



Type II _____ Fee \$ _____

Type III _____ Fee \$ _____

CITY OF PENDLETON

Planning Department (541) 966-0204 Fax (541) 966-0251
500 SW Dorion Avenue, Pendleton, OR 97801

APPEAL OF A TYPE II/III DECISION

File No. _____

On original application form, please print legibly using blue or black ink, or type. Applicants are advised to review the list of submittal requirements indicated on each application form prior to submitting an appeal. **Incomplete applications will not be acted upon or scheduled for a public hearing unless the Planning Department receives all required submittal materials and fees within the 14-day appeal period.** **There is no refund of appeal fees if withdrawn.**

Specific Land Use Action Appealed (file number of original application) _____

NATURE OF APPEAL: *Approval* _____ *Denial* _____ *Condition(s) of Approval* _____

APPELLANT _____

Mailing address _____

Phone _____ Fax _____ Email _____

Signature _____ **Date** _____

APPELLANT _____

Mailing address _____

Phone _____ Fax _____ Email _____

Signature _____ **Date** _____

If multiple persons or parties are involved in an appeal, please include additional sheets

All testimony, arguments and evidence presented regarding an appeal must be directed toward the applicable approval criteria or other criteria in the plan or land use regulation which the person believes to apply to the original decision. Please address only the applicable criteria for the decision.

Please provide specific information regarding the nature of the appeal and the relevant procedural matters or approval criteria. All issues raised shall be accompanied by statements or evidence sufficient to afford the decision-making body and the parties an adequate opportunity to respond to each issue. Failure to raise an issue accompanied by statements or evidence sufficient to afford the decision makers and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals (LUBA) based on that issue.

Please attach a separate typed sheet describing in detail the specific nature of the appeal, including all relevant testimony.

Please provide ten printed copies of any materials submitted. Please provide electronic copies of all materials.

OFFICE USE ONLY – DO NOT WRITE IN THIS AREA

This institution is an equal opportunity provider and employer.

Notice of Decision mailed _____

Date appeal received _____

Deadline for receipt of appeal _____

Final decision by (120 day time limit) _____

Hearing date _____

Notice mailed _____

Notice to media - Publication date _____

Emailed to paper _____

Notice of Decision - Date mailed _____

Appeal deadline _____

City of Pendleton Unified Development Code (Ord. No. 3845)
Article XIII. Land Use Application Procedure

For appeal of a staff decision to the Planning Commission

13.03 Type II Procedure (Administrative)

13.03.7 **Appeal.** A Type II administrative decision may be appealed to the Planning Commission as follows:

- A. Who may appeal. The following people have legal standing to appeal a Type II Administrative Decision:
 - 1. The applicant or owner of the subject property;
 - 2. Any person who was entitled to written notice of the Type II administrative decision;
 - 3. Any other person who participated in the proceeding by submitting written comments.
- B. Appeal filing procedure.
 - 1. Notice of appeal. Any person with standing to appeal, as provided in subsection A, may appeal a Type II Administrative Decision by filing a Notice of Appeal according to the following procedures;
 - 2. Time for filing. A Notice of Appeal shall be filed with the City Planning Official or designee within 14 days of the date the Notice of Decision was mailed;
 - 3. Content of notice of appeal. The Notice of Appeal shall contain:
 - a. An identification of the decision being appealed, including the date of the decision;
 - b. A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
 - c. A statement explaining the specific issues being raised on appeal;
 - d. If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period;
 - e. Filing fee.
- C. Scope of appeal. The appeal of a Type II Administrative Decision by a person with standing shall be a hearing de novo before the Planning Commission. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the Type II administrative review. The Planning Commission may allow additional evidence, testimony or argument concerning any relevant standard, criterion, condition, or issue.
- D. Appeal procedures. Type III notice, hearing procedures and decision process shall be used for all Type II Administrative Appeals.
- E. Further Appeal to City Council. The decision of the Planning Commission regarding an appeal of a Type II Administrative Decision is the final decision of the City unless appealed to City Council. An appeal to City Council shall follow the same notification and hearing procedures as for the Planning Commission hearing. The decision of the City Council on an appeal is final and effective on the date it is mailed by the City. The City Council's decision may be appealed to the State Land Use Board of Appeals pursuant to ORS 197.805 – 197.860.

*Fee for appeal of a Type II decision is refundable if appellant prevails – See ORS 227.175

For appeal of a Planning Commission decision to City Council

13.04 Type III Procedure (Quasi-Judicial)

13.04.8 **Appeal.** A Type III decision may be appealed to the City Council as follows:

- A. Who may appeal. The following people have legal standing to appeal a Type III Decision:
 1. The applicant or owner of the subject property;
 2. Any person who participated in the proceeding by submitting written comments to the Planning Commission.
 3. Any person who participated in the proceeding by providing oral testimony to the Planning Commission at the hearing(s).
 4. The City Council, acting upon the recommended action of the City Manager or upon its own motion, may order a de novo review of any lower level decision. This review shall be conducted in accordance with appeal procedures specified herein.
- B. Appeal filing procedure.
 1. Notice of appeal. Any person with standing to appeal, as provided in subsection A, above, may appeal a Type III Decision by filing a Notice of Appeal according to the following procedures;
 2. Time for filing. A Notice of Appeal shall be filed with the City Planning Official or designee within 14 days of the date the Notice of Decision was mailed;
 3. Content of notice of appeal. The Notice of Appeal shall contain:
 - a. An identification of the decision being appealed, including the date of the decision;
 - b. A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
 - c. A statement explaining the specific issues being raised on appeal;
 - d. If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period;
 - e. Filing fee.
- C. Scope of appeal. The appeal of a Type III Decision by a person with standing shall be a hearing de novo before the City Council. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the Planning Commission review. The City Council may allow additional evidence, testimony or argument concerning any relevant standard, criterion, condition, or issue.
- D. Appeal procedures. Type III notice, hearing procedures and decision process shall also be used for all Type III Appeals;
- E. Further Appeal. The decision of the City Council on an appeal is final and effective on the date it is mailed by the City. The City Council's decision may be appealed to the State Land Use Board of Appeals pursuant to ORS 197.805 – 197.860.

13.06 Burden of Proof

The following language shall be included with all decisions for Type II, III and IV actions.

The specific findings made in granting a Permit shall be factual and supported by substantial evidence. The burden of producing substantial evidence to support the requisite findings is on the applicant seeking the approval of the Permit. If no evidence is produced by the applicant concerning any of the findings, the application may be denied based upon improper or inadequate findings. All evidence produced must be recited in the findings relating to approval or denial of an application.

- A. The applicant has the burden of proof regarding all requests affecting a subject property, and the applicant recognizes that it is the sole obligation of the applicant to substantiate the request.
- B. If any administrative review, suit or action is instituted in connection with any appeal of a decision, the applicant shall be required to either (1) reimburse the City for all costs incurred in defending this action, including but not limited to attorney fees, staff costs, any materials and other related costs, or (2) notify the City that the applicant does not desire to undertake such costs and will drop its request.
- C. The applicant shall notify the City Manager within five (5) days from City's receipt of any notice of appeal by delivering a written statement to the City Manager within said five (5) days advising the City Manager whether the applicant will reimburse the City for all costs as described above or desires to drop the request.
- D. In the absence of written communication from the applicant within the allotted five (5) days the City may at its option presume the applicant desires to drop the request and the City shall have no obligation to defend the appeal.
- E. In appeals involving questions of City-wide significance, the City Council may determine to participate in part of the costs specified herein. Nothing in this condition shall affect applicant's right to retain independent counsel in making their own legal appearance upon appeal.
- F. If any suit or action, including rescission, is instituted by the applicant in connection with any controversy arising out of a request, there shall be taxed and allowed to the City as a part of the costs of the action, a reasonable amount to be fixed by the court as attorney fees in such suit or action, both at trial and upon appeal. In addition, the City may charge a fee for preparation of a written transcript, not to exceed the actual cost of preparing the transcript, up to \$500 plus one-half the actual costs over \$500.

15.24 Fees

15.24.1 The city may adopt by resolution, and revise from time to time, a schedule of fees for applications and appeals. Fees shall be based upon the city's actual or average cost of processing the application or conducting the appeal process. The only exception shall be the appeal fee for a Type II decision, which shall be limited by ORS 227.175.10.b. The requirements of this Section shall govern the payment, refund and reimbursement of fees.

15.24.2 Payment. All fees shall be due and payable at the time the application or appeal is submitted. No application or appeal shall be accepted without the proper fee being paid.

15.24.3 Refunds. Fees will only be refunded as provided in this subsection:

- A. If a fee is paid for an application which is later found to not be required, the city shall refund the fee.
- B. When an error is made in calculating a fee, overpayment will be refunded.
- C. In the event an applicant withdraws an application, the planning department shall refund the unused portion of the fee. In this case, the planning department will deduct from the fee the city's actual costs incurred in processing the application prior to withdrawal.

15.24.4 Fee Waivers. The Community Development Department may waive all or any portion of an application fee if, in the opinion of the Director, a particular application must be resubmitted because of an error made by the city. Appeal fees may be waived, wholly or in part, by the City Manager, if the City Manager finds that, considering fairness to the applicant and to opposing parties, a full or partial waiver of the appeal fee is warranted. Appeal fees shall not be charged for an appeal filed by a city-recognized neighborhood association, so long as the appeal has been officially approved by the general membership or board of the neighborhood association at a duly announced meeting.

15.24.5 Major Projects. The fees for a major project shall be the city's actual costs, which shall include, but not be limited to, the actual costs for staff time, as well as any consultants, including contract planners, attorneys and engineers. The costs of major projects will not be included in any average used to establish other fees under this Section. For purposes of this subsection only, a "major project" is defined to include any combined plan and zone change and any project with an estimated construction cost exceeding one million dollars.