

**CHAPTER 921**  
**LAND DEVELOPMENT ADMINISTRATION CODE**  
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**I. DEVELOPMENT CODE; GENERALLY**

**A. GENERAL ADMINISTRATIVE PROVISIONS**

**921.002 Title; and short titles**

This Chapter, LCC 921.002 to 921.999, shall be known and cited as the “Linn County Land Development Administration Code.” This Chapter may also be referred to and cited as the “Land Development Administration Code,” or the “Administration Code.”

**921.005 Application of this Chapter and exceptions**

- (A) Procedures for delayed annexations are governed by the provisions in LCC 921.002 to 921.499 (Development Code; Generally) and LCC 931.200 to 931.260.
- (B) Land development permits authorized and issued by the Director or hearing authority are governed by the provisions in LCC 921.002 to 921.499 (Development Code; Generally) and LCC 921.500 to 921.599 (Land Development Permits).
- (C) Interpretations of the Land Development Code are governed by the provisions in LCC 921.002 to 921.499 (Development Code; Generally) and LCC 921.600 to 921.699 (Development Code Interpretations).
- (D) Amendments to the *Comprehensive Plan* and the Land Development Code are governed by the provisions in LCC 921.002 to 921.499 (Development Code; Generally) and LCC 921.800 to 921.899 (Amendment Procedures).
- (E) If a use is not set forth in this Development Code or is determined to be inconsistent with the purposes of this Development Code, the use is unlawful.

**921.007 Authority**

- (A) The Director and Commission are hereby granted all authority and duties allowed them by law, including ORS Chapters 92, 197 and 215, and the Linn County Code, and any applicable rules promulgated by the State, to carry out the purposes and duties of those laws.

- (B) Those purposes and duties include but are not limited to the review of applications for and issuance of permits, orders, or ordinance amendments authorizing:
  - (1) Land use development;
  - (2) Land Development Code interpretations;
  - (3) Recommendations on amendments to the *Comprehensive Plan* and the Land Development Code;
  - (4) Monitoring compliance with the Development Code and enforcement of violations thereof.
- (C) The Director or Commission shall not accept for review an application not meeting the requirements of LCC 921.040.
- (D) The Director or Commission shall not authorize any action not provided by, or not in compliance with, this Development Code.

**921.010 Actions requiring an application**

- (A) The land use actions set forth in this section require review and approval by the decision maker pursuant to this Chapter.
- (B) Development permits authorized by and set forth in LCC 921.510.
- (C) Development Code interpretations authorized by and set forth in LCC 921.620.
- (D) Failures to render a decision required by the Development Code and appeals authorized by and set forth in LCC 921.200 and 921.210.

**921.015 Definitions**

As used in this Chapter or as otherwise indicated:

- (A) “**Application**” means
  - (1) the completed application form including any documents and evidence submitted by an applicant. The application is an evidentiary document and is used by the Director for the purpose of making a determination whether the information as submitted by the applicant may be deemed complete. The term does not include documents or evidence provided to the applicant by the Department.
  - (2) in the case of an appeal and when consistent with the context and the appeal the term means the notice of intent to appeal.
- (B) “**Substantially changes,**” in reference to an application deemed complete, means a change made by the applicant that differs from the proposal as described in the notice to such a degree that the notice of the proposed action did not reasonably describe the County’s final action.
- (C) “**Applicant**” means the appellant in the case of an appeal and when consistent with the context and the appeal process.
- (D) “**Argument**” means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. “Argument” does not include facts.
- (E) “**Evidence**” means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision.

**921.020 Applications; generally**

- (A) The burden of proof is upon the applicant. The greater the impact of the proposal in the area, the greater the burden of proof. The proposal must be supported by

- proof that it conforms to the applicable provisions of the Land Development Code, especially to specific decision criteria. Unless the applicant or the applicant's authorized representative waives appearance in writing with the Director, the applicant or the applicant's authorized representative must appear at a hearing on the application. For an application that requires a public hearing, the presence of the applicant or the applicant's authorized representative at the hearing provides the applicant a greater opportunity to meet the burden of proof.
- (B) The Director shall not accept an application that on the face is incomplete, except as provided in LCC 921.082, or violates federal, state, or local law, or where the Director determines that there is a violation or alleged violation of the Land Development Code.
  - (C) If, in the determination of the Director, an applicant submits any evidence that substantially changes the proposal between the time of giving notice and a decision being made on that proposal, the Director must so notify the applicant in writing and the hearing authority. The notice of the Director's determination must be included in the record of that application.
  - (D) An issue which may be the basis for an appeal to the Land Use Board of Appeals (LUBA) shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the Board. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the Board and the parties an adequate opportunity to respond to each issue.
  - (E) All documents or evidence relied upon by the applicant shall be submitted to the Director and shall be made available to the public for inspection and copying. The person requesting any copies shall bear the expenses for copying as set by the Board in the most recent fee order.
  - (F) Any staff report used at a hearing shall be available at least 7 calendar days prior to the hearing. If additional documents or evidence are provided by any party, the decision maker may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record requested by the applicant shall result in a corresponding extension of the time limitations of ORS 215.428.
  - (G) Irrelevant or repetitive evidence may not be received without the express permission of the hearing authority.
  - (H) Except as allowed in LCC 932.860 to 932.895, age, gender or physical disability shall not be considered in making a land development decision.
  - (I) The application shall be made available to public inspection at the time notice is given in accordance with the provisions of LCC 921.300 to 921.370.
  - (J) The appellant may not submit a recording of an evidentiary hearing on appeal unless the appellant submits along with the recording a transcript of that recording certified to be a true and accurate reproduction of the recording.
  - (K) A video recording may be submitted and received as evidence in an evidentiary hearing.

**921.025 Conflict of interest and ex parte contacts**

- (A) *Conflict of interest.* The Director or any member of the hearing authority shall not participate in any proceeding or action required by this Chapter except as allowed in ORS Chapter 244.

- (B) *Ex parte contact*. No decision or action of the Commission or Board shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:
  - (1) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and
  - (2) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.
- (C) A communication between county staff, including County Counsel, and the Commission or Board shall not be considered an ex parte contact.
- (D) Subsection (B) of this section does not apply to ex parte contact with a hearings officer approved under ORS 215.406 (1).

**921.030 Pre-application conference**

- (A) Definition. For purposes of this section, “**pre-application conference**” means an informal discussion between the applicant and the Director, or the Director’s staff that takes place before an application is filed under LCC 921.040.
- (B) The Director may require and schedule a pre-application conference.
- (C) The applicant shall attend a pre-application conference scheduled by the Director.
- (D) The Director shall grant a pre-application conference requested by an applicant.
- (E) The Director may request the attendance of any other county official whose attendance is deemed necessary by the Director.

**921.035 County Clerk maintains official record of final decisions made by the Board**

The County Clerk is the office that maintains the written record of Board hearings. All written evidence received by the Board and a tape recording of the hearing, if any, will be maintained by the County Clerk.

**921.040 Application; submission requirements**

- (A) An application for an action set forth in this subsection is subject to this section.
  - (1) Development permit,
  - (2) Development Code interpretation,
  - (3) Amendment to the *Comprehensive Plan* or Land Development Code, or
  - (4) Any other proposal for which Linn County has authority to determine under this Development Code, and any additional requirements for an application imposed by the Chapter or section under which the application is filed or governed.
- (B) The application must conform to the requirements of this section before the application may be deemed complete and scheduled for review and decision.
- (C) Except for a Type IIB (code interpretation) and Type IIIA (legislative) application, an application required by this section is an evidentiary document on which a final decision is made.
- (D) Linn County shall not take jurisdiction of an application unless the applicant complies with all the requirements of this section.
- (E) Only an application complying with all the requirements of this section may be deemed complete under LCC 921.060.



- (F) The application form required by this section is a form prescribed by the Director.
- (G) The applicant must file with the Director an application that satisfies all the requirements of subsection (H) of this section.
- (H) *Contents of the application.*
- (1) A completed application form.
  - (2) A statement from the Linn County Environmental Health Program showing that the applicant's proposed or existing uses can be supported by an approved septic system which meets the requirements imposed by LCC 933.140.
  - (3) Any statements needed to show compliance with requirements imposed by any technical information provided to the applicant by the Director under LCC 921.400.
  - (4) A detailed site development plan, drawn to scale.
  - (5) A truck haul plan, if a haul route plan is required by the Chapter or section under which the application is filed or governed.
  - (6) A copy of any document referenced by the application or by any other document. A document may not be incorporated into the application by reference only.
  - (7) All documents and evidence relied upon by the applicant to demonstrate compliance with the applicable decision criteria. All such documents and evidence shall be submitted to the Director before the application is deemed complete.
  - (8) Any information the Director requires the applicant to submit which the Director deems necessary to address applicable decision criteria.
  - (9) Any information required by the Chapter or section under which the application is filed or governed.
  - (10) Unless waived by the Director under this section, a fee applicable to that application in the amount specified by the most current edition of the Linn County Fee Order. Linn County will not take jurisdiction of an application if the fee is:
    - (a) paid late;
    - (b) paid in an incorrect amount; or
    - (c) paid with a check that is returned for insufficient funds.
- (I) The Director may waive the application fee required by subsection (H) if the applicant is a unit or agency of local government.
- (J) The fee required in subsection (H) shall not apply to an appeal made by neighborhood or community organizations recognized by an order of the Board and whose boundaries include the site under review when such appeal is made of a Director determination made pursuant to the Land Development Code.
- (K) The fee required by subsection (H) may have additional requirements imposed by the Chapter or section under which the application is filed or governed.
- (L) The applicant shall attend any pre-application conference scheduled by the Director pursuant to LCC 921.030.
- (M) The fee required by this section may be paid by cash, check, money order, or, if a unit of government, a purchase order, or in any other manner approved by the Director.

### **921.045 Multiple applications**

- (A) The Director, or other decision maker, may require that multiple applications relating to the same tract or authorized unit of land be combined and reviewed concurrently as a single application.
- (B) The Director may consolidate the public hearing processes when appropriate.
- (C) Whenever combined, the applications shall be processed in accordance with the highest level assigned to the applications.
- (D) Approval or denial by the decision maker of one portion of a combined application does not require that the decision maker approve or deny any other portion of the application.
- (E) The applicant shall set forth on separate applications each proposal when:
  - (1) different decision criteria are applicable;
  - (2) more than one zoning district is proposed; or
  - (3) the affected properties are not contiguous.

**921.060 Reviewing an application for completeness**

- (A) *Application classified.* The Director shall initially classify each application according to the appropriate level of review: Type IA, Type IB, Type IIA, Type IIB, Type IIIA, or Type IIIB application. Review by the Director may include submission of the application to other county officials for their review and approval.
- (B) *Application reviewed for completeness.* Within 30 calendar days of receiving an original application or any subsequently provided information, the Director will review the original application or any subsequently provided information and determine if the application complies with LCC 921.040.
- (C) *Deemed complete.* The Director shall deem an application complete if the Director determines that the application complies with all the provisions of LCC 921.040.
- (D) *Notice application is deemed complete.* If the application is deemed complete, the Director shall provide written proof to the applicant that the application is deemed complete. This notice shall contain at least:
  - (1) a statement that the application has been deemed complete;
  - (2) the date it was deemed complete;
  - (3) the date scheduled for a public hearing or decision on the application;
  - (4) a list of any applicable criteria under which proposal was reviewed;
  - (5) the level of review that the Director has determined under subsection (A) of this section;
  - (6) a statement that approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted if:
    - (a) The application was deemed complete when first submitted, or
    - (b) The applicant submits the requested information within 180 calendar days of the date the application was first submitted;
  - (7) a statement that a final action will be made by the Director, or hearing authority, consistent with the time limitations set forth in LCC 921.140; and
  - (8) a statement that if the applicant submits any evidence or testimony after notice has been given on an application deemed complete and the new evidence or testimony substantially changes the proposal, then the decision maker shall



not consider such evidence and shall not receive such new evidence into the record, and that the applicant, if the applicant desires that the new evidence be received, must withdraw the application and submit a new application including fees.

- (E) *Not Deemed Complete*. If the application is not deemed complete, the Director shall notify the applicant in writing what information is missing and allow the applicant, subject to the time limit specified in paragraph (2) of this subsection, 30 calendar days to submit the needed information.
- (1) *Missing information submitted*. If the applicant, within 30 calendar days of receiving the notice specified in paragraph (3) of subsection (B) of this section, submits any additional information, the application first received and the missing information shall be again reviewed under this section.
- (2) *Dismissal of incomplete application*. If the Director, by the end of the 180<sup>th</sup> calendar day after first receiving the application, is still unable to deem complete the application first received and all additionally-provided information, the application shall be dismissed.
- (3) *Incomplete application deemed complete*. If the applicant, by the end of the 30<sup>th</sup> calendar day after the application was first received, refuses to submit the needed information, the application shall be deemed complete on the 31<sup>st</sup> calendar day after the application was first received. The Director shall document the nature of the refusal.
- (F) *Date for review scheduled*. After the application is deemed complete, the Director shall schedule a date for a rendering a decision. The date and time may be for a hearing before the Commission or Board.

#### **921.065 Law applicable to the application**

- (A) Approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted if:
- (1) The application was deemed complete when first submitted, or
- (2) The applicant submits the requested information within 180 calendar days of the date the application was first submitted.
- (B) If an application has not been deemed complete by the 181<sup>st</sup> calendar day after it was first submitted, the applicant must resubmit the proposal in a new application. Such resubmitted application shall be subject to the review process of LCC 921.060 as a new application.

#### **921.070 Classes of review; applications, procedures and decisions**

- (A) *Classes of reviews; applications, levels of review, and decision*. There are three classes of review. Each class consists of an application, its corresponding level of review procedure, and final decision. Each class is identified by a type unique to that class. The three classes of review are:
- (1) Type IA and Type IB classes;
- (2) Type IIA and Type IIB classes;
- (3) Type IIIA and Type IIIB classes.
- (B) *Type IA and Type IB classes*. An application that is classified by the Director as Type I shall be reviewed pursuant to a Type I procedure. The decision is a ministerial decision made by the Director.
- (C) *Type II classes*.

- (1) A Type IIA classification is for an application for a development permit authorized and issued by the Director. An application that is classified by the Director as Type IIA shall be reviewed pursuant to a Type IIA procedure. The decision is a discretionary decision made by the Director. A Type IIA application may be reclassified as a Type IIIB application and referred by the Director to the Commission. If the application is so referred, the application shall be reviewed and decided by the Commission pursuant to the Type IIIB level of review.
  - (2) A Type IIB classification is for an application seeking an interpretation of the Land Development Code. The decision is made by the Director pursuant to a Type IIB procedure.
- (D) *Type III classes.*
- (1) An application that is classified by the Director as Type IIIA shall be reviewed pursuant to a Type IIIA procedure. An action on an application that is classified by the Director as Type IIIA includes:
    - (a) a recommendation on a legislative matter made by the Commission; and
    - (b) a final decision on a legislative matter made by the Board.
  - (2) An application that is classified by the Director as Type IIIB shall be reviewed pursuant to a Type IIIB procedure. An action on an application that is classified by the Director as Type IIIB includes:
    - (a) a quasi-judicial amendment to the *Comprehensive Plan* or the Land Development Code;
    - (b) a development permit authorized by the Commission and issued by the Director; and
    - (c) a Type IIA application that is reclassified by the Director as Type IIIB application.

**921.075 Type I classes**

- (A) The Director shall classify an action set forth in subsections (B) and (C) of this section as a Type IA or Type IB application.
- (B) *Examples of Type IA applications.* The actions set forth in this subsection shall be classified as Type IA.
  - (1) Development being permitted where no discretion is involved and which does not result in the issuance of a permit by the Department, such as planning approval of an irrigation diversion permit issued by the State Water Resources Department.
- (C) *Examples of Type IB applications.* The actions set forth in this subsection shall be classified as Type IB.
  - (1) Development permit where no discretion is involved which results in the issuance of a building permit or an EHP permit.
  - (2) Use of a recreational vehicle as a temporary dwelling.
  - (3) Alteration, restoration, or replacement of a lawfully established dwelling, for which a decision may be made solely on information in the development permit application.
  - (4) Temporary manufactured dwelling storage permit.
  - (5) Partition not requiring the creation of a road, flag-lot, or recognition of an easement.
  - (6) Property line adjustment meeting clear and objective standards.

- (7) Final partition review.
- (8) Final subdivision plat review.
- (9) Road approach (access to a public road).
- (10) Step-one review, as that term is described in LCC 921.082, of a conditional use permit application for a dwelling in an EFU or F/F zoning district.
- (11) Creation of a mortgage-lot.
- (12) Site plan review.
- (13) Any other action which is determined by the Director to require review and approval pursuant to this Chapter or ORS Chapters 92, 197, or 215.

**921.080 Type II classes**

- (A) The Director shall classify an action set forth in subsections (B) and (C) of this section as a Type II application.
- (B) Type IIA applications include but are not limited to:
  - (1) Conditional use permit for which the Director is authorized to make a decision, including,
    - (a) step-two review, as that term is described in LCC 921.082, of a conditional use permit application for a dwelling in an EFU or F/F zoning district, and
    - (b) Greenway conditional use permits.
  - (2) Easement recognition.
  - (3) Partition authorized under LCC 924.500 to 924.800.
  - (4) Non-conforming use review.
  - (5) Partition requiring the creation of a road, flag-lot or an easement.
  - (6) Partition to validate a unit of land not lawfully established.
  - (7) Property line adjustment requiring discretion.
  - (8) Development review within a Sensitive Bird Habitat Overlay.
  - (9) Subdivisions.
  - (10) Variance.
  - (11) Any other action which is determined by the Director to require review and approval pursuant to this Chapter or ORS Chapters 92, 197 or 215.
  - (12) Alteration, restoration, or replacement of a lawfully established dwelling requiring that the Director make a decision based on a review of information not limited to the development permit application.
  - (13) Site plan review for the production, processing, wholesaling, retailing, research or testing of marijuana.
- (C) A Type IIB application is limited to an interpretation of the Land Development Code.

**921.082 Step-one and step-two reviews**

- (A) A step-one review of a conditional use application is a Type IB action conducted by the Director using clear and objective criteria.
- (B) A step-two review of a conditional use application is a Type IIA action conducted by the Director and involves discretion.

**921.085 Type IIIA classes; legislative**

- (A) The Director shall classify an action set forth in subsection (B) of this section as a Type IIIA application.
- (B) A Type IIIA application includes but is not limited to:
  - (1) Legislative amendment to the *Comprehensive Plan*.

- (2) Legislative amendment to the Land Development Code.
- (3) Any other action which is determined by the Director to require review and approval pursuant to this Chapter or ORS Chapters 92, 197 or 215.

**921.090 Type IIIB classes; quasi-judicial**

- (A) The Director shall classify an action set forth in subsection (B) of this section as a Type IIIB application.
- (B) A Type IIIB application includes but is not limited to:
  - (1) Conditional use permit in EFU, F/F, and FCM zoning district for which the Commission is authorized to make a decision.
  - (2) Quasi-judicial amendment to the *Comprehensive Plan*.
  - (3) Quasi-judicial amendment to the Land Development Code.
  - (4) An application:
    - (a) to alter or demolish an historic resource on the Linn County Register of Historic Resources; or
    - (b) to remove a resource from the Historic Resource Overlay (HRO); or
    - (c) to apply the Historic Resource Overlay (HRO) to a resource.
  - (5) A hearing to consider the revocation of a permit pursuant to LCC 921.965.
  - (6) Any other action which is determined by the Director to require review and approval pursuant to this Chapter or ORS Chapters 92, 197 or 215.

**B. EVIDENTIARY AND APPELLATE PROCEDURES**

**921.110 Type IA procedure**

- (A) A Type IA application shall be reviewed and decided in compliance with the procedure provided in this section.
- (B) A decision of a Type IA application shall be made by ministerial action of the Director.
- (C) The Director is not required to provide notice or a public hearing before making a decision on a Type IA application.
- (D) The Director shall make a decision on a Type IA application based only on the evidence and testimony in the record and on any information that is customarily received by judicial notice.
- (E) The Director shall, within 150 calendar days of deeming an application complete:
  - (1) approve the application if the findings and conclusions satisfy all the criteria or can be made to satisfy the criteria with conditions; or
  - (2) deny the application, if the findings of fact do not satisfy all the criteria.
- (F) The Director may issue a decision on a Type IA application in writing. If the decision is in writing, the decision shall comply with the provisions of LCC 921.115 (G).

**921.115 Type IB procedure**

- (A) A Type IB application shall be reviewed and decided in compliance with the procedure provided in this section.
- (B) A decision of a Type IB application shall be made by ministerial action of the Director.
- (C) The Director is not required to provide notice or a public hearing before making a decision on a Type IB application.

- (D) The Director shall make a decision on the application based only on the evidence and testimony in the record and on any information that is customarily received by judicial notice.
- (E) The Director shall, within 150 calendar days of deeming an application complete:
  - (1) deny the application, if the findings of fact do not satisfy all the criteria.
  - (2) approve the application if the findings and conclusions satisfy all the criteria or can be made to satisfy the criteria with conditions; or
- (F) The Director may reclassify a Type IB application as a Type IIA application.
- (G) The Director shall issue a decision on a Type IB application in writing and signed by the Director. The decision shall be based on and include findings of fact, applicable Land Development Code criteria, and conclusions to support the decision. The signature may appear on a final decision, a final plat, a building or other non- planning permit, or in spaces provided on the appropriate form.
- (H) The Director shall comply with the provisions of LCC 921.120 and 921.180.

**921.120 Type IIA procedure**

- (A) A Type IIA application shall be reviewed and decided in compliance with the procedure provided in this section. A decision of a Type IIA application involves application of discretion and shall be made by the Director.
- (B) The Director shall:
  - (1) provide initial application notice as may be required for Type IIA applications by LCC 921.300 to 921.370;
  - (2) make a decision on the application conforming to the requirements of LCC 921.140; and
  - (3) give notice of the decision as required by LCC 921.180.
- (C) A Type IIA application may be reclassified, at the Director’s discretion, as Type IIIB and referred to the Commission for a public hearing. If a Type II application is so referred by the Director to the Commission for its review, the Commission shall review the application under LCC 921.135 (Type IIIB).
- (D) If the Director has not made a decision on a Type IIA application or has not referred it to the Commission within 14 calendar days of the date scheduled for decision, the applicant may request that the application be heard by the Commission under the procedure authorized in LCC 921.135 (Type IIIB, by the Commission).

**921.125 Type IIB procedure**

The procedure for a Type IIB application is set forth in LCC 921.600 to 921.670.

**921.130 Type IIIA legislative procedure**

- (A) A Type IIIA action shall be reviewed and decided in compliance with the procedure provided in this section.
- (B) A Type IIIA action requires a legislative public hearing conducted by a hearing authority.
- (C) A legislative hearing is a public hearing during which opportunity for the presentation of testimony. The hearing is not an evidentiary hearing. A legislative hearing is less formal than a quasi-judicial hearing.
- (D) Except for written materials submitted to the Director prior to the hearing, the Director shall not present documents or testimony on behalf of any person at any time. Each person is responsible to submit any document, evidence or testimony

- which that person wishes to have included in the record. This limitation does not apply when the County is the applicant.
- (E) The Director shall provide initial application notice as may be required for Type IIIA action by LCC 921.300 to 921.370;
- (F) The hearing authority shall:
- (1) conduct at least one public hearing in accordance with subsection (H) of this section no sooner than 42 calendar days from the date the application is deemed complete; and
  - (2) make a decision on the application conforming to the requirements of LCC 921.140.
- (G) The Director shall give notice of the decision as required by LCC 921.190.
- (H) *Conduct of a legislative hearing.* The hearing authority shall include, at a minimum, and as closely as possible in the order indicated, the elements set forth in this subsection in the conduct of such hearing:
- (1) *Statements by the presiding chair.* At the commencement of a hearing the chairperson of the hearing authority shall make a statement on the record to those in attendance that:
    - (a) States the nature and purpose of the matter being considered;
    - (b) States that testimony and arguments must be directed toward the matter described in subparagraph (a) of this paragraph or other criteria in the *Plan* or the Land Development Code which the person believes to apply to the decision;
    - (c) States that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to LUBA based on that issue; and
    - (d) Declares any ex parte contacts that result in bias or impartiality or any conflicts of interest by members of the hearing authority.
  - (2) *Order of testimony and evidence.* The hearing authority shall provide opportunity for the presentation of argument and testimony as closely as possible to the following order.
    - (a) The Director shall, at a minimum, submit:
      - (i) a staff report
      - (ii) any agency comments the Director has received; and,
      - (iii) in the case of appeal, the notice of intent to appeal and the record on appeal in compliance with LCC 921.250.
    - (b) The proponents, if any, followed by other people in support of the proposal.
    - (c) The opponents, if any.
    - (d) Those who do not support or oppose the proposal.
    - (e) The hearing authority may ask questions of any person who has testified or of staff at any point during the hearing.
  - (3) *Hearing continued.* If the hearing is continued or tabled, the chairperson of the hearing authority shall state on the record the date and time for which the hearing is rescheduled and the place where the hearing will be conducted and what limitations exist on further comment or submissions of written materials;



- (4) *Hearing and record closed.* Unless a decision is tabled or hearing continued, the chairperson of the hearing authority shall close the record to public input and begin deliberations on a decision or announce the time, date and place when the decision will be made.
- (5) *Final decision.* The hearing authority shall make a decision on the application conforming to the requirements of LCC 921.140 not more than 42 calendar days from the close of the public hearing.
- (I) A Type IIIA decision on a legislative matter made by the Commission is a recommendation only. It is not a final decision. The Director shall schedule a date for final decision on the matter with the Board.

**921.135 Type IIIB quasi-judicial procedure; evidentiary and appellate**

(A) *Generally.*

- (1) A Type IIIB action shall be reviewed and decided in compliance with the procedure provided in this section.
- (2) This section applies to the evidentiary and appellate process for a Type IIIB application and for an appeal of a Type IIIB decision.
- (3) A Type IIIB action requires at least one quasi-judicial public hearing conducted by a hearing authority.
- (4) A quasi-judicial hearing is a public hearing during which opportunity for the presentation of evidence and testimony is provided. The hearing is an evidentiary hearing. A quasi-judicial hearing is more formal than a legislative hearing.
- (5) Except for written materials submitted to the Director prior to the hearing, the Director shall not present documents or testimony on behalf of any person at any time. Each person is responsible to submit any document, evidence or testimony which that person wishes to have included in the record. This limitation does not apply when the County is the applicant.
- (6) The Director shall provide initial application notice as may be required for Type IIIB action by LCC 921.300 to 921.370.
- (7) The hearing authority shall:
  - (a) conduct at least one public hearing in accordance with subsection (B) of this section no sooner than 42 calendar days from the date the application is deemed complete; and
  - (b) make a decision on the application conforming to the requirements of LCC 921.140.
- (8) The Director shall give notice of the decision as required by LCC 921.195.
- (9) Notwithstanding any provision in this Code to the contrary, the Board may elect to hear any Type IIIB matter in the place of the Commission.
- (B) *Conduct of a quasi-judicial hearing.* The hearing authority shall include, at a minimum, and as closely as possible in the order indicated, the elements set forth in this subsection in the conduct of such hearing.
  - (1) *Statements of presiding chair.* At the commencement of a hearing the chairperson of the hearing authority shall make a statement on the record to those in attendance that:
    - (a) Lists the applicable substantive criteria;
    - (b) Explains the nature and purpose of the matter being considered;

- (c) States that testimony, arguments, and evidence must be directed toward the criteria described in subparagraph (a) of this paragraph or other criteria in the *Plan* or the Land Development Code which the person believes to apply to the decision;
- (d) States that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to LUBA based on that issue;
- (2) The chairperson shall provide an opportunity to the members of the hearing authority to declare any ex parte contacts in compliance with LCC 921.025.
- (3) The chairperson shall provide an opportunity to the members of the hearing authority to declare any conflicts of interest.
- (4) Announces the time and date that the hearing authority plans for a site visit, if a site visit is planned.
- (5) *Order of testimony and evidence.* The hearing authority shall provide opportunity for the presentation of argument and testimony as closely as possible to the following order.
  - (a) The Director.
  - (b) The proponents, if any, followed by other people in support of the proposal.
  - (c) The opponents, if any.
  - (d) Those who do not support or oppose the proposal.
  - (e) The proponent shall be allowed an opportunity to rebut opposing evidence and testimony. The rebuttal is the applicant's opportunity to address concerns raised by others providing testimony.
  - (f) The hearing authority may ask questions of any person who has testified or of staff at any point during the hearing.
- (6) *Evidence, argument, and testimony.* The hearing authority shall provide opportunity for the presentation of evidence, argument, and testimony from the persons listed in paragraph (5) of this subsection.
  - (a) The Director shall, at a minimum, submit:
    - (i) a staff report
    - (ii) any agency comments the Director has received; and,
    - (iii) in the case of appeal, the notice of intent to appeal and the record on appeal in compliance with LCC 921.250.
  - (b) The proponent of the application, followed by other people in support of the proposal.
  - (c) The opponents to the proposal, if any.
  - (d) Those who do not support or oppose the proposal.
  - (e) If any party, at any time before the record is closed, offers written evidence to the hearing authority, the submitting party shall provide copies of such evidence to all other parties. If the written evidence is too large or too voluminous for reproduction, then the person submitting the written evidence must make it or a reasonable copy thereof available for inspection in a reasonable manner to any person requesting to see it.
  - (f) Any evidence or testimony presented in video or still-slide format shall be part of the record made by the hearing authority.

- (g) The hearing authority may consider all or any portion of any proceeding conducted below, subject to:
  - (i) approval by the hearing authority;
  - (ii) no objections to its admission by any party, or the resolution of any objections to the satisfaction of the parties;
  - (iii) the moving party bearing all expenses for the production and distribution of copies as provided in this paragraph;
  - (iv) the moving party providing three copies to the hearing authority and one copy to each party of record; and
  - (v) the transcripts being prepared by a duly certified, official transcriber or reporter and each transcript bearing a certification identifying the name and business address transcriber or reporter and information identifying the tapes used in making the transcription.
- (7) *Hearing and record closed.* The chairperson shall close the public hearing and record unless one of the actions is requested and granted as set forth in subsections (C) and (D).
- (C) *Request for continuation or holding record open.* Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application.
  - (1) The hearing authority shall grant such request by:
    - (a) continuing the public hearing pursuant to subsection (E), or
    - (b) leaving the record open for additional written evidence, arguments, or testimony pursuant to subsection (F).
  - (2) If additional documents or evidence are provided by any party as allowed for in subsection (C) of this section, the hearing authority may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond to the additional documents or evidence. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations of ORS 215.428.
- (D) *Hearing tabled.* On its own motion, the hearing authority may table a decision for up to 35 calendar days for such reasons as bad weather, failure to appear by the applicant, failure to get or maintain a quorum, or for submission of supplemental information from the Director pertaining to the application or decision criteria, when such submission is deemed pertinent by the hearing authority for purposes of rendering a decision.
- (E) *Hearing continued.* If the hearing authority grants a continuance, the hearing shall be continued to a date, time, and place certain at least 7 calendar days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, argument, or testimony. If new written evidence is submitted at the continue hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least 7 calendar days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.
- (F) *Holding record open.* If the hearing authority leaves the record open for additional written evidence, arguments, or testimony, the record shall be left open for at least

- 7 calendar days. Any participant may file a written request with the Director for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearing authority shall reopen the record pursuant to subsection (G) of this section.
- (G) *Submit additional evidence if record reopened.* When the hearing authority reopens a record as authorized in subsection (F) to admit new evidence, arguments, or testimony, any person may raise new issues which related to the new evidence, arguments, testimony, or criteria for decision-making which apply to the matter at issue.
- (1) *Date and limitations.* The chairperson shall state on the record the date and time at which the hearing is rescheduled and the place where the hearing will be conducted.
- (2) *Additional evidence and testimony.* The parties may present additional evidence or testimony and respond to any additional evidence and testimony presented under subsection (C) of this section. If additional written evidence is submitted at the continued hearing, any party may request, prior to the close of the continued hearing, and the hearing authority may grant, that the record be left open, in full or in part, for at least 7 more calendar days to submit written evidence responding to the additional written evidence.
- (H) *Final written arguments.* Unless waived by the applicant, the applicant shall have at least 7 calendar days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. The 7-day period shall not be subject to the limitations of ORS 215.428.
- (I) A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 215.428, unless the continuance is requested or agreed to by the applicant.
- (J) If an applicant submits evidence after notice has been given but prior to a decision being made and that evidence would substantially change the proposal, then the Director shall bring that evidence to attention of the decision maker.
- (K) *Final decision* The hearing authority shall render a final decision on the application conforming to the requirements of LCC 921.140.
- (L) The failure of a property owner to receive notice as provided in LCC 921.335 shall not invalidate a proceeding conducted under this section if the Director can demonstrate by affidavit that such notice was given. The notice provisions of LCC 921.335 shall not restrict the giving of notice by other means, including posting, newspaper publication, radio, and television.
- (M) *Failure to make a decision.* If the Commission has not made a decision within 60 calendar days of the close of a hearing plus any extensions made on the record or the close of the record, the applicant may request that the application be heard by the Board under this section and a decision rendered under LCC 921.140.

**921.140 Final action; time limitations**

- (A) A Type IA and Type IB decision shall be made by the Director within 150 calendar days of deeming the application complete.
- (B) Except as provided in LCC 921.065 (A) and subsection (D),

- (1) For all Type II and Type III applications for land within an urban growth area or for an application for a development permit for mining of mineral or aggregate, final action shall be taken on an application for a development permit or zone change, including resolution of all appeals under ORS 215.422, within 120 calendar days after the application is deemed complete.
  - (2) For all Type II and Type III applications for a development permit or zone change not set forth in subsection (B), including resolution of all appeals under ORS 215.422, final action shall be taken within 150 calendar days after the application is deemed complete.
- (C) If an application for a permit or zone change is incomplete, the Director shall comply with LCC 921.060 (E).
- (D) The period set in subsection (B) of this section may be extended for a reasonable period of time at the request of the applicant.
- (E) The period set in subsection (B) of this section applies:
- (1) only to decisions wholly within the authority and control of the Board; and
  - (2) unless the parties have agreed to mediation as described in ORS 197.318 (2) (b).
- (F) Notwithstanding subsection (E) of this section, the period set in subsection (B) of this section does not apply to an amendment to the *Comprehensive Plan* or the Land Development Code or adoption of a new provision to the Land Development Code that was forwarded to the Director of DLCD under ORS 197.610 (1).
- (G) Except when an applicant requests an extension under subsection (D) of this section, if the decision maker does not take final action on an application for a development permit or zone change within 120 calendar days or 150 calendar days, as applicable, after the application was deemed complete:
- (1) the county shall refund to the applicant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.
  - (2) The applicant may apply in the circuit court of Linn County for a writ of mandamus to compel the county to issue the approval. The writ shall be issued unless the decision maker shows that the approval would violate a substantive provision of the *Comprehensive Plan* or Land Development Code. The writ may specify conditions of approval that would otherwise be allowed by the *Comprehensive Plan* or Land Development Code.
- (H) The decision maker may not compel an applicant to waive the time periods set in subsection (B) of this section or to waive the provisions of subsection (G) of this section as a condition for taking any action on an application for a development permit or zone change except when such applications are filed concurrently and considered jointly with a *Plan* amendment.
- (I) Except when requested or agreed to by the applicant, the extension (s) shall be subject to the time limitations of subsection (B), as applicable.

- (J) Any request by the applicant for an extension of time must be in writing and shall result in a corresponding extension of the time limitations of subsection (B), as applicable.

**921.150 Final decisions; effective date**

A decision is final, for purposes of appeal, on the date the decision is signed by the Director.

**921.160 Final decisions; effect**

- (A) The final decision on a Type I, Type IIA, or Type IIIB application, if approved, is the land development permit sought by the applicant.
- (B) The decision maker shall make a decision based only on the application as deemed complete, the evidence and testimony in the record, and on any information that is customarily received by judicial notice.
- (C) The decision maker may not receive into the record or consider any evidence, argument, or testimony that would substantially change the application as deemed complete when rendering a decision on the application. The decision maker must so inform the applicant and allow the applicant an opportunity to withdraw the application. If the applicant does not voluntarily withdraw the application then the decision maker shall render a decision on the application as deemed complete.
- (D) The decision maker shall:
  - (1) approve the application if the findings and conclusions
    - (a) satisfy all the criteria, or
    - (b) can be made to satisfy the criteria with conditions; or
  - (2) deny the application if the findings of fact do not satisfy all the criteria.
- (E) Following an appeal of a Type IIA or a Type IIIB application, the hearing authority shall make a decision based only on the evidence and testimony in the record made during the hearing *de novo* and on any information that is customarily received by judicial notice.
  - (1) The hearing authority shall:
    - (a) approve the application and deny the appeal if the findings and conclusions
      - (i) satisfy all the criteria, or
      - (ii) can be made to satisfy the criteria with conditions; or
    - (b) deny the application and affirm the appeal, if the findings of fact do not satisfy all the criteria.
- (F) Failure of any person to receive a final decision or notice of decision shall not invalidate the decision.
- (G) The application shall not be approved if the proposed use of land is found to be in conflict with the *Comprehensive Plan* and other applicable Land Development Code or Linn County Code or ordinance provisions. The approval may include such conditions as are authorized by statute or county legislation.
- (H) Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the Land Development Code which shall relate approval or denial of a permit application to the Land Development Code and *Comprehensive Plan* for the area in which the proposed use of land would occur and to the Land Development Code and *Comprehensive Plan* for the county as a whole.
- (I) Approval or denial of a permit 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 on the criteria, standards and facts set forth.

- (J) The Director shall indicate on a distribution list the persons to whom the final decision and notice of decision were mailed. The Director shall maintain the list in the Department's file for that application. If a party is given a notice of decision by means other than mail, the provision of that notice shall be indicated on the list.
- (K) If the hearing authority approves an application for an amendment to the *Comprehensive Plan* map or an amendment to the *Zoning Map*, the Director shall make all appropriate changes to the *Comprehensive Plan* map or *Zoning Map*.
- (L) A decision described in ORS 215.402 (4) (b) shall:
  - (1) Be entered in a registry available to the public setting forth:
    - (a) The street address or other easily understood geographic reference to the subject property;
    - (b) The date of the decision; and
    - (c) A description of the decision made.
  - (2) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.
  - (3) Be subject to the appeal period described in ORS 197.830 (4) (b).
- (M) At the option of the applicant, the Director shall provide notice of the decision described in ORS 215.402 (4) (b) in the manner required by ORS 197.763 (2), in which case an appeal to the LUBA shall be filed within 21 calendar days of the decision. The notice shall include an explanation of appeal rights.

**921.170 Final decisions; form**

- (A) *Type IB final decision.* The Director shall prepare a final decision for a Type IB application on a form approved by the Director.
- (B) *Type II final decision.* The Director shall prepare a final decision for a Type II application on a form approved by the Director.
- (C) *Type IIIA final decision.* The Director shall prepare for the hearing authority's consideration and approval a final decision on a Type IIIA application in the form of an ordinance ready for adoption.
- (D) *Type IIIB final decision.* The Director shall prepare for the hearing authority's consideration and approval a final decision based on the submitted evidence and testimony and on the applicable criteria. The form of a final decision shall be as follows. The form of the decision shall be set forth in and adopted as an order conforming to the requirements of subsection (E).
- (E) *Orders.* All orders setting forth the final decision on a Type IIIB application shall contain:
  - (1) the decision to approve, to approve with conditions and requirements, or to deny the application;
  - (2) finding of facts relevant to the application,
  - (3) the applicable decision criteria and any applicable conditions or requirements of the Land Development Code; and
  - (4) the conclusion that obtains from applying the facts to the criteria and requirements and
  - (5) if the application is approved,

- (a) a statement that the final decision is the land development permit sought by the applicant, and
- (b) one of the following two statements:
  - (i) if there are no conditions or requirements imposed on the permit, a statement that development may be initiated pursuant to the permit, or
  - (ii) if there are conditions or requirements imposed on the permit, a statement that the development permit has only preliminary planning approval and that all conditions and requirements must be fulfilled before development may be initiated. Proof that a condition or requirement has been fulfilled shall be indicated by a dated signature of the Director on the face of the development permit.

Notwithstanding the imposition of conditions or requirements on a development permit, the signature of the Director, pursuant to LCC 921.150, subjects the decision to issue the permit to an appeal if filed in compliance with this Chapter.

**921.180 Notice of decision (Type IB); content and distribution**

- (A) The Director shall prepare, sign and give notice of decision of a Type IB action in accordance with this section.
- (B) *Contents of notice of decision.* The notice of decision on a Type IB action shall contain at least the following elements:
  - (1) the name of the applicant;
  - (2) the Department’s case file number;
  - (3) the location of the property;
  - (4) the Director’s decision on the matter;
  - (5) the date the decision was made;
  - (6) information on how and where to inspect and to obtain a copy of the decision; and
  - (7) a statement that the decision may not be appealed.
- (C) *Distribution of Type IB notice of decision.* Within 35 calendar days of a Type IB decision, the Director shall give notice of decision which for a Type IB decision contains the final decision to all parties to the decision.

**921.185 Notice of decision (Type IIA); content and distribution**

- (A) The Director shall prepare, sign and give notice of decision of a Type IIA action in accordance with this section.
- (B) *Contents of the notice of decision.* The notice of decision shall contain:
  - (1) the name of the applicant;
  - (2) the Department’s case file number;
  - (3) the location of the property;
  - (4) the Director’s decision on the matter;
  - (5) the date the decision was made;
  - (6) information on how and where to inspect and to obtain a copy of the decision;
  - (7) a statement that the decision may be appealed by a party with standing within 14 calendar days of the date of the decision letter by filing a notice of intent to appeal with the Director;
  - (8) a statement that the notice of intent to appeal shall:
    - (a) be in writing;

- (b) identify with particular specificity the inadequacies, omissions or errors made by the decision maker; and
- (c) be accompanied by the appropriate appeal fee; and
- (9) a statement that, unless the decision is appealed in compliance with this Chapter, the decision is a final land use decision.

(C) *Distribution.*

- (1) Within 5 working days of the decision, the Director shall give notice of decision to:
  - (a) the applicant or the land owner(s) if different from the applicant; and
  - (b) all parties with standing who have provided correct mailing addresses.
- (2) The Director shall give the final decision to the applicant, or land owner if different from the applicant.

**921.190 Notice of decision (Type IIIA); content and distribution**

(A) The Director shall prepare, sign and give notice of decision of a Type III action in accordance with this subsection.

(B) *Contents of the notice of decision.* The notice of a Type IIIA decision shall contain:

- (1) the name of the applicant;
- (2) the Department's case file number;
- (3) the location of the property;
- (4) the Board's decision on the matter;
- (5) the date the decision was made;
- (6) information on how and where to inspect and to obtain a copy of the decision;
- (7) a statement that the decision, if approved, may be appealed by a party with standing within 21 calendar days of the date of the decision letter by filing a notice of intent to appeal with the County Clerk.
- (8) a statement that the notice of intent to appeal shall:
  - (a) be in writing;
  - (b) identify with particular specificity the inadequacies, omissions or errors made by the decision maker; and
- (9) a statement that, unless the decision, if approved, is appealed in compliance with this Chapter, the decision is a final land use decision.

(C) *Distribution.*

- (1) Within 5 working days of the decision, the Director shall give the notice of decision to:
  - (a) the applicant or the land owner (s) if different from the applicant;
  - (b) all parties with standing who have provided correct mailing addresses; and
  - (c) DLCD, if required. If a notice of decision is required;
    - (i) it shall include a certificate of mailing containing a statement signed by the person mailing it indicating the date the notice was deposited in the mail, if the notice is mailed, and
    - (ii) the notice of decision shall be mailed or delivered to all parties on the same day.
- (2) Within 20 days of the date of a *Comprehensive Plan* amendment decision, the Director shall give notice to DLCD.

- (3) The Director shall give a notice of decision conforming to this section along with a copy of the final decision to the applicant, or land owner if different from the applicant.

**921.195 Notice of decision (Type IIIB); content and distribution**

- (A) The Director shall prepare, sign and give notice of decision of a Type IIIB action in accordance with this subsection.
- (B) *Contents of notice of decision.* The notice of decision shall contain:
  - (1) the name of the applicant;
  - (2) the Department's file number;
  - (3) the location of the property;
  - (4) the Commission or Board's decision on the matter;
  - (5) the date the decision was made;
  - (6) the number of the order and ordinance, if any;
  - (7) information on how and where to inspect and to obtain a copy of the decision;
  - (8) a statement that the decision may be appealed by a party with standing:
    - (a) within 14 calendar days of the date of the decision letter by filing a notice of intent to appeal with the Director, if the appeal is of a Commission decision; or
    - (b) within 21 calendar days of the date of the decision letter by filing a notice of intent to appeal with the County Clerk, if the appeal is of a Board decision.
- (C) *Distribution.*
  - (1) Within 5 working days of the decision, the Director shall give the notice of decision to:
    - (a) the applicant or the land owner(s) if different from the applicant;
    - (b) the appellant, if any; and
    - (c) all parties with standing who have provided correct mailing addresses; and
    - (d) DLCDC, if required. If a notice of decision is required:
      - (i) it shall include a certificate of mailing containing a statement signed by the person mailing it indicating the date the notice was deposited in the mail, if the notice is mailed, and
      - (ii) the notice of decision shall be mailed or delivered to all parties on the same day.
  - (2) Within 20 days of the date of a *Comprehensive Plan* amendment decision, the Director shall give notice to DLCDC.
  - (3) The Director shall give the applicant, or land owner if different from the applicant, a final decision on a development permit and a copy of a final decision, if any, on an amendment to the *Plan* or Land Development Code.

**C. APPEALS; FAILURES TO RENDER A DECISION**

**921.200 Failure of the decision maker to render a decision**

- (A) If the decision maker fails to make a decision on an application that has been deemed complete under this Chapter, the applicant may file an application pursuant to this section.
- (B) An applicant may file an application requesting the Commission to render a decision if the application not decided was:

- (1) Type IA, or,
- (2) Type IB.
- (C) An applicant may file an application requesting the Board to make a decision if the application not decided was:
  - (1) Type IIA,
  - (2) Type IIB,
  - (3) Type IIIA, not decided by the Commission,
  - (4) Type IIIB, not decided by the Commission. or
  - (5) one of the applications filed pursuant to subsection (B) of this section not decided by the Commission.

**921.210 Appeals**

- (A) Unless otherwise stated, a decision set forth in this section is subject to appeal pursuant to the applicable sections in the Development Code.
- (B) A Type IA decision is not appealable.
- (C) A Type IB decision is not appealable.
- (D) A Type IIA decision may be appealed to the Commission.
- (E) A Type IIB decision may be appealed to the Board.
- (F) A Type IIIA decision by the Board adopting an amendment to the *Plan* or Land Development Code may be appealed to LUBA.
- (G) A Type IIIB decision by the Board adopting an amendment to the *Plan* or Land Development Code may be appealed to LUBA.
- (H) A Type IIIB development permit decision made by the Commission may be appealed to the Board.
- (I) A Type IIIB code interpretation made by the Board may be appealed to LUBA.

**921.220 Appeal procedures; generally**

- (A) *General Provisions.*
  - (1) *Purpose.* This section establishes appeal procedures for reviewing a final decision, or the failure to make a decision, when such decision is required by the Land Development Code and an appeal thereof is provided by the Development Code.
  - (2) *Who may file.* A person who has standing in a land development procedure conducted pursuant to LCC 921.120 to 921.135 may file a notice of intent to appeal for a Type II or Type III decision. The notice of intent to appeal must comply with this section and LCC 921.230.(3) *Where filed.* A notice of intent to appeal must be filed with:
    - (a) the Director, if the appeal is of a Director or a Commission decision, or
    - (b) the County Clerk, if the appeal is of a Board decision.
  - (4) Once a written notice of intent to appeal is determined to be complete pursuant to LCC 921.230 (D), The Director shall provide to the appellant, and applicant, if different than the appellant notice that the notice of intent to appeal is complete and that the appeal has been accepted for purposes of setting the appeal before the hearing authority.
  - (5) The Director shall then schedule the appeal with the hearing authority.
- (B) *Stay of proceedings.* An appeal accepted by the Director shall stay all proceedings and advancement of the action appealed, unless the Director certifies to the Board, after the notice of intent to appeal has been filed, that a stay would cause

imminent peril to life or property. In such cases, the action shall not be stayed except by order of the Board or of a court of competent jurisdiction.

- (C) Notwithstanding any provision in this Code to the contrary, if a time limitation is about to expire and a final decision has not been made, or if the Commission has made a decision and a time limit is about to expire, the Board may enter an order affirming the findings and conclusion of the Commission without conducting any further hearings.

**921.230 Appellant's notice of intent to appeal**

- (A) A written notice of intent to appeal of a Type II or a Type III Commission decision must be filed by the appellant with the Director and shall comply with this section and LCC 921.200 to 921.220.
- (B) *Type II or Type III Commission decision.* A written notice of intent to appeal of a Type II or Type III Commission decision must be received not later than 5:00 p.m. of the 14<sup>th</sup> calendar day after the date of the notice of decision. If the 14<sup>th</sup> calendar day of the appeal period falls on a holiday or weekend, the notice of intent to appeal shall be submitted not later than 5:00 p.m. on the first working day following the 14<sup>th</sup> calendar day.
- (C) The written notice of intent to appeal must be in writing and contain at a minimum:
- (1) the Department's case file number,
  - (2) the appellant's name, address and telephone number, and
  - (3) identify with particular specificity the inadequacies, omissions or errors made by the decision maker; and
  - (4) an appeal fee. The applicant must pay to the County within the appeal period the full amount of the appeal fee specified in the notice of decision if the appeal is not of a Commission decision. An appeal is not complete without the appeal fee, and the hearing authority shall not take jurisdiction of an appeal unless the fee is timely paid in full. Appeal fees must comply with LCC 921.040.
- (D) *Completeness of notice of intent to appeal.* The Director shall evaluate the written notice of intent to appeal of a Director or Commission decision to determine if it is complete. If a written notice of intent to appeal is deficient, an appellant shall be given written notice of the deficiencies and shall be provided 7 additional calendar days to correct the deficiencies. If at the end of the 7 calendar days the written notice of intent to appeal remains deficient, the Director shall not accept the appeal and so notify the appellant in writing.
- (E) *Type III Board decision.* A written notice of intent to appeal of a Type III Board decision must be filed by the appellant with the Clerk.
- (1) The Clerk shall:
    - (a) send, not later than the next working day, a copy of the notice of intent to appeal to the Director and to County Counsel, and
    - (b) make, as soon as practicable, a certified copy of the record made before the Board and submit it to the Director.
  - (2) The Director shall arrange the certified copy of the record of the Clerk into the form required by LUBA.



- (3) The Director or Clerk may ask County Counsel to assist in preparing the certified copy of the record.
- (4) County Counsel shall prepare any legal forms required by the rules of LUBA to represent the County's case and transmit the record and legal forms as required by LUBA.

**921.240 Staff report on appeal**

*Contents of the staff reports.* All staff reports submitted by the Department concerning an application on appeal to the hearing authority shall contain:

- (A) all written comments received prior to the Commission hearing, for applications reviewed by the Commission that were previously reviewed by the Director.
- (B) the record on appeal as described in LCC 921.250, for applications that are reviewed by the Board.

**921.250 Record on appeal to the Board**

- (A) The record of a Commission hearing for purposes of appellate review by the Board shall include only the documents described in subsection (C) of this section.
- (B) The Director shall submit the documents set forth in subsection C of this section to the Board as part of the staff report.
- (C) *Contents of the Commission record.*
  - (1) the application in the form in which it was deemed complete;
  - (2) written correspondence between the Director and the applicant dated before initial application notice was given under the applicable provisions of LCC 921.300 to 921.370;
  - (3) notices published and mailed for Director and Commission reviews;
  - (4) notices of the Board hearing;
  - (5) statements of mailing and affidavits of publication;
  - (6) the staff report prepared by the Director and submitted to and accepted by the Commission as part of the record;
  - (7) any agency comments the Director has received and submitted to and accepted by the Commission as part of the record;
  - (8) the written notice of decision by the Commission; and
  - (9) the notice of intent to appeal.

**921.260 Record on appeal to the LUBA**

The record of the Board hearing for purposes of appellate review by LUBA shall include only:

- (A) the final decision of the Board including any findings of fact and conclusions of law;
- (B) All written testimony and all exhibits, maps, documents or other written materials placed before, and not rejected by, the Board during the course of the Board's proceeding;
- (C) Minutes and tape recordings of the meetings conducted by the Board as required by law;
- (D) Notices of the proposed action, public hearing and adoption of a final decision, if any, published, posted or mailed during the course of the proceeding, including *statements or affidavits* of publication, posting and mailing. Such notices shall

include any notices concerning amendments to acknowledged *Comprehensive Plan* or Land Development Code given pursuant to ORS 197.610 (1) and (2).

[Adopted 98-002 §3 eff 3/4/98]

#### **D. INITIAL APPLICATION NOTICE**

##### **921.300 Initial application notice; generally**

- (A) The Director shall give notice as provided in LCC 921.300 to 921.370.
- (B) The Director shall prepare statements indicating that the notice required by this section has been mailed and published. The statements shall be retained in the Department's file for the application.
- (C) The Director shall document and retain in the Department's file for the application statements indicating that notice required by this section was prepared and given as required.
- (D) A failure to receive the notice required by this section, LCC 921.360 or 921.370 shall not invalidate the land development proceedings or land development decision, provided the Director can demonstrate by statements in the Director's files that such notice was given or published.
- (E) The provisions of this subsection do not limit the County's authority to provide notice in addition to this section and LCC 921.360 and 921.370.
- (F) For easement recognition applications under LCC Chapter 935 (Access Improvement Standards Code), the Director shall give notice as required in LCC 921.305, and also to all land owners within the specified distance along the entire length of the easement.
- (G) If the Director determines that a Land Development Code interpretation, while not specific to a particular property, could have an impact on other properties in the area, notice will be provided to those land owners.
- (H) No mailed notice to land owners is required for legislative amendments to the Land Development Code text or *Comprehensive Plan* text.
- (I) If land subject to a land use application is within an urban growth area and the urban growth boundary management agreement between the affected municipality and Linn County requires notice to the municipality, then the Director shall provide notice of the action to the affected municipality within 14 calendar days of deeming the application complete.
- (J) Proof of publication required by this Chapter shall be by affidavit.

##### **921.305 Initial application notice; landowner**

- (A) Initial application notice of Type IIA actions and hearings for Type IIIB actions governed by LCC 921.135 shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:
- (B) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;
- (C) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within an FCM, EFU or F/F zoning district; or
- (D) Within 1000 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and within an FCM, EFU or F/F zoning district.

(E) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

**921.307 Initial application notice; owner of an airport**

(A) Initial application notice of Type IIA actions and hearings for Type IIIB actions governed by LCC 921.135 shall be provided to the owner of an airport defined by the Department of Transportation as a “public use airport” if:

- (1) The name and address of the airport owner has been provided by the Department of Transportation to the county planning authority; and
- (2) The property subject to the land use hearing is:
  - (a) Within 5,000 feet of the side or end of a runway of an airport determined by the Department of Transportation to be a “visual airport”; or
  - (b) Within 10,000 feet of the side or end of the runway of an airport determined by the Department of Transportation to be an “instrument airport.”

(B) Notwithstanding the provisions of subsection (A) of this section, notice of a land use hearing need not be provided as set forth in subsection (A) of this section if the zoning permit would only allow a structure less than 35 feet in height and the property is located outside the runway “approach surface” as defined by the Department of Transportation.

**921.310 Type I initial application notice**

The Director is not required to give notice for a Type I procedure.

**921.320 Type IIA initial application notice**

- (A) The Director shall give notice of a Type IIA procedure in accordance with this section.
- (B) The Director is not required to provide newspaper notice.
- (C) Within 14 calendar days after an application is deemed complete and not less than 20 calendar days prior to making the decision, the Director shall provide written notice meeting the requirements of LCC 921.350 to surrounding land owners as specified in LCC 921.305 and 921.307, and to agencies, districts and cities determined by the Director to be affected by or to have an interest in the application.

**921.330 Type IIIA initial application notice**

- (A) Not less than 20 calendar days prior to the first hearing on a Type III application set before the Commission or the Board, the Director may, if determined expedient by the Director, provide written notice meeting the requirements of LCC 921.350 to surrounding land owners as specified in LCC 921.305 and 921.307 and to agencies, districts and cities determined by the Director to be affected by or to have an interest in the application.
- (B) Notice meeting the requirements of LCC 921.355 shall be published in a newspaper of general circulation not less than 20 calendar days prior to the date of the public hearing.

[Adopted 98-002 §3 eff 3/4/98]

**921.335 Type IIIB initial application notice**

- (A) Not less than 20 calendar days prior to the first evidentiary hearing on a Type IIIB application, the Director shall provide written notice meeting the requirements of LCC 921.350 to surrounding land owners as specified in LCC

- 921.305 and 921.307 and to agencies, districts and cities determined by the Director to be affected by or to have an interest in the application.
- (B) Notice meeting the requirements of LCC 921.350 shall be published in a newspaper of general circulation not less than 20 calendar days prior to the date of the public hearing.

**921.340 Rescheduled hearings; notice**

In the event a public hearing must be rescheduled, sufficient notice shall be deemed to exist:

- (A) if notice is posted on the door of the scheduled meeting room advertising the cancellation and the date, time, and place for the rescheduled meeting; and
- (B) if reasonable attempts are made prior to the scheduled hearing to announce the cancellation and rescheduling to applicants and known interested parties by direct communication and to the general public through available news media.

[Adopted 98-002 §3 eff 3/4/98]

**921.350 Content of initial application notice**

- (A) Initial application notice required under LCC 921.300 to 921.370 shall comply with this section.
- (B) *Content of the Notice.* One of the purposes of the initial application notice is to provide the information required by ORS 197.763 (5). Toward that end, a copy of the notice shall also be made available to those in attendance at the commencement of any hearing under the *Comprehensive Plan* or Land Development Code. The notice provided shall:
- (1) Explain the nature of the application and the proposed use or uses which could be authorized;
  - (2) List the applicable criteria from the ordinance and the plan that apply to the application at issue;
  - (3) Set forth the street address or other easily understood geographical reference to the subject property;
  - (4) State the date, time and location of the hearing;
    - (a) State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue;
  - (5) Be mailed at least:
    - (a) Twenty calendar days before the evidentiary hearing; or
    - (b) If two or more evidentiary hearings are allowed, 10 calendar days before the first evidentiary hearing;
  - (6) Include the name of a local government representative to contact and the telephone number where additional information may be obtained;
  - (7) 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;
  - (8) State that a copy of the staff report will be available for inspection at no cost at least seven calendar days prior to the hearing and will be provided at reasonable cost; and
  - (9) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

- (10) the applicant's name and the land owner if different from the applicant;
- (11) the applicable decision criteria;
- (12) the Department's file number;
- (13) a statement that written evidence and testimony may be presented at the public hearing or written comments may be submitted to the Director prior to the hearing;
- (14) a reference to the Linn County Assessment map and tax-lot number (s), and a map identifying the property;
- (15) a statement that all testimony and evidence submitted by a party must be directed toward the specified criteria or other criteria in the *Comprehensive Plan*, the Land Development Code, or other criteria in the Oregon Administrative Rules (OAR's) which a party believes apply to the decision;
- (16) A statement that a party may request and the hearing authority shall grant a continuance of any public hearing;
- (17) a statement that a case on appeal to the Commission or to the Board shall be heard *de novo* and
- (18) a statement that in an appeal hearing, any information previously submitted by any party must be resubmitted by that party in order for that information be considered on appeal.

**921.355 Content of initial application notice by publication**

- (A) Initial application notice by publication shall comply with this section.
- (B) *Content of the Notice.* The notice provided shall:
  - (1) Explain the nature of the application and the proposed use or uses which could be authorized;
  - (2) List the applicable criteria from the ordinance and the plan that apply to the application at issue;
  - (3) Set forth the street address or other easily understood geographical reference to the subject property;
  - (4) State the date, time and location of the hearing
  - (5) the Department's file number; and
  - (6) a statement that written evidence and testimony may be presented at the public hearing or written comments may be submitted to the Director prior to the hearing.

**921.360 Additional required notice**

- (A) The Director shall give additional notice in accordance with the provisions of the appropriate sections of this Development Code. Additional notice includes but is not limited to the uses and entities described in subsection (B).
- (B) *Additional notice.*
  - (1) *Subdivision replats.* The Director shall give to affected utility companies or public agencies notice when a utility easement is proposed to be realigned, reduced in width or omitted by the replat. If a replat is proposed in an undeveloped subdivision described in ORS 92.225, notice shall be provided at least 30 calendar days before the date of decision or public hearing date. Notice of a subdivision replat shall also be published in a newspaper of general circulation in Linn County.

- (2) *Greenway compatibility.* The Director shall give to the Oregon State Parks Division notice for all proposed Willamette River Greenway Compatibility Reviews via certified mail, return receipt requested. The Director shall give notice of decision to the Oregon State Parks Division via certified mail return receipt requested for all Greenway compatibility reviews.
- (3) *Historic resource.* The Director shall give to the Oregon State Historic Preservation Office and to persons who have specifically requested notice, notice of any demolition or alteration of an historic resource.
- (4) *Applications within the resource zoning districts.* The Director shall give to the Department of Land Conservation and Development (DLCD) notice of applications on land within the resource zoning districts.
- (5) *Comprehensive Plan map and text changes, zoning map and text changes.*
  - (a) The Director shall give to the Department of Land Conservation and Development (DLCD) notice of *Comprehensive Plan* map and text changes and zoning map and Land Development Code text changes at least 35 days prior to the first evidentiary hearing on the proposal on requisite forms. The notice shall include the date set for the first evidentiary hearing.
  - (b) If the County 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 County may adopt such a change without holding a public hearing, notwithstanding contrary provisions of state and local law, if:
    - (i) The Director gives notice to the DLCD of the proposed change in the manner provided by ORS 197.610 and 197.615, and
    - (ii) The DLCD 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.
  - (c) If the Director determines that emergency circumstances beyond the control of the Director require expedited review such that the Director cannot submit the proposed changes consistent with the 35-day deadline under OAR 660-018-0020, the Director may submit the proposed change to the DLCD as soon as practicable. The submittal must include a description of the emergency circumstances.
- (6) *Flood hazard.* The Director shall give to the Linn County Building Official notice of applications on land affected by potential flooding as identified on the *Flood Insurance Rate Maps (FIRM)* for Linn County.
- (7) *Notice to public agencies.* The Director shall give notice to public agencies, consistent with LCC 921.370.
- (8) *Requested notice.* The Director shall give to those who have requested notice in writing. The person so requesting notice is subject to a notification fee covering costs of notification.

### **921.370 Intergovernmental notice**



- (A) The Director shall give additional notice in accordance with the provisions of the appropriate sections of this Development Code. Additional notice, includes but is not limited to the uses and entities described in this section.
- (B) *Additional intergovernmental notice.*
- (1) *Department of Land Conservation and Development (DLCD).* The Director shall give to DLCD notice of adoption or rejection of proposed Land Development Code text, zoning map, *Comprehensive Plan* text and *Comprehensive Plan* map amendments, on forms prescribed by DLCD, within 5 calendar days of the Board's decision.
  - (2) *Division of State Lands (DSL).* The Director shall give to DSL notice of:
    - (a) land development applications and development permits, including the installation of roadways, within 5 working days of receiving a complete application proposing development in or on a potential jurisdictional wetland as indicated on the *National Wetlands Inventory (NWI) Maps*.
    - (b) *Comprehensive Plan* map or Zoning Map amendment applications for properties that contain a potential jurisdictional wetland.
    - (c) proposed land development applications to mine land located within the beds and banks of waters owned by the State of Oregon shall be provided.
  - (3) *Oregon Department of Fish and Wildlife (ODFW).* The Director shall give to ODFW notice of proposed land development applications when the land involved in a proposal is located within an identified big game habitat area, contains sensitive fish or riparian habitat or is located wholly or partially within a Sensitive Bird Habitat Overlay (see LCC 931.500 to 931.540 for additional notice requirements).
  - (4) *Oregon Department of Geology and Mineral Industries (DOGAMI).* The Director shall give to DOGAMI notice of proposed land development applications involving mining, including the application of an Aggregate Resource Overlay to property within any zoning district. The Director shall also give to DOGAMI a copy of the staff report and the final land development decision.
  - (5) *Oregon Department of Agriculture (ODA).* The Director shall give ODA notice of:
    - (a) proposed land development applications for pre-85 dwellings when an applicant has challenged the soils data for the property as determined in the *Soil Survey of Linn County Area Oregon, July, 1987*. The ODA shall review a report submitted by an applicant and determine if the report was prepared by a soil scientist whose credentials are acceptable to the ODA and determine if the analysis in the report is soundly and scientifically based (see LCC 928.300 to 928.599).
    - (b) all applications under LCC 928.320(B)(9) and 928.620(B)(22).
  - (6) *Oregon Department of Transportation (ODOT).* The Director shall give to ODOT, Highway Division, notice of proposed land development applications that would be adjacent to, would access from or would have potential impact upon a state highway or the interstate freeway.

## **E. MISCELLANEOUS PROCEDURES**

### **921.400 Technical information provided by the Director**

- (A) The Director shall provide to the applicant any technical information known by the Director to be in the Department files at the time of the application, that bears on the application set forth in subsections (B) and (C). The applicant is entitled to rely on that information in any decision rendered.
- (B) Such technical information includes, but is not limited to, the following: mass movement, flood hazard, wildlife habitat, wetlands and sanitation.
- (C) The Director shall make available to the public any technical information provided to the applicant under this section not later than 7 calendar days prior to the first hearing on the application or the final decision whichever is earlier.

**921.430 Limitations of Re-filing of Application**

No new application for the same or similar land development shall be filed within one year of the date of an earlier denial unless it is determined by the Director that circumstances warrant a new application.

**921.450 Interagency Reviews**

- (A) If an agency requests information on the compatibility of a proposed use with the *Comprehensive Plan* or Land Development Code, the Director shall comply with this section.
- (B) When presented with an application, the Director shall review the request and respond.
- (C) The Director may charge a fee for the review as specified in the latest Linn County order establishing a fee therefor.
- (D) The list of agencies and land development activities includes, but is not limited to:
  - (1) *Department of Environmental Quality (DEQ) / Linn County Environmental Health Program (EHP)*.
    - (a) The Director shall review land development compatibility statements for EHP and DEQ. Compatibility statements for site evaluations can be signed as “inconsistent” prior to land development approvals. Until land development approval is granted, only repair permits may be issued.
    - (b) For properties that require the use of a holding tank or require a Water Pollution Control Facilities (WPCF) permit from DEQ, the Director shall coordinate the issuance of building permits with DEQ. Building permits shall not be issued by the Director until DEQ is able to issue the holding tank permit or the WPCF permit.
  - (2) *Department of State Lands (DSL)*. The Director shall review applications from DSL and the U.S. Army Corps of Engineers for proposed mining or bank stabilization within the beds and banks of waters owned by the State of Oregon. The compatibility statement is marked as appropriate and returned to the agency.
  - (3) *Oregon Water Resources Department (OWRD)*. The Director shall review applications from the OWRD for new water rights or the transference of water rights. The review provides the opportunity for coordination of proposed land developments which typically are farm-related and allowed outright.
  - (4) *Department of Geology and Mineral Industries (DOGAMI)*. The Director shall review applications from DOGAMI that involve the mining of land. The compatibility statement is marked as appropriate and returned to the agency.

- (5) *Department of Motor Vehicles (DMV).*
- (a) The Director shall review new and renewal applications from the DMV for dealers and rebuilders of vehicles. The DMV application shall be submitted to the Director along with the appropriate fee as specified in the Fee Order. A site visit may be made. A decision on the application shall be made within 30 calendar days of receiving the application.
  - (b) In reviewing the application, the Director shall determine if the use complies with the site development standards for such a use, any conditions of approval previously included on the use, or if the use is a recognized nonconforming use, that the use has not expanded. If the Director determines the site is not in compliance, the application shall not be signed and the applicant shall be notified. If it is determined that the site is in compliance, the Director shall sign the DMV application and either telephone the applicant or mail the signed application to the applicant.
  - (c) The Director shall review new and renewal applications for the Board from the DMV for a wrecker of motor vehicles or a salvage pool operator. The Director shall determine if the use complies with the site development standards for such a use, any conditions of approval previously included on the use, or if the use is a recognized nonconforming use, that the use has not expanded. A site visit is made and the Director makes a written recommendation on the application by the date established by Board.
- (6) *Oregon Liquor Control Commission (OLCC).*
- (a) The Director shall review applications for the Board from the OLCC for liquor licenses outside incorporated cities to determine if the use will occur on land appropriately zoned for such a use and if the property is in compliance with the applicable zoning district standards. The Director shall make a recommendation to the Board on OLCC license applications. Restaurants outside incorporated city limits are subject to this review. Grocery stores are not subject to this review.
  - (b) The Director shall review OLCC land use compatibility statements to determine if the production, processing, wholesaling, retail, research or testing of recreational marijuana is prohibited or not prohibited on individual properties in Linn County.
- (7) *County Clerk.* The Director shall review applications from the County Clerk for second hand and junk dealers. If the land is appropriately zoned for the use and has land development approval or if the land is not zoned to allow the use but the use is a lawful, nonconforming use, the Director shall recommend approval.
- (8) *Delayed Annexations.* Development of land covered by a delayed annexation agreement shall be coordinated with the appropriate city. Development permits shall not be authorized by the Director unless the city determines that the land is in compliance with the conditions and requirements in the delayed annexation agreement. The Director shall maintain an inventory of properties affected by a delayed annexation agreement.

## **II. LAND DEVELOPMENT PERMITS**

## **A. DEVELOPMENT PERMIT APPLICATIONS**

### **921.500 Applications for land development permits; requirements; generally**

- (A) The Department shall not accept an application for a development permit or issue a permit authorizing development on any land that is not an authorized unit of land.
- (B) The Director or Hearing Authority may issue a development permit only for an authorized unit of land and only for uses or structures permitted through the provisions of this Development Code.
- (C) The Director or Hearing Authority shall not issue any development permits for any unit of land determined to be part of an existing violation of any provision of this Development Code or any other provision of the Linn County Code, whether accidental or intentional, regardless of the time and conditions of the violation, unless the violation will be remedied by the review process.
- (D) Any unit of land which is a part of an original larger unit of land or tract which is in violation of the Land Development Code shall also be subject to that violation, regardless of the time and conditions of the creation and conveyance of such unit of land.
- (E) Except as authorized in subsection (F) of this section, no development permits shall be authorized until such time as the alleged violation has been verified, and either found to be without merit or the violation has been remedied.
- (F) A development permit may be authorized if:
  - (1) the Building Official determines that an imminent hazard to the public health, safety or welfare exists and then only for those building permits needed to resolve the hazardous situation; or
  - (2) when the Director or Hearing Authority determines that issuing a permit would remedy the violation.
- (G) No person shall develop land in a manner not prescribed by the Land Development Code.
- (H) No person shall initiate any land development proposal that is subject to review under this Chapter unless that person first makes application and obtains approval for that development in compliance with the provisions of this Chapter.
- (I) Applicants shall meet or exceed the minimum procedures, criteria and standards of this Development Code in order to meet the land use planning provisions controlling partitions, subdivisions, development, land use, and property line adjustments.
- (J) No person may in any manner not in compliance with the procedures and regulations established in this Development Code:
  - (1) locate, construct, maintain, repair, alter or use a building or other structure; or
  - (2) use, develop, adjust property lines, partition or subdivide land or create a road necessary to permit the division of land.

### **921.510 Development permits requiring an application**

- (A) The actions set forth in subsection (B) require a development permit approved pursuant to this Chapter.
- (B) *Development requiring a permit.*
  - (1) Type IA and Type IB development permits where no discretion is involved resulting in the issuance of a building or an EHP permit;

- (2) Use of a recreational vehicle as a temporary dwelling;
- (3) Alteration, restoration, or replacement of lawfully established dwellings;
- (4) Temporary storage of a manufactured dwelling;
- (5) Road approach (access to a public road);
- (6) Development of a residential site;
- (7) Development of a commercial, industrial or public service site;
- (8) Variance from property development standards;
- (9) Land divisions:
  - (a) Partitions:
    - (i) which require the creation of a road, flag-lot or an easement;
    - (ii) which do not require the creation of a road, flag-lot, or recognition of an easement;
    - (iii) requiring prior authorization granted under LCC 924.500 to 924.800;
  - (b) Subdivisions:
    - (i) preliminary plat approval, and
    - (ii) final plat approval;
- (10) Property line adjustments;
  - (a) requiring discretion
  - (b) meeting objective standards;
- (11) Nonconforming use, including an alteration of a nonconforming use;
- (12) Conditional use permits;
- (13) Creation of a mortgage-lot;
- (14) Recognition of an easement;
- (15) Development reviews within a Sensitive Bird Habitat Overlay (SBHO); and
- (16) Any other action which is determined by the Director to require approval of a development permit pursuant to the Land Development Code.

**921.520 Persons authorized to submit development permit applications**

Applications for developments set forth in LCC 921.510 may be submitted only by the following persons:

- (A) The owner or contract purchaser of record of any existing authorized unit of land, or a representative of the owner or contract purchaser of record having written authorization which specifically sets forth the land development proposal (s) for which the representative is authorized to apply, and
- (B) The Director may initiate on behalf of any public agency applications for proposals intended to be located on property which that public agency owns or intends to own.

**921.530 Grading permit required**

A grading permit may be required from the Building Official pursuant to LCC Chapter 850 (Fill and Excavation Code).

**921.530 Permit for development in the EFU, F/F, or FCM; expiration date and extensions**

- (A) Except for a partition or a subdivision, a discretionary decision in the EFU, F/F, or FCM zoning districts is void two years from the date of the final decision if the development action is not initiated in that period.
- (B) One, 12-month extension may be granted upon written request submitted prior to the expiration of the approval period. The request shall state the reasons that

prevented the applicant from beginning or continuing development within the approval period. If the Department determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible, then an extension shall be granted.

## **B. DEVELOPMENT PERMITS FOR MINING; GENERALLY**

### **921.540 Definitions**

The definitions set forth in LCC 939.030 apply to LCC 921.541 to 921.569.

### **921.541 Development permit for mining generally**

- (A) *Sites not approved for mining.* The Director shall not issue a development permit under this Subchapter if the site is on Appendix 3 (Possibly Significant Site) in LCC Chapter 905 (Land Use Element Code).
- (B) No person may initiate or engage in mining of aggregate without, or in non-compliance with, a development permit issued under LCC 921.552 or 921.562.
- (C) A person who initiates or engages in mining without a development permit approving mining is in violation of the Land Development Code.
- (D) A person who initiates or engages in mining in a manner that does not comply with the requirements imposed by the permit, or of any requirements imposed by LCC Chapter 939 (Mining Permit and Uses Code) or by LCC 921.560 to 921.569 or by the provisions of LCC Chapter 905 (Land Use Element Code) applicable to that site is in violation of the Land Development Code.
- (E) The violations described in this section are subject to LCC Chapter 240 (Enforcement Code).

### **921.542 Expansion sites**

- (A) The County shall allow a currently approved aggregate processing operation at an existing site to process material from one of the sites set forth in subsection (B) of this section without requiring a re-authorization of the existing processing operation unless limits on such processing were established at the time it was approved.
- (B) The sites described in subsection (A) are:
  - (1) an expansion site; or
  - (2) a new site:
    - (a) on the same property on which the existing site is located; or
    - (b) on an adjacent property which is under the control or ownership of the owner of the existing site.

### **921.543 Initiation of mining**

- (A) The operator shall initiate the mining of aggregate under a development permit issued pursuant to LCC 921.552 or 921.562 within the time period identified in LCC 920.400 (B) (1).<sup>1</sup>
- (B) If the owner or operator does not initiate development within the time period set forth in subsection (A) of this section the owner or operator may apply to the Director for an authorization to initiate mining.
- (C) If mining is not initiated within the time period set forth in this section, the operator may not initiate or engage in mining at the site unless the operator first obtains a new authorization to initiate mining following the review as described in this section.



- (D) For a development permit issued under LCC 921.552 for which mining has not been initiated within the time period set forth in this section, review to re-authorize the initiation of mining shall consider only the factors identified in this subsection.
- (1) If the proposed re-authorization does not represent a change in the previous mining permit, the development permit shall comply with the provisions of LCC 921.522 to 921.556.
  - (2) If the proposed re-authorization represents a change in the previous mining permit, and such change results in a new conflict or greater conflict not previously analyzed under LCC 939.130(B):
    - (a) The review to authorize the development permit shall consider only new conflicts or greater conflicts not previously analyzed under LCC 939.130(B);
    - (b) The review to authorize the development permit shall consider only those factors set forth in LCC 939.130(B) (4) pursuant to the process set forth in LCC 939.140; and
    - (c) The development permit shall comply with the provisions of LCC 921.552 to 921.556.
- (E) For a development permit issued under LCC 921.562 for which mining has not been initiated within the time period set forth in this section, no mining may be initiated unless a new development permit has been first applied for and obtained.

**921.544 Performance and development standards**

- (A) The minimum standards set forth in LCC 934.350 to 934.359 shall apply to the establishment, maintenance and operation of a mining area that is subject to a development permit issued under LCC 921.552 or 921.562.
- (B) The measures, conditions, and regulations approved under LCC 939.200.
- (C) The decision maker may, at its discretion, provide additional performance or development standards on the mining permit and mining operation.

**921.545 Removal of structures and equipment**

When mining is completed, all equipment, refuse, buildings and structures not related to the final use shall be removed from a mining area that is subject to a permit issued under LCC 921.552 or 921.562. The mining area shall be left free of debris.

**921.546 Final use**

- (A) Each mining area subject to a permit issued pursuant to LCC 921.552 shall be reclaimed to a final use as set forth in LCC 933.190 (C).
- (B) Each mining area subject to a permit issued pursuant to LCC 921.562 shall be reclaimed to a final use as set forth in LCC 933.190 (B).

**C. DEVELOPMENT PERMITS FOR MINING OF SITES RECEIVING GOAL 5 PROTECTION**

**921.552 Development permit for mining of sites receiving Goal 5 protection**

- (A) The Director shall issue a development permit authorizing the initiation of mining if a determination was made that the site is a significant site under LCC 939.120 and is a site listed on or after September 1, 1996 on:
  - (1) Appendix 5 in LCC Chapter 905 (a site without conflicts); or
  - (2) Appendix 6 in LCC 905 (all conflicts have been minimized); or
  - (3) Appendix 8 in LCC 905 (based on an ESEE analysis the site is to receive Goal 5 protection and to be approved for mining with or without limitations).

- (B) A permit authorizing the initiation of mining of a significant site listed on Appendix 6 or 8 in LCC Chapter 905 shall be subject to:
  - (1) any required measures, conditions and regulations approved in LCC 939.200; and
  - (2) a condition that mining may not be initiated or conducted unless in compliance with a site development plan approved by the decision maker; and
  - (3) a condition that the owner and operator comply with the program adopted to protect the resource.
- (C) Any conditions imposed on the permit issued pursuant to this section shall be clear and objective whether imposed by this Code, the *Comprehensive Plan*, the process that leads to minimization of all significant conflicts, or by an ESEE analysis.

**921.556 Additional land use review**

- (A) The decision maker, in making a determination under LCC Chapter 939 pursuant to the Goal 5 process, may consider the additional land use review factors set forth in subsection (B) of this section.
- (B) Additional land use review authorized by this section and by LCC 921.544 shall not:
  - (1) exceed the minimum review necessary to assure compliance with the requirements in LCC 939.200 pertaining to the site under review.
  - (2) provide opportunities to deny mining for reasons unrelated to these requirements, or to attach additional approval requirements, except with regard to mining activities:
    - (a) not requested in an application filed under LCC Chapter 939; or
    - (b) for which the *Plan* amendment application does not provide information sufficient to determine clear and objective measures to resolve identified conflicts; or
    - (c) for which a significant change to the type, location, or duration of the activity shown on the *Plan* amendment application is proposed by the operator.

**D. DEVELOPMENT PERMITS FOR SITES NOT RECEIVING GOAL 5 PROTECTION**

**921.560 Statement of purpose**

The purpose of LCC 921.560 to 921.569 is to allow for the development and utilization of aggregate resources not protected by Goal 5 while providing guidelines for conditions to be applied to the mining of the aggregate. These conditions are designed:

- (A) to provide reasonable protection to neighboring properties,
- (B) to minimize undesirable effects, and
- (C) to result in the reclamation, rehabilitation and the ultimate beneficial reuse of the property for land uses which will be compatible with the surrounding activities.

**921.562 Development permit for mining of sites not receiving Goal 5 protections**

- (A) The Director may issue a development permit for a site that:
  - (1) is listed on Appendix 4 (non-significant site) in LCC Chapter 905 (Land Use Element Code) and the decision maker has approved the issuance of a development permit under LCC 921.560 to 921.569, or
  - (2) is listed on Appendix 10 (significant site but based on an ESEE analysis conducted under LCC 939.150 is not to receive Goal 5 protection) in LCC

- Chapter 905 and the decision maker has approved the issuance of a development permit under LCC 921.560 to 921.569, or
- (3) is listed before September 1, 1996, on Appendix 5 (no conflicts), or Appendix 8 (Goal 5 protections based on ESEE analysis).

(B) A permit issued under this section must comply with LCC 921.560 to 921.569.

**921.564 Decision criteria**

(A) Approval to issue a permit to mine a site described in LCC 921.562 shall be based on compliance with all the decision criteria described in subsection (B) of this section.

(B) *Decision criteria.*

(1) LCC 933.310.

(2) The site is listed on one of the appendices as described in LCC 921.562.

**921.568 Permit issuance and renewal**

(A) A permittee holding a development permit issued under LCC 921.562 shall comply with the performance standards of LCC 921.544, in addition to any conditions established by the decision maker.

(B) Except as otherwise provided in LCC 921.960, a development permit issued by the Director to mine under LCC 921.562 pursuant to which mining has been initiated in compliance with LCC 920.400 (B) (1) shall be valid until the DOGAMI or DSL permit expires.

**III. DEVELOPMENT CODE INTERPRETATIONS**

**A. CODE INTERPRETATION APPLICATIONS**

**921.600 Statement of purpose**

(A) The purpose of LCC 921.600 to 921.670 is to provide a procedure for interpretation of the Land Development Code. The Board has adopted the *Comprehensive Plan* and the Land Development Code after duly and regularly noticed and advertised public hearings and opportunity for public comment. Respective portions of the Land Development Code were adopted and amended following duly and regularly noticed and advertised public hearings and opportunity for public comment as the respective legislative and quasi-judicial procedure required. An interpretation is a declaration of what the Board meant at the time of the adoption or amendment.

(B) The Board hereby authorizes the Director to interpret the Land Development Code adopted by the Board.

**921.610 Authority for interpretation**

(A) Subject to subsection (B) of this section, the Director shall be responsible for interpreting the Land Development Code if, in its administration, a question of interpretation or its applicability arises.

(B) If the Director refers the application to the Board pursuant to LCC 921.640 (C), the Board shall decide the question of interpretation or applicability of a Land Development Code.

**921.620 Application for a Development Code interpretation**

(A) An application for a code interpretation may be filed with the Director when:

(1) a word, text, or application of the Development Code is determined by the Director to be unclear or ambiguous; or

(2) an application is filed involving a determination described in LCC 921.625.

- (B) The person requesting an interpretation shall file an application:
  - (1) that complies with LCC 921.040, or
  - (2) on a form approved by the Director. The person requesting an interpretation shall make the request in writing and submit the appropriate fee.
- (C) The Director shall classify an application filed pursuant to this section as a Type IIB application.

**921.622 Person authorized to file an application for a Development Code interpretation**

Any person may file an application seeking an interpretation of the Land Development Code.

**921.625 Review of similar uses**

- (A) The Director may permit, in any zoning district, any use not specifically described or listed in any other zoning district if, in the opinion of the Director, the requested use is
  - (1) of the same general type, and
  - (2) is similar to uses permitted in the subject zoning district.
- (B) The similar use shall be consistent with the statement of purpose of the subject zoning district.
- (C) This similar-use review and decision shall be made in the same manner as other interpretations of this Development Code.

**B. CODE INTERPRETATION NOTICE**

**921.630 Type IIB initial application notice**

The Director is not required to give initial application notice for a code interpretation.

**C. CODE INTERPRETATION PROCEDURE**

**921.640 Type IIB Development Code interpretations; procedure**

- (A) A Type IIB application shall be reviewed and decided in compliance with the procedure provided in this section.
- (B) At the Director's discretion, a Type IIB application requesting an interpretation may be reclassified as a Type IIIB action and referred to the Board. If a Type IIB application is so referred by the Director to the Board for its review, the Board shall review and decide the application under LCC 921.135.
- (C) The interpretation of the Director or Board shall not violate the intent or provisions of the *Comprehensive Plan* or the Land Development Code.
- (D) *Decision.*
  - (1) The Director shall, within 90 calendar days of deeming an application complete:
    - (a) deny the application, if the findings of fact do not satisfy all the criteria, or
    - (b) approve the application if the findings and conclusions satisfy all the criteria or can be made to satisfy the criteria with conditions.
  - (2) The Director shall issue a decision on a Type IIB application. The decision shall be based on and include findings of fact, applicable Land Development Code criteria, and conclusions to support the decision.
  - (3) The Director shall make a decision on the application based only on the evidence and testimony in the record and on any information that is customarily received by judicial notice.

- (4) The Director shall make a decision on the application conforming to the requirements of LCC 921.140.
- (5) The Director, or Board, shall issue an interpretation in writing and shall base the interpretation on the purpose and intent of the *Comprehensive Plan* and Land Development Code as applied to the particular situation.
- (E) *Doubt regarding interpretation.* If the Director determines that there is substantial doubt regarding the proper interpretation, the Director shall:
  - (1) so state and provide the basis for the doubt in writing;
  - (2) submit the question and the Director's written basis for substantial doubt to the Board; and
  - (3) prepare a staff report for the Board and the report will be available at least 7 calendar days prior to the hearing.
- (F) *Role of County Counsel.* The Director or Board may refer the application to County Counsel for research and an opinion of the matter.

**921.650 Final decisions; form**

The Director shall prepare a Type IIB interpretation on a form approved by the Director.

**921.660 Notice of decision (Type IIB); content and distribution**

- (A) Within 35 calendar days of a decision by the Director, the Director shall give a notice of the decision to the applicant, or to the land owner if different from the applicant.
- (B) The Director shall prepare, sign and give notice of decision of a Type IIB action in accordance with this section.
- (C) The Director shall give notice of decision in the following situations:
  - (1) If the interpretation makes a use an outright use; or
  - (2) If the interpretation would result in requiring the applicant to file an application that would not be a Type IIA or Type IIIB application.
- (D) The Director shall give notice of decision in compliance with LCC 921.300 to 921.350, if an interpretation affects only a specific property or a restricted or limited number of landowners notice shall be given as provided in this subsection.
- (E) The Director may give notice of decision in compliance with LCC 921.300 to 921.350, if an interpretation has a general, county-wide impact, rather than an impact only on a specific property or a restricted or limited number of landowners.
- (F) Unless required by this section, notice of decision to a surrounding landowner is not required to be provided unless such notice has been specifically requested by that landowner.
- (G) *Contents of the notice of decision for an interpretation of the Development Code.* The notice of decision shall contain:
  - (1) the name of the applicant;
  - (2) the Department's case file number;
  - (3) the location of the property, if necessary;
  - (4) the Director's decision on the matter;
  - (5) the date the decision was made;
  - (6) information on how and where to inspect and to obtain a copy of the decision;

- (7) a statement that the decision may be appealed to the Board by the applicant, or a party with standing, if any, within 14 calendar days of the date of the decision letter by filing a notice of intent to appeal with the Department;
  - (8) a statement that the notice of intent to appeal shall:
    - (a) be in writing;
    - (b) identify with particular specificity the inadequacies, omissions or errors made by the decision maker; and
    - (c) be accompanied by the appropriate appeal fee; and
  - (9) a statement that, unless the decision is appealed in compliance with LCC 921.670, the decision is a final land use decision.
- (H) *Distribution.*
- (1) Within 5 working days of the decision, the Director shall give the notice of decision to:
    - (a) the applicant or the land owner (s) if different from the applicant; and
    - (b) all parties with standing, if any, who have provided correct mailing addresses.
  - (2) The Director shall give the final decision to the applicant, or land owner if different from the applicant.

**D. CODE INTERPRETATION APPEALS**

**921.670 Type IIB Development Code interpretations; appeal procedures**

- (A) An interpretation of the Land Development Code made by the Director may be appealed to the Board by a party adversely affected by the interpretation.
- (B) If the Director has not made a decision on a Type IIB application or has not referred it to the Board within 14 calendar days of the scheduled decision date, the applicant may request that the application be heard by the Board under LCC 921.135.
- (C) A notice of intent to appeal of a Type IIB decision must be filed within 14 calendar days after the date of a notice of decision. The notice of intent to appeal shall state with sufficient specificity why the interpretation is thought to be incorrect and shall be accompanied by the appropriate fee.
- (D) The Board shall hear an appeal of an application for a Director interpretation of Land Development Code pursuant to LCC 921.135.
- (E) On appeal, the Board may:
  - (1) issue a final determination in the matter;
  - (2) find that the question is of a legislative nature and proceed in an appropriate manner;
  - (3) find that there is insufficient information to interpret the Land Development Code; or
  - (4) require the Director to study the issue and provide additional information at a subsequent hearing.
- (F) A copy of an interpretation not appealed or one that is rendered by the Board following appeal shall be provided to the Commission and to Department staff for their information and use.
- (G) If necessary, Board interpretations shall be incorporated into the Land Development Code during the next appropriate amendment and shall be implemented by the Director and Commission during the interim.



#### **IV. HISTORIC RESOURCES PROCEDURES**

##### **921.700 Historic resources; applications**

An application complying with LCC 921.040, may be made for the following actions.

- (A) An application to remove an Historic Resource Overlay (HRO).
- (B) An application to apply an Historic Resource Overlay (HRO).
- (C) An application to alter or demolish an historic resource on the Linn County Register of Historic Resources.

##### **921.710 Historic resource; procedures**

An application to remove an Historic Resource Overlay (HRO) shall be reviewed and decided by a Type IIIA process.

- (A) An application to apply an Historic Resource Overlay (HRO) shall be reviewed and decided by a Type IIIB process.
- (B) An application to alter or demolish an historic resource on the Linn County Register of Historic Resources shall be reviewed and decided by a Type IIIB process.

##### **921.730 HRC review of applications for historic resource properties**

- (A) The Director shall review and initially classify an application set forth in subsection (C) of this section for review by the Historic Resource Commission (HRC) as provided in LCC 932.900 to 932.990.
- (B) The HRC shall review an application by the level of review set forth in LCC 921.710.
- (C) The HRC shall make a recommendation to the Commission approving or denying:
  - (1) application or removal of the Historic Resource Overlay (HRO) designation, or
  - (2) amending the HRO designation.
- (D) The recommendation in subsection (C) shall be based on whether the application or removal of the HRO would serve to retain the integrity of the historic resource or on whether the HRO designation should be amended.
- (E) The HRC shall make a decision on an application for alteration or demolition of an historic resource on the Linn County Register of Historic Resources.
- (F) When a qualifying historic dwelling is habitable and the authorized unit of land is proposed to apply an HRO, the dwelling does not need a conditional use permit from the Department or the Commission.
- (G) When an historic property which is not habitable or which has been used for non-dwelling purposes is proposed to be rehabilitated for or converted to a dwelling, its establishment as a dwelling requires approval under the Land Development Code provisions for the underlying zoning district from either the Department or the Commission.
- (H) The HRC shall determine whether it is appropriate to establish or remove the Historic Resource Overlay (HRO) and to confirm the underlying zoning designation if property is removed from the HR Overlay.
- (I) Any proposed changes that would potentially affect the exterior of a qualifying historic dwelling shall be reviewed and approved by the HRC before they are initiated. Such review and approval shall be required as a condition of approval

##### **921.740 Board review of applications for historic resource properties**

The Director shall schedule a recommendation made by the HRC for final action by the Board. The Board shall review and decide the recommendation as follows:

- (A) A recommendation made by the HRC to remove an Historic Resource Overlay (HRO) shall be reviewed and decided by a Type IIIA process.
- (B) A recommendation made by the HRC to apply an Historic Resource Overlay (HRO) shall be reviewed and decided by a Type IIIA process.
- (C) An appeal of a decision made on an application to alter or demolish an historic resource on the Linn County Register of Historic Resources shall be reviewed and decided by a Type IIIB process.

## **V. AMENDMENT PROCEDURES**

### **921.800 Title; short titles**

LCC 921.800 to 921.899 shall be known and cited as the “Linn County Land Use Amendment Process Code.” LCC 921.800 to 921.899 may also be referred to and cited as the “Land Use Amendment Code” or the “Amendment Code.”

### **A. LAND DEVELOPMENT CODE**

#### **921.802 Statement of purpose**

The purpose of this LCC 921.800 to 921.849 is to provide criteria for decision and the necessary procedures to take action on the Zoning Map or Development Code text amendments that are consistent with the provisions of the *Comprehensive Plan*. These provisions are intended to provide the opportunity to amend or revise the *Linn County Land Development Code* to meet changing land use needs.

#### **921.805 Authority to amend the Zoning Map**

- (A) Amending the Zoning Map, e.g., changing boundaries of zoning districts, shall be made only by the Board by ordinance adoption.
- (B) The amended map, when so adopted, shall become a part of this Code.
- (C) One original Zoning Map shall be maintained in the Department.
- (D) A second original Zoning Map shall be maintained in the County Clerk’s Office.
- (E) Both original Zoning Maps shall be continuously updated with the adopted text that describes the changes to the Zoning Map.

#### **921.810 Types of amendment applications**

- (A) Application for amendment of the Land Development Code may be initiated to amend the Zoning Map, text or a combination of the Zoning Map and text.
- (B) An amendment to the Development Code may be a legislative Type IIIA action.
- (C) An amendment to the Development Code may be a quasi-judicial Type IIIB action.
- (D) A separate application to amend the Zoning Map shall be required for each proposed map designation. Approval of one application shall not mandate approval of other applications. The application may be consolidated for public hearing purposes if the applications are interrelated and consolidation would expedite their review.
- (E) An application to amend the Zoning Map and text shall require at least two separate applications: one or more applications to amend the map and one to amend the text. Approval of one application shall not mandate approval of the other application.

- (F) If an application to amend the Zoning Map or text of the Land Development Code necessitates a *Plan Map* or *Plan* text amendment, the two applications may be consolidated into a single public hearing.

**921.812 Persons authorized to submit amendment applications**

- (A) An application to amend the Land Development Code may be filed only by the persons set forth in subsection (B).
- (B) *Persons having authority to file an application.*
  - (1) The majority of the Board.
  - (2) A recommendation by a majority of the Commission.
  - (3) The Director.
  - (4) A city, if the amendment is requested for land within an adopted urban growth boundary.
  - (5) A special district or school district if the amendment is requested for land within the district's boundaries.
  - (6) A land owner, for his or her land.
  - (7) A group of land owners, for their land.
  - (8) A County resident for an application to amend the text of the Land Development Code.

**921.815 Application procedure**

An application may be filed seeking an amendment to the Land Development Code if the application complies with the applicable requirements of LCC 921.002 to 921.499.

- (A) The Department shall not accept an application for amendment of the Land Development Code if incomplete or incorrect information has been submitted or if the applicant has failed to attend a pre-application conference with the planning staff.
- (B) A public hearing on an application to amend the Land Development Code shall be set no sooner than 42 calendar days following the deeming of that application complete.

**921.817 Pre-application conference**

Prior to filing an application to amend the Land Development Code, the applicant shall attend a pre-application conference with the planning staff pursuant to LCC 921.030.

**921.820 Review procedure**

An application seeking an amendment to the Land Development Code shall be reviewed under a Type IIIA procedure if the application is legislative, or a Type IIIB procedure if the application is quasi-judicial.

**921.822 Decision criteria for Zoning Map amendments**

- (A) When a Zoning Map or Land Development Code text amendment is necessary due to a proposed *Comprehensive Plan* amendment, only findings and conclusions responding to the *Comprehensive Plan* amendment criteria for decision are necessary to amend the Zoning Map or Code text provisions.
- (B) Except as stated in subsection (A) and LCC 921.824, a Zoning Map amendment from one zoning district to another may be granted if on the basis of the application, investigation, testimony and evidence submitted, findings and conclusions show that all of the following conditions exist:
  - (1) The presence of development limitations including but not limited to geologic hazards, natural hazards, water quality and quantity and septic suitability, do

not significantly adversely affect development permitted in the proposed zoning district;

- (2) The amendment will result in a development pattern having no significant adverse impact upon transportation facilities, police and fire protection, storm drainage facilities or the provision of other regional public facilities;
- (3) The amendment will result in a development pattern compatible with uses on nearby lands and will have no significant adverse impact on the overall land use pattern in the area;
- (4) The amendment is consistent with the intent and purpose statement of the proposed zoning district;
- (5) The amendment is consistent with the existing *Comprehensive Plan* map designation;
- (6) The amendment will not have a significant adverse impact on a sensitive fish or wildlife habitat; and
- (7) The amendment, if within an adopted urban growth boundary, is consistent with the *Comprehensive Plan* and implementing ordinances of the affected city.

**921.824 Decision criteria for Development Code text amendments**

- (A) A Land Development Code text amendment may be granted if on the basis of the application, investigation, testimony and evidence submitted, findings and conclusions show that:
  - (1) The amendment is consistent with the intent and purpose statement of the affected Chapter or subchapter of the Land Development Code; and
  - (2) The amendment is consistent with the intent of the policies within the applicable section (s) of the *Comprehensive Plan*.

**921.830 Intent to Re-zone**

- (A) An order of intent to re-zone shall be adopted by the Board only when the criteria for decision have been met.
- (B) If it is determined that a Zoning Map amendment application would comply with the general purpose of the Land Development Code should the land in question be developed as proposed, the Board shall indicate general approval in the form of an order entitled “Order of Intent to Re-zone.”
- (C) The order of intent shall include any conditions, stipulations or limitations which are necessary to safeguard the public interest and to insure consistency with the intent, purposes and criteria of the Land Development Code.
- (D) Approved site plans for land covered by an “Order of Intent to Re-zone” may be amended or abandoned with the approval of the Board. No other changes constituting a departure from the approved site plan shall be made, except by amendment as herein provided unless the property has been released from the site plan requirement.
- (E) The applicant must meet all conditions, stipulations and limitations stated in the order within 12 months of the effective date of decision unless a different approval period is prescribed. If not completed within the approval period, the order shall become null and void unless, prior to the expiration of the approval period, an application to extend the approval period has been submitted and approved.

- (F) The Director may grant one extension for up to 12 months. Any conditions deemed necessary for the implementation of this Land Development Code may be established as part of the extension. All extension requests exceeding 12 months in length and extension requests that are in addition to an extension granted by the Director shall be reviewed by the Board. Any conditions deemed necessary for the implementation of the Land Development Code may be established as part of the extension.
- (G) Upon fulfillment of all conditions, stipulations and limitations contained in the Order of Intent to Re-zone, the order shall become binding for final approval. An ordinance adopting the map amendment shall be signed completing the re-zone.

**921.840 Appeal procedures**

An appeal of an approval of amendment to the *Comprehensive Plan* shall comply with LCC 921.200 to 921.260.

**B. COMPREHENSIVE PLAN**

**921.850 Statement of purpose**

The purpose of LCC 921.850 to 921.899 is to provide procedures and criteria for the amendment of the *Comprehensive Plan*. These provisions are intended to provide the opportunity to amend the plan to meet changing land use needs.

**921.855 Authority to amend the *Comprehensive Plan* Map**

- (A) Amending the *Comprehensive Plan* map, e.g., changing boundaries of map designations, shall be made only by the Board by ordinance adoption. The amended map, when so adopted, shall become a part of this Development Code.
- (B) One original *Comprehensive Plan* map as amended shall be maintained in the Department.
- (C) A second original *Comprehensive Plan* map shall be maintained in the Clerk's Office.
- (D) Both original *Comprehensive Plan* maps shall be continuously updated with the adopted text that describes the changes to the *Comprehensive Plan* map.

**921.860 Persons authorized to submit amendment applications**

- (A) An application to amend the *Comprehensive Plan* may be filed only by the persons set forth in subsection (B).
- (B) *Persons having authority to file an application.*
  - (1) The majority of Board.
  - (2) A recommendation of a majority of the Commission.
  - (3) The Director.
  - (4) A city, if the amendment is request for land within an adopted urban growth boundary.
  - (5) A special district or school district, if the amendment is requested for land within the district's boundaries.
  - (6) A landowner for the landowner's property.
  - (7) A group of landowners for their property.
  - (8) County resident for *Plan* text amendment only.

**921.862 Types of amendment applications**

- (A) Application for amendment of the *Comprehensive Plan* may be initiated to amend the *Plan* map, *Plan* text, or a combination of the *Plan* map and text.
- (B) An amendment to the *Comprehensive Plan* may be a legislative Type IIIA action.

- (C) An amendment to the *Comprehensive Plan* may be a quasi-judicial Type IIIB action.
- (D) A separate application to amend the *Plan* map shall be required for each proposed map designation. Approval of one application shall not mandate approval of other applications. The application may be consolidated for public hearing purposes if the applications are interrelated and consolidation would expedite their review.
- (E) An application to amend the *Plan* map and text shall require at least two separate applications: one or more applications to amend the map and one to amend the text. Approval of one application shall not mandate approval of the other application.
- (F) If an application to amend the *Plan* map or text necessitates a Zoning Map or Land Development Code text amendment, the two applications may be consolidated into a single public hearing.

**921.864 Application procedure**

- (A) An application may be filed seeking an amendment to the Comprehensive Plan if the application complies with the applicable requirements of LCC 921.002 to 921.499. The Department shall not accept an application for amendment of the *Comprehensive Plan* if incomplete or incorrect information has been submitted or if the applicant has failed to attend a pre-application conference with the planning staff.
- (B) A public hearing on an application to amend the *Comprehensive Plan* shall be set no sooner than 45 calendar days following the deeming of that application complete.

**921.866 Fees**

- (A) In addition to the requirements of LCC 921.040, a fee shall be assessed in compliance with subsection (B) for each application filed with the Department to amend the *Comprehensive Plan*.
- (B) *Fees for amendments.*
  - (1) If a *Comprehensive Plan* amendment necessitates a Zoning Map amendment, only the *Comprehensive Plan* amendment fee shall be charged;
  - (2) In addition to the filing fee, the applicant shall be assessed the cost of research, duplication and mailing of public notices to affected persons at a rate of \$7.50 per required notice
  - (3) The filing fee shall apply to an applicant listed under LCC 921.860 (B) (4) to (8).
- (C) The following provisions shall apply to refunding of fees assessed for public hearing on a *Comprehensive Plan* amendment:
  - (1) Refunds for the application fee may be made when the application is withdrawn prior to any substantial review and prior to the publication and issuance of any public notice. The refund shall be for up to 90% of the fee, depending on the amount of review that has occurred.
  - (2) If an application is withdrawn after publication or mailing of public hearing notice, the applicant shall forfeit all fees.
  - (3) If the date of public hearing is rescheduled at request of the applicant after publication or mailing of public hearing notice, the applicant shall be assessed a rescheduling fee of \$100 plus a re-notification fee of \$7.50 per notice.



**921.868 Pre-application conference**

Prior to filing an application to amend the *Comprehensive Plan*, the applicant shall attend a pre-application conference with the planning staff.

**921.870 Review procedures**

An application seeking an amendment to the *Comprehensive Plan* shall be reviewed under a Type IIIA procedure if the application is legislative, or a Type IIIB procedure if the application is quasi-judicial.

**921.872 Decision criteria for *Plan* text amendments**

To approve a plan text amendment, the following criteria shall be met:

- (A) The amendment is consistent with the intent of the applicable section (s) of the *Comprehensive Plan*; and
- (B) The amendment is consistent with the statewide planning goals.

**921.874 Decision criteria for *Plan* map amendments**

(A) To approve a plan map amendment, findings shall be made that:

- (1) The amendment is consistent with and does not alter the intent of applicable section (s) of the *Comprehensive Plan*;
- (2) The amendment will be compatible with adjacent uses and will not adversely impact the overall land use pattern in the area;
- (3) The amendment, if within an adopted urban growth boundary, is in substantial conformity with the *Comprehensive Plan* and implementing ordinances of an affected city;
- (4) The amendment will not have a significant adverse impact on a sensitive fish or wildlife habitat;
- (5) The amendment will not have a significant adverse impact upon the provision of public facilities including police and fire protection, sanitary facilities and storm drainage facilities;
- (6) The amendment will not have a significant adverse impact upon the transportation facilities;
- (7) The presence of any development limitations including geologic hazards, flood hazards or water quality or quantity will not have a significant adverse affect on land uses permitted through the amendment;
- (8) An exception to the statewide planning goals is not required. If required, then findings have been prepared to meet the exception criteria; and
- (9) The amendment is consistent with the statewide planning goals.

**921.876 Decision criteria for combined *Comprehensive Plan* and Land Development Code amendments**

When an application involves an amendment to the *Comprehensive Plan* and to the Land Development Code, each amendment shall be subject to the respective criteria. When a criterion is addressed under one amendment, that criterion need not be addressed again under the other amendment.

**921.890 Appeal procedures**

An appeal of an approval of amendment to the *Comprehensive Plan* shall comply with LCC 921.200 to 921.250.

**VI. ENFORCEMENT PROCEDURES**

**921.900 Acts of the director or the hearing authority**

For purposes of this Land Development Code, a requirement that the Director or the Hearing Authority do or refrain from doing an act includes the Director or the Hearing Authority causing that act to be done or not done.

**921.910 Administration of development code**

- (A) The Director shall be responsible for the administration and interpretation of the Land Development Code.
- (B) The Building Official, prior to issuing any permit pertaining to the use of land or structures or the erection or alteration of any structure, shall ascertain that the proposed use or structure shall, in all ways, conform to the requirements of this Development Code.
- (C) A planning review fee shall be imposed at the time of issuance of a building permit unless the land use review associated with the pending building permit has already occurred under separate fee. The planning review fee shall be established by the fee order.

**921.920 Initiating or Starting Development**

- (A) No person may initiate development within 14 calendar days of a Director, Commission or HRC decision date. The exception to the 14-day period is when there is no party in a land development review with standing to appeal a decision. In that case, development may be initiated within the 14-day period, provided all applicable conditions and requirements of Land Development Code have been met.
- (B) Unless a different period has been prescribed, the construction or alterations authorized by a land development decision must be initiated within 24 months, or, when a land development decision does not involve any construction or alteration, the authorized activity must be started within 24 months of the effective date of decision.
- (C) Unless otherwise specified,
  - (1) Land development decisions shall be void 2 years from the date of the final decision if the development action is not initiated in that period.
  - (2) One, 12-month extension may be granted upon written request submitted prior to the expiration of the approval period. The request shall state the reasons that prevented the applicant from beginning or continuing development within the approval period. If the Director determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible, then an extension shall be granted. The extension of a conditional use permit is not a land use decision.
  - (3) If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid for four years.
    - (a) An extension of a permit described in paragraph (3) shall be valid for two years.
    - (b) For purposes of this paragraph, “**residential development**” includes only the dwellings allowed under LCC 928.315 (B) (1), 928.325 (B) (7), 928.326 (B) (3), (4), (5), and (6), 928.336 (B) (1), 928.615 (B) (1), 928.617 (B) (2) and (3), 928.625 (B) (7), 928.626 (B) (3), (4), (5), and (6), 928.627 (B) (8), 928.628 (B) (1) and (2), 928.636 (B) and 928.915 (B) (2).

- (D) Ministerial decisions made with respect to applications set forth in this subsection shall remain valid for the times specified:

**Action Valid for:**

Partitions with recognized access 180 calendar days

Property line adjustments meeting objective standards 180 calendar days

Step-one reviews of conditional use permit applications for dwellings in the EFU and FF zoning

Districts 30 calendar days

- (E) No person may initiate development of a property authorized by a development permit issued under the Land Development Code unless that person fulfills all conditions and requirements imposed on a permit. A person may only initiate development of a property authorized by a development permit issued under the Land Development Code if that person first fulfills all conditions and requirements imposed on a permit, or if the development permit authorizing development was issued without any conditions or requirements imposed on the permit.
- (F) The satisfactory completion of all conditions and requirements shall be so noted on the face of the permit by signature of the Director and date of approval.

**921.930 Compliance with the Development Code provisions; generally**

Applications, interpretations and decisions made under this Development Code shall comply with:

- (A) The minimum requirements of this Development Code;
- (B) The goals, policies and land use allocations of the *Comprehensive Plan*; and
- (C) Oregon Revised Statutes, Chapter 92 regulating land division, description, surveying and sale; Chapter 197 regulating development and implementation of comprehensive plans; Chapter 215 regulating county land use planning policies and standards; and the applicable Oregon Administrative Rules.

**921.950 Compliance with state and other local regulations**

- (A) Development subject to this Development Code shall also require coordination and compliance with the following regulations, as applicable. Another Linn County ordinance cannot allow a land use that is inconsistent with this Development Code unless that use is specifically exempted by the other ordinance.
- (B) The Linn County Ordinances set forth in this subsection may have bearing on an application filed under the Land Development Code:
- (1) Citizen Involvement Element of the Linn County Comprehensive Plan,
  - (2) LCC Chapter 870 (Floodplain Management Code),
  - (3) Urban Growth Management Agreements,
  - (4) Historic Resource Protection Element of the Linn County Comprehensive Plan,
  - (5) LCC Chapter 850 (Fill and Excavation Code)
  - (6) LCC 531.400 to 531.900 (Nuisance Code)
  - (7) LCC Chapters 560 to 564 (Dog Control Code),
  - (8) LCC Chapter 240 (Code Enforcement Code),
  - (9) LCC Chapter 960 (Road Naming and Addressing), and
  - (10) All other applicable local ordinances and Development Codes.
- (C) The Director coordinates land use decisions with, among others, Environmental Health, the Road Department and the Building Official.

- (D) The Linn County Agency Involvement Program, which provides opportunity for comment to all federal, state or local agencies potentially affected by a proposed land use decision.
- (E) All other requirements and provisions reasonably necessary to accomplish the purposes of this Development Code.
- (F) All partitions, subdivisions and use of land shall conform to all applicable development standards specified in the pertinent zoning district and to all applicable state and county regulations regarding health, safety and sanitation.

**921.960 Revocation of development authorization**

A permit or other approval granted pursuant to the Land Development Code may be revoked if the hearing authority finds that the permittee has:

- (A) materially misrepresented the intended land development on the application or in testimony or evidence that was relied upon by the decision maker to make a determination approving the application; or
- (B) failed to establish, maintain, or otherwise comply with the use or the development in accordance with:
  - (1) a condition of approval, or
  - (2) a material provision of the authorized plans or permit conditions.

**921.965 Development permit revocation procedure**

- (A) The decision to revoke a land development approval is subject to this section
- (B) If the Director receives sufficient information to indicate that the permittee has met any of the conditions described in LCC 921.960, the Director may, in addition to any process authorized under LCC Chapter 240 (Enforcement Code):
  - (1) Schedule a public hearing before the Board to determine whether a permit should be revoked for any condition described in LCC 921.960;
  - (2) Notify the following persons of the time and place of the hearing pursuant to LCC 921.335:
    - (a) the permittee;
    - (b) any person entitled to notice under LCC 921.305, 921.307, 921.360 and 921.370; and
    - (c) any person not entitled to receive notice under paragraph (2) of this subsection but who received a notice of decision on the conditional permit being reviewed at the last known address as shown in the Department's files;
  - (3) Prepare a staff report for the Board setting forth the basis for the Director's determination made under subsection (B) of this section and any evidence or testimony which the Director has received or is aware that rebuts the failure.
- (C) A review to determine whether a permit should be revoked shall be conducted in accordance with LCC 921.135.
- (D) The Board may elect to have the matter heard by the Commission. If the Board elects to have the matter heard by the Commission, the Board so instruct the Director, and the Director shall schedule the matter before the Commission.
- (E) The review under this section is in addition to any action authorized to be taken in LCC Chapter 240 (Enforcement Code).
- (F) A decision under this section shall:
  - (1) affirm the permit as issued; or

- (2) revoke the permit.
- (G) The decision maker shall provide findings of fact to support whatever decision is made by the Board or Commission regarding the revocation review.
- (H) No person shall continue or resume a use that has been revoked. Continuing or resuming the use is a violation of this Land Development Code.
- (I) Once a land development has been revoked, it may only be re-established by obtaining land development approval using the current land development provisions.
- (J) *Appeals.* A decision made by the Board pursuant to this section is subject to appeal pursuant to LCC 921.210 (H). A decision made by the Commission pursuant to this section is subject to appeal pursuant to LCC 921.210 (G)

**921.970 Stop work order**

Whenever any activity is being done contrary to or without the necessary authorization provided through the provisions of this Development Code, the Director may order the activity stopped by written notice posted on the property or served on any persons engaged in the activity. Such activity shall cease until the Director authorizes the activity.

**921.980 Development constraints and violations of development code**

- (A) No person shall develop land in the unincorporated areas of Linn County in violation of this Development Code.
- (B) No person shall initiate any land development proposal that is subject to review under LCC Chapter 921 (Land Development Administration Code) unless that person first makes application and obtains approval for that development in compliance with the provisions of LCC Chapter 921 (Land Development Administration Code).
- (C) No person may develop access to an authorized unit of land unless that access is in compliance with LCC Chapter 935 (Access Improvement Standards Code).
- (D) No person may develop land within any of the hazard areas except as allowed in paragraphs (1), (2), or (3) of this subsection.
  - (1) *Flooding.* In an area subject to flooding identified on flood hazard maps created by the Federal Emergency Management Administration (FEMA), no person may develop land unless that person has first applied for and obtained approval for that development under the provisions in LCC Chapter 870 (Floodplain Management Code).
  - (2) *Mass movement.* In an area containing mass movement topography as indicated in the *Bulletin 84, Environmental Geology of Western Linn County, Oregon*, no person may develop land unless the applicant provides a report from an Oregon Engineering Geologist to the Director before development permits may be issued. The report shall state that the land can be safely developed. If the report provides recommendations for development, those recommendations shall be incorporated into the site development.
  - (3) *Wetlands.* Development of land containing potential jurisdictional wetlands as inventoried on the National Wetlands Inventory (NWI) maps may be subject to additional development standards imposed by the -Department of State Lands (DSL).
- (E) No person shall continue any activity for which a stop work order on the property has been issued

- (F) Unless in compliance with the procedures and regulations established in this Development Code, no person may in any manner:
  - (1) locate, construct, reconstruct, structurally alter, enlarge, partly or wholly demolish, move, repair, or use a building or other structure;
  - (2) use, develop, adjust property lines, partition or subdivide land, or
  - (3) create a road necessary to permit the division of land.
- (G) No person having received a development permit shall fail to continuously maintain the applicable property development standards, performance and operation standards, and conditions of approval imposed on a development permit pursuant to this Development Code.
- (H) No person shall fail to comply with LCC 932.815(D) if a permit is revoked and the removal of a caretaker residence is required.
- (I) No person shall fail to comply with LCC 932.895(B)(5) and (6) if a permit is revoked or the hardship ceases and the removal of a manufactured dwelling is required.
- (J) No person may at any time negotiate to sell a lot until the preliminary plat has been approved.
- (K) No person shall sell or convey any interest in a lot:
  - (1) Until the plat has been signed by the Director and recorded with the County Clerk.
  - (2) By reference to, or exhibition or other use of, a plat until that plat has been recorded.
- (L) No person may at any time negotiate to sell a parcel until the preliminary plat has been approved.
- (M) No person shall sell or convey any interest in a parcel:
  - (1) Until the plat has been signed by the Director and recorded with the County Clerk.
  - (2) By reference to, or exhibition or other use of, a plat until that plat has been recorded
- (N) No person may sell any portion of real property that is composed of a mortgage-lot permitted under LCC Chapter 922 (Mortgage-lot Code) unless the seller first complies with LCC 922.500 (C).
- (O) No person may create a mortgage-lot unless the purpose for its creation is to finance improvements or the development of improvements on the real property on which the mortgage lot is located.
- (P) No person may create a mortgage-lot unless that person first files an application meeting the requirements of LCC 921.040 and obtains approval pursuant to LCC 921.115.
- (Q) No person may sell any portion of real property that has a mortgage-lot unless the seller first
  - (1) files a satisfaction of the mortgage has been recorded and otherwise complies with LCC 922.500, and
  - (2) applies for and obtains approval for a partition under LCC Chapter 924 (Partitioning Code), or
  - (3) a division of land has resulted from a judicial foreclosure of
    - (I) a lien financing the purchase or improvement of the real property, or



(II) a recorded contract for the sale of the real property.

**921.990 Penalties**

- (A) County Counsel, upon request of the Board, shall institute any necessary legal proceedings to enforce the provisions of this Development Code, including but not limited to, injunctive relief, abatement proceedings, actions at law, suits in equity and criminal actions.
- (B) Any person violating any provision of this Development Code shall be subject to action under LCC Chapter 240 (Code Enforcement Code) for a Class “A” infraction.
- (C) Each person found guilty of a violation shall be deemed guilty of a separate offense for every day during any portion of which any violation of any provision of this Development Code is committed, continued or permitted by such person and shall be punishable therefore as provided in the Linn County Enforcement Ordinance.
- (D) If, after the issuance of a permit, the Director or Hearing Authority determines that a violation existed on a unit of land prior to permit issuance, the permit, may be recalled and voided by the Director, hearing authority, Building Official, or other official of Linn County.