

City of Sherwood, Oregon
Ordinance No. 99-1079

AN ORDINANCE APPROVING A PLAN TEXT AMENDMENT TO THE COMMUNITY DEVELOPMENT PLAN, PART 3, TO INCLUDE A DEFINITION FOR A HEARING AUTHORITY AND TO ESTABLISH A HEARINGS OFFICER IN THE DEVELOPMENT PROCESS FOR THE REVIEW OF TYPE III APPLICATIONS WITHIN THE CITY OF SHERWOOD.

WHEREAS, the Sherwood City Council has determined that certain portions of the existing process contained in the Comprehensive Plan, Part 3, Zoning and Community Development Code regarding development applications within the City are inadequate; and

WHEREAS, the proposed hearing authority and hearings officer language incorporates provisions for a hearings officer to review and conduct a public hearing on all Type III applications in the Zoning and Community Development Code which consists of minor land partitions, subdivisions, site plans, variances and conditional uses; and

WHEREAS, the Sherwood Planning Commission conducted work sessions on May 4, 1999 and June 1, 1999 to review the land use application review process, held public hearings on the proposed PA 99-3 Plan Text Amendment on April 20, 1999 and July 6, 1999, and recommended approval to the City Council; and

WHEREAS, the Sherwood City Council has received the City's Planning Staff report, the recommendation of the Planning Commission, and the Council has reviewed the materials submitted and the facts of the proposal.

NOW, THEREFORE, THE CITY ORDAINS AS FOLLOWS:

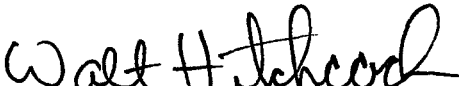
Section 1. Commission Review & Public Hearing. That the application for a Plan Text Amendment to incorporate a Hearings Authority into the Development Code, Part 3 (City File No. PA 99-3) was subject to full and proper review by the Planning Commission.

Section 2. Findings. That after full and due consideration of the application, the City Staff report, the record, findings, and of the evidence presented at the public hearing, the Council adopts the findings of fact contained in the staff report.

Section 3. Approval. That a request for the subject Plan Text Amendment is hereby APPROVED subject to the language contained in Attachment A.

Section 4. Effective Date. This ordinance shall become effective thirty (30) days after passage and approval.

Duly passed by the City Council this 28th day of September, 1999.



Walt Hitchcock, Mayor

ATTEST:

C. Wiley
C.L. Wiley, City Recorder

	AYE	NAY
Whiteman	<input checked="" type="checkbox"/>	___
Franklin	<u>absent</u>	___
Krause	<input checked="" type="checkbox"/>	___
Cottle	<u>absent</u>	___
Hitchcock	<input checked="" type="checkbox"/>	___

CHAPTER 1

GENERAL PROVISIONS

1.100 INTRODUCTION

1.101 GENERALLY

1.101.01 Title

Title Ordinance shall be known as the City of Sherwood, Oregon Zoning and Community Development Code, Part 3 of the City Comprehensive Plan, hereinafter referred to as the "Code".

1.101.02 Purpose

This Code is enacted to:

- A. Encourage the most appropriate use of land.
- B. Conserve and stabilize the value of property.
- C. Preserve natural resources.
- D. Facilitate fire and police protection.
- E. Provide adequate open space for light and air.
- F. Minimize congestion on streets.
- G. Promote orderly growth of the City.
- H. Prevent undue concentrations of population.
- I. Facilitate adequate provision of community facilities.
- J. Promote in other ways the public health, safety, convenience, and general welfare.
- K. Enable implementation of the Sherwood Comprehensive Plan in compliance with State Land Use Goals.

1.101.03 Conformance Required

The use of all land, as well as the construction, reconstruction, enlargement, structural alteration, movement, use, or occupation of any structure within the City shall conform to the requirements of this Code, except as allowed by Section 2.206. Age, gender or physical disability shall not be an adverse consideration in making a land use decision as defined in ORS 197.015(10).

1.101.04 Violations

Upon failure to comply with or maintain any provision of this Code, or with any restrictions or conditions imposed hereunder, the City may withhold or withdraw any City land use

approvals, permits, licenses, or utility services until the appropriate correction(s) is made. Notwithstanding any such action taken by the City, any person, firm or corporation who violates, disobeys, omits, neglects, or refuses to comply with any of the provisions of this Code, or who resists the enforcement of such provisions, shall be subject to civil penalties of no more than five-hundred dollars (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

1.101.05 Interpretation

The provisions of this Code shall be interpreted as minimum requirements. When this Code imposes a greater restriction than is required by other provisions of law, or by other regulations, resolutions, easements, covenants or agreements between parties, the provisions of this Code shall control.

1.101.06 Savings Clause

Should any section, clause or provision of this Code be declared invalid by a court of competent jurisdiction, the decision shall not affect the validity of the Code as a whole or of the remaining sections. Each section, clause, and phrase is declared severable.

1.101.07 Conflicting Ordinances

All zoning, subdivision, and other land development ordinances previously enacted by the City are superseded and replaced by this Code.

1.101.08 Regional, State and Federal Regulations

All development within the City shall adhere to all applicable regional, State and Federal air quality, water quality, noise, odor, building, wetlands, solid waste, natural resource, and other regulations and statutes.

1.101.09 Community Development Plan

This Code shall be administered in conjunction with, and in a manner that is consistent with, the policies and strategies adopted in the City of Sherwood, Oregon, Community Development Plan, Part 2 of the City Comprehensive Plan. The City Zoning Map, the Transportation Plan Map, the Natural Resources and Recreation Plan Map, the Water Service Plan Map, the Storm Drainage Plan Map, and the Sanitary Sewer Service Plan Map are extracted from the Community Development Plan, and attached to this Code as appendices. References to these maps shall be deemed to include all applicable policies, standards and strategies contained in Chapters 4, 5, 6, and 7 of the Community Development Plan.

1.102 ESTABLISHMENT OF ZONING DISTRICTS

1.102.01 Districts

For the purposes of this Code, the City is hereby divided into the following zoning districts:

Very Low Density Residential	VLDR
Low Density Residential	LDR
Medium Density Residential-Low	MDRL
Medium Density Residential-High	MDRH
High Density Residential	HDR
Neighborhood Commercial	NC
Office Commercial	OC
Office Retail	OR
Retail Commercial	RC
General Commercial	GC
Light Industrial	LI
General Industrial	GI
Flood Plain Overlay	FP
Institutional/Public	IP
Old Town Overlay	OT

1.102.02 Official Map

Zoning district boundaries are shown on the Official Plan and Zoning Map of the City. This Map is made part of this Code by reference, and shall be kept on file in the City Recorder's office. Any future changes to the zoning of land within the City shall be appropriately depicted on the Plan and Zoning Map and certified as to the date of amendment. The Official Plan and Zoning Map shall be the first and final reference point for verifying other land use mapping and in determining actual zoning district boundaries. A dated reproduction of the Official Plan and Zoning Map is attached as Appendix A.

1.102.03 Zoning District Boundaries

The Commission shall resolve any dispute over the exact location of a zoning district boundary. In interpreting the location of such boundaries on the Official Plan and Zoning Map, the Commission shall rely on the following guidelines:

- A. Unless otherwise indicated, zoning district boundaries are the centerlines of streets, roads, highways, alleys, or such lines extended.

- B. Where a boundary line follows or nearly coincides with a section, lot or property ownership line, the boundary shall be construed as following such line.
- C. In the event that a dedicated street, road, highway, or alley is vacated by ordinance, the zoning regulations applicable to abutting property shall apply up to the centerline of such rights-of-way.
- D. If a right-of-way is vacated in total to one (1) property, the zoning of that property shall apply to the total vacated right-of-way.

1.102.04 Urban Growth Area

The zoning districts shown on the Official Plan and Zoning Map, for land outside of the incorporated area of the City but within the Urban Growth Boundary, shall serve as a guide to development in these areas. Actual land use regulation and development shall be controlled under the terms of the Urban Planning Area Agreement between the City and Washington County. This Agreement is made part of this Code by reference and is attached as Appendix H. An area incorporated into the City shall, upon annexation, be given an interim zoning consistent with the Official Plan and Zoning Map. The City shall provide notice of this interim zoning as per Section 3.202.03. No hearing shall be required and the interim zoning shall be considered final thirty (30) days after mailing of said notice.

1.103 PLANNING COMMISSION

1.103.01 Appointment and Membership

- A. The City Planning Commission shall consist of seven (7) members to be appointed by the Council for terms of four (4) years. Two (2) members may be non-residents of the City, provided they reside within the Sherwood portion of the Urban Growth Boundary. Commission members shall receive no compensation for their services, but shall be reimbursed for duly authorized expenses.
- B. A Commission member may be removed by a majority vote of the Council for misconduct or non-performance of duty, as determined by the Council. Any vacancy shall be filled by the Council for the unexpired term of the predecessor in office.
- C. No more than two (2) Commission members shall be engaged principally in the buying, selling, or developing of real estate for profit as individuals, or be members of any partnership, or officers or employees of any corporation that is engaged principally in the buying, selling, or developing of real estate for profit. No more than two (2) members shall be engaged in the same kind of business, trade or profession.

1.103.02 Officers, Minutes, and Voting

- A. The Commission shall, at its first meeting in each odd-numbered year, elect a chair and vice-chair who shall be voting members and who shall hold office at the pleasure of the Commission.
- B. Before any meeting of the Commission, public notice shall be given as required by State statute and this Code. Accurate records of all Commission proceedings shall be kept by the City, and maintained on file in the City Recorder's office.
- C. A majority of members of the Commission shall constitute a quorum. A majority vote of those members, not less than a quorum, present at an open meeting of the Commission shall be necessary to legally act on any matter before the Commission. The Commission may make and alter rules of procedure consistent with the laws of the State of Oregon, the City Charter, and City ordinances.

1.103.03 Conflicts of Interest

- A. Commission members shall not participate in any Commission proceeding or action in which they hold a direct or substantial financial interest, or when such interest is held by a member's immediate family. Additionally, a member shall not participate when an action involves any business in which they have been employed within the previous two (2) years, or any business with which they have a prospective partnership or employment.
- B. Any actual or potential interest by a Commission member in a land use action as per Section 1.103.03A shall be disclosed by that member at the meeting of the Commission where the action is being taken. Commission members shall also disclose any pre-hearing or ex parte contacts with applicants, officers, agents, employees, or any other parties to an application before the Commission. Ex-parte contacts shall not invalidate a final decision or action of the Commission, provided that the member receiving the contact indicates the substance of the ex-parte communication and of the right of parties to rebut said content at the first hearing where action will be considered or taken.

1.103.04 Powers and Duties

Except as otherwise provided by law, the Commission shall be vested with all powers and duties, and shall conduct all business, as set forth in the laws of the State of Oregon, the City Charter, and City ordinances.

1.104 HEARINGS OFFICER

1.104.01 Appointment

- A. The City Council shall appoint a Hearings Officer for a term of two (2) years. The Hearings Officer shall be selected after requesting applications and interviewing selected candidates. The Hearings Officer may be terminated by a majority vote of the City Council.
- B. If the office of Hearings Officer is vacant or the Hearings Officer is unavailable, the Planning Commission shall perform all duties of the Hearings Officer.

1.103.02 Minutes

Before any meeting of the Hearings Officer, public notice shall be given as required by state statute and this Code. Accurate records of all Hearings Officer proceedings shall be kept by the City and maintained on file in the City Recorder's Office.

1.104.03 Conflicts of Interest

- A. The Hearings Officer shall not participate in any proceeding or action in which they hold a direct or substantial financial interest, or when such interest is held by a member's immediate family. Additionally, the Hearings Officer shall not participate when an action involves any business in which they have been employed within the previous two (2) years, or any business with which they have a prospective partnership or employment.
- B. Any actual or potential interest by the Hearings Officer in a land use action shall be disclosed by the Hearings Officer at the meeting where the action is being taken. The Hearings Officer shall also disclose any pre-hearing or ex parte contacts with applicants, officers, agents, employees, or any other parties to an application before the Hearings Officer. Ex-parte contacts shall not invalidate a final decision or action of the Hearings Officer, provided that the Hearings Officer indicates the substance of the ex-parte communication and of the right of parties to rebut said content at the first hearing where action will be considered or taken.

1.104.04 Powers and Duties

Except as otherwise provided by law, the Hearings Officer shall be vested with all powers and duties, and shall conduct all business, as set forth in the laws of the State of Oregon, the City Charter, this Code, and City ordinances.

- .63 **Ground Floor Area:** The total area of a building measured by taking the largest outside dimensions of the building, exclusive of open porches, breezeways, terraces, garages, exterior stairways, and secondary stairways.
- .64 **Hard Surface:** Any man-made surface that prevents or retards the saturation of water into land, or that causes water to run-off in greater quantities or increased rates, than existed under natural conditions prior to development. Common hard surfaces include but are not limited to: roofs, streets, driveways, sidewalks and walkways, patios, parking and loading areas, and other graveled, oiled, macadam or concrete surfaces. Also referred to as impermeable surface.
- .65 **Hazardous Waste:** Has the meaning given that term in ORS 466.005.

ADD **Hearing Authority:** The City of Sherwood Planning Commission, City Council, Landmarks Advisory Board or Hearings Officer.

ADD **Hearings Officer:** An individual appointed by the City Council to perform the duties as specified in this Code.

- .66 **Hogged Fuel:** Fuel generated from wood or other waste that has been fed through a machine that reduces it to a practically uniform size of chips, shreds, or pellets.
- .67 **Home Occupation:** An occupation or a profession customarily carried on in a residential dwelling unit by a member or members of the family residing in the dwelling unit and clearly incidental and secondary to the use of the dwelling unit for residential purposes.
- .68 **Hotel:** A building or buildings in which there are more than five (5) sleeping rooms occupied as temporary dwelling places, which rooms customarily do not contain full kitchen facilities, but may include kitchenettes.
- .69 **Homeowners Association:** A formally organized group of homeowners within a single housing development having shared responsibility for portions of the development such as building, landscaping, or parking maintenance, or other activities provided for by covenant or legal agreement.
- .70 **Household:** All persons occupying a group of rooms or a single room which constitutes a dwelling unit.
- .71 **Inert Material:** Solid waste material that remains materially unchanged by variations in chemical, environmental, storage, and use conditions reasonably anticipated at the facility.
- .72 **Junk:** Materials stored or deposited in yards and open areas for extended periods, including inoperable or abandoned motor vehicles, inoperable or abandoned

CHAPTER 3

ADMINISTRATIVE PROCEDURES

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. An applicant may apply at one time for all permits or zone changes needed for a development project as determined in the pre-application conference.

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. A land use application shall be reviewed against the standards and criteria effective at the time of application submittal.

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 Acceptance

Within thirty (30) 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. The application fees submitted are non-refundable. 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~~ Hearing Authority. All application materials to be relied upon for Type II decisions as indicated in Section 3.201 shall be available for public inspection fourteen (14) calendar days in advance of the staff decision on the application.
- 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~~ Hearing Authority, 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. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations. 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 review process required by this Code for the land use action being considered.

3.200 PROCEDURES FOR PROCESSING DEVELOPMENT PERMITS

3.201 GENERALLY

All development permit applications shall be classified as one of the following:

A. Type I

A Type I review action shall be decided by the ~~City Manager~~ City Planner or his/her ~~designee~~ without public notice or public hearing. Notice of a decision shall be provided to the applicant. The action of the ~~City Manager~~ or his/her ~~designee~~ City Planner may be appealed to the Planning Commission.

The following actions shall be subject to a Type I review process:

1. Signs
2. Property Line Adjustments
3. Interpretation of Similar Uses
4. Temporary Uses/~~Minor Site Plans~~

B. Type II

1. A Type II review action shall be decided by the ~~City Manager~~ or his/her ~~designee~~ City Planner with a public notice.
2. The City shall notify the applicant and all property owners within 100 feet of the proposal by mailed notice. Any person or property owner may present written comments to the City which address relevant criteria and standards. Such comments must be received by the City within 14 days from the date of the notice.
3. The ~~City Manager~~ or his/her ~~designee~~ City Planner shall make a decision based on the information presented, and shall issue a development permit if the applicant has complied with all of the relevant requirements of the Zoning and Community Development Code. Conditions may be imposed by the ~~City Manager~~ City Planner if necessary to fulfill the requirements of the Zoning and Community Development Code.
4. The decision shall be final unless an appeal is filed within 14 days of the final action. The applicant or any person providing written comments may appeal the decision to the Hearings Officer ~~City Council~~. Appeals of decisions relative to expedited land division applications shall be to a ~~hearings officer~~.

or If substantial public comment has been received, the City Planner shall deem the application controversial and elevate it to a type II process.

5. Appeals to the ~~City Council~~ Hearings Officer shall be subject to the requirements of Section 3.404 of the Zoning and Community Development Code or ORS 197.375 for Expedited Land Divisions.

The following actions shall be subject to a Type II review process:

- ~~1. Minor Site Plans - 15,000 square feet of building area or less~~
2. Minor Land Partitions
2. Expedited Land Divisions

C. Type III

A Type III review action shall be heard and decided by a Hearings Officer ~~the Planning Commission~~. The public hearing procedures shall be in accordance with the requirements of Section 3.202-3.300. An appeal of a Type III application shall be to the City Council. ~~A Type III review action shall be forwarded to the City Council if no decision has been reached by the Planning Commission within 45 days of the initially scheduled hearing.~~

The following actions shall be subject to a Type III review process:

1. Conditional Uses
2. Variances
3. Site Plans - ~~Greater~~ Less than 45,000/40,000 square feet of building area
4. Subdivisions - ~~Greater than 3 acres or land area~~ Less than 200 lots
- ~~5. Minor Land Partitions~~

D. Type IV

A Type IV review action shall be ~~considered~~ heard by public hearing by the Planning Commission and a recommendation made to the City Council. The City Council shall conduct a public hearing and make a final decision. The public hearing procedure shall be in accordance with the requirements of Section 3.202-3.300. ~~A Type IV review action shall be forwarded to the City Council if no decision has been reached by the Planning Commission within 45 days of the initially scheduled hearing.~~

The following actions shall be subject to a Type IV review process:

1. Plan Map Amendments
2. Plan Text Amendments
3. Planned Unit Developments
4. Site Plans - Equal to or Greater than 40,000 square feet of building area.

5. Subdivisions – Equal to or Greater than 200 lots

3.202 PUBLIC NOTICE AND HEARING**3.202.01 Newspaper Notice**

Notices of all public hearings for Type III and IV 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~~ Hearing Authority.

3.202.02 Posted Notice

Notices of all Type II, III and IV 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 fourteen (14) calendar days in advance of staff decision on Type II applications or twenty (20) calendar days in advance of the initial hearing before the ~~Commission or Council~~ Hearing Authority. Additionally, signage shall be posted on the subject property either fourteen (14) days in advance of the staff decision on Type II applications or twenty (20) calendar days in advance of the hearing before the ~~Commission or Council~~ Hearing Authority. The location, size and content of the sign shall be subject to the approval of the ~~City Manager or his/her designee~~ City Planner.

3.202.03 Mailed Notice

- A. For Type II, III and IV actions on zoning map amendments, conditional uses, variances, site plans, planned unit developments, ~~temporary uses~~, minor land partitions, subdivisions, annexations, landmarks, 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 one hundred (100) feet from the property subject to the land use action.
- 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 Hearing Authority ~~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. Written notice to property owners for Type II actions shall be mailed in accordance with Section 3.200.
- 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.
- E. If a zone change application proposes to change the zone of property which includes all or part of a manufactured home park, the City shall give written notice by first class mail to each existing mailing address for tenants of the manufactured home park at least twenty (20) days but not more than forty (40) days before the date of the first hearing on the application. Such notice costs are the responsibility of the applicant.

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 Notices**

Public 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 accompanied by statements or evidence sufficient to offer the City, applicant or other parties to the application the opportunity 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 Hearing Authority~~Commission or Council~~. Copies shall be provided to the applicant and the ~~Commission or Council~~Hearing Authority 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~~Hearing Authority.
- 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. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The local hearings authority shall grant such request by continuing the public hearing pursuant to paragraph (B) of this section or leaving the record open for additional written evidence or testimony pursuant to paragraph (C) of this section.~~
- 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. If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven (7) days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence and testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven (7) days to submit additional written evidence or testimony for the purpose of responding to the new written evidence.~~
- 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. If the hearings authority leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven (7) days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to Section 3.205.03 (F).~~

- D. A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 215.427 or 227.178, unless the continuance or extension is requested or agreed to by the applicant.
- E. Unless waived by the applicant, the local government shall allow the applicant at least seven (7) days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence.
- F. When a hearings authority 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.

3.205.04 Ex parte Contacts

Ex parte contacts with a member of the ~~Commission or Council~~ Hearing Authority shall not invalidate a final decision or action of the ~~Commission or Council~~ Hearing Authority, provided that the member receiving the contact indicates the substance of the content of the ex parte communication and of the right of parties to rebut said content at the first hearing where action will be considered or taken.

3.206 NOTICE OF DECISION

Within seven (7) calendar days of a land use action by the ~~Commission or Council~~ Hearing Authority, 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.

3.208 FINAL ACTION ON PERMIT OR ZONE CHANGE

Except for plan and land use regulation amendments or adoption of new regulations that must be submitted to the Director of the State Department of Land Conservation and

Development under ORS 197.610(1), final action on a permit, appeal, or zone change application shall be taken within one hundred and twenty (120) days of the application submittal. The one hundred and twenty (120) days may be extended for a reasonable period of time at the request of the applicant. An applicant whose application does not receive final consideration within one hundred and twenty (120) days after the application was accepted by the City may seek a writ of mandamus to compel issuance of the permit or zone change or a determination that approval would violate the City's Comprehensive Plan or land use regulations.

3.300 APPLICATION FEES

3.301 FEES

Fees for land use actions are set by the "Schedule of Development Fees", adopted by Resolution of the Council. This schedule is included herein for the purposes of information, but is deemed to be separate from and independent of this Code.

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~~ Hearing Authority 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. The record of the land use action shall be considered.

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.

cc: Ordinance Files
Incoming Planning Director
City Manager

Facsimile Cover Sheet

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TO: Chris Wiley, Recorder

LOCATION: Sherwood, OR

FAX #: (503) 625-5524

VOICE #: (503) 625-4246

COPY TO:

FROM: Mark Berens, Editor

COMMENTS: Chris,

A. I left a phone message for you regarding Ord. 99-1079. As we discussed, this ordinance indicates amendments to the zoning and community development code using strike-thru or underline. However, Ord. 99-1079 amends an outdated version of the zoning and community development code. It appears to amend Ord. 86-851, while failing to take into account subsequent amendments.

As a few examples of the difficulties:

1. Sections 3.200 (Procedures for Processing Development Permits) and 3.201 (Generally) have a number of proposed amendments to them. However, there is no "Procedures for Processing Development Permits" that I can find in the code and therefore nothing to amend.

2. In addition, Sections 3.202.01 through 3.202.04 are found in Section 16.50.020 on p. 341 in your code. However, you'll notice that the ordinance's versions refer to "Type VII, etc." land use actions throughout the sections. These "Type ___" land use actions were originally codified in Section 3.200 mentioned in item # 1 above. Since they are not currently in your code, the references in Sections 3.202.01 through 3.202.04 are not accurate.

Therefore, because Ord. 99-1079 amends an outdated version of the zoning and community development code, we cannot with any accuracy codify it. We recommend that Ord. 99-1079 be excluded from the supplement in process and replaced by an ordinance that amends the current zoning and community development code, as codified in Title 16 of the Sherwood Municipal Code.

B. One last thing: Unless you object, we will codify Ord. 99-1077 under Art. II of Ch. 12.04. Please let us know if you would like us to codify just Sections 1 through 4 of the ordinance alone, or Sections 1 through 4 as well as "Attachment A."

Please respond by December 3, 1999 in order to complete your supplement.

Sincerely,



Mark Berens
Book Publishing Company