

Administrative Hearings: A Citizen's Guide

LEGAL TERMS AND DEFINITIONS

Administrative Hearing - similar to a judicial hearing; however, instead of a judge, an administrative body (City Council or a Board/ Commission, such as the Board of Zoning and Planning) presides over the proceedings.

Aggrieved Party - Any person who demonstrates an interest that is directly affected by the order, requirement, decision, or determination. A person's interest is directly affected where it is subject to an immediate, unique harm distinct from the harm suffered by the community at large. A future, contingent, or speculative interest will not suffice. For the purposes of this definition, any person owning property contiguous or adjacent to a proposed land use site shall be considered directly affected with respect to any administrative hearing or appeal regarding that site.

Ex-parte Communications - When a party communicates directly with the judge (City Council) about the issues in the case without the other parties' knowledge (the developer).

Quasi-judicial - In this case, an administrative agency (City Council), which has powers and procedures resembling those of a court of law or judge, and which is obligated to objectively determine facts and draw conclusions from them.



FAQs

What is City Council's normal role and why is an Administrative Hearing different?

Typically, City Council acts in a legislative capacity; it listens to citizen's input and creates new law. However, in an administrative hearing, City Council acts in quasi-judicial role. This means that City Council applies pre-existing law to a dispute. During an administrative hearing, City Council has no ability to make new law and apply it retroactively. This commonly arises in regards to new construction projects and zoning requirements.

Am I able to communicate with City Council regarding an Administrative Hearing?

In short, no; this is considered ex-parte communication and not allowed.

Why am I unable to communicate with City Council during an Administrative Hearing?

In any administrative hearing, and throughout the process, City Council acts as the judge and jury for the quasi-judicial proceedings. To ensure fairness and equal treatment of both parties, City Council is not allowed to talk to one party without the other party to the dispute being present.

Any communication without both parties present is called ex-parte communication and is forbidden. This applies to phone calls, emails, letters, and faxes.

I am a taxpaying resident of Upper Arlington; City Council should listen to me.

We understand that you are a resident and taxpayer of Upper Arlington, but it is likely that the person on the other side of the dispute is as well.

Remember, even if you do not agree with your neighbor adding an addition to their home, or a construction project down the street, City Council still must treat all residents and businesses fairly and impartially in an administrative proceeding.

If I am unable to communicate with City Council, how can I ensure City Council hears my complaint?

We understand the inability to communicate directly with City Council during an administrative hearing is challenging for the community; however, any aggrieved party may present testimony concerning the matter at the heart of the dispute at the administrative hearing, thus ensuring:

1. All complaints and testimony are heard.
2. All aggrieved parties are given a chance to plead their case.
3. No ex-parte communication is had.
4. The administrative hearing is fair and impartial to all parties involved.

What happens if I attempt to talk to a City Council Member?

You are used to talking to Council Members about legislative matters, both at Council meetings or at the grocery store. However, if you attempt to speak to a City Council member regarding an administrative hearing, the Council Member should explain they are not permitted to take part in the discussion.

If you send a written "ex parte" communication relating to an appeal, the Council member will transmit the item to the Clerk to be included in the official records. These communications will then be forwarded to the both parties as soon as practicable before the hearing. Also, the opposing party may object to consideration of material submitted "ex parte," ultimately harming your objective.

You can contact the City Manager who is permitted to generally discuss the matter.

What can the City Attorney help me do?

The City Attorney may not give residents legal advice. You may have questions that the City Attorney is not permitted to answer. The City Attorney represents the City of Upper Arlington, and depending on your position, we may be on opposite sides.

The City Attorney may not:

- Provide you with legal research
- Tell you what sorts of claims to file or what to put on forms
- Tell you what to say in your administrative proceeding
- Give an opinion about how City Council may rule in the hearing
- Give you information that both parties do not have.

The City Attorney may:

- Answer questions about how an administrative hearing works and procedurally what happens
- Explain legal terminology used.
- The City Attorney is there to help you, and will typically be fighting for you. However, in an administrative proceeding, the City Attorney can only tell you how things work, not advise you about what you ought to do.

What else should I know?

Please understand that when a City Council member says that they cannot talk to you because it is ex-parte communication, it does not mean that they are ignoring your concerns; rather, it is because of a legal obligation to do so. Again, it is important to remember that any aggrieved party will be able to express any concerns to City Council regarding the dispute at the administrative hearing.

Board of Zoning and Planning

When the Board of Zoning and Planning hears an issue, it hears the issue as an administrative hearing. Everything discussed in this pamphlet regarding administrative hearings applies to when the Board of Zoning and Planning consider an issue.

Examples of Administrative Hearings:

- Variances
- Development Plans
- Conditional Use Approvals

