



## Memorandum

Date: March 31, 2011

To: Commission for Citizen Involvement

From: Chris Kerr, Senior Planner

Subject: Receipt and distribution of public testimony prior to Quasi-judicial hearings

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This memorandum is intended to assist the Commission in their discussion on the procedures for collecting and distributing public testimony prior to public hearings. It provides an overview of the City's current practices, legal parameters, a review of the practices of other Cities, and options for the Commission to consider.

Please keep in mind a few general points about testimony. The public and/or applicant may submit testimony at any time until the public hearing portion of the hearing is closed. The information is always accepted into the record, available to the public and provided to the Commission for their consideration.

### ***Current Code/practices***

Chapter 99 of the CDC requires that notice be mailed at least 20 days prior to the public hearing, with notice in the newspaper at least 10 days prior to the hearing, and a completed Staff Report to be prepared and posted on the website 10 days prior to the hearing. Because the Commission meets on Wednesday's, Staff mails a completed final Staff Report on the Friday 12 days prior to the hearing. Bearing in mind the 120 day 'clock' to complete the review of applications, very little flexibility exists for adjusting these dates.

The current process for distributing testimony to the Commission is somewhat fluid. Staff always assembles all testimony received up until the day the Staff Report is finalized (12 days prior to hearing) and includes it in the Staff Report. This means however, that Staff cannot always provide responses or commentary on questions or testimony received immediately prior to the printing of the Report and the testimony is simply included with the Report. Any testimony received after the Report is completed is provided to the Commissioners under separate cover on the Friday 5 days before the meeting. Anything received after that time is provided to the Commissioners at the worksession immediately prior to the hearing on Wednesday.

### ***State requirements***

*Quasi-judicial* applications (Design Review, subdivisions, variances, etc.) in the City must adhere to the State statues for quasi-judicial land use hearings. Compared to the City's practices, the requirements are minimal, and the City meets or exceeds all of the minimum legal requirements; however, for discussion purposes, some key components that impact testimony include:

- The City must take final action (includes any appeals to Council) on an application within 120 days;
- Public notice must be mailed at least 20 days prior to the public hearing;
- The Staff report must be made available for inspection at least seven days prior to the hearing;
- Any participant may request that the record be left open at the first evidentiary hearing and the Commission must either leave the record open for at least seven days or continue the hearing.

*Legislative* applications (CDC or Comprehensive Plan amendments) are subject to slightly different and less complicated hearing requirements than quasi-judicial applications. The principal differences are that there is no 120 day 'clock', the applicant is almost always the City, and the Commission only makes recommendations rather than final decisions. The Commission often continues hearings numerous times on legislative items to allow for more discussion, to pursue alternatives, require more analysis, or to ask for more input on an issue. For these reasons, accepting public input on legislative items has not historically been an issue in the City.

### ***Summary of key practices of other Cities***

None of the City's surveyed by Staff adheres 'strictly' to their rules, most of which are unwritten. Additionally, most of the planners I spoke with said problems are rare and only occur on large, highly controversial projects which, in any case, typically receive second hearings. All of the Cities utilize the option of leaving the record open for seven days, rather than continuing the hearing, whenever possible. Most of the Cities include the deadline for submitting testimony in their hearing notice.

#### *City of Beaverton:*

- Accepts testimony until 14 days prior to the hearing for inclusion into the Staff Report
- All testimony received after that is handed out to the Commissioners at the hearing
- Staff Report is issued 7 days prior to hearing
- Staff addresses testimony received after 14 days under separate memo only if very significant
- Commission will take 15 minute 'break' after public testimony portion of hearing if significant testimony is received
- Have not experienced many problems with system

#### *Lake Oswego:*

- Staff Report is prepared 10 days prior to meeting
- All testimony received after that is handed out to the Commissioners at the hearing
- Commission has occasionally been 'bombarded' with testimony at their meeting
- Commission is considering amending their rules as they have experienced issues. Their concern is an excessive number of continuances due to receipt of last minute testimony.

#### *Oregon City:*

- Accepts testimony until 20 days prior for inclusion into the Staff Report
- All testimony received after that date is provided to Commissioners at the hearing.
- Staff Report is prepared 14 days prior to hearing
- Staff recently started putting testimony on website 7 days prior to the hearing. .

*Wilsonville:*

- Accepts testimony until 12 days prior for inclusion into the Staff Report
- All testimony received after that date is provided to Commissioners at the hearing, unless of great significance
- Staff Report is prepared 7 days prior to hearing
- Review Board requests Staff to “encourage parties to provide written testimony in advance of hearing or it may not receive the attention they would like”

**Options**

It's imperative that the procedures for collecting and reviewing testimony be clear and predictable and be applied equally and consistently. In practice, there will always be information provided at the last minute at a public hearing that requires the Commission to delay their deliberations and decision by some means.

For a variety of reasons, positive and negative testimony on an application is received at all points during the planning process, right up until the closing of the public hearing on the night of the final meeting. Some testimony comes in as soon as the application is submitted, some is submitted with the intention of influencing the final Staff Report, some is in response to items in the Staff Report and other testimony is provided after reviewing hearing other testimony (such as the applicant's presentation at the hearing). For this reason, having pre-determined 'windows' when testimony is bound and distributed makes practical sense.

With some minor modifications, the current practice can meet these goals. Without amending the notification requirements in CDC, Staff could apply, and strictly enforce the following windows of accepting testimony:

- All testimony received 15 days prior the meeting is included in the Staff Report
- Testimony received up until the Thursday (6 days) before the hearing is distributed to the Commissioners on Friday prior to the meeting, via mail, and is posted to the web and sent to our e-notification group. This is essentially the same procedure used for Council hearings.
- Testimony received after that time is presented to the Commissioners at their worksession prior to the meeting.
- The Commission should utilize the 15 minute 'reading' period at the end of their worksession immediately prior to the hearing to review any new testimony (whenever it is necessary) . Commissioners who do not want to read quietly during this period should leave the room.
- When significant testimony is received during the public hearing that requires time to review, the Commission should authorize a 15-30 minute break in the meeting after public hearing portion is closed, prior to their deliberations.
- Rather than an automatic continuance of a hearing, the Commission should consider and utilize the option of 'leaving the record open' for 7 days. At the next meeting the Commission can simply deliberate and vote rather than taking additional testimony.

Another recommended change would be to clarify these dates in the public hearing notice so that all parties are aware of them. Also, because emails, and email chains tend to be received at the last minute, Staff would recommend that all emails be distributed through the Planning

Department in accordance with the timeframes above. Emails should not be treated any differently than other correspondence.

A potential consideration that would require a CDC amendment would be to complete the Staff Report seven days prior to the hearing rather than the current 12 days. This is common in most other Cities and would allow 5 more days to 'collect' testimony to be included in the Staff Report. However, because it is an accepted practice in this City and because it would have little impact on the receipt of public testimony, Staff would not recommend it at this time.