KP LAW

THE LEADER IN PUBLIC SECTOR LAW

HOW TO CONDUCT A PUBLIC HEARING

There are three types of Public Hearings:

- **Adjudicatory Hearings** – hearings to determine the legal rights, duties or privileges of specifically named persons or entities, such as license violations or dangerous dog hearings.
- **Application Hearings** – hearings to act on applications for a license, permit, variance or other approval.
- **Regulatory Hearings** – hearings on adoption or amendment to a public body's rules or regulations.

Basic Framework – Four Step Process

Step 1 – Notice

- Prior to conducting any public hearing, proper notice must be given to all interested parties.
- Timing - Substantive law will dictate when the notice needs to be sent and to whom. In the absence of a statutory requirement, ten days' notice is generally acceptable for due process purposes. At a minimum, the notice must comply with the Open Meeting Law by posting at least forty-eight hours prior to the hearing, except in an emergency, calculated as required by law.
- Content - Substantive law will also dictate the content of the notice. Generally, notice must include the date, time and location of the hearing, statutory basis, and a brief statement of facts.
- Delivery – Unless addressed by applicable substantive law, when individual notice is required, it should be sent certified mail and first class mail, or in any other manner reasonably likely to provide actual notice to interested parties, e.g. service by constable.

Step 2 - Open the Hearing

- The Chair should open the meeting by reading the hearing notice into the record and asking staff to confirm that notice was published, posted and served upon interested parties as required by law. For Application hearings, the Chair should confirm that the application is complete.
- The Chair (or Town Counsel if present) should establish ground rules, informing those present that: testimony will be limited to the issues directly related to the subject matter of the hearing; only one person will be permitted to speak at a time; all discussion will go through the Chair; all parties will be expected to conduct themselves civilly; and argument between parties will not be permitted. The proceeding should be recorded and the recording preserved.
- Before taking testimony, witnesses must be sworn. The Chair may ask anyone who intends to testify to stand, raise his/her right hand and swear that "the testimony I am about to give in this matter is the truth, the whole truth and nothing but the truth."

© 2016 KP Law, P.C

Step 3 – Collect Evidence

- Adjudicatory Hearings generally proceed in two phases: (1) collection of evidence of the violation from staff and/or complaining parties; and (2) collection of evidence in defense from the subject of the hearing and/or supporting witnesses.
- Application and Regulatory Hearings also proceed in two phases: (1) collection of evidence from the applicant/proponent and those wishing to speak in favor of the application or regulation; and (2) collection of evidence from those in opposition to the application or regulation.
- For each person who testifies, the Chair should ask them to identify themselves by stating their name and address for the record. Witnesses may be questioned by members. In Adjudicatory Hearings, however, witnesses may first be cross-examined by a representative of the hearing target.
- Any documentary or physical evidence should be given a unique identifier as part of the record and made available for inspection by interested parties. Such documents must be maintained as part of the official meeting record.

Step 4 – Deliberate and Decide

- When it is determined that all relevant testimony and evidence has been presented, the Chair should entertain a motion to "close the evidentiary portion of the hearing". Once the vote is taken, the Chair should declare the evidentiary portion of the hearing closed and inform the public that deliberations will begin.
- Members must then deliberate, in open session and in a manner that can be followed by those in attendance, i.e., in loud, clear voices.
- For Adjudicatory Hearings, members will vote on two issues: (1) whether there was a violation; and (2) if so, what, if any, action should be taken. To insulate a decision from challenge, members must separately consider each violation and, in connection therewith, make specific findings of fact.
- For Application Hearings, members will vote on whether to grant the license, permit or approval, and if so, whether to impose any conditions thereon. In order to insulate the decision from challenge, members must separately consider each criterion for issuance and make specific findings of fact to support that criterion.
- For Regulatory Hearings, following submission of written or oral testimony, members will deliberate and then vote on whether to adopt, rescind or amend regulations.
- Once final votes are taken, the Chair should entertain a motion to close the public hearing, and staff should be directed to prepare proper notice of the decision or other action taken, in accordance with applicable law. For Adjudicatory and Application proceedings, written notice should be sent, certified and first-class mail, as soon as possible to all interested parties including any right of appeal, and such notice may also be required to be filed with the municipal clerk. For Regulatory proceedings, further notice or publication of the decision may be required.

© 2016 KP Law, P.C