



Hearings Office

City of Portland

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RULES OF THE CITY OF PORTLAND HEARINGS OFFICE

ADM-9.02 – LAND USE REVIEWS

Adopted by the Chief Hearings Officer Pursuant to Rulemaking Authority
ARB-ADM-9.02

A. Purpose and Authority

The Portland City Council has delegated authority to the Hearings Office to review certain types of land use actions. Oregon law and [Chapter 33.730](#) of the Portland City Code set forth requirements for these quasi-judicial land use proceedings. These rules are intended to supplement those requirements by providing additional guidance for land use reviews conducted by the Hearings Office.

[Code Section 33.730.100 A.](#) authorizes the Hearings Office to adopt rules of procedure that are consistent with Oregon Public Meetings law, statutory land use hearing requirements, and Code Title 33.

B. Modification or Waiver; Conflicts

1. The Hearings Officer may modify or waive any of these rules, in the interest of fairness or justice and for good cause shown, consistent with State and City law.
2. In the event of any conflict between these rules and applicable requirements set forth in the Portland City Code, the Code provisions will prevail.

C. Definitions

For purposes of these rules:

1. “Bureau” means the Bureau of Development Services.
2. “Continue” means to adjourn a hearing that is in progress and order that the hearing be completed on another date and time. For example, the Hearings Officer may “continue”

a hearing that is taking longer than scheduled or expected to another date and time to give the parties enough time to present all of their evidence.

3. “Day” means calendar day.
4. “Disruptive conduct” means conduct that interferes with the normal hearing process, as determined by the Hearings Officer.
5. “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 or recommendation.
6. “*Ex parte* contact” means a direct or indirect communication about a land use case pending before a Hearings Officer, between the Hearings Officer and any person interested in the outcome of the case, which occurs outside of a public hearing. *Ex parte* contacts do not include communications between:
 - a. The Hearings Officer and any person employed by the Hearings Office.
 - b. The Hearings Officer and the Hearings Office’s legal counsel.
 - c. Hearings Office staff (excluding the Hearings Officer) and City staff or other participants regarding procedures and for verification of evidence in record.
7. “Interested in the outcome” of a case means having a concern, interest in, or relationship to the case.
8. “Interpreter” means a person with sufficient fluency to communicate with a party or witness who does not speak English. An interpreter is responsible for accurately translating the party or witness’ statements into English during the hearing, and for translating what is said during the hearing into the language used by the party or witness. “Interpreter” also refers to a person who assists or aides another person due to a disability.
9. “Mail” means first-class United States Post Office mail delivery service. A party’s use of the Hearings Office’s electronic case management system will be deemed consent to receive documents via electronic mail, unless the party requests receipt via mail or State law requires mail.

10. “Party” means any person who submits oral or written testimony or evidence before the record of a land use proceeding is closed.
11. “Postpone” means to reschedule a hearing for another date and time.
12. “Received” means the date and time a document is time-stamped as received in the Hearings Office; except that a document delivered to the Hearings Office after regularly scheduled business hours or on a Saturday, Sunday, or official City holiday or closure will be deemed to have been received on the next business day at the start of business hours.

D. General Duties and Powers of the Hearings Officer in Land Use Proceedings

The Hearings Officer performs fair and impartial quasi-judicial reviews of certain land use applications and expedited land division decisions, in accordance with Code Title 33 and applicable statutory requirements. The Hearings Officer’s duties include:

1. Maintaining order during each hearing.
2. Requesting, receiving, and examining available information, preparing a record, and making decisions, supported by findings and conclusions, on assigned cases.
3. Taking all necessary action to avoid delay in the disposition of land use cases, consistent with providing fairness to all parties.

E. Site Visits

The Hearings Officer may, in the Hearings Officer’s discretion, view a site under review, before or after a hearing. Site visits may provide the Hearings Officer with relevant evidence, which the parties have the right to rebut as follows:

1. *If the Hearings Officer views a site before the hearing:* The Hearings Officer will announce the site visit at the hearing, state any facts gained or conclusions reached from the site visit that are relevant to the review, and give the parties an opportunity to respond to the facts or conclusions, which may include holding the record open or continuing the hearing.
2. *If the Hearings Officer views a site after the hearing:* The Hearings Officer will notify the parties of any facts gained or conclusions reached from the site visit and will give the

parties an opportunity to respond to the new evidence by reopening the record or scheduling an additional hearing.

F. Conflicts of Interest; Bias

1. A Hearings Officer will disqualify themselves from any land use case in which they have a conflict of interest, in accordance with Code Section 33.710.030 I. and ORS Chapter 244 (Government Ethics). Compensation paid to the Hearings Officer by the City does not amount to a conflict of interest because the Hearings Officer will be paid the same amount regardless of the outcome of the decision.
2. A Hearings Officer may not participate in a land use case in which the Hearings Officer has a bias that makes the Hearings Officer incapable of rendering an objective decision on the merits of the case.

G. Standard of Proof; Ex Parte Contacts

1. The applicant has the burden of proof and must provide evidence to establish that the proposed development will satisfy every element of the applicable approval criteria.
2. In making a land use decision or recommendation, the Hearings Officer will rely solely on the testimony and evidence in the record, including facts officially noticed by the Hearings Officer.
3. Ex parte contacts undermine fairness by introducing new information to the Hearings Officer without giving other parties an opportunity to respond.
 - a. The Hearings Officer may not intentionally engage in ex parte contacts.
 - b. If a Hearings Officer is subject to an ex parte contact or otherwise receives new factual information about a pending land use case that is not included in the record, the Hearings Officer must, at the earliest possible time:
 - i. Make a public announcement of the contact, on the record, at the first hearing following the contact. If the record has closed, the Hearings Officer must announce the contact through a written notice to all parties.
 - ii. Place a statement describing the substance of the contact on the record. The statement must be sufficiently detailed to allow for rebuttal. If the contact is in

written or tangible form, the Hearings Office will place a copy of the contact into the record.

- iii. Give all parties an opportunity to respond to the substance of the contact by holding the record open, continuing the hearing, or reopening the record.
- c. Any objections to an inadequately disclosed or undisclosed *ex parte* contact must be filed with the Hearings Officer at the earliest possible time, and not later than the close of the record at or following the final evidentiary hearing on the proposal. A person objecting to an undisclosed *ex parte* contact must show a reasonable basis for believing the contact occurred.

H. Record of Land Use Hearings

1. The Hearings Office will ensure that all land use hearings are electronically recorded and that a copy of the recording is placed in the City's online archive system, which can be accessed by the public.
2. The Hearings Office may make copies of recordings available to the public upon request and payment of nominal costs.

REVIEW OF TYPE II AND TYPE IIx LAND USE DECISIONS AND TYPE III LAND USE APPLICATIONS

I. Scheduling and Notice of Hearings

1. Upon receipt of notice from the Bureau that a land use decision or application is ready to be placed on the hearing calendar, the Hearings Office will coordinate with the Bureau to schedule a hearing date and time.
 - a. Land use hearings will be scheduled in accordance with the time limits set forth in Code Chapter 33.730.
 - b. Land use hearings are generally held on Mondays and Wednesdays in Room 3000 of the 1900 SW Fourth Avenue building.
2. Unless otherwise specified herein, the Bureau will provide hearing notices in accordance with Code Chapter 33.730.

3. If the Bureau fails to send a hearing notice as required by the Code, a party fails to receive a notice, or a notice fails to reasonably describe the actual proposal, the Hearings Officer may, in their discretion, continue the hearing or hold the record open.
 - a. In so determining, the Hearings Officer will consider the particular circumstances of the case, the possible prejudice to the persons failing to receive proper notice or to any other persons, and the reason for the failure to comply.
 - b. If a hearing notice complies with Code Chapter 33.730, the failure of a property owner or resident to receive notice is not grounds for automatically continuing or holding the record open and does not invalidate a proceeding.

J. Availability of Staff Reports and Documents

1. Appeals of Type II and Type IIX Decisions: The Bureau will send the Hearings Office a copy of the administrative decision, the appeal, and any other reports that will be relied upon at the hearing, at least seven days before the date of the hearing.
2. Type III Reviews: The Bureau will file its report and recommendation with the Hearings Office at least ten days before the date of the hearing.
3. In the discretion of the Hearings Officer, the Bureau's failure to make documents available by the deadlines set forth in this Section may be grounds for continuing the hearing or holding the record open. In so determining, the Hearings Officer will consider the circumstances of the case, the reason for the Bureau's failure to comply, and the possible prejudice to the persons who did not receive timely access to the documents or to any other party.
4. The Hearings Office will make case documents received by the Hearings Office available for public inspection. Availability may be limited from the date the record closes to the date the Hearings Officer issues the decision or recommendation to enable the Hearings Officer to access the file to meet statutory deadlines for issuing the decision or recommendation.
5. After mailing the Hearings Officer's decision or recommendation in a land use case, the Hearings Office will forward the complete record to the Bureau for storage.

K. Changes to a Land Use Application or Applicable Criteria

1. The Hearings Officer may consider a substantial change to a land use application or applicable criteria, made after the Bureau issues the staff report, only if the applicant submits a signed waiver of the 120-day deadline for final action on the application.
2. If an application is amended and the hearing notice no longer accurately describes the amended application, the Bureau must issue a new hearing notice.

L. Land Use Hearings

1. The Hearings Officer may allow a party or witness to appear by telephone or an electronic remote participation platform, for good cause shown, using procedures established by the Hearings Office.
2. A party has the right to be represented by an attorney, at the party's own expense. The Hearings Office encourages attorneys to notify the Hearings Office (directly or through the case management system) that they are representing a party, so that the Hearings Office / case management system can issue hearings notices directly to the attorney.
3. The Hearings Officer will begin hearings promptly at the scheduled time. ***Land use hearings will not be rescheduled for late arrivals.*** Persons arriving late may lose the opportunity to present their case or to hear other parties' testimony.
4. If a party or witness fails to appear at a scheduled land use hearing, the Hearings Officer will proceed with the hearing in their absence.
5. Land use hearings are informal but organized so that testimony and evidence can be presented quickly and efficiently. Hearings generally proceed in the following order:
 - a. Introductory statement by the Hearings Officer, made in accordance with Code Section 33.730.100 B. and ORS 197.763(5).
 - b. Bureau presentation and summary of the staff report.
 - c. The Applicant's presentation.
 - d. Testimony by supporters of the application.
 - e. Testimony by opponents of the application.

- f. A final statement and rebuttal by the Applicant.
6. The Hearings Officer may set reasonable limits on the nature and length of testimony to expedite or avoid continuing the hearing. The Hearings Officer will notify participants as early as practical if time limitations will be imposed. If a party is unable to present arguments or testimony within the time allotted, the Hearings Officer may hold the record open after the close of the hearing for submission of written testimony.
7. The Hearings Officer may question any participant at any time during the hearing and will make decisions on procedural issues as they arise.
8. Participants are not entitled to cross examine other participants during land use hearings, but may ask the Hearings Officer to question any other participant.

M. Rules of Evidence, Generally

1. Technical rules of evidence do not apply to land use hearings. Any relevant, material, and reliable evidence will be admitted if it possesses any probative value commonly accepted by reasonable and prudent persons in the conduct of their serious affairs.
2. Evidence must be received by the Hearings Office prior to any deadlines. The parties are strongly encouraged to upload all evidence to the Hearings Office's online case management system (when the system is available). Evidence that is uploaded to the case management system can be viewed by the Hearings Office and all parties.
3. All evidence submitted to the Hearings Office becomes a public record.
 - a. The parties must redact (black out) all confidential information (e.g., social security numbers, driver's license or passport numbers, financial account numbers, health information, etc.) from exhibits prior to submission to the Hearings Office.
 - b. The Hearings Office may edit a document or recording to redact confidential content before publicly posting or distributing the document or recording. The Hearings Office will retain the unedited record with restricted access.
4. The Hearings Office will ensure that exhibits are numbered upon receipt, the party offering the exhibit is noted, and all exhibits are preserved as a part of the record.
 - a. The Hearings Office affixes an Exhibit label to the bottom righthand corner of each page of each document. Parties should therefore leave a sufficient margin or border

at the bottom righthand corner of each exhibit so that important information is not obscured by the Exhibit label.

- b. All evidence submitted into the evidentiary record becomes the property of the Hearings Office and will not be returned.
5. Evidence other than oral testimony or in writing may be offered and admitted subject to the following limitations:
- a. If equipment, technology, or computer programs are required to access or present the evidence, the person offering such evidence is responsible for providing and setting up the equipment, technology, or programs. The Hearings Office does not supply equipment, technology or programs (including, but not limited to projectors and computers).
 - i. A copy of the evidence presented must be provided to the Hearings Office to keep with the record for archiving and appeal purposes.
 - ii. Set up must be done before the scheduled start of the hearing and must not disrupt the hearing process. The equipment, technology, or programs must be removed immediately after the hearing concludes.
 - iii. The Hearings Officer will not attempt to open any computer flashdrive/DVD/CD/phone or program. The Hearings Office will not click on a link unless the Bureau of Technology first reviews the link for security purposes related to malware.
 - b. If a party has questions or concerns about how to submit a particular item of evidence, they should contact the Hearings Office clerks at least two business days prior to the scheduled Hearing to coordinate submission of evidence.
6. An issue that may be the basis for an appeal to the Land Use Board of Appeals must be raised before the close of the record at or following the final evidentiary hearing on the proposal, and must be accompanied by statements or evidence sufficient to allow the Hearings Officer and the parties an adequate opportunity to respond to the issue.

N. Holding the Record Open, Continuing a Hearing, and Reopening the Record

- I. At the request of a party before the close of the hearing, or upon the motion of the Hearings Officer, the Hearings Officer will hold the record open or continue the hearing

to a later date for the submission of additional evidence or testimony. If the record is held open or the hearing continued:

- a. The time and date the record will be closed will be specified at the hearing. If the time, date and place of the continued hearing is specified before the initial hearing is closed, no further written notice will be mailed.
 - b. The record may be held open for an additional period of time to allow parties to respond to any new evidence that is submitted while the record is held open or the hearing is continued.
 - c. The applicant will be given an opportunity to submit final legal argument after the hearing and record have been closed for all other parties.
2. The requesting party has a right to seven days for any of the time periods allowed under Section I, but the Hearings Officer will consider less or more time upon request. All decisions involving holding the record open or continuing the hearing will take into account the 120 day requirement of ORS 227.178(1).

O. Withdrawal of Application or Appeal

At any time before the Hearings Officer issues a decision or recommendation, an applicant or appellant may withdraw all or a portion of their application or appeal. A withdrawal may be submitted orally at a hearing or in writing at any other time. If an applicant or appellant withdraws their application or appeal, the Hearings Officer's decision or recommendation will indicate which portions of the application or appeal have been withdrawn and the effect of the withdrawal.

P. Decisions and Recommendations

The Hearings Officer may adopt, reject, or modify the Bureau's report, decision, or recommendation, based on the testimony and evidence in the record, including facts officially noticed by the Hearings Officer.

- I. All decisions and recommendations issued by the Hearings Officer must:
 - a. Be based on the applicable standards and criteria, accompanied by findings of fact, and supported by substantial evidence in the record;
 - b. Reasonably conform to the proposal described in the notice; and
 - c. Contain the information required in Code Sections 33.730.070 I. and 33.730.090.

2. All City land use decisions, at each levels of review (Bureau, Hearings Office, City Council), are written in the same format, which is based on the Bureau staff report.
 - a. The City’s use of a consistent format promotes efficiency and ensures that all relevant criteria are considered and addressed at each level of review.
 - b. While the Hearings Officer’s decision or recommendation follows the Bureau staff report format, the Hearings Officer must independently assess all approval criteria.
 - c. The Hearings Officer may make different findings than the Bureau, and will revise the staff report, as needed, to reflect the Hearings Officer’s independent assessment.
 - d. If the Hearings Officer modifies or rejects the Bureau’s report or recommendation, the Hearings Officer must prepare an amended report or recommendation that sets forth findings supporting the decision.
3. The Hearings Officer will issue and the Hearings Office will mail the decision or recommendation by the deadlines set forth in Code Chapter 33.730.
 - a. The Hearings Office may send the decision or recommendation by electronic mail (email) to any applicant, owner, or other participant that has consented to receipt via electronic mail.
 - b. For petitions, the Hearings Office will send the decision or recommendation only to the first person listed on a petition.

Q. Withdrawal of Decision or Recommendation

Before the appeal period has run, the Hearings Officer may withdraw a decision or recommendation that has been mailed, in order to correct an error, at the request of a party or upon the motion of the Hearings Officer. The error must be based on the existing record and must be material to the decision or recommendation.

1. Withdrawals will be granted sparingly and are not to be considered an available administrative remedy.
2. If the Hearings Officer reopens the record, the Hearings Office will notify all parties of the reason for reopening, and the time and date the record will close or the time, date, and place of an additional hearing.

3. If the City withdraws a decision of the Hearings Officer after a notice of intent to appeal is filed, pursuant to ORS 197.830(13)(b), the reconsideration process must comply with OAR 661-010-0021.

R. Appeal of Decision or Recommendation

1. Rules governing appeals to the Land Use Board of Appeals are set forth in ORS 197.830. If the Hearings Officer's decision is appealed to the Board, the City Attorney's Office will provide the Hearings Office with the Board's final order.
2. Rules governing appeals of Type III decisions to the City Council are set forth in Code Chapter 33.730.

S. Reconsidering Land Use Approvals

If one or more conditions of a land use approval are violated or are not implemented, the Bureau may issue a notice of violation and initiate the reconsideration process in accordance with Code Sections 33.700.030 and 33.700.040. The Hearings Office may reconsider a land use approval as follows:

1. The Bureau will:
 - a. Work with the Hearings Office Clerks to schedule a hearing after at least 60 days have passed from the first notice of violation.
 - b. Issue hearing notices in accordance with Code Section 33.700.040.
 - c. File the staff report with the Hearings Office at least ten days before the hearing, and provide copies of the report in accordance with Code Section 33.730.030 E.I.
2. The Hearings Office will conduct a public hearing in accordance with Code Section 33.730.100, using a modified Type III procedure. The Hearings Officer will limit the scope of testimony to whether the use is conforming to the conditions of the land use approval and whether the activities of the use are substantially different from what was approved. The hearing will proceed as follows:
 - a. The Bureau's Land Use Services Division will summarize the conditions on the land use approval.

- b. The Bureau’s Compliance Division will provide evidence regarding the land use approval conditions that the Bureau believes have not been implemented or have been violated, and will ask the Hearings Officer to revoke the land use approval.
 - c. The operator, if any, and the owner (if different than the operator), may respond.
 - d. Any interested party may testify about the conditions on the land use approval that have not been implemented or have been violated. Testimony may address the violations identified by the Bureau and/or additional violations. The Hearings Officer will decide whether parties supporting the revocation of the land use approval testify first, or whether parties supporting the operator testify first.
3. The Hearings Officer will issue a written decision, in the form of a report, which adopts, modifies, or rejects the Bureau’s report and recommendation, based on the information presented at the hearing and in the record.
- a. The Hearings Officer may:
 - i. Find that the use is in compliance with the conditions of the land use approval and allow the use or development to continue;
 - ii. Find that the use or development does not fully comply with the conditions of approval, but that the violations are not substantial enough to warrant revocation and that the use can comply with the original approval criteria if the conditions are met. The Hearings Officer may modify the existing conditions, add new conditions to ensure compliance, and/or refer the case to the Code Hearings Officer for enforcement of the existing conditions; or
 - iii. Revoke the land use approval, if the Hearings Officer finds that there are substantial violations of conditions or a failure to implement conditions of prior land use decisions such that the original approval criteria for the use or development are not being met.
 - A. If the Hearings Officer revokes the land use approval, the use becomes illegal and must be terminated within 21 days of the Hearings Officer’s decision, unless the decision specifies another deadline.
 - B. The Bureau is responsible for enforcing the Hearings Officer’s decision.

- b. If the Hearings Officer modifies or rejects the Bureau’s report, the Hearings Officer will prepare an amended report with findings supporting the decision.
 - c. The Hearings Officer’s decision will include a notice about the right to appeal.
4. The Hearings Office will mail the Hearings Officer’s decision within 17 days of the close of the record, to the owner, operator (if different from the owner), and all organizations or persons who responded in writing to the Bureau’s notice, testified at the hearing, or requested notice of the decision.
 5. The Hearings Officer’s decision is appealable to the City Council.

REVIEW OF EXPEDITED LAND DIVISIONS

T. Hearings Officer Review of Expedited Land Divisions

The Hearings Officer may hear appeals of Bureau decisions to approve or deny expedited land division applications issued in accordance with Code Section 33.730.013 and ORS 197.360 – 197.365.

U. Initiating an Appeal

1. A Bureau decision to approve or deny an expedited land division may be appealed by the applicant, or by any person or organization who filed timely written comments on the expedited land division application. A person or organization that filed timely written comments but did not file an appeal may participate in the appeal only with respect to the issues raised in their written comments.
2. An appeal must be filed with the Bureau within 14 days of the date the Bureau mailed the notice of its decision, and must be accompanied by any required deposit.
3. The sole grounds for appealing the Bureau’s decision are:
 - a. Violation of substantive provisions of applicable land use regulations;
 - b. Unconstitutionality of the decision;
 - c. The application is not eligible for review under ORS 197.360 - 197.380 and should be reviewed as a land use decision or limited land use decision; or

- d. A procedural error by the City substantially prejudiced the parties' substantive rights.

V. Notice

Within seven days after a Hearings Officer is appointed to hear the appeal:

1. The Bureau will send the Hearings Office a mailing list setting forth the contact information for the following persons or organizations entitled to notice:
 - a. The applicant;
 - b. The Bureau;
 - c. The appellant, if other than the applicant;
 - d. Any person or organization entitled to notice of the application and who also provided written comments before the expiration of the 14-day comment period; and
 - e. All providers of public facilities and services entitled to notice of the application.
2. The Hearings Office will send a notice to the persons and organizations explaining the manner in which they may participate in the appeal.

W. Scope of Review

In reviewing the Bureau's decision to approve or deny an expedited land division decision:

1. The Hearings Officer will apply the substantive requirements set forth in Code Section 33.730.013 and ORS 197.360. The Hearings Officer will seek to identify means by which the application can satisfy applicable substantive requirements.
2. The Hearings Officer may, but is not required to, consider information that was not considered by the Bureau. The notice of the appeal will indicate what information the Hearings Officer will consider.
3. If the Hearings Officer determines that the application does not qualify for review as an expedited land division, the Hearings Officer will remand the application to the Bureau

for consideration as a land use decision or limited land use decision. The Hearings Officer may not remand the decision for any other reason.

X. Final Decision and Costs

Within 42 days after the appeal is filed, the Hearings Officer will issue a written decision approving or denying the application or approving the application with conditions that are designed to ensure that the application satisfies applicable land use regulations.

1. The Hearings Officer may not reduce the proposed density of the land division application.
2. If the Hearings Officer's final decision materially improves the appellant's position, the Hearings Officer will order the Bureau to refund any deposit paid by the appellant.
3. If an appellant's position is not materially improved, the City will retain the deposit. The Hearings Officer may assess against the appellant any additional costs of the appeal incurred by the City in excess of the deposit, up to a maximum of \$500.00.

Y. Appeals

The Hearings Officer's decision may be appealed to the Oregon Court of Appeals, in accordance with [ORS 197.375\(8\)](#). The Land Use Board of Appeals does not have jurisdiction to consider expedited land division decisions or actions.

Rule Information and History

Questions about these rules may be directed to the [Hearings Office](#) at 503-823-7307.

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Revised rules adopted by the Chief Hearings Officer on July 1, 2020.