

BEFORE THE BOARD OF COUNTY COMMISSIONERS

MULTNOMAH COUNTY, OREGON

Ordinance No. 111

An ordinance amending Ordinance No. 100 by revising Section 8.00 (except for subsections 8.60 through 8.618, which are renumbered), and Section 12.00; establishing a Planning and Zoning Hearings Council and a Board of Adjustment; prescribing new administrative procedures; and repealing Ordinance No. 104.

Multnomah County ordains as follows:

Section 1. Purpose

- A. The Board of County Commissioners of Multnomah County, Oregon, recognizes that the zoning ordinance is in need of periodic revision and amendment and in the interest of the public health, safety and general welfare of the County's citizens the Board has determined the necessity of amending the Zoning Ordinance as hereinafter more particularly described.
- B. The Board takes notice that the Multnomah County Planning Commission has initiated and proposed these changes by resolution, has held public hearings and has recommended to the Board of County Commissioners that the changes be enacted, all in accordance with Ordinance No. 100 and ORS Chapter 215.

Section 2. Amendment of Section 8.00. Section 8.00, Ordinance No. 100, except as provided by Section 3 hereof, is amended to read:

8.00 PLANNING AND ZONING HEARINGS COUNCIL

8.10 Establishment. There is hereby established a Planning and Zoning Hearings Council, which shall act as a hearings officer as provided in ORS 215.406, advise the Board and exercise such powers and duties as are described in this ordinance.

8.10.1 The Director of Planning and Development and persons designated by the Director shall serve as staff for the Council and its committees and shall provide such administrative and technical assistance as may be required.

8.11 Membership. There shall be nine members of the Council: seven shall be designated Councilors and shall be appointed pursuant to the Charter of Multnomah County; two shall be appointed from the Planning Commission on recommendation to the Chairman of the Board of County Commissioners by the Chairperson of the Planning Commission, pursuant to the Charter.

8.11.1 The Councilors shall be residents of the various geographic areas of the County, and shall serve without compensation, except for reimbursement for duly authorized expenses.

8.11.2 No more than two members of the Council shall be engaged principally in the buying, selling or

developing of real estate for profit. No more than two members of the Council shall be engaged in the same kind of business, trade or profession.

- 8.11.3 At the request of the Council Chairperson, the Planning Commission Chairperson shall appoint one additional Planning Commission member to serve on the Council during the excused absence of a Councilor; provided that the person so appointed shall be deemed a member of the Council for all purposes regarding actions heard by the Council during the absence.
- 8.12 Term of Office. Terms of office of Councilors shall be four years, the terms continuing until successors are appointed. Terms of the initial seven Councilors shall be staggered for one, two, three and four years, as follows: two Councilors shall serve one year terms; two shall serve two year terms; two shall serve three year terms and one shall serve a four year term.
- 8.12.1 Terms of office of Planning Commission members serving on the Council shall be as designated by the Chairman of the Board of County Commissioners. Appointments shall be staggered, rotated at regular intervals and may include the designation of one or more alternates. The Chairperson of the Planning Commission shall recommend any appointment at least 30 days prior to commencement of service by any Planning Commission member on the Council, except

in the case of appointment of a successor and members whose terms on the Council commence on the effective date of this ordinance.

- 8.12.2 The initial members of the Council shall take office as of the effective date of this ordinance, but for the purpose of subsections 8.12 and 8.12.1, they shall be deemed to have taken office as of January 1, 1976.
- 8.13 Vacancies and Removal. Upon the resignation, permanent disqualification or removal of any Councilor, the Chairman of the Board shall appoint a successor to fill the remainder of the term pursuant to the County Charter. Upon the resignation, permanent disqualification or removal of any Planning Commission member serving on the Council, the Chairperson of the Planning Commission shall recommend a successor to be appointed pursuant to the County Charter to fill the remainder of the term.
- 8.13.1 After hearing, the Board may remove any Councilor for cause, which may include misconduct or non-performance of duty.
- 8.13.2 Unless excused by the Chairperson of the Council, the absence of any Councilor from three consecutive regular Council meetings shall be deemed a resignation.
- 8.14 Officers. The Chairman of the Board shall appoint one of the Councilors to serve as Chairperson of the Council during that person's term of office on the Council.

- 8.14.1 At its first meeting, the Council shall elect and install one Councilor to serve as Vice-Chairperson and one Councilor to serve as Secretary. Thereafter, such officers shall be elected at or before the Council's first meeting in January of each year.
- 8.14.2 The Secretary, with assistance from the staff of the Planning and Development Division, shall be responsible for keeping an accurate, permanent and complete record of all proceedings before the Council.
- 8.15 Committees. In addition to a Board of Adjustment as established in subsection 8.21, the Chairperson of the Council may appoint advisory and other committees as deemed appropriate or as directed by the Council.
- 8.16 Powers and Duties. Except as provided in subsection 8.25 relating to the Board of Adjustment, the Council shall:
- a. Exercise the authority of a Planning and Zoning Hearings officer pursuant to ORS 215.406;
 - b. Exercise the powers and duties of the Board of Adjustment, as provided in subsection 8.25, when otherwise acting on an application affecting the same property pursuant to this or other ordinance;
 - c. Recommend to the Board ordinances renaming public thoroughfares and the numbering of property pursuant to ORS 215.110(2);
 - d. Review applications for approval of the creation of a street or road for the purpose of partition-

- ing an area or tract of land pursuant to ORS 92.014;
- e. Hear and act upon appeals from administrative interpretations by the Planning Director authorized by ordinance;
 - f. Request, when appropriate, advisory opinions from the Planning Commission on the application of the Comprehensive Plan to any proposed action or other matter within the jurisdiction of the Planning Commission;
 - g. Recommend to the Board the institution of injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate or remove any existing or proposed unlawful location, construction, maintenance, repair, alteration or use of any building or structure or the existing or proposed unlawful subdivision or other unlawful partitioning or use of any land;
 - h. Enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon, as required to perform its functions;
 - i. Advise the Planning Commission and the Board concerning any problem comprehended within the powers and duties of the Council;
 - j. Consult with each advisory committee established under ORS 215.046(1) in regard to any matter

within the powers and duties of the Council;
and

k. Exercise such other powers and perform such other duties as may be given to the Council by this or other ordinance.

8.17 Meetings, Notices. The Council shall hold at least one public meeting each month. Additional meetings and the time and place of all meetings shall be as determined by the Chairperson or as requested by a majority of the entire Council.

8.17.1 Before any meeting of the Council for the conduct of business, notice shall be given as required by law and also in the following manner:

- a. Posting a notice in a conspicuous place in the Multnomah County Courthouse not less than seven days prior to the meeting;
- b. Except for actions before the Board of Adjustment, publishing a notice of the date, time, place and agenda of the meeting at least once in any daily newspaper having general circulation in excess of 50,000 in Multnomah County not less than seven days before the meeting;
- c. For actions by the Council or Board of Adjustment, providing notice as required by subsections 12.23 through 12.23.5; and
- d. Providing such notice and in such other manner as the Board or the Council may direct.

8.17.2 The Council shall hold a public meeting jointly with the Planning Commission at least once each four

months to consider such matters as the Commission or the Council may propose.

Notice of each joint meeting shall be given as required by law and as required in subsection 8.17.1.b.

- 8.17.3 The Chairperson of the Planning Commission or the Chairperson of the Hearings Council, or their designated substitutes, shall preside at alternate joint meetings provided for under subsection 8.17.2.
- 8.18 Rules of Procedure. The conduct of hearings of the Council shall be according to procedures prescribed by order of the Council and filed with the Clerk of the Board. The procedures shall be applicable to all requests for permits, to the determination of contested cases and to all matters coming before the Board of Adjustment pursuant to subsections 8.20 through 8.25.
- 8.18.1 Five members of the Council shall constitute a quorum for the conduct of business.
- 8.18.2 A member of the Council shall not participate in any Council proceeding or action in which any of the following has a direct or substantial financial interest: The member, the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner in any business of which he or she is then a member or has been a member with the previous two years

or in any business with which he or she is negotiating or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential financial or other interest which would lead to bias or partiality shall be disclosed, pursuant to subsection 12.23.9, at the meeting of the Council where the action is considered.

8.19 Coordination. The Council shall advise and cooperate with the Planning Commission and with other planning commissions, hearings officers, agencies or bodies within the State, and shall upon request or on its own initiative furnish advice or reports to the State or federal government or any city, county, officer or department on any problem comprehended within its powers and duties.

8.19.1 All County officials, departments and agencies having information, maps and data deemed by the Council pertinent to its powers and duties shall make such information available for the use of the Council.

8.20 BOARD OF ADJUSTMENT

8.21 Establishment. There is hereby established a committee of the Hearings Council to be called the Board of Adjustment, which shall exercise the powers and duties provided in subsection 8.25 of this ordinance.

- 8.22 Membership. The Chairperson of the Hearings Council shall appoint not less than three Councilors to serve as the Board of Adjustment for such terms as may be designated by the Chairperson of the Council.
- 8.23 Organization. The Board of Adjustment shall hold at least one meeting each month. Two members shall constitute a quorum.
- 8.24 Officers. The Board of Adjustment shall designate one member to serve as Chairperson at each meeting.
- 8.25 Powers and Duties. Except as otherwise provided by this ordinance, the Board of Adjustment shall consider and decide applications:
- a. For variances involving:
 1. Yard or setback requirements;
 2. Height requirements;
 3. Lot widths;
 4. Lot depths;
 5. Lot areas or lot coverages;
 6. Requirements relating to sight obscuring fences;
 7. Requirements relating to the height, size and location of signs;
 8. Off-street parking and loading requirements; and

9. Other dimensional requirements of this ordinance.

b. For temporary permits pursuant to subsections 12.71 through 12.72.3.

Section 3. Amendment by Renumbering Certain Subsections.

Subsections 8.60 through 8.618, Ordinance No. 100, are each renumbered by substituting "12" for "8" as the whole number.

Section 4. Amendment to Section 12.00. Section 12, Ordinance No. 100, is amended in part to read:

12.00 GENERAL PROVISIONS

12.10 PLANNING DIRECTOR Subject to the direction of the Board, the Planning Director or the Director's delegate shall perform the following duties:

- a. Schedule and assign proposed actions for hearings and review;
- b. Conduct all correspondence of the Planning Commission, Hearings Council, and Board of Adjustment;
- c. Give notices as required by law and by this ordinance;
- d. Maintain dockets and minutes of all hearings;
- e. Compile and maintain all necessary records, files and indexes;
- f. Record all continuances, postponements, dates of giving notices and minutes and summaries of all actions taken by the Planning Commission, Hearings Council or Board of Adjustment;
- g. Record the decision of each matter heard and

- the vote of each member of the Planning Commission, Hearings Council or Board of Adjustment, members absent or failing to vote and the reasons for the decision;
- h. Provide copies of records to any party requesting the same upon the payment of a fee therefor established by the Director of the Department of Environmental Services and approved by the Board of County Commissioners;
 - i. File orders and decisions of the Planning Commission, Hearings Council or Board of Adjustment with the Clerk of the Board;
 - j. File notices of review of actions by the Hearings Council or Board of Adjustment with the Clerk of the Board as provided in subsection 12.30; and
 - k. Perform such other functions as may be assigned by the Board.

12.11 ENFORCEMENT The Director of the Department of Environmental Services and the Director's delegates shall be responsible for securing the enforcement of the provisions of this ordinance.

12.20 ACTION PROCEEDINGS

12.21 Definition. "Action" means a proceeding in which the legal rights, duties or privileges of specific parties are determined only after a hearing in which such parties are entitled to appear and be heard, including requests for:

- a. Change of Zone Classification;
- b. Community Service Uses;
- c. Conditional Uses;
- d. Variances, except as otherwise provided herein;
- e. Temporary Permits; and
- f. Other requests for permits and other contested cases determining permissible uses of specific property.

- 12.21.1 An action, unless otherwise specifically provided by this ordinance, may only be initiated by order of the Board, a majority of the entire Planning Commission or by application of the record owner of the property which is the subject of the action or the authorized agent of the record owner.
- 12.21.2 An action initiated by a record owner or owner's agent shall be filed with the Planning Director on application forms provided by the Director which shall contain all information requested. The Planning Director may require submission of a certified land survey as part of the application.
- 12.22 Pre-Initiation Conference. Prior to initiating an action pursuant to subsection 12.21.2, the property owner or owner's agent shall confer with the Planning Director regarding the requisites of formal initiation.
- 12.23 Notice of Hearing, Contents. Notice of hearing before the Hearings Council or Board of Adjustment shall contain the following:

- a. The date, time and place of the hearing;
- b. A legal description of the subject property;
- c. The nature of the proposed action;
- d. A statement that all interested parties may appear and be heard;
- e. A statement that the hearing shall be held pursuant to the Rules of Procedure adopted by the Council; and
- f. In the case of a hearing by the Hearings Council, the names of the members of the Hearings Council and, in the case of a hearing by the Board of Adjustment, the names of those members of the Council eligible to serve on the Board of Adjustment.

12.23.1 When the proposed action is a change of zone classification, the Planning Director may include in the notice of hearing a statement that the Hearings Council may consider classifications other than that for which the action is initiated.

12.23.2 In addition to the notice required by subsection 8.17.1 and any other notice required by law, notice shall be mailed at least ten days prior to the hearing to the following persons:

- a. The applicant;
- b. All record owners of property within 250 feet of the subject property on matters coming before the Hearings Council and within 100 feet of the subject property on matters coming before

the Board of Adjustment.

- 12.23.3 The records of the Department of Administrative Services shall be used to determine who is entitled to mailed notice; and persons whose names and addresses are not on record at the time of the initiation of the proposed action need not be notified of the hearing. The failure of a property owner to receive notice shall not invalidate the action if a good faith attempt was made to notify all persons entitled to mailed notice.
- 12.23.4 In addition to the notice required by subsection 12.23.2, the party initiating an action before the Hearings Council shall, at the party's expense, post signs on the property conspicuously displaying notice of the pending hearing at least ten days prior to the date of the hearing. One sign shall be required for each 300 feet, or part thereof, of frontage of the subject property on any street. The content, design, size and location of the signs shall be as determined by the Planning Director to assure that the information thereon is legible from the public right of way. As a precondition to a hearing, the party shall file an affidavit of such posting with the Planning Director not less than five days prior to the hearing. This subsection shall not take effect until 60 days after the effective date of this ordinance.
- 12.23.5 A hearing may be continued from time to time as

necessary. If a hearing is adjourned to a date certain, no additional notice shall be given, unless ordered by the Hearings Council or Board of Adjustment.

12.24 Parties. The following persons only are "parties" and shall be entitled either themselves or through their representatives or counsel to make an appearance of record at a hearing before the Hearings Council or Board of Adjustment and to seek review by the Board and the courts:

- a. Those persons entitled to notice pursuant to subsection 12.23.2;
- b. Other persons who demonstrate to the Hearings Council or Board of Adjustment, pursuant to the Rules of Procedure, that the action may affect some substantial right of those persons.

12.24.1 "Appearance of record" shall mean either:

- a. Testimony by a party or the party's representative or counsel; or
- b. A written statement giving the name and address of the person making the appearance, signed by the person or the person's counsel, and filed with the Planning Director, at or prior to the hearing.

12.25 Hearings. Hearings on actions shall be in accordance with Rules of Procedure adopted by the Council.

12.25.1 A quorum of the Hearings Council or Board of Adjustment, as is appropriate, shall conduct a hearing on

the application within 60 days of receipt thereof, unless such time is extended with the recorded consent of the one initiating the action.

12.25.2 No action shall be heard unless a staff report is completed and available at the office of the Planning Director at least five days prior to the date fixed for hearing. A copy of the report shall be mailed, upon completion, to the one initiating the action and to the Hearings Council or Board of Adjustment. In addition, a copy shall be furnished to other persons who request the same upon payment of the fee provided for under subsection 12.10.h. The staff report may be supplemented only at the hearing.

12.25.3 The burden of proof is upon the person initiating an action. Unless otherwise provided in this ordinance, that burden shall be to persuade that:

- a. Granting the request is in the public interest;
- b. There is a public need for the requested change and that need will be best served by changing the classification of the property in question as compared with other available property;
- c. The proposed action fully accords with the applicable elements of the Comprehensive Plan; and
- d. The factors listed in ORS 215.055 have been considered.

- 12.25.31 Proof of change in a neighborhood or community or mistake in the planning or zoning for the property under consideration are additional relevant factors to be considered under subsection 12.25.3.
- 12.26 Findings of Fact; Conclusions. In all cases the Hearings Council or Board of Adjustment shall cause written findings of fact and conclusions, based upon the record, to be filed with decisions. The findings shall specifically address the relationships between the application and the factors listed in subsections 12.25.3 and 12.25.31 to the extent they form the basis for decision; provided, however, that in the event an application is denied, summary findings with reference to those factors may be filed.
- 12.27 Decisions. The Hearings Council or Board of Adjustment may approve an application as submitted, deny it, or approve it with such modifications or conditions as may be necessary to carry out the Comprehensive Plan or to obtain the objectives of subsection 12.27.3b.
- 12.27.1 A decision to approve a zone change, community service use or conditional use shall be by majority vote of the entire Council.
- 12.27.2 The Hearings Council and Board of Adjustment shall render a decision upon the close of the hearing or at the time to which the matter is continued. Within ten days after a decision is announced it

shall be reduced to writing by the Planning Director, signed by the Chairperson of the Council or Board of Adjustment, filed by the Planning Director with the Clerk of the Board and mailed to those persons entitled to mailed notice pursuant to subsection 12.23.2 and to such other persons who request the same.

12.27.3 The following limitations shall be applicable to conditional approvals:

- a. Conditions shall be fulfilled within a time limitation set forth in the approval thereof, or if no time limit is set, within a reasonable time.
- b. Conditions shall be reasonably designed to fulfill public needs emanating from the proposed land use in either of the following respects:
 1. Protection of the public from the potentially deleterious effects of the proposed use; or
 2. Fulfillment of the need for public services created by the proposed use.
- c. Failure to fulfill any conditions to the grant of a proposal within the time limitations provided may be grounds for initiation of an action.
- d. A bond, in a form acceptable to the Planning Director, or a cash deposit from the property owner in such an amount as will assure compliance with the conditions imposed pursuant to this

subsection, may be required.

- 12.27.31 Any change or alteration of conditions attached to conditional approvals shall be processed as a new action, except that the Planning Director may approve a change or alteration which does not:
- a. Increase density;
 - b. Change boundaries;
 - c. Change any use; or
 - d. Change the location or amount of land devoted to specific land uses.
- 12.27.4 An alternative zoning classification may be substituted by the Hearings Council for the proposed action if the alternative classification is in the same general classification (i.e., Residential, Commercial, Industrial), and the hearing notice included notification of this possibility as provided by subsection 12.23.1.
- 12.27.5 If the application is denied, either initially and no review taken, or upon review by the Board or by action of the courts, no new application for the same or substantially similar action shall be filed for at least six months from the date of the final action denying the application.
- 12.28 Record of Proceeding. A verbatim recording shall be made of the proceedings before the Hearings Council and Board of Adjustment.
- 12.29 Ex Parte Contact. Members of the Hearings Council or Board of Adjustment shall not:

- a. Communicate with any party or party's representative in connection with any action except upon notice and opportunity for all parties to participate; or
 - b. Take notice of any communication, report, staff memorandum, or other material prepared in connection with an action and not part of the record, unless the parties are afforded an opportunity to be heard on the material so noticed.
- 12.29.1
- a. In the event a member of the Hearings Council or Board of Adjustment has any prehearing ex parte contact with a party, the member shall disclose the occurrence and substance of such contacts and the persons involved, in a statement of capacity to hear.
 - b. The statement shall also indicate any interest or independent knowledge of the member. The statement shall be made at the beginning of the hearing and placed in the record.
 - c. Whether the ex parte contact, independent knowledge or interest will result in the member's disqualification to act on that matter shall be publicly decided by the member and placed in the record.
- 12.29.2
- a. Any party to an action may, in relation to such action, challenge the impartiality of any member of the Hearings Council or Board of Adjustment. A challenge must state, by affidavit,

the facts relied upon by the submitting party relating to the member's alleged bias, prejudice, or personal interest, or other facts from which the party has concluded that the member cannot participate in a decision in an impartial manner.

- b. A written challenge must be delivered by personal service to the Planning Director and the member whose impartiality is challenged not less than 3 days preceding the time set for public hearing.
- c. A challenge and the decision thereon by the challenged person shall be entered in the record of the action.

12.29.3 In the event a challenge is submitted pursuant to subsection 12.29.2 and the member of the Hearings Council or Board of Adjustment elects to participate in the action, the member shall present a written statement of capacity to hear as provided in subsection 12.29.1, which statement shall make reference to the challenge and include the reasons why the member has elected to participate in the action.

12.30 Notice to Board of Decisions. The written decision of the Hearings Council or Board of Adjustment shall be submitted to the Clerk of the Board by the Planning Director not later than ten days after the decision is announced. The Clerk shall summarize each

decision on the agenda for the next Board meeting on planning and zoning matters for which notice can be given pursuant to the Charter.

12.31 Notice of Review. Decisions of the Hearings Council or Board of Adjustment shall be final at the close of business on the tenth day following submittal of the written decision to the Clerk of the Board pursuant to subsection 12.30 unless:

- a. A notice of review from a party is received by the Planning Director within ten days after the decision has been submitted to the Clerk of the Board pursuant to subsection 12.30; or
- b. The Board, on its own motion orders review pursuant to subsection 12.32.

12.31.1 A notice of review shall contain:

- a. An identification of the decision sought to be reviewed, including the date of such decision;
- b. A statement of the interest of the person giving the notice of review;
- c. The specific grounds relied upon for review; and
- d. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in subsection 12.33.2.

12.31.2 A Notice of Review shall be accompanied by the required fee and a deposit to cover the estimated costs of the transcript as specified by the Planning Director. Within ten days of notice from the Planning

Director of completion of a required transcript, the party seeking review shall transmit the balance due, if any, of any required transcript fee.

Failure to comply with this subsection shall be a jurisdictional defect and shall preclude review by the Board.

12.31.3 Notice of Review shall be a condition precedent to judicial review of final orders, except in the case of Board review on its own motion.

12.32 Board Order for Review. A Board Order for Review of a decision must be made at the meeting at which the Board's agenda included a summary of that decision pursuant to subsection 12.30, unless specifically continued, which continuance shall not be later than the next regular Board meeting on planning and zoning matters.

12.33 a. Scope of Review. The Board, upon receipt of Notice of Review or upon its own motion to grant review, shall, at the appropriate meeting, determine whether review shall be:

1. On the record; or
2. Pursuant to subsection 12.33.2, de novo or by additional testimony and other evidence without full de novo review.

b. Prior to such determination, the Board may conduct a hearing at which the parties shall be afforded an opportunity to appear and present argument on the scope of review pursuant to subsection

12.33.2. Notice of such hearing shall be mailed to the parties no less than ten days prior to the hearing.

- 12.33.1 Unless otherwise provided by the Board under subsections 12.33.12 and 12.33.2, review of the action shall be confined to the record of the proceeding below, which shall include:
- a. All materials, pleadings, memoranda, stipulations and motions submitted by any party and received or considered by the Hearings Council or Board of Adjustment;
 - b. All materials submitted by the Planning Director with respect to the proposal;
 - c. The transcript of the hearing below;
 - d. The findings and decision of the Hearings Council or Board of Adjustment and the Notice of Review, when applicable.
- 12.33.12 When permitted by the Board, review before the Board may include argument by the parties or their authorized representatives.
- 12.33.2 The Board may hear the entire matter de novo; or it may admit additional testimony and other evidence without holding a de novo hearing if it is satisfied that the additional testimony or other evidence could not reasonably have been presented at the prior hearing. The Board shall, in making such decision, consider:
- a. Prejudice to parties;

- b. Convenience or availability of evidence at the time of the initial hearing;
 - c. Surprise to opposing parties;
 - d. The competency, relevancy and materiality of the proposed testimony or other evidence.
- 12.33.21 "De novo hearing" shall mean a hearing by the Board as if the action had not been heard by the Hearings Council or Board of Adjustment and as if no decision had been rendered, except that all testimony, evidence and other material received by the Council or Board of Adjustment shall be included in the record.
- 12.33.3 Review by the Board, if upon Notice of Review by an aggrieved party, shall be limited to the grounds relied upon in the Notice of Review pursuant to subsection 12.31.1 and any hearing permitted under subsection 12.33.b.
- 12.33.4 At the meeting at which the scope of review is determined pursuant to subsection 12.33, the Board shall further determine the time and place for the review, which shall not be later than 45 days from the date of the Board determination.
- 12.34 Notice of Board Hearing. Notice of Board hearing shall be given in the same manner as required for hearings by the Hearings Council or Board of Adjustment on actions. The Board may continue hearing. Unless otherwise provided by the Board, no additional notice shall be given of a continued

- hearing if the matter is continued to a time certain.
- 12.35 Board Procedure. Review by the Board shall be in accordance with its Rules of Procedure.
- 12.36 Board Decision. The Board may affirm, reverse or modify the decision of the Hearings Council or Board of Adjustment and may grant approval subject to such modifications or conditions as may be necessary to carry out the Comprehensive Plan or to achieve the objectives of subsection 12.27.3b.
- 12.36.1 The Board shall state all decisions upon the close of its hearing or upon continuance of the matter to a time certain.
- 12.36.2 Written findings of fact and conclusions, based upon the record, shall be signed by the Chairman of the Board and filed with the Clerk of the Board with a decision within five business days following announcement of the decision pursuant to subsection 12.36.1.
- 12.36.3 The Board's decision shall be final at the close of business on the tenth day after the decision, findings of fact and conclusions have been filed pursuant to subsection 12.36.2, unless the Board on its own motion grants a rehearing pursuant to subsection 12.37.1.
- 12.37 Rehearing. The Board may rehear a matter on its own motion pursuant to subsection 12.37.1.
- 12.37.1 A Board motion for rehearing shall be made, if at all, within ten days after the decision, findings

of fact and conclusions have been signed and filed with the Clerk of the Board pursuant to subsection 12.36.2.

- 12.37.2 A Board motion for rehearing shall be made, if at all, within ten days after the action takes effect as provided in subsection 12.36.2.
- 12.37.3 At the meeting at which the Board determines to grant a rehearing, the Board shall set the time and place for the rehearing, which shall not be later than 21 days from the date of the Board determination.
- 12.37.4 If a rehearing is granted, it shall be heard as a new review, except that all testimony and evidence theretofore received shall be included in the record.
- 12.37.5 No action shall be reheard more than once.

12.40 AMENDMENTS

- 12.41 Initiation. Amendments of the text of this ordinance may be initiated by:
- a. Order of the Board; or
 - b. Resolution of a majority of the entire Planning Commission; or
 - c. Request of the Planning Director.
- 12.42 Procedure for Amendment of Text, Notice. A public hearing shall be held by a majority of the entire Planning Commission on all proposed amendments to this ordinance. A proposed amendment shall be in draft form.
- 12.42.1 Notice of the date, time, place and subject of a hearing before the Planning Commission shall be given

as required by law and also in the following manner:

- a. Publication of a notice one time in any daily newspaper having a general circulation in excess of 50,000 in Multnomah County, not less than ten days prior to the date of hearing;
- b. Posting public notices in three conspicuous places in the County at least 15 days prior to the date of hearing; and
- c. Where an amendment affects a particular geographical area, publication of a notice one time in a newspaper distributed in that area, other than as provided in subparagraph a. of this subsection, not less than ten days prior to the date of the hearing.

12.42.2 The Planning Commission may continue any hearing, but if a hearing is continued to a date certain, no additional notice shall be given unless ordered by the Planning Commission.

12.43 Planning Commission Recommendation. A recommendation to approve an amendment shall be by majority vote of the entire Planning Commission. A recommendation, together with relevant information, shall be referred after approval by the Planning Commission to the Board.

12.43.1 Amendments initiated by the Board or the Planning Director shall be referred to the Planning Commission for report and recommendation. If no

report and recommendation is made by the Planning Commission within 45 days after referral and no extension granted by the Board, the Board may deem the proposal approved by the Planning Commission and may proceed to act upon the same.

- 12.44 Board Procedure, Notice. The Board shall conduct a hearing and take action on an amendment in accordance with the County Charter and rules of the Board.
- 12.44.1 The Board shall give notice of the hearing as required by law, County Charter and subsection 12.42.1 of this ordinance.
- 12.45 VARIANCES The Board of Adjustment may permit and authorize a variance from the requirements of this ordinance only when unusual circumstances cause practical difficulties in the application of the ordinance. A variance shall be granted only when substantially all of the following conditions and facts are found to exist:
- a. Unusual circumstances or conditions apply to the property or to the intended use that do not apply generally to other property in the same vicinity or district;
 - b. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, possessed by the owners of other properties in the same vicinity or district;
 - c. The authorization of the variance will not be

materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located.

- d. The granting of the variance will not adversely affect the realization of the Comprehensive Plan.

12.45.1 A variance shall be void if no substantial construction or substantial expenditure of funds occurs on the affected property within 18 months after the variance is granted.

12.46 Variances Under Certain Conditions. In lieu of the provision of subsection 12.45, the Planning Director is authorized to grant variances of the setback, yard, height, coverage, lot size, width or depth requirements of this ordinance in accordance with the following procedures and conditions:

- a. Application shall be made on forms provided by the Planning Director and shall be accompanied by the written consent of the owner or owners of each lot adjoining and across any street from the subject property;
- b. The filing fee for the variance shall be as required by this ordinance;
- c. The Planning Director may, without notice or hearing, grant the variance for which the application is made and may attach reasonable conditions thereto.

12.46.1 A variance pursuant to subsection 12.46 shall require a finding by the Planning Director that:

- a. The requirements of subsection 12.45 of this ordinance have been met; and
- b. Due to the size, shape, topography or location of the site or the location of existing buildings or other conditions, compliance with applicable requirements can only be achieved with practical difficulty or hardship.

A statement reciting these findings shall be attached by the Planning Director to the variance application.

12.46.2 The Planning Director shall in no case grant a variance in excess of twenty-five percent (25%) of the applicable requirements.

12.47 Notice of Denial. In the event the Planning Director declines to grant a variance requested pursuant to subsection 12.46, the Director shall notify the applicant, stating the reasons for denial. The applicant may, within 20 days after receipt of such notice, file a variance application pursuant to subsection 12.45.

12.48 Hillside Residential Variances by Administrative Action.

- a. Notwithstanding the limitation of subsection 12.46.2, the Planning Director may approve reductions in the required front setback for hillside residential properties when the following conditions exist:

1. Application of the required setback will

necessitate extraordinary cutting or filling of the land, resulting in potentially unsafe banks; and

2. The reduction of the required setback would not permit the development of the property in a manner that would be more hazardous or detrimental to the public safety than development within the required setback.

b. For the purposes of this subsection, a hillside residential property is any legally created lot or parcel with an average grade from the front to the rear property line of more than five percent (5%).

12.70 PERMITS AND CERTIFICATES

12.71 Temporary Permits. Notwithstanding the limitations of use as established by this ordinance in each of the several districts, the Board of Adjustment may issue temporary permits, valid for a period of not more than one year after issuance, for structures, or uses which are of a temporary nature, such as:

- a. Storage of equipment during the building of roads or developments;
- b. Real estate office used for the sale of lots or housing in subdivisions;
- c. Temporary storage of structures or equipment;
- d. Sheds used in conjunction with the building

of a structure;

e. Temporary housing; or

f. Other uses of a temporary nature when approved by the Board of Adjustment.

12.71.1 The Board of Adjustment may attach reasonable conditions relevant to the proposed use to carry out the intent and purpose of this ordinance.

12.72 Annual Temporary Permit, Health Hardship. The Board of Adjustment may authorize an annual temporary permit, renewable for not to exceed five years, for occupancy of a mobile home on a lot with a single family residence where a finding of a health hardship is made.

12.72.1 The Board of Adjustment may attach conditions relating to size, design, location, occupancy and neighborhood compatibility of the mobile home.

12.72.2 The Planning Director shall review health hardship permits annually, upon application and the payment of the required fee, and renew the permit, if the Director determines that the hardship found by the Board of Adjustment still exists and that conditions imposed are being satisfied.

12.72.3 The owner may apply to the Board of Adjustment pursuant to subsection 12.71 if the Planning Director declines to renew the permit.

12.73 Land Use Permits. Before any change in the use of land or a structure is made, the owner or his agent shall obtain a land use permit from the

Department of Environmental Services. Such permit shall be issued only if the proposed use complies with the provisions of this ordinance and any other applicable statute, ordinance, code, regulation or rule.

- 12.73.1 In cases where a building permit is required under the Building Code, it shall be deemed to be a Land Use Permit.
- 12.73.2 The term "change in use of land or structure" is defined as any change from a specific use, as for example, a grocery store, to any other specific use, as for example, a restaurant, if the uses are subject to different restrictions in whole or in part under this ordinance.
- 12.74 Certificate of Occupancy. No building or structure, except single family and duplex dwellings, and no land shall be used or occupied, and no change in the existing occupancy of a building, structure or land or portion thereof shall be made, until a Certificate of Occupancy has been issued by the Department of Environmental Services.
- 12.74.1 Changes in the use of a building, structure or land shall not be made except in compliance with the provisions of this ordinance.
- 12.74.2 If it is found that the building, structure or land complies with the provisions of this ordinance, the Director of Environmental Services or the Director's delegate shall issue a Certificate

of Occupancy, which shall contain the following:

- a. Building Permit or Land Use Permit Number;
- b. The address of the building or premises;
- c. The name and address of the owner;
- d. A description of the portion of the building or land for which the Certificate is issued;
- e. A statement that the described portion of the building or land complies with the requirements of this ordinance;
- f. The name of the Building Official; and
- g. The date of issuance.

12.74.3 A Certificate of Occupancy as required in this ordinance may be the Certificate of Occupancy required under the Building Code when so indicated thereon.

12.74.4 A temporary Certificate of Occupancy may be issued by the Director of Environmental Services or the Director's delegate for the use of a portion or portions of a building or land prior to the completion or occupation of the entire building or use.

12.74.5 The Certificate of Occupancy shall be posted in a conspicuous place on the premises and shall not be removed except by the Director of Environmental Services or the Director's delegate.

12.75 NON-CONFORMING USES

12.75.1 A non-conforming structure or use may not be changed or altered in any manner except as pro-

vided herein, unless such change or alteration more nearly conforms with the regulations of the district in which it is located.

- 12.75.2 In case of destruction beyond reasonable repair as determined by the Hearings Council, by fire or other causes, a non-conforming structure or use shall not be rebuilt unless it conforms to all requirements of the district in which it is located.
- 12.75.3 If a non-conforming structure or use is abandoned or discontinued for any reason for more than one year, it shall not be re-established unless specifically approved by the Hearings Council.
- 12.75.4 A non-conforming structure or use may be maintained with ordinary care.

Section 5. Amendments of Certain Subsections. The words "Planning Commission" are deleted and the words "Hearings Council" are added in lieu thereof in the following subsections of Ordinance No. 100:

3.114;
3.1525(a) and (6); 3.527(d); 3.1531(a); 3.1536; 3.1537; 3.1541;
3.214; 3.216(d); 3.227; 3.228; 3.231;
3.314; 3.316(d); 3.327; 3.328; 3.331;
3.414; 3.416(d); 3.427; 3.428; 3.431;
3.514; 3.516(d); 3.527; 3.528; 3.531;
3.614; 3.616(d); 3.627; 3.628; 3.631;
3.714; 3.716(d); 3.727; 3.728; 3.731;
3.814; 3.816(d); 3.825; 3.827; 3.828; 3.833;
3.9105; 3.9107; 3.9108(c); 3.9111; 3.921; 3.925; 3.926;

3.927; 3.929(a) (14);

3.0122; 3.0123; 3.0124(c); 3.0126; 3.0129; 3.0134; 3.0135;
3.0136; 3.0141;

4.113; 4.125; 4.126;

4.213; 4.225; 4.226; 4.229;

4.313; 4.325; 4.326; 4.329;

4.422; 4.423; 4.424; 4.43; 4.432; 4.434; 4.441; 4.444;
4.454c; 4.463; 4.471b; 4.472b and c; 4.482; 4.483;
4.484; 4.486; 4.492;

5.11; 5.111; 5.112(e); 5.122(d); 5.127; 5.128;

5.213; 5.221(b); 5.225; 5.226;

5.313(a); 5.314; 5.321(b); 5.325; 5.326;

5.414; 5.421(b); 5.425; 5.426;

6.121; 6.122;

6.4201 a, c, d, e, f; 6.4202 a; 6.4202d.2.(b); 6.4302b;
6.4303b; 6.4304; 6.4306a2; 6.4308b; 6.4401b, c and c1;
6.4402(b), (c);

7.22; 7.24; 7.25; 7.26; 7.30; 7.30(r); 7.46(d);

7.521; 7.522; 7.534; 7.535(a) and (b), 7.5401(A) (1);
7.5401(A) (7); 7.5402(A) (4), (6), (7), (8), (10) and (11);
13.01

Section 6. Amendments of Certain Subsections. The words
"Planning Commission" are deleted and the words "Planning Director"
are added in lieu thereof in the following subsections of
Ordinance No. 100:

6.2203; 6.2206; 6.2207; 6.2210; 6.2501(e);

6.32; 6.33(b); 6.35;

6.4204(e);

7.21;

Section 7. Amendments of Certain Subsections. The following
subsections of Ordinance No. 100 are amended to read as follows:

- 6.4201b. Hearings Council review of the Preliminary Plan and Program shall be at a public hearing. Notice of the hearing shall be given pursuant to subsection 12.23.2 of this ordinance.
- 6.4202b. The applicant shall apply for an amendment of the Zoning Map as set forth in this ordinance.
- 6.4202c. Upon receipt of the application accompanied by the General Development Plan and Program, the Hearings Council shall hold a hearing in accordance with the provisions of this ordinance.
- 6.4203a. The Hearings Council, after hearing, may approve the Planned Development District and the General Development Plan and Program, with or without modifications, or may deny the application. A decision to approve a Planned Development District shall be based upon the following findings:
- 6.4204a. Following approval of the Planned Development District, the applicant shall submit a Final Plan and Program to the Planning Director, who shall review the same for compliance with the approved General Development Plan and Program.
- 6.420b. If the Final Plan and Program is found to be in compliance with the approved General Development Plan and Program, it shall be so certified by the Planning Director and recorded by the applicant in the office of the Department of Administrative Services as the Final Development Plan, with all documents relating to dedications, improvements,

agreements, restrictions, and associations constituting the Final Program.

- 6.4305e. Instruments guaranteeing the maintenance of open space shall be reviewed for approval by the Hearings Council after review as to form by the County Counsel.
- 6.46 If substantial construction or development has not taken place within four years from the date of approval of the General Development Plan and Program, the Hearings Council may review the district at a public hearing to determine whether its continuation in whole or in part is in the public interest. If the Council's decision is negative, it shall order that the Planned Development District on the property be removed.
- 6.5512 Any other use permitted in the underlying classification, provided it is elevated above the regulatory flood protection elevation and a determination is made by the Director of the Department of Environmental Services that the use will not unduly restrict the capacity of the channels or floodway of tributaries to any main streams, rivers, drainage ditches, or any other drainage facilities or systems.
- 6.571 The applicant for any use requiring a Special Review Permit shall submit an application to the Planning Director.
- 6.573 One copy of the information described in subsection

6.5721 shall be transmitted to the Director of the Department of Environmental Services, from whom the Board of Adjustment shall request technical assistance in:

- a. Determining whether the proposed use is in the Flood Hazard Area classification;
- b. Determining the regulatory flood protection elevation; and
- c. Evaluating the proposed project in relation to flood heights and velocities, the seriousness of potential flood damage to the use, the adequacy of the plans for flood protection and other technical matters.

7.53 Permits:

7.54 Conditional Uses:

The following uses may be permitted in any district or as otherwise specified herein, when approved pursuant to this ordinance.

Section 8. Subsections Repealed. The following subsections of Ordinance No. 100 are repealed in their entirety:

6.4203b; 7.23; 7.531; 7.532; 7.533; 7.534; and 7.535

Section 9. Subsections Added. The following subsections are added to Ordinance No. 100 and shall read:

7.531 Conditional Use Permit. A conditional use permit shall be obtained for each conditional use approved, before development of the use. The permit shall stipulate any modifications, conditions, and restrictions imposed by the Hearings Council or

Board of County Commissioners, in addition to those specifically set forth in this ordinance.

7.532 Revocation of Permit. A conditional use permit may be suspended or revoked by the Hearings Council when any of the conditions or restrictions imposed are not satisfied.

a. A conditional use permit shall be suspended only after a hearing before the Hearings Council. Written Notice of the hearing shall be given to the owner of the property at least ten days prior to the hearing.

b. A suspended permit may be reinstated if, in the judgment of the Planning Director, the conditions or restrictions imposed in the approval have been satisfied.

c. A revoked permit may be reinstated only on approval by the Hearings Council of a new application for a conditional use.

Section 10. Transition.

A. All actions heard but not decided by the Planning Commission prior to the effective date of this ordinance shall be decided by the Hearings Council in accordance with the procedures previously in effect.

B. Actions heard for the first time after the effective date of this ordinance and all actions initiated after the effective date of this ordinance, shall be determined in accordance with the provisions of this ordinance.

C. The Multnomah County Planning Commission shall exercise the functions prescribed for the Hearings Council and Board of Adjustment, as appropriate, until all members of the Council have been appointed and have held an organizational meeting.

Section 11. Repeal of Ordinance No. 104. Ordinance No. 104 is repealed.

Section 12. Nothing in this ordinance shall be deemed to amend Ordinance No. 100 except as expressly stated herein.

Section 13. Adoption. This ordinance being necessary for the health, safety and welfare of the people of Multnomah County for the immediate implementation of its purposes and replacement of Ordinance No. 104, an emergency is declared to exist, and this ordinance shall take effect on November 5, 1975, pursuant to Section 5.50 of the Charter of Multnomah County.

ADOPTED this 4th day of November, 1975, being the date of its second reading before the Board of County Commissioners of Multnomah County, Oregon.

BOARD OF COUNTY COMMISSIONERS
OF MULTNOMAH COUNTY, OREGON

By


Chairman