

# **PROCEDURE FOR PUBLIC HEARING FOR LAND USE HEARINGS**

## **READ ALOUD ALL IN BLUE**

**FOLLOW THE STEPS AND ASK EACH QUESTION IN FULL**

### **1. CALL TO ORDER**

The Public Hearing is now open. This public hearing concerns several subjects, including legislative and quasi-judicial matters; because of the combined nature of the hearing, we will observe quasi-judicial safeguards. The subject of this public hearing is a request for a Comprehensive Plan Map Amendment; Zone Change; Outline Plan approval for a 20-lot, 23-unit subdivision; Site Design Review approval; Tree Removal Permit to remove ten trees greater than six-inches in diameter at breast height (d.b.h.) and Exception to Street Standards for the properties located at 475 East Nevada Street. The existing Comprehensive Plan designation is “Single Family Residential Reserve” and the existing zoning is “Rural Residential (RR-.5-P)”. The proposal would change the Comprehensive Plan Map designation to “North Mountain Neighborhood Plan” and the zoning to “North Mountain Multi-Family (NM-MF).” Tonight’s proceedings include the land use public hearing and first reading of an Ordinance modifying the Comprehensive Plan and Zoning map designations for the properties.

The Council will take a few moments to cover some preliminary matters and required statements. Rules for the conduct of the hearing are in the Public Hearing Format for Land Use Hearings – A Guide for Participants and Citizens and are available on the wall in the back of this room.

Generally, the following procedure will be used in this hearing:

1. Preliminary Matters and Required Statements
2. Staff Report
3. Applicant’s Presentation
4. Those wishing to provide testimony: in favor...in opposition
5. Rebuttal by the Applicant
6. Requests for Continuances or to Leave the Record Open
7. Close Public Hearing
8. Requests to submit final written argument
9. Advice from Legal Counsel and staff, and
10. Council Deliberation and Decision.

If you wish to participate in this hearing, including challenges for bias, prejudgment or conflict of interest, you must complete the yellow speaker request form located at the back of the room and deliver them to the City Recorder. Please do so immediately.

Challenges will be addressed after the reading of the required statements.

Presentations are generally limited to 15 minutes, more detailed and specific time limits are specified in the guide handout. Because of the number of applications, the Mayor may extend time allowed for the applicant’s presentation, will allowance for equal additional time for those opposed. When recognized by the presiding officer, please come forward to the podium, give your name, address and make your statement. If presenting documents at the time of your statement, these will be considered exhibits. Please submit these to the City Recorder as part of the record when you have completed your statement. Councilors may ask questions of staff and participants without affecting time limits.

### **2. ABSTENTIONS, CONFLICTS, EX PARTE CONTACTS**

Do any members of the council wish to abstain, declare a conflict of interest or report any ex parte contact on this matter?

**If contacts are reported, consider the following:**

- a. *Ex-parte communications:* If a member has had ex parte communication the substance of the contact must be disclosed. The presiding officer and other members must listen to the disclosures to ensure the member places the substance of the ex parte communication on the record. The presiding officer should question the member if the disclosure of the written or oral communication is not complete. If the presiding officer fails to do so, a member may request a more full disclosure (point of order). Legal counsel will also monitor the disclosure.

After disclosure of an ex parte contact, (or potential conflict of interest or after a challenge for bias (see below) the member should make the following affirmative statement of impartiality:

**“I have not prejudged this application and I am not prejudged or biased by my prior contacts or involvement or by any personal considerations; I will make this decision based solely on the public interest and the application of the relevant criteria and standards to the facts and evidence in the record of this proceeding.”**

After ex parte disclosure the following **must be announced** by the presiding officer:

**Any person has the right to rebut the substance of the evidence or information disclosed. Please present your rebuttal evidence on the substance of any ex parte contacts during the normal time allowed for testimony which has been established for this proceeding. Please reduce any bias, conflict of interest and prejudgment challenges to writing with supporting evidence and provide these to the City Recorder**

- b. *Conflict of Interest:* If a member has an actual or potential Conflict of Interest, the member must both announce the conflict and explain the nature of the conflict. If the Conflict is only a potential conflict the member may participate and vote. If the Conflict is an actual conflict, the member must also announce that the member will not be participating or voting. The member should leave the room to avoid accusations of non-verbal communication. (The only exception to not voting [for the City Council] is for necessity). After disclosure of potential conflict of interest the member should make an affirmative statement of impartiality.
- c. *Actual personal bias, prejudgment:* If a member is actually personally biased, that is, the member cannot make the decision based upon applying the relevant Code standards to the evidence and argument presented, the member must announce the nature of the bias and also announce that they will not be participating or voting. The member should leave the room to avoid accusations of non-verbal communication. (see also Challenges below) Remember, if a member refuses to disqualify him or herself, the Council, for the hearings before the Council, shall have the power to remove such member for that proceeding.

**2. READ THE FOLLOWING STATEMENT (pursuant to the City Land Use Code and ORS 197.763(5). (City Recorder will read the following)**

**(1) The following is a list of the Ashland Municipal Code applicable substantive criteria for this decision:**

- The criteria for Plan Amendments and Zone Changes are described in AMC 18.5.9.020
- The criteria for Outline Plan approval are described in AMC 18.3.9.040.A.3
- The criteria for Site Design Review approval are described in AMC 18.5.2.050
- The criteria for a Tree Removal Permit are described in AMC 18.5.7.040.B
- The criteria for an Exception to Street Standards are described in AMC 18.4.6.020.B.1
- The requirements for a City Ordinance are described in Article 10 of the City Charter

**The applicable criteria are more fully set forth in the guide handout at the back of this hearings room.**

- (2) All testimony, arguments and evidence must be directed toward the applicable substantive criteria previously listed, or such other criteria in the Plan or Land Use regulations which the person believes applies to the decision.
- (3) 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 appeal to LUBA, the Land Use Board of Appeals, on that issue.
- (4) Failure of the applicant to raise constitutional or other issues related to proposed conditions of approval with sufficient specificity to allow the decision maker to respond to the issue precludes any action for damages in Circuit Court.
- (5) Prior to the end of this hearing, any person who participated may request a continuance to provide additional testimony, argument or evidence or request that the record be left open to submit additional written testimony, argument or evidence.

### 3. CHALLENGES

City Recorder, do we have any written challenges to members of this hearing body for bias, prejudice or conflict of interest?

If a challenge is made, the challenge needs to be entered into the record and summarized by the presiding officer or legal counsel. The presiding officer, the challenged member and if necessary, the hearing body, will make a determination as how to proceed, including the power to override a member's own decision and remove a member.

*There is no opportunity for individuals to disrupt proceedings by making out of order oral presentations or interrogating members under the guise of conflict of interest, prejudice and bias.*

*If a member is challenged for bias, the following statement should be made:*

**"I have not prejudged this application and I am not prejudiced or biased by my prior contacts or involvement or by any personal considerations; I will make this decision based solely on the public interest and the application of the relevant criteria and standards to the facts and evidence in the record of this proceeding."**

### 4. STAFF REPORT

At this time, I call for the staff to present the proposal.

### 5. APPLICANT'S PRESENTATION

Would the applicant please come to the podium, state your name, address and make any comments you may have for the council regarding the application?

\*\*Applicant is given 15 minutes to present proposal, at 14 minutes they will be asked to conclude their remarks.

### 6. THOSE WISHING TO PROVIDE TESTIMONY – IN FAVOR AND OPPOSED

"I will now call forward those who have filed testimony request forms. Each person will have 5 minutes. Please come to the podium, state your name, address and make any comments you may have for the council regarding the application. If you have any documents to be submitted into the record, please deliver these to the City Recorder."

### 7. REBUTTAL BY THE APPLICANT

Does the applicant have any rebuttal?

\*\*Applicant will be given 5 minutes of rebuttal time, after which the public hearing portion will be closed

### 8. CLOSE PUBLIC HEARING

At this time, I will close the public hearing as we have had no requests for continuance. The record is now closed.

**9. REQUESTS TO SUBMIT FINAL WRITTEN ARGUMENT**

Does the applicant wish to submit any final written argument?

**10. ADVICE FROM LEGAL COUNSEL AND STAFF**

Does the council have any questions of staff or does the staff have any matter they wish to respond to?

**12. COUNCIL DELIBERATION AND DECISION**

“What is the pleasure of the council?”