

ORDINANCE NO. 163B

(An Ordinance amending Chapter 17.09 and repealing Chapter 17.12 of the Hood River Municipal Code relating to administrative provisions and hearing procedures)

The City of Hood River ordains as follows:

Chapter 17.12 is hereby repealed.

Chapter 17.09, Section 17.09.010 through Section 17.09.100 of the Hood River Municipal Code shall be amended to read as follows:

Sections:

17.09.010	DEFINITIONS
17.09.020	FILING FEES
17.09.030	PERMIT APPLICATIONS
17.09.040	APPEAL FROM DECISION OF THE CITY PLANNER
17.09.050	REQUIREMENTS FOR QUASI-JUDICIAL LAND USE HEARINGS
17.09.060	QUASI-JUDICIAL HEARING PROCEDURES
17.09.070	CRITERIA OF APPROVAL
17.09.080	RESTRICTIONS
17.09.090	APPEAL FROM DECISIONS OF THE PLANNING COMMISSION
17.09.100	RESUBMITTAL

17.09.010 Definitions For the purposes of this ordinance, the following terms shall mean:

- A. "Board" means the Land Use Board of Appeals.
- B. "City Planner" means the individual(s) designated by the City Council to process permit applications, provide professional planning advice to the Planning Commission and City Council, and administer the City Planning Department.
- C. "Hearing Body" means the Planning Commission or City Council, as applicable.
- D. "Hearing Body Members" means the Planning Commissioners or City Council members, as applicable.

E. "Land Use Decision":

1. Includes: a final decision or determination made by the city planner, Planning Commission or City Council that concerns the adoption, amendment or application of:

- (a) The goals;
- (b) A comprehensive plan provision;
- (c) A land use regulation; and

2. Does not include: a decision of the city planner, Planning Commission or City Council:

(a) Which is made under land use standards which do not require interpretation or the exercise of factual, policy or legal judgment;

(b) Which approves, approves with conditions or denies a subdivision or partition, as described in ORS Chapter 92, located within an urban growth boundary where the decision is consistent with land use standards; or

(c) Which approves or denies a permit made under land use standards which do not require interpretation or the exercise of factual, policy or legal judgment.

F. "Land Use Regulation" means the provisions of Title 16 and Title 17 of the Hood River Municipal Code.

G. "Permit" means discretionary approval of an application under Title 16 or Title 17 of the Hood River Municipal Code.

H. "Quasi-Judicial Hearing" means a hearing wherein the hearing body is required to apply general standards and criteria to a specific set of facts in order to determine the conformance

of the facts to the applicable criteria which results in a determination that will directly affect a small number of identifiable persons.

I. "Quorum" means a majority of the members of the hearing body. A member who is present at the hearing but is disqualified from voting or abstains from voting shall be counted as being present for purposes of constituting a quorum of the hearing body.

J. "Standing" means a person who has submitted oral testimony at a hearing or written testimony in conjunction with an administrative action or hearing. A person with standing shall be considered a party.

17.09.020 Filing Fees The filing fees for land use permits, variances, conditional uses, zone changes, subdivisions, major and minor partitions, and appeals shall be set by city council resolution. The fees shall be paid to the city recorder upon filing of an application or appeal.

17.09.030 Permit Applications

A. Approval or denial of a permit application shall be based on the standards and criteria set forth in Title 16 and Title 17 of the Hood River Municipal Code and the comprehensive plan.

B. Approval or denial of a permit shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards

and facts set forth.

C. Written notice of the approval or denial shall be given to all parties to the proceeding and to any individual who has made a written request for notice of the decision.

D. The city planner may approve or deny an application for a permit without a hearing if the city planner gives notice of the decision and provides an opportunity for appeal of the decision to those persons who would have had a right to notice pursuant to Section 17.09.050, or who are adversely affected or aggrieved by the decision.

E. Unless otherwise provided, approval of a permit by the Planner shall automatically become void one (1) year after the date on which it was granted unless a building permit has been issued. If a building permit is not required by the Building Official, construction shall commence within one (1) year after approval of the permit.

17.09.040 Appeal from Decision of the City Planner

A. An appeal from a decision of the city planner may be filed by any person entitled to notice of the decision pursuant to Section 17.09.050A., by a person with standing, or by a person adversely affected or aggrieved by the decision.

B. An appeal from a decision of the city planner may only be initiated by filing a Notice of Intent to Appeal.

C. The decision of the city planner shall be final, unless a written Notice of Intent to Appeal is filed with the city recorder within 15 days of the date the decision is mailed

to those persons entitled to notice pursuant to Section 17.09.050

A.

D. The Notice of Intent to Appeal shall contain a copy of the application for the permit and a copy of the city planner's decision.

E. The Notice of Intent to Appeal shall state the specific issues which are the basis for the appeal and the specific reasons the appellant contends the decision of the city planner is not in conformance with the applicable criteria and standards set forth in Title 16 and Title 17 of the Hood River Municipal Code and the comprehensive plan.

F. A Notice of Intent to Appeal shall be accompanied by the required fee as set by city council resolution.

G. An appeal of a decision of the city planner shall be heard by the planning commission pursuant to the provisions of Section 17.09.050, Section 17.09.060, Section 17.09.070, and Section 17.09.080.

17.09.050 Requirements for Quasi-Judicial Land Use Hearings

A. Notice of quasi-judicial hearings before the planning commission or city council shall be provided to the applicant and to record owners of property within 250 feet.

B. The notice provided shall:

1. Explain the nature of the application and the proposed use or uses which could be authorized;

2. List the applicable criteria from the ordinance that apply to the application at issue;

3. Set forth the street address or other easily understood geographical reference to the subject property;

4. Include a map designating zones and boundaries of the subject and adjacent properties;

5. State the date, time and location of the hearing;

6. State that the failure of an issue to be raised at the hearing, in person or by letter, or the failure to provide sufficient specificity to afford the hearing body an opportunity to respond to the issue precludes appeal to the board based on that issue;

7. Be mailed at least:

(a) Twenty days before the hearing; or

(b) If two or more hearings are allowed, ten days before the first hearing;

8. Include the name of the city representative to contact and the telephone number where additional information may be obtained;

9. State that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost at least seven days prior to the hearing and copies will be provided at reasonable cost upon request;

10. State that a copy of the staff report will be

available for inspection at no cost at least seven days prior to the hearing and that copies will be provided at reasonable cost upon request; and

11. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings including standing requirements.

C. Applicant shall submit all documents or evidence relied upon to the City of Hood River prior to the time notice is to be provided pursuant to Section 17.09.050 B.7.

D. Any staff report used at the hearing shall be available to the public at least seven days prior to the hearing. If additional documents or evidence is provided in support of the application, any party shall be entitled to a continuance of the hearing upon request to the hearing body. Such a continuance shall not be subject to limitations of ORS 227.178.

E. The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given.

17.09.060 Quasi-Judicial Hearing Procedures

A. The procedures set forth in this section shall be followed when the subject matter of a hearing is an appeal from a decision of the city planner pursuant to Section 17.09.040, a conditional use permit, quasi-judicial zone/plan change, variance, or other land use decision.

B. The chair of the hearing shall follow the procedures set forth in subsection C of this section. It is the purpose of this procedure to provide all interested persons a reasonable opportunity to participate in the hearing process and to provide for an impartial hearing on the application. Any questions concerning the conduct of a hearing shall be addressed to the chair with a request for a ruling. Rulings from the chair shall be made in light of the stated purpose of these procedures. Any ruling made by the chair may be modified or reversed by a majority of those members of the hearing body present and eligible to vote on the application before the hearing body.

C. The procedures for the conduct of hearings under this section are as follows:

1. At the commencement of the hearing, the chair, or the chair's designee shall ascertain whether a quorum is present. A quorum is necessary to conduct the hearing and to deliberate. The Chair shall explain the nature of the application, list the substantive criteria of Title 16 or Title 17 of the Hood River Municipal Code, the comprehensive plan or state statute which applies to the decision before the hearing body.

2. The chair shall then request abstentions by members of the hearing body. Prior to abstaining the member shall explain the basis for his/her abstention. No member of the hearing body shall participate in discussion of the application or vote on the application when:

- a. Any of the following has a direct or substantial

financial interest in the proposal; the member of the hearing body or his or her spouse, brother, sister, child, parent, or like relative of his spouse, any business in which he/she is then serving or has served within the previous two years, or any business with which he/she is negotiating for or has an arrangement or understanding concerning prospective partnership or employment;

b. He owns property within the area entitled to receive notice of the public hearing; or

c. He has a direct personal interest in the proposal.

3. The chair shall then request that all hearing body members disclose any significant pre-hearing or ex parte contact regarding the application.

4. The chair shall then provide an opportunity for questioning of the hearing body members by interested persons as to a hearing body member's qualifications to hear the application or appeal. Based upon the disclosures of the hearing body members or any challenges by interested persons, the chair should then entertain motions by any member of the hearing body to disqualify any of its members. A member may be disqualified if a majority of the hearing body determines that a member is biased in favor of or against the applicant or proposal;

5. The chair shall then request presentation of the city planner's report;

6. The chair shall then state the rules of conduct for the hearing:

- a. No person shall testify without first being recognized by the chair and stating his/her full name and residence address.
- b. No person shall be disorderly, abusive, or disruptive of the orderly conduct of the hearing.
- c. There shall be no audience demonstrations such as applause, cheering, display of signs, or conduct disruptive of the hearing. Such conduct may be cause for immediate termination of the hearing by the hearing body.
- d. No person shall present irrelevant, immaterial, or unduly repetitious testimony or evidence.
- e. Testimony and evidence must be directed toward the applicable substantive criteria. Failure to raise an issue with sufficient specificity to afford the hearing body and the parties an opportunity to respond to the issue precludes appeal to the board based on that issue.
- f. The chair, members of the hearing body, and with the approval of the chair, the city attorney, and any other officer or employee of the City may question and cross-examine any person who testifies.
- g. No other officer or employee of the City who has a financial or other private interest or has

previously participated in a hearing on the application 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 such interest.

h. The hearing body may set such time limitations for hearings provided that proponents and opponents are provided equal time for presentation of evidence and argument.

7. The Chair shall then request:

- a) The proponent's case;
- b) Other testimony or evidence in support of the application;
- c) The opponent's case;
- d) Other testimony or evidence against the application;
- e) Testimony or evidence concerning the application, which by its nature is neither in favor nor against;
- f) Rebuttal, which should be directed to comments on evidence in the record and may include cross-examination;

8. The chair shall then close the hearing and the hearing body shall commence deliberations. The hearing body's deliberations may include questions directed to city staff, comments from city staff, or inquiries directed to any person

present. If new evidence, conditions or modifications not presented in the staff report are raised after the close of the hearing, the hearing shall be reopened and an opportunity shall be provided for any person to comment on or rebut that evidence or information;

9. When the hearing body reopens a record to submit new evidence or testimony, 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;

10. Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing. Such an extension shall not be subject to the limitations of ORS 227.178;

11. The hearing body shall, within thirty days (30) after closing the hearing, adopt a written decision which specifically sets forth the basis for that decision. The decision shall be based upon the record of the proceeding. A proposed order submitted by the city planner or any other person may be adopted by the hearing body with or without amendments. The written decision is the final decision on the application and the date of decision is the date it is signed by the Planning Commission Chair.

17.09.070 Criteria for Approval

The burden of proof shall be upon the applicant seeking approval. The more drastic the change or the greater the

proposal or the greater the impact of the proposal in an area, the greater the burden is upon the applicant.

A. For any application to be approved, it shall be first established that the proposal conforms to the city's comprehensive plan, the zoning ordinance, the subdivision ordinance, and the Oregon Revised Statutes, as applicable.

B. In evaluating the proposal, consideration will be given to:

1. The suitability of the subject area for the proposed type of development;
2. The density of the development and the impact on adjacent property owners;
3. Access;
4. Public facilities;
5. Trends in land development;
6. The promotion of the public health, safety, general welfare, and the public need for the proposal.

17.09.080 Restrictions The hearing body may include restrictions and conditions as part of any approval. The purpose of the restrictions and conditions may be to:

A. Protect the public from the potentially negative effects of the proposal;

B. Fulfill the need for public services created or increased by the proposal; and/or

C. Further the purposes of the comprehensive plan and zoning ordinance.

17.09.090 Appeal from Decisions of the Planning Commission

A. The applicant, or any person who provided testimony, either in person or in writing, at the hearing before the Planning Commission, may appeal the decision of the Planning Commission to the City Council.

B. The appeal of a decision of the Planning Commission may only be initiated by filing a Notice of Intent to Appeal, as set forth in this section.

C. The decision of the Planning Commission shall be final, unless a written Notice of Intent to Appeal is filed with the city recorder within 15 days from the date it was signed by the Chair, unless the City Council, on its own motion, orders a review of the decision within 15 days of the date of the recorded decision.

D. Every Notice of Intent to Appeal shall contain:

1. A copy of the application or adequate reference to the matter sought to be appealed and the date of the decision of the Planning Commission;

2. A statement that the appellant either participated in the hearing in person or in writing or that the appellant is the applicant;

3. The specific issues which are the basis for the appeal and the specific reasons the appellant contends the decision of the hearing body is not in conformance with the comprehensive plan, zoning ordinance, subdivision ordinance or Oregon Revised Statutes. Such issues shall be raised with

sufficient specificity so as to afford the City Council an adequate opportunity to respond to each issue;

4. The required fee as set by city council resolution.

E. Hearings before the City Council shall be conducted in compliance with Sections 17.09.050, 17.09.060 A., B., C.1-6, C.11, 17.09.070 and 17.09.080.

F. The City Council's consideration of the Planning Commission's decision shall be confined to the record of the proceeding before the Planning Commission, which shall include:

1. All materials, memorandum, stipulations, exhibits and motions submitted during the proceeding and received or considered by the Planning Commission;

2. All materials submitted by the city staff with respect to the application;

3. The minutes of the hearing before the Planning Commission;

4. The written decision of the Planning Commission;

5. The Notice of Intent to Appeal;

6. Oral and written argument, if any, by the hearing participants, their legal representatives or city staff, made at the time of consideration by the City Council.

G. Evidence not contained in the record before the Planning Commission may not be presented to the City Council. In considering the appeal from the Planning Commission, the City Council need only consider those issues specifically raised by the appellant.

H. The City Council may affirm, reverse or modify the action of the Planning Commission in full or in part. The City Council may also remand the matter back to the Planning Commission for further consideration.

I. The City Council shall adopt a written decision that clearly states the basis for its decision within thirty (30) days of the close of the hearing. When an application is approved, the terms of approval shall be specified, including any restrictions and conditions. A proposed decision submitted by the city planner or any other person may be adopted by the City Council as submitted, or as amended by the City Council.

17.09.100 Resubmittal If a request is denied by the city planner or hearing body and no appeal is filed, or if upon review or appeal the denial is affirmed, no new request for the same or substantially similar proposal shall be filed within six months after the date of final denial. An application may be denied without prejudice and a waiver of the six month restriction granted. If conditions have changed to an extent that further consideration of an application is warranted, the hearing body, on its own motion, may consider new evidence and waive the six month restriction.

Read for the first time: April 8, 1991.

Read for the second time: April 8, 1991.

PASSED BY the City Council of the City of Hood River this

8th day of April, 1991.

ATTEST:

Jay Reynolds
City Recorder

[Signature]
Glenn P. Taylor, Jr., Mayor