

Salem Parks and Recreation Advisory Board (“Board”) Hearing Procedures on Director’s Referral
January 25, 2019

A. Hearings in General:

- 1. Responsibilities of staff supporting the Board.** For public hearings held by the Board regarding referral to the Board by the Director pursuant to SRC 86.050(d), staff shall:
 - (a) Schedule the public hearing before the Board.
 - (b) Provide public notice of the hearing.
 - (c) Prepare and make available to the public a staff report summarizing the proposal.

- 2. Rules of Procedure.** Public hearings held by the Board shall be conducted in accordance with the provisions of this rule, and may be supplemented as provided by bylaws or rules adopted by the Board.
 - (a) Any party may appear and present oral or written testimony in person or through an attorney.
 - (b) A copy of any written testimony or physical evidence that a party desires to have introduced into the record at the time of hearing shall be submitted to the Board prior to, or at the time the party makes his or her presentation.
 - (c) No person may speak more than once without obtaining permission from the presiding officer.
 - (d) Upon being recognized by the presiding officer, any member of the Board, or city staff may question any person who testifies.
 - (e) Testimony shall be directed towards the applicable standards and criteria which apply to the proposal.
 - (f) The Board may exclude or limit cumulative, repetitious, or immaterial testimony. To expedite hearings, the presiding officer may call for those in favor and those in opposition to rise, and the secretary of the Board shall note the numbers of such persons for the record in the minutes.

- 3. Conflicts of Interest; Ex Parte Contact; Challenges to Impartiality; and Abstention or Disqualification.**
 - (a) A member shall not participate in the discussion or vote in a matter if:
 - (1) The member has an actual conflict of interest as defined by SRC 12.015(1), ORS 244.020(1), or ORS 244.120 or is prohibited from participating under Section 62 of the Salem City Charter;
 - (2) The member was not present during the public hearing; provided, however, the member may participate if the member has reviewed the evidence, including recordings of the hearing, and declares such fact for the record.
 - (b) Upon a challenge to the qualifications or impartiality of a member of the Board, the challenged member shall be given an opportunity to respond orally or in writing to the challenge. The challenge and response shall be included in the record of the proceeding.
 - (c) An abstaining or disqualified member of the Board shall be counted for purposes of forming a quorum. A member who represents a personal interest at a hearing may do so only by making full disclosure to the Board. A member representing a personal interest at a hearing shall not be counted for purposes of forming a quorum.
 - (d) A member who has an actual conflict of interest, or is prohibited from participating under Section 62 of the Charter, or is representing a personal interest at a hearing shall remove themselves from their seat on Board during the hearing, including any staff presentation and Board deliberation and voting.

- 4. Burden of Proof.**

- (a) The proponent of a proposal has the burden of proof on all elements of the proposal, and must support each argument by proof that it conforms to all applicable standards and criteria.
- (b) The Board's decision shall be based on the applicable standards and criteria set forth in the SRC or administrative rule.

5. Evidence; Witnesses; Site Visits; Official Notice.

- (a) The technical rules relating to evidence and witnesses set forth in the Oregon Evidence Code shall not apply in hearings under this Rule, and any relevant evidence may be received by the Board. Relevant evidence is any evidence having a tendency to make the existence or non-existence of a fact that is of consequence to the land use approval more or less probable than it would without the evidence.
- (b) For hearings under this Rule, evidence shall be anything offered for the record in the form of written or oral communication.
- (c) Evidence may be received until the close of the record on the hearing.
- (d) No decision shall be deemed invalid on the basis that any evidence was excluded, except where such exclusion was in error and caused harm to the substantive rights of the person offering the evidence.
- (e) Members of the Board may inspect the subject property if applicable, provided that the date, time and place of the inspection are disclosed to the parties prior to the inspection. Members shall not discuss the subject of the hearing at the inspection.
- (f) The Board may take official notice either before or after the hearing, of official records, the SRC, statutes, and administrative rules. Any party may request on the record that official notice be taken of general, technical and scientific facts within the knowledge of the Board. Any general, technical and scientific facts need not be established by evidence and may be considered by the Board in the determination of the matters. All other parties shall be given the opportunity to present rebuttal evidence for any general, technical or scientific fact for which official notice is requested. The Board may, in its discretion, determine whether to take official notice of any fact offered.
- (g) As used in this Rule:
 - (1) Argument means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent of a decision. Argument does not include facts.
 - (2) Evidence means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards and criteria believed by the proponent to be relevant to the proposal. (Ord No. 1-10; Ord No. 12-12)

6. Order of Proceedings. The order of proceeding for a hearing will depend in part on the nature of the hearing. The following shall be supplemented by the adopted rules of procedure of the Board as appropriate.

- (a) **Jurisdiction.** Before receiving the staff report, testimony or evidence on the proposal, any objections on jurisdictional grounds shall be noted in the record and if there is objection, the Board has the discretion to proceed, suspend, or terminate the hearing.
- (b) **Call for disclosure of conflicts of interest.** The presiding officer should inquire whether any member has any potential or actual conflict of interest related to the subject of the hearing. Any member announcing a conflict of interest shall state for the record the nature and content of the contact, and if the member believes they have an actual conflict of interest, or are prohibited from participating in the hearing under Section 62 of the Charter, abstain from participating in the hearing, as required by SRC Chapter 12.
- (c) **Staff presentation.** City staff shall present a summary of and recommendation concerning the subject of the hearing.
- (d) **Presentation of the case.**
 - (1) Proponent, (15 minutes).

Interested persons (3 minutes).

- (2) Question of Staff or Proponent (no time limit). Staff/Proponent may not introduce new factual evidence during the question period. If the Board desires to accept new factual evidence, the Board shall reopen the hearing to allow further testimony to any interested party.
- (e) **Close of hearing.** No new factual evidence shall be received after the close of the hearing. If the response to any such questions requires the introduction of new factual evidence, all parties shall be afforded an opportunity to respond to the new factual evidence.
- (f) **Reopened hearings.** The hearing may be reopened by the Review Authority, upon majority vote, prior to decision, to receive additional testimony, evidence or argument. Notice shall be provided to the same persons who received notice of the original hearing.
- (g) **Deliberations and Decision.** Deliberations shall immediately follow the hearing, except that the Board may delay deliberations to a subsequent date and time certain. The Board may ask questions of staff during deliberations concerning procedures, or facts that are in the record. Staff shall not introduce new factual evidence during deliberations. If the response to any such questions requires the introduction of new factual evidence, all parties shall be afforded an opportunity to respond to the new factual evidence.
- (h) **Findings and Order.** The decision of the Board shall be by simple majority vote of members present. The Board shall, in all decisions, adopt findings to support its decision.

B. Continued Hearing; Extension of the Record. Prior to the conclusion of hearing the proponent may request an opportunity to present additional evidence, arguments or testimony regarding the proposal. Upon such request, the Board shall either continue the hearing to a date certain to allow for additional oral testimony, or hold the record open as provided in this section.

1. Continuances.

- (a) If the Board grants a continuance, the hearing shall be continued to a time and date certain at least 7 days after the date of the hearing. The continued hearing shall provide an opportunity for persons to present and rebut new evidence, arguments and testimony.
- (b) 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 7 days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.
- (c) Only one continuance is available of right under this subsection; provided, however, nothing in this subsection shall restrict the Board, in its discretion, from granting additional continuances.

2. Holding the Record Open.

- (a) If the Board holds the record open for additional written testimony, the record shall be left open for at least 7 days after the close of the hearing to any person who participated in the initial hearing.
- (b) Any person who participated at the initial hearing may file a written request with the Public Works Director for an opportunity to respond to any new evidence submitted during the period the record was left open. Requests shall be filed no later than the end of the last business day the record is held open. If a request is filed, the Public Works Director shall keep the record open an additional 7 days to allow for rebuttal testimony to be submitted.

C. Record of Proceedings.

- 1. Record Content.** A record of the proceedings shall be prepared and maintained for all public hearings. The record of proceedings is comprised of:
 - (a) The application, resolution, decision, or other action which initiated the proceeding;
 - (b) All testimony, evidence, and exhibits submitted prior to the close of the record of the proceeding. Where practicable, exhibits submitted shall be marked to show the identity of the person offering the item;
 - (c) Any staff reports submitted prior to the close of the record;
 - (d) An electronic recording of the hearing;
 - (e) Minutes of the hearing;
 - (f) Minutes of any public meeting after the close of the hearing at which the proceeding is discussed or acted upon by the hearing body; and
 - (g) The written decision.
- 2. Access to Record.** Access to the record shall be made available to the public at a reasonable time and place; any person may obtain copies of the record at reasonable cost.

D. Withdrawal. At any point prior to the issuance of the written decision, the proponent of the project, may submit a notice of withdrawal of the appeal. Upon receipt of a notice of withdrawal, the matter shall be deemed dismissed without further action by the Board.