

ORDINANCE NO. 3767

ORDINANCE AMENDING CHAPTER 2.16 OF THE ALBANY MUNICIPAL CODE CREATING A PLANNING COMMISSION, PROVIDING FOR THE APPOINTMENT OF MEMBERS AND QUALIFICATIONS, ESTABLISHING A HEARINGS BOARD AND ESTABLISHING RULES FOR CONDUCT AT HEARINGS, PROVIDING FOR APPEALS OF DECISIONS OF THE HEARINGS BOARD AND DECLARING EMERGENCY.

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1:

There is hereby established a planning commission for the City of Albany which shall act as the planning and land use advisory body to the city council and shall have such other powers and authority as described in this ordinance.

Section 2:

The planning commission shall consist of nine (9) members appointed by the city council.

- (a) Commission members shall receive no compensation, but shall be reimbursed for duly authorized expenses.
- (b) Any person appointed to membership upon the planning and zoning commission may be removed by the city council, after hearing, for misconduct or nonperformance of duty.
- (c) Any vacancy shall be filled by the city council for the unexpired term of the predecessor in office.
- (d) No more than two (2) voting members shall be engaged principally in the buying, selling or developing of real estate for profit as an individual, or be a member of a partnership, or officer or employee of any corporation that is engaged principally in the buying, selling or developing of real estate for profit.
- (e) No more than two (2) voting members shall be engaged in the same kind of business, trade or profession.
- (f) All members of the planning commission shall be appointed for four (4) year terms or until their respective successors are appointed and qualify.
- (g) Not more than two (2) planning commission members shall be nonresidents of the city. Only one (1) member may be a resident of Benton County.

(h) No voting member shall be related to another voting member of the commission nor to a member of the city council closer than the third degree of either blood relationship or through affinity.

(i) In the event that any member of the planning commission shall change residence after appointment so that he is no longer a resident of the city of Albany or of the county where he resided at the time of appointment then in that event his membership on the commission shall immediately terminate.

(j) No member of the commission shall vote on any question before the commission in which said commissioner shall have a direct or indirect financial interest nor in which any member of his family within the third degree shall have a direct or indirect financial interest. The interest of any commission member shall be disclosed and entered on the minutes of the meeting.

(k) The planning commission shall, at its first meeting in January of each year, elect one of its members to serve as chairman and another to serve as vice-chairman. The planning director of the city of Albany shall serve as secretary to the planning commission and shall keep accurate, permanent and complete records of all proceedings held before the planning commission. The chairman or the presiding officer of the planning commission shall be entitled to vote on all questions that are before the commission. The planning commission may adopt rules governing the transaction of its business which are not inconsistent with the provisions of this ordinance.

Section 3: DUTIES OF THE COMMISSION

The commission shall:

1) Recommend and make suggestions to the city council and to all other public authorities concerning the laying out, widening, extending, parking and locating of streets, sidewalks, and boulevards, relief of traffic congestion, betterment of housing and sanitation conditions and establishment of zones of districts limiting the use, height, area and bulk of buildings and structures.

2) Recommend to the city council and all other public authorities plans for regulation of all future growth, development and beautification of the city in respect to its public and private buildings and works, streets, parks, grounds and vacant lots and plans consistent with future growth and development of the city in order to secure to the city and its inhabitants sanitation, proper service of all public utilities, and transportation facilities.

- 3) Recommend to the city council and all other public authorities plans for promotion, development and regulation of industrial and economic needs of the community in respect to private and public enterprises engaged in industrial pursuits.
- 4) Advertise the industrial advantages and opportunities of the city and availability of real estate within the city for industrial settlement.
- 5) Encourage industrial settlement within the municipality.
- 6) Make economic surveys of present potential possibilities of the municipality with view to ascertaining its industrial needs.
- 7) Studying needs of existing local industries with view to strengthening and developing local industries and stabilizing employment conditions.
- 8) Prepare and submit to the city council for adoption a comprehensive land use plan and shall review this plan and recommend amendments thereto as are from time to time deemed necessary.
- 9) Shall advise the city council as to needs for amendment and change in existing zones and zoning ordinances.
- 10) Make annual report to the City Council of goals and activities.

Section 4: HEARINGS BOARD

The planning commission shall appoint a committee of three (3) of its members to act as a Hearings Board. A fourth person shall be appointed to act on an alternate basis only. Membership on the Hearings Board shall be for a period of two (2) years and no member of the commission shall sit as a Hearings Board member for more than two (2) successive terms. A person shall not be eligible for appointment to the Hearings Board unless he has served at least two (2) years as a member of the planning commission at the time of appointment. No more than one member shall be engaged in buying, selling or developing of real estate for profit. The first Hearings Board to be appointed shall consist of one (1) member to serve a one (1) year term and two (2) members to serve a two (2) year term and an alternate to serve a two (2) year term. The Hearings Board may continue from time to time any hearing held by it.

The Hearings Board shall appoint one of its members as chairman to preside at all hearings. The chairman may designate any member of the board to preside and perform duties in the absence of the chairman. The chairman shall decide all points of order or procedure unless otherwise directed by a majority of the board in session at the time. The chairman may designate members of the board to make an inspection of premises if so desired.

Section 5: HEARINGS BOARD DUTIES

The Hearings Board will hear all contested cases which are referred to it by the planning commission. Any party may appeal from a decision of the Hearings Board to the entire membership of the planning commission and then, to the city council.

Section 6: INITIATION OF HEARING

An owner of land or any party having an interest therein may apply in writing to the Hearings Board for a hearing upon such forms and in such manner as provided and prescribed by this ordinance or rules of the planning commission. The Hearings Board shall hold at least one (1) public meeting on an application and within forty-five (45) days after receipt of an application shall take action denying or approving the application, issuance of the permit or determining the contested case. An application shall not be approved unless the proposed use of the land would be in compliance with a comprehensive plan for the city. Any approval may include such conditions as are authorized by ORS 227.230 and any ordinance of the city or rules and regulations of the planning commission. If an application for a permit is denied the application shall not be submitted again until at least six (6) months after the date of the final action denying the application.

Section 7: RULES FOR HEARINGS BEFORE HEARINGS BOARD

- 1) Hearings shall be held only after notice to the applicant and notice to all interested persons.
- 2) All hearings sessions shall be open to the public.
- 3) The concurrence of two (2) members of the Hearings Board sitting at a particular hearing shall be necessary to take any action. Notice of all hearings before the hearings board shall be given by publication thereof at least one (1) time prior to the date of hearing, which notice shall not be more than seven (7) days nor less than twenty-four (24) hours before the date of the hearing.
- 4) The administrative rules of procedure as promulgated under the Oregon Administrative Procedures Act shall be the rules followed by the Hearings Board unless otherwise provided in this ordinance.

Section 8: RECORD OF HEARING

A definitive record must be made on all evidence produced before the Hearings Board and upon all matters upon which it basis its order. The record may be made stenographically or mechanically and shall require only in substance reporting and not verbatim reporting.

The city shall assign to the Hearings Board a secretary for the purpose of preparation of the official record of the hearing.

Any party to a matter that is being considered by the Hearings Board shall have the right to counsel. Strict technical rules of evidence as practiced in the courts of law of the state of Oregon are not required to be followed and rules of evidence shall be relaxed, particularly so with regard to "exclusionary rules". The board shall test evidence by weight rather than as to its admissibility. The board shall not have the right to subpoena witnesses.

In taking of testimony the right of cross-examination is preserved and the taking of depositions and interrogatories shall be encouraged. Affidavits may be admitted but shall be weighted as to their value. Testimony under oath or affirmation will be taken and oral examination of witnesses by the question and answer method will be permitted.

Section 9: JUDICIAL NOTICE

The Hearings Board shall take official notice of all of the ordinances and regulations of the City of Albany and the laws of the state of Oregon and may take notice of all other facts which are within the specialized knowledge of the Hearings Board.

Section 10: ON SITE EXAMINATIONS AND INSPECTIONS

The Hearings Board may make on site examination and inspections and examinations into facts which will be a part of the formal hearing record if the facts are essential to proof.

Section 11: APPEALS

A party aggrieved by the Hearings Board may appeal such approval or denial to the entire planning commission and then to the city council of the City of Albany. The city council on its own motion may review any action taken by the Hearings Board.

Any appeal from a decision of the Hearings Board or to the city council must be perfected by filing notice of appeal within fifteen (15) days of the date of the decision of the Hearings Board and within fifteen (15) days from the date of the decision of the planning commission. Notice of appeal shall be filed with the planning director of the City of Albany. Any matter appealed to the planning commission shall be determined within thirty (30) days after the date of the filing of the notice of appeal.

On appeal to the city council, the council, upon due notice of the hearing shall review the action of the Hearings Board or the planning commission, as the case may be, as set forth in the transcript of the hearing and the written findings as submitted and shall take further evidence if they so desire and the city council may amend, rescind or

affirm the action of the Hearings Board or the planning commission.

Section 12: WITHDRAWAL OF PETITION

A petitioner and applicant for a special permit, exception or other permit or approval provided by this ordinance or a change of zone may withdraw his application any time before hearing by filing with the Hearings Board a request in writing signed by all persons who signed the original application or their successors in interest. If such request is made prior to publication of notice of hearing the city shall refund the filing fee and any deposit required.

Section 13: TERMS OF PRESENT NONRESIDENTS

Those nonresident members now serving on the Planning Commission shall continue to serve until the expiration of their term.

Section 14: EMERGENCY DECLARED

Whereas it is necessary that this ordinance become effective as soon as possible in that the laws of the state of Oregon effective on October 5, 1973, provide for basic changes in the composition of the planning commission an emergency is hereby declared and this ordinance shall become immediately effective upon its passing by the council and approval by the mayor.

PASSED BY THE COUNCIL February 13, 1974

APPROVED BY THE MAYOR February 13, 1974

EFFECTIVE DATE February 13, 1974



Mayor



City Recorder