

MODEL PUBLIC HEARING RULES OF PROCEDURE

These Rules of Procedure are designed to ensure a fair and thorough public hearing process and should be considered the general parameters governing zoning public hearings.¹ These Rules of Procedure apply to all public hearing participants who, for the purposes of these Rules of Procedure, are the petitioner, objectors, witnesses, and attorneys representing the petitioner, objector(s), and any witnesses.² All such participants are expected to conduct themselves according to these rules and in a respectful and professional manner. While the **[Plan Commission] [Zoning Board of Appeals]** ("____") has the authority, if it deems necessary, to temporarily waive, suspend, or otherwise adjust these Rules as circumstances warrant, failure by any participant in the public hearing process to follow these Rules of Procedure, as may be adjusted by the ____, may result in removal from the public hearing by the Chair of the ____.

If you have not registered to provide comment, testimony, or questions on a petition before the ____, or otherwise address the ____ on any public hearing matter before it, and wish to do so, please obtain a registration form outside the public hearing room, fill the form out, and give it to the ____.³

[Please note that if you did not receive personal mailed notice of the public hearing and you wish to cross-examine the applicant, or any applicant witnesses, you must register not less than seven days before the public hearing date to conduct the cross-examination.]⁴

All public hearings held before the ____, unless otherwise required by law, will be administrative hearings. The Rules of Evidence and other Rules of Civil Procedure will not be enforced, but may serve as guidance, where appropriate, at the sole discretion of the ____.⁵

¹ It is important to make it clear that the rules of procedure are general in scope and, as noted later in the paragraph can be temporarily waived, suspended, or adjusted to meet the particular needs of the public hearing process. This statement makes it clear that the rules are designed to be flexible and this is consistent with the Supreme Court's decision in Klaeren v. Village of Lisle, 202 Ill.2d 164 (Ill. 2002) where the Court explained, among other things, that "We recognize that the right is not unlimited and may be tailored by the municipal body to the circumstances specifically before it." Klaeren at 185.

² This statement makes clear that all who appear before the body holding the public hearing are subject to the rules and avoid debates as to the scope of their applicability.

³ Registration rules are useful to not only manage the public hearing process, but also keep a record for municipal files on who appeared and provided testimony. In addition, the registration forms can have a notes section that may be used by the Chairperson or secretary of the body holding the public hearing to note the testimony offered.

⁴ Many municipalities require that personal notice be sent to surrounding property owners of a zoning application on a given parcel. In those instances, the municipality may want to consider establishing an automatic right to cross examination and a qualified right for those who did not receive personal notice. These model rules are set up for such a two stage system of cross examination. There is a common misunderstanding that Illinois statutes require all municipalities to provide such personal notice, but read carefully, it is clear that the statutes only require that variation and special use applicants in the City of Chicago provide personal notice. 65 ILCS 5/11-13-7 provides "In addition to the notice requirements otherwise provided for in this Division 13, in municipalities of 500,000 or more population, an applicant for variation or special use shall, not more than 30 days before filing an application...serve written notice...on the owners...of all property within 250 feet in each direction of the location for which the variation or special use is requested..." Klaeren and subsequent cases provide no support for a universal requirement in this regard. See Klaeren, "We are unwilling to adopt the appellate majority's blanket endorsement...that a 'public hearing before any tribunal or body' includes the full panoply of due process rights." *Id.* at 181.

⁵ This paragraph makes it clear that public hearings before the public body are not court proceedings and, that while some procedure will be used, it is a more flexible and informal process than a court proceeding.

(As used in these Rules of Procedure, the word “Chair” will apply to the duly appointed Chair of the ____ or a duly appointed hearing officer presiding over the public hearing process.)⁶

1. Introduction by the Chair.

The Chair will begin each public hearing by announcing the name of the petitioner and the relief requested. The Chair will explain the procedures for the conduct of the public hearing. An oath will be administered to all persons intending to testify during the course of the public hearing. Nothing said by attorneys representing any party will be considered evidence or testimony, unless the attorney’s client is not present at the public hearing. The Chair will remind those people previously sworn under oath from a continued public hearing that they remain under oath.

2. Village Staff’s Summary of Petition.

Village staff will summarize the basic facts of, and relief requested in, the petition. In the event that the hearing is continued from a previous date, staff will be asked to provide any new, additional, or supplemental information.

3. Petitioner’s Presentation.

The petitioner will present the petition with testimony of witnesses and other evidence. In general, the ____ should allow the petitioner to make this presentation without interruption, except for those questions allowed by the Chair that may be immediately necessary to aid the ____ or the public in understanding a particular aspect of the presentation.

4. Public Comment, Testimony, General Questions (Other Than Cross-Examination).⁷

- **General.** At the start of the period for public comment, testimony, and general questions, the Chair will advise the public:
 1. of amount of time permitted for public testimony, comment, and general questions;
 2. that all speakers state their names and addresses before addressing the ____;
 3. to avoid repetitive comments, testimony, and general questions;
 4. to appoint only one person to speak on behalf of a group; and
 5. that all information presented to the ____ is under oath.

⁶ This parenthetical paragraph simply accounts for the possibility that some public hearings may be overseen by an appointed public hearing officer under Section 11-13-14.1 of the Municipal Code, 65 ILCS 5/11-13-14.1.

⁷ This section establishes the rules for general comments, testimony, and questions and is distinguished from the rules for cross-examination. These rules should be straightforward and it must be clearly stated that they are not the rules for cross examination to avoid confusion among members of the public body and the general public. The distinction between general comments, testimony, and questions and cross-examination is further established in these rules by requiring that they be directed to the public body for later redirection to staff or the applicant.

Each person will be permitted to speak one time only, unless the Chair determines that allowing a speaker to address the ____ again will contribute new testimony or other evidence. Unless more time is deemed necessary by the Chair, all comments from the public will be limited to no more than five minutes per person.

- **Testimony, Evidence, and Questions.** Members of the public and their attorneys should address their comments, testimony, and general questions to the _____. Following the conclusion of all public participation, the Chair will direct the questions from the public to the petitioner or staff in an orderly and consolidated manner for response.

5. Cross-Examination.⁸

In addition to asking general questions, the public and their attorneys will have an automatic or qualified right to cross-examine petitioners and petitioners' witnesses in accordance with the following:

- **Personal Notice Recipients' Automatic Right.** People who received a personal notice addressed to them as required under the Zoning Ordinance about the public hearing have an automatic right to cross-examine petitioners and petitioners' witnesses. People wishing to exercise this right must be prepared to demonstrate to the satisfaction of the ____ that they are the person to whom the notice was addressed or that they reside at the address on the notice. This right is based upon the fact that these people have a unique interest in ensuring the preservation of the property values of their home, as well as the use and quiet enjoyment of their property. People who qualify under this right should be prepared to elicit information that addresses these valuable property interests.
- **Petitioners' Automatic Right.** Petitioners have a right to cross-examine any witness offered in opposition to their petition.
- **General Public Qualified Right.** Any other party who does not otherwise have an automatic right to cross-examination under these rules must file a formal registration to do so at least 7 days in advance of the scheduled public hearing date or continuation thereof.⁹ The request must be made on forms approved by the ____ and submitted to the Community Development Director. Requesters will be informed as to whether their right to cross-examine witnesses has been granted or denied within 2 days of the public hearing by the Chair, or his or her designee, and no such request will be unreasonably denied.

⁸ These rules govern the cross-examination process and create an automatic right and qualified right to cross examination based on whether or not a person received personal notice of the public hearing. The right to cross examination is well established under Illinois law (See *E & E Hauling, Inc. v. County of Du Page*, 77 Ill.App.3d 1017 (2d Dist. 1979) and *Klaeren, supra.*). Communities considering adopting rules or amending the rules they have need to give this section serious thought and consideration, because this is a highly technical and complex process and the better the rules governing cross examination are drafted, the easier everyone will understand how the cross examination process works.

⁹ The qualified right to cross examine witnesses requires a registration in advance of the public hearing. The purpose of requiring registration is to, among other things, understand the extent of potential community concern or opposition to a project, ensure that those who want to cross-examine witnesses understand the rules governing the cross-examination process, and to facilitate an orderly and efficient public hearing process.

All members of the public and their attorneys conducting cross-examination are subject to the following:

- Parties wishing to cross-examine witnesses must tailor their cross-examination in accordance with the following:
 1. The matters that are subject to cross-examination are factual and not merely matters of taste or personal opinion;
 2. The cross-examination will help simplify otherwise complex issues before the ____; and
 3. The cross-examination relates to the factors to be considered by the ____ in making its recommendation.¹⁰
- In all instances, the Chair may specify which issues are considered relevant to the factors the ____ must use to make its recommendation and limit cross-examination accordingly. People wishing to cross-examine witnesses must be aware of the factors that guide the ____ in its considerations of a given petition and must tailor their cross-examination to these factors. Failure to do so may result in disqualification from cross-examination.
- The Chair will determine whether a party conducting cross-examination is eliciting relevant information and may direct a cross-examiner to adjust his or her questioning accordingly. In addition, the Chair may restrict the scope of cross-examination to the testimony offered. Cross-examination designed to elicit extraneous, irrelevant, or repetitive testimony will be ruled out of order by the Chair and may result in disqualification of the person from further cross-examination of the witness.
- The ____ acknowledges the rights of parties to cross-examine witnesses, but parties wishing to do so must accept that the ____ is not a court of law and the normal rules of evidence that would otherwise exist in those settings are not applicable in the ____'s proceedings. In order for the ____ to most effectively carry out its responsibilities, parties wishing to cross-examine witnesses must respect this fact and conduct themselves accordingly.
- Finally, parties wishing to cross-examine witnesses offered by a petitioner are expected to respect the right of the petitioner to a prompt and efficient process. The use of cross-examination that deviates from these rules will be viewed as an abuse of process and infringement on the right of a petitioner to a prompt and efficient process and result in immediate disqualification from further cross-examination or testimony.

¹⁰ These rules require people wanting to cross-examine witnesses to tailor their cross examination to a reasonable scope of questioning. Cross-examination should be straight-forward and assist the public body in reaching its decision. Without appropriate tailoring, cross-examination can become tedious and irrelevant, confusing the applicant, the public, and the public body. A useful requirement is to require that those conducting cross-examination limit their questions to the factors required to be demonstrated to support the zoning relief. These factors, or standards, are listed in the zoning code sections dealing with the zoning relief in question (i.e. special uses, variations, text and map amendments).

6. Subpoena of Witnesses.

There is no automatic right to request the issuance of a subpoena for any witness.¹¹ However, upon:

1. a proper showing that the testimony to be elicited is relevant to the factors under consideration by the ____;
2. an allegation of some special interest beyond that of the general public, and
3. that the evidence to be elicited from the subpoenaed witness cannot be obtained through some other document or testimony,

the Chair may, in accordance with state law, compel the attendance of witnesses. Any person who satisfies the requirements for issuance of a subpoena will be completely responsible for presenting the witness before the ____, including, without limitation all costs, attorneys fees, and enforcement of the subpoena. In no event will subpoenas be issued to obtain documents or other non-testimonial evidence.

Failure of a subpoenaed witness to appear will not result in a delay of the proceedings before the ____.

7. Time for Non-Petitioner Presentation(s).

As a general rule, all other parties desiring to make a presentation will be collectively allowed an equal amount of time as was provided the petitioner for its full presentation. Multiple parties desiring to make presentations are expected to coordinate their efforts to maintain efficiency and the promptness of the proceedings and to stay within the general time parameters set forth herein.

8. Response by the Petitioner.

The Chair will allow the petitioner a reasonable time to respond to the public testimony and comments presented, but no more than half the time as was used by all other non-petitioners.

9. Questions by the ____.

¹¹ Some attorneys have argued that the right to subpoena witnesses, currently limited under the zoning statutes (compare 65 ILCS 5/11-13-3(e) "The chairman...may...compel the attendance of witnesses" to 65 ILCS 5/11-13-7(a) "Zoning variation and special use applicants and property owners, as set forth in Section 11-13-7 of this Act [in municipalities of 500,000 or more population], shall have the following rights...to have subpoenas issued for persons to appear at board of appeals' hearings and for examination of documents"), extends to all municipalities based on the Appellate Court decision in Klaeren [citation omitted]. The Supreme Court declined to adopt the Appellate Court's decision in this regard, criticizing the Appellate Court, "the appellate majority too strictly relied on the Municipal Code for its resolution of this cause." Klaeren, 202 Ill.2d at 181. These rules follow the Supreme Court's decision, creating a qualified right for subpoena of witnesses only, and also incorporates the discretionary language of 65 ILCS 5/11-13-3(e) where the chairperson "may" compel the attendance of witnesses and that failure of a subpoenaed witness to appear will not delay the proceedings before the public body.

The ____ members may ask questions of any individual that may be necessary to clarify material presented or the relief requested. At the conclusion of the questions, the public hearing will be closed.

10. ____ Discussion and Deliberation.

During the ____'s discussion, members of the ____ may direct additional questions to the petitioner, witnesses for the petitioner, or members of the public who testified. The petitioner, witnesses for the petitioner, or members of the public or their attorneys may not address the ____ during this portion of the meeting without the consent of the Chair.

11. ____ Action.

Based on the discussions, the ____ may: (a) request the petitioner, a member of the public, Village staff, and/or the Village Attorney to provide new or additional information and continue the hearing to a date certain; or (b) take action (vote) on the petition and make its recommendation to the Board of Trustees. A vote by the ____ will close the public hearing unless the hearing was closed by the ____ following the conclusion of all testimony.¹²

¹² The closing of the public hearing upon a vote of the public body on the application provides flexibility to take additional testimony, in the discretion of the public body, up to the point of a vote on an application. An earlier vote to close the public hearing could result in the public body being required to reopen the public hearing, including requirements to publish and deliver new notice. Failure to follow these procedural requirements on the reopening of a public hearing could result in technical challenges to the public hearing process.