

City of Seattle
OFFICE OF HEARING EXAMINER

**HEARING EXAMINER
RULES OF PRACTICE AND PROCEDURE**

(Effective March 24, 2008)

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**HEARING EXAMINER
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SECTION 1 GENERAL PROVISIONS

1.01 APPLICABILITY

These Hearing Examiner Rules (Rules) supplement Seattle Municipal Code and ordinances and other applicable law, for matters within the Hearing Examiner's jurisdiction, and govern administrative practice and procedure before the Hearing Examiner. In case of conflict between a Hearing Examiner Rule (HER) and the Seattle Municipal Code or other applicable law, the Seattle Municipal Code or other applicable law controls.

1.02 EFFECTIVE DATE

These Rules apply to all matters properly before the Hearing Examiner on or after the Rules' effective date.

1.03 INTERPRETATION OF RULES

(a) The Hearing Examiner shall interpret the Hearing Examiner Rules of Practice and Procedure and determine their application.

(b) While a matter is pending before the Hearing Examiner, an affected party may request by motion that the Hearing Examiner issue a declaratory ruling on the applicability of a Rule to identified, existing circumstances. The motion must clearly identify the Rule and describe the circumstances for which the declaratory ruling is sought. Unless brought during a hearing, the motion must be in writing.

(c) When questions of practice or procedure arise that are not addressed by these Rules, the Hearing Examiner shall determine the practice or procedure most appropriate and consistent with providing fair treatment and due process. The Hearing Examiner may look to the Superior Court Civil Rules for guidance.

1.04 PETITION FOR RULES (SMC 3.02040)

Any interested person may petition the Hearing Examiner requesting adoption, amendment or repeal of any rule. The petition shall be in writing, signed by the petitioner, and shall include:

(a) The name and address of the petitioner; and

(b) In the case of a petition for adoption, the substance of the requested rule, and a brief statement of the reason why adoption of the rule is necessary or desirable; or

(c) In the case of a petition for amendment or repeal of a rule, the number of the rule to be amended or repealed, the substance of any requested amendment, and a

brief statement of the reason why an amendment or repeal of the rule is necessary or desirable.

In accordance with SMC 3.02.040, no later than 60 days after a petition is submitted, the Hearing Examiner will either deny the petition in writing, stating the reasons for the denial, or initiate rulemaking proceedings concerning the subject of the petition in accordance with SMC 3.02.030.

1.05 PUBLIC RECORDS (SMC 3.02.070)

The Office of Hearing Examiner is a separate and independent City office and is responsible for conducting administrative hearings and issuing decisions and recommendations in matters where jurisdiction has been granted by the Seattle Municipal Code. The Office is located on the 40th floor of Seattle Municipal Tower, 700 Fifth Avenue, in Seattle, Washington, and is open from 8:00 a.m. to 5:00 p.m. on business days. The mailing address is PO Box 94279, Seattle, Washington 98124.

All case files, including recordings, exhibits, and decisions or recommendations, are retained by the Office of Hearing Examiner in accordance with applicable retention schedules, and are available to the public during normal business hours for inspection and copying in accordance with the requirements of the Public Records Act and other laws governing public records.

SECTION 2 RULES OF GENERAL APPLICATION

2.01 SCOPE

Unless stated otherwise, Rules in this section apply to all matters before the Hearing Examiner.

2.02 DEFINITIONS

The following definitions apply unless the context requires otherwise:

(a) "Affidavit" - a written or printed statement of facts confirmed by oath or affirmation of the person making it, before one having authority to administer oaths.

(b) "Appeal" - a challenge to a decision or other action that the Hearing Examiner is authorized to review and decide.

(c) "Appeal hearing" - a hearing held by the Hearing Examiner to consider an appeal of a decision or other action within the Hearing Examiner's jurisdiction. In these Rules an "appeal hearing" is distinguished from a "public hearing".

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

(e) "Applicant" - the person, organization, or other entity who files an application or otherwise formally requests a permit or other type of City action that is the subject of an appeal or other review by the Hearing Examiner.

(f) "Business days" - days other than Saturday, Sunday, and national, State and City holidays.

(g) "Code" - Seattle Municipal Code (SMC).

(h) "Days" - calendar days.

(i) "Declaration" - a written or printed statement of facts declared or certified to be true and correct under penalty of perjury under the laws of the State of Washington.

(j) "Department" - the City entity responsible for the decision or action that is subject to appeal or other review by the Hearing Examiner.

(k) "Director" - the head of the unit of City government responsible for the decision or other action that is subject to appeal or other review by the Hearing Examiner.

(l) "Discovery" - the disclosure by one party to another party of documents and information that are relevant to the subject matter of an appeal, or are reasonably

calculated to lead to documents and information that are relevant to the subject matter of an appeal.

(m) "Ex parte communication" - a direct or indirect communication between a proponent, opponent, or a party and the Hearing Examiner, made outside a hearing or properly scheduled conference, and outside the presence of all other parties, regarding the merits of a matter pending before the Hearing Examiner.

(n) "Hearing Examiner" or "Examiner" – The Hearing Examiner is the official appointed by the City Council pursuant to Chapter 3.02 SMC to serve as the City's Hearing Examiner. However, in these Rules, the terms "Hearing Examiner" and "Examiner" are used interchangeably to refer to the Hearing Examiner, or to a Deputy Hearing Examiner or Hearing Examiner Pro Tempore who has been delegated responsibility by the Hearing Examiner to preside over a particular matter.

(o) "Interested person" - any person, organization, or other entity significantly affected by, or interested in proceedings before the Hearing Examiner, including any party.

(p) "Law" - federal, or state statute or regulation, Code, City ordinance or regulation, or common law.

(q) "Motion" - a request made to the Hearing Examiner for an order or other ruling.

(r) "Offer of proof" - a party's statement for the record of what excluded evidence would show had it been admitted.

(s) "Order" - a ruling, instruction, or other directive issued by the Hearing Examiner in response to a request or motion by a party, or on the Hearing Examiner's own initiative. Where allowed by law, an order may direct how the Hearing Examiner's decision is to be implemented and may be issued as part of that decision or separately.

(t) "Party" - the person, organization, or other entity that has filed an appeal or is granted a hearing automatically by law; the person, organization, or other entity granted party status through intervention; the Director who made the decision or took the action that is the subject of the appeal; the person, organization, or other entity who filed the application, request, or petition for a permit or other type of City authorization or action that is the subject of the appeal; the owner of the property subject to the City decision or other action; floating home moorage site lessees petitioning for review of rate increases; and the owner of the moorage subject to the petition filed by floating home moorage site lessees.

(u) "Public hearing" - a hearing held by the Hearing Examiner for the purpose of gathering evidence from which to prepare a final decision on a preliminary subdivision

application, or a recommendation for the City Council on matters for which the Code provides for a recommendation. (See also "Appeal hearing").

(v) "Representative" - the individual or firm designated by a party to be the official contact person and to speak for the party. Unless the law establishing the Hearing Examiner's jurisdiction requires otherwise, a representative is not required to be an attorney.

(w) "Rules" - the Hearing Examiner Rules of Practice and Procedure, as currently amended.

(x) "Timely" - within the time prescribed by applicable law or, in the absence of applicable law, the time prescribed by Hearing Examiner Rule or order.

2.03 HEARING EXAMINER'S JURISDICTION

The Hearing Examiner has jurisdiction to hear and decide appeals and make recommendations only as authorized by law.

2.04 COMPUTATION OF TIME

Unless otherwise provided by law, computation of any period of time for matters before the Hearing Examiner begins with the first day after the day on which the act or event that started the time period occurred. When the last day of the time period so computed is a Saturday, Sunday, or national, state or City holiday, the time period extends to the end of the next business day.

2.05 FILING AND SERVICE OF DOCUMENTS

(a) Documents are deemed filed with the Hearing Examiner on receipt at the Office of Hearing Examiner on business days between the hours of 8 a.m. and 5 p.m. unless the Hearing Examiner has specified otherwise.

(b) A party may file no more than 15 pages with the Office of Hearing Examiner by electronic facsimile without the prior permission of the Hearing Examiner.

(c) Unless otherwise provided by law, by the Hearing Examiner, or by agreement of the parties, documents shall be served on all parties personally, by first-class, registered, or certified mail, or by facsimile transmission. City agencies may serve other City agencies through the City's regular interoffice mail.

(d) Unless otherwise provided by the Hearing Examiner or by agreement of the parties, service is complete at the time documents are personally delivered, or confirmed as having been successfully transmitted by facsimile. Unless earlier receipt is shown, service by mail is complete upon deposit in the regular facilities of the US mail of a properly stamped and addressed letter or packet.

2.06 EXPEDITIOUS PROCEEDINGS

Hearings shall be conducted expeditiously. At every stage in the proceedings, all parties shall make every effort to avoid delay.

2.07 SCHEDULING AND NOTICE OF HEARINGS

(a) Upon receipt of an appeal that meets the requirements of HER 3.01, the Hearing Examiner will promptly schedule an appeal hearing in accordance with the requirements of the law and these Rules.

(b) The Hearing Examiner shall promptly schedule a public hearing when notified by a Department of a recommendation, decision or action that requires one.

(c) Notice of hearing shall be provided as required by law. Hearing dates will also be posted on the Office of Hearing Examiner website at www.seattle.gov/examiner.

2.08 CONSOLIDATION

All cases under the jurisdiction of the Hearing Examiner relating to the same matter should be consolidated for hearing. The Hearing Examiner may order consolidation on the Hearing Examiner's own initiative or at the request a party.

2.09 PREHEARING CONFERENCE

(a) On the Hearing Examiner's own initiative, or at the request of a party, the Hearing Examiner may hold a conference prior to the hearing to consider:

- (1) Identification, clarification, and simplification of the issues;
- (2) Potential for mediation of the dispute;
- (3) Disclosure of witnesses to be called and exhibits to be presented;
- (4) Discovery;
- (5) Motions;
- (6) Other matters deemed by the Hearing Examiner appropriate for the orderly and efficient disposition of the case.

(b) Prehearing conferences may be held by telephone conference call. The Hearing Examiner may require that any costs associated with telephone conferencing be borne by the party requesting it.

(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 a party has waived the right to be present or represented and been excused by the Hearing Examiner.

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

2.10 INTERFERENCE PROHIBITED

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

2.11 PRESIDING OFFICIAL

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

- (a) Determine the order of presentation of evidence;
- (b) Administer oaths and affirmations;
- (c) Issue subpoenas;
- (d) Rule on offers of proof and receive evidence;
- (e) Rule on procedural matters, objections and motions;
- (f) Question witnesses and request additional exhibits;
- (g) Permit or require oral or written argument, briefs, proposed findings of fact and conclusions, or other submittals the Examiner finds appropriate, and determine the timing and format for such submittals;
- (h) Regulate the course of the hearings and the conduct of the parties and others so as to maintain order and provide for a fair hearing; and
- (i) Hold conferences for settlement, simplification of issues, or for any other proper purpose

2.12 DISQUALIFICATION OR RECUSAL OF AN EXAMINER

(a) In the event of personal bias, prejudice, financial interest, or other reason substantially affecting the examiner's objectivity, an Examiner should recuse himself/herself from hearing a matter.

(b) Prior to hearing, a party who reasonably believes that the Examiner assigned to a matter cannot remain objective in hearing it due to personal bias, prejudice, financial interest, or other substantial reason, may request by written motion that a

different Examiner be assigned to the matter. The request should be made at the earliest possible time, preferably no more than 7 business days prior to the day the hearing is to begin. The request must set forth the reasons for the belief that the assigned Examiner cannot remain objective in hearing the matter.

(c) The fact that an Examiner has considered the same or a similar issue or proposal in another matter, or has made a ruling adverse to the interests of the party in the same or another matter, is not a basis for disqualification.

(d) In case of disqualification or recusal, the matter shall be assigned to a different Examiner.

2.13 [RESERVED]

2.14 TESTIMONY AND ARGUMENT

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

(b) Before beginning to interpret, every interpreter shall take an oath that to the best of the interpreter's ability, a true interpretation shall be made that is understandable for the person utilizing the interpreter, and that the interpreter shall repeat statements in English to the Examiner and the other parties. (See also HER 2.33(b)).

(c) The rules of privilege apply to the extent recognized by law.

(d) Although Hearing Examiner hearings are open to the public, those who are not parties are generally not permitted to testify in appeal hearings unless called as witnesses by a party.

(e) The Examiner may limit the length of testimony to expedite the proceedings. The maximum practicable advance notice of such time limitations will be provided. If parties are unable to complete their testimony and arguments within the allotted time, and the hearing will not be continued, an opportunity will be provided 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.

(f) The Examiner may allow testimony via teleconference or videoconference or similar electronic means. Each party to the proceeding shall have the opportunity to hear (or for a videoconference, to both hear and see) testimony given in this manner and to question the person giving such testimony. Any costs associated with electronic conferencing shall be borne by the party requesting it.

2.15 EXPECTED CONDUCT AND APPEARANCE OF FAIRNESS

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

(b) The appearance of fairness doctrine applies to proceedings under these Rules.

(c) Except for communications regarding procedural matters (which are permitted), no party or other person, organization or other entity shall communicate or attempt to communicate *ex parte* with the Examiner.

(d) If a prohibited *ex parte* communication is made, the communication shall be publicly disclosed by the Examiner: any written communications, and a memorandum summarizing the substance of and participants in all oral communications, shall promptly be made available to the parties for review and an opportunity provided for them to rebut the communications.

2.16 MOTIONS

(a) All motions shall state the order or relief requested and the grounds for the motion. All motions other than those made during a hearing shall be in writing. Every motion, response, and accompanying paper, shall be served on each party representative on the day it is filed with the Hearing Examiner. (See HER 2.05 on Filing and Service of Documents.)

(b) Within 7 days after service of a written motion, or such other time as may be designated by the Hearing Examiner, any other party may file a written response. After the Hearing Examiner has received any written responses, or the 7 days or other designated time has elapsed, the Hearing Examiner may rule on the motion. Failure of a party to file a timely response may be considered by the Hearing Examiner as evidence of that party's consent to the motion.

(c) The Hearing Examiner may provide for the filing of a reply or other additional briefing on a motion, and may call for oral argument prior to ruling.

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

(e) Motions to dismiss all or part of an appeal, other dispositive motions, and motions to exclude evidence (testimony or exhibits) shall be filed at the earliest possible time in the proceedings in order to allow time for the other party to respond, as provided in subsection 2.16 (b) above, and to ensure that the Examiner will consider the motions on the merits.

2.17 EVIDENCE

(a) Evidence, including hearsay, may be admitted if the Examiner determines that it is relevant to the issue on appeal, comes from a reliable source, and has probative (proving) value. Such evidence is that on which responsible persons would commonly rely in the conduct of their important affairs.

(b) The Examiner may exclude evidence that is irrelevant, unreliable, immaterial, unduly repetitive, or privileged.

(c) At public hearings on matters in which the Hearing Examiner is to prepare a recommendation for the City Council, opinion evidence of non-experts may be admitted into the record. At appeal hearings, opinion evidence from non-experts is discouraged but may be admitted and given appropriate weight by the Examiner.

(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.

2.18 OFFICIAL NOTICE

(a) The Hearing 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.

(b) Before a decision or recommendation is issued, parties must be notified of the facts or material noticed and their source, and afforded an opportunity to contest or rebut them.

(c) A Hearing Examiner ruling, decision, or recommendation may refer to and utilize any part of the Code and any issued Hearing Examiner decision.

2.19 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 or recommendation prior to the close of the record. Unless otherwise provided by the Examiner, site visits include only the Examiner; interested parties may not accompany or approach the Examiner during a site visit.

2.20 CONTINUING OR REOPENING HEARING

(a) A scheduled hearing may be continued on the Examiner's initiative, or on the motion of a party for good cause shown. 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 conform to the time requirements for the original notice.

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

(c) Following the close of the hearing and/or the record, but prior to issuing a decision or recommendation, the Examiner may reopen the record and/or the hearing for good cause and may permit or require written briefs or oral argument.

(d) If a matter is reopened after conclusion of the hearing, parties shall be provided no less than 10 days notice of the reopened hearing.

2.21 LEAVING THE RECORD OPEN

(a) At the conclusion of the hearing, the Examiner may close the hearing, but leave the record open to receive argument or for other good purpose. Parties shall be provided notice of any evidence received after hearing and shall have an opportunity to review the evidence and file rebuttal evidence or argument.

(b) Except as provided in this Rule, HER 2.20 and HER 2.23, information submitted after the close of the record shall not be included in the hearing record or considered by the Examiner.

2.22 DISTRIBUTION OF DECISIONS AND RECOMMENDATIONS

A copy of the Hearing Examiner's decision or recommendation shall be distributed to each party representative, to persons who have specifically requested a copy, and to others as specified by applicable law.

2.23 REMAND

(a) Prior to issuing a recommendation, if the Hearing Examiner determines that information, analysis, or other material necessary to the Examiner's recommendation has not been provided, the Examiner may remand the matter for the addition of the requisite information, analysis, or other material.

(b) Prior to issuing a decision on an appeal or a preliminary subdivision application, if the Hearing Examiner determines that information, analysis, or other material needed to satisfy the provisions of relevant law has not been provided, the Examiner may remand the matter for the addition of the requisite information, analysis, or other material.

(c) If the Hearing Examiner remands a matter for additional information, analysis, or other material, the Hearing Examiner shall retain jurisdiction in order to

review the adequacy of the information, analysis, or other material submitted in response to the remand. The decision shall expressly state that jurisdiction is retained and what information, analysis, or other material is to be provided, and may indicate when it is to be submitted.

(d) A copy of the information, analysis, or other material filed with the Hearing Examiner in response to a remand shall also be provided to all parties to the proceeding. If the size or condition of the required materials makes copying impractical, notifying the other parties of the filing is sufficient. The parties shall have an opportunity to review and file rebuttal to the information, analysis, or other material filed in response to a remand.

(e) After receiving information, analysis or other material in response to a remand, and any rebuttal, the Examiner may reopen the hearing.

2.24 TERMINATION OF JURISDICTION

(a) The jurisdiction of the Hearing Examiner is terminated on the date a decision or recommendation is issued unless the Hearing Examiner expressly retains jurisdiction, or the law or these Rules provide otherwise (see e.g., HER 2.23).

2.25 CLERICAL ERRORS

Clerical mistakes in decisions, recommendations, orders, or other parts of the record, and errors arising from oversight or omission, may be corrected by order on the Hearing Examiner's initiative, or in response to the motion of a party.

2.26 PROCEEDINGS RECORDED

All proceedings before the Hearing Examiner are electronically recorded. The recordings of hearings are part of the official case record. Copies of the recordings are made available to the public upon request, subject to payment of a reasonable fee for copying.

2.27 [RESERVED]

2.28 CERTIFIED TRANSCRIPT OF PROCEEDINGS

(a) Anyone desiring a certified transcript of a hearing must obtain a duplicate copy of the hearing recording from the Office of Hearing Examiner and arrange and pay for the preparation of a verbatim transcript. (See also HER 2.26.) 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 shall provide a certification when such disputes are resolved and the Examiner is satisfied that the transcript provides a reliable record of the proceedings.

2.29 [RESERVED]

2.30 TRANSMITTAL OF RECORDS

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

2.31 RECORDING DEVICES

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

2.32 [RESERVED]

2.33 ACCESSIBILITY AND ACCOMMODATION

(a) Proceedings before the Hearing Examiner shall be accessible to the greatest extent practicable.

(b) If a hearing impaired or non-English speaking party requires an interpreter or other accommodation in order to fully and fairly participate in a contested case hearing, the Examiner shall appoint a qualified and impartial interpreter in accord with the Hearing Examiner's adopted procedures for using interpreters, or provide other necessary accommodation.

SECTION 3 APPEAL RULES

In addition to the Rules of General Application in Section 2, the Rules in Section 3 apply to appeals. In case of a conflict, the Rules in Section 3 control.

3.01 FILING

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

(b) Timeliness. To be timely, an appeal must be received in the Office of Hearing Examiner no later than 5 p.m. on the last day of the appeal period. (See also HER 2.04.)

(c) Fee. Any filing fee required by law (see SMC 3.02.125) must accompany an appeal, unless the Hearing Examiner waives part or all of the required fee due to financial hardship. A filing fee cannot be paid by credit or debit card, or by third-party check. A filing fee may be refunded if the Hearing Examiner determines that he or she lacks jurisdiction to hear the appeal, or otherwise determines it appropriate, in fairness to the appellant, to refund the fee.

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

- (1) Identification of the matter being appealed, including the number of the application or departmental action, and the applicant name and property address where applicable;
- (2) A brief statement as to how the appellant is significantly affected by or interested in the matter appealed;
- (3) A brief statement of the appellant's issues on appeal, noting appellant's specific objections to the decision or action being appealed;
- (4) The relief requested, such as reversal or modification;
- (5) Signature, address, telephone and facsimile numbers, and electronic mail address of the appellant and the appellant's designated representative, if any.

(e) Multiple appeals. More than one appeal may be filed concerning the same appealable decision or other action.

3.02 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 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 by motion pursuant to HER 2.16.

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

3.03 AUTOMATIC APPEAL

Where the underlying law provides that an appeal is automatic, (*i.e.*, notice of the appeal hearing is sent with notice of the Department's action), an appeal statement is not required.

3.04 CLARIFICATION

On the motion of a party, or at the Hearing Examiner's own initiative, the Hearing Examiner may require that the appellant provide clarification, additional information, or other submittal that the Hearing Examiner deems necessary to demonstrate the basis for the Hearing Examiner's jurisdiction, or to make the appeal complete and understandable. A request for clarification must be made in a timely manner so that other parties have a reasonable opportunity to respond before hearing.

3.05 AMENDMENT

For good cause shown, the Hearing Examiner may allow an appeal to be amended no later than 10 days after the date on which it was filed. In deciding whether to allow such an amendment, the Hearing Examiner shall consider whether the fair hearing opportunity of other parties would be prejudiced by the amendment.

3.06 WITHDRAWAL

(a) An appeal may be withdrawn only by the appellant, in writing.

(b) Where an appeal is filed by more than one person, or by an organization or other entity, the appeal may be withdrawn only by the person designated as the party representative. (See HER 3.07.)

(c) An appellant's request to withdraw shall be granted as a matter of right and the appeal dismissed.

3.07 PARTY REPRESENTATIVE REQUIRED

When a party consists of more than one person, or is an organization or other entity, the party shall designate an individual or firm to be its representative and provide written notification to the Hearing Examiner and the other parties of contact information for the representative. (See HER 3.01(d)(5).) The rights of such a party shall be exercised by

the party representative. Notice or other communication to the party representative is notice or communication to the party. (See also HER 3.01(d)(5), and HER 3.08.)

3.08 NOTICE OF APPEARANCE

When a party is represented by an attorney, the attorney shall file a notice of appearance with the Hearing Examiner and serve a copy of the notice on the other parties at the earliest possible time in the proceedings. (See HER 3.07.)

3.09 INTERVENTION

(a) Intervention is not a substitute means of appealing a decision for those who could have appealed but failed to do so.

(b) A person, organization or other entity who has not filed an appeal may request by motion to participate in the appeal. The request must state how the person or entity making it is affected by or interested in the matter appealed, and must demonstrate a substantial interest that is not otherwise adequately represented. Except as provided in HER 3.09(d) below, a written request for intervention must be filed with the Hearing Examiner and served on all parties to the appeal no later than 10 business days prior to the scheduled hearing date.

(c) In determining the merits of a request for intervention, the Hearing Examiner shall consider whether intervention will unduly delay the hearing process, expand the issues beyond those stated in the appeal, or prejudice the rights of the parties. If intervention is granted, the Hearing Examiner may limit its nature and scope.

(d) The Hearing Examiner may allow a substantially interested person, organization, or other entity who has not filed an appeal to intervene for the sole purpose of preserving the right to appeal. Such intervention may be permitted at any time up to the start of the hearing.

3.10 NOTICE OF HEARING

(a) Contents. The notice of hearing shall include:

- (1) The time, place, and nature of the hearing;
- (2) The legal authority and jurisdiction for the hearing;
- (3) The file number, address, or other identifying information for the underlying decision or action being appealed;
- (4) A brief statement of the issue to be considered;
- (5) Reference to the applicable Code section.

(b) Time. Notice of the hearing shall be given as required by applicable law. If the time for notice of hearing is not specified by law, or there is a conflict in the applicable law, minimum notice shall be 20 days, as specified in SMC 3.02.090 for

contested cases. Consistent with SMC 3.02.090, a hearing may be set on shorter notice where substantial injury to a party would otherwise result, or where all parties agree to a shorter notice period.

(c) Method of Notice. Unless otherwise provided by applicable law, notice of hearing shall be given to each party in person, by U.S. mail, or for City departments, by regular interoffice mail service. Hearing dates will also be posted on the Office of Hearing Examiner website at www.seattle.gov/examiner.

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

3.11 DISCOVERY

Appropriate prehearing discovery, including written interrogatories, and deposition upon oral and written examination, is permitted. In response to a motion, or on the Hearing Examiner's own initiative, the Examiner may prohibit or limit discovery where the Examiner determines it to be unduly burdensome, harassing, or unnecessary under the circumstances of the appeal. Unless provided otherwise by order, the Hearing Examiner should not be copied on discovery documents, or on correspondence and electronic mail about discovery matters.

3.12 SUBPOENAS

(a) A request or motion may be made in writing for a subpoena to require a person to appear and testify at a deposition or hearing, or for a person to produce specified documents or other physical exhibits at a prehearing conference, deposition, or at hearing. (Note: expert witnesses often require reimbursement for their time and/or travel expenses, in addition to a subpoena for testimony.)

(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 it. An affidavit or declaration of personal service or mailing shall be filed with the Hearing Examiner and a copy served on all other parties.

(d) Unless otherwise allowed by the Hearing Examiner, subpoenas shall be served no later than 7 days prior to the date the appearance or production is ordered.

(e) A subpoena may be issued with like effect by an attorney of record in the proceeding. The issuing attorney must sign the subpoena.

(f) Unless otherwise allowed by the Hearing Examiner, any motion to limit or quash (*i.e.*, vacate or void) a subpoena shall be filed with the Hearing Examiner no later than 5 days after the date the subpoena was received.

(g) Requests for subpoenas and the rulings upon such requests may be made *ex parte* unless otherwise ordered by the Hearing Examiner. Requests for subpoenas normally require at least 2 business days for the Office of Hearing Examiner to process.

3.13 PARTIES' RIGHTS AND RESPONSIBILITIES

(a) Each party in an appeal proceeding has the right to 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.

(c) Where a party has designated a representative, the representative shall exercise the rights of the party.

(d) Unless otherwise provided by order of the Hearing Examiner, if a party expects to offer a document as an exhibit at the hearing, the party shall supply a copy of the document to each party either before or at the hearing.

3.14 DEFAULT

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

3.15 HEARING FORMAT

(a) Although generally informal in nature, appeal hearings have a structured format to elicit relevant evidence efficiently while providing the parties a fair opportunity for hearing.

(b) Where the Code provides that the appellant must overcome deference accorded the decision being appealed, the order of presentation 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) Parties' closing arguments.

(c) Where no deference is accorded the decision being appealed, the order of hearing 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) Parties' closing arguments.

(d) Notwithstanding the provisions of HER 3.15(b) and (c) above, the Examiner may modify the order of presentation to promote the clear and fair presentation of evidence. With the Examiner's approval, the order of presentation may be modified by agreement of the parties.

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

3.16 COMMUNICATIONS FROM NON-PARTIES

After considering any objections of the parties and determining that undue delay or prejudice will not result, the Examiner may permit relevant oral or written statements or both, by persons who are not parties or called by parties as witnesses. Limitations may be imposed on the length of such statements, and cross-examination by the parties is permitted.

3.17 BURDEN AND STANDARD OF PROOF

(a) The Hearing Examiner accords deference or other presumption to the decision being appealed as directed by applicable law.

(b) Where the applicable law provides that the appellant has the burden of proof, the appellant must show by the applicable standard of proof that the Department's decision or action does not comply with the law authorizing the decision or action.

(c) Where the applicable law does not provide that the appellant has the burden of proof, the Department must make a *prima facie* showing that its decision or action complies with the law authorizing the decision or action.

(d) Unless otherwise provided by applicable law, the standard of proof is a preponderance of the evidence.

3.18 HEARING EXAMINER'S DECISION

(a) Issuance. The Hearing Examiner shall issue a written decision and provide a copy to each party representative within the time required by applicable law. If more than one time limit applies, the shorter period controls unless the parties agree to the longer period.

(b) Decision on Relief Requested. In accordance with applicable law, the Hearing Examiner's decision may affirm, reverse, modify, or remand the Department's decision or other action that is the subject of the appeal.

(c) Contents. A decision of the Hearing Examiner on an appeal 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 upon the evidence presented at hearing and those matters officially noticed. (This may include recitation of relevant provisions of applicable 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 the outcome of the appeal (affirm, modify, reverse, or remand) based upon a consideration of the whole record and, unless otherwise provided by applicable law, supported by substantial evidence in the record.
- (5) Postscript. Information regarding any subsequent procedural steps for appealing the Hearing Examiner's decision.

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

3.19 RECORD

- (a) The record of an appeal includes:
- (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) Recording of the hearing.

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

3.20 RECONSIDERATION

(a) The Hearing Examiner may grant a party's motion for reconsideration of a Hearing Examiner decision if one or more of the following is shown:

- (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 of the amount of damages or other monetary element of the decision;
- (4) Clear mistake as to a material fact.

(b) Motions for reconsideration must be filed no later than 10 days after the date of the Hearing Examiner's decision. Unless otherwise provided by applicable law, the filing of a motion for reconsideration does not stop or alter the running of the period provided to appeal the Hearing Examiner's decision.

3.21 SUBSEQUENT APPEAL

Hearing Examiner decisions may be appealed as provided by law. Information regarding subsequent appeal opportunities is provided as a postscript to the Hearing Examiner decision. (See HER 3.18(c)(5)).

SECTION 4 RULES FOR SPECIFIC CATEGORIES OF CASES

The rules in Section 4 address specific categories of cases with unique procedures and practices that are attributable to the governing law. Where the law specifies a practice or procedure different from, or in addition to the Hearing Examiner Rules, the law controls. If the Rules in Section 4 conflict with the Rules in Section 2 or Section 3, the Rules in Section 4 control.

4.01 FLOATING HOME MOORAGE FEE INCREASES

In addition to the Rules of General Application in Section 2 and the Appeal Rules in Section 3, the Rules in Section 4.01 govern review of petitions regarding moorage fee rate increases pursuant to Chapter 7.20, Seattle Municipal Code.

- (a) Petition for Review:
 - (1) Jurisdiction. The Examiner shall review a moorage rate increase where at least one-half of the floating home owners in the floating home moorage who are subject to a moorage fee increase in the same percentage amount, within one percent, collectively file a petition for review.
 - (2) Withdrawal. A request by the petitioners to withdraw a petition for review shall be granted as a matter of right.
 - (3) Timely Filing. A petition for review shall be filed with the Hearing Examiner within 15 days of the moorage site lessee's receipt of written notification of the moorage fee increase.
 - (4) Filing Fee. The petition shall be accompanied by the filing fee specified in SMC 3.02.125. The filing fee is non-refundable, but shall be returned if no hearing is held.
 - (5) Filing and Service of the Petition. The petitioners shall serve the moorage owner with a copy of the petition no later than 3 business days after the petition is filed with the Hearing Examiner. The petitioners shall submit evidence to the Hearing Examiner that the moorage owner was served a copy of the petition.
 - (6) Contents of Petitions. The petition must be in writing in the form of a sworn statement that includes the information required by SMC 7.20.080.
 - (7) Signing the Petition. Each petitioner must sign and date the petition.

(b) Moorage Owner Submittal. As soon as practicable, and in no case later than 30 days after the petition is filed with the Hearing Examiner, the moorage owner shall file with the Hearing Examiner and serve on the petitioners a memorandum, affidavits and other documentation in support of the proposed increase.

(c) Petitioner's Response. Within 15 days of receipt of the moorage owner's submittal, the petitioners shall file with the Hearing Examiner and serve on the moorage owner a responsive memorandum and affidavits.

(d) Hearing Examiner's Notice. The Hearing Examiner shall provide written notice of hearing to the party representatives at least 15 days prior to the date of the hearing. The notice shall include the time and place for hearing, a brief statement of the legal and factual issues to be resolved, the amount of time each party will have to present his or her case, and a statement of the basis for the Hearing Examiner's jurisdiction. The hearing date will also be posted on the Office of Hearing Examiner website at www.seattle.gov/examiner.

(e) Duty to Provide Information. The Hearing Examiner may require the petitioners or owner to provide information to assist the Hearing Examiner in determining whether the proposed fee increase is reasonable per Chapter 7.20 SMC. A party's failure to provide information required by the Hearing Examiner may result in a finding against that party.

(f) Hearing Format:

- (1) Examiner's introductory statement;
- (2) Parties' opening statements;
- (3) Moorage owner's presentation of evidence;
- (4) Petitioners' presentation of evidence;
- (5) Rebuttal;
- (6) Parties' closing arguments.

(g) Purpose of Hearing. The Hearing Examiner shall conduct the hearing for the purpose of making a factual determination as to whether a demanded moorage fee increase is necessary, as provided in Chapter 7.20 SMC.

(h) Decision On Petition

- (1) Time requirement. The Hearing Examiner shall issue a written decision which shall be mailed to each party representative within 30 days of the close of the record.
- (2) Contents of decision. The decisions shall include, but not be limited to, the following:

- a. Background. The nature and background of the proceedings.
- b. Findings. The facts that the Examiner finds relevant, credible, and/or necessary to the decision, based on the evidence presented in the hearing and those matters officially noticed.
- c. Conclusions. The legal and factual conclusions based upon the law and the facts adduced in the proceedings.
- d. Decision. The Hearing Examiner's decision as to the appropriate rule, order, relief, or denial.

(i) Dismissal of Petition. On motion of the respondent moorage owner, the Hearing Examiner may dismiss a petition without fact finding where the requested increase does not exceed the factors specified by law. The Hearing Examiner may call for oral or written argument and/or additional information, in order to make a determination on dismissal. The Hearing Examiner shall dismiss a petition if the parties reach a settlement of the issues.

(j) Offers. As provided for in applicable law, where parties have submitted offers, the Hearing Examiner shall examine those offers and in a separate decision, assess reasonable attorney fees.

(k) Record. The record shall include, but need not be limited to the following:

- (1) Petition by the floating home owners;
- (2) Response of the moorage owner;
- (3) Exhibits received or considered;
- (4) A statement of matters officially noticed (if any);
- (5) Pleadings, rulings, other documents and materials that are part of the file;
- (6) Hearing Examiner's findings, conclusions and decision;
- (7) Recording of the hearing;
- (8) Hearing Examiner's decision on attorney fees.

4.02 [RESERVED]

4.03 AUTOMATIC HEARINGS

In addition to the Rules of General Application in Section 2 and the Appeal Rules in Section 3, the Rules in Section 4.03 apply in cases for which the Code provides an automatic hearing (*i.e.*, the Code does not require the person subject to a Departmental

decision or other action to file an appeal in order to have a hearing before the Hearing Examiner).

(a) Scheduling Hearing. The Department shall contact the Office of Hearing Examiner and schedule a date and time for hearing prior to issuing the Department's order or other communication that informs a person of the Department's action.

(b) Notice of Hearing. The Department shall provide notice to the person subject to the Department's action consistent with HER 3.10 and in the manner prescribed by law. Where the applicable law does not prescribe notice requirements, the Department shall provide notice at least 20 days in advance of the date of hearing in the manner provided in HER 2.05. The hearing date will also be posted on the Office of Hearing Examiner website at www.seattle.gov/examiner.

(c) Hearing and Decision. The hearing shall be conducted and the decision issued in accord with these Rules unless otherwise prescribed by applicable law.

4.04 CIVIL SERVICE APPEALS

Matters delegated or referred to the Hearing Examiner for decision, recommendation, certification or other authorized action by the Civil Service Commission are governed by the Rules of Practice and Procedure adopted by the Civil Service Commission.

4.05 NOISE CODE APPEALS

Repealed March, 2010.

4.06 DISCRIMINATION COMPLAINTS

Rules for matters coming before the Hearing Examiner pursuant to SMC 14.04, Employment Discrimination Ordinance, SMC 14.06, Public Accommodation Practices, and SMC 14.08, Fair Housing/Business Practices Ordinance, are under separate cover.

4.07 [RESERVED]

SECTION 5 RECOMMENDATIONS TO CITY COUNCIL

In addition to the Rules of General Application in Section 2.0, the Rules in Section 5 govern review of matters where the Hearing Examiner is to hold a public hearing and prepare a recommendation for the City Council. These matters include, but are not limited to, various Council land use actions: Rezone Petition, SMC Chapter 23.34; Major Institution Master Plan, SMC Chapter 23.69; and Council Conditional Use, SMC Chapters 23.44 and 23.50.

5.01 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) Director's recommendation;
- (5) Environmental determination, if required, and appeal information regarding that determination.

(b) Time Requirement. Notice of the hearing shall be given within the time required by law. Where no time is specified, notice shall be given no later than 20 days prior to hearing.

(c) Method of Notice. Unless otherwise required by law, notice of hearing shall be provided in person, by U.S. mail, or, for City departments, by the City's regular interoffice mail service. The hearing date will also be posted on the Office of Hearing Examiner website at www.seattle.gov/examiner.

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

5.02 NATURE AND PURPOSE OF PROCEEDINGS

Public hearings are generally informal in nature, but are conducted so that the relevant facts are efficiently available to the Examiner. The Examiner may exclude irrelevant, immaterial, unreliable or unduly repetitious testimony, exhibits, or other information.

5.03 RIGHTS OF PARTIES AND INTERESTED PERSONS

(a) Any party to a matter subject to a public hearing before the Hearing Examiner has the right to receive notice of hearing and other Hearing Examiner orders or actions, to testify and present evidence, to ask questions of those testifying at hearing, and to receive a copy of the Hearing Examiner's recommendation.

(b) Interested persons who testify or submit information at the public hearing, shall be sent a copy of the Hearing Examiner's recommendation.

5.04 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 Director (including introduction of the official file, reference to exhibits, and a summary of the recommendation of the Department);
- (3) Testimony by the applicant or petitioner;
- (4) Public comment on 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 presentation as needed to provide for the orderly presentation of information.

(c) Questions asked of citizens expressing their opinions shall generally be designed to clarify the opinions presented.

(d) Persons testifying as expert witnesses are subject to cross-examination.

5.05 HEARING EXAMINER'S RECOMMENDATION

(a) Issuance. The Hearing Examiner shall issue a written recommendation as required by applicable law.

(b) Contents. The Hearing Examiner's recommendation 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 Council's deliberations and decision in the matter;
- (3) Conclusions. Legal and factual conclusions based upon specific provisions of law and the findings of fact;
- (4) Recommendation. Hearing Examiner's recommendation to the City Council as to whether the application or petition should be approved, denied, or remanded;
- (5) Postscript. Information regarding subsequent procedural steps.

5.06 RECORD OF THE HEARING EXAMINER'S RECOMMENDATION

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

- (a) Application or petition;
- (b) Director's report and recommendation;
- (c) Written comments from the public and other agencies received during the Director's review;
- (d) Exhibits and written comments received by the Hearing Examiner prior to the close of the record;
- (e) Statement of matters officially noticed (if any);
- (f) Hearing Examiner's findings, conclusions, and recommendation;
- (g) Notice and mailing list for notice and decision;
- (h) Recording of the public hearing.