

Land Use Hearing Quick Reference Guide

Quasi-Judicial Land Use Hearings		Legislative Land Use Hearings	
<u>Order of Proceedings:</u>	<u>Time Limit</u>	<u>Order of Proceedings:</u>	<u>Time Limit</u>
Recorder Announcement		Recorder Announcement	
Call for COI/Ex Parte Contacts		N/A	
Staff Report	10 Minutes	Staff Report	10 Minutes
Applicant/Appellant	10 Minutes	N/A	
Appellant/Opponent	10 Minutes	N/A	
Neighborhood Association	5 Minutes	Neighborhood Association	5 minutes
Public	3 Minutes	Public	3 minutes
Questions of Staff	-		None
Applicant Rebuttal	5 Minutes	N/A	
Close Hearing	(unless there is a motion to continue the hearing or keep the record open)		
Motion		Motion	
Deliberations		Deliberations	
Motion to continue hearing/keep record open		Motion to continue hearing/keep record open	
Vote		Vote	

Issues with Quasi-Judicial Hearings:

Conflict of Interest:

Actual: If you, your business or your family **will** receive a benefit or detriment from the decision, you must; 1) disclose the conflict, and; 2) abstain from participating.
Potential: If the benefit of detriment is **uncertain**, you; 1) must disclose the conflict, but; 2) may participate.

- Call OGEC for informal opinion/advice: 503-378-5105, www.oregon.gov/ogec

Ex Parte Contacts (Only applies for quasi-judicial hearings):

Information from any party received outside the hearing, that is substantive to the subject of the hearing must be disclosed at the beginning of the hearing. Ex Parte contacts that occur after the hearing is closed should be disclosed to the City Attorney asap, which may require reopening the hearing.

- Communications with staff are not ex parte contacts.
- Simple “vote no on the application” without arguing why is not an ex parte contact. The contact must discuss the substance of the application.

Questions of Staff:

Members may ask questions of staff at any point. Once record is closed, there are restrictions about introducing new evidence, so try to ask all questions before the hearing and record are closed, and before the applicant has rebuttal.

Questions of witnesses:

Members may ask question of witnesses while they are testifying. Questions of the applicant should be asked during initial testimony. Applicant may not introduce new evidence during rebuttal, so limit your questions during rebuttal to the facts in the record.

Site visits/Member fact-finding.

Under Oregon law, all participants are entitled to know what evidence the decision maker is relying on to reach a decision. Members who conduct site visits or research issues relevant to the application must disclose all relevant facts at the hearing, prior to any testimony.

- Better practice is to ask questions of staff prior to the hearing to get the same information out to all council members and the public.

Conditions of Approval:

- Conditions must be to ensure that the proposal better complies with the applicable criteria.
- Dedication of land or requirements for improvements must be proportional to the impact of the proposed land use and have a rational nexus to the use.

Needed Housing Statutory Protection:

Oregon law requires local governments to provide a “clear and objective” approval tract for applications for housing. The criteria must be clear and objective and avoid unreasonable cost or delay. Local governments have limited or no discretion to vary from the clear and objective criteria.

120-day rule:

Most quasi-judicial land use decisions, including local appeals, must be issued within 120 days of an application being “deemed complete.” If the City violates this requirement, the applicant can file a “writ of mandamus” in circuit court that requires: 1) that the City approve the application, and; 2) pay the applicant’s attorney fees.

Tie Vote:

In the event of a tie vote on an **appeal**, the lower decision is affirmed.
In the event of a tie vote on an initial decision, the body must continue voting until a decision is reached.