

## **D# 86 HEARING EXAMINER RULES AND PROCEDURES**

### **General Description**

Currently, there are no established rules and procedures for how the City Hearing Examiner conducts business. This proposal will include a review of other city's Hearing Examiner codes and make a recommendation for an Hearing Examiner code for the City.

### **Impact Analysis**

#### Effect on rate of growth, development, and conversion of land as envisioned in the Plan

This docket item would not affect growth, development, and conversion of land as envisioned in the Comprehensive Plan. The City Code does not have established rules and procedures for the conduct of work performed by the Hearing Examiner. This work would establish procedures and rules that would clarify the role of the Examiner and the conduct of hearings.

#### Effect on the City's capacity to provide adequate public facilities

This docket item is procedural and would not have an effect on the City's ability or capacity to provide adequate public facilities.

#### Effect on the rate of population and employment growth

This docket item is procedural and would not have an effect on the City's rate of population and employment growth.

#### Whether Plan objectives are being met as specified or remain valid and desirable

This docket item is procedural and would provide for clarification as to the responsibilities of the Hearing Examiner and the conduct of hearings which would help to further the goals of the Comprehensive Plan.

#### Effect on general land values or housing costs

This docket item is procedural and would not have an effect on the City's land values or housing costs.

#### Whether capital improvements or expenditures are being made or completed as expected

This docket item is procedural and would not have an effect on whether capital improvements or expenditures are being made or completed as expected.

#### Consistency with GMA, the Plan, and Countywide Planning Policies

This docket item is consistent with GMA in that it furthers Regulatory Reform by providing procedural authority that will clarify the power of the Hearing Examiner, and by clarifying the format and nature of Hearing Examiner proceedings.

#### Effect on critical areas and natural resource lands

This docket item is procedural and would not have an effect on critical areas and natural resource lands.

### Effect on other considerations

This docket item would provide Hearing Examiner Rules and Procedures within the Code, where currently none exist. Proposed language is modeled after another jurisdiction in Washington, and includes an introduction/scope of rules, definitions, powers of the Hearing Examiner, nature of proceedings, common features of the hearing such as presenting evidence, exhibits and testimony, the format of permit hearings, content of the record, and appeal hearings. This is needed guidance for staff, applicants, appellants, and the public to provide meaningful public input.

### **Staff Recommendation**

It is recommended that Title IV be amended to include a new section "Hearing Examiner Rules and Procedures" and apply to all Hearing Examiner hearings required by Renton Municipal Code.

### **Implementation Requirements**

Adopt a new code section, modeled after Attachment A, and formatted to match the format of Renton Municipal Code.

**D R A F T**

**HEARING EXAMINER RULES AND PROCEDURES**

**April 4, 2012**

## **CHAPTER I GENERAL**

### **A. Introduction and Scope of Rules**

These rules apply to all hearings that are required by the Renton Municipal Code to be held before the Hearing Examiner and shall serve as guidance when the Hearing Examiner is given the duty to conduct hearings on other subjects. These rules should be considered with Renton Municipal Code Chapter XXX, which contains provisions regarding the establishment and duties of the Hearing Examiner. The criteria for consideration of land use decisions are found in Chapter XXX of the Renton Municipal Code and, most often, in Chapter XXX. These Hearing Examiner rules have been approved by the Renton City Council in Ordinance No. XXX.

Public testimony is encouraged in all permit hearings but the Hearing Examiner is concerned not with the popularity of the proposal, but with whether it conforms to criteria for approval under the applicable ordinance. The Hearing Examiner decides matters on the merits, based on the preponderance of the evidence. The decisions and/or recommendations of the Hearing Examiner are final unless appealed. Failure of the Examiner to follow these rules shall not serve as grounds for invalidation of the decision, but the Examiner is expected to apply these rules to the best of his or her ability.

### **B. Definitions**

1. "Appellant" means a person, organization, association or other similar group who files a complete and timely appeal to the Hearing Examiner as set forth in Renton Municipal Code (RMC) Chapter 2.22.
2. "Department" means the Renton Department of Community and Economic Development or its successor.
2. "Notice of-decision" means a written document that communicates a decision or recommendation of the Hearing Examiner.
3. "Participant" means any individual, partnership, corporation, association, or public or private organization that has submitted public comment before the Hearing Examiner.
4. "Party of Record" means:
  - a. The permit applicant;
  - b. The appellant (if different than the permit applicant); and
  - c. The City (if different than the appellant); and
  - d. Any person or entity who has submitted timely written or verbal testimony.
5. "Record" means the oral testimony and written exhibits submitted at the hearing before the Hearing Examiner. The audio recording of the proceeding and/or an accurate written transcription thereof shall be included as part of the record.

6. "RMC" or "Code" means the Renton Municipal Code.

**C. Organization Representative Required**

When a group of people, organization, corporation, or other entity, participates in a hearing, one person is to be designated to be its representative and inform the Hearing Examiner in writing of the name, address and telephone number of that designated representative. The rights of such participant shall be exercised by the person designated as the representative. Except as otherwise provided in these rules, notice or other communication to the representative is considered to be notice or communication to the organization.

**D. Powers of Hearing Examiner**

The Hearing Examiner shall preside over the hearing. The Hearing Examiner shall have all of the authority and duties granted to the Hearing Examiner in state statutes, the City code, and other City ordinances. Included in the duties of the Hearing Examiner are the following: to conduct fair and impartial hearings; to take all necessary action to avoid delay in the disposition of proceedings; and, to maintain order. The Hearing Examiner has all powers necessary to that end, including the following:

1. To administer oaths and affirmations;
2. To rule upon offers of proof and receive evidence;
3. To regulate the course of the hearings and the conduct of the parties and their agents;
4. To consolidate matters under consideration for hearing whenever the interests of justice and efficiency will be served or as required by the County code;
5. To question any participant at the hearing;
6. To hold conferences for settlement, simplification of the issues, or any other proper purpose;
7. To require brief on legal issues;
8. To consider and rule upon all procedural and other motions appropriate to the proceedings; and
9. To make and file decisions and recommendations.

**E. Conflict with Municipal Code or State Law**

These rules of procedure are adopted to supplement the requirements of the municipal code, state law and procedural due process. In the event that there are any conflicts between these rules and the provisions of the municipal code, state law or procedural due process, the provisions of the municipal code or procedural due process shall prevail.

**F. Nature of Proceedings**

1. Frequency. Hearings before the Hearing Examiner shall be held at the time and place specified in the notice of hearing. Each matter shall be noted to commence at a particular time. Once commenced, a hearing may be continued by the Hearing Examiner for good cause.
2. Format. The format for a hearing will be of an informal nature yet designed in such a way that the evidence and facts relevant to a particular proceeding will be easily ascertainable by a reviewing body. The format will allow development of a record consistent with these rules.
3. Site Visit. Site visits may be helpful in understanding evidence that has been or might be presented at a hearing. When deemed necessary by the Hearing Examiner, the Hearing Examiner may inspect the site before or after a hearing. If the Hearing Examiner intends to conduct a post-hearing inspection, he or she shall ensure that the parties have no objections to the visit.
4. Record of Hearing. Hearings shall be electronically recorded and such recordings shall be a part of the official case record. No minutes of the hearing will be required, except that the list of witnesses testifying and exhibits offered and/or entered shall be maintained throughout the proceedings. Written transcripts of recorded proceedings are the responsibility of the person desiring the transcript at his or her own cost.
5. Computation of Time. In the computation of any period of time prescribed or allowed in any manner by the Hearing Examiner or municipal code, the day from which the time period begins to run shall not be included. When the last day of the period so computed is a Saturday, Sunday or a City-recognized holiday, the period shall run until the end of the next following business day.
6. Filing and Service
  - a. Filing occurs when documents are submitted to the Hearings Examiner Clerk at the Renton City Clerk's Office. Documents may be submitted by mail, personal delivery, fax, or e-mail. Filing is complete upon receipt, except that filing by e-mail and fax must be confirmed during regular business hours. Courtesy copies may be sent directly to the Hearing Examiner. Service by mail will be deemed complete if postmarked two days before the due date.
  - b. Documents required to be served on another party of record may be delivered personally, transmitted by facsimile or e-mail, or sent by regular mail. Service must be complete by 5:00 p.m. on the day it is due. In the case of regular mail, service will be deemed complete if postmarked two days before the due date.
  - c. Except for final decisions, every Party of Record represented by another person and every participant represented by another person consents to service on the representative.
  - d. At least 7 days prior to the hearing, the staff member assigned to the matter shall file a written analysis ("Staff Report") with the Hearing Examiner, along with all documents from the file he or she determines are required for review of the matter. The Staff Report and an

identification of the documents shall be mailed to the applicant and to the appellant(s), if different from the applicant. Any party may inspect the Department's file and submit additional documents to the Hearing Examiner.

7. Communications with Hearing Examiner. Any written or verbal communication, made directly or indirectly with or by the Hearing Examiner that occurs outside of the hearing and in the absence of other participants is an ex parte communication. Ex parte communications are prohibited, except those communications regarding written submissions that are copied to all other Parties of Record or procedural matters. If an ex parte communication is prohibited by these rules and is recognized after it occurs, a written statement of the communication shall be made or the statement shall be disclosed during the hearing with an opportunity for Parties of Record to respond.
8. Appearance of Fairness. Proceedings before the Hearing Examiner are quasi-judicial in nature and therefore the Appearance of Fairness Doctrine applies. At the commencement of the hearing or prior to commencement, if known, the Hearing Examiner and Parties of Record are required to disclose any fact that may affect the ability of the Hearing Examiner to issue a fair and impartial decision.
9. Hearing Examiner Pro Tem. In the event the Hearing Examiner is unable to serve, a "Hearing Examiner Pro Tem" will be selected randomly from a list established by the City Council for this purpose.
10. Termination of Jurisdiction. The jurisdiction of the Hearing Examiner ends when the Hearing Examiner issues a final decision or recommendation in the matter and the time limit for all appeals has been exhausted. All prehearing orders and non-final decisions and recommendation of the Hearing Examiner are subject to reconsideration and correction.
11. Consolidation of Appeal Hearing with Permit Hearing. When an appeal hearing is consolidated with a permit hearing, the Examiner may segregate testimony in the hearing into appeal and permit testimony. The format for each of the segregated portions of the testimony may individually follow the formats applicable to permit and appeal hearings, as required below.

## CHAPTER II FEATURES COMMON TO ALL HEARINGS

### A. Oath

All testimony shall be taken under oath or affirmation.

### B. Recording

Hearings shall be electronically recorded and the recordings shall be made a part of the record. Copies of the electronic recordings shall be made available on request upon payment of the costs of reproduction.

**C. Evidence**

Technical rules of evidence will not be applied. The key requirements for evidence will be relevance and reliability. Relevant and reliable evidence will be admitted if it possesses probative value commonly accepted by reasonable persons in the conduct of their affairs. The Hearing Examiner may take judicial notice of facts generally known or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Personal attacks shall not be tolerated, unless it is demonstrated that there is no other manner in which relevant evidence can be presented.

**D. Exhibits**

Documents, photographs and physical evidence will be admitted as exhibits as determined by the Hearing Examiner and each will be assigned an exhibit number.

**E. Staff Report or Analysis**

The Staff Report or Staff Analysis produced by the Department will be admitted as an exhibit in every hearing.

**F. Testimony - How Presented**

Testimony may be presented orally, in writing, or both. Persons giving expert testimony shall be subject to questioning by both Parties of Record and by the Hearing Examiner. When testimony is presented only in writing, the Hearing Examiner has discretion to leave the record open for written responses by any Party of Record. The Hearing Examiner is granted discretion to allow or disallow testimony by telephone or other means that can be heard or reviewed by all Parties of Record.

**G. Limits on Testimony**

The Hearing Examiner may impose reasonable limitations on the nature and length of testimony. In so doing, the Hearing Examiner shall give consideration to:

1. The expeditious completion of the hearing.
2. The need to provide all Parties of Record a fair opportunity to present their cases.
3. Accommodating the desires of members of the public to be heard, when public testimony is taken.

At the Hearing Examiner's discretion, irrelevant or unduly repetitious testimony may be excluded. If all testimony cannot be presented in the time available, the hearing will be continued.

**H. Burden of Proof**

For an application to be approved, a preponderance of the evidence presented at the hearing must support the conclusion that the application meets the legal decision criteria that apply. The applicant shall have the burden of proof in a pre-decision hearing. The City shall have the burden of proof in a code enforcement hearing. For an administrative decision to be reversed or modified, the appellant has the burden by a preponderance of the evidence to show that the legal decision criteria are not met by the proposal as approved. In appeals of procedural matters under the State Environmental Policy Act (SEPA), the determinations of the responsible official shall be entitled to substantial weight.

**I. Expert Testimony**

Affidavits, declarations or letters containing expert opinion will generally be admitted without the presence of the expert absent objection from the parties of record. Objections must be made at the time the written expert testimony is made known to the objecting party. Upon the submittal of a timely objection, the Examiner may continue the hearing to require the expert to appear and be available for cross-examination.

**J. Filing of Papers**

All written submissions made in advance of hearing shall be filed with the Department, marked for the attention of the Hearing Examiner.

**K. Form and Timing of Hearing Examiner's Decision/Recommendation**

The Hearing Examiner's decision will be contained in a written decision document with supporting findings and conclusions. Normally this document will be issued about 10 working days after the record closes.

**L. Substance of Hearing Examiner's Decision/Recommendation**

The Hearing Examiner's decision or recommendation shall be in writing and shall contain findings of fact and conclusions of law supporting the result reached. Any conditions included as part of an approval shall be set forth. The Hearing Examiner may approve or deny or provide a recommendation to the City Council regarding the application or appeal before him or her. In any decision or recommendation which allows a project, the Hearing Examiner may impose reasonable conditions supported by the record.

**M. Continuation or Reopening of Hearing**

The Hearing Examiner may continue or reopen proceedings, as allowed by law, for good cause any time prior to the issuance of the decision or recommendation.

**N. Who Receives Copies of Decision/Recommendation**

The Department will maintain a copy of the Hearing Examiner's decision or recommendation, available for public inspection, in the official file of each application or appeal. The Parties of Record will receive a copy or notice of the Hearing Examiner's decision or recommendation. Any other person may receive a copy upon request upon payment of the costs of reproduction and postage as allowed by the Public Records Act, Chapter 42.56 RCW.

**O. Correction of Examiner's Decision/Recommendation**

Technical defects in the Hearing Examiner's decision or recommendation may be corrected any time prior to the end of the appeal period, but no such correction shall operate to lengthen the appeal period.

**P. Termination of Jurisdiction**

The jurisdiction of the Hearing Examiner terminates upon the end of the appeal period for a decision or recommendation.

**CHAPTER III  
PERMIT HEARINGS**

**A. Format of Permit Hearings**

The public hearing will be informal in nature, but organized, so that testimony and evidence can be presented efficiently. The hearing shall include at least the following elements:

1. An introductory outline of the procedure by the Hearing Examiner.
2. Testimony by the Department staff which shall summarize the written Staff Report and provide any additional exhibits or other information the staff believes should be brought to the Hearing Examiner's attention. The staff presentation shall include a recommendation for approval, approval with conditions, or denial.
3. Testimony by the applicant and the applicant's witnesses.
4. Testimony from others wishing to be heard.
5. Rebuttal testimony and closing argument from staff.
6. Rebuttal testimony and closing argument from the applicant.
7. Any participant in the hearing may present his or her testimony through witnesses, provided that such witnesses, including expert witnesses, must be

personally present to so testify unless permission has been granted in advance by the Hearing Examiner to present such testimony by telephone.

**B. Testimony for Organizations**

Whenever the views of any formal or informal organization are to be presented, the organization shall designate a representative with authority to coordinate the presentation and to speak for the group. Any communications with the organization by the Hearing Examiner or by any Party of Record during the course of proceedings shall be through the designated representative.

**C. Requiring Further Information**

When the Hearing Examiner concludes that further information is necessary to reach a decision, the record may be kept open to allow time for such information to be supplied. When appropriate, an opportunity to reply to such information shall be provided to the Parties of Record specified by the Hearing Examiner, either in writing or through further hearings.

**D. Content of the Record.**

The record of a permit hearing shall include at least the following:

1. The application.
2. The staff report.
3. All documentary or physical evidence received and considered, including all exhibits filed.
4. Electronic recordings of the proceedings and/or an accurate written transcription thereof.

**CHAPTER IV  
APPEAL HEARINGS**

**A. Who May Appeal**

On matters within the Hearing Examiner's jurisdiction, any person aggrieved by an administrative decision, as defined by law, may appeal to the Examiner.

**B. Notice of Appeal**

The contents of an appeal and the filing requirements thereof shall comply with applicable provisions of the Renton Municipal Code. The content and filing requirements shall be considered jurisdictional. The Examiner shall have no authority to consider appeals that fail to comply with the content and filing requirements of the Renton Municipal Code.

**C. Clarification of Notice of Appeal**

If the appeal is unclear and does not sufficiently explain the basis for the appeal, the Hearing Examiner may issue an order requiring that the appellant amend the appeal within 10 days of the date of the order. If the appeal is not satisfactorily amended within the time allowed, it shall be dismissed.

**D. Motions**

The Hearing Examiner shall dismiss an appeal, without hearing, when it is determined by the Hearing Examiner to be untimely, without merit on its face, incomplete, or frivolous.

Any application to the Hearing Examiner for an order shall be by motion which, unless made during a hearing, shall be in writing, stating the reasons for the request and setting forth the relief or order sought. Written motions shall be received at least five days in advance of the hearing.

**E. Parties**

The parties in appeal hearings shall be the City, the applicant, and the appellant(s), if different from the applicant or the City. No other persons shall be allowed to testify unless serving as a witness to one of the parties.

**F. Format of the Appeal Hearing**

The appeal hearing will be of an informal nature, but organized so that testimony and other evidence can be presented efficiently. An appeal hearing shall include at least the following:

1. An introductory outline of the procedure by the Examiner.
2. Presentation by the appellant, including any witnesses.
3. Cross-examination, if any, of appellant and appellant's witnesses.
4. Presentation by the Department staff, summarizing the Staff Analysis and including any witnesses for the City.
5. Cross-examination, if any, of Department staff and staff's witnesses.
6. Presentation by the project applicant, if different from appellant, including any witnesses.
7. Cross-examination, if any of the project applicant and applicant's witnesses.
8. Rebuttal testimony and closing by staff.
9. Rebuttal testimony and closing by applicant, if different from appellant.
10. Rebuttal testimony and closing by appellant.

**G. Prehearing Conference**

The Hearing Examiner may schedule and hold a prehearing conference when it appears that the orderly and efficient conduct of the hearing will be served, or that settlement of the appeal through such a conference is likely. A prehearing conference may, among other things, consider:

1. Simplification of the issues.
2. The existence of undisputed facts to which the parties are willing to stipulate.
3. The identification of witnesses and documentary or other evidence to be presented at hearing.
4. Any reasonable needs any party may have for discovering the details of the case the other party intends to present.
5. The imposition of reasonable time limits.

Based upon the discussions and agreements at such a conference, the Hearing Examiner may enter a Prehearing Order, which shall govern subsequent proceedings. If the case is settled at such a conference, the Examiner shall enter an Order reciting the terms of the settlement and dismissing the appeal.

#### **H. Content of the Record**

The record of an appeal hearing conducted by the Hearing Examiner shall include at least the following:

1. The Notice of Appeal and any amendments.
2. The Staff Analysis responding to the appeal and all accompanying documents, including the papers that comprise the record of the decision subject to appeal.
3. Additional documentary or physical evidence received and considered, including all exhibits filed.
4. The Hearing Examiner's decision.
5. Electronic recordings of the proceedings and/or an accurate written transcription thereof.

### **CHAPTER V APPEAL OF HEARING EXAMINER DECISIONS**

Decisions of the Hearing Examiner are the final decision of the City and there is no further administrative appeal. The rules and procedures for appeals to court or other boards are set out in the Revised Code of Washington. Appeals shall be within the time allowed by law. The Hearing Examiner's decision and/or recommendation shall contain a statement advising parties of their appeal rights.