



AGENDA

MOLALLA CITY COUNCIL WORK SESSION
March 23, 2022
6:00 PM
Molalla City Hall
117 N. Molalla Avenue, Molalla, OR 97038

Mayor Scott Keyser

Council President Jody Newland
Councilor Elizabeth Klein
Councilor Terry Shankle

Councilor Leota Childress
Councilor Crystal Robles
Councilor Eric Vermillion

*In accordance with House Bill 2560, the City of Molalla adheres to the following practices:
Live-streaming of the Molalla City Council Meetings are available on Facebook at “Molalla City Council Meetings – LIVE” and “Molalla City Council Meetings” on YouTube.*

Citizens can submit Public Comment in the following ways: attend the meeting, email the City Recorder @ recorder@cityofmolalla.com by 4:00pm on the day of the meeting, or drop it off at City Hall, 117 N. Molalla Avenue.

- 1. CALL TO ORDER AND ROLL CALL**

- 2. APPROVAL OF AGENDA**

- 3. DISCUSSION ITEMS**
 - A. Quasi Judicial Hearing Protocol

- 4. ADJOURN**

Agenda posted at City Hall, Library, and the City Website at <http://www.cityofmolalla.com/meetings>. This meeting location is wheelchair accessible. Disabled individuals requiring other assistance must make their request known 48 hours preceding the meeting by contacting the City Recorder's Office at 503-829-6855.

Conducting Quasi-Judicial Hearings

City of Molalla City Council Work Session

March 23, 2022

Quasi-Judicial Role

- Legislative vs. Quasi Judicial:
 - Legislative: The Making of Law and Policy (e.g. Ordinances)
 - Quasi Judicial: Applying the Law and Policy to a Specific Fact Pattern (e.g. Land Use Decisions)
- Not as simple as it seems – 3 Part Test:
 - Pre-existing Rule or Policy? Number of People Directly Affected? Decision Required?
- Pretty Simple for Us – MMC Tells Planning What Process to Use:
 - Site Design Review: Type III – Quasi Judicial

Sources of Authority and Regulation for Quasi Judicial Hearings

- US Constitution – Amendment XIV
- ORS 197.763 Conduct of local quasi-judicial land use hearings
- MMC 17-4.1.040 Type III Procedure (quasi-judicial review – public hearing)

US Constitution XIV Amendment

Due Process

- The person affected must be informed of the decision
 - Notice - Staff & Applicant
- The person affected must be permitted to address the decision maker before the decision is made
 - Quasi-Judicial Hearing – Staff and Planning Commission/Hearings Officer/Council
- The person affected has the right to an impartial decision-maker.
 - Ex-Parte Contacts, Bias, Conflict of Interest

ORS 197.763

- These rules must be incorporated in the Development Code and Comprehensive Plan.
- Notice Requirements – not part of this training
- **Hearing Procedures ORS 197.763(4)-(7) & (9)**

MMC 17-4.1.040

- Application Requirements
- Procedure – Really a notice requirement
- Appeals to City Council & Appeals to LUBA
- Effective Date of Decision
- **Conduct of the Public Hearing MMC17-4.1.040(C)**
- **Record of the Public Hearing MMC17-4.1.040(E)**

Purposes of Quasi-Judicial Hearings

- Ensure Constitutional Due Process is provided
- Apply laws/policies to factual situations
- Render a decision
- Create a record
- Ensure equal treatment through standardized procedures

Conducting Quasi-Judicial Hearings

Opening Statement

- Must Contain:
 - Applicable approval criteria by code chapter.
 - Limit testimony to applicable criteria in the staff report, comprehensive plan, or land use regulations that the person testifying believes applicable to the decision.
 - Failure to raise an issue with sufficient detail to provide the hearings body and/or parties an opportunity to respond may preclude appeal to LUBA.
 - At the conclusion of the initial evidentiary hearing, the hearing body will deliberate and make a decision based on the facts and arguments in the public record.
 - Any participant may ask the hearing body for an opportunity to present additional relevant evidence or testimony within the scope of the hearing...
 - If the request is granted, the hearing body must leave the record open or schedule a date to continue the hearing (procedures for each contained in the same section)

Conducting Quasi-Judicial Hearings: Impartial Hearing Body – No Bias Allowed

- Ex Parte contacts – disclosure required IAW ORS 227.180
- Real conflicts of interest – member shall not participate unless allowed under state law
- Appearance of conflict of interest – member shall disclose their relationship to the applicant on the record and state whether they are capable of a fair and impartial decision
 - If not, they shall be excused from the hearing
- Otherwise Biased – member must disclose and not participate

Conducting Quasi-Judicial Hearings: Presenting and Receiving Evidence

- Hearing body may set limits on: oral presentation times, cumulative, repetitious, irrelevant, or personally derogatory statements and evidence
- No oral testimony may be received after the close of the public hearing
 - Written testimony may be received after close only when record left open
- Members may visit the site and surrounding area, and may use information obtained in the visit to support their decision
 - But only if the information is disclosed at the beginning of the hearing and an opportunity to dispute the information is provided

Conducting Quasi-Judicial Hearings: Decision Making

- The body may only rely on evidence in the public hearing record in making its decision, except...
 - The body may take notice of facts not in the record (e.g. local, state, federal regulations, previous city decision, case law, staff reports)...
 - The body must announce this intention and provide all participants (present or not) an opportunity to request the record be reopened to present evidence concerning the newly presented facts.

Conducting Quasi-Judicial Hearings: Leaving the Record Open & Continuation

- Leaving the record open
 - For written testimony only;
 - 7 days minimum;
 - Any participant may request an opportunity to respond to new evidence presented during the “left open” period;
 - The request must be granted if made, and the record must be re-opened;
 - Additional procedures to re-open the record and take responsive written or oral testimony
- Continuation
 - 7 days minimum;
 - Requires opportunity to present and respond to new evidence;
 - Any new written evidence, combined with a request to leave the record open for response must be granted

Conducting Quasi-Judicial Hearings: Record of the Public Hearing

- All materials considered by the body
- All materials to the body by Planning regarding the application
- The minutes of the hearing
- The final written decision (NOD)
- Copies of all notices given
- Note – all exhibits must be marked and included in the record

Practical Application

Apply the facts on the record to the law on the books...

Staff attempts to do this for you in the staff report...

The question is the applicable criteria and whether the application meets it, or can meet it with the proposed conditions of approval.

- Script provided to Chair – Planning Staff
- Opening Statement – Chair
- Ex Parte Contacts, Conflicts, Bias – Body
- Presentation of Staff Report – Staff
- Entry of any additional correspondence on the record – Staff
- Public Comment – Have staff report in front of you during this portion so you can view the criteria to determine whether the commentary is relevant
 - Applicant presentation of proposal
 - All those in favor to speak
 - All those opposed to speak
 - All those neutral to speak
 - Applicant Rebuttal
 - Staff addresses questions or issues raised during testimony
- Close public Comment
- Body may ask questions regarding testimony
- Commission Discussion
- Final Decision
 - Must adopt or amend (then adopt as amended) findings in staff report
 - Amendments must include a new statement of finding