

FINAL BYLAWS FOR THE
CITY OF WHEELER
PLANNING COMMISSION

I. Purpose

II. Organization

- A. Members of the Wheeler City Planning Commission shall be appointed by the City Council under Ordinance 76-1.
- B. Duties of all Commission Members shall be:
- 1) To read and be familiar with the Wheeler City Zoning Ordinance;
 - 2) To read and be familiar with the Comprehensive Plan and the Comprehensive Plan Background Report of the City of Wheeler;
 - 3) To be present at and participate in all Commission Meetings.
 - 4) To attend all Commission workshops if possible.
 - 5) To visit all sites relative to applicant requests.
 - 6) To attend training workshops for planning commission members.
- C. Members terms are set by City Council under Resolution 95-3 (attached).
- D. A member may be removed by the City Council, after a hearing of misconduct or non-performance of duty. A member who is absent from two consecutive meetings without an excuse as approved by the Commission and fails to notify the City Recorder during said period, is presumed to be in non-performance of duty and the City Council shall declare the position vacant unless finding otherwise following the hearing.

Members excused from meetings are to review tapes of missed meetings.

III. Officers, Duties, Membership, and Conduct of Members

A. Officers

- 1) Ordinance 76-1 Section 3 defines officers voting privilege, status, and duties (attached) .
- 2) The President shall preside at all meetings and hearings of the Planning Commission, and shall have the duties normally conferred by parliamentary usage on such officers.

B. Membership of Commission

- 1) The Commission membership is defined by Ordinance 76-1, Section 2.

C. Conduct of Members

- 1) Members of the Planning Commission shall direct inquiries about ordinances to City Hall staff.
- 2) Inquiries regarding ordinance interpretations or applicant requests are to be directed to City Hall staff for placement on the Commission Meeting agenda.
- 3) The general interpretation of ordinances and applicant requests are to be made in the normal course of the Commission Meeting with Planning Commission members present for general discussion.

IV. Meetings, Quorums, Notification

Public hearings conducted under this section shall follow the procedures and requirements of these bylaws.

Procedural Rights.

The following procedural entitlements shall be provided at the public hearing:

- A. An impartial review as free from potential conflicts of interest and pre-hearing ex-parte contacts as is reasonably possible:
 1. No member of a hearing body shall participate in a discussion of the proposal or vote on the proposal when any of the following conditions exist:

- a. Any of the following have a direct or substantial financial interest in the proposal: the hearing body member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.
- b. The member owns property within the area entitled to receive notice of the public hearing.
- c. The member has a direct private interest in the proposal.
- d. For any other valid reason, the member has determined that participation in the hearing and decision cannot be in an impartial manner.

Disqualifications due to a conflict of interest or personal bias may be ordered by a majority of the members present. The person who is the subject of the motion may not vote on the motion.

2. Hearing body members shall reveal any pre-hearing or ex-parte contacts with regard to any matter at the commencement of the first public hearing following the pre-hearing or ex-parte contact where action will be considered or taken on the matter. If such contacts have not impaired the member's impartiality or ability to vote on the matter, the member shall so state and shall participate in the public hearing. If the member determines that such contact has affected his impartiality or ability to vote on the matter, the member shall remove himself from the deliberations.

Disqualifications due to ex-parte contact may be ordered by a majority of the members present. The person who is the subject of the motion may not vote on the motion.

3. A party to a hearing may challenge the qualifications of a member of the hearing body to participate in the hearing and decision regarding the matter. The challenge shall state the facts

relied upon by the challenger relating to a person's bias, prejudice, personal interest, ex-parte contact, or other facts from which the challenger has concluded that the member of the hearing body cannot participate in an impartial manner. The hearing body shall deliberate and Vote on such a challenge. The person who is the subject of the challenge may not vote on the motion.

4. A party to a hearing may rebut the substance of the communication that formed the basis for an ex parte contact declared by a member of the hearing body.

5. No officer or employee of the city who has a financial or other private interest in a proposal shall participate in discussion with or give an official opinion to the hearing body on the proposal without first declaring for the record the nature and extent of each interest.

B. A reasonable opportunity for those persons potentially affected by the proposal to present evidence.

C. A reasonable opportunity for rebuttal of new material.

Rights of disqualified member of the hearing body.

A disqualified member of the hearing body shall have the following rights:

A. An abstaining or disqualified member of the hearing body may be counted for purposes of forming a quorum. A member who represents personal interest at a hearing may do so only by abstaining from voting on the proposal, physically joining the audience and vacating the seat on the hearing body, and making full disclosure of his or her status and position at the time of addressing the hearing body.

B. A member absent during the presentation of evidence in a hearing may not participate in the deliberations or final decision regarding the matter of the hearing unless the member has reviewed the evidence received.

Burden and nature of proof.

Except for a determination of the applicability of bylaw provisions, the burden of proof is upon the proponent. The proposal must be supported by proof that it conforms to the applicable provisions of these bylaws, especially the

specific criteria set forth for the particular type of decision under consideration.

Nature of proceedings.

An order of proceedings for a hearing will depend in part on the nature of the hearing. The following shall be supplemented by administrative procedures as appropriate.

- A. Before receiving information on the issue, the following shall be addressed:
1. Any objections on jurisdictional grounds shall be noted in the record and if there is objection, the person presiding has the discretion to proceed or terminate.
 2. Any abstentions or disqualifications, based on conflicts of interest, personal bias, or ex-parte contacts, shall be determined.
 3. A statement by the person presiding that:
 - a. Describes the applicable substantive criteria against which the application will be reviewed,
 - b. Testimony and evidence must be directed toward the criteria described in paragraph (a) above or other criteria in the comprehensive plan or zoning ordinance which a party believes to apply to the land use action, and
 - c. Failure to raise an issue or address a criterion with sufficient specificity to afford the decision makers and parties to the hearing an opportunity to respond to the issue precludes an appeal based on that issue or criterion,
 - d. Describes the review and appeal process provided for by these bylaws.
- B. Presentations and Evidence.
1. The presiding officer shall preserve order at the public hearing and shall decide questions of order subject to a majority vote.
 2. The presiding officer may set reasonable time limits for oral presentations. The presiding

officer may determine not to receive cumulative, repetitious, immaterial or derogatory testimony.

3. Evidence shall be received from the staff and from proponents and opponents.
 - a. Evidence shall be admissible if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of serious affairs. Erroneous evidence shall not invalidate or preclude action unless shown to have prejudiced the substantial rights of a party to the hearing.
 - b. Members of the hearing body may take official notice of judicially known facts of a general, technical or scientific nature within their specialized knowledge. Such notice shall be stated and may be rebutted.
 - c. The presiding officer may approve or deny a request from a person attending the hearing to ask a question. Unless the presiding officer specifies otherwise, if the request to ask a question is approved, the presiding officer will direct the question to the person submitting testimony.
4. The hearing body may view the area in dispute with notification to the parties to the hearing, of the time, manner and circumstances of such a visit.
5. The hearing body may recess a hearing in order to obtain additional information or to serve further notice upon other property owners or persons it decides may be interested in the proposal being considered. The time and date when the hearing is to resume shall be announced.
6. When the hearing has been closed, the hearing body shall openly discuss the issue and may further question a person submitting information or the staff, if opportunity for rebuttal is provided. No testimony shall be accepted after the close of the public hearing unless the hearing body provides an opportunity for review and rebuttal of that testimony.
7. At the conclusion of the public hearing, a participant in the public hearing may request that the record remain open for at least seven days for the purpose of submitting additional evidence.

Such a request may only be made at the first de novo hearing held in conjunction with a permit application or zoning ordinance text or map amendment.

Whenever the record is supplemented in this manner any person may raise new issues which relate to the new evidence, testimony or criteria for decision making which apply to the matter at issue. This extension of time shall not be counted as part of the one hundred twenty day limit.

Decision.

Following the procedure described, the hearing body shall approve, approve with conditions or deny the application or if the hearing is in the nature of an appeal, affirm, affirm with modifications or additional conditions, reverse or remand the decision that is on appeal.

- A. The decision of the hearing body shall be by a written order signed by the chair or his or her designee.
- B. The order shall incorporate finding of facts and conclusions that include:
 - 1. A statement of the applicable criteria and standards against which the proposal was tested;
 - 2. A statement of the facts which the hearing body relied upon in establishing compliance or noncompliance with each applicable criteria or standards and briefly state how those facts support the decision.
 - 3. In the case of a denial, it shall be sufficient to address only those criteria upon which the applicant failed to carry the burden of proof or, when appropriate the facts in the record that support denial.
- C. The written order is the final decision on the matter and the date of the order is the date that it is signed. The order becomes effective on the expiration of the appeal period, unless an appeal has been filed.

Record of proceedings.

The secretary to the hearing body shall be present at each hearing and shall cause the proceedings to be recorded stenographically or electronically.

- A. Testimony shall be transcribed if required for judicial review or if ordered by the hearing body.
- B. The hearing body shall, retain as part of the hearing records each item of physical or documentary evidence presented and shall have the items marked to show the identity of the person offering the same and whether presented on behalf of a proponent or opponent.

Exhibits received into evidence shall be retained in the hearing file until after the applicable appeal period has expired, at which time the exhibits may be released to the person identified thereon, or otherwise disposed of.

- C. The findings shall be included in the record.
- D. A person shall have access to the record of proceedings at reasonable times, places and circumstances. A person shall be entitled to make copies of the record at the person's own expense.

Notice of decision.

Notice of a decision by a hearing body shall be provided to all parties to the hearing within five working days of the date that the final order was signed. The notice of the decision shall include:

- A. A brief description of the decision reached.
- B. A statement that the decision may be appealed by filing an appeal within twenty calendar days of the date that the final order was signed.
- C. A description of the requirements for an appeal, including the type of appeal that may be requested.
- D. A statement that an appeal may only be filed concerning criteria that were addressed at the initial public hearing.
- E. A statement that the complete case, including the final order is available for review at the city.

Request for review of a decision.

- A. A decision on the issuance of a permit concerning a land use matter may be appealed to the planning commission by an affected party by filing an appeal with the city recorder within twenty days of the date that written notice of the decision was mailed. The

notice of appeal that is filed with the city shall indicate the nature of the interpretation that is being appealed. The matter at issue will be a determination of the appropriateness of the interpretation of the requirements of these bylaws.

- B. A decision of the planning commission may be appealed to the city council by a party to the hearing by filing an appeal within twenty calendar days of the date the final order is signed. The notice of appeal filed with the city shall contain the information outlined in Section 18.030.

Scope of review.

The reviewing body may determine, as a non-public hearing item, that the scope of review, on appeal, will be one of the following:

- A. Restricted to the record made on the decision being appealed.
- B. Limited to the admission of additional evidence on such issues as the reviewing body determines necessary for a proper resolution of the matter.
- C. Remand the matter to the hearing body for additional consideration.
- D. A de novo hearing on the merits.

Review on the record.

- A. Unless otherwise provided for by the reviewing body, review of the decision on appeal shall be confined to the record of the proceeding as specified in this section. The record shall include the following:
 - 1. A factual report prepared by the City Recorder.
 - 2. All exhibits, materials, pleadings, memoranda, stipulations and motions submitted by any party and received or considered in reaching the decision under review.
 - 3. The final order and findings of fact adopted in support of the decision being appealed.
 - 4. The request for an appeal filed by the appellant.
 - 5. The minutes of the public hearing. The reviewing

body may request that a transcript of the hearing be prepared.

- B. All parties to the initial hearing shall receive a notice of the proposed review of the record. The notice shall indicate the date, time and place of the review and the issue(s) that are the subject of the review.
- C. The reviewing body shall make its decision based upon the record after first granting the right of argument but not the introduction of additional evidence to parties to the hearing.
- D. In considering the appeal, the reviewing body need only consider those matters specifically raised by the appellant. The reviewing body may consider other matters if it so desires.
- E. The appellant shall bear the burden of proof.

Review consisting of additional evidence or de novo review.

- A. The reviewing body may hear the entire matter de novo; or it may admit additional testimony and other evidence without holding a de novo hearing. The reviewing body shall grant a request for a new hearing only where it finds that:
 - 1. The additional testimony or other evidence could not reasonably have been presented at the prior hearing; or
 - 2. A hearing is necessary to fully and properly evaluate a significant issue relevant to the proposed development action; and
 - 3. The request is not necessitated by improper or unreasonable conduct of the requesting party or by a failure to present evidence that was available at the time of the previous review.
- B. Hearings on appeal, either de novo or limited to additional evidence on specific issue(s), shall be conducted in accordance with the requirements of these bylaws.
- C. All testimony, evidence and other material from the record of the previous consideration shall be included in the record of the review.

Review body decision.

- A. Upon review, the Planning Commission or City Council may affirm, reverse, or modify in whole or part, a determination or requirement of the decision that is under review.

When the Planning Commission modifies or renders a decision that reverses a decision of the design review board, the Planning Commission shall set forth its findings and state its reasons for taking the action and shall be in conformance with the requirements applicable ordinances.

When the City Council modifies or renders a decision that reverses a decision of the Planning Commission, the City Council shall set forth its findings and state its reasons for taking the action. When the City Council elects to remand the matter back to the Planning Commission for further consideration as it deems necessary, it shall include a statement explaining the error found to have materially affected the outcome of the original decision and the action necessary to rectify such.

- B. Notice of the City Council decision shall be provided to all parties to the hearing within five working days of the date that the final order was signed. The notice of decision shall include:

1. A brief description of the decision reached;
2. A statement that the decision may be appealed to the Land Use Board of Appeals by filing a notice of intent to appeal a land use decision within 21 days after the date the decision sought to be reviewed becomes final; and
3. A statement that the complete case, including the final order is available for review at the city.

Notification of State and Federal agencies.

The City shall forward a copy of the final decision, including the findings and required conditions, within seven working days, to the appropriate state and/or federal agencies where a use or activity involves a state or federal permit which requires a determination of consistency with the local comprehensive plan. The response shall contain a statement of whether or not approval of the permit would be consistent with the comprehensive plan, the reasons the development is or is not so considered, and standards and conditions which should apply if a state or federal permit is granted.

Final action on application for permit or zone change request.

The City shall take final action on an application for a permit or zone change with one hundred twenty days of the receipt of a complete application. The one hundred twenty day period does not apply to an amendment to the comprehensive plan or zoning ordinance, or the adoption of a new land use regulation. At the request of the applicant, the one hundred twenty day period may be extended for a reasonable period of time.

Requirements of a request for appeal of a Planning Commission decision.

An appeal of a Planning Commission decision shall contain the following:

- A. An identification of the decision sought to be reviewed, including the date of the decision.
- B. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings.
- C. The specific grounds relied upon for review, including a statement that the criteria against which review is being requested were addressed at the planning commission hearing.
- D. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in these bylaws.

ORS Chapter 227, City Planning and Zoning is the final authority. If any part of these bylaws is in conflict with ORS 227, it shall be superseded by ORS 227.