

# BINGEN MUNICIPAL CODE

## Chapter 16.16

### PUBLIC HEARINGS

#### Sections:

16.16.010	Notice
16.16.020	Rules of Procedure
16.16.030	Parties
16.16.040	Record
16.16.050	Procedural Rights
16.16.060	Presentations
16.16.070	Evidence

Public hearing on all development actions, including appeals, shall be conducted in accordance with this chapter.

#### **16.16.010 Notice.**

Notice of public hearing shall be provided in accordance with Section 16.12.050 of this title and the rules of procedure adopted by the City Council. (Ord. 507 §2, 2004).

#### **16.16.020 Rules of Procedure.**

- A. Public hearings shall be conducted in accordance with the rules of procedure adopted by the City Council.
- B. At the beginning of the hearing for an application, a statement shall be made to those in attendance that:
  - 1. Lists the applicable substantive criteria;
  - 2. States that testimony and evidence must be directed toward the criteria described in B.1. of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision; and
  - 3. States that failure to raise an issue with sufficient specificity to afford the City Council and the parties an opportunity to respond to the issue precludes appeal to the Superior Court based on that issue. (Ord. 507 §2, 2004).

#### **16.16.030 Parties.**

- A. The following persons, or their authorized representatives, may participate during the public hearing:

1. The applicant or applicant's representative and the owners of the subject property;
2. Those persons entitled to notice; and
3. Any other person who demonstrates to the City Council that the person's rights may be adversely affected or aggrieved by the decision.

B. Appearance of record shall mean:

1. An oral statement made at the hearing sufficiently identifying the speaker and the speaker's address; or
2. A written statement giving the name and address of the maker of the statement and introduced into the record prior to or at the public hearing.
3. A person's name and address on a petition introduced into the record constitutes an appearance of record. (Ord. 507 §2, 2004).

**16.16.040 Record.**

- A. Absent mechanical failure or inadvertent error, a verbatim written or mechanical record of the hearing may be made. In addition, written minutes giving a true reflection of the matters discussed and the views of the participants shall be taken. Such minutes shall substitute for a verbatim record in the event of mechanical failure or inadvertent error.
- B. Failure to comply with Section 16.16.040 A. shall not invalidate any action provided that a de novo appeal or other relief is available. (Ord. 507 §2, 2004).

**16.16.050 Procedural Rights.**

Subject to the specific standards and limitations set forth in this title, the following procedural entitlements shall be provided at the public hearing.

- A. A reasonable opportunity for those persons entitled to notice or who may be adversely affected or aggrieved by the decision to present evidence.
- B. A reasonable opportunity for the applicant to rebut evidence submitted by opponents.
- C. An impartial City Council shall remain as free from potential conflicts of interest and pre-hearing ex-parte contacts as reasonably possible. It is recognized, however, that the public has a countervailing right of free access to public officials:
  1. City Council members shall disclose the substance of any significant pre-hearing ex-parte contacts with regard to the matter at the commencement of the public hearing on the matter. The member shall state whether the contact has impaired

the impartiality or ability of the member to vote on the matter and shall participate or abstain accordingly.

2. A member of the City Council shall not participate in any proceeding or action in which any of the following has a direct or substantial financial interest: The member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which the member is serving or has served within the previous 2 years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interests shall be disclosed at the meeting of the review authority where the action is being taken.
3. Disqualification of a City Council member due to contacts or conflict may be ordered by a majority of the members present and voting. The person who is the subject of the motion may not vote.
4. If all members abstain or are disqualified, the administrative rule of necessity shall apply. All members present who declare their reasons for abstention or disqualification shall thereby be re-qualified to act. (Ord. 507 §2, 2004).

**16.16.060 Presentations.**

- A. The City Council may set reasonable time limits for oral presentations. The City Council may determine not to receive cumulative repetitious, immaterial, derogatory, or abusive testimony. Persons may be required to submit written testimony in lieu of oral if the City Council determines that a reasonable opportunity for oral presentations has been provided.
- B. No testimony shall be accepted after the close of the public hearing unless the City Council sets a deadline for such testimony and provides an opportunity for review and rebuttal, oral or written, at the direction of the City Council.
- C. Unless there is a continuance, if a participant so requests before the conclusion of the hearing, the record shall remain open for at least 7 days after the hearing. Such an extension shall be subject to the limitations of RCW 58.17.140.
- D. When the City Council reopens a record to admit new evidence or testimony, any person may raise new issues that relate to the new evidence, testimony, or criteria for decision-making which apply to the matter at issue.
- E. Counsel for the City Council may be consulted solely on legal issues without reopening the public hearing. Objections alleging that counsel is discussing or testifying as to factual matters shall be heard.
- F. The presiding officer shall preserve order at all public hearings and shall decide questions of order subject to a majority vote of the City Council. Persons who become disruptive

or abusive may be ejected from the hearing.

- G. If documents or evidence are entered into the record for the application, any interested party shall be entitled to a continuance of the hearing for the sole purpose of responding to the new documents or evidence. (Ord. 507 §2, 2004).

**16.16.070 Evidence.**

- A. The City Council may place any person submitting testimony under oath or affirmation. Once sworn or affirmed, all testimony subsequently given by the person during the hearing or a continuation thereof shall be deemed to be under oath.
- B. Cumulative, repetitious, immaterial, or irrelevant evidence may be excluded. Evidence shall be admissible if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of serious affairs. Evidence may be received subject to a later filing regarding its admissibility. Erroneous admission or evidence shall not invalidate or preclude action unless shown to have prejudiced the substantial rights of a party.
- C. Members of the City Council may take official notice of judicially cognizable facts of general, technical, or scientific facts within their specialized knowledge. Such notice shall be stated and may be rebutted.
- D. Exhibits shall be marked to provide identification upon review. Unless required for an appeal, all exhibits shall be retained by the City for a period of not less than 30 calendar days after expiration of all appeals. Exhibits may be disposed of as approved by the City Administrator.
- E. Any member of the City Council may visit the subject property and may use information gained to reach a decision, provided the information relied upon is disclosed and an opportunity to rebut provided. (Ord. 507 §2, 2004).