

Chapter 17.94

HEARINGS

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17.94.010 General provisions.

Public hearings shall be held on all quasi-judicial and legislative land use applications.

Statutory Reference: ORS Ch. 197 and 227

History: Ord. 1131 §2 (part), 1990.

17.94.020 Notice.

(1) Written notice of quasi-judicial hearings and hearings where the subject is a legislative zone change shall be mailed to the applicant, the owner of the subject property and owners of record-as identified on the most recent Clackamas County property tax assessment roll of property located within two hundred fifty (250) feet of the subject property. Notice shall also be provided to affected agencies, recognized neighborhood or community organizations whose boundaries include the subject property and affected Dual Interest Area Agreement parties. Notice shall be mailed a minimum of twenty (20) days in advance of the scheduled hearing.

(2) The notice shall contain the following:

- (a) An explanation of the nature of the application and the proposed use or uses which could be authorized;
- (b) The criteria from this title and the comprehensive plan that apply to the application at issue;
- (c) The street address or other easily understood geographical reference to the subject property;
- (d) The date, time and location of the

hearing;

(e) A statement that failure to raise an issue in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue;

(f) The name of the city representative to contact and the telephone number where additional information may be obtained;

(g) A statement that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;

(h) A statement that a copy of the staff report will be available for inspection at no cost at least seven (7) days prior to the hearing and will be provided at reasonable cost; and

(i) A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

(j) When a potential for advance financing of public improvements pursuant to Chapter 13.20 is anticipated by either the city or the applicant, the notice shall contain a statement to the effect that property adjacent to the development which might derive benefit from the developer's public improvements could be subject to advance finance reimbursement as specified in Chapter 13.20 of the Gladstone Municipal Code. Failure to provide this statement in a notice shall not invalidate the notice.

(3) Failure of the property owner to receive notice shall not invalidate such proceedings if the city can demonstrate by affidavit that such notice was sent. Notice is deemed given when deposited with the U.S. Postal Service.

(4) If the subject of the hearing is a legislative action, notice shall be given by publication in a newspaper of general circulation at least twenty (20) days prior to the hearing before the Planning Commission and ten (10) days prior to the hearing before the City Council.

(5) Written notice as described in this section shall be provided to residents of manufactured dwelling parks of applications that would change the zone of property which includes all or part of the park in which they reside.

Statutory Reference: ORS Ch. 197 and 227

History: Ord. 1131 §2 (part), 1990; Ord. 1141 §1,1991;

Ord. 1171 §1(J), 1993; Ord. 1175 §7, 1993; Ord. 1323 §1 (part), 2002; Ord. 1348, 2004.

17.94.030 Documents.

(1) All documents or evidence relied upon by the applicant shall be submitted to the city and available for inspection twenty (20) days prior to the hearing.

(2) If additional documents or evidence is provided in support of an application less than twenty (20) days prior to the hearing, any person so requesting shall be entitled to a continuance of the hearing.

Statutory Reference: ORS Ch. 197 and 227

History: Ord. 1131 §2 (part), 1990; Ord. 1323 §1 (part), 2002.

[**Ed. Note:** The publication(s) referred to or incorporated by reference in this ordinance are available from the office of the City Recorder.]

17.94.040 Hearing procedure.

(1) At the start of a hearing, a statement containing the following shall be made:

(a) The applicable substantive criteria;

(b) Testimony, arguments and evidence must be directed to the criteria in Subsection (1)(a) of this Section or other criteria in the comprehensive plan or this title that the person believes to apply to the decision;

(c) Failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue;

(2) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The request shall be granted by continuing the public hearing or leaving the record open for additional written evidence, arguments or testimony.

(a) If a continuance is granted, the hearing shall be continued to a date, time and place certain at least seven (7) days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or 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 (7) days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.

(b) If the record is left open for additional written evidence, arguments or testimony, the record shall remain open for at least seven (7) days. Any participant may file a written request for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record. If the record is reopened to admit new evidence, arguments or testimony, any person may raise new issues related to the new evidence, arguments, testimony or criteria for decision-making that apply to the matter at issue.

(c) A continuance or extension granted pursuant to this Section shall be subject to the limitations of ORS 227.178 and 227.179 unless the continuance or extension is requested or agreed to by the applicant.

(3) Unless waived by the applicant, the applicant shall be allowed at least seven (7) 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. This seven (7) day period shall not be subject to the limitations of ORS 227.178 and 227.179.

(4) The decision maker shall approve, approve with conditions or deny a land use action. Findings in support of the decision shall be adopted and a written memorandum of the decision shall be mailed to the applicant and any party requesting notice of the decision, provided the party so requested in writing specifying their address.

(5) The Council may remand any land use application to the Planning Commission for further review and recommendation.

(6) In the event of a challenge to the impartiality of any member of the Planning Commission or the City Council, the remaining members shall vote whether to excuse the person so challenged. A majority vote of the nonchallenged members who are present shall control.

Statutory Reference: ORS Ch. 197 and 227

History: Ord. 1131 §2 (part), 1990.

[Ed. Note: The publication(s) referred to or incorporated by reference in this ordinance are available from the office of the City Recorder.]

17.94.050 City Administrator decisions.

(1) The following types of applications shall be reviewed by the City Administrator or designee and a decision rendered:

- (a) Lot line adjustments;
- (b) Type I partitions;
- (c) Home occupations;
- (d) Water quality resource area determinations pursuant to GMC Subsection 17.27.020(6);
- (e) WQ District permits pursuant to GMC Subsection 17.27.030 (2).
- (f) Billboard permits;
- (g) Adjustments, pursuant to GMC Chapter 17.73.

(2) An applicant may request that the application be heard directly by the Planning Commission.

(3) Written notice of the City Administrator's or designee's decision shall be mailed to the applicant, the owner of the subject property and owners of record – as identified on the most recent Clackamas County property tax assessment roll - of property located within one hundred feet (100') of the subject property. Notice shall also be provided to affected agencies, recognized neighborhood or community organizations whose boundaries include the subject property and affected Dual Interest Area Agreement parties

- (4) The notice shall contain the following:
 - (a) An explanation of the nature of the decision;
 - (b) An explanation of the nature of the application and the proposed use or uses which could be authorized;
 - (c) The criteria from this title and the comprehensive plan that apply to the application at issue;
 - (d) The street address or other easily understood geographical reference to the subject property;
 - (e) The name of the city representative to contact and the telephone number where additional information may be obtained;
 - (f) A statement that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable

criteria are available for inspection at no cost and will be provided at reasonable cost;

(g) A statement that any person who is adversely affected or aggrieved or who is entitled to written notice under GMC Subsection 17.94.050(3) may appeal the decision by filing a written appeal pursuant to GMC Section 17.90.060 (forms of petitions, applications and appeals) and GMC Chapter 17.92 (appeals);

(h) A statement that the decision will not become final until the period for filing a local appeal has expired; and

(i) A statement that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

(5) The decision of the City Administrator or designee shall become final unless appealed in writing within fifteen (15) days of the notice of decision.

(a) If appealed, the application shall be reviewed by the Planning Commission at a public hearing.

(b) The decision of the Planning Commission shall be final unless appealed to the City Council.

Statutory Reference: ORS Ch. 197 and 227

History: Ord. 1131 §2 (part), 1990; Ord. 1179 §19(A), 1993; Ord. 1323 §1 (part), 2002; Ord. 1334, §9 (part), 2002, Ord. 1374, 2006.

17.94.060 Planning Commission decisions.

(1) A public hearing shall be held before the Planning Commission and a recommendation made by the Planning Commission to the City Council on the following types of applications:

- (a) Annexations;
- (b) Zone changes;
- (c) Comprehensive plan amendments;
- (d) Amendments to the text of this title, unless the City Council finds that an emergency exists requiring only a hearing before the City Council on the amendment.

(e) Requests for revocation, pursuant to GMC Section 17.94.100 (revocation of approvals), of previous application approvals granted by the city;

(f) Map amendments pursuant to GMC Section 17.27.080 (map administration) or GMC Section 17.29.080 (map administration).

(2) A public hearing shall be held before the

Planning Commission on the following types of applications. The Planning Commission's decision shall be final unless appealed to the City Council.

- (a) Variances;
- (b) Alterations, expansions or changes of use of nonconforming uses;
- (c) Design review;
- (d) Interpretations of this title or the comprehensive plan;
- (e) Subdivisions;
- (f) Type II partitions;
- (g) City Administrator decisions appealed pursuant to GMC Subsection 17.94.050(5);
- (h) Conditional uses;
- (i) Greenway conditional uses;
- (j) FM District variances and appeals pursuant to GMC Section 17.29.090.

Statutory Reference: ORS Ch. 197 and 227

History: Ord. 1131 §2 (part), 1990; Ord. 1179 §19(B), 1993; Ord. 1323 §1 (part), 2002; Ord. 1334 §9 (part), 2002; Ord. 1349, §1, 2004.

17.94.070 City Council decisions.

A public hearing shall be held before the City Council on the types of applications identified in GMC Subsection 17.94.060(1) and on all Planning Commission decisions appealed to the City Council.

Statutory Reference: ORS Ch. 197 and 227

History: Ord. 1131 §2 (part), 1990; Ord. 1323 §1 (part), 2002.

17.94.080 Action on applications.

(1) Following a hearing, the Planning Commission or City Council may:

- (a) Approve the application/recommendation;
- (b) Deny the application/recommendation;
- (c) Approve the application/recommendation with conditions.

(2) On appeal, the Planning Commission or City Council may modify, delete or add conditions of approval.

Statutory Reference: ORS Ch. 197 and 227

History: Ord. 1131 §2 (part), 1990; Ord. 1323 §1 (part), 2002.

17.94.090 Aggregate resource extraction.

For applications regarding aggregate resource extraction, the Oregon Department of Geology and Mineral Industries must either be

notified or issued a permit for operation.

Statutory Reference: ORS Ch. 197 and 227

History: Ord. 1131 §2 (part), 1990.

17.94.100 Revocation of approvals.

The City Council may, at any time after reviewing a recommendation from the Planning Commission and conducting a hearing pursuant to this chapter, modify or revoke any prior approval or approval condition it or the Planning Commission has made, for the following reasons:

(1) Material misrepresentation or mistake of fact made on behalf of or by the applicant, whether intentional or unintentional.

(2) A failure to comply with conditions of approval.

(3) A failure to use the premises in accordance with the terms of approval.

(4) A change in state law mandating compliance.

Statutory Reference: ORS Ch. 197 and 227

History: Ord. 1131 §2 (part), 1990.