

SECTION 11.1100

APPEALS

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11.1100 Appeals

11.1101 General

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

11.1102 Notice of Appeal

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

11.1103 General Procedures Applicable to All Appeals

- A. Public Hearing. Appeal hearings before the appropriate appeal authority as specified in **Table 11.0204** shall be conducted in accordance with the public hearing provisions in **Section 11.1000** of this code.
- B. Staff Report. Not less than 7 days before the date of the appeal hearing, the Manager shall prepare and make available to the public a copy of the staff report regarding the appeal. A copy of the staff report and recommendation shall be provided to the appeal authority, the applicant and to the appellant. The Manager shall provide a copy of the staff report to the public at reasonable cost upon request.
- C. Action of Appeal Authority. At the conclusion of the hearing on the appeal, the appeal authority shall take one of the following actions:

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

11.1104 Specific Provisions for Appeal of a Type I Decision

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

11.1105 Specific Provisions for Appeal of a Type II Decision

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

11.1106 Specific Provisions for Appeal of a Type III Decision

- A.** A Type III decision may be appealed only by the applicant or any other person who participated by providing either oral or written evidence on the record leading to the decision by the decision authority.
- B.** The Manager shall mail written notice of the appeal hearing to the parties listed in **Section 11.1106(A)** not less than 20 days prior to the appeal hearing. The appeal shall be posted on the subject property.
- C.** The scope of review for an appeal of a Type III decision shall be a review of the record with the right of argument.
- D.** The record shall include:
 - 1.** A factual report prepared by the Manager.
 - 2.** All exhibits, materials, pleadings, memoranda, stipulations, and motions submitted by any party and reviewed or considered in reaching the decision under review.
 - 3.** The transcript of the hearing and a detailed summary of the evidence.
- E.** The decision of the designated appeal authority for the appeal of a Type III decision shall be the final local decision.
- F.**
 - 1.** The City Council may, by the process described in 11.1106.F.2, initiate a hearing as a “Council Review” of a Type III Decision made by the designated Decision Authority as identified in Table 11.0204. City Council may take this action both where City Council is the designated “Appeal Authority” indicated under 11.0204, and where City Council would be taking the place of another Appeal Authority. Where City Council is the “Decision Authority” or there is no available local appeal, City Council may not initiate Council Review.
 - 2.** The Council Type III Review process is initiated by the following procedures. The requirements of Section 11.1101 and 11.1102, Notice of Appeal, do not apply.
 - a.** An individual City Councilor or the Mayor shall notify the City Manager or their designee of the intent to initiate a Council Review process within twelve (12) calendar days of the written Notice of Decision, or, in the case of weekends and holidays, by the end of the next business day. Staff shall begin the process of scheduling a tentative Council Review hearing, pending confirmation by majority vote of City Council to proceed with the Council Review hearing as described in Section (b) below.
 - b.** The City Council shall then hold a vote at the next available City Council meeting after the individual initiation described, and before the tentative hearing date. Majority vote shall be required to confirm the decision to proceed with the Council Review.
 - c.** If the majority of City Council does not vote to proceed with Council Review, the tentatively scheduled hearing will be canceled. Unless a separate Notice of Appeal has been accepted per Section 11.1101 and 11.1102, the decision will be final. If a separate Notice of Appeal has been accepted, the appeal hearing shall be held with City Council as the Appeal Authority.
 - 3.** A Council Review hearing shall be a review of the record with the right of argument and proceed under the appeal procedures of Sections 11.1103 and 11.1106, with City Council acting as the Appeal Authority. Only those parties that presented testimony on the record of the initial Type III hearing may participate. No new evidence is permitted; however, new legal argument

is permitted. Testimony and/or argument is permitted in writing or orally, by those that are parties to the evidentiary hearing record. The decision of City Council as part of the Council Review hearing shall be the final local decision. Any further appeal shall be to the Land Use Board of Appeals (LUBA).

4. In the even that a separate Notice of Appeal is filed where City Council votes to initiate a Council Review, the City Council will take the place of any other Appeal Authority designated in Table 11.0204. Other appellants who have filed in a timely Notice of Appeal may still participate as appellants in the hearing process and retain the same rights to participate and receive notice as otherwise indicated in Article 11.

11.1107 Remand from the Land Use Board of Appeals

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