

CITY OF BELLINGHAM
HEARING EXAMINER
RULES OF PRACTICE AND PROCEDURE

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Section 1: General Provisions

1.01 APPLICABILITY

These Hearing Examiner Rules (herein after "Rules") are adopted to supplement the ordinance requirements for matters within the Hearing Examiner's jurisdiction and govern administrative practice and procedure before the Hearing Examiner. In any case of conflict between a Hearing Examiner Rule (herein after "HER") and the Bellingham Municipal Code (herein after "BMC"), the Bellingham Municipal Code shall control.

1.02 EFFECTIVE DATE

These Rules shall apply to all matters filed with or otherwise properly before the Hearing Examiner on or after the effective date of adoption of these Rules by the Hearing Examiner.

1.03 INTERPRETATION OF RULES

(a) The Hearing Examiner shall interpret the Hearing Examiner Rules of Practice and Procedure and determine how the Rules apply in specific instances. An affected party may petition the Hearing Examiner during the pendency of an appeal or other proceeding to request a declaratory ruling regarding the applicability of these Rules to specific actual circumstances. Except during hearing, such request must be in writing and clearly identify the subject Rule(s) and describe the circumstances for which the declaratory ruling is sought.

(b) Where questions of practice and procedure arise that are not addressed by these Rules, the Hearing Examiner shall determine the practice or procedure that the Hearing Examiner deems most appropriate and consistent with providing fair treatment and due process. In making such determinations, the Hearing Examiner may look to the current Civil Rules of Superior Court for guidance.

Section 2: Rules of General Application

2.01 DEFINITIONS

The following definitions shall apply unless the context or subject matter requires otherwise:

(a) "Appeal" -- a challenge to a decision or other action where the BMC or other authority authorizes the City's Hearing Examiner to review and decide.

(b) "Appeal hearing" -- a hearing held by the Hearing Examiner to consider an appeal of a decision or other action where the Hearing Examiner has been granted jurisdiction to hear and decide such an appeal.

(c) "Appellant" -- the person(s), organization, association, corporation, or other entity who files a complete and timely appeal of a decision or other appealable action.

(d) "Applicant" -- the person(s), organization, association, corporation or other entity who files an application or otherwise formally requests a permit or other type of City action, interpretation, or authorization which is the subject of an appeal or other review by the Hearing Examiner.

(e) "BMC" -- Bellingham Municipal Code.

- (f) "Days" -- calendar days unless otherwise stated.
- (g) "Department" -- the department, agency, board, commission or other City entity responsible for the decision or action that is subject to appeal or other review by the Hearing Examiner.
- (h) "Director" -- the head of the department, agency, board or commission, or other unit of City government responsible for the decision or other action that is subject to appeal or other review by the Hearing Examiner.
- (i) "Examiner" -- the Hearing Examiner or a Hearing Examiner Pro Tempore who has been delegated responsibility to conduct the hearing or otherwise preside over a particular matter.
- (j) "Ex parte communication" -- a communication between one party and the Examiner in the absence of the other party(s).
- (k) "Hearing Examiner" -- the official appointed pursuant to BMC Chapter 2.56 to serve as the City's Hearing Examiner; also used when referring to a Hearing Examiner Pro Tempore appointed to preside over a particular matter.
- (l) "Interested person" -- any individual, or public or private organization of any character, significantly affected by, or interested in proceedings before the Hearing Examiner, including any party.
- (m) "Motion" -- a request made to the Hearing Examiner, whether written or oral, for an order or other ruling.
- (n) "Party" -- with respect to appeals: the appellant; the person(s), group, organization, corporation, or other entity granted party status through intervention; Director of the City department or other agency that made the decision or took the action that is subject to the appeal and the owner(s) of the property subject to the City decision or other action, provided such owner(s) has appeared in the proceeding. "Party" shall also include the applicant in proceedings other than appeals.
- (o) "Plan" -- the Bellingham Comprehensive Plan and its component parts.
- (p) "Public hearing" -- a hearing held by the Hearing Examiner.
- (q) "Representative" -- that individual designated by a party to be the official contact person and to speak for the party. Unless the applicable underlying substantive law or regulation establishing the Hearing Examiner's jurisdiction specifies otherwise, a representative is not required to be an attorney.
- (r) "Rules" -- the Hearing Examiner Rules of Practice and Procedure as currently amended.
- (s) "Timely" -- within the time prescribed by applicable ordinance or, in the absence of ordinance provision, the time prescribed by Hearing Examiner rule, or within the time determined by the Hearing Examiner.
- (t) Designation in the form of any gender includes the masculine, feminine and neutral gender.

2.02 HEARING EXAMINER'S JURISDICTION

The Hearing Examiner can only hear and decide applications and appeals, and make recommendations in those matters and on those issues where ordinance or other appropriate authority grants to the Hearing Examiner the authority to do so.

2.03 COMPUTATION OF TIME

Except as otherwise provided by the BMC, computation of any period of time prescribed or allowed for matters before the Hearing Examiner, shall begin with the first day following that on which the act or event initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or City holiday, the period shall extend to the end of the next day when the Hearing Examiner's office is open for business.

2.04 FILING AND SERVICE OF DOCUMENTS

(a) Documents shall be deemed filed with the Hearing Examiner on receipt at the Office of Hearing Examiner unless the Hearing Examiner has specified otherwise.

(b) Documents shall be served personally or, unless otherwise provided by applicable ordinance, by first-class, registered, or certified mail, or by facsimile (fax) transmission, or, in the case of service from one City agency to other City agencies, by the City's regular interoffice mail. Service shall be regarded as complete upon deposit in the regular facilities of the U.S. Mail of a properly stamped and addressed letter or packet, or at the time personally delivered, or transmitted by fax properly addressed to the name and number by the party or agency for receipt of fax transmission.

2.05 EXPEDITIOUS PROCEEDINGS

To the extent practicable and consistent with requirements of law, hearings shall be conducted expeditiously. At every stage in the proceedings, all parties shall make every reasonable effort to avoid delay.

2.06 SCHEDULING HEARINGS

(a) Promptly following receipt of a timely appeal, the Hearing Examiner shall schedule a hearing consistent with the requirements of the applicable ordinance(s) and these Rules.

(b) Applications requiring a Hearing Examiner decision shall be scheduled for hearing promptly upon notification by the Department that the application is complete and ready for scheduling.

(c) All applicable fees, unless waived in accordance with the BMC, shall be paid prior to scheduling a hearing in any matter.

2.07 CONSOLIDATION

Where practical, feasible, and consistent with ordinance requirements, all matters under the jurisdiction of the Hearing Examiner relating to the same matter, should be consolidated for hearing. The Hearing Examiner may order consolidation with or without a request from any party.

2.08 PARTY REPRESENTATIVE REQUIRED

When a party consists of more than one (1) individual, or as a group, organization, corporation, or other entity, the party shall designate an individual to be its representative and inform the Hearing Examiner of the name, address and telephone number of that designated representative. The rights of such an appellant shall be exercised by the person designated as the party representative. Notice or other

communication to the party representative, is notice or communication to the party. See also [HER 2.09](#).

2.09 NOTICE OF APPEARANCE

When an attorney represents a party or participant, the attorney shall file a Notice of Appearance with the Hearing Examiner and send a copy of that notice to the other parties. Where the appellant's/applicant's attorney filed the appeal or application, and indicated his/her representative capacity, a separate Notice of Appearance is not required. Failure to file and serve a Notice of Appearance required by this section at least two (2) business days prior to a hearing shall be grounds for a continuance at the request of the other party. The notice of appearance shall serve to designate the attorney as the party representative. See also [HER 2.08](#).

2.10 PREHEARING CONFERENCE

(a) The Hearing Examiner may, on the Hearing Examiner's own order, or at the request of a department or party, hold a conference prior to the hearing to consider:

1. Identification, clarification, and simplification of the issues;
2. Disclosure of witnesses to be called and exhibits to be presented;
3. Motions;
4. Other matters deemed by the Hearing Examiner appropriate for the orderly and expeditious disposition the proceedings.

(b) Prehearing conferences may be held by telephone conference call.

(c) The Hearing Examiner shall give notice to all parties of any prehearing conference. Notice may be written or oral.

(d) All parties shall be represented at any prehearing conference unless they waive the right to be present or represented, and are granted permission by the Hearing Examiner not to attend.

(e) Following the prehearing conference, the Hearing Examiner may issue an order reciting the actions taken or ruling on motions made at the conference.

2.11 INTERFERENCE PROHIBITED

In the performance of adjudicative functions in deciding appeals, applications and recommendations, the Hearing Examiner is an independent official and shall not be responsible to or subject to the supervision or direction of any elected official, officer or employee of any department, or any other person whether or not associated with Bellingham City government.

2.12 PRESIDING OFFICIAL

The Examiner conducting a hearing shall have the duty to ensure a fair and impartial hearing, to take all necessary action to avoid undue delay in the disposition of proceedings, to gather facts necessary to making the decision or recommendation, and to maintain order. The Examiner shall have all powers necessary to these ends, including, but not necessarily limited to the following:

1. Determine the order of presentation of evidence;
2. Administer oaths and affirmations;

3. Issue subpoenas;
4. Rule on and receive evidence;
5. Rule on procedural matters, objections and motions;
6. Question witnesses and request additional exhibits;
7. Permit or require oral or written argument or briefs and determine the timing and format for such submittals;
8. Regulate the course of the hearings and the conduct of the parties and others so as to maintain order and provide for fair hearing;
9. Hold conferences for settlement, simplification of issues, or for any other proper purpose;
10. Make and issue the decision or recommendation.
11. Appoint a mediator at the request of the parties.

2.13 DISQUALIFICATION OR RECUSAL OF AN EXAMINER

(a) In the interest of fairness to the parties, an Examiner may, on the Examiner's own initiative, be recused from hearing a particular matter in the event of personal bias, prejudice, financial interest, or other substantial reason.

(b) A party may request the disqualification or recusal of the Examiner and the appointment of a different Examiner to hear a particular matter. The request must be in writing or on the record, submitted at least seven (7) days prior to the day the hearing is to begin or as soon as reasonably possible after the basis for disqualification is known. The request must set forth the reasons for the belief that personal bias, prejudice, financial interest, or other substantial reason supported by law for disqualification or recusal exists. The fact that the Examiner has considered the same or a similar proposal in another hearing, or has made a ruling adverse to the interests of a party in this or another hearing, or has considered and ruled upon the same or a similar issue in the same or similar context, shall not be a basis for disqualification.

(c) In case of disqualification or recusal, a Hearing Examiner Pro Tem shall be assigned to hear the matter. If the Hearing Examiner Pro Tem is not available for the scheduled hearing date the hearing shall be rescheduled to an available date.

2.14 OATH OR AFFIRMATION

(a) All testimony before the Hearing Examiner at hearing shall be taken under oath or affirmation to tell the truth.

(b) Every interpreter, before beginning to interpret, shall take an oath that a true interpretation shall be made that is understandable for the person needing the interpreter and that the interpreter shall repeat statements in English to the Examiner, to the best of the interpreter's ability.

2.15 WITNESSES

(a) All witnesses testifying at hearing must take an oath or affirmation to be truthful. All witnesses in an appeal hearing are subject to cross-examination by the other party(ies).

(b) The rules of privilege shall be effective to the extent recognized by law.

(c) Hearing Examiner hearings are open to the public. In appeal hearings persons who are not parties and who are not called as witnesses by parties may be permitted to testify at the discretion of the Examiner.

(d) The Examiner may limit the length of testimony to expedite the proceedings and avoid the necessity to continue the hearing. If parties are unable to complete their arguments and testimony within the allotted time, an opportunity will be granted to submit written materials after the close of the hearing; other parties will be allowed an opportunity to offer written rebuttal to any such materials.

(e) At the discretion of the Examiner, or where the parties agree and the rights of the parties will not be prejudiced, the Examiner may allow testimony via telephone or television or similar electronic means. Each party to the proceeding shall have the opportunity to hear (or, if televised, to both hear and see) testimony given in this manner and to question the person giving such testimony.

2.16 EXPECTED CONDUCT

(a) All persons appearing before the Hearing Examiner shall conduct themselves with civility and courtesy to all persons involved in the hearing.

(b) No party or other person shall communicate with an Examiner presiding over a matter or with any employee of the Hearing Examiner's Office in an attempt to influence the outcome or to discuss the merits of that matter, except on the record.

(c) Except for communications regarding procedural matters (which are permitted), no party or other person shall make or attempt ex parte communication with the Examiner regarding a pending appeal, application or other contested case.

(d) If a substantial, prohibited ex parte communication is made, such communication, including a summary of the substance and participants, shall be publicly disclosed by the Examiner. Any written communications shall be made available to the parties for review. Parties shall have an opportunity to rebut those communications. Ex parte communications that are disclosed in this manner shall not be grounds for disqualification of the Examiner.

2.17 MOTIONS

(a) All motions, other than those made during a hearing, shall be in writing, and shall state the order or relief requested and the grounds for the motion. Every motion and answering statement and accompanying papers, shall be served on each party representative on the day it is filed with the Hearing Examiner.

(b) Within seven (7) days after service of any written motion, or such longer or shorter period of time as may be designated by the Hearing Examiner, the other party(ies) shall file a written answer. When the Hearing Examiner has received the answering statement(s), or the seven (7) days or other period of time designated by the Hearing Examiner has elapsed, the Hearing Examiner shall rule on the motion.

(c) Prior to ruling the Hearing Examiner may, in the Examiner's discretion, call for oral argument at the Examiner's own initiative or at the request of a party.

(d) For motions made at hearing or for motions made for the extension of time or the expedition of hearings, the Hearing Examiner may waive the requirements of this section and may also rule upon such motions orally.

2.18 EXTENSIONS OF TIME

A motion may be made by a party or other interested person to extend the time for hearing or for taking any action allowed or required by these Rules, except that no

extensions of time will be granted for the filing of an application or appeal or for limitations set forth in the BMC or state law. Any motion to extend time shall be made as soon as the moving party knows the basis for the extension.

2.19 EXHIBIT LISTS

- (a) An initial exhibit list shall be prepared by the Office of the Hearing Examiner identifying all documents submitted to the Examiner as part of the record prior to preparation of the agenda for the hearing. This list shall be included in the agenda packet for the hearing.
- (b) Additional exhibits received and admitted during the hearing process shall be added to the exhibit list.
- (c) Parties and interested persons are encouraged to submit exhibits at least seven (7) days prior to the hearing date. Copies of exhibits submitted less than seven (7) days prior to the hearing, and of all exhibits consisting of more than ten (10) pages regardless of the date submitted, shall be served on all parties to an appeal at the time of or prior to filing with the Examiner, and should be provided to the Department, the Recording Clerk, and the applicant in all matters. A reasonable number of copies, taking into consideration the expected interest in the matter, should be provided for interested persons at hearings other than appeal hearings.

2.20 HEARING AGENDAS

- (a) The Office of the Hearing Examiner shall prepare an agenda for each Examiner hearing, listing the date, place and time of the hearing, the nature of the application, appeal or other matter to be considered, a concise description of the location of property affected by the application and the name of the applicant/appellant or representative.
- (b) The agenda shall be distributed to applicants/appellants, parties, Planning Commission members, City Council members, news media organizations requesting Examiner agendas, and others who have requested agendas. It shall be posted in the Examiner's offices for public review. When required by applicable law, the agenda shall be published in the official newspaper.
- (c) Agenda packets shall consist of the agenda, exhibit list and selected, pre-submitted exhibits. At the discretion of the Examiner, voluminous exhibits, exhibits not easily reproduced, and those relating solely to procedure may be excluded from the packet. Agenda packets shall be available upon request at the Office of the Hearing Examiner and at the hearing and may be available for review at the Bellingham Public Library.

2.21 EVIDENCE

- (a) Evidence, including hearsay, may be admitted if, in the judgment of the Examiner, it is relevant to the issue(s), comes from a reliable source, and has probative (proving) value. Such evidence is that which responsible persons in the conduct of their important affairs would commonly rely upon.
- (b) The Examiner may exclude evidence that is irrelevant, unreliable, immaterial, unduly repetitive, or privileged.
- (c) Opinion evidence of non-experts presented at public hearings may be admitted into the record in proceedings where the Hearing Examiner decides applications or prepares

a recommendation for the City Council. Opinion evidence presented by non-experts at appeal hearings may be admitted, although the Examiner need not give it weight.

(d) Documentary evidence may be received in the form of copies or excerpts. The Examiner may require that the parties be given an opportunity to compare the copy with the original, and that the complete document from which an excerpt is taken be made available for inspection by all parties.

(e) Reduced scale/size copies, or copies that can be folded for storage in a legal sized file folder are preferred whenever oversized and mounted documents are used for display purposes at hearing. Color photographs of three-dimensional models should be provided, whenever feasible, when models are used in presentations.

2.22 OFFICIAL NOTICE

(a) The Examiner may take official notice of judicially cognizable facts. In addition, the Examiner may take notice of general, technical, or scientific facts within his or her specialized knowledge. The Examiner shall not take notice of disputed adjudicative facts that are at the center of an appeal.

(b) Parties must be notified during the hearing, or before issuance of the decision, of the specified facts or material noticed other than judicially cognizable facts and the source thereof, and afforded an opportunity to contest or rebut the facts or material so noticed.

(c) A Hearing Examiner ruling, decision, or recommendation may refer to and utilize any part of the BMC, the Plan, adopted City Policies, Procedures, and Rules, and any issued Hearing Examiner decision.

2.23 SITE INSPECTION

Where it would assist the Examiner in clarifying or understanding the evidence adduced at hearing, the Examiner may inspect property subject to an appeal, application or recommendation. The site inspection shall be taken out of the presence of any interested party whenever feasible. If accompaniment by an interested party is necessary to fully view the property no substantive discussion shall occur during the inspection. An accompanied site inspection should be, but is not required to be disclosed at the outset of the hearing.

2.24 CONTINUING OR REOPENING HEARING

(a) A scheduled hearing may be continued for good cause as determined by the Hearing Examiner. Written notice of the date, time, and place of the continued hearing shall be provided to each party. The notice of a rescheduled hearing need not observe the time requirements to which the original notice was subject.

(b) Prior to the issuance of the subject decision or recommendation, the Examiner may continue or reopen proceedings for good cause and may permit or require written briefs or oral argument.

(c) If the Examiner determines at hearing that there is good cause to continue such proceeding and then and there specifies the date, time, and place of the new hearing, no further notice is required.

2.25 LEAVING THE RECORD OPEN

(a) The Examiner may leave the record of hearing open at the conclusion of a hearing in order to receive argument or for other good purpose. Parties shall be provided notice of the consideration of any evidence received after hearing and shall have an opportunity to review such evidence and to file rebuttal evidence or argument.

(b) Except as provided for in [HER 2.22](#), [HER 2.27](#) and [HER 2.24](#), and observations made pursuant to site visits taken pursuant to [HER 2.23](#), information submitted after the close of the record shall not be included in the hearing record or considered by the Examiner making the decision or recommendation.

2.26 DISTRIBUTION OF DECISIONS AND RECOMMENDATIONS

A copy of the Hearing Examiner's decision or recommendation shall be distributed to the Department, the applicant/appellant, each party or party representative, those persons who have specifically requested a copy, and to others as specified by applicable ordinance(s). The decision or recommendation may be distributed to others in the discretion of the Examiner.

2.27 REMAND

(a) Prior to the issuance of the Hearing Examiner's decision or recommendation, if the Examiner determines that information, analysis, or other material necessary to the Hearing Examiner's decision or recommendation has not been provided, or that there is a lack of information, analysis, or other material needed to satisfy the provisions of relevant regulations, or for other good cause, the matter may be remanded to the Department for the addition of that information, analysis, or other material, with notice of such remand provided to all parties of record.

(b) Where the Hearing Examiner's decision is to remand the matter to the Department for additional information, analysis, or other material, the Hearing Examiner shall retain jurisdiction in order to review the adequacy of that information, analysis, or other material. The decision shall expressly state that jurisdiction is retained and what information, analysis, or other material is to be provided, and it may indicate when it is to be submitted. A copy of that information, analysis, or other material shall also be provided to each party to the proceeding, except where the size or condition of the required materials make copying impractical, notification to the other parties of the submittal, shall be sufficient. The parties shall have an opportunity to review, comment upon, and submit rebuttal to the information, analysis, or other material submitted. At the discretion of the Examiner, the hearing may be reopened following such submittal.

(c) Where the decision of the Hearing Examiner is to remand for the preparation of a new departmental decision, the Hearing Examiner's jurisdiction is terminated and the Director's subsequent decision shall be issued and subject to appeal in accordance with applicable ordinance(s).

2.28 RECONSIDERATION

(a) Reconsideration of a Hearing Examiner decision may be granted by the Hearing Examiner on a showing of one or more of the following:

1. Irregularity in the proceedings by which the moving party was prevented from having a fair hearing;

2. Newly discovered evidence of a material nature which could not, with reasonable diligence, have been produced at hearing;
3. Error in the computation or any monetary element of the decision;
4. Clear mistake as to a material fact;
5. Clear error as to the law, which should be corrected in the interests of justice.

(b) Motions for reconsideration must be filed and served on other parties within ten (10) days of the date of the Hearing Examiner's decision. Unless otherwise specifically provided by the applicable ordinance(s), the filing of a motion for reconsideration shall not stop or alter the running of the period provided to appeal the Hearing Examiner's decision.

(c) Motions for reconsideration may be scheduled for consideration at a regular or special hearing date, at the discretion of the Examiner. A motion for reconsideration that is not scheduled for consideration or otherwise acted upon by the Examiner within ten (10) days of filing of the motion shall be deemed denied.

2.29 SUBSEQUENT APPEAL

Hearing Examiner decisions may be appealed as provided for in applicable law. The method and time limits for appeal vary depending upon the type of decision. A Notice of Decision may specify the time and place for appeal of a decision. Recommendations of the Hearing Examiner may not be appealed.

2.30 TERMINATION OF JURISDICTION

The jurisdiction of the Hearing Examiner is terminated upon the issuance of the decision or recommendation except where jurisdiction is expressly retained, or as otherwise provided in ordinance or in these Rules (see [HER 2.31](#) and [HER 2.28](#)), or when a matter is remanded to the Hearing Examiner by the City Council or by a reviewing court.

2.31 CLERICAL ERRORS

Clerical mistakes in decisions, recommendations, orders, or other parts of the record, errors arising from oversight or omission or error in the computation of any monetary element of the decision, may be corrected by Order at the Hearing Examiner's initiation, or in response to the motion of any party.

2.32 PROCEEDINGS RECORDED

All proceedings before the Hearing Examiner shall be electronically recorded. The recordings of hearings shall be part of the official case record. Copies of the recordings shall be made available to the public upon request, subject to payment of a reasonable fee for copying. A party may, at their own expense, have proceedings of record transcribed by a certified court reporter. A transcript prepared by such a reporter may, in the discretion of the Hearing Examiner, be declared an official transcript of the proceedings.

2.33 DISCLOSURE OF PUBLIC RECORDS

Hearing Examiner decisions and recommendations, the hearing record, and associated official files, are public records and shall be available for public review as provided in

state law and City policies and procedures. Working notes and drafts are not subject to disclosure.

2.34 TRANSCRIPT OF PROCEEDINGS

(a) Anyone desiring a certified transcript of a hearing must obtain a duplicate copy of the hearing tapes from the Office of Hearing Examiner and be responsible for arranging and paying for the preparation of a verbatim transcript. See also [HER 2.32](#). The completed transcript must be returned to the Hearing Examiner for certification.

(b) The parties shall have an opportunity to review and comment on the transcript. The Hearing Examiner shall resolve conflicts as to form and content of the transcript and provide a certification when such disputes are resolved and the Examiner is satisfied that the transcript provides a reliable record of the proceedings.

2.35 RETENTION OF RECORDS

The case file, including the tape recording(s) and exhibits, shall be retained by the Office of Hearing Examiner consistent with the requirements of the Public Records Act and applicable retention schedules.

2.36 TRANSMITTAL OF RECORDS

The Hearing Examiner shall promptly transmit the official records of a case upon the request of an entity having jurisdiction to review the decision or recommendation.

2.37 RECORDING DEVICES

Photographic and recording equipment may be permitted at hearings with the approval of the Examiner. The Examiner may deny or condition use of such equipment as she deems necessary to avoid disruption to the proceedings or prejudice to any party.

2.38 APPEARANCE OF FAIRNESS

The appearance of fairness doctrine applies to proceedings of the Hearing Examiner as specified by state and local law.

2.39 ACCESSIBILITY

Proceedings before the Hearing Examiner shall be accessible in accordance with federal, state and local laws and as provided by City policies.

Section 3: Land Use Applications and Recommendations to the City Council

In addition to the Rules of General Application in Section 2, the rules in Section 3 shall govern review of matters where the Hearing Examiner is to hold a public hearing and issue a decision on a land use application or other original jurisdiction matter, or prepare a recommendation for the City Council.

3.01 PUBLIC HEARING NOTICE

(a) Contents: Notice of a public hearing shall be in writing and include:

1. Time and place for hearing;
2. Type of decision under consideration;
3. Location of property involved;
4. Nature of application or request;
5. Name of applicant/applicant's representative.

(b) Time Requirement: Notice of the hearing shall be given within the time required by the applicable ordinance. Where no time is specified, notice shall be given no less than ten (10) days prior to hearing.

(c) Method of Service: Notice of hearing shall be given in person, by U.S. mail, by publication, posting, or, for notice from one City department or agency to other City departments or agencies, by the City's regular interoffice mail service, or as required by ordinance.

(d) Notice Recipients: Notice shall be given to the applicant, interested persons and news media who have requested notice, and to others as required by ordinance or state law.

(e) Record of Notice: A copy of the notice of hearing shall be made part of each official case record.

3.02 NATURE AND PURPOSE OF PROCEEDINGS

Public hearings shall generally be informal in nature, but conducted in such manner that the information and facts relevant to a particular proceeding will become the most readily and efficiently available to the Examiner. The Hearing Examiner may exclude irrelevant, immaterial, unreliable or unduly repetitious testimony, exhibits, or other information presented.

3.03 RIGHTS OF INTERESTED PERSONS

Interested persons who testify or submit information at a public hearing, shall be sent a copy of the Hearing Examiner's decision or recommendation and be notified regarding subsequent Hearing Examiner proceedings, orders, or actions related to the matter considered at the public hearing.

3.04 FORMAT OF PUBLIC HEARING

(a) A public hearing shall include, but need not be limited to, the following:

1. Examiner's introductory statement;
2. Report by the Department (including introduction of the official file, reference to exhibits, and a summary of the recommendation, if any, of the Department);
3. Testimony by the applicant or petitioner;
4. Public comment in support of or in opposition to the application or petition;
5. Opportunity for parties and Examiner to ask questions;
6. Opportunity for presentation of additional information as rebuttal.

(b) The Examiner may alter or modify the order of hearing if and as necessary to best provide for the presentation and understanding of information.

- (c) Questions asked of citizens expressing their opinions shall generally be limited to clarification.
- (d) Persons testifying as expert witnesses are subject to cross-examination.

3.05 HEARING EXAMINER'S DECISION

- (a) Issuance: The Hearing Examiner shall issue a written decision or recommendation as required in the applicable ordinance(s).
- (b) Contents: The Hearing Examiner's decision shall include, but not be limited to, a statement of the following:

1. Background. The nature and background of the proceeding.
2. Findings. The individual facts that the Examiner finds relevant, credible, and requisite to inform the City
3. Conclusions. Legal and factual conclusions based upon specific provisions of law and the findings of fact.
4. Decision. Hearing Examiner's decision as to whether the application or petition is approved, approved with conditions, denied, or remanded.
5. Findings of Fact that should be denominated Conclusions of Law shall be deemed to be Conclusions of Law. Conclusions of Law that should be denominated Findings of Fact shall be deemed to be Findings of Fact.

3.06 RECORD OF THE HEARING EXAMINER'S DECISION

The record of a public hearing shall include, but need not be limited to, the following materials:

1. Application or petition;
Department's report and recommendation;
2. Environmental documents, special studies, reports, reviews, correspondence, memos and other public documents relating to the matter under consideration and contained within the Departmental file for the matter, and transmitted to the Office of the Hearing Examiner, provided that any party may object to the admission into evidence of specific items contained within the Departmental file. Such objections shall be made prior to or at the opening of the public hearing. The Examiner shall rule on such objections prior to the close of the public hearing;
3. Written comments from the public and other agencies received during the Director's review;
4. Exhibits and written comments received by the Hearing Examiner prior to the close of the record;
5. Statement of matters officially noticed (if any);
6. Hearing Examiner's findings, conclusions, and decision;
7. Notice(s) and mailing list(s) for notice and decision;
8. The tape recording and/or transcript of the public hearing.

Section 4: Appeal Rules

In addition to the Rules of General Application in Section 2, the Rules in Section 4 shall apply to appeals (in case of conflict between the rules in Section 2 and the rules in Section 4, Section 4 shall control).

4.01 FILING

(a) Compliance with Rules: All appeals must comply with these Rules and with the requirements established in the applicable ordinance(s) under which the appeal is filed.

(b) Timeliness: To be considered timely filed, an appeal must be received in the Office of Hearing Examiner (or Finance Director in the event the Hearing Examiner Office is closed) no later than 5:00 PM on the last day of the appeal period. See also [HER 2.04](#).

(c) Fees: Any filing fee as required by City ordinance or resolution, shall accompany an appeal, unless the Hearing Examiner waives part or all of the required filing fee due to indigency. An appeal fee can be refunded where the Hearing Examiner determines there is not jurisdiction, as provided by applicable ordinance(s), or when the appeal is withdrawn prior to the undertaking of any significant activity on the appeal by the Department or Hearing Examiner.

(d) Contents: An appeal must be in writing and contain the following:

1. The action or decision appealed, including the date thereof;
2. The City Department that took the action or made the decision;
3. The name, address and telephone number of the appellant;
4. The name, address, telephone and fax number of the attorney or other representative, if any for the appellant;
5. A brief statement as to how the appellant is significantly affected by or interested in the matter appealed;
6. A brief statement of the errors that the appellant believes were made in the action or decision being appealed, or the procedural irregularities associated with the action or decision, noting appellant's specific exceptions and objections to the decision or action being appealed. Unless amendment is allowed the identification of errors will define and limit the issues the Examiner will consider.
7. The relief requested, such as reversal or modification.

4.02 DISMISSAL

(a) An appeal may be dismissed without a hearing if the Hearing Examiner determines that it fails to state a claim for which the Hearing Examiner has jurisdiction to grant relief, or it is without merit on its face, frivolous, or brought merely to secure delay.

(b) Any party may request dismissal of all or part of an appeal at any time with notice to all parties. The Hearing Examiner may make a ruling on a motion to dismiss based upon written arguments or may call for oral arguments.

(c) When the decision or action being appealed is withdrawn by the issuing Department, the appeal becomes moot and shall be dismissed.

4.03 AUTOMATIC APPEAL

Where the underlying ordinance provides that an appeal is automatic or an appeal hearing is noticed as part of Department action the opportunity for appeal is not dependent upon the appellant filing an appeal statement.

4.04 CLARIFICATION

The appellant shall provide clarification, additional information, or other submittal(s) as the Hearing Examiner deems necessary in order that the appeal be made complete and understandable. The Hearing Examiner shall rule on the request of any party for clarification of an appeal. Request for clarification must be made in a timely manner to afford reasonable opportunity for other parties to prepare response(s) for hearing.

4.05 AMENDMENT

For good cause shown, the Hearing Examiner may allow an appeal to be amended within ten (10) days after it has been filed. A request to amend an appeal shall be made by the appellant in writing and shall be filed within the ten (10) day time period, together with the proposed amended appeal. In deciding whether to allow such an amendment, the Hearing Examiner shall attempt to ensure that the fair hearing opportunity of other parties will not be prejudiced by the amendment. A timely filed amendment, if allowed, shall relate back to the date of filing of the original appeal.

4.06 WITHDRAWAL

- (a) An appeal may be withdrawn only by the appellant.
- (b) Where an appeal is made by several persons, a group, organization, corporation, or other entity, withdrawal shall be made by the person who had been designated as the party representative. See also [HER 2.08](#).
- (c) An appellant's request to withdraw shall be granted as a matter of right and the appeal dismissed.

4.07 INTERVENTION

- (a) Upon a showing of a substantial or significant interest that is not otherwise adequately represented, the Hearing Examiner may permit an interested person, group, organization, corporation, or other entity, who has not filed an appeal, to participate in the appeal.
- (b) Except as provided in [HER 4.07\(d\)](#), a written request for intervention must be submitted to the Hearing Examiner at least five (5) days prior to the day on which the hearing begins. The intervention request must state the basis for the intervention and how the person, group, organization, corporation, or other entity making the request is affected by or interested in the matter appealed. In considering the requested intervention, the Hearing Examiner shall seek to ensure that intervention will not unduly delay the hearing process, will not expand the issues beyond those within the appeal, and will not prejudice the rights of any of the original parties. In granting intervention, the Hearing Examiner may limit the nature and scope of the intervention.
- (c) Intervention is not a substitute means of appealing a decision for those who could have appealed but failed to do so.
- (d) A substantially or significantly interested person, group, organization, corporation, or other entity who has not filed an appeal, may be allowed to intervene for the purpose of

preserving the right of subsequent appeal. Such intervention may be permitted at any time up to the time of hearing.

4.08 DEPARTMENT RESPONSE

The Department shall file a written response to the appeal, and serve such response on the appellant representative and other parties who have appeared in the matter, within thirty (30) days of service of the appeal, or no later than seven (7) days prior to the hearing, whichever is sooner. Extensions of time for filing the departmental response may be granted by the Hearing Examiner upon request of the Department

4.09 NOTICE OF HEARING

(a) Contents: The notice of hearing shall include the following:

1. The time, place, and nature of the hearing;
2. The file number, address, or other identifying information for the underlying decision or action being appealed;
3. A brief statement of the issue(s) to be considered;
4. Reference to the applicable BMC section(s), if specified in the notice of appeal or Department response.

(b) Time: Notice of the hearing shall be given within the time required by applicable ordinance(s). If the time for notice of hearing is not specified by the applicable ordinance(s), or applicable ordinances conflict, minimum notice shall be seven (7) days. A hearing may be set on shorter notice where substantial injury to a party would otherwise result from delay, or where all parties agree to a shorter notice period.

(c) Method of Service: Notice of hearing shall be given to each party in person, by U.S. mail, or for City departments, by regular interoffice mail service, unless otherwise required by applicable ordinance.

(d) Record of Notice: A copy of the notice of hearing shall be made part of each official case record.

4.10 DISCOVERY

Appropriate prehearing discovery may be permitted upon motion of a party and at the discretion of the Examiner. The Hearing Examiner may prohibit or limit discovery where the Hearing Examiner determines it to be unduly burdensome, harassing, or unnecessary under the circumstances of the appeal.

4.11 SUBPOENAS

(a) A request or motion may be made in writing for a subpoena to require a person to appear and testify at an evidentiary hearing, or for a person to produce specified documents or other physical exhibits at a prehearing conference or at hearing.

(b) A request for a subpoena for a person shall: include the person's name and address; show the relevance of that person's testimony; and, demonstrate the reasonableness of the scope of subpoena sought. A request for a subpoena for documents or other physical exhibits shall: include the name and address of the person who is to produce the documents or other physical exhibit; specify the materials to be

produced; indicate the relevance of the materials subpoenaed to the issues on appeal; and, demonstrate the reasonableness of the scope of the subpoena sought.

(c) The party requesting the subpoena shall be responsible for serving the subpoena. An affidavit or declaration of personal service or of mailing shall be submitted to the Hearing Examiner as proof of that service.

(d) Except as otherwise allowed by the Hearing Examiner, subpoenas shall be served no less than seven (7) days prior to the appearance or production ordered.

(e) An attorney of record in the proceeding may issue a subpoena with like effect. The issuing attorney must sign the subpoena.

(f) Any motion to limit or quash (i.e., vacate or void) a subpoena shall be filed with the Hearing Examiner within seven (7) days of receipt of the subpoenas or such other time as specified by the Hearing Examiner.

(g) Requests for subpoenas and the rulings upon such requests may be made ex parte unless otherwise ordered by the Hearing Examiner.

4.12 PARTIES' RIGHTS AND RESPONSIBILITIES

(a) Each party in an appeal proceeding shall have the right to: due notice of hearing, presentation of evidence, rebuttal, objection, cross-examination, argument, and other rights determined by the Hearing Examiner as necessary for the full disclosure of facts and a fair hearing.

(b) Parties have the right to be represented by an attorney. Representation by an attorney is not required. See also [HER 2.09](#).

(c) Where a party has designated a representative, the representative shall exercise the rights of the party. See also [HER 2.08](#).

(d) All parties, witnesses, and others participating in and observing hearings shall conduct themselves with civility and deal courteously with all persons involved in the proceedings.

(e) Each party shall provide the Examiner and other parties with a current name and mailing address for receipt of official notifications and service of other documents. The Hearing Examiner will not make further mailings to a party if mail sent to the address provided by the party is returned by the postal service as undeliverable unless and until a correct address is provided by the party.

4.13 DEFAULT

The Hearing Examiner may dismiss an appeal by an order of default where the appellant, without good cause, fails to appear or is unprepared to proceed at a scheduled and properly noticed hearing.

4.14 HEARING FORMAT

(a) Appeal hearings, although generally informal in nature, shall have a structured format and shall be conducted in a manner deemed by the Examiner to make the relevant evidence most readily and efficiently available to the Examiner and to provide the parties a fair opportunity for hearing.

(b) Where the BMC provides that the appellant must overcome deference accorded the Director's decision being appealed, the order of hearing is generally as follows:

1. Examiner's introductory statement;
2. Parties' opening statements (optional);
3. Appellant's presentation of evidence;
4. Department's presentation of evidence;
5. Applicant's presentation of evidence (if applicant is not the appellant);
6. Rebuttal;
7. Closing argument of parties.

(c) Where no deference is accorded the Director's decision, the order of hearing for appeals is generally as follows:

1. Examiner's introductory statement;
2. Parties' opening statements (optional);
3. Department's presentation of evidence;
4. Appellant's presentation of evidence;
5. Applicant's presentation of evidence (if applicant is not the appellant);
6. Rebuttal;
7. Closing argument of parties.

(d) Notwithstanding the provisions of [HER 4.14\(b\)](#) and [\(c\)](#), the order of hearing may be modified or a different order established as the Examiner deems necessary for the clear and fair presentation of evidence. The order of the hearing may also be modified as agreed upon by the parties with the Examiner's approval.

(e) The order of presentation at hearing shall not alter or shift any burden(s) or presumption(s) established by applicable law(s).

(f) The Examiner may ask questions of any witness, including Department staff, at any time during the hearing to seek clarification or elaboration of testimony given. The Examiner may request submittal of additional information to facilitate a complete and accurate evaluation of the issues.

(g) The Examiner may request that particular issues be addressed in testimony and/or argument.

4.15 BURDEN OF PROOF

(a) Where applicable ordinance(s) so provide, the Hearing Examiner shall accord deference or other presumption as directed by the applicable ordinance(s).

(b) Where the applicable ordinance(s) provide that the appellant has the burden, appellant(s) must show by the applicable standard of proof that the Department's decision or action is not in compliance with the ordinance(s) authorizing that decision or action.

(c) Where the applicable ordinance(s) do not provide that the appellant has the burden, the Department shall make a prima facie showing that its decision or action is in compliance with the ordinance(s) authorizing that decision or action.

(d) Unless otherwise provided by applicable ordinance(s), statute, or case law, the standard of proof is a preponderance of the evidence.

4.16 HEARING EXAMINER'S DECISION

(a) Issuance: The Hearing Examiner shall issue a written decision and provide a copy of that decision to each party representative within the time required by the applicable ordinance. If more than one ordinance applies and the time limits specified conflict, the shorter period shall apply unless the parties agree to the longer period.

(b) Judgment on Relief Requested: Unless proscribed by applicable ordinance(s), the Hearing Examiner's decision may affirm, reverse, modify, or remand the Department's decision or other action, which is the subject of the appeal.

(c) Contents: A decision of the Hearing Examiner on appeals shall include, but not be limited to, a statement regarding the following:

1. Background. The nature and background of the proceeding, including identification of party representatives participating in the hearing, prehearing determinations, and other similar information.
2. Findings. The individual facts that the Examiner finds relevant, credible, and requisite to the decision, based on the evidence presented at hearing and those matters officially noticed. (This may include recitation of relevant provisions of ordinance, other regulation, or case law.)
3. Conclusions. Legal and factual conclusions based upon specific provisions of law and the findings of fact.
4. Decision. The Hearing Examiner's decision as to outcome of the appeal (affirm, modify, reverse, or remand) based upon a consideration of the whole record and supported by substantial evidence in the record.
5. Any Finding of Fact that should be denominated a Conclusion of Law shall be deemed to be a Conclusion of Law. Any Conclusion of Law that should be denominated a Finding of Fact shall be deemed to be a Finding of Fact.

(d) The decision may also include an order disposing of contested issues and/or directing parties to take actions consistent with the decision.

4.17 RECORD

(a) The record of an appeal shall include the following:

1. Department's decision or action being appealed;
2. Appeal statement;
3. Evidence received or considered;
4. Pleadings, procedural rulings, and other non-evidentiary materials that are part of the Hearing Examiner's file;
5. Statement of matters officially noticed, if any;
6. Findings, conclusions and decision of the Hearing Examiner;
7. Tape recording and/or transcript of the hearing.

(b) The Hearing Examiner's administrative file on an appeal case may include other information or materials, which are not part of the evidentiary record.

Section 5: Rules for Specific Cases

The rules in Section 5 address those specific cases where the procedures and practices must be different because the requirements and/or operation of the underlying

ordinance or other substantive authority are unique. Where the BMC or other substantive authority for the Hearing Examiner's jurisdiction specifies a practice or procedure different or additional to the Hearing Examiner Rules, that BMC or substantive authority shall control. In the event that the rules in Section 2 or Section 4 conflict with the rules in Section 5, the rules in Section 5 shall control.

5.01 SEIZED PROPERTY CLAIMS

- a) Upon written referral from the Police Chief a claim relating to property seized pursuant to RCW 69.50 or other applicable statute or ordinance shall be scheduled for hearing with notice provided to the parties.
- b) Proceedings for seized property claims shall be conducted in accordance with RCW 34.05.

5.02 VEHICLE IMPOUND HEARINGS

Proceedings relating to impounded vehicles are governed by RCW 46.55 and BMC 11.18.