

SECTION 11.1000 PUBLIC HEARINGS

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11.1000 Public Hearings

11.1001 Responsibility of Manager for Public Hearings

The Manager shall:

- A. Schedule land use applications for review and public hearing before the appropriate review authority as required for the particular application procedure by **Table 11.0204**.
- B. Provide public notice of the public hearing or appeal hearing.
- C. Prepare minutes to include the decision on the matter heard at the public hearing, and the reasons for the decision.
- D. Mail a copy of the decision to those required to receive such information as specified for the particular application procedure.

11.1002 General Public Notice Requirements

- A. Notice of public hearings, either issued by mail, by site posting, and/or publication in a newspaper of general circulation in the city, shall be provided for Type I – IV applications as described in the following code sections:
 - 1. **Section 11.1100** for notice requirements for a public hearing on an appeal of a Type I decision.
 - 2. **Section 11.1100** for notice requirements for a public hearing on an appeal of a Type II decision.
 - 3. **Section 11.0500** for notice requirements for a public hearing on a Type III application and **Section 11.1100** for notice requirements for a public hearing on an appeal of a Type III decision.
 - 4. **Section 11.0600** for notice requirements for a public hearing on a Type IV application.

- B. All public notices shall be deemed to have been provided or received upon the date the notice is deposited in the mail or personally delivered, whichever occurs first.
- C. Cost of the initial public notice shall be included in the development permit application fee.

11.1003 Rules of Procedure

Public hearings shall be conducted in accordance with the rules of procedure adopted by the hearing body. Provisions regarding challenges to impartiality, disqualification, abstention, participation by interested officers or employees, ex parte contacts, burden of proof, and the order of proceedings, as referenced in the Gresham Revised Code and below are applicable to all public hearings.

11.1004 Challenges to Impartiality

- A. Except for Type IV hearings, a party to a hearing or a member of a hearing body may challenge the qualifications of a member of the hearing body to participate in the hearing and decision. The challenge shall state by affidavit the facts relied upon by the challenger relating to a person's bias, prejudice, personal interest, or other facts from which the challenger has concluded that the member of the hearing body cannot participate in an impartial manner. Except for good cause shown, the challenge shall be delivered by personal service to the Manager not less than 48 hours preceding the time set for the public hearing.
- B. The Manager shall attempt to notify the person whose qualifications are challenged prior to the meeting. The challenged person shall have an opportunity to respond orally and in writing to the challenge. The challenge shall be incorporated into the record of the hearing.

11.1005 Disqualification

Except for Type IV hearings, no member of a hearing body may participate in a discussion of the proposal or vote on the proposal when any of the following conditions exist:

- A. Any of the following have a direct or substantial financial interest in the proposal: the member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.
- B. The member owns property within the area entitled to receive notice of the public hearing.
- C. The member has a direct private interest in the proposal.
- D. For any other valid reason, the member has determined that participation in the hearing and decision cannot be in an impartial manner.

11.1006 Participation by Interested Officers or Employees

No officer or employee of the City who has a financial or other private interest in a proposal may participate in discussion with or give an official opinion to the hearing body on the proposal without first declaring for the record the nature and extent of such interest.

11.1007 Ex Parte Contacts

Except for Type IV hearings, the general public has a right to have the hearing body members free from prehearing or ex parte contacts on matters heard by them. It is recognized that a countervailing public right is free access to public officials on any matter. Therefore, hearing body members shall reveal any significant prehearing or ex parte contacts with regard to any matter at the commencement of the public hearing on the matter. If such contacts have impaired the member's impartiality or ability to vote on the matter, the member

shall so state and shall abstain from voting. In addition, parties who had the communication with the member have the right to rebut the substance of the communication, on the subject to which the communication relates, with the member at the commencement of the public hearing on the matter.

11.1008 Abstention or Disqualification

Except for Type IV hearings, disqualification for reasons other than the member's own judgment may be ordered by a majority of the members of a hearing body present and voting. The member who is the subject of the motion for disqualification may not vote on the motion.

11.1009 Rights of Abstaining or Disqualified Member of the Hearing Body

- A. An abstaining or disqualified member of the hearing body shall be counted for purposes of forming a quorum. A member who represents a personal interest at a hearing may do so only by abstaining from voting on the proposal, vacating the seat on the hearing body, physically joining the audience, making full disclosure to the hearing body.
- B. If all members of a hearing body abstain or are disqualified, all members present after stating their reasons for abstention or disqualification shall be requalified and shall proceed to resolve the issues.
- C. Except for Type IV hearings, a member absent during the presentation of evidence in a hearing may not participate in the deliberations or decision unless the member has reviewed the evidence received.

11.1010 Burden and Nature of Proof

Except for Type IV determinations, the applicant shall bear the burden of proof and persuasion that the proposal is in compliance with applicable provisions of the Gresham Community Development Plan and this Code.

11.1011 Order of Proceedings

The order of proceeding for a hearing will depend in part on the nature of the hearing. The following shall be supplemented by rules of procedure of the hearing body as appropriate.

- A. Before receiving information on the issue, the following shall be determined:
 - 1. Any objections on jurisdictional grounds shall be noted in the record and if there is objection, the hearing body has the discretion to proceed or terminate; and
 - 2. Any abstentions or disqualifications shall be determined.
- B. The presiding officer may take official notice of known information related to the issue, such as:
 - 1. A provision of the charter, state law, ordinance, resolution, rule, or officially promulgated policy of the City.
 - 2. Other public records and facts judicially noticeable by law.
- C. Matters officially noticed need not be established by evidence and may be considered by the hearing body in the determination of the matters. Parties requesting notice shall do so on the record. However, the hearing body may take notice of matters listed in **subsection B** of this section if stated for the record. Any matter given official notice may be rebutted.
- D. The hearing body may view the area in dispute with or without notification to the parties, but shall place the time, manner, and circumstances of such view in the record.
- E. Information shall be received from the staff and from proponents and opponents. The presiding officer may approve or deny a request from a person attending the hearing to ask a question. Unless the presiding officer specifies otherwise, if the request to ask a question is approved, the presiding officer will direct the question to the person submitting testimony.

- F. When the hearing has closed, the review authority shall openly deliberate and may further question a person submitting information or the staff if opportunity for rebuttal is provided.

11.1012 Continuance of Hearing

- A. All documents or evidence relied upon by the applicant shall be submitted to the City and be made available to the public. If additional documents or evidence are provided by any party at the hearing, the hearing body may allow a continuance or leave the record open for at least seven (7) days to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record requested by the applicant shall result in a corresponding extension of the time limitations of ORS 227.
- B. Prior to closing the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The hearing body shall grant such request by continuing the public hearing or leaving the record open for additional written evidence or testimony pursuant to **subsection C** below.
- C. If the hearing body grants a continuance, the hearing shall be continued to a date, time and place certain at least seven (7) days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence and testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven (7) days to submit additional written evidence or testimony for the purpose of responding to the new written evidence.
- D. If the hearing body leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven (7) days. Any participant may file a written request with the hearing body for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearing body shall reopen the record and any person may raise new issues which relate to the new evidence, testimony, or criteria for decision-making.
- E. A continuance or extension granted pursuant to **Section 11.1012** shall be subject to the limitations of ORS 227 unless the continuance or extension is requested or agreed to by the applicant.
- F. Unless waived by the applicant, the hearing body shall allow the applicant at least seven (7) days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. For purposes of this section, "argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. "Argument" does not include facts. "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision.

11.1013 Decision

- A. Following the order of proceedings described in **Section 11.1011**, the hearing body shall approve, conditionally approve, or deny the application. If the hearing is an appeal, the hearing body shall affirm, reverse or remand the decision that is on appeal.
- B. A final local decision on an application for a development permit shall be made within 120 days from the date the application was deemed to be complete, except that, with the agreement of the hearing body and an applicant or appellant, the processing of a matter under consideration may be extended for a reasonable period of time as determined by the hearing body, but not to exceed 6 months from the date of the first hearing on the matter.

For *Qualifying Applications* as defined in **Section 3.0103**, unless waived by the applicant, the City will

reach a final decision within 100 calendar days from the date that the application is deemed complete.

11.1014 Findings and Order

The hearing body shall prepare findings of fact and an order, which shall include:

- A. A statement of the applicable criteria against which the proposal was tested.
- B. A statement of the facts that the hearing body found establishing compliance or noncompliance with each applicable criterion, and assurance of compliance with applicable standards.
- C. The reasons for, and decision to, approve, conditionally approve, or deny a proposal.

11.1015 Record of Proceedings

The secretary to the hearing body shall be present at each hearing, and shall cause the proceedings to be recorded stenographically or electronically.

- A. Testimony shall be transcribed if required for judicial review.
- B. The hearing body shall, where practicable, retain as part of the hearing record each item of physical or documentary evidence presented, and shall have the items marked to show the identity of the person offering the item and whether presented on behalf of a proponent or opponent. Exhibits received into evidence shall be retained in the hearing file until after the applicable appeal period has expired, at which time the exhibits may be released to the person identified on the exhibit, or otherwise disposed of.
- C. Included in the record shall be a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision, and explains the justification for the decision based on the criteria, standards and facts set forth.
- D. A person shall have access to the record of the proceedings at reasonable times, places, and circumstances. A person shall be entitled to make copies of the record at the person's own expense.

