

LOWeR COLuMBia PrEServatiOn SOcieTY

Public Participation in Preservation

Tips for presenting testimony at
Astoria Historic Landmarks Commission



Testifying at a Historic Landmarks Commission hearing is a great way to broaden the commissioners' knowledge about local history, historic preservation practices, and community viewpoints. By being prepared and understanding the procedures of a quasi-judicial hearing ahead of time, you can be better prepared and make sure your message is clear and compelling.

LOWER COLUMBIA
PRESERVATION
S.O.C.I.E.T.Y

Contents

This guide is organized into the following sections:

1. Historic Landmarks Commission, Certificates of Appropriateness and the Historic Preservation Officer.
2. Types of land use actions – the Historic Landmarks Commission hears six different types of land use cases.
3. Preparing for the hearing – things to do in advance of the hearing.
4. Day of the hearing – hearing process, signing in, order of testifiers.
5. Important considerations – reminders and tips for effective testimony.
6. After the record closes – what happens after the public participation part of the hearing is closed.
7. Glossary of terms – terms highlighted in purple text are explained here.
8. Resources and references – where to get additional information.*

*This guide is not meant to be all-encompassing and should not be taken as a legal interpretation of the Development Code. Sources cited and referenced do include the City of Astoria Development Code as well as other sources and we have provided links to these materials at the end of this document.

About Historic Landmarks Commission

The Astoria Historic Landmarks Commission (HLC) is a **quasi-judicial** body that consists of seven members appointed by the City's Mayor. Each member of the Commission holds office for four years, and members may be reappointed. The HLC is bound by the procedural requirements set forth in Articles 6 and 9 of the City of Astoria Development Code.

The primary function of HLC is to review Certificate of Appropriateness applications for exterior alterations, demolition or relocation of historic properties, and new construction adjacent to historic properties. HLC meets as needed, generally on the third Tuesday of the month, at 5:15 PM. These meetings usually take place in City Council Chambers, on the second floor of Astoria City Hall, 1095 Duane Street.

Astoria's HLC was originally formed as the Astoria Historic Building and Sites Commission, in 1977. HLC's primary function is application review but they have also previously identified additional preservation goals including: Improving and clarifying the Development Code relative to Historic Properties; Surveying and inventorying historic properties and establishing additional historic districts, pursuing funding to provide grants/loans for historic property owners and historic preservation projects; and neighborhood outreach and education.

About Certificates of Appropriateness

A Certificate of Appropriateness, or COA, is a certification by the Historic Preservation Officer or the Historic Landmarks Commission that the design of a project is appropriate within the neighborhood or area in which it is located. COA approval is required for any exterior alteration, demolition or relocation of designated historic properties within the City of Astoria as well as new construction adjacent to designated historic properties. A COA is required before the issuance of building permits for these projects.

About the Historic Preservation Officer

The Historic Preservation Officer is the City Staff person appointed by the City Manager to provide Staff support to the Historic Landmarks Commission. The Historic Preservation Officer or their designee writes the staff report and recommendations that are presented to the HLC.

The Historic Preservation Officer (or their designee) can also render decisions on TYPE I and TYPE II Certificate of Appropriateness applications. TYPE I Certificate of Appropriateness permit requests do not require public notice nor a **public hearing**. TYPE II Certificate of Appropriateness permit applications do require public notice but not a public hearing.

The Community Development Director may determine that an application should be reviewed by HLC or another Commission or Committee in lieu of an Administrative Review to protect the best interests of the surrounding property or neighborhood or the City as a whole.

Types of Land-Use Actions

The Historic Landmarks Commission hears the following types of land use actions:

1. Historic design review (Type III process). Applies to substantial exterior alterations to designated historic properties, as outlined in Article 6, Historic Properties. HLC holds a public hearing on the proposal and considers staff recommendations, contained in a staff report addressing the applicable approval criteria. HLC decision may be appealed to the City Council.
2. Proposed demolition or relocation of designated historic buildings. HLC holds a public hearing on the proposal and considers staff recommendations, contained in a staff report addressing the applicable approval criteria. HLC decision may be appealed to the City Council.
3. Review of proposed new construction adjacent to or across the public right-of-way from a Historic Landmark as described in Section 6.040. HLC holds a public hearing on the proposal and considers staff recommendations, contained in a staff report addressing the applicable approval criteria. HLC decision may be appealed to the City Council.

4. Review of Historic Designation Requests to designate properties as local historic landmarks. Historic Landmarks Commission holds a public hearing on the proposal and considers staff recommendations, contained in a staff report addressing the applicable approval criteria.

5. **Appeals** of Historic Preservation Officer decisions (following a Type II process) applies to proposals that are smaller in scale than Type III proposals. The City's Historic Preservation Officer issues the administrative decision. These decisions may be appealed to the Historic Landmarks Commission.

6. **Legislative actions** are another type of land use action heard by the Historic Landmarks Commission. Hearings for legislative actions do not follow procedures in this guide. Contact the City of Astoria Community Development Department for more information on legislative actions.

Public Notice

20 days prior to the hearing:

- Public Notice is mailed to owners of property within 200 feet of the subject property.
- Public Notice is posted to the City's website, https://www.astoria.or.us/Public_Notices.aspx
- For quasi-judicial hearings, Public Notice is published in *The Astorian* newspaper.
- You can also sign up to receive public notice alerts via email at https://www.astoria.or.us/Sign_up_for_Alerts.aspx

14 days prior to the hearing:

- For quasi-judicial hearings, Public Notice is posted at the site, in clear view from a public right-of-way. This may be inside a storefront window of a commercial or industrial building.

7 days prior to the hearing:

- A copy of the staff report is available at the Community Development Department.

- A copy of the agenda packet, including the application and staff report, will be available at the hearing. The agenda packer is often available a few days prior to the hearing, either online [https://www.astoria.or.us/Historic Landmarks Commission Agenda Minutes.aspx?deptid=3](https://www.astoria.or.us/Historic_Landmarks_Commission_Agenda_Minutes.aspx?deptid=3) or at the Community Development Department.

Prepare for the Hearing

Review the application. The applicant has the **burden of proof**. The applicant must introduce evidence that shows that all of the **approval criteria** are satisfied. The staff report will identify which criteria are to be met.

Explore other sources of information. The planner and other city staff, neighbors, the applicant, property owner, appellant, and neighborhood and business associations can provide you with the information needed to shape your testimony. Become familiar with the relevant sections of the Development Code and **Comprehensive Plan**, available online at https://www.astoria.or.us/Development_Zoning.aspx.

Identify issues important to you. Specify the aspects of the project you support or oppose. To be considered, your issue must be related to the relevant approval criteria or to criteria you think should have been addressed. Opponents have the duty to show that the applicant's facts are incorrect or insufficient.

Create an outline of your testimony. Base your outline on the relevant approval criteria. How does the proposal meet or not meet the approval criteria? Typically, testimony should be limited to 3 to 5 minutes to ensure that all present have an opportunity to testify.

Decide the format of your testimony. You may supplement your oral or written testimony with presentation boards, maps, photos, or PowerPoint presentations. Please contact the Community Development Department to determine formatting requirements and how many copies of documents you should provide.

Day of the Hearing

Arrive early. Hearings are usually held at the Astoria City Hall, City Council Chambers on the second floor, 1095 Duane Street and begin at 5:15 PM. Confirm the location and time of the hearing.

Sign in. You must sign in if you plan to testify. There are sign-up sheets for each individual hearing. Please fill in the requested information. To receive a copy of the final decision, you must provide your complete address.

Introducing your testimony. State your full name and address for the record. Speak directly into the microphone.

Time limits. Generally, your testimony should be limited to 3 to 5 minutes. For hearings that involve a large number of testifiers, the Commission Chair may request that testifiers adhere to a time limit in order for all testimony to be heard.

Order of Presenters and Testifiers

1. Commission Chair asks if anyone objects to the jurisdiction of the HLC to hear this matter at this time. The Chair also asks if any member of the HLC has a conflict of interest or any **ex parte contacts** to declare.
2. City staff presents a summary of the staff report, with photos of sites and surrounds. If the hearing is an appeal, staff presents a summary of the administrative decision, and issues of appeal.
3. Commissioners may ask questions of City staff regarding the application and staff report.
4. Applicant presents their proposed project. If new evidence is presented by the applicant, any party may request a continuance to the hearing or for the record to be held open for seven days.
5. Public Testimony in favor. Commission Chair will ask if anyone would like to speak in Public Testimony in favor of the application.
6. Public Testimony impartial to the application. Commission Chair will ask if anyone would like to speak in Public Testimony in favor of the application.
7. Public Testimony in opposition – Commission Chair will ask if anyone would like to speak against the application.

8. Applicant Rebuttal. Commission Chair will ask if the applicant would like to respond to any of the public testimony. If new evidence is presented, the public may respond to new evidence and be given the opportunity to request a **continuance** or for the record to be held open for seven days.

9. Public Testimony Closed (or may be held open).

10. Historic Landmarks Commission discussion and decision making. HLC may vote to approve, approve with conditions, deny, or continue the hearing to a future, specified date and time.

11. If the Commission reaches a decision, the Commission Chair will read a notice that outlines the process and guidelines of appealing the decision.

Important Considerations for Testifying

- Your testimony can only address the applicable approval criteria. State how you think the proposal meets or falls short of meeting the approval criteria. Historic design review approval criteria are stated in the administrative decision or staff recommendation and are referenced in Development Code, Article 6. Historic Properties.
- Be clear about your position. Your testimony should clarify your role and interest in the historic design review. For a Type III historic design review, do you agree with the staff recommendation? If not, what parts do you oppose? Or, in the case of a TYPE II appeal hearing, do you support the appeal and disagree with the administrative decision?
- The burden of proof is on the land use review applicant to show that each and every element of the approval criteria can be satisfied. Testifiers may argue the criteria are being incorrectly interpreted, the incorrect approval criteria are being applied, or additional approval criteria should be applied.
- Failure to address a criterion during the hearing precludes an appeal based on that criteria.
- If you are testifying as a group, instead of each group member restating the same issue, it is much more effective to have each group member address a different issue and to state that they support the previous testimony on an issue.

- Any party may request that the hearing be continued or that the record be kept open. Requested continuances will generally be granted at an initial hearing.

After the Record Closes

After their discussion, the Historic Landmarks Commission will vote to either approve or deny the application. The decision may occur at the initial hearing or at a later public meeting. The decision is rendered and effective on the day the signed Order is mailed.

Who is notified of the final decision? The Community Development department will mail the final decision to the applicant, owner, recognized organizations and persons who responded to the appeal notice, testified at the hearing or requested notice of the decision.

Appeal rights. A decision of the Historic Landmarks Commissions may be appealed to the City Council by the applicant, a party to the hearing, or by a party who responded in writing, by filing an appeal within 15 days of the mailing of the Order. A final decision on the part of the City Council is appealable to the Land Use Board of Appeals (LUBA).

Glossary of Terms

Appeal. The process of having a land use decision by the planning administrator or the historic landmarks commission reviewed by the city council. Council decision may be appealed to the Land Use Board of Appeals.

Approval criteria. The set of statements that must be answered, supported by facts, and be satisfied in their entirety in order for a proposal to be approved. The public notice, the staff report and recommendation, and the review body's decision describe the relevant approval criteria. Approval criteria are also stated during the public hearing.

Burden of proof. The burden to present facts and evidence demonstrating that the approval criteria have been satisfied.

Comprehensive plan. An official document adopted by a local government, which sets forth general long-range policies on how the community's future development will occur.

Continuance. The review body may decide to continue a hearing to a future date. The review body will state the date and time of the continued hearing.

Ex Parte contact. Contact outside of a public hearing in a land use case by a member of the decision-making body and someone wishing to directly or indirectly influence the outcome of the case. This does not apply to legislative or policy issues such as code amendments nor does it apply to pre-hearing contact with staff.

Legislative actions. Generally, legislative actions involve the adoption of law or policy citywide or to a broad geographical area of the city.

Quasi-judicial actions. Generally, quasi-judicial actions involve the application of existing law or policy to a small geographical area or a specific factual situation. Three factors distinguish quasi-judicial decision-making: (1) the process results in a decision; (2) pre-existing criteria are applied to facts to make a decision and (3) the decision is directed at a closely circumscribed factual situation (site and proposal). A quasi-judicial process must include notice, an opportunity to be heard and present evidence; an impartial decisionmaker; and a written decision that explains the basis for the decision.

Public hearing. A formal proceeding before a governing body in which the public is permitted to provide testimony to be entered into the official record.

Record closed. After all testimony, evidence and rebuttal are submitted, the review body will end the public participation portion of the hearing. This means review body will accept no more oral or written testimony.

Record held open. A participant may request, and the review body may decide, to leave the record open until a specified date, to allow submission of additional information and rebuttal of that information. The record will close after that date.

Testimony. Formal statements made at a public hearing before an official body deciding an issue or a land use case. Testimony may be either presented in writing or orally prior to the close of the hearing.

Resources & References

City of Astoria - Community Development Department

Astoria City Hall, 1095 Duane Street

(503) 338 - 5183

https://www.astoria.or.us/dept/Community_Development

Oregon Dept. of Land Conservation and Development

(503) 373 – 0050

www.oregon.gov/lcd

Tips about How to Testify at Land Use Hearings.

State Land Use Board of Appeals

(503) 373-1264

www.oregon.gov/luba

File an appeal, hearings schedules.

Bureau of Development Services, Portland, Oregon

A Guide for Presenting Testimony

www.portlandoregon.gov/bds/article/437356

National Alliance of Preservation Commissions

www.napcommissions.org