

BY THE COUNCIL: BEAUMONT, HIGGINS, MITCHELL AND SOUZA

A RESOLUTION APPROVING LAND USE PUBLIC HEARING PROCEDURES FOR THE CITY OF GARDEN CITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in certain circumstances, the Idaho Code requires public hearings rather than public meetings. For example, the Local Land Use Planning Act requires that public hearings be held to adopt ordinances, to adopt, amend or repeal the comprehensive plan, or to grant a conditional use permit; and

WHEREAS, Idaho Code § 67-6534 requires that cities, by ordinance or resolution, adopt procedures for the conduct of public hearings in matters governed by the Local Land Use Planning Act, regardless of whether such hearings be held by the Garden City Design Review Committee, the Planning and Zoning Commission, or the City Council; and

WHEREAS, the procedures for the conduct of Appeals, and City Council Review of Conditional Use Permits, are governed by the Garden City Code and Administrative Rules, and are not otherwise governed by this Resolution to the extent that such are not *de novo*. In addition, procedures and guidelines for Appeals, and City Council Review of Conditional Use Permits, may be established from time to time by Resolution of the Council; and

WHEREAS, from time to time it is beneficial to review and revise public hearing procedures to better facilitate input from the public and to promote a thorough and expeditious hearing.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GARDEN CITY, IDAHO that Garden City hereby adopts the following procedures to be applied in matters concerning land use-related public hearings:

SECTION 1. Public Notice:

- a. If a public hearing is required by law or ordinance, the Design Review Committee, when applicable, the Planning and Zoning Commission and, when applicable, the City Council shall hold at least one public hearing in which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of the time and place and a summary of the proposal shall be published in the Idaho Statesman. Notice of public hearing should only be published when an application is complete in a manner sufficient to address the requirements established by ordinance and application forms.

- b. In the case of annexations, conditional use permits, site-specific rezones, subdivisions, and variances, notice shall also be provided to property owners within the land being considered; those record owners of lands within three hundred feet (300') of the external boundaries of the land being considered; and, optionally, within any additional areas that may be substantially impacted by the proposal as determined by the development services department staff. Contents of the mailed notice must contain the information required by law and when practical should include information guided by this Resolution such as requirements of testimony, default time limits (or issue-specific time limits, if known), timing for allowing written submissions, and other significant conditions or restrictions on testifying.
- c. When mailed notices would be required to be sent to two hundred (200) or more property owners, a notice of public hearing, at least 2" x 4" in size, published in the Idaho Statesman at least fifteen (15) days prior to the hearing, shall be considered adequate in lieu of otherwise required mailed notices.
- d. For site-specific matters, the subject property should be posted with signs that comply with the requirements in the Garden City Code, including describing the type of action to be considered, contact information for the development service department, and the time, date and location of the hearing. Such signage shall be posted on the site as required by law.

SECTION 2. General Rules for Testimony:

- a. At the commencement of the public hearing, the Committee/Commission/Council, or the Chairperson/Mayor, may establish a time limit to be observed by all speakers. This Resolution provides the default time limits as follows:
 - 1. Applicant (to describe application and reasons that it meets requirements) – not to exceed fifteen (15) minutes.
 - 2. Staff explanation – not to exceed fifteen (15) minutes.
 - 3. Individual testimony – pro, neutral and con – three (3) minutes per person (up to fifteen (15) minutes for spokesman in cases where spokesmen are pre-authorized by the chairman).
 - 4. Rebuttal by the applicant (no new evidence unless specifically allowed by the Committee/Commission/Council, or the Chairperson/Mayor – only information from the record to rebut assertions by contrary testimony) – as needed.
- b. No person shall be permitted to testify or speak before the hearing agency at a public hearing unless such person has signed his name and written his contact address on sign-up sheets to be provided by the city. This requirement shall not

apply to staff or technical witnesses directed by the Chairperson/Mayor to give evidence or information to the hearing agency.

- c. The presiding officer, or the Committee/Council/Commission, is authorized to revise the default time frames and order of proceedings so long as due process rights are maintained. In the event of disagreement by governing board members with procedural rulings by the Chairperson, the governing board may suspend or amend any one or more of these rules by majority vote of members of the governing board then in attendance, provided that due process rights are preserved.
- d. Anyone who intends to appear as a representative of a group, at a hearing where spokesmen will be allowed, should contact the development services department at least five days prior to the hearing. Staff may then apprise the representative of procedures for the hearing and any special limits or allowances concerning testimony.
- e. No person shall be permitted to speak before the Committee/Council/Commission at a public hearing until such person is recognized by the chairperson.
- f. Testimony should directly address the subject at hand.
- g. Testimony should not be repetitious with other entries into the record.
- h. Testimony should not be personally derogatory.
- i. Testimony should comply with time restrictions established by the hearing agency.
- j. If oral testimony fails to comply with the aforementioned standards, the chairperson may declare such testimony out of order and require it to cease.
- k. All public hearing proceedings shall be recorded electronically and all persons speaking at such public hearings shall speak before a microphone in such a manner as will assure that the recorded testimony or remarks will be complete.

SECTION 3. Procedures for Legislative Public Hearings.

Public hearings on legislative matters brought pursuant to requirements established by the Local Land Use Planning Act should take place after notice has been provided as required by law. Prior to publishing notice of a legislative public hearing, a draft of the legislative proposal should be prepared and be available for public inspection no later than the day the notice of public hearing is published. Procedural limits on duration of testimony may be established by the Chairperson/Mayor, subject to approval by the

governing board. Legislative public hearings do not require final decisions in a manner comparable to those for quasi-judicial proceedings.

SECTION 4. Order for Quasi-Judicial Public Hearing:

Quasi-judicial hearings involve site-specific decisions (such as rezoning specific property) as opposed to legislative hearings which require decisions that have a broad application (such as a change in the text of a zoning or subdivision ordinance, which does not necessarily affect one specific parcel of land). Quasi-judicial public hearings should follow the order of events set forth below:

- a. Brief introduction of the subject of the hearing by the Chairperson/Mayor.
- b. Presentation by applicant. (Decision makers should address their questions to the applicant at this time.)
- c. City staff report. (Decision makers should address their initial questions to staff at this time.)
- d. Open Public Hearing: testimony from public in the following order: (Questions from the decision makers should be asked of the person testifying before they leave the podium whenever possible.)
 1. In favor of proposal
 2. Neutral respecting proposal
 3. Opposed to proposal
- e. Rebuttal testimony from applicant. (Decision makers should ask any final questions.) If new facts are elicited, the public must be given an opportunity to respond to the new facts.
- f. Close Public Hearing
- g. Discussion of hearing subject among governing board members. Questions may also be directed to city staff during this period. Any procedural rules requiring a motion prior to discussion are hereby suspended for purposes of such discussion. Decision makers may table the matter until later in the meeting if other public hearings are pending or to a later meeting for deliberations.
- h. The final decision should include a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan for rezoning requests, relevant ordinance

and statutory decision criteria for other requests, pertinent constitutional principles and factual information contained in the record.

- i. When a final decision has been made, a copy of the final decision shall be sent promptly by electronic mail, or by U.S. Mail if requested, to a permit or approval applicant and to any other affected property owner entitled to mailed notice by local ordinance or state law who has requested notice of the final decision on the sign-up sheets at the public hearing or otherwise. Applicants or affected property owners shall have no more than fourteen (14) days after a final decision is rendered to request reconsideration by the final decision-maker. Any such request must identify specific deficiencies in any final decision. Failure to request reconsideration may invalidate a subsequent judicial review. After considering the identified deficiencies, the final decision shall be issued and distributed as above. If no decision is made within the sixty (60) day timeframe for reconsideration, notice of that fact shall be sent promptly by electronic mail, or by U.S. Mail if requested, to a permit or approval applicant and to any other affected property owner entitled to mailed notice by local ordinance or state law who has requested notice of the final decision on the sign-up sheets at any public hearing concerning the application or otherwise.

SECTION 5. Standards for Written Testimony:

Written testimony and exhibits from the public to be admitted at a public hearing shall comply with the following standards:

- a. Written testimony and exhibits must be submitted at least seven (7) calendar days prior to the date of the pertinent public hearing. This provision may be varied through notice to potential hearing participants.
- b. Written testimony should include the signature and address of the submitter.
- c. Written testimony should address the issue at hand.
- d. Written testimony should not be personally derogatory.
- e. If written testimony or an exhibit fails to comply with the aforementioned standards, the Chairperson/Mayor or Committee/Council/Commission may declare such testimony inadmissible.

SECTION 6. Exhibits:

All exhibits, photographs, diagrams, maps, evidence and other material presented during the public hearing should be marked or otherwise identified and entered into the record. Exhibits from the Applicant must be submitted at the time the application has been submitted unless an extension of time has been granted by development services staff, and shall be marked or identified prior to publication of any notice of

public hearing. Original exhibits may be released to the presenting party if requested in writing, and if acceptable to the development services director and legal counsel. If original exhibits are released, photocopies or reproducible photos of the originals should be maintained in the record.

SECTION 7. Records Maintained:

The city clerk should maintain records of all public meetings in the following manner:

- a. Transcribable verbatim recordings of the proceedings should be maintained in conformance with Idaho Code § 50-907 or its successor.
- b. Originals or accurate duplicates of written submittals to the hearing record and copies of applications should be maintained in conformance with Idaho Code § 50-907 or its successor.
- c. Minutes which catalog the occurrences at the public hearing shall be maintained as required by applicable sections of the Idaho Code.

SECTION 8. That this Resolution shall be in full force and effect immediately upon its adoption and approval until superseded by a Resolution addressing the same subject matter.

PASSED by the Council and **APPROVED** by the Mayor of the City of Garden City, Idaho, this 26th day of November, 2018.

ATTEST:



Lisa M. Leiby, City Clerk

APPROVED:



John G. Evans, Mayor

