

**PORT ORFORD PLANNING COMMISSION
GABLE CHAMBERS, PORT ORFORD CITY HALL
REGULAR MEETING
Tuesday, August 8th, 2023, 3:30 PM**

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Please join the meeting from your computer, tablet or smartphone.

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1. Call to Order
2. Approval of July 11th Minutes
3. Chair Comments
4. Public Comments (On Agenda Items Only)
5. Short Term Rental Ordinance Discussion
6. Planning Matters
 - a. Review Comprehensive Plan
 - b. Review of minor partition process
7. Other Business
 - a. City Planner Comments
 - b. Planning Commission Comments
8. Public Considerations
9. Adjourn

City of Port Orford
Planning Commission Meeting
In the Gable Chambers / Virtual participants
Tuesday, July 11th, 2023 at 3:30 P.M.

Commission Member	Present	City Staff	Present
<i>Chairman Greg Thelen</i>	X	<i>Joseph Harrison, Planning Tech.</i>	X
<i>Vice Chair Pamela Berndt</i>	Excused	<i>Crystal Shoji, City Planner</i>	X
<i>Comm Sara Lovendahl</i>	X		
<i>Comm Jennifer Head</i>	X		

Others Present: Carol Lawton (Commissioner waiting for appointment by City Council)

The minutes were prepared using the video available at
<https://www.youtube.com/watch?v=LRqxLIDO4o8>

1. (0:00-0:02) Call to Order

- A. Chair Thelen called to order this Meeting of the Planning Commission on July 11nd, 2023, at (3:34) p.m.

2. (0:02-0:08) Approval of June 6th meeting Minutes

- A. Discussion: the committee members requested the following changes be made to the minutes;
 - i. Item 4(vi)(1); Commissioners ask for the discussion on the safety that arose from the Public Hearing be given more detail. Item 4(vi)(1) changed to include “Commissioners also note concerns over the increase in traffic and construction impacting the safety of children from the neighboring properties located in the residential zone. Commissioners also noted the size of the road potentially being hazardous as it was not designed with the intent of having that section be high traffic.”
- B. Motion to approve the minutes as amended by Comm. Lovendahl.
- C. Motion seconded by Vice Chair Berndt.
- D. The vote passes unanimously with no further discussion.

Chairman Thelen Yes Commissioner Lovendahl Yes Commissioner Head X

3. (0:08-0:09) Chair Comments

- A. Due to the high volume of agenda items, the training portion of the agenda may need to be split into 2 section and finished at the next meeting.

4. Public Comment

- A. None

5. (0:09-0:26) Short Term Rental Discussion

- A. Documents on pages 22-25 are recommendations on the drafted ordinance on Short Term Rentals, the revised one has been included in the minutes. Some items from the first document, drafted by the Planning Commission were missed in the second document, drafted by the administration. The items are as follows:
 - i. Proof of use as a requirement for renewal (except those grandfathered in)
 - ii. A limiting cap to the number in residential zones is changed to “by resolution” instead of a fixed number.
- B. Commissioners have been in contact with a local contractor, Jeff McVannel, who is willing to do inspections on the Short Term Rentals to make sure they are following the code; both during the initial approval and upon renewal. Commissioners reiterate the importance of inspections if the City is giving them permission to do
- C. Commissioner Lovendahl motions that prior initial approval, or initial renewal after a code change, outside inspection required for approval.
- D. Commissioner Burns Seconds
- E. Vote: Passes unanimously with no further discussion at (3:52)
- F. Commissioners inquire if Daneil Kearns is going to review the document prior to finalization. As it stands, the document will only be reviewed by the City Administrator prior to finalization due to his background in legal matters. Commissioners express desire to have Daneil Kearns review it due to his specialization in this area.
- G. Commissioners confirm that the STR license is non-transferable and would be lost if a property is sold.

6. (0:26-1:20) Planning Matters

- A. Senior Planner Shoji goes through a training power point that has been included in the minutes. Senior Planner Shoji answers commissioner questions through out.
- B. Senior Planner Shoji has found a DLCD application for a grant that would allow the City to Update its code.
 - i. Commissioner Head motions to approve the recommendation for the City Administrator to file the DLCD grant application for code changes prior to 7/31/2023.
 - ii. Commissioner Lovendahl seconds the motion.
 - iii. Vote: passes unanimously at (4:52) pm with only clarifying questions being asked.

Chairman Thelen Yes Commissioner Lovendahl Yes Commissioner Head X

- C. **The Commission does a time check and agrees via consensus to postpone the Comprehensive Plan Review until the next meeting.**

7. **(1:20-1:52) Other Business**

- A. Review of Approval Process for Planning Clearance and Building Permits for Commercially zoned properties has been moved from (7)(d) to (7)(a), displacing the rest of the items.
- i. Joseph presents a planning clearance form, included in the minutes, that has been updated and brought in line with the code.
 - ii. Commissioners state that want signed applications to come back after being approved by County to make sure that County approved and the plans didn't change between municipal approval and County approval.
 - iii. Commissioner Lovendahl motions to recommend change the planning clearance application by adding that the applicant must return the signed permit to ensure that the plans are the same as the initial plans approved by the City.
 - iv. Commissioner Head seconds the motion.
 - v. Vote: passes unanimously at **(5:12) pm** with only clarifying questions being asked.

Chairman Thelen Yes Commissioner Lovendahl Yes Commissioner Head X

- vi. Commissioners have other clarifying questions and ask for some changes to the form to make the Planning Clearance forms clearer.

B. Planning Commission Secretary Election

- i. Comm Lovendahl motions to have Joseph serve as Planning Commission Secretary
- ii. Comm Head seconds the motion.
- iii. Vote passes unanimously with no discussion.

Chairman Thelen Yes Commissioner Lovendahl Yes Commissioner Head X

C. **(1:52-1:54) City Planner Comments**

- i. Next Meeting is postponed for 1 week, being moved from 8/1/23 to 8/8/23.

D. Planning Commission Comments

- i. Commissioners thank Senior Planner Shoji for the training.

8. Public Considerations

A. None

9. Adjourn

A. With no further business, Chairman Thelen closed the meeting of the Planning Commission at **(5:28)** pm.

Attest:

Chair, Greg Thelen

Date

City Recorder, Joseph Harrison

Date

April 24, 2023

Review of draft STR ordinance presented to Council at their February meeting with suggested updates based on recommendations by Daniel Kearns, the Planning Commission, and my understanding of Council's general wishes.

Greg Thelen, PC chair gkthelen@gmail.com 503-841-9218.

For convenience, sections noted only include the last 3 digits of the ordinance number, so .070 A. means 05.05.070 A.

1. .040 C. PC recommends not putting the number of licenses in the ordinance because the number of legally existing STRs has been decreasing. We recommend the number be set by Council at the time of the adoption of the ordinance. I recommend the first sentence of this section begin, "The City Council may, by resolution, set a limit on the number...".
The number of the cap can then be set and changed by Council if necessary without affecting the ordinance.

2. .040 C. "or renewed" appears three times, but may not be necessary, because we are grandfathering in legally existing STRs.

3. .040 C. The next to last sentence seems awkward, "No similar...".
Suggest, "There is no similar limitation on issuance of licenses outside residential areas 1-R and 2-R".

4. .040 D. Council and PC agreed that legally existing STRs closer than 300 feet will be grandfathered in. I recommend replacing "or renew" in the first sentence with "a new".

5. .040 D. The last sentence of this section should be removed, "Any applicant...". Should language noting the grandfathering be placed here?

6. .070 B. The last sentence is incomplete. It may refer to the fact that we want the license to be reviewed periodically with a new application and/or inspection. PC recommends this happen every 5 years.

7. .070 New item: We want a proof of use requirement, similar to that adopted by Gold Beach recently. It reads, "Proof of Use. For STR endorsement renewals, lodging tax remittance records must demonstrate that the unit has been rented at least 30 days within the 12-month fiscal year".

8. .070 D. Off street parking... Commission voted to remove this section at the City Administrator's suggestion.

9. .080 B. Strike portion of first sentence, "...in accordance with section 05.05.070 of this ordinance"...

10. .080 D. Replace Quiet Hours section with language recommended by Daniel Kearns in letter to CA Ginsburg Feb. 7, 2023, which says, "A violation occurs if between the hours of 10 p.m. and 7 a.m. there is any noise from a STR that can be heard at the property line".

11. .080 E. Strike last portion of sentence about contractors and amend so it reads, "...shall be fully permitted and inspected".
12. 080. G. 2. Fire and emergency safety. Add to the last sentence, "...prior to issuance of a license and may be required for each renewal at the City Administrator's discretion". (this had been removed from an earlier draft)
13. .080 K. Fires. Add a sentence, "Outdoor fires are prohibited in Port Orford during many months of the year. Check with Coos Forest Protective Association (CFPA) on current regulations before lighting any outdoor fires www.cfpa.net (541-267-3161)".
14. .080 K. Drones. Strike (State Parks) and add, "Some State Parks restrict drone use".
15. .090 B. 1. and 2. Complaints. This section needs clarification. It has been discussed and CA Ginsburg has maintained that Police dispatch should be the number called and that dispatch would contact her 24/7 and she would contact the representative so a record could be made of the complaint. The Commission has not been in favor of this, but does not have information on whether the approach in the draft is effective or would be sufficient. If more accountability is needed, perhaps the licensee or representative could be required to email or call the city within 24 hours with a report on the complaint and how or if it was resolved? Some guidance from Mr. Kearns would be helpful as to whether this section in the existing draft would be adequate.
16. .090 Inspection. (new section—was in an earlier draft taken from Hood River code and modified by Planning Commission with additions in *italics*.)
 - C. Inspection. Upon application for an operating license all short-term rentals shall be subject to inspection by the City for compliance with this section.
 1. The City *Administrator or their agent* may conduct a site visit upon an application for a short-term rental to confirm the number of bedrooms (as defined by the International Building Code) stated on the application and the number, location and availability of on-site parking spaces. The site visit will be coordinated with the applicant and be conducted during the City's normal business hours, and with reasonable notice.
 2. The City *Administrator or their agent* may visit and inspect the site of a short-term rental to ensure compliance with all applicable regulations, during the City's normal business hours, and with reasonable notice and other procedural safeguards as necessary. Code violations shall be processed in accordance with Port Orford Municipal Code Title 1.
17. .100 Should there be any other descriptive language about grandfathering, which replaces the amortization approach?
18. .100 B. 1. and 2. Remove these sections because we will be grandfathering in lawful pre-existing STRs, no matter the distance between them.
19. .100 C. Remove if no longer necessary.

Additional items suggested by Daniel Kearns but not yet addressed and beyond my role:

20. Adding to Section 040 a new subsection E that requires full and on-going compliance with the City's TLT requirements in Chapter 3.08.
21. Consider up-dating our TLT code chapter by adopting the League of Oregon Cities model TLT Ordinance.
22. Adding to the TLT code a reporting requirement that the licensee report each year the number of nights rented.

The Role of the Planning Commissioner



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Overview

- History – Statewide role began in the 1970's.
- Today – Every city and county has a Plan acknowledged by DLCD.
- Day to day decisions are made locally.
- Dept. Land Conservation and Development (DLCD) reviews local plan amendments, provides technical assistance and some funding.



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Regulatory Framework

Statewide Planning Goals

Oregon Revised Statutes (ORS)
Oregon Administrative Rules
Case Law
Local Comprehensive Plan
and Zoning Ordinance
Other Approved Local Plans
State and Federal Agency
Requirements

1. Citizen Involvement
2. Land Use Planning
3. Agriculture Lands
4. Forest Lands
5. Natural Resources
6. Air Water, Land Quality
7. Natural Hazards
8. Recreational Needs
9. Economic Development
10. Housing
11. Public Facilities
12. Transportation
13. Energy Conservation
14. Urbanization
15. Willamette Greenway
16. Estuarine Resources
17. Coastal Shore Lands
18. Beaches and Dunes
19. Ocean Resources

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What is City Planning?

■ Planning Commission

- Long range planning: Develop and amend the existing plans. Example: An ordinance to update flood provisions to be consistent with FEMA requirements.
- Implement existing plans: Make decisions regarding ongoing permits: Variance, Zone Change / Amendment, Conditional Use Permit, Land Partitioning, Subdivision

■ Others at the City

- Staff works with the public to provide regulations, sign off on building permits, provide information to Planning Commission for decision-making.
- City Council has the final say on some land use actions, but not all.

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Long Range Planning

- Local Comprehensive Plans implement Statewide Goals.
- Zoning and Subdivision Ordinances have rules that carry out Comprehensive Plan policies.
- Other City plans for streets, water and sewer apply.
- Statewide Planning Goals
- Oregon Revised Statutes, Oregon Administrative Rules.
- Federal regulations such as clean air and clean water.



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What is the Planning Commission's Role?

- Implement the local plan.
- Propose revisions to plans and ordinances.
- Oversee discretionary permits such as Conditional Use Permits, Variances, Land Partitioning, Subdivision, Site Plan Review.
- Understand the importance of Findings for decision-making
- Follow the rules for public meetings.
- Be informed.
- Be ethical and treat the public with respect.

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Types of Land Use Decisions

■ Legislative – Policies and Ordinances

- Change in the text of the Zoning Ordinance.
- Zone change for a whole section of town.
- Change that affects everyone due to state law.
- Scope is broad.
- Includes public involvement, newspaper notices, public hearings at multiple levels.
- No limits on who Planning Commission can talk with about the proposed policies.
- Comprehensive Plan is legislative in nature.

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Quasi-Judicial

■ Quasi-Judicial – Site Specific

- Conditional Use Permit for a single family dwelling in a light industrial zone.
- Variance to allow a different setback than the zone requires.
- Zone change or map amendment that applies to a single or a few owners.
- Subdivision proposal.
- Has a number of rules about public hearing procedures and who can speak when.
- Planning Commission members have to show no bias and no conflict of interest.
- Staff can have unlimited contact.

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Staff Role

■ Administrative

- Provides information to the public about the requirements.
- Provides information to the applicant before application is filed, and throughout the process.
- Provides required notices to the newspapers and the public.
- Follows up with any State or County agencies, or other organizations that may have concerns.
- Provides a written report (staff report) to the Planning Commission with all facts and information. Makes it available to the public seven days before the meeting.
- Provides information to all parties as a professional liaison.
- Sends out decisions.
- Follows the rules and signs zoning clearance letters to allow building permits, grading permits, or other permits that are allowed by the zoning, or that have been approved by the Planning Commission.

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Citizen's Rights



- Opportunity to be heard.
- Opportunity to present and rebut evidence.
- Right to an impartial hearing with decision-makers having no ex-parte contact, or as follows:
 - Ex-parte contact has to be placed in the record.
 - Ex-parte contact has to be announced and explained at the meeting.
- A right to findings of fact.
- A right to a record of the proceedings.

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Basis of Decision

- Based upon criteria (Comprehensive Plan, Zoning Ordinance, Subdivision Ordinance, State Law, and how these documents pertain).
- Apply the criteria to the facts that are presented by the applicant, the staff, and the opponents.
- **The results are the Findings of Fact.**
 - ✓ The Findings of Fact must address all the criteria, all the facts, and all the information that has been presented.



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Findings of Fact

- State the criteria and the conclusion.

Example Criteria:

To allow the use, there shall be an assurance that the property is not subject to landslides.

Example Finding: Criteria + Conclusion:

The property is not subject to landslides because Oregon Registered Engineer E. Geo Logical has entered a statement that he has tested subject property and that he has determined that there no potential for landslides due to the topography of the site.

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Findings - *Continued*



- Identify legal standards and criteria.
- Weigh criteria with facts to make findings.
- If some criteria are not applicable, state why, and this is a finding.
- Where there is conflicting evidence, state that it is conflicting.
- Tell what you believe to be the facts, and why.
- State all your assumptions. You can get these from testimony.
- Do not use generalizations.
- If the project is modified, add new findings.
- Findings for big projects or contested activities can be organized by staff and brought to the next meeting (or a special meeting that is set). The Planning Commission can then accept the findings at the specified public meeting.

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The Public Hearing

- Chair tells the audience:
 - How the hearing will be conducted.
 - How the decision will be made.
 - What constitutes relevant testimony.



Chair can take a poll to see the number proponents and opponents prior to asking for testimony to help organize the meeting.

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Public Hearing



- Chair opens hearing.
- Chair reads hearing disclosure statement.
- Chair asks for declaration of actual or potential conflict of interest, ex-parte contact or personal bias.
- Applicant's testimony.
- Proponent's testimony.
- Opponent's testimony.
- Neutral Testimony
- Applicant's rebuttal.
- Commission deliberation.
- Carry over or close hearing.
- State findings and make recommendation to City Council or final decision (can make decision based upon findings and have findings prepared).
- Notice of decision to go to all parties.

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Ex-Parte Contact

- Any written or verbal communication outside a public hearing between a decision-maker (Planning Commission member) and one or more of the parties (citizens)
- You are acting as a judge, and are not allowed this communication:

What do I do if someone attempts to talk about the upcoming application?



- Stop the person.
- Disclose the contact at the hearing.
- Decide whether you can make an impartial decision.
- Have a formal procedure adopted by the Planning Commission because that will make it easier.

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Conflict of Interest or Bias?



- **Bias:** An inclination or outlook with preconceived judgment or opinion that is adverse to an applicant without sufficient knowledge or information.

State your bias and participate, or choose not to participate because your opinion would taint the final decision.

- **Conflict of Interest**

Results in a pecuniary (relating to money/financial) benefit or detriment.

This must be disclosed and the person with conflict may not vote unless that vote is needed for a quorum. In that case, they can vote only, but not enter into discussion.

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Clear and Objective standards Work Best

- **Examples**

Not clear and objective: *The applicant shall provide adequate parking.*

Clear and objective: *Retail business shall provide one parking space for each 300 square feet of floor area.*

Not clear and objective: *Manufacturing will be allowed if it does not disturb the neighborhood.*

Clear and objective: *Any activity that produces radio or TV interference, noise, glare, vibration, smoke or odor that can be detected beyond the property line is prohibited.*

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