

**DRAFT FOR PUBLIC REVIEW**

City of Seattle  
OFFICE OF HEARING EXAMINER

**HEARING EXAMINER  
RULES OF PRACTICE AND PROCEDURE**

(Effective ~~March 24, 2008~~ 2022)  
~~Amended August 1, 2012~~

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# HEARING EXAMINER RULES OF PRACTICE AND PROCEDURE

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## SECTION 1 GENERAL PROVISIONS

### 1.01 APPLICABILITY

~~These~~The Hearing Examiner Rules ~~(of Practice and Procedure~~ ("Rules" or "HER"s) supplement Seattle Municipal Code and ordinances and other applicable law, for matters within the Hearing Examiner's jurisdiction, ~~and, They govern~~ Office of Hearing Examiner ("Office") 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~~The 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/interprets~~ the ~~Hearing Examiner~~ Rules ~~of Practice and Procedure and determines/determines~~ their application.

(b) Sections 1-3 generally apply to all proceedings. Sections 4-6 apply to specific types of proceedings. If a Rule in Sections 1-3 and a Rule in Sections 4-6 conflict, the Rule in Sections 4-6 governs. If a Rule and the Seattle Municipal Code or other law conflicts, the Seattle Municipal Code or other law controls.

(c) 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.~~

(d) ~~When questions of practice or procedure arise that are the Rules do not addressed by these Rules address, the ~~Hearing~~ Examiner shall determine the practice or procedure most appropriate~~ procedure based on fairness and consistent with providing fair treatment and due process/efficiency concerns. The ~~Hearing~~ Examiner may look to the Washington State Superior Court Civil Rules for guidance. ([http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.list&group=sup&set=CR](http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=sup&set=CR)).

### 1.04 PETITION FOR RULES (SMC 3.02.040)

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



- (a) ~~The~~Petitioner's 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 rule amendment or repeal of a rule, the number of the rule to be amended or repealed, the substance of any ~~requested~~proposed new text amendment, and a brief statement ~~of the reason explaining~~ why ~~an~~ amendment or repeal of the rule is necessary or desirable.

~~In accordance with SMC 3.02.040, no later than~~Within 60 days ~~after a~~of petition is submitted submittal, the ~~Hearing~~ Examiner will either ~~deny the petition in writing, stating the reason~~issue a written denial, with an explanation for the denial, or initiate rulemaking proceedings ~~concerning the subject of the petition in accordance with~~under SMC 3.02.030.

#### 1.05 OFFICE LOCATION AND PUBLIC RECORDS (SMC 3.02.070)

(a) ~~The Office of Hearing Examiner~~ is a separate and independent City office ~~and is responsible for conducting. The Office conducts~~ administrative hearings and ~~issuing issues~~ decisions and recommendations ~~in matters where jurisdiction has been granted by the Seattle Municipal Code.~~authorizes it. The Office is ~~located on~~in the ~~40th floor of~~ Seattle Municipal Tower, 700 Fifth Avenue, ~~in~~40th floor, Seattle, Washington, ~~and, The Office~~ 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~~(b) The Office retains case files, including recordings, exhibits, and decisions or recommendations, ~~are retained by the Office of Hearing Examiner in~~recommendations in accordance with applicable retention schedules, ~~and, Case files~~ are available to the public during normal business hours for inspection and copying ~~in accordance with the requirements of~~ the Public Records Act, RCW Chapter 42.56, and other laws governing public records. ~~Procedures for making a public~~In addition, most case records ~~request from January 2010 to the present and all e-filed documents are available at the Office's website:~~request from January 2010 to the present and all e-filed documents are available at the Office's website: online. [www.seattle.gov/examiner](http://www.seattle.gov/examiner) <http://www.seattle.gov/hearing-examiner/decisions/case-search>

## 1.06 ACCESSIBILITY AND ACCOMMODATION

(a) Proceedings before the 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 to fully and fairly participate in a contested case hearing, the Examiner shall appoint a qualified and impartial interpreter in accordance with the Hearing Examiner's adopted procedures for using interpreters, or provide other necessary accommodation where feasible. A request for appointment of a qualified interpreter should be submitted at least 10 days prior to the proceeding for which the services are requested.

## SECTION 2—RULES OF GENERAL APPLICATION

### 2.01—SCOPESECTION 2 DEFINITIONS

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

#### 2.0201 DEFINITIONS

The following~~These~~ definitions apply unless the context requires otherwise:

(a) "Affidavit"<sup>17</sup> - a written ~~or printed~~ factual statement ~~of facts~~ confirmed by oath or affirmation ~~efby~~ the person making it; before ~~one having authority to a notary public, an officer of the court, or any other person authorized to administer oaths such an~~ oath.

(b) "Appeal"<sup>17</sup> - a challenge to a decision or other action ~~that the~~ Hearing Examiner is authorized to review and decide.

(c) "Appeal hearing"<sup>17</sup> - a hearing ~~held by the~~ Hearing Examiner holds to consider an appeal of a decision or other action within the Hearing Examiner's jurisdiction. ~~In these Rules an "An~~ "appeal hearing"<sup>17</sup> is distinguished from a "public hearing".<sup>17</sup>

(d) "Appellant"<sup>17</sup> - the person, organization, or other entity who files a complete and timely appeal of a decision or other appealable action.

(e) "Applicant"<sup>17</sup> - 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~~ appealed to or ~~other review~~ reviewed by the Hearing Examiner.

(f) "Business days"<sup>17</sup> - days other than Saturday, Sunday, ~~and~~ legal holidays, and emergency closures.

(g) "City" – City of Seattle.



(h) "City department" – any agency, office, board or commission of the City, or any department employee acting on its behalf, but does not include a public corporation chartered under Chapter 3.110 SMC, or any contractor, consultant or concessionaire or lessee.

(g) "Code" – Seattle Municipal Code (~~"SMC"~~).

(h) "Days" – calendar days.

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

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

(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~~ review.

(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 which 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 on~~ 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~~appointed per Chapter 3.02 SMC to serve as the City's Hearing Examiner. ~~However, in these~~In the 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~~ has delegated authority 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) (p) "Intervenor" – means a party granted permission to participate in an appeal by motion, as specified by these Rules.

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

~~(q)~~ "Motion" ~~(r)~~ "Legal Holidays" - a public holiday established by Federal, or State law, or such dates established by the City or Office.

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

~~(t)~~ ~~(t)~~ "Offer of proof" - a party's statement for the record of what excluded evidence would show had it been admitted.

~~(u)~~ ~~(u)~~ "Order" ~~a~~ - an Examiner ruling, instruction, or other directive issued by the Hearing Examiner in response to a party's request or motion by a party, or on the Hearing Examiner's own Examiner 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.

~~(v)~~ "Party" - a participating individual, group or entity to a matter the Examiner is considering.

~~(w)~~  
~~(t)~~ "Party" the person, organization, or other entity that has filed an appeal or application 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 hearing or 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 hearing or 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 holds to gather evidence from which to prepare a final decision on a preliminary subdivision application, ~~or on~~ a recommendation ~~for to~~ the City Council ~~on matters for which where~~ the Code provides for a recommendation. (See also "Appeal hearing".)

~~(v)~~ "Regular business hours" 8 a.m. to 5 p.m.

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

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

~~(y) "Timely"<sup>27</sup> - within the time prescribed by applicable law or, in the absence of applicable law, the time prescribed by Hearing Examiner law, Rule, or order.~~

## ~~2.03 HEARING EXAMINER'S JURISDICTION~~

~~The Hearing Examiner has jurisdiction to hear and decide appeals and other contested cases, make decisions on preliminary subdivisions, and make recommendations to the City Council only as authorized by law~~order.

## SECTION 3 RULES OF GENERAL APPLICATION

### 3.01 EXAMINER JURISDICTION AND AUTHORITY

(a) The Office is independent of other City departments, boards and commissions and is responsible for the impartial facilitation of administrative hearings.

(b) Examiner jurisdiction is limited to matters identified in the Seattle Municipal Code or assigned to the Hearing Examiner by ordinance or other City Council action.

(c) Equitable defenses, or claims based on the constitutionality of City ordinances or codes, may be raised to exhaust administrative remedies and make a record for judicial review but are beyond Examiner jurisdiction, unless otherwise provided in City code.

(d) A party or the Examiner may raise jurisdictional issues at any time. A party shall raise jurisdictional issues promptly upon becoming aware of the facts giving rise to the issue.

(e) The Examiner and Office staff cannot provide legal advice.

### 2.04—3.02 TIME COMPUTATION OF TIME

~~Unless otherwise provided by law, computation of any~~Computing a 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~~ computed time

period ~~so computed~~ is a Saturday, Sunday, or ~~national, state or City legal~~ holiday, the time period extends to the end of the next business day.

#### **2-063.03 FILING AND SERVICE OF DOCUMENTS**

(a) Documents may be filed with the ~~Hearing Examiner Office~~ in hard copy, ~~or~~ in electronic format through the ~~Office e-File web page of the Hearing Examiner's website ((see www.seattle.gov/examiner) or, subject to Rule 2.05(e), by electronic facsimile).~~ Unless ~~the Examiner~~ otherwise ~~provided by the Hearing Examiner~~ authorizes, if an e-Filed document is more than 10 pages ~~in length~~, including exhibits, a hard copy of ~~the document~~ must be delivered to the ~~Hearing Examiner Office~~. Electronic mail filing is not authorized.

(b) Documents are deemed filed with the ~~Hearing Examiner on receipt at the Office of Hearing Examiner on business days during regular business hours unless the Hearing Examiner has specified otherwise~~ Examiner when the Office receives them. Documents filed ~~in any format~~ on non-business days, or outside regular business hours, are deemed filed on the next business day.

(c) ~~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.~~

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

(ed) Unless ~~the Examiner~~ otherwise ~~provided by the Hearing Examiner~~ provides or by party ~~agreement of the parties~~, service is complete at the time documents are personally delivered, or confirmed as having been successfully transmitted by facsimile-electronic mail. Unless earlier receipt is shown, service by mail is complete on the third day after deposit ~~in the regular facilities of the US mail~~ of a properly stamped and addressed letter or packet ~~unless into regular U.S. mail facilities. If~~ the third day falls on a non-business day, ~~in which case service is complete on the first following business day after the third day following.~~

(e) It is the sender's responsibility to confirm receipt of an e-Filing or of electronic mail service. Requesting a confirmation receipt for electronic mail is recommended. It is the sender's responsibility to confirm the Examiner can read, view, and/or listen to e-Filed materials.

#### **2-063.04 EXPEDITIOUS PROCEEDINGS**

Hearings shall All proceedings will be conducted expeditiously. At every stage into promote efficient use of hearing time, minimize hearing participant costs, and reduce delay



through active case management. Throughout the proceedings, all parties shall ~~make every effort to~~ avoid delay.

#### **2-073.05** SCHEDULING AND NOTICE OF HEARINGS

(a) Upon receipt of an appeal that meets the requirements of HER ~~35.01~~, 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~~will promptly schedule a public hearing when ~~notified by a~~the Department notifies the Office of a recommendation, decision or action that ~~requires~~requiring one.

(c) ~~Notice of hearing shall~~Hearing notice will be provided as legally required ~~by law~~. Hearing dates ~~will also be~~are posted on the Office ~~of Hearing Examiner~~ website at [www.seattle.gov/examiner](http://www.seattle.gov/examiner).

(d) As a courtesy, the Examiner may consult with the parties to determine mutually agreeable hearing dates. However, hearing dates and schedules are compulsory and where mutually agreeable dates are not available, parties must adhere to the case schedule set by the Examiner.

(e) Notice to a non-English or limited-English-speaking party. When the Examiner is notified, or otherwise made aware, that a limited or non-English-speaking person is a party, notices concerning the hearing:

- (1) Shall be written in English and the party's primary language; or
- (2) Shall include a notice in the party's primary language, describing the notice's significance, and how the party may receive assistance in understanding and responding.

#### **2-083.06** CONSOLIDATION

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

#### **2-093.07** PREHEARING CONFERENCE

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

- (1) ~~Identification~~ Issue identification, clarification, and simplification of the issues;
- (2) Potential for mediation ~~of the dispute or settlement~~;
- ~~(3) Disclosure of witnesses to be called and exhibits to be presented;~~
- ~~(3) Stipulations and admissions, including whether the parties can agree to a stipulated record;~~
- (4) Witness and exhibit disclosures;
- ~~(5) Discovery;~~
- ~~(5) Motions;~~
- ~~(6) (7) Hearing date and pre-hearing deadlines;~~
- ~~(8) Other matters deemed by the Hearing Examiner appropriate for the order~~ case 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 costs to be borne by the ~~party requesting it~~ party.

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

(d) ~~All parties~~ Parties shall be represented at any prehearing conference unless a party ~~has waived~~ waives the right to be present or ~~represented and been if the Examiner has excused by the Hearing Examiner participation~~.

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

(f) Failure to adhere to a pre-hearing order deadline may result in forfeiting the right to take the action subject to the deadline.

(g) The Examiner may hold more than one prehearing conference in a proceeding.

## **2-103.08 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.

## **2-113.9 PRESIDING OFFICIAL**



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

## **2.12 — 3.10 EXAMINER 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, An Examiner is subject to disqualification for bias, prejudice, conflict of interest, or any other cause for which a Superior Court judge can be disqualified under the Code of Judicial of Conduct. In such matters, the Examiner shall be guided by the Code of Judicial Conduct, Rule 2.11.~~

(<http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Code%20of%20Judicial%20Conduct%20Task%20Force%20Committee/CodeOfJudicialConduct.pdf>).

(a) Any party may request by written motion that a different assigned Examiner be assigned to the matter—disqualification. The request should be made at the earliest possible time, preferably no later than 7 business days prior to the day the hearing is to begin. The request must set forth shall be written and identify the reasons for the belief that the assigned Examiner cannot remain objective in hearing the matter. This request must be submitted as soon as the basis for disqualification is known, and in all cases raised at least seven days before a hearing, or before any discretionary ruling. If not, the objection may be considered waived. A disqualification request should be granted whenever the Examiner has:

- (e)(1) a demonstrated personal bias or prejudice concerning the party or matter;
- (2) directly served in a professional or business relationship with respect to the specific matter at issue, or is professionally associated with a person who is so engaged; or
- (3) has a direct financial or personal interest in proceeding outcome either personally or through a family member.

(b) 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 (c) The Examiner's decision on a disqualification or refusal, the matter request shall be assigned to a different documented on the record. The Examiner may orally or in writing:

- (1) Disqualify himself/herself, if he/she determines that the reasons the party set forth for disqualification may create a reasonable question concerning the appearance of impartiality or fairness of the tribunal;
- (2) Reject the request, setting forth the reasons for the rejection; or
- (3) Disclose any relationship or appearance on the record, stating a bona fide conviction that the interest or relationship will not interfere with rendering an impartial decision.

### **2.13 — [RESERVED] 3.11 REMOTE HEARING APPEARANCE**

(a) A party may appear by telephone or video conference (collectively "remote" appearance) when authorized or directed by the Examiner to do so in advance of the hearing. All requests for remote appearances must be made as early as possible and should be made no later than one week in advance of the hearing. Authorization for a party or witness to appear remotely is subject to successful completion of a system test, prior to the hearing, to ensure the party's system is compatible with the Office equipment.

(b) Procedural hearings such as prehearing conferences or a status conference will be held by video conference. The Examiner may order in person or telephonic participation. A request by a party to appear at a procedural hearing by telephone or video conference must be made by a party at least two days in advance.

(c) To the degree possible, hearings conducted remotely should be treated as an in-person hearing in accordance with the Seattle Municipal Code and Hearing Examiner Rules of Practice and Procedure. This includes logging in to participate in the hearing on time, and each participant conducting themselves with the decorum and respect owed to each other and the hearing forum for an in-person hearing. It is inevitable that remote hearings will encounter limitations concerning technology. All parties are urged to be patient with regard to the technological and other difficulties experienced by others.

(d) It is inevitable that remote hearings will encounter limitations concerning technology. All parties are urged to be patient with regard to the technological and other difficulties experienced by others.

(e) If in the determination of the Hearing Examiner, the technology supporting the hearing is not performing adequately, the Examiner may suspend or continue the hearing, make arrangements for submission of materials or testimony at a later date, or make other necessary arrangements.

(f) Participants must adhere to any protocols for remote hearings issued by the Examiner.

(g) Parties to an appeal appearing remotely.

- (1) A party to an appeal authorized to appear remotely must send electronic copies of documents it intends to submit as evidence to the Examiner and other parties, with receipt by the Examiner and other parties no later than seven days before the hearing (or such other date the Examiner identifies). A single hard copy of each exhibit must also be mailed to the Office on the same day electronic filing is completed.
- (2) All exhibits shall be marked numerically and presented in sequential order. Electronic documents shall include 1-3 word titles clearly identifying the document.
- (3) A party appearing remotely shall arrange a means to receive exhibits from other parties instantaneously during the hearing (e.g. email).
- (4) No exhibits will be admitted by showing documents through a videoconference call.

(h) Witnesses appearing remotely.

- (1) The party calling the witness must provide all necessary exhibits to the witness before the hearing, so the witness may refer to them during the hearing.
- (2) The party calling the witness shall also arrange a means to transmit rebuttal exhibits to the witness instantaneously at the hearing.

**2-143.12 TESTIMONY AND ARGUMENT**

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

(b) Testimony and argument are limited to matters relevant to the Examiner's decision.

(c) The Examiner may limit testimony length to expedite the proceedings. The Examiner may pre-set allotted time for testimony. If parties are unable to complete their testimony and arguments within the allotted time, and the hearing will not be continued, it is within Examiner discretion to provide an opportunity to submit written materials after the close of the hearing; other parties may be allowed an opportunity to offer written rebuttal to any such materials.

(d) No person shall be compelled to divulge information, which could not be compelled in a court of law. A witness has the right to invoke any legally recognized privilege. The rules of privilege (e.g. attorney-client, etc.) apply to the extent recognized by law.

(e) The Examiner may allow witness testimony to be submitted by sworn statement, granting to such statement the evidentiary weight warranted under the circumstances.

(f) ~~(b)~~ Facts or argument from an unsworn attorney or other representative are not evidence.

(g) Although Examiner hearings are open to the public, those who are not parties are generally not permitted to testify, or comment, in appeal hearings unless a party calls them as witnesses.

(h) Interpreters. 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 ~~2.331.06~~(b)).

~~\_\_\_\_\_ (c) The rules of privilege apply (i) Cross-Examination. Subject to the extent recognized by law,~~

~~below, every party may cross-examine~~

~~\_\_\_\_\_ (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.~~

- ~~(1) Cross-examination is limited to direct testimony subject matter, the foundation for opinions and statements, and to determine any bias, conflict of interest or any other issue that reflects on credibility.~~
- ~~(2) Expert witnesses may also be subject to cross-examination on the sufficiency of their qualifying credentials.~~
- ~~(3) The Examiner will prohibit irrelevant, cumulative, unduly repetitious, argumentative, or abusive cross-examination.~~
- ~~(4) Only one person representing each party may cross-examine a witness. In cases with multiple parties, the Examiner may place limits on the number of parties that may cross-examine an individual witness and require parties to submit their questions for cross-examination jointly through one party.~~
- ~~(5) A party may seek re-direct testimony after cross-examination. Re-direct is limited to the subjects addressed during cross-examination.~~

### **3.13 OBJECTION**

An objection to admitting testimony or evidence shall identify the grounds for objection. Any evidence entered into the record without objection is admissible. The Examiner determines the probative value, if any, of all admitted evidence.

### **3.14 EXHIBITS**

(a) Any person offering an exhibit into evidence must provide a copy for the record, a copy for each named party, and, at Examiner discretion, a mark-up copy for the Examiner.

(b) Documents submitted as exhibits must be legible. Unless challenged for authenticity and found unreliable by the Examiner, documents may be received in copy or excerpt form. 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.

(c) The Examiner may exclude any evidence imposing an unreasonable custodial burden. The Examiner may require substitute photographs, reduced-sized copies, or written or oral descriptions.

(d) Any screen presentation, such as PowerPoint, must be accompanied by printed paper copies of each panel or image. Copies of the presentation must be provided as specified above.

(e) Exhibits submitted for the record will not normally be returned.

#### **23.15 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. If an individual or group fails to meet this requirement, or if circumstances otherwise warrant, the Examiner may take reasonable measures to maintain order, including but not limited to:



- (1) Provide security officers whenever necessary to maintain order, safety, civility, or to protect against witness intimidation.
- (2) Recess a hearing and reconvene it under reasonable conditions to assure the violation will not be repeated.
- (3) Exclude any disruptive person from further participation and have them removed from the premises. A person so excluded is deemed to have forfeited any right to participate in the hearing.
- (4) Limit or prohibit picket signs, posters, flags or other visible or audible demonstrations as necessary to maintain order, security, and the appearance of fairness in any hearing.
- (5) Identify an alternative secure location for the hearing, with specific limits placed on access to the hearing location.

(b) No profanity, combative, rude, degrading or irrelevant questions or testimony will be allowed, and shall be deemed to be disruptive behavior.

(c) The Examiner may permit photographic and recording equipment, subject to conditions preventing disruption. Flash photography and high-intensity lighting are prohibited.

### **3.16 APPEARANCE OF FAIRNESS**

(a) The appearance of fairness doctrine applies to proceedings under these Rules, codified at RCW Chapter 42.36, requires the Examiner to conduct hearings in a way that is fair and unbiased in appearance and fact.

(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.

(b) Any communication between a hearing participant and the Examiner outside the hearing and in the absence of other participants, is an *ex parte* communication. No interested person or representative shall communicate *ex parte* directly, or indirectly, with the Examiner concerning the merits or facts of any matter before the Examiner.

(c) This rule does not prohibit *ex parte* communications about procedural topics, nor does it apply to written submissions made for the record and available to all participants.

(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. Examiner shall promptly be made available to and publicly disclose the communication, and provide the parties for review and an opportunity provided for them to review and rebut the communications it.

## **2-163.17 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~~ written, and the filing shall be identified as a motion for Examiner consideration. Every motion, response, and accompanying paper, shall be served on ~~each~~ every other party representative on the day it is filed with the ~~Hearing~~ Examiner. (See HER 2-053.04 on Filing and Service of Documents.)

(b) Within ~~seven~~ days ~~after~~ of service of a written motion, or such other time as ~~may be designated by the Hearing~~ the Examiner may designate, any other party may file a written response. After the ~~Hearing~~ Examiner has received any written responses, or the ~~seven~~ 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—, and failure to respond to an issue raised in the motion shall constitute abandonment of that issue.

(c) The ~~Hearing~~ Examiner may ~~provide for the filing of~~ authorize a reply or other additional briefing ~~on a motion, and~~. Where the Examiner has not yet determined if a party may call for file a reply, such parties should request a determination prior to filing a reply.

(d) Parties may request oral argument prior to ruling on a motion. The Examiner may grant or deny the request.

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

(f) The Examiner may rule upon motions orally, except for motions that are fully dispositive of a case.

(g) Written decisions on motions do not require findings and conclusions to be made in support the decision.

(h) 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 (HER 3.18.(b) above, and to ensure that the Examiner will consider the motions on the merits.)

## **2.17 EVIDENCE**

(i) Motion to Dismiss. A party may move to dismiss an appeal without a hearing, in whole or in part, if:

- (1) The appellant lacks standing to appeal the decision or action being challenged;
- (2) The appeal was not filed before the appeal deadline, or does not otherwise conform to appeal requirements;
- (3) The Examiner lacks jurisdiction, in whole or in part, over the appeal;
- (4) The appeal is frivolous on its face; or
- (5) Other grounds as established by law.

(j) Motion for Summary Judgment. A party may move for summary judgment in an appeal without a hearing, in whole or in part, if:

- (1) There are no material facts in dispute; and
- (2) The moving party can show that when the law is applied to those facts, the party is entitled to judgment on the claim or claims.

(k) A party may request, or the Examiner may grant upon his or her initiative, oral argument on a motion. Parties are not entitled to oral argument on a dispositive motion.

(l) The Examiner may grant a written motion seeking permission to file a brief *amicus curiae*, if the Examiner determines that the brief would assist the Examiner. A motion to file an *amicus curiae* brief, shall not exceed six pages and must identify:

- (1) The applicant's interest and the person or group the applicant represents, if any;
- (2) The applicant's familiarity with the issues involved in the proceeding;
- (3) Issues the *amicus curiae* brief will address; and
- (4) The reason additional argument is necessary.

(m) A primary purpose of prehearing motions is to enhance hearing efficiency. Where filing of a motion will cause delay or inefficiency, the Examiner may prohibit or deny the motion.

(n) Generally, the Examiner issues a decision within 21 days of final briefing on a motion.

### 3.18 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 that which~~ responsible persons would commonly rely ~~on in the conduct of their conducting~~ 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~~ prepares 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 ~~the Examiner may be admitted~~ admit the testimony and ~~give~~ give it 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 (d) All evidence that a party plans to submit at hearing must be exchanged with all other parties to the appeal, except as otherwise agreed by the parties or ordered by the Examiner. Any evidence offered at the hearing that was not disclosed by the party offering it may be excluded, unless the Examiner permits it for impeachment purposes, or the party demonstrates extenuating circumstances apply.

(f) The Examiner's rulings on objections to evidence admissibility is guided by the Washington State Rules of Evidence ([http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.rulesPDF&groupName=gs&setName=ER](http://www.courts.wa.gov/court_rules/?fa=court_rules.rulesPDF&groupName=gs&setName=ER)). Where those rules conflict with the Rules or Code, the Rules or Code shall take precedent.

### 3.19 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.~~ (b)

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

### 3.20 SITE VISIT

When



### 2.10 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 visit or view the site before, during, or recommendation prior to after the close of the record. Unless otherwise provided by hearing,~~

(a) If the Examiner conducts a post-hearing site visit, the hearing record will not close until the visit is completed.

(b) The Examiner's observations at the site visit are not evidence.

(c) Unless the Examiner provides otherwise, site visits include only the Examiner; interested parties may not accompany or approach the Examiner during a site visit.

(d) The Examiner may view publicly accessible electronic aerial mapping or imagery of the site such as is available through Google Earth, Google Maps, or MapQuest. If the Examiner intends to utilize such materials, the mapping or imagery shall be disclosed to the parties in advance so they may comment or object. As with site visits, such electronic aerial mapping or imagery is not evidence.

### 2.203.21 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 continued hearing need not conform to the time requirements for the original notice.

(b) At a hearing the Examiner may, for good cause shown, continue the hearing.

(c) If the Examiner determines at hearing that there is good cause to continue the hearing, it, and then and there specifies the date, time, and place of the new hearing, no further notice is required. Otherwise a notice consistent with Rule 3.06 shall set forth the continuance date, time, and place.

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

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

### 2.213.22 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,~~ provides (including HER 2-203.22, 3.23 and HER 2-22, 3.25), the Examiner shall not consider information submitted after the close of the record ~~shall not be included in the hearing record or considered by the Examiner~~closes.

#### 2-223.23

#### DISTRIBUTION OF DECISIONS AND RECOMMENDATIONS

~~A copy of the Hearing~~The 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 required.~~ A copy of the decision and the certificate of service shall be made part of the case record.



### 2-23

#### 3.24 REMAND

(a) ~~Prior to Before~~ issuing a recommendation, if the ~~Hearing~~-Examiner determines that information, ~~or~~ 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 to allow for submittal.~~

(b) ~~Prior to Before~~ issuing a decision on an appeal or a preliminary subdivision application, ~~or other matter~~, if the ~~Hearing~~-Examiner determines that ~~information, evidence or analysis, or other material~~ needed to satisfy the ~~relevant legal~~ 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 to allow for submittal.~~

(c) If the ~~Hearing~~-Examiner remands a matter for additional information, analysis, ~~or other material analysis~~, the ~~Hearing~~-Examiner ~~shall may~~ retain jurisdiction ~~in order to~~ review the adequacy of the ~~information, analysis, or other material submitted in remand~~ response ~~to the remand~~. The decision shall ~~expressly state that whether~~ jurisdiction is retained and what information, ~~or~~ analysis, ~~or other material~~ is to be provided, and ~~may indicate when it is to be submitted.~~

(d) ~~A copy of the The~~ information, ~~or~~ analysis, ~~or other material~~ filed with the ~~Hearing~~-Examiner in response to a remand shall ~~also be~~ served on all parties ~~to the proceeding~~. If the ~~document~~ size or condition of the ~~required materials~~ makes ~~electronic mail or~~ copying impractical, ~~notifying the other parties of the filing notification~~ is sufficient. ~~The parties shall have an opportunity to review and file rebuttal to the information, analysis, or other material filed in Where the Examiner retains jurisdiction, parties may rebut the remand response to a remand.~~

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

### 2-243.25

#### TERMINATION OF JURISDICTION

(a) ~~The jurisdiction of the~~ Hearing Examiner ~~jurisdiction~~ 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 2-22 and 3.2025*).

### 2-263.26

#### CLERICAL ERRORS AND CLARIFICATIONS

Clerical mistakes in decisions, recommendations, orders, or ~~other parts of~~ the record, and errors arising from oversight or omission, may be corrected by ~~Examiner order on the Hearing Examiner's or~~ initiative, or in response to ~~the~~ motion ~~effor~~ clarification by a party. ~~A motion for clarification does not stop, or alter, the running of the time period provided by law for appealing the Examiner's decision.~~

## **2.263.27**

### **PROCEEDINGS RECORDED**

~~All Examiner proceedings before the Hearing Examiner are electronically recorded. The Hearing 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 for each proceeding on the Office of Hearing Examiner website under the case number for each matter (<http://www.seattle.gov/hearing-examiner/decisions/case-search>).~~

## **2.27 — [RESERVED]**

### **2.28 CERTIFIED TRANSCRIPT AND RECORD OF PROCEEDINGS**

(a) Anyone desiring a certified hearing transcript ~~of a hearing~~ must obtain a ~~duplicate copy of the hearing recording~~ copy from the Office ~~of Hearing Examiner~~ and arrange and pay for ~~the preparation of a~~ verbatim transcript ~~preparation, preferably by a certified transcriptionist.~~ (See also HER ~~2.26-3.28.~~) The completed transcript must be returned to the Hearing Examiner for certification. Where a certified transcriptionist is not used to prepare the transcript, the Examiner reserves the right to decline certification.

(b) The parties shall have an opportunity to review and comment on the transcript. The Hearing Examiner shall resolve conflicts as to transcript 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 — 3.29 RECORD TRANSMITTAL OF RECORDS**

(a) Anyone may request a certified copy of the record from the Office.

(b) The Hearing Examiner Office shall promptly transmit the record of a case upon the request of when requested by 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

(c) Those seeking a copy are responsible for costs to copy the record or portions thereof.

### SECTION 4 RECOMMENDATIONS TO CITY COUNCIL

The  
In addition to the Rules of General Application in Section 2.3.0, and the Section 4 Rules govern matters where the Examiner holds a public hearing and prepares a City Council recommendation. 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.

#### 4.01 PUBLIC HEARING NOTICE

Unless otherwise provided by law, notice shall be given as follows:

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

- (1) Hearing time and place;
- (2) Type of decision under consideration;
- (3) Property location;
- (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 legally required time. 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 or requested, notice of hearing shall be provided in person or by U.S. mail. A person may request notice by electronic means. For City departments, notice shall be provided by the City's regular interoffice mail service or electronic means, as the Office determines. The hearing date will also be posted on the Office website at [www.seattle.gov/examiner](http://www.seattle.gov/examiner).

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

#### 4.02 NATURE AND PURPOSE OF PROCEEDINGS

Public hearings 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.

#### 4.03 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 Examiner orders or actions, to testify and present evidence, and to receive a copy of the 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.

#### 4.04 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) Applicant or petitioner testimony;
- (4) Public comment on the application or petition;
- (5) Opportunity for Examiner to ask questions;
- (6) Opportunity for presentation of additional information as rebuttal.

(b) The Examiner may alter or modify the presentation order as needed.

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

(d) Persons testifying as expert witnesses may be subject to cross-examination with Examiner permission.

#### 4.05 HEARING EXAMINER'S RECOMMENDATION

(a) Issuance. The Examiner shall issue a written recommendation as required by applicable law. A copy of the recommendation and the certificate of service shall be made part of the case record.

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



#### 4.06 RECORD

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

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

#### SECTION 2 apply to appeals. In case of a conflict, the Rules in Section 2 control. 5 RULES FOR APPEALS

2.

#### 5.01 FILING

(a) Compliance with Rules. All ~~appeals~~Appeals must comply with these Rules and with the requirements established in the law under which the appeal is filed. Where an appeal fails to meet these requirements the appeal may be dismissed as determined by the Examiner. The Examiner, and Office of Hearing Examiner staff, cannot provide advice concerning the appealability of a matter or issue.

(b) Timeliness. To be timely, the Office must receive an appeal must be received in the Office of Hearing Examiner during regular business hours no later than the last day of the appeal period. (See also HER 2-043.03 and HER 2-053.04.) Appeals filed ~~in any format~~ after regular business hours are deemed filed on the next business day. If using the U.S. Postal Service, as mail service can be delayed, parties are encouraged to mail well before the deadline.

(c) Fee. Any filing fee required by law (see SMC 3.02.125) must accompany an appeal or be paid by credit or debit card (VISA and MASTERCARD only) by telephone, during regular business hours, no later than the last day of the appeal period. ~~A filing fee cannot be paid by third party check. The Hearing Examiner may waive part or all of the~~

required fee due to demonstrated financial hardship. 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, or the appeal will be dismissed. A filing fee cannot be paid by third-party check.

- (1) Fee Waiver : If allowed, the Examiner may waive part or all of the required fee due to demonstrated financial hardship.
  - (2) Fee Refund: The Examiner may refund a filing fee if the Examiner determines he or she lacks jurisdiction to hear the appeal, or otherwise determines it is appropriate, in fairness to the appellant, and consistent with code, 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 number or departmental action, and where applicable, 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; (See also HER 5.01(e) below);
  - (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~~;

(6) A copy of the matter being appealed (e.g. decision or permit) must be submitted with the appeal. At party request, for unusually lengthy documents, the Examiner may waive this requirement.

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

(f) An Appellant's issues on appeal are limited to those issues identified in the appeal. No new issues may be raised after the appeal filing deadline expires.

## 5.02 PARTY REPRESENTATIVE REQUIRED

(a) An individual may represent himself/herself or may be represented by an attorney, or other designee. Individuals choosing to represent themselves, or "pro se litigants," must follow the same rules of procedure and substantive law, including these rules, as attorneys.

(b) 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 Examiner and the other parties of contact information for the representative. The party representative shall exercise the party's rights. Notice or other communication to the party representative is notice or communication to the party.

### 5.03 NOTICE OF APPEARANCE

When an attorney represents a party, the attorney shall promptly file a notice of appearance with the Office and serve the notice on the other parties at the earliest possible time in the proceedings.

#### 2-025.04 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, or, where the Examiner cannot provide relief, or if it is~~ without merit on its face, frivolous, ~~or~~ brought merely to secure delay, ~~or other legal grounds.~~

(b) Any party may request dismissal of all or part of an appeal by motion pursuant to HER 2-463.18.

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

#### 2-025.05 AUTOMATIC APPEAL

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

#### 2-045.06 CLARIFICATION OF APPEAL

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

#### 2-065.07 AMENDMENT

~~For~~ On a party's motion, for good cause shown, the Hearing Examiner may allow an appeal to be amended no later than 10 days after the filing date on which it was filed. In deciding whether to allow ~~such an~~ amendment, the Hearing Examiner shall ~~consider~~ whether the

~~amendment would prejudice the other parties' fair hearing opportunity of other parties would be prejudiced by the amendment and/or whether amendment raises jurisdictional issues (e.g., if a party is seeking to belatedly add new appeal issues not identified in the original notice appeal).~~

**2-065.08 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.) may withdraw the appeal.~~
- (c) An appellant's written request to withdraw shall be granted ~~as a matter of right~~ and the appeal dismissed.



## **2.07 — 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.~~

## **5.09 INTERVENTION**

~~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.)~~

## **2.09 — 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~~appealed may request by motion to participate in the appeal. The ~~request~~motion 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 the existing parties do~~ not ~~otherwise~~ adequately represented. ~~Except as provided in HER 3.09(d) below, or represent. The motion shall specify the legal issue(s) the intervenor seeks to address and may not raise new issues. A written request for intervention must be filed with the Hearing Examiner and served on all parties test the appeal~~earliest possible time, and in no event later than 1015 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 the nature and scope of the intervenor's participation in the proceedings.~~

## **5.10 — MEDIATION AND SETTLEMENT**

### **5.10.01 — PURPOSE**

(a) Mediation is a process that allows the participants to explore resolution of an appeal without going through a formal hearing procedure. In mediation, a neutral third

party (a "mediator") facilitates communication and negotiation between the parties to assist them in finding mutually acceptable solutions to disagreements. The process is voluntary and the parties may or may not reach a written agreement. The mediator does not have the power to make a decision for the parties, but can help the parties find a resolution that is mutually acceptable. The only people who can resolve the dispute in mediation are the parties themselves. Mediation is more flexible than the formal appeal process and may allow the participants greater control over the process and outcome, and may allow consideration of outcomes beyond those an Examiner might have authority to address.

(b) Settlement is the voluntary resolution of a dispute through party agreement. The Examiner does not participate in the settlement process.

(c) Mediation or settlement may be used to address some, or all of the issues that have been raised in a notice of appeal. The Examiner encourages the use of mediation and/or settlement to reach voluntary and mutually acceptable solutions.

#### 5.10.02 INITIATION

(a) Mediation may be requested by the parties, or it may be suggested by the Examiner. Parties may initiate mediation privately at any time.

(b) Settlement is initiated privately between the parties at any time.

(c) If all parties agree to mediate or engage in settlement discussions, and to extend deadlines in the proceedings, the Examiner may continue any deadlines and hearings. If less than all parties agree to mediate any substantial issue, the Examiner may consider that in deciding whether to grant an extension.

#### 5.10.03 RESOURCES

(a) At any time, a party may request a referral for mediator services.

(b) The Examiner may provide information on mediation resources, including free or low-cost mediation services, but the Examiner does not warrant or represent the quality or suitability of any such source.

In (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.

(c) some cases, the Examiner may request another Examiner to offer mediation services. If another Examiner mediates the case:

(1) The Examiner serving as mediator shall not be the Examiner assigned to the case.

- (2) The Examiner serving as mediator may not communicate or discuss the mediation, or any other aspect of the case, with the Examiner assigned to the case, except procedural matters to arrange the mediation.
- (3) The parties must agree to the Examiner serving as mediator.
- (4) Whether an Examiner may serve in such a role is dependent on availability, and subject to Examiner discretion.
- (5) The mediation process will follow the Seattle Office of Hearing Examiner Mediation Guidelines.

#### **5.10.04 CONDUCT OF MEDIATION**

- (a) Before mediation, each party representative shall file a declaration affirming:

- (1) A party representative with authority to settle the matter will be available for the duration of the mediation; and
- (2) The party representative with authority to settle the matter has reviewed the mediation materials submitted by that party, as well as the materials submitted by opposing parties.

(b) Mediation during an Examiner proceeding is governed by the Uniform Mediation Act, RCW Chapter 7.07. To the extent the Rules are inconsistent with RCW Chapter 7.07, state law governs.

(c) During mediation, prehearing procedures, including but not limited to discovery and motions for dispositive orders, shall continue according to the prehearing order.

#### **5.10.05 PRIVILEGE AND CONFIDENTIALITY**

(a) A mediation communication is a statement, whether oral, written, or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

(b) A mediation communication is privileged, except as provided by Chapter 7.07 RCW, and is not subject to discovery or admissible in evidence in a proceeding before the Examiner unless the privilege is expressly waived. In any subsequent Hearing Examiner proceeding following a mediation, the following privileges apply:

- (1) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.
- (2) Evidence or information otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in mediation.

(c) A privilege under subsection (b) above may be waived in a written agreement or orally during the proceeding if expressly waived by all parties to the mediation and:

- (1) In the case of the privilege of the mediator, it is expressly waived by the mediator.
- (2) In the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.
- (3) A person who discloses or makes a representation about a privileged mediation communication that prejudices another person in a proceeding is precluded from asserting a privilege under subsection (b) above, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.
- (4) There is no privilege for a mediation communication that is a written agreement signed by all parties to the dispute.

#### 5.10.06 OUTCOME

(a) When the parties determine mediation is complete, they shall report the outcome of the mediation to the Examiner.

(a) The following applies if agreement is reached as a result of mediation or settlement:

- (1) If the agreement resolves all appeal matters at issue, and calls for case dismissal, the Examiner shall order dismissal.
- (2) If the agreement resolves all matters at issue in the appeal and is signed by all parties, but calls for additional action by the Examiner (e.g. the parties may request review of the agreement by the Examiner, or request that the Examiner modify or condition a department decision based on the parties' agreement), the parties shall file a copy of the agreement with the Examiner, and the Examiner shall convene a hearing to address the parties' request.
- (3) If the agreement resolves only some matters at issue in the appeal, and calls for dismissal of those issues, the Examiner shall order dismissal of those issues. The hearing process shall resume as if no mediation had occurred with regard to the remaining issues. The agreement on the dismissed issues shall not be used as evidence or proof of anything except that an agreement has been reached, unless all parties signed the agreement or agreed to waive the privilege.
- (4) If the agreement resolves only some matters at issue in the appeal, and calls for additional action by the Examiner (See HFR 5.10.03.(a).(2) above), the parties shall file a copy of the agreement with the Examiner, and the Examiner shall convene a hearing to address the parties' request. As to the remaining issues on appeal, the hearing process shall resume as if no mediation had occurred



with regard to those remaining issues. The agreement on the dismissed issues shall not be used as evidence or proof of anything except that an agreement has been reached, unless all parties signed the agreement or agreed to waive the privilege.

(d) The following applies if no agreement is reached:

- (1) The hearing process shall resume as if no mediation or settlement discussion had occurred; and
- (2) Information exclusively shared by parties at a mediation may not be used as evidence in the hearing process, unless all parties agree to waive their privilege.

#### **3-105.11 NOTICE OF HEARING**

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

- (1) TheHearing 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 statementidentification of the issuematter to be considered;
- (5) Reference to the applicable Code section.

(b) Time. Notice of the hearingHearing notice shall be given as legally required by applicable law. If the time for notice of hearing is not specified by law, or there is a conflict in the applicable laws conflicting notice requirements, minimum notice shall be 20 days, as specified in SMC 3.02.090 forprovides in contested cases. Consistent with SMC 3.02.090, aA 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. (SMC 3.02.090).

(c) Method of Notice. Unless otherwise provided by applicable lawrequired or requested by a party, notice of hearing shall be given to each party in person or by U.S. mail. A party may request notice by or electronic meansmail. For City departments, notice shall be provided by regular interoffice mail service or electronic means, as determined by the Office of Hearing Examiner. 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 and certificate of service shall be made part of the case record.

#### **3-115.12 DISCOVERY**

Appropriate. (a) Discovery is the process of prehearing discoveryfact-finding through the use of certain methods commonly used in civil litigation, including but not



~~limited to written interrogatories, and deposition upon of witnesses (oral and written examination, is permitted-), requests for documents, and requests for admissions. Parties who wish to utilize this process should do so at the earliest possible time to avoid later delay in the hearing process. Discovery should be limited and not overburdensome to other parties.~~

~~(b) The record supporting a decision appealed to the Examiner is developed by the City office or department responsible for the decision. Parties should obtain necessary documents through a Public Disclosure Act request to the relevant department.~~

~~(b) The Examiner typically is not involved in the discovery process and is not copied on documents produced, or on correspondence and electronic mail about discovery matters.~~

~~(c) In response to a motion, or on the Hearing-Examiner's own initiative, the Examiner may compel discovery, or may prohibit or limit discovery where the Examiner determines it to be unduly overly 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.~~

#### 2.125.13 SUBPOENAS

(a) A 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 motion for a subpoena ~~feeto require~~ a person ~~to testify~~ shall include the person's name and address, ~~showdemonstrate~~ the relevance of that person's testimony, and demonstrate the reasonableness of the scope of ~~the~~ subpoena sought. A request ~~for a to~~ subpoena ~~for~~ documents or other physical exhibits shall include the name and address of the person ~~who is to produceproducing~~ the documents ~~or other physical exhibit, specify, identify~~ the materials to be produced, ~~indicate the relevance of the materials subpoenaed to the issues on appeal state their relevance,~~ 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 ~~seven business~~ 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 five 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 orders otherwise. Subpoena requests~~ require ~~at least three~~ business days for the Office of ~~Hearing Examiner~~ to process.

### **2-145.14 PARTIES' RIGHTS AND RESPONSIBILITIES**

(a) Each party in an appeal proceeding has the right to ~~notice of hearing~~ notice, presentation of evidence, rebuttal, objection, cross-examination, argument, and other rights ~~determined by the Hearing Examiner as determines~~ necessary for the full disclosure of facts and a fair hearing. ~~(except where a matter has been dismissed as a result of pre-hearing motion or otherwise).~~

(b) Parties have the right to ~~be represented by an attorney. Representation by an attorney representation but it~~ 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 ~~Examiner~~ 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.

### **2-145.15 DEFAULT**

The ~~Hearing~~ Examiner may dismiss an appeal ~~without a hearing~~ 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, ~~fails to meet prehearing order deadlines, or where the appellant otherwise fails to pursue their case in a timely manner.~~

### **2-145.16 HEARING FORMAT**

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

(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: (if any); and
- (7) Parties' closing arguments: (See HER 5.20).

(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: (if any); and
- (7) Parties' closing arguments: (See HER 5.20).

(d) ~~Notwithstanding the provisions of HER 3.15(b) and (c) above, the~~The Examiner may modify the order of presentation to promote ~~the~~ clear and fair evidence 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~~ legally established burden or presumption ~~established by applicable law~~.

## **2.16 — 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.~~

## **2.17 BURDEN AND STANDARD OF PROOF**

(a) The ~~Hearing~~ Examiner accords deference or other presumption to the decision being appealed ~~aswhere~~ 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~~ is not ~~comply~~legally compliant 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. In this context, a *prima facie* showing requires the introduction of evidence sufficient to compel a conclusion in the absence of contradicting evidence.

(d) Unless otherwise stated, the burden of proof provided by applicable law shall apply; however, if none is stated, the standard of proof is applicant or appellant shall establish by a preponderance of the evidence that the request is consistent with applicable legal standards.

(e) Where a party fails to present evidence or argument at hearing (including in closing arguments) concerning an issue raised in its notice of appeal, such issue is generally considered abandoned, and will be dismissed.

#### **5.18 CLOSING BRIEFS AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS**

(a) The Examiner may request that parties to submit closing briefs, written arguments, or proposed findings and conclusions.

(b) When a brief, written argument, or proposed findings and conclusions are filed, copies shall be served concurrently on all named parties.

#### **2-185.19 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~~legally required by applicable law, time, or if none stated, 21 days from record closure. If more than one time limit applies, absent party agreement, the shorter period controls ~~unless the parties agree to the longer period~~. A copy of the decision and the certificate of service shall be made part of the case record.

(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~~appealed.

(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~~Proceeding 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~~Facts the Examiner finds relevant, credible, and requisite to the decision, based ~~upon~~on 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 on the~~ 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.

#### 2-195.20

##### 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~~ Examiner findings, conclusions, and decision ~~of the Hearing Examiner;~~
- ~~(7) Recording of the hearing.~~
- (6) Hearing recording

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

#### 2-205.21

##### RECONSIDERATION

(a) ~~The Hearing Examiner~~ Any party may ~~grant a party's motion for request~~ reconsideration of ~~a Hearing Examiner's~~ the Examiner's final decision on an appeal only if it can demonstrate one or more of the following ~~is shown~~ grounds:

- (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.

A motion for reconsideration may not repeat arguments the Examiner's decision rejected. If a motion for reconsideration fails to show one of the above criteria is met, the Examiner may dismiss the motion.

(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~~When a timely motion for reconsideration ~~does not stop or alter the running of~~has been filed, the period provided by law to appeal the ~~Hearing Examiner's decision~~ Examiner's decision is tolled. The Examiner's decision in such cases occurs on the date a decision is entered on the motion for reconsideration.

### 2-215.22

#### SUBSEQUENT APPEAL

Hearing Examiner decisions may be appealed as provided by law. Information regarding subsequent~~the law provides. The party seeking to appeal opportunities is provided as a postscript to the Hearing Examiner decision. (See HER 2-18(c)(5))~~an Examiner decision has the responsibility to consult Code sections and other appropriate sources, to determine their rights and responsibilities.

## **SECTION 46 RULES FOR SPECIFIC CATEGORIES OF CASES**CASE TYPES

~~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.~~

### **46.01 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 Sections 2-3, and Section 6.01 govern review of petitions regarding moorage fee rate ~~increases~~increase petitions 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~~Petitioners have the petitioners right 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) Petition 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) ~~Petition 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—Signature.~~ 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~~response memorandum and ~~affidavits~~declarations.

(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](http://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; and;
- (6) Parties' closing arguments.

(g) ~~Purpose of Hearing—~~ Purpose. 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 provided to each party representative within 30 days of the close of the record. A copy of the decision and the certificate of service shall be made a part of the case record.
- (2) ~~Contents of Decision contents.~~ The 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~~ 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) ~~Petition 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~~ by law, where parties have submitted offers, the ~~Hearing~~ Examiner shall examine those offers and in a separate decision, assess reasonable attorney fees ~~if applicable~~.

- (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 any matters officially noticed ~~(if any);~~
  - (5) Pleadings, rulings, and other documents ~~and materials~~ that are part of the file;
  - (6) ~~Hearing~~ Examiner's findings, conclusions and decision ~~(s);~~
  - (7) ~~Recording of the hearing~~ Hearing recording;
  - (8) Hearing Examiner's decision on attorney fees, if any.

#### ~~4.02 — [RESERVED]~~

#### 4.036.02 AUTOMATIC HEARINGS

~~In addition to the Rules of General Application in Section 2 and the Appeal Rules in Section 2, the Rules in Section 4.02 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). Rules in Sections 1-3, 5, and 6.02 apply to automatic hearings.~~

(a) ~~Scheduling Hearing.~~ The Department shall contact the Office ~~of Hearing Examiner~~ and schedule a hearing date and time ~~for hearing prior to before~~ issuing the Department's its order or other communication ~~that informs a person~~ providing notice 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 ~~3.105.11~~ and ~~in the manner prescribed by law as legally required~~. Where ~~the applicable law does not prescribe~~ notice requirements ~~are not legally prescribed~~, the Department shall provide notice at least 20 days ~~in advance of the date of hearing~~ notice by first-class, registered, or certified mail. The hearing date will also be posted on the Office ~~of Hearing Examiner~~ website at www.seattle.gov/examiner 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.~~

#### 4.046.03 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.

#### ~~4.06 — NOIR CODE APPEALS [RESERVED]~~

#### 4.066.04 DISCRIMINATION COMPLAINTS

Rules for matters coming before the ~~Hearing~~ Examiner pursuant to SMC Title 14.04, Employment Discrimination Ordinance; SMC 14.06, Public Accommodation Practices; SMC 14.08, Fair Housing Business Practices Ordinance; SMC 14.10, Fair Contracting Practices; and SMC 14.16, Paid Sick Time and Paid Safe Time; Human Rights, are under separate cover entitled *Hearing Examiner Rules for Discrimination Cases*.

#### ~~4.07 — [RESERVED]~~



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## **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: Persons Petition, SMC Chapter 23.34; Major Institution Master Plan, SMC Chapter 23.60; and Council Conditional Use, SMC Chapters 23.44 and 23.50.~~

### **5.01—PUBLIC HEARING NOTICE**

~~Unless otherwise provided by law, notice shall be given as follows:~~

~~—— (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 30 days prior to hearing.~~

~~—— (c) Method of Notice. Unless otherwise provided by law or requested by a person, notice of hearing shall be provided in person or by U.S. mail. A person may request notice by electronic means. For City departments, notice shall be provided by the City's regular interoffice mail service or by electronic means, as determined by the Office of Hearing Examiner. The hearing date will also be posted on the Office of Hearing Examiner website at [www.seattle.gov/examiner](http://www.seattle.gov/examiner).~~

~~—— (c) Record of Notice. A copy of the notice of hearing and certificate of service 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.~~

#### **6.04 — 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.~~

#### **6.05 — HEARING EXAMINER'S RECOMMENDATION**

~~(a) Issuance. The Hearing Examiner shall issue a written recommendation as required by applicable law. A copy of the recommendation and the certificate of service shall be made part of the case record.~~

~~(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;~~
- ~~(a) (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.~~