

# CITY COUNCIL LAND USE APPEAL PUBLIC HEARINGS: *A Guide for Presenting Testimony*

## INTRODUCTION

*There is nothing beyond the reach of ordinary citizens doing the daily work of democracy, and no problem too great to tackle with the power of active citizenship.”*

– Joan Claybrook

Testifying at a public hearing is a principal way to be engaged in civic life and strengthen your community. Elected leaders rely on citizens to broaden their knowledge about neighborhood and community-wide issues. Still, testifying before the City Council can be challenging, especially if you've never attended a public hearing. This outline is designed to help you prepare and become familiar with the procedures of a public hearing. If you know what to expect and are prepared, your message is more likely to be effective.

A number of different types of land use reviews may be heard by the City Council on appeal. These reviews are known as **quasi-judicial actions**. Land Divisions, design and environmental reviews, and conditional uses are common quasi-judicial actions. If the initial decision was made by a hearings officer, the design commission or landmarks commission and it is designated a Type III process under the City Zoning Code, the decision could be appealed to the City Council.

**Legislative actions** are another type of land use action. Legislative actions must be heard by City Council but do not follow the appeal procedures in this guide.

## CONTENTS



This guide is organized into the following sections:

- 1. PREPARING FOR THE HEARING** – things to do in advance of the hearing.
- 2. DAY OF THE HEARING** – process of hearing, signing in, order and time limits of testifiers.
- 3. IMPORTANT CONSIDERATIONS** – reminders and tips for effective testimony.
- 4. AFTER THE RECORD CLOSES** – what happens after the public participation part of the hearing is closed.
- 5. GLOSSARY OF TERMS** – **terms highlighted in blue text** are explained here.
- 6. RESOURCES** – where to get additional information.

# 1. PREPARING FOR THE HEARING

  
CITY OF  
PORTLAND, OREGON  
HEARINGS OFFICE

**DECISION OF THE HEARINGS OFFICER**

**I. GENERAL INFORMATION**

**File No.:**  
LU 07-114901 ZC LDP AD  
(HO 4070026)

**1) Read the lower review body's decision and appeal statement.**

The decision may be from the hearings officer or the design or landmarks commissions. It contains contact information and facts about the subject site and proposal and the relevant **approval criteria**. Most importantly, it provides the reasons behind the decision. Also, read the appeal statement. Understand what parts of the decision are at issue. Decisions are available on the BDS website. See the Resource Section of this document.

**2) Explore other sources of information.**

The case planner and other city staff, neighbors, the applicant, property owner, and neighborhood and business associations present different perspectives and can provide you with the information needed to shape your testimony. Become familiar with the relevant sections of the Zoning Code, available online at [portlandonline.com/zoningcode](http://portlandonline.com/zoningcode).

**3) Know the hearing format.**

Many appeal hearings before City Council do not allow new information. Find out if the hearing will be **evidentiary** (you can submit new information) or **on the record** (no new information, arguments are limited to existing record). This information is contained in the notice of the hearing and the decision document. Contact the City Council clerk or case planner if you need to confirm.

**4) Identify issues important to you.**

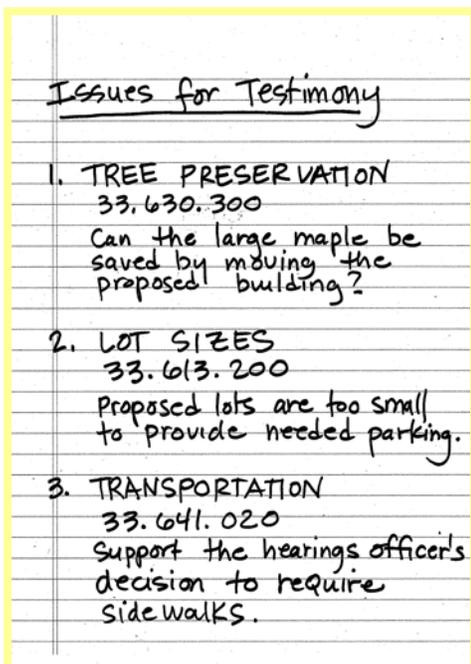
Specify the aspects of the proposal you support or oppose. To be considered, your issues must be related to the relevant **approval criteria** or to criteria you think should have been addressed.

**5) Create an outline of your testimony.**

Base your outline on the relevant approval criteria. How does the proposal meet or not meet the approval criteria. It's also a good idea to rehearse and note the time. Individuals are given a maximum of 3 minutes to testify. You will have more time if you are the appellant or the principal opponent of the appeal.

**6) Decide the format of your testimony.**

You may supplement your oral testimony with presentation boards, maps, photos, or powerpoint presentations. Powerpoint presentation files must be provided to the city council clerk prior to the hearing. A written version of your testimony will be accepted at the hearing. Please provide 8 copies to the city council clerk. Keep in mind that no new evidence can be presented for **on the record** hearings.



## 2. DAY OF THE HEARING

*I get up every morning  
determined both to change the  
world and have one hell of a good  
time. Sometimes this makes  
planning the day difficult.*

-- E.B. White

**Arrive early.** Confirm the location and time of hearing: Check the auditor's calendar at [www.portlandonline.com/auditor](http://www.portlandonline.com/auditor). Hearings are usually held in City Council Chambers, City Hall, 1221 SW 4<sup>th</sup> Avenue.

**Sign In.** A sign-in sheet is available outside Council Chambers 30 minutes before the scheduled hearing. Sign yourself in as either a supporter or opponent of the appeal. Individuals sign up on a first-come, first-served basis. Take a seat in the Council Chambers. If you are submitting written testimony, provide 8 copies to the City Council Clerk.

**Testimony.** When City Council is ready to hear public testimony, the City Council Clerk will call (in order) the names of those who signed up to testify, calling three names at a time. The three individuals will walk up together to take a seat at the table facing City Council.

**Introducing your Testimony.** State your full name for the record. Speak directly into the microphone.

**Time Limit for Testimony.** Each individual has a maximum of three (3) minutes to testify unless otherwise stated. Refer to the chart below.

### Order of Presenters and Testifiers



Presenter/Testifier	Notes	Time Limit
Council Clerk	Reads the item.	As needed
City Attorney	Makes opening procedural announcements.	As needed
Bureau of Development Services Staff	Reads the relevant approval criteria, presents the lower review body's decision.	Approx. 10 minutes
Appellant	Presents arguments.	10 minutes
Supporters of Appellant		3 minutes each
Principal Opponent of the Appeal		15 minutes
Other Opponents		3 minutes each
Appellant Rebuttal	Limited to addressing opponents' testimony.	5 minutes
Council Discussion	May make a decision, continue hearing, or leave record open.	As needed

### 3. IMPORTANT CONSIDERATIONS

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#### **EXAMPLE of Relevant Approval Criteria:**

*In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are:*

*33.641.020. Transportation Impacts. The transportation system must be capable of safely supporting the proposed development . . . .*

- **Your testimony can only address the applicable approval criteria.** State how you think the proposal meets or falls short of meeting the approval criteria.
- **Be clear about your position.** Your testimony should clarify your role and interest in the land use review/proposal. Do you agree with the lower review body's decision and oppose the appeal? Or, do you support the appellant who is seeking to change the decision?
- **The burden of proof is on the applicant** of the proposal to show that each and every element of the approval criteria can be satisfied. Testifiers may argue the criteria are being incorrectly interpreted, the wrong approval criteria are being applied, or additional approval criteria should be applied.
- **Testifying as a Group.** Instead of each individual group member restating the same issue, it is more effective to have each group member address a different issue and to state that they support the previous testimony on an issue.
- **Requests to City Council.** For **evidentiary hearings**, any party can request that the record be kept open. Note that this decision is at the sole discretion of City Council.

### 4. AFTER THE RECORD CLOSES

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After the public participation part of the hearing has ended, City Council will **close the record**.

**When will the City Council make a final decision?** That depends on the Council vote. If the vote is to uphold the lower review body's decision, a final vote can be taken at the conclusion of the hearing and the decision will be mailed soon after. Typically, if Council votes to change the lower review body's decision, a tentative vote is taken, and a future date is set for a final vote to allow time to amend the written decision. You may attend this meeting to witness the final vote but testimony typically is not taken by City Council at the time of the final vote.

**Who is notified of Council's final decision?** Those who were mailed the previous decision, and those who testified at the City Council hearing.

**Appeal rights.** The Council's decision is a final land use decision. If you appeared before the Council orally or in writing, you may appeal the Council's decision to the State Land Use Board of Appeals (LUBA) within 21 days of the date Council makes a final decision.

## 5. GLOSSARY OF TERMS

*A community is like a ship: everyone ought to be prepared to take the helm.*

– Henrik Ibsen

**Approval criteria.** The set of statements that must be answered, supported by facts, and be satisfied in their entirety in order for a proposal to be approved. There are many different sets of approval criteria in the Portland Zoning Code; each set is applied to a specific type of review such as a land division or conditional use. The relevant approval criteria for a specific proposal are identified throughout the process in the following documents: the public notice, the staff report and recommendation, and the lower review body's decision. They are also stated during the public hearing.

**Burden of proof.** The burden to present facts and evidence that demonstrate that the approval criteria have been satisfied.

**Continued hearing.** The council may decide to continue the hearing to a future date, in order to hear additional testimony. The Mayor will state the date and time of the continued hearing.

**Evidentiary hearing.** An evidentiary hearing (also called “de novo”) allows for new facts and evidence and new arguments. Appeal hearings may be evidentiary hearings.

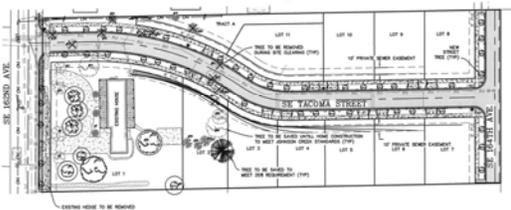
**Legislative actions.** Generally, legislative actions involve the adoption of law or policy citywide or to a broad geographical area of the city.

**On the Record hearing.** An “on the record” hearing is limited to the factual record compiled by the initial review body. The Council will only allow arguments that are based on the record, no new facts or evidence can be introduced.

**Quasi-judicial actions.** Generally, quasi-judicial actions involve the application of existing law or policy to a small geographical area or a specific factual situation. Three factors distinguish quasi-judicial decision making: (1) the process is bound to result in a decision; (2) pre-existing criteria are applied to facts to make a decision; and (3) the decision is directed at a closely circumscribed factual situation (site and proposal). A quasi-judicial process must include notice, an opportunity to be heard and present evidence; an impartial decisionmaker; and a written decision that explains the basis for the decision.

**Record closed.** After all testimony, evidence and rebuttal is submitted, the Council will end the public participation portion of the hearing. This means Council will accept no more oral or written testimony.

**Record held open.** A participant may request and the council may decide to leave the record open until a specified date, to allow submission of additional information and rebuttal of that information. The record will close after that date.



A tree preservation plan is often part of the public record for a land division. For this site, the plan documents existing trees and structures, and identifies the trees to be preserved.

## 6. RESOURCES

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### HOW TO GIVE TESTIMONY AT PUBLIC HEARINGS

#### Tips:

- *Arrive early to sign up to testify. This will also allow you to listen to testimony from others.*
- *Be polite and project a positive image.*
- *Try to anticipate questions you may receive and consider how you would answer them. . . .*

**Case Planner**, Bureau of Development Services (503) 823-7300.

#### **Bureau of Development Services Website**

[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

Contains Zoning Code and information for land use review procedures. Land use decisions are posted by neighborhood area.

#### **City Council Clerk's Office** (503) 823-4086

[www.portlandonline.com/auditor](http://www.portlandonline.com/auditor)

City Council hearing procedures and agendas, submitting written testimony, submitting powerpoint presentations, sign language interpreter, assisted listening devices.

#### **Oregon Dept. of Land Conservation and Development** (503) 373-0050

[www.oregon.gov/lcd](http://www.oregon.gov/lcd) -- publications/citizen involvement.

Tips about How to Testify at Land Use Hearings.

#### **Land Use Board of Appeals** (503) 373-1265

[www.oregon.gov/luba](http://www.oregon.gov/luba) – how to file an appeal, hearings schedules, final decisions.