

ORDINANCE No. 89-A

Introduced by Commissioner Robert C. POLLARD

AN ORDINANCE AMENDING THE TOWN OF HAMMOND
COMPREHENSIVE PLAN AND ZONING ORDINANCE Nos. 82-1 & 86-6

WHEREAS, certain changes are necessary to update and amend the Town of Hammond Comprehensive Plan, Zoning Ordinance and Map; and

WHEREAS, the City of Warrenton Planning Commission has reviewed the proposed changes and recommended said changes to the Warrenton City Commission:

NOW, THEREFORE, the Warrenton City Commission ordains as follows:

Section 1. To facilitate the merger, it is necessary to amend the Town of Hammond Comprehensive Plan and Zoning Ordinance, replace the procedural requirements with identical language to Warrenton's Administrative Provisions and Public Hearing Procedures. The Town of Hammond Comprehensive Plan, Zoning Ordinance and Map are hereby amended as set forth in Exhibit ", which is attached hereto and by this reference incorporated herein.

Section 2. This ordinance shall become effective thirty days after its adoption.

Section 3. If any article, section, subsection, subdivision, phrase, clause, sentence or word in this ordinance shall, for any reason, be held invalid or unconstitutional by a court of competent jurisdiction, it shall not nullify the remainder of the ordinance but shall be confined to the article, section, subdivision, clause, sentence or word so held invalid or unconstitutional.

First reading: 5 February 1992


Second reading: 19 February 1992

PASSED by the City Commission of the City of Warrenton, Oregon, this 19th
day of February 1992.

APPROVED by the Mayor of the City of Warrenton, Oregon, this 19th day of
February 1992.


Mayor

ATTEST:


City Manager/Auditor

Date: November 13, 1991

To: Gil Gramson, City of Warrenton

From: Mark Barnes

RE: Warrenton and Hammond Zoning Ordinances

CREST was asked to prepare amendments to the Hammond Zoning Ordinance to bring its procedural requirements into conformity with those in the Warrenton Zoning Ordinance. Most of Hammond's procedural requirements are in Articles 14 and 15 of the Zoning Ordinance. For the most part, they are the same as Warrenton's. There are some differences, however. I recommend deleting Hammond's *Administrative Provisions* section (Article 14), and the *Public Hearing Procedures and Requirements* section (Article 15), and replacing them with provisions that are identical to Warrenton's. Procedural matters elsewhere in the Zoning Ordinance also need to be amended. The following amendments to Hammond's Zoning Ordinance will do this.

Section 2.030 LOCATION OF ZONING DISTRICTS

2. The boundaries of the FH Zone shall be the same as those for the areas of special flood hazard identified by the Federal Insurance Administration through a scientific and engineering report entitled "Flood Insurance Study" for the Town of Hammond dated April 17, 1978, with accompanying Flood Insurance Rate maps (FIRM) and Flood Boundary Maps and any revisions thereto. These materials are hereby adopted as a part of this ordinance and shall be considered to be the official source indicating FG Zone boundaries. These materials are on file at the ~~Hammond Town Hall~~ Warrenton City Hall.

3. The boundaries of the SH Zone shall be the same as those for the areas in the town with Brallier or Freshwater marsh soils identified by the Oregon State University Extension Service in the Soils map that includes the Town of Hammond which accompanies the report "Soils of the Clatsop Plains" dated April, 1974. This map is hereby adopted as a part of this ordinance and shall be considered to be the official source indicating SG Zone boundaries. These materials are on file at the ~~Hammond Town Hall~~ Warrenton City Hall.

Section 2.040 ZONING MAP

1. The Town of Hammond Zoning Map is hereto attached and by this reference made a part hereof, bearing the signatures of the Mayor and Zoning Administrator of the Town of

Hammond, and entitled Town of Hammond Zoning Map dated with the effective date of this Ordinance, it shall be maintained without charge on file at all times in the Hammond Town Hall Warrenton City Hall.

Section 8.060 APPLICATION FOR A REVIEW USE

A property owner or their designated representative may initiate a request for a review use or the modification of an existing review use by filing an application with the zoning administrator, using forms prescribed by the Town. The application will be accompanied by a set of findings which demonstrate that applicable zoning and other Town ordinance requirements will be satisfied. The application will be accompanied by plans with information specified in Section 14.040, and by evidence of the land owner's approval of the application.

Section 8.070 REVIEW USE PROCEDURE

(delete subsections (1) through (4) and replace as follows:

1. The procedure for considering review uses shall be the same as the procedure for considering conditional uses, Section 9.070.

ARTICLE 9 **CONDITIONAL USES**

(Replace Hammond's Section 9.010 through 9.110 with the following new text:)

Section 9.010 Purpose

The purpose of the conditional use process is to allow, when desirable, uses that would not be appropriate throughout a zoning district or without restrictions in that district, but would be beneficial to the City if their number, area, location, design, and relation to the surrounding property are controlled.

Section 9.020 Authorization to Grant or Deny Conditional Uses

(1) A new, enlarged or otherwise altered development listed in this ordinance as a conditional use shall be approved or denied by the Planning Commission under the procedure in this Article. The Planning Commission shall base its decision on whether the use complies with:

- a. Applicable policies of the comprehensive plan.
- b. Applicable Columbia River Estuary Aquatic and Shoreland Development Standards, Article 6.

c. For certain uses in Columbia River Estuary aquatic areas, whether the use or activity meets the resource capability and purpose of the zone in which it is proposed when such a determination is required in accordance with Article 7.

d. For certain activities in Columbia River Estuary aquatic areas, the findings of an Impact Assessment where required by Article 7.

e. Development standards of the applicable zone.

f. Basic conditional use standards of Section 9.030.

g. Appropriate conditional use standards of Sections 9.090 through 9.100.

(2) In permitting a conditional use or the modification of an existing conditional use that involves a housing type (e.g. multi-family structure, manufactured dwelling park), the Planning Commission may impose in addition to those standards and requirements expressly specified in the ordinance, conditions which it considers necessary to protect the best interest of the surrounding property or the City as a whole. These additional conditions may include, but are not limited to:

a. controlling the location and number of vehicle access points;

b. increasing the required street width;

c. limiting the number, size, location and lighting of signs;

d. requiring diking, fencing, screening, landscaping, berms, or other items to protect adjacent areas;

e. designating sites for open space;

f. specifying the types of materials to be used.

In permitting a conditional use or the modification of a conditional use for a use other than a housing type, the Planning Commission may impose in addition to those standards and requirements expressly specified for that use other conditions which are necessary to protect the adjacent property, an identified resource, or the city as a whole. These conditions may include a through f above, but are not limited there-to, and may include such additional conditions as:

g. increasing the required lot size or yard dimensions

h. reducing the required height and size of buildings

i. specifying the time of year the activity may occur

j. completion of a monitoring program.

(3) In the case of a use existing prior to its present classification as a conditional use, any change in use or in lot area or any alteration of a structure will conform with the requirements dealing with conditional uses.

(4) The Planning Commission may require that the applicant for a conditional use furnish to the City a performance bond up to, and not to exceed, the value of the cost of the required improvements in order to assure that the conditions imposed are completed in accordance with the plans and specifications as approved by the Planning Commission and that the standards established in granting the conditional use are observed.

Section 9.030 Basic Conditional Use Review Criteria

Before a conditional use is approved findings will be made that the use will comply with the following standards:

(1) The proposed use is in conformance with the Comprehensive Plan.

(2) The location, size, design and operating characteristics of the proposed use are such that the development will be compatible with, and have a minimal impact on, surrounding properties.

(3) The use will not generate excessive traffic, when compared to traffic generated by uses permitted outright, and adjacent streets have the capacity to accommodate the traffic generated.

(4) Public facilities and services are adequate to accommodate the proposed use.

(5) The site's physical characteristics, in terms of topography, soils and other pertinent considerations, are appropriate for the use.

(6) The site has an adequate area to accommodate the proposed use. The site layout has been designed to provide for appropriate access points, on-site drives, public areas, loading areas, storage facilities, setbacks and buffers, utilities or other facilities which are required by City ordinances or desired by the applicant.

Section 9.040 Application for a Conditional Use

A property owner or his designated representative may initiate a request for a conditional use by filing an application with the Zoning Administrator according to the requirements of Section 14.030. The application will also be accompanied by related plans, drawings, and information needed to provide background for the request.

Section 9.050 Conditional Use Procedures

(1) The Planning Commission will consider a conditional use request after holding a public hearing in accordance with the provisions of Section 14.035 through 14.045(5). Where proposed development involves uses or activities in aquatic areas, public notice as required in Section 14.035 shall be sent to state and federal agencies with statutory planning and permit authority in aquatic areas, including Oregon Division of State Lands, Oregon Department of Fish and Wildlife, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, U.S Army Corps of Engineers and the National Marine Fisheries Service.

(2) The Planning Commission will determine whether the evidence supports a finding that requirements of the comprehensive plan, zoning ordinance, and other City ordinances have been met. It will approve, approve with conditions, or deny the application according to requirements of Section 14.045(6) and (7). Conditional use decisions by the Planning Commission will become final after an elapsed period of 15 days from the date of the decision unless appealed to the City Commission within that 15 day period.

(3) Notice of the Planning Commission decision will be provided in accordance with Section 14.045(8).

(4) A decision of the Planning Commission on a conditional use request may be appealed to the City Commission in accordance with Section 14.050.

(5) A request for a conditional use which is not acted upon by the Planning Commission within 60 days from the receipt of the application may be deemed denied and may be appealed to the City Commission.

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

Section 9.060 Compliance With Conditions of Approval

Compliance with conditions established for a conditional use and adherence to the submitted plans as approved is required. Any departure from these conditions of approval and approved plans constitutes a violation of this ordinance.

Section 9.070 Time Limit on a Permit for a Conditional Use

Authorization of a conditional use shall be void after one year or such lesser time as the authorization may specify unless substantial construction has taken place. However, the Planning Commission may extend authorization for an additional period not to exceed one year on request.

Section 9.080 Limitations for Refiling an Application

Applications for which a substantially similar application has been denied will be heard by the Planning Commission only after a period of one year has elapsed from date of the earlier decision.

Article 12 VARIANCES

(Replace Hammond's Article 12 with the following new text:)

Section 12.010 Purpose

The purpose of a variance is to provide relief when a strict application of the zoning requirements would impose unnecessary hardships resulting from the size, shape, or dimensions of a site or the location of existing structures thereon; or from geographic, topographic, or other factors listed below. Reasonable conditions may be imposed in connection with a variance as deemed necessary to protect the best interests of the surrounding property or neighborhood, and otherwise secure the purpose and requirements of this Section. Guarantees and evidence may be required that such conditions will be met.

Section 12.015 General Criteria

Variations to a quantitative requirement of this Ordinance may be granted only if, on the basis of the application, investigation and evidence submitted by the applicant, findings are made based on factors 1 through 4 listed below:

- (1) The request is necessary to prevent unnecessary hardship; and
- (2) Development consistent with the request will not be substantially injurious to the neighborhood in which the property is located; and
- (3) The request is necessary to make reasonable use of the property; and
- (4) The request is not in conflict with the Comprehensive Plan.

(2) A pre-application conference may be scheduled at the request of either the applicant or the Zoning Administrator.

Section 12.040 Action On Class 1 Variance Application

(1) The Zoning Administrator shall make a decision to approve or deny the request within 30 calendar days of submittal of a complete application.

(2) The Zoning Administrator shall determine whether the criteria for approval have been satisfied.

(3) All decisions shall be in writing and will include at a minimum:

- a. name and address of applicant;
- b. location of property (street number, map number, tax lot number, lot and block);
- c. date of the decision;
- d. conditions of approval, if any; and
- e. notice of the appeal time and procedure.

(4) The decision will be mailed to the applicant, and to interested persons who have commented in writing.

Section 12.045 Appeals And Hearings

(1) The decision of the Zoning Administrator on a Class 1 variance may be appealed to the Planning Commission.

(2) Hearings on a Class 2 variance will be held in accordance with Section 14.035 through 14.050.

(3) Appeal of a Planning Commission decision on a Class 1 or Class 2 variance shall be taken pursuant to Section 14.050.

Section 12.050 Conditions; Refiling

(1) Compliance with conditions imposed in the variance, and adherence to the submitted plans, as approved, is required. Any departure from these conditions of approval and approved plans constitutes a violation of this Ordinance.

(2) Applications for which a substantially similar application has been denied shall be heard by the Planning Commission only after a period of six months has elapsed, unless the Planning Commission finds that special circumstances justify earlier reapplication.

Section 12.090 Notice Requirements for Certain Structures in an FH Zone

When a variance is granted allowing a structure to be built or placed with the lowest floor elevation at or below the base flood elevation, the Zoning Administrator shall give written notice to the owner of the structure that: (1) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance as high as \$25 for every \$100 of insurance coverage; and 2) such construction below the base flood level increases risk to life and property. Such notification shall be maintained with a record of all variance actions.

ARTICLE 13 AMENDMENTS

(delete the existing text in Article 13 and replace as follows)

Section 13.010 Purpose

Periodically, as local goals and opinions change and new information is obtained, the Zoning Ordinance should be updated. The purpose of the Zoning Ordinance amendment process is to provide a method for carefully evaluating potential changes to insure that they are beneficial to the City.

Section 13.020 Authorization to Initiate Amendments

An amendment to the text of this ordinance may be initiated by the City Commission, Planning Commission, a person owning property in the City, or a City resident. An amendment to a zone boundary may only be initiated by the City Commission, Planning Commission, or the owner or owners of the property for which the change is proposed.

Section 13.030 Authorization to Grant or Deny an Amendment

Amendments to the Zoning Ordinance may be granted or denied upon the authorization of the City Commission. The City Commission will consider the recommendation of the Planning Commission and general public comments in its consideration of a proposed amendment. In granting a proposed amendment, the City Commission may make revisions which it determines are in the best interests of the City.

Section 13.040 Application for an Amendment

Property owners or local residents which are eligible to initiate an amendment or their designated representatives may begin a request for an amendment by filing an application with the Zoning Administrator, using forms prescribed by the City. The application will be accompanied by a set of findings which demonstrate that the standards in Section 13.080 will be satisfied.

Section 13.050 Amendment Procedures

(1) The Planning Commission will consider a proposed amendment after holding a public hearing in accordance with the provisions of Section 14.045.

(2) The City Commission will consider a proposed amendment after holding a public hearing in accordance with the provisions of Section 14.045. The hearing will be held as soon as practical after receiving the Planning Commission's recommendation.

(3) Notice of the decision of the City Commission shall be in accordance with Section 14.045(8).

Section 13.060 Record of Amendments

The Zoning Administrator shall maintain records of amendments to the text and zoning map of the ordinance.

Section 13.070 Limitations on Re-applications

No application of a property owner or local resident for an amendment to the text of this ordinance or to a zone boundary shall be considered by the Planning Commission within the one-year period immediately following a previous denial of such request, except the Planning Commission may permit a new application if in the opinion of the Planning Commission new evidence or a change of circumstances warrant reconsideration.

Section 13.080 Basic Amendment Standards

Before an amendment is approved, findings will be made that the following standards are satisfied:

(1) Before an amendment to the text of the Zoning Ordinance is approved, findings will be made that the following standards have been satisfied.

- a. The amendment shall be consistent with the Comprehensive Plan
- b. The amendment will not have an adverse effect upon the City's ability to satisfy land and water use needs.

(2) Before an amendment to the Zoning Ordinance map is approved, findings will be made that the following standards have been satisfied:

- a. The amendment shall be consistent with the Comprehensive Plan
- b. The use permitted by the amendment is compatible with the land use development pattern in the vicinity of the request.
- c. The land is physically suitable for the uses to be allowed in terms of slope, geologic stability, flood hazards and other relevant considerations.
- d. Public facilities, services and streets are available to accommodate the uses to be provided by the proposed zone designation.

Section 13.085 Change of Zone for Manufactured Dwelling Parks

If an application would change the zone of property which includes all or part of a manufactured dwelling park as defined by ORS 446.003, the City shall give written notice by First Class Mail to each existing mailing address for tenants of the manufactured dwelling park at least 20 days, but not more than 40 days, before the date of the first hearing on the application. The failure of a tenant to receive notice which was mailed shall not invalidate any zone change.

ARTICLE 14 ADMINISTRATIVE PROVISIONS

(delete the entire text of articles 14 and 15 and replace as follows)

Section 14.010 Enforcement

The City Zoning Administrator shall have the power and duty to enforce the provisions of this ordinance.

Section 14.020 Building Permits

No permit shall be issued by the Zoning Administrator for the construction, reconstruction, alteration or change of use of a structure or lot that does not conform to the requirements of this ordinance.

Section 14.030 Application Information and Procedures

(1) An application for an action or permit shall consist of:

- a. A complete application form.
- b. Proof that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has the consent of all partners in ownership of the affected property.
- c. Legal description of the property affected by the application.

(2) If the application is complete when first submitted, or the applicant submits the requested additional information within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(3) If an application for a permit or zone change is incomplete, the City shall notify the applicant of the additional information required within 30 days of the receipt of the application. The applicant shall be given the opportunity to submit the additional information required. The application shall be deemed complete upon receipt of additional information required. If the applicant refuses to submit the required additional information, the application shall be deemed complete on the 31st day after the governing body first received the application.

(4) All documents or evidence provided by the applicant shall be submitted to the City and be made available to the public at the time the notice of public hearing required by Section 14.035(1) is provided.

(5) Where a proposed development requires more than one development permit or zone change request from the City, the applicant may request that the City consider all necessary permit and zone change requests in a consolidated manner. If the applicant requests that the City consolidate its review of the development proposal, all necessary public hearings before the Planning Commission shall be held on the same date.

(6) An application and all accompanying information must be submitted at least 14 days prior to a scheduled meeting to be considered at that meeting.

Section 14.035 Notice of Public Hearing

(1) Notice of a public hearing shall be reasonably calculated to give actual notice and shall contain the following information:

- a. The name of the applicant
- b. The date, time, place of hearing and who is holding the public hearing.
- c. A description reasonably calculated to inform a person of the location of the property for which a permit or other action is pending including the street address, and the subdivision lot and block designation or tax map designation of the County Assessor. This is not required for legislative actions under this ordinance.
- d. A concise description of the proposed development action.
- e. A description in general terms of the applicable criteria from the Zoning Ordinance and Comprehensive Plan known to apply to the issue.
- f. A statement that failure to raise an issue in person or by letter precludes appeal and that failure to specify to which criterion the comment is directed precludes an appeal based on that criteria.
- g. A statement describing where the complete application, all evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and that copies can be provided at reasonable cost.
- h. The name and phone number of a local government representative to contact for more information.
- i. A statement that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing, and that copies can be provided at reasonable cost.
- j. A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

(2) Mailed notice.

- a. Mailed notice shall be sent to property owners within the following distances from the exterior boundary of the subject property:
 - (i) Legislative change to the Zoning Ordinance - none.
 - (ii) Quasi-judicial change to the Zoning Ordinance - 200 feet.
 - (iii) Conditional use - 200 feet.
 - (iv) Variance request - 100 feet.
- b. Mailed notice shall be sent to the applicant.

c. Addresses for a mailed notice required by this Ordinance shall be obtained from the County Assessor's Real Property Tax records. 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 Ordinance for notice. In addition to persons to receive notice as required by the matter under consideration, the Zoning Administrator shall provide notice to others he or she has reason to believe are affected or otherwise represent an interest that may be affected by the proposed action.

(3) Published Notice: Notice shall be given for the proposed actions described below by publication in a newspaper of general circulation of The City of Warrenton:

- a. Legislative change to the Zoning Ordinance
- b. Quasi-judicial change to the Zoning Ordinance.
- c. Conditional use
- d. Variance

(4) Notice shall be mailed or published not less than ten days prior to the hearing requiring the notice.

Section 14.040 Date of Public Hearing: The Planning Commission shall hold a public hearing within 40 days of the filing of a complete application unless the applicant requests an extension.

Section 14.045 Public Hearing Procedure and Requirements

(1) Public hearings conducted under this ordinance shall follow the procedures and requirements of Section 14.045 (2) - (8).

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

a. An impartial review as free from potential conflicts of interests and pre-hearing ex-parte contact as is reasonably possible.

b. Except for hearings on legislative actions 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:

(i) 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.

(ii) The member owns property within the area entitled to receive notice of the public hearing.

(iii) The member has a direct private interest in the proposal.

(iv) For any other valid reason, the member has determined that participation in the hearing and decision cannot be in an impartial manner.

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

g. 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 in the public hearing.

h. If the member determines that such contact has affected his/her impartiality or ability to vote on the matter, the member shall remove himself from the deliberations. Disqualifications due to ex-parte contact may be ordered by a majority of the members present. The person who is the subject of the motion may not vote on the motion.

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

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

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

l. There shall be a reasonable opportunity for those persons potentially affected by the proposal to present evidence.

m. There shall be a reasonable opportunity for rebuttal of new material.

(3) 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 abstaining from voting on the proposal, physically joining the audience and vacating the seat on the hearing body, and making full disclosure of his or her status and position at the time of addressing the hearing body.

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

(4) Burden and Nature of Proof. The burden of proof is upon the proponent. The proposal must be supported by proof that it conforms to the applicable provisions of this Ordinance, 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. Mistake in the original definition or provision.

b. Change of conditions within the vicinity in which the development is proposed.

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

a. Before receiving information on the issue, the following shall be addressed.

(i) 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.

(ii) Any abstentions or disqualifications based on conflict of interest, personal bias, or ex-parte contacts, shall be determined.

(iii) A statement by the person presiding that:

- Describes the applicable substantive criteria against which the application will be reviewed.
- Testimony and evidence must be directed toward the criteria described in subsection 14.035(1)(e).
- Failure to address a criterion during the hearing precludes an appeal based on that criterion.
- Describes the review and appeal process provided for by this ordinance.

b. **Presentations and Evidence:** The presiding officer shall preserve order at the public hearing and shall decide questions of order subject to a majority vote. The presiding officer may set reasonable time limits for oral presentation. The presiding officer may determine not to receive cumulative, repetitive, immaterial, or derogatory testimony.

c. Evidence shall be received from the staff and from proponents and opponents. Evidence shall be admissible if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of serious affairs. Erroneous evidence shall not invalidate or preclude action unless shown to have prejudiced the substantial rights of a party to the hearing. Members of the hearing body may take official notice of judicially cognizable facts of a general technical or scientific nature within their specialized knowledge. Such notice shall be stated and may be rebutted. 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.

d. The hearing body may recess a hearing in order to obtain additional information or to serve further notice upon other property owners or persons it decides may be interested in the proposal being considered. The time and date when the hearing is to resume shall be announced.

e. 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.

f. When the hearing has been closed the hearing body shall openly discuss the issue and may further question a person submitting information or the staff if opportunity for rebuttal is provided. No testimony shall be accepted after the close of the public hearing unless the hearing body provides an opportunity for review and rebuttal of that testimony.

(6) **Decision:** Following the procedure described in Section 14.045(2) - (5), the hearing body shall approve, approve with conditions or deny the application or, if the hearing is in the nature of an appeal, affirm, affirm with modifications or additional conditions, reverse or remand the decision on appeal.

a. The decision of the hearing body shall be by a written order signed by the chair or his/her designee.

b. The order shall incorporate findings of fact and conclusions that include:

(i) A statement of the applicable criteria and standards against which the proposal was tested.

(ii) A statement of the facts which the hearing body relied upon in establishing compliance or noncompliance with each applicable criteria or standard, briefly stating how those facts support the decision.

(iii) In the case of a denial, it shall be sufficient to address only those criteria upon which the applicant failed to carry the burden of proof or when appropriate the facts in the record that support denial.

c. The written order is the final decision on the matter and the date of the order is the date that it is signed. The order becomes effective on the expiration of the appeal period, unless an appeal has been filed.

(7) 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 records each item of physical or documentary evidence presented and shall have the items marked to show the identity of the person offering the same and whether presented on behalf of a proponent or opponent. Exhibits received into evidence shall be retained in the hearing file until after the applicable appeal period has expired, at which time the exhibits may be released to the person identified thereon, or otherwise disposed of.

c. The findings shall be included in the record.

d. A person shall have access to the record of proceedings at reasonable times, places and circumstances. A person shall be entitled to make copies of the record at the person's own expense.

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

a. A brief description of the decision reached.

b. A statement that the decision may be appealed by filing an appeal within 15 calendar days of the date that the final order was signed.

c. A description of the requirements for an appeal, including the type of appeal that may be requested.

d. A statement that an appeal may only be filed concerning criteria that were addressed at the initial public hearing.

e. A statement that the complete case, including the final order is available for review at the City.

Section 14.050 Request for Review of a Decision (Appeals)

(1) An administrative decision on the issuance of a permit concerning a land-use matter may be appealed to the Planning Commission by an affected party by filing an appeal with the City Manager within 15 days of the notice of the decision. The notice of appeal that is filed with the City shall indicate the interpretation that is being appealed. The matter at issue will be a determination of the requirements of this ordinance.

A decision of the Planning Commission may be appealed to the City Commission by a party to the hearing by filing an appeal within 15 days of the date the final order is signed. The notice of appeal filed with the city shall contain the information outlined in Section 14.050(2).

(2) An appeal of a Planning Commission decision shall contain:

a. An identification of the decision sought to be reviewed, including the date of the decision.

b. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings.

c. The specific grounds relied upon for the review including a statement that the criteria against which review is being requested were addressed at the Planning Commission hearing.

d. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Section 14.050(5).

(3) Scope of Review: The reviewing body shall determine, as a non-public hearing item, that the scope of review will be one of the following:

a. Restricted to the record made on the decision being appealed.

b. Limited to the presentation of additional evidence on such issues as the reviewing body determines necessary for a proper resolution of the matter.

c. A de novo hearing

d. A remand of the matter to the hearing body for additional consideration.

(4) 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:

(i) A factual report prepared by the City Manager.

(ii) All exhibits, materials, pleadings, memoranda, stipulations and motions submitted by any party and received or considered in reaching the decision under review.

(iii) The final order and findings of fact adopted in support of the decision being appealed.

(iv) The request for an appeal.

(v) The minutes of the public hearing. The reviewing body may request that a transcript of the hearing be prepared.

b. All parties to the initial hearing shall receive a notice of the proposal review of the record. The notice shall indicate the date, time and place of the review and the issues that are the subject of the review.

c. The reviewing body shall make its decision based upon the record after first granting the right of argument, but not the introduction of additional evidence, to parties to the hearing.

d. In considering the appeal, the reviewing body need only consider those matter specifically raised by the appellant. The reviewing body may consider other matters if it so desires.

e. The appellant shall bear the burden of proof.

(5) Review Consisting of Additional Evidence or De Novo Review.

a. The reviewing body may hear the entire matter de novo; or it may admit additional testimony and other evidence without holding a de novo hearing. The reviewing body shall grant a request for a new hearing only where it finds that:

(i) The additional testimony or other evidence could not reasonably have been presented at the previous hearing; or

(ii) A hearing is necessary to fully and properly evaluate a significant issue relevant to the proposed development action; and

(iii) The request is not necessitated by improper or unreasonable conduct of the requesting party or by a failure to present evidence that was available at the time of the previous review.

b. Hearings on appeal, either de novo or limited to additional evidence on specific issues, shall be conducted in accordance with the requirements of Section 14.035 - 14.045.

(6) Review Body Decision

a. Upon review, the City Commission may affirm, reverse, or modify in whole or part, a determination or requirement of the decision that is under review. When the City Commission modifies or renders a decision that reverses a decision of the Planning Commission, the City Commission shall set forth its finding and state its reasons for taking the action and these shall be in conformance with the requirements of Section 14.045(6). When the City Commission elects to remand the matter back to the Planning Commission for further consideration as it deems necessary, it shall include a statement explaining the error found to have materially affected the outcome of the original decision and the action necessary to rectify such.

(6) Notice of the City Commission Decision shall be provided to all parties to the hearing within five working days of the date that the final order was signed. The notice of the decision shall include:

- a. A brief description of the decision reached.
- b. A statement that the decision may be appealed to the Land Use Board of Appeals by filing a notice of intent to applicants.
- c. A statement that the complete case including the final order is available for review at the City.

Section 14.055 Final Action on Application for Permit Zone Change Request.

(1) The City shall take final action on an application for a permit or zone change within 120 days of the receipt of a complete application. The 120 day period does not apply to an amendment to the Comprehensive Plan or Zoning Ordinance, or the adoption of a new land use regulation. At the request of the applicant, the 120 day period may be extended for a reasonable period of time.

Section 14.070 Authorization of Similar Uses

The Planning Commission may permit, in a particular zone, a use not listed in this Ordinance, provided the use is of the same general type as the uses permitted there by this Ordinance. However, this section does not authorize the inclusion, in a zone where it is not listed, of a use specifically listed in another zone, or which is of the same general type and is similar to a use specifically listed in another zone.

Section 14.080 Temporary Permits

Notwithstanding the limitations of use as established by this Ordinance in each of the several districts, the Planning Commission may issue temporary permits.

(1) Temporary permits shall be valid for a period of not more than one year after issuance.

(2) Such permits shall be issued for structures or uses which are of a temporary nature, such as:

- a. Storage of equipment during the building of roads or developments.
- b. Real estate office used for the sale of lots or housing in subdivisions; i.e., tract offices.
- c. Temporary storage of structures or equipment, including boats and trailers.
- d. Sheds used in conjunction with the building of a structure.
- e. Temporary housing.
- f. Other uses of a temporary nature, when approved by the Planning Commission and the City Commission.

(3) The Planning Commission may attach conditions it deems necessary in regard to the proposed use to carry out the intent and purpose of this ordinance. The permit granted herein shall be reduced to written contract approved by the City Attorney and signed and notarized by the permittee. Security for performance of permittee's obligations including removal of the structure shall be posted in all cases. The security may be a performance bond, cash, time certificate of deposit payable to the City and/or other negotiable instrument, including title. In addition, no permit granted herein shall be effective prior to review and approval by the City Commission.

(4) No temporary permit granted by the Planning Commission shall become operative until the City has received satisfactory written evidence the temporary permit notice had been appropriately recorded at the deed records of Clatsop County, State of Oregon.

Section 14.085 Coastal Zone Consistency Review

(1) Applicability. This section applies to the following activities that directly affect the coastal zone:

- a. actions requiring federal permits or licenses
- b. federal activities and development projects
- c. outer continental shelf activities
- d. federal grants or financial assistance.

(2) Consistency Review Procedure for Activities Requiring Federal Permits or Licenses. Applicants for activities in Warrenton's coastal zone which require a federal permit or license shall submit to the Zoning Administrator a copy of: the completed permit application, other supporting material provided to the permit granting agency and a set of findings which demonstrate that the development would be consistent with the applicable elements of the Comprehensive Plan and this Ordinance.

If the activity requires a local permit, the applicant shall apply for the local permit under the established permit program. Approval of the permit shall constitute a ruling that the action is consistent with the applicable elements of the Comprehensive Plan and Ordinance. If the action does not require a local permit, the Zoning Administrator may make an investigation to provide information on the project's conformance with the Plan and Ordinance standards and provisions. The investigation can be done administratively or through public hearings.

The Zoning Administrator shall respond to state or federal permit granting agency within seven working days of the local actions. The response shall contain a statement of whether the permit is consistent with the applicable elements of the Comprehensive Plan, the reasons development is or is not consistent, standards and conditions which apply if the permit is granted, and the need for local permits for developments associated with the activity.

3) Consistency Review Procedure for Federal Activities and Development Projects. Federal activities in the Coastal Zone are not subject to the established local permit procedures. Federal activities which directly affect the coastal zone of the city must be consistent, to the maximum extent practicable, with the coastal zone management program. The coastal zone management program includes the Comprehensive Plan and Zoning Ordinance. The federal consistency determination is reviewed by the Oregon Department of Land Conservation and Development.

Consistency determinations for federal activities shall be reviewed for conformance with the mandatory enforceable policies of the Comprehensive Plan and Ordinance. The review may be done administratively or through public hearings. The federal agency has the option of applying for a local permit to demonstrate consistency with the Plan and Ordinance. The Zoning Administrator shall communicate concurrence or disagreement

with the consistency determination, and recommendations on conditions of project approval, to the Oregon Department of Land Conservation Department within 21 days of receiving the notice for reviewing the federal consistency determination.

(4) Outer Continental Shelf Activities. Federally licensed or permitted activities described in Outer Continental Shelf plans and which affect Warrenton's coastal Zone shall be conducted in a manner consistent with the coastal zone management program. The applicant's consistency certification is reviewed by the Department of Land Conservation and Development. The Zoning Administrator may review these activities for consistency with the Plan and Zoning Ordinance. The review may be done administratively or through public hearings. The Zoning Administrator may communicate concurrence or disagreement with the consistency certification to the Oregon Department of Land Conservation and Development within the time specified on the Oregon Department of Land Conservation and Development notice for the activities.

(5) Federal Grants and Financial Assistance. Federal financial assistance or grants to state agencies, cities, counties, special purpose districts, or regional bodies, for activities which affect the coastal zone shall be granted only when the activities are consistent with the coastal zone management program. The Zoning Administrator may review the grants and financial assistance for consistency with the Plan and Ordinance. The review may be done administratively or through public hearings. The Zoning Administrator may communicate its review findings to the Intergovernment Relations Division Clearinghouse within the time specified on the Clearinghouse notice.

Section 14.090 FH Zone Flood Hazard Permits

(1) Establishment of a flood hazard permit. A special flood hazard permit, in addition to any regular building permit which may be required, shall be required in an FH Zone for all structures, including manufactured dwellings, and for all other development as defined in Section 1.040(4). An application for a flood hazard permit shall be made to the building official on forms furnished by him and shall specifically include the following information:

- a. Base flood elevation data for all developments with an area of more than five acres.
- b. Elevation in relation to mean sea level of the lowest floor (including basement) of all structures certified by a registered surveyor, engineer, or architect.

Section 14.100 Public Notice, Administrative Decisions

(1) Permitted uses and activities under this zoning ordinance are subject to the public notice provision of Section 14.100(2) under any of the following circumstances:

- a. if an impact assessment is required pursuant to Section 7.210 through 7.240.

b. if a resource capability determination is required pursuant to Section 7.100 through 7.170.

c. if the permit decision will require interpretation or the exercise of factual, policy or legal judgement.

(2) The City shall provide a public notice of pending administrative conditions that meet one of the threshold criteria in Section 14.100(1). Notice of the pending administrative decision will conform to the following standards:

a. Notice will be provided by publication in a newspaper of general circulation in the City of Warrenton, and by first class mail to potentially affected parties.

b. Mailed notice will be provided to all owners of property within 200 feet of the subject property's exterior boundary; to local, state and federal agencies with an interest in the decision; and to any others that the Zoning Administrator has reason to believe are affected by the proposed decision.

c. Notice shall be mailed and published not less than ten days prior to the date of the decision.

d. Notice shall include the following information:

i. The name of the applicant

ii. The date the decision will become final

iii. A description reasonably calculated to inform a person of the location of the property for which a permit or other action is pending including the street address, and the subdivision lot and block designation or tax map designation of the County Assessor.

iv. A concise description of the proposed development action, and the proposed decision.

v. A description in general terms of the applicable criteria from the Zoning Ordinance and Comprehensive Plan known to apply to the issue.

vi. A statement that failure to raise an issue in person or by letter precludes appeal and that failure to specify to which criterion the comment is directed precludes an appeal based on that criteria.

vii. A statement describing where the complete application, all evidence supplied by the applicant, and applicable criteria are available for inspection at no cost; and that copies can be provided at reasonable cost.

viii. The name and phone number of a local government representative to contact for more information.

ix. A general explanation of the requirements for submission of comments and the procedure for appeals.

e. Mailed notice shall be sent to the applicant.

f. Addresses for a mailed notice required by this Ordinance shall be obtained from the County Assessor's Real Property Tax records. 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 Ordinance for notice.

(3) Appeals of administrative decisions shall be subject to the requirements of Section 14.050.