

# ATTACHMENT C

Quasi-Judicial Hearing Guidelines  
Yolo County Board of Supervisors (Adopted 1/15/19)

## I. INTRODUCTION

This document provides guidelines for land use appeals and most other quasi-judicial hearings before the Board of Supervisors and any specific subsidiary bodies designated by the Board, like the Planning Commission, that are also authorized to hold quasi-judicial hearings. Quasi-judicial hearings involve the legal rights of specific parties—most commonly, the appeal of a decision on a land use permit—and decisions resulting from such hearings must be based upon and supported by the “record” developed for the matter.

Quasi-judicial hearings may be **evaluative or adversarial** in nature. **Evaluative** hearings are far more common and include appeals involving a pending development application, such as a decision granting a conditional use permit. **Adversarial** hearings involve the deprivation of property rights (e.g., the revocation of a conditional use permit) and are less common. These guidelines apply to both types of hearings except that in some specific respects, as noted below, adversarial hearings may require heightened procedural protections or formalities that are not necessary for evaluative hearings.

These are guidelines, not binding rules of procedure. The Chair of the hearing body may make changes on a case-by-case basis to ensure that a quasi-judicial hearing is conducted efficiently and with appropriate protection for the due process rights of the parties. These guidelines do not create any additional rights and the failure of a hearing body to follow these guidelines shall not affect the validity of the hearing or the decision made.

## II. WHO MAY ATTEND AND PARTICIPATE

The parties to a hearing and members of the general public with an interest in the matter under consideration are encouraged to attend and, if desired, participate by providing testimony. Participation may occur through a representative, such as an attorney, if desired. Parties to a hearing—for example, the applicant for a land use permit and the individual(s) that filed a formal appeal of permit approval—should always be present at the hearing. Written material may be submitted in advance of the hearing, as discussed further below.

## III. PRIOR TO THE HEARING

### A. Letters, Documents, and Other Written Submissions.

Quasi-judicial matters often include a large volume of documents, including staff reports, environmental review documents, expert witness information, and letters and other written information submitted by the parties and members of the public. These documents and testimony provided at the hearing constitute the “record” for the matter under consideration. Because the record is often voluminous, all written material should be submitted as far in advance of the scheduled hearing as possible.

Generally, this means parties to an appeal or other quasi-judicial matter should submit their materials **at least two weeks, and in no event less than one week**, prior to the anticipated

hearing date. Members of the public should also strive to provide any comment letters or other written materials at least one week prior to the hearing if practicable. Submissions should be directed to the Clerk of the Board of Supervisors unless otherwise indicated by County staff.

If it is not possible to meet the timeframes set forth above, materials may be submitted at any other time prior to the hearing. However, materials submitted well in advance of a hearing are more likely to receive careful consideration than materials submitted a few days, or hours, before the hearing occurs. Neither staff nor decisionmakers can fully consider voluminous documents submitted on the morning of a hearing. Additionally, the late submission of materials may prejudice one or more parties to an appeal and result in a continuance of the matter to a later date. Late submissions are therefore discouraged, particularly for technical or otherwise complex material (e.g., expert witness reports).

#### **B. Meetings, Site Visits, and other Direct Communications with Hearing Body Members.**

Members of a hearing body are required to act in a fair and impartial manner. Their decisions must be in writing and are to be based on the record developed for the matter under consideration. In connection with **evaluative hearings only**, they may also view the premises at issue and meet with parties, interested members of the public, or their authorized representatives (including but not limited to attorneys).<sup>1</sup> Such “*ex parte*” contacts (*i.e.*, without all present) are allowed in evaluative matters with the understanding that some hearing body members may view them as essential to informed decision-making, while others may appropriately prefer to avoid such contacts and confine their review to written materials in the record and testimony provided at the hearing. *Ex parte* contacts are not allowed in adversarial matters.

At the commencement of a quasi-judicial hearing, members of the hearing body will be given an opportunity to disclose site visits, meetings with the parties, and other *ex parte* contacts occurring outside of the hearing. Members should disclose any information received from such interactions to the extent such information is (1) relevant to the hearing, and (2) not otherwise contained in the record. Disclosures of this nature are important to ensure broad awareness of information received by individual decisionmakers and to enable the parties and members of the public to respond to that information during testimony.

### **IV. CONDUCT OF THE HEARING**

#### **A. Responsibilities of the Chair.**

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<sup>1</sup> In the context of evaluative hearings, the County does not consider attorneys’ contacts with decision-makers, counsel, and staff to be in violation of Rule 3.5(b) of the California Rules of Professional Conduct (“Contact with Judges, Officials, Employees, and Jurors”). However, attorneys’ contacts with County staff must comply with Rule 4.2 (“Communication with a Represented Person”).

The Chair of the hearing body will preside over the hearing and control all aspects of hearing procedure, including any modifications to these guidelines on a case-by-case basis. By way of example only, and without limitation, the Chair will:

- Decide the amount of time to be afforded speakers. By way of example only, this could include 10 minutes each for parties and three minutes each for members of the public. The Chair has flexibility to establish appropriate time limits for each appeal and those limits may vary based on the number and complexity of the issues and other factors;
- Describe other procedural aspects of the hearing at its inception, including opportunities for rebuttal testimony by the parties;
- Announce the adopted protocol for hearing attendance and participation, included as **Attachment A** hereto, to ensure that public participation is orderly and fair to all; and
- The Chair will open and close the hearing, request disclosure of any *ex parte* contacts, call speakers, and ensure orderly deliberations consistent with the procedure set forth in Section D, below.

**B. Responsibilities of Those Who Attend and Testify.**

In addition to following the protocol included as Attachment A at all times, attendees shall observe time limits imposed on testimony. Attendees shall focus their testimony on relevant matters and strive to avoid testimony that is irrelevant, repetitive, inflammatory (including but not limited to personal attacks), or otherwise not conducive to the fair and efficient conduct of the hearing. Repetitive testimony is discouraged and, if practicable, attendees should express their agreement with testimony presented earlier in the hearing (i.e., “me too”) rather than restate the same or a substantially similar position.

**C. Hearing Procedure.**

Subject to the discretion of the Chair, the order of business for an **evaluative** hearing should typically be as follows:

- 1) The Chair will announce the item, provide a brief description of the adopted protocol for hearing participation (see Attachment A), and describe the hearing format and procedure.
- 2) The Chair will ask all members of the hearing body to disclose any site visits or *ex parte* contacts, consistent with Section III.B, above, and inquire whether any members must recuse themselves due to disqualifying conflicts of interest or bias arising from personal embroilment with the parties or the matter at issue.
- 3) County staff will present the staff report and provide an overview of the project, the planning and environmental review process (if applicable), and the staff recommendation and its basis. Staff may also respond during their presentation, if appropriate, to any significant issues raised in timely written submissions by the parties or members of the public.

- 4) Hearing body members may ask questions of staff, if desired, but shall not deliberate on the merits of the matter.
- 5) The Chair will open the hearing. The parties and their representatives, starting with the project applicant (or equivalent), shall each be afforded an opportunity to present arguments, evidence, and other initial testimony. Both sides to an appeal, regardless of the number of parties, shall be afforded an equal amount of time. (Members of the hearing body may ask questions during this initial presentation but are encouraged to hold their questions until after all public comments and rebuttal testimony have been provided.)
- 6) Members of the public will be afforded an opportunity to testify, subject to time limits (typically, three minutes per speaker) announced by the Chair.
- 7) The parties and their representatives, starting with the project applicant (or equivalent), will each be asked to provide any rebuttal testimony. Such testimony shall be confined to issues raised subsequent to their initial testimony and will be subject to time limits announced by the Chair.
- 8) The Chair will solicit questions from members of the hearing body. Questions may be directed to staff or one or both of the parties. If appropriate, the Chair will encourage those responding to address the question raised and avoid testimony on matters beyond the scope of the specific question. Additional public testimony will not be accepted unless the Chair grants leave for such testimony.
- 9) After all questions are addressed, the Chair will close the hearing.
- 10) The hearing body will deliberate and render a decision or, if it so chooses, continue the matter to a time and date certain for further testimony or deliberation.
- 11) The hearing body will adopt written findings prepared by staff or, if necessary, provide direction to staff on modified findings and request that the findings return for consideration (as to conformity with that direction only) at a future meeting.

Similar procedures will be followed for an **adversarial** hearing, with modifications announced at the beginning of the item. Principal differences may include the opportunity for cross-examination, the swearing-in of witnesses, evidentiary objections, and other heightened procedural safeguards.

#### **D. Role of Counsel.**

In evaluative hearings, the Office of the County Counsel does not act as an advocate for County staff or the staff recommendation. Rather, the Office will explain the law and its application to relevant facts and provide guidance on procedural issues. In an adversarial hearing, however, the Office may designate an attorney to advise staff and assist in presenting the matter to the hearing body, with a separate attorney designated to advise the hearing body. The assigned attorneys will maintain an “ethical wall” and, among other things, avoid any direct or indirect communications about the appeal that may involve confidential client information.

To ensure appropriate limitations are observed on *ex parte* contacts, the Office will advise the Board if adversarial in nature as soon as it is filed.

## **V. WRITTEN DECISION.**

Under California law, all decisions on quasi-judicial matters must be in writing. The written decision should reflect the hearing body's findings on contested facts and their application to specific standards for the particular activity at issue. In other words, the findings bridge the analytic gap between the raw evidence and ultimate decision or order.

Findings are effective upon their adoption, which will occur at the conclusion of deliberations unless changes are directed. If minor changes to staff findings are directed with specificity by the hearing body, the findings are effective once the changes are incorporated and the final findings are distributed (by electronic mail if feasible) to the parties and any members of the public that have requested the findings. If more significant changes are required (e.g., changes that require substantial drafting), staff shall present the findings for adoption at the next regularly scheduled meeting of the hearing body. Any discussion of the findings shall be confined to whether they accurately reflect the direction of the hearing body.

# ATTACHMENT A

Topic	Protocol
<b>Public Expression</b>	<p>The Board of Supervisors values and encourages public attendance and participation at its meetings. <b><i>Public participation shall be orderly and fair to all.</i></b> For that reason, attendees are asked to observe the following rules:</p> <ul style="list-style-type: none"> <li>• Speaker are encouraged but not required to complete a comment card (available immediately outside the Chambers and with the Clerk of the Board) and submit it to the Clerk.</li> <li>• Each speaker’s public comment is limited to three minutes per agenda item, unless otherwise advised by the Chair. The three-minute limit includes all comments by an individual, including any comments offered in a representative capacity for others (whether in attendance or not). Additional comments and comments from those unable to attend may be submitted in writing (before the Board meeting whenever possible).</li> <li>• Speakers may not yield time to other speakers or attempt to speak a second time, in a representative capacity or otherwise, on a single item.</li> <li>• Direct your comments to the Board, not to the audience or staff.</li> <li>• State your comments clearly and briefly, and maintain a courteous and polite demeanor.</li> <li>• <b><i>Please avoid personal attacks, abusive language, and other disruptive behavior,</i></b> including through applause, the display of signs, or other non-verbal measures that may discourage full public participation. Everyone has the right to be heard without fear of jeers or other forms of intimidation.</li> </ul> <p><b><i>These rules are taken seriously.</i></b> Disruptive or unruly behavior may result in your removal from the Board meeting.</p>