

CHAPTER 23

HEARING AND APPEAL PROCEDURES

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23-1 INTENT

This Chapter establishes orderly procedures for the formal conduct of meetings and hearings. The procedures are intended to provide adequate opportunity for the citizens in Jerome County to promote their rights under the concept of due process.

23-2 APPLICABILITY

Unless otherwise stated in the JCZO, all land use meetings of a Governing Body shall be held in general compliance with the procedures of this chapter, as shall all hearings conducted by a Hearing Examiner.

23-3 DEFINITIONS

BOARD

The Board of County Commissioners of Jerome County, Idaho.

GOVERNING BODY

Shall refer to the Planning and Zoning Commission or the Board, whichever is the applicable entity that is conducting the hearing.

HEARING

A meeting of a Governing Body, or a time set before a Hearing Examiner, where the public has a legal right to comment or provide testimony.

HEARING, LEGISLATIVE

A hearing focused on the land use interests of the public at large.

HEARING, QUASI-JUDICIAL

A hearing focused on the land use interest of a specific individual or group of individuals.

MEETING

The convening of members of a Governing Body, in sufficient number to form a quorum,

for the purposes of conducting county business.

23-4 HEARINGS

23-4.01 QUASI-JUDICIAL

A. AUTHORITY TO SIT OR APPOINT HEARING EXAMINER

The Board and Commission shall each have independent authority to sit in a quasi-judicial hearing and consider those applications brought before it as prescribed by the JCZO; or to appoint a Hearing Examiner to sit in their stead. The Commission's authority to appoint a Hearing Examiner shall be limited to those applications where the Commission is not serving as a recommending body, but instead as the actual decision maker.

B. PROCEDURES

Quasi-Judicial Hearings by a Governing Body, or Hearing Examiner, should be conducted in general conformance with the procedures set forth in this section, although the order of such procedures do not necessarily have to conform as listed below. Instead, such procedures may be taken in that order deemed most appropriate by the Chairman or Examiner presiding over a particular hearing.

1. The Administrator should prepare a written report on the application, appeal, or other matter being heard by the Governing Body or Examiner, and should be available to give an overview of the report at the hearing. The Administrator's report may contain recommendations; however neither the Governing Body nor Examiner shall be bound to accept such recommendations.
2. The person bringing the application shall be given an opportunity to be heard and to support his position. All other persons in favor of, opposed to, or neutral towards the application who desire an opportunity to be heard shall be provided an opportunity to do so.
3. Upon all oral testimony being presented to the Governing Body or Examiner, the person bringing the application shall be given the final opportunity to be heard and offer rebuttal.
4. Upon conclusion of all oral testimony from those present at the hearing, the hearing shall be closed **and no further evidence accepted** unless the Governing Body or Examiner determines additional evidence not currently available is required to render a decision. In such case, the Governing Body or Examiner may proceed as follows:
 - a. Close the hearing with the exception of allowing the submission of specifically requested information; or
 - b. Continue the hearing to a date certain for the purpose of receiving additional evidence and conducting such further proceedings as deemed necessary in the discretion of the Governing Body or Examiner. The person bringing the

application shall be provided a reasonable opportunity to rebut any additional evidence allowed into the record.

5. The Governing Body and Hearing Examiner are authorized to reopen a closed hearing if re-opened prior to the issuance of a written decision, and if good cause has been demonstrated. Only the person bringing the application, or any affected person as defined under Idaho Code Sections 67-6519(4) and/or 67-6521(d), may seek to reopen the hearing by filing a timely motion. Such motion shall state the reasons that support good cause, and shall be accompanied with payment of the estimated costs that will be incurred by Jerome County having to comply with applicable law governing notice and hearings. If the actual cost is more than the estimated cost, the person seeking to reopen the hearing shall pay the remaining amount before any action is taken on his motion. If the actual cost is less than the estimated cost, the balance shall be returned to the payer of the estimated cost. The Governing Body or Examiner shall make a recorded decision as to whether good cause has been demonstrated, and shall state such on the record. The Governing Body or Examiner may, within the time allowed herein, reopen the hearing for good cause on their own motion. Applicable law governing notice and hearing procedures shall be complied with for any reopen hearing.
 6. Any procedural question not specifically addressed by this section shall be determined by the Governing Body's Chairman, or by the Examiner.
- C. SUBMISSION OF WRITTEN TESTIMONY AND DOCUMENTARY EVIDENCE
1. All written testimony and/or other documentary evidence to be considered by a Governing Body or Examiner shall be submitted to the Administrator seven days prior to the scheduled hearing. To be accepted, the appropriate number of copies of the written documents shall be submitted. When before a Governing Body, the "appropriate number" equals the number of members currently sitting on the on the Governing Body, plus one (1) additional.
 2. All written and documentary evidence not meeting the seven day requirement shall not be reviewed or considered by the Governing Body or Examiner, but shall be retained by the Administrator in a sealed envelope and kept as part of the record. The outside of the envelope shall be clearly marked with an index of the materials placed inside; the date such materials were submitted; and the name of the person who submitted such materials. The hearing's record shall clearly reflect that such materials were not reviewed or considered because of their untimeliness.
 3. The requirement of this section shall not apply to written documentation submitted by the Administrator or persons sought out by the Governing Body or Examiner.

D. DECISIONS

After the hearing has been closed, the Governing Body or Examiner shall then deliberate towards a decision based on the record. Such deliberation may be continued to a later date. The Governing Body or Examiner shall render a decision within one hundred eighty (180) days from the end of the hearing date. The Governing Body's decision shall be in accordance with Idaho Code Section 67-6535, as amended. A Hearing Examiner's decision shall be in accordance with Idaho Code Section 67-6520, as amended.

23-4.02 LEGISLATIVE OR OTHER NON-QUASI-JUDICIAL HEARINGS

A. APPLICABILITY

This section shall be applicable to those portions of the legislative process or other non-quasi-judicial hearings where public comment is required by way of the JCZO or Idaho code.

B. PROCEDURES

1. The Governing Body shall follow any applicable procedures set forth under Idaho code.
2. Absent any procedures under Idaho code, or in addition thereto if not conflicting, the Governing Body's chair shall determine the best procedures for receiving public comment. The chair's procedural discretion may include, but not be limited to:
 - a. Requiring members of the public to be sworn in.
 - b. Limiting the amount of time given for individual comment, as well as the scope of the discussion.
 - c. Allowing members of the governing body to freely inquire of anyone at the meeting.
 - d. Allowing a continuance for the matter to be discussed with persons not present at the hearing or to acquire additional information be gathered.
 - e. Allow additional hearings and notice.
 - f. Taking any other action deemed necessary.
3. Notwithstanding the chair's discretion, required notice of the hearing shall be given and each member of the public wishing to comment shall be provided a reasonable opportunity to do so.

C. DECISIONS

Legislative decision involving the passage of an ordinance shall not become effective until such ordinance is passed and signed by the Board and published per the parameters of Idaho Code Section 31-715 as amended.

23-5 APPEAL OF QUASI-JUDICIAL DECISIONS

23-5.01 APPLICABILITY

Only the Board shall have authority to sit in an appellate capacity.

23-5.02 HEARING

A. NOTICE

Unless otherwise stated, the notice requirements applied when the matter being appealed was first heard shall be followed. In addition, mailed notice shall be sent to those persons who at the hearing below provided a mailing address and either testified or submitted a written request to be notified of any appeal.

B. PROCEDURE

1. The Board shall hear oral testimony; receive written testimony or other documentation; and reopen the hearing in the same manner prescribed in section 23-4.01 of this chapter.
2. In making its decision, the Board may affirm, reverse, modify (in whole or in part) the appealed decision; or it may remand the matter back to the Commission/Examiner for further proceedings that are consistent with the Board's findings on appeal.

C. FINAL ACTION

If the action taken by the Board on appeal is final, any person falling within the parameters of Idaho Code sections 67-6519(4) and/or 67-6521(d), as amended, may appeal such action as outlined therein.

23-6 ADMINISTRATIVE DECISIONS

23-6.01 EXEMPT

Administrative decisions authorized by the JCZO are not considered quasi-judicial in nature and are therefore exempt from the procedures outlined in this chapter.

23-6.02 BOARD REVIEW

- A. Any person denied a request or aggrieved by an Administrative Decision, and who believes the Administrator erred in his decision and interpretation of the JCZO, shall be entitled to have such decision reviewed by the Board.
- B. In conducting the review, the Board shall not be deemed as sitting in an appellant capacity of a quasi-judicial decision and the procedures of section 23-4 of this chapter shall therefore not apply. The Board shall instead adhere to the procedures set forth in this section.
- C. Board Review of an Administrative Decision shall be initiated upon a written request for review being submitted by the denied or aggrieved person to the Administrator within twenty eight (28) days from the date when the decision was first made.

- D. The denied or aggrieved person shall be sent written notice of the date and time for the Board's review. If the aggrieved person is not the same person who requested or applied for the Administrative Decision, then the requesting or applying person shall also be sent written notice of the review.
- E. At the review, the Board may consider any written decision or report issued by the Administrator in support of his decision, as well as any other written documentation relevant to the Board's review. The Board shall also present all persons receiving notice of the review an opportunity to be heard, and may present such opportunity to anyone else the Board deems appropriate.
- F. In deciding the matter, the Board shall assume the role of the Administrator and hear the matter as if it were the first time it was being decided by a county official. The Board may consider any information deemed relevant, and shall make its decision as directed by the governing portions of the JCZO.
- G. If the Board's decision is such that no further County action can be taken in the matter, then any person falling within the parameters of Idaho Code Section 67-6519(4) and/or 67-6521(d) may appeal such decision as outlined therein.