

# Approved Minutes

## Bend Planning Commission

### Monday, October 28, 2024, 5:30 P.M. Regular Meeting



The hybrid meeting started at 5:30 P.M., in-person and online.

The public was invited to watch online at: [www.bendoregon.gov/planningcommission](http://www.bendoregon.gov/planningcommission)

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#### 1. ROLL CALL:

- Margo Clinton – Chair
- Scott Winters – Vice Chair
- Bob Gressens
- Suzanne Johannsen
- Nathan Nelson
- Jeff Payne

**Commissioners Present:** All Commissioners were present except Chair Margo Clinton and Commissioner Suzanne Johannsen

2. **Staff Present:** Ian Leitheiser, Assistant City Attorney; Colin Stephens, CEDD Director; Renee Brooke, Planning Manager; Aaron Henson, Senior Planner; Russell Grayson, Chief Operations Officer; Pauline Hardie, Senior Planner; Beth LaFleur, Senior Planner

#### 3. VISITORS:

The Chair opened the floor for comments on non-agenda items. Attendees were encouraged to fill out a speaker slip and approach the podium, or raise their hand online, to provide comments.

No public comment was given.

#### 4. STREET NAME CHANGE PUBLIC HEARING

[PLMISC20240474](#) – Proposal to recommend that the City Council approve the proposed street name change, to change SW Taylor Court to SW Innovation Way.

Aaron Henson, Senior Planner, [ahenson@bendoregon.gov](mailto:ahenson@bendoregon.gov)

Vice Chair Scott Winters convened the hearing at 5:33 p.m.

Senior Planner Aaron Henson gave his [presentation](#), beginning with explaining the criteria for street name changes. The primary reason for the proposed change is the fact that SW Innovation Way is planned to extend through the OSU campus, from Century Drive to Mount Washington Drive, with additional internal connections

through the campus also planned. Also, the name SW Taylor Court is nearly identical to NE Taylor Court in the northeast part of town, which can lead to potential confusion.

Vice Chair Scott Winters opened the public testimony portion of the hearing. No testimony was provided.

Vice Chair Winters closed the public testimony portion of the hearing at 5:38 p.m. and the Commissioners deliberated.

Commissioner Nathan Nelson commented that the name change aligns well with the innovation plans of the campus, noting that the confusion in similar street names fits the criteria for a name change.

Commissioner Jeff Payne made a motion to recommend that the City Council approve the proposed street name change from Southwest Taylor Court to Southwest Innovation Way. Commissioner Nelson seconded the motion. The motion passed unanimously.

## 5. LEGISLATIVE PUBLIC HEARING

### 5.1 [PLTEXT20240523](#)

Legislative public hearing on text amendments to the Bend Development Code implementing certain Oregon state laws and legislation to facilitate housing development.

**Staff: Pauline Hardie, Senior Planner, [phardie@bendoregon.gov](mailto:phardie@bendoregon.gov)**

Vice Chair Scott Winters convened the hearing at 5:38 p.m.

Chief Operations Officer, Russel Grayson, provided background information on the text amendments, acknowledging the need for additional affordable housing, and the Council's directive to expedite its development. The state has recognized that local codes and policies can be obstacles to housing development and the proposed code amendments aim to provide transparency and ensure the city's code is not a barrier to housing development.

Senior Planner Pauline Hardie expanded on the topic by giving a detailed [presentation](#) of the legislative changes affecting the Bend Development Code. She explained that the proposed amendments implement several Oregon State laws aimed at facilitating housing development—many of which, have been in effect since 2021 and 2022, and are now being incorporated into the Bend Development Code to make them easily accessible and clear for developers and applicants.

These amendments also include removing the local option for the City Council to hear appeals on certain development applications and addressed feedback from the development community regarding cottage housing and shared court developments.

Hardie noted that tonight is the first public hearing on the proposed code amendments. The City Council's public hearing and first reading are scheduled for November 20th, with the second reading planned for December 4th. If all goes as planned, the amendments will go into effect on January 3<sup>rd</sup>. She emphasized that many of the bills are already in effect, allowing developers to proceed under the new regulations even before they are codified into the Bend Development Code.

Commissioner Bob Gressens asked about the terminology of "land use outright." Hardie explained that this change adds "Income Qualified Housing" to the use tables. Income-qualified housing is marked with an asterisk and the table refers to BDC 3.6.250 instead of being labeled as permitted (P) or conditional use (C). Developers would refer to the new section to check the allowable zones and affordability requirements. Assistant City Attorney Ian Leitheiser added that "permitted outright" means the use is allowed without needing a conditional use permit, but it still requires the standard permit application and review process.

Commissioner Gressens inquired about the proposal to remove the City Council's ability to hear appeals. Leitheiser explained that local appeal options are not required by state statute and that the criteria under which a discretionary appeal can be allowed is limited. Typically, these criteria are not met, as the Land Use Board of Appeals (LUBA) is the appropriate body to hear such appeals. Removing this option from the code is seen as a way to streamline the process and avoid unnecessary complications.

Vice Chair Winters asked for clarification on the building height transition under the adjustment options. Hardie explained that the adjustments allow for additional height bonuses, permitting buildings to be taller by either one story or up to a 20% increase, whichever is greater. The height increase cannot exceed 50% of the corresponding zone's maximum height.

Vice Chair Winters opened the public testimony portion of the hearing.

Jeff Conrad, Land Use Chair of the Awbrey Butte Neighborhood District, provided testimony regarding Senate Bill 1537. He expressed concerns about the bill's provision allowing adjustments to development standards and the ability to opt into new city standards adopted after an application is submitted, citing the Compass Corner case. He urged the Planning Commission and the Planning Department to consider all possible scenarios to ensure fairness to all parties involved.

Leitheiser addressed Mr. Conrad's concern about Senate Bill 1537 potentially undoing a final land use decision. He clarified that the adjustments allowed under the bill are deviations from existing land use regulations and cannot reverse a final decision. If an applicant wants to reapply, it would be a new process with public notice requirements.

James Cagney expressed concerns about changes to Bend Development Code (BDC) Chapter 2.6 of the Public Facilities Zoning District, particularly the inclusion of income-qualified housing in parks like Drake Park. He also objected to removing the City Council's ability to hear appeals, emphasizing the importance of maintaining the ability to object and appeal decisions.

Kristen Reidelberger from Central Oregon Land Watch expressed general support for the proposed amendments but emphasized the need to ensure they do not hinder the development of complete communities. She raised concerns about the reduction of commercial zones and the preservation of parks and green spaces. Reidelberger recommended monitoring the impacts of the amendments and pairing them with additional changes to allow more neighborhood-scale commercial uses in residential zones.

Suzie Newcome opposed the proposed changes related to Public Facilities, arguing that these changes could jeopardize open spaces and natural areas. She also highlighted the risk of modifying the quasi-judicial process, which could lead to development on protected lands without adequate public input. Additionally, she noted that Senate Bill 8's requirement for the losing party to pay attorney fees at LUBA discourages public appeals.

Ian Osteen suggested including non-exclusive language in BDC Chapter 2.6 to cover both privately and publicly held cemeteries, noting that Greenwood Cemetery is privately owned. He also raised concerns about using the term "public facilities" instead of "public lands" in the code. He argued that this change removes some of the city's discretion in determining what constitutes public land and could lead to the development of parks and natural areas.

Tom Scott expressed concerns about the proposed changes to Chapter 2.6 related to Public Facilities. He emphasized the importance of protecting parks and other public spaces from development, arguing that allowing development in these zones could endanger public spaces and noted that public participation might be reduced under the new amendments. He highlighted the importance of maintaining public involvement as outlined in Oregon's Statewide Planning Goal.

Nunzie Gould emphasized the importance of citizen participation as outlined in Senate Bill 100. Gould expressed concerns about the proposed changes allowing discretionary adjustments without opportunities for citizen appeals. Gould highlighted the value of public facilities like Troy Field. She opposed the

inclusion of housing in the public facilities zone and called for thorough review and public involvement in the decision-making process.

Dillon Schneider expressed concerns about the broad scope of the proposed code changes, suggesting that they might be better addressed individually. Schneider specifically objected to the outright use of housing in the Public Facilities Zone and noted that several sections would benefit from additional public scrutiny and discussion. He asked if it would be possible to break the changes into smaller, more manageable parts for better public understanding and input.

Staff responded to concerns about development in the Public Facilities Zone under Senate Bill 8. They explained that state law requires cities to allow affordable housing on properties owned by public bodies, regardless of zoning. This means that the focus on the public facilities zoning designation is only part of the issue, as public bodies can develop affordable housing on their properties regardless of the zoning.

Commissioner Bob Gressens raised a legal question about the potential for a developer with significant resources to pressure the city into developing public land, such as a park, for affordable housing. Staff clarified that such decisions would be up to the property owner, in this case, the Bend Park and Recreation District, not the city. While state law requires cities to allow affordable housing on public land, the property owner has the final say.

Gressens expressed concerns about the reduction of citizen involvement and responsiveness of elected officials to citizen needs if appeals are directed to LUBA. CEDD Director Colin Stephens explained that the City Council's review of land use decisions is being proposed for removal to streamline the process and meet the 120-day application review period. Historically, the Council has not wanted to be involved in these reviews, and the change was requested by the Council itself.

Winters clarified that the proposed amendments align local regulations with state mandates, which require the city to allow certain developments if they meet specific criteria.

Grayson explained that property development responsibility lies with the controlling entity and that the state is overriding local restrictions to help facilitate housing development. The focus is on identifying remnant pieces of public property that are not needed for future facilities and determining their best use.

Gressens asked about providing education to the public about the policy changes and raised concerns about the latitude given to developers in meeting adjustment criteria, questioning the impact of multiple adjustments on the integrity of the building code.

Staff acknowledged that there are limitations and exclusions in the legislation regarding adjustments, particularly for fire and building codes.

Vice Chair Winters closed the public testimony portion of the hearing at 7:20 p.m. and the Commissioners deliberated.

Commissioner Jeff Payne expressed concern of some of the mandates from Senate Bill 8. Both Commissioner's Payne and Winters acknowledged the intent of staff to codify the amendments into the Bend Development Code, expressing approval in the process of bringing the code up to date to reflect state requirements.

Winters expressed concerns about the safety of public lands, emphasizing that while major parks like Drake Park are unlikely to be developed due to public opposition, smaller parks on the outskirts might be at risk. Payne acknowledged that different agencies have their own boards of directors, which makes such developments less likely. The discussion emphasized the need to balance housing development with preserving public lands.

Gressens emphasized the importance of public outreach and working with developers to ensure responsible development. He highlighted the necessity of clear communication about state requirements and the role of local agencies in managing public lands, stressing the importance of exercising restraint and good judgment in development decisions to serve the public good.

Commissioner Nelson expressed broad support for the development code amendments. He agreed that codifying the amendments clearly reflect state requirements and improve communication to developers and the public. Specific local changes, such as adjusting density requirements for small lots and allowing cottage cluster parking in back alleyways, were seen as sensible improvements. The removal of the local appeals process was supported, noting its limited productive use in the past.

Winters discussed the adjustment options in the development code amendments. He noted that some adjustments, like minor changes to setbacks, are reasonable and will still need to adhere to building code. However, there were concerns about reducing window area requirements. The Commissioners generally supported height bonuses, favoring vertical development over horizontal expansion.

The discussion also included a proposed amendment to allow residential access areas, like stairwells and lobbies, within the ground floor of mixed-use buildings without requiring these areas to be offset by commercial uses on upper floors. This amendment was seen as practical and had been previously accepted in similar contexts. The Commissioners agreed to include this amendment in the motion for the development code changes.

Commissioner Nelson moved to recommend that the City Council approve the legislative amendments to the Bend Development Code implementing certain Oregon State laws and legislation to facilitate housing development and to amend this motion to include the exemption to the floor area requirement, which would permit ground-floor entrance lobbies and other common areas that lead to residential units above or behind the commercial uses. Commissioner Payne seconded the motion. The motion was passed unanimously.

Chair Margo Clinton was nominated to bring the recommendation of the Commission to the City Council on November 20<sup>th</sup>.

**5.2 [PLTEXT20240514](#)** – Proposal to make amendments to Bend Development Code (BDC) Table 2.2.300, Permitted and Conditional Uses, to prohibit new auto-dependent uses from the Convenience Commercial (CC) zoning district and to amend BDC 3.6.500, Short-Term Rentals, to subject properties within the Neighborhood Commercial (CN) zoning district to the same Short-Term Rental Review Type as the underlying Residential Land Use Designation.

**Senior Planner, Beth LaFleur – [elafleur@bendoregon.gov](mailto:elafleur@bendoregon.gov)**

Senior Planner Beth LaFleur gave a [presentation](#) on two proposed amendments to the Bend Development Code. The first amendment aims to prohibit new auto-dependent uses in the Convenience Commercial (CC) zone, which are currently permitted as a conditional use. The second amendment proposes subjecting CN-zoned properties to the same short-term rental standards as the underlying residential zone, specifically affecting five properties currently reviewed under commercial standards.

These amendments support the Council's environment and climate goals by promoting sustainable development and addressing community concerns. The short-term rental amendment would change the review process to a Type II application with public notice, subject to a 500-foot concentration limit for short-term rentals and limiting one short-term rental unit per property. Community outreach included a Council work session and a Planning Commission work session, with significant public support for the CC zone amendment and one opposition comment for the short-term rental amendment.

Next steps include a City Council public hearing and first reading on December 4<sup>th</sup>, a second reading on December 18<sup>th</sup>, and an effective date of January 17<sup>th</sup>, 2025.

Vice Chair Winters convened the hearing at 7:35 p.m. No public testimony was provided.

Vice Chair Winters closed the public testimony portion of the hearing at 7:41 p.m. and the Commissioners deliberated.

Commissioners discussed the proposal to prohibit auto-dependent uses in the Convenience Commercial (CC) zone. Commissioner Winters discussed the

consideration to expand the amendment to include auto-oriented uses, such as drive-throughs.

Nelson supported the expansion, viewing it as a stopgap measure to prevent unwanted developments while reevaluating commercial zoning in residential areas. Gressens expressed concerns about the unintended consequences of further restrictions and preferred to study the issue more before making a decision. Ultimately, there was no consensus to amend the proposal to include auto-oriented uses. The Commissioners then moved to address the rest of the proposed amendments.

Commissioner Nelson moved to recommend that the City Council approve the legislative amendments to the Bend Development Code to prohibit new auto dependent uses from the Convenience Commercial Zoning District, and to subject properties within the Neighborhood Commercial Zoning District to the same Short Term Rental review standards as those in the underlying residential land use designations. Commissioner Gressens seconded the motion. The motion passed on a 3-1 vote, with Commissioner Payne dissenting.

## **6. APPROVAL OF MINUTES:**

The Planning Commission approved the [September 23, 2024 Draft Minutes](#).

## **7. COMMUNICATIONS:**

### **7.1. Reports From Planning Commissioners**

Commissioner Nelson reminded everyone that the last day to vote is November 5<sup>th</sup>.

### **7.2. Report From Planning Manager**

Renee Brooke, Planning Manager, provided several updates. The next scheduled meeting on November 11<sup>th</sup> is to be canceled due to Veterans Day, with no items queued for November 25<sup>th</sup>. The next meeting is expected to be on December 9<sup>th</sup>, with at least one item on the agenda.

Upcoming items for the City Council include:

- The sign district map update on November 6<sup>th</sup>.
- Implementation of House and Senate bills, comprehensive plan map amendments for Stevens Ranch Master Plan, and the street name change, all scheduled for November 20<sup>th</sup>.

The applications for advisory bodies have recently closed, with interviews for the two vacancies happening soon.



### **7.3. Report From Community and Economic Development Director**

Colin Stephens, CEDD Director, had nothing to report.

### **7.4. Report From City Attorney**

Ian Leitheiser, Assistant City Attorney, had nothing to report.

The meeting was adjourned at 7:52 p.m.

Minutes submitted by Maggie St. Onge