

CITY OF SANTA BARBARA

Staff Hearing Officer Guidelines



August 2021

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**CITY OF SANTA BARBARA
STAFF HEARING OFFICER GUIDELINES**

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CITY OF SANTA BARBARA STAFF HEARING OFFICER GUIDELINES

I. INTRODUCTION

A. Appointment of Staff Hearing Officer

Santa Barbara Municipal Code (SBMC) Sections 28.05.010 and 30.200.040 establish the Staff Hearing Officer as a City staff person appointed by the Community Development Director.

B. Authority

The Staff Hearing Officer has the authority to investigate, approve, approve with conditions, or deny applications for development as specified in Titles 27, 28 and 30 of the SBMC.

C. Interpretation and Application of These Guidelines

1. *Guidelines are Directory, not Mandatory*

The provisions of these Guidelines are directory, not mandatory. These Guidelines are intended to guide the preparation for and conduct of Staff Hearing Officer meetings. The Guidelines are not intended to alter or amend any existing City or state law. In the event of an inconsistency between these Guidelines and City or state law, the City or state law shall prevail. Except as provided otherwise by statute or local ordinance, no action taken by the Staff Hearing Officer shall be held invalid due to any failure to observe any provision of these Guidelines, nor shall any person have a claim or cause of action against the City, the Staff Hearing Officer, or any of their officers or employees on account of such a failure. The Staff Hearing Officer is authorized to develop and apply supplemental guidelines during the course of any hearing.

2. *Staff Hearing Officer Interprets Guidelines*

All questions regarding the proper interpretation and application of these Guidelines shall be resolved by the Staff Hearing Officer, upon the advice of staff and the Staff Hearing Officer's City Attorney advisor. The Staff Hearing Officer's interpretation of such questions is final and binding.

II. GENERAL INFORMATION

A. Regular Meetings - Date and Time

The Staff Hearing Officer shall hold regular meetings at 9:00 a.m. on alternating Wednesdays. These meetings shall be open and public and all interested persons shall be permitted to attend the meeting. The Staff Hearing Officer will attempt to complete its regular meeting by 12:00 p.m. If it has not completed its agenda by that time, it will complete consideration of the item it is reviewing at 12:00 p.m. and may continue the remaining items to its next meeting.

B. Agenda, Staff Report, and Minutes and Resolution Posting

1. *Agenda*

The Staff Hearing Officer meeting agenda is posted for public review on the outdoor bulletin board at 630 Garden Street, adjacent to the David Gebhard Public Meeting Room, in the public lobby at 630 Garden Street, and on the City's website, at least 72 hours prior to a Staff Hearing Officer meeting. In the event that the website goes down or otherwise is inaccessible for all or part of the 72 hours preceding the meeting due to technical difficulties or other factors not within the City's control, the meeting may proceed

2. *Staff Report*

To the extent possible, the written staff report containing staff's analysis, recommendation, required findings, and proposed conditions of approval, if any, along with appropriate application materials, will be posted on the City's website and available for viewing at the Planning Counter at 630 Garden Street and on the City's website, at least 72 hours prior to a Staff Hearing Officer meeting.

3. *Minutes and Resolution*

To the extent possible, the Staff Hearing Officer meeting minutes and any resolutions will be posted on the City's website generally within five business days after the associated the Staff Hearing Officer meeting.

C. Applicant Attendance at Public Hearing

In the absence of the applicant or other project representative, or a written request from the applicant for postponement of the agenda item, the Staff Hearing Officer may: (i) postpone the public hearing to a later position on the same meeting agenda; (ii) postpone the agenda item indefinitely; or (iii) continue the agenda item to a date certain. A

postponement or continuance may require a new public notice and associated noticing and application postponement/continuance fees.

D. Resolutions

The Staff Hearing Officer Commission Secretary shall prepare a Resolution following a decision by the Staff Hearing Officer on an application. The Resolution is intended to establish a permanent record of the decision made by the Staff Hearing Officer and to give an applicant formal notice of the decision of the Staff Hearing Officer. Any such Resolution shall be effective on the date that the Staff Hearing Officer took the action referred to in the Resolution.

E. Substitution of Application Materials

Architectural plans or other application materials originally submitted and filed for Staff Hearing Officer review shall not be substituted by applicants after the meeting agenda has been posted nor at the time of the scheduled public hearing. Applicants may submit additional or clarifying information to staff after the meeting agenda has been posted, if staff determines the additional information is consistent with the agenda project.

F. Submission of Written Public Correspondence for Staff Hearing Officer Consideration

Members of the public may submit written correspondence to the Staff Hearing Officer indicating their support of or opposition to the project, including their reasoning and concerns. All documents addressed to the Staff Hearing Officer pertaining to a specific project shall be delivered to the Staff Hearing Officer Commission Secretary, P.O. Box 1990, Santa Barbara, CA 93102-1990 or via email to SHOSecretary@santabarbaraca.gov. The Staff Hearing Officer Commission Secretary will then transmit copies of those documents to the Staff Hearing Officer, the appropriate case planner assigned to the project, and to the applicant team. Please note the Staff Hearing Officer may not have time to review written correspondence received after 4:30 p.m. the Tuesday immediately prior to the meeting.

Written correspondence may also be brought to the meeting for distribution (provide 4 copies), however, please note that the Staff Hearing Officer may not be able to review it during the meeting. Correspondence received after the close of the public hearing on the item will not be considered nor become part of the public record.

III. MEETING PREPARATION

A. Site Visits

The Staff Hearing Officer will perform site visits of scheduled projects. The purpose of a site visit is to permit the Staff Hearing Officer to view and inspect the physical aspects of the real property and development projects that are the subject of an agenda item. The property owner or authorized agent is not required to attend the site visit. However, the property owner or authorized agent shall ensure the area of the property subject to the development application before the Staff Hearing Officer is accessible to the Staff Hearing Officer. During the site visits, statements shall not be taken from the public or from applicants. Comments from staff are limited to a summary of the applications and identification of issues for which the site visit could provide information. At the site visit, the Staff Hearing Officer may raise questions or issues regarding the project to be addressed by staff, the applicant and others at the public hearing.

B. Visual Aids, Including Story Poles.

Some development applications may require visual aids to assist the Staff Hearing Officer, staff, applicant, and the public in the review of the requested discretionary application. Please refer to the *Visual Aid Requirements for Development Applications* handout on the City's website (www.santabarbaraca.gov) for guidance on when visual aids are required, story pole requirements, timing of installation, etc.

C. Ex Parte Communication

Ex parte communications are substantive oral or individual written communications concerning projects coming before the Staff Hearing Officer for a decision that occur outside of noticed public hearings. The Staff Hearing Officer should avoid and discourage ex parte contacts if at all possible. If an ex parte contact does occur the Staff Hearing Officer must disclose the contact and the substance of the information communicated on the record at the start of the hearing on the item. This disclosure allows people who may have a different point of view or contrary evidence to make their points during the hearing in response to the information the Staff Hearing Officer may have obtained through the ex parte contact.

As part of the preparation for a public hearing, the Staff Hearing Officer may contact staff for clarification of transmitted materials or to ask questions that the Staff Hearing Officer will want staff or the project applicant to answer or respond to at the public hearing. The Staff Hearing Officer may also request staff to contact the project applicant with requests for additional information the Staff Hearing Officer determines will be necessary to bring to the public hearing. At the public hearing, staff or the applicant will summarize any questions asked and verbally provide an answer during the staff/applicant presentation.

IV. PROCEDURAL STANDARDS

A. Agenda Organization

The Staff Hearing Officer agendas are organized as follows:

1. Preliminary Matters
 - a. Changes to the Agenda
 - b. Announcements and Appeals
 - c. Public Comments
2. Consent Calendar – If any (See Section IV.C, Consent Calendar, below for procedure)
3. Continued Items – If any
4. Projects –Modification only applications scheduled first followed by other land use discretionary applications (See Section IV.D, Conduct of Public Hearing, below for procedure)
5. Discussion Items – If any
6. Adjournment

B. Change in Order of Agenda Items

At regular meetings of the Staff Hearing Officer, the Staff Hearing Officer may change the order of the agenda. The Staff Hearing Officer will announce changes to the order of the agenda under Preliminary Matters on the agenda and between each item for the benefit of the audience.

C. Public Comment/Testimony

Persons wishing to address the Staff Hearing Officer on any subject within the jurisdiction of the Staff Hearing Officer that is not on that meeting's agenda may do so under Preliminary Matters – Public Comment portion of the agenda. At most meetings, the total amount of time for public comment during this portion of the agenda will be limited to 15 minutes and no individual speaker shall speak for more than three minutes. Persons who speak during the public comment portion of the agenda may not pool their time with others. The Staff Hearing Officer may decline to hear a speaker on the grounds that the subject matter is beyond the jurisdiction of the Staff Hearing Officer. No decision will be made nor will any discussion occur regarding the issue addressed during public comment.

Persons wishing to address the Staff Hearing Officer on a project on the meeting agenda shall do so at the time the public hearing is opened for that project. See E. Conduct of Public Hearings, below.

D. Consent Calendar Procedure

The Consent Calendar is comprised of items which, in the Zoning Supervisor's judgment, will not require discussion. Typically, requests for time extensions of project approvals are placed on the Consent Calendar.

1. *Presentation*

The Staff Hearing Officer typically waives the oral staff report and applicant presentation.

2. *Comments*

For each item on the Consent Calendar for which a public hearing is required, the Staff Hearing Officer announces the application and asks if anyone in the audience wishes to address the Staff Hearing Officer regarding the item. The announcement of the item opens the public hearing. Every person who desires to address the Staff Hearing Officer must complete a written Request to Speak form which is provided at the hearing. Individual comments are typically limited to two minutes.

3. *Time Limit and Removal from Consent Calendar*

If questions from the applicant or public are substantive and require a lengthy discussion, the item will be removed from the Consent Calendar and scheduled in accordance with IV.D.4 below.

4. *Scheduling*

All items removed from the Consent Calendar shall be scheduled for hearing on the same day, and considered on the agenda after completion of items that have been continued from a previous meeting or in the order decided by the Staff Hearing Officer.

5. *Action*

At the conclusion of the comments (if any), the Staff Hearing Officer will approve, approve with conditions, deny or continue the items on the Consent Calendar. Any action shall include a statement to adopt all appropriate findings and all conditions

of approval on the written staff reports or as revised at the hearing. The Staff Hearing Officer will announce if the project is appealable to the Planning Commission or City Council or if the Staff Hearing Officer's decision is subject to suspension per SBMC §28.05.020 and 30.205.150.A.2.c. No further discussion on the item is permitted.

E. Public Hearing Procedure

1. *Commencement of Public Hearing*

The Staff Hearing Officer calls for the first project on the agenda by reading its site address and requests the applicant come up to the table.

2. *Staff Presentation*

The Staff Hearing Officer requests staff to make its presentation of the proposed project. The case planner presents its report, including any environmental analysis, proposed conditions of approval, and its recommendation. In general, staff presentations are limited to three minutes. The Staff Hearing Officer may question staff to clarify points made in the presentation.

3. *Applicant's Presentation*

The Staff Hearing Officer asks the applicant or applicant's representative to introduce themselves and if they wish to provide additional comments or a presentation. In general, the applicant's presentation is limited to five minutes. The Staff Hearing Officer may question the applicant to clarify points made in the presentation.

4. *Public Comment*

The Staff Hearing Officer asks if any persons wish to speak on the subject item. Every person who desires to address the Staff Hearing Officer must complete a written *Request to Speak* form which is provided at the hearing. Individual comments are typically limited to three minutes. In cases where it appears that there are a large number of persons present to speak on the item, the Staff Hearing Officer may further limit the time that a member of the public may speak. Persons wishing to pool their time with other speakers shall indicate that on their *Request to Speak* form. Each person who is donating time shall be present in the room to deliver the *Request to Speak* form and when the pooled-time speaker is heard. Time will be pooled up to a maximum of five minutes for any single speaker,

regardless of how many persons donate their time. A person may not donate only a portion of their time.

5. *Applicant's Response*

The Staff Hearing Officer may recognize the applicant for response remarks.

6. *Deliberation*

The Staff Hearing Officer declares the public portion of the hearing closed. Comments made after this point are to be made only by the Staff Hearing Officer or by staff. Applicants, proponents or opponents may speak only upon questioning by Staff Hearing Officer. The Staff Hearing Officer may recognize City staff for response to comments or remarks received during public comment or by the applicant.

7. *Decisions*

When the Staff Hearing Officer's deliberation is complete, the Staff Hearing Officer will approve, approve with conditions, deny, deny without prejudice or continue the subject application. The Staff Hearing Officer will announce if the project is appealable to the Planning Commission and whether the Staff Hearing Officer's decision is subject to suspension per SBMC §28.05.020 or SBMC §30.205.150.A.2.c. No further discussion is permitted on the item.

F. Signature of Plans by Staff Hearing Officer

When the Staff Hearing Officer approves a particular plan (site plan, tentative map, development plan, etc.), the Staff Hearing Officer shall stamp, sign and date the approved plan, and note thereon the existence of conditions.

V. PROCEDURE FOR POSTPONEMENT OR CONTINUATION OF A PUBLIC HEARING

A. Postponement

A public hearing on any matter shall be commenced on the date for which it has been noticed, unless the Staff Hearing Officer postpones the public hearing to a later date. A postponement is deferral of the consideration of an agenda item to a future meeting. No discussion or presentation takes place on the date a postponement occurs. A postponement may be requested by City staff or by the project applicant. A request to postpone the public hearing by an applicant should be filed in writing in the office of the

Community Development Department prior to the time set for the hearing. The request must be signed by the person requesting the postponement or by an authorized representative and must state the reason(s) why a postponement is requested. The written request shall be delivered to the Staff Hearing Officer who shall announce that a request has been received and by whom it was made. The Staff Hearing Officer will decide whether the postponement will be granted.

B. Continuance

A continuance is the carrying forward of an item under discussion to a future meeting. To be considered for a continuance, the applicant must attend the meeting and make a presentation. An application may be continued at the request of the applicant or by action of the Staff Hearing Officer. Unless a continuance is necessary in order for the Staff Hearing Officer to receive reports or other information, the Staff Hearing Officer may offer the applicant the option of agreeing to the continuance or requesting that the Staff Hearing Officer take action on the project at the present meeting.

C. Re-Opening a Public Hearing for a Continued Item

When an item is continued after the public hearing is closed, the Staff Hearing Officer may decide to re-open the public hearing (provided notice requirements are met) at the meeting to which it has been continued, if new and additional evidence is to be presented.

VI. **PROCEDURE FOR PROCESSING A REVISED PROJECT OR SUBSTANTIAL CONFORMANCE DETERMINATION REQUEST**

A. Project Revision

In the event that a revision to an application is filed by the applicant after the public notice for a Staff Hearing Officer hearing has been published and the revision requires re-evaluation of any policy, design or environmental impact related to the revised application, the revised application shall comply with the following procedures:

1. *Additional Fees*

At the time of submittal of the revised application, the applicant shall pay an additional fee as specified in the fee resolution adopted by Council.

2. *Environmental Review*

The revised application shall be referred to the Environmental Analyst to determine the adequacy of previous environmental review. If the Environmental Analyst

determines that additional review is necessary it must be completed prior to scheduling the revised project for a new public hearing.

3. *Design Review*

If required, the revised application shall be referred to the appropriate Design Review Board/Commission for project compatibility analysis.

4. *Hearing*

Upon completion of any additional environmental and design review, the Staff Hearing Officer's hearing shall be scheduled in accordance with customary procedure.

B. Finding of Substantial Conformance.

After an application has been approved by the Staff Hearing Officer, the applicant may request that the project be revised in a minor fashion. These requests are usually the result of completing the design review and plan check processes where some new requirement has come to light. Some of the revisions are very minor and some may be more difficult to assess. In all cases, the need for the revision should be carefully considered. Typically, this finding is made by staff prior to the issuance of building permits. The Staff Hearing Officer may be asked to offer input before staff makes the substantial conformance determination. The question in this type of determination is whether the revised project is substantially consistent with the original Staff Hearing Officer approval. If staff cannot make the finding of substantial conformance and the applicant still wishes to pursue the revised project, an application for the revised project or an amendment to the approval must be filed. The following details the Substantial Conformance Determination process to be followed:

1. *Letter Approving Site Plan/Project Changes*

Applicants write a letter to staff describing the changes to the project (e.g., changes to the location of a window approved with the Modification or conversion of an approved carport to a garage, etc.) and requesting a finding of substantial conformance with the earlier approval. If staff determines that the change in scope does not represent a change in the land use intensity or raise any issues relative to the approval or project conditions of approval, staff writes a letter to the applicant and City Planning File which indicates that the changes are in substantial conformance with the approval. No notification of the Staff Hearing Officer is necessary in this instance.

2. *Discussion of Substantial Conformance Requests at a Staff Hearing Officer Meeting*

In instances when an applicant requests a finding of substantial conformance which staff determines it cannot grant without more formal input from the Staff Hearing Officer, the item is scheduled on a Staff Hearing Officer agenda as a Discussion Item. Examples include: additional square footage is proposed, some changes in use are proposed, removal of a specimen tree(s) that were to be preserved, minor changes in the location of a building, and project phasing changes or an additional bedroom is added to a residential project. The purpose of this discussion is to help staff determine if the request is consistent with the original approval and any conditions placed on the project approval. A cover memo with background information is sent to the Staff Hearing Officer prior to the meeting. Sometimes in these cases it is appropriate to provide notice to interested parties and surrounding property owners to inform them that a formal discussion will be held to address a proposed change in the project. Once staff has received the Staff Hearing Officer's input, a final determination will be made. Staff will write a letter to the applicant with a copy sent to the Staff Hearing Officer and the City Planning File.

VII. PROCEDURE FOR CONCEPT REVIEW/JOINT PLANNING COMMISSION AND STAFF HEARING OFFICER REVIEW

Conceptual review of a project may be conducted at a joint hearing of the Planning Commission and Staff Hearing Officer prior to the application being submitted for formal discretionary review. Concept review provides an opportunity for early input on a proposed project and is an informal review where general information, questions, comments and suggestions for further study may be made. Comments made at the concept level are not binding on future review. The types of projects that may be considered at a concept level tend to involve new or complex planning issues. Conceptual review projects shall require public notice and hearing pursuant to SBMC Section 28.87.380 and Chapter 30.205. In general, a Concept Review hearing follows the procedures outlined above in Section IV.E, Public Hearing Procedure.

VIII. APPEAL, SUSPENSION, OR REVOCATION OF STAFF HEARING OFFICER ACTION

A. Appeals

Decisions of the Staff Hearing Officer (except Minor Zoning Exceptions and denial of Time Extensions) may be appealed to the Planning Commission by an interested party who participated in the public hearing in accordance with SBMC Section 27.07.090,

§28.05.020, §30.205.150, and Chapter 1.30 of the SBMC. Appeals of a Staff Hearing Officer decision must be filed with the City within 10 calendar days of the Staff Hearing Officer's decision. If the 10th day falls on a day City offices are closed, the appeal period is automatically extended to 4:30 p.m. on the next business day City offices are re-opened. Appeals of the Staff Hearing Officer's decisions are filed at the public Planning Counter on the first floor of the Community Development Building located at 630 Garden Street.

B. Suspension

The Chairperson, Vice Chairperson or designated liaison of the Planning Commission may suspend a decision of the Staff Hearing Officer (except Minor Zoning Exceptions) within the 10-day appeal period in accordance with SBMC §28.05.020 and §30.205.150. The suspension shall be accepted and processed in the same manner as an appeal.

C. Revocation of Approval

Pursuant to SBMC §28.87.360 and §30.205.140, any permit or approval granted by the Staff Hearing Officer may be revoked or revised for cause if any of the conditions or terms of the permit or approval are violated or if any applicable law or ordinance is violated. The revocation proceedings may be initiated by the Community Development Director or City Attorney. A decision to revoke or revise a permit or approval shall be made following a noticed public hearing, using the same noticing requirements which were applicable to the original permit or approval.

D. Transmittal of Records

All matters considered by the Staff Hearing Officer shall be included in the record transmitted to the Planning Commission at the time the appeal or suspension is held. The records shall include copies of all reports, project plans, correspondence and documents.