



Community Development Department  
Planning Division  
12725 SW Millikan Way  
Beaverton, OR 97006  
General Information: (503) 526-2222 V/TDD  
www.BeavertonOregon.gov

**To:** Interested Parties  
**From:** City of Beaverton, Community Development Department  
**Date:** August 23, 2019  
**Subject:** **DI2019-0002 Director's Interpretation for Washington County Interim Zoning Type I, II, and III Review Processes**

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Please find attached the Notice of Decision for the Director's Interpretation concerning Washington County Interim Zoning Type I, II, and III Review Processes, case file number DI2019-0002. Pursuant to Section 50.40.11.E of the Beaverton Development Code, the decision for DI2019-0002 Washington County Interim Zoning Type I, II, and III Review Processes is final, unless appealed within twelve (12) calendar days following the date of the decision. The procedures for appeal of a Type 2 Decision are specified in Section 50.65 of the Beaverton Development Code. The appeal shall include the following in order for it to be accepted by the Director:

- The case file number designated by the City.
- The name and signature of each appellant.
- Reference to the written evidence provided to the decision making authority by the appellant that is contrary to the decision.
- If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.
- The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.
- The appeal fee of \$250.00, as established by resolution of the City Council.

***The appeal closing date for DR2019-0002 is 4:30 p.m., September 4, 2019.***

The complete case files including findings, conclusions, and conditions of approval, if any, are available for review. The case files may be reviewed at the Beaverton Planning Division, Community Development Department, 4<sup>th</sup> Floor, Beaverton Building/City Hall; 12725 SW Millikan Way between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. For more information about the case file, please contact Jana Fox, Current Planning Manager, at (503) 526-3710.



**NOTICE OF DECISION  
DIRECTOR'S INTERPRETATION  
WASHINGTON COUNTY INTERIM ZONING  
TYPE I, II, AND III REVIEW PROCESSES**

DECISION DATE: August 23, 2019

TO: All Interested Parties

FROM: Cheryl Twete, Community Development Director

CASE FILE NO: **DI2019-0023 Washington County Interim Zoning Type I, II, and III Review Processes**

LOCATION: All properties with Washington County Interim Zoning.

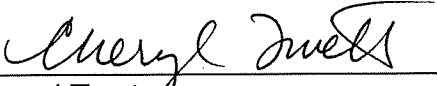
SUMMARY: The Director proposes to interpret the process by which Types I, II, and III uses located within Washington County Interim zoning districts are considered upon proposal of a new or modified use. Specifically the Director will interpret Development Code Section 10.40.1 which reads:

*Any area annexed to the City shall retain the zoning classification of its former jurisdiction until changed by the City. In the interim period, the City shall enforce the zoning regulations of the former jurisdiction along with any conditions, limitations or restrictions applied by the former jurisdiction as though they were a part of this Code, except that the provisions of Chapters 30 through 80 of this Code shall supersede comparable provisions of the zoning regulations in force in the former jurisdiction at the time of annexation.*

Specifically the Director will interpret what, if any, processes identified in Chapters 30 through 80 of the Beaverton Development Code are applicable to the use classifications provided by Washington County as Type I, II, and III uses. Should no portions of the Beaverton Development Code supersede the Washington County Community Development Code the Director will identify the process(es) within the Washington County Community Development Code that apply to Type I, II, and III uses.

APPLICANT: City of Beaverton  
PO Box 4755  
Beaverton, OR 97076

APPLICABLE CRITERIA: Director's Interpretation - BDC Section 40.25.15.1.C

AUTHORIZATION:   
\_\_\_\_\_  
Cheryl Twete  
Community Development Director

## BACKGROUND

### Application Dates

<u>Application</u>	<u>Submittal Date</u>	<u>Deemed Complete</u>	<u>120<sup>th</sup> Day*</u>	<u>365<sup>th</sup> Day**</u>
DI2019-0002	May 30, 2019	May 30, 2019	September 27, 2019	May 29, 2020

\* Pursuant to ORS 227.178, the City will reach a final decision on an application within 120 calendar days from the date that the application was determined to be complete or deemed complete unless the applicant agrees to extend the 120 calendar day time line pursuant to subsection 9 or unless State law provides otherwise.

\*\* Pursuant to ORS 227.178, the total of all extensions may not exceed 245 calendar days after the initial 120 calendar days. This is the latest date by which a final written decision on the proposal can be made.

### Table of Contents

**Attachment A** – Analysis and Findings for Director Interpretation

### EXHIBITS

#### **Exhibit 1. Materials Received by the Public**

1.1 Email from Connie Levine, received June 21, 2019\*

\*Received after written comment period closed.

**ANALYSIS AND FINDINGS  
DIRECTOR'S INTERPRETATION  
DI2019-0002**

Section 40.25.15.1.C. of the Development Code identifies the approval criteria for evaluating and rendering a decision on all Director's Interpretation applications.

The approval criteria are as follows:

- 1. The proposal satisfies the threshold requirements for a Director's Interpretation application.**

City staff has initiated a request that the Director interpret the Beaverton Development Code in writing. The Director finds the Director's Interpretation (DI) application to be consistent with threshold number one.

**Therefore, the Director finds that the proposal meets the criterion for approval.**

- 2. All City application fees related to the application under consideration by the decision-making authority have been submitted.**

Policy Number 470.001 of the City's Administrative Policies and Procedures manual states that fees for a City initiated application are not required where the application fee would be paid from the City's General Fund. The Planning Division, which is a General Fund program, initiated the application. Therefore, the payment of an application fee is not required.

**Therefore, the Director finds that the proposal meets the criterion for approval.**

- 3. That the interpretation is consistent with the City's Comprehensive Plan and other provisions within this Code.**

For properties that are annexed into the City and not provided a city land use designation or zoning district, these properties are classified as "Interim Washington County" for both the City's Land Use and Zoning maps. For these properties, Beaverton Development Code (BDC) Section 10.40.1 states:

*Any area annexed to the City shall retain the zoning classification of its former jurisdiction until changed by the City. In the interim period, the City shall enforce the zoning regulations of the former jurisdiction along with any conditions, limitations or restrictions applied by the former jurisdiction as though they were a part of this Code, except that the provisions of Chapters 30 through 80 of this Code shall supersede comparable provisions of the zoning regulations in force in the former jurisdiction at the time of annexation.*

While the BDC 10.40.1 is clear about which chapters of the BDC supersede the Washington County's Community Development Code (CDC), the way the City and County apply use

standards is significantly different and can cause confusion. The purpose of this Director's Interpretation is to identify the process or processes by which Type I, Type II, and Type III uses may be approved on properties that retain Washington County Interim zoning.

#### Comparison of County and City Land Use Review Types

Washington County and the City of Beaverton classify Type 1 (I), Type 2 (II) and Type 3 (III) processes similarly, definitions from both jurisdictions are provided below.

Per Washington County CDC Section 202:

*202-1.1 Type I development actions involve permitted uses or development governed by clear and objective review criteria. Type 1 actions do not encompass discretionary land use decisions. Impacts have been recognized by the development and public facility standards.*

*202-2.1 Type II development actions are presumed to be appropriate in the District. They generally involve uses or development for which review criteria are reasonably objective, requiring only limited discretion. Impacts on nearby properties may be associated with these uses which may necessitate imposition of special conditions of approval to minimize those impacts or ensure compliance with this Code.*

*202-3.1 Type III actions involve development or uses which may be approved or denied, thus requiring the exercise of discretion and judgement when applying the development criteria contained in this Code or applicable Community Plan. Impacts may be significant and the development issues complex. Extensive conditions of approval may be imposed to mitigate impacts or ensure compliance with this Code and the Comprehensive Plan.*

The BDC similarly described Type 1, Type 2, and Type 3 applications as follows:

*50.5.1.A. A Type 1 procedure typically involves an application that is subject to non-discretionary criteria or criteria that require the exercise of professional judgement only about technical issues.*

*50.5.1.B. A Type 2 procedure typically involves an application that is subject to criteria that require the exercise of limited discretion about non-technical issues and about which there may be limited public interest.*

*50.5.1.C. A Type 3 procedure typically involves an application that is subject to criteria that requires the exercise of substantial discretion and about which there may be broad public interest, although the application applies to a limited number of land owners and properties.*

The BDC and CDC identify very similar characteristics of Type 1 (I), Type 2 (II), and Type 3 (III) processes. In most cases the City process either meets or exceeds the requirements of the County. The Director notes that the degrees of discretion in decision-making, amount of notice, record of the action, and required compliance with applicable approval criteria are all quite similar as shown in Table 1 below.

Table 1: Comparison of County and City Land Use Process

Process	County*	City**
<b>Type 1</b>		
Notice Requirement (Before Decision)	Not Required	Not Required
Notice of Decision	Applicant Team Property Owner	Applicant Team Property Owner
Decision Maker	Director	Director
<b>Type 2</b>		
Pre-Application Conference	Optional (w/ waiver)	Optional (w/ waiver)
Neighborhood Meeting	Required for certain applications	Not Required
Notice Requirement(Before Decision):		
• Notice to surrounding property owners	500 feet	300 feet
• Newspaper Notice	Not Required	Required
• Site Posting	Not Required	Required
Notice of Decision	<ul style="list-style-type: none"> <li>• Applicant Team</li> <li>• Property Owner</li> <li>• People who provided testimony</li> </ul>	<ul style="list-style-type: none"> <li>• Applicant Team</li> <li>• Property Owner</li> <li>• People who provided testimony</li> </ul>
Decision Maker	Director	Director
<b>Type 3</b>		
Pre-Application Conference	Optional (w/ waiver)	Required
Neighborhood Meeting	Required for certain applications	Required
Notice Requirement(Before Decision):		
• Notice to surrounding property owners	500 feet	500 feet
• Newspaper Notice	Required	Required
• Site Posting	Not Required	Required
Notice of Decision	<ul style="list-style-type: none"> <li>• Applicant Team</li> <li>• Property Owner</li> <li>• People who provided testimony</li> </ul>	<ul style="list-style-type: none"> <li>• Applicant Team</li> <li>• Property Owner</li> <li>• People who provided testimony</li> </ul>
Decision Maker	Hearings Officer	Planning Commission

\* Information obtained from Washington County's Development Code Section 203 and 204  
[https://library.municode.com/or/washington\\_county/codes/community\\_development\\_code?nodemd=ARTIIPR](https://library.municode.com/or/washington_county/codes/community_development_code?nodemd=ARTIIPR)

\*\* Information obtained from Chapter 50 of the Beaverton Development Code  
<https://www.beavertonoregon.gov/DocumentCenter/View/4968/Chapter-50---Procedures?bidId=>

While the City and County land use review processes are very similar, the City's and County's approach to use classifications are significantly different resulting in confusion as to how to apply the appropriate use review for proposals located on property zoned Interim Washington County in Beaverton.

#### Comparison of County and City Use Classification

In the CDC, the County classifies uses within each land use designation by procedure type: Type I, II, or III. As shown in Table 1, the higher the type, the greater the review process obligations. In the BDC, the City classifies uses as Permitted, Conditional, or Prohibited for each zoning district in BDC Chapter 20. Uses which are classified as Permitted are allowed by right within the zoning district, assuming compliance with other applicable provisions of the BDC. No additional use review or use permits are required for Permitted Uses. Conditional uses are subject to a Type 2 or 3 process pursuant to BDC Section 40.15. Prohibited uses are not allowed in the zoning district in which they are so designated.

Although no specific land use application is required by the BDC for Permitted uses, many projects proposing Permitted uses must submit land use applications for other aspects of the proposed development. For example, a multi-family residential development may require a Type 1, 2, or 3 Design Review application even though the use itself may not require review. The overall proposed development receives the scrutiny of decision-makers and must comply with public notice and comment periods for the application type. In addition, conditions of approval may be imposed through the land use review process that allow potential impacts related to the project to be mitigated.

Accordingly, if a proposal for a Type I or Type II use within the Washington County Interim zoning district is required to go through the comparable Type 1 or Type 2 City land use application process based upon the City's application thresholds in order to gain approval for other aspects of the overall project, the Director finds that the County's use permit process requirements is superseded by the City's. The Director notes that the City processes provide a comparable amount of notice, provide a record of the action, and require compliance with applicable approval criteria as shown in Table 1.

If a proposed Type I or Type II use within the Washington County Interim zoning district is not required to go through a comparable land use application process by the BDC, then the City process is not comparable to the County's and is not superseded. In this case, the Director finds that the applicant must make a submittal to the City using the County's form and requirements for a County land use application. The Director notes that the City's Facilities Review Approval Criteria of Section 40.03 of the do BDC supersede the County's *Public Facilities and Service Standards inside an Urban Growth Boundary* in Article V Section 501-2 of the County's CDC for the purposes of responding to relevant approval criteria when utilizing the County's application form and requirements.

Type III uses in the CDC are similar to those described as Conditional in BDC Section 40.15.05 which states:

*The purpose of a Conditional Use application is to review uses that may be compatible with the underlying zoning district but because of their size, operation, or other characteristic require review on a case-by-case basis. The uses are subject to regulations in this Section because they may, but do not*



*necessarily, result in significant adverse effects upon the environment, overburden public services, alter the character of the surrounding area, or create nuisances.*

Conditional Uses in the BDC and Type III uses in the CDC both describe uses which have the potential to have significant impacts on the surrounding community, resources, and/or utilities. As such the Conditional Use process in the BDC is comparable to the Type III use process in the CDC and the City's Conditional Use process is the correct tool to evaluate those uses identified as Type III in the County's CDC. Staff notes that New Conditional Uses in the BDC are evaluated through the Type 3 process and subject to similar noticing and review as Type III uses in the CDC.

For uses not specifically identified in the CDC that may be comparable to uses that are identified as Type I, II, or III, a Director's Interpretation may be filed to request an interpretation pursuant to BDC Section 40.25.15.1, to determine whether that use can be processed as a Type I,II,III use pursuant to this Director's Interpretation.

Table 2 summarizes what application review process/type the Director finds is appropriate for Type I, Type II, and Type III uses within Washington County Interim zoning districts. In Table 2 the column, *City Land Use Applications Required* references applications that evaluate multiple aspects of a project that includes the proposed use within the zoning district.

Table 2: Application Review Process for Interim Washington County Properties

County Use Type	City Land Use Application Required (Chapter 40)	Type (1, 2, or 3) Of City Application Required (Chapter 40)	County CDC Application Required
Type I	Yes	1, 2, or 3	N/A
	No	N/A	Type I
Type II	Yes	2 or 3	N/A
	Yes	1	Type II
	No	N/A	Type II
Type III	New Conditional Use per BDC Section 40.15.15.3 Required		

The Director finds that the use table and description above identify where in BDC Chapters 30 through 80 the City's requirements supersede those of the County's CDC in relation to processes for Type I, Type II, and Type III uses within the CDC, for properties designated Interim Washington County zoning. Where the BDC does not have provisions that supersede the CDC those applicable provisions of the CDC, including application requirements, shall remain effective until such time as the City identifies a process that supersedes those CDC provisions. The Director finds that the above interpretation is consistent with BDC Section 10.40.1.

**Therefore, the Director finds that the proposal meets the criterion for approval.**

- 4. When interpreting that a use not identified in the Development Code is a permitted, a conditional, or prohibited use, that use must be substantially similar to a use currently identified in the subject zoning district or elsewhere in the Development Code.**

The Director's Interpretation is not requesting that a use not identified in the Development Code be determined to be substantially similar to another use identified in the Development Code. The Director's Interpretation is related to process questions related to Washington County Interim zoning.

**Therefore, the Director finds that the approval criterion is not applicable.**

- 5. The proposal contains all applicable submittal requirements as specified in Section 50.25.1 of the Development Code.**

All applicable submittal requirements for the Director's Interpretation application have been submitted. The application was deemed complete by the city on May 30, 2019.

**Therefore, the Director finds that the proposal meets the criterion for approval.**

- 6. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.**

The necessary documents related to the Director's Interpretation have been submitted.

**Therefore, the Director finds that the proposal meets the criterion for approval.**

## **CONCLUSION**

Based on the facts and findings stated herein, the Community Development Director hereby makes this interpretation identifying appropriate procedures for Type I, Type II, and Type III uses within the Washington County Interim Zoning District, consistent with Section 10.40.1 of the Beaverton Development Code.