

ARTICLE 9.5 – PUBLIC HEARINGS

SECTION 9.5.001 - RESPONSIBILITY OF COMMUNITY DEVELOPMENT DEPARTMENT/PLANNING DIVISION

The Community Development Department/Planning Division shall perform the following duties pertaining to a hearing, all in accordance with other provisions of this Code.

- A. Upon receipt of a complete application for a Land Use and Development or policy decision requiring a public hearing, the Community Development Department/Planning Division shall schedule a date for a public hearing. All such applications must be received and deemed complete by the Community Development Department/Planning Division in advance of any public notice deadlines for the regular monthly hearing or special hearing at which consideration is requested. The Community Development Department/Planning Division may schedule special hearings as warranted by the agenda loads of regular hearings.
- B. Conduct the correspondence of the hearing body.
- C. Give notice in accordance with Article 9.6 of this Chapter.
- 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 hearing 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 all parties to a hearing or review.

SECTION 9.5.002 - CHALLENGES TO IMPARTIALITY

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 regarding the matter. The challenge shall state 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. The challenge shall be incorporated into the record of the hearing.

SECTION 9.5.003 - DISQUALIFICATION

No member of a hearing body shall 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 hearing body 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 a quasi-judicial public hearing.

- C. The member has a direct private interest in a proposal being considered in a quasi-judicial public hearing.
- D. For any other valid reason, the member has determined that participation in the hearing and decision cannot be in an impartial manner.

SECTION 9.5.004 - PARTICIPATION BY INTERESTED OFFICERS OR EMPLOYEES

No officer or employee of the City of La Grande who has a financial or other private interest in a proposal shall 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.

SECTION 9.5.005 - EX PARTE CONTACTS (QUASI-JUDICIAL HEARING)

The general public has a right to have hearing body members free from prehearing or ex parte contacts on matters heard by the hearing body. Hearing body members shall reveal any written or oral prehearing or ex parte contact with regard to any matter at the commencement of the public hearing on the matter. If such contacts have not impaired the member's impartiality or ability to vote on the matter, the member shall so state and shall participate or abstain in accordance with Section 9.5.006. Communication with City staff is not ex parte contact.

SECTION 9.5.006 - ABSTENTION OR DISQUALIFICATION

Abstention or disqualification shall be the member's own judgment. A member seeking disqualification may not vote on the motion.

SECTION 9.5.007 - RIGHTS OF DISQUALIFIED MEMBER OF THE HEARING BODY

- A. A member who represents personal interest at a hearing may do so only by abstaining from voting on the proposal, physically vacating the seat on the hearing body, and making full disclosure of his or her status and position at the time of addressing 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 by so doing be requalified and proceed to resolve the issues.
- C. 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.

SECTION 9.5.008 - BURDEN AND NATURE OF PROOF

The burden of proof is upon the proponent. The more drastic the change or the greater the impact of the proposal in 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 Plan and to applicable 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. Mistake in the original designation or provision.
- B. Change of conditions within the vicinity in which the development is proposed.

SECTION 9.5.009 - 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 Order of Proceedings shall be read into the record and the following shall be determined:
 - 1. Any objections on jurisdictional grounds shall be noted in the record and if there is 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, Order, rule, or officially promulgated Policy of the City of La Grande.
 - 2. Other public records and facts.
- C. Matter 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 the viewing 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. The presiding officer may establish time limits for oral testimony.
- G. 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.
- H. All evidence, testimony, deliberations, and decisions shall be made before the public, recorded, and made a part of the record.

SECTION 9.5.010 - DECISION

Following the hearing procedure described in Section 9.5.009, the hearing body shall make a decision to approve or deny the application. If the hearing is in the nature of an appeal, the hearing body shall affirm, reverse, or remand the decision that is on appeal. A decision on an application or appeal shall be made within thirty (30) days of the final hearing on the matter, 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 one hundred-twenty (120) days from the date the application is deemed to be complete, unless an extension is requested by the applicant, except as provided in ORS 227.178(7).

SECTION 9.5.011 - PREPARATION OF FINDINGS AND ORDER

The Community Development Director/Planner shall prepare and present findings of facts 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 established 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.
- E. The final Order shall be filed with the Community Development Department/Planning Division, and a copy mailed to the applicant at the address indicated on the application and to other parties to the hearing requesting a copy.
- F. The hearing body shall make a final decision by approving, denying, or modifying the Findings of Facts and Order.

SECTION 9.5.012 - RECORD OF PROCEEDINGS

The Secretary to the hearing body shall be present at each hearing and shall cause the proceedings to be recorded electronically.

- A. Testimony shall be transcribed verbatim if required for judicial review or if ordered by the hearing body, at an additional cost.
- 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 the 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 of fact and Order shall be included in the record.
- D. A person shall have access to the record of the proceedings at reasonable times, places and circumstances. A person shall be entitled to copies of the record at the person's own expense.