

ORDINANCE 2018-05

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AN ORDINANCE OF THE CITY OF MOLALLA CREATING SECTION 2.06 LAND USE HEARINGS BODIES AND THEIR DUTIES. [TO REPLACE SECTION 16.2]

Commented [KRC1]: This was removed from chapter 16.2 because it was a part of the development code and shouldn't be there all of the other boards are in chapter 2 of the code. So were just moving it not changing it. No impact.

WHEREAS, the Molalla City Council had recently done a Development Code update in 2017; and

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WHEREAS, section 16.2 was removed as Council did not believe it should be a part of the Development Code; and

WHEREAS, the City now needs a new section to replace section 16.2 and the City has posted the Ordinance in compliance with Molalla Municipal Code and notification requirements.

Chapter 46.20

NOW, THEREFORE, the City of Molalla ordains as follows:

Section 1: That this ordinance creating Section 2.06 Land use Hearings Bodies and Their Duties in the Molalla Municipal Code and adopting this version of section 2.06 land use hearing bodies and their duties as attached in Exhibit A.

SECTION 2: This ordinance is effective 30 days after passage.
Adopted this 13 day of November, 2018.

Approved:

Jimmy Thompson, Mayor

ATTEST this _____ day of _____ 2018.

Kelly Richardson, CMC
City Recorder

EXHIBIT A OF ORDINANCE 2018-05
HEARINGS BODIES AND THEIR DUTIES

Sections:

Article I. Hearings Officer

- ~~16.202.06.010~~ Appointment.
- ~~16.202.06.020~~ Qualification—Compensation.
- ~~16.202.06.030~~ Adoption of rules for conduct of hearings.
- ~~16.202.06.040~~ Rules of evidence at public hearings.
- ~~16.202.06.050~~ Challenge of decision.

Article II. Citizens Advisory Committee

- ~~16.202.06.060~~ Purpose.
- ~~16.202.06.070~~ Appointment and terms of members.
- ~~16.202.06.080~~ Meetings—Quorums—Officers.

Article III. Planning Commission

- ~~16.202.06.090~~ Purpose.
- ~~16.202.06.100~~ Created—Composition—Compensation.
- ~~16.202.06.110~~ Terms of members.
- ~~16.202.06.120~~ Quorum—Rules of procedure.
- ~~16.202.06.130~~ Meetings—Officers.
- ~~16.202.06.140~~ Record of proceedings.
- ~~16.202.06.150~~ Right of parties to present evidence at hearings.

~~**Article IV. Design Review Board**~~

- ~~16.20.160— Purpose.~~
- ~~16.20.170— Creation.~~
- ~~16.20.180— Time of meetings and officers.~~
- ~~16.20.190— Terms of members.~~
- ~~16.20.200— Quorum— Rules of procedure.~~
- ~~16.20.210— Record of proceedings.~~
- ~~16.20.220— Right of parties to present evidence at hearings.~~

Article I. Hearings Officer

~~16.202.06.010~~ Appointment.

The City Manager, subject to the approval of the City Council, may appoint a planning and zoning Hearings Officer to serve the City Council. Said Hearings Officer shall conduct hearings, make decisions or recommendations on applications for such matters as approved in this chapter. (Ord. 2010-15 §1; Ord. 2010-04 §1)

16.202.06.020 Qualification—Compensation.

The Hearings Officer shall be a member in good standing of the Oregon State Bar Association and shall be paid such compensation as agreed between such Hearings Officer and the City Council. (Ord. 2010-15 §1; Ord. 2010-04 §1)

16.202.06.030 Adoption of rules for conduct of hearings.

The Hearings Officer is authorized to adopt rules of procedure for the conduct of hearings pursuant to this chapter, provided such rules do not conflict with state law, the City Charter and ordinances, or the Comprehensive Plan. A copy of such rules shall be available for review at no cost or purchase for a nominal fee. (Ord. 2010-15 §1; Ord. 2010-04 §1)

16.202.06.040 Rules of evidence at public hearings.

Public hearings before the Hearings Officer shall be subject to the following rules of evidence: All interested persons shall be allowed to testify. A verbatim record of the proceeding shall be made by written, mechanical or electronic means. This record need not be transcribed except upon review of the record.

- A. All evidence offered and not objected to may be received, unless excluded by the Hearings Officer on the Hearings Officer's own motion. Evidence received at any hearing shall be of the quality that reasonable persons rely upon in the conduct of their everyday affairs. Evidence may be received in written form at or prior to the hearing.
- B. The Hearings Officer may exclude irrelevant, unduly repetitious, immaterial or cumulative evidence. Any erroneous admission of evidence by the Hearings Officer shall not preclude action or cause reversal on appeal unless shown to have substantially prejudiced the rights of a party.
- C. All evidence shall be offered and made a part of the record in the case, except for matters stipulated to and except as provided in subsection B of this section, no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies of excerpts or by incorporation by reference.
- D. The Hearings Officer may take notice of judicially cognizable facts, and take notice of general, technical or scientific facts within the Hearings Officer's specialized knowledge.
- E. Every party is entitled to an opportunity to be heard and present and rebut evidence. (Ord. 2010-15 §1; Ord. 2010-04 §1)

16.202.06.050 Challenge of decision.

- A. A party may challenge the Hearings Officer on the grounds of bias, ex-parte contact, or that the Hearings Officer has a legal conflict of interest. A written challenge must be delivered by personal service to the City Recorder and the Planning Department not less than 3 calendar days preceding the time set for public hearing.
- B. A challenge of the Hearings Officer's decision shall be entered in the record of the action. (Ord. 2010-15 §1; Ord. 2010-04 §1)

Article II. Citizens Advisory Committee

~~16.202.06.060~~ Purpose.

The purpose of the Citizens Advisory Committee is to assist in determining the community's interest in land use proposals and present such view at public hearings before the Hearings Officer, Planning Commission and City Council. A Citizens Advisory Committee meeting shall be for the purpose of reviewing current land use applications, ordinance and Comprehensive Plan amendments, and preparing written or oral testimony regarding such proposals to be presented at the appropriate public hearing. The Committee is authorized to file appeals from a decision of the city staff or Hearings Officer. The Planning Commission acts as the city's officially recognized Citizen Advisory Committee. (Ord. 2010-15 §1; Ord. 2010-04 §1)

~~16.202.06.070~~ Appointment and terms of members.

The Planning Commission is appointed as the Citizens Advisory Committee. At the discretion of the City Council or on petition by resolution from the Planning Commission, the City Council may establish a separate Citizens Advisory Committee. Terms of members shall run concurrently with their membership on the Planning Commission. If a separate Citizens Advisory Committee is established, the Mayor with the consent of the City Council shall appoint to it at least 3 but no more than 7 voting citizens who reside within the city limits. Such appointments shall be for a term of 1 year and may be terminated at the pleasure of the Mayor with the consent of the City Council. (Ord. 2012-03 §7; Ord. 2010-15 §1; Ord. 2010-04 §1)

~~16.202.06.080~~ Meetings—Quorums—Officers.

The Citizens Advisory Committee shall operate under the same rules and policies as those established for the Planning Commission. (Ord. 2010-15 §1; Ord. 2010-04 §1)

Article III. Planning Commission

~~16.202.06.090~~ Purpose.

The purpose of the Planning Commission shall be to conduct the review of the Comprehensive Plan, implement ordinances, hold hearings and make decisions and recommendations to the City Council on major plan and ordinance amendment applications as well as other such matters approved in this chapter. (Ord. 2010-15 §1; Ord. 2010-04 §1)

~~16.202.06.100~~ Created—Composition—Compensation.

- A. There is created a City Planning Commission for the City of Molalla.
1. The Planning Commission shall consist of the following:
 - a. Voting Members.
 - i. A minimum of 3 but no more than 7 members to be appointed as outlined in Section ~~16.202.06.110~~.
 - ii. No more than 2 voting members may be non-residents of the city. There shall be more residents of the city than non-residents sitting on the board at all times.
 - b. City Involvement Seats on the Planning Commission.

- i. An additional 2 non-voting members on the board. Non-voting members will be afforded the privileges and rights given to voting members with the exception of voting privileges. Non-voting members shall be given priority consideration for the positions on the Planning Commission as positions become available given that they meet the criteria as set forth in subsection (A)(1)(a) of this section.
 - ii. Appointment of non-voting members shall occur as outlined in Section ~~16.202.06~~.110.
 - c. It is the policy of the City of Molalla that involving youth in the public decision-making process provides the opportunity to enhance the community's interest in this process for generations to come. Accordingly, the Planning Commission may also have up to 2 additional non-voting members of high-school age, who must live within the Molalla River School District.
 - i. A youth applicant must be 16 years of age or older.
 - ii. Meetings may go late into the evening. Students under the age of 18 shall not be allowed to go later than 9:00 p.m. on school nights, or 10:00 p.m. on nights when there is no school the following day. If the staff believes the frequency of Planning Commission meetings will disrupt the student's school work or interfere with the student's school schedule, staff may request the student be absent from certain meetings. Students shall be required to provide proof that their grades are being maintained at a minimum of a "C" average.
 - iii. Students will be expected to participate fully in discussions.
 - iv. Appointment of non-voting youth members shall occur as outlined in Section ~~16.202.06~~.110.
 - d. Individuals interested in serving on the Planning Commission shall meet the following criteria:
 - i. Reside within the City of Molalla, except as otherwise provided in this section.
 - ii. Not more than 2 members may have the same occupation.
 - iii. Must be a citizen of the United States of America.
- B. The composition of the Planning Commission shall meet the requirements of ORS 227.030. Commission members shall receive no compensation. (Ord. 2012-03 §8; Ord. 2010-15 §1; Ord. 2010-04 §1)

~~16.202.06~~.110 Terms of members.

- A. Each member of the Planning Commission shall be appointed as provided in the City Charter to a 4-year term. Any vacancies shall be filled by the Mayor for the unexpired portion of the term.
- B. Unexcused absences from 3 regular meetings may disqualify a member at which time the Planning Commission may request that the Mayor appoint a replacement. Members shall call, mail, or drop-off a letter to staff in order to be excused from regularly scheduled meetings.
- C. All appointments to the Commission may be terminated at the pleasure of the Mayor with the Consent of the City Council. (Ord. 2012-03 §9; Ord. 2010-15 §1; Ord. 2010-04 §1)

16.202.06.120 Quorum—Rules of procedure.

- A. A majority of the voting Commission shall constitute a quorum. The Commission is authorized to adopt rules of procedure for the conduct of its meetings and hearings, provided such rules do not conflict with state law, City Charter, Ordinances, and the Comprehensive Plan. A copy of such rules shall be filed with the City Recorder and made available for inspection to those appearing before the Planning Commission prior to their appearance.
- B. When exercising the function of the Hearings Officer, the Planning Commission shall follow the rules of the Hearings Officer in performing said function. A majority vote of the Planning Commission members present shall be sufficient for taking any action authorized by ordinance. (Ord. 2010-15 §1; Ord. 2010-04 §1)

16.202.06.130 Meetings—Officers.

The Planning Commission shall meet on a monthly basis. At the first meeting of each calendar year, the Commission shall select a chair, vice-chair, and a secretary. The chair, or vice-chair in the chair's absence, shall preside over the Planning Commission's meetings and hearings. (Ord. 2010-15 §1; Ord. 2010-04 §1)

16.202.06.140 Record of proceedings.

A ~~verbatim~~ record of the proceedings shall be made by ~~written, mechanical or~~ electronic recording and subject to retention schedule. A transcript can be made available upon written request within the first year of the proceeding means, which need not be transcribed, except upon review of the record. Summary written minutes will be kept of each meeting of record as a tracking method of the meeting and or hearing of record . (Ord. 2010-15 §1; Ord. 2010-04 §1)

Commented [KRC2]: I think this brings into the 21st century.

Commented [KRC3]: By law we are required to keep recordings for 12 months after which time a transcript would be impossible.

16.202.06.150 Right of parties to present evidence at hearings.

- A. At public hearings before the Planning Commission, all interested persons and organizations shall be allowed an opportunity to be heard and to present and rebut evidence.
- B. The Chair may limit the speaking time allowed for interested parties to 5 minutes. (Ord. 2010-15 §1; Ord. 2010-04 §1)

Article IV, Design Review Board

Commented [KRC4]: We no longer have a design review board. This is all done through the City Planner and Planning Commission.

16.20.160—Purpose:

~~The purpose of the Design Review Board (DRB) shall be to conduct reviews of design reviews which meet the criteria to be addressed by the DRB. (Ord. 2010-15 §1; Ord. 2010-04 §1)~~

16.20.170—Creation:

- ~~A. The Planning Commission shall act as the City's DRB in the absence of a DRB.~~
- ~~B. The Design Review Board shall consist of 7 voting members which meet the following:~~
 - ~~1. No more than 2 members may have the same qualification. Members shall be appointed using the following qualifications:~~
 - ~~a. Attorney;~~
 - ~~b. Architect/engineer;~~

- e. ~~Planning Director;~~
- d. ~~Developer/builder;~~
- e. ~~Real estate agent;~~
- f. ~~City of Molalla resident; and~~
- g. ~~Business owner. (Ord. 2010-15 §1; Ord. 2010-04 §1)~~

16.20.180 — Time of meetings and officers.

~~Meetings shall be scheduled on an as needed basis. At a minimum, the DRB shall hold at least 1 meeting every 6 months as a training session on the Design Review Code. At the first meeting of each year the DRB shall select a chairperson, vice chairperson, and secretary. (Ord. 2010-15 §1; Ord. 2010-04 §1)~~

16.20.190 — Terms of members.

- A. ~~Each member of the DRB shall be appointed to a 2-year term. Any vacancies shall be filled by a Planning Commissioner for the unexpired portion of the term.~~
- B. ~~Unexcused absences from 2 consecutive regular meetings shall disqualify a member, at which time the City Council shall appoint a replacement. Members shall call, mail, or drop off a letter to staff in order to be excused from regularly scheduled meetings. (Ord. 2010-15 §1; Ord. 2010-04 §1)~~

16.20.200 — Quorum — Rules of procedure.

~~The DRB shall follow the same rules and procedures set forth in Section 16.20.120, Quorum — Rules of procedure. When the Planning Commission serves as the DRB, Planning Commission rules shall apply. (Ord. 2010-15 §1; Ord. 2010-04 §1)~~

16.20.210 — Record of proceedings.

~~A verbatim record of the proceedings shall be made by written, mechanical or electronic means, which need not be transcribed, except upon review of the record. (Ord. 2010-15 §1; Ord. 2010-04 §1)~~

16.20.220 — Right of parties to present evidence at hearings.

- A. ~~At public hearings before the DRB, all interested persons and organizations shall be allowed an opportunity to be heard and to present and rebut evidence.~~
- B. ~~The chair may limit the speaking time allowed for interested parties to 5 minutes. (Ord. 2010-15 §1; Ord. 2010-04 §1)~~

