



## Supplemental Rules Of The Zoning Hearing Examiner

### **Section 1. - General.**

The Zoning Hearing Examiner (the "ZHE") of the City of Cincinnati, Ohio (the "City") is established pursuant to Article XXV, § 10 of the City of Cincinnati Administrative Code ("Administrative Code") and shall be governed pursuant to Cincinnati Municipal Code Chapter 113, Chapter 1443 of the City of Cincinnati Zoning Code (the "Zoning Code"), and by the rules of hearing procedure hereinafter approved by the City Manager in accordance with Cincinnati Municipal Code Section 113-11 on the date first written above. Whenever any conflict exists between these rules and the applicable laws of the State of Ohio or ordinances of the City, the applicable State laws and City ordinances shall prevail.

### **Section 2. - Hearings.**

A. *Hearing Schedule and Location: Open to Public.* The ZHE shall conduct regularly scheduled hearings and provide notice of same in accordance with Zoning Code Sections 1443-05 and 1443-07. All hearings will take place at a time and place contained in the hearing notice. If no official matters are scheduled for a particular month, then the ZHE will not be required to conduct a hearing. All hearings of the ZHE shall be open to the public except as provided by Ohio law.

B. *Appearances.* An applicant may appear in person at the hearing or may be represented by an attorney or a duly authorized agent having a power of attorney. Any reference herein to the term "applicant" shall be deemed to be inclusive of applicant's attorney or authorized agent. In the event that the applicant fails to appear as scheduled before the ZHE and has not requested a postponement upon twenty-four (24) hours advance written notice to the ZHE, then the ZHE, in his or her discretion, shall have the right to (i) continue the case until the next regularly scheduled hearing, or (ii) deny the application for want of prosecution. All persons wishing to appear before the ZHE shall sign in on a sheet located at the entrance to the hearing room. The ZHE shall have the right to exclude testimony of anyone who has failed to sign in.

C. *Oath.* All persons providing testimony to the ZHE shall be sworn by the ZHE at the beginning of the hearing or prior to testifying. An attorney shall not be sworn by the ZHE unless the attorney is acting as a witness or providing testimony rather than acting as an advocate and providing argument.

D. *Decorum.* It shall be the duty of the ZHE to maintain decorum at all times during the hearing. Prior to testifying at a hearing, all persons appearing before the Board shall clearly state their first and last name and their personal address or business address for the record. All parties shall speak clearly into the microphone provided and shall refrain from speaking over other parties. No person shall be permitted to speak from the audience. The ZHE shall have the right to expel from the hearing any person exhibiting a lack of decorum or causing disruptive behavior.

E. *Order of Cases.* Cases shall be heard in the order noticed by the ZHE.

F. *Hearing Procedure.* The order of business of a hearing shall be as follows;

1. The applicant shall first present its case. The time limit for applicant's case shall be a

combined total of fifteen (15) minutes. If there is more than one applicant party, then the applicants may determine the length of time each appellant will have to present their arguments; otherwise, the ZHE, in his or her discretion, will divide the allotted time evenly between or among the applicant parties. Upon the expiration of the allotted time for applicant to present their case, the ZHE, in his or her discretion, may grant one (1) extension of a combined total of ten (10) minutes for applicant to continue to present their case.

2. Any party or parties opposing an application shall have a combined total of fifteen (15) minutes to present their arguments in opposition. If there is more than one party opposing the appeal, such parties may determine the length of time each party will have to present its argument; otherwise, the ZHE, in his or her discretion, will divide the allotted time evenly between or among the parties. In the event that an opposition group attends the hearing in opposition to the application, the ZHE may request that one (1) spokesperson from the opposition group address the ZHE. The ZHE, in his or her discretion, may grant one (1) extension of a combined total of ten (10) minutes for any opposing parties to present their arguments in opposition.

3. An applicant may request to undertake cross-examination of any person who has testified at the hearing under oath and in opposition to an application. The scope of applicant's cross-examination shall be limited to testimony taken at the hearing. Applicant shall have a maximum of two (2) minutes for the cross-examination of each opposing party.

4. In the event that any party testifies in opposition to an application, then after the applicant has had an opportunity to cross-examine any opposing party, the applicant shall have the right to present a rebuttal of a combined total of two (2) minutes.

5. After all presentations have been made on the appeal, the ZHE may (a) close the hearing, or (b) rule on the application. All decisions of the ZHE shall be made in accordance with Zoning Code Section 1443-09.

6. The principal purpose of the hearing is to allow applicants and opposing parties to testify before the ZHE and to offer and refute evidence and testimony. A ZHE hearing is a record hearing, meaning that all testimony and evidence that an applicant or any opposing party desires to include in the case record shall be presented to the ZHE at the hearing. The ZHE may limit or exclude any testimony that the ZHE deems, in the ZHE's discretion, is irrelevant or outside the scope of the application being considered. The ZHE may interrupt any speaker to ask questions or to make any comments; provided, however, the time for such interruptions shall not be deducted from the time limitations set forth above.

H. *Hearsay*. The ZHE may refuse to consider hearsay testimony, which is any statement which was made outside of the hearing and is being offered as credible evidence to support or dispute any issue in the case. The ZHE shall make the determination about whether hearsay evidence should be considered based upon the following factors: (i) whether an objection has been made to the ZHE to exclude the hearsay evidence; (ii) whether an objecting party has previously proffered hearsay evidence during the hearing which the ZHE considered; and (iii) whether the hearsay evidence is reliable and accurate.

### **Section 3. - Amendments or Suspension of Rules.**

A. *Amendments*. These rules may be amended or revoked at any time upon the written approval of the City Manager.

B. *Suspension*. The ZHE may suspend these rules at a hearing for good cause and in the ZHE's sole discretion; provided, however, that the ZHE shall state clearly on the record the reason for suspending the rules.