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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 736
PARKS AND RECREATION DEPARTMENT

FILED

04/26/2022 12:36 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Committee procedures for public comment during State Advisory Committee on Historic Preservation public meetings.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/31/2022 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Katie Gauthier
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 05/23/2022

TIME: 6:00 PM

OFFICER: Katie Gauthier

ADDRESS: Virtual hearing. registration required.

online- registration required

SALEM, OR 97303

SPECIAL INSTRUCTIONS:

Registration required: https://us06web.zoom.us/webinar/register/WN_jvfmGbyARu-YJDQoI8nFWw

NEED FOR THE RULE(S)

On October 21, 2021, an online meeting of the State Advisory Committee on Historic Preservation (SACHP) was interrupted when a public attendee began typing racial and homophobic slurs, directed at members of the committee. The meeting was open to the public, as required by Oregon Administrative Rule 736-050-0260(9). The staff administrator ended the meeting and the matter was referred to the Oregon State Police, who are conducting a criminal investigation, and the Oregon Department of Justice Bias Incident Hotline.

A temporary rule was adopted on November 17, 2021 to protect the health and safety of committee members as they fulfilled their duty to consider nominations to the National Register. After the temporary rule went into effect, the committee held a replacement meeting to consider nominations without incident. A public meeting is a necessary step in state consideration of nominations to the federal National Register of Historic Places. By rule, after the nomination is presented to the SACHP by the National Register Program Coordinator, public comment must be taken during the meeting.

A permanent rule change is needed in order to continue the process of allowing for a facilitated public comment process that allows the committee chair to accept public comments during the meeting via a designated OPRD staff member

receiving the comments and sharing them for the committee members' consideration. Comments not material to the nomination would not be displayed.

The proposed rule is modified from the current temporary rule to allow for additional methods for submission of comments that will be described by the department to enable broader options for participation for anyone with limitation to submitting in writing.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

A commission brief and this document are available for public inspection by contacting the Oregon Parks and Recreation Department by email at chris.havel@oregon.gov. Additional materials may be available following the official end to an Oregon State Police investigation into the incident.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The proposed rule was developed as a result of committee members being subjected to racial and homophobic slurs during an online meeting. Protecting the health and safety of committee members and ensuring the diversity of representation on the committee is the purpose for continuing this proposed rule change.

Committee members who were subject to this attack have expressed reservations about continuing to volunteer for the department without adequate protections. The proposed rules preserve both the public interest in commenting on proposed actions of the committee and the department interest of protecting our volunteer committee members from comments not germane to the public discourse.

FISCAL AND ECONOMIC IMPACT:

There is no fiscal or economic impact for this proposed rule change. It is a change in process for accepting public comments during a meeting.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) The proposed rule amendment does not increase costs for state agencies, units of local government or members of the public.

(2) (a) The proposed rule amendment does not specifically impact small businesses. Small business owners who choose to comment before the State Advisory Committee on Historic Preservation would be subject to the rule as would any member of the public. (b) The proposed rule amendment would not create additional record keeping or reporting requirements for small businesses, however, if a small business owner did choose to provide public comment it could require additional administrative activity to submit the comment to OPRD. (c) The proposed rule does not require additional cost for professional services, equipment supplies, labor or administration.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The proposed rule change does not impact small businesses differently than any member of the public.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

This is continuation of change in process for accepting comments during meetings for the State Advisory Committee on

AMEND: 736-050-0260

RULE SUMMARY: Describes committee procedures for the State Advisory Committee on Historic Preservation.

Proposed amendment would make temporary rule language permanent to allow for public comment facilitated through a designated OPRD staff person.

CHANGES TO RULE:

736-050-0260

State Advisory Committee on Historic Preservation: Committee Procedures for Review and Approval of Nominations to the National Register ¶¶

(1) The committee must review all National Register nomination forms except for those prepared under OAR 736-050-0250(19)(a)(A) to (E) and when a CLG objects to a National Register nomination form as provided under OAR 736-050-0250(13).¶¶

(2) The committee must make a recommendation to the SHPO whether the National Register nomination form meets the following criteria:¶¶

(a) All procedural requirements are met;¶¶

(b) The National Register nomination form is adequately documented;¶¶

(c) The National Register nomination form is technically and professionally correct and sufficient; and¶¶

(d) The National Register nomination form demonstrates that the nominated property meets the National Register criteria for evaluation.¶¶

(3) Neither the SHPO nor the committee chairperson or vice chairperson will consider a National Register nomination form submitted after the opening of the public comment period.¶¶

(4) The owner(s) and chief elected official may waive the CLG comment opportunity described in OAR 736-050-0250(13) by each submitting a written statement to the SHPO at least 15 calendar days before a scheduled committee meeting. The remaining provisions of OAR 736-050-0250 must be met.¶¶

(5) Committee members must disclose actual and potential conflicts of interest in accordance with ORS 244.120 to ORS 244.130.¶¶

(6) Committee members must not recuse themselves for a potential conflict of interest.¶¶

(7) A quorum of 5 committee members are required to conduct business. The committee retains a quorum if by the removal of committee members for declared actual conflicts of interest the committee falls below 5 present, voting committee members.¶¶

(8) For each National Register nomination form presented to the committee, the National Register Program Coordinator must provide a summary of:¶¶

(a) The argument presented in the National Register nomination form, and¶¶

(b) Public comment received prior to the committee meeting pursuant to OAR 736-050-0250(12).¶¶

(9) The chairperson must call for comments from the proponent(s), opponent(s), and other interested parties present following the National Register Program Coordinator's presentation. The total time allowed for comments must be determined by the chairperson or by practices adopted by comments must address one or more of the criteria in section (2) and may suggest an action under section (11). The total time allowed for comments must be determined by the chairperson or by practices adopted by the committee. Notwithstanding OAR 736-050-0250(12), the chairperson may direct that comments provided under this section be submitted in a manner prescribed by the department to the designated Oregon Parks and Recreation Department staff who will provide the comments to the committee.¶¶

(10) The SHPO, Deputy SHPO, Associate Deputy SHPO, and Oregon SHPO staff may participate in committee discussions, but are not voting committee members.¶¶

(11) The committee must take one of the following actions when considering a National Register nomination form based on the committee's deliberations and comments received during the public comment period:¶¶

(a) Recommend that the SHPO find that the National Register nomination form meets the criteria in subsections (2)(a) to (d) as presented to the committee with no revisions;¶¶

(b) Recommend that the SHPO find that the National Register nomination form meets the criteria in subsections (2)(a) to (d) after making less than a major revision(s) to the National Register nomination form;¶¶

(c) Defer making a recommendation until a future committee meeting to allow the proponent to make revision(s) or for any other reason deemed appropriate by the committee related to the criteria in subsections (2)(a) to (d); or¶¶

(d) Recommend that the SHPO find that the National Register nomination form does not meet the criteria in

subsections (2)(a) to (d). The committee must provide reasons for the recommendation. The committee may reconsider a recommendation at a later committee meeting after the SHPO determines that the proponent resolved the committee's objections.¶

(12) The committee must defer making a recommendation until a future committee meeting if the National Register nomination form requires a major revision.¶

(13) The SHPO must take action on a National Register nomination form reviewed by the committee as described in 36 CFR § 60.6(k) to (w) (2020).¶

(14) The committee may provide courtesy comments on a National Register nomination form submitted to the Oregon SHPO by a federal agency or Tribe for properties administered by a federal agency or on lands held in trust by the United States of America on behalf of a Tribe or an individual allotment held by a tribal member. Reviews completed under section (14) are subject to the procedures described in OAR 736-050-0260(2)(b), (c), and (d), and sections (3), and (5) through (10).

Statutory/Other Authority: ORS 358.617

Statutes/Other Implemented: ORS 358.622(2)