

# Citizen's Guide to Hearing Examiner Services

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Office of the Hearing Examiner

August 2018



## **Citizen's Guide to Hearing Examiner Services**

This guide is intended as a quick-reference for applicants, appellants and others who are interested in, or who want to participate in a matter that is, or may be, scheduled for a hearing by the City of Bellingham Hearing Examiner. Hearing Examiner powers and jurisdiction are governed by the Bellingham Municipal Code and Washington State laws. To the extent these laws contradict anything contained in this guide the laws will prevail. The Hearing Examiner has adopted Rules of Procedure that may be found on the City's webpage at <https://www.cob.org/hearing>. These Rules and [Title 21](#) of the [Bellingham Municipal Code](#) (<https://www.cob.org/bmcode>) should be consulted for more specific guidance on procedural matters.

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## **1 Definition of a Hearing Examiner**

A Hearing Examiner holds public hearings and decides cases involving land use applications, appeals from administrative decisions and other matters as provided in the ordinance that establishes the Hearing Examiner's jurisdiction and powers.

The Bellingham Hearing Examiner is an attorney who has experience in land use and administrative law. The Examiner is appointed by the Mayor and confirmed by the City Council. [Chapter 2.56](#) of the Bellingham Municipal Code addresses qualifications, powers and jurisdiction of the Hearing Examiner.

## **2 Types of Cases Heard by the Bellingham Hearing Examiner**

The Bellingham Hearing Examiner hears the following types of cases:

1. Subdivisions of land of nine or more lots.
2. Cluster subdivisions of land of five or more lots.
3. Density bonus applications for subdivisions of two or more lots.
4. Variances from subdivision regulations.
5. Conditional use permits.
6. Variances from land use regulations.
7. Oversize dwelling permits.
8. Reconstruction or expansion of Non-conforming Uses and Structures.
9. Co-housing developments.
10. Adaptive use permits for historic properties.
11. Variances from street and utility construction regulations.
12. Variances from Critical Areas regulations.
13. Shoreline conditional uses.
14. Appeals regarding Planned Developments.
15. Appeals regarding Design Review.
16. Appeals of Home Occupation Permits, Accessory Dwelling Units, and Short Plats.
17. Appeals of Critical Areas permits.
18. Appeals of tax and license decisions.
19. Appeals of certain determinations made by the City's Planning and Community Development, Public Works, and Parks and Recreation Departments.
20. Appeals from the Utility Hearings Board.
21. Contested vehicle tows and impounds initiated by the Bellingham Police Department.
22. Appeals of Environmental Determinations.
23. Appeals regarding Binding Site Plans.
24. Appeals from Building Code determinations.
25. Appeals from certain Animal Control decisions.
26. Appeals of Nuisance or Litter Abatement Orders.
27. Appeals relating to Parade Permits.
28. Contested Property forfeitures.
29. Street Vacations (Recommendation to City Council).
30. Local Improvement Districts (Recommendation to City Council).

## **3 Requesting a Hearing**

### **3.1 Land Use Applications**

To request a hearing for a land use application such as a Subdivision, Variance from land use regulations or a Conditional Use Permit, an application must be filed with the Planning and Community Development Department at the City's Permit Center (<https://www.cob.org/services/permits/pages/forms-land-use.aspx>). The Planning Department will process the application and it will be scheduled for a hearing after the Department has completed its review and all preliminary steps have been taken.

### 3.2 Appeals

To request a hearing on an appeal from a decision or determination made by a City Department or the animal control authority acting on behalf of the City a written notice of appeal must be filed within the time period specified in the City Code provision authorizing the appeal. The appeal form may be obtained from the Office of the Hearing Examiner, the Department making the decision, or at the Permit Center (<https://www.cob.org/services/permits/pages/forms-land-use.aspx>).

The written appeal must specify the action or decision appealed, including the date of the action or decision and the Department involved, the name, address and telephone number of the appellant and the appellant's representative, if any, a brief statement of how the appellant is affected by the decision or action appealed, a brief statement of the errors which the appellant claims were made in the decision or action being appealed, and the relief which the appellant requests. The written appeal must be accompanied by payment of an appeal fee for most appeals. This fee varies depending upon the type of appeal and is paid at the City's Finance Department. See the Land Use (Planning Department) Fee Schedule (PDF) at <https://www.cob.org/documents/planning/applications-forms/permit-center-fees/land-use-fee-sheet.pdf>.

### 3.3 Impounded Vehicles

To request a hearing regarding the towing or impoundment of a vehicle at the direction of a Bellingham Police Officer you must complete and file an Impounded Vehicle Hearing Request Form. This form may be obtained from the towing company or the Bellingham Police Department. The form and the applicable filing fee must be filed at the Bellingham Police Department within 10 days after the towing company provides written notice of redemption rights and the opportunity for a hearing, and more than five days before a scheduled auction of the vehicle.

### 3.4 Property Seizure/Forfeiture

To request a hearing regarding property seized for forfeiture by the Bellingham Police Department a written claim must be filed with the Bellingham Police Department within the applicable time period specified in the state law under which the property was seized, or as directed in the Notice provided by the Police Department. The Department will then determine whether the matter will be referred to the Hearing Examiner for hearing.

## 4 Costs to Request a Hearing

Fees charged for Hearing Examiner services vary depending upon the type of case that is filed. The fee schedule is adopted by the City Council. The schedule for most applications and appeals may be found on the Land Use (Planning Department) Fee Schedule (PDF) at (<https://www.cob.org/services/permits/pages/fees.aspx>). The filing fee for a vehicle impound hearing is \$73.00. There is no fee for appeals from decisions of the animal control authority, property forfeiture claims and certain other matters. You may contact the Office of the Hearing Examiner if you have questions about the fees.

## **5 Participating in a Hearing**

Hearings are open to the public. They are held in the City Council Chambers on the second floor of Bellingham City Hall, 210 Lottie Street in Bellingham, unless another location is specified in the hearing notice.

Applicants and Appellants are notified of hearing dates. Each applicant and appellant will have an opportunity to speak at the hearing and to present documents or other evidence to support his or her position.

Those persons who own property within a certain distance (usually 500 feet) from the property which is the subject of a land use application will be notified by mail of the hearing date. The list of property owners is based upon records of the Whatcom County Assessor's Office. Notice of a pending application is also posted on the property near an adjacent street. Notices for most land use application hearings are also published in the Bellingham Herald and are available on the internet (<https://www.cob.org/notices>).

Any person who wants to comment on a land use application may send written materials to the Planning and Community Development Department or the Office of the Hearing Examiner for inclusion in the record and/or speak at the public hearing. The amount of time each person may be allowed to speak may be limited in order to ensure that everyone who wants to comment will have an opportunity to do so. Written materials must be received by the Hearing Examiner before the public hearing is closed. The time to submit materials is usually closed when the public comment portion of the hearing ends. Occasionally the record may be left open for a short time period after the hearing date for submission of additional written materials.

All testimony during the hearing is given under oath or affirmation. The oath or affirmation is usually administered to all participants at the beginning of the hearing. City staff members, Applicants, Appellants and individuals who speak as experts on a particular matter, or who provide technical information, may be subject to questioning by other parties to the proceeding. The Hearing Examiner may also ask questions of participants.

In an appeal hearing direct participation is generally limited to the parties to the appeal and the witnesses called by the parties. The hearing is open to the public and anyone may attend and listen to the proceedings. Interested persons may be permitted to become parties to an appeal if they can show that they have a significant interest in the subject of the appeal that is not otherwise adequately represented. A request to intervene, or become a party to an appeal, must be filed at least five days prior to the scheduled start of the hearing.

## **6 Matters Prior to Hearing**

### **6.1 Pre-hearing Conference**

In cases involving multiple parties or complex issues, or upon the request of a party, a pre-hearing conference may be held. In the pre-hearing conference the participants meet with the Hearing Examiner to clarify the issues, establish schedules and resolve preliminary matters. Deadlines for filing issue statements, witness lists, exhibit lists and legal briefs may be imposed.

### **6.2 Discovery**

Parties to an appeal may choose to seek “discovery” of materials or information from other persons or parties to assist in the preparation of their cases. Usually this process involves the voluntary cooperation of the parties and other persons who have the necessary information. Occasionally a party requests that the Hearing Examiner authorize a subpoena, or order to a person, to produce the information or submit to questioning. Subpoenas may also be issued by attorneys representing a party. A subpoena must be served on the person to whom it is directed at least seven days before the date specified for the production of information. An affidavit of service must be filed with the Hearing Examiner. Any request to limit or void a subpoena issued in a case must be filed with the Hearing Examiner within seven days after the subpoena is received.

### **6.3 Motions**

Requests or motions to dismiss a case, limit the issues in the case, resolve issues before the hearing date or to change a scheduled hearing date may be filed by parties. These requests must be made in writing, filed at the Office of the Hearing Examiner and served on other parties to the case. Other parties have seven days to file and serve a written answer to the motion unless the Hearing Examiner shortens the time for response. The Hearing Examiner may rule on the motion after this response period has run even if no response is filed. Motions are usually heard and decided before the hearing date. The Hearing Examiner may schedule a time for the parties to appear and argue the motion. If a pre-hearing conference is held time limits on the filing of motions may be included in the pre-hearing order. All motions must be made as soon as possible in order to avoid unnecessarily delaying the proceedings.

## **7 Communicating with the Hearing Examiner**

By law the Hearing Examiner is not allowed to talk to participants about the subject matter of the appeal or application outside of the public hearing. All communications to the Hearing Examiner about the case, other than those made at the hearing, must be in writing and included in the record of the case. Communications received after the hearing is closed will not be considered in making the decision unless a motion to reconsider the case is granted.

Communications regarding procedural matters, such as scheduling or requesting subpoenas for necessary witnesses in an appeal hearing, are permitted. These communications should be directed to the Office of the Hearing Examiner at 210 Lottie Street or by calling (360) 778-8399.

## **8 Appearance of Fairness**

The Appearance of Fairness doctrine has been adopted as law for decision-makers in land use and other types of cases in Washington. This doctrine requires that proceedings not only be fair and impartial, but that they also appear fair to ordinary citizens. This doctrine requires that the Hearing Examiner avoid contacts with participants outside the hearing setting and not have a financial or personal interest in the outcome of the proceeding.

If the Hearing Examiner knows of any reason why she cannot fairly consider a case she may recuse herself from hearing the case. A party to a case may request disqualification of the Hearing Examiner by submitting a request in writing, at least seven days before the scheduled hearing, or as soon as the basis for disqualification is known, specifying the reasons for disqualification. If the Hearing Examiner recuses herself or grants a request for disqualification a Hearing Examiner Pro Tem will be appointed by the Mayor to hear the case.

The fact that a Hearing Examiner has made rulings in the same case or in prior cases that may be adverse to the interests of one or more of the parties is not sufficient grounds for disqualification.

## **9 What to Expect During a Hearing**

### **9.1 Land Use Application Hearings**

A hearing on a land use application generally includes the following steps:

1. A sign-up sheet is located near the door to the hearing room. Those who want to comment on one of the items on the agenda are asked to write their names, addresses and which case they are interested in on the sign-up sheet. Usually more than one item is on a hearing agenda. Items are generally taken in the order in which they appear on the agenda.
2. The Examiner introduces the matter and administers an oath or affirmation to all who want to comment on the application.
3. Planning and Community Development staff give a report and recommendation. Letters and other written information received for the record in advance of the hearing are included in the staff report.
4. The Applicant testifies and provides other information supporting the application.
5. The hearing is opened to public comment. Anyone present at the hearing who wants to speak is permitted to come to a microphone, provide his or her name and address, spelling the last name, and comment on the application or ask questions about it. The public is also permitted to submit written materials relevant to the application at the hearing. If there are many people who want to comment the Hearing Examiner may call on them to speak in the order their names appear on the sign-up sheet. A time limit may be imposed for each speaker in order to ensure that everyone has an opportunity to comment.
6. Planning staff may respond to questions or comments from the public.
7. The Hearing Examiner may ask questions of staff, the Applicant or other speakers.
8. The Applicant may respond to questions and comments from the public and present any rebuttal.

### **9.2 Appeal Hearings**

The format for an appeal hearing includes the following steps:

1. The Hearing Examiner introduces the matter. An oath or affirmation may be administered to all witnesses at once or as each witness is called to testify.
2. The parties may opt to give opening statements, a brief summary of the evidence to be presented.
3. The Appellant presents witnesses and exhibits. After each expert or fact witness provides testimony other parties have an opportunity to ask questions of the witness. This is called cross-examination. The Appellant may then ask follow-up questions relating to matters raised during cross-examination. Cross-examination may not be allowed if the witness is only expressing lay opinions.
4. The Department whose decision is the subject of the appeal presents witnesses and exhibits. The same sequence of testimony, cross-examination and follow-up questioning applies to each party's witnesses.
5. Other parties then present witnesses and exhibits.
6. The Appellant may present witnesses or exhibits to rebut the evidence presented by the other parties.

7. The Hearing Examiner may ask questions of any witness or party, and request submittal of additional information, either during the presentation of each party's case or after the presentations.
8. Each party may give a closing statement.
9. The hearing may be held open for a specified period of time for the submission of additional written materials or argument.

If the Department has the burden of proof in the appeal the Department will present its evidence first, followed by the Appellant. The Hearing Examiner may also modify the order of the hearing in some circumstances.

## **10 Preparing for a Hearing**

### **10.1 Land Use Application Hearings**

#### **10.1.1 Applicants**

Applicants in land use cases must submit all of the required materials and information to the Department reviewing the application. The Department usually has written forms that must be completed. After the Department has reviewed the application it will issue a staff report with an analysis of the application, and usually containing a recommendation to the Hearing Examiner. The Applicant should obtain a copy of the staff report prior to the hearing. If the Applicant doesn't understand the report or recommendation, or believes it is not accurate, the Applicant should contact the Department staff for clarification. Written comments and materials submitted by the public prior to the hearing are also available for review at the Department or the Office of the Hearing Examiner. Those materials received in advance of the hearing are included in the Hearing Examiner packet, which is issued about a week prior to the hearing. The Applicant should obtain a copy of the packet prior to the hearing date. The Applicant should be prepared to attend the hearing, or send a representative, present a summary of the proposal at the hearing, answer questions from the Hearing Examiner and public, and address issues raised by the staff report and the public comment. The Applicant may submit additional exhibits and written materials at the hearing. Photographs, large-scale drawings or renderings, models, and other graphic representations of the proposal are helpful. If there are disputed technical issues the Applicant should be prepared to present expert testimony or reports to support the application. Additional copies of any new materials should be provided for Department staff and the Recording Clerk.

#### **10.1.2 Public**

Applications and supporting materials are available for review by the public at the reviewing Department. Interested persons should seek information about the application prior to the hearing so they are familiar with the proposal. A neighborhood meeting is conducted prior to formal submittal of the application for some proposals. Notice of these meetings is usually sent to property owners within 500 feet of the site of the proposal. At the neighborhood meeting an overview of the proposal is presented and the public has an opportunity to ask questions of the Applicant and Department staff, and make recommendations regarding the proposal. The purpose of the Neighborhood Meeting is to obtain input at an early stage of the process so that neighborhood concerns may be addressed and the proposal modified to incorporate ideas generated by the public. Attendance at the Neighborhood Meeting provides interested persons with an early opportunity to express concerns and provide input into the process.

A Hearing Examiner packet, containing the staff report and written materials submitted prior to the time when the packet is prepared is usually available at the Office of the Hearing Examiner about a week before the hearing date for most land use applications. Interested persons should obtain a copy of the packet, review it before the hearing date, and be prepared with comments and/or materials that are responsive to the issues presented by the application.

Some people find it easier to put their comments in writing, which may be sent to the Hearing Examiner or the reviewing Department in advance, or submitted at the hearing. Make sure that your written comments are received by the Hearing Examiner before the hearing ends. Comments or other materials received after the end of the hearing may not be considered by the Hearing Examiner in making a decision on the application. A postmark on or before the hearing date is not sufficient. The materials must be actually received by the Hearing Examiner before the hearing is closed. If you bring your written comments to the hearing you should bring additional copies so that the Applicant and Department staff have an opportunity to read and respond to your comments. You may submit written comments and materials in addition to oral testimony at the hearing.

## 10.2 Appeals

If you are an Appellant you will probably have completed an Appeal form and submitted supporting documentation at the time the appeal was filed. You, and other parties to the appeal, should bring copies of any additional materials you intend to submit as evidence at the hearing for the Hearing Examiner, the Recording Clerk, the Department and other parties.

You should review the report and other materials submitted by the Department and other parties prior to the hearing and be prepared to address the issues that are raised as well as questions that may be asked at the hearing by the Department, other parties and the Hearing Examiner.

If you intend to call other individuals as witnesses you should determine whether those individuals will attend the hearing voluntarily or if a subpoena is necessary to compel their attendance. If a subpoena is required it may be issued by your attorney, if one is representing you, or by the Hearing Examiner. Subpoenas must usually be served on the witness at least seven days before the hearing. You should request the subpoena at least 10 business days before the hearing to ensure sufficient time for it to be issued and served. You are responsible for making sure that it is served on the witness in a timely manner. An affidavit or declaration stating when and how the subpoena was served must be filed with the Office of the Hearing Examiner.

If you are a party to an appeal you should determine how you intend to present evidence. You may call witnesses and ask them to testify in a narrative format, or you may ask questions of the witness. You should talk to the witnesses before the hearing so you know what they will say. You may want to talk to the witnesses for other parties prior to the hearing. If they will not talk to you voluntarily you may request a subpoena from the Hearing Examiner for a pre-hearing interview with the witness, known as a deposition.

You should be familiar with the Bellingham Municipal Code provisions that apply to the appeal. The Code may be found on the internet at (<https://www.cob.org/bmcode>) or in the Bellingham Public Library. Applicable code sections may be specified in the decision that is being appealed.

Carefully review the decision being appealed and the Department file prepared before the decision. Be prepared to present evidence and argument that demonstrate why the decision is,

or is not, consistent with the law and the facts. If the appeal involves highly technical issues you may need to obtain a report or testimony from an expert in the field.

### 10.3 Street Vacations and Local Improvement Districts

In street vacation and local improvement district hearings you should be prepared to present all of the information that is relevant to your petition or position during the hearing. Even though the Hearing Examiner issues a recommendation to the City Council, and not a final decision on these matters, the City Council will rely on the record and evidence produced at the Hearing Examiner hearing. You may not have another opportunity to present evidence.

## 11 Seeking Legal Counsel

You may participate in a hearing with or without an attorney to represent you, at your option. Hearings are less formal than proceedings in a court of law. You do not need to be familiar with formal rules of evidence, although objections may be made to evidence that is improper, repetitive or irrelevant. Evidence may be admitted at a hearing even though it does not comply with the rules for evidence in a court of law if it is the kind of evidence that people ordinarily rely upon in the conduct of their affairs.

Hearings in land use cases are designed to encourage public participation. They are informal, but orderly. Many of the individuals who speak at these public hearings are residents who live near the site of a proposed development.

There are rules that apply to Hearing Examiner proceedings. Participants should review these rules, which can be found in the Office of the Hearing Examiner, or on the internet at (<https://www.cob.org/hearing>), for more specific information regarding Hearing Examiner proceedings.

## 12 Expected Conduct of Hearing Participants and Attendees

Those who attend and participate in hearings are expected to conduct themselves with civility and courtesy towards other participants. You should silence cell phones and other devices that could disrupt the proceedings. Shouting, booing and abusive behavior are not permitted. Attendees should respect the right of others to have their say, whether they agree with the speaker or not.

## 13 Time and Duration of Hearings

Most hearings for land use applications are held on Wednesday evenings; beginning at 6:00 PM. The length of a hearing depends upon the complexity of the issues and the number of speakers or witnesses. Most last between 20 minutes and two hours. More than one hearing may be scheduled for the same evening. Items are usually heard in the order they appear on the agenda, but they may be taken out of order if there is a good reason to do so. If more time is needed to complete a hearing it may be scheduled for more than one evening, or continued to another time.

Appeal hearings are scheduled either during the day or in the evening depending upon the anticipated public interest in the matter and the schedules of the participants. They may last one hour or less or extend over the course of several days. These hearings are usually scheduled

for a specific period of time depending upon the number of parties and witnesses expected to participate.

## **14 Procedures**

If you have questions about procedures, or need clarification about what is happening during the hearing you may ask the Hearing Examiner. Questions as well as comments are always welcome during the public hearing.

If you are unsure what to do before a hearing, or what materials to bring to a hearing you may contact the Office of the Hearing Examiner for assistance or referral to the appropriate staff person.

The Hearing Examiner and examiner staff are not allowed to assist you in preparing or presenting your case, but can provide information regarding procedural matters and staff contacts.

## **15 Hearing Examiner Considerations in Making Decisions**

The Hearing Examiner considers the evidence presented at the hearing, including the written materials included in the packet and those submitted at the hearing, and the testimony of the witnesses. The Hearing Examiner may also view the property involved in the case. This evidence is considered in light of the laws that apply to the issues involved in the case. The Hearing Examiner is bound by the ordinances and regulations adopted by the City of Bellingham and the State of Washington. The criteria for granting applications and appeals are specified in these laws. The law does not allow decisions to be based upon the personal preferences of the Hearing Examiner, or the personal preferences expressed by participants in the hearing. Sometimes the law requires that an application or appeal be approved even though the majority of the public oppose it, or that an application or appeal be denied, even though the majority of the public support it. In making a decision on an application or an appeal the Hearing Examiner looks at whether the proposal or the action that is the subject of the appeal conforms to the applicable regulations that have been adopted by the City or State. Many land use decisions do involve the exercise of discretion in determining whether the proposal has satisfied applicable criteria, whether it will have adverse effects on the neighborhood, or what conditions are required to minimize adverse impacts.

## **16 Decisions**

The decision will include findings of fact, conclusions of law and an order granting or denying the application or appeal, with or without conditions. The Notice of Decision will also include information about how to appeal the decision.

For street vacation petitions and local improvement districts the Hearing Examiner issues findings of fact, conclusions of law and a recommendation to the City Council. In these cases the City Council will then schedule the matter for its consideration at a public meeting and take final action.

## **17 Obtaining Copies of a Decision**

The decision is automatically sent to Applicants, Appellants and anyone who has requested, in writing, a copy of the decision. The decision may also be obtained from the Office of the Hearing Examiner and may be found on the internet at (<https://www.cob.org/hearing>).

## **18 Issuing of Decisions**

Most decisions are issued within 10 business days from the close of the public hearing or the latest date for submission of additional materials or legal briefs.

## **19 Appealing a Decision**

If you believe that the Hearing Examiner should reconsider the decision due to some irregularity in the proceedings, newly discovered evidence, a clear mistake as to a material fact, or a clear error as to the law you may file a motion to reconsider within 10 days of the date of the decision. Unless the Hearing Examiner acts upon, or schedules the motion for consideration within 10 days after the motion is filed the motion is considered denied. You do not need to file a motion to reconsider first to preserve your right to appeal the decision.

Some decisions of the Hearing Examiner, including those on preliminary plats, cluster short plats and subdivision variances may be appealed to the City Council. A notice of appeal must be filed with the Council within 14 days of the notice of the Hearing Examiner's decision.

The Hearing Examiner's recommendation on street vacation petitions and local improvement district matters are not final decisions and may not be appealed. The City Council makes the final decision on these matters.

Most other decisions of the Hearing Examiner may be appealed to Superior Court. Appeals of land use decisions are generally governed by the Land Use Petition Act, RCW 36.70C (<https://apps.leg.wa.gov/RCW/default.aspx?cite=36.70C>). The timeframe for appealing decisions is short and the procedures must be strictly followed. Anyone who is interested in appealing a decision may wish to consult an attorney.

In most cases the Notice of Decision will provide information specific to the case about appeal rights.

When the Hearing Examiner makes a recommendation to the City Council the decision is not final until the Council takes action. The Council may accept, reject or modify the action recommended by the Hearing Examiner. The action of the City Council may be appealed to Superior Court.

## **20 Vehicle Impound Hearings**

If the Bellingham Police Department has your vehicle towed without your approval you may request a hearing to contest the validity of the tow and/or the amount you are charged for the tow and storage by the towing company. A spouse or partner of a driver whose vehicle was impounded and is subject to a hold due to violation of driving laws may request release of the vehicle for hardship reasons. You obtain the form to request a hearing from the towing company or the Bellingham Police Department. The form must be filed with the Police Department along with a filing fee of \$41.00.

Once the form and fee are filed the Office of the Hearing Examiner will schedule the matter for a hearing. The Office will try to schedule the hearing at a time that is convenient for all of the

parties. These hearings are held during normal business hours. Hardship requests are expedited and may be considered based on the written materials submitted by the requestor and the Police Department without an in-person hearing.

You should bring copies of any relevant documents, such as the invoice for the towing and storage charges, to the hearing. Photographs may be helpful depending upon the circumstances of your case. If there are witnesses to relevant facts that will help you make your case you may want to have them attend the hearing. Testimony at the hearing is given under oath or affirmation administered at the beginning of the hearing.

Bellingham Police Officers may attend the hearing and provide testimony or they may submit a written report in lieu of testimony. If the officer testifies you will have the opportunity to ask him or her questions. If a written report is submitted in lieu of testimony you will have an opportunity to hear or review its contents. A representative of the towing company may attend the hearing, particularly if the amount of the towing and storage charges is contested. The hearing is informal. The person requesting the hearing will explain why he or she believes the impound or the charges are not valid and submit any additional documents or witnesses to support this contention. Then the police officer and the towing company representative will testify, if they are in attendance. The Hearing Examiner may ask questions of any of the witnesses.

The Hearing Examiner will issue written findings of fact, conclusions of law and an order after the hearing. The decision in a vehicle impound case is limited to whether the impound was valid under state and city laws and whether the towing and storage charges are consistent with the rates filed by the towing company with the Department of Licensing. If the impound and charges are found to be valid the fees and costs will be assessed against the person requesting the hearing. If the impound is found to be in violation of state or city laws the vehicle is ordered returned to the owner, if it is still in the custody of the towing company, and the City will be ordered to reimburse the owner for the charges that were paid to redeem the vehicle and the filing fee. If the amount of the charges is determined to be incorrect the order will direct reimbursement to the owner for the amount that was overpaid.

In a hardship request the Hearing Examiner determines whether the requestor has satisfied the requirements for a hardship release of the vehicle, whether release of the vehicle will pose a danger to the public, and any conditions that are necessary if the vehicle is released. Fees and charges must be paid by the registered owner of the vehicle or the person requesting that it be released.

If you are not satisfied with the Hearing Examiner's decision in a vehicle impound case the decision may be appealed to the Bellingham Municipal Court by filing a notice of appeal with the court along with a filing fee.

## **21 Property Forfeiture Hearings**

A property forfeiture hearing is initiated by the filing of a claim to property that has been seized by the Bellingham Police Department, usually pursuant to RCW 69.50.505 (<https://apps.leg.wa.gov/RCW/default.aspx?cite=69.50.505>) or 10.105.010 (<https://apps.leg.wa.gov/RCW/default.aspx?cite=10.105.010>). If your property has been seized you will receive a Notice of Seizure from the Police Department if the Department is aware of your ownership interest. This notice will advise you of the property seized, the reason for the seizure and what you must do in order to contest forfeiture of the property. Upon receipt of a claim to

seized property the Police Department may refer the matter to the Hearing Examiner for hearing.

A hearing will be scheduled during normal business hours. All testimony during the hearing is under oath or affirmation. The Police Department will present its case first. The Department has the burden of showing, by a preponderance of the evidence that the property is subject to forfeiture in accordance with the laws of the State of Washington. The property claimant will have an opportunity to ask questions of the Department's witnesses. After the Department presents its case the claimant may testify, call other witnesses to testify and submit relevant documents as evidence. The Department is usually represented at the hearing by an Assistant City Attorney. If the claimant testifies he or she will be subject to questioning by the Department's attorney. Other witnesses presented by the claimant may also be questioned by the Department's attorney. After the claimant presents his or her case the Department may present rebuttal evidence. Each party will have an opportunity for closing argument.

After the hearing the Hearing Examiner will issue a written decision containing findings of fact, conclusions of law and an order. The order may uphold the seizure and declare the property forfeited, or determine that the property is not subject to forfeiture and should be returned to the lawful owner.