Chapter 227

2017 EDITION

City Planning and Zoning

CITY PLANNING COMMISSION

227.010 Definition for ORS 227.030 to 227.300. As used in ORS 227.030 to 227.300, "council" means a representative legislative body. [Amended by 1975 c.767 §1]

227.020 Authority to create planning commission. (1) A city may create a planning commission for the city and provide for its organization and operations.

(2) This section shall be liberally construed and shall include the authority to create a joint planning commission and to utilize an intergovernmental agency for planning as authorized by ORS 190.003 to 190.130. [Amended by 1973 c.739 §1; 1975 c.767 §2]

227.030 Membership. (1) Not more than two members of a city planning commission may be city officers, who shall serve as ex officio nonvoting members.

(2) A member of such a commission may be removed by the appointing authority, after hearing, for misconduct or nonperformance of duty.

(3) Any vacancy in such a commission shall be filled by the appointing authority for the unexpired term of the predecessor in the office.

(4) No more than two voting members of the commission may engage principally in the buying, selling or developing of real estate for profit as individuals, or be members of any partnership, or officers or employees of any corporation, that engages principally in the buying, selling or developing of real estate for profit. No more than two members shall be engaged in the same kind of occupation, business, trade or profession. [Amended by 1969 c.430 §1; 1973 c.739 §2; 1975 c.767 §3]

227.035 [1973 c.739 §5; renumbered 244.135 in 1993]

227.040 [Repealed by 1973 c.739 §13]

227.050 [Amended by 1969 c.430 §2; repealed by 1975 c.767 §16]

227.060 [Repealed by 1975 c.767 §16]

227.070 [Amended by 1969 c.430 §3; 1973 c.739 §3; repealed by 1975 c.767 §16]

227.080 [Repealed by 1973 c.739 §13]

227.090 Powers and duties of commission. (1) Except as otherwise provided by the city council, a city planning commission may:

(a) Recommend and make suggestions to the council and to other public authorities concerning:

(A) The laying out, widening, extending and locating of public thoroughfares, parking of vehicles, relief of traffic congestion;

(B) Betterment of housing and sanitation conditions;

(C) Establishment of districts for limiting the use, height, area, bulk and other characteristics of buildings and structures related to land development;

(D) Protection and assurance of access to incident solar radiation; and

(E) Protection and assurance of access to wind for potential future electrical generation or mechanical application.

(b) Recommend to the council and other public authorities plans for regulating the future growth, development and beautification of the city in respect to its public and private buildings and works, streets, parks, grounds and vacant lots, and plans consistent with future growth and development of the city in order to secure to the city and its inhabitants sanitation, proper service of public utilities and telecommunications utilities, including appropriate public incentives for overall energy conservation and harbor, shipping and transportation facilities.

(c) Recommend to the council and other public authorities plans for promotion, development and regulation of industrial and economic needs of the community in respect to industrial pursuits.

(d) Advertise the industrial advantages and opportunities of the city and availability of real estate within the city for industrial settlement.

(e) Encourage industrial settlement within the city.

(f) Make economic surveys of present and potential industrial needs of the city.

(g) Study needs of local industries with a view to strengthening and developing them and stabilizing employment conditions.

(h) Do and perform all other acts and things necessary or proper to carry out the provisions of ORS 227.010 to 227.170, 227.175 and 227.180.

(i) Study and propose such measures as are advisable for promotion of the public interest, health, morals, safety, comfort, convenience and welfare of the city and of the area within six miles thereof.

(2) For the purposes of this section:

(a) "Incident solar radiation" means solar energy falling upon a given surface area.

(b) "Wind" means the natural movement of air at an annual average speed measured at a height of 10 meters of at least eight miles per hour. [Amended by 1975 c.153 §3; 1975 c.767 §4; 1979 c.671 §3; 1981 c.590 §8; 1987 c.447 §118]

227.095 Definitions for ORS 227.100 and 227.110. As used in ORS 227.100 and 227.110, "subdivision" and "plat" have the meanings given those terms in ORS 92.010. [1955 c.756 §28]

227.100 Submission of plats for subdivisions and plans for street alterations and public buildings to commission; report. All subdivision plats located within the city limits, and all plans or plats for vacating or laying out, widening, extending, parking and locating streets or plans for public buildings shall first be submitted to the commission by the city engineer or other proper municipal officer, and a report thereon from the commission secured in writing before approval is given by the proper municipal official. [Amended by 1955 c.756 §26]

227.110 City approval prior to recording of subdivision plats and plats or deeds dedicating land to public use within six miles of city; exception. (1) All subdivision plats and all plats or deeds dedicating land to public use in that portion of a county within six miles outside the limits of any city shall first be submitted to the city planning commission or, if no such commission exists, to the city engineer of the city and approved by the commission or engineer before they shall be recorded. However, unless otherwise provided in an urban growth area management agreement jointly adopted by a city and county to establish procedures for regulating land use outside the city limits and within an urban growth boundary acknowledged under ORS 197.251, if the county governing body has adopted ordinances or regulations for subdivisions and partitions under ORS 92.044, land within the six-mile limit shall be under the jurisdiction of the county for those purposes.

(2) It shall be unlawful to receive or record such plat or replat or deed in any public office unless the same bears thereon the approval, by indorsement, of such commission or city engineer. However, the indorsement of the commission or city engineer of the city with boundaries nearest the land such document affects shall satisfy the requirements of this section in case the boundaries of more than one city are within six miles of the property so mapped or described. If the governing bodies of such cities mutually agree upon a boundary line establishing the limits of the jurisdiction of the cities other than the line equidistant between the cities and file the agreement with the recording officer of the county containing such boundary line, the boundary line mutually agreed upon shall become the limit of the jurisdiction of each city until superseded by a new agreement between the cities or until one of the cities files with such recording officer a written notification stating that the agreement shall no longer apply. [Amended by 1955 c.756 §27; 1983 c.570 §5; 1991 c.763 §25]

227.120 Procedure and approval for renaming streets. Within six miles of the limits of any city, the commission, if there is one, or if no such commission legally exists, then the city engineer, shall recommend to the city council the renaming of any existing street, highway or road, other than a county road or state highway, if in the judgment of the commission, or if no such commission legally exists, then in the judgment of the city engineer, such renaming is in the best interest of the city and the six mile area. Upon receiving such recommendation the council shall afford persons particularly interested, and the general public, an opportunity to be heard, at a time and place to be specified in a notice of hearing published in a newspaper of general circulation within the municipality and the six mile area not less than once within the week prior to the week within which the hearing is to be held. After such opportunity for hearing has been afforded, the city council by ordinance shall rename the street or highway in accordance with the recommendation or by resolution shall reject the recommendation. A certified copy of each such ordinance shall be filed for record with the county clerk or recorder, and a like copy shall be filed with the county assessor and county surveyor. The county surveyor shall enter the new names of such streets and roads in red ink on the county surveyor's copy of any filed plat and tracing thereof which may be affected, together with appropriate notations concerning the same. The original plat may not be corrected or changed after it is recorded with the county clerk. [Amended by 2001 c.173 §4]

227.130 [Repealed by 1975 c.767 §16]

227.140 [Repealed by 1975 c.767 §16]

227.150 [Repealed by 1975 c.767 §16]

PLANNING AND ZONING HEARINGS AND REVIEW

227.160 Definitions for ORS 227.160 to 227.186. As used in ORS 227.160 to 227.186:

(1) "Hearings officer" means a planning and zoning hearings officer appointed or designated by a city council under ORS 227.165.

(2) "Permit" means discretionary approval of a proposed development of land, under ORS 227.215 or city legislation or regulation. "Permit" does not include:

(a) A limited land use decision as defined in ORS 197.015;

(b) A decision which determines the appropriate zoning classification for a particular use by applying criteria or performance standards defining the uses permitted within the zone, and the determination applies only to land within an urban growth boundary;

(c) A decision which determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility which is otherwise authorized by and consistent with the comprehensive plan and land use regulations; or

(d) An expedited land division, as described in ORS 197.360. [1973 c.739 §6; 1975 c.767 §5; 1991 c.817 §8a; 1995 c.595 §13; 2015 c.260 §5]

227.165 Planning and zoning hearings officers; duties and powers. A city may appoint one or more planning and zoning hearings officers, to serve at the pleasure of the appointing authority. Such an officer shall conduct hearings on applications for such classes of permits and zone changes as the council designates. [1973 c.739 §7; 1975 c.767 §6]

227.170 Hearing procedure; rules. (1) The city council shall prescribe one or more procedures for the conduct of hearings on permits and zone changes.

(2) The city council shall prescribe one or more rules stating that all decisions made by the council on permits and zone changes will be based on factual information, including adopted comprehensive plans and land use regulations. [1973 c.739 §8; 1975 c.767 §7; 1997 c.452 §3]

227.172 Siting casino in incorporated city. (1) As used in this section:

(a) "Casino" means a facility in which casino games, as defined in ORS 167.117, are played for the purpose of gambling.

(b) "Tribal casino" means a facility used for:

(A) Class I gaming or class II gaming regulated by the Indian Gaming Regulatory Act of October 17, 1988 (25 U.S.C. 2701 et seq.);

(B) Class III gaming conducted under a tribal-state compact approved by the Secretary of the Interior under section 11(d)(8) of the Indian Gaming Regulatory Act (25 U.S.C. 2710(d)(8)); or

(C) Gaming conducted in accordance with the Indian Gaming Regulatory Act and federal regulations.

(2) A casino may not be sited on land in an incorporated city unless the electors of the city approve the development.

(3) Before a permit, as defined in ORS 227.160, can be approved authorizing a proposed development of land in an incorporated city as a site for a casino, the governing body of the city that contains the site shall submit the question of siting the casino to the electors of the city for approval or rejection.

(4) Subsections (2) and (3) of this section do not apply to a tribal casino. [2007 c.724 §2]

227.173 Basis for decision on permit application or expedited land division; statement of reasons for approval or denial. (1) Approval or denial of a discretionary permit application shall be based on standards and criteria, which shall be set forth in the development ordinance and which shall relate approval or denial of a discretionary permit application to the development ordinance and to the comprehensive plan for the area in which the development would occur and to the development ordinance and comprehensive plan for the city as a whole.

(2) When an ordinance establishing approval standards is required under ORS 197.307 to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance.

(3) Approval or denial of a permit application or expedited land division 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.

(4) Written notice of the approval or denial shall be given to all parties to the proceeding. [1977 c.654 §5; 1979 c.772 §10b; 1991 c.817 §16; 1995 c.595 §29; 1997 c.844 §6; 1999 c.357 §3]

227.175 Application for permit or zone change; fees; consolidated procedure; hearing; approval criteria; decision without hearing. (1) When required or authorized by a city, an owner of land may apply in writing to the hearings officer, or such other person as the city council designates, for a permit or zone change, upon such forms and in such a manner as the city council prescribes. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body of the city shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 227.178. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.

(3) Except as provided in subsection (10) of this section, the hearings officer shall hold at least one public hearing on the application.

(4)(a) A city may not approve an application unless the proposed development of land

would be in compliance with the comprehensive plan for the city and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by ORS 227.215 or any city legislation.

(b)(A) A city may not deny an application for a housing development located within the urban growth boundary if the development complies with clear and objective standards, including but not limited to clear and objective design standards contained in the city comprehensive plan or land use regulations.

(B) This paragraph does not apply to:

(i) Applications or permits for residential development in areas described in ORS 197.307 (5); or

(ii) Applications or permits reviewed under an alternative approval process adopted under ORS 197.307 (6).

(c) A city may not reduce the density of an application for a housing development if:

(A) The density applied for is at or below the authorized density level under the local land use regulations; and

(B) At least 75 percent of the floor area applied for is reserved for housing.

(d) A city may not reduce the height of an application for a housing development if:

(A) The height applied for is at or below the authorized height level under the local land use regulations;

(B) At least 75 percent of the floor area applied for is reserved for housing; and

(C) Reducing the height has the effect of reducing the authorized density level under local land use regulations.

(e) Notwithstanding paragraphs (c) and (d) of this subsection, a city may reduce the density or height of an application for a housing development if the reduction is necessary to resolve a health, safety or habitability issue or to comply with a protective measure adopted pursuant to a statewide land use planning goal.

(f) As used in this subsection:

(A) "Authorized density level" means the maximum number of lots or dwelling units or the maximum floor area ratio that is permitted under local land use regulations.

(B) "Authorized height level" means the maximum height of a structure that is permitted under local land use regulations.

(C) "Habitability" means being in compliance with the applicable provisions of the state building code under ORS chapter 455 and the rules adopted thereunder.

(5) Hearings under this section may be held only after notice to the applicant and other interested persons and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

(6) Notice of a public hearing on a zone use application shall be provided to the owner of an airport, defined by the Oregon Department of Aviation as a "public use airport" if:

(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the city planning authority; and

(b) The property subject to the zone use hearing is:

(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation 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 Oregon Department of Aviation to be an "instrument airport."

(7) Notwithstanding the provisions of subsection (6) of this section, notice of a zone use hearing need only be provided as set forth in subsection (6) of this section if the permit or zone change would only allow a structure less than 35 feet in height and the property is located outside of the runway "approach surface" as defined by the Oregon Department of Aviation.

(8) If an application would change the zone of property that includes all or part of a mobile home or manufactured dwelling park as defined in ORS 446.003, the governing body shall give written notice by first class mail to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first hearing on the application. The governing body may require an applicant for such a zone change to pay the costs of such notice.

(9) The failure of a tenant or an airport owner to receive a notice which was mailed shall not invalidate any zone change.

(10)(a)(A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.

(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.

(C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and

(h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the city's land use regulations. A city may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the city. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.

(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:

(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and

(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

(b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or $250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.

(c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;

(ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

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

(C) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(11) A decision described in ORS 227.160 (2)(b) shall:

(a) 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.

(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.

(c) Be subject to the appeal period described in ORS 197.830 (5)(b).

(12) At the option of the applicant, the local government shall provide notice of the decision described in ORS 227.160 (2)(b) in the manner required by ORS 197.763 (2), in which case an appeal to the board shall be filed within 21 days of the decision. The notice shall include an explanation of appeal rights.

(13) Notwithstanding other requirements of this section, limited land use decisions shall be subject to the requirements set forth in ORS 197.195 and 197.828. [1973 c.739 §§9,10; 1975 c.767 §8; 1983 c.827 §24; 1985 c.473 §15; 1987 c.106 §3; 1987 c.729 §18; 1989 c.648 §63; 1991 c.612 §21; 1991 c.817 §6; 1995 c.692 §2; 1997 c.844 §5; 1999 c.621 §2; 1999 c.935 §24; 2001 c.397 §2; 2017 c.745 §3]

Note: The amendments to 227.175 by section 3, chapter 745, Oregon Laws 2017, become operative July 1, 2018, and apply to applications for housing development submitted for review on or after July 1, 2018. See sections 12 and 13, chapter 745, Oregon Laws 2017. The text that is operative until July 1, 2018, is set forth for the user's convenience.

227.175. (1) When required or authorized by a city, an owner of land may apply in writing to the hearings officer, or such other person as the city council desig-

nates, for a permit or zone change, upon such forms and in such a manner as the city council prescribes. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body of the city shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 227.178. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.

(3) Except as provided in subsection (10) of this section, the hearings officer shall hold at least one public hearing on the application.

(4) The application shall not be approved unless the proposed development of land would be in compliance with the comprehensive plan for the city and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by ORS 227.215 or any city legislation.

(5) Hearings under this section may be held only after notice to the applicant and other interested persons and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

(6) Notice of a public hearing on a zone use application shall be provided to the owner of an airport, defined by the Oregon Department of Aviation as a "public use airport" if:

(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the city planning authority; and

(b) The property subject to the zone use hearing is:

(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation 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 Oregon Department of Aviation to be an "instrument airport."

(7) Notwithstanding the provisions of subsection (6) of this section, notice of a zone use hearing need only be provided as set forth in subsection (6) of this section if the permit or zone change would only allow a structure less than 35 feet in height and the property is located outside of the runway "approach surface" as defined by the Oregon Department of Aviation.

(8) If an application would change the zone of property that includes all or part of a mobile home or manufactured dwelling park as defined in ORS 446.003, the governing body shall give written notice by first class mail to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first hearing on the application. The governing body may require an applicant for such a zone change to pay the costs of such notice.

(9) The failure of a tenant or an airport owner to receive a notice which was mailed shall not invalidate any zone change.

(10)(a)(A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.

(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.

(C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the city's land use regulations. A city may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the city. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.

(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:

(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and

(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

(b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or $250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.

(c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;

(ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

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

(C) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(11) A decision described in ORS 227.160 (2)(b) shall:

(a) 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.

(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.

(c) Be subject to the appeal period described in ORS 197.830 (5)(b).

(12) At the option of the applicant, the local government shall provide notice of the decision described in ORS 227.160 (2)(b) in the manner required by ORS 197.763 (2), in which case an appeal to the board shall be filed within 21 days of the decision. The notice shall include an explanation of appeal rights.

(13) Notwithstanding other requirements of this section, limited land use decisions shall be subject to the requirements set forth in ORS 197.195 and 197.828.

227.178 Final action on certain applications required within 120 days; procedure; exceptions; refund of fees. (1) Except as provided in subsections (3), (5) and (11) of this section, the governing body of a city or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section or ORS 197.311 upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(3)(a) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, 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.

(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

(5) The 120-day period set in subsection (1) of this section or the 100-day period set in ORS 197.311 may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (11) of this section for mediation, may not exceed 245 days.

(6) The 120-day period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the city; and

(b) Unless the parties have agreed to mediation as described in subsection (11) of this section or ORS 197.319 (2)(b).

(7) Notwithstanding subsection (6) of this section, the 120-day period set in subsection (1) of this section and the 100-day period set in ORS 197.311 do not apply to a decision of the city making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610.

(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the city or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days after the application is deemed complete, the city shall refund to the applicant, subject to the provisions of subsection (9) of this section, 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.

(9)(a) To obtain a refund under subsection (8) of this section, the applicant may either:

(A) Submit a written request for payment, either by mail or in person, to the city or its designee; or

(B) Include the amount claimed in a mandamus petition filed under ORS 227.179. The court shall award an amount owed under this section in its final order on the petition.

(b) Within seven calendar days of receiving a request for a refund, the city or its designee shall determine the amount of any refund owed. Payment, or notice that no payment is due, shall be made to the applicant within 30 calendar days of receiving the request. Any amount due and not paid within 30 calendar days of receipt of the request shall be subject to interest charges at the rate of one percent per month, or a portion thereof.

(c) If payment due under paragraph (b) of this subsection is not paid within 120 days after the city or its designee receives the refund request, the applicant may file an action for recovery of the unpaid refund. In an action brought by a person under this paragraph, the court shall award to a prevailing applicant, in addition to the relief provided in this section, reasonable attorney fees and costs at trial and on appeal. If the city or its designee prevails, the court shall award reasonable attorney fees and costs at trial and on appeal if the court finds the petition to be frivolous.

(10) A city may not compel an applicant to waive the 120-day period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 197.311 or 227.179 as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

(11) The periods set forth in subsections (1) and (5) of this section and ORS 197.311 may be extended by up to 90 additional days, if the applicant and the city agree that a dispute concerning the application will be mediated. [1983 c.827 §27; 1989 c.761 §16; 1991 c.817 §15; 1995 c.812 §3; 1997 c.844 §8; 1999 c.533 §8; 2003 c.150 §1; 2003 c.800 §31; 2009 c.873 §16; 2011 c.280 §12; 2017 c.745 §11]

227.179 Petition for writ of mandamus authorized when city fails to take final action on land use application within 120 days; jurisdiction; notice of petition. (1) Except when an applicant requests an extension under ORS 227.178 (5), if the governing body of a city or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days after the application is deemed complete, the applicant may file a petition for a writ of mandamus under ORS 34.130 in the circuit court of the county where the application was submitted to compel the governing body or its designee to issue the approval.

(2) The governing body shall retain jurisdiction to make a land use decision on the application until a petition for a writ of mandamus is filed. Upon filing a petition under ORS 34.130, jurisdiction for all decisions regarding the application, including settlement, shall be with the circuit court.

(3) A person who files a petition for a writ of mandamus under this section shall provide written notice of the filing to all persons who would be entitled to notice under ORS 197.763 and to any person who participated orally or in writing in any evidentiary hearing on the application held prior to the filing of the petition. The notice shall be mailed or hand delivered on the same day the petition is filed.

(4) If the governing body does not take final action on an application within 120 days of the date the application is deemed complete, the applicant may elect to proceed with the application according to the applicable provisions of the local comprehensive plan and land use regulations or to file a petition for a writ of mandamus under this section. If the applicant elects to proceed according to the local plan and regulations, the applicant may not file a petition for a writ of mandamus within 14 days after the governing body makes a preliminary decision, provided a final written decision is issued within 14 days of the preliminary decision.

(5) The court shall issue a peremptory writ unless the governing body or any intervenor shows that the approval would violate a substantive provision of the local comprehensive plan or land use regulations as those terms are defined in ORS 197.015. The writ may specify conditions of approval that would otherwise be allowed by the local comprehensive plan or land use regulations. [1999 c.533 §10; 2003 c.150 §2]

227.180 Review of action on permit application; fees. (1)(a) A party aggrieved by the action of a hearings officer may appeal the action to the planning commission or council of the city, or both, however the council prescribes. The appellate authority on its own motion may review the action. The procedure for such an appeal or review shall be prescribed by the council, but shall:

(A) Not require that the appeal be filed within less than seven days after the date the governing body mails or delivers the decision of the hearings officer to the parties;

(B) Require a hearing at least for argument; and

(C) Require that upon appeal or review the appellate authority consider the record of the hearings officer's action. That record need not set forth evidence verbatim.

(b) Notwithstanding paragraph (a) of this subsection, the council may provide that the decision of a hearings officer or other decision-making authority in a proceeding for a discretionary permit or zone change is the final determination of the city.

(c) The governing body may prescribe, by ordinance or regulation, fees to defray the costs incurred in acting upon an appeal from a hearings officer, planning commission or other designated person. The amount of the fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal, excluding the cost of preparation of a written transcript. The governing body may establish a fee for the preparation of a written transcript. The fee shall be reasonable and shall not exceed the actual cost of preparing the transcript up to $500. In lieu of a transcript prepared by the governing body and the fee therefor, the governing body shall allow any party to an appeal proceeding held on the record to prepare a transcript of relevant portions of the proceedings conducted at a lower level at the party's own expense. If an appellant prevails at a hearing or on appeal, the transcript fee shall be refunded.

(2) A party aggrieved by the final determination in a proceeding for a discretionary permit or zone change may have the determination reviewed under ORS 197.830 to 197.845.

(3) No decision or action of a planning commission or city governing body 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:

(a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

(b) 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.

(4) A communication between city staff and the planning commission or governing body shall not be considered an ex parte contact for the purposes of subsection (3) of this section.

(5) Subsection (3) of this section does not apply to ex parte contact with a hearings officer. [1973 c.739 §§11,12; 1975 c.767 §9; 1979 c.772 §12; 1981 c.748 §43; 1983 c.656 §2; 1983 c.827 §25; 1991 c.817 §12]

227.181 Final action required within 120 days following remand of land use decision. (1) Pursuant to a final order of the Land Use Board of Appeals under ORS 197.830 remanding a decision to a city, the governing body of the city or its designee shall take final action on an application for a permit, limited land use decision or zone change within 120 days of the effective date of the final order issued by the board. For purposes of this subsection, the effective date of the final order is the last day for filing a petition for judicial review of a final order of the board under ORS 197.850 (3). If judicial review of a final order of the board is sought under ORS 197.830, the 120-day period established under this subsection shall not begin until final resolution of the judicial review.

(2)(a) In addition to the requirements of subsection (1) of this section, the 120-day period established under subsection (1) of this section shall not begin until the applicant requests in writing that the city proceed with the application on remand, but if the city does not receive the request within 180 days of the effective date of the final order or the final resolution of the judicial review, the city shall deem the application terminated.

(b) The 120-day period established under subsection (1) of this section may be extended for up to an additional 365 days if the parties enter into mediation as provided by ORS 197.860 prior to the expiration of the initial 120-day period. The city shall deem the application terminated if the matter is not resolved through mediation prior to the expiration of the 365-day extension.

(3) The 120-day period established under subsection (1) of this section applies only to decisions wholly within the authority and control of the governing body of the city.

(4) Subsection (1) of this section does not apply to a remand proceeding concerning a decision of the city making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610. [1999 c.545 §5; 2011 c.280 §13; 2015 c.522 §3]

227.182 Petition for writ of mandamus authorized when city fails to take final action within 120 days of remand of land use decision. (1) If the governing body of a city or its designee fails to take final action on an application for a permit, limited land use decision or zone change within 120 days

as provided in ORS 227.181, the applicant may file a petition for a writ of mandamus as provided in ORS 34.105 to 34.240. The court shall set the matter for trial as soon as practicable but not more than 15 days from the date a responsive pleading pursuant to ORS 34.170 is filed, unless the court has been advised by the parties that the matter has been settled.

(2) A writ of mandamus issued under this section shall order the governing body of the city or its designee to make a final determination on the application. The court, in its discretion, may order such remedy as the court determines appropriate.

(3) In a mandamus proceeding under this section the court shall award court costs and attorney fees to an applicant who prevails on a petition under this section. [1999 c.545 §6; 2015 c.522 §4]

227.184 Supplemental application for remaining permitted uses following denial of initial application. (1) A person whose application for a permit is denied by the governing body of a city or its designee under ORS 227.178 may submit to the city a supplemental application for any or all other uses allowed under the city's comprehensive plan and land use regulations in the zone that was the subject of the denied application.

(2) The governing body of a city or its designee shall take final action on a supplemental application submitted under this section, including resolution of all appeals, within 240 days after the application is deemed complete. Except that 240 days shall substitute for 120 days, all other applicable provisions of ORS 227.178 shall apply to a supplemental application submitted under this section.

(3) A supplemental application submitted under this section shall include a request for any rezoning or zoning variance that may be required to issue a permit under the city's comprehensive plan and land use regulations.

(4) The governing body of a city or its designee shall adopt specific findings describing the reasons for approving or denying:

(a) A use for which approval is sought under this section; and

(b) A rezoning or variance requested in the application. [1999 c.648 §4]

227.185 Transmission tower; location; conditions. The governing body of a city or its designate may allow the establishment of a transmission tower over 200 feet in height in any zone subject to reasonable conditions imposed by the governing body or its designate. [1983 c.827 §27a]

227.186 Notice to property owners of hearing on certain zone change; form of notice; exceptions; reimbursement of cost. (1) As used in this section, "owner" means the owner of the title to real property or the contract purchaser of real property, of record as shown on the last available complete tax assessment roll.

(2) All legislative acts relating to comprehensive plans, land use planning or zoning adopted by a city shall be by ordinance.

(3) Except as provided in subsection (6) of this section, at least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to amend an existing comprehensive plan or any element thereof, or to adopt a new comprehensive plan, a city shall cause a written individual notice of a land use change to be mailed to each owner whose property would have to be rezoned in order to comply with the amended or new comprehensive plan if the ordinance becomes effective.

(4) At least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to rezone property, a city shall cause a written individual notice of a land use change to be mailed to the owner of each lot or parcel of property that the ordinance proposes to rezone.

(5) An additional individual notice of land use change required by subsection (3) or (4) of this section shall be approved by the city and shall describe in detail how the proposed ordinance would affect the use of the property. The notice shall:

(a) Contain substantially the following language in boldfaced type across the top of the face page extending from the left margin to the right margin:

This is to notify you that (city) has proposed a land use regulation that may affect the permissible uses of your property and other properties.

(b) Contain substantially the following language in the body of the notice:

On (date of public hearing), (city) will hold a public hearing regarding the adoption of Ordinance Number _____. The (city) has determined that adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

Ordinance Number _____ is available for inspection at the _____ City Hall lo-

cated at _____. A copy of Ordinance Number _____ also is available for purchase at a cost of _____.

For additional information concerning Ordinance Number _____, you may call the (city) Planning Department at _____.

---

(6) At least 30 days prior to the adoption or amendment of a comprehensive plan or land use regulation by a city pursuant to a requirement of periodic review of the comprehensive plan under ORS 197.628, 197.633 and 197.636, the city shall cause a written individual notice of the land use change to be mailed to the owner of each lot or parcel that will be rezoned as a result of the adoption or enactment. The notice shall describe in detail how the ordinance or plan amendment may affect the use of the property. The notice also shall:

(a) Contain substantially the following language in boldfaced type across the top of the face page extending from the left margin to the right margin:

This is to notify you that (city) has proposed a land use regulation that may affect the permissible uses of your property and other properties.

(b) Contain substantially the following language in the body of the notice:

As a result of an order of the Land Conservation and Development Commission, (city) has proposed Ordinance Number _____. (City) has determined that the adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

Ordinance Number _____ will become effective on (date).

Ordinance Number _____ is available for inspection at the _____ City Hall located at _____. A copy of Ordinance Number _____ also is available for purchase at a cost of _____.

For additional information concerning Ordinance Number _____, you may call the (city) Planning Department at _____.

---

(7) Notice provided under this section may be included with the tax statement required under ORS 311.250.

(8) Notwithstanding subsection (7) of this section, a city may provide notice of a hearing at any time provided notice is mailed by first class mail or bulk mail to all persons for whom notice is required under subsections (3) and (4) of this section.

(9) For purposes of this section, property is rezoned when the city:

(a) Changes the base zoning classification of the property; or

(b) Adopts or amends an ordinance in a manner that limits or prohibits land uses previously allowed in the affected zone.

(10) The provisions of this section do not apply to legislative acts of the governing body of the city resulting from action of the Legislative Assembly or the Land Conservation and Development Commission for which notice is provided under ORS 197.047 or resulting from an order of a court of competent jurisdiction.

(11) The governing body of the city is not required to provide more than one notice under this section to a person who owns more than one lot or parcel affected by a change to the local comprehensive plan or land use regulation.

(12) The Department of Land Conservation and Development shall reimburse a city for all usual and reasonable costs incurred to provide notice required under subsection (6) of this section. [1999 c.1 §3; 1999 c.348 §11; 2003 c.668 §3]

227.187 Public sale of copies of city comprehensive plan and land use regulations. A city shall maintain copies of its comprehensive plan and land use regulations, as defined in ORS 197.015, for sale to the public. [1991 c.363 §3]

227.188 Amendments to city comprehensive plan map. (1) A city governing body may authorize the planning commission or hearings officer to conduct hearings and make final decisions on applications for amendments to the city comprehensive plan map.

(2)(a) A final decision of the planning commission or hearings officer made under subsection (1) of this section may be appealed to or reviewed by the city governing body.

(b) A person may appeal or petition for review of a final decision to the city governing body under this subsection if the person appeared or participated in the proceedings of the planning commission or hearings officer orally or in writing.

(3) This section is not subject to the provisions of ORS 227.178 or 227.179.

(4) A decision of a planning commission, hearings officer or city governing body under this section shall comply with the post-

acknowledgment procedures set forth in ORS 197.610 to 197.625.

(5) This section does not apply to:

(a) Any plan map amendment for which an exception is required under ORS 197.732;

(b) Any lands designated under a statewide planning goal addressing agricultural lands or forestlands; or

(c) An expansion of an urban growth boundary.

(6) A decision of a city governing body issued on appeal under subsection (2) of this section is subject to review by the Land Use Board of Appeals under ORS 197.830 to 197.845. [2017 c.432 §2]

Note: 227.188 was added to and made a part of ORS chapter 227 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

SOLAR ACCESS ORDINANCES

227.190 Solar access ordinances; purpose; standards. (1) City councils may adopt and implement solar access ordinances. The ordinances shall provide and protect to the extent feasible solar access to the south face of buildings during solar heating hours, taking into account latitude, topography, microclimate, existing development, existing vegetation and planned uses and densities. The city council shall consider for inclusion in any solar access ordinance, but not be limited to, standards for:

(a) The orientation of new streets, lots and parcels;

(b) The placement, height, bulk and orientation of new buildings;

(c) The type and placement of new trees on public street rights of way and other public property; and

(d) Planned uses and densities to conserve energy, facilitate the use of solar energy, or both.

(2) The State Department of Energy shall actively encourage and assist city councils' efforts to protect and provide for solar access.

(3) As used in this section, "solar heating hours" means those hours between three hours before and three hours after the sun is at its highest point above the horizon on December 21. [1981 c.722 §5]

227.195 Effect of land use regulations and comprehensive plans. Solar access ordinances shall not be in conflict with acknowledged comprehensive plans and land use regulations. [1981 c.722 §6]

227.210 [Repealed by 1975 c.767 §16]

DEVELOPMENT ORDINANCES

227.215 Regulation of development. (1) As used in this section, "development" means a building or mining operation, making a material change in the use or appearance of a structure or land, dividing land into two or more parcels, including partitions and subdivisions as provided in ORS 92.010 to 92.285, and creating or terminating a right of access.

(2) A city may plan and otherwise encourage and regulate the development of land. A city may adopt an ordinance requiring that whatever land development is undertaken in the city comply with the requirements of the ordinance and be undertaken only in compliance with the terms of a development permit.

(3) A development ordinance may provide for:

(a) Development for which a permit is granted as of right on compliance with the terms of the ordinance;

(b) Development for which a permit is granted discretionarily in accordance and consistent with the requirements of ORS 227.173;

(c) Development which need not be under a development permit but shall comply with the ordinance; and

(d) Development which is exempt from the ordinance.

(4) The ordinance may divide the city into districts and apply to all or part of the city. [1975 c.767 §11 (enacted in lieu of 227.220 to 227.270); 1977 c.654 §3]

227.220 [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.220)]

227.230 [Amended by 1971 c.739 §2; 1975 c.153 §4; repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.230)]

227.240 [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.240)]

227.250 [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.250)]

227.260 [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.260)]

227.270 [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.270)]

227.280 Enforcement of development legislation. The council may provide for enforcement of any legislation established under ORS 227.215. [Amended by 1975 c.767 §14]

227.285 [1959 c.601 §1; repealed by 1969 c.460 §2 (227.286 enacted in lieu of 227.285)]

227.286 City ordinances applicable to public property. City ordinances regulating the location, construction, maintenance, repair, alteration, use and occupancy of land and buildings and other structures shall apply to publicly owned property, except as the

ordinances prescribe to the contrary. [1969 c.460 §3 (enacted in lieu of 227.285); 1975 c.767 §12]

227.290 Building setback lines established by city council; criteria. (1) The council or other governing body of any incorporated city, under an exercise of its police powers, may establish or alter building setback lines on private property adjacent to any alley, street, avenue, boulevard, highway or other public way in such city. It may make it unlawful and provide a penalty for erecting after said establishment any building or structure closer to the street line than such setback line, except as may be expressly provided by ordinance. The council or body shall pass and put into effect such ordinances as may be needed for the purpose of providing for a notice to and hearing of persons owning property affected before establishing any such setback line. Such setback lines may be established without requiring a cutting off or removal of buildings existing at the time.

(2) The council may consider, in enacting ordinances governing building setback lines, the site slope and tree cover of the land with regard to solar exposure. The council shall not restrict construction where site slope and tree cover make incident solar energy collection unfeasible, except an existing solar structure's sun plane shall not be substantially impaired.

(3) The council may consider, in enacting ordinances governing building setback lines and maximum building height, the impact on available wind resources. The ordinances shall protect an existing wind energy system's wind source to the extent feasible.

(4) The powers given in this section shall be so exercised as to preserve constitutional rights. [Amended by 1979 c.671 §4; 1981 c.590 §9]

227.300 Use of eminent domain power to establish setback lines. The council or other governing body of any incorporated city, under an exercise of the power of eminent domain, may establish or alter building setback lines on private property adjacent to any alley, street, avenue, boulevard, highway, or other public way in such city in cases where the establishment of such setback lines is for street widening purposes, and in cases where the establishment of such setback lines affects buildings or structures existing at the time. The council or other governing body of the city shall pass and put into effect such ordinances as may be needed for the purpose of providing for a notice to and hearing of persons whose property is affected by such establishment. In case of the exercise of the power of eminent domain, provision shall be made for ascertaining and paying just compensation for any damages caused as the result of establishing such setback lines.

227.310 [1957 c.67 §1; 1975 c.767 §13; repealed by 1977 c.766 §16]

227.320 City program for demolition of residences or residential buildings. (1) Subject to the provisions of this section, a city of this state may establish by ordinance or otherwise a program for the demolition of residences or residential buildings. A program established under this subsection:

(a) Must require a person performing a demolition to acquire a permit from the city authorizing the person to perform the demolition;

(b) If a person performing a demolition is a contractor, as defined in ORS 701.005 (5)(a), and if a residence or residential building to be demolished was built before January 1, 1978, must require the person, as a condition of receiving a permit under this subsection, to submit proof verifying that the person has been certified to engage in lead-based paint activities in accordance with rules adopted by the Oregon Health Authority;

(c) If a residence or residential building to be demolished was built before January 1, 1978, must require the person performing the demolition to comport with some or all of a list of best practices developed and periodically updated by the authority, in consultation with the Department of Environmental Quality, the Construction Contractors Board and other interested stakeholders, for the purpose of containing lead particles that otherwise would be released into the air during a demolition;

(d) May require a person performing a demolition to provide a copy of the asbestos survey required under ORS 468A.757 and notice of intent to perform activities related to asbestos abatement to an agency of the city before performing the demolition; and

(e) May provide for the dissemination to the public of a document, developed in coordination with the authority and the department, listing answers to frequently asked questions about:

(A) Best practices for containing lead particles that otherwise would be released into the air during a demolition;

(B) The asbestos survey required under ORS 468A.757; and

(C) Asbestos abatement activities that must be conducted before a demolition.

(2) Subsection (1)(b) and (c) of this section does not apply to the demolition of a residence or residential building built before January 1, 1978, if a person certified to inspect or assess structures for the presence of lead-based paint in accordance with rules

adopted by the authority has determined that the residence or residential building does not contain lead-based paint.

(3)(a) Except as provided in paragraph (b) of this subsection, this section does not prevent a city from adopting ordinances or otherwise providing for the further regulation of demolitions of residences and residential buildings.

(b) After any best practices are developed as described in subsection (1)(c) of this section, a city may not adopt ordinances regarding, or otherwise provide for, best practices for the purpose of containing lead particles that otherwise would be released into the air during a demolition that are in addition to any best practices developed and updated as described in subsection (1)(c) of this section. [2017 c.739 §1]

Note: 227.320 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 227 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

WETLANDS DEVELOPMENT

227.350 Notice of proposed wetlands development; exception; approval by city. (1) After the Department of State Lands has provided the city with a copy of the applicable portions of the Statewide Wetlands Inventory, the city shall provide notice to the department, the applicant and the owner of record, within five working days of the acceptance of any complete application for the following activities that are wholly or partially within areas identified as wetlands on the Statewide Wetlands Inventory:

(a) Subdivisions;

(b) Building permits for new structures;

(c) Other development permits and approvals that allow physical alteration of the land involving excavation and grading, including permits for removal or fill, or both, or development in floodplains and floodways;

(d) Conditional use permits and variances that involve physical alterations to the land or construction of new structures; and

(e) Planned unit development approvals.

(2) The provisions of subsection (1) of this section do not apply if a permit from the department has been issued for the proposed activity.

(3) Approval of any activity described in subsection (1) of this section shall include one of the following notice statements:

(a) Issuance of a permit under ORS 196.600 to 196.905 by the department required for the project before any physical alteration takes place within the wetlands;

(b) Notice from the department that no permit is required; or

(c) Notice from the department that no permit is required until specific proposals to remove, fill or alter the wetlands are submitted.

(4) If the department fails to respond to any notice provided under subsection (1) of this section within 30 days of notice, the city approval may be issued with written notice to the applicant and the owner of record that the proposed action may require state or federal permits.

(5) The city may issue local approval for parcels identified as or including wetlands on the Statewide Wetlands Inventory upon providing to the applicant and the owner of record of the affected parcel a written notice of the possible presence of wetlands and the potential need for state and federal permits and providing the department with a copy of the notification of comprehensive plan map or zoning map amendments for specific properties.

(6) Notice of activities authorized within an approved wetland conservation plan shall be provided to the department within five days following local approval.

(7) Failure by the city to provide notice as required in this section will not invalidate city approval. [1989 c.837 §31; 1991 c.763 §26]

TRUCK ROUTES

227.400 Truck routes; procedures for establishment or revision; notice; hearing. (1) A city council shall not establish a new truck route or revise an existing truck route within the city unless the council first provides public notice of the proposed truck route and holds a public hearing concerning its proposed action.

(2) The city council shall provide notice of a public hearing held under this section by publishing notice of the hearing once a week for two consecutive weeks in some newspaper of general circulation in the city. The second publication of the notice must occur not later than the fifth day before the date of the public hearing.

(3) The notice required under this section shall state the time and place of the public hearing and contain a brief and concise statement of the proposed formation of the truck route, including a description of the roads and streets in the city that will form the truck route.

(4) As used in this section:

(a) "Truck" includes motor truck, as defined in ORS 801.355, and truck tractor, as defined in ORS 801.575.

(b) "Truck route" means the roads or streets in a city which have been formally designated by the city council as the roads or streets on which trucks must travel when proceeding through the city. [1985 c.564 §1]

RECYCLING CONTAINERS

227.450 Recycling containers; recommendations for new construction. (1) Each multifamily residential dwelling with more than 10 individual residential units that is constructed after October 4, 1997, should include adequate space and access for collection of containers for solid waste and recyclable materials.

(2) Each commercial building and each industrial and institutional building that is constructed after October 4, 1997, should include adequate space and access for collection of containers for solid waste and recyclable materials.

(3) As used in this section, "commercial," "recyclable material" and "solid waste" have the meanings given in ORS 459.005. [1997 c.552 §32]

CLUSTERED MAILBOXES

227.455 Clustered mailboxes in city streets and rights-of-way. Each city in this state shall adopt standards and specifications for clustered mailboxes within the boundaries of city streets and rights-of-way that conform to the standards and specifications for such mailboxes contained in the State of Oregon Structural Specialty Code. [2011 c.488 §2]

Note: 227.455 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 227 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PERMITTED USES IN ZONES

227.500 Use of real property for religious activity; city regulation of real property used for religious activity. (1) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship is allowed on real property under state law and rules and local zoning ordinances and regulations, a city shall allow the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including:

(a) Worship services.

(b) Religion classes.

(c) Weddings.

(d) Funerals.

(e) Meal programs.

(f) Child care, but not including private or parochial school education for prekindergarten through grade 12 or higher education.

(g) Providing housing or space for housing in a building that is detached from the place of worship, provided:

(A) At least 50 percent of the residential units provided under this paragraph are affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located;

(B) The real property is in an area zoned for residential use that is located within the urban growth boundary; and

(C) The housing or space for housing complies with applicable land use regulations and meets the standards and criteria for residential development for the underlying zone.

(2) A city may:

(a) Subject real property described in subsection (1) of this section to reasonable regulations, including site review and design review, concerning the physical characteristics of the uses authorized under subsection (1) of this section; or

(b) Prohibit or regulate the use of real property by a place of worship described in subsection (1) of this section if the city finds that the level of service of public facilities, including transportation, water supply, sewer and storm drain systems is not adequate to serve the place of worship described in subsection (1) of this section.

(3) Notwithstanding any other provision of this section, a city may allow a private or parochial school for prekindergarten through grade 12 or higher education to be sited under applicable state law and rules and local zoning ordinances and regulations.

(4) Housing and space for housing provided under subsection (1)(g) of this section must be subject to a covenant appurtenant that restricts the owner and each successive owner of the building or any residential unit contained in the building from selling or renting any residential unit described in subsection (1)(g)(A) of this section as housing that is not affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located for a period of 60 years from the date of the certificate of occupancy. [2001 c.886 §4; 2017 c.745 §8]

227.505 Solar energy systems on residential and commercial structures. (1) The installation and use on a residential structure of a solar photovoltaic energy system or a solar thermal energy system is an outright permitted use in any zone in which residential structures are an allowed use.

(2) The installation and use on a commercial structure of a solar photovoltaic energy system or a solar thermal energy system is an outright permitted use in any zone in which commercial structures are an allowed use.

(3) Approval of a permit application under ORS 227.160 to 227.186 is, notwithstanding the definition of "permit" in ORS 227.160, a ministerial function if:

(a) The installation of a solar energy system can be accomplished without increasing the footprint of the residential or commercial structure or the peak height of the portion of the roof on which the system is installed; and

(b) The solar energy system would be mounted so that the plane of the system is parallel to the slope of the roof.

(4) As part of the permit approval process, a city:

(a) May not charge a fee pursuant to ORS 227.175 for processing a permit;

(b) May not require extensive surveys or site evaluations including, but not limited to, vegetation surveys, contour maps and elevation drawings; and

(c) May charge building permit fees pursuant to ORS 455.020, 455.210 and 455.220.

(5) Subsections (3) and (4) of this section do not apply to a permit application for a residential or commercial structure that is:

(a) A federally or locally designated historic building or landmark or that is located in a federally or locally designated historic district.

(b) A conservation landmark designated by a city or county because of the historic, cultural, archaeological, architectural or similar merit of the landmark.

(c) Located in an area designated as a significant scenic resource unless the material used is:

(A) Designated as anti-reflective; or

(B) Eleven percent or less reflective.

(6) As used in this section, "solar photovoltaic energy system" has the meaning given that term in ORS 757.360. [2011 c.464 §2]

Note: 227.505 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 227 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PLANNING AND ZONING PREAPPLICATION PROCESS

227.600 Land use approval preapplication review. (1) As used in this section:

(a) "Compost" has the meaning given that term in ORS 459.005.

(b) "Disposal site" has the meaning given that term in ORS 459.005.

(c) "Local government" has the meaning given that term in ORS 174.116.

(2) Before an applicant may submit an application under ORS 227.160 to 227.186 for land use approval to establish or modify a disposal site for composting that requires a permit issued by the Department of Environmental Quality, as provided in subsection (3) of this section, the applicant shall:

(a) Request and attend a preapplication conference described in subsections (4) to (6) of this section; and

(b) Hold a preapplication community meeting described in subsections (7) to (9) of this section.

(3) Subsection (2) of this section applies to an application to:

(a) Establish a disposal site for composting that sells, or offers for sale, resulting product; or

(b) Allow an existing disposal site for composting that sells, or offers for sale, resulting product to:

(A) Accept as feedstock nonvegetative materials, including dead animals, meat, dairy products and mixed food waste; or

(B) Increase the permitted annual tonnage of feedstock used by the disposal site by an amount that requires a new land use approval.

(4) During the preapplication conference:

(a) The applicant shall provide information about the proposed disposal site for composting and proposed operations for composting and respond to questions about the site and operations.

(b) The city with land use jurisdiction over the proposed disposal site for composting and the other representatives described in subsection (5) of this section shall inform the applicant of permitting requirements to establish and operate the proposed disposal site for composting and provide all application materials to the applicant.

(5) The applicant shall submit a written request to the city with land use jurisdiction to request a preapplication conference. A representative of the planning department of the city and a representative of the Department of Environmental Quality shall attend the conference along with representatives, as determined necessary by the city, of the following entities:

(a) Any other state agency or local government that has authority to approve or deny a permit, license or other certification required to establish or operate the proposed disposal site for composting.

(b) A state agency, a local government or a private entity that provides or would provide to the proposed disposal site for composting one or more of the following:

(A) Water systems.

(B) Wastewater collection and treatment systems, including storm drainage systems.

(C) Transportation systems or transit services.

(c) A city or county with territory within its boundaries that may be affected by the proposed disposal site for composting.

(d) The Department of Land Conservation and Development.

(e) The State Department of Agriculture.

(6) The city with land use jurisdiction may use preapplication procedures, if any, in the acknowledged land use regulations of the city, consistent with the requirements that the city shall:

(a) Provide notice of the preapplication conference to the entities described in subsection (5) of this section by mail and, as appropriate, in any other manner that ensures adequate notice and opportunity to participate;

(b) Hold the preapplication conference at least 20 days and not more than 40 days after receipt of the applicant's written request; and

(c) Provide preapplication notes to each attendee of the conference and the other entities described in subsection (5) of this section for which a representative does not attend the preapplication conference.

(7) After the preapplication conference and before submitting the application for land use approval, the applicant shall:

(a) Hold a community meeting within 60 days after the preapplication conference:

(A) In a public location in the city with land use jurisdiction; and

(B) On a business day, or Saturday, that is not a holiday, with a start time between the hours of 6 p.m. and 8 p.m.

(b) Provide notice of the community meeting to:

(A) The owners of record, on the most recent property tax assessment roll, of real property located within one-half mile of the real property on which the proposed disposal site for composting would be located;

(B) The resident or occupant that receives mail at the mailing address of the real property described in subparagraph (A) of this paragraph if the mailing address of the owner of record is not the mailing address of the real property;

(C) Neighborhood and community organizations recognized by the governing body of the city if a boundary of the organization is within one-half mile of the proposed disposal site for composting;

(D) A newspaper that meets the requirements of ORS 193.020 for publication;

(E) Local media in a press release; and

(F) The entities described in subsection (5) of this section.

(8) During the community meeting, the applicant shall provide information about the proposed disposal site for composting and proposed operations for composting and respond to questions about the site and operations.

(9) The applicant's notice provided under subsection (7)(b) of this section must include:

(a) A brief description of the proposed disposal site for composting;

(b) The address of the location of the community meeting; and

(c) The date and time of the community meeting. [2013 c.524 §2]

Note: 227.600 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 227 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

CHAPTERS 228 TO 235

[Reserved for expansion]