



ANALYSIS OF THE PROPOSED
 AMENDMENTS TO THE BEAVERTON DEVELOPMENT CODE
 CHARTER IMPLEMENTATION TEXT AMENDMENT

Proposed Comprehensive Plan Amendment	Staff Comments
Chapter 1 – Amendment Procedures Element	
<p>1.1 Amendment Initiation.</p> <p>Amendments to the Comprehensive Plan may be initiated by City Council, the Planning Commission, the Mayor <u>City Manager</u>, the Community Development Director, or the City Engineering Director, or Community Development Director at any time. Landowners may also initiate an amendment to the Land Use Map pertaining only to their property at any time.</p>	<p>Removes Mayor and adds City Manager per Charter. Corrects title of City Engineer and add Community Development Director to be consistent with Development Code.</p>
<p>1.1.4. Legislative Amendments</p> <p>A. Notice of the initial hearing shall be provided as follows:</p> <p>1. By mailing <u>providing</u> the required inter-agency Department of Land Conservation and Development (DLCD) notice to DLCD, Metro, and Washington County at least thirty-five (35) calendar days prior to the initial hearing.</p>	<p>Updated to reflect electronic submission of notice.</p>
<p>1.4.2 Quasi-Judicial Amendments.</p> <p>A. 1. By mailing <u>providing</u> the required inter-agency DLCD notice to DLCD, Metro, and Washington County at least thirty-five (35) calendar days prior to the initial hearing;</p>	<p>As above.</p>
<p>1.5.2 Criteria for Non-Discretionary Map Amendments</p> <p>A. * * *</p> <p>Table 1 below shows city plan and zoning designations that correspond closely with the county land use districts. Properties with Washington County land use districts in Table 1 can be processed with a Type 1 application using the city’s non- discretionary process. County land use districts not consistent with Table 1 and associated footnotes shown shall be subject to a Type 3 discretionary process. <u>The</u></p>	<p>Recognizes the City Council as the decision-maker for non-discretionary map amendments.</p>

<p><u>decision-maker for Type 1 and Type 3 applications shall be the City Council, which shall adopt such plan amendments according to the requirements of the City Charter.</u></p>	
<p>1.6 Hearings Procedures</p> <p><u>The initial body to review Quasi-Judicial and Legislative Comprehensive Plan amendment applications shall be the Planning Commission which shall make a written recommendation which is forwarded to the City Council. The City Council shall make the final decision as set forth in this Section. Before the City Council may adopt any amendment to the Comprehensive Plan, the procedures within this section shall be followed. In the case of Non-Discretionary amendments, no hearing will be held. Consideration of the proposal shall be placed on the City Council Agenda for adoption by ordinance.</u></p>	<p>Clarifies decision making roles of Planning Commission and City Council.</p>
<p>1.6.1 After appropriate notice is given as provided in section 1.4. the Planning Commission or City Council shall hold a public hearing on the amendment, except for Non-Discretionary amendments.</p> <p>A. At the beginning of the hearing an announcement shall be made to those in attendance that: * * *</p> <p>3. States failure to raise an issue accompanied by statements or evidence with sufficient specificity to afford the Planning Commission or City Council and the parties an opportunity to respond to the issue may preclude appeal to the Land Use Board of Appeals on that issue.</p> <p>* * *</p> <p>5. If a quasi-judicial application, states the Planning Commission and City Council must be impartial and that members of the Planning Commission and City Council shall not have any bias or personal or business interest in the outcome of the application.</p> <p>a. Prior to the receipt of any testimony, members of the Planning Commission or City Council must announce any ex parte contacts. The Planning Commission or City Council shall afford parties an opportunity to challenge any member thereof based on bias, conflicts of interest or ex parte contacts.</p> <p>b. If any member of the Planning Commission or City Council has visited the site (if applicable), they should describe generally what was observed.</p> <p>6. Summarizes the procedure of the hearing.</p>	<p>Updates procedures to reflect required City Council Hearing – Council procedures moved to 1.6.3 below.</p>

7. States that the hearing shall be recorded on audio only or audio and video tape.

8. States any time limits for testimony set by the Planning Commission ~~or City Council~~ at the beginning of the hearing.

B. After the aforementioned announcements, the Chair ~~or Mayor~~ shall call for presentation of the staff report. Staff shall describe the proposal and provide a recommendation.

C. After the presentation of the staff report, the Chair shall call for the applicant's testimony, if the City is not the applicant.

D. After the applicant's testimony, the Chair ~~or Mayor~~ shall call for other evidence or testimony in the following sequence unless the Planning Commission ~~or City Council~~ consents to amend the sequence of testimony:

1. First, evidence or testimony in support of the application

2. Second, evidence or testimony in opposition to the application.

3. Third, evidence or testimony that is neither in support nor in opposition to the application.

E. If the City is not the applicant, the Chair ~~or Mayor~~ shall call for rebuttal by the applicant. Rebuttal testimony shall be limited to the scope of the issues raised by evidence and arguments submitted into the record by persons in opposition to the application. Should the applicant submit new evidence in aid of rebuttal, the Chair ~~or Mayor~~ shall allow any person to respond to such new evidence, and provide for final rebuttal by the applicant.

F. The Chair ~~or Mayor~~ shall offer staff an opportunity to make final comments and answer questions.

G. Provisions for holding a record open or continuing a hearing set forth in Oregon Revised Statutes (ORS 197.763 (6)) shall apply to this Chapter of the Comprehensive Plan, in accordance with the statute.

1.6.2. Following the conclusion of the hearing for a Legislative or Quasi-Judicial amendment, the Planning Commission shall take one of the following actions:

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B. ~~Deny the application, approve the application, or approve the application with conditions~~ Recommend approval, approval with modifications, or denial to the City Council.

1.If the Planning Commission proposes to ~~deny, approve, or approve with conditions~~ recommend approval, approval with modifications, or denial, the Planning Commission shall announce a brief summary of the basis for the ~~decision~~ recommendation and that ~~an order shall be issued~~ recommendation shall be conveyed to City Council as described in 1.7.; provided, the proceedings may be continued for the purpose of considering such ~~order~~ recommendation without taking new testimony or evidence.

~~3.2.~~ Provisions for holding a record open or continuing a hearing set forth in ORS 197.763(6) shall apply under this Ordinance in a manner consistent with state law.

~~3.~~ If the Planning Commission ~~proposes to approve, or approve with conditions~~ recommends approval, an ordinance shall be prepared for City Council consideration, consistent with the City Charter.

4. Within approximately seven (7) calendar days from the date that the Planning Commission recommendation is reduced to writing and signed by the Chair or the Chair's designee, the Director shall mail a written notice to the persons who appeared orally or in writing before the Planning Commission prior to the closing of the public record ("persons of record"). The written notice shall include the following information:

- A statement indicating the Web page address on which the Planning Commission recommendation may be viewed and downloaded.

- A statement that the complete case file is available for review. The statement shall list when and where the case file is available and the name and telephone number of the City representative to contact for information about the case file.

~~4. In conjunction with their adoption of an ordinance-~~

Updates procedures to reflect required City Council Hearing – Council procedures moved to 1.6.3 below.

<p>approving or approving with conditions a Comprehensive Plan Amendment, the City Council shall adopt written findings which demonstrate that the approval complies with applicable approval criteria.</p>	
<p><u>1.6.3. After appropriate notice is given, as provided in section 1.4. the City Council shall hold a public hearing on the amendment.</u></p> <p><u>H. At the beginning of the hearing an announcement shall be made to those in attendance that:</u></p> <p><u>1. States the applicable approval criteria by Comprehensive Plan section number.</u></p> <p><u>2. States testimony, arguments and evidence must be directed toward the applicable criteria.</u></p> <p><u>3. States failure to raise an issue accompanied by statements or evidence with sufficient specificity to afford the City Council and the parties an opportunity to respond to the issue may preclude appeal to the Land Use Board of Appeals on that issue.</u></p> <p><u>4. States failure of the applicant to raise constitutional or other issues relating to the proposed conditions of approval with sufficient specificity to allow the City to respond to the issue may preclude an action for damages in circuit court.</u></p> <p><u>5. If a quasi-judicial application, states the City Council must be impartial and that members of the Planning Commission shall not have any bias or personal or business interest in the outcome of the application.</u></p> <p><u>a. Prior to the receipt of any testimony, members of the City Council must announce any ex parte contacts. The Planning Commission shall afford parties an opportunity to challenge any member thereof based on bias, conflicts of interest or ex parte contacts.</u></p> <p><u>b. If any member of the City Council has visited the site (if applicable), they should describe generally what was observed.</u></p> <p><u>6. Summarizes the procedure of the hearing.</u></p> <p><u>7. States that the hearing shall be recorded on audio only or audio and video tape.</u></p> <p><u>8. States any time limits for testimony set by the City Council at the beginning of the hearing.</u></p>	<p>New section with City Council Hearing procedures.</p>

<p>I. <u>After the aforementioned announcements, the Mayor shall call for presentation of the staff report. Staff shall describe the proposal and provide a recommendation.</u></p> <p>J. <u>After the presentation of the staff report, the Mayor shall call for the applicant's testimony, if the City is not the applicant.</u></p> <p>K. <u>After the applicant's testimony, the Mayor shall call for other evidence or testimony in the following sequence unless the City Council consents to amend the sequence of testimony:</u></p> <ol style="list-style-type: none"> 1. <u>First, evidence or testimony in support of the application</u> 2. <u>Second, evidence or testimony in opposition to the application.</u> 3. <u>Third, evidence or testimony that is neither in support nor in opposition to the application.</u> <p>L. <u>If the City is not the applicant, the Mayor shall call for rebuttal by the applicant. Rebuttal testimony shall be limited to the scope of the issues raised by evidence and arguments submitted into the record by persons in opposition to the application. Should the applicant submit new evidence in aid of rebuttal, the Mayor shall allow any person to respond to such new evidence, and provide for final rebuttal by the applicant.</u></p> <p>M. <u>The Mayor shall offer staff an opportunity to make final comments and answer questions.</u></p> <p>N. <u>Provisions for holding a record open or continuing a hearing set forth in Oregon Revised Statutes (ORS 197.763 (6)) shall apply to this Chapter of the Comprehensive Plan, in accordance with the statute.</u></p>	
<p><u>1.6.4. Following the conclusion of the hearing for a Legislative or Quasi-Judicial amendment, the City Council shall take one of the following actions:</u></p> <p>O. <u>Continue the hearing to a date, time and location certain, which shall be announced by the Mayor. Notice of date, time, and location certain of the continued hearing is not required to be mailed, published or posted, unless the hearing is continued without announcing a date, time, and</u></p>	<p>As above.</p>

<p><u>location certain, in which case notice of the continued hearing shall be given as though it was the initial hearing.</u></p> <p><u>P. Vote to approve, approve with modifications, or deny the application. For Legislative amendment applications the City Council may also vote to take no action.</u></p> <p><u>If the City Council votes to approve, approve with modifications, or deny, the City Council shall announce a brief summary of the basis for the decision; the proceedings may be continued for the purpose of considering the decision without taking new testimony or evidence.</u></p> <p><u>a. Provisions for holding a record open or continuing a hearing set forth in ORS 197.763(6) shall apply under this Ordinance in a manner consistent with state law.</u></p> <p><u>b. Within approximately seven (7) calendar days from the date that the City Council final order is adopted, the Director shall mail a written notice to the persons who appeared orally or in writing before the City Council prior to the closing of the public record (“persons of record”). The written notice shall include the following information:</u></p> <p><u>i. A statement indicating the Web page address on which the City Council decision may be viewed and downloaded.</u></p> <p><u>ii. A statement that the complete case file is available for review. The statement shall list when and where the case file is available and the name and telephone number of the City representative to contact for information about the case file</u></p>	
<p>1.7 FINAL ADOPTION AND APPEALS</p> <p>1.7.1 Final Order</p> <p>A. * * *</p> <p>2. A statement or summary of the facts upon which the Planning Commission or City Council relies to find the application does or does not comply with each applicable approval criterion and to justify any conditions of approval. The Planning Commission or City Council may adopt or incorporate a staff report or written findings prepared by any party to the proceeding into the final order to satisfy this requirement.</p> <p>* * *</p>	<p>Clarification and reorganization of the final order procedures. Elimination of appeal of the Planning Commission decision/recommendation to the City Council.</p> <p>Comprehensive Plan Amendments are adopted as ordinances. The 2020 Charter clarifies that City Council is the decision-maker on ordinances, even if the procedures are considered non-discretionary or quasi-judicial. Therefore the appeal process for Planning Commission decisions on the</p>

<p>C. Within five (5) working days from the date that the Planning Commission or City Council adopts a final order, the Community Development Director shall cause the order to be signed, dated, and mailed to the applicant, the property owner, the Neighborhood Association Committee or County Participation Organization in which the subject property is located, and other persons who appeared orally or in writing before the public record closed. The final order shall be accompanied by a written notice which shall include the following information:</p> <p>1. In the case of a Planning Commission decision, a statement that the Planning Commission decision can be appealed to the City Council following the procedures listed in 1.7.2. The appeal date and the statement that the appeal must be filed within ten (10) calendar days after the date of the signed notice is dated and mailed shall be placed on the notice, with the appeal closing date shown in boldface type. The statement shall generally describe the requirements for filing an appeal and include the name, address and phone number of the Community Development Director.</p> <p>2.1. <u>2.1.</u> In the case of a City Council decision, a A statement that the <u>City Council decision</u> decision is final, but may be appealed to the Land Use Board of Appeals as provided in Oregon Revised Statutes (ORS 197.805 through 197.860) or to the Land Conservation and Development Commission as provided in Oregon Revised Statutes (ORS 197.633), in the case of Periodic Review Amendments.</p> <p>3.2. <u>3.2.</u> A statement indicating the Amendment application number, date, and brief summary of the decision. The statement shall list when and where the case file is available and the name and telephone number of the City representative to contact for information about the proposal.</p> <p>4.3. <u>4.3.</u> A statement of the name and address of the applicant.</p> <p>5.4. <u>5.4.</u> If applicable, an easily understood geographic reference to the subject property and a map.</p>	<p>Comprehensive Plan is proposed to be removed in its entirety.</p> <p>Appeal of City Council’s decision may be made to the Land Use Board of Appeals per state law.</p>
<p><u>1.7.2 Notice of Intent to Appeal</u> A. The Planning Commission decision may be appealed to the City Council only by the applicant, a person whose name appears on the application, or any person who appeared before the Planning Commission either orally or in writing. An appeal shall be made by filing a Notice of Intent to Appeal with the Community Development Director and within ten (10) calendar days after the signed written order was dated and mailed.</p>	<p>As above.</p>

~~B. A notice of Intent to Appeal shall be in writing and shall contain:~~

- ~~1. A reference to the application number and date of the Planning Commission order;~~
- ~~2. A statement that demonstrates the appellant is the applicant or their representative, a person whose name appears on the application, or a person who appeared before the Planning Commission either orally or in writing;~~
- ~~3. The name, address, and signature of the appellant or the appellant's representative;~~
- ~~4. An appeal fee, as established by Council resolution; if more than one person files an appeal on a specific decision, the appeals shall be consolidated and the appeal fee shall be divided equally among the multiple appellants; and~~
- ~~5. A discussion of the specific issues raised for Council's consideration and specific reasons why the appellant contends that the Planning Commission's findings and/or recommendation is incorrect or not in conformance with applicable criteria.~~

~~C. The Community Development Director shall reject the appeal if it~~

- ~~1. is not filed within the ten (10) day appeal period set forth in subsection A. of this section;~~
- ~~2. is not filed in the form required by subsection B. of this section; or~~
- ~~3. does not include the filing fee required by subsection B. of this section.~~

~~If the Community Development Director rejects the appeal, the Community Development Director will so notify the appellant by letter. This letter shall include a brief explanation of the reason why the Community Development Director rejects the appeal. A decision of the Community Development Director to reject an appeal pursuant to this section is a final City decision as of the date of the letter and is not subject to appeal to the City Council. The appellant shall be allowed to correct a failure to comply with subsection B of this section if the correction can be made and is made within the 10 day appeal period provided in subsection A of this section.~~

~~D. If a Notice of Intent to Appeal is not filed, or is rejected, an ordinance shall be prepared for City Council consideration, consistent with the City Charter.~~

~~If the application is denied, the City Council will adopt a final order which sets forth its decision together with any reasons therefor. The Council's final order or the ordinance is the final decision of the City on the~~

<p>application. Notice of the decision shall be given as provided in 1.7.1.</p> <p>E. Notwithstanding the provisions of this section, City Council on its own motion, may order a public hearing before the City Council at any time prior to adopting a Council final order or ordinance.</p>	
<p>1.7.3 Notice of Appeal Hearing</p> <p>A. Written notice of the appeal hearing before the City Council will be sent</p> <ol style="list-style-type: none"> 1. by regular mail, 2. no later than twenty (20) days prior to the date of the hearing 3. to the appellant, the property owner, the applicant, if different from the appellant, persons whose names appear on the application, and all persons who previously testified either orally or in writing before the Planning Commission. <p>B. Notice of the hearing shall:</p> <ol style="list-style-type: none"> 1. State the date, time and location of the hearing; 2. State that an appeal has been filed, set forth the name of the appellant or appellants and contain a brief description of the reasons for appeal; 3. Reference the CPA file number or numbers and the appeal number; 4. List the applicable criteria from the Comprehensive Plan by section number that apply to the application at issue 5. State that a copy of the Planning Commission's written order, the application, all documents and evidence contained in the record, and the applicable criteria are available for inspection at no cost at least seven (7) calendar days prior to the hearing and can be provided at reasonable cost including the days, times and location where available for inspection; 6. Include the name and phone number of the City staff person assigned to the application from whom additional information may be obtained; 7. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of the hearing; and 8. Set forth the street address or other easily understood geographical reference to the subject property, if applicable. 	<p>As above.</p>
<p>1.7.4 Preparation of the Record; Staff Report; Transcript</p> <p>A. Following receipt of a Notice of Intent to Appeal filed in compliance with 1.7.2., the Community Development Department Director shall prepare a record for Council review containing:</p>	<p>As above.</p>

~~1. All staff reports and memoranda prepared regarding the application that were presented to the Planning Commission;~~
~~2. Minutes of the Planning Commission proceedings at which the application was considered;~~
~~3. All written testimony and all exhibits, maps documents or other written materials presented to and or rejected by the Planning Commission during the proceedings on the application; and~~
~~4. the Planning Commission's Final written order.~~
~~5. The appellant may request, and the City Council may allow, a quasi-judicial comprehensive plan amendment appeal hearing be conducted on the record established at the Planning Commission public hearing. If such a request is made and granted, a transcript of the Planning Commission proceeding is required. The appellant shall remit a fee to cover the cost of the transcript of the Planning Commission hearing within five (5) calendar days after the Community Development Director estimates the cost of the transcript. Within ten (10) calendar days of notice of completion of the transcript, the appellant shall remit the balance due on the cost of the transcript. In the event that the Council denies the request for an on the record appeal hearing, and holds a de novo hearing, the transcript fee may be refunded. If the transcription fee estimate exceeds the transcription cost, the balance shall be refunded to the appellant.~~
~~B. The Community Development Department Director shall prepare a staff report on the appeal explaining the basis for the Planning Commission's decision as relates to the reason for appeal set forth in the Notice of Intent to Appeal, and such other matters relating to the appeal as the Director deems appropriate.~~

1.7.5 Scope of Review
~~A. The City Council appeal hearing shall be de novo, which means any new evidence and argument can be introduced in writing, orally, or both. The City Council may allow, at the appellant's request, a quasi-judicial comprehensive plan amendment appeal hearing be conducted on the record established at the Planning Commission hearing.~~
~~B. The Council may take official notice of and may consider in determining the matter any material which may be judicially noticed pursuant to the Oregon Rules of Evidence, ORS 40.060 through 40.090, including an ordinance, comprehensive plan, resolution, order, written policy or other enactment of the City.~~
~~C. Preliminary Decision:~~
~~At the conclusion of deliberations, the Council shall make a preliminary oral decision. The Council may affirm, reverse or modify the Planning Commission's order in~~

As above.

~~whole or in part, or may remand the decision back to the Planning Commission for additional consideration. (Procedures for noticing a remand hearing are found in sections 1.4.1.D. and 1.4.2.D.) The preliminary oral decision is not a final decision. At any time prior to adoption of the final order or Ordinance pursuant to subsection D of this section, the Council may modify its decision based upon the record or may reopen the hearing.~~

D. Final Order or Ordinance

~~In the case of a denial, the City Council shall direct staff to prepare a final order or in the case of approval, the Council shall cause the preparation of an Ordinance. The Ordinance or final order shall consist of a brief statement explaining the criteria and standards considered relevant, stating the facts relied on in rendering the decision, and explaining the justification for the decision based upon the criteria and facts set forth. The final order, or Ordinance, is the final decision on the application and the date of the order, or Ordinance, for purposes of appeal is the date on which it is signed by the Mayor.~~

Procedures for preparation of the Final Order, Ordinance and distribution of the Notice of Decision are found in section 1.7.