

ARTICLE 23.00
LAND USE REGULATION AND LAND USE PLAN AMENDMENTS

23.01 AUTHORIZATION TO INITIATE AN AMENDMENT

An amendment to the text or map of the Union County Land Use Plan or the text or map of this or other land use regulations, including the Transportation System Plan, or adoption of a new land use regulation may be initiated by the Planning Commission, by the Board of Commissioners, or by application from a property owner(s) or his authorized agent.

If a local government proposes a change to an acknowledged comprehensive plan or a land use regulation solely for the purpose of conforming the plan and regulations to new requirements in a land use statute, statewide land use planning goal, or a rule implementing the statutes or goals, the local government may adopt such a change without holding a public hearing, notwithstanding contrary provisions of state and local law, provided:

1. The local government provides notice to the Oregon Department of Land Conservation & Development of the proposed change, including the materials described in section (2) of OAR 660-018-0020, 35 days before the proposed change is adopted by the local government, and
2. The department confirms in writing prior to the adoption of the change that the only effect of the proposed change is to conform the comprehensive plan or the land use regulations to the new requirements.

23.02 APPLICATION

An application for amendment by a property owner(s) or his authorized agent shall be filed with the Planning Director on forms provided by the Planning Department at least 30 days prior to the Planning Commission hearing. The application shall be accompanied by a fee as prescribed in Article 33.00 of the ordinance.

23.03 PROCEDURES

1. A pre-applicant conference shall be held between the applicant(s) and the Planning Director to discuss the proposed amendment(s), applicable Land Use Plan or other land use regulation requirements and hearing procedures.
2. The Planning Director may recommend an expansion of the geographical limits set forth in an application for a Plan or Zoning Map amendment if, in his judgement, such expansion would result in better conformity with the application and the affected area.

The Planning Director shall present any such recommendation for expansion to the applicant(s) for concurrence.

3. Notice of a public hearing before the Planning Commission shall be given according to provisions in Section 23.04.
4. The Planning Commission shall conduct a public hearing to receive pertinent evidence and testimony according to provisions in Section 23.05.
5. The Planning Commission shall, after the hearing, recommend to the Board of Commissioners approval, disapproval, or modification of the proposed amendment.
6. The Board of Commissioners shall give notice or cause notice to be given for a public hearing according to provisions in Section 23.04.
7. The Board of Commissioners shall conduct a public hearing to review the Planning Commission's recommendation and receive any "new" pertinent evidence and testimony according to provisions in Section 23.05.

Substantially new testimony at the Board of Commissioner hearing could result in referral to the Planning Commission.

8. Notice of the Board of Commissioner's final action shall be given in the following:
 - A. The signed copy of each amendment to the Land Use Plan or a land use regulation shall be maintained on file in the office of the County Clerk. Additional copies and a record of such amendments shall be maintained by the Planning Department and made available to the public.
 - B. Three copies of the ordinance amending the Land Use Plan or land use regulation, or new land use regulations and findings to support the adoption shall be mailed or otherwise submitted to the Director of the Oregon Department of Land Conservation and Development and the Oregon Department of Transportation (ODOT), Region 5 within five working days after the final decision by the Board of Commissioners.
 - C. In addition, the final ordinance on the action shall be sent within five working days to persons who participated in the proceedings leading to the adoption and who requested notice in writing.
9. An appeal or objection to the Board of Commissioners decision shall be conducted according to Section 24.07 of this ordinance or DLCD Oregon Administrative Rule 660-18-000 "Division 18 – Post Acknowledgement Procedures."

23.04 NOTICE OF PLANNING COMMISSION AND BOARD OF COMMISSIONERS HEARING

All notices shall contain the time, place and a brief description of the application and shall be circulated in the following manner:

1. Separate notice on the Planning Commission and Board of Commissioner hearings shall be published in a newspaper of general circulation in the County at least 10 days prior to the prospective hearings.
2. Individual notice shall be mailed to the recorded owners within 300 feet of the property for which a Plan map or Zoning map change has been requested. Failure of the property owner to receive the notice described shall not invalidate any amendment.
3. A proposal to amend the Land Use Plan or land use regulation or to adopt a new land use regulation shall be submitted to the Director of the Oregon DLCDC and to ODOT, Region 5 at least 45 days before the final Board of Commissioners hearing on adoption. The proposal submitted shall contain three copies of the text and any supplemental information the County believes is necessary to inform the Director of DLCDC and ODOT, Region 5 as to the effect of the proposal and shall indicate the date of the final hearing on adoption by the Board of Commissioners.
4. Planning decisions will be coordinated with other local, State and Federal agencies that may have an effect upon, or be affected by the decision.

23.05 PLANNING COMMISSION AND BOARD OF COMMISSIONER HEARING

1. Hearing Procedure.
Hearings on proposed proceedings shall be in accordance with the rules of procedure adopted by the Planning Commission and Board of Commissioners for the conduct of public hearing pursuant to this Zoning Ordinance.
2. The Burden of Proof.
The burden of proof is placed on the applicant seeking an action pursuant to the provisions of this ordinance. Essential to presenting proof is the applicant, or an authorized agent's attendance at the prescribed hearing for the action unless otherwise prescribed by the hearing body. Unless otherwise provided for in this ordinance, such burden shall be to prove:
 - A. That granting the request is within the public interest, taking into consideration that the greater the departure from the present land use patterns, the greater the burden on the applicant.
 - B. The proposed change is compatible with the Land Use Plan policies or LCDC Goals and Guidelines.

3. A decision on a Land Use Plan text or map amendment by the Planning Commission and Board of Commissioners shall be based on the applicant's ability to meet all of the following:
 - A. Community attitudes and/or physical, social, economic, or environmental changes have occurred in the area or related areas since plan adoption and that a public need supports the change, or that the original plan was incorrect.
 - B. Alternative sites for the proposed uses will be considered which are comparable with the other areas which might be available for the uses proposed.
 - C. All applications to take an exception or exclude certain land from the requirements of one or more applicable statewide planning goals shall be reviewed against the requirements in OAR Chapter 660, Division 4.
 - D. Determine whether the amendment significantly affects a transportation facility. The amendment shall assure that land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan. This shall be accomplished by one of the following:
 - (1) Limiting allowed land uses to be consistent with the planned function of the transportation facility;
 - (2) Amending the Transportation System Plan to ensure that existing, improved, or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the Transportation Planning Rule; or,
 - (3) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.
 - E. A plan or land use regulation amendment significantly affects a transportation facility if it:
 - (1) Changes the functional classification of an existing or planned transportation facility;
 - (2) Changes standards implementing a functional classification system;
 - (3) Allows types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility; or
 - (4) Would reduce the level of service of the facility below the minimum acceptable level identified in the Transportation System Plan.

4. The decision of the hearing body shall be based upon and accompanied by a brief statement that explains the following:
 - A. The criteria and standards considered relevant to the decision;
 - B. The basic facts relied upon in rendering the decision; and
 - C. The ultimate facts and justification for the decision based on the criteria, standards and facts set forth.
5. Recess of Hearing.

The Planning Commission or Board of Commissioners may recess a hearing in order to obtain additional information or to notify additional property owners who it believes may be interested in the application. Upon recessing, the Commission shall announce time and date when the hearing will resume.
6. If the application for amendment is denied, no new application for the same or substantially similar action shall be filed for at least one year from the date of the final order denying the application.

23.06 QUASI-JUDICIAL AND LEGISLATIVE HEARINGS

1. Quasi-Judicial Land Use Hearing Procedure.¹

A Quasi-Judicial land use hearing requires adequate prior notice, an opportunity to both present and rebut evidence at the hearing on the decision, the right to have a record made of the hearing and adequate findings adopted explaining the reasons for the decision. The failure of a property owner to receive notice shall not invalidate the proceedings if the local government can demonstrate by affidavit that such notice was sent.

 - A. Commissioners or Board members are asked whether they have had ex parte contact with any party at interest and if so, explain the contact and whether they will be disqualifying themselves with reason(s) for abstention. The public may challenge a Commissioner or Board member as having bias in any scheduled hearing and if so, the challenge must be supported by evidence, and made before the hearing begins.
 - B. A staff report will be presented which identifies the criteria and standards applying to the application and summarizes basic findings of facts concerning the application. Testimony will be taken from the applicant and proponents of the action, followed by testimony from opponents and other interested parties. Written testimony will be introduced and Commissioners or Board members may ask questions of staff, proponents, or opponents at any time. An opportunity for rebuttal will follow, first from proponents and then opponents.

¹ Based on ORS 197.763

- C. When final comments have been heard, the Commission or Board may close the hearing, not accepting additional oral testimony, or continue the hearing to a specific time and place. Prior to the conclusion of an evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The Commission or Board shall grant such request by continuing the opportunity for oral or written testimony at least seven days from the date of the initial evidentiary hearing.
- (1) If the Commission or Board grants a continuance for a second public hearing to accept and rebut new evidence and testimony they shall announce the date, time and location before the close of the initial hearing. If new written evidence is submitted at the second hearing, any person may request, prior to the conclusion of the second hearing, that the record be left open for at least seven days to submit additional written evidence for the purpose of responding to the new written evidence submitted during the second hearing; or
 - (2) The first hearing (first round) for additional written evidence. Any participant may file a written request with the Planning Department to respond to new evidence submitted during the written testimony period following the first hearing. If so requested, the Commission or Board shall reopen the record to any person to accept the second round of written testimony, then close the record to everyone except the applicant. The applicant may at least seven days after the record is closed submit final written arguments, not to include any new evidence.
- D. If a continuance is requested by the applicant, and the applicant agrees, such a continuance shall not be subject to the 120 day final action period set forth in ORS 197.763.
- E. All testimony and evidence must be directed toward the applicable criteria or other criteria in the Union County Land Use Plan or land use regulations which the person believes applies to the decision. The failure to raise an issue precludes appeal to the Board of Commissioners and the Land Use Board of Appeals on that issue. All testimony may be limited to five minutes or less.
- F. The Commission or Board decision must be based on adequate findings of fact presented during the hearings. When making a motion for a decision, the findings must be stated fully. All Commissioners or Board members are responsible for the adequacy or inadequacy of each finding in the motion. If a finding is challenged by a fellow Commissioner or Board member, a vote may be taken on the findings singly, apart from the motion.

2. Legislative Land Use Hearing Procedure

A legislative land use hearing requires adequate prior notice, an opportunity to both present and rebut evidence at the hearing on the decision, the right to have a record made of the hearing and adequate findings adopted explaining the reasons for the decision.

- A. A staff report will be presented which identifies the criteria and standards applying to the application and summarizes available basic findings of fact concerning the application. Testimony will be taken from the applicant and proponents of the action, followed by testimony from opponents and other interested parties. Written testimony will be introduced and Commissioners or Board members may ask questions of staff, proponents or opponents at any time. An opportunity for rebuttal will follow, first from proponents and then opponents.

- B. When final comments have been heard, the Commission or the Board may close the hearing, not accepting additional oral testimony, or continue the hearing to a specific time and place. Prior to the conclusion of an evidentiary hearing any participant may request an opportunity to present additional evidence or testimony regarding the application. The Commission or Board shall grant such request by continuing the opportunity for oral or written testimony at least seven days from the date of the initial evidentiary hearing.
 - (1) If the Commission or Board grants a continuance for a second public hearing to accept and rebut new evidence and testimony they shall announce the date, time and location before the close of the initial hearing. If new written evidence is submitted at the second hearing, any person may request, prior to the conclusion of the second hearing, that the record be left open for at least seven days to submit additional written evidence for the purpose of responding to the new written evidence submitted during the second hearing; or
 - (2) The Commission or Board may leave the record open for seven days following the first hearing (first round) for additional written evidence. Any participant may file a written request with the Planning Department to respond to new evidence submitted during the written testimony period following the first hearing. If so requested, the Commission or Board shall reopen the record to any person to accept the second round of written testimony, then close the record to everyone except the applicant. The applicant may at least seven days after the record is closed submit final written arguments, not to include any new evidence.

- C. If a continuance is requested by the applicant, and the applicant agrees, such a continuance shall not be subject to the 120 day final action period set forth in ORS 197.763.

- D. All testimony and evidence must be directed toward the applicable criteria or other criteria in the Union County Land Use Plan or land use regulations which the person believes applies to the decision. The failure to raise an issue precludes appeal to the Board of Commissioners and the Land Use Board of Appeals on that issue. All testimony may be limited to five minutes or less.
- E. The Commission or Board decision must be based on adequate findings of fact presented during the hearings. When making a motion for a decision, the findings must be stated fully. All Commissioners or Board members are responsible for the adequacy or inadequacy of each finding in the motion. If a finding is challenged by a fellow Commissioner or Board member, a vote may be taken on the findings singly, apart from the motion.

**QUASI-JUDICIAL & LEGISLATIVE PUBLIC HEARING
FLOW DIAGRAM**

Initial (1st) Hearing

