

ORDINANCE NO. 866

AN ORDINANCE AMENDING ORDINANCE NO. 502 TO REDUCE THE CURRENT NUMBER OF PLANNING COMMISSION MEMBERS FROM A SEVEN MEMBER COMMISSION DOWN TO A FIVE MEMBER COMMISSION; ADOPTING NEW PLANNING COMMISSION BYLAWS; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Madras ("City") adopted Ordinance No. 502 on October 22, 1991, which ordinance established the composition and general duties of the City of Madras Planning Commission (the "Commission"); and

WHEREAS, City adopted Ordinance No. 728 on March 8, 2005, which ordinance amended Ordinance No. 502 with respect to the Commission's membership requirements; and

WHEREAS, on or about July 5, 1994, the Commission adopted certain Planning Commission Bylaws (the "Original Bylaws") pursuant to ORS 227.020 in order to govern Commission business and operations; and

WHEREAS, the original bylaws were amended by formal motion of the City Council on July 22, 1997; and

WHEREAS, the original bylaws, as amended, were repealed and replaced by passage of Ordinance No. 714 on January 27, 2004 (the "Current Bylaws"); and

WHEREAS, the Madras City Council (the "Council") and Commission have determined that Ordinance No. 502, as amended, and the current bylaws are outdated and in need of amendment or replacement; and

WHEREAS, on or about March 18, 2014, the Commission reviewed and discussed the proposed amendments to Ordinance No. 502 and the proposed Planning Commission Bylaws dated April 14, 2015 substantially in the form attached hereto as Exhibit "A" (the "Proposed Bylaws") and determined that the ordinance amendments and bylaws being proposed were acceptable; and

WHEREAS, after providing the public with an opportunity to testify on the ordinance amendments and proposed bylaws, and after taking into consideration any written and oral comments received from the public and staff during the public hearing held on April 14, 2015, the Council approves the amendments to Ordinance No. 502 and the proposed bylaws as provided in this Ordinance.

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

SECTION 1: FINDINGS

The above-stated findings contained in this Ordinance are hereby adopted.

SECTION 2: AMENDMENT NO. 1

Ordinance No. 502, Section 3, Membership, Subsections (1) and (7), as amended by Ordinance No. 728 in the case of Subsection (1), are hereby amended in their entirety as follows:

- “(1) The commission shall consist of five voting members. Commission members shall be appointed by the City Council. At all times, at least one (1) member must be a resident of the City of Madras. Not more than two (2) members may reside outside the Madras city limits but within the City of Madras Urban Growth Boundary. Not more than two (2) members may reside outside the Madras city limits but within a three mile radius of the Madras city limits. Notwithstanding the foregoing, the City Council shall endeavor to appoint residents of the City of Madras to the commission.”
- “(7) No two (2) or more members of the commission shall have the same occupation. Business persons engaged in different kinds of business shall not be prevented by this subsection from serving. Being retired shall not be considered an occupation within the meaning of this subsection. Persons principally engaged in the buying, selling, or developing of real estate for profit, including as principals, members, officers, or employees of any partnership, business entity, or corporation that principally engages in the buying, selling, or developing of real estate for profit, shall be considered to have the same occupation.”

The foregoing amendments are hereby made part of Ordinance No. 502. The sections and provisions of Ordinance No. 502 that are not amended or modified by this Ordinance remain unchanged and in full force and effect.

SECTION 3: ADOPTION OF BYLAWS

The proposed bylaws dated April 14, 2015, are hereby approved and adopted by the Council. The proposed bylaws, attached hereto as Exhibit "A", replace and supersede the current bylaws dated January 27, 2004 in its entirety. In furtherance of the general powers and duties granted the Commission under Ordinance No. 502, as amended, the Commission will be permitted to make any further amendments and/or modifications to the Commission bylaws as and when the Commission deems necessary or appropriate without the Council's review and approval provided such amendments and/or modifications are permitted and do not conflict with Ordinance No. 502, as amended, and applicable law.

SECTION 4: MISCELLANEOUS

- 4.1 Severability. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not

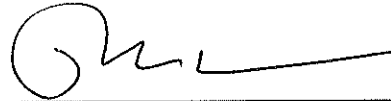
affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance.

4.2 Corrections. This Ordinance may be corrected by order of the City Council to cure editorial and/or clerical errors.

4.3 Emergency Declaration. The City Council finds that passage of this Ordinance is necessary for the immediate preservation of the peace, health, and safety of City's citizens. Therefore, an emergency is hereby declared to exist. This emergency Ordinance will be in full force and effect upon its passage by the Council and signing by the mayor.

APPROVED AND ADOPTED by the City Council of the City of Madras and signed by the Mayor this 14th day of April, 20 15.

Ayes: 5
Nays: 0
Abstentions: 0
Absent: 0
Vacancies: 1



Royce Embanks, Mayor

ATTEST:

Karen J. Coleman
Karen J. Coleman, City Recorder

Exhibit "A"
Planning Commission Bylaws

[attached]

**CITY OF MADRAS
PLANNING COMMISSION BYLAWS**

BE IT RESOLVED that the City of Madras Planning Commission (the "Commission") hereby adopts the following Planning Commission Bylaws pursuant to ORS 227.020 and/or Ordinance No. 502 in order to govern the Commission's business and operations. As of April 14, 2015, (the "effective date"), these bylaws replace and supersede all prior Commission bylaws, as amended, in its or their entirety.

SECTION 1: MEMBERSHIP

A. NUMBER AND SELECTION. The Commission shall consist of five (5) voting members. Commission members shall be appointed by the City Council. At all times, at least one (1) member must be a resident of the City of Madras. Not more than two (2) members may reside outside the Madras city limits but within the City of Madras Urban Growth Boundary. Not more than two (2) members may reside outside the Madras city limits but within a three-mile radius of the Madras city limits. Notwithstanding the foregoing, the City Council shall endeavor to appoint residents of the City of Madras to the Commission.

B. TERM OF OFFICE. Members shall be appointed for three (3) year terms, or until their respective successors are appointed and qualified. Terms begin on January 1 and end on December 31. Terms shall be staggered.

When an interim vacancy occurs, the City Council shall make appointments to fill that position for the duration of the unexpired term given due consideration to the Commission's recommendation.

C. REPRESENTATION. No two (2) or more members of the Commission shall have the same occupation.

1. Business persons engaged in different kinds of business shall not be prevented by this subsection from serving.
2. Being retired shall not be considered an occupation within the meaning of this subsection.
3. Persons principally engaged in the buying, selling or developing of real estate for profit, including as principals, members, officers, or employees of any partnership, business entity, or corporation that

principally engages in the buying, selling or developing of real estate for profit, shall be considered to have the same occupation.

- D. **RESPONSIBILITIES.** Commission members shall regularly attend meetings of the Commission and its subcommittees, as well as fulfill other duties as assigned by the Chair. Members shall notify the Community Development Director when they are unable to attend a Commission meeting.

Prior to meetings and hearings, members shall review pertinent written documents in preparation for deliberation and decision making.

- E. **TERMINATION OF MEMBERSHIP.** The City Council may, following a hearing, remove a Commission member for the following reasons:

1. Failure to attend regular Commission meetings resulting in three (3) or more consecutive unexcused absences;
2. Committing a felony;
3. Incompetence;
4. Misconduct;
5. Failure to declare conflicts of interest or ex-parte contacts.

The Community Development Director shall be directed by the Commission Chair to notify the City Council in writing when a Commissioner's appointment needs to be reviewed for possible termination.

SECTION 2: OFFICERS

- A. **ELECTION OF OFFICERS.** At the first regular meeting of each year, the Commission shall select from its voting membership, a Chair and Vice-Chair whose term of office shall be one (1) year. Said member shall be eligible to serve as many terms as they are elected to serve.

1. Duties of the Chair.

- a. Preside at all meetings;
- b. Conduct meetings/hearings in an orderly manner following all accepted laws and Bylaws governing the Commission;
- c. Call special meetings;
- d. Appoint all Commission committees.
- e. Sign approved documentation (e.g. Minutes of the Meetings, Decisions, etc.)

2. Duties of the Vice-Chair

- a. Conduct meetings and hearings, and sign approved documentation in the absence of the Chair;
- b. Serve out the unexpired term when the Chair is vacated.

SECTION 3: ROLE OF THE PLANNING COMMISSION

The Commission is composed of volunteer lay members whose duties include:

- A. Participation in the Periodic Review of the City Comprehensive Plan.
- B. Maintenance of ordinances intended to implement the City Comprehensive Plan.
- C. The conducting of hearings intended to satisfactorily determine application issues.

SECTION 4: STAFF

- A. **STAFF TO THE PLANNING COMMISSION.** In addition to the Community Development Director, the following positions may support the work of the Commission:

1. City Administrator
2. Jefferson County Fire Marshal

3. City Public Works Director
4. City Attorney
5. City Recorder
6. Community Development staff and consultants

- B. ADVISORS TO THE PLANNING COMMISSION.** The Council may, at the request of the Commission, designate subcommittees of citizens and professionals as advisors. Said advisors will be requested to provide technical assistance, participate in deliberations, and attend meetings to the extent deemed appropriate by the Chair.
- C. LEGAL COUNSEL.** The City Attorney shall act as legal advisor to the Commission in the conduct of all hearings.
- D. COMMISSION SECRETARY.** The Community Development Director or Community Development staff shall serve as Secretary to the Commission and shall keep an accurate, permanent, and complete record of all proceedings before the Commission. The Community Development Director shall be responsible for overseeing the timely and accurate preparation of the Commission minutes.

SECTION 5: COMMISSION MEETINGS.

- A. REGULAR MEETINGS.** The regularly scheduled meeting of the Commission shall be the first Wednesday (or such other business day that the Commission may fix from time to time) of each month, beginning at a time set by the Commission in the Madras City Hall Council Chambers.

In addition to the foregoing regular meeting dates, the Commission may meet at other times, dates, and places as may be deemed appropriate to carry out the Commission's business.

If there is no pending business, the Community Development Director may cancel a Commission meeting by providing appropriate notice.

B. **SPECIAL MEETINGS.** Special meetings may be called by the Chair, a majority of the Commission members, the Community Development Director, or the City Council by giving at least forty-eight (48) hour notice before the meeting.

C. **QUORUM.** A quorum shall consist of not less than three (3) members of the Commission. It is necessary to have a quorum present to conduct business or hold a public hearing. A previously absent member may count towards a quorum and participate in a continued hearing if the commissioner states for the record that they have listened to the recordings of the prior meeting and have read all of the evidence in the record

D. **VOTING.** Motions may be made and seconded by any member of the Commission except the Chair. Each Commission member, including the Chair, shall vote unless there is a recognized conflict of interest or unless the Commission member or Chair was unable to consider the full record on the matter. In this case, the Commission member or Chair will abstain.

A majority vote of those constituting a quorum shall be required to pass any motion before the Commission. All voting on public hearing issues shall be by roll call of the Commissioners. On a tie vote, the motion fails.

The Commission shall approve or deny any application where the Commission serves as the hearings body. Matters where the Commission does not serve as the hearings body may be forwarded to the City Council with either a recommendation to approve, recommendation to disapprove, or no recommendation.

E. **AGENDA.** The Community Development Director, in conjunction with the Chair, shall set the agenda and give notice to members seven (7) days prior to the meeting. Additional items may be added at the meeting when requested by individual Commission members, City Council, or Community Development staff.

F. **MINUTES.** A recording of the Commission's proceedings plus an accurate written record shall be maintained by the City Recorder in compliance with the state records retention schedule, and in the office of the Community Development Department.

SECTION 6: COMMISSION HEARINGS

- A. CONFLICTS OF INTEREST, BIAS, AND EX-PARTE CONTACTS.** A Commission member shall not participate in any proceedings in which any of the following has a direct, or substantial financial interest: the member, the member's spouse, brother, sister, child, parent, parent-in-law, cousin, niece, nephew, employer or partner in any business with which he or she is negotiating or has an arrangement or understanding concerning prospective partnership or employment.

Any action, or potential financial, or other interest that would lead to bias or partiality shall be disclosed at the hearing where the action is considered.

Any party to any action may, in relation to an action, challenge the impartiality of any member before or during the hearing on the action. A challenge must include the facts relied upon by the challenging party relating to the member's alleged bias, prejudgment, or personal interest, or other facts from which the party has concluded that the member cannot participate in the decision in an impartial manner.

In the event of a challenge for bias, the member shall respond in a statement of capacity to participate in the hearing, which shall be part of the record. The statement shall refer to the challenge and include the reasons why the member wishes to participate or be disqualified. The statement of capacity to participate in the hearing shall not be subject to cross examination, but shall be subject to rebuttal by the challenging party.

The member of the Commission shall not:

1. Communicate, directly or indirectly, with any interested persons or their representatives in connection with any matter before the Commission that is subject to a public hearing except upon notice and an opportunity for all parties to participate;
2. Take notice of any communication, reports, staff memoranda, or other materials prepared in connection with the particular case unless the parties are afforded an opportunity to contest the material so noticed; or
3. Conduct a site visit with a party or their representative unless all parties are given an opportunity to be present.

If ex-parte contact cannot be avoided by a member of the Commission, disclosure of the contact shall be made by the member at the opening of the appropriate hearing. Such disclosure shall be subject to the same rules as for a statement of bias or conflict of interest.

Requests for disqualification based upon bias, conflict of interest, or ex-parte contact shall be considered by the entire Commission present, and be granted upon majority consent (excluding the individual disclosing or challenged concerning bias or ex-parte contact). The Commission shall consider the evidence in the record and decide whether the individual can reasonably be expected to render an impartial decision.

In the event a member is disqualified, the remaining members shall hear the application. In the event of no quorum, the application will be rescheduled to a future meeting.

No decision or action of the Commission shall be invalid due to ex-parte contact or bias resulting from ex-parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:

- a. Places on the record the substance of any written or oral ex-parte communications concerning the decision or action; and
- b. Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

A communication between city staff and the Planning Commission shall not be considered as ex-parte contact for the purposes listed in the above paragraph and subparagraphs.

- B. BURDEN OF PROOF.** The burden of proof is placed upon the applicant seeking approval of the proposed action. Such proof shall show that:

The proposed action is in accordance with the applicable standards and criteria of the City of Madras Comprehensive Plan and relevant zoning ordinances.

C. **HEARING PROCEDURES.** Hearings on proposed actions shall be conducted in compliance with Article 9 of the City of Madras Zoning Ordinance (No. 864) as it may be amended from time to time. These bylaws shall be subordinate in the event of any conflict with the City of Madras Zoning Ordinance.

D. **ORDER OF HEARING.** The general rules governing hearings will be as follows:

1. Questions may be asked by Commissioners at any time on any point and shall be directed through the Chair;
2. The length of time given for speakers may be indicated by the Chair;
3. The Chair may regulate time allowed if it is in the public's interest and necessary to the Commission's responsibility as a hearings body;
4. Anyone wishing to testify before the Commission may be represented by counsel;
5. Questions must be submitted to the Chair who may request answers.
6. All Commissioners are expected to contribute to the deliberation by asking questions, and discussing issues;
 - Hearing declared open
 - Chair reads ORS 197/227....., if requested, or not included on the meeting agenda.
 - Staff report
 - Applicant testimony
 - Testimony of proponents
 - Written testimony favoring application shall be read by the Chair or designee

- Testimony of all opponents
- Written testimony in opposition to the application shall be read by the Chair or designee
- Applicant rebuttal
- Public hearing is closed
- Discussion by Commissioners including attention to any relevant written questions from the audience
- Action by the Commission; motion for disposition; discussion of the motion; call for the question, and voting

A continuance may be granted by a majority of the Commissioners present if new information regarding the application has been presented by the applicant after the notice of public hearing is sent.

If the hearing is continued, the time and place shall be announced. Persons previously notified need not be renotified.

If there is no continuance, the record shall remain open for seven (7) days if a party so requests.

SECTION 7: PLANNING COMMISSION TRAINING

The Community Development Department shall provide appropriate training to all Commission members when the department's budget allows for training. All Commission members shall be given a current, complete notebook containing the Comprehensive Plan, Zoning Ordinance, Subdivision Ordinance, any updates thereto, and any other written information that will assist the Commission members in carrying out their duties.

SECTION 8: CITY PLANNING COMMISSION BYLAWS REVIEW

These bylaws shall be reviewed for appropriate and timely revision(s) at the first meeting of each calendar year.