



City of Talent

Community Development Department

STAFF REPORT

Type-4 Land Use Application – Legislative Review – Planning Commission

Meeting Date: March 22, 2022
File No: DCA 2022-001
Staff Contact: Kristen Maze kmaze@cityoftalent.org
Item: Title 2 -Text Amendment
Applicant: City of Talent
Action: Reviewing the structure of the Planning Commission

BACKGROUND

The Talent Municipal Code Section 2.20, Planning Commission outlines the criterion for the planning commission powers and duties within the City of Talent as such, Title 17, and Title 18 requires the Planning Commission to serve in a variety of land use actions, including quasi-judicial actions, legislative recommendations, and appeals for staff decisions regarding Type II procedures. City Council or a hearings officer serves as the appeal board for the Planning Commission land use actions.

The Planning Commission consists of seven members and a meeting quorum consists of four members, regardless of vacancies.

Issue

If the Planning Commission is unable to fulfill its responsibilities, due to lack of quorum or other reason, there is currently no alternative. If the Planning Commission cannot fulfill its responsibilities over an extended period, this could significantly delay development within Talent.

The Planning Commission is involved in:

- Type II procedures (administrative): Type II decisions are made by the Community Development department with public notice and an opportunity for a public hearing. This typically encompasses design review, minor land partitions, site development plan review (minor), subdivisions, temporary use permits, and use interpretations. The appeal of a Type II decision is heard by the Planning Commission.
- Type III procedures (quasi-judicial): Type III decisions are made by the Planning Commission after a public hearing, with appeals reviewed by the City Council. Type II decisions generally use discretionary approval criteria for topics such as conditional use permits, design review, sign permits, site development plan review (major), temporary use permits, and variances.
- Type IV procedures (legislative): Type IV procedures apply to legislative matters. Legislative matters involve the creation, revision, or large-scale implementation of public policy, such as annexations, comprehensive plan amendments, zone changes, and land use regulations. Type IV matters are considered initially by the Planning Commission with final decisions

made by the City Council.

PROPOSAL

To help lower the likelihood of the Planning Commission not meeting quorum and to have remedy for the situation if the Planning Commission is unable to fulfill its responsibilities, staff recommends making the following amendments to the Talent Municipal Code Title 2:

- **Remove quorum definition from municipal code.** Quorum would be defined by the Planning Commission's bylaws.
- **Stipulate that City Council can act in the stead of the Planning Commission** in the event that the Planning Commission is unable to discharge its responsibilities.

Potential language is provided in the attached draft ordinance.

HEARING PROCEDURES

To ensure an efficient meeting and to refamiliarize the Council with the hearing procedures, staff has outlined the hearing procedures below:

The presiding officer of the planning commission and the city council shall conduct the hearing as follows:

- The presiding officer shall begin the hearing with a statement of the nature of the matter before the body, a general summary of the procedures, a summary of the standards for decision-making, and whether the decision which will be made is a recommendation to the city council or the final decision of the council (these are provided in the legislative hearing script);*
- The city planner's staff report and other applicable reports shall be presented;*
- The public shall be invited to testify;*
- The public hearing may be continued to allow additional testimony, or it may be closed; and*
- The body's deliberation may include questions to the staff, comments from staff, and inquiries directed to any person present.*

NOTICE

The Planning Commission held a properly noticed first evidentiary hearing on this matter on March 22, 2022.

Notice of the proposed code amendments was sent to the Department of Land Conservation and Development (DLCD) on February 11, 2022, not less than 35 days prior to the first evidentiary hearing of March 22, 2022, as required by State Law and the Talent Municipal Code (TMC).

Notice of the Planning Commission public hearing scheduled for March 22, 2022 was published in the Medford Mail Tribune on March 11, 2022, consistent with required legislative procedures in TMC 18.190.060(D)(2)(b).

PUBLIC PARTICIPATION

A copy of the application, including all documents, evidence and applicable criteria relied upon by the applicant, and a copy of the staff report will be available on-line as an attachment to the agenda at www.cityoftalent.org seven days prior to the hearing. Anyone wishing to provide testimony can submit comments via e-mail to publictestimony@cityoftalent.org with the subject line "**Written testimony**" by 5:00 p.m. on Tuesday, March 22, 2022. Written testimony received by this deadline will be available for Commissioners to review before the hearing and will be included in the meeting record. Oral testimony will only be taken during the hearing if you have pre-registered. To pre-register, email your request to publictestimony@cityoftalent.org with the subject line "**Request for Oral Comment/Testimony**" by 4:00 p.m. the date of the hearing. You must include your name and residential address for the record.

Alternatively, respondents may submit written to the Community Development Department using the utility payment drop box or via US mail. Written correspondence submitted in the drop box or via US Mail, must be received by the date and time above to be included in the meeting record.

City of Talent, Community Development Department
P.O. Box 445/110 East Main Street
Talent, Oregon 97540

For copies of public documents or for more information related to this staff report, please contact the Community Development Director at 541-535-7401 or via e-mail at dconverse@cityoftalent.org.

APPLICABLE CRITERIA

Talent Municipal Code (TMC) Title 18: Zoning

- Chapter 2.20 Section 2.120.080 Quorums – Meetings - Rules (Legislative)

Talent Comprehensive Plan

- Element A - Citizen Involvement

Oregon Land Use Planning Goals

- Goal 2 – Land Use Planning

Oregon Administrative Rules (OAR)

- OAR 660-018-0020

V. FINDINGS

In the following, any text quoted directly from City codes appears in *italics*; staff findings appear in regular typeface.

TALENT MUNICIPAL CODE (TMC)

TITLE 18: ZONING

18.190.060 (G) Decision-Making Considerations. The recommendation by the Planning Commission and the decision by the City Council shall be based on consideration of the following factors:

- 1. The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes (ORS) Chapter 197 (for Comprehensive Plan amendments only);*

FINDING: This regulation is not applicable as this is not a Comprehensive Plan amendment. A development code amendment is presumed to enact policies in the Comprehensive Plan, which was reviewed against the Statewide Planning Goals when it was adopted; the findings validating that presumption are outlined below.

- 2. Comments from any applicable federal or state agencies regarding applicable statutes or regulations;*

FINDING: This regulation is met. The City sent the full text of the proposed amendment to the Department of Land Conservation and Development (DLCD), which has exclusive oversight of code amendments to ensure compatibility with State Goals, Statutes and Administrative Rules. DLCD provided no comments.

- 3. Any applicable intergovernmental agreements; and*

FINDING: This regulation is not applicable. The proposed text amendment will not affect any intergovernmental agency.

4. *Any applicable Comprehensive Plan policies and provisions of the Talent Zoning Code that implement the Comprehensive Plan. Compliance with this section shall be required for Comprehensive Plan Amendments, Zoning Map, and Text Amendments.*

FINDING: This regulation is met. All applicable Comprehensive Plan policies and provisions of the Talent Zoning Code have been addressed.

TALENT COMPREHENSIVE PLAN

ELEMENT A: CITIZEN INVOLVEMENT

Policy 1: Citizen Involvement: *Provide a process for widespread citizen involvement as defined by Oregon's Land Conservation and Development Commission (LCDC) including the creation of a Committee for Citizen Involvement and Citizen Involvement Plan.*

Objective 1.3: *Create an infrastructure within the city government that is both flexible and strong, to ensure sustainable, effective, and maximum public involvement in all land use and other planning and community procedures and issues. The TCIP will work to create a culture of transparency, access, and education.*

FINDING: The policy is met. The City posted the proposed planning commission code text changes on our Community Development page website. The page was designed to be easily accessible current projects and land use actions. The draft documents included proposed code and staff report addressing the reason for the amendment.

Policy 2 Communication: *Assure effective two-way communications between the City (elected and appointed city officials, as well as staff) and citizens.*

Objective 2: *The City will make every effort to communicate decisions and deliberative discussions to citizens, especially those who participated in the process; and to assure citizens that their participation was considered.*

FINDING: The policy is met. The proposed code amendments are consistent with this policy because public hearings will be held to take community comment at the evidentiary hearing. All participants involved in the process will receive mailed notice advising City Council public hearing and those that have not participated to date, will see an additional notice published in the Medford Mail Tribune. All materials associated with the proposed amendments, including hearing agendas are posted on the City's website at least 7 days prior to the hearing.

ORS 197.610: Submission of proposed comprehensive plan or land use regulation changes to Department of Land Conservation and Development; rules.

- (1) *Before a local government adopts a change, including additions and deletions, to an acknowledged comprehensive plan or a land use regulation, the local government shall submit the proposed change to the Director of the Department of Land Conservation and Development. The Land Conservation and Development Commission shall specify, by rule, the deadline for submitting proposed changes, but in all cases the proposed change must be submitted at least 20 days before the local government holds the first evidentiary hearing on adoption of the proposed change. The commission may not require a local government to submit the proposed change more than 35 days before the first evidentiary hearing.*

- (2) *If a local government determines that emergency circumstances beyond the control of the local government require expedited review, the local government shall submit the proposed changes as soon as practicable, but may submit the proposed changes after the applicable deadline.*
- (3) *Submission of the proposed change must include all of the following materials:*
 - (a) *The text of the proposed change to the comprehensive plan or land use regulation implementing the plan;*
 - (b) *If a comprehensive plan map or zoning map is created or altered by the proposed change, a copy of the map that is created or altered;*
 - (c) *A brief narrative summary of the proposed change and any supplemental information that the local government believes may be useful to inform the director or members of the public of the effect of the proposed change;*
 - (d) *The date set for the first evidentiary hearing;*
 - (e) *The form of notice or a draft of the notice to be provided under ORS 197.763, if applicable; and*
 - (f) *Any staff report on the proposed change or information describing when the staff report will be available, and how a copy of the staff report can be obtained.*
- (4) *The director shall cause notice of the proposed change to the acknowledged comprehensive plan or the land use regulation to be provided to:*
 - (a) *Persons that have requested notice of changes to the acknowledged comprehensive plan of the particular local government, using electronic mail, electronic bulletin board, electronic mailing list server or similar electronic method; and*
 - (b) *Persons that are generally interested in changes to acknowledged comprehensive plans, by posting notices periodically on a public website using the Internet or a similar electronic method.*

FINDING: This statute is met. The proposal is consistent with this statute because notice to DLCD was first sent on February 11, 2022 at least 35 days prior to the first evidentiary public hearing and the notice contained the information required in this statute. The notice of proposed change was circulated widely within the city consistent with subsection (4), as detailed in response to Comprehensive Plan Element A – Citizen Involvement above. In addition to the required notice to DLCD, notice was published in the Mail Tribune the same day. All proposed amendments, meetings, meeting memos and other documents supporting the proposed changes were added to the Community Development website for review (www.cityoftalent.org/housingcodeupdate).

OREGON ADMINISTRATIVE RULES (OAR)

The procedures for legislative decisions and public hearings are set out in the Talent Municipal Code, which has been acknowledged by DLCD and these local regulations effectively implement state law. The sections of State rules that relate to the proposed amendments to the City code are listed below with findings to address consistency with these State laws.

OAR 660-018-0020: Notice of a Proposed Change to a Comprehensive Plan or Land Use Regulation

(1) Before a local government adopts a change to an acknowledged comprehensive plan or a land use regulation, unless circumstances described in OAR 660-018-0022 apply, the local government shall submit the proposed change to the department, including the information described in section (2) of this rule. The local government must submit the proposed change to the director at the department's Salem office at least 35 days before holding the first evidentiary hearing on adoption of the proposed change.

FINDING: This rule is met. The proposal is consistent with this rule as detailed in the findings for ORS 197.610.

CONCLUSION

The proposed amendments to the Talent Municipal Code (TMC) Title 2 are consistent with the applicable criteria in the City of Talent Comprehensive Plan, Talent Municipal Code (TMC), Oregon Revised Statutes and Oregon Administrative Rules. For reasons cited earlier in this report, the Planning Commission recommendation includes the following revisions to the Title 2 draft:

1. 2.20.080 Quorum – Meetings - Rules

~~A meeting quorum shall consist of four members, regardless of vacancies. The commission shall adopt rules or procedures consistent with the law. The commission meetings shall include at least one regularly scheduled meeting per month, unless canceled at the direction of the chair due to lack of commission business or other reason. (Ord ____ . § 1, 2022)~~

2. 2.02.100 Nonexistence of a Planning Commission

In the event that the City Council determines that the Planning Commission is, at any time, and for any reason, including but not limited to lack of a quorum to conduct business, unable to act and to discharge its responsibilities under this section and under Title 17 and Title 18, the City Council may act in the place and stead of the Planning Commission, and all such acts taken by the City Council pursuant to such a determination shall be deemed and shall have the same force and effect as actions taken by the Planning Commission. (Ord ____ . § 2, 2022)

EXHIBITS

A. Proposed Ordinance 2022-XXX-O

Kristen Maze
Community Development Director

March 22, 2021
Date