

CITY ORDINANCE NO. 1010

AN ORDINANCE AMENDING SECTIONS 8.020, 9.020, 9.030, 9.040 AND 9.060 OF CITY ORDINANCE NO. 807, AND SECTIONS 12.010 THRU 12.080 OF CITY ORDINANCE NO. 805; AND DECLARING AN EMERGENCY.

The people of the City of Prineville ordain as follows:

SECTION 1. PURPOSE. This Ordinance is for the purpose of revising City planning regulations to comply with the applicable provisions of Oregon Revised Statutes Chapters 197 and 227 and to clarify certain Administrative provisions of said City Ordinances No.s 805 and 807.

SECTION 2. AMEND SECTION 8.020 OF CITY ORDINANCE NO. 807 TO READ AS FOLLOWS:

Section 8.020. Public Hearings on Amendments. The Planning Commission shall conduct a public hearing on a proposed amendment within 30 days after the amendment is proposed, and shall, within 15 days after the hearing, recommend to the City Council approval, disapproval, or modified approval of the proposed amendment. After receiving the recommendation of the Planning Commission, the City Council shall hold a public hearing on the proposed amendment and shall approve, approve with modifications, or disapprove the proposed amendment.

SECTION 3. AMEND SECTIONS 9.020, 9.030, 9.040 AND 9.060 OF CITY ORDINANCE NO. 807 TO READ AS FOLLOWS:

Section 9.020. Decisions. All decisions made pursuant to the provisions of this Ordinance for the approval or denial of an application authorized or required for a use permitted by this Ordinance shall be based upon and accompanied by a brief statement that explains the criteria and standards relied upon and considered relevant to the decision, that states the facts relied upon in rendering the decision, and explains the justification for the decision based on the criteria, standards, facts set forth. Written notice of the decision shall be given to all parties to the proceedings within ten(10) working days of the date that such decision is approved by the approving authority in writing.

Section 9.030. Appeals. A party aggrieved by a decision or requirement made by the City Planning Commission may appeal the action to the City Council, or a party may appeal a decision or requirement made pursuant to this Ordinance by the City Planning Director, Building Official or other City Official to the City Planning Commission except as set forth by Section 9.050 of this Ordinance, if the party:

Section 9.030; Contd.

- (1) Files a notice of intent to appeal as provided in Subsection (4) of this Section; and
- (2) Appeared or participated in the proceedings leading to the decision, either orally or in writing; and
- (3) Meets one or more of the following criteria:
 - (a) Was entitled to right of notice and hearing prior to the decision to be reviewed; or
 - (b) Was a person who would have had a right to notice if a hearing had been scheduled; or
 - (c) Is aggrieved, or has interests adversely affected by the decision, and submits sufficient evidence to substantiate such affect.
- (4) Written notice of an appeal must be filed with the City Recorder and/or Planning Director within 10 working days after the decision or requirement is set forth in writing by the approving authority, except as provided otherwise by Section 9.050 of this Ordinance.
- (5) The notice of appeal shall state the nature of the decision or requirement being appealed, a copy of the decision, the grounds for appeal, and shall specifically state the following:
 - (a) The facts that establish that the petitioner has standing; and
 - (b) The date of the decision being appealed; and
 - (c) Facts that substantiate that the issues sought to be reviewed were raised before the decision-making authority with sufficient specificity as to permit said authority the opportunity to respond; and
 - (d) Facts that establish that the issues sought to be reviewed relate to the specific criteria and/or standards that apply to the action to which the decision is applicable; and
 - (e) The issues the petitioner seeks to have reviewed shall be set forth in sufficient specificity as to permit the hearing body the opportunity to respond; and
 - (f) States whether or not the petitioner is requesting a verbatim transcript of the hearing on the subject decision being appealed, and fully understands the responsibilities of having such a record transcribed.
- (6) The appeal shall not be deemed complete until the required filing fee therefore as established by the City Council is submitted with the notice to appeal.

Section 9.030; Contd.

(7) The hearing body shall hold a hearing on the appeal within 30 days from the date the appeal is filed and deemed complete. A hearing on an appeal may be recessed or continued for good cause.

(8) The City Council or Planning Commission may review a lower decision or requirement upon its own motion after giving 10 days notice to the parties involved in the decision or requirement, and if such review is initiated within the 10 working day appeal period after the decision or requirement is made, except as provided otherwise by Section 9.050 of this Ordinance.

(9) An appeal or review proceedings shall be based upon the record of the decision being appealed or reviewed unless the hearing body rules that the record of the hearing is inadequate to make a reasonable decision, however hearing records need not set forth evidence verbatim. The hearing body shall set forth the procedures for the conduct of the hearing on the appeal, and, if the record of the decision being appealed or reviewed is determined adequate by the hearing authority, the hearing for the appeal or review proceedings shall provide for argument only.

(10) All appeal or review proceedings shall require a hearing by the reviewing authority. Notice of such hearing shall be published at least one time not less than 10 days prior to such hearing in a newspaper of general circulation in the City. In addition, individual notice shall be mailed or otherwise delivered to all parties participating in the appeal or review; "participating parties" shall be defined as the petitioner(s) for the appeal and the applicant(s) who initiated the action being appealed or reviewed. Such notice shall be mailed or otherwise delivered to said participating parties not less than 10 days prior to such hearing date.

(11) Appeal or review proceedings shall be conducted in open session by the reviewing authority, and testimony and evidence shall be strictly limited to those issues set forth in the petition for appeal or review unless the hearing authority specifically provides otherwise. Only if the hearing authority finds sufficient reasons related to an inadequate record, or finds specific procedural errors, shall the hearing record be reopened, and only if the hearing record is reopened shall any new issues and evidence or testimony related to such issues be permitted.

Section 9.030; Contd.

(12) Following the hearing, the reviewing authority may uphold, overrule or modify any decision or requirement, and shall set forth findings and conclusions for such decision.

Section 9.040. Form of Petitions, Applications and Appeals. Petitions, applications and appeals provided for in this Ordinance shall be made on forms provided for such purpose or as otherwise prescribed by the City in order to assure the fullest practical presentation of pertinent facts and to maintain a permanent record. Where accompanying plans and specifications must be submitted, such plans shall be legibly drawn to scale showing the actual shape and dimensions of the subject lot, parcel or site and its relationship to adjacent and surrounding properties, the sizes and locations of all existing and proposed structures, public or private facilities, and such other information as is needed to sufficiently determine conformance with this Ordinance, and more specifically with the criteria and standards applicable thereto.

Section 9.060. Public Hearings and Notice.

(1) General Rules for Hearings.

(a) Hearings on land use matters are conducted in a quasi-judicial manner; there shall not be any audience demonstrations or other conduct which would disrupt the hearing.

(b) Persons may only speak after being recognized by the presiding officer of the hearing, and must state their full name and address for the record.

(c) A record of attendance for the hearing shall be provided; parties not signing said attendance record may be precluded from testifying, or testimony may not be entered as a part of the hearing record.

(d) The hearing body shall only consider testimony and information that is relevant to the issue of the hearing, and the presiding officer may prohibit immaterial and/or repetitious testimony.

(2) Burden and Criteria: In the initial application stage, the proponent of an application or permit has the burden of proof for the justification of approval thereof; the more drastic the request, or the greater the impact of the application or permit, the greater is the burden of proof on the proponent. In any review or appeal of a decision, the party appealing has the burden of proof to overturn the prior decision.

Section 9.060; Contd.

(3) Order of Procedures for Hearing: The following procedures shall be followed in the conduct of hearings, except as otherwise modified or set forth by the hearing authority in the case of a hearing regarding a review or appeal, or as otherwise deemed necessary in the consideration of time or to maintain order. Relative thereto, the hearing authority may limit individual testimony times, may request that identified groups designate a specified number of representatives, may limit or prohibit repetitive testimony, and stipulate other hearing procedures that are deemed necessary to facilitate an orderly hearing process.

(a) The presiding officer shall request declarations of potential conflicts of interest and/or exparte contacts by members of the hearing body. Participation may be subject to objections from the public, and final determination by the hearing body.

(b) Input or advice from the City Attorney regarding procedures or other matters of concern relative to the subject matter of the hearing.

(c) Presentation of the City Planning Staff Report.

(d) Presentation of any other public or semi-public agency or organization with design recommendations; does not include proponent and/or opponent testimony from such agencies or organizations.

(e) Presentation by the applicant.

(f) Cross-examination of applicant by hearing body.

(g) Other proponent's testimony.

(h) Cross-examination of proponents by hearing body.

(i) Opponent's testimony.

(j) Cross-examination of opponents by hearing body.

(k) Rebuttal: Proponent's; then Opponent's.

(l) Final summation by applicant.

(m) Hearing closed.

(n) Deliberation by hearing body; upon closing the hearing, the hearing body will deliberate the question and reach a decision, or continue the matter for further study or decision, to an announced time and place.

(4) Public Notices.

(a) Unless required otherwise by this Ordinance, each notice of a hearing authorized or required by this Ordinance shall be published at least one time in a newspaper of general circulation in the City not less than 10 days prior to such hearing.

Section 9.060(4); Contd.

(b) In addition, individual notice shall be mailed or otherwise delivered as required by this Ordinance. Such mailed notices shall be mailed to the names and addresses of affected persons or parties within 100 feet of the affected property as such names and addresses are shown on the last available Crook County Assessor's assessment roll, except as required otherwise by ORS Chapter 197.763 as such applies to required notices for affected airports and mobile home parks.

(c) Such individual notices shall be mailed at least 20 days before the evidentiary hearing; or, if two or more evidentiary hearings are allowed, 10 days before the first such hearing.

(d) Failure of a person to receive the notice prescribed in this Section shall not impair or invalidate the proceedings of the subject hearing or any actions or decisions resulting therefrom.

(e) The notice provisions of the Section and this Ordinance shall not restrict the giving of notice by other means, including the public posting of notice, the posting of affected property, or the use of radio and/or television.

(5) Contents of Public Notices. Notices required by this Ordinance shall:

(a) Explain the nature of the application and the proposed use or uses which could be authorized;

(b) List the applicable criteria from the ordinance and the plan that apply to the application at issue;

(c) Set forth the street address or other easily understood geographical reference to the subject property;

(d) State the date, time and location of the hearing;

(e) State that failure of an issue to be raised in a hearing, in person or by letter, or failure of such issue to be relevant to the applicable criteria or standards, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal based on that issue;

(f) State that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost; and

(g) Includes a general explanation of the requirements for submission of testimony and the procedure for the conduct of hearings;

Section 9.060(5); Contd.

(h) State that a copy of the staff report will be available for inspection at no cost at least 7 days prior to the hearing and will be provided at reasonable cost; and

(i) Includes the name and phone number of a local government contact person where additional information can be obtained.

SECTION 4. AMEND SECTIONS 12.010 THRU 12.070 OF CITY ORDINANCE NO. 805 TO READ AS FOLLOWS:

Section 12.010. Decisions. All decisions made pursuant to the provisions of this Ordinance for the approval or denial of an application authorized or required for a use permitted by this Ordinance shall be based upon and accompanied by a brief statement that explains the criteria and standards relied upon and considered relevant to the decision, that states the facts relied upon in rendering the decision, and explains the justification for the decision based on the criteria, standards, facts set forth. Written notice of the decision shall be given to all parties to the proceedings within ten(10) working days of the date that such decision is approved by the approving authority in writing.

Section 12.020. Appeals. A party aggrieved by a decision or requirement made by the City Planning Commission may appeal the action to the City Council, or a party may appeal a decision or requirement made pursuant to this Ordinance by the City Planning Director, Building Official or other City Official to the City Planning Commission, if the party:

- (1) Files a notice of intent to appeal as provided in Subsection (4) of this Section; and
- (2) Appeared or participated in the proceedings leading to the decision, either orally or in writing; and
- (3) Meets one or more of the following criteria:
 - (a) Was entitled to right of notice and hearing prior to the decision to be reviewed; or
 - (b) Was a person who would have had a right to notice if a hearing had been scheduled; or
 - (c) Is aggrieved, or has interests adversely affected by the decision, and submits sufficient evidence to substantiate such affect.

Section 12.020; Contd.

(4) Written notice of an appeal must be filed with the City Recorder and/or Planning Director within 10 working days after the decision or requirement is set forth in writing by the approving authority.

(5) The notice of appeal shall state the nature of the decision or requirement being appealed, a copy of the decision, the grounds for appeal, and shall specifically state the following:

(a) The facts that establish that the petitioner has standing; and

(b) The date of the decision being appealed; and

(c) Facts that substantiate that the issues sought to be reviewed were raised before the decision-making authority with sufficient specificity as to permit said authority the opportunity to respond; and

(d) Facts that establish that the issues sought to be reviewed relate to the specific criteria and/or standards that apply to the action to which the decision is applicable; and

(e) The issues the petitioner seeks to have reviewed shall be set forth in sufficient specificity as to permit the hearing body the opportunity to respond; and

(f) States whether or not the petitioner is requesting a verbatim transcript of the hearing on the subject decision being appealed, and fully understands the responsibilities of having such a record transcribed.

(6) The appeal shall not be deemed complete until the required filing fee therefore as established by the City Council is submitted with the notice to appeal.

(7) The hearing body shall hold a public hearing on the appeal within 30 days from the date the appeal is filed and deemed complete. A hearing on an appeal may be recessed or continued for good cause.

(8) The City Council or Planning Commission may review a lower decision or requirement upon its own motion after giving 10 days notice to the parties involved in the decision or requirement, and if such review is initiated within the 10 working day appeal period after the decision or requirement is made.

(9) An appeal or review proceedings shall be based upon the record of the decision being appealed or reviewed unless the hearing body rules that the record of the hearing is inadequate to make a reasonable decision, however hearing

Section 12.020(9); Contd.

records need not set forth evidence verbatim. The hearing body shall set forth the procedures for the conduct of the hearing on the appeal, and, if the record of the decision being appealed or reviewed is determined adequate by the hearing authority, the hearing for the appeal or review proceedings shall provide for argument only.

(10) All appeal or review proceedings shall require a hearing by the reviewing authority. Notice of such hearing shall be published at least one time not less than 10 days prior to such hearing in a newspaper of general circulation in the City. In addition, individual notice shall be mailed or otherwise delivered to all parties participating in the appeal or review; "participating parties" shall be defined as the petitioner(s) for the appeal and the applicant(s) who initiated the action being appealed or reviewed. Such notice shall be mailed or otherwise delivered to said (affected) participating parties not less than 10 days prior to such hearing date.

(11) Appeal or review proceedings shall be conducted in open session by the reviewing authority, and testimony and evidence shall be strictly limited to those issues set forth in the petition for appeal or review unless the hearing authority specifically provides otherwise. Only if the hearing authority finds sufficient reasons related to an inadequate record, or finds specific procedural errors, shall the hearing record be reopened, and only if the hearing record is reopened shall any issues and new evidence or testimony related to such issues be permitted.

(12) Following the hearing, the reviewing authority may uphold, overrule or modify any decision or requirement, and shall set forth findings and conclusions for such decision.

Section 12.030. Form of Petitions, Applications and Appeals. Petitions, applications and appeals provided for in this Ordinance shall be made on forms provided for such purpose or as otherwise prescribed by the City in order to assure the fullest practical presentation of pertinent facts and to maintain a permanent record. Where accompanying plans and specifications must be submitted, such plans shall be legibly drawn to scale showing the actual shape and dimensions of the subject lot, parcel or site and its relationship

Section 12.030; Contd.

to adjacent and surrounding properties, the sizes and locations of all existing and proposed structures, public or private facilities, and such other information as is needed to sufficiently determine conformance with this Ordinance, and more specifically with the criteria and standards applicable thereto.

Section 12.040. Public Hearings and Notice.

(1) General Rules for Hearings.

(a) Hearings on land use matters are conducted in a quasi-judicial manner; there shall not be any audience demonstrations or other conduct which would disrupt the hearing.

(b) Persons may only speak after being recognized by the presiding officer of the hearing, and must state their full name and address for the record.

(c) A record of attendance for the hearing shall be provided; parties not signing said attendance record may be precluded from testifying, or testimony may not be entered as a part of the hearing record.

(d) The hearing body shall only consider testimony and information that is relevant to the issue of the hearing, and the presiding officer may prohibit immaterial and/or repetitious testimony.

(2) Burden and Criteria: In the initial application stage, the proponent of an application or permit has the burden of proof for the justification of approval thereof; the more drastic the request, or the greater the impact of the application or permit, the greater is the burden of proof on the proponent. In any review or appeal of a decision, the party appealing has the burden of proof to overturn the prior decision.

(3) Order of Procedures for Hearing: The following procedures shall be followed in the conduct of hearings, except as otherwise modified or set forth by the hearing authority in the case of a hearing regarding a review or appeal, or as otherwise deemed necessary in the consideration of time or to maintain order. Relative thereto, the hearing authority may limit individual testimony times, may request that identified groups designate a specified number of representatives, may limit or prohibit repetitive testimony, and stipulate other hearing procedures that are deemed necessary to facilitate an orderly hearing process.

Section 12.040(3); Contd.

(a) The presiding officer shall request declarations of potential conflicts of interest and/or exparte contacts by members of the hearing body. Participation may be subject to objections from the public, and final determination by the hearing body.

(b) Input or advice from the City Attorney regarding procedures or other matters of concern relative to the subject matter of the hearing.

(c) Presentation of the City Planning Staff Report.

(d) Presentation of any other public or semi-public agency or organization with design recommendations; does not include proponent and/or opponent testimony from such agencies or organizations.

(e) Presentation by the applicant.

(f) Cross-examination of applicant by hearing body.

(g) Other proponent's testimony.

(h) Cross-examination of proponents by hearing body.

(i) Opponent's testimony.

(j) Cross-examination of opponents by hearing body.

(k) Rebuttal: Proponent's; then Opponent's.

(l) Final summation by applicant.

(m) Hearing closed.

(n) Deliberation by hearing body; upon closing the hearing, the hearing body will deliberate the question and reach a decision, or continue the matter for further study or decision, to an announced time and place.

(4) Public Notices.

(a) Unless required otherwise by this Ordinance, each notice of a hearing authorized or required by this Ordinance shall be published at least one time in a newspaper of general circulation in the City not less than 10 days prior to such hearing.

(b) In addition, individual notice shall be mailed or otherwise delivered as required by this Ordinance. Such mailed notices shall be mailed to the names and addresses of affected persons or parties within 100 feet of the affected property as such names and addresses are shown on the last available Crook County Assessor's assessment roll, except as required otherwise by ORS Chapter 197.763 as such applies to required notices for affected airports and mobile home parks.

Section 12.040(4); Contd.

(c) Such individual notices shall be mailed at least 20 days before the evidentiary hearing; or, if two or more evidentiary hearings are allowed, 10 days before the first such hearing.

(d) Failure of a person to receive the notice prescribed in this Section shall not impair or invalidate the proceedings of the subject hearing or any actions or decisions resulting therefrom.

(e) The notice provisions of the Section and this Ordinance shall not restrict the giving of notice by other means, including the public posting of notice, the posting of affected property, or the use of radio and/or television.

(5) Contents of Public Notices. Notices required by this Ordinance shall:

(a) Explain the nature of the application and the proposed use or uses which could be authorized;

(b) List the applicable criteria from the ordinance and the plan that apply to the application at issue;

(c) Set forth the street address or other easily understood geographical reference to the subject property;

(d) State the date, time and location of the hearing;

(e) State that failure of an issue to be raised in a hearing, in person or by letter, or failure of such issue to be relevant to the applicable criteria or standards, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal based on that issue;

(f) State that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost; and

(g) Includes a general explanation of the requirements for submission of testimony and the procedure for the conduct of hearings;

(h) State that a copy of the staff report will be available for inspection at no cost at least 7 days prior to the hearing and will be provided at reasonable cost; and

(i) Includes the name and phone number of a local government contact person where additional information can be obtained.

SECTION 5. DELETE SECTIONS 12.050, 12.060 AND 12.070 OF CITY ORDINANCE NO. 805 IN THEIR ENTIRETY.

SECTION 6. RENUMBER SECTION 12.080 OF CITY ORDINANCE NO. 805 TO BE SECTION 12.050, AND AMEND TO READ AS FOLLOWS:

Section 12.050. Filing Fees: Applications or filings required or permitted by this Ordinance shall be accompanied by a filing fee in the amount set forth by Resolution of the City Council.

SECTION 7. RENUMBER SECTION 12.090 OF CITY ORDINANCE NO. 805 TO BE SECTION 12.060.

SECTION 8. EMERGENCY DECLARED. Whereas the City Planning Commission has held two public hearings on the subject Ordinance and amendments set forth thereby and has recommended approval as being necessary to comply with applicable State Law; and, Whereas the City Council finds that such compliance is necessary to protect the public welfare of the City, now therefore an emergency is hereby declared and this Ordinance shall be in full force and effect on and after its approval by the City Council and the Mayor.

APPROVED BY THE CITY COUNCIL ON THE 14th DAY OF June, 1994.

APPROVED BY THE MAYOR ON THE 14th DAY OF June, 1994.

ATTEST:


CITY MANAGER/RECORDER

6-14-94
DATE


MAYOR