



TYPICAL ORDER OF ACTIONS FOR A MATTER THAT REQUIRES A PUBLIC HEARING

1. The **Mayor (for the Council)** or **Planning Commission Chairperson** opens the public hearing. This cannot occur before the advertised, noticed and published day and time of the hearing.
2. The type of hearing is described as well as the subject or purpose of the hearing, the location (if applicable) and the applicant.
3. Preliminary matters are discussed. This includes:
 - The review body (Planning Commission or City Council) may be asked if they wish to declare an **ex-parte contact, conflict of interest** or **bias** regarding the issue. If any of these are declared, it is dealt with by the review body. This could result in a decision maker not being able to participate. Sometimes only bias and conflict of interest applies.
 - The audience is asked if they object to the ability of someone to make a fair decision. If someone objects, it is dealt with by the review body and can result in a decision maker not being able to participate.
4. Required statements are read. This includes:
 - The applicable substantive criteria that applies to the issue.
 - Instruction about basis for any testimony, arguments and evidence provided by those in attendance.
 - That failure to raise an issue appropriately precludes appeal to a higher court based on that issue.
5. At this point the official public hearing begins. The typical order for the public hearing is:
(1) City staff's presentation → (2) applicant's presentation → (3) testimony in support → (4) neutral testimony → (5) testimony in opposition → (6) rebuttal by the applicant

After this there are many things that can happen. But the key thing to remember is that once the public record is closed, no more evidence is supposed to be added. This includes testimony from those in attendance. Sometimes the public hearing can be continued to another time, but it usually ends at this point.
6. Normally, the public record is closed now. However, if it is a quasi-judicial hearing, a participant can request that the record be left open for additional evidence—ORS 197.763(6)(a). Also, the applicant has an opportunity to submit a final written argument—ORS 197.763(6)(e). If these happen, deliberations will be delayed to a different day.
7. Now the decision body can **deliberate**. The decision body reviews the evidence in the record and comes to a conclusion. This usually ends with a motion by one of the decision makers and if the motion has adequate votes amongst the decision body, it passes. At this point the decision is made. Sometimes, this is only a recommendation from the Planning Commission to the City Council.
8. The decision will be put in writing and notice sent out to those who have a legal right for the notice. This usually includes all those who provided testimony. The notice will include appeal information. If the matter is not appealed, the decision becomes final.

CONDUCT OF HEARING

- The Planning Commission or City Council, in conducting a hearing which will result in a determination as to the permissible use of a specific property, are acting in an administrative, **quasi-judicial** capacity, and all hearings are conducted accordingly. Interested parties are therefore entitled to an opportunity to be heard, to present evidence, to have the proceedings recorded, and to have a decision based on the evidence in the record. If the hearing is **legislative** (for adoption of law for example), there is opportunity to be heard similar to quasi-judicial proceedings.
- Testimony from those who are not the applicant shall be limited to 5 minutes per person.
- No person shall be disorderly, abusive or disruptive of the orderly conduct of the hearing.
- No person shall testify without first receiving recognition from the presiding officer and stating their full name for the record. Permission is also required to speak more than once.
- No person shall present irrelevant or repetitious testimony or evidence.
- There shall be no audience demonstrations, such as applause, cheering, displays or signs or other conduct disruptive of the hearing. Such conduct may be cause for immediate termination of the hearing.
- Planning Commission or City Council members may question or cross-examine any person who testifies.

Formatted: Highlight

Formatted: List Paragraph, Left, No bullets or numbering

CHALLENGE FOR PREJUDGMENT, PERSONAL INTEREST, OR BIAS

Anyone attending a public hearing before the Planning Commission or City Council may challenge the qualifications of any of its members to participate in the hearing and decision. This helps ensure the decision making body is impartial. For quasi-judicial hearings this challenge can be based on **ex-parte communication, conflict of interest**, or personal **bias**. For legislative hearings only **conflict of interest** and **bias** applies. Upon a challenge, the Planning Commission or Council may have to address the issue by motion after discussion of the accusation.

- **Ex-parte contact** includes contact outside of the public hearing process. This includes but is not limited to communication, site visits, and research. Decision makers are required to state any ex-parte contact so those in attendance can evaluate if it results in any impartiality.

Note that communication between City staff and a decision maker is not considered ex-parte contact.

- **Conflict of interest** includes unfair circumstances of decision makers such as being a relative of the applicant or having a financial interest in the outcome of the proposal.
- **Bias** is unfair prejudice.

APPEALS AND PROCEDURES

Decisions of the Planning Commission may be appealed to the City Council by an affected person. Decisions of the City Council may be appealed to the Oregon Land Use Board of Appeals (LUBA). Notice of appeal rights is sent to applicable parties after a decision is made. Appeal timelines and requirements are indicated on the notice.

QUESTIONS

If you have questions please contact the City Planning Department. Planning staff is usually at the front lines of these proceedings and can help with the technical aspects.