

City of Sherwood, Oregon

ORDINANCE NO. 90-906

AN ORDINANCE AMENDING THE CITY ZONING AND COMMUNITY DEVELOPMENT CODE WITH RESPECT TO PUBLIC HEARING NOTICES AND PROCEDURES, CONFORMING THE CITY'S PUBLIC HEARING REQUIREMENTS TO NEW STATE STATUTES, AND DECLARING AN EMERGENCY.

---

WHEREAS, the Oregon State Legislature passed a new statute (House Bill 2288) in 1989 that amends previous requirements for public hearing notices and procedures for land use actions; and

WHEREAS, the new statute affects the City's current regulations regarding deadlines for applications and staff reports, public hearing notification distances, content of public hearing notices, conduct of public hearings, and appeal limitations; and

WHEREAS, the new statute redefines land use actions requiring public hearings; and

WHEREAS, the new statute became effective on October 1, 1989 and failure to comply with the requirements of HB2288 may provide the basis for a continuance or appeal of an approval request; and

WHEREAS, the expansion of the requirement for public hearings on land use decisions renders obsolete several City provisions for "minor" land use applications, and also will increase the cost of processing and reviewing most City land use applications.

NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:

Section 1: Administrative Procedures: Chapter 3 of the Zoning and Community Development Code is hereby amended to read:

**3.100      GENERALLY**

**3.101      PRE-APPLICATION CONFERENCE**

Pre-application conferences shall be scheduled to provide applicants with the informational and procedural requirements of this Code; to exchange information regarding applicable policies, goals and standards of the Comprehensive Plan; to provide technical and design assistance; and to identify opportunities and constraints for a proposed land use action.

### **3.102 APPLICATION MATERIALS**

#### **3.102.01 Form**

Any request for a land use action shall be made on forms prescribed and provided by the City and shall be prepared and submitted in compliance with this Code.

#### **3.102.02 Copies**

To assist in determining the compliance of proposed land use actions with the Comprehensive Plan and provisions of this Code, applicants shall submit fifteen (15) copies of: the completed application form, with attachments or exhibits specifying and illustrating the proposed land use action; an existing conditions inventory; the proposed development plan; and any supplemental materials, as required by Section 4.100. Additional information may be required at the discretion of the City.

### **3.103 APPLICATION SUBMITTAL**

#### **3.103.01 Deadlines**

Completed application forms, application materials, and fees must be submitted to the City, and accepted as full and complete as per Section 3.103, at least thirty (30) calendar days in advance of the Commission meeting at which the application is to be first considered, except as provided by Section 7.301.01.

#### **3.103.02 Acceptance**

Within seven (7) calendar days of the date of initial submission, the City shall determine whether the application is complete and so notify the applicant in writing. Incomplete applications will not be accepted by the City. Incomplete applications shall be returned to the applicant along with a written notification of the application's deficiencies and all materials and fees submitted. Provided, however, that incomplete applications may be resubmitted when the noted deficiencies have been corrected to the City's satisfaction.

### **3.104 AVAILABILITY**

#### **3.104.01 Public Inspection**

- A. Except as provided herein, all application materials to be relied upon in public hearings on land use actions required by this Code shall be available for public inspection twenty (20) calendar days in advance of the initial hearing before the Commission or Council. If two (2) or more hearings are required on a land use action, all application materials shall be available for public inspection at least ten (10) calendar days in advance of the initial hearing before the Commission or Council.
- B. Application materials shall be available to the public for inspection at no cost. Copies of application materials will be provided to the public, upon request, at a cost defined by the City's schedule of miscellaneous fees and charges.

#### **3.104.02 Continuance**

If additional materials are provided in support of an application later than twenty (20) calendar days in advance of the initial hearing before the Commission or Council, or later than ten (10) calendar days in advance of the initial hearing before the Commission or Council if two (2) or more hearings are required, or if the City or the applicant fails to meet any requirements of Section 3.200, any party to the application, or party notified of the hearing as per Section 3.202.03, may make request to the City, either verbally at the initial hearing or in writing at any time before the close of the hearing, for a hearing continuance. If, in the City's determination, there is a valid basis for the continuance request, said request shall be granted.

### **3.105 APPLICATION RESUBMISSION**

A land use application denied in accordance with this Code, shall not be accepted for resubmission for one hundred eighty (180) calendar days following the date of the denial, unless the application has been sufficiently modified to abrogate the reason for denial, as determined by the City. All applications resubmitted after being denied in accordance with this Code shall be required to provide new application materials, pay new fees, and shall be subject to the

full hearing and review process required by this Code for the land use action being considered.

**3.200      PUBLIC NOTICE AND HEARING**

**3.201      GENERALLY**

When required by this Code, the Council and/or the Commission shall provide notice and conduct public hearings pursuant to Section 3.200. The land use actions for which public hearings are required are:

- A.    Zoning Map Amendments (Commission and Council)
- B.    Zoning Text Amendments (Commission and Council)
- C.    Conditional Uses (Commission only)
- D.    Variances (Commission only)
- E.    Site Plans (Commission only)
- F.    Interpretations of Similar Uses (Commission only)
- G.    Temporary Uses (Commission only)
- H.    Planned Unit Developments (Commission and Council)
- I.    Preliminary plats of Subdivision and Land Partitions (Commission only)
- J.    Annexations (Commission and Council)
- K.    Other Land Use Actions (Commission or Council)

**3.202      FORM OF NOTICE**

**3.202.01   Newspaper Notice**

Notices of all public hearings on land use actions required by this Code shall be published in a newspaper of general circulation within the City in each of the two (2) calendar weeks prior to the initial hearing before the Commission or Council.

**3.202.02   Posted Notice**

Notices of all public hearings on land use actions required by this Code shall be posted by the City in no fewer than five (5) conspicuous locations within the City, not less than twenty (20) calendar days in advance of the initial hearing before the Commission or Council.

**3.202.03   Mailed Notice**

- A.    For public hearings on zoning map amendments, conditional uses, variances, site plans, temporary uses, minor land partitions, subdivisions, annexations, and other land use action specific to a property or group of properties, the City shall send written notice by regular mail to

owners of record of all real property within the following distances from the property subject to the land use action:

Wholly or partly within the UGB = 100 feet;  
Outside UGB, not in farm or forest zone = 250 feet;  
Outside UGB, in farm or forest zone = 500 feet.

- B. Except as otherwise provided herein, written notice to property owners shall be mailed at least twenty (20) calendar days in advance of the initial public hearing before the Commission or Council. If two (2) or more hearings are required on a land use action, notices shall be mailed at least ten (10) calendar days in advance of the initial hearing before the Commission or Council.
- C. For the purposes of mailing the written notice, the names and addresses of the property owners of record, as shown on the most recent County Assessor's records in the possession of the City, shall be used. Written notice shall also be mailed to homeowners associations when the homeowners association owns common property within the notification area and is listed in the County Assessor's records.
- D. For written notices required by this Code, other than written notices to property owners of record, the City shall rely on the address provided by the persons so notified. The City shall not be responsible for verifying addresses so provided.

#### **3.202.04 Failure to Receive Notice**

- A. The failure of a property owner or other party to an application to receive notice of a public hearing as provided in Code Section 3.202.03 or to receive notice of continuances and appeals as provided by this Code due to circumstances beyond the control of the City, including but not limited to recent changes in ownership not reflected in County Assessors records, loss of the notice by the postal service, or an inaccurate address provided by the County Assessor or the party to the application, shall not invalidate the applicable public hearing or land use action. The City shall prepare and maintain affidavits demonstrating that public notices were mailed, published, and posted pursuant to this Code.

- B. Persons who should have received notice of a proposed land use action but can prove, to the City's satisfaction, that notice was not received due to circumstances beyond their control, may be permitted, at the City's discretion, to exercise the right to appeal the action as per Section 3.400. All appeals filed under such conditions shall cite the circumstances resulting in the non-receipt of the notice.

### 3.203 CONTENT OF NOTICE

#### 3.203.01 Public Hearing Notices

Public hearing notices shall include the following information:

- A. The nature of the application and proposed use(s).
- B. A list of the applicable Code or Comprehensive Plan criteria to be applied to the review of the proposed land use action.
- C. The location and street address of the property subject to the land use action (if any).
- D. The date, time, place, location of the public hearing.
- E. The name and telephone number of a local government representative to contact for additional information.
- F. The availability of all application materials for inspection at no cost, or copies at reasonable cost.
- G. The availability of the City planning staff report for inspection at no cost, or copies at a reasonable cost, at least seven (7) calendar days in advance of the hearing.
- H. The requirements for the submission of testimony and the procedures for conducting hearings, including notice that failure to raise an issue, or to provide sufficient specificity so as to afford a reasonable opportunity for other parties to the application to respond, will preclude appeal on said issue to the Council or to the State Land Use Board of Appeals (LUBA).

### **3.204 PLANNING STAFF REPORTS**

Recommended findings of fact and conditions of approval for each land use action shall be made in writing in a City planning staff report. Said staff report shall be published seven (7) calendar days in advance of the initial required public hearing before the Commission or Council. Copies shall be provided to the applicant and the Commission or Council no later than seven (7) calendar days in advance of the scheduled public hearing. Staff reports shall be available to the public for inspection at no cost. Copies of the staff report shall be provided to the public, upon request, at a cost defined by the City's schedule of miscellaneous fees and charges.

### **3.205 CONDUCT OF PUBLIC HEARINGS**

#### **3.205.01 Hearing Disclosure Statements**

The following information or statements shall be verbally provided by the Commission Chairperson or the Mayor, or his or her designee, at the beginning of any public hearing on a land use action:

- A. The findings of fact and criteria specified by the Code that must be satisfied for approval of the land use action being considered by the Commission or Council.
- B. That public testimony should be limited to addressing said findings of fact and criteria, or to other City or State land use standards which the persons testifying believe apply to the proposed land use action.
- C. That failure to raise an issue, or failure to raise an issue with sufficient specificity so as to provide the City, applicant, or other parties to the application with a reasonable opportunity to respond, will preclude appeal on said issue to the Council or to the State Land Use Board of Appeals (LUBA).
- D. The rights of persons to request, as per this Code, that a hearing be continued or that the hearing record remain open.
- E. That all persons testifying shall be deemed parties to the application, and must provide their name and full mailing address if they wish to be

notified of continuances, appeals, or other procedural actions as required by this Code.

### **3.205.02 Persons Testifying**

Any person, whether the applicant, a person notified of the public hearing as per Section 3.202, the general public, or the authorized representative of any of the foregoing persons, may testify at a public hearing on a land use action. Testimony may be made verbally or in writing. The applicant, the applicant's representative, or any person so testifying, or that person's authorized representative, shall be deemed a party to the application, and shall be afforded all rights of appeal allowed by this Code and the laws of the State of Oregon.

### **3.205.03 Hearing Record**

- A. Unless the hearing is continued or an additional hearing scheduled, any person testifying may request, verbally or in writing before the conclusion of the initial hearing before the Commission or Council, that the record remain open for an additional seven (7) calendar days. Such requests shall be granted. The Commission or Council shall not take final action on a land use application until the hearing record is closed.
- B. When a hearing record remains open, then any person may submit new evidence or testimony, or raise new issues relating to any of the new evidence or testimony. The City shall not be responsible for notifying all parties to an application of the new evidence presented under such circumstances.
- C. If, after the close of the final hearing before the Commission or Council or the close of the hearing record as per Section 3.205.03A, the City reopens said hearing or record for any reason, then all parties to the application as per Section 3.205.02 shall be so notified, either verbally if the reopening occurs at the same Commission or Council meeting at which the hearing was conducted or in writing if the reopening occurs at a later date. Said notice shall indicate the time and place of the reopened hearing, the reason for the reopening, and provide for a reasonable opportunity to submit further written or verbal testimony.



**3.206 NOTICE OF DECISION**

Within seven (7) calendar days of a land use action by the Commission or Council, the City shall notify the applicant in writing of said action. This notice of decision shall list the terms and conditions of approval or denial, and explain the applicant's rights of appeal.

**3.207 REGISTRY OF DECISIONS**

The City shall maintain a registry of all land use actions taken in the preceding twelve (12) months. This registry shall be kept on file in the City Recorder's office and shall be made available to the public for inspection at no cost. Copies of the registry shall be provided to the public, upon request, at a cost defined by the City's schedule of miscellaneous fees and charges.

**3.300 APPLICATION FEES**

**3.301 TYPE OF ACTION**

Action	Fee
Zone Text Amendment	\$400.00
Zoning Map Amendment	\$650.00
Conditional Use	\$400.00
Variance	\$250.00
Minor Land Partition	\$250.00
Subdivision	\$550.00 plus \$5.00 per lot
Planned Unit Development	\$750.00
Planned Unit Development with Subdivision	\$750.00 plus \$5.00 per lot
Site Plan Review (Based on project value)	
Less than \$49,999	\$250.00
\$50,000 to \$99,999	\$350.00
\$100,000 to \$999,999	\$550.00
Over \$1,000,000	\$650.00
Appeal	One half (1/2) original fee
Interpretation of Similar Use	\$250.00
Temporary Use	\$250.00
Annexations	\$450.00
Signs	
Requiring Commission Review	\$100.00

Requiring Permit Only	\$ 20.00
Directional Signs	\$ 10.00 per sign
Time Extension (requiring hearing)	\$250.00
Time Extension (no hearing required)	\$100.00
Other Land Use Action (requiring hearing)	\$250.00
Other Land Use Action (no hearing required)	\$100.00

### 3.302 EXCEPTIONS

Except when a land use action is initiated by the Commission or Council, application fees shall be paid to the City upon the filing of all land use applications. Full or partial waiver or refund of the fees required by Section 3.301 may be granted by the Council, based on a written request by the applicant showing cause for such reduction.

### 3.400 APPEALS

#### 3.401 GENERALLY

##### 3.401.01 Basis of Appeal

- A. Any issue which may be the basis for appeal of a land use action to the Council or to the State Land Use Board of Appeals (LUBA) shall be raised not later than the close of the final hearing on the proposal before the City, or within seven (7) calendar days as per Section 3.205.03.
- B. Failure to raise an issue, or failure to raise an issue with sufficient specificity so as to provide the City, applicant, or other parties to the application with a reasonable opportunity to respond, will preclude appeal on said issue to the Council or to LUBA. Any aggrieved party appealing a land use action must exercise the right of petition for review to the Council prior to making any appeal to LUBA, except as provided in Section 3.401.03.

##### 3.401.02 Appeal Eligibility

Except as otherwise permitted herein, only persons who were a party to the action being appealed, as defined by Section 3.205.02, are eligible to file for a petition for review by the Council. If the potential appellant is judged not to be a party to the action, or

the issue(s) that are the basis of the appeal were not raised as per Section 3.401.01, as determined by the City, the Council shall refuse to hear the appeal and direct that the appellant be so notified in writing.

### **3.401.03 Exception**

If the City either takes a land use action without providing a hearing as required by this Code, or takes a land use action which is substantially different than indicated in notice of the proposed action as per Section 3.203.01, an aggrieved party may, as provided by the law of the State of Oregon, appeal directly to State Land Use Board of Appeals (LUBA).

### **3.402 APPEAL DEADLINE**

Land use actions taken pursuant to this Code shall be final unless a petition for review is filed with the City Recorder not more than twenty-one (21) calendar days after the date on which the Commission or Council took final action on the land use application. In the event the aggrieved party is the applicant, the twenty-one (21) calendar days shall be counted from the date when written notice of the action has been mailed to the address shown on the application.

### **3.403 PETITION FOR REVIEW**

Every petition for review shall include the date and a description of the land use action, including adopted findings of fact, a statement of how the petitioner is aggrieved by the action, the specific grounds relied upon in requesting a review, and a fee pursuant to Section 3.301.

### **3.404 COUNCIL ACTION**

The review of the appealed land use action shall include a public hearing conducted by the Council at which time all parties to the action, as per Section 3.205.02, may present old evidence or any additional evidence. Public notice and hearing procedures for appeals shall be identical to the procedures used in initially taking the land use action which is being appealed. The Council may act to affirm, reverse, refer or amend the action being reviewed. The action of the Council shall be final, except insofar as further appeal to the State Land Use Board of Appeals (LUBA) may be allowed by the law of the State of Oregon.

Section 2: Application Content: Section 4.100 of the Zoning and Community Development Code, under "Existing Conditions Inventory, Citizen Involvement", is hereby amended to read:

A list of tax lots, owners of record (including homeowners associations), and their addresses within the following distances from the property subject to a land use action for which a public hearing is required:

Wholly or partially within the UGB = 100 feet;  
Outside UGB, not in farm or forest zone = 250 feet;  
Outside UGB, in farm or forest zone = 500 feet.

Section 3: Minor Zoning Map Amendment: Section 4.200.02 is hereby deleted in its entirety.

Section 4: Interpretation of Similar Uses: Section 4.603 of the Zoning and Community Development Code is hereby amended to read:

4.603 APPROVALS

The Commission shall conduct a public hearing pursuant to Section 3.200 and take action to approve, approve with conditions, or deny the request for an interpretation of a similar use. The action of the Commission may be appealed to the Council in accordance with Section 3.400.

Section 5: Site Plan Review: Section 5.102 is hereby amended to read:

5.102.05 Approvals

The Commission shall conduct a public hearing pursuant to Section 3.200 and take action to approve, approve with conditions, or deny the application for site plan review. The Commission's action shall include appropriate findings of fact as required by Section 5.102.04. The action of the Commission may be appealed to the Council in accordance with Section 3.400.

5.102.06 Time Limits

Site plan approvals shall be void after one (1) year unless, actual construction on the site has begun, as determined by the City. The Commission may extend site plan approvals for an additional period not to exceed one (1) year, upon written request from the applicant showing adequate cause for such extension.

5.102.07 Additional Standards

The Commission may increase, decrease, or otherwise modify the standards contained in Chapter 5, other portions of this Code, or other City regulations where such modifications will better meet the intent and objectives of Section 5.100.

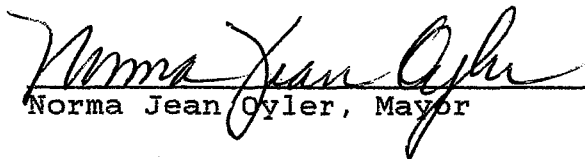
Section 6: Final Plat: Section 7.301.01 is hereby amended to read:

"Within twelve (12) months after approval of the preliminary plat, a final plat shall be submitted. The subdivider shall submit to the City the original drawings, the cloth, and fifteen (15) prints of the final plat, and all supplementary information required by or pursuant to this Code. The final plat application shall be submitted at least twenty (20) days prior to the Commission meeting at which consideration of the plat is desired."

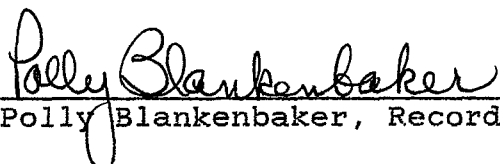
Section 7: Effective Date: Inasmuch as it is necessary for the peace, health and safety of the people of the City of Sherwood that this Ordinance take effect immediately, and in recognition that the new State statute mandating this Ordinance went into effect on October 1, 1989, an emergency is hereby declared to exist, and this Ordinance shall be effective upon its passage by the Council and approval by the Mayor. All land use applications accepted by the City after February 20, 1990 shall be processed in accordance with the terms of this Ordinance.

Duly passed by the City Council this 14th day of February, 1990

Approved by the Mayor this 16<sup>th</sup> day of February, 1990

  
Norma Jean Oyler, Mayor

Attest:

  
Polly Blankenbaker, Recorder

	<u>AYE</u>	<u>NAY</u>
BIRCHILL	<u>absent</u>	
CHAVEZ	<u>X</u>	
HITCHCOCK	<u>X</u>	
BOYLE	<u>X</u>	
OYLER	<u>X</u>	