

## DIVISION V. ADMINISTRATIVE PROCEDURES

### Chapter 2.70

#### LAND USE ADMINISTRATION

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**2.70.010** **Purpose.** The purpose of this chapter is to combine and consolidate the application review and approval processes of applications involving land use in a manner that is clear, concise and understandable. It is further intended to comply with state guidelines to combine and expedite and integrate development and environmental reviews. (Ord. 767, September 2003.)

**2.70.020** **Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

- A. "Administrator" means the mayor or the mayor's designee.
- B. "Closed record appeal" means an administrative appeal on the record following an open record hearing on a project permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.
- C. "Consistency" means a determination of whether the project permit application is consistent with applicable regulations, the comprehensive plan, and SEPA regulations.
- D. "Deficiency" means a deficiency in the comprehensive plan or a development regulation such as the absence of required or potentially desirable contents of the comprehensive plan or a development regulation.
- E. "Docketing" means the compiling and maintaining of a list of suggested changes to the comprehensive plan or development regulations in a manner that will ensure such suggested changes will be considered for review by the public.
- F. "Open record hearing" means a hearing, conducted by a single hearing body or officer that creates the record through testimony and submission of evidence and information. An open record hearing may be held prior to a decision on a project permit to be known as an open record predecision hearing. An open record hearing may be held on an appeal, to be known as an open record appeal hearing, if no open record predecision hearing has been held on the project permit.
- G. "Project permit" or "project permit application" means any land use or environmental permit or license required from the city for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional use, shoreline substantial development permits, site plan reviews, permits or approvals required by critical area ordinances, site-specific rezones authorized by the comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection.
- H. "Public meeting" means an informal meeting, hearing, workshop or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to a decision. A public meeting may include, but is not limited to, a design review or architectural control board meeting, a special review district or community council meeting, or a scoping meeting on a draft environmental impact statement. A public meeting does not include an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the local government's project permit application file. (Ord. 767, September 2003.)

**2.70.030 Administration.**

- A. Roles and responsibilities – Board and decision makers.

1. The regulation of land development is a cooperative activity including many different elected and appointed boards and City staff. The specific responsibilities of these boards and staff are set forth below.
  2. Developers are expected to read and understand this chapter and the various land use ordinances applicable to the specific project, and be prepared to fulfill the obligations placed on the developer by this chapter and the applicable land use ordinances of this code.
- B. Administrator. The administrator will:
1. Administer those ordinances dealing with zoning, subdivisions, critical areas, the State Environmental Policy Act, and other applicable land use issues.
  2. Interpret the meaning or application of the provisions of such ordinances and issue a written administrative interpretation within thirty (30) days. Requests for interpretation must be in writing and concisely identify the issue for which an interpretation is being requested.
  3. Review and make administrative approvals set forth in Section 2.70.100 and 2.70.110.
  4. Review and act on short plat applications.
  5. Other applicable duties deemed necessary by the City Council.
- C. Planning Commission. The Planning Commission will review and make recommendations to the City Council on the following applications:
1. Following a conducted quasi-judicial open record public hearing the following:
    - a. Site-specific zoning map amendments.
    - b. Conditional Use Permits.
    - c. Prezone of areas to be annexed.
    - d. Variances.
    - e. Appeal of State Environmental Policy Act determinations of nonsignificance or mitigated nonsignificance.
  2. Following a legislative public hearing:
    - a. Amendments or revisions to the Comprehensive Plan, subarea plan, or neighborhood plan.
    - b. Amendments to the subdivision and short subdivision ordinances.
    - c. Amendments to the zoning ordinances.
    - d. Amendments to the ordinance implementing the State Environmental Policy Act.
    - e. Any other deemed necessary by the City Council.

3. Guidelines for hearings. For the purpose of this hearing, “legislative public hearing” is to obtain public input on legislative decisions on matters of policy. They do not involve legal rights as specific, private parties in a contested setting. The Appearance of Fairness Doctrine does not apply to legislative public hearings. Quasi-judicial public hearings involve the legal rights of specific parties requiring strict procedural requirements, a decision based on and supported by the evidence and testimony presented at the hearing, and is subject to the Appearance of Fairness Doctrine prohibiting ex parte communications.
- D. City Council. In addition to its legislative responsibilities, the City Council will review and act on the following subjects:
1. Recommendations of the Planning Commission;
  2. Appeals of administrative decisions as set forth in Section 2.70.240;
  3. Appeal of determinations of significance under the City’s SEPA implementing ordinance; and
  4. Variances.
- E. Amendments.
1. Amendments to the zoning ordinance, subdivision ordinance, short subdivision ordinance, critical areas ordinance, the ordinance implementing the State Environmental Policy Act and comprehensive plan must be on forms supplied by the administrator and contain all the information required thereon as well as the application requirements which accompany each application. Such amendments may be initiated by any person, including applicants, citizens, and staff of other agencies.
  2. Suggested amendments to the comprehensive plan will be docketed and considered in accord with the provisions of the City’s once-a-year review process.
  3. Suggested amendments to any development regulation or zoning designation, will be considered when received, unless in conflict with the comprehensive plan, in which case consideration will be docketed or review in conjunction with the once-a-year review of the comprehensive plan.
  4. The procedure for amendment to the zoning code and map are contained in Section 2.70.135. (Ord. 866, November 2009; Ord. 831, April 2008; Ord. 767, September 2003.)

**2.70.040 Consolidated application process—Applicability.**

- A. Where possible, development applications and reviews will be consolidated in order to integrate the development permit and environmental review process, while avoiding duplication of such review processes.
- B. All applications for zone changes, subdivisions, short subdivision, conditional use permits, development permits, site reviews, variances and other land use decisions must be submitted on forms provided by the administrator. All

applications must be acknowledged by the property owner or the owner's authorized representative. (Ord. 767, September 2003.)

**2.70.050 Consolidated application process—Preapplication meetings.**

- A. Discretionary. Preapplication meetings will be held when deemed necessary by the administrator or as requested by an applicant.
- B. Informal. Applicants for development are encouraged to participate in an informal meeting, with the administrator, prior to the formal preapplication meeting. The purpose of the meeting is to discuss, in general terms, the proposed development, city design standards, and the required permits and approval process.
- C. Formal. Except as stated above, every person proposing a development, with the exception of building permits, must attend a formal preapplication meeting. The purpose of the meeting is to discuss the nature of the proposed development, application and permit requirements, fees, review process and schedule, and applicable plans, policies and regulations. In order to expedite development review, the city will invite all affected jurisdictions, agencies and/or special districts to the preapplication meeting.
- D. Required Information. The applicant will be expected to supply sufficient copies of necessary information to provide for an adequate review of the proposal. The information must be submitted to the administrator in sufficient time so that it may be included in the notice of the preapplication meeting. Nothing precludes the city or any other agency from requesting additional information during the formal review process. (Ord. 767, September 2003.)

**2.70.060 Consolidated application process—Contents of formal application.**

- A. All applications listed in Section 2.70.040(B), must include the information contained in the applicable ordinance. The administrator may require such other additional information as reasonably necessary to fully and properly evaluate the proposal.
- B. The applicant must apply for all permits identified in the preapplication meeting. (Ord. 767, September 2003.)

**2.70.070 Letter of completeness/consistency—Timing and content.**

- A. Within twenty-eight (28) days of receiving a date-stamped application, the city will review the application and, as set forth below, provide the applicant with a written determination that the application is complete or incomplete. In addition, the letter will state if the project is, or is not, consistent with the city's plans, policies and regulations.
- B. A project application will be declared complete only when it contains all of the following materials:
  - 1. A fully completed, signed and acknowledged development application.
  - 2. All applicable fees.

3. A fully completed, signed and acknowledged environmental checklist for projects subject to review under the State Environmental Policy Act.
  4. The information specified in the appropriate application packet.
  5. Any supplemental information or special studies identified by the administrator.
- C. For applications determined to be incomplete, the city will identify, in writing, the specific requirements or information necessary to constitute a complete application. The applicant will have sixty (60) days to submit the required additional information. If the additional information is not submitted within the sixty (60) day period, the review process will be terminated and the applicant will be required to file a new application and fees. Upon submittal of the additional information, the city will, within fourteen (14) days, issue a letter of completeness or identify what additional information is required.
- D. The determination of consistency will include whether the items listed in this subsection are defined in the development regulations applicable to the proposed project or, in the absence of such regulations the adopted comprehensive plan. This determination of consistency will include the following:
1. The type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional and special uses, if the criteria for their approval have been satisfied;
  2. Density of residential development in urban growth areas; and
  3. Availability and adequacy of public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by RCW Chapter 36.70A. (Ord. 767, September 2003.)

**2.70.080      Formal review of proposal—When held—Purpose.**

- A. Immediately following the issuance of a letter of completeness, the city will schedule a formal review of the proposal. Invited to this review will be representatives of all affected city departments, utility districts and any other entities or agencies with jurisdiction.
- B. Attendees will review the development application for compliance with city and affected agency plans and regulations, coordinate necessary permit review, and identify the developer's environmental impacts. (Ord. 767, September 2003.)

**2.70.090      Environmental review.**

- A. Developments and actions subject to the provisions of the State Environmental Policy Act (SEPA) will be reviewed in accord with the policies and procedures contained therein and the city's SEPA implementing ordinance.
- B. SEPA review will be conducted concurrently with the development review. The following are exempt from concurrent review:

1. Projects categorically exempt from SEPA unless the administrator determines the project will have a significant adverse impact on the quality of the environment.
2. Those actions for which SEPA has been complied with and are consistent thereto. (Ord. 767, September 2003.)

**2.70.100      Administrative approvals without notice.**

- A. The administrator may approve, approve with conditions or deny the following without notice:
  1. Boundary line adjustments.
  2. Extensions of time.
  3. Interpreting the meaning of the various land use ordinances such as zoning, subdivisions and the like.
- B. The administrator's decisions under this section will be final on the date issued, and are subject to appeal in accord with Section 2.70.240. (Ord. 767, September 2003.)

**2.70.110      Administrative approvals subject to notice.**

- A. The administrator is authorized to approve, approve with conditions, or deny the following actions subject to the notice requirements of Sections 2.70.190 through 2.70.230:
  1. Short plats.
  2. Permits required under Titles 15, 16, 17, and 20.
- B. Preliminary approvals under this section will become final subject to the following:
  1. If no appeal is submitted, the preliminary approval becomes final at the expiration of the fifteen (15) day notice period.
  2. If a written notice of appeal is received within the specified time, the matter will be referred to the city council for an open record appeal hearing. (Ord. 767, September 2003.)

**2.70.120      Planning commission review and recommendation process.**

- A. Staff Report. The administrator will prepare a staff report of the proposed development or action summarizing the comments and recommendations of city departments, affected agencies and special districts, and evaluating the development's consistency with applicable codes, ordinances and adopted plans. The staff report will include, as applicable, findings, conclusions, conditions of approval, and a recommendation for disposition of the application.
- B. Hearing. The planning commission will conduct a public hearing for the purpose of taking testimony, considering the facts relevant to the proposal, and evaluating the proposal for consistency with applicable codes, ordinances and adopted plans. Notice of the planning commission public hearing will be in

accord with Sections 2.70.190 through 2.70.230.

- C. Required Findings. The planning commission will not recommend approval of a proposal unless it first makes the following findings and conclusions, as applicable:
1. The development is consistent with the comprehensive plan and meets the requirements and intent of this code.
  2. The development makes adequate provisions for the development to serve the public health, safety and welfare. Such provisions may include, but are not limited to open space, drainage ways, streets and other public ways, transit stops, water supply, sanitary wastes, parks and recreation facilities, playgrounds, sites for schools and school grounds, and pedestrian and bicycle ways.
  3. The development adequately mitigates impacts identified during the environmental reviews required by law.
  4. The development is in the public interest.
  5. The development does not lower the level of service of transportation and/or neighborhood park facilities below the minimum standards established within the comprehensive plan. If the development results in a level of service lower than those set forth in the comprehensive plan, the development may be approved if, in accord with any applicable city ordinances, improvements or strategies to reach or raise the level of service above the minimum standard are made concurrent with the development. For the purpose of this section, "concurrent with the development" is defined as the required improvements or strategies in place at the time of occupancy, or a financial commitment is in place to complete the improvements or strategies within six years of approval of the proposal.
  6. The area, location and features of land proposed for any dedication are a direct result of the proposal, are reasonably needed to mitigate the effects of the project, and are proportional to the impacts created by the project.
- D. Recommendation. For any recommendation of approval, the planning commission will adopt a motion setting forth its findings, conclusions, any conditions, and promptly forward the matter to the city council for consideration and action.
- E. Denial. Denial of a proposal or action will be final unless appealed to the city council in accord with Section 2.70.240.
- F. Minor Amendments. The planning commission is authorized to make minor amendments or modifications to approved developments or permits. Minor amendments are those which may affect the precise dimensions or location of buildings, accessory structures and driveways. Minor amendments are not possible which affect the overall project character; increase the number of lots, dwelling units or density; or, decrease the quality or amount of open space.
- G. Minor Adjustments. The planning commission is authorized to make minor

adjustments to yard and height requirements limited to ten percent of the required dimension. (Ord. 767, September 2003.)

**2.70.130 City council action.**

- A. Actions. Upon receiving a recommendation from the planning commission or notice of any other matter requiring council attention, the council will perform the following action, as appropriate:
  - 1. Hold open record hearings and decide on the following:
    - a. Appeal of administrative interpretations.
    - b. Appeal of administrative decisions.
    - c. Appeal of determinations of significance.
    - d. Other matters not prohibited by law.
  - 2. Hold closed record hearings and take action on planning commission recommendations and denials.
- B. Decisions. The council will make its decision by motion, resolution or ordinance, as appropriate.
  - 1. A council decision on a planning commission recommendation or following an open record hearing will include one of the following actions:
    - a. Approve as recommended.
    - b. Approve with additional conditions.
    - c. Modify, with or without the applicant's concurrence, provided the modification does not enlarge the area or scope of the project, increase the density or proposed building size, or significantly increase adverse environmental impacts as determined by the responsible official.
    - d. Deny (reapplication or resubmittal is permitted).
    - e. Deny with prejudice (reapplication or resubmittal is not allowed for one year).
    - f. Remand for further proceedings and/or evidentiary hearing.
  - 2. A council decision following a closed record appeal hearing will include one of the following actions:
    - a. Grant the appeal in whole or in part.
    - b. Deny the appeal in whole or in part.
    - c. Remand for further proceedings and/or an evidentiary hearing. (Ord. 767, September 2003.)

**2.70.135 Amendments to Zoning Code and Map.**

- A. Purpose. The purpose of this section is to establish the procedures to amend the zoning text and/or map when the proposed change will benefit the general welfare of the community and is consistent with the goals, objectives and

policies of the comprehensive plan as amended.

1. From time to time a change in circumstances or conditions may warrant a change in the zoning code consistent with any changes made in the comprehensive plan.
- B. There are three types of zoning related amendments:
1. Rezone: a reclassification of land from one zoning district to another, allowing a change in the range of permitted uses on a specific piece of property. A “rezone” is a change in the Official Zoning Map.
  2. Zoning Code Text Amendment: A change of the text, standards, procedures or other provisions of this Code.
  3. Prezone: A Prezone provides a zone designation for land to be annexed to the city. Upon annexation the official zoning map is changed to reflect the addition.
- C. Who May Initiate. Amendments may be initiated by:
1. The city council;
  2. The planning commission;
  3. Any person requesting amendment of this code;
  4. Any property owner or contract purchaser or authorized agent requesting a rezone of his property; or
  5. Any property owner (s) requesting annexation to the city.
- D. Procedure.
1. A site specific rezone is a quasi-judicial process which requires an open record hearing before the planning commission pursuant to 2.70.120. A Prezone is a legislative process, which requires an open record hearing pursuant to 2.70.120. Amendment proposals shall follow the procedures as described in 2.70.030.F.
  2. The planning commission is the reviewing body/hearing body for a site-specific rezone. Following a public hearing on the proposal, the planning commission’s recommendation will be sent to the city council for its consideration. The planning commission is the reviewing body/hearing body for a text amendment. Following a public hearing on the proposal, the planning commission’s recommendation will be sent to the city council for consideration and final decision.
  3. The city council is responsible for the approval or denial of a site-specific rezone or text amendment. When considering a rezone request or a text amendment, the city council will act on the request at a public meeting upon the hearing record of the initial reviewing body.
  4. Prezones require two public hearings at least thirty (30) days apart before the city council.

- E. Review Criteria. The decision on a proposed amendment shall be based on legislative findings as they relate to the following:
  - 1. The proposal is in conformance with goals and policies of the Benton City Urban Area Comprehensive Plan as amended and the intent of this code.
  - 2. The property in question is suitable for uses permitted under the proposed zoning amendment.
  - 3. Public facilities, such as roads, sewer and water and other public facilities are adequate to support the proposed zoning amendment.
  - 4. The proposed zone change and associated uses are compatible with neighboring land uses.
  - 5. The proposal addresses a need, which was improperly or inadequately addressed by the present ordinance text or map.
- F. Appeals. Appeal of a final decision made under this section shall be made according to section 2.70.240(E) (Judicial Appeals). (Ord. 767, September 2003.)

**2.70.137 Conditional Use Permits and Variances.**

- A. Purpose. The purpose of this section is to establish the procedure for the consideration of applications for Conditional Use Permits and variances which:
  - 1. Recognize that certain uses, while generally appropriate to an area or zone, may require special consideration prior to their being permitted at any particular location to ensure through the imposition of reasonable conditions the use will be reasonably compatible with the surrounding use as permitted.
  - 2. A Variance is a permission granted as a relief from some specific and unusual hardship imposed by the strict interpretation of the dimensional or development requirements of this Code.
- B. Who may initiate. A Conditional Use Permit or a Variance may be initiated by any property owner or contract purchaser or authorized agent.
- C. Procedure.
  - 1. An application for a Conditional Use Permit or Variance is a quasi-judicial process which requires an open record hearing before the Planning Commission as to the hearing body.
  - 2. Following a public hearing on the proposal, the Planning Commission shall provide findings of facts and conclusions of law upon which their recommendation is based which will be sent to the City Council for its consideration.
- D. Review Criteria for Conditional Use Permits.
  - 1. The Planning Commission shall make written findings of fact based upon the evidence received at the open record public hearing stating the reasons for granting or denying the Conditional Use Permit. The findings of facts

shall be based upon the finding criteria which shall include whether:

- a. The use will not endanger the public health or safety if located and developed where proposed, and that the use will not allow conditions which will tend to generate nuisance conditions to adjoining properties.
- b. The location and character of the use, if developed according to the plan as submitted and approved or conditionally approved, will be compatible and in harmony with the area in which it is located.
- c. The Conditional Use Permit approval would be in general conformity with the City's adopted Comprehensive Plan, as amended.
- d. The use meets all required conditions and specifications set forth in the zone where it is proposed to locate.

To ensure the establishment of the above conditions, the Planning Commission shall recommend and the City Council shall have the authority to require and approve specific plans, specific requirements tailored to mitigate the adverse affects of the projects, and will require compliance with other requirements specified elsewhere in this Code.

If the potential adverse impact of permit approval cannot be mitigated through implementation of reasonable conditions to a degree which assures that adjacent properties will not be unreasonably impacted, the Conditional Use Permit shall be denied.

2. Conditions of approval. To ensure that a Conditional Use proposal meets the general criteria, conditions may be imposed as a part of the Conditional Use Permit supported by a finding which supports such conditions as follows:

- a. The manner in which the use is conducted may be limited, including restricting hours of operation and imposing restraints to minimize such environmental effects as noise, vibration, air pollution, glare, or odor.
- b. A special yard, other open space or lot area or dimension in excess of any specified minimum may be established.
- c. The height, size, or location of a building or other structure may be limited.
- d. The size, number, location and nature of vehicle access points may be designated.
- e. Required street dedication, roadway width, or improvements within the street right-of-way on adjacent streets may be increased.
- f. The size, location, screening, drainage, surfacing, or other improvement of a parking or loading area may be designated.
- g. An overall drainage plan of the property and construction of drainage ways, sumps, and other drainage structures may be required.
- h. The number, size, location, height, and lighting of signs may be

specified.

- i. The location and intensity of outdoor lighting may be limited, and shielding may be required.
- j. Diking, screening, landscaping, or other methods to protect adjacent or nearby property from noise, light, traffic, or litter may be required. The Planning Commission may set standards for installation and maintenance.
- k. The size, height, location and materials for a fence may be specified.
- l. Protection and preservation of existing trees, vegetation, or water resources shall be encouraged.

E. Review Criteria for Variances.

- 1. The Planning Commission shall, based on evidence received in an open record public hearing, make written findings of fact stating the reasons for granting or denying the requested Variance based upon the conditions below.
- 2. Conditions for Granting Variances. To support a recommendation of granting a Variance, the Planning Commission must find that the following conditions have been met:
  - a. Exceptional or extraordinary circumstances apply to the property itself such as lot size, shape, or topography, which do not apply generally to other properties in the same zone or vicinity, and result from a situation over which the applicant has no control.
  - b. The Variance is necessary for the preservation of a property right of the applicant substantially the same as is possessed by owners of other property in the same zone or vicinity.
  - c. The granting of the proposed Variance will not be materially detrimental to property within the vicinity in respects such as: public safety, traffic, noise, health and sanitation, and hours of operation. The granting of a Variance shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the same zoning district.
  - d. It must be shown that a material hardship unwarranted within the intent of this Code will exist if the Variance is not granted, and that the hardship cannot be remedied by other means. The hardship demonstrated must be not self created, and must relate to the land itself and not to problems personal to the applicant. The Variance permitted shall be the minimum Variance which will mitigate the hardship.
  - e. Authorization of the Variance does not adversely affect implementation of the Benton City Comprehensive Plan, as amended.

**2.70.140 Procedures for public hearings—Joint and local.**

- A. The administrator may combine any public hearing on a project application with

any hearing that may be held by another local, state, regional, federal or other agency, as long as the hearing is held within the city limits and the requirements of Sections 2.70.190 through 2.70.230, are met.

1. The applicant may request that the public hearing be combined as long as the joint hearing can be held within the time periods set forth in this code. In the alternative, the applicant may agree to a particular schedule if additional time is needed in order to complete the hearings.
  2. A joint hearing may be held with another local, state, regional, federal or other agency and the city, as long as:
    - a. The other agency is not expressly prohibited by statute from doing so;
    - b. Sufficient notice of the hearing is given to meet each of the agencies' adopted notice requirements as set forth in statute, ordinance or rule; and
    - c. The agency has received the necessary information about the proposed project from the applicant in sufficient time to hold its hearing at the same time as the city hearing.
- B. Public hearings will be conducted in accord with the hearing body's rules of procedure and serve to create or supplement an evidentiary record upon which the body will base its decision. The chair will open the hearing and, in general, observe the following sequence of events:
1. Staff presentation, including submittal of any administrative reports. Members of the hearing body may ask questions of the staff;
  2. Applicant presentation, including submittal of any materials. Members of the hearing body may ask questions of the applicant;
  3. Testimony of comments by the public relevant to the matter. Questions directed to the staff or applicant must first be directed to the chair;
  4. Rebuttal, response or clarifying statements by the staff and applicant;
  5. The evidentiary portion of the hearing will be closed and the hearing body will deliberate on the matter. (Ord. 767, September 2003.)

**2.70.150** **Procedure for closed record appeals.** Closed record appeals will be conducted in accord with the hearing body's rules of procedure and will serve to provide argument and guidance for the body's decision. Closed record appeals will be conducted generally as provided for public hearings. Except as provided in Sections 2.70.160 and 2.70.170, no new evidence or testimony shall be given or received. The parties to the appeal may submit timely written statements or arguments. (Ord. 767, September 2003.)

**2.70.160** **Reconsideration of final decision.** A party to a public hearing or closed record appeal may seek reconsideration of a final decision by filing a written request for reconsideration with the administrator within five days of the oral announcement of the final decision. The request must comply with Section 2.70.240(C). The hearing body will consider the request at its next practical

regularly scheduled meeting, without public comment or argument. If the request is denied, the previous action will become final. If the request is granted, the hearing body may immediately revise and reissue its decision or may call for argument in accord with the procedures for closed record appeals. Reconsideration will be granted only when an obvious legal error has occurred or a material factual issue has been overlooked that would change the previous decision. (Ord. 767, September 2003.)

**2.70.170** **Remand.** In the event the council determines the public hearing record or record on appeal is insufficient or otherwise flawed, the council may remand the matter to the hearing body to correct the deficiencies. The council will specify the items or issues to be considered and the time frame for completing the additional work. The council may hold a public hearing on a closed record appeal only for the limited purposes identified in RCW 34.05.562(1). (Ord. 767, September 2003.)

**2.70.180** **Final decision—Timing and exceptions.**

- A. The final decision on a development proposal will be made within one hundred twenty (120) days from the date of the letter of completeness. Exceptions to this include:
1. Amendments to the comprehensive plan or this code.
  2. Any time required to correct plans, perform studies or provide additional information; provided, that within fourteen (14) days of receiving the requested additional information, the administrator will determine whether the information is adequate to resume the project review.
  3. Substantial project revisions made or requested by an applicant, in which case the one hundred twenty (120) days will be calculated from the time the administrator determines the revised application is complete.
  4. All time required for the preparation and review of an environmental impact statement.
  5. Projects involving the siting of an essential public facility.
  6. An extension of time mutually agreed upon by the city and applicant.
  7. All time required to obtain a variance.
  8. Any remand to the hearing body.
  9. All time required for the administrative appeal of a determination of significance.
  10. Any period for administrative appeals of project permits, if an open and/or closed record appeal are allowed.
- B. **Effective Date.** The final decision of the hearing body will be effective on the date stated in the decision, motion, resolution or ordinance; provided, that the date from which appeal periods will be calculated will be the date the hearing body takes action on the motion, resolution or ordinance. (Ord. 767, September

2003.)

**2.70.190 Notice of development application—Timing and content.**

- A. Within fourteen (14) days of issuing a letter of completeness under Section 2.70.070, the city will issue a notice of development application. The notice will include but not be limited to the following:
  - 1. Name of the applicant.
  - 2. Date of application.
  - 3. Date of the letter of completeness.
  - 4. Location of the project.
  - 5. Project description.
  - 6. Requested approval, actions and/or required studies.
  - 7. A public comment period of not less than fifteen (15) days.
  - 8. Identification of existing environmental documents.
  - 9. City staff contact and phone number.
  - 10. The date, time and place of a public hearing if one has been scheduled.
  - 11. A statement that the decision on the application will be made within one hundred twenty (120) days of the date of the letter of completeness.
- B. The notice of development application will be published once in a newspaper of general circulation.
- C. The applicant must post the notice on the property in accord with Section 2.70.210.
- D. The notice will be issued prior to, and is not a substitute for, any required public hearing notice.
- E. The notice is not required for administrative approvals in accord with Section 2.70.100; actions that are categorically exempt from SEPA or an environmental review has been completed; or applications for building permits. (Ord. 767, September 2003.)

**2.70.200 Notice of administrative approvals—Content.** Notice of administrative approvals subject to notice under Section 2.70.110, will be made as follows:

- A. Notification of Preliminary Approval. The administrator will notify the adjacent property owners as specified in the applicable ordinance, of the intent to grant approval. Notification will be made by mail only and the posting of property. The notice will include:
  - 1. A description of the preliminary approval granted, including any conditions of approval.
  - 2. A place where further information may be obtained.
  - 3. A statement that final approval will be granted unless an appeal requesting

a public hearing is filed with the administrator within fifteen (15) days of the date of the notice. (Ord. 767, September 2003.)

**2.70.210 Notice of meetings, hearings and pending action—Content.** Public notification of meetings, hearings, pending action and open record appeal hearings will be given as follows:

- A. Time of Notices. Except as otherwise required by the applicable ordinance, such notice will be made by:
1. Publication at least fifteen (15) days before the date of the public meeting, hearing or pending action in a newspaper of general circulation.
  2. Mailing at least fifteen (15) days before the date of a public meeting, hearing or pending action to all property owners as shown on the records of the county assessor within three hundred (300) feet, including street rights-of-way, of the boundaries of the property, and any contiguous property under the same ownership, which is the subject of the meeting or pending action.
  3. Posting at least fifteen (15) days before the meeting, hearing or pending action in public places where such notices are generally posted.
  4. Posting by the applicant at least fifteen (15) days before the meeting, hearing or pending action, of at least one sign on each street frontage. The sign(s) must be visible from the street it faces and be in accord with the following specifications: (OPTIONAL)
    - a. The size of the sign must be at least two feet by two feet. The top of the sign must be at least three feet above grade.
    - b. The color of the sign and text must be distinct and in contrasting colors.
    - c. The sign must be such that it will withstand adverse weather conditions.
    - d. The sign must be removed and properly disposed of within five days after the public hearing.
    - e. The sign must contain the following wording:

CITY OF BENTON CITY  
(HEARING BODY)  
NOTICE OF (TYPE OF MEETING, HEARING OR PENDING ACTION)  
(DESCRIBE PROPOSED PROJECT WITH A NON-LEGAL DESCRIPTION OF  
ITS LOCATION)  
(DATE AND TIME AND PLACE OF MEETING, HEARING OR PENDING  
ACTION)  
CONTACT THE CITY CLERK  
BENTON CITY HALL  
708 9<sup>th</sup> STREET  
509-588-3322

- f. The applicant must submit written verification that the sign(s) has been installed. Verification must be on a form supplied by the city.
- B. Content of Notice. The public notice, excluding posted sign, will include a general description of the proposed project, action to be taken, a non-legal description of the property or a vicinity map or sketch, the time, date and place of the public hearing and the place where further information may be obtained.
- C. Continuations. If for any reason, a meeting or hearing on a pending action cannot be completed on the date set in the public notice, the meeting or hearing will be continued to a date certain and no further notice under this section is required. (Ord. 767, September 2003.)

**2.70.220 Notice of appeal hearings.** In addition to the posting and publication requirements of Section 2.70.210, notice of appeal hearings will be as follows:

- A. For administrative approvals, notice will be mailed to adjacent property owners.
- B. For planning commission recommendations, notice will be mailed to parties of record from the commission hearing. (Ord. 767, September 2003.)

**2.70.230 Notice of decision.** A written notice for all final decisions will be sent to the applicant and all parties of record. For development applications requiring planning commission review and city council approval, the notice will be the signed ordinance, resolution or action. (Ord. 767, September 2003.)

**2.70.240 Appeals.**

- A. Appeal of Administrative Interpretations and Approvals. Administrative interpretations and administrative approvals may be appealed by applicants or parties of record to the city council.
- B. Appeal of Planning Commission Recommendations. Recommendations of the planning commission may be appealed by applicants or parties of record from the planning commission hearing to the city council.
- C. Appeal of Hearing Examiner Board Recommendations. Recommendations of the hearing examiner board by applicants or parties of record from the hearings board to the city council.
- D. Appeals to the City Council.
  1. Filing. Every appeal to the city council must be filed with the Administrator within ten days of the date of the recommendation or decision of the matter being appealed.
  2. Contents. The notice of appeal must contain a concise statement identifying:
    - a. The decision being appealed.
    - b. The name and address of the appellant and the appellant's interest(s) in the matter.
    - c. The specific reasons why the appellant believes the decision to be wrong. The appellant bears the burden of proving the decision is wrong.

- d. The desired outcome or changes to the decision.
- e. The appeal fee in accord with the adopted fee schedule.

E. Judicial Appeal.

1. Appeals from the final decision of the city council, board of hearing examiners or any other city board of body involving applications listed in Section 2.70.040(B), and for which all other appeals specifically authorized have been timely exhausted, shall be made to the Benton County Superior Court within twenty-one (21) days of the date the decision or action became final. This requirement is jurisdictional.
2. Notice of the appeal and any other pleadings required to be filed with the court must be served on the mayor, city clerk and city attorney within the applicable time period.
3. The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant. The appellant must post, with the city clerk prior to the preparation of any records, an advance fee deposit in the amount specified by the city clerk. Any overage will be promptly returned to the appellant. If the advance is not sufficient to cover the costs of the requested work, the information will not be submitted to the appellant until adequate remuneration is given the city. (Ord 767, September 2003.)

**2.70.250** **Enforcing official—Administrator.** The administrator is responsible for enforcing those ordinances for which a project permit is required, and may adopt administrative rules to meet that responsibility. The administrator may delegate enforcement responsibility to other city staff as appropriate. (Ord. 767, September 2003.)

**2.70.260** **General Penalty.** Compliance with the requirements of this chapter is mandatory. The penalties and remedies heretofore established by this code for violation of the provisions of such titles shall continue to apply. The enforcement actions authorized under this chapter are supplemental to those penalties and remedies and are not intended to supersede the same. (Ord. 767, September 2003.)

**2.70.270** **Enforcement actions—Applicability.**

- A. Actions under this chapter will be taken in any order deemed necessary or desirable by the administrator to achieve the purpose of this chapter or code.
- B. Proof of a violation of a development permit or approval will constitute prima facie evidence that the violation is that of the applicant and/or owner of the property upon which the violation exists. An enforcement action under this chapter will not relieve or prevent enforcement against any other responsible person. (Ord. 767, September 2003.)

**2.70.280** **Administrative order of compliance.**

- A. Authority. An administrative order of compliance may be issued and served

upon a person if any activity by or at the direction of that person is, has been, or may be taken, in violation of this code.

- B. Notice. An order of compliance will be deemed served and be effective when posted at the location of the violation and/or delivered to any suitable person at the location and/or delivered by mail or otherwise to the owner or other person having responsibility for the locations.
- C. Content. The order of compliance will set forth:
  - 1. The name and address of the person to whom it is directed.
  - 2. The location and specific description of the violations.
  - 3. A notice that the order is effective immediately upon posting at the site and/or receipt by the person to whom it is directed.
  - 4. An order that the violation immediately cease, or that the potential violation be avoided.
  - 5. An order that the person stop work until correction and/or remediation of the violation as specified in the order.
  - 6. A specific description of the actions required to correct, remedy or avoid the violation, including a time limit to complete such actions.
  - 7. A notice that failure to comply with the regulatory order may result in further enforcement actions, including civil fines and criminal penalties.
- D. Remedial Action. The administrator may require any action reasonably calculated to correct or avoid the violation, including but not limited to replacement, repair, supplementation, revegetation or restoration.
- E. Appeal. An administrative order of compliance may be appealed to the city council in accord with Section 2.70.240.
- F. Legal Action. Any person who does not comply with an order of compliance will be subject to appropriate legal action, including possible submittal of the matter to the Benton County District or Superior Court. (Ord. 767, September 2003.)

**2.70.290**      **Review of approved permits.**

- A. Review. Any approval or permit issued under the authority of this code may be reviewed for compliance with the requirements of the code, or to determine if the action is creating a nuisance or hazard, has been abandoned, or the approval or permit was obtained by fraud or deception.
- B. Initiation of Review. The review of an approval or permit may be initiated by the administrator, city council, or by petition to the administrator by three property owners or three residents of separate dwelling units in the city, stating their belief as to the noncompliance, nuisance or hazard of the permitted activity.
- C. Administrator's Investigation. Upon receipt of information indicating the need for, or upon receiving a request for review of a permit or approval, the administrator will investigate the matter and take one or more of the following actions:

1. Notify the property owner or permit holder of the investigation; and/or
2. Issue an administrative order of compliance; and/or recommend revocation or modification of the permit or approval; and/or
3. Refer the matter to the city attorney; and/or
4. Refer the matter to the city council with a recommendation for action. (Ord. 767, September 2003.)

**2.70.300      Revocation or modification of permits and approvals.**

- A. Upon receiving an administrator's recommendation for revocation or modification of a permit or approval, the city council will review the matter at a public hearing. Upon a finding that the activity does not comply with the conditions of approval or the provisions of this code, or creates a nuisance or hazard, the city council may delete, modify or impose such conditions on the permit or approval it deems sufficient to remedy the deficiencies. If the council finds no reasonable conditions which would remedy the deficiencies, the permit or approval will be revoked and the activity allowed by the permit or approval must cease.
- B. Reapplication. If a permit or approval is revoked for fraud or deception, no similar application will be accepted for a period of one year from the date of final action and appeal, if any. If a permit or approval is revoked for any other reason, another application may be submitted subject to all of the requirements of this code. (Ord. 767, September 2003.)