

<u>Article 8: Quasi-Judicial Hearing Rules</u>	8-1
<u>8.010 Purpose</u>	8-1
<u>8.020 Nature of Quasi-Judicial Hearings</u>	8-1
<u>8.030 Order of Hearing Procedure</u>	8-1
8.031 <u>Commencement</u>	8-1
8.032 <u>Objections to Jurisdiction</u>	8-2
8.033 <u>Abstentions</u>	8-2
8.034 <u>Staff Report</u>	8-2
8.035 <u>Proponents</u>	8-2
8.036 <u>Opponents</u>	8-2
8.037 <u>Final Discussion and Summation</u>	8-3
8.038 <u>Requests for Continuances or Extensions of the Record</u>	8-3
8.039 <u>Final Decision</u>	8-4
<u>8.040 Conflict, Disclosure and Abstention</u>	8-4
8.041 <u>Ex Parte or Pre-Hearing Contact</u>	8-4
8.042 <u>Financial and Other Potential Conflicts of Interest</u>	8-4
8.043 <u>Abstention</u>	8-5
8.044 <u>Effect on Quorum</u>	8-6
8.045 <u>Challenge for Bias, Prejudice or Conflict of Interest</u>	8-6
<u>8.050 Conduct of Hearing</u>	8-7
8.051 <u>Notice</u>	8-7
8.052 <u>Presiding Officer</u>	8-7
8.053 <u>Conduct of Participants</u>	8-7
8.054 <u>Burden of Proof</u>	8-8
8.055 <u>Nature of Proof and Decision Making</u>	8-8
8.056 <u>Rules of Evidence</u>	8-8
<u>8.060 Record of Proceedings</u>	8-9
<u>8.070 Appeal and Review</u>	8-9

Article 8: Quasi-Judicial Hearing Rules

8.010 Purpose

The purpose of this article is to provide rules governing the conduct of all quasi-judicial land use hearings within the Urban Growth Boundary heard under the Type III, IV, and V procedures as provided in Article 2.

8.020 Nature of Quasi-Judicial Hearings

Land use hearings conducted as provided in this article are quasi-judicial administrative determinations, and shall be conducted accordingly. All applicants are entitled to notice of hearing, an opportunity to be heard, to present and rebut evidence before an impartial Hearing Body, to have the proceedings recorded, and to have a decision rendered in accordance with the facts on record and the law.

8.030 Order of Hearing Procedure

The presiding officer shall conduct the hearing in an orderly fashion, as provided in this section. Technical rules of parliamentary law shall be avoided in order that the hearing procedure is as clear and simple as possible.

8.031 Commencement. The presiding officer shall:

- (1) announce the nature and purpose of the hearing,
- (2) summarize the rules for the conduct of the hearing,
- (3) identify the name of each applicant,
- (4) describe the general nature of each proposal,
- (5) list the applicable substantive criteria,
- (6) state that testimony and evidence must be directed toward those criteria or other criteria in the comprehensive plan or land use regulations which the person believes to apply to the decision,
- (7) state that failure to raise an issue accompanied by statements or evidence sufficient to afford the review body and the parties an opportunity to respond to the issue precludes appeal to the State Land Use Board of Appeals based on that issue,
- (8) explain rights for continuances and extensions of the record, and
- (9) briefly explain rights and procedures for appeals.

8.032 Objections to Jurisdiction. The presiding officer shall inquire of the audience whether there are any objections to the jurisdiction of the Hearing Body to hear the matter. Objections, if any, shall be noted in the record, and the matter shall proceed or shall terminate at the discretion of the presiding officer.

8.033 Abstentions. The presiding officer shall inquire of the Hearing Body whether any member thereof wishes to abstain from participation in the hearing on that proposal. Any member so abstaining may identify the reasons for the abstention and shall not participate in discussion of, or vote on, the proposal.

Any Hearing Body member whose participation has been identified or challenged for allegation of bias, prejudice, or conflict of interest, or who has been subject to significant ex parte contacts with proponents or opponents, may make a statement in explanation for the record, and shall announce his decision whether to participate in the hearing. (See Section 8.040). This statement shall not be subject to cross examination except upon consent of that member, but shall be subject to rebuttal by the alleging party. The final decision on whether a member of the Hearing Body should participate is to be decided by a majority of members of the Hearing Body.

8.034 Staff Report. The presiding officer shall request the Staff Report and shall thereafter indicate the action to be taken by the Hearing Body.

8.035 Proponents.

(1) Presentation. The presiding officer shall allow the proponent to present his evidence in support of his application, and may limit the proponent to a time certain in which to present such evidence. Proponent shall be allowed to produce witnesses on his behalf. Each such witness may be limited to a time certain in which to present his testimony. Members of the audience in favor of the proposal shall thereafter be allowed to present their views, subject to similar reasonable time limitations.

(2) Cross-Examination. The parties do not have the right to cross-examine any witness. However, the Presiding Officer may allow a request to cross-examine when such a request would further the purpose of the hearing.

8.036 Opponents

(1) Presentation. The presiding officer shall allow opponents to present evidence in opposition to the proposal. Each such opponent shall be limited to a time certain in which to present his opposition. Opponents shall be allowed to cross-examine proponent or any of his witnesses. Opponents shall be allowed to produce witnesses on their behalf.

- (2) Cross-Examination. The parties do not have the right to cross-examine any witness. However, the Presiding Officer may allow a request to cross-examine when such a request would further the purpose of the hearing.

8.037 Final Discussion and Summation. The presiding officer, in his discretion, may allow the proponent and opponent to summarize their arguments, upon conclusion of which no further evidence on that proposal shall be permitted. Members of the Hearing Body shall thereafter be allowed to openly discuss the proposal, and to further question any party appearing for or against the proposal. The order of procedure specified in this section shall be utilized for all land use hearing before the Josephine County Board of Commissioners, City of Grants Pass Council, Urban Area Planning Commission, and any Hearings Officer appointed by such City or County, for those cases originating within the Grants Pass Urban Growth Boundary Area.

8.038 Requests for Continuances or Extensions of the Record

Prior to the conclusion of the initial hearing on an application, any participant may request an opportunity to present additional evidence or testimony regarding the application. The review body shall grant such request by continuing the public hearing pursuant to subsection (1) below, or by leaving the record open for additional written evidence or testimony pursuant to subsection (2) below.

- (1) Continuance: If the review body grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for any person to present and rebut new evidence and testimony. 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 seven days to submit additional written evidence or testimony for the purpose of responding to the new written evidence.
- (2) Extension of the Record: If the review body leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days. Any participant may file a written request for an opportunity to respond to the new evidence submitted during the period the record was left open. The request must be filed not more than one working day after the close of the record. If such a request is filed, the review body shall reopen the record pursuant to subsection (3) below.
- (3) Reopening the Record after an Extension of the Record: When a request to reopen the record is filed pursuant to subsection (2) above, the record shall automatically be reopened for a period of 7 days after the date it was closed. Any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.

- (4) Submittal of Final Written Arguments: Unless waived by the applicant, the review body shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence.

8.039 Final Decision.

- (1) Oral Decision. At the conclusion of the Hearing, the Hearing Body may approve the application, deny the application, approve the application with conditions, table the proposal, or continue the application of further study or deliberation to a date and time certain. This action shall be known as the oral decision. For purposes of the record, each member of the Hearing Body shall be polled separately, at which time each member shall state his or her decision, and the particular findings in support of that decision when required by this Code.
- (2) Final Action. A final decision shall be taken by the Hearing Body as provided in Sections 2.045, 2.055 and 2.066 of this Code, incorporating the oral decision and approving the findings.

8.040 Conflict, Disclosure and Abstention

8.041 Ex Parte or Pre-Hearing Contact. Members of the Hearing Body shall avoid significant pre-hearing contacts so that the tribunal's deliberations, recommendations and decisions can be based on evidence presented at the time of the public hearing.

8.042 Financial and Other Potential Conflicts of Interest

- (1) Any member of the Hearing Body with a potential conflict of interest, as herein-below defined, shall announce publicly the nature of the potential conflict prior to taking any official action thereupon. A potential conflict of interest means any transaction where a person acting in a capacity as a public official takes any action or makes any decision or recommendation, the effect of which would be to the private pecuniary benefit or detriment of the person or member of the person's household, unless the pecuniary benefit or detriment arises out of the following:
 - (a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

- (b) Any action in the person's official capacity which would affect to the same degree all inhabitants of the County, City, or a smaller class consisting of industry, occupation or other group including one of which or in which the person, or member of the person's household or business with which he is associated, is a member or is engaged.
- (2) Any other appointed official or employee of the County or City with a potential conflict of interest shall notify, in writing, the City Manager of the nature of the conflict and request the City Manager to dispose of the matter, which shall be either to designate within a reasonable time an alternate to dispose of the matter or to direct the said appointed official or employee to dispose of the matter in a manner specified by the City Manager.

8.043 Abstention

- (1) Impartiality. At the commencement of the hearing, members of the Hearing Body shall reveal all significant pre-hearing and ex parte contact they have had about the matter. If the contacts have not impaired the members' impartiality, the members shall so state that fact and participate or abstain, in accordance with these rules and in accordance with the members' own judgment. If the contacts have impaired the members' impartiality, the members shall disclose the same for the record and shall abstain from further discussion or voting on the proposal.
- (2) Appearance. Because of the importance of preserving public confidence in decisions made by the Hearing Body, a member of the Hearing Body may elect to abstain from the hearing when, in fact, the member is not disqualified but simply desires to avoid the mere appearance of partiality. Abstention in such an instance shall be solely a matter of the member's own judgment. A member who feels his abstention may be necessary or desirable under this section shall seek the advice of the Hearing Body and then state the member's decision and the reasons therefore.
- (3) Planning Commission Only. Pursuant to ORS 244.135, Planning Commission members must abstain from any hearing when any of the following has a direct or substantial financial interest in the proposal: The Planning Commission member, or his 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 he or she is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interests shall be disclosed at the meeting of the Hearing Body where the action is being taken.
- (4) Disqualification for any of the above reasons, as applicable, may be ordered by a majority of the Hearing Body. The member who is subject to the motion for disqualification may not vote on said motion.

8.044 Effect on Quorum.

- (1) City Council or Board of County Commissioners. Notwithstanding any other rule, an abstaining or disqualified member shall constitute part of a quorum and may represent the member's own interest at a hearing, provided the member joins the audience, makes full disclosure of the member's status and position when addressing the Hearing Body, and abstains from discussion and voting on the matter as a member of the Hearing Body. If all members of the Hearing Body abstain or are disqualified and consequently cannot reach a decision while so abstaining or disqualified, all members present, after stating the reasons for abstaining or disqualifications, shall by so doing be requalified and proceed to resolve the issues raised by the hearing.
- (2) Planning Commission. Under ORS 227.035, Planning Commission members may not participate in the moving in his own interest, as in section 8.044(1) above, nor may Planning Commissioners become requalified as in Section 8.044(1) above.
- (3) Absence. A Hearing Body member absent during the presentation of any evidence during a hearing may not participate in the deliberations, oral decision or final decision regarding the matter of the hearing, unless such member first reviews the evidence presented in his absence, and states the same, on the record, prior to voting on the matter.
- (4) Lack of Quorum. If a public hearing of the Planning Commission has been scheduled and publicly noticed in accordance with the provisions of this Code, and the Commission lacks a quorum at the time of that hearing, the majority of those members present may postpone the hearing to the next regularly scheduled meeting of the Planning Commission without additional public notification. If no Commission members are present, a scheduled and publicly notice hearing may be postponed to the next regularly schedule meeting by posting a notice at the scheduled time and place of the hearing. The notice shall state the time when and place where the hearing will be rescheduled.

8.045 Challenge for Bias, Prejudice or Conflict of Interest. Any person may challenge the qualification of any member of the Hearing Body to participate in such hearing and decision. Such challenge may be in writing or made orally, and shall state the facts upon which the challenging party relies as to the member of the Hearing Body's disqualification or other facts from which the challenging party alleges the member should not participate in and render a decision in the matter. The presiding officer may require such challenge to be made under oath, administered by the presiding officer. Such matter of challenge shall be resolved at the time of the hearing, as provided in Section 8.033 above.

8.050 Conduct of Hearing

8.051 Notice. Notice of the hearing shall be given as provided in this Code, Article 2, Procedure Types.

8.052 Presiding Officer. The presiding officer shall have authority to:

- (1) Regulate the course and decorum of meetings;
- (2) Dispose of procedural requests or similar matters;
- (3) Rule on offers of proof and relevancy of evidence;
- (4) Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentations, cross-examination and rebuttal testimony;
- (5) Question any person appearing and allow other members to question any person;
- (6) Waive, in his discretion, the application of any provision of this section where the circumstances of the hearing indicate it would be expedient and proper to do so, provided such waiver does not act to prejudice or deny any party his substantial rights, as provided herein or otherwise by law; or
- (7) Take such other actions as authorized by the City Council or Board of County Commissioners to appropriately conduct the hearing, when the hearing is held before such body.

8.053 Conduct of Participants

- (1) Proceedings shall at all times be orderly, and no person shall be heard until he states his name, residential or business address, as applicable, and interest in the proceedings. The presiding officer may terminate the hearing when necessary or refuse to recognize or continue to recognize anyone who:
 - (a) Is disorderly, abusive or disruptive;
 - (b) Takes part in or encourages audience demonstrations, such as applause, cheering, display of signs, or other conduct disruptive of the hearing;
 - (c) Testifies without first receiving recognition from the presiding officer and making a statement regarding name, address and interest in the proceedings, as set forth herein-above; or

(d) Presents irrelevant, immaterial or repetitious evidence.

- (2) The presiding officer shall at all times maintain order at any hearing. Upon any person engaging in conduct which is disruptive of the hearing, the presiding officer shall first warn such party to stop such disruptive conduct upon penalty of removal. If such disruptive person continues to cause disruption the presiding officer may then order such person removed from the hearing without further warning.

8.054 Burden of Proof. The burden of proof shall be on the applicant. The degree of proof required shall vary depending upon the nature of the proposal and its impact on the community. The more drastic the change or the greater the impact of the proposal on an area, or the greater the departure from the present land use patterns, the greater is the burden upon the applicant.

8.055 Nature of Proof and Decision Making. The decision of the Hearing Body shall be based upon reliable, probative, and substantial evidence supported by the record. The applicant, or his witnesses, shall present evidence on the applicable criteria. Upon conclusion of the presentations, the Hearing Body shall consider such evidence in relation to the appropriate criteria, and shall render a decision as to whether or not the evidence received is sufficient to establish that the proposal is consistent or inconsistent with the appropriate criteria.

8.056 Rules of Evidence.

- (1) All evidence offered and not properly objected to may be received unless otherwise excluded by the presiding officer. The presiding officer shall admit all evidence that is relevant and useful. Evidence received at the hearing shall be of the quality that responsible persons are accustomed to rely upon in serious affairs.
- (2) All evidence received by the presiding officer shall be made a part of the record of the matter, and except for matters stipulated to and for matters judicially noticed, no other factual information or evidence shall be considered in the determination of the case. In the discretion of the presiding officer, documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.
- (3) Judicial notice may be taken of judicially cognizable facts and general technical or scientific facts within the experience, technical competence, or specialized knowledge of the Hearing Body.
- (4) No decision shall be rendered except upon consideration of the whole record and as supported by and in accordance with reliable probative and substantial evidence.

- (5) The presiding officer may place any person submitting testimony under oath or affirmation prior to accepting such testimony.
- (6) The Hearing Body, in its discretion, may be represented by the City Attorney or County Counsel as appropriate.

8.060 Record of Proceedings

- (1) Written minutes shall be taken of all hearings as provided by law.
- (2) All exhibits received in evidence shall be marked or otherwise made readily identifiable for purposes of appeal or review. All exhibits received into evidence shall be retained by the Hearing Body until the period for review or appeal has expired, at which time the same may be released to the person identified thereon as the owner thereof. If a review proceeding or appeal is filed, exhibits shall be released as aforesaid when the matter is finally resolved.
- (3) Except as otherwise provided by State law, all records of the Hearing Body shall be available for inspection and copying by any person. Expense of copying shall be borne by the person obtaining the same.

8.070 Appeal and Review

Any final action of the Hearings Officer or Planning Commission may be appealed by an aggrieved party as provided in Section 10.040 of this Code. Any final action of the Planning Commission may be reviewed by the City Council or Board of County Commissioners on its own motion, as provided in the joint Urban Area Services Management Agreement.

REVISIONS

DATE	ORD #
8/1/84	4518
2/16/94	4787
11/15/95	4843
3/6/96	4853