



Staff Report

File #: 24-21

Version: 1

Date: 1/22/2024

Item #: 5.b.

TO: Mayor and City Council

FROM: City Council Rules Committee

SUBJECT:

City Council Rule Committee report and recommendations to modify City Council Rules

Ward(s): All Wards

Councilor(s): All Councilors

Neighborhood(s): All Neighborhoods

Result Area(s): Good Governance.

SUMMARY:

The City Council Rules Subcommittee (Committee) met four times beginning in March 2023 to review the City Council Rules, deliberate on potential changes and additions to the Rules and provided a unanimous recommendation to City Council for a package of Rules changes.

ISSUE:

Shall City Council adopt Resolution No. 2024-5 to implement changes to City Council Rules as set forth in Exhibit A to the resolution and direct staff to initiate a legislative land use process to amend the Salem Revised Code to modify the Council "Call-Up" process?

RECOMMENDATION:

Adopt Resolution No. 2024-5 to implement changes to City Council Rules as set forth in Exhibit A to the resolution and direct staff to initiate a legislative land use process to amend the Salem Revised Code to modify the Council "Call-Up" process.

FACTS AND FINDINGS:

The Rules Committee was appointed by Mayor Hoy and consists of Councilors Stapleton (Committee Chair), Gwyn, Phillips and Mayor Hoy. Councilor Nordyke is the alternate. The Committee, working with the City Attorney, reviewed the Rules and arrived at a consensus on changes to several rules and additions. The complete council rules with the proposed changes are set forth in Exhibit A to

Resolution No. 2024-5 (attached hereto as Attachment 1. Attachment 2 summarizes the changes. A table outlining the proposed changes to the Council Call-Up procedures is set forth in Attachment 3. A more comprehensive discussion of the proposed changes is below.

1. **Non-Substantive Changes.** Many of the proposed changes are simple clarifications, administrative updates, or removal of gendered language and are not intended to substantively change the rule. All changes are reflected in Exhibit A to the resolution.
2. **Rule 4(c) Executive Sessions.** The proposed change would require in-person attendance at executive sessions for all participants, unless the City Manager determined that unusual circumstances warrant allowing a participant to appear remotely.

The change is proposed because Council Rules have been updated to permit council members and others to attend and participate in council meetings remotely, as required by state law. State law exempts executive sessions from the requirement to allow remote attendance and participation by the public. Oregon is unique in allowing institutional media representatives to attend executive sessions. Allowing individuals to attend executive sessions remotely creates a risk that people not permitted to attend an executive session could view the session unobserved and record the session. Requiring in-person attendance addresses that risk.

3. **Rule 16 Public Hearings Generally.** Clarifies that groups, including neighborhood associations and applicants share the applicable period for the entity's testimony. The intent of the rule is to limit multiple representatives of an entity to the time limits established for speakers. Individuals may still sign up to speak on their own behalf separately. Neighborhood Associations are allotted five minutes to provide testimony at land use public hearings. Multiple members of an association sign up to speak on behalf of the association. Those members have a combined five minutes to speak. Those same people may also sign up to speak on their own behalf and speak for an additional three minutes. People doing so, should clearly indicate they are speaking on their own behalf and not for the association, and should try to differentiate the points raised from their association related testimony.
4. **Rule 19(d) Conduct of Hearings on Land Use Matters.** The proposal expressly delegates authority to staff to exclude improper testimony and evidence from the record in a quasi-judicial land use matter. In some quasi-judicial land use hearings, the record may be continued to allow additional evidence and testimony. Pursuant to Oregon law, new evidence must be excluded after a certain period. On occasion, testimony is submitted that contains new evidence during a period where new evidence is prohibited. If that evidence is included in the record, the City would commit a procedural error that could have a substantive impact on the participant's rights. This would be grounds for LUBA to remand the City's decision to correct the error.

The current practice is for staff (legal or planning) to review the evidence that is submitted and if a particular submission contains impermissible new evidence, the party is given an opportunity to revise their testimony to exclude the new evidence or demonstrate that it is not new evidence. If the issue is not corrected, staff will reject the portion of the offending portion

of the submission.

The change clarifies that staff has authority to exclude impermissible evidence.

- 5. Rule 22 - Council Communications.** Rule 22 is a new rule that provides guidance to councilors to comply with public meetings and public records requirements by avoiding serial public meetings through email or other communications between councilors.
- 6. Rule 24 - Social Media.** The proposed rule restricts council members' use of the City logo on members' personal social media and requires members to include a disclosure on their social media profiles stating that the personal social media account is not an official City of Salem account, that any opinions expressed in the account are the member's own and not the City's or on behalf of the City or City Council.

The U.S. Supreme Court will hear oral argument on a case involving a city manager's "personal" Facebook page and the official's blocking of a resident who critiqued the official's posts that related to City business. There are several other cases at lower courts that will be influenced by the Supreme Court's decision.

The proposed rule attempts to have members of council distinguish their personal social media accounts from official City accounts, however, depending on the outcome of the Supreme Court case, the City may need to consider more restrictions on council members and all City officials (elected official, employees, and board members) social media accounts. Once a "personal" social media account is deemed a "public" account of the City, the City and the public official become responsible for records retention for the account and have potential liability if the owner of the account infringes on the civil rights of members of the public who attempt to interact with the account.

Given the uncertainty of the state of the law, the City Attorney does not recommend more restrictive social media use standards at this time.

- 7. Rule 25 - Standards of Conduct.** Council members are subject to the State and City ethics and campaign laws (including improper use of office, conflict of interest, gift rules, and reporting requirements). In addition, Council Rules restrict council members involvement in City contracts or influencing personnel decisions. Council members' actions and behaviors, even those while acting in a personal or professional capacity, can negatively affect the City Council and the City.

Members of Council are elected officials and Council has limited authority to impose sanctions on members who violate Council Rules. Mutually agreed upon standards of conduct for members of Council may help avoid council member actions or behaviors that negatively impact the Council or the City.

8. Council Call-Up of Quasi Judicial Land Use Decisions.

SRC 300.1050 ([Sec. 300.1050. - Review by the Council. | Code of Ordinances | Salem, OR | Municode Library <https://library.municode.com/or/salem/codes/code_of_ordinances?nodeId=TITXUNDECO_UDC_CH300PRLAUSAPLELAUSPR_S300.1050RECO>](https://library.municode.com/or/salem/codes/code_of_ordinances?nodeId=TITXUNDECO_UDC_CH300PRLAUSAPLELAUSPR_S300.1050RECO)) permits the City Council to call up for review certain quasi-judicial land use decisions made by the Planning Administrator, Hearings Officer or Planning Commission. The City Council may also hear appeals of certain land use decisions. If a decision is called up or appealed to Council, a *de novo* public hearing is scheduled before City Council, and Council has the option to affirm, affirm with conditions, or reverse the lower decision (*de novo* means new evidence may be presented). Council's decision is the final decision of the City and may be appealed to the Oregon Land Use Board of Appeals.

The call-up procedure only applies to quasi-judicial land use decisions. These are decisions where an applicant has applied for a specific use or action, such as a site plan review, subdivision, or zone change for a specific property or small group of properties. Decisions on code amendments and comprehensive plan or map amendments are almost always made by Council initially and any appeal is to the State Land Use Board of Appeals.

The Committee elected to consider changes to Council call-up authority to potentially eliminate call-ups for some classes of land use decisions, including those where Council has limited discretion under Oregon law to substantively change the lower decision.

The Table in Attachment 3 sets forth the land use decisions that Council may call up under the current code and Committee's proposed changes. In some cases, a decision may either be called up by Council or appealed to Council. The Committee recommends that if the potential for call-up is eliminated, the ability to appeal the decision to Council is eliminated as well.

Under the recommendation, call ups and appeals to Council would be eliminated for application types, including; a) Applications involving needed housing; b) Site Plan Review; c) Urban Growth Area Preliminary Declarations, and; d) Wireless Communication Facilities.

Consolidated applications, such as when there are multiple applications consolidated into one proceeding and decision (such as; Site Plan, Tree Variance, Driveway Access Permit) may not be called-up if one of the applications is ineligible for call-up. The Committee recommends this to avoid reaching inconsistent decisions for a particular development. This could occur if Council were to reach one decision on a call-up, but the remainder of the decisions reached a different outcome.

The rationale for eliminating the recommended application types is set forth below:

- a. Needed housing. City staff and City Council have little or no discretion to modify an approval or reject an application due to needed housing statutory requirements that require only clear and objective criteria be applied.

- b. Site Plan Review. On some occasions site plan review involves multi-family housing, and needed housing statutes limit Council's discretion. Even for commercial or industrial developments, Site Plan Review is largely an administrative process to ensure that code standards are met for a use that is already permitted. The City has no discretion at the site plan stage to outright deny a use that is "permitted" under the City Code, and conditions may only be imposed that further the application's compliance with the applicable development standards.
- c. Urban Growth Area (UGA) Preliminary Declarations. The decisions are for the pre-development planning stage and identify what major public facilities are needed to serve a development as determined by City Council approved master plans. These public facilities include street improvements, water, sewer, stormwater, and parks. The decision is based on the City Council adopted master plans for each facility and simply provide notice to developers about what facilities are needed to serve a given development. The decisions do not impose a requirement to build facilities, that imposition comes later during the specific application for the proposed land use, where the impact of the proposed use and the need for public facilities to serve the use can be determined. UGA decisions are rarely appealed by themselves, and removing the ability to call-up such decisions will have little impact on Council's authority.
- d. Wireless Communication Facilities. Federal law largely limits local governments' authority to regulate what, where, and how wireless communication facilities (cell towers, antenna, and related infrastructure) may be sited within a jurisdiction. Much like needed housing applications, the City has very limited discretion to limit or prohibit proposed new wireless communication facilities.

Under the City's Code and Oregon land use law, all land use decisions issued without an initial public hearing may be appealed and a public hearing will be conducted. Even if Council call-up or appeal to City Council is eliminated through this proposal, land use decisions will still be subject to a local appeal and to appeal to LUBA.

Any recommended changes to call-up procedures will require a change to Council Rule 5 and to the Unified Development Code (UDC). Amendments to the UDC typically take several months to implement due to requirements for notice to the State, conducting public outreach and required public hearings. If Council adopts the Committee's recommendation to makes changes to the call-up procedures, staff will initiate a code amendment consistent with the recommendation.

9. Adoption. Section 12 of the City Charter and Council Rules provide that the Council Rules may only be amended after at least ten days' notice and the concurrence of two-thirds of the council members present. The committee report on January 8, 2024 was City Council first official notice of the recommended changes. To implement the Rules changes and begin the land use process to modify Council Call-Up procedures, two-thirds of councilors present must

pass Resolution No. 2024-5.

Dan Atchison
City Attorney

Attachments:

1. Resolution No. 20245-5 (with Exhibit A - Recommended changes to Council Rules).
2. Table of recommended changes.
3. Council Call Up Table.
4. Public Comment Received.