

A BILL FOR AN ORDINANCE AMENDING) Ordinance Bill No. 3
CHAPTER 17.64 OF THE LEBANON) for 2006
MUNICIPAL CODE CONCERNING THE)
APPEAL OF QUASI-JUDICIAL LAND USE) Ordinance Number 2394
DECISIONS)

WHEREAS, the City Council has determined that public participation in land use decisions is good public policy, supported by the laws of the State of Oregon; and

WHEREAS, the City Council has determined that such public participation can be protected by the use of a public process whereby the Council may review the records and testimony of proceedings of the Lebanon Planning Commission to determine whether or not that public body has accurately and appropriately heard public testimony and applied adequate conclusions from such testimony; and

WHEREAS, the Lebanon Planning Commission has conducted public hearings to determine efficient and appropriate methods of ensuring public participation in the planning process, such hearings having been conducted on the 19th day of October, 2005; and

WHEREAS, the Lebanon City Council makes the following findings:

1. On the 19th day of October, 2005, the Lebanon Planning Commission conducted a public hearing on the procedure to be followed in the event of an appeal being sought by a decision of the Lebanon Planning Commission. Appropriate notice of the hearing was made to the public, and witnesses testified.
2. At the conclusion of the hearing, the Planning Commission recommended that the procedures which have heretofore conducted "de novo" hearings before the City Council upon appeals from the Planning Commission were not necessary to

preserve the ability of the public to participate in the planning process for the following reasons:

- A. The Planning Commission receives training in conducting quasi-judicial hearings on land use issues which is unique to the training which is received by the City Council;
- B. The hearings conducted by the Planning Commission afford adequate opportunity for public participation in the planning process. A process by which the testimony, written or oral, and the record are reviewed by the City Council allow the Council to review the cases decided by the Planning Commission without the necessity of witnesses being required to attend a subsequent hearing, while the Council may review that testimony and evaluate it according to the criteria and standards applied to a land use decision; and
- C. State law requires that parties participate in the presentation of evidence at the outset of the process, or waive the opportunity to participate. The hearings process which is used by the Planning Commission adequately preserves the rights of citizens to participate, while recognizing the essential responsibility of persons to present arguments and testimony or waive that opportunity.

NOW, THEREFORE, based upon the findings made above and the Lebanon City Council's determination that it is in the best public interest to obviate the need for repetitive public hearings, the People of the City of Lebanon ordain as follows:

Section 1. Chapter 17.64 of the Lebanon Municipal Code, concerning the appeals of decisions is hereby amended to read as follows:

17.64.010 Appeals from planning official.

An appeal from a ruling of the planning official regarding a requirement of this title may be made only to the planning commission. Any action or ruling of the planning official shall become final fifteen days after approval or disapproval is given unless the decision is appealed to the planning commission. Written notice of the appeal shall be filed with the planning official. If the appeal is filed, the planning commission shall receive a report and recommendation thereon from the planning official and shall hold a public hearing on the appeal. The scope of review shall be de novo review of the action of the planning official, considering the entire record of the planning official.

17.64.020 Appeals from planning commission.

An action or ruling of the planning commission may be appealed to the city council, within fifteen days after the planning commission has rendered its decision, by filing written notice with the city recorder. The written notice shall be on a form required by the City, accompanied by a required filing fee which shall be set by the City. If no appeal is filed within the fifteen-day period, the decision of the planning commission shall be final. If an appeal is filed, the council shall receive the record of the proceedings from the planning commission and a public hearing shall be held on the appeal pursuant to the procedures set forth in this chapter.

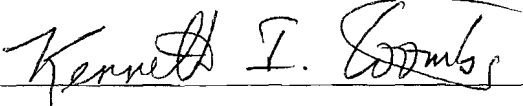
17.64.030 Scope of Review

A. Upon appeal, the City Council shall not re-examine issues of fact and shall limit its review to determining whether there is substantial evidence to support the findings of the Planning Commission, or to determine if errors in law were committed by the Planning Commission. Review shall in any event be limited to those issues set forth in the notice of appeal. The appellant is also precluded from raising an issue on appeal to the Council if the appellant could have raised the issue before the Planning Commission but failed to do so. Review shall be based on the record of the initial proceedings. The record shall consist of the application and all materials submitted with it; documentary evidence, exhibits and materials submitted at the initial hearing; recorded testimony; the decision of the approving authority, including the findings and conclusions; and the notice of appeal. Only the appellant and other parties who appeared in person or who submitted evidence in

the initial proceedings may participate in the appeal hearing. Appellant shall make the initial presentation and shall be allowed rebuttal. Each participant in the appeal hearing shall present to the council those portions of the record which the participant deems relevant to the appeal. If a party wishes the council to review recorded testimony, the party shall present a written summary or transcript of such testimony to be read by the council in lieu of actually listening to the recording.

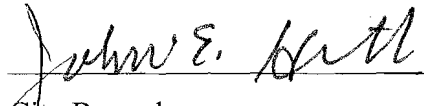
B. The council may, in its decision on the appeal, amend, rescind, or affirm the action appealed from, or may remand the matter for further proceedings or fact finding by the Planning Commission. The council shall not be bound by any finding, conclusion or other ruling of the Planning Commission.

PASSED by the City Council for the City of Lebanon on the 26 day of January, 2006 by a vote of 4 for and 2 against.



Mayor

ATTEST:



City Recorder