

CHAPTER 16 - PUBLIC DELIBERATIONS AND HEARINGS**16.010 Responsibility of Director for Hearings.**

- A. Schedule and assign the matter for review and hearing.
- B. Conduct the correspondence of the hearing body.
- C. Give notice.
- D. Maintain a record, and enter into the record, relevant dates such as those of giving notice, hearings, postponement, and continuances, and a summary of action taken by the hearings body.
- E. Prepare minutes to include the decision on the matter heard and the reasons for the decision.
- F. Reduce the decisions of the hearings body to writing within a reasonable time.
- G. Mail a copy of the decision to the party requesting the same upon payment of a reasonable fee, if a fee has been established. [Adopted by Ord. 550, ef. 9/25/90]

16.020 Raising of Issues for Appeal.

[Adopted by Ord. 591, ef. 2/25/93; Renumbered to 16.285 by Ord. 705, ef. 5/10/01]

16.030 Notice of Hearing. The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before the Hearings Officer, Planning Commission, and City Council on application for a land use decision, and shall be incorporated into the Comprehensive Land Use Plan and land use regulations. Notice of hearings governed by this section shall be provided to the applicant and owners of record of property on the most recent property tax assessment roll where such property is located:

- A. Within 250 feet of the property which is the subject of the notice where the subject property is wholly, or in part, within the Urban Growth Boundary.
- B. Within 250 feet of the property which is the subject of the notice where the subject property is outside the Urban Growth Boundary, and not within a farm or forest zone.
- C. Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.
- D. Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.020 and amended by Ord. 591, ef. 2/25/93]

16.040 Notice to Interested Parties.

- A. Interested parties such as counties, state agencies, public utilities, etc., which may be affected by the specific development proposal, shall receive notice of the scheduled public hearing.
- B. Area-Wide Proposals. Notices may be mailed, posted, or published, as determined appropriate by the Director and based on the impact of the proposed development, and as required by Chapter 15, Amendments, of this code. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.030 and amended by Ord. 591, ef. 2/25/93]

16.050 Contents of Notice. The notice provided by the City shall:

- A. Explain the nature of the application and the proposed use or uses which could be authorized.
- B. List the applicable criteria from this code and the Plan that apply to the application at issue.
- C. Set forth the street address or other easily understood geographical reference to the subject property.
- D. State the date, time, and location of the hearing.
- E. State that failure of an issue to be raised in a hearing, in person, or by letter, or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue, precludes appeal to the board based on that issue.
- F. Be mailed at least:
 - 1. Twenty days before the evidentiary hearing; or
 - 2. If two or more evidentiary hearings are allowed, ten days before the first evidentiary hearing.
- G. Include the name of a local government representative to contact and the telephone number where additional information may be obtained.
- H. State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant, and applicable criteria are available for inspection at no cost and will be provided at a reasonable cost.
- I. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at a reasonable cost.
- J. Include a general explanation of the requirements for submission of testimony and the procedures for conduct of hearings. [Adopted by Ord. 591, ef. 2/25/93; Amended by Ord. 638, ef. 2/23/96]

- 16.060 Time of Notice.
[Adopted by Ord. 550, ef. 9/25/90; Repealed by Ord. 591, ef. 2/25/93]
- 16.060 Procedure for Mailed Notice. The applicant shall provide a certified list of property owners as required by notice provisions of this code. Unless otherwise provided, addresses for a mailed notice shall be obtained from the County's real property tax records. Unless the address is on file with the Director, a person whose name is not in the tax records at the time of filing of an application, or of initiating other action not based on an application, need not be furnished mailed notice. The failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to comply with the requirements of this code for notice. In addition to receiving notice as required by the matter under consideration, the Director shall provide notice to others he has reason to believe are affected or otherwise represent an interest that may be affected by the proposed development. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.040 by Ord. 591, ef. 2/25/93]
- 16.070 Procedure for Posted or Published Notice.
- A. A posted notice, if required, shall be posted in at least one conspicuous place within the boundary of the parcel under consideration. If the property frontage exceeds 500 feet, one additional notice shall be posted on the property.
 - B. A posted notice, if required, shall be posted in a minimum of three public places within the City boundaries.
 - C. If a published notice is required, it shall be published at least once in a newspaper of general circulation. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.050 by Ord. 591, ef. 2/25/93]
- 16.080 Applicant's Documents and Evidence. All documents or evidence relied upon by the applicant shall be submitted to the local government and made available to the public. [Adopted by Ord. 591, ef. 2/25/93; Amended by Ord. 638, ef. 2/23/96]
- 16.090 Staff Report. Any staff report used at the hearing shall be available at least seven days prior to the hearing. If additional documents or evidence are provided by any party, the local government may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations of ORS 227.178. [Adopted by Ord. 591, ef. 2/25/93; Amended by Ord. 638, ef. 2/23/96]
- 16.100 Explanation at Commencement of Hearing. At the commencement of a hearing under a Comprehensive Land Use Plan or land use regulation, a statement shall be made to those in attendance that:
- A. Lists the applicable substantive criteria;
 - B. States that testimony and evidence must be directed toward the criteria described in subsection (A) of this section or other criteria in the Comprehensive Land Use Plan or land use regulations which the persons believes to apply to the decision; and

- C. States that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision-maker and the parties an opportunity to respond to the issue precludes an appeal to the City Council based on that issue. [Adopted by Ord. 591, ef. 2/25/93; Amended by Ord. 638, ef. 2/23/96]
- 16.110 Request to Present Additional Evidence. Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The Hearings Officer, Planning Commission, or City Council shall grant such request by either continuing the public hearing or leaving the record open for additional written evidence or testimony. A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 227.178 unless the continuance or extension is requested or agreed to by the applicant. [Adopted by Ord. 591, ef. 2/25/93; Amended by Ord. 638, ef. 2/23/96]
- 16.120 Continuance of the Hearing. If the Hearings Officer, Planning Commission, or City Council grants a continuance, the hearing shall be continued to a date, time, and place certain at least seven 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 days to submit additional written evidence or testimony for the purpose of responding to the new written evidence. [Adopted by Ord. 638, ef. 2/23/96]
- 16.130 Leaving the Record Open. If the Hearings Officer, Planning Commission, or City Council leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the City for an opportunity to respond to new evidence submitted during the period the record is left open. If such a request is filed, the Hearings Officer, Planning Commission, or City Council shall reopen the record pursuant to section 16.150, Reopening a Hearing, of this chapter. [Adopted by Ord. 638, ef. 2/23/96]
- 16.140 Applicant's Right to Submit Final Arguments. Unless waived by the applicant, the City shall allow the applicant at least seven 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. [Adopted by Ord. 638, ef. 2/23/96]
- 16.150 Reopening a Hearing. When the Hearings Officer, Planning Commission, or City Council reopens a record to admit new evidence or testimony, any person may raise new issues which relate to the new evidence, testimony, or criteria for decision-making which apply to the matter at issue. [Adopted by Ord. 591, ef. 2/25/93; Renumbered from 16.120 by Ord. 638, ef. 2/23/96]
- 16.160 Failure to Receive Notice. The failure of the property owner to receive notice as provided in this chapter shall not invalidate such proceedings if the local government can demonstrate, by affidavit, that such notice was given. The notice provisions of this chapter shall not restrict the giving of notice by other means, including posting, newspaper publication, radio, and television. [Adopted by Ord. 591, ef. 2/25/93; Renumbered from 16.130 by Ord. 638, ef. 2/23/96]

- 16.170 Ex Parte Contacts. The general public has a right to have hearing body members free from ex parte contacts in quasi-judicial hearings. It is recognized that a countervailing public right is free access to public officials on any matter. Therefore, hearing body members shall reveal all ex parte contacts with regard to a matter that comes before the hearing body member at a quasi-judicial proceeding. If ex parte contacts have not impaired the member's ability to make a fair and impartial decision based on the information presented during the quasi-judicial proceeding, the member shall so state and may participate in the hearing and decision. Ex parte contacts with a member of the decision-making body shall not invalidate a final decision or action of the decision-making body, provided that the member receiving the ex parte contact places the substance of the content of the ex parte communication in the record of the hearing, and makes a public announcement of the content of the communication and of the right of the parties to rebut the content of the first hearing where action will be considered or taken. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.100 by Ord. 591, ef. 2/25/93; Amended by Ord. 705, ef. 5/10/01]
- 16.180 Challenges to Impartiality. A party to a quasi-judicial hearing, or a member of the hearing body, may challenge the qualifications of a member of the hearing body to participate in a quasi-judicial hearing or decision. A challenge shall identify the facts and basis for concluding that the member being challenged cannot make a fair and impartial decision due to bias, prejudgment, a direct and substantial personal interest in the outcome, or other similar circumstances. Except for good cause shown, a written challenge shall be filed with the Director not less than 48 hours preceding the time set for the quasi-judicial hearing. The Director shall attempt to notify the member being challenged prior to the meeting. The challenge shall be incorporated into the record of the hearing. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.070 by Ord. 591, ef. 2/25/93; Renumbered from 16.140 by Ord. 638, ef. 2/23/96; Amended by Ord. 705, ef. 5/10/01]
- 16.190 Conflicts of Interest. No officer or employee of the City shall participate in a hearing or decision if the officer or employee has an actual conflict of interest as defined by state law, unless otherwise authorized by state law. An officer or employee of the City may participate in a land use hearing or decision if the officer or employee has a potential conflict of interest as defined by state law. Officers and employees shall disclose actual and potential conflicts of interest. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.090, ef. 2/25/93; Renumbered from 16.160 by Ord. 638, ef. 2/23/96; Amended by Ord. 705, ef. 5/10/01]
- 16.200 Disqualification. A Planning Commissioner shall not participate in the discussion or decision on a matter in which any of the following have a direct or substantial financial interest: The Planning Commissioner or the commissioner's spouse, brother, sister, child, parent, father-in-law or mother-in-law; any business in which the commissioner 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. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.080 by Ord. 591, ef. 2/25/93; Renumbered from 16.150 by Ord. 638, ef. 2/23/96; Amended by Ord. 705, ef. 5/10/01]
- 16.210 Abstention or Disqualification. Except for Type IV hearings conducted by the governing body, 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. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.110 by Ord. 591, ef. 2/25/93; Renumbered from 16.180 by Ord. 638, ef. 2/23/96]

16.220 Rights of Disqualified Member of the Hearing Body.

- A. An abstaining or disqualified member of the hearing body may be counted for purposes of forming a quorum. A member who represents personal interest at a hearing may do so only by physically joining the audience and vacating the seat on the hearing body. He shall make full disclosure of his status and position at the time of addressing the hearing body and shall not vote.
- B. If all members of a hearing body disqualify themselves, all members present after stating their reasons for abstention or disqualification shall by so doing be re-qualified and proceed to resolve the issues.
- C. Except for Type IV legislative hearings conducted by the governing body, a member absent during the presentation of evidence in a hearing may not participate in the deliberations or final decision regarding the matter of the hearing unless the member has reviewed the evidence received. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.120 by Ord. 591, ef. 2/25/93; Renumbered from 16.190 by Ord. 638, ef. 2/23/96]

16.230 Burden and Nature of Proof. Except for legislative determinations, the burden of proof is upon the proponent. The more drastic the change or the greater the impact of the proposal on the area, the greater is the burden upon the proponent. The proposal must be supported by proof that it conforms to the applicable elements of the Comprehensive Land Use Plan and to provisions of this code, especially the specific criteria set forth for the particular type of decision under consideration. Additionally, the following factors are deemed relevant and material, and shall be considered by the hearing body in reaching its decision on a proposal:

- A. Mistakes in the original designation or provision.
- B. Change of conditions within the vicinity in which the development is proposed. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.130 by Ord. 591, ef. 2/25/93; Renumbered from 16.200 by Ord. 638, ef. 2/23/96]

16.240 Order of Proceedings. An order of proceedings for a hearing will depend in part on the nature of the hearing. The following shall be supplemented by administrative procedures 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 an objection, the person presiding has the discretion to proceed or terminate.
 - 2. Any abstentions or disqualifications shall be determined.
- B. The person presiding at the hearing may take official notice of known information related to the issue, such as the following:

1. Provisions of the charter or state law, or of an 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; provided, however, that 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 ended, the hearing body shall openly discuss the issue and may further question a person submitting information or the staff, if opportunity for rebuttal is provided. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.140 by Ord. 591, ef. 2/25/93; Renumbered from 16.210 by Ord. 638, ef. 2/23/96]
- 16.250 Decision. Following the hearing procedure, the hearing body shall approve or deny the application; or, if the hearing is in the nature of an appeal, affirm, reverse, or remand the decision that is on appeal. A decision on a hearing or a land use proposal shall be made within 120 days of the application. If the hearing body and an applicant or appellant agree to an extension, 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 six months from the date of the first hearing on the matter. An applicant may request an extension beyond the 120-day legal limit. An applicant whose application has not been acted upon within 120 days after the application was initiated may seek a writ of mandamus to compel a decision on the land use application or issuance of permits, or a determination that approval would violate the City's Plan or land use regulations. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.150 by Ord. 591, ef. 2/25/93; Renumbered from 16.220 by Ord. 638, ef. 2/23/96]
- 16.260 Findings and Order. The hearing body shall prepare findings of fact and an order which shall include:
- A. A statement of the applicable criteria and standards against which the proposal was tested, and of the hearing body's interpretation of what would be required to achieve compliance with the criteria and standards.
 - B. A statement of the facts which the hearing body found establishing compliance or noncompliance with each applicable criteria and assurance of compliance with applicable standards.

- C. The reasons for a conclusion to approve or deny.
 - D. The decision to deny or approve the proposed change with or without conditions. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.160 by Ord. 591, ef. 2/25/93; Renumbered from 16.230 by Ord. 638, ef. 2/23/96]
- 16.270 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 or if ordered by the hearing body.
 - 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 same 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 thereon, or otherwise disposed of.
 - C. The findings and order shall be included in the record.
 - D. A person shall have access to the record of the proceeding at reasonable times, places, and circumstances. A person shall be entitled to make copies of the record at the person's own expense. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.170 by Ord. 591, ef. 2/25/93; Renumbered from 16.240 by Ord 638, ef. 2/23/96]
- 16.280 Request for Review - Appeal of Decision.
- A. Type I or II Procedure. A decision on a land use proposal or permit may be appealed to the Planning Commission by an affected party by filing an appeal with the Director within ten days of notice of the decision. The notice of appeal shall indicate the nature of the decision that is being appealed, and the matter at issue will be a determination of the appropriateness of the decision.
 - B. Type III Procedure. A decision of the Planning Commission may be appealed to the City Council by an affected party by filing an appeal within ten days of notice of the decision. The notice of appeal shall indicate the decision that is being appealed.
 - C. Type IV Procedure. A decision of the City Council may be appealed to the Land Use Board of Appeals, or to the legal authority governing land use regulations and issues, by an affected party by filing an appeal within 21 days of notice of the decision. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.180 by Ord. 591, ef. 2/25/93; Renumbered from 16.250 by Ord. 638, ef. 2/23/96; Amended by Ord. 705, ef. 5/10/01]
- 16.285 Raising Issues for Appeal. An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised before the close of the record at the final evidentiary hearing on the proposal. Such issues shall be raised with sufficient specificity to afford the final reviewing body and the parties an adequate opportunity to

respond to each issue. [Adopted by Ord. 591, ef. 2/25/93; Renumbered from 16.020 and amended by Ord. 705, ef. 5/10/01]

16.290 Appeal Requirements

- A. A notice of appeal shall contain:
 - 1. An identification of the decision sought to be reviewed, including the date of the decision.
 - 2. A statement of the interest of the person seeking review and that the person was a party to the initial proceedings.
 - 3. The specific grounds relied upon for review, including an explanation of the errors the person seeking review believes exist in the decision that is being appealed.
- B. An appeal of a decision rendered under a Type I or II procedure shall be limited to a review of the record supplemented by oral arguments relevant to the record presented by parties to the prior deliberations.
- C. An appeal of a decision rendered under a Type III procedure shall automatically be conducted as a de novo review and subject to a de novo hearing. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.190 by Ord. 591, ef. 2/25/93; Renumbered from 16.260 by Ord. 638, ef. 2/23/96; Amended by Ord. 705, ef. 5/10/01]

16.300 Scope of Review.

[Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.200 by Ord. 591, ef. 2/25/93; Renumbered from 16.270 by Ord. 638, ef. 2/23/96; Repealed by Ord. 705, ef. 5/10/01]

16.310 De Novo Hearing.

- A. “De novo hearing” shall mean a hearing by the reviewing body as if the action had not been previously heard, and as if no decision had been rendered, except that the reviewing body may consider all the testimony, evidence, and other material that is in the record.
- B. For purposes of a de novo hearing, the record shall include:
 - 1. A report prepared by the Director.
 - 2. All prior staff reports, decisions, the application, and any exhibits, materials, reports, letters, memoranda, and stipulations submitted by any party that were received and considered by the decision-maker in reaching the decision under review.
 - 3. The transcript of prior hearings, if previously prepared, or the tapes and minutes from the prior hearings.
- C. At a de novo hearing, the applicant for the land use proposal or permit which is the subject of the appeal shall have the right of final rebuttal to any arguments,

evidence, or testimony raised by an opposing party. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.210 by Ord. 591, ef. 2/25/93; Renumbered from 16.280 by Ord. 638, ef. 2/23/96; Amended by Ord. 705, ef. 5/10/01]

16.320 Review Consisting of Additional Evidence or De Novo Review.

[Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.220 by Ord. 591, ef. 2/25/93; Renumbered from 16.290 by Ord. 638, ef. 2/23/96; Repealed by Ord. 705, ef. 5/10/01]

16.330 Reviewing Body Decision. Upon review, the reviewing body may by order affirm, reverse, or modify in whole or in part, a determination or requirement of the decision that is under review. When the reviewing body modifies or renders a decision that reverses a decision of the hearing body, the reviewing body, in its order, shall set forth its finding and state its reasons for taking the action encompassed in the order. When the reviewing body elects to remand the matter back to the hearing body for such further consideration as it deems necessary, it shall include a statement explaining the error found to have materially affected the outcome of the original decision and the action necessary to rectify it. [Adopted by Ord. 550, ef. 9/25/90; Renumbered from 16.230 by Ord. 591, ef. 2/25/93; Renumbered from 16.300 by Ord. 638, ef. 2/23/96; Amended by Ord. 705, ef. 5/10/01]