



Oregon

Tina Kotek, Governor

HPAC Work Group Recommendation Template

Last Update: June 21, 2023

Work Group

- Availability of land
- Land development permit applications
- Codes and design
- Workforce shortages
- Financing

Recommendation

In quasi-judicial land use hearings, the burden of proof falls on the applicant. In an effort to ensure housing projects are able to respond to a

- Allow equal time for applicant as staff gets (minimum 15 minutes).
- Minimum of 5 minutes for rebuttal. Additional 1 minute of rebuttal time allowed for each person who gives public testimony.
- If planning commission/city council ask questions of staff, the applicant also get a chance to answer the same questions during the hearing, even if the hearing has been closed

Related Work Plan Topics

Increase affordability and housing choice, including middle housing, through the refinement of overly restrictive standards.

Adoption of Recommendation

*Conditionally adopted in Work Group Meeting on August 8, 2023
Adopted via email on August 18, 2023. Unanimous consent to move forward.*

Co-chairs Guidance: Standards for Analysis

1. Clearly describe the housing production issue that the recommended action(s) will address.

During public hearings held for quasi-judicial review, the burden of proof falls to the applicant to demonstrate they have met or can meet the standards and development code. Lack of time to respond can result in delays in approvals or denials that end up going to LUBA.

2. Provide an overview of the housing production issue, including quantitative/qualitative context if available.

During public hearings held for quasi-judicial review, the burden of proof falls to the applicant to demonstrate they have met or can meet the standards and development code. However, individual cities have different hearings processes. While some cities allow the time needed in order to answer questions and provide clear information, not all do. Some cities give a total of 15 minutes for applicant presentation including rebuttal. Some cities give 10 minutes for initial presentation with 5 minutes for rebuttal. Some ask the applicant questions. Some do not ask questions.

Depending on the city and the opposition involvement, you could have a 30 minutes staff report and hours of opposition testimony, and the applicant still only gets 15 minutes. If staff and the applicant are in agreement, this time limit isn't as much of an issue. But if staff and the applicant disagree on a condition or if there is a lot of public opposition, 10 minutes may not be enough time to convey the complexity of the issues to the commission/council.

This can result in applications being denied or saddled with conditions of approval which may not be constitutional/necessary. Applicants often don't appeal conditions such as these because of the added costs and delays that come with LUBA appeals.

Allowing the applicant to answer questions asked to staff mitigates having commissions/council which have a lot of questions but only ask them of staff. While staff often can answer the question, they may sometimes have different answers/perspectives than the applicant would provide. Since the applicant has the burden of proof (and can request for written rebuttal), allowing questions to be answered on the spot reduces the time it takes for land use approval (versus keeping the record open and delaying decisions by at least 2 weeks).

3. To assess the issue and potential action(s), include subject matter experts representing all sides of the issue in work group meetings, including major government, industry, and stakeholder associations.

This recommendation was discussed at the work group meeting on August 8, 2023. There was no negative feedback.

4. Provide an overview of the expected outcome of the recommended action(s), including quantitative/qualitative context if available.

Providing more time for the applicant could help get more projects approved without extra conditions or a costly LUBA appeal.

5. Estimate of the time frame (*immediate, short, medium, long-term*), feasibility (*low, medium, high*), and cost (*low, medium, high*) for implementation of the recommended action(s).

Time Frame	Feasibility	Cost
<input type="checkbox"/> Long-term	<input checked="" type="checkbox"/> High	<input type="checkbox"/> High
<input type="checkbox"/> Medium-term	<input type="checkbox"/> Medium	<input type="checkbox"/> Medium
<input type="checkbox"/> Short-term	<input type="checkbox"/> Low	<input checked="" type="checkbox"/> Low
<input checked="" type="checkbox"/> Immediate		

There's very little anticipated costs for this recommendation. Allowing more time so that projects can avoid LUBA appeal or extra conditions that increase costs would reduce the overall cost of housing.

Hearings could become a little longer which may result in more staff time. However, this is not an open-ended time for the applicant. The possible increased costs for additional hearing time would be well offset by avoiding appeals.

6. Provide a general overview of implementation, the who and how for the recommended action(s).

Amend state statute to outline minimum time allowed for the applicant.

7. Outline the data and information needed for reporting to track the impact and implementation of the recommended action(s).

Identify the data the Governor's Office would need to track to determine if the recommendation is increasing housing production. Flag any areas where data does not exist leaving a gap in understanding outcomes or impacts.

8. Identify any major externalities, unknowns, tradeoffs, or potential unintended consequences.

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Often, public hearings can be long so there might not be a desire to extend public hearings. However, applicants are not required to take all this time. It just allows the applicant to take the time, should they need it.

Please include any relevant reports, data analyses, presentations, or other documents that would be informative and useful for the full HPAC as the recommendation is discussed and considered.