission shall determine whether the request for reconsideration has merit.

(C) The Planning Commission shall modify the decision upon a determination that the request has merit and the alleged error substantially affects the applicant. Notice of the modification shall be sent to all parties to the proceeding. If the Planning Commission determines that no modification is warranted, a determination shall issue a decision to that effect.

(D) Filing a request for reconsideration shall not be a precondition for appealing a decision.

(E) Filing a request for reconsideration stays the deadline for any party to file an appeal of the Planning Commission decision. The appeal period for all parties to the proceeding shall commence upon mailing of a modification or upon mailing a determination that a modification is not warranted. If an opponent files an appeal and an applicant has requested reconsideration, the opponent's appeal shall be stayed pending disposition of the request for modification. If the decision is not modified, the appeal will be processed in accordance with the procedures set forth in 153.258. If the decision is modified, the appellant must within 12 days of the mailing of the modified decision file in writing a statement requesting that its appeal be activated.

153.257.030 Limitation on reconsideration

No decision shall be reconsidered more than once by the Planning Commission.

153.258 APPEALS

153.258.010 Who may appeal

- (A) The following may file an appeal:
- (1) A party;
 - (2) In the case of an appeal of an administrative decision without prior notice, a person entitled to notice, a person adversely affected or aggrieved by the administrative decision, or any other person who has filed comments on the application with the Planning Division; and
 - (3) A person entitled to notice and to whom no notice was mailed.
 - (4) Any administrative decision may be called up for a public hearing by the Planning Commission as long as at least 3 Planning Commissioners submit a written request to review a decision. In such a case, there shall be no additional hearings fee charged to the applicant and the hearing shall be scheduled for the next available meeting date with consideration for required notice periods.
- (B) A person to whom notice is mailed is deemed notified even if notice is not received.

Section 153.258.020 shall be amended as follows:

153.258.020 Filing appeals

...

(A) To file an appeal, an appellant must file a completed notice of appeal on a form prescribed by the Planning Department and an appeal fee.

(B) Unless a request for reconsideration has been filed, the notice of appeal and appeal fee must be received at the offices of the City of Prineville Planning Department no later than 5:00 PM on the ~~twelfth~~ 12 day following mailing of the decision. If a decision has been modified on reconsideration, an appeal must be filed no later than 5:00 PM on the ~~twelfth~~ 12 day following mailing of the decision as modified. Notices of Appeals may not be received by facsimile machine.

...

(C) If the City Council is the Hearings Body and the City declines review, a portion of the appeal fee may be refunded. The amount of any refund will depend upon the actual costs incurred by the City in reviewing the appeal.

~~(D) — The appeal fee shall be paid by cash or check or money order, except that local, state or federal governmental agencies may supply a purchase order at the time of filing.~~

Purpose: Call out numbers for quicker document search, no need to call out how to pay for something.

153.258.030 Notice of appeal

The Notice of Appeal shall include:

(A) A statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings Body an adequate opportunity to respond to and resolve each issue in dispute.

(B) If the City Council is the Hearings Body, a request for review by the Council stating the reasons why the Council should review the lower Hearings Body's decision.

(C) If the City Council is the Hearings Body and de novo review is desired, a request for de novo review by the Council stating the reasons why the Council should provide de novo review as provided in 153.258.060.

Section 153.258.040 shall be amended as follows:

153.258.040 Transcript requirement

...

(A) Except as otherwise provided in 153.258.040, appellants shall provide a complete transcript of any hearing appealed from, from recorded audio provided by the Planning Department.

(B) Appellants shall submit the transcript to the Planning Department no later than 10 days after the date notice of appeal was filed or within 10 days after the audio was given to the appellant, whichever is later. ~~than the close of the 5th day prior to the date set for a de novo appeal hearing, in on the record appeals, the date for receipt of written arguments.~~ Unless excused under this section, an appellant's failure to provide a transcript shall cause the Council to decline to consider the appellant's appeal further and shall, upon notice mailed to the parties, cause the lower Hearings body's decision to become final.

...

Purpose: Add a clear time limit for transcripts. Current language does not work. 5 days prior to hearing is after the time packets should be ready for hearing.

(C) An appellant shall be excused from providing a complete transcript if appellant was prevented from complying by:

(1) The inability of the Planning Department to supply appellant with a recording of the prior proceeding; or

(2) Defects on the recording of the prior proceeding that make it not reasonably possible for applicant to supply a transcript. Appellants shall comply to the maximum extent reasonably and practicably possible.

153.258.050 Consolidation of multiple appeals

If more than one party files a notice of appeal on a land use action decision, the appeals shall be consolidated and noticed and heard as one proceeding.

Section 153.258.060 shall be amended as follows:

153.258.060 Scope of review

(A) Before Planning Commission or Hearings Officer. ~~The~~ Review on appeal ~~before the Planning Commission~~ shall be de novo.

(B) Before the Council.

...

(1) Review before the City Council, if accepted, shall be on the record except as otherwise provided for in this section.

(2) The Council may grant an appellant's request for a de novo review at its discretion after consideration of the following factors:

(a) Whether hearing the application de novo could cause the 120-day time limit to be exceeded; and

(b) If the ~~magnetic tape~~ audio of the hearing below, or a portion thereof, is unavailable due to a malfunctioning of the recording device during that hearing, whether review on the record would be hampered by the absence of a transcript of all or a portion of the hearing below; or

...

Purpose: Add Hearing officer, delete magnetic tape.

(c) Whether the substantial rights of the parties would be significantly prejudiced without de novo review and it does not appear that the request is necessitated by failure of the appellant to present evidence that was available at the time of the previous review; or

(d) Whether in its sole judgment a de novo hearing is necessary to fully and properly evaluate a significant policy issue relevant to the proposed land use action.

(e) For the purposes of this section, if an applicant is an appellant, factor 153.258.060(B)(2)(a) shall not weigh against the appellant's request if the applicant has submitted with its notice of appeal written consent on a form approved by the City to restart the 120-day time clock as of the date of the acceptance of applicant's appeal.

(3) Notwithstanding 152.258.060(B)(2), the Council may decide on its own to hear a timely filed appeal de novo.

(4) The Council may, at its discretion, determine that it will limit the issues on appeal to those listed in an appellant's notice of appeal.

153.258.070. Hearing on appeal.

(A) The appellant and all other parties to the decision below shall be mailed notice of the hearing on appeal at least 10 days prior to any de novo hearing or deadline for submission of written arguments.

(B) Except as otherwise provided in 153.258, the appeal shall be heard as provided in 153.255. The applicant shall proceed first in all de novo appeals.

(C) The order of Hearings Body shall be as provided in 153.255.020.

(D) The record of the proceeding from which appeal is taken shall be a part of the record on appeal.

(E) The record for a review on the record shall consist of the following:

(1) A written transcript of any prior hearing;

(2) All written and graphic materials that were part of the record below;

- (3) The Hearings Body decision appealed from;
- (4) Written arguments, based upon the record developed below, submitted by any party to the decision;
- (5) Written comments submitted by the Planning Commission or individual planning commissioners, based upon the record developed below; and
- (6) A staff report and staff comment based on the record. No oral evidence, argument or comment other than staff comment based on the record shall be taken. The Board shall not consider any new factual information.

153.258.080 Declining Review

Except as set forth in 153.256.030, when there is an appeal of a land use action and the City Council is the Hearings Body:

(A) The Council may on a case-by-case basis, at a public meeting, determine that the decision of the lower Hearings Body of an individual land use action or a class of land use action decisions shall be the final decision of the City.

(B) If the City Council decides that the lower Hearings Body decision shall be the final decision of the City, then the Council shall not hear the appeal and the party appealing may continue the appeal as provided by law. In such a case, the City shall provide written notice of its decision to all parties. The decision on the land use application becomes final upon mailing of the Council's decision to decline review.

(C) The decision of the City Council not to hear a land use action appeal is entirely discretionary.

(D) In determining whether to hear an appeal, the City Council may consider only:

- (1) The record developed before the lower Hearings Body;
- (2) The notice of appeal; and
- (3) Recommendations of staff.

153.258.090 Development Action appeals

Notice of the hearing date set for appeal shall be sent only to the applicant. Only the applicant, his or her representatives, and his or her witnesses shall be entitled to participate. Continuances shall be at the discretion of the Hearings Body, and the record shall close at the end of the hearing.

153.258.100 Withdrawal of an appeal

An appeal may be withdrawn in writing by an appellant at any time prior to the rendering of a final decision. Subject to the existence of other appeals on the same application, in such event the appeal proceedings shall terminate as of the date the withdrawal is received.

153.259 LIMITATIONS ON APPROVALS

Section 153.259.010 shall be amended as follows:

153.259.010 Expiration of approval.

(A) Scope.

(1) Except as otherwise provided herein, this section shall apply to and describe the duration of all approvals ~~of land use permits~~ provided for under the City of Prineville Land Development Ordinance and the various zoning ordinances administered by City of Prineville.

...

(2) 153.259.010 does not apply to:

(a) Those determinations made by declaratory ruling or expiration determinations, that involve a determination of the legal status of a property, land use or land use permit rather than whether a particular application for a specific land use meets the applicable standards of the zoning ordinance. Such determinations, whether favorable or not to the applicant or landowner, shall be final, unless appealed, and shall not be subject to any time limits.

(b) Quasi-judicial map changes.

(B) Duration of Approvals.

(1) Except as otherwise stated in the decision, provided under this section or under applicable zoning ordinance provisions, all approvals shall be valid for a ~~land use permit is void~~ 1 year after the date the ~~discretionary~~ decision becomes final if the use approved in the permit is not initiated within that time period.

(2) Except as otherwise stated in the decision, provided under applicable ordinance provisions, preliminary approval of plats or master plans shall be ~~void after valid~~ for 1 year from the date of preliminary approval, unless the final plat has been submitted to the Planning Department for final approval within that time period, or an extension is sought under 153.259.010(C), or the preliminary plat or master plan approval has been initiated as defined herein.

...

(3) In cases of a land use approval authorized under applicable approval criteria to be completed in phases, each phase must be initiated within 1 year of completion of the prior phase, if no timetable is specified.

(C) Extensions.

(1) The Planning Director may grant 1 extension of up to 1 year for a land use approval or a phase of a land use approval, regardless of whether the applicable criteria have changed, if:

(a) An applicant makes a written request for an extension of the development approval period;

(b) The request, along with the appropriate fee, is submitted to the City prior to the expiration of the approval period;

(c) The applicant states reasons that prevented the applicant from beginning or continuing development or meeting conditions of approval within the approval period; and

(d) The City determines that the applicant was unable to begin or continue development or meet conditions of approval during the approval period for

reasons for which the applicant was not responsible, including, but not limited to, delay by a state or federal agency in issuing a required permit.

(e) All fees charged to the project have been paid.

(2) Up to two additional one-year extensions, may be granted under the above criteria by the Planning Director or his/her designees with the condition that all plans be brought up to current city standards, including Land Use and Zoning Code requirements and Standards and Specifications.

(3) Any additional extensions beyond the three allowed under 1 and 2 above may only be approved by City Council. Such extensions shall be based on the following:

(a) All requirements listed for extensions under 1 (a), (b), (c), (e) and 2 above are met.

(b) Council determines that, due to unforeseen general economic conditions, reasonable expectations for developing the project in a given timeframe have changed since the date of the original approval. General economic conditions refer to citywide (or broader) conditions, not the specific economic situation of the applicant.

(c) The applicant demonstrates that a substantial effort has been made to move the project forward. Evidence of substantial effort shall be evaluated at the discretion of the Council and may include planning, engineering, architectural design, bonding for or construction of public improvements, or other similar demonstrations of economic commitment.

(D) Procedures.

(1) [The Planning Director shall make the determination whether a land use decision has been initiated based on the criteria listed in 153.259.020. A dispute over ~~determination of~~ whether a land use has been initiated shall be processed as a declaratory ruling.](#)

(2) Approval of an extension granted under 153.259.010(c) is an administrative decision, is not a land use decision described in ORS 197.015 and is not subject to appeal as a land use decision and shall be processed under 153.250 as a development action, ~~except to the extent it is necessary to determine whether the use has been initiated.~~

...

Purpose: Clarify that all approvals have a 1 year time limit unless otherwise approved, allow Planning Director to make determinations on whether land use had been initiated.

(E) Effect of Appeals. The time period set forth in 153.259.010(B) shall be tolled upon filing of an appeal to LUBA until all appeals are resolved.

153.259.020 Initiation of use

(A) For the purposes of this section, development action undertaken under a land use approval described in 153.259.010, has been "initiated" if it is determined that:

(1) The proposed use has lawfully occurred;

(2) Substantial construction toward completion of the land use approval has taken place; or

(3) Where construction is not required by the approval, the conditions of a permit or approval have been substantially exercised and any failure to fully comply with the conditions is not the fault of the applicant.

(B) For the purposes of this section, "substantial construction" has occurred when the holder of a land use approval has physically altered the land or structure or changed the use thereof and such alteration or change is directed toward the completion and is sufficient in terms of time, labor or money spent to demonstrate a good faith effort to complete the development.

Section 153.259.030 shall be amended as follows:

153.259.030 Modification of approval

(A) Modification

(1) An applicant may apply to modify an approval at any time after a period of ~~six~~ 6 months has elapsed from the time a land use action approval has become final.

(B2) Unless otherwise allowed under section 153.020(H) for Revision of plans, or other specified in a particular zoning ordinance provision, the grounds for filing a modification shall be that a change of circumstances since the issuance of the approval makes it desirable to make changes to the proposal, as approved. A modification shall not be filed as a substitute for an appeal or to apply for a substantially new proposal or one that would have significant additional impacts on surrounding properties.

(C3) An application to modify an approval shall be directed to one or more discrete aspects of the approval, the modification of which would not amount to approval of a substantially new proposal or one that would have significant additional impacts on surrounding properties. Any proposed modification, as defined in this section, shall be reviewed only under the criteria applicable to that particular aspect of the proposal. Proposals that would modify an approval in a scope greater than allowable as a modification shall be treated as an application for a new proposal. Modifications shall not be accepted in such cases where a variance would be required.

(D4) An application for a modification shall be processed in the same manner as the original approval unless criteria for that use has changed. ~~handled as a land use action.~~

(B) Alteration of an Approved Plan

(1) Minor alterations of an approved site plan, design or preliminary plat shall be processed as a Development Action. Examples of such alterations include:

(a) Minor shifting of building location such that no setback is violated.

(b) Minor shifting of street alignments or easements which do not add or delete intersections or diminish road connectivity.

(c) Minor amendments to lot lines such that no new lots are created and all lots continue to meet lot size and frontage requirements.

(d) Minor changes to landscaping species or location of plant materials such that there is no change to the aesthetic improvement qualities of the landscaping.

(e) Minor changes to the building design including roof line.

(f) Minor amendments to phasing plans that would have no adverse effect on the phasing of public improvements.

(2) Proposed alterations shall be submitted in writing to the City Planning Department for approval. The Planning Director shall grant approval to the proposed if it is determined that the change does not substantially alter the previous approval previously given, or the final conditions of approval. If the Director determines that the proposed

change does constitute a substantial alteration or a violation of the conditions the proposal shall be processed as a modification or in the same manner as a new application.

(3) An Alteration can only be considered if there are non-substantive changes in the outward appearance of the development, impact on the surrounding properties is minimal, and the alteration is consistent with the conditions of the original approval and applicable criteria.

Purpose: Note the difference between a modification and an alteration and allows the Planning Director to make this determination based on the criteria.

153.259.040 Transfer of permit

(A) A land use action permit shall be deemed to run with the land and be transferable to applicant's successors in interest.

(B) The Planning Department may require that an applicant record a notice of land use permit and conditions of approval agreement in the Crook County Records. Such an agreement shall set forth a description of the property, describe the permit that has been issued and set forth the conditions of approval.

(C) The terms of the approval agreement may be enforced against the applicant and any successor in interest.

153.259.050 Revocation of approvals

(A) Approvals shall be subject to revocation according to standards set forth in the applicable zoning ordinances.

(B) Revocations shall be processed as a declaratory ruling under City of Prineville Land Development Ordinance. 153.259.010 notwithstanding, a public hearing shall be held in all revocation proceedings.

153.260 DECLARATORY RULING

153.260.010 Availability of declaratory ruling.

(A) Subject to the other provisions of this section, there shall be available for the City's comprehensive plans, zoning ordinances and City of Prineville Land Development Ordinance process for:

(1) Interpreting a provision of a comprehensive plan or ordinance (and other documents incorporated by reference) in which there is doubt or a dispute as to its meaning or application;

(2) Interpreting a provision or limitation in a land use permit issued by the City or quasi-judicial plan amendment or zone change in which there is doubt or a dispute as to its meaning or application;

(3) Determining whether an approval has been initiated or considering the revocation of a previously issued land use permit, quasi-judicial plan amendment or zone change;

(4) Determining the validity and scope of a nonconforming use; and

(5) Determination of other similar status situations under a comprehensive plan, zoning ordinance or land division ordinance that do not constitute the approval or denial of an application for a permit.

(6) Such a determination or interpretation shall be known as a "declaratory ruling" and shall be processed in accordance with this section. In all cases, as

part of making a determination or interpretation the Planning Director shall have the authority to declare the rights and obligations of persons affected by the ruling.

(B) A declaratory ruling shall be available only in instances involving a fact-specific controversy and to resolve and determine the particular rights and obligations of particular parties to the controversy. Declaratory proceedings shall not be used to grant an advisory opinion. Declaratory proceedings shall not be used as a substitute for seeking an amendment of general applicability to a legislative enactment.

(C) Declaratory rulings shall not be used as a substitute for an appeal of a decision in a land use action or for a modification of an approval. In the case of a ruling on a land use action a declaratory ruling shall not be available until six months after a decision in the land use action is final.

(D) The Planning Director may refuse to accept an application for a declaratory ruling if:

(1) The Planning Director determines that the question presented can be decided in conjunction with approving or denying a pending land use action application or if in the Planning Director judgment the requested determination should be made as part of a decision on an application for a quasi-judicial plan amendment or zone change or a land use permit not yet filed; or

(2) The Planning Director determines that there is an enforcement case pending in district or circuit court in which the same issue necessarily will be decided as to the applicant and the applicant failed to file the request for a declaratory ruling within two weeks after being cited or served with a complaint.

(3) The Planning Director determination to not accept or deny an application under this section shall be the City's final decision.

153.260.020 Persons who may apply.

(A) 153.251.010(B) notwithstanding, the following persons may initiate a declaratory ruling under 153.260:

(1) The owner of a property requesting a declaratory ruling relating to the use of the owner's property;

(2) In cases where the request is to interpret a previously issued quasi-judicial plan amendment, zone change or land use permit, the holder of the permit; or

(3) In all cases arising under 153.260.010, the Planning Director.

(4) No other person shall be entitled to initiate a declaratory ruling.

(B) A request for a declaratory ruling shall be initiated by filing an application with the planning department and, except for applications initiated by the Planning Director, shall be accompanied by such fees as have been set by the Planning Department. Each application for a declaratory ruling shall include the precise question on which a ruling is sought. The application shall set forth whatever facts are relevant and necessary for making the determination and such other information as may be required by the Planning Department.

153.260.030 Procedures

Except as set forth in this section or in applicable provisions of a zoning ordinance, the procedures for making declaratory rulings shall be the same as set forth in 153.250 for land use actions. Where the Planning Department is the applicant, the Planning

Department shall bear the same burden that applicants generally bear in pursuing a land use action.

153.260.040 Effect of declaratory ruling.

(A) A declaratory ruling shall be conclusive on the subject of the ruling and bind the parties thereto as to the determination made.

(B) 153.256.040 notwithstanding, and except as specifically allowed therein, parties to a declaratory ruling shall not be entitled to reapply for a declaratory ruling on the same question.

153.260.050 Interpretation

Interpretations made under 153.260 shall not have the effect of amending the interpreted language. Interpretation shall be made only of language that is ambiguous either on its face or in its application. Any interpretation of a provision of the comprehensive plan or other land use ordinance shall consider applicable provisions of the comprehensive plan and the purpose and intent of the ordinance as applied to the particular section in question.

153.261 ENFORCEMENT AND REMEDIES

153.261.010 Enforcement

(A) The City Manager or designee shall have the powers and the duties to enforce the provisions of this chapter and all amendments thereto.

(B) In addition, the City Manager or designee may initiate action to enforce any provision of this chapter, including any violation of any restriction or condition established under the provisions of this chapter in the granting of any application authorized or required pursuant to the provisions of this chapter.

(C) Failure to comply with any order or decision as above provided will subject the violator to any legal remedy provided under law, including but not limited to the following.

(1) A complaint filed with the Circuit Court, or other court of competent jurisdiction whereupon conviction the court may fine the violator up to the maximum allowed by law, or imprison the violator in jail for up to the maximum time allowed by law, or both. Each day a violation occurs may be considered a separate offense.

(2) The City Planning Official and/or a certified Building Official may order the stoppage of work of any type which is in violation of any of the provisions of this chapter or a permit granted pursuant hereto.

(3) A copy of the stop work order shall be posted at the site of construction or use and a copy thereof shall be mailed to the last known address of the property owner and/or the permittee.

(4) Upon the posting of the order, all work shall cease forthwith, and the property owner, permittee or permittee's agents or employees who thereafter continue to work shall be in violation of this chapter.

(5) The stop work order shall not be removed until satisfactory evidence that the violation has or will be corrected has been provided.

153.261.020 Remedies

A person violating a provision of this chapter shall be subject to the following provisions.

(A) Unlawful construction or use declared a nuisance. The location, erection, construction, maintenance, repair, alteration or use of a building or other structure, or the subdivision, partitioning, other land development or use of land in violation of this chapter shall be deemed a nuisance.

(B) Penalty. Except as otherwise provided for by law or by a court of competent jurisdiction, a person violating a provision of this chapter shall, upon conviction, be punished by fine of not more than \$500. A violation of this chapter shall be considered a separate offense for each day the violation continues.

(C) Alternative remedy. In case a building or structure is, or is proposed to be, located, constructed, maintained, repaired, altered or used, or land is, or is proposed to be, used in violation of this chapter, the building or land thereby in violation shall constitute a nuisance, and the city may, as an alternative to other remedies that are legally available for enforcing this chapter, institute injunction, mandamus, abatement or other appropriate proceedings to prevent, enjoin temporarily or permanently, abate or remove the unlawful location, construction, maintenance, repair, alteration or use.

(D) Nuisances. Violations which constitute or include a nuisance violation shall also be subject to the abatement procedures set forth in sections 93.70 through 93.99.