

CHAPTER 10

PUBLIC HEARING PROCEDURES

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Sec. 10- 1. Purpose.

To provide consistency in the conduct of public hearings held in conjunction with the process of regulating the use and development of land within the jurisdiction of the City; to protect the public interest and the private rights of all participants in the public hearing process; and to comply with the requirements of Idaho Code 67-6534.

For purposes of this Chapter, the term “decision-making board” shall mean the Board of Adjustment, Planning and Zoning Commission, Council, hearing examiner or advisory board and any other person or persons duly authorized to make a determination regarding zoning or land use planning pursuant to Idaho Code or this Code, excluding City staff.

Sec. 10-2. Organization.

This Chapter shall be organized into three distinct types of hearing procedures which are required by various portions of this Code and by the Idaho Code. Basic rights and responsibilities are spelled out for the participants in these different hearing procedures toward the goal of making the hearing process predictable and understandable.

Sec. 10-3. Types of Hearings.

Three primary types of public hearings shall be included in the scope of this Chapter.

A. Quasi-Judicial Hearings - Type 1: Type 1 Quasi-Judicial hearings shall be required when a permit or discretionary administrative ruling is sought from a decision-making board such as the Board of Adjustment, Planning and Zoning Commission, or Council and only one public hearing is required by this Code or the Idaho Code before final action can be taken on the request. Because such a hearing may influence the individual rights of applicants, this administrative procedure shall be more strictly controlled to protect individual rights. Decisions following Type 1 Quasi-Judicial hearings shall be final subject to appeal to a higher decision making authority as provided by this Code or the Idaho Code. Permits to which this procedure shall apply are the variance, Conditional Use Permit, Special Use Permit, vacation of a portion of a subdivision plat, or an appeal from a decision of the Zoning Administrator.

(Ord. 2007-10, 09/17/2007)

B. Quasi-Judicial Hearings - Type 2: Type 2 Quasi-Judicial hearings shall be required when the permit or regulatory change sought requires a sequence of two or more public hearings before final action may be taken on the request. The initial public hearing shall be conducted by the Planning and Zoning Commission whose task is to prepare a recommendation for submittal to the Council. Following receipt of the recommendation from the advisory board, a second public hearing must be scheduled before the Council before a decision on the request may be rendered. Like those hearings classified as Type 1 Quasi-Judicial hearings the rights of individuals are at stake and the protection of those rights is a prime purpose of the required procedure. Like a Type 1

procedure the resulting decision from a Type 2 procedure is final unless appealed to a subsequent decision-making tribunal. Unlike the Type 1 procedure, care must be taken in the steps between the initial and second hearing to protect the interests of all parties involved. Type 2 Quasi-Judicial hearings are used in request for changes in zoning district boundaries, changes to the Comprehensive Plan when sought in conjunction with a request for a change in zoning district boundaries, Planned Unit Developments and subdivision plats.

(Ord. 2007-10, 09/17/2007)

C. Legislative Hearings: Legislative hearings shall be required when amendments are contemplated to the substantive or procedural terms of Title 3, Chapters 1 and 2, all of Title 4, and Title 5, Chapters 1 and 2 of this Code. Legislative hearings are characterized by their general applicability to the community as a whole. Legislative hearings may only be initiated by the Planning and Zoning Commission or by the direction of the Council. Included in this category are public hearings leading up to changes in the zoning ordinance, the subdivision ordinance, and the comprehensive plan of the City.

Sec. 10-4. Procedures for Type 1 Quasi-Judicial Hearings.

- A. Pre-Hearing Procedures:
 - 1. General Requirements and Responsibilities.
 - a. Prior to the conduct of the hearing no person shall attempt to discuss the subject of the hearing with a member of the decision-making board destined to decide the issue. Any such attempt shall be reported by the decision-making board member so approached to legal counsel for the decision-making board who shall advise the decision-making board in that regard.
 - b. Notices of public hearing shall provide adequate information to allow

notice recipients to participate in the hearing process.

2. Applicant's Responsibilities.

- a. The applicant for a permit shall submit a completed application on a form provided by the City to the appropriate City official.

- b. The applicant shall, in a timely manner, provide the names and addresses, on mailing labels provided by the City, of all persons entitled to notice under the provisions of this Chapter. In the alternative the applicant may contract with the City for research and preparation of the list of landowners and residents who require notice. The City shall have the option of billing for this service based on its out-of-pocket costs plus administrative expenses or the City may charge a fixed charge per notice, with said charge established by the Council from time to time by resolution.

- c. The applicant should submit such additional written material as the applicant may desire to tender to the decision-making board at the public hearing at the time of application filing. Such written submittals should be made at this time so they may be reviewed by the interested public prior to the hearing. Petitions may be submitted by the applicant after the filing deadline. Materials provided tardy may be admitted subject to the discretion of the decision-making board.

3. Public Participant's Responsibilities.

- a. Public participants in the hearing process shall have the opportunity to examine written materials submitted by the applicant prior to the hearing.

- b. Public participants desiring to submit textual materials (excluding petitions) to the decision-making board shall make that submission at least five (5) calendar working days in advance of the scheduled meeting. Material provided tardy may be admitted subject to the discretion of the decision-making Board.

4. City's Responsibilities.

a. The responsible City administrative personnel shall provide appropriate application forms and related materials to applicants.

b. Where required, the City shall publish notice of the public hearing in accordance with the requirements of this Code and the appropriate Idaho Code sections.

c. Where required, the City shall provide proper notice to the residents and/or land owners entitled to notice within the terms of this code or applicable sections of the Idaho Code.

d. The City shall maintain a file of materials relating to the application available for public inspection during regular business hours.

B. Hearing Procedures:

1. General Requirements.

a. Public hearings shall be conducted according to orderly procedures as specified by the chairperson of the meeting, subject to the will of the decision-making board.

b. All procedures shall be directed to providing the participants in the hearing a fair chance to be heard by an impartial decision-making board.

c. Decision-making board members having a conflict of interest involving the subject matter of a hearing shall not participate in the deliberations related to the item in which they possess an interest. Said abstention shall be governed by the applicable provisions of this Code, the Idaho Code, and the member's personal perception of the situation. The decision to abstain from participation shall be the personal decision of the individual decision-making board member.

d. The chairperson of the decision-making board shall have sole authority to recognize participants in the hearing process and to maintain order in its conduct.

e. Subject to decision-making board objection, the chairperson may

establish time limits on presentations in the interest of fairness and to provide more people with a chance to participate. Said limitations may be established at the beginning of the hearing or may be invoked during the hearing when conditions warrant.

f. Formal rules of evidence will not apply during the hearing, but the chairperson may rule that certain testimony may be excluded or shortened because of its relevance to the subject of the hearing.

g. Hearings conducted in accord with this section shall generally be conducted in the following order:

- (1) Opening of hearing and call to order.
- (2) Introduction of hearing item and explanation of request.
- (3) Presentation by applicant.
- (4) Public testimony in support of the application.
- (5) Public testimony in opposition to the application.
- (6) Other public testimony.
- (7) Response of applicant to public testimony.
- (8) Closure of the public hearing.
- (9) Board deliberations without further unsolicited comment.

h. All inquiries regarding the presentation of any party shall be directed to the chairperson who shall decide the need for a response and seek one where necessary or appropriate.

i. At the close of the initial public hearing the decision-making board may take any of the following actions concerning the application before it:

- (1) Approve the application as presented.
- (2) Reject the application as presented.
- (3) Approve the application subject to specific conditions as permitted by the applicable substantive Zoning Code sections.

(4) Table the application to allow fact finding by the City staff, to receive answers to specific factual questions from the applicant or the interested public, or to defer the decision for further reflection. When a request is tabled, the final decision shall be made at a succeeding regularly scheduled meeting, or at a special meeting for which proper notice has been given.

(5) Schedule a continuation of the public hearing at a specific time and place. This provision shall apply to any visit to the site in question by the decision-making board.

j. Each person who testifies shall provide the recording secretary with his or her name and a true and accurate mailing address.

k. All information upon which a decision rests, including information held by decision-making board members from their own experience, shall be placed upon the record before the public hearing is closed.

l. Members of the decision-making board may question any participant in the hearing process concerning any representations made or questions raised in the course of the hearing or in written materials submitted prior to the hearing.

m. The chairperson of the decision-making board conducting the hearing may solicit a response to a question seeking a specific objective fact from any participant without reopening the hearing for general testimony.

n. Any person may testify through a designated representative. The decision-making board may request proof of authorization from anyone purporting to speak for another. All writings submitted as testimony shall contain the name and address of the testifying party in legible form and shall include that person's signature.

o. All votes on final decisions or adoption of findings of fact shall be recorded in the official minutes of the meeting.

2. Applicant's Responsibilities.

a. The applicant or a duly authorized representative shall be present at the public hearing to present the application to the decision-making board unless excused by the decision-making board.

b. The applicant shall describe the application with reasonable detail to inform the decision-making board and those in attendance of the character of the application, the permission being sought, and the efforts undertaken to make the permission, if granted, acceptable to the community. The applicant's presentation shall address the criteria detailed in this Code or the Idaho Code for the type of permission sought.

3. Public Participant's Responsibilities.

a. Public participants in the hearing process shall address the facts of the issue at hand and may state opinions as they relate to the criteria of the applicable Code sections governing the request for permission made by the applicant.

b. Questions from public participants to the applicant, City staff, members of the decision-making board, or other public participants shall be directed to the chairperson of the decision-making board during the hearing.

4. City Responsibilities.

a. The City shall provide meeting facilities adequate to accommodate all who wish to participate in the hearing process.

b. The City shall provide a person who shall produce minutes of the proceeding as required by this Code or the Idaho Code.

c. The City shall maintain a transcribable verbatim record of all hearing proceedings for six (6) months following the date of a final decision in a matter for which a public hearing of this type is conducted.

C. Post-Hearing Procedures:

1. General Requirements.

a. After the close of a public hearing, the only public communication with the decision-making board concerning the application before them shall be specific factual answers to questions raised at the hearing or during deliberations and requiring a subsequent reply. The decision-making board may communicate freely with City staff and its own legal counsel following the closure of the public hearing.

b. Following each public hearing the decision-making board shall reach a decision regarding the permission sought in the subject application. The deliberations and final decision shall be conducted in an open meeting subject to the public scrutiny, and shall be made in a timely manner.

c. Decisions in such applications shall be accompanied by a written Reasoned Statement of Relevant Criteria and Standards which shall set forth the reasons for the decision-making board's decision pursuant to Idaho Code Section 67-6535. Reasoned Statement of Relevant Criteria and Standards shall be adopted by specific motion of the decision-making board.

d. The decision-making board may reach a decision in each application in any of the following ways:

(1) A final decision may be reached on the day of the hearing subject to adoption of Reasoned Statement of Relevant Criteria and Standards at a later date.

(2) A final decision may be reached on the day of the hearing immediately followed by adoption of Reasoned Statement of Relevant Criteria and Standards at the same meeting.

(3) A tentative decision may be reached on the day of the hearing subject to development of suitable Reasoned Statement of Relevant Criteria and Standards at a later date.

(4) A decision may be deferred to a late date at either the next regularly scheduled meeting of the

decision-making board or at a subsequent regular meeting or a properly scheduled special meeting identified at the public hearing.

e. Draft Reasoned Statement of Relevant Criteria and Standards may be developed by motion of the decision-making board immediately following the hearing in question; by a subcommittee of the decision-making board, numbering less than necessary to constitute a quorum, to be brought to the entire board for final action; or by delegation to City staff or legal counsel to be brought to the entire decision-making board for final action.

f. Adoption of Reasoned Statement of Relevant Criteria and Standards shall constitute a final decision for purposes of appeal.

(Ord. 2004-35, 09/07/2004)

Sec. 10-5. Procedures for Type 2 Quasi-Judicial Hearings.

A. Comparison to Type 1 Quasi-Judicial Hearings:

1. The Type 2 Quasi-Judicial hearings are to be conducted according to the same format as the Type 1 Quasi-Judicial hearings in the preceding section. The Type 2 procedure differs only in that two (2) successive hearings on the same matter (not on appeal) are required to complete the process. Both hearings are de novo hearings which allow presentation of any pertinent information regardless of prior participation and/or deliberation in the process.

2. The first hearing shall be conducted by the Planning and Zoning Commission and shall be held for the purpose of formulating a recommendation to be forwarded to the Council. The Planning and Zoning Commission shall be responsible for considering all information submitted to it by participants in the hearing process and for developing a proposed Reasoned Statement of Relevant Criteria and Standards for the Council. The entire

product of the Planning and Zoning Commission hearing and deliberation process shall be made available to the Council before the close of the second hearing. Dissenting members of the Planning and Zoning Commission may submit written statements explaining their disagreement with the proposed Reasoned Statement of Relevant Criteria and Standards. Such statements shall be made available to the Council before the close of the second hearing.

3. The second hearing shall be conducted by the Council according to the same guidelines and requirements which are applied to a Type 1 Quasi-Judicial hearing. Any member of the Planning and Zoning Commission who participates in the second hearing, in person or by written submission, shall do so only for themselves and not as a representative of the opinion of the Planning and Zoning Commission as a body. Evidence received by the Planning and Zoning Commission at the first hearing shall have the weight at the second hearing that each Council member assigns to such evidence.

- B. At the conclusion of the public hearing held by the Council, the Council may take any of the following actions:
 - 1. Approve the recommendation of the Planning and Zoning Commission, and adopt the Planning and Zoning Commission’s Reasoned Statement of Relevant Criteria and Standards.
 - 2. Approve the recommendation of the Planning and Zoning Commission, subject to modifications to the Planning and Zoning Commission’s Reasoned Statement of Relevant Criteria and Standards.
 - 3. Render a decision different from the recommendation of the Planning and Zoning Commission, and adopt a new Reasoned Statement of Relevant Criteria and Standards.
 - 4. Defer decision on the request to a later meeting date.
 - 5. Remand the recommendation to the

Planning and Zoning Commission for clarification or further documentation of the recommendation prior to reaching a decision.

- C. A decision shall be deemed final when a proposal has been either approved or disapproved by the Council.
(Ord. 2004-07, 02/17/2004; Ord. 2004-35, 09/07/2004)

Sec. 10-6. Procedures for Legislative Hearings.

- A. General Requirements and Conditions:
 - 1. Legislative hearings are required when changes are proposed to the land use regulations of the City which are subject to the requirements of Title 67, Chapter 65 of the Idaho Code.
 - 2. Legislative hearings are required in tandem as are Type 2 Quasi-Judicial hearings, but legislative hearings are not subject to the same procedural restrictions as are Quasi-Judicial hearings.
 - 3. Ex-parte contacts are not forbidden in conjunction with the legislative hearing process.
- B. Pre-Hearing Procedures:
 - 1. A legislative hearing may be scheduled by order of the chairperson of the Planning and Zoning Commission or the Mayor or by a motion passed by a majority of the membership of the respective board involved.
 - 2. Upon said order the City staff shall cause to be published a public notice containing the nature of the proposed change contemplated to the land use regulations of the City and the time and place of the hearing.
 - 3. A copy of the proposed change shall be made available to the public for inspection from the time notice is published to the time of the hearing.
 - 4. Written comments may be forwarded for consideration any time prior to the close of comments as determined by the board hearing the matter.
- C. Hearing Procedures:
 - 1. Testimony may be submitted in any

form by any person interested in the legislative proposition, subject to rulings by the chairperson concerning form, length, or relevance.

2. Hearings conducted in accordance with this section shall generally be conducted in the following order:

- a. Opening of the hearing and call to order.
- b. Introduction of hearing item and explanation of proposal.
- c. Public testimony in support of the proposal.
- d. Public testimony in opposition to the proposal.
- e. Other testimony on the proposal.
- f. Closure of the public hearing.
- g. Board deliberations without further unsolicited commitment.

3. The chairperson shall be free to vary the order of hearing procedures as necessary or desirable.

4. Minutes shall be kept of all legislative hearings and said minutes shall be available for public inspection during regular business hours.

5. All deliberations on matters which are the subject of legislative hearings shall be conducted in a properly called open meeting of the board considering the proposal.

6. All persons testifying at a legislative hearing shall state their name and address prior to addressing the hearing board.

D. Post-Hearing Procedures:

1. At the close of the initial hearing, the Planning and Zoning Commission shall prepare a recommendation to the Council concerning the proposal before them. This recommendation may take any of the following forms:

- a. Approval of the proposal as presented.
- b. Rejection of the proposal as presented.
- c. Approval of the proposal subject to modifications as included in the Planning and Zoning Commission's recommendation.

2. The Planning and Zoning Commission shall forward its recommendation to the Council within forty-five (45) days of the close of the initial public hearing. The recommendation shall be in writing and shall set forth the reasons for the Planning and Zoning Commission's recommendation. Dissenting members may submit written comments stating their reasons for disagreement with the majority position on the proposal.

3. Upon receipt of the Planning and Zoning Commission's recommendation, the Council shall determine whether to hold a second public hearing on the subject of the initial legislative hearing. Upon an affirmative finding the City shall publish notice of a legislative public hearing before the Council stating the nature of the proposal and the time, place, and date of the hearing.

E. Second Hearing Procedures:

1. Procedures for the second hearing, conducted this time before the Council, shall be the same as for the initial hearing before the Planning and Zoning Commission.

2. At the conclusion of the second hearing the Council may take any of the following actions:

- a. Adopt the proposal in ordinance form as originally proposed or as recommended or modified by the Planning and Zoning Commission.
- b. Reject the change as proposed.
- c. Propose substantial modifications to the proposal originally made or to the proposal recommended by the Planning and Zoning Commission and return the substantially modified proposal to the Planning and Zoning Commission for a new initial hearing.

Sec. 10-7: The Neighborhood Meeting.

A. Purpose.

The purpose of the neighborhood meeting is to allow the developer to present the proposal to neighbors and other members of the public prior to the

formal public hearing so that the parties can discuss and consider neighborhood impacts, mitigation, design and construction elements, and the like. A further purpose is to allow developers to have related applications considered concurrently by the hearing bodies.

B. When required.

1. A neighborhood meeting shall be required for each of the land use matters below. Where the applicant desires to file more than one (1) application involving the same project and/or property and desires all related applications to be considered within the same hearing, one (1) neighborhood meeting shall be necessary.

2. A neighborhood meeting shall be required as a pre-requisite to filing of an application with the City for the following land use matters:

- a. Annexation,
- b. Request to amend Comprehensive Plan Map land use designation,
- c. Request to amend Zoning District,
- d. Preliminary Plat,
- e. Planned Unit Development, or
- f. Any combination of the foregoing.

C. Notice of meeting.

1. Notice of the neighborhood meeting shall be given to all property owners of record within six hundred feet (600') of the subject property. Such notice shall be provided at least fourteen (14) days before the first neighborhood meeting regarding the subject property. Notice of the neighborhood meeting shall be made by mail to the current or last known address of the property owners of record. Property owners of record shall be determined by review of records in the possession of Latah County. Alternatively, the City may provide a list of property owners to the applicant upon receipt by City of the proper request form and the appropriate fee.

2. Notice shall include a vicinity map,

the general nature of the proposal, the size of the land, the number of lots/dwelling units, the date, time and location of the meeting, and the name, address, telephone number and email address of a contact person.

The neighborhood meeting shall be set at a date, time, and place reasonably calculated to facilitate the attendance of the property owners required to receive notice. Evening meetings during the work week are encouraged.

D. Format.

1. General.

The applicant or applicant's representative shall chair and conduct the meeting according to orderly procedures. The Chair should provide the participants in the neighborhood meeting a fair chance to be heard. The Chair will have the authority to recognize participants in the meeting and to maintain order in the conduct of the neighborhood meeting. Formal rules of evidence will not apply during the neighborhood meeting but the Chair may limit the duration of comments or presentation where necessary to give the broadest number of participants the opportunity to express their views.

2. Order.

The neighborhood meeting shall generally be conducted in the following order; however, the meeting should not be so formal that it precludes or unduly limits participation by those in attendance nor should it be so unruly that information gathering and exchange cannot occur:

- a. Opening of the meeting and a call to order,
- b. Introduction of the proposal/project by the applicant and/or the applicant's representatives,
- c. Public comments in support of the application,
- d. Public comments in opposition of the application,
- e. Questions and/or other public testimony,

- f. A response of the applicant (if desired by applicant),
- g. Any related business,
- h. Close of the neighborhood meeting.

3. Other.

Conduct by all participating in the neighborhood meeting should be respectful, should avoid personal attack, and should be directed toward gathering and exchanging information regarding the proposal(s).

E. Scope.

Each neighborhood meeting shall be conducted so that those in attendance can discuss the project/proposal which is the subject of the application(s) to be filed. Where more than one (1) application is to be considered in the same public hearing, the meeting shall include discussion of all related matters. For example, where there is to be a submittal for a rezoning along with a preliminary plat, both shall be thoroughly discussed in the neighborhood meeting.

F. Submission of neighborhood meeting materials to City.

1. Time to submit materials.

Neighborhood meeting materials required to be submitted pursuant to this Chapter shall be submitted with the application(s) and relevant fee(s).

2. Materials to be submitted.

The following shall be submitted to the City with the original filing of the land use application(s) and shall constitute part of such land use application(s):

- a. Time, date and location of the neighborhood meeting,
- b. Names and addresses of property owners to whom notice was sent,
- c. Names and addresses of all attendees,
- d. Summary of comments, suggestions and discussion,
- e. Applicant’s response to comments, suggestions and discussion, including any modifications made or intended to be made to the project

proposal/application as a result of the neighborhood meeting comments,

f. Materials utilized or submitted (including plans, proposals, designs, power point presentations, maps, handouts, petitions, letters, studies, etc.) shall be submitted with the application for the related project(s).

A verbatim transcript is not required nor is a video and/or audio tape (unless the applicant wishes to submit it). The summary of comments, suggestions and discussion should be extensive enough to allow the reader to understand what occurred.

G. Notice of hearing.

Following receipt by City staff of the required submittals, notice of a public hearing on the related application(s) shall be scheduled before the Planning and Zoning Commission. Notice of such public hearing shall take place not less than thirty (30) days prior to the required public hearing before the Planning and Zoning Commission pursuant to this Code and City policy.

(Ord. 2007-03, 05/07/2007)

Sec. 10-8. Procedures for Appeals of Interpretation or Administration.

A. The Council shall review the appeal on the written record generated and/or preserved by the Board. Decisions made regarding appeals herein should be founded upon sound reason and practical application of recognized principles of law. When considering the merits of an appeal, no additional public testimony or information shall be taken or considered by the Council. After considering the record and the reasons for the appeal, the Council shall take one or more of the following actions:

- 1. Sustain the Decision. Sustain the decision of the Board in whole or in part.
- 2. Reverse the Decision. Reverse the decision of the Board in whole or in part.
- 3. Remand the Decision.
 - a. Remand the matter in whole or in

part to the Board with comments and/or instructions for further consideration by the Board or for remand by the Board to the Zoning Administrator in order to gather more information on the matter. The Council shall remand the appeal in whole or in part for gathering of additional material information and a subsequent decision only where it is shown by a preponderance of the evidence that there is:

(1) New material information not available or readily discoverable at the time of the Zoning Administrator's decision; and

(2) It is in the public interest to develop such additional material information on the matter.

- B. Procedures and guidelines for an appeal in addition to that contained herein may be established from time to time by resolution of the Council.

(Ord. 2007-10, 09/17/2007)