

ORDINANCE NO. ~~591~~-0

**ORDINANCE OF THE CITY OF TROUTDALE
AMENDING CHAPTER 16 OF THE TROUTDALE
DEVELOPMENT CODE RELATING TO NOTICE
PROCEDURES TO PROVIDE CONSISTENCY WITH
ORS 197.763 (3) AND AS RECOMMENDED BY THE
DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

WHEREAS, the City of Troutdale may adopt planning and zoning regulations to promote the general welfare, and

WHEREAS, the Citizen Advisory Committee met on December 1, 1992 to consider the amendment to Chapter 16, and forwarded a recommendation to the Planning Commission recommending adoption, and

WHEREAS, the Planning Commission conducted a public hearing on December 16, 1992 to consider the amendments to Chapter 16 and finds these amendments to be in the public interest, and

WHEREAS, the City Council conducted a public hearing on January 26, 1993, and

WHEREAS, the Department of Land Conservation and Development has directed the City to amend the notice requirements within Chapter 16, and

WHEREAS, amendment of Chapter 16 will bring the Troutdale Development Code into compliance with adopted Oregon Revised Statutes, Section 197.763 (3):

**NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL
OF THE CITY OF TROUTDALE THAT:**

Chapter 16 of the Troutdale Development Code, adopted by Ordinance 491-0, is hereby amended as follows:

16.000 PUBLIC DELIBERATIONS AND HEARINGS

16.010 Responsibility of Director for Hearings.

- A. Schedule and assign the matter for review and hearing.
- B. Conduct the correspondence of the hearing body.

- C. Give notice.
- D. Maintain a record and enter into the record relevant dates such as those of giving notice, hearings, postponement and continuances and a summary of action taken by the hearings body.
- E. Prepare minutes to include the decision on the matter heard and the reasons for the decision.
- F. Reduce the decisions of the hearings body to writing within a reasonable time.
- G. Mail a copy of the decision to the party requesting the same upon payment of a reasonable fee, if a fee has been established.

16.020 Raising of Issues for Appeal. 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 following evidentiary hearing on the proposal before the Planning Commission or City Council. Such issues shall be raised with sufficient specificity so as to afford the Planning Commission or City Council and the parties an adequate opportunity to respond to each issue.

16.030 Notice of Hearing. The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before a Hearings Officer, the Planning Commission, and City Council on application for a land use decision and shall be incorporated into the Comprehensive Plan and land use regulations.

- A. Notice of 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:
 1. Within 250 feet of the property which is the subject of the notice where the subject property is wholly or in part within the Urban Growth Boundary;
 2. 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
 3. Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.

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

16.040 Affected Property Owners/Interested Parties Notice.

- A. Interested parties, such as counties, state agencies, public utilities, etc., which may be affected by the specific development proposal shall receive notice of the scheduled public hearing.
- B. Area-Wide Proposals. Notices may be mailed, posted or published, as determined appropriate by the Director and based on the impact of the proposed development and as required by Chapter 15.

16.050 Contents of Notice. The notice provided by the City 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 appeal to the board based on that issue;
- F. Be mailed at least:
 1. Twenty days before the evidentiary hearing; or
 2. If two or more evidentiary hearings are allowed, ten 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 relied upon by the applicant and applicable criteria are available for inspection at not cost and will be provided at a 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 procedures for conduct of hearings;

16.060 Procedure for Mailed Notice. The applicant shall provide a certified list of property owners as required by notice provisions of this code. Unless otherwise provided, addresses for a mailed notice shall be obtained from the County's real property tax records. Unless the address is on file with the Director, a person whose name is not in the tax records at the time of filing of an application, or of initiating other action not based on an application, need not be furnished mailed notice. The failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to comply with the requirements of this code for notice. In addition to persons to receive notice as required by the matter under consideration, the Director shall provide notice to others he has reason to believe are affected or otherwise represent an interest that may be affected by the proposed development.

16.070 Procedure for Posted or Published Notice.

- A. A posted notice, if required, shall be posted in at least one conspicuous place within the boundary of the parcel under consideration and if the property frontage exceeds 500 feet one additional notice shall be posted on the property.
- B. A posted notice, if required, shall be posted in a minimum of three public places within the City boundaries.
- C. If a published notice is required, it shall be published in a newspaper of general circulation at least once.

16.080 Applicant's Documents and Evidence. All documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public at the time notice provided in subsection 16.030 (F) is provided.

16.090 Staff Report. Any staff report used at the hearing shall be available 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. Such a continuance shall not be subject to the limitations of ORS 215.428 or 227.178.

- 16.100 Explanation at Commencement of Hearing. 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 and evidence must be directed toward the criteria described in paragraph 1 of this subsection or other criteria in the Plan or land use regulations which the persons believes to apply to the decision; and
 - C. States that failure to raise an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes an appeal to the Council based on that issue.
- 16.110 Request that the Record Remain Open. 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 extension shall not be subject to the limitations of ORS 215.428 or 227.178.
- 16.120 Reopening a Hearing. When a Hearings Officer, Planning Commission or City Council reopens a record to admit 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.
- 16.130 Failure to Receive Notice. The failure of the property owner to receive notice as provided in the 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.
- 16.140 Challenges to Impartiality. Except for Type IV legislative hearings conducted by the governing body, a party to a hearing or a member of a hearing body may challenge the qualifications of a member of the hearing body to participate in the hearing and decision regarding the matter. The challenge shall state by affidavit the facts relied upon by the challenger relating to a person's bias, prejudgment, personal interest, or other facts from which the challenger has concluded that the member of the hearing body cannot participate in an impartial manner. Except for good cause shown, challenge shall be delivered by personal service to the Director not less than 48 hours preceding the time set for public hearing. The Director

shall attempt to notify the person whose qualifications are challenged prior to the meeting. The challenge shall be incorporated into the record of the hearing.

16.150 Disqualification. Except for Type IV legislative hearings conducted by the governing body, no member of a hearing body shall participate in a discussion of the proposal or vote on the proposal when any of the following conditions exist:

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

16.160 Participation by Interested Officers or Employees. No officer or employee of the City who has a financial or other private interest in a proposal shall participate in discussion with or give an official opinion to the hearing body on the proposal without first declaring for the record the nature and extent of such interest.

16.170 Ex Parte Contacts. Except for Type IV legislative hearings conducted by the governing body, the general public has a right to have hearing body members free from pre-hearing or ex parte contacts on matters heard by them. It is recognized that a countervailing public right is free access to public officials on any matter. Therefore, hearing body members shall reveal any significant pre-hearing or ex parte contacts with regard to any matter at the commencement of the public hearing on the matter. If such contacts have not impaired the member's impartiality or ability to vote on the matter, the member shall so state and shall participate or abstain in accordance with Section 16.110.

Ex parte contacts with a member of the decision making body shall not invalidate a final decision or action of the decision making body, provided that the member receiving the contact places the substance of the content of the ex parte communication in the record of the hearing and makes a public announcement of the content of the communication and of the right of the parties to rebut the content of the first hearing where action will be considered or taken.

16.180 Abstention or Disqualification. Except for Type IV hearings conducted by the governing body, disqualification for reasons other than the member's own judgment may be ordered by a majority of the members of a hearing body present and voting. The member who is the subject of the motion for disqualification may not vote on the motion.

16.190 Rights of Disqualified Member of the Hearing Body.

- A. An abstaining or disqualified member of the hearing body may be counted for purposes of forming a quorum. A member who represents personal interest at a hearing may do so only by physically joining the audience and vacating the seat on the hearing body. He shall make full disclosure of his status and position at the time of addressing the hearing body and shall not vote.
- B. If all members of a hearing body disqualify themselves all members present after stating their reasons for abstention or disqualification shall by so doing be requalified and proceed to resolve the issues.
- C. Except for Type IV legislative hearings conducted by the governing body, a member absent during the presentation of evidence in a hearing may not participate in the deliberations or final decision regarding the matter of the hearing unless the member has reviewed the evidence received.

16.200 Burden and Nature of Proof. Except for legislative determinations, the burden of proof is upon the proponent. The more drastic the change or the greater the impact of the proposal on the area, the greater is the burden upon the proponent. The proposal must be supported by proof that it conforms to the applicable elements of the Comprehensive Plan and to provisions of this code, especially the specific criteria set forth for the particular type of decision under consideration. Additionally, the following factors are deemed relevant and material and shall be considered by the hearing body in reaching its decision on a proposal.

- A. Mistakes in the original designation or provision.
- B. Change of conditions within the vicinity in which the development is proposed.

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

- A. Before receiving information on the issue, the following shall be determined:

1. Any objections on jurisdictional grounds shall be noted in the record and if there is objection, the person presiding has the discretion to proceed or terminate.
 2. Any abstentions or disqualifications shall be determined.
- B. The person presiding at the hearing may take official notice of known information related to the issue, such as the following:
1. Provisions of the charter or state law or of an ordinance, resolution, rule or officially promulgated policy of the City.
 2. Other public records and facts judicially noticeable by law.
- C. Matters officially noticed need not be established by evidence and may be considered by the hearing body in the determination of the matters. Parties requesting notice shall do so on the record; provided, however, that the hearing body may take notice of matters listed in subsection (B) of this section if stated for the record. Any matter given official notice may be rebutted.
- D. The hearing body may view the area in dispute with or without notification to the parties, but shall place the time, manner and circumstances of such view in the record.
- E. Information shall be received from the staff and from proponents and opponents. The presiding officer may approve or deny a request from a person attending the hearing to ask a question. Unless the presiding officer specifies otherwise, if the request to ask a question is approved, the presiding officer will direct the question to the person submitting testimony.
- F. When the hearing has ended, the hearing body shall openly discuss the issue and may further question a person submitting information or the staff if opportunity for rebuttal is provided.

16.220 Decision. Following the hearing procedure, the hearing body shall approve or deny the application or if the hearing is in the nature of an appeal, affirm, reverse or remand the decision that is on appeal. A decision on a hearing or a land use proposal shall be made within 120 days of the application. If the hearing body and an applicant or appellant agree to an extension, processing of a matter under consideration may be extended for a reasonable period of time as determined by the hearing body, but not to exceed six months from the date of the first hearing on the matter.

An applicant may request an extension beyond the 120 day legal limit. An applicant whose application has not been acted upon within the 120 days after the application was initiated may seek a writ of mandamus to compel a decision on the land use application or issuance of permits or a determination that approval would violate the City's Plan or land use regulations.

16.230 Findings and Order. The hearing body shall prepare findings of fact and an order which shall include:

- A. A statement of the applicable criteria and standards against which the proposal was tested, and of the hearing body's interpretation of what would be required to achieve compliance with the criteria and standards.
- B. A statement of the facts which the hearing body found establishing compliance or noncompliance with each applicable criteria and assurance of compliance with applicable standards.
- C. The reasons for a conclusion to approve or deny.
- D. The decision to deny or approve the proposed change with or without conditions.

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

- A. Testimony shall be transcribed if required for judicial review or if ordered by the hearing body.
- B. The hearing body shall, where practicable, retain as part of the hearing record each item of physical or documentary evidence presented and shall have the items marked to show the identity of the person offering the same and whether presented on behalf of a proponent or opponent. Exhibits received into evidence shall be retained in the hearing file until after the applicable appeal period has expired, at which time the exhibits may be released to the person identified thereon, or otherwise disposed of.
- C. The findings and order shall be included in the record.
- D. A person shall have access to the record of the proceeding at reasonable times, places and circumstances. A person shall be entitled to make copies of the record at the person's own expense.

16.250 Request for Review - Appeal of Decision.

- A. Type I or Type II Procedure. A decision on a land use proposal or permit may be appealed to the Planning Commission by an affected party by filing an appeal with the Director within ten days of notice of the decision. The notice of appeal shall indicate the nature of the interpretation that is being appealed and the matter at issue will be a determination of the appropriateness of the interpretation of the requirements of the code.
- B. Type II Appeal or Type III Procedure. A decision of the Planning Commission may be appealed to the City Council by an affected party by filing an appeal within ten days of notice of the decision. The notice of appeal shall indicate the decision that is being appealed.
- C. Type IV Procedure. A decision of the City Council may be appealed to LUBA or to the legal authority governing land use regulations and issues by an affected party by filing an appeal within ten days of notice of the decision.

16.260 Requirements of Notice of Appeal.

- A. A notice of appeal shall contain:
 - 1. An identification of the decision sought to be reviewed, including the date of the decision.
 - 2. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings.
 - 3. The specific grounds relied upon for review.
 - 4. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Section 16.210 (A).

16.270 Scope of Review. At its discretion the hearing body may limit an appeal or review to a review of the record and a hearing for receipt of oral arguments regarding the record, or may accept new evidence and testimony. If new evidence is to be received, a hearing shall be conducted pursuant to this article. The reviewing body shall issue an order stating the scope of review on appeal to be one of the following:

- A. Restricted to the record made on the decision being appealed.
- B. Limited to such issues as the reviewing body determines necessary for a proper resolution of the matter.

- C. A de novo hearing on the merits.

16.280 Review on the Record.

- A. Unless otherwise provided for by the reviewing body, review of the decision on appeal shall be confined to the record of the proceeding as specified in this section. The record shall include:
 - 1. A factual report prepared by the Director.
 - 2. All exhibits, materials, pleadings, memoranda, stipulations and motions submitted by any party and received or considered in reaching the decision under review.
 - 3. The transcript of the hearing below, if previously prepared; otherwise, a detailed summary of the evidence, but the details need not be set forth verbatim.
- B. The reviewing body shall make its decision based upon the record after first granting the right of argument but not the introduction of additional evidence to any party who has filed a notice of appeal.

16.290 Review Consisting of Additional Evidence or De Novo Review.

- A. The reviewing body may hear the entire matter de novo; or it may admit additional testimony and other evidence without holding a de novo hearing if it is satisfied that the additional testimony or other evidence could not reasonably have been presented at the prior hearing. The reviewing body shall consider all of the following in making such a decision.
 - 1. Prejudice to the parties.
 - 2. Convenience or availability of evidence at the time of the initial hearing.
 - 3. Surprise to opposing parties.
 - 4. The competency, relevancy and materiality of the proposed testimony or other evidence.
- B. "De novo hearing" shall mean a hearing by the review body as if the action had not been previously heard and as if no decision had been rendered, except that all testimony, evidence and other material from the

record of the previous consideration shall be included in the record of the review.

16.300 Review Body Decision.

- A. Upon review, the review body may by order affirm, reverse or modify in whole or in part a determination or requirement of the decision that is under review. When the review body modifies or renders a decision that reverses a decision of the hearing body, the review body, in its order, shall set forth its finding and state its reasons for taking the action encompassed in the order. When the review body elects to remand the matter back to the hearing body for such further consideration as it deems necessary, it shall include a statement explaining the error found to have materially affected the outcome of the original decision and the action necessary to rectify it.

- B. Action by the review body shall be decided by a majority vote of its members present at the meeting at which review as made and shall be taken either at that or any subsequent meeting. The review body shall render its decision no later than 90 days after the filing of the request for review and shall file that decision with the City Recorder within 10 days after it is rendered.

**PASSED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE
THIS 26TH DAY OF JANUARY, 1993.**

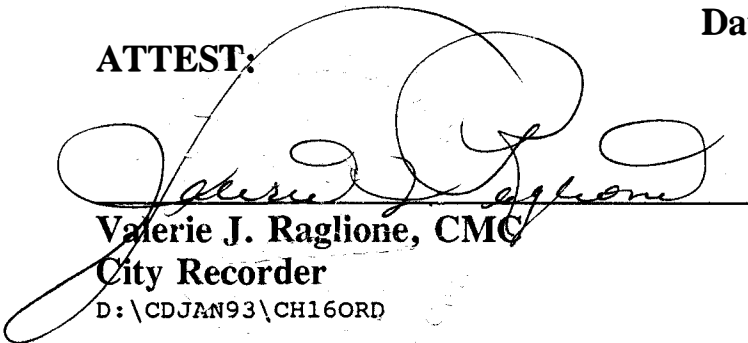
YEA: 5
NAYS: 0
ABSTAINED: 0



Gene Bui, Mayor

Dated: January 16, 1993

ATTEST:



Valerie J. Raglione, CMC
City Recorder
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