

**CHAPTER 15.07  
ADMINISTRATION AND PROCEDURES**

**Section:**

<b>15.07.010</b>	<b>Purpose</b>
<b>15.07.020</b>	<b>Summary of the City's Decision Making Process</b>
<b>15.07.030</b>	<b>Preapplication Conference Meeting</b>
<b>15.07.040</b>	<b>Application Requirements</b>
<b>15.07.050</b>	<b>Completeness Review and 120-Day Rule</b>
<b>15.07.060</b>	<b>Complete Application: Required Information</b>
<b>15.07.070</b>	<b>Public Notices</b>
<b>15.07.080</b>	<b>Quasi-Judicial Hearing Process</b>
<b>15.07.090</b>	<b>Conditions of Approval and Notice of Decision</b>
<b>15.07.100</b>	<b>Performance Guarantees</b>
<b>15.07.110</b>	<b>Covenant with the City</b>
<b>15.07.120</b>	<b>Ex Parte Contact, Conflict of Interest and Bias</b>
<b>15.07.130</b>	<b>Legislative Hearing Process</b>
<b>15.07.140</b>	<b>Objections to Procedure</b>
<b>15.07.150</b>	<b>Appeals</b>
<b>15.07.160</b>	<b>Expiration of Approval</b>
<b>15.07.170</b>	<b>Extension of an Approval</b>
<b>15.07.180</b>	<b>Reapplication Limited</b>
<b>15.07.190</b>	<b>Conformity of Permits</b>
<b>15.07.200</b>	<b>Reconsideration of a Final Decision</b>
<b>15.07.210</b>	<b>Transfer of Approval Rights</b>
<b>15.07.220</b>	<b>Fees.</b>
<b>15.07.230</b>	<b>Revocation of a Previously Approved Permit</b>
<b>15.07.240</b>	<b>Authority to Condition Permit Approvals</b>

**15.07.010 – Purpose.** This Chapter provides the procedures by which the City of Mosier reviews and decides upon applications for all permits relating to the use of land authorized by ORS Chapters 92, 197 and 227. These permits include all forms of land divisions, land use, limited land use and expedited land division and legislative enactments and amendments to the City of Mosier Comprehensive Plan and the City of Mosier Zoning Ordinance. Any applicant may elect to consolidate applications for two or more related permits needed for a single development project.

**15.07.020 - Summary of the City's Decision Making Process.** The following decision making processes chart shall control the city's review of the indicated permits:

**TABLE 15.07-A**  
**Summary of Approval Procedures**

Permit Type	I	II	III	IV
Partition w/out Creation of Accessway	X			
Subdivision & Partitions w/ Creation of Accessway			X	
Planned Unit Development (PUD)			X	
Final Plat	X			
Conditional Use Permit (CUP)		X		
Temporary Use Permit (TUP)		X		
Site Plan Review (SPR)		X		
Major Variance			X	
Minor Variance		X		
Zone Change or Plan Amendment			X	X
Zone change Upon Annexation	X			
Similar Use Determination		X		
Nonconforming Use Verification			X	
Alteration/expansion of a Nonconforming Use		X	X	
Formal Code Interpretation		X		
Lot Line Adjustment or Abandonment	X			
Modification (material deviation) to a Prior Approval	X	X	X	X
Minor Modification (not a material deviation) to a Prior Approval		X		

A. Type I decisions are not permits and do not require interpretation or the exercise of policy or legal judgment in evaluating approval criteria. Type I decisions include partition and lot line adjustments, zone changes upon annexation, and final subdivision and planned unit development plan approvals where there are no material deviations from the approved preliminary plans. Because no discretion is involved, Type I decisions do not qualify as a land use, or limited land use, decisions. The process requires no notice to any party other than the applicant. The city planner's decision is final and not appealable by any party through the normal land use process. Type I decisions may only be appealed through a writ of review proceeding to Circuit Court.

B. Type II decisions involve the exercise of limited interpretation and discretion in evaluating approval criteria, similar to the limited land use decision making process under state law. Applications evaluated through this process are assumed to be allowable in the underlying zone, and the inquiry typically focuses on what form the use will take or how it will look and include preliminary subdivision plats, site plan review. Notice of application and an invitation to comment is mailed to the applicant and property owners within 100 feet. The city planner accepts comments for 14 days and renders a decision. The city planner's decision is appealable to the city council by any party with standing (*i.e.*, the applicant or any party who submitted comments during the 14-day period). The city council's decision is the city's final decision and is appealable to LUBA within 21 days of when it becomes final.

C. Type III decisions involve the greatest amount of discretion and evaluation of subjective approval standards and are required to be heard by the city council. Applications evaluated through this process include conditional use permits, preliminary planned unit development plans, variances, code interpretations, similar use determinations, quasi-judicial zone change and comprehensive plan amendments. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and the city council hearing is published and mailed to the applicant and property owners within 100 feet. Notice must be issued at least 20 days pre-hearing, and the staff report must be available at least 7 days pre-hearing. At the evidentiary hearing held before city council all issues are addressed. The city council's decision is the city's final decision and is appealable to LUBA.

D. Type IV decisions include only legislative plan amendments and zone changes . These applications involve the greatest amount of discretion and evaluation of subjective approval standards, and must be heard by the city council for final action. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and city council hearing is published and mailed to the applicant and property owners within 100 feet. Notice must be issued at least 20 days pre-hearing, and the staff report must be available at least 7 days pre-hearing. All issues are addressed by the city council at the evidentiary hearing. If the city council denies the application, any party with standing (*i.e.*, anyone who appeared before the city council either in person or in writing) may appeal city council's denial to LUBA. Any review by the city council is on the record, and only issues raised before the city council may be raised on appeal to LUBA. The city council's decision is the city's final decision and is appealable to LUBA.

**15.07.030 – Pre-application Conference.** Prior to submitting an application for any form of permit, the applicant shall schedule and attend a pre-application conference with city planner to discuss the proposal, unless, in the city planner's opinion, the pre-application conference is not warranted. To schedule a pre-application conference, the applicant shall contact the city planner and pay the appropriate conference fee. The purpose of the pre-application conference is to provide city staff with a summary of the applicant's development proposal and an opportunity for staff to provide the applicant with information on the likely impacts, limitations, requirements, approval standards, fees and other information that may affect the proposal. The city planner shall provide the applicant with a written summary of the pre-application conference.

**15.07.040 – Application Requirements.** All permit applications must be submitted to the city recorder on the most current form provided by the city, along with the appropriate fee and all necessary supporting documentation and information, sufficient to demonstrate compliance with all applicable approval criteria. The applicant has the burden of demonstrating, with evidence, that all applicable approval criteria are, or can be, met.

**15.07.050 – Completeness Review and 120-Day Rule.** Upon submission, the city recorder shall date stamp the application form and verify that the appropriate application fee has been included. The city planner will then review the application and all

information submitted with it and evaluate whether the application is complete enough to process. If the application is not complete to process, the city planner shall notify the applicant and identify what information must be submitted to make the application complete.

A. Completeness. Once the city planner determines the application is complete enough to process, or the applicant refuses to submit any more information, the city shall declare the application complete and take final action on the application within 120 days of that date unless the applicant waives or extends the 120-day period. The 120-day clock, however, will be suspended or inapplicable in the following situations:

1. For the duration of any continuance or other process delay requested by the applicant.
2. The 120-day period does not apply to any application for a permit that is not wholly within the city's authority and control.
3. The 120-day period does not apply to any application for an amendment to the city's comprehensive plan or land use regulations nor to any application for a permit, the approval of which depends upon a plan amendment.
4. In the event the applicant amends, supplements or changes the application so fundamentally that, in the city planner's opinion, the application amounts to a new or different proposal. In these instances, the 120-day clock will be suspended or restarted as warranted.

B. Approval Standards. The approval standards which control the city's review and decision on a complete application are those which were in effect on the date the application was first submitted.

**15.07.060 – Complete Application: Required Information.** A complete application includes all the materials listed in this section. The city planner may waive the submission of any of these materials if not deemed to be applicable to the specific review sought. Likewise, within 30 days of when the application is first submitted, the city planner may require additional information beyond that listed in this section, such as a traffic study or other report prepared by an appropriate expert. In any event, the applicant is responsible for the completeness and accuracy of the application and all of the supporting documentation, and the city planner will not deem the application complete until all information required has been submitted. At a minimum, the applicant must submit one copy of a completed city application form that includes the following information:

A. An accurate legal description, tax account number(s), map and location of all properties that are the subject of the application.

B. Name, address, telephone number and authorization signature of all record property owners or contract owners, and the name, address and telephone number of the applicant, if different from the property owner(s). If the applicant is different than the owner, then a complete application shall also include a written and signed statement from

all recorded property owners that the applicant is authorized to apply for the proposed development.

C. A complete list of the permit approvals sought by the applicant.

D. A complete and detailed narrative description of the proposed development that describes existing site conditions, existing buildings, public facilities and services, presence of wetlands, steep slopes and other natural features, a discussion of the approval criteria for all permits required to approve the development proposal and which explains how the criteria are or can be met, and any other information indicated by staff at the pre-application conference as being required.

E. Where a site plan is involved, the city planner may require the applicant to submit up to 5 copies of the site plan or related drawings. At least one copy of the site plan and all related drawings shall be in a readable/legible 8½ by 11 inch format.

F. Any other information or document that the city planner has identified as being necessary before the application can be reviewed.

G. All required application fees.

**15.07.070 – Public Notices.** All public notices issued by the city with regard to a land use matter, announcing applications or public hearings of quasi-judicial or legislative actions shall comply with the requirements of this section. Current county property tax records shall be deemed an acceptable source of names and addresses of the surrounding property owners. In any event, so long as a good faith attempt was made to obtain the current names and addresses and notices were sent to those to whom notice is required by this section, then any defects in notice shall not invalidate any final decision rendered.

A. Notice of Type II applications - Once the city planner has deemed a Type II application complete, the she shall prepare and send notice of the application, by first class mail, to all record owners of property within 100 feet of the subject property. The city's Type II notice shall include the following information:

1. Name and mailing address of the applicant, and street address or other easily understood location of the subject property.
2. A description of the applicant's proposal, along with citations of the approval criteria that the city will use to evaluate the proposal.
3. A statement that any interested party may submit to the city written comments on the application during a 14-day comment period prior to the city's deciding the application, along with instructions on where to send the comments and the deadline of the 14-day comment period.
4. A statement that any issue which is intended to provide a basis for an appeal to city council or the Land Use Board of Appeals must be raised in writing during the 14-day comment period with sufficient specificity to enable the city to respond to the issue.

5. A statement that the application and all supporting materials and evidence submitted in support of the application may be inspected at no charge, and that copies may be obtained at a reasonable cost at City Hall during normal business hours.
6. The name and telephone number of the city planner responsible for the application or otherwise available to answer questions about the application.

B. Notice of public hearing on a Type III application (a quasi-judicial application) - Notice for all public hearings concerning a quasi-judicial application shall conform to the requirements of this subsection. At least 20 days prior to the hearing, the city planner shall prepare and send, by first class mail, notice of the hearing to all record owners of property within 100 feet of the subject property. The city shall also publish the notice in a newspaper of general circulation within the city at least 20 days prior to the hearing. Notice of the application hearing shall include the following information:

1. The time, date and location of the public hearing.
2. Name and mailing address of the applicant, and a street address or other easily understood location of the subject property;
3. A description of the applicant's proposal, along with a list of citations of the approval criteria that the city will use to evaluate the proposal.
4. A statement that any interested party may testify at the hearing or submit written comments on the proposal at or prior to the hearing, and that a staff report will be prepared and made available to the public at least 7 days prior to the hearing.
5. A statement that any issue which is intended to provide a basis for an appeal to the city council or the Land Use Board of Appeals must be raised before the close of the public record. Issues must be raised and accompanied by statements or evidence sufficient to afford the city and all parties to respond to the issue.
6. A statement that the application and all supporting materials and evidence submitted in support of the application may be inspected at no charge, and that copies may be obtained at a reasonable cost, at City Hall during normal business hours.
7. The name and telephone number of the city planner responsible for the application or otherwise available to answer questions about the application.

C. Notice of public hearing on a Type IV application (a legislative proposal). At least 20 days prior to a public hearing at which a legislative proposal to amend or adopt the city's land use regulations or Comprehensive Plan is to be considered, the city recorder in coordination with the city planner shall issue a public notice that conforms to the requirements of this subsection. Notice shall be sent to affected governmental entities, special districts, providers of urban services, including Oregon Department of Transportation and any party who has requested in writing such notice. Notice shall also be published in a newspaper of general circulation within the city. Notice issued under this subsection shall include the following information:

1. The time, date and location of the public hearing.
2. The title of the proposal.

3. A description of the proposal in sufficient detail for people to determine the nature of the change being proposed, including a description of the geographic range, area or location of the land that will be affected by the proposal.
4. A statement that any interested party may testify at the hearing or submit written comments on the proposal at or prior to the hearing.
5. The name and telephone number of the city planner responsible for the proposal and who interested people may contact for further information.
6. A statement that failure of any person entitled to notice under subsection 15.07.070-C to receive notice shall not invalidate the action, provided that the city can demonstrate by certificate of mailing that such notice was sent.

**15.07.080 – Quasi-Judicial Hearing Process.** All public hearings pertaining to quasi-judicial permits, shall comply with the procedures of this section. In addition, all public hearings held pursuant to this chapter shall comply with the Oregon Public Meetings Laws, the applicable provisions of ORS 197.763 and any other applicable law.

A. Notice of the hearing shall be issued at least 20 days prior to the hearing in accordance with Section 15.0.070 of this ordinance.

B. The city planner shall prepare a staff report on the application which lists the applicable approval criteria, describes the application and the applicant's development proposal, summarizes all relevant city department, agency and public comments, describes all other pertinent facts as they relate to the application and the approval criteria, and makes a recommendation as to whether each of the approval criteria are met. The staff report shall be made available to the public for inspection and copying at least 7 days prior to the scheduled hearing.

C. At the beginning of the initial public hearing for any quasi-judicial application or appeal is reviewed, a statement describing the following shall be announced to those in attendance:

1. That the hearing will proceed in the following general order: Staff report, applicant's presentation, testimony in favor of the application, testimony in opposition to the application, applicant's rebuttal, record closes, city council deliberation and decision.
2. That all testimony and evidence submitted, orally or in writing, must be directed toward the applicable approval criteria. If any person believes that other criteria apply in addition to those addressed in the staff report, those criteria must be listed and discussed on the record. The decision maker may reasonably limit oral presentations in length or content depending upon time constraints. Any party may submit written materials of any length while the public record is open.
3. Failure to raise an issue on the record, with sufficient specificity and accompanied by statements or evidence sufficient to allow the city and all parties to respond to the issue, will preclude appeal on that issue to the Land Use Board of Appeals.
4. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the city to respond to the issue precludes an action for damages in circuit court.

5. Any party wishing a continuance or to keep open the record must make that request while the record is still open.
6. That the mayor shall call for any ex parte contacts, conflicts of interest or bias before the beginning of each hearing.

D. Requests for Continuances and to Keep Open the Record. The city council may continue the hearing from time to time to allow the submission of additional information or for deliberation without additional information. New notice of a continued hearing need not be given so long as the city council establishes a time certain and location for the continued hearing. Similarly the city council may close the hearing but keep open the record for the submission of additional written material or other documents and exhibits. The city council may limit the factual and legal issues that may be addressed in any continued hearing or during an open-record period.

#### **15.07.090 – Conditions of Approval and Notice of Decision.**

- A. All city decision makers have the authority to impose reasonable conditions of approval designed to ensure that all applicable approval standards are, or can be, met.
- B. Failure to comply with any condition of approval shall be grounds for revocation of the permit(s) and grounds for instituting enforcement proceedings under the applicable city ordinance or ORS 30.315.
- C. Notice of Decision. The city shall send, by first class mail, a notice of all decisions rendered under this Chapter to all persons with standing (*i.e.*, the applicant, all others who participated either orally or in writing before the close of the public record and those who specifically requested notice of the decision). The notice of decision shall include the following information:
1. The date of decision.
  2. The name of the applicant, owner and appellant (if different).
  3. The street address or other easily understood location of the subject property.
  4. A brief summary of the decision, and if an approval, a description of the development that was approved.
  5. A statement that the decision is final unless appealed, and a description of the requirements for perfecting an appeal.
  6. The contact person, address and telephone number whereby a copy of the final decision may be inspected or copies obtained.
- D. Modification of Conditions. Any request to modify a condition of permit approval shall be processed in the same manner, and shall be subject to the same standards, as was the original application. However, the city council may consider a modification request and limit its review of the approval criteria to those issues or aspects of the application that are proposed to be changed from what was originally approved.

**15.07.100 – Performance Guarantees.** When conditions of permit approval require the applicant to construct certain improvements, the city may allow the applicant to submit a

financial guarantee in lieu of actual construction of the improvement. Financial guarantees shall be governed by this section.

A. Form of Guarantee. Guarantees shall be in a form approved by the city attorney, including an irrevocable stand-by letter of credit issued by a recognized lending institution to the benefit of the city, a certified check, dedicated bank account or allocation of a construction loan held in reserve by the lending institution for the benefit of the city. The guarantee shall be filed with the city recorder.

B. Amount of Guarantee. The amount of the performance guarantee shall be equal to at least 110 % of that estimated cost of constructing the improvement in question. The amount of the performance guarantee may be larger than 110 % if deemed necessary by the city engineer. The cost estimate substantiating the amount of the guarantee must be provided by the applicant supported by either an engineer's or architect's estimate or written estimates by three contractors with their names and addresses. The estimates shall separately itemize all materials, labor, and other costs.

C. Duration of the Guarantee. The guarantee shall remain in effect until the improvement is actually constructed and accepted by the city. Once the city has inspected and accepted the improvement, the city shall release the guarantee to the applicant. If the improvement is not completed to the city's satisfaction within the time limits specified in the permit approval or the guarantee, the city council may direct the city attorney to draw upon the guarantee and use the proceeds to construct or complete construction of the improvement and for any related administrative and legal costs incurred by the city. Once constructed and approved by the city, any remaining funds shall be refunded to the applicant.

D. If the applicant elects to defer construction of improvements by using a financial guarantee, the applicant shall agree to construct those improvements upon written notification by the city, or at some other mutually agreed to time. If the applicant fails to commence construction of the required improvements within 6 months of being instructed to do so, the city may, without further notice, undertake the construction of the improvements and draw upon the applicant's performance guarantee to pay those costs as provided in paragraph C above.

#### **15.07.110 – Covenant with the City.**

A. The city may impose as a condition of final approval of a quasi-judicial permit, the requirement that the applicant execute a covenant with the city agreeing to comply with all conditions of approval. Any such covenant shall include the following elements:

1. An agreement that the applicant will comply with all applicable code requirements, conditions of approval and any representations made to the city by the applicant or the applicant's agents during the application review process, either orally or in writing. This commitment shall be binding on the applicant and all the applicant's successors, heirs and assigns.

2. If the owner fails to perform under the covenant, the city may immediately institute revocation of the approval or any other enforcement action available under state law or the municipal code. The covenant may also provide for payment of attorney fees and other costs associated with any such enforcement action.
3. Where the development rights of one site are dependent on the performance of conditions by the owner of another property (such as joint access), the covenants are judicially enforceable by the owner of one site against the owner of another.

B. Adopting the Covenant. The form of all covenants shall be approved by the city attorney. The covenant shall run with the land and shall be placed in the county deed records prior to the issuance of any permits or development activity pursuant to the approval. Proof of recording shall be made prior to the issuance of any permits and filed with the city recorder. Recording shall be at the applicant's expense. Any covenant required under this section shall be properly signed and executed within 30 days after permit approval with conditions; provided, however, that the city attorney may grant reasonable extensions, not to exceed an additional 30 days, in cases of practical difficulty. Failure to sign and record the covenant within the prescribed period shall require a new application for any use of the subject property.

**15.07.120 – Ex Parte Contact, Conflict of Interest and Bias.** The following rules shall govern any challenges to a decision maker's participation in a quasi-judicial or legislative action:

A. Ex parte Contacts. Any factual information obtained by a decision maker outside the context of a quasi-judicial hearing shall be deemed an ex parte contact. Prior to the close of the record in any particular matter, any decision maker that has obtained any material factual information through an ex parte contact shall declare the content of that contact and allow any interested party to rebut the substance of that contact. This rule does not apply to legislative proceedings.

B. Conflict of Interest. Whenever a decision maker, or any member of a decision maker's immediate family or household, has a financial interest in the outcome of a particular quasi-judicial or legislative matter, that decision maker shall not participate in the deliberation or decision on that matter.

C. Bias. All decisions in quasi-judicial matters shall be fair, impartial and based on the applicable approval standards and the evidence in the record. Any decision maker who is unable to render a decision on this basis in any particular matter shall refrain from participating in the deliberation or decision on that matter. This rule does not apply to legislative proceedings.

**15.07.130 - Legislative Hearing Process.**

A. Purpose. Legislative actions involve the adoption or amendment of land use regulations, Comprehensive Plan, map inventories and other policy documents that affect

the entire city or large portions of it. Legislative actions which affect land use must begin with a public hearing before the city council.

B. City Council Review:

1. *Hearing Required.* The city council shall hold at least one public hearing before taking action on a legislative proposal. Any interested person may appear and provide written or oral testimony on the proposal at or prior to the hearing. The city recorder, in coordination with the city planner, shall notify the Oregon Department of Land Conservation and Development (DLCD) as required by the post acknowledgment procedures of ORS 197.610 to 197.625, as applicable.
2. *City Planner's Report.* Once the city council's hearing has been scheduled and noticed in accordance with the Type IV notice procedures and any other applicable laws, the city planner shall prepare and make available a report on the legislative proposal at least 7 days prior to the hearing.
3. *City Council Decision.* The city council shall adopt a written decision on the proposal. The city council's decision is appealable to the Land Use Board of Appeals (LUBA) or the Land Conservation and Development Commission (LCDC), as provided by state law.

**15.07.140 – Objections to Procedure.** Any party who objects to the procedure followed in any particular matter, including bias, conflict of interest and undisclosed ex parte contact, must make a procedural objection prior to the city council's rendering a final decision. Procedural objections may be raised at any time prior to a final decision, after which they are deemed waived. In making a procedural objection, the objecting party must identify with particularity the procedural requirement that was not properly followed and identify how the alleged procedural error harmed that person's substantial rights.

**15.07.150 – Appeals.** Appeals of any action or decision by the city planner are heard by the city council and must comply with the requirements of this section. Any decision by the city council is appealable, if at all, to the Land Use Board of Appeals (LUBA) or the Land Conservation and Development Commission (LCDC), as provided by state law.

A. Type I decisions by the city planner are not appealable to the city council.

B. A written Notice of Appeal of a Type II decision by the city planner must be received by the city recorder within 10 calendar days from the date notice of the challenged decision is provided to those entitled to notice. If the city's Notice of Decision is mailed, any appeal must be received by the city recorder within 14 calendar days from the date the challenged decision was placed in the mail. Late filing of any appeal shall be deemed a jurisdictional defect and will result in the automatic rejection of any appeal so filed.

C. The following must be included as part of the Notice of Appeal:

1. The date the decision to be appealed was rendered.
2. The name, mailing address and daytime telephone number for each appellant.

3. A statement of how the appellant has an interest in the matter and standing to appeal.
4. A statement of the specific grounds for the appeal.
5. The appropriate appeal fee. Failure to include or otherwise provide the appeal fee within appeal period is deemed to be a jurisdictional defect and will result in the automatic rejection of any appeal so filed.

D. Standing to Appeal. For Type II decisions, only those persons who submitted written comments within the 14-day comment period have standing to appeal a city planner's decision. Grounds for appeal are limited to those issues raised in writing during the 14-day comment period.

E. Notice of the Appeal Hearing. The city recorder shall issue notice of the appeal hearing to all parties who participated either orally or in writing before the close of the public record in accordance with Chapter 15.07 *Administration and Procedures*. Notice of the appeal hearing shall contain the following information:

1. The date of the decision being appealed.
2. The time, date and location of the public hearing.
3. The name of the applicant, owner and appellant (if different).
4. The street address or other easily understood location of the subject property.
5. A description of the permit requested and the applicant's development proposal.
6. A brief summary of the decision being appealed and the grounds for appeal listed in the Notice of Appeal.
7. A statement that the appeal hearing is confined to the issues raised in the notice of appeal.
8. A general explanation of the requirements for participation and the city's hearing procedures.

F. Appeal Hearing, Scope of Review. Appeal hearings shall comply with the procedural requirements of this Chapter for the appropriate Type of process. Appeal hearings conducted by the city council shall be on the record, and the issues under consideration shall be limited to those listed in the Notice of Appeal.

#### **15.07.160 - Expiration of Approval.**

A. When Approvals Become Void. All quasi-judicial permit approvals, except for zoning map or comprehensive plan map amendments, automatically expire and become void if any of the following events occur:

1. If, within two years of the date of the final decision, a building permit has not been issued; or
2. If, within two years of the date of the final decision the activity approved in the permit has not commenced. In situations involving only the creation of lots, the final plat must have been approved and recorded within two years of preliminary plat approval.

B. New Application Required. Expiration of an approval shall require a new application for any use on the subject property that is not otherwise allowed outright. If a

new application is filed, approval or denial shall be controlled by the standards in effect at the time the new application is submitted.

**15.07.170 – Extension of an Approval.**

A. The city planner may extend, prior to its expiration, any approved permit for a period of 6 months up to an aggregate period of one year; provided, however, that there has been substantial implementation of the permit. Any request for an extension shall be reviewed and decided upon by the city planner as a Type II decision.

B. Substantial implementation of a permit shall require at a minimum, for each extension requested, demonstrable evidence showing:

1. The permit holder has applied for all necessary additional approvals or permits required as a condition of the land use or limited land use permit.
2. Further commencement of the development authorized by the permit could not practicably have occurred for reasons beyond the reasonable control of the permit holder.
3. The request for an extension is not sought for purposes of avoiding any responsibility imposed by this code or the permit or any condition there under.
4. There have been no changes in circumstances or the law likely to necessitate significant modifications of the development approval or conditions of approval.

C. Extension of the Expiration Period Due to Appeals. If a permit decision is appealed beyond the jurisdiction of the city, the expiration period shall not begin until review before the Land Use Board of Appeals and the appellate courts has been completed, including any remand proceedings before the city. The expiration period provided for in this section will begin to run on the date of final disposition of the case (the date after which an appeal may no longer be filed).

**15.07.180 – Reapplication Limited.** If an application is denied no reapplication for the same or substantially similar proposal may be made for one year following the date of final decision denying the permit.

**15.07.190 – Conformity of Permits.** The city shall not accept any application for a permit, certificate or other approval, including building permit applications, for any property that is not in full compliance with all applicable provisions of the Mosier Zoning Ordinance, Land Division Ordinance, and any permit approvals previously issued by the city.

**15.07.200 – Reconsideration of a Final Decision.** Under this section, parties with standing may seek reconsideration of a final decision rendered pursuant to a Type I, II, III or IV process. Reconsideration is warranted where the city's decision indicates the decision maker failed to understand or consider certain relevant facts or misinterpreted the application in some material way. Any request for reconsideration must be received by the city recorder within 10 days of when the decision in question was rendered and must specifically describe the alleged misunderstanding or misinterpretation. A request for reconsideration shall not stay the effectiveness of the city's final decision, nor shall it

affect any applicable appeal deadlines to the Land Use Board of Appeals. If the request is granted, the city recorder shall notify all affected parties that the decision will be reconsidered. If the reconsideration is based on new evidence or information all parties with standing shall have the opportunity to review and comment on the new evidence or information. Any request for reconsideration by the applicant shall be deemed a waiver of the 120-day deadline. Notwithstanding anything in this Chapter, the city council may on its own motion withdraw a previously final decision for reconsideration at any time.

**15.07.210 – Transfer of Permits or Approval Rights.** Unless otherwise stated in the city’s permit decision, any permit or approval granted under this ordinance runs with the land and is transferred with ownership of the land. Land use approvals and permits are not personal to the applicant. Any conditions, time limits or other restrictions imposed with a permit approval shall bind all subsequent owners and users of the property for which the permit was granted.

**15.07.220 – Fees.** 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 Type II decisions shall be limited by ORS 227.175(10)(b). The requirements of this section shall govern the payment, refund and reimbursement of fees.

A. 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.

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

1. *Misapplied.* When a fee is paid for an application which is later found not to be required, the city shall refund the fee.
2. *Errors.* When an error is made in calculating a fee, overpayments will be refunded.
3. *Withdrawals.* In the event an applicant withdraws an application, the city recorder shall refund the unused portion of the fee. In this case, the city recorder will deduct from the fee the city’s actual costs incurred in processing the application prior to withdrawal.
4. *Remainder of Special Deposit.* Sometimes funds collected as a special deposit for permit reviews that have been determined to require a level of review that will clearly exceed the average permit fee. When this occurs the city recorder shall refund the unused portion of the fee. In this case, the city recorder will deduct from the fee the city’s actual costs incurred in processing the application prior to refunding remaining deposit.

C. Fee Waivers. The city council may waive all or any portion of an application or appeal fee if, it is determined that an application must be submitted or resubmitted because of an error made by the city.

- A. Applicant's Deposit for City Administrative Costs. The City of Mosier, like many cities in Oregon, is faced with a severely reduced budget for administration of the city's ordinances. The land use planning process in the State of Oregon has become increasingly complex and lengthy. To properly process a land use application, the city must rely upon professional consultants to assist in preparing the legal notices, conducting on-site inspections, preparation of staff reports and, in some cases, actual attendance at the city council meeting. The city uses consultants to ensure land use applications are processed fairly and promptly. Because of the city's limited budget, the city council finds it necessary to transfer those administrative costs to the applicant, as a part of the land use planning process. The city's consultants will be responsible for providing a bill to the city on at least a monthly basis that itemizes all time and materials devoted to each particular permit project. The city will then present these bills to the applicant who benefited from the work for payment. Payment for the consultant's bill shall either come from the applicant's deposit or the applicant shall pay the consultant's bill to the city within 30 days. An applicant's failure to pay these billing statements is grounds for the city's suspension of work on a permit application and withholding any permit until all amounts due are paid in full.

Some permit reviews are readily determined to be significantly more complex than the typical or average permit review. The city may require the applicant to deposit an amount with the City which is estimated to be necessary to cover the costs of an especially complex permit review. A special permit deposit will be required at the discretion of the Mayor with input from consultants relied on to provide review services. Such special deposit shall be sufficient to cover anticipated costs of retaining professional services. The amount may exceed the average costs of permit fees but shall not exceed the estimated actual review costs. If actual costs incurred are less than the special deposit a refund can be issued per

**15.07.230 – Revocation of a Previously Approved Permit.** In the event an applicant, or the applicant's successor in interest, fails to fully comply with all conditions of permit approval or otherwise does not comply fully with the city's approval, the city may institute a revocation or modification proceeding under this section.

- A. Situations When Permit Approvals May be Revoked or Modified. All quasi-judicial permits may be revoked or modified if the city council determines a substantial likelihood that any of the following situations exists:
1. One or more conditions of the approval have not been implemented or have been violated.
  2. The activities of the use, or the use itself, are substantially different from what was approved.
  3. If the use is subject to the nonconforming use regulations, the applicant has not obtained approval, and has substantially changed its activities or substantially increased the intensity of its operations since the use became nonconforming.

B. Process For Revocation and Modification. Revocation or modification shall be processed as a Type III decision. The city planner or any private complaining party shall have the burden of proving, based on substantial evidence in the whole record that one or more of the situations set forth in the previous subsection exist.

C. Possible Actions at the Revocation Hearing. Depending on the situation the city council may take any of the actions described below. The city council may not approve the new use or a use that is more intense than originally approved unless the possibility of this change has been stated in the public notice. Uses or development which are alleged to have not fulfilled conditions, violate conditions, or the use is not consistent with the city's approval, may be subject to one or more of the following actions:

1. The city council may find that the use or development is complying with the conditions of approval. In this case, the use or development shall be allowed to continue.
2. The city council may modify the approval if it finds that the use or development does not fully comply with the conditions of approval, that the violations are not substantial enough to warrant revocation, and that the use can comply with the original approval criteria if certain conditions are met. In this case, the city council may modify the existing conditions, add new conditions to ensure compliance with the approval criteria, or refer the case to the city attorney for enforcement of the existing conditions.
3. The city council may revoke the approval if it finds there are substantial violations of conditions or failure to implement conditions of prior land use decisions, such that the original approval criteria for the use or development are not being met.

D. Effect of Revocation. In the event that the permit approval is revoked, the use or development becomes illegal. The use or development shall be terminated within 30 days of the date that the revocation final order is approved by the city council, unless the decision provides otherwise. In the event the city council's decision on a revocation request is appealed, the revocation action shall be stayed pending a final, unappealed decision.

**15.07.240 – Authority to Condition Permit Approvals.** The city has the authority to impose any reasonable conditions it deems necessary to ensure compliance with the approval criteria, including a limit on the duration of the permit, a periodic review process with the possibility of termination, or any reasonable limitation on physical or operational characteristics of the use. In the event that the approval criteria for any discretionary land use request cannot be met through the imposition of reasonable conditions, the request shall be denied.