

## PLANNING COMMISSION AGENDA

December 8, 2011

**7:30 p.m. Regular Meeting**

**Newberg Public Safety Building**

**401 E. Third Street**

**NOTE: THE MEETING START TIME HAS BEEN CHANGED FROM 7:00 p.m. to 7:30 p.m.**

- I. **ROLL CALL**
- II. **OPEN MEETING**
- III. **CONSENT CALENDAR** (items are considered routine and are not discussed unless requested by the commissioners)
  1. Approval of November 10, 2011 Planning Commission Meeting Minutes
  2. Continuation of Stormwater & Erosion Control hearing to January 12, 2012 (the required code revisions are not yet complete).
- IV. **COMMUNICATIONS FROM THE FLOOR** (5 minute maximum per person)
  1. For items not listed on the agenda
- V. **REVIEW OF PLANNING COMMISSION GUIDELINES:** The Planning Commission will discuss adopting proposed policies regarding attendance, how meetings are conducted, public testimony, and other issues. Resolution No. 2011-297.
- VI. **ITEMS FROM STAFF**
  1. Update on Council items
  2. Other reports, letters, or correspondence
  3. Next Planning Commission Meeting: January 12, 2012
- VII. **ITEMS FROM COMMISSIONERS**
- VIII. **ADJOURN**

FOR QUESTIONS PLEASE STOP BY, OR CALL 537-1240, PLANNING & BUILDING DEPT. - P.O. BOX 970 - 414 E. FIRST STREET

### **ACCOMMODATION OF PHYSICAL IMPAIRMENTS:**

*In order to accommodate persons with physical impairments, please notify the City Recorder's office of any special physical or language accommodations you may need as far in advance of the meeting as possible and no later than 48 hours prior to the meeting. To request these arrangements, please contact the City Recorder at 503-537-1283. For TRS services please dial 711.*

**PLANNING COMMISSION MINUTES**

**November 10, 2011**

**7 p.m. Regular Meeting**

**Newberg Public Safety Building**

**401 E. Third Street**

TO BE APPROVED AT THE DECEMBER 8, 2011 PLANNING COMMISSION MEETING

**I. ROLL CALL:**

Present: Philip Smith, Chair  
Art Smith  
Cathy Stuhr  
Lon Wall

Thomas Barnes, Vice Chair  
Gary Bliss  
Allyn Edwards

Absent: Kale Rogers, Student PC

Staff Present: Mayor Bob Andrews  
Steve Olson, Associate Planner  
Sonja Johnson, Environmental Specialist  
Alan Lee, Environmental Services Specialist  
DawnKaren Bevill, Minutes Recorder

**II. OPEN MEETING:**

Chair Smith opened the meeting at 7:00 p.m. and asked for roll call.

**III. CONSENT CALENDAR:**

Vice Chair Smith entertained a motion to accept the minutes of the October 11, 2011 meeting.

**MOTION#1: Stuhr/Edwards** approve the minutes from the Planning Commission Meeting of October 11, 2011 as written. Motion carried (7 Yes/ 0 No/ 0 Absent).

**IV. COMMUNICATIONS FROM THE FLOOR:**

No items were brought forward.

**V. LEGISLATIVE PUBLIC HEARING:**

**APPLICANT: City of Newberg**

**REQUEST: Proposed Stormwater and Erosion Control codes to implement the Willamette River TMDL Plan. The Willamette River TMDL (Total Maximum Daily Load) Implementation Plan is an agreement between DEQ and the City to protect the Willamette River from illicit discharges and adverse effects from construction site stormwater and post-construction stormwater. The proposed stormwater and erosion control codes are intended to implement the plan and control the adverse effects of stormwater and erosion.**

**RESOLUTION NO.: 2011-296**

### **Opening of the Hearing:**

Chair Smith opened the hearing and asked the Commissioners for any abstentions, conflicts of interests, or objections to jurisdiction. None were brought forward.

Sonja Johnson gave the staff report and reviewed the following changes that have been made since the workshop that was held on October 11, 2011 (see the official meeting packet): The Illicit Connections definition now matches the Illicit Discharge section; the word “convey” was removed from the Stormwater Facility definition; and Street Wash Water has now been included in the definitions section. Clarification was given to the Pollution, Responsible Party, and Stormwater definitions, as well. Under the Erosion Control, Section 13.25.04 (H-3), a limit was defined in regard to erosion and sediment controls; charity fundraising events were exempted under the Conditional Exemption, Section 13.30.05; Illicit Connections, Section 13.30.06, were redefined and the Illegal Dumping definition, Section 13.30.07 has been clarified. Staff removed reference to removing excessive vegetation and removal of invasive species from Riparian Destabilization, Section 13.30.08. Suspension of Discharge Access, Section 13.30.14 was clarified and re-worded; Stormwater Management, Section 13.35.01 (B) was narrowed to include only homeowner projects; Maintenance, Section 13.35.06 (G) was changed to say, “*functionally unaltered*”; and clarification to options was given to the Mitigation Options, Section 13.35.08 (D). Ms. Johnson stated the change to the municipal code is necessary due to DEQ requiring the City have enforcement mechanisms in place. Public education has been helpful but cannot be counted on alone.

Chair Smith referred to the written comments staff received from David Craig, who served as a member of the Stormwater Ad-Hoc Committee. Ms. Johnson explained that when the Ad-Hoc Committee went through the code they did not want it to apply to small homeowner projects. She does not recall wanting to change it in order for developers to create a brand new home but instead for additions, decks, etc. Chair Smith referred to 13.35.02 (B-1) and stated Daniel Craig believes projects should be extended to others besides homeowners. Ms. Johnson believes he is referring to the case where someone buys a plot of land and it takes time for the owner to be able to afford to build a home on it. By the time the house is built, the homeowner may not be exempt from the code. But, it would still be a homeowner project in that respect because it is not a developer who is building it.

Commissioner Stuhr stated Section 13.35.02 (B-1) says it is only exempt for projects on a single lot containing an existing single family residence, and so Mr. Craig’s issue is referring to unbuilt existing lots. Chair Smith believes this raises an issue to be discussed, and that the code language needs to be clear on how we address existing vacant lots. Mr. Olson stated Mr. Craig questioned whether the code should treat two additions differently, based on whether the owner lived in the house or not. Mr. Craig’s second point was what should be done in regard to vacant lots in subdivisions that have not been built out yet in the City. There are some subdivisions that are platted but are largely or partly unbuilt at this time.

Commissioner Bliss asked Mr. Olson if this code should be retroactive. Mr. Olson replied he was not recommending that, but the language needs to be clear regarding what will apply when there is an existing platted lot with no stormwater pond in the subdivision. Commissioner Bliss stated when it is a platted subdivision with no houses built on the lot, you cannot plat until the improvements are bonded and a bond is only good for so long. If the improvements are in place and it is an established use, he is unsure if it can be changed retroactively. He agrees with Mr. Craig’s objection.

Chair Smith stated clarification is needed so the exemption applies to new single family residences that are completed by the homeowner. He then asked staff if the grandfather exception will not be in compliance with DEQ. Ms. Johnson is unsure in regard to DEQ, however she pointed out that staff has tiered the stormwater requirements so that if someone builds a house on a single lot that is currently unbuilt and they create less than 2,877 square feet, they will have to provide a project summary and the general stormwater flow direction but

may not need any stormwater facilities; or if they create more than 2,877 square feet, they have to propose methods for stormwater facilities and it can be something as simple as an infiltration rain garden that will take care of the stormwater on their lot. The City will not require anything on the smaller projects.

Commissioner Bliss referred to the last sentence, item 13.35.01 (A) which discusses volume and asked what the intent is. Ms. Johnson replied research has shown that people have tried to control the amount of sediment that is entering the rivers and streams and if volume can be controlled, velocity of the streams can be controlled as well which limits the amount of erosion and sediment that enters the streams. Commissioner Bliss asked staff how the volume is controlled. Ms. Johnson replied restricting volume by retaining, detaining, or infiltrating it. There are many cities that are requiring pre-built stormwater volumes and velocities, although Newberg is not. Depending on the size of the project, you may or may not have to put in a detention pond according to the design standards manual. Detention ponds are not always appropriate for small projects.

Commissioner Stuhr referred to the discussion at the workshop regarding the Conditional Exemptions, Section 13.30.05, and car washing, RV's, gutters, etc. and asked where that issue went. Ms. Johnson had considered adding boats, but the only thing the TMDL requires the City to address is residential car washing.

Commissioner Bliss referred to Stormwater Treatment; Section 13.35.03 (B-1) and stated downstream facilities needs to be quantitative; you need to know how far downstream you need to analyze. Ms. Johnson explained staff thought seriously about it but if you are over inundating stormwater facilities downstream due to the amount of water being sent down, it should not be the problem of those others downstream. She referred to 13.35.03 (B-2) and stated if there is no increase to existing erosion or flooding problems that the project should be fine. Commissioner Bliss asked how to determine that if it is not reported and flooding occurs downstream. Ms. Johnson replied if there is currently no flooding at that facility, then the project should not be creating a flooding problem. If there is currently a flooding problem at that facility, it cannot be made worse by the project.

Commissioner Bliss referred to Section 13.35.01 and stated (3-B) & (4-B) seem repetitive since the square footage has already been defined for a single family lot. Under Section 13.35.02 (B) they are exempted. Ms. Johnson stated that was a confusion that the Stormwater Ad-Hoc Committee had as well. The intent when the code was written was to not have an arbitrary number, so they chose one equivalent dwelling unit which is what the stormwater fees are based upon; an average impervious area for an average residential lot.

Commissioner Bliss asked if 150% is a legal surcharge under the Penalties, Section 13.40.07. Ms. Johnson replied she has a meeting with legal counsel next week regarding that issue as well as another section regarding public comment before granting a variance. She will check with Legal and advise. Commissioner Bliss then referred to Section 13.40.07 (2d); in regard to the failure or refusal to reimburse the City for expenses incurred as a result of summary abatement he sees no consistency in regard to the percentage. Ms. Johnson replied the expenses the City would incur for the summary abatement would be included in the surcharge. She will ask legal counsel about the correct language.

### **Public Testimony:**

### **Undecided:**

Larry Anderson stated he believes this is a much better document than the original and appreciates the work staff has done in removing overly harsh requirements. He is still concerned because the MS-4 permit does not require the City to regulate small developments. It clearly states the City is to implement and enforce stormwater run-off from land disturbance greater than or equal to one acre as well as in one acre post-construction run-off control. It can be very expensive to build stormwater facilities and the smaller the area is, the more (relatively) expensive it is to treat water. When a City begins regulating small development areas they

tend to regulate far beyond what DEQ requires. Mr. Anderson likes the emphasis on design and protection of the stream corridors and watersheds but he would like to see it not imposed in ways that are expensive to enforce. An estimate has never been calculated in regard to the cost of the requirements. What is the cost for a stormwater treatment system for a single family home? It is overreaching to require properties owned by one person to develop a stormwater facility when others do not. It would be easier on undeveloped lots than on non-single family and commercial properties. He asked for the work that has been done in the stormwater code to not be included in the MS-4 permit with DEQ if it is unnecessary. Much of the code is borrowed from Washington County, Clackamas County, and Portland, which are larger agencies and have expensive requirements. He is unsure if staff understands that the MS-4 permit can be met very simply. There are provisions in the code such as design review to help regulate it already.

Commissioner Wall asked staff if this document is an attempt to make the EPA or DEQ happy and if there are requirements in this document which deals with anything other than being in compliance with the regulations. Ms. Johnson stated the EPA tasked DEQ so in essence, the City is pleasing DEQ and DEQ is trying to please the EPA. The committee and staff tried to follow comments received last fall and follow the TMDL requirements and not do more than what they require. Also, the committee was very concerned with how it would affect small homeowners and the costs and that is why the tiered requirements came into play. Commissioner Wall asked if this is the minimum code language to satisfy the requirements. Ms. Johnson said that the city does not want to institute more fees. Staff looked at comparable cities in the area and what is required by the TMDL implementation plan and tried to create a non-burdened code. Mr. Anderson read what the EPA rule is for runoff control. He believes the City does not need to require stormwater detention on less than one acre.

Chair Smith asked Mr. Anderson what he specifically wants changed and asked for clarification in regard to the MS-4 permit. Ms. Johnson explained it is for the stormwater system and is the EPA's permit for stormwater. She explained to Mr. Anderson that the City is not permitted as a Phase II but has been asked to comply with the TMDL which states the City needs to develop a municipal code or enforcement mechanism for stormwater management for new and redevelopment projects that disturb one acre as well as addressing impacts from projects that are smaller than one acre. She also pointed out it is on net-impervious area and not project size. She believes Mr. Anderson is referring to requirements by DEQ for Phase II.

Chair Smith recessed for a five-minute break to return at 8:40 p.m.

Chair Smith closed the public testimony and asked for comments from staff. Ms. Johnson stated the Stormwater AD-Hoc Committee was very concerned about costs for developers and not to overburden people when they drafted the proposed code. They did not want a blanket requirement for all projects and that is why the projects were tiered. The City is required to do this by DEQ; they have seen the code and largely agreed to it. Their comments have been incorporated into the code.

**MOTION #2: Stuhr/Art Smith** in light of the issues brought forward, recommends tabling Planning Commission Resolution 2011-296 to the next meeting. Motion carried. (7 Yes/ 0 No/ 0 Absent).

Mayor Andrews asked staff when they are referring to grandfathering in platted land, to take into account that the City has some activity going on outside the City of Newberg that may become annexed where lots are not developed, but may have been platted. If grandfathering, will that include the lots which exists at this time within the City or is that looking at other prospective areas? Staff will meet with the City Attorney regarding grandfathering in current plats inside and outside the City.

Commissioner Bliss would like for Section 13.35.03 (B-1) to specifically state how far down stream. Commissioner Edwards suggested striking (B-1) and follow with (B-2). Commissioner Bliss agreed.

Commissioner Edwards stated there should be a clause addressing the Mayor's question. It should be defined. Ms. Johnson will send it to DEQ for further advice if there is a change.

**VI. ITEMS FROM STAFF:**

Update on Council items:

Steve Olson stated the County considered the population projection and decided not to adopt it at this time. The likely outcome is that the County will hire a demographic research center to do a new study for the entire county. The study would affect Newberg's population projection, which would require revisions to land projections, employment projections, and the UGB expansion.

Kale Rogers was reappointed as student Planning Commissioner, and Commissioners Phil Smith and Cathy Stuhr have been put forward to be reappointed to the Planning Commission. Staff recommended they attend the City Council meeting on Nov. 21, 2011.

The Planning Commission was interested in meeting for a holiday celebration before the next Planning Commission meeting, which is scheduled for Thursday, December 8, 2011.

**VII. ITEMS FROM COMMISSIONERS:**

Commissioner Bliss inquired as to the outcome of Ballot Measure 36-149. Mayor Andrews stated the initial, unofficial results showed the measure failed on a 65% to 34% margin last Tuesday, November 8, 2011. On November 21, 2011, the City Council will be doing a debriefing on this issue during the Work Session due to the many voters who voted for a change. The City Council wants to be representative of all of the citizens and more receptive. The City Council has adopted an affirmation of the City logo which has been slightly modified with guidelines on its use. The City Council has also directed staff to examine branding as it applies to the City of Newberg and in partnership with other organizations inside the City. The City Council adopted a strategic plan for the Library and a supplemental budget #1. On Tuesday at the McMinnville City Club Meeting, the Chairman of the Tribal Council for the Confederated Tribes of the Grand Ronde pledged four million dollars from the tribes towards the local government match for the Newberg-Dundee bypass.

**VIII. ADJOURN:**

Chair Smith adjourned the meeting at 9:25 p.m.

**Approved by the Planning Commission on this 8<sup>th</sup> day of December, 2011.**

**AYES:**

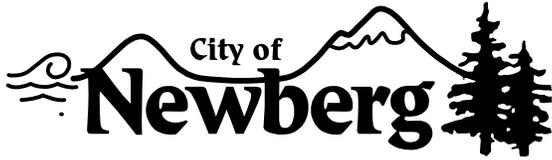
**NO:**

**ABSENT:**

**ABSTAIN:**

\_\_\_\_\_  
*Planning Recording Secretary*

\_\_\_\_\_  
*Planning Commission Chair*



## Planning and Building Department

P.O. Box 970 • 414 E First Street • Newberg, Oregon 97132  
503-537-1240 • Fax 503-537-1272 • [www.newbergoregon.gov](http://www.newbergoregon.gov)

### PLANNING COMMISSION STAFF REPORT Planning Commission Guidelines

MEETING DATE: December 8, 2011

FILE NO: G-11-005

APPLICANT: Initiated by Newberg Planning Commission

REQUEST: Establish rules and guidelines for the planning commission

#### ATTACHMENTS:

Planning Commission Resolution 2011-297 with  
Exhibit "A" Planning Commission Rules and Guidelines Draft  
Attachment 1: Municipal Code regarding the Planning Commission  
Attachment 2: Public Comment

#### A. **SUMMARY:** The proposed guidelines would do the following:

1. Establish rules for conducting planning commission meetings.
2. Establish expectations for the roles and duties of commissioners.
3. Establish rules concerning the chair and vice-chair.
4. Establish procedures for scheduling of meetings and preparation of agendas.
5. Establish procedures for planning commission hearings and public testimony.
6. Establish expectations for the relationship between the city council and planning commission.

**B. BACKGROUND:** These guidelines are being discussed to formalize procedures for the commission. Barton Brierley presented these guidelines to the planning commission at their meeting on October 13, 2011. The commission discussed the guidelines reached general consensus on some items, and discussed the pros and cons of other items.

**C. PROCESS:** The Planning Commission should discuss the proposal at the December 8 meeting. The commission is not required to take public input, but it may. If acceptable, the commission may adopt the rules by resolution.

**D. PUBLIC COMMENTS:** The City received one written comment on a previous version of

the rules. See Attachment 2.

**E. ANALYSIS:**

At the prior workshop, the commission discussed many issues, and seemed to have consensus on many. Those were incorporated into the draft. A few issues that the commission should discuss include:

1. **Absences:** The Planning Commission seemed to have consensus that if a commissioner notifies the planning director ahead of time, he or she will be excused. The commission should discuss situations where a planning commissioner cannot notify the planning director in time. The draft allows that commissioner to request an excused absence after the fact, which would be voted on by the commission.
2. **Voting:** The Planning Commission seemed to have consensus that commissioners could abstain from voting with an explanation of why they were abstaining. The draft reflects this. The commission expressed various views on this topic, however, so the commission might review this policy.
3. **Time limits for speakers:** Per the commission's discussion, the draft allows the principal applicant (the one who has completed the proper paperwork and paid the fee) to be allotted up to 15 minutes to present the proposal. The applicant can receive additional time up to 30 minutes total by calling the planning director ahead of time. The draft allows the principal opponent to be allotted the same amount of time as the principal applicant. All other speakers are allotted no more than 5 minutes to speak.
4. **Late testimony:** The staff report is typically sent out a week prior to the Planning Commission meeting. Commissioners feel like if there was more time between the packet and the actual meeting a cut-off time for written testimony would be easier to enforce. The staff report packet will now be sent out eight days in advance so that people can better prepare and have more time to submit their arguments. The cut-off time will be noon on the 3rd business day (typically the Monday) before the meeting. These comments will be e-mailed to the commission. Any testimony submitted after that will be read as much as the time allotted provides.

- F. PRELIMINARY STAFF RECOMMENDATION:** The preliminary staff recommendation may be modified subsequent to the close of the business item. At this writing, staff recommends the following motion:

*Move to adopt Resolution 2011-297, which adopts the guidelines.*



# PLANNING COMMISSION RESOLUTION 2011-297

---

---

## A RESOLUTION ADOPTING PLANNING COMMISSION RULES AND GUIDELINES

---

---

### RECITALS

1. The Newberg Planning Commission desires to adopt rules and guidelines for conducting its business.
2. The Newberg Planning Commission held a meeting on December 8, 2011, to consider the resolution.
3. The Commission finds that the rules and guidelines will provide for effective operation of the Commission.

### The Newberg Planning Commission resolves as follows:

1. The Commission hereby adopts the Planning Commission Guidelines as shown in Exhibit "A". Exhibit "A" is hereby adopted and by this reference incorporated.

**Adopted by the Newberg Planning Commission this 8th day of December, 2011.**

ATTEST:

---

Planning Commission Chair

---

Planning Commission Secretary

List of Exhibits:

Exhibit "A": Planning Commission Rules and Guidelines

# **CITY OF NEWBERG PLANNING COMMISSION GUIDELINES**

**Draft November 16, 2011**

# NEWBERG PLANNING COMMISSION GUIDELINES

Newberg planning commission members will strive to do the following:

- 1) Trust and respect the opinions of fellow commission members and actively participate in the decisions of the planning commission.
- 2) Accept responsibility to attend all planning commission meetings.
- 3) Provide appropriate notification to the planning staff of an absence as soon as practical prior to the meeting time.
- 4) Make every attempt to resolve any conflict with a fellow planning commissioner prior to bringing the conflict to the attention of the planning commission.
- 5) Make an effort to study material presented in a timely manner and be informed on all issues.

# NEWBERG PLANNING COMMISSION MEETING EXPECTATIONS

Newberg planning commission members will strive to do the following:

- 1) Make the citizens and visitors feel welcomed at the meetings by involving them in the process, being courteous to them, and respecting their opinions.
- 2) Do their best to communicate in clear, concise and audible language and written communications.
- 3) Make sure that their tone of voice is friendly and sincere.
- 4) Honor and act on all requests for action and/or information in a timely and courteous manner.
- 5) Discuss issues, but not personalities, with non-commission members.
- 6) After an issue has been voted on, commission members will speak for themselves carefully, in a manner that does not undermine the integrity or motives of the planning commission, even if their personal opinion differs from the planning commission's decision.
- 7) Member will vote on all motions before the commission, or explain the reasons for abstaining.

# **CITY OF NEWBERG PLANNING COMMISSION RULES**

**Discussion Draft**

**October 19, 2011**

**TABLE OF CONTENTS**

Table of Contents ..... 5

**SECTION 1 – AUTHORITY** ..... 7

    Rule 1.1 Authority of Rules..... 7

    Rule 1.2 Questions about these Rules ..... 7

    Rule 1.3 Presentation of Rules to Planning Commission Members..... 7

    Rule 1.4 Amendments to Planning Commission Rules ..... 7

**SECTION 2 – GENERAL RULES** ..... 7

    Rule 2.1 Public Meetings Law ..... 7

    Rule 2.2 Quorum ..... 7

    Rule 2.3 Lack of Quorum..... 7

    Rule 2.4 Rules of Order..... 8

    Rule 2.5 Enforcement of Rules ..... 8

    Rule 2.6 Suspension of Rules..... 8

    Rule 2.7 Commissioners Duties to Uphold Rules and Decorum ..... 8

    Rule 2.8 Removal of Any Person for Violation of Rules..... 8

    Rule 2.9 Records of Proceedings..... 8

**SECTION 3 – PLANNING COMMISSION MEMBERS** ..... 9

    Rule 3.1 Attendance ..... 9

    Rule 3.2 Excused Absences..... 9

    Rule 3.3 Report of Absences ..... 9

**SECTION 4 – PRESIDING OFFICER** ..... 10

    Rule 4.1 Chair..... 10

    Rule 4.2 Vice Chair ..... 10

    Rule 4.3 Chair Pro Tem..... 10

    Rule 4.4 Election of Chair and Vice Chair..... 10

**SECTION 5 – PLANNING COMMISSION MEETINGS** ..... 11

    Rule 5.1 Regular Meetings..... 11

    Rule 5.2 Meeting Times and Places ..... 11

    Rule 5.3 Notice of Meeting ..... 11

    Rule 5.4 Special Meetings..... 11

    Rule 5.5 Cancellation of Meeting..... 11

**SECTION 6 – AGENDAS AND ADDITIONAL ITEMS FOR CONSIDERATION** ..... 11

    Rule 6.1 Preparation of Agenda ..... 11

    Rule 6.2 Non-Agenda Items ..... 12

    Rule 6.3 Time for Submission of Items ..... 12

    Rule 6.4 Staff Reports ..... 12

    Rule 6.5 Agenda Availability ..... 12

    Rule 6.6 Regular Meeting Agenda ..... 12

    Rule 6.7 Consent Calendar ..... 12

**SECTION 7 – PROCEDURES AT MEETINGS** ..... 13

    Rule 7.1 Call to Order ..... 13

    Rule 7.2 Public Comment on Non-Agenda Items ..... 13

    Rule 7.3 Legislative Public Hearings ..... 13

    Rule 7.4 Quasi-judicial Public Hearings ..... 13

    Rule 7.5 Public Comment Registration..... 13

Rule 7.6	Public Testimony .....	13
Rule 7.7	Time Limits for Testimony.....	14
Rule 7.8	Written Testimony .....	14
Rule 7.9	Ex parte Contact.....	14
Rule 7.10	Questions of Speakers.....	14
Rule 7.11	Order of Deliberation.....	14
Rule 7.12	Address the Chair.....	14
Rule 7.13	Motions, Seconds, and Decisions by Unanimous Consent.....	15
Rule 7.14	Voting and Abstaining from Voting .....	15
Rule 7.15	Tabled Items.....	15
Rule 7.16	Reconsideration .....	15
SECTION 8 – ELECTRONIC MAIL AND ELECTRONIC COMMUNICATION .....		15
Rule 8.1	Electronic Mail .....	15
SECTION 9 - RELATIONSHIP WITH THE CITY COUNCIL .....		16
Rule 9.1	Role of Planning Commission in Relation to the City Council.....	16
Rule 9.2	Joint Meetings with City Council or Other Boards .....	16
Rule 9.3	Planning Commission Presentations at City Council Work Sessions .....	16
Rule 9.4	Attendance at and Participation in City Council Meetings.....	16

DRAFT

# **Newberg Planning Commission Rules**

## **SECTION 1 – AUTHORITY**

### **Rule 1.1 Authority of Rules**

The planning commission will adopt commission rules by resolution to govern its meetings and proceedings. These rules will decide questions and give direction on debating, voting, membership, attendance, agendas, and other matters. The rules are intended to serve as a guide for the planning commission. One of the goals of the planning commission is to work with the residents of Newberg and provide a positive atmosphere at planning commission meetings. These rules provide the basic outline required to work together. The commission may need to vary from these rules from time to time to best serve the public interest.

### **Rule 1.2 Questions about these Rules**

All questions regarding these rules will be resolved by majority vote of the commission.

### **Rule 1.3 Presentation of Rules to Planning Commission Members**

These planning commission rules will be presented to all planning commission members at or before the time they take the oath of office.

### **Rule 1.4 Amendments to Planning Commission Rules**

Amendments to these planning commission rules will be made by resolution.

## **SECTION 2 – GENERAL RULES**

### **Rule 2.1 Public Meetings Law**

All planning commission meetings will be held in accordance with the Oregon Public Meetings Law (“OPML”). The meetings of the commission, including regular meetings, special meetings, work sessions and emergency meetings are open to the public. The meetings are considered a limited public forum at which planning commission business is conducted in accordance with the agenda and rules of the planning commission. The chair, along with the commission, has the authority to require discussion at the meetings be addressed to the matters that are appropriate to be considered, to limit the time for discussion, and to restrict input concerning the matters to be discussed. The planning commission has the right to require persons attending the meeting, addressing the commission or participating in the meeting to conform to the rules of the commission and directions of the chair.

### **Rule 2.2 Quorum**

Section 2.15.280 of city’s municipal code provides that a majority of the voting members of the planning commission constitutes a quorum to conduct business.

### **Rule 2.3 Lack of Quorum**

If there is a lack of quorum at any scheduled meeting, any hearings scheduled shall be continued to the next scheduled meeting of the commission by announcement to those present, or by posting notice of such continuance prominently at the meeting location.

#### **Rule 2.4 Rules of Order**

"Robert's Rules of Order, Newly Revised, Tenth Edition" or the latest editions published thereafter hereafter referred to as "Robert's Rules of Order" will govern all planning commission proceedings unless they conflict with these rules. The chair will have the authority to appoint a parliamentarian for the commission. If there is no person appointed as parliamentarian or that person is absent, the city attorney or planning director will advise the chair concerning parliamentarian matters.

#### **Rule 2.5 Enforcement of Rules**

The chair will enforce the planning commission rules. In addition, the chair has the authority to preserve decorum and will determine all points of order, subject to the right of any planning commissioner to appeal to the commission. The chair will enforce order, prevent attacks on personalities or the impugning of members' motives, and keep those in debate to the question under discussion.

#### **Rule 2.6 Suspension of Rules**

The vote to suspend commission rules including Robert's Rules of Order, requires a majority vote of those members of the planning commission who are present. If the motion is carried, the rules will be suspended for that item only.

#### **Rule 2.7 Commissioners Duties to Uphold Rules and Decorum**

Commissioners will preserve order and decorum during planning commission meetings, and will not by conversation or other action delay or interrupt the proceedings or refuse to obey the orders of the chair and commission rules. Commissioners will, when addressing staff or commissioners, confine themselves to questions or issues that are under discussion, will not engage in personal attacks, will not impugn the motives of any speaker, and will at all times, while in session or otherwise, conduct themselves in a manner appropriate to the dignity of office. Commissioners will not attack the knowledge, skills, abilities and personalities or impugn city staff members' motives in commission or at any city meetings.

#### **Rule 2.8 Removal of Any Person for Violation of Rules**

Any persons making disruptive or threatening remarks or actions during a meeting will forthwith be barred from further audience at that meeting, unless permission to continue is granted by a majority vote of the commissioners present. The planning director or chair may summon the assistance of the police or other administrative staff to prevent further interruption by such person by any action necessary, including the removal of that individual. In case the planning director or chair should fail to act, any commissioner may obtain the floor and move to require enforcement of this rule, upon an affirmative vote of the majority of the commissioners present, the police or administrative staff will be authorized to remove the person(s) as the chair so directs.

#### **Rule 2.9 Records of Proceedings**

The city recorder will provide a secretary for the commission who will keep a record of commission proceedings. The records of the proceedings are to be known as "minutes." The minutes will be kept in accordance with the Oregon Public Records and Meetings Law.

## SECTION 3 – PLANNING COMMISSION MEMBERS

### **Rule 3.1 Attendance**

It is the duty of each commissioner to attend all meetings of the planning commission unless excused. A member of the commission may be removed by the city council after hearing for misconduct or nonperformance of duty. Per Newberg Code 2.15.250(C), a member who is absent from two consecutive meetings without an excuse as approved by the planning commission is rebuttably presumed to be in nonperformance of duty and the city council shall declare the position vacant unless finding otherwise following the hearing.

### **Rule 3.2 Excused Absences**

When a commissioner cannot attend a meeting, the member is to notify the planning director prior to the meeting. Absences will be considered excused when such notice is given. An absence will be considered unexcused if there is no notification of the absence prior to the meeting, unless otherwise determined by vote of the commission.

### **Rule 3.3 Report of Absences**

The planning director will report to the city council any time a commissioner has four or more excused absences in a twelve-month period, along with the reasons for the excuse. The planning director also will report to the city council any time a commissioner has two or more unexcused absences in a twelve-month period. The purpose of this notice is to inform the council of the member's attendance, and does not require any particular action by the council unless they so elect.

### **Rule 3.4 Mayor as Ex-Officio Member of the Planning Commission.**

By code, the mayor serves as a non-voting ex-officio member of the planning commission. The mayor shall be invited to, but is not obligated to, attend all meetings and activities of the planning commission. When attending, the mayor shall sit with the commission.

When participating in legislative matters, the mayor shall be invited to participate in the discussion. The mayor shall recuse himself/herself from quasi-judicial matters that eventually may be before the council for decision. This is to avoid questions of ex parte contact or bias in the decision.

### **Rule 3.5 Student Planning Commissioner**

The student planning commissioner is a high school student who applies for the position by filling out an application for the city committee and gives the City of Newberg a letter of recommendation from a teacher. The mayor selects an individual student and the city council approves the mayor's nomination. The student planning commissioner is expected to attend all planning commission meetings, unless excused by the planning commission. The student commissioner serves a one year term and is allowed and encouraged to participate in all planning commission events and activities except for voting. The chair shall seek the opinion of the student prior to any significant votes.

### **Rule 3.6 Planning Commissioner Training**

The City shall offer training to planning commissioners to educate them in their duties. It shall be the duty of any newly appointed planning commissioner to attend a basic training session from staff within 30 days of his or her appointment. It shall be the duty of any re-appointed planning commissioner to attend at least a one-hour training session from staff or offered by the city within 12 months of the beginning of that person's appointed term. Planning commissioners are strongly encouraged to attend training of some kind annually.

## SECTION 4 – PRESIDING OFFICER

### **Rule 4.1 Chair**

The chair will preside over and facilitate all planning commission meetings, preserve order, enforce commission rules, and determine the order of business pursuant to planning commission rules. The chair is a voting member of the commission and will sign all records of planning commission decisions.

### **Rule 4.2 Vice Chair**

In the absence of the chair, or if the chair is unable to perform the chair's duties, the vice chair will act as the presiding officer. Whenever in these rules the chair is mentioned, the vice chair acting as presiding officer can exercise the same authority as the chair. The vice chair also assists the chair in his/her duties, such as keeping time, maintaining order, and determining order of speakers.

### **Rule 4.3 Chair Pro Tem**

In the absence of the chair and vice chair at any meeting of the planning commission where a quorum is present, the planning commission members present shall appoint a chair pro tem who will act as presiding officer. The chair pro tem will exercise all the authority of the chair during that meeting.

### **Rule 4.4 Election of Chair and Vice Chair**

At the first meeting of each year, or upon vacancy of the current chair or vice chair, the commission shall elect a chair and vice chair for the remainder of the calendar year. The commission's policy is to rotate the positions by seniority in such a fashion that each member has the opportunity to serve first as vice-chair, and then the following year as chair. Newly appointed members will be placed at the bottom of the current rotation to allow them to serve a few years first as commissioner then later as chair and vice chair. In case multiple members are appointed at the same time, the commission will decide seniority by vote. The policy does not compel any member to serve as chair who is unwilling, nor does it compel election when the majority determines the commission would be better served by election of different officers. The commission shall consent to the election of each chair and vice chair and absent such consent, shall elect positions by majority vote.

## SECTION 5 – PLANNING COMMISSION MEETINGS

### **Rule 5.1** Regular Meetings

Section 12 of the city charter provides that the planning commission must meet at least once a month at a time and place designated by the planning commission. The planning commission designates through these rules that the regular meetings of the commission will be held on the second Thursday of each month, except on holidays in which event the commission will meet on the second Wednesday. The commission also will meet on the fourth Thursday if business so requires.

### **Rule 5.2** Meeting Times and Places

The regular meetings of the commission will begin at 7:00 p.m. Regular planning commission meetings will take place in the Public Safety Building in the training room at 401 E. Third St., unless specifically designated to occur at another location. Any other such location will be noted in the notice of the meeting. There will be no new items presented after 10:00 p.m. except by vote of the planning commission.

### **Rule 5.3** Notice of Meeting

The notice of the regular meeting of the planning commission, including the agenda which lists items to be considered by the planning commission, will be given in accordance with the OPML. However, the notice does not limit the matters that can be considered by the planning commission nor prevent the commission from taking up any matter brought before the commission in accordance with the OPML.

### **Rule 5.4** Special Meetings

The chair, upon the chair's own motion and after consulting the planning director, may, or at the request of three members of the commission, shall, by giving notice to the members of the commission, call a special meeting of the commission for a time not earlier than 24 hours after the notice is given. Notice of a special meeting shall be posted at City Hall and to the extent feasible, provided to interested persons and the local newspaper at least 24 hours prior to the meeting.

### **Rule 5.5** Cancellation of Meeting

Upon a majority vote of the planning commission members present, a meeting may be canceled when deemed appropriate. If there is no business to transact or a quorum of the planning commission cannot attend and there is no urgent necessity to have the meeting, the planning director with advice and consent of the chair may cancel the meeting. Planning commission members will be notified of the cancellation prior to notice being given to the public. Notice of cancellation will be given as soon as possible to the public in a manner aimed at giving adequate notice.

## SECTION 6 – AGENDAS AND ADDITIONAL ITEMS FOR CONSIDERATION

### **Rule 6.1** Preparation of Agenda

The planning director with the advice and consent of the chair will prepare the agenda along with appropriate documentation for planning commission meetings. Any member of the planning commission may request, through the chair, for a matter to be placed upon the agenda. Such request is subject to the advice of the planning director. Each meeting agenda's format will be prepared as prescribed in the rules. If there is no item to be considered under a section of the agenda, that section will be omitted from the agenda and the agenda will be renumbered accordingly. The final authority on the agenda matters is the planning commission.

**Rule 6.2 Non-Agenda Items**

Prior to the meeting, the planning director may send out additions to the agenda with the appropriate documentation. The planning commission may consider the items which are not listed on the published agenda. The planning commission must, by a majority, place the item on the agenda. Action may then be taken on the item.

**Rule 6.3 Time for Submission of Items**

Items for the planning commission agenda will be submitted in time to allow for sufficient research by staff.

**Rule 6.4 Staff Reports**

Normally the staff will send a report of each planning commission item to be considered by the planning commission at least eight days prior to the commission meeting.

**Rule 6.5 Agenda Availability**

Planning commission agendas and the accompanying documents are available at the city planning office and are posted on the city website normally eight days prior to the planning commission meeting. Interested persons are encouraged to read the agenda along with supporting material, and address questions to the planning director or city staff prior to the meeting. The planning director and planning commission value public input. In order to efficiently conduct city business, those who have concerns are encouraged to address these issues prior to the planning commission meeting.

**Rule 6.6 Regular Meeting Agenda**

The regular meeting agenda will be as follows:

- I. Call Meeting to Order
- II. Administration of Oath of Office (if needed)
- III. Roll Call
- IV. Public Comment (30 minutes maximum which may be extended at the chair's discretion; an opportunity to speak for not more than five minutes per speaker allowed)
- V. Consent Calendar
- VI. Public Hearings
- VII. Continued Business
- VIII. New Business
- IX. Items from Staff
- X. Items from Commissioners
- XI. Adjournment

At the chair's discretion, the chair may change the order of the agenda and allow communications concerning items on the agenda or other commission business.

**Rule 6.7 Consent Calendar**

The director will place items which have been previously reviewed by the planning commission or items which are routine in nature on the consent calendar. Items may be removed from the consent calendar by the chair or by request of a planning commission member. Public comments will be held prior to the approval of the consent calendar to allow the public to address items under consent calendar.

## SECTION 7 – PROCEDURES AT MEETINGS

### **Rule 7.1**      **Call to Order**

The chair will call the planning commission members to order at the hour designated for the meeting. The secretary will call roll. Should there not be a quorum within 15 minutes, the members present will adjourn until a quorum can be gathered or until the next scheduled meeting time established by the planning commission or to the next regular meeting time.

### **Rule 7.2**      **Public Comment on Non-Agenda Items**

Persons speaking to the planning commission concerning items not on the agenda or items that are on the consent calendar would speak under the public comment period. Those persons will be given the opportunity to speak for no more than five minutes. Speakers may share their time at the discretion of the chair. The maximum time allowed for public comment, including all speakers, is 30 minutes. The chair has the discretion to extend these time limits. Speakers may address the planning commission for less than their allotted time. Speakers may also submit information at the meeting. The Commission normally will not take immediate action on any request raised, but may consider acting on a request during items from commissioners.

### **Rule 7.3**      **Legislative Public Hearings**

For legislative hearings, the commission will follow the legislative hearing format shown in Exhibit “1”. The planning commission’s legislative authority is usually exercised by the adoption of a resolution.

### **Rule 7.4**      **Quasi-judicial Public Hearings**

For quasi-judicial hearing, the commission will follow the quasi-judicial hearing format shown in Exhibit “2”. The planning commission’s quasi-judicial authority is usually exercised by adoption of an order when the commission is the final decision maker, and by adoption of a resolution when the commission is a recommending body only.

### **Rule 7.5**      **Public Comment Registration**

In order to properly notify persons who participate in the hearing and to be able to send them information, it is necessary for the interested person to register at the planning commission meeting before making oral comments and/or providing input at the meeting. The interested person shall register for each subject under which they wish to provide comment. The public comment registration forms will be made part of the meeting records in accordance with OPML. The registration forms will contain a provision by which a person may indicate that they do not wish for their address, phone number, and email address to be released in any public records request. When the interested person addresses the commission or gives oral comments, that person should state their name, but does not need to state their mailing address, phone number, or email address. A form complying with this rule will be available at all meetings of the planning commission. The planning director may produce and revise the necessary form that complies with this rule.

### **Rule 7.6**      **Public Testimony**

Each interested person addressing the commission should do so in a courteous and considerate manner. The person needs to register and follow other rules as provided in the commission rules. The public will be furnished guidelines and should comply with these guidelines for testifying before the planning commission.

**Rule 7.7 Time Limits for Testimony**

The principal applicant for a proposal will be allotted 15 minutes for an initial presentation. Prior to the meeting the applicant may petition the planning director for additional time for the initial presentation, not to exceed 30 minutes.

A principal opponent, if any, will be allotted time in the same manner as the principal applicant.

All other speakers will be given the opportunity to speak for no more than five minutes. Speakers may share their time at the discretion of the chair.

The chair has the discretion to extend these time limits. Speakers may address the planning commission for less than their allotted time.

**Rule 7.8 Written Testimony**

In order to be considered at a hearing, written testimony must be received at the Planning and Building Department by noon on the third business day (typically Monday) prior to any meeting. Written testimony received after that date will be read out loud at the meeting, subject to time limits for speakers, and will be included in the record if there are future proceedings.

**Rule 7.9 Ex parte Contact**

Whenever the planning commission conducts a quasi-judicial public hearing, the planning commission must declare any ex parte contact. Rules concerning ex parte contact are set forth in state law.

Commissioners may visit a site individually prior to hearing an application, and shall declare the substance of that visit as ex parte contact. Otherwise, planning commissioners should avoid ex parte contacts.

**Rule 7.10 Questions of Speakers**

Commissioners may ask questions of speakers following their testimony. Such questions should be directed to elicit information that will help the commission reach a decision. Commissioners should avoid debating or arguing with speakers.

**Rule 7.11 Order of Deliberation**

The commission's deliberation on an agenda item may begin with a formal motion, or an informal discussion. If the informal discussion is not leading toward a decision, the chair shall call for a formal motion.

The chair shall determine the order of speakers to a motion. Except as otherwise determined by the chair, the maker of the motion will speak first to the motion, followed by the second, and then by other commissioner in the order they request to speak.

**Rule 7.12 Addressing the Chair**

When any commissioner is about to speak in debate or deliver any matter to the planning commission, that commissioner should respectfully address the chair, and be given the floor before speaking. The commissioner should confine the remarks to the question under consideration and avoid addressing personalities.

**Rule 7.13 Motions, Seconds, and Decisions by Unanimous Consent**

Generally, no motion will be considered unless it has been seconded. However, routine motions that have the general consent of the planning commission do not require a second, unless requested by any member of the planning commission. Motions brought forth by the chair, which receive no seconds, but also no objections, will be passed by unanimous consent.

**Rule 7.14 Voting and Abstaining from Voting**

Commissioners shall vote on each motion brought before the commission, or shall explain the reason for abstaining.

Commissioners who abstain from participating in a matter due to a conflict of interest shall retire to the lobby during the time the matter is under consideration. Commissioners may not provide testimony before the commission on any matter from which they abstain, but may designate a representative to speak to their interests.

**Rule 7.15 Tabled Items**

Items that are tabled may be taken from table by majority vote any time during the calendar year, but no later. Items may be postponed to a time certain, including to a following year.

**Rule 7.16 Reconsideration**

When a question has been decided, it will be in order for a member who voted on the prevailing side to move for reconsideration at the same meeting or next meeting only. For quasi-judicial matters, a motion for reconsideration at the next meeting only may be made upon request of the applicant, having waived rights to the time limits for decisions, and only to correct any technical issue in a decision and not to reverse a decision or decide again any substantive issue.

**SECTION 8 – ELECTRONIC MAIL AND ELECTRONIC COMMUNICATION**

**Rule 8.1 Electronic Mail and Electronic Communication**

E-mail or other forms of electronic communication may be used to schedule meetings, send informative messages, or request information from other planning commissioners or the planning director, except as limited by these rules or other applicable law. E-mail or other electronic communication may not be used to discuss policy issues with a quorum of the planning commission at one time or a quorum of a standing advisory body in any manner which would be in violation of the OPML. All planning commission e-mail correspondence is subject to the Oregon Public Records and Meetings Laws and is subject to disclosure.

**Rule 8.2 Electronic Mail and Electronic Communication Regarding Quasi-Judicial Items**

Commissioners shall refrain from sending electronic communication regarding the substance of any quasi-judicial item. If commissioners receive e-mail or electronic communication concerning the substance of any quasi-judicial item, they shall forward the communication to the planning director.

As such information may ex parte contact, commissioners shall avoid reading such communication outside the period the record is open for written comment. If reading such items is unavoidable, the commissioner shall declare the ex parte contact.

## SECTION 9 - RELATIONSHIP WITH THE CITY COUNCIL

### **Rule 9.1 Role of Planning Commission in Relation to the City Council**

Members of the planning commission are appointed by the mayor with consent of the city council. The mayor and council appoint them to provide study and perspective on issues beyond what the council can provide. Commissioners provide no value simply mimicking what they feel the council's decision on a matter would be, and thus can and should provide independent recommendations.

After the city council has voted on an issue that previously has been before the planning commission, commission members will speak for themselves carefully, in a manner that does not undermine the integrity or motives of the city council, even if their personal opinions or the Commission's decisions differ from the city council's decision.

### **Rule 9.2 Joint Meetings with City Council or Other Boards**

The commission should periodically hold joint meetings with the city council to share directly information and perspectives regarding particular issues. The mayor shall preside at such joint meetings.

The commission also may have joint meetings with other boards or commissions, such as the traffic safety commission. The chairs of the boards shall determine the agenda and the manner of facilitating the meeting.

### **Rule 9.3 Planning Commission Presentations at City Council Work Sessions**

The city council has established a work session before council meetings, and has invited the planning commission to make presentations on any matter during that meeting. The chair shall notify the mayor as far in advance as possible and at least one week in advance of the meeting to schedule a time. The commission may appear as a whole, the chair or vice-chair may represent the commission, or the commission may appoint one or more members to represent the commission to the council.

### **Rule 9.4 Attendance at and Participation in City Council Meetings**

In legislative matters, after the planning commission has taken action on an item, the mayor or city manager may request that the chair or chair's designee attend a city council meeting to report the commission's recommendation. The planning commission also may appoint a representative to attend the city council meeting and convey the Commission's recommendation.

On quasi-judicial items, the planning commission's report to the council consists of their written decision, findings and the record. Commission members do not speak at the council meeting unless requested by the city council or mayor.

Otherwise, planning commissioners may attend any meeting of the city council. They may speak to the council for themselves as a citizen on any item.

**OUTLINE FOR LEGISLATIVE PUBLIC HEARING**  
**Newberg Planning Commission**

- 1. CALL TO ORDER**  
OPEN THE PUBLIC HEARING, ANNOUNCE THE PURPOSE, DISCUSS TESTIMONY PROCEDURE, AND TIME ALLOTMENTS
- 2. CALL FOR ABSTENTIONS AND OBJECTIONS TO JURISDICTION**
- 3. STAFF REPORT**  
COMMISSION MAY ASK BRIEF QUESTIONS FOR CLARIFICATION
- 4. PUBLIC TESTIMONY**  
5 MINUTE TIME LIMIT PER SPEAKER (15 MINUTE LIMIT FOR APPLICANT AND PRINCIPAL OPPONENT). SPEAKER GOES TO WITNESS TABLE, STATES NAME & PRESENTS TESTIMONY. COMMISSION MAY ASK QUESTIONS OF SPEAKERS.
  - A. APPLICANT(S) (IF ANY)
  - B. OTHER PROPONENTS
  - C. OPPONENTS AND UNDECIDED
  - D. STAFF READS WRITTEN CORRESPONDENCE (TIME LIMIT APPLIES)
  - E. QUESTIONS OF PROPONENTS AND OPPONENTS FROM THE FLOOR DIRECTED THROUGH THE CHAIR
  - F. APPLICANT (IF ANY) REBUTTAL
- 5. CLOSE OF PUBLIC TESTIMONY PORTION OF HEARING**
- 6. FINAL COMMENTS FROM STAFF AND RECOMMENDATION**
- 7. PLANNING COMMISSION DELIBERATION**
- 8. ACTION BY THE PLANNING COMMISSION**
  - A. RESOLUTION – Usually requires passage of resolution.
  - B. VOTE – Vote is done by roll call.
  - C. MAJORITY OF A QUORUM – Requires majority of the quorum for passage.
  - D. COMBINATION – Can be combined with other commission action; separate vote on each action is required.

**OUTLINE FOR QUASI-JUDICIAL PUBLIC HEARING**  
**Newberg Planning Commission**

1. **CALL TO ORDER**  
OPEN THE PUBLIC HEARING, ANNOUNCE THE PURPOSE, DISCUSS TESTIMONY PROCEDURE, AND TIME ALLOTMENTS
2. **CALL FOR ABSTENTIONS, BIAS, EX PARTE CONTACT, AND OBJECTIONS TO JURISDICTION**
3. **LEGAL ANNOUNCEMENT**  
READ “[QUASI-JUDICIAL ANNOUNCEMENTS](#)” SHEET
4. **STAFF REPORT**  
COMMISSION MAY ASK BRIEF QUESTIONS FOR CLARIFICATION
5. **PUBLIC TESTIMONY**  
5 MINUTE TIME LIMIT PER SPEAKER (15 MINUTE LIMIT FOR APPLICANT AND PRINCIPAL OPPONENT). SPEAKER GOES TO WITNESS TABLE, STATES NAME & PRESENTS TESTIMONY. COMMISSION MAY ASK QUESTIONS OF SPEAKERS.
  - A. APPLICANT(S)
  - B. OTHER PROPONENTS
  - C. OPPONENTS AND UNDECIDED
  - D. STAFF READS WRITTEN CORRESPONDENCE (TIME LIMIT APPLIES)
  - E. QUESTIONS OF PROPONENTS AND OPPONENTS FROM THE FLOOR OR DIRECTED THROUGH THE CHAIR
  - F. APPLICANT REBUTTAL
6. **CLOSE OF PUBLIC TESTIMONY PORTION OF HEARING**
7. **FINAL COMMENTS FROM STAFF AND RECOMMENDATION**
8. **PLANNING COMMISSION DELIBERATION INCLUDING DISCUSSION OF CRITERIA WITH FINDINGS OF FACT**
9. **ACTION BY THE PLANNING COMMISSION**
  - A. ORDER OR RESOLUTION – Usually requires passage of order if the commission is the final decision maker, or a resolution if the commission is only advisory to the council.
  - B. VOTE – Vote is done by roll call.
  - C. MAJORITY OF A QUORUM – Requires majority of the quorum for passage.
  - D. COMBINATION – Can be combined with other commission action; separate vote on each action is required.

## Planning Commission

### **2.15.220 Establishment.**

There is reestablished a Newberg city planning commission for the City of Newberg, Oregon. [Ord. 2325, 4-6-92; Ord. 1718, 1-8-74. Code 2001 § 32.40.]

### **2.15.230 Membership.**

A. The commission shall consist of seven members who are not officials or employees of the city and two ex officio nonvoting members, one who shall be the mayor and the second a student from one of the local high schools.

B. Six of the seven members shall have their principal place of residency inside the city limits. One member may live within one mile of the urban growth boundary of the city at the time of their appointment and during the term that they serve on the planning commission.

C. No more than one voting member of the commission may engage in the buying, selling or the developing of real estate for profit as individuals or be members of any partnership or officers of any corporation that engages principally in the buying, selling or developing of real estate for profit. No more than two members shall engage in the same kind of occupation, business, trade or profession. [Ord. 2374, 4-4-94; Ord. 1718, 1-8-74. Code 2001 § 32.41.]

### **2.15.240 Term of office.**

A. Members of the planning commission shall be appointed by the mayor with the consent of the city council for a term of three years from the first calendar day of the year. The appointments of some members shall be for other than specified terms in order to establish an approximately equal expiration of terms each year. Members of the planning commission shall continue after expiration of their term until such time as their successors are appointed.

B. The term of each member shall continue until such time as their successors are appointed. [Ord. 2690 § 2(B), 2-4-08; Ord. 2325, 4-6-92; Ord. 2320, 1-21-92; Ord. 1718, 1-8-74. Code 2001 § 32.42.]

### **2.15.250 Vacancies and removal.**

A. Any vacancy in the commission shall be filled by appointment of the mayor with consent of the city council for the unexpired term of the predecessor in the position.

B. A member of the commission may be removed by the city council after hearing for misconduct or nonperformance of duty.

C. A member who is absent from two consecutive meetings without an excuse as approved by the planning commission is rebuttably presumed to be in nonperformance of duty and the city council shall declare the position vacant unless finding otherwise following the hearing. [Ord. 2690 § 2(B), 2-4-08; Ord. 2325, 4-6-92; Ord. 1718, 1-8-74. Code 2001 § 32.43.]

### **2.15.260 Presiding members.**

At the commission's first meeting of each calendar year, the commission shall elect a chairman and vice chairman to serve one-year terms. [Ord. 2325, 4-6-92; Ord. 1718, 1-8-74. Code 2001 § 32.44.]

**2.15.270 Staff services.**

The city recorder shall provide a secretary to the commission and such other staff and consultation services as may be appropriate. The secretary shall keep a record of commission proceedings. [Ord. 2325, 4-6-92; Ord. 1718, 1-8-74. Code 2001 § 32.45.]

**2.15.280 Meetings.**

A. A majority of the voting members of the planning commission shall constitute a quorum. The commission shall meet at least once a month unless business does not require such a meeting. In which case, the chairman, with the consent of the city manager, or the city manager's designee, may cancel such meeting. Meetings of the commission shall be open to the public and subject to the Open Meetings Law. Meetings other than the regularly scheduled times may be announced at a prior meeting and thereby be made a part of the meeting records.

B. The chairman, upon the chairman's own motion, may, or at the request of three members of the commission, shall, by giving notice to the members of the commission, call a special meeting of the commission for a time not earlier than 24 hours after the notice is given. Notice of a special meeting shall be posted at City Hall and to the extent feasible, provided to interested persons and the local newspaper at least 24 hours prior to the meeting. [Ord. 2374, 4-4-94; Ord. 2325, 4-6-92; Ord. 1718, 1-8-74. Code 2001 § 32.46.]

**2.15.290 Powers and duties.**

The commission shall have the powers and duties which are not and may hereinafter be assigned to it by Charter, ordinances or resolutions of the city and general laws of the state. [Ord. 2325, 4-6-92; Ord. 1718, 1-8-74. Code 2001 § 32.47.]

**2.15.300 Application.**

A. The city shall give public notice of any vacancy of the planning commission and accept such application for such vacancies.

B. The application for membership on the planning commission shall state the principal occupation of the applicant, the principal residency of the applicant, and give other information and qualifications as the city may deem necessary. [Ord. 2325, 4-6-92; Ord. 1718, 1-8-74. Code 2001 § 32.48.]

**2.15.310 Conflict of interest.**

A member of the planning commission shall abide by and be in accordance with the State Ethics Code. [Ord. 2325, 4-6-92; Ord. 2320, 1-21-92; Ord. 1718, 1-8-74. Code 2001 § 32.49.]

**2.15.320 Training.**

The city shall offer training to planning commissioners to educate them in their duties. It shall be the duty of any newly appointed planning commissioner to attend a basic training session from staff within 30 days of the planning commissioner's appointment. It shall be the duty of any reappointed planning commissioner to attend at least a one-hour training session from staff or offered by the city within 12 months from the beginning of that person's appointed term. [Ord. 2669, 5-7-07. Code 2001 § 32.50.]

**BROWN, TARLOW, BRIDGES  
PALMER & STONE PC  
Attorneys at Law**

ALLYN E. BROWN  
DONALD O. TARLOW  
JOHN T. BRIDGES  
STEPHEN C. PALMER  
TRUMAN A. STONE  
RICHARD P. BROWN



515 E. FIRST STREET  
NEWBERG, OREGON 97132  
TELEPHONE: (503) 538-3138  
FACSIMILE: (503) 538-9812  
[www.newberglaw.com](http://www.newberglaw.com)

September 7, 2011

City of Newberg  
Newberg Planning Director  
Barton Brierley  
P.O. Box 970  
Newberg, OR 97132

**Re: Planning Commission Guidelines, Meeting Expectations & Rules**

Dear Barton:

As you can imagine, I am quite pleased that the Planning Commission is engaging in a discussion about how they go about conducting their business. I have been suggesting to you for more than five years that it would be helpful to have some clear guidelines about how hearings are processed beyond just the statutory rules. In particular, I would love to see some decision making training. I have suggested on a number of occasions to you, the City Manager, and Mayor, that the Oregon State Extension Service has a number of programs where volunteers will come out and engage in "group decision making training", both for groups that make decisions using Robert's Rules of Order and those that do not.

In the next several paragraphs, I will cover a number of different comments or suggestions I have about the different documents that are being considered this Thursday. Before I make direct comments on the documents, I have some general comments that come from the perspective of applicants and obviously myself as an advocate. They are as follows:

1. First and foremost, I believe the Planning Commission should created and describe their deliberative process. None of the rules talk about how you will deliberate a decision. It may be that you do not need a formal rule, but it would be helpful to have the process written down. There are many different deliberative models. Some follow the Robert's Rules of Order where there is no deliberation until first a motion is made, where as others have a model where they do not even have a motion made until they have gone all the way around the table and heard a generalized discussion

from each member about how they are feeling about the application. I stress the term generalized discussion, because it does not get to the details of a particular criteria or a particular piece of factual evidence, but generally a sense of how the person feels about supporting or not supporting the application as a whole. There could be many other models as well, but the key point here is that you have a clear path because often times while watching deliberation I see the group go splintering off into different directions before someone is able to recapture the discussion and point it into a productive direction.

2. It is incredibly important that during the deliberation no Planning Commission member bring up issues or personal factual observations that were not directly discussed on the record. You can imagine how frustrated an applicant might be when for the first time during deliberation a Planning Commission member says "I went out and I saw that they cannot have vision clearance on that intersection" Well, if the Planning Commission member either does not disclose the information as an *ex parte* observation, which it is, or does not ask the applicant or the applicant's advocate about that vision clearance issue, then the applicant feels as though they had no opportunity to address an issue that has been elevated as a higher factual problem, because it is not one that a proponent or opponent is advocating, but rather one of the decision makers is advocating it. Whenever one of these issues comes to your mind, either through personal observation or otherwise, you should make every effort to ask both proponents and opponents whether they agree or disagree with your observation or your issue. If for some reason it does not come up until there is a process of deliberation, I would certainly request that you reopen the evidentiary portion of the hearing so you can ask those questions and get those responses.
3. You should endeavor not to engage in any *ex parte* communications or observations. The reason for this is that it is so hard for you to fully disclose what those communications or observations are. If for some reason you do engage in a conversation, try to explain it as fully as possible, both the bad and the good. If you have any personal observations, meaning you drove by a site or believe an assertion that somebody is making is inaccurate based on your own personal information, I believe the law is such that you have an obligation to disclose that, so that it gives the person that may disagree with that, an opportunity to clarify their position. It is not so much that *ex parte* contact in and of itself is bad, it just leads to a difficult time in explaining all of the nuances of what the communication or observations were. That is why it is better to receive all of your information through the hearing process.
4. All of your decisions should be made purely on the criteria. There should never be additional obligations or standards applied. You should never desire to require a greater setbacks or higher standards unless you are in a legislative process to change those items. Those topics should never come up in a quasi judicial setting. Often

times they have come up in the context of trying to negotiate with applicants to require them to do more than the code requires, impliedly in an effort to earn your vote. Because of the nature of the setting an applicant is not in an equal bargaining position with people who are attempting to negotiate with them at that juncture. Instead those rules should be applied as written, and not attempted to be modified in an ad hoc way.

I would like to discuss the documents that you have as drafts. My first comment deals with the "Meeting Expectations." Item #5 suggests that you should discuss issues with non-commission members outside the hearing. I think this is the opposite of what you should do. Instead, as I have indicated above, you should strive to avoid any *ex parte* contacts.

On the "Rules" I have the following comments:

- Rule 1.1** It would seem to me that the City Counsel should adopt these rules rather than the Planning Commission. Certainly the Planning Commission should have input on the content.
  
- Rule 2.5** While I recognize everybody has a First Amendment right to comment on applications, you should be mindful of the appearance to the audience. If somebody has just indicated that they have a conflict of interest and then come forth, even through a representative, to speak to their colleagues about a particular application, it is obvious that the audience is going to perceive that the commission member has a greater voice or a more legitimate comment.
  
- Rule 5.8** I make the same suggestion to the City Council that before starting any public hearings and after your consent calendar you consider any agenda item that deals with any volunteers. As a volunteer on many committees and activities it can be frustrating and rather time consuming to sit through a two to three hour public hearing when the report or request on the volunteer matter is going to take 10 or 15 minutes. I would much rather spend those two hours with my family, as I am sure other volunteers have many other interests as well.
  
- Rule 7.1-2** This rule is redundant of Rule 6.1. It also contains redundancy of the quorum requirement.
  
- Rule 7.5-7.8** These items seem unnecessary, as you have already adopted the Robert's Rules of Order. They provide answers to all of these proposed rules. To the extent that any of these rules could be inconsistent with the Robert's Rules of Order, you only create confusion.

- Rule 7.11** The last sentence I believe should be deleted. It encourages people not to declare *ex parte* communication or observation. Please keep in mind that your own “observations” are *ex parte* information, it is not merely limited to oral communication. On the issue of when an *ex parte* contact that fails to be declared can be a basis for overturning the decision, there is an extensive body of appellate law that addresses this. To distill it down to this sentence I think unjustifiably simplifies it.
- Rule 7.3** You should have a rule that allows the applicant and/or appellant to have more time than other people. If someone is filing an application that has 28 different criteria to respond to that 5 or even 15 minutes is insufficient. I can assure you I, as an advocate, do everything in my power to address the fewest number of criteria, leaving the items that are not at dispute aside. However, it is impossible to intelligently address say 15 or 20 criteria that are at issue in any meaningful way in such a short amount of time.
- Rule 8.1** I do not see any reason to have a presiding officer when you already have a chair and vice-chair. Really in this section you are dealing with the same issues that you have already dealt with in 6.1 and attempted, to redundantly, deal with in 7.1. The bottom line is that the chair and vice-chair are in charge of the environment of the whole meeting
- Rule 9.1(A)** Please also keep in mind, if you have any emails, with one or two of the Commissioners that they constitute *ex parte* communication. In other words, even communication between the Commissioners can be *ex parte*.

Thank you for the opportunity to be able to comment on these items. For those of who are newer to the Commission, rest assured that I have appeared before the Commission on numerous occasions in many different roles. I hope you will receive these comments, not as a complaint about how past actions have occurred, but rather an opportunity to improve the process and, most importantly, the deliberative process.

Yours truly,

BROWN, TARLOW, BRIDGES, PALMER & STONE PC



John T. Bridges  
JTB:cs