

RESOLUTION NO. 556

A RESOLUTION ADOPTING "RULES OF PROCEDURE FOR PUBLIC HEARINGS ON LAND USE ISSUES."

WHEREAS, the Stayton City Attorney has advised the Stayton City Council to adopt rules of procedure for public hearings on land use issues; and

WHEREAS, the Stayton City Council and Stayton Planning Commission have reviewed the proposed rules and find that they will be useful and effective in processing land use hearings;

NOW, THEREFORE, BE IT RESOLVED BY THE STAYTON CITY COUNCIL that the "City of Stayton Rules of Procedure for Public Hearings on Land Use Issues," attached hereto as Exhibit A. and fully incorporated by this reference, is hereby adopted.

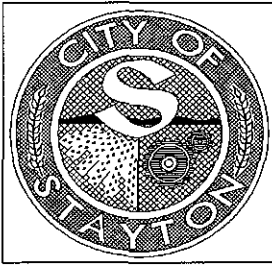
Approved by the Stayton City Council this 3rd day of October 1994.

Date: 10-20-94

By: *Willmer Van Vleet*
WILLMER VAN VLEET, Mayor

Date: 10-19-94

Attest: *Michael D. Healy*
MICHAEL D. HEALY, Acting City Administrator



CITY OF STAYTON

Rules of Procedure for Public Hearings on Land Use Issues

SECTION 1: SHORT TITLE

These rules shall be known as the *Land Use Hearings Rules of Procedure*.

SECTION 2: SCOPE OF RULES

These rules of procedure shall govern the conduct of all land use hearings conducted by the City of Stayton including, but not limited to, variances, conditional use permits, planned unit developments, site plan reviews, major and minor partitions, subdivisions, appeals of decisions under the zoning and division code, amendments to the Stayton Municipal Code regarding zoning, land divisions and the Stayton Comprehensive Plan, and any annexation to the City of Stayton.

SECTION 3: PRESIDING OFFICER

1. The mayor or planning commission chair shall be the presiding officer at all hearings before their respective bodies. In the absence of the presiding officer, or with his/her consent, the council or commission may designate one of its members to act as presiding officer at their respective hearings.
2. The presiding officer shall have authority to:
 - a. Regulate the course and decorum of the hearing;
 - b. Dispose of procedural requests or similar matters;
 - c. Rule on relevancy of evidence and testimony;
 - d. Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentation.

SECTION 4: WITHDRAWAL OR DISMISSAL OF THE APPLICATION

1. Any applicant may withdraw a land use application at any time. The withdrawal shall be either in writing or orally during a public hearing. Upon withdrawal of an application, a new application and payment of new filing fees is required before a hearing date is scheduled.
2. If an applicant fails to appear at a public hearing, the presiding officer shall open the hearing, indicate for the record that the applicant is not present, and then continue the hearing to the next regularly scheduled planning commission meeting at a date and time certain. Further continuances at the request of the applicant shall be granted only upon the written consent of the applicant to a waiver of the statutory 120-day time limit for final land use decisions.

If the applicant fails to appear at two consecutive meetings, the presiding officer shall ask the commission or the council to dismiss the application for cause. The commission or council shall then vote on whether or not the application should be dismissed or the hearing continued.

SECTION 5: RULES GOVERNING TESTIMONY

1. **Identification of Persons Testifying:** Persons appearing before the city shall state and spell his name, give his address, and representative capacity, if any, for the record. Written testimony must include the signature, name, address, and representative capacity of the individual giving testimony.
2. **Representation of Applicants:** An applicant shall appear either in person or through a representative, authorized in writing by the applicant prior to testimony, at the hearing. Corporations, including governmental bodies, must appear through an attorney (ORS 9.320).

3. **Time Limitations:** Applicants shall limit presentations on an application to a maximum of 15 minutes and shall limit the summary of the application and rebuttal to 10 minutes. All other persons shall limit testimony to 5 minutes per person. The presiding officer may modify the time limits listed.
4. **Repetitive or Irrelevant Testimony:** The presiding officer may limit testimony when it is cumulative, repetitive, irrelevant, or immaterial to the issue being considered.
5. **Opportunity to be Heard:** Any person wishing to provide testimony concerning a particular land use issue shall be afforded the opportunity to be heard.

SECTION 6: BURDEN OF PROOF

1. **Burden of Proof:** The applicant has the burden of proof for any land use action before the City of Stayton. According to law, the applicant must present to the decision maker facts, evidence, analysis, and justification for each and every decisional criteria in order to carry that burden of proof. The burden of proof lies with the applicant to prove why the proposal complies with the Stayton Comprehensive Plan and the city's land use ordinances. There is no assumption that the applicant is entitled to an approval from the City of Stayton and the burden of proof does not lie with the City of Stayton staff, or appointed or elected officials.
2. **Burden of Going Forward with Evidence:** The applicant's burden of proof is met by placing a prima facie case before the decision maker. Thereafter the burden of placing a new and/or contradictory issue or position; or additional or contradictory evidence before the decision maker lies with the proponent of that position. The decision maker must then decide between the submissions and positions of the various parties which is more persuasive and credible.

SECTION 7: ORDER OF PROCEDURE

1. **Commencement of Hearing:** The presiding officer shall open the record, announce the nature and purpose of the hearing, and summarize the rules for the conduct of the hearing.
2. **Declaration of Interests:** The presiding officer shall inquire whether any member of the council or planning commission has any conflicts of interest concerning the issue before the city. All councilors and planning commissioners are required to declare conflicts of interest, bias, and ex parte contacts, and to state on the record their decision regarding their ability to vote on the application.

All declarations shall be made publicly at the commencement of the first public hearing following the date when the councilor or planning commissioner first learned of or had an interest which must be declared.

The declaration shall contain a detailed statement of the content of any interest or contact, including who was involved, the time of discovery or happening, and the result, if any, of the interest. The members shall declare whether or not the he/she can make an impartial decision on the issue before the city.

3. **Preliminary Matters:** Immediately following the declaration of interest section of the hearing, the presiding officer shall determine if there are other preliminary matters that need to be addressed prior to taking testimony and evidence on the case. Preliminary matters may include quality and/or quantity of the notice of public hearing; jurisdictional questions; or legal objections to procedure.
4. **Opening Statement:** Following the determination of all preliminary matters, the presiding officer shall read into the record an opening statement that includes the following:
 - a. A list of the applicable substantive approval criteria.
 - b. That testimony and evidence submitted at the hearing must be directed toward the approval criteria listed in the notice of public hearing and as read in item 5.a hereof, or to other criteria which the person believes to apply to the decision.

- c. A disclaimer that failure to raise an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to LUBA on that issue.
 - d. Notice that any person may request either a continuance of the hearing, or that the record be left open for submission of additional evidence.
5. **Staff Report:** A representative of the city shall present a staff report summarizing the nature of the application, citing applicable standards and criteria, and making a recommendation with or without conditions as to whether the application should be granted or denied.
 6. **Applicant or Appellant:** The person(s) filing the application or the appeal shall present evidence in support of the application or appeal. In cases where the appellant is other than the applicant, the burden of proof remains with the applicant to show that the land use application is entitled to approval. In such cases where the appellant is not the applicant, the appellant shall testify first, followed by the applicant.
 7. **Proponents:** Any person in favor of the application.
 8. **Opponents:** Any person opposed to the application.
 9. **Governmental Agencies:** A representative of any governmental agency or department may present testimony or other evidence concerning the application at issue.
 10. **General Testimony:** Any person who has not previously testified on the issue shall be given an opportunity to be heard.
 11. **Questions from the Public:** Any member of the public who wishes to ask questions about the issue may direct questions to the presiding officer who may respond to the inquiry or call upon the applicant, staff, or any other party to respond.
 12. **Questions from the Council or Commission:** After recognition by the presiding officer, any member of the council or commission may direct questions to the applicant, staff, or any other party.
 13. **Applicant Summary:** The applicant will be allowed to summarize briefly the proposal and shall be given the opportunity to present rebuttal testimony or evidence.
 14. **Staff Summary:** The city staff representative shall restate the staff recommendation, any conditions of approval, and shall summarize the actions required by the city.
 15. **Closing of the Hearing:** Generally, the record will be closed at the conclusion of the hearing unless the presiding officer has declared that the record will be held open to receive additional evidence, or to continue the hearing to a date and time certain.

SECTION 8. CONTINUANCE OF THE HEARING

1. **Continuance of Hearing:** A hearing may be continued if so desired by a majority vote of the council or planning commission. A continuation is mandatory only if the council or planning commission finds that additional documents or evidence were submitted in support of the application either at the hearing or within seven days before the hearing. The date, time, and place upon which the case will be continued shall be announced by the presiding officer. No new notice of the continued hearing shall be required.
2. **Leaving the Record Open:** The written record of any proceeding may be left open if so desired by a majority vote of the council or planning commission. The record must be left open for a minimum of seven days if no continuance has been granted and if so requested by any interested party. The right to request the record be left open applies only to the initial evidentiary hearing on an application, and not to any subsequent hearings.

Because the burden of proof is always on the applicant, when the record is held open, it shall be held open for a designated period for submissions of opponents, followed by a designated period for rebuttal submissions by the applicant only.

3. **Reopening a Record:** The decision maker, in its sole and exclusive discretion, may at any time prior to final decision on an application, upon majority vote, elect to reopen a record that has previously been closed. Once a record is reopened, a notice of this fact shall be sent in the same manner as the initial notice. Any person may raise any new issues relevant to the approval criteria for the case during the new open record period.

SECTION 9. DECISION ON THE ISSUE

1. **Written Decision:** The planning commission or council decisions shall be based solely upon testimony and evidence contained in the record.
2. **Content:** A written copy of the decision shall be adopted by the planning commission or council. The written decision shall include:
 - a. A statement of the nature of the application
 - b. A statement of the criteria relevant to the decision
 - c. A description of the proceedings including a list of participants and any procedural rulings
 - d. Findings of fact and conclusions of law
 - e. Order specifying disposition of the case
 - f. A statement of appeal rights
 - g. A statement of the effective date where an application has been approved.
3. **Conditions:** The planning commission or council may include in the decision any conditions which are authorized by statute or by ordinance.
4. **Notice of Decision:** A copy of the decisions of the planning commission or council shall be sent to the applicant or the representative of the applicant, to the appellant or representative thereof, and to any other person making a written request for a copy of the decision before the close of the hearing.

SECTION 10. RECONSIDERATION

Reconsideration of a prior land use decision shall occur only when so ordered by a court of competent jurisdiction; the Land Use Board of Appeals; or upon formal reconsideration by the council. Formal reconsideration must occur at the next regularly scheduled council meeting following the decision that is sought to be reconsidered. The motion to reconsider must be made by a councilor who voted previously on the prevailing side of the decision (with the majority), and the motion must pass by a two-thirds majority vote of councilors then present. The effect of reconsideration is to terminate the prior decision, and place the entire matter before the council for entry of a new decision. No decision may be reconsidered where the application has previously become final and the applicant has relied upon issuance of a permit to the extent where the applicant has acquired a vested right to the permit regardless of any subsequent action by the city. For purposes of reconsideration, the decision is the actual vote of the council on the application itself, and not the subsequent formal adoption of a findings document or order.

SECTION 11. AMENDMENT AND SUSPENSION OF THE RULES

Any rule of procedure not required by law may be amended, superseded, or repealed at any hearing by a majority of the council or commission members present and voting.

Adopted by the Stayton Planning Commission 26 September 1994

Adopted by the Stayton City Council 17 October 1994

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