
AGENDA ITEM SUMMARY

ITEM NO: 4

FLORENCE CITY COUNCIL

Meeting Date: 1-22-13
Department: City Recorder

ITEM TITLE: CITY COUNCIL RULES OF PROCEDURE

Review adopted rules and procedures including attached updated Florence City Code and Oregon Revised Statutes

ATTACHMENTS:

Attachment 1 - City of Florence City Council Rules of Procedure – Sept. 2008

Attachment 2 - Florence City Code References – Current as of Jan. 2013

Attachment 3 - References to Oregon Revised Statutes – Current as of Jan. 2013



City of Florence
City Council
RULES OF PROCEDURE
Adopted February 6, 2006
Amended June 2006
Amended May 2008
Amended Sept. 2008
(Res. 33, 2008)

1. AUTHORITY

1.1 *Charter:* As authorized by the Charter of the City of Florence, Oregon, The Florence City Council establishes the following rules for the governance of its members and proceedings. (See City Charter, Chapter IV, Section 15)

1.2 *Prior Rules Repealed:* Upon adoption of these rules, any prior rules are hereby repealed.

2. GENERAL RULES

2.1 *Meetings to be Public:* All meetings of the council shall *be* open to the public except for executive sessions as allowed by Oregon Public Meeting laws.

2.2 *Quorum:* Three members of the council shall constitute a quorum and be necessary for the transaction of business.

2.3 *Compelling Attendance:* The council may adjourn from time to time to compel the attendance of absent members.

2.4 *Journal of Proceedings:* An account of all proceedings of the council shall be kept as required by the public meetings and public records laws. Only the Mayor and Councilors have the authority to make substantive revision to the minutes subject to a majority vote of the Council. The minutes, upon approval, shall constitute the official record of the council.

2.5 *Rules of Order:* State Statutes, the City Charter, Code of Ethics adopted by the council, and these rules shall govern the proceedings of the council. The Council shall resolve any question about any question involving a rule of order by taking a vote of the Council members present at the meeting. (Amended May 2008) (Amended Sept. 2008 – Res. 33, 2008)

3. TYPES OF MEETINGS

3.1 *Regular Meetings:* Regular meetings of the council shall be held at 7:00 p.m. on the first and third Monday of each month. A change of any

City of Florence
City Council
RULES OF PROCEDURE
Adopted February 6, 2006
Amended June 2006
Amended May 2008
Amended Sept. 2008
(Res. 33, 2008)

regular meeting date may be made by consensus. All regular meetings shall be held in the Council Chamber unless another facility is needed for a stated, specific purpose.

3.2 *Special Meetings:* Special meetings may be called by the mayor, city manager, two councilors or by announcement during any regular meeting. The call for a special meeting shall specify the time and place and shall list one or more of the subjects to be considered. No special meeting shall be held until at least twenty-four (24) hours after the call is issued except in the case of actual emergency.

3.3 *Adjourned Meetings:* Any meeting of the council may be adjourned to a later date and time provided that no adjournment shall be for a longer period than until the next regular meeting.

3.4 *Executive Sessions:* Executive sessions may be held in accordance with the provisions of state law.

3.5 *Attendance of Media at Council Meetings:* Except as provided for by state law all meetings of the council and its committees shall be open to the media and freely subject to recording by tape, radio, television and photographic services at any time, provided that such arrangements do not interfere with the orderly conduct of the meetings as determined by the presiding officer.

4. PRESIDING OFFICER AND DUTIES

4.1 *Presiding Officer:* At the first meeting of each odd number year, the council shall elect a President and a Vice President from its membership. The mayor presides over all meetings of the council. In the absence of the mayor, the council president shall preside. In the absence of both the mayor and the council president, the council vice president shall preside. The presiding officer may take part in debate and may make or second a motion. The presiding officer shall vote on all questions before the council except in cases of conflict of interest.

4.2 *Preservation of Order:* The presiding officer has the authority to preserve order at all meetings of the Council, to cause the removal of any person from any meeting for disorderly conduct, and to enforce the rules of the Council. The presiding officer may limit debate with council consensus.

4.3 *Questions to be stated:* The presiding officer shall state all questions

City of Florence
City Council
RULES OF PROCEDURE
Adopted February 6, 2006
Amended June 2006
Amended May 2008
Amended Sept. 2008
(Res. 33, 2008)

submitted for a vote and announce the result. A roll call vote shall be taken upon the request of any member.

4.4 *Tie Vote:* In the event of a tie in votes on any motion the motion shall be considered lost.

5. ORDER OF BUSINESS AND AGENDA

5.1 *Agenda:* The order of business of each meeting shall be as contained in the agenda prepared by the city manager and mayor. Any council member may request an item to be placed on the agenda, relating to any matter over which the council has control. The Mayor may determine which agenda depending on agenda time available, but must be done in a timely manner. The agenda shall be a listing by topic of subjects to be considered by the council and shall be delivered to members of the council at least twenty-four (24) hours preceding the meeting to which it pertains, except in case of emergency. Failure to make timely delivery shall not invalidate any action by the council.

5.2 *Order of Business:* The order of business on the agenda may be adjusted at the discretion of the presiding officer.

5.3 *Agenda Available to Press and Public:* Copies of the agenda shall be made available to the press; the public and one copy shall be posted on the bulletin board at City Hall. This public notice shall be reasonably calculated to provide a list of the principle subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of the council to consider additional subjects, unless such items are otherwise governed by specific noticing requirements under state or city law. (ORS 192.640) (*Amended May 2008*)

5.4 *Presentation by Members of Council:* The agenda shall provide a time when the mayor or any council member may bring before the council any business that he/she feels should be deliberated upon by the council. These matters need not be specifically listed on the agenda. These matters shall not be acted on by the city council until a subsequent meeting, unless there is compelling reason. This excludes direction to the city manager.

5.5 *Consent Agenda:* Consent agenda items are generally business items about which there is expected to be no conflict. There will be no debate on consent agenda items and the consent agenda will be voted upon as a single

Council Rules of Procedure *3 of 5*

City of Florence
City Council
RULES OF PROCEDURE
Adopted February 6, 2006
Amended June 2006
Amended May 2008
Amended Sept. 2008
(Res. 33, 2008)

group. Any councilor may request a specific item be pulled from the consent agenda. If an item is pulled, it will be considered as an item of council business.

6. ORDINANCES, RESOLUTIONS AND MOTION

6.1 The enacting of ordinances shall follow Chapter VIII of City of Florence Charter, City Code (Title 1 Chapter 2) and State Law. (ORS. 221.926, 221.927, 221.928, 221.310, and 221.315)

7. CREATION OF COMMITTEES

7.1 *Citizen Committees:* The council may create temporary committees to assist in the conduct of the operation of the city government with such duties as the council may specify not inconsistent with the city's charter or code.

7.2 *Membership and Selections:* Membership and selection of members shall be as provided by the city's charter or code. Any committee so created shall cease to exist upon the accomplishment of the special purpose for which it was created or when abolished by a majority vote of the council. No committee so appointed shall have powers other than advisory to the council or to the city manager and shall conduct their meetings in accordance with state law.

7.3 *Member Conduct:* All members of committees shall adhere to State Statutes, the City Charter, and the Code of Ethics adopted by the Council. (Res. 33, 2008)

8. CITIZENS' RIGHTS

8.1 *Addressing the Council:* Citizen comments on non-agenda issues are to be heard at the specified time in the agenda. Each speaker will be limited to a three (3) minute comment period. Council may in its discretion and by consensus terminate public comment or lengthen or shorten the individual comment period. All speaking will sign in with printed name, address and state same for the record. Citizen comment made in support of or in opposition to an agenda item may be heard at the time of that agenda item with the same sign in and 3 minute rules. Oregon Public Meeting Law guarantees the public a right to monitor the meetings of public bodies. It does not grant the public the right to interact with the public bodies during those meetings. Nevertheless, the presiding officer shall generally allow citizen comment within the orderly conduct of council meetings, but the presiding

City of Florence
City Council
RULES OF PROCEDURE
Adopted February 6, 2006
Amended June 2006
Amended May 2008
Amended Sept. 2008
(Res. 33, 2008)

officer has the right to deny it. *(Amended May 5, 2008)*

8.2 *Written Communications:* Interested parties or their authorized representatives may address the council by written communication in regard to any matter concerning the city's business or over which the council has control at any time by direct mail or by addressing the city manager and requesting that copies be distributed to the council members.

8.3 *Anonymous Communications:* Anonymous communications delivered to the Florence City Council, through whatever means, regarding employees, appointed committees or elected officials, cannot be used as a basis for discussion, administrative action or Council decision making. *(Amended May, 2008)*

9. CONDUCT OF HEARINGS

9.1 The conduct of hearings will be governed by current City Charter, City Code (Title 2 Chapter 10 and Title 10, Chapter 1) and State Ordinances. (ORS. 197.222, ORS. 197.195, ORS. 197.763, ORS. 227.170, and ORS. 227.180, 224.020, 244.120, 244.130 as attached.)

10. ADOPTION AND AMENDMENT OF THESE RULES

10.1 See section 1.2

10.2 *Suspension of these Rules:* Any provision of these rules not governed by the city's charter or code may be temporarily suspended by a vote of a majority of the council. The vote on any such suspension shall be taken by ayes and nays.

Added, June 2006 - Section 8.4

Amended, May, 2008 - Sections 2.5; 5.3; 8.1; 8.2 (deleted) and renumbered; 8.3 (which was 8.4 previously) amended.

Amended, Sept, 2008 - Sections 2.5 and added 7.3

**Attachment to Florence City Council's Rules of Procedures
Florence City Code References
Current as of January 16, 2013**

TITLE 1
CHAPTER 2

SAVING CLAUSE

SECTION:

- 1-2-1: Repeal of General Ordinances
- 1-2-2: Public Utility Ordinances
- 1-2-3: Court Proceedings
- 1-2-4: Severability Clause

1-2-1: REPEAL OF GENERAL ORDINANCES: All general ordinances of the City passed prior to the adoption of this City Code are hereby repealed, except such as are included in this City Code or are by necessary implication herein reserved from repeal (subject to the saving clauses contained in the following sections), and excluding the following ordinances which are not hereby repealed: tax levy ordinances; appropriation ordinances; ordinances relating to boundaries and annexations; franchise ordinances and other ordinances granting special rights to persons or corporations; contract ordinances and ordinances authorizing the execution of a contract or the issuance of warrants; salary ordinances; ordinances establishing, naming or vacating streets, alleys or other public places; improvement ordinances; bond ordinances; ordinances relating to elections; ordinances relating to the transfer or acceptance of real estate by or from the City; and all special ordinances.

1-2-2: PUBLIC UTILITY ORDINANCES: No ordinance relating to railroad crossings with streets and other public ways, or relating to the conduct, duties, service or rates of public utilities shall be repealed by virtue of the adoption of this City Code or by virtue of the preceding Section, excepting as this City Code may contain provisions for such matters, in which case this City Code shall be considered as amending such ordinance or ordinances in respect to such provisions only.

1-2-3: COURT PROCEEDINGS: No new ordinance shall be construed or held to repeal a former ordinance whether such former ordinance is expressly repealed or not, as to any offense committed against such former ordinance or as to any act done, any penalty, forfeiture or punishment so incurred, or any right accrued or claim arising under the former ordinance, or in any way whatever to affect any such offense or act so committed or so done, or any penalty, forfeiture or punishment so incurred or any right accrued or claim arising before the new ordinance takes effect, save only that the proceedings thereafter shall conform to the ordinance in force at the time of such proceeding, so far as practicable, if any penalty, forfeiture or punishment be mitigated by any provision of a new ordinance, such provision may be, by the consent of the party affected, applied to any judgement announced after the new ordinance takes effect.

This Section shall extend to all repeals, either by express words or implication, whether the repeal is in the ordinance making any new provisions upon the same subject or in any other ordinance.

Nothing contained in this Chapter shall be construed as abating any action now pending under or by virtue of any general ordinance of the City herein repealed and the provisions of all general ordinances contained in this Code shall be deemed to be continuing provisions and not a new enactment of the same

provision; nor shall this Chapter be deemed as discontinuing, abating, modifying or altering any penalty accrued or to accrue, or as affecting the liability of any person, firm or corporation, or as waiving any right of the City under any ordinance or provision thereof in force at the time of the adoption of this City Code.

1-2-4: SEVERABILITY CLAUSE: If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this City Code or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Code, or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. (1981 Code)

TITLE 2
CHAPTER 10

QUASI JUDICIAL HEARINGS

SECTION:

- 2-10-1: Definitions
- 2-10-2: Procedures
- 2-10-3: Conduct
- 2-10-4: Challenges to Impartiality
- 2-10-5: Presiding Officer
- 2-10-6: Burden of Proof
- 2-10-7: Order of Procedure
- 2-10-8: Rules of Procedure
- 2-10-9: Closure and Deliberations
- 2-10-10: Official Notice
- 2-10-11: Record of Proceedings
- 2-10-12: Amendment and Suspension of Rules

2-10-1: DEFINITIONS:

HEARING BODY: The City Council, Planning Commission, Design Review Board or Hearing Official, as the context requires.

PARTY: The applicant or any person who has timely submitted written or oral evidence or testimony for consideration in a quasi-judicial evidentiary hearing.

2-10-2: PROCEDURES: The quasi-judicial procedures set forth in Title 2 Chapter 10 supersede any rules of procedure (Roberts Rules of Order), resolution bylaw, ordinance, or section of this Code in conflicting rules and procedures. These procedures supplement the particular land use decisional processes set forth in other parts of this Code to the extent that those processes are consistent herewith. Where these procedures conflict with requirements of State law, State law shall prevail.

2-10-3: CONDUCT:

- A. No person may be disorderly, abusive, or disruptive of the conduct of the hearing.

- B. No person may present evidence, argument or comment without first being recognized by the presiding officer.
- C. All witnesses shall identify themselves, their physical address and mailing address.
- D. Any employee, agent, or officer of the City shall disclose his or her relationship to the City when commencing to testify.
- E. Formal rules of evidence as used in course of law shall not apply.
- F. All documents or other written materials relied on by the applicant shall be submitted to the City and, along with the applications, be made available to the public at the time that notice of the public hearing is provided. Any staff notes or reports to be made part of the record shall be available to the public at least seven days prior to the hearing.
- G. Audience demonstrations such as applause, cheering, display of signs, and other conduct disruptive of the hearing, shall not be permitted. Any such conduct may be cause of immediate suspension of the hearing at the sole discretion of the presiding officer.

2-10-4: CHALLENGES TO IMPARTIALITY:

- A. **Challenges:** Any proponent, opponent, or person interested in a matter to be heard, and any member of the hearing body may challenge the qualification of any other member of that hearing body to participate in the hearing and decision regarding the matter. The challenge shall state by affidavit the fact relied upon by the challenger as the basis for the challenge.
 - 1. Any member of the public may raise conflict of interest issues prior to the hearing.
 - 2. The challenge shall be made a part of the record of the hearing.
- B. **Conflict of Interest:** No member of the hearing body may discuss or vote on a matter when:
 - 1. Any of the following has a direct or substantial pecuniary interest in the matter: the member or his or her spouse, brother, sister, child, parent, father-in-law, or mother-in-law; or business in which the member is then serving as an officer or director or employee or has so served within the previous two years; or any business with which the member is negotiating for or has an arrangement or understanding concerning a prospective partnership, employment or other business affiliation.
 - 2. The member owns all or a portion of the property that is the subject of the matter before the hearing body or owns abutting or adjacent property.
 - 3. The member has a direct personal interest in the matter or for any other reason cannot participate in the hearing and decision impartially.
- C. **Abstentions:** Because of the importance of preserving public confidence in decisions made by the hearing body a member of that hearing body may elect to abstain from a particular hearing when in fact the member is not disqualified under Subsection B of this Section but simply desires to avoid the mere appearance of partiality. Abstention in such an instance shall be solely a matter of the member's own judgment. A member who feels that abstention may be necessary or desirable under this section shall seek the advice of the hearing body and then state the member's decision and the reasons for the abstention.
- D. **Ex Parte Contacts:** At the commencement of the hearing on a matter, members of the hearing body shall reveal all ex-parte contacts they have had about the matter in the manner provided in Section 2-10-7-B. If the contacts have not impaired the member's impartiality, the member shall so state that fact and participate or abstain in accordance with subsection C of this section. Ex parte contacts are communications directly or indirectly with any applicant, appellant, other party

to the proceedings, or representative of a party about any issue involved in a hearing. Ex parte contacts also include any communication, report, or other materials outside the record in connection with the particular case, unless all participants are given the opportunity to respond to the materials.

- E. No other officer or employee of the City who has a financial or other private interest in a matter before the hearing body may participate in discussion of the matter, or give an official opinion on the matter to the hearing body without first declaring for the record the nature and extent of that interest.
- F. Notwithstanding any other rule, an abstaining or disqualified member shall constitute part of a quorum and may represent the member's interest at a hearing, provided the member joins the audience, makes full disclosure of the member's status and position when addressing the hearing body and abstains from discussion and from voting on the matter as a member of the hearing body.
- G. Disqualification for reasons set forth in subsection B of this section may be ordered by a majority of the members of the hearing body present at the hearing. The member who is the subject of the motion for disqualification may not vote on the motion.
- H. If all members of the hearing body abstain or are disqualified and consequently cannot reach a decision while so abstaining or disqualified, all members present, after stating their reasons for abstention or disqualification, shall by so doing be re-qualified and proceed to resolve the issues, unless such participation violates State or Federal law or the City Charter.
- I. A member absent during the presentation of any 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.

2-10-5: PRESIDING OFFICER:

- A. The presiding officer shall:
 - 1. Regulate the course and decorum of the hearing.
 - 2. Attend to procedural requests or similar matters.
 - 3. Impose reasonable limitations on the number of witnesses to be heard and set reasonable time lines for oral presentation, questioning of witnesses, and rebuttal testimony.
 - 4. Take other action authorized by the hearing body for conduct appropriate for the hearing.
- B. Any ruling by the presiding officer may be put to a vote by the hearing body upon a motion duly made, seconded and discussed. The decision on the motion shall be final for the purpose of the proceeding.

2-10-6: BURDEN OF PROOF: The burden of proof is upon the applicant. A decision to resolve the issues presented shall be based upon reliable, probative and substantial evidence in the whole record.

2-10-7: ORDER OF PROCEDURE: The presiding officer in the conduct of the hearing shall:

- A. Open the hearing by announcing the nature, purpose and time of the hearing and summarize the rules for its conduct.
 - 1. State that testimony and evidence must be directed toward the specified criteria or to other criteria in the plan or land use regulation which the person believes to apply to the decision; and

2. State that failure to raise an issue with sufficient specificity to afford the decision and the parties an opportunity to respond to the issue precludes an appeal on that issue to a higher City hearing body or to the Land Use Board of Appeals.
 3. State that the failure of the applicant to raise a constitutional or other issue relating to the proposed conditions of approval with sufficient specificity to allow the local government or its designee to respond to the issue precludes an action for damages in circuit court.
- B. Call for statements of conflicts of interest, ex parte contacts, and biases, abstentions, or challenges to impartiality:
1. If any member of the hearing body has visited the property which is the subject of the land use application as part of the preparation for the hearing, any observations from the site view that are relevant to the decision shall be disclosed.
 2. Any member of the hearing body who has been subject to significant ex parte contacts regarding the matter shall place on the record the substance of the communication. If the contact has not impaired the member's impartiality, the members shall so state and may then participate in the hearing and decision. If the member believes that his or her impartiality has been affected by the contacts, the members shall not participate in the hearing and decision. If the member is uncertain or wishes to avoid the appearance of partiality, the member shall seek the hearing body's advice and announce a decision regarding participation in the hearing and decision, and give the reasons for the action.
 3. If the member making the disclosure of ex parte contacts decides to participate in the hearing, the presiding officer shall announce that any person, during their testimony, has the right to rebut the substance of the communication. Communication between City Staff and the hearing body shall not be considered an ex parte contact.
 4. Any member of the hearing body who has a potential conflict of interest regarding the matter shall disclose the nature of the potential conflict, on the record. Following disclosure, the member may proceed in the same manner as described in subparagraph 2 of this subsection.
 5. Any member of the hearing body who has an interest in the matter as described in subsection 2-10-4-B may not discuss or vote on the matter. Following disclosure of the conflict of interest, the member shall leave the table during hearing, deliberation, discussion, and voting on the matter.
 6. Any member considering abstention for reasons other than those described above shall state the reasons for the abstention, seek the advice of the hearing body, and announce a decision and the reasons therefore.
 7. Any member whose participation has been challenged by allegation of bias, prejudgment, personal interest, or partiality may make a statement in response or in explanation thereof for the record, and state a decision of whether or not to participate in the hearing. The statement shall be subject to cross examination only upon consent of that member, but shall be subject to rebuttal by the proponent, opponent, or other interested party.
 8. The presiding officer shall provide opportunity for additional statements or discussions and proceedings in connection with the impartiality of members of the hearing.
 9. Any member who abstains shall not participate in discussion of the matter or vote upon any procedural or substantive issue concerning it.
- C. Call for the Applicable Substantive Criteria and Staff Report. Staff notes and reports that have been delivered to members along with the application or proposal and supporting materials prior to the hearing shall be made a part of the record. The presiding officer shall then request that City staff list the applicable substantive criteria, summarize the nature of the proposal, explain any graphic or pictorial displays which are part of the record, summarize the findings and decisions of whatever hearing body has previously considered the matter, and provide whatever other information is requested by the hearing body.

- D. Call for testimony in the following order:
 1. The applicant or representative (as provided in subsection B of Section 2-10-8).
 2. Proponents
 3. Opponents.
 4. Neutral Parties.
 5. Applicant rebuttal (as provided in subsection D of Section 2-10-8).
- E. Call for staff response and recommendations.
- F. Announce whether:
 1. The record is closed (as provided under Section 2-10-9);
 2. The record will be held open (as provided in subsection F of Section 2-10-8); or
 3. The hearing will be continued (as provided in subsection G of Section 2-10-8).

2-10-8: RULES OF PROCEDURE

- A. Coordination of Testimony. To the degree necessary to an orderly process within available time, the presiding officer may consolidate submissions by participants or establish reasonable time limits for presentation of testimony. One or more spokespersons for any group may be designated by the presiding officer.
- B. Proponent's Case. The applicant or their representative shall first be heard, and other persons or groups in favor of the applicant's proposal shall next be heard. If the applicant or any person representing the applicant provides documentary or oral evidence in support of the application at the hearing, which were not previously submitted under subsection 2-10-3-F, other than staff notes or reports or excerpts thereof, any party shall be entitled to request that the record be held open as provided in subparagraph F of this subsection.
- C. Questioning of Witnesses. The questioning of witnesses is a matter solely within the discretion of the hearing body acting through the presiding officer except as subsection B of Section 2-10-5 provides to the contrary. The presiding officer, as deemed necessary or desirable, may permit the questioning of witnesses by members of the hearing body, staff and other interested persons at the conclusion of the witness's presentation. No questioning of witnesses shall be permitted after the proponent's rebuttal, except the questioning of rebuttal witnesses as to matters contained in rebuttal testimony. All questions to witnesses shall be submitted to the witness through the presiding officer unless the presiding officer expressly permits the submission of questions directly to a witness.
- D. Rebuttal Evidence. The presiding officer shall allow the applicant or his or her representative to offer additional evidence and testimony, which shall be confined to rebutting the evidence and testimony offered by interested persons, opponents, and the City staff.
- E. Raising Issues. An issue which may be the basis for an appeal to a higher City hearing body or to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the application. Such issues shall be raised with sufficient specificity so as to afford the hearing body and participants in the hearing an adequate opportunity to respond to each issue.
- F. Holding the Record Open. Unless the hearing is continued, if a party so requests prior to the close of the initial evidentiary hearing, the record shall remain open for seven days or a longer

period of time specified by the presiding officer. During this time any person may submit documents or written testimony to clarify, supplement, or rebut evidence already in the record. For a period thereafter of seven days or a longer time specified by the presiding officer, the applicant may rebut the evidence and written testimony submitted during the open record period. The record shall then be closed. The hearing body shall disregard any new evidence or other evidence that is not within the limitations of this subparagraph.

- G. Continuance of Hearing. The presiding officer may continue the hearing for any reason deemed appropriate to a specified time, date and location.

2-10-9: CLOSURE AND DELIBERATIONS: Subsequent to staff response and recommendations, the presiding officer shall close the hearing unless the hearing is to be continued. If the hearing is closed and the record is to be held open, then the presiding officer shall set a time and date for the record to close. After the hearing and the record have been closed, the hearing body shall deliberate on the matter heard. During the deliberation the hearing body may consult with the City staff and pose questions for review, analysis, and response by the staff. The consultation and questioning shall not constitute re-opening of the hearing. If the presiding officer concludes, however, that new evidence has been presented during the consultation or questioning, the officer shall, upon designation of the new evidence permit the applicant and parties to respond briefly, present evidence, and raise issues with respect to the designated material. The hearing body shall then continue its deliberation to a subsequent meeting at a specified time and place, state its findings of fact and conclusions, or state its decision generally and request that staff prepare proposed findings of fact and conclusions. The staff may request proposed findings of fact and conclusions from any party. All actions taken by the hearing body pursuant to this section shall be made a part of the record.

2-10-10: OFFICIAL NOTICE:

- A. The hearings body may take official notice of the following:
 - 1. All facts which are judicially noticeable.
 - 2. All public records of the City.
 - 3. The Charter, ordinances, resolutions, rules, regulations, and officially promulgated policies of the City.
- B. Matters officially noticed need not be established by evidence and may be considered by the hearings body in the determination of the proposal.

2-10-11: RECORD OF PROCEEDINGS:

- A. An adequate record of the hearing shall be prepared in accordance with Section 17 of the Florence City Charter and State law as applicable. To assist in the preparation of the record, the proceedings may be stenographically or electronically recorded, but the record need not set forth evidence verbatim.
- B. Where practicable, the presiding officer shall cause all presented physical and documentary evidence to be received and to be marked to show the identity of the person offering the evidence and to indicate whether it is presented on behalf of the proponent or an opponent. If evidence is not capable of being incorporated in the record, it shall not be included.
- C. Any member of the public shall have access to the record of the proceedings at reasonable times and places. Members of the public shall be entitled to receive copies of the record at their own expense.

2-10-12: AMENDMENT AND SUSPENSION OF RULES: Any rule of procedure not required by Federal or State law or the City Charter may be amended or suspended at any hearing by majority vote of those members of the hearing body present and voting.

Amended by Ord. 13, Series 2004

Amended by Ord. 26, Series 2008 – effective 1-14-09

**Excerpt of Title 10 Chapter 1
Zoning Administration**

10-1-1-5: LAND USE HEARINGS:

- A. Hearings are required for quasi-judicial land use matters requiring Planning Commission review.
- B. Notification of Hearing:
 - 1. At least twenty (20) days prior to a quasi-judicial hearing, notice of hearing shall be posted on the subject property and shall be provided to the applicant and to all owners of record of property within 100 feet of the subject property, except in the case of hearings for Conditional Use Permits, Variance, Planned Unit Development and Zone Change, which notice shall be sent to all owners of record of property within 300 feet of the subject property.
 - a. Notice shall also be provided to the airport as required by ORS 227.175 and FCC 10-21-2-4 and any governmental agency that is entitled to notice under an intergovernmental agreement with the City or that is potentially affected by the proposal. For proposals located adjacent to a state roadway or where proposals are expected to have an impact on a state transportation facility, notice of the hearing shall be sent to the Oregon Department of Transportation.
 - b. For a zone change application with two or more evidentiary hearings, notice of hearing shall be mailed no less than ten (10) days prior to the date of the Planning Commission hearing and no less than ten (10) days prior to the date of the City Council hearing.
 - c. For an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.186 and ORS 227.175(8).
 - 2. Prior to a quasi-judicial hearing, notice shall be published one (1) time in a newspaper of general circulation.
- C. Notice Mailed to Surrounding Property Owners - Information provided:
 - 1. The notice shall:

- a. Explain the nature of the application and the proposed use or uses which could be authorized;
 - b. List the applicable criteria from the ordinance and the plan that apply to the application at issue;
 - c. Set forth the street address or other easily understood geographical reference to the subject property;
 - d. State the date, time and location of the hearing;
 - e. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes further appeal based on that issue;
 - f. State that application and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;
 - g. State that a copy of the staff report will be available for inspection at no cost at least 7 days prior to the hearing and will be provided at reasonable cost;
 - h. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.
 - i. Include the name of a local government representative to contact and the telephone number where additional information may be obtained.
- D. Hearing Procedure: All quasi-judicial hearings shall conform to the procedures of Florence City Code Title 2 Chapter 10.
- E. Action by the Planning Commission:
- 1. At the public hearing, the Planning Commission shall receive all evidence deemed relevant to the issue. It shall then set forth in the record what it found to be the facts supported by reliable, probative and substantive evidence.
 - 2. Conclusions drawn from the facts shall state whether the ordinance requirements were met, whether the Comprehensive Plan was complied with and whether the requirements of the State law were met.
 - 3. In the case of a rezoning request, it shall additionally be shown that a public need exists; and that the need will be best served by changing the zoning of the parcel of land in question.
 - 4. There is no duty upon the Planning Commission to elicit or require evidence. The burden to provide evidence to support the application is upon the applicant. If the Planning Commission determines there is not sufficient evidence supporting the major requirements, then the burden has not been met and approval shall be denied.
- F. Notice of Decision by the Planning Commission: A notice of the action or decision of the Planning Commission, and right of appeal shall be given in writing to the applicant. Any party who testified either in writing or verbally at the hearing must provide a mailing address in order to be noticed. The notice may be served personally, or sent by mail. The notice shall be deemed served at the time it is deposited in the United States mail.

- G. Limitations on Refiling of Applications: Where an application has been denied, no new application for the same purpose shall be filed within six (6) months of the date the previous denial became final unless the Planning Commission can show good cause for granting permission to do so.
- H. Consolidated Procedures: Whenever possible an application for development such as a Conditional Use, Variance, or other action requiring Planning Commission, or Design Review Board approvals be consolidated to provide faster service to the applicant. (ORS 227.175(2)), (Amd. by Ord. No. 4, Series 2011)

10-1-1-6: ADMINISTRATIVE REVIEW

- A. The Planning Director, or designated planning staff may make administrative decisions. The administrative procedure is used when there are clear and objective approval criteria and applying City standards require no use of discretion.
- B. Administrative Decisions are based upon clear compliance with specific standards. Such decisions include, but are not limited to the following:
 - 1. Vegetation clearing permits.
 - 2. Change of use from a less intensive use to a greater intensive use, which does not increase the building's square footage and does not require more than five additional parking spaces.
 - 3. Modification to an approved Design Review of less than 1,500 square feet or less than 25% of the building square footage, whichever is less.
 - 4. An increase in residential density by less than 10 percent, provided the resulting density does not exceed that allowed by the land use district.
 - 5. A change in setbacks or lot coverage by less than 10 percent, provided the resulting setback or lot coverage does not exceed that allowed by the land use district.
 - 6. A change in the type and/or location of access-ways, drives or parking areas not affecting off-site traffic.
 - 7. Administrative review is required for all modifications to an approved landscaping plan except city staff may approve the following changes without going through the administrative review process, provided the proposed landscaping plan is consistent with the intent and character of the original approval:
 - a. plant or tree substitutions (e.g. shrub for shrub, tree for tree),
 - b. ground cover substitutions,
 - c. trading plant locations if planting beds remain the same, or
 - d. change in the location of planting beds (site plan) up to a maximum of 10% of the landscaping area. (Amended Ord. No. 9, Series 2009)
 - 8. Special Use Permit
 - 9. Administrative Review is required for all new construction, expansions, change of use and remodels within the Limited Industrial District and Pacific View Business Park District, except city staff may approve the following changes without going through the administrative review process:

- a. Change of use from a less intensive use to a greater intensive use, which does not increase the building's square footage and does not require more than five additional parking spaces.
 - b. Modification to an approved Design Review of less than 1,500 square feet or less than 25% of the building square footage, whichever is less.
 - c. A change in setbacks or lot coverage by less than 10 percent provided the resulting setback or lot coverage does not exceed that allowed by the land use district.
 - d. A change in the type and/or location of access-ways, drives or parking areas not affecting off-site traffic.
- C. The Director may refer a request for administrative review to the Planning Commission/Design Review Board for decision. If such a referral is made, the request shall be scheduled on the next available Planning Commission agenda, providing that time allows and subject to proper notice requirements.
- D. Notice - Information:
 - 1. Administrative Decisions: The City will post a notice on the subject property and provide Notice of Application to owners of property within 100 feet of the entire contiguous site for which the application is made. The list of property owners will be compiled from the most recent property tax assessment roll.
 - a. Notice shall also be provided to the airport as required by ORS 227.175 and FCC 10-21-2-4 and any governmental agency that is entitled to notice under an intergovernmental agreement with the City or that is potentially affected by the proposal. For proposals located adjacent to a state roadway or where proposals are expected to have an impact on a state transportation facility, notice of the application shall be sent to the Oregon Department of Transportation..
 - 2. Property Owner Notice shall:
 - a. Provide a 14 day period of submission of written comments prior to the decision;
 - b. List applicable criteria for the decision;
 - c. Set forth the street address or other easily understood geographical reference to the subject property;
 - d. State the place, date and time that comments are due;
 - e. State that copies of all evidence relied upon by the applicant are available for review at no cost, and that copies can be obtained at a reasonable cost;
 - f. Include the name and phone number of local government representative to contact and the telephone number where additional information may be obtained.
- E. Request for referral by the Planning Commission Chair: The Chair of the Planning Commission may, within the 14 days notice period, request that staff refer any application to the Planning Commission for review and decision.
- F. Administrative decision requirements: The Director's decision shall address all of the relevant approval criteria. Based on the criteria and the facts contained within the record, the Director shall approve with or without conditions or deny the request, permit or action.

- G. Notice of Decision: A notice of the action or decision and right of appeal shall be given in writing to the applicant. Any party who submitted written testimony must provide a mailing address in order to be noticed. The notice may be served personally, or sent by mail. The notice shall be deemed served at the time it is deposited in the United States mail.
- H. Appeal process: As set forth in 10-1-1-7 or appealed by the Planning Commission.
- I. Fee: A fee shall be established to cover at least direct costs of the application. (Ord. No. 15, 2002)

10-1-1-7: APPEALS: Under this Title, any quasi-judicial decision of the Planning Commission or Design Review Board may be appealed to the City Council in accordance with the following procedure:

- A. A notice of intent to appeal must be filed by an affected party, which includes persons mailed notice of the hearing and persons testifying orally or in written form at the hearing held on the matter.
- B. Such appeal shall be initiated within twelve (12) calendar days of the date of the mailing of the decision by filing written notice of appeal with the City of Florence Community Development Department. The person filing the notice of intent to appeal shall also certify the date that a copy of the notice was delivered or mailed by first class mail postage prepaid to all other affected parties. If an appeal is not received by the city no later than 5:00 pm of the 12th day after the notice of decision is mailed, the decision shall be final.
- C. If the applicant has signed an "Agreement of Acceptance" and there is no other party who could appeal the decision, the appeal period is waived.
- D. The written petition on appeal shall include:
 - 1. A statement of the interest of the petitioner to determine standing as an affected party.
 - 2. The date of the decision of the initial action.
 - 3. The specific errors, if any, made in the decision of the initial action and the grounds therefore.
 - 4. The action requested of the Council and the grounds therefore.
 - 5. A certification of the date that a copy of the written petition on appeal was delivered or mailed by first class mail postage prepaid to all affected parties.
- E. Unless otherwise provided by the City Council, the review of the initial action shall be confined to the record of the proceeding below, which shall include:
 - 1. All materials, pleadings, memoranda, stipulations and motions submitted by any party to the proceeding and received or considered by the Planning Commission or Design Review Board as evidence.
 - 2. All materials submitted by the City staff with respect to the application.
 - 3. The minutes of the hearing.
 - 4. The Findings and action of the Planning Commission or Design Review Board
 - 5. The notice of intent to appeal or the requests for review and the written petitions on appeal.

6. Argument by the parties or their legal representatives before the Council.
- F. The City Council may affirm, reverse or amend the decision of the Planning Commission or Design Review Board and may reasonably grant approval subject to conditions necessary to carry out the Comprehensive Plan and ordinances. The Council may also refer the matter back to the Planning Commission for additional information. When rendering its decision the Council shall make findings based on the record before it and any testimony or other evidence received by it.
- G. Whenever two members of the City Council submit to the Community Development Department a written request for review within twelve (12) days of the date of the mailing of the Planning Commission or Design Review Board decision, the Council shall review the decision of the Planning Commission or Design Review Board. Each request for review shall identify the issues that the affected parties are to address. The Community Development Department shall deliver or mail by first class mail a copy of the requests for review to all affected parties and to the other members of the Council. Such requests for review shall be considered an appeal, with all affected parties allowed an opportunity to submit written petitions on appeal within the time specified in paragraph A of this subsection. Each person filing a written petition on appeal shall be heard by the Council. The Council shall review the record to determine whether there is sufficient evidence to support the findings, whether the finds are sufficient to support the Planning Commission or Design Review Board decision, and where appropriate, whether the decision of the Commission or Board is a proper interpretation of the applicable ordinances.
- H. Any action or decision by the City Council arising from an appeal, except a referral back to the Planning Commission or Design Review Board, shall be final and conclusive.
- I. The Council, by resolution shall establish a schedule of filing fees for all appeals from final decisions of the Planning Commission or Design Review Board. Council shall use the following criteria in establishing such a fee schedule; that the fee charged bear some relation to the City's cost in processing the appeal; and that the fee or fees charged be consistent in amount with fees charged by similar municipalities or agencies. (Amd. by Ord. No. 30, Series 1990).

**Attachment to Florence City Council's Rules of Procedures
References to ORS
Current as of December 28, 2011**

**ORS
Quasi Judicial Hearings**

197.195 Limited land use decision; procedures. (1) A limited land use decision shall be consistent with applicable provisions of city or county comprehensive plans and land use regulations. Such a decision may include conditions authorized by law. Within two years of September 29, 1991, cities and counties shall incorporate all comprehensive plan standards applicable to limited land use decisions into their land use regulations. A decision to incorporate all, some, or none of the applicable comprehensive plan standards into land use regulations shall be undertaken as a post-acknowledgment amendment under ORS 197.610 to 197.625. If a city or county does not incorporate its comprehensive plan provisions into its land use regulations, the comprehensive plan provisions may not be used as a basis for a decision by the city or county or on appeal from that decision.

(2) A limited land use decision is not subject to the requirements of ORS 197.763.

(3) A limited land use decision is subject to the requirements of paragraphs (a) to (c) of this subsection.

(a) In making a limited land use decision, the local government shall follow the applicable procedures contained within its acknowledged comprehensive plan and land use regulations and other applicable legal requirements.

(b) For limited land use decisions, the local government shall provide written notice to owners of property within 100 feet of the entire contiguous site for which the application is made. The list shall be compiled from the most recent property tax assessment roll. For purposes of review, this requirement shall be deemed met when the local government can provide an affidavit or other certification that such notice was given. Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(c) The notice and procedures used by local government shall:

(A) Provide a 14-day period for submission of written comments prior to the decision;

(B) State that issues which may provide the basis for an appeal to the Land Use Board of Appeals shall be raised in writing prior to the expiration of the comment period. Issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue;

(C) List, by commonly used citation, the applicable criteria for the decision;

(D) Set forth the street address or other easily understood geographical reference to the subject property;

(E) State the place, date and time that comments are due;

(F) State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;

(G) Include the name and phone number of a local government contact person;

(H) Provide notice of the decision to the applicant and any person who submits comments under subparagraph (A) of this paragraph. The notice of decision must include an explanation of appeal rights; and

(I) Briefly summarize the local decision making process for the limited land use decision being made.

(4) Approval or denial of a limited land use decision 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.

(5) A local government may provide for a hearing before the local government on appeal of a limited land use decision under this section. The hearing may be limited to the record developed pursuant to the initial hearing under subsection (3) of this section or may allow for the introduction of additional testimony or evidence. A hearing on appeal that allows the introduction of additional testimony or evidence shall comply with the requirements of ORS 197.763. Written notice of the decision rendered on appeal shall be given to all parties who appeared, either orally or in writing, before the hearing. The notice of decision shall include an explanation of the rights of each party to appeal the decision. [1991 c.817 §3; 1995 c.595 §1; 1997 c.844 §1]

197.763 Conduct of local quasi-judicial land use hearings; notice requirements; hearing procedures. The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before a local governing body, planning commission, hearings body or hearings officer on application for a land use decision and shall be incorporated into the comprehensive plan and land use regulations:

(1) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.

(2)(a) Notice of the hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:

(A) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;

(B) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(C) Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.

(b) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(c) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(3) The notice provided by the jurisdiction shall:

(a) Explain the nature of the application and the proposed use or uses which could be authorized;

(b) List the applicable criteria from the ordinance and the plan that apply to the application at issue;

(c) Set forth the street address or other easily understood geographical reference to the subject property;

(d) State the date, time and location of the hearing;

(e) State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond

to the issue precludes appeal to the board based on that issue;

(f) Be mailed at least:

(A) Twenty days before the evidentiary hearing; or

(B) If two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing;

(g) Include the name of a local government representative to contact and the telephone number where additional information may be obtained;

(h) State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;

(i) 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 will be provided at reasonable cost; and

(j) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

(4)(a) All documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public.

(b) Any staff report used at the hearing shall be available at least seven days prior to the hearing. If additional documents or evidence are provided by any party, the local government may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

(5) At the commencement of a hearing under a comprehensive plan or land use regulation, a statement shall be made to those in attendance that:

(a) Lists the applicable substantive criteria;

(b) States that testimony, arguments and evidence must be directed toward the criteria described in paragraph (a) of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision; and

(c) States that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the board based on that issue.

(6)(a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The local hearings authority shall grant such request by continuing the public hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection.

(b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.

(c) If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (7) of this section.

(d) A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179, unless the continuance or extension is requested or agreed to by the applicant.

(e) Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

(7) When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.

(8) 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. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.

(9) For purposes of this section:

(a) "Argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. "Argument" does not include facts.

(b) "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision. [1989 c.761 §10a (enacted in lieu of 197.762); 1991 c.817 §31; 1995 c.595 §2; 1997 c.763 §6; 1997 c.844 §2; 1999 c.533 §12]

227.170 Hearing procedure; rules. (1) The city council shall prescribe one or more procedures for the conduct of hearings on permits and zone changes.

(2) The city council shall prescribe one or more rules stating that all decisions made by the council on permits and zone changes will be based on factual information, including adopted comprehensive plans and land use regulations. [1973 c.739 §8; 1975 c.767 §7; 1997 c.452 §3]

227.180 Review of action on permit application; fees. (1)(a) A party aggrieved by the action of a hearings officer may appeal the action to the planning commission or council of the city, or both, however the council prescribes. The appellate authority on its own motion may review the action. The procedure for such an appeal or review shall be prescribed by the council, but shall:

(A) Not require that the appeal be filed within less than seven days after the date the governing body mails or delivers the decision of the hearings officer to the parties;

(B) Require a hearing at least for argument; and

(C) Require that upon appeal or review the appellate authority consider the record of the hearings officer's action. That record need not set forth evidence verbatim.

(b) Notwithstanding paragraph (a) of this subsection, the council may provide that the decision of a hearings officer or other decision-making authority in a proceeding for a discretionary permit or zone change is the final determination of the city.

(c) The governing body may prescribe, by ordinance or regulation, fees to defray the costs incurred in acting upon an appeal from a hearings officer, planning commission or other designated person. The amount of the fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal, excluding the cost of preparation of

a written transcript. The governing body may establish a fee for the preparation of a written transcript. The fee shall be reasonable and shall not exceed the actual cost of preparing the transcript up to \$500. In lieu of a transcript prepared by the governing body and the fee therefor, the governing body shall allow any party to an appeal proceeding held on the record to prepare a transcript of relevant portions of the proceedings conducted at a lower level at the party's own expense. If an appellant prevails at a hearing or on appeal, the transcript fee shall be refunded.

(2) A party aggrieved by the final determination in a proceeding for a discretionary permit or zone change may have the determination reviewed under ORS 197.830 to 197.845.

(3) No decision or action of a planning commission or city governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:

(a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

(b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

(4) A communication between city staff and the planning commission or governing body shall not be considered an ex parte contact for the purposes of subsection (3) of this section.

(5) Subsection (3) of this section does not apply to ex parte contact with a hearings officer. [1973 c.739 §§11,12; 1975 c.767 §9; 1979 c.772 §12; 1981 c.748 §43; 1983 c.656 §2; 1983 c.827 §25; 1991 c.817 §12]

ORS
Conflict of Interest
Methods of Handling Conflicts with Elected Officials

244.020 Definitions. As used in this chapter, unless the context requires otherwise:

(1) “Actual conflict of interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person’s relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (12) of this section.

(2) “Business” means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official or a relative of the public official is associated only as a member or board director or in a nonremunerative capacity.

(3) “Business with which the person is associated” means:

(a) Any private business or closely held corporation of which the person or the person’s relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person’s relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding calendar year;

(b) Any publicly held corporation in which the person or the person’s relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;

(c) Any publicly held corporation of which the person or the person’s relative is a director or officer; or

(d) For public officials required to file a statement of economic interest under ORS 244.050, any business listed as a source of income as required under ORS 244.060 (3).

(4) “Candidate” means an individual for whom a declaration of candidacy, nominating petition or certificate of nomination to public office has been filed or whose name is printed on a ballot or is expected to be or has been presented, with the individual’s consent, for nomination or election to public office.

(5) “Development commission” means any entity that has the authority to purchase, develop, improve or lease land or the authority to operate or direct the use of land. This authority must be more than ministerial.

(6)(a) “Gift” means something of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:

(A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or candidates or the relatives or members of the household of public officials or candidates on the same terms and conditions; or

(B) For valuable consideration less than that required from others who are not public officials or candidates.

(b) “Gift” does not mean:

(A) Contributions as defined in ORS 260.005.

(B) Gifts from relatives or members of the household of the public official or candidate.

(C) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item,

wall memento or similar item, with a resale value reasonably expected to be less than \$25.

(D) Informational or program material, publications or subscriptions related to the recipient's performance of official duties.

(E) Admission provided to or the cost of food or beverage consumed by a public official, or a member of the household or staff of the public official when accompanying the public official, at a reception, meal or meeting held by an organization when the public official represents state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(F) Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(G) Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the public official.

(H) Reasonable food, travel or lodging expenses provided to a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, when the public official is representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117:

(i) On an officially sanctioned trade-promotion or fact-finding mission; or
(ii) In officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance.

(I) Food or beverage consumed by a public official acting in an official capacity:

(i) In association with the review, approval, execution of documents or closing of a borrowing, investment or other financial transaction, including any business agreement between state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 and a private entity or public body as defined in ORS 174.109;

(ii) While engaged in due diligence research or presentations by the office of the State Treasurer related to an existing or proposed investment or borrowing; or

(iii) While engaged in a meeting of an advisory, governance or policy-making body of a corporation, partnership or other entity in which the office of the State Treasurer has invested moneys.

(J) Waiver or discount of registration expenses or materials provided to a public official or candidate at a continuing education event that the public official or candidate may attend to satisfy a professional licensing requirement.

(K) Expenses provided by one public official to another public official for travel inside this state to or from an event that bears a relationship to the receiving public official's office and at which the official participates in an official capacity.

(L) Food or beverage consumed by a public official or candidate at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.

(M) Entertainment provided to a public official or candidate or a relative or member of the household of the public official or candidate that is incidental to the main purpose of another event.

(N) Entertainment provided to a public official or a relative or member of the household of the public official where the public official is acting in an official capacity while representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 for a ceremonial purpose.

(O) Anything of economic value offered to or solicited or received by a public official or candidate, or a relative or member of the household of the public official or candidate:

(i) As part of the usual and customary practice of the person's private business, or the person's employment or position as a volunteer with a private business, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, not-for-profit corporation or other legal entity operated for economic value; and

(ii) That bears no relationship to the public official's or candidate's holding of, or candidacy for, the official position or public office.

(P) Reasonable expenses paid to a public school employee for accompanying students on an educational trip.

(7) "Honorarium" means a payment or something of economic value given to a public official in exchange for services upon which custom or propriety prevents the setting of a price. Services include, but are not limited to, speeches or other services rendered in connection with an event.

(8) "Income" means income of any nature derived from any source, including, but not limited to, any salary, wage, advance, payment, dividend, interest, rent, honorarium, return of capital, forgiveness of indebtedness, or anything of economic value.

(9) "Legislative or administrative interest" means an economic interest, distinct from that of the general public, in:

(a) Any matter subject to the decision or vote of the public official acting in the public official's capacity as a public official; or

(b) Any matter that would be subject to the decision or vote of the candidate who, if elected, would be acting in the capacity of a public official.

(10) "Member of the household" means any person who resides with the public official or candidate.

(11) "Planning commission" means a county planning commission created under ORS chapter 215 or a city planning commission created under ORS chapter 227.

(12) "Potential conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.

(c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

(13) "Public office" has the meaning given that term in ORS 260.005.

(14) "Public official" means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.

(15) "Relative" means:

- (a) The spouse of the public official or candidate;
- (b) Any children of the public official or of the public official's spouse;
- (c) Any children of the candidate or of the candidate's spouse;
- (d) Siblings, spouses of siblings or parents of the public official or of the public official's spouse;
- (e) Siblings, spouses of siblings or parents of the candidate or of the candidate's spouse;
- (f) Any individual for whom the public official or candidate has a legal support obligation;
- (g) Any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that individual's employment; or
- (h) Any individual from whom the candidate receives benefits arising from that individual's employment.

(16) "Statement of economic interest" means a statement as described by ORS 244.060 or 244.070.

(17) "Zoning commission" means an entity to which is delegated at least some of the discretionary authority of a planning commission or governing body relating to zoning and land use matters. [1974 c.72 §2; 1975 c.543 §1; 1977 c.588 §2; 1979 c.666 §5; 1987 c.566 §8; 1989 c.340 §2; 1991 c.73 §1; 1991 c.770 §5; 1993 c.743 §8; 1995 c.79 §85; 1997 c.249 §75; 2001 c.200 §1; 2003 c.14 §115; 2005 c.574 §1; 2007 c.865 §8; 2007 c.877 §16a; 2009 c.68 §2; 2009 c.689 §§1,2]

244.120 Methods of handling conflicts; Legislative Assembly; judges; appointed officials; other elected officials or members of boards. (1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall:

(a) If the public official is a member of the Legislative Assembly, announce publicly, pursuant to rules of the house of which the public official is a member, the nature of the conflict before taking any action thereon in the capacity of a public official.

(b) If the public official is a judge, remove the judge from the case giving rise to the conflict or advise the parties of the nature of the conflict.

(c) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.

(2) An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:

(a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or

(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

(A) Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or

from voting on the issue.

(B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

(3) Nothing in subsection (1) or (2) of this section requires any public official to announce a conflict of interest more than once on the occasion which the matter out of which the conflict arises is discussed or debated.

(4) Nothing in this section authorizes a public official to vote if the official is otherwise prohibited from doing so. [1974 c.72 §10; 1975 c.543 §7; 1987 c.566 §15; 1993 c.743 §15]

244.130 Recording of notice of conflict; effect of failure to disclose conflict. (1) When a public official gives notice of an actual or potential conflict of interest, the public body as defined in ORS 174.109 that the public official serves shall record the actual or potential conflict in the official records of the public body. In addition, a notice of the actual or potential conflict and how it was disposed of may in the discretion of the public body be provided to the Oregon Government Ethics Commission within a reasonable period of time.

(2) A decision or action of any public official or any board or commission on which the public official serves or agency by which the public official is employed may not be voided by any court solely by reason of the failure of the public official to disclose an actual or potential conflict of interest. [1974 c.72 §11; 1975 c.543 §8; 1993 c.743 §16; 2007 c.865 §9]

ORS Ordinance Procedures

221.926 Authority to enact ordinances. Every city organized under sections 1 to 6, pages 119 to 123, Oregon Laws 1893, may pass any and all necessary ordinances for the purpose of carrying into force and effect any provisions of ORS 221.901 to 221.928 or any other laws concerning city government.

221.927 Approval or veto of ordinances; proceedings after veto. Upon the passage of any ordinance, the enrolled copy thereof, attested by the recorder, shall be submitted to the mayor by the recorder, and if the mayor approves the same the mayor shall write upon it "Approved," with the date thereof and sign it with the name of office of the mayor. Thereupon, unless otherwise provided, such ordinance shall become a law and be of force and effect. If the mayor does not approve of the ordinance so submitted, the mayor must, within 10 days from the receipt thereof, return the same to the recorder with the reasons of the mayor for not approving it, and if the mayor does not so return it, such ordinance shall become a law as if the mayor had approved it. Upon the first meeting of the council after the return of an ordinance from the mayor not approved, the recorder shall deliver it to the council, with the message of the mayor, which must be read. The ordinance shall then be put upon its passage again, and if two-thirds of all the members constituting the council, as then provided by law, vote in the affirmative, it shall become a law without the approval of the mayor, and not otherwise.

221.928 Record of ordinances; compilation accepted as evidence. The ordinances passed by any common council or any municipal corporation within this state, organized under sections 1 to 6, pages 119 to 123, Oregon Laws 1893, shall be recorded in a book to be kept for that purpose by the recorder of any such city. When so recorded, the record so made shall be received in any court of this state as prima facie evidence of the due passage of such ordinance as recorded. When the ordinances of any such city are printed by authority of such municipal corporation, the printed copies thereof shall be received as prima facie evidence that such ordinances as printed and published were duly passed.

221.310 Effective date of ordinances, resolutions and franchises; emergency measures. (1) In cities having a population of 2,000 or more, an ordinance or a franchise shall not take effect until 30 days after its passage by the city council and approval by the mayor, unless it is passed over the veto of the mayor. In that event, it shall not take effect until 30 days after final passage over the mayor's veto. However, measures necessary for the immediate preservation of the peace, health and safety of the city are excepted. These emergency measures shall become immediately effective if they state in a separate section the reasons why it is necessary that they should become immediately effective and if they are approved by the affirmative vote of three-fourths of all the members elected to the city council, taken by ayes and noes, and also by the mayor. This subsection shall apply in every city in all matters concerning the operation of the initiative and referendum in its municipal legislation on which the city has not made or does not make conflicting provisions.

(2) Except for ordinances necessary for the immediate health, peace or safety, an ordinance enacted by the council of a city created under ORS 221.010 to 221.100 shall take effect 30 days after its enactment.

(3) In cities having a population of 2,000 or more, a resolution may take effect at any time

after its passage by the city council. A resolution shall state in a separate section the effective date of the resolution. [Amended by 2001 c.34 §1]

221.315 Enforcement of ordinance and charter provisions; disposition of fines. (1)

Prosecution of violations of the charter or ordinances of a city in circuit or justice court shall be by the city attorney and in the name of such city. An agreement may be made between any city and, on behalf of the state, the presiding judge for the judicial district in which all or part of such city is located, that such violations be prosecuted for such city in the circuit court by the district attorney in the name of the State of Oregon. An agreement may be made, pursuant to ORS 190.010, between any city and the county in which all or part of such city is located, that such violations be prosecuted for such city in the justice court by the district attorney in the name of the State of Oregon.

(2) Except as otherwise provided by an agreement made under subsection (1) of this section in respect to the court, all fines collected by the circuit or justice court having jurisdiction of a violation of a city charter or ordinance shall be paid as follows:

(a) One-half of the fine shall be credited and distributed to the treasurer of the city whose charter or ordinance was violated, as a monetary obligation payable to the city.

(b) If collected by the circuit court, one-half of the fine shall be credited and distributed as a monetary obligation payable to the state.

(c) If collected by the justice court, one-half of the fine shall be credited and distributed to the treasurer of the county in which the court is located as a monetary obligation payable to the county. [1973 c.645 §3; 1975 c.713 §2; 1981 s.s. c.3 §114; 1983 c.763 §48; 1987 c.905 §19; 1995 c.781 §41; 1995 c.658 §92a; 1999 c.1051 §264; 2011 c.597 §128]