Chapter 227

1985 REPLACEMENT PART

City Planning and Zoning

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CITY PLANNING COMMISSION

227.010 Definition for ORS 227.030 to 227.300. As used in ORS 227.030 to 227.300, "council" means a representative legislative body. [Amerded by 1975 c.767 §1]

227.020 Authority to create planning commission. (1) A city may create a planning commission for the city and provide for its organization and operations.

(2) This section shall be liberally construed and shall include the authority to create a joint planning commission and to utilize an intergovernmental agency for planning as authorized by ORS 190.003 to 190.110. [Amended by 1973 c.739 §1; 1975 c.767 §2]

227.030 Membership. (1) Not more than two members of a city planning commission may be city officers, who shall serve as ex officio nonvoting members.

(2) A member of such a commission may be removed by the appointing authority, after hearing, for misconduct or nonperformance of duty.

(3) Any vacancy in such a commission shall be filled by the appointing authority for the unexpired term of the predecessor in the office.

(4) No more than two voting members of the commission may engage principally in the buying, selling or developing of real estate for profit as individuals, or be members of any partnership, or officers or employes of any corporation, that engages principally in the buying, selling or developing of real estate for profit. No more than two members shall be engaged in the same kind of occupation, business, trade or profession. [Amended by 1969 c.430 §1; 1973 c.739 §2; 1975 c.767 §3]

227.035 Planning commission member conflict of interest activities. A member of a planning commission shall not participate in any commission proceeding or action in which any of the following has a direct or substantial financial interest: The member or the spouse, brother, sister, child, parent, father-in-law, mother-in-law of the member, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the meeting of the commission where the action is being taken. [1973 c.739 §5]

227.040 [Repealed by 1973 c 739 §13]

227.050 [Amended by 1969 c 430 §2; repealed by 1975 c.767 §16]

227.060 [Repealed by 1975 c.767 §16]

227.070 [Amended by 1969 c 430 §3, 1973 c.739 §3; repealed by 1975 c.767 §16]

227.080 [Repealed by 1973 c.739 §13]

227.090 Powers and duties of commission. (1) Except as otherwise provided by the city council, a city planning commission may:

(a) Recommend and make suggestions to the council and to other public authorities concerning:

(A) The laying out, widening, extending and locating of public thoroughfares, parking of vehicles, relief of traffic congestion;

(B) Betterment of housing and sanitation conditions;

(C) Establishment of districts for limiting the use, height, area, bulk and other characteristics of buildings and structures related to land development;

(D) Protection and assurance of access to incident solar radiation; and

(E) Protection and assurance of access to wind for potential future electrical generation or mechanical application.

(b) Recommend to the council and other public authorities plans for regulating the 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 public utilities, including appropriate public incentives for overall energy conservation and harbor, shipping and transportation facilities.

(c) Recommend to the council and other public authorities plans for promotion, development and regulation of industrial and economic needs of the community in respect to industrial pursuits.

(d) Advertise the industrial advantages and opportunities of the city and availability of real estate within the city for industrial settlement.

(e) Encourage industrial settlement within the city.

(f) Make economic surveys of present and potential industrial needs of the city.

(g) Study needs of local industries with a view to strengthening and developing them and stabilizing employment conditions.

(h) Do and perform all other acts and things necessary or proper to carry out the provisions of ORS 227.010 to 227.170, 227.175 and 227.180.

(i) Study and propose such measures as are advisable for promotion of the public interest, health, morals, safety, comfort, convenience and welfare of the city and of the area within six miles thereof.

(2) For the purposes of this section:

(a) "Incident solar radiation" means solar energy falling upon a given surface area.

(b) "Wind" means the natural movement of air at an annual average speed measured at a height of 10 meters of at least eight miles per hour. [Amended by 1975 c.153 §3; 1975 c.767 §4; 1979 c.671 §3; 1981 c.590 §8]

227.095 Definitions for ORS 227.100 and 227.110. As used in ORS 227.100 and 277.110, "subdivision" and "plat" have the meanings given those terms in ORS 92.010. [1955 c.756 §28]

227.100 Submission of plats for subdivisions and plans for street alterations and public buildings to commission; report. All subdivision plats located within the city limits, and all plans or plats for vacating or laying out, widening, extending, parking and locating streets or plans for public buildings shall first be submitted to the commission by the city engineer or other proper municipal officer, and a report thereon from the commission secured in writing before approval is given by the proper municipal official. [Amended by 1955 c 756 §26]

227.110 City approval required prior to recording of subdivision plats and plats or deeds dedicating land to public use within six miles of city; exception. (1) All subdivision plats and all plats or deeds dedicating land to public use in that portion of a county within six miles outside the limits of any city shall first be submitted to the city planning commission or, if no such commission exists, to the city engineer of the city and approved by the commission or engineer before they shall be recorded. However, unless otherwise provided in an urban growth area management agreement jointly adopted by a city and county to establish procedures for regulating land use outside the city limits and within an urban growth boundary acknowledged under ORS 197.251, if the county governing body has adopted ordinances or regulations for subdivision and major partition control under ORS 92.044, land within the six-mile limit shall be under the jurisdiction of the county for those purposes.

(2) It shall be unlawful to receive or record such plan, plat or replat or deed in any public office unless the same bears thereon the approval, by indorsement, of such commission or city engineer. However, the indorsement of the commission or city engineer of the city with boundaries nearest the land such document affects shall satisfy the requirements of this section in case the boundaries of more than one city are within six miles of the property so mapped or described. If the governing bodies of such cities mutually agree upon a boundary line establishing the limits of the jurisdiction of the cities other than the line equidistant between the cities and file the agreement with the recording officer of the county containing such boundary line, the boundary line mutually agreed upon shall become the limit of the jurisdiction of each city until superseded by a new agreement between the cities or until one of the cities files with such recording officer a written notification stating that the agreement shall no longer apply. [Amended by 1955 c.756 §27; 1983 c.570 §5]

227.120 Procedure and approval for renaming streets. Within six miles of the limits of any city, the commission, if there is one, or if no such commission legally exists, then the city engineer, shall recommend to the city council the renaming of any existing street, highway or road, other than a county road or state highway, if in the judgment of the commission, or if no such commission legally exists, then in the judgment of the city engineer, such renaming is in the best interest of the city and the six mile area. Upon receiving such recommendation the council shall afford persons particularly interested, and the general public, an opportunity to be heard, at a time and place to be specified in a notice of hearing published in a newspaper of general circulation within the municipality and the six mile area not less than once within the week prior to the week within which the hearing is to be held. After such opportunity for hearing has been afforded, the city council by ordinance shall rename the street or highway in accordance with the recommendation or by resolution shall reject the recommendation. A certified copy of each such ordinance shall be filed for record with the county clerk or recorder, and a like copy shall be filed with the county assessor and county surveyor. The county surveyor shall enter the new names of such streets and roads in red ink on any filed plat and tracing thereof which may be affected, together with appropriate notations concerning the same.

227.130 [Repealed by 1975 c.767 §16]

227.140 [Repealed by 1975 c 767 §16]

227.150 [Repealed by 1975 c.767 §16]

PLANNING AND ZONING HEARINGS AND REVIEW

227.160 Definitions for ORS 227.160 to 227.185. As used in ORS 227.160 to 227.185:

(1) "Hearings officer" means a planning and zoning hearings officer appointed or designated by a city council under ORS 227.165.

(2) "Permit" means discretionary approval of a proposed development of land, under ORS 227.215 or city legislation or regulation. [1973 c.739 §6; 1975 c.767 §5]

227.165 Planning and zoning hearings officers; duties and powers. A city may appoint one or more planning and zoning hearings officers, to serve at the pleasure of the appointing authority. Such an officer shall conduct hearings on applications for such classes of permits and zone changes as the council designates. [1973 c 739 §7, 1975 c.767 §6]

227.170 Hearing procedure. The city council shall prescribe one or more procedures for the conduct of hearings on permits and zone changes. [1973 c.739 §8; 1975 c.767 §7]

227.173 Basis for decision on permit application; statement of reasons for grant or denial. (1) Approval or denial of a discretionary permit application shall be based on standards and criteria, which shall be set forth in the development ordinance and which shall relate approval or denial of a discretionary permit application to the development ordinance and to the comprehensive plan for the area in which the development would occur and to the development ordinance and comprehensive plan for the city as a whole.

(2) Approval or denial of a permit application shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(3) Written notice of the approval or denial shall be given to all parties to the proceeding. [1977 c.654 §5; 1979 c.772 §10b]

227.175 Application for permit or zone change; fees; consolidated procedure; hearing; approval criteria; decision without hearing. (1) When required or authorized by a city, an owner of land may apply in writing to the hearings officer, or such other person as the city council designates, for a permit or zone change, upon such forms and in such a manner as the city council prescribes. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body of the city shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 227.178. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations under ORS 197.640.

(3) Except as provided in subsection (7) of this section, the hearings officer shall hold at least one public hearing on the application.

(4) The application shall not be approved unless the proposed development of land would be in compliance with the comprehensive plan for the city. The approval may include such conditions as are authorized by ORS 227.215 or any city legislation.

(5) Hearings under this section may be held only after notice to the applicant and other interested persons.

(6) If an application would change the zone of property which includes all or part of a mobile home park as defined in ORS 446.003, the governing body shall give written notice by first class mail to each existing mailing address for tenants of the mobile home park at least 20 days but not more than 40 days before the date of the first hearing on the application. The governing body may require an applicant for such a zone change to pay the costs of such notice. The failure of a tenant to receive a notice which was mailed shall not invalidate any zone change.

(7) The hearings officer, or such other person as the governing body designates, may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for appeal of the decision to those persons who would have had a right to notice if a hearing had been scheduled or who are adversely affected or aggrieved by the decision. Notice of the decision shall be given in the same manner as notice of the hearing would have been given if a hearing had been held. An appeal from a hearings officer's decision shall be to the planning commission or governing body of the city. An appeal from such other person as the governing body designates shall be to a hearings officer, the

planning commission or the governing body. In either case, the appeal shall be a de novo hearing. [1973 c.739 §§9,10; 1975 c.767 §8; 1983 c.827 §24; 1985 c.473 §15]

227.178 Final action on application for permit or zone change required within 120 days; exceptions; mandamus authorized. (1) Except as provided in subsections (3) and (4) of this section, the governing body of a city or its designate shall take final action on an application for a permit or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

(2) If an application for a permit or zone change is incomplete, the governing body or its designate shall notify the applicant of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section upon receipt by the governing body or its designate of the missing information. If the applicant refuses to submit the missing information, the application shall be deemed complete for the purpose of subsection (1) of this section on the 31st day after the governing body first received the application.

(3) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(4) The 120-day period set in subsection (1) of this section may be extended for a reasonable period of time at the request of the applicant.

(5) The 120-day period set in subsection (1) of this section applies only to decisions wholly within the authority and control of the governing body of the city.

(6) Notwithstanding subsection (5) of this section, the 120-day period set in subsection (1) of this section does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the director under ORS 197.610 (1).

(7) If the governing body of the city or its designate does not take final action on an application for a permit or zone change within 120 days after the application is deemed complete, the applicant may apply in the circuit court of the county where the application was filed for a writ of mandamus to compel the governing body or its designate to issue the approval. The writ shall be issued unless the governing body shows that the approval would violate a substantive provision of the city comprehensive plan or land use regulations as defined in ORS 197.015. [1983 c.827 §27]

227.180 Review of action on permit application. (1)(a) A party aggrieved by the action of a hearings officer may appeal the action to the planning commission or council of the city, or both, however the council prescribes. The appellate authority on its own motion may review the action. The procedure for such an appeal or review shall be prescribed by the council, but shall:

(A) Not require that the appeal be filed within less than seven days after the date the governing body mails or delivers the decision of the hearings officer to the parties;

(B) Require a hearing at least for argument; and:

(C) Require that upon appeal or review the appellate authority consider the record of the hearings officer's action. That record need not set forth evidence verbatim.

(b) Notwithstanding paragraph (a) of this subsection, the council may provide that the decision of a hearings officer in a proceeding for a discretionary permit or zone change is the final determination of the city.

(c) The governing body may prescribe, by ordinance or regulation, fees to defray the costs incurred in acting upon an appeal from a hearings officer or planning commission. The amount of the fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal, excluding the cost of preparation of a written transcript. The governing body may establish a fee for the preparation of a written transcript. The fee shall be reasonable and shall not exceed the actual cost of preparing the transcript up to $500 plus one-half the actual costs over $500.

(2) A party aggrieved by the final determination in a proceeding for a discretionary permit or zone change may have the determination reviewed under ORS 197.830 to 197.845.

(3) No decision or action of a planning commission or city governing body 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.

(4) A communication between city staff and the planning commission or governing body shall not be considered an ex parte contact for the purposes of subsection (3) of this section.

(5) Subsection (3) of this section does not apply to ex parte contact with a hearings officer. [1973 c 739 §§11,12; 1975 c 767 §9; 1979 c 772 §12; 1981 c.748 §43; 1983 c 656 §2; 1983 c 827 §25]

227.185 Transmission tower; location; conditions. The governing body of a city or its designate may allow the establishment of a transmission tower over 200 feet in height in any zone subject to reasonable conditions imposed by the governing body or its designate. [1983 c.827 §27a]

SOLAR ACCESS ORDINANCES

227.190 Solar access ordinances; purpose; standards. (1) City councils may adopt and implement solar access ordinances. The ordinances shall provide and protect to the extent feasible solar access to the south face of buildings during solar heating hours, taking into account latitude, topography, microclimate, existing development, existing vegetation and planned uses and densities. The city council shall consider for inclusion in any solar access ordinance, but not be limited to, standards for:

(a) The orientation of new streets, lots and parcels;

(b) The placement, height, bulk and orientation of new buildings;

(c) The type and placement of new trees on public street rights of way and other public property; and

(d) Planned uses and densities to conserve energy, facilitate the use of solar energy, or both.

(2) The Department of Energy shall actively encourage and assist city councils' efforts to protect and provide for solar access.

(3) As used in this section, "solar heating hours" means those hours between three hours before and three hours after the sun is at its highest point above the horizon on December 21. [1981 c 722 §5]

227.195 Effect of land use regulations and comprehensive plans. Solar access ordinances shall not be in conflict with acknowledged comprehensive plans and land use regulations. [1981 c 722 §6]

DEVELOPMENT ORDINANCES

227.210 [Repealed by 1975 c.767 §16]

227.215 "Development" defined; regulation of development. (1) As used in this section, "development" means a building or mining operation, making a material change in the use or appearance of a structure or land, dividing land into two or more parcels, including partitions and subdivisions as provided in ORS 92.010 to 92.285, and creating or terminating a right of access.

(2) A city may plan and otherwise encourage and regulate the development of land. A city may adopt an ordinance requiring that whatever land development is undertaken in the city comply with the requirements of the ordinance and be undertaken only in compliance with the terms of a development permit.

(3) A development ordinance may provide for:

(a) Development for which a permit is granted as of right on compliance with the terms of the ordinance;

(b) Development for which a permit is granted discretionarily in accordance and consistent with the requirements of ORS 227.173;

(c) Development which need not be under a development permit but shall comply with the ordinance; and

(d) Development which is exempt from the ordinance.

(4) The ordinance may divide the city into districts and apply to all or part of the city. [1975 c.767 §11 (enacted in lieu of 227.220 to 227 270), 1977 c.654 §3]

227.220 [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.220)]

227.230 [Amended by 1971 c.739 §2; 1975 c.153 §4; repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.230)]

227.240 [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.240)]

227.250 [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.250)]

227.260 [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.260)]

227.270 [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.270)]

227.280 Enforcement of development legislation. The council may provide for enforcement of any legislation established under ORS 227.215. [Amended by 1975 c.767 §14]

227.285 [1959 c.601 §1; repealed by 1969 c.460 §2 (227.286 enacted in lieu of 227.285)]

227.286 City ordinances applicable to public property. City ordinances regulating the location, construction, maintenance, repair, alteration, use and occupancy of land and buildings and other structures shall apply to publicly owned property, except as the ordinances prescribe to the contrary. [1969 c 460 §3 (enacted in lieu of 227.285); 1975 c.767 §12]

227.290 Building setback lines established by city council; criteria. (1) The council or other governing body of any incorporated city, under an exercise of its police powers, may establish or alter building setback lines on private property adjacent to any alley, street, avenue, boulevard, highway or other public way in such city. It may make it unlawful and provide a penalty for erecting after said establishment any building or structure closer to the street line than such setback line, except as may be expressly provided by ordinance. The council or body shall pass and put into effect such ordinances as may be needed for the purpose of providing for a notice to and hearing of persons owning property affected before establishing any such setback line. Such setback lines may be established without requiring a cutting off or removal of buildings existing at the time.

(2) The council may consider, in enacting ordinances governing building setback lines, the site slope and tree cover of the land with regard to solar exposure. The council shall not restrict construction where site slope and tree cover make incident solar energy collection unfeasible, except an existing solar structure's sun plane shall not be substantially impaired.

(3) The council may consider, in enacting ordinances governing building setback lines and maximum building height, the impact on available wind resources. The ordinances shall protect an existing wind energy system's wind source to the extent feasible.

(4) The powers given in this section shall be so exercised as to preserve constitutional rights. [Amended by 1979 c.671 §4; 1981 c.590 §9]

227.300 Use of eminent domain power to establish setback lines. The council or other governing body of any incorporated city, under an exercise of the power of eminent domain, may establish or alter building setback lines on private property adjacent to any alley, street, avenue, boulevard, highway, or other public way in such city in cases where the establishment of such setback lines is for street widening purposes, and in cases where the establishment of such setback lines affects buildings or structures existing at the time. The council or other governing body of the city shall pass and put into effect such ordinances as may be needed for the purpose of providing for a notice to and hearing of persons whose property is affected by such establishment. In case of the exercise of the power of eminent domain, provision shall be made for ascertaining and paying just compensation for any damages caused as the result of establishing such setback lines.

227.310 [1957 c.67 §1; 1975 c.767 §13; repealed by 1977 c.766 §16]

TRUCK ROUTES

227.400 Truck routes; procedures for establishment or revision; notice; hearing. (1) A city council shall not establish a new truck route or revise an existing truck route within the city unless the council first provides public notice of the proposed truck route and holds a public hearing concerning its proposed action.

(2) The city council shall provide notice of a public hearing held under this section by publishing notice of the hearing once a week for two consecutive weeks in some newspaper of general circulation in the city. The second publication of the notice must occur not later than the fifth day before the date of the public hearing.

(3) The notice required under this section shall state the time and place of the public hearing and contain a brief and concise statement of the proposed formation of the truck route, including a description of the roads and streets in the city that will form the truck route.

(4) As used in this section:

(a) "Truck" includes motor truck, as defined in ORS 801.355, and truck tractor, as defined in ORS 801.575.

(b) "Truck route" means the roads or streets in a city which have been formally designated by the city council as the roads or streets on which trucks must travel when proceeding through the city. [1985 c.564 §1]

CHAPTERS 228 TO 235
[Reserved for expansion]