

Operational Directions for Holding a Hearing, Ministry of the Interior

The Ministry of the Interior (hereinafter referred to as the Ministry) has stipulated the Operational Directions for Holding a Hearing (hereinafter referred to as the Operational Directions) according to Administrative Procedure Act and considering the nature of land use cases reviewed by the Ministry, including urban planning, important wetland, coastal management, urban renewal, land expropriation, urban land consolidation and other similar cases. The purpose is to comply with due process enshrined in the Constitution of the Republic of China, and to further implement the essence illustrated in Judicial Yuan Interpretation No. 709 and 739 that the parties and interested persons involved in administrative actions of urban renewal and private-led urban land consolidation related cases shall be given the opportunity of making statements and argument.

The nature of land use cases heard by the Ministry is unique comparing with those heard by other government agencies. For example, cases heard by National Communications Communication (NCC), Fair Trade Commission (FTC) or Ill-Gotten Party Assets Settlement Committee of Executive Yuan involve specific topics and persons of administrative action, whereas cases heard by the Ministry often involve diverse issues and a number of parties. Besides, concerning that decisions made upon these cases can bring significant influence on the geological and hydrological identification of the region, connection between people and land, and on protection of human rights, the Ministry's hearing procedures shall be differentiated from other government agencies' hearing procedure. The differences include:

1. The hearing cases conducted according to the Operational Directions are related to urban planning, important wetland, coastal management, urban renewal, land expropriation and urban land consolidation (Article 2);
2. The cases heard by the Ministry can be quite simple or rather complicated with a number of issues. As technical and professional evidences or issues can be involved in the case, relevant details shall be clarified through the hearing. The

Ministry has therefore specified circumstances where a hearing may be held (Article 3);

3. Where the Ministry's authority or subordinate agency deems that it is necessary to hold a hearing, a hearing plan shall be prepared and submitted to the minister and deputy minister(s) for approval. A preparation meeting shall also be taken place, if required. The elected hearing officer shall attend the said meeting and provide opinions (Article 4 and 5);
4. The Ministry shall conduct notice and public announcement procedure with regard to the hearing. To clarify issues, preliminary hearing may be taken place accordingly (Article 6 to 8);
5. The hearing shall be conducted by the hearing officer elected by the Ministry, whose authority shall also be defined accordingly (Article 12, and 15 to 19);
6. Hearing minutes shall be taken after the hearing session(s) and be signed by the hearing officer and the persons who have made statements and/or raised questions. The hearing officer shall summarize and present opinions of which a consensus has been made, and issues or evidences that have been clarified. For opinions of which a consensus is not made, and issues or evidences that are not clarified, it is a must to list the reasons and causes, and make a summary accordingly (Article 20 to 24).

Operational Directions for Holding a Hearing, Ministry of the Interior

1. The Ministry of the Interior (hereinafter referred to as the Ministry) has stipulated the Operational Directions to regulate hearing operating procedures, facilitate citizens' participation, and to comply with the due process.
2. Regarding the review of land use cases, including urban planning, important wetland, coastal management, urban renewal, land expropriation, and urban land consolidation related cases, those who must hold a hearing before rendering an administrative disposition as required by statute, regulation, or as deemed that there is a necessity of holding a hearing ex officio shall follow the Operational Directions (see the annex flowchart for the operating procedure).
3. The Ministry's competent authority or subordinate agency (hereinafter referred to as the Authority or Agency) may, during the performance of administrative disposition rendered by the Ministry referred to in Article 2, hold a hearing in any of the following circumstances:
 - (1) The case is complex, or the basic fact or evidence (hereinafter referred to as the evidence) of applicable regulation(s) shows a number of discrepancies or issues, provided that it is necessary to hold a hearing;
 - (2) A technical or professional evidence or issue is concerned during the review; relevant commission, review committee or other meeting deems that it is necessary to hold a hearing for that specific evidence or issue; and
 - (3) When the necessity of holding a hearing is approved by the Authority or Agency.

Regarding the approval of holding a hearing, the Authority or Agency shall take the following considerations into account:

- (1) Whether the evidence is known in the public or to those who carry out their functions;
- (2) Whether other agencies have already conducted an investigation, or the investigation is completed;
- (3) Whether other agencies have already conducted a hearing for the same evidence or issue;
- (4) Whether the evidence or issue must be concluded or clarified through the hearing;
- (5) Whether the definition of the said evidence or issue makes crucial influence to the final decision of the case;
- (6) Whether it is difficult to identify the parties involved in the case, evidence or issue; and
- (7) Whether the hearing cannot be hold due to the period fixed by the applicable law.

The parties or interested persons may specify the reason(s) of holding the hearing, and the Authority or Agency shall take it under consideration together with Paragraph 1.

4. Where the Authority or Agency deems that it is necessary to hold a hearing, it is a must to prepare a hearing plan specified with the following details. Upon receipt of the approval of the minister and deputy minister(s), the plan shall be implemented:
 - (1) Case background, overview and current status;
 - (2) Legal basis or reasons of holding a hearing according to laws, regulations or to Article 3;
 - (3) Involved evidence or issue;
 - (4) Planned hearing session;
 - (5) Nominated hearing officer;
 - (6) Number of parties and any other known interested persons;
 - (7) Opinions of relevant agencies and their responding proposal;
 - (8) List of witnesses, expert witnesses or other relevant persons who will attend the hearing; and
 - (9) Other matters concerning the implementation or preparation of the hearing.
5. Where the hearing request is approved, the Authority or Agency shall notify the hearing officer and ask the officer to provide opinions on the hearing plan. The Authority or Agency may hold the preparation meeting based on the actual needs, and may invite the hearing officer to join the meeting if necessary. The preparation meeting may be held for the purposes of:
 - (1) Collecting materials of evidence or issue involved;
 - (2) Planning session and selecting the date and place of holding the hearing;
 - (3) Coordinating with those sharing common interest or assertion to appoint a representative or agent, if a multiple number of parties and any other known interested persons are involved in the case;
 - (4) Formulating appropriate hearing procedure, order of presentation, or other related mechanism;
 - (5) Requesting relevant agency or persons to provide documents, materials or evidences; and
 - (6) Other matters related to the implementation of hearing plan.Approved hearing plan that requires amendment after the implementation as prescribed in the three preceding paragraphs shall be reported to and approved by the minister and deputy minister(s).
6. Before holding a hearing, the Ministry shall serve on the parties and any other known interested persons a written notice, giving therein the following details. Relevant details shall also be published on the Ministry's notice board, website, and the Executive Yuan Gazette:
 - (1) Subject matter of and grounds for the hearing;
 - (2) Evidence or issue that is going to be clarified;
 - (3) Name or trade name, domicile or residence, and business office or business establishment of the parties and any other known interested persons;
 - (4) Date and place of the hearing;
 - (5) Name of the hearing officer;

- (6) Basic procedure of the hearing;
- (7) The parties and any other known interested persons may appoint a representative or agent;
- (8) The rights to which the parties, any other known interested persons and their representatives and/or agents are entitled under Article 61 of Administrative Procedure Act;
- (9) Date and place of preliminary hearing, if any, intended to be held;
- (10) The manner in which failure to appear before the hearing will be dealt with;
- (11) The name of the authority holding the hearing;
- (12) Deadline for the said parties to express their intent of attending the hearing (as annex format); and
- (13) Deadline for the said parties to provide their opinions and materials.

Regarding the written notice and public announcement referred to in the preceding paragraph, the Ministry shall public relevant documents, materials and matters concerning the audience and media interview on the Ministry's website for the others to browse or download.

7. The notice and public announcement referred to in Article 6 shall be in compliance with the following provisions:
 - (1) Shall be made fifteen days before the date of hearing, except for unique and urgent cases, or cases with the consent of the parties and any other known interested persons. Besides, the term of public announcement shall not be less than fifteen days;
 - (2) The place of holding the preliminary hearing or hearing shall be selected appropriately according to the nature of the case;
 - (3) The deadline for the said parties to express their intent of attending the hearing and submit written opinions and materials shall be more than 7 days starting from the next day after the date of notice.

8. To facilitate the unobstructed progression of the hearing proceeding, the Ministry may, based on the complexity of each case, number of attendants, collection progress of evidence, the possibility to solve all issues and so on, hold before the date scheduled for the hearing a preliminary hearing. The Ministry shall also notify the parties, any other known interested persons and their representatives and/or agents to attend it.

A preliminary hearing may be held for the purposes of:

- (1) Discussing the process of hearing proceeding;
- (2) Clarifying the issues;
- (3) Presenting relevant documents and evidence; and
- (4) Changing the date and place of the hearing and replacing the hearing officer.
- (5) Other hearing related matters.

Minutes shall be taken of the preliminary hearing.

Provisions of Article 4, Article 5, Article 9, Paragraph 1 of Article 10, and Article 11 to Article 23 are applicable to the preliminary hearing.

9. In any of the following circumstances, the hearing officer shall recuse him/herself from the hearing:

- (1) Where the hearing officer him/herself or his/her spouse, former spouse, any of his/her relative by blood within the fourth degree or relative by marriage within the third degree, or a person having previously such relationship with the hearing officer, is the party or any other known interested person to the matter;
- (2) Where the hearing officer him/herself or his/her spouse or former spouse is connected with the parties or any other known interested persons in relationship of joint holders of the rights or co-obligators in the matter;
- (3) Where the hearing officer is currently or was once the agent for or assistant to the parties or any other known interested persons;
- (4) Where the hearing officer was once a witness, expert witness or other legal assistant in the matter.

10. The hearing shall be held according to the notified date and place.

The Ministry may change the date or place of holding the hearing ex officio or according to the party's application. However, the said change shall only be made with a good cause.

The Ministry shall follow Article 6 and 7 to conduct above-mentioned change.

11. To maintain the order of hearing, ensure the safety of the place and to confirm attendants' qualifications for attending the hearing, the Authority and Agency shall verify attendants' ID card to ensure their qualifications before the hearing begins.

The hearing officer may forbid those who fail to provide the ID card and make corrections on time to attend the hearing. The fact of such failure shall be specifically noted in the hearing minutes.

12. The hearing shall be presided over by the hearing officer elected by the Ministry. Whenever it is necessary, lawyers, professionals of relevant fields and other professionals who are familiar with the laws may provide assistance at the hearing.
13. The hearing shall be carried out in the language of the Republic of China. Where the parties, any other known interested persons, their representatives and/or agents are foreigners or audibly/orally challenged people, it is a must to have an interpreter at the hearing.
14. The hearing shall be held orally and in the public, unless otherwise required by law.

In any of the following circumstances, the hearing officer may determine ex officio or upon application of the party not to make the entire or a part of the hearing proceeding open to the public:

- (1) Where making the hearing open to the public is likely against the public interest; or
 - (2) Where making the hearing open to the public is likely to cause material harm to the interest of the party.
15. The hearing shall be taken place according to the following procedure. However, the hearing officer may make adjustment to it based on the actual needs:
 - (1) Introductory statement of the hearing officer: introduce the attendants and inquire the parties, any other known interested persons, and their representatives and/or agents if they desire to raise any objection to the qualifications of attendants. If not, the hearing officer shall make a statement of the subject matter, order of presentation, the time allocated to each presentation and other relevant matters.
 - (2) Authority or Agency makes a brief presentation on the case and actions taken therefor.
 - (3) The parties, any other known interested persons or their representatives and/or agents state their opinions: the order of presentation and time allocated to each presentation shall be based on the order and time finalized at the preliminary hearing or at the introductory statement of the hearing officer.
 - (4) Authority or Agency shall read out the written opinions of those who fail to attend the hearing.
 - (5) Inquiring the witnesses, expert witnesses or relevant persons.

- (6) Upon receipt of the consent of hearing officer, parties, any other known interested persons, or their representatives and/or agents may raise questions to the Authority, Agency or any other attendants.
 - (7) Upon receipt of the consent of hearing officer, other attendants may raise questions to the Authority, Agency or other attendants.
 - (8) Inquiring the attendants if they have any final statement.
16. In conducting the hearing, the hearing officer shall maintain an unbiased and fair position.

The hearing officer may exercise the following powers during the hearing:

- (1) Inquiring the parties, any other known interested persons, their representatives and/or agents, and other persons present at the hearing with respect to questions of fact or law, or demanding the providing of evidence;
- (2) Inquiring witnesses, expert witnesses or relevant persons;
- (3) Permitting the parties, any other known interested persons, their representatives and/or statutory agents, and other persons present at the hearing to raise questions or to make statements;
- (4) Forbidding the parties, any other known interested persons, their representatives and/or agents, and other persons present at the hearing to make statements in order to avoid delay of the hearing proceeding, and ordering the expulsion of any such person if the hearing proceeding is seriously obstructed thereby;
- (5) Beginning, postponing or concluding the hearing proceeding as the case may require notwithstanding the failure of all or some of the parties, any other known interested persons, or their representatives and/or agents to appear without good cause;
- (6) Admitting the statement contained in the relevant documents presented by the party at the preliminary hearing as his/her statement made at the hearing;
- (7) Determining before the end of the hearing the date and place where further hearing will be held if the hearing officer deems it necessary;
- (8) Suspending the hearing ex officio or upon application by the party in the event of natural disasters or other incidents preventing the conduct of the hearing; and
- (9) Taking other necessary actions to ensure the unobstructed progression of the hearing proceeding.

Where the hearing officer has determined the date and place of holding further hearing, the Authority or Agency shall notice unattended parties and any other known interested persons, and report it to the minister and deputy minister(s).

17. After the hearing begins, the hearing officer may determine ex officio or upon application of the party to suspend the hearing proceedings in any of the following circumstances:

- (1) Presented documents and evidences cannot be confirmed or proved at the hearing, and such failure makes crucial influence to the hearing;
- (2) Facts of the case shall be further investigated and clarified;
- (3) Any attendant violates Article 18 and refuses to obey the order, resulting in the interference of the hearing proceedings; and
- (4) Other circumstances that result in the suspension of hearing.

The decision and reasons of hearing suspension made by the hearing officer shall be noted in the hearing minutes.

18. When the hearing proceeding takes place, the parties, any other known interested persons, their representatives and/or agents, and other persons present at the hearing shall be in compliance with the following provisions:

- (1) Smoking, drinking and eating are prohibited, and all mobile devices shall be turned off;
- (2) All attendants can only make statements upon receipt of the consent of hearing officer;
- (3) Above-mentioned statement shall be concise and brief, and be made within the time allocated by the hearing officer;
- (4) All statement shall be made to matters related to the case, and no ad hominem argument is allowed;
- (5) No interruption, such as clamor or uproar, is allowed during other people's presentation;
- (6) For the same question or matter to which the hearing officer has already taken action or notified, no repeated statement shall be made;
- (7) Audio/video recording or photographing shall be made in designated media zone;
- (8) The audience must not make any statement or raise any question;
- (9) Actions that can break the order of hearing proceeding, threat the safety of the place, or interrupt the hearing proceeding are not allowed;

19. Where the parties, any other known interested persons, or their representatives and/or agents consider the action taken by the hearing officer during the hearing to be contrary to law or improper, he/she may raise instantaneously an objection thereto.

If the hearing officer considers the objection well grounded, he/she shall revoke the action taken by him/her. If the objection is considered groundless, it shall be denied.

20. Minutes shall be taken of each session of hearing within 15 days after the hearing.

The minutes required by the preceding paragraph shall specify the following matters and be signed by the hearing officer:

- (1) Subject matter of the hearing;
- (2) Date and place of the hearing;
- (3) Name of the parties, any other known interested persons, or their representatives and/or agents, witnesses, expert witnesses and other attendants;
- (4) Essence of the matters specified by, or documents and/or evidences provided by the parties, any other known interested persons, their representatives and/or agents, witnesses, expert witnesses and other persons present at the hearing;
- (5) Written opinions of unattended parties, which shall be read out;
- (6) Objections made by the party, any other known interested persons, or their representatives and/or agent in the hearing proceedings, and actions taken by the hearing officer towards the objections;
- (7) Gist of the inquiries and relevant responses; and
- (8) Other matters that the hearing officer orders to specify;

The matters specified in Subparagraph 7 of the preceding paragraph may be summarized and recorded in a list of questions and answers.

Audio or video recordings shall be provided to support the hearing minutes.

21. Hearing minutes taken and completed instantly at the hearing shall be signed by or affixed with the personal seals of the persons making statements and/or raising questions. Where a person who has made statement or raised question desires to raise any objection to the entries in the hearing minutes, he/she may do so instantaneously. If the hearing officer considers the objection well grounded, he/she shall make corrections and/or additions to the minutes. If the objection is considered groundless, it shall be noted accordingly.

Where the person who has made statement or raised question refuses to put on the minutes his/her signature or personal seal, the fact of such refusal shall be specifically noted.

22. Where the hearing minutes that are not taken and completed instantly at the hearing, the persons who has made statement or raised questions shall examine the minutes on the date and in the place designated by the hearing officer, and put on the minutes his/her signature or personal seal accordingly.

Where the person who has made statement or raised question desires to raise any objection to the entries in the hearing minutes, the hearing officer shall take the objection into account and access the audio or video recording if necessary. If the hearing officer considers the objection well grounded, he/she shall make corrections and/or additions to the minutes. If the objection is considered groundless, it shall be noted accordingly.

Where the person who has made statement or raised question refuses to put on the minutes his/her signature or personal seal or examine the minutes on the date and in the place designated by the hearing officer, the fact of such refusal shall be specifically noted.

The date referred to in Paragraph 1 shall not be less than five days.

23. When the hearing officer is satisfied that the presented parties and any other known interested persons, their representative/agent, witnesses, expert witnesses and other persons present at the hearing have fully expressed their views and that the case has come to the stage where a decision can be made, he/she shall close the hearing.

After a hearing is closed and before a decision is made, the Authority or Agency may order to have the hearing re-opened if necessary and upon receipt of the approval of minister and deputy minister(s) as prescribed in Article 4.

24. Upon completion of the hearing minutes, and after corrections or additions are made to the minutes according to Article 21 or 22, the hearing officer shall summarize and present opinions of which a consensus has been made, and issues or evidences that have been clarified. For opinions of which a consensus is not made, and issues or evidences that are not clarified, it is a must to list the reasons and causes, and make a summary accordingly.
25. Documents, materials and records cited at the hearing and preliminary hearing shall be made public on website of the Ministry and Authority or Agency.
26. Where the case is submitted to the Ministry's commission, review committee or relevant meeting for examination, deliberation or resolution, the Ministry shall invite members of the said commission, review team or relevant meeting to attend the hearing as an attendant.
Above-mentioned members shall not raise questions or make statements, and will not accept questions proposed by the parties, any other known interested persons, their representatives and/or agents, and other persons present at the hearing.
27. The Operational Directions shall be applicable to the hearing of cases related to new or expanded urban planning if a major dispute is involved.

Letter of Intent for Hearing Attendance

Subject Matter: Hearing of (please fill the subject matter)

Name		<input type="checkbox"/> Party <input type="checkbox"/> Interested person		
		<input type="checkbox"/> Will attend the hearing.		<input type="checkbox"/> Will not attend the hearing.
		<input type="checkbox"/> _____ is appointed to attend the hearing instead.		
Address				
Telephone				
Mobile				
Fax				
E-MAIL				
Party / Interested person (Appointer) :				
				(Seal and Signature)
Agent (Appointee):				
				(Seal and Signature)
Notes	<p>※In case of desiring to make statements, shall submit relevant materials.</p> <p>※Letter of Intent for Hearing Attendance shall be submitted to the Ministry before _____ (dd/mm/yy).</p> <p>※Personal ID card or other identification document / certificate shall be carried to the hearing for verification.</p> <p>※Submission of the Letter of Intent for Hearing Attendance: The Letter of Intent may be submitted to the Ministry by personal delivery, mail, express delivery, fax or internet. The Ministry's Address: Fax: (02) _____ E-MAIL :</p>			