RULES OF PROCEDURE FOR PROCEEDINGS BEFORE THE HEARING EXAMINER OF THE CITY OF SEQUIM, WASHINGTON

These Rules of Procedure and Proceedings are Issued in Accordance with and Intended to Supplement and be Read Together with SMC 2.10.

December 1, 2024

CHAPTER I:
HEARINGS ON PERMIT APPLICATIONS

This Chapter applies to Open Record Hearings on land use applications and administrative appeals.

SECTION 1.1: DEFINITIONS

“Applicant” means a Person (or Persons) who is the owner of the subject property or the authorized representative of the owner of the subject property, and who has applied for a land use permit.

“Business Day” means any day for which the City’s offices are open for normal business matters.

“Calendar Day” means each day of the calendar week. When the last day of a stated period falls on a Saturday, Sunday, or National, State, or City holiday, the stated period will run until the end of the following Business Day.

"City" means the City of Sequim, Washington.

"City Council" means the Sequim City Council.

“Clerk of the Hearing Examiner” means a Person designated by the City of Sequim to assist the Hearing Examiner in their duties.

"Comprehensive Plan" means the Comprehensive Plan that has been adopted by the City of Sequim.

"County" means Clallam County, Washington.

"Ex Parte Communication" means written or oral communications to the Hearing Examiner about a matter pending before the Hearing Examiner, not included in the Record and made outside of a Hearing.

"Hearing" means the proceeding at which the public has the opportunity to provide written and oral testimony and the testimony becomes part of the Record. The Hearing creates the Record through testimony and submission of evidence and information.

"Hearing Examiner" or "Examiner" means the Hearing Examiner or the Hearing Examiner Pro Tempore of the City of Sequim.

"Interested Person" means any individual, partnership, corporation, association, or public or private organization of any character that may be affected by proceedings before the Hearing Examiner and includes any party in a contested case. The City’s administrative staff is considered an Interested Person and has the same rights as any other Interested Person.

"Motion" means an oral request during the course of a Hearing or a written request made to the Hearing Examiner for an Order or other ruling.

“Notice of Decision" means the written document distributed by the City that communicates a decision or recommendation on an action before the Hearing Examiner. *RCW 36.70B.130*. The date on which a land use decision is issued is three Business Days after a written decision or recommendation is mailed by the City or, if not mailed, the date on which the City provides notice that a written decision or recommendation is publicly available. *RCW 36.70C.040(a).*

“Open Record Appeal Hearing” means an administrative Hearing that creates the Record on appeal through written and oral testimony and submission of evidence and information.

"Open Record Hearing" means a Hearing held under chapter 36.70B RCW and conducted by the Sequim Hearing Examiner who is authorized by the City to conduct such Hearings, that creates the Record through testimony and submission of evidence and information, under procedures prescribed by the City by ordinance or resolution.

“Order” means a written determination of the Hearing Examiner, which directs a party to the proceedings to act or to refrain from acting.

"Party of Record" means:

a. A Person who has testified at the Open Record Hearing on the application or who submitted substantive written comments on the application (excluding Persons who have only signed petitions or mechanically produced form letters), or who, prior to the rendering of the decision, requested notice of the decision. *RCW 36.70B.130.*
b. The Applicant, or Applicant’s representative;
c. The property tax payer as identified by the records available from the Clallam County assessor’s office;
d. The City staff.

“Person” means any individual, firm, association, partnership, corporation or any entity, public or private.

"Record" means the oral testimony and written exhibits submitted at a Hearing. The electronic recording of the proceeding must be included as part of the Record. At the discretion and Order of the Hearing Examiner, the Record may be supplemented after the closing of testimony.

“RCW” means the Revised Code of Washington.

“SMC” means the Sequim Municipal Code.

“Staff Report” means the document prepared by the City’s Community Development Department Director or designee.

SECTION 1.2: JURISDICTION

The City Council has authorized the Hearing Examiner to prescribe rules and regulations for the conduct of Hearings.

The Hearing Examiner's jurisdiction is limited to those issues where an ordinance or other appropriate authority grants the Hearing Examiner the authority to hold Hearings, make decisions or recommendations, and issue Orders.

SECTION 1.3: EX PARTE COMMUNICATION

No Person, nor his or her agent, employee, or representative, who is interested in a particular petition or application currently pending before the Hearing Examiner is allowed to communicate ex parte, directly or indirectly, with the Hearing Examiner concerning the merits of that or a related petition or application. This rule does not prohibit Ex Parte Communication concerning procedural matters if such communication is made part of the Record. All allowed ex parte procedural communications must be directed to the City Clerk or Clerk to the Hearing Examiner. Any material not submitted in this manner will not be considered a part of the Record established on that application or petition.

The Hearing Examiner will not communicate ex parte directly or indirectly with any Interested Person, nor his or her agent, employee, or representative, with regard to the merits of a petition or application that is pending before the Hearing Examiner, or a factually related petition or application.

If prohibited Ex Parte Communication is made to or by the Hearing Examiner, such communication must be publicly disclosed, and proper discretion will be exercised by the Hearing Examiner on whether to disqualify himself or herself as Examiner for that particular Hearing.

SECTION 1.4: NATURE OF PROCEEDINGS

1.4.1 Expeditious Proceedings

It is the policy of the Office of the Hearing Examiner that, to the extent practicable and consistent with requirements of law, Hearings will be conducted expeditiously. In the conduct of such proceedings the Hearing Examiner, City staff, and all parties, or their agents, must make every effort at each stage of a proceeding to avoid delay.

1.4.2 Frequency

City Staff will schedule Hearings in coordination with the Hearing Examiner. There may be more than one case scheduled to commence at the same time, and in such event the Hearing Examiner has discretion in setting the agenda.

1.4.3 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 become available to the Hearing Examiner and easily ascertainable by a reviewing body. The format will allow development of a Record by parties.

1.4.4 Site Visit

When necessary in the judgment of the Hearing Examiner, the Hearing Examiner may inspect a site before or after the Hearing. The site visit is not part of the Record. Failure to inspect the site will not render the Hearing Examiner's decision void.

1.4.5 Record of Hearing

a. The City will make an electronic recording of all Hearings in an audio and/or video format. Hearings must be electronically recorded and such recordings are a part of the Record. No minutes of the Hearing will be kept. Copies of the electronic recordings of a particular proceeding must be made available to the public within 3 Business Days of a request. The requester must pay the cost of producing the copy in accordance with the Public Records Act, unless the requester seeks to file an action in Superior Court, in which case SMC 2.10.120 applies.
b. Copies of any written materials in the Record may be obtained by any Interested Person and will be produced in accordance with the Public Records Act, unless that request is connected to filing an action for review in Superior Court. In those cases, costs and procedures are addressed in SMC 2.10.120.

1.4.6 Computation of Time

Computation of any period of time prescribed or allowed by these rules, ordinances of the City of Sequim, and laws of the State of Washington begins with the first day following that on which the act or event initiating such period of time occurred. When the last day of the period so computed is a Saturday, Sunday, or a national, state, or City holiday, the period runs until the end of the next following Business Day.

SECTION 1.5: RIGHTS AND RESPONSIBILITIES OF PARTIES

1.5.1 Rights of City

The City staff has the right to present evidence and testimony, object, and make Motions, arguments, recommendations, and all other rights essential to a fair Hearing.

1.5.2 Rights of Applicant

a. Every Applicant has the right of notice, cross-examination, presentation of evidence, objection, Motion, argument, and all other rights essential to a fair Hearing. Further, Applicants have the right to timely access to the City Staff Report.
b. The Hearing Examiner may limit the time allowed to parties testifying on an equal basis, may establish time limits for initial or rebuttal evidence, and may limit the number of witnesses to be heard. Cross-examination is permitted as necessary for a full disclosure of the facts, but the Hearing Examiner controls the amount and style of cross-examination.

1.5.3 Rights of Parties of Record

Every Party of Record has the right to present evidence and testimony at Hearings. The right of Persons to cross-examine, object, and submit Motions and arguments is at the discretion of the Hearing Examiner. The Hearing Examiner may impose reasonable limitations on the number of witnesses heard, and the nature and length of their testimony.

1.5.4 Responsibilities of City Staff

City staff have the right to present evidence and testimony, object, and to make Motions, arguments, recommendations, and all other rights essential to a fair Hearing. City staff will provide a report consistent with the provisions of Rule 1.7.6, provide notice of Hearings, present materials at the Hearings, and provide documentation relevant to the case. Staff Reports should be available to the public, including the Applicant, at least 7 calendar days before the Hearing.

1.5.5 Responsibilities of Applicant

Whenever possible, the Applicant will provide the Hearing Examiner with material that supports their case prior to the Hearing, be prepared for questions by the Hearing Examiner, and treat all who participate in these proceedings courteously. All supporting materials must be provided to the Hearing Examiner at least 7 calendar days before the Hearing.

1.5.6 Responsibilities of All Participants, Witnesses, and Observers

Parties, witnesses, or observers must conduct themselves with civility and deal courteously with all who participate in the proceedings. Failure to do so will result in removal from the Hearing at the discretion of the Hearing Examiner.

SECTION 1.6: PRESIDING OFFICIALS

1.6.1 Presiding Officials

a. The Hearing Examiner will preside over the Hearings.
b. The Hearing Examiner has all of the authority and duties as granted in state statutes, the SMC, and other local 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:
    i. To provide rules for the format for Hearings and proceedings;
    ii. To administer oaths and affirmations;
    iii. To rule upon offers of proof and receive evidence;
    iv. To regulate the course of the Hearings and the conduct of the parties and their agents;
    v. To question any party presenting testimony at the Hearing;
    vi. To hold conferences for settlement, simplification of the issues, or any other proper purpose;
    vii. To require briefs on legal issues;
    viii. To allow limited discovery if it is not unduly burdensome, will not unnecessarily delay the proceedings, and the information is not otherwise available;
    ix. To consider and rule upon all procedural and other Motions appropriate to the proceedings; and
    x. To make and file recommendations or decisions.
c. In the performance of adjudicative functions, the Hearing Examiner must not be subject to the supervision or direction of any elected official, officer, employee, or agent of any municipal department.

1.6.2 Presence of Legal Counsel at Hearings or Public Meetings

a. All parties participating in the Hearings may be represented at the Hearings by legal counsel of their choice.
b. At the request of any department and discretion of the Hearing Examiner, a representative of the City Attorney's Office may be present at the Hearings or public meetings to advise on matters of law and procedure.
c. Attorneys engaged in the representation of clients before the Hearing Examiner must conduct themselves in accordance with all applicable Rules of Professional Conduct, including the display of courtesy to other members of the bar, witnesses, and all other Persons present in the Hearing room.
d. All forms of legal authority including briefs, Staff Reports, and other legal memoranda upon which a Party of Record will be relying or presenting at the Hearing must be submitted to the Hearing Examiner's office at least 7 calendar days in advance of the scheduled Hearing date. The above mentioned documents must be available to the public, subject to payment, at least 7 calendar days in advance of the scheduled Hearing date.

SECTION 1.7: CONDUCT OF HEARINGS

1.7.1 Notice Requirements of Hearings and Filings

a. All notice, time requirements, and methods of notification must be consistent with the provisions as set forth in the SMC, as applicable, in addition to the provisions of this Section.
b. Affidavit of Notice: An affidavit attesting to the notice given of a Hearing (including dates and places of publication, and list of addresses) must be part of each Record.

1.7.2 Oath or Affirmation

a. All testimony before the Hearing Examiner must be given under oath or affirmation to tell the truth.
b. An interpreter acting on behalf of any Interested Person must take an oath that a true interpretation of the Interested Person's testimony will be made.

1.7.3 Content of the Record

The Record of a Hearing conducted by the Hearing Examiner must include without limitation the following materials:

a. The application or petition;
b. The departmental Staff Report;
c. All evidence received, which includes oral testimony given at the Hearing, all exhibits, other materials admitted as evidence, and any written material submitted pursuant to Hearing Examiner Order;
d. A statement of all materials officially noticed;
e. A decision or a recommended decision containing the findings and conclusions of the Hearing Examiner;
f. Recordings made on electronic equipment; and
g. An environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA) (if applicable).

1.7.4 Development of Record

A Hearing usually will include, but not be limited to, the following elements:

a. A brief introductory statement of the Hearing Examiner's process;
b. A report by the departmental staff that may include introduction of the request, reference to visual aids, and a summary of the recommendation of the department;
c. Testimony by the Applicant, City Staff, and cross-examination of the witnesses;
d. Testimony of interested parties;
e. Opportunity for cross-examination and rebuttal; and
f. An opportunity for questions by the Hearing Examiner.

1.7.5 Content and Form of Staff Reports

The City Staff Report on a land use application should include the following, if relevant to the application:

a. A list of the names, addresses, and property interests of the subject property's owner(s) and/or the Applicant.
b. A brief summary of the requested action and the citation of the ordinance controlling the request.
c. A common description of the subject property and a legal description of the subject property.
d. A statement identifying applicable City zoning code regulations.
e. A technical data summary of the Comprehensive Plan designation and zoning designation of the subject property; the current development of the subject property and the adjoining properties; topographical information; geological and soils information; information on the vegetation on the property; and any other relevant scientific, environmental, or engineering information.
f. The current access to the subject property and the proposed access to the subject property.
g. An in-depth analysis of the proposed project. This analysis may include without limitation the following elements of review:
    i. natural features;
    ii. character and design, including population figures;
    iii. human resources;
    iv. housing;
    v. economic development;
    vi. transportation;
    vii. community facilities, services, and institutions;
    viii. government jurisdiction boundaries;
    ix. neighborhoods;
    x. land use plans; and
    xi. land use regulations.
h. A history of the requested action and a history and vicinity map of the development in the surrounding properties. In making the analysis, the staff should refer to applicable ordinances as often as possible.
i. A summary of any other requested land use permits in the area.
j. A description of the compatibility and impact of the proposal on the existing development and the probable character of the proposal.

k. A summary of the reports or recommendations of any other agencies consulted.
l. Appropriate maps of the subject property. If photographs of the site are available, the Applicant is encouraged to provide color reproductions as part of the Staff Report.
m. The result of the SEPA determination.
n. Staff's conclusions and recommendations.
o. The notice of complete application, declarations of posting and mailing, and other land use required publications under the requirements of Washington State Law and Sequim Municipal Code Title 20.01.

The Staff Report must be filed with the Hearing Examiner at least 7 calendar days before the scheduled Hearing and copies provided to the Applicant and made available for public inspection. Copies must be provided to all interested parties upon payment of allowable costs.

1.7.6 Continuances of Hearings

a. Hearing Examiner:
If the Hearing Examiner finds that more information is necessary in order to make a decision or recommendation, or is unable to hear all of the public comments on the matter, the Hearing may be continued to a specified date. If the Hearing is continued and the Hearing Examiner publicly announces the specific date, time, and place before adjournment, no further notice of the Hearing need be given. Continuances must be consistent with the provisions of the SMC but will be granted for a period of no longer than 30 calendar days.
b. At the Request of a Party:
Any Party of Record may request continuance of a Hearing. The request, if made before the Hearing, must be in writing and submitted to the Hearing Examiner, the Applicant, and the City and state reasonable grounds for a continuance. If the request is made orally at the Hearing it must be based on reasonable grounds. The Hearing Examiner has discretion to grant or deny the request for continuance.

1.7.7 Evidence

a. Burden of proof. In each proceeding, the Applicant has the burden of proof to show compliance with applicable laws and regulations of Washington State and the City of Sequim.
b. Admissibility. The Hearing generally will not be conducted in strict adherence to Rules of Evidence. Any relevant evidence will be admitted if it possesses probative value commonly accepted by reasonably prudent Persons in the conduct of their affairs. The rules of privilege are effective to the extent recognized by law. The Hearing Examiner has discretion on the admissibility of all evidence.
c. Copies. Documentary evidence may be received in the form of copies of excerpts if the original is not readily available. Upon request, parties will be given an opportunity to compare the copy with the original. It is advisable to provide extra copies of all documents to the Hearing Examiner.
d. Judicial notice. The Hearing Examiner may take judicial notice of judicially cognizable facts and may take notice of general, technical, or scientific facts within his or her specialized knowledge. The Hearing Examiner will not take notice of disputed adjudicative facts that are at the center of a particular proceeding.

e. The Hearing Examiner may request a document to be filed after the close of public testimony. Only those documents referred to at the Hearing may be submitted and only those specifically requested by the Hearing Examiner. Additional evidence may only be submitted upon a Request for Reconsideration based on new evidence not reasonably available at the time of the Hearing. If additional evidence is submitted with a Request for Reconsideration, it will be considered only upon a showing of significant relevance and good cause for delay in its submission. All Parties of Record will be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.
f. All parties will be allowed opportunity to make a Record of evidence admitted or denied during the course of the Hearing. This Record will include offers of proof.

SECTION 1.8: WITHDRAWAL OF APPLICATION

1.8.1 Withdrawal Prior to Notice of Hearing
If an Applicant provides written notification to the City of a request to withdraw the application before official notice of the Hearing is given, the withdrawal will be automatically permitted.

1.8.2 Withdrawal Made Any Other Time
Withdrawal requests made at any time other than that mentioned in Section 1.8.1 will be granted at the sole discretion of the Hearing Examiner.

SECTION 1.9: DECISIONS AND RECOMMENDATIONS

1.9.1 Written Decisions or Recommendation
For applications on which the Hearing Examiner has final approval authority, a written report of findings, conclusions, and decision will be provided to all Parties of Record. The Hearing Examiner's decision or recommendation must be submitted within 10 Business Days following the conclusion of all testimony and Hearings, unless a longer period is mutually agreed to by the City, Applicant, and Hearing Examiner. The findings, conclusions, and decision or recommendation may indicate how the decision or recommendation carries out the goals, policies, plans, and requirements of the SMC, and other policies and objectives of the City.

1.9.2 Content of Decision or Recommendation
A decision or recommendation must include a statement of:
a. The Hearing Examiner's decision.
b. The nature and background of the proceeding.
c. Findings. The findings must be based exclusively on the evidence presented in the Hearing and those matters officially noticed. The findings must consist of a concise statement of each fact found to support the review criteria. A statement of any threshold determination made under chapter 43.21 RCW must be included.
d. Conclusions. Conclusions must include a resolution of the review criteria based upon the findings. The conclusions may reference legal criteria, if applicable. The conclusions may make reference to the Comprehensive Plan, as well as to the effect of both approval and denial on property in the vicinity, on businesses, if relevant, and on the general public.

e. The appropriate rule, Order, or relief. The decision or recommendation must be based upon a consideration of the whole Record and supported by reliable, probative, and substantial evidence. All decisions may include conditions of approval, including the time limit after which any approval expires if not utilized.
f. The decision must also contain a statement that the decision is final, as applicable, and set forth the time frames for reconsideration and appeal.

1.9.3 Procedure for Reopening Hearing

a. At any time before the filing of the final decision or recommendation, the Hearing Examiner may reopen the proceeding to receive further evidence. All Parties of Record who participate at the Hearing must be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.
b. If within 10 calendar days after the Hearing, and prior to the Hearing Examiner issuing the final decision of recommendation, any Party of Record petitions the Hearing Examiner for a reopening of the hearing, the Hearing Examiner has discretion to reopen the Hearing to consider new testimony or new evidence that was unavailable at the time of the Hearing.

1.9.4 Correction of Clerical Errors

Any Party of Record who participated at the Hearing may request at any time correction of a clerical error in the decision by notifying the Clerk to the Hearing Examiner of the error and proposed correction. The Hearing Examiner has discretion to issue a corrected decision. Such a corrected decision does not stay the effect of a decision or substance of the conclusions of the Hearing Examiner's decision.

SECTION 1.10: RECONSIDERATION

1.10.1 Request for Reconsideration

A Party of Record may request reconsideration within six calendar days after the date of the Hearing Examiner's decision. The request must be in writing and directed to the City Clerk or designee, who will forward the request to the Hearing Examiner within three Business Days. The request must specifically set forth errors of procedure, errors of law or fact, errors in judgment, or the discovery of new evidence which was not reasonably available at the Open Record Public Hearing. Requests for reconsideration stay further issuance of City permits and the applicable appeal period.

1.10.2 Procedure for Response to Request for Reconsideration

Within 10 calendar days of receiving the request, the Hearing Examiner will do one of the following:

a. Correct or amend the decision without an additional public Hearing; or
b. Set the matter for additional public Hearing, in which case notice will be republished and provided to all Parties of Record; or
c. Confirm the original decision.

The Hearing Examiner's decision is subject to only one reconsideration, even if the Hearing Examiner reverses or modifies the original decision.

SECTION 1.11: APPEALS OF DECISIONS

The decision of the Hearing Examiner is final unless an appeal is filed pursuant to SMC 20.01.240.

SECTION 1.12: CONFLICTS

These Rules of Procedure are adopted under the authority granted by the Sequim City Council to supplement the requirements set forth in the SMC. Any conflict between the rules and the provisions of the SMC will be decided consistent with the provisions of the SMC.

CHAPTER II:
RULES OF APPEAL OF ADMINISTRATIVE LAND USE DECISIONS

This chapter applies to appeals of administrative decisions that affirm, reverse, or remand a land use permit application.

SECTION 2.1: DEFINITIONS

This Chapter II incorporates the definitions in Chapter I, Section 1.1. In addition, the following definitions apply:

"Aggrieved Party" means the Applicant and the Owner of property to which the land use decision is directed; or is a Party of Record who can demonstrate the following:

1. The land use decision will prejudice the Person;
2. The asserted interests are among those the city is required by city code to consider in making a land use decision; and
3. A decision on appeal in favor of the Person would substantially eliminate or redress the prejudice alleged to be caused by the land use decision.

"Appellant" means the Person who files an appeal from a decision of an administrative Official or the Hearing Examiner. Only a "Party," "Party of Record," or "Aggrieved Party" as defined herein has standing to become an Appellant.

"Party" or "Party of Record" means:

1. The Appellant, or Appellant's Representative;
2. The Property Owner as identified by the records available from the Clallam County Assessor's office;
3. The Applicant if other than the Appellant; or
4. City Staff involved in the appeal.

SECTION 2.2: PRESIDING OFFICIALS

2.2.1 Presiding Officials

a. The Hearing Examiner presides over the Hearings.
b. The Hearing Examiner has all of the authority and duties granted in state statutes, the SMC, and other local 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:
    i. To provide rules for the format for Hearings and proceedings;
    ii. To administer oaths and affirmations;
    iii. To rule upon offers of proof and receive evidence;
    iv. To regulate the course of the Hearings and the conduct of the parties and their agents;

v. To question any party presenting testimony at the Hearing;
vi. To hold conferences for settlement, simplification of the issues, or any other proper purpose;
vii. To require briefs on legal issues;
viii. To allow limited discovery if it is not unduly burdensome, will not unnecessarily delay the proceedings, and the information is not otherwise available;
ix. To consider and rule upon all procedural and other Motions appropriate to the proceedings; and
x. To make and file recommendations or decisions

c. In the performance of adjudicative functions, the Hearing Examiner is not subject to the supervision or direction of any elected official, officer, employee, or agent of any municipal department.

SECTION 2.3: FILING

2.3.1 Compliance with Rules

All appeals must comply with the Rules and with the requirements established in the applicable SMC ordinance(s) and/or RCW 36.70C.040 (as it exists now or as amended) under which the appeal is filed.

2.3.2 Timeliness

To be considered timely, administrative appeals of a department action or decision must be filed within 21 calendar days of the decision or action becoming final. A written notice of appeal must be delivered to the city clerk's office by regular mail or personal delivery by 4:00 PM on the last Business Day of the appeal period.

2.3.3 Fee

Appeals must be accompanied by the appropriate filing fee as required by the SMC Fee Schedule (SMC 3.68).

2.3.4 Contents

All appeals must be filed in accordance with the SMC. An appeal must be in writing and should contain the following, in addition to the requirements in SMC 20.01.240:

a. A heading in the words: "Before the City of Sequim Hearing Examiner".
b. A caption reading: "Appeal of _____" giving the names of all Appellants participating in the appeal;
c. A brief statement setting forth the legal interest of each of the Appellants;
d. A brief statement in concise language of the specific action protested, together with any material facts claimed to support the contentions of the Appellant;
e. A brief statement in concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed, modified, or otherwise set aside;
f. The signatures of all parties named as Appellants, and their official mailing and email addresses; and
g. The verification (by declaration under penalty of perjury) of at least one Appellant as to the truth of the matters stated in the appeal.

2.3.5 Briefs

a. Briefs or other memoranda of law may be submitted by the parties in support of or in response to an appeal. Each party is permitted one primary brief not exceeding 15 double-spaced pages in length. In addition, the Appellant may submit a reply brief not exceeding 10 pages in length. The Hearing Examiner has discretion to waive or modify these page limits at the request of a party to accommodate complex legal and factual issues.
b. Briefs must be limited to the specific issues set forth in the Appellant's statement of appeal.

2.3.6 Motions

Motions and responses to Motions are not to exceed 15 double-spaced pages in length without prior approval of the Hearing Examiner.

2.3.7 Proposed Findings and Conclusions

The Hearing Examiner may request proposed Findings and Conclusions to be submitted at the option of the parties.

SECTION 2.4: MANDATORY PRE-FILING OF EVIDENCE IN APPEALS

2.4.1 Mandatory Pre-filing Requirement

a. All evidence that a party intends to rely upon as part of its case in chief on appeal, or in defense of an appeal, must be disclosed through the exhibit pre-filing process. This includes a list of all witnesses, including expert witnesses, along with all technical or scientific documents, materials, studies, reports or analyses, photographs or other material.
b. Failure to present such evidence within the time required may result in its exclusion by the Hearing Examiner.
c. Other technical or scientific evidence may be introduced into evidence in response or on rebuttal only at the Hearing Examiner's discretion.

2.4.2 Time for Filing

a. The Appellant(s) must provide the following to all other parties and to the Hearing Examiner at least 21 calendar days before the date of the scheduled Hearing (unless another date has been established at a pre-Hearing conference or pursuant to a prehearing order issued by the Hearing Examiner):
    i. An original or copy of all substantive/technical/scientific documents, materials, studies, analyses, photographs or other evidence that the party desires to enter as exhibits in the appeal Record;
    ii. A complete list of witnesses;
    iii. The following information for each Person the party expects to call as an expert witness: name, curriculum vitae (resume), the subject matter on which the expert is expected to testify, a summary of the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion that is expected to be offered.
b. The Respondent(s) must provide the following to all other parties and to the Hearing Examiner at least 14 calendar days before the date of the scheduled Hearing

(unless another date has been established at a pre-Hearing conference or pursuant to a prehearing order issued by the Hearing Examiner):

i. An original or copy of all substantive/technical/scientific documents, materials, studies, analyses, photographs or other evidence that the party desires to enter as exhibits in the appeal Record;
ii. A complete list of witnesses;
iii. The following information for each Person the party expects to call as an expert witness: name, curriculum vitae (resume), the subject matter on which the expert is expected to testify, a summary of the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion that is expected to be offered.

c. The Clerk will sequentially mark and add each document to the Exhibit List. When multiple copies of the same document are received, only one needs to be marked and catalogued.

SECTION 2.5: EXHIBITS OFFERED DURING A HEARING

2.5.1 Copies Required
Any party seeking to admit an exhibit into evidence at the Hearing will make a sufficient number of copies to provide one copy to each party, in addition to the Hearing Examiner.

2.5.2 Limitation—Good Cause Required
Where a party did not submit evidence as required by Section 2.4, the Hearing Examiner may admit evidence offered by that party for the first time at the Hearing only upon a showing of good cause.

2.5.3 Marking not Required
No party may pre-mark an exhibit offered for the first time at the Hearing. Marking exhibits will be performed by the Clerk after it is admitted into evidence.

SECTION 2.6: DISMISSAL

2.6.1 An appeal may be dismissed without a Hearing if the Hearing Examiner determines that it fails to state a claim for which the Hearing Examiner has jurisdiction to grant relief, or it is without merit on its face, frivolous, or brought merely to secure delay. Summary judgment motions are disfavored by the Hearing Examiner and should be filed only when the relevant matter primarily involves legal interpretations based on facts that are either uncontested or can be expeditiously determined.

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

2.6.3 When the decision or action being appealed is withdrawn by the issuing department, the appeal becomes moot and will be summarily dismissed.

SECTION 2.7: PRE-HEARING CONFERENCE

2.7.1 The Hearing Examiner may, on the Examiner's own Order, or at the request of a party, hold a conference prior to the Hearing to consider:

a. Identification, clarification, and simplification of the issues;
b. Disclosure of witnesses to be called and exhibits to be presented;
c. Motions; and
d. Other matters deemed by the Hearing Examiner appropriate for the orderly and expeditious disposition of the proceedings.

2.7.2 Pre-Hearing conferences may be held by telephone conference call or remote meeting technology.

2.7.3 The Hearing Examiner must give written or oral notice to all parties of any pre-Hearing conference.

2.7.4 All Parties of Record have the right to be represented at any pre-Hearing conference. Representation is not required.

2.7.5 Following the pre-Hearing conference, the Hearing Examiner may issue an Order reciting the actions taken or ruling on Motions made at the conference that will be controlling on all participants.

2.7.6 At the Hearing the Hearing Examiner will develop for the Record the time, purpose, and result of the conference. If any Orders have been issued they will be part of the Record.

2.7.7 In the event that a pre-Hearing conference is not held, the Hearing Examiner may issue a pre-Hearing Order with procedural information including identification of the parties; date and time of the Hearing Appeal; issues identified in the appeal statement; a request and date for submission of lists of witnesses and documents; cross-examination of witnesses; and an order of presentation.

2.7.8 Pre-Hearing Orders may not be appealed until the Hearing Examiner issues an appeal decision.

SECTION 2.8: WITHDRAWAL

2.8.1 Only the Appellant may withdraw an appeal.

2.8.2 Where an appeal is made by several Persons, a group, organization, corporation, or other entity, withdrawal must be made by a Person designated as the party representative (see 2.9).

2.8.3 An Appellant's Request to Withdraw must be granted as a matter of right and the appeal dismissed.

SECTION 2.9: PARTY REPRESENTATIVE

When a party consists of more than one individual, or is a group, organization, corporation, or other entity, the party must designate an individual to be its representative and inform the Hearing Examiner's office of the name, address, email address, and telephone number of the designated representative. The rights of such an Appellant must be exercised by the Person designated as the party representative. Notice or other communication to the party representative is considered to be notice or communication to party.

SECTION 2.10: REQUESTS FOR PUBLIC ACCOMMODATION AND ACCESSIBILITY

2.10.1 Accommodation Allowed

A Person with a disability needing accommodation in order to meaningfully participate in a Hearing will be accommodated to the greatest extent practicable. Individuals needing such accommodation must contact the City's ADA Coordinator at least 2 Business Days before the Hearing to request accommodation. A Person with a disability may also elect to have a personal representative present their testimony or provide support to them during the Hearing process in accordance with Section 2.9 "Party Representative". Trained guide dogs and assistance dogs are allowed in the Hearing room with their owners and must remain under their control.

2.10.2 Interpreters

Hearing-impaired Persons, non-English speaking Persons, or Persons for which English is a second language, requiring the skills of an interpreter or other accommodation in order to meaningfully participate in a Hearing, may request such accommodation from the Hearing Examiner's Office. A request for the appointment of a fair and impartial interpreter should be made to the Clerk at least 10 days prior to the Hearing.

SECTION 2.11: NOTICE OF HEARING

2.11.1 Contents

The Notice of Hearing should include:

a. Appellant name and project name (if applicable).
b. The legal authority and jurisdiction for the Hearing.
c. The street address of the subject property or a description in non-legal terms of the property's location.
d. A brief description of the administrative decision that is being appealed.
e. A statement of the scope of the appeal including a summary of the specific errors alleged in the letter of appeal.
f. The date, time, and place of the appeal Hearing before the Hearing Examiner.

2.11.2 Time

Notice of the Hearing must be given within the time required by applicable ordinance(s). If the time for Notice of Hearing is not specified by the applicable ordinance(s), or the applicable ordinances conflict, minimum notice is 14 Calendar Days before the scheduled Hearing date.

2.11.3 Responsibility
The City is responsible for preparing and serving the Notice of Hearing for appeals.

2.11.4 Record of Notice
A copy of the Notice of Hearing must be made part of each Record.

SECTION 2.12: PARTIES' RIGHTS AND RESPONSIBILITIES

2.12.1 Attorney not Required
Although Appellants and Applicants have the right to be represented by an attorney, representation by an attorney is not required.

2.12.2 Party Representative
Where a party has designated a representative, the representative must exercise the rights of the party.

2.12.3 Civility Expected
Parties, witnesses, and observers must conduct themselves with civility and deal courteously with all who participate in the proceedings. Failure to do so will result in removal from the Hearing at the discretion of the Hearing Examiner.

2.12.4. Limitation on Demonstrations – Security
The Hearing Examiner may limit or prohibit the use of picket signs, posters, flags, or other visible or audible demonstrations as necessary to maintain order, security and the appearance of fairness in any Hearing. The Hearing Examiner may have security officers present in the Hearing room whenever, in the Examiner's opinion, such officer is needed to maintain order, to protect against the intimidation of a witness, and/or where needed to maintain the appearance of fairness.

SECTION 2.13: CONTINUANCES

2.13.1 Hearing Examiner
If the Hearing Examiner finds that more information is necessary in order to make a decision or recommendation, or is unable to hear all of the public comments on the matter, the Hearing may be continued to a specified date. If the Hearing is continued and the Hearing Examiner publicly announces the specific date, time, and place before adjournment, no further notice of the Hearing need be given. Continuances must be consistent with the provisions of the SMC but will normally be granted for a period of no longer than 30 Calendar Days.

2.13.2 At the Request of a Party or Parties
Any Party of Record may request continuance of a Hearing.

a. The request, if made before the Hearing, must be in writing and state reasonable grounds for a continuance.
b. The request for continuance must be submitted to the Hearing Examiner and all Parties of Record a minimum of 14 Calendar Days before the date of the Hearing.

Other parties may submit a response to the request for continuance a minimum of 7 Calendar Days before the date of Hearing.

c. The parties may submit a joint request for continuance to the Hearing Examiner a minimum of three Business Days before the date of the Hearing.
d. More than one request for continuance per party is disfavored.
e. If the request is made orally at the Hearing it must be based on reasonable grounds.
f. The Hearing Examiner has discretion to grant or deny the request for continuance.

SECTION 2.14: DEFAULT

All defaults must be in accordance with SMC 2.10.110. The Hearing Examiner may dismiss an appeal by an Order of Default where the Appellant, without good cause, fails to appear or is unprepared to proceed at a scheduled and properly noticed Hearing.

SECTION 2.15: HEARING FORMAT

2.15.1 Appeal Hearings, although generally informal in nature, will have a structured format and be conducted in a manner deemed by the Hearing Examiner to make the relevant evidence most readily and efficiently available to the Hearing Examiner and to provide the parties a fair opportunity for Hearing.

2.15.2 The Order of an Appeal Hearing will generally be as follows:
a. Hearing Examiner's introductory statement;
b. Appellant's argument;
c. Applicant's presentation;
d. City's presentation;
e. Rebuttal; and
f. Closing argument of parties.

2.15.3 Notwithstanding the provisions of the SMC, the Order of Hearing may be modified or a different Order established as the Hearing Examiner deems necessary for a clear and fair presentation. The Order of the Hearing may also be modified as agreed upon by the parties, with the Hearing Examiner's approval.

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

SECTION 2.16: HEARING EXAMINER DECISION

A decision of the Hearing Examiner on appeal must include, but not be limited to, a statement regarding the following:

a. Background. The nature and background of the proceeding, including identification of party representatives participating in the Hearing, pre-Hearing determinations, and other similar information.
b. Findings. The individual facts that the Hearing Examiner finds relevant, credible, and requisite to the decision, based on the Record of proceedings.

c. Conclusions. Legal and factual conclusions based upon specific provisions of law and the findings of fact.
d. Decision. The Hearing Examiner's decision as to outcome of the appeal (affirm wholly or in part, reverse, or modify the decision appealed) based upon a consideration of the whole Record and supported by substantial evidence in the Record.
e. The Hearing Examiner will hear evidence from all affected parties and render a decision on the appeal within 10 Business Days of the close of the Hearing Record, unless a longer period is mutually agreed to by the Parties and Hearing Examiner.

SECTION 2.17: RECORD

2.17.1 The Record of an appeal must include:

a. The application or petition;
b. The departmental Staff Reports;
c. All evidence received, including oral testimony given at the Hearing, all exhibits, and other materials admitted as evidence;
d. A statement of all matters officially noticed;
e. A decision or a recommended decision containing the findings and conclusions of the Hearing Examiner;
f. Recordings made on electronic equipment; and
g. An environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA) (if applicable).

2.17.2 The Hearing Examiner's administrative file on an appeal case may include other relevant information or materials that are not part of the evidentiary Record.

SECTION 2.18: RECONSIDERATION

A Party of Record may request reconsideration within six days of the date of the Hearing Examiner's decision. The request must be in writing and directed to the city clerk or designee, who will forward the request to the Hearing Examiner within three Business Days. The request must specifically set forth errors of procedure, errors of law or fact, errors in judgment, or the discovery of new evidence which was not reasonably available at the time of the Hearing. Requests for reconsideration stay further issuance of city permits and the applicable appeal period. Within 10 Calendar Days of receiving the request, the Hearing Examiner will do one of the following:

a. Correct or amend the decision without an additional public Hearing; or
b. Set the matter for additional public Hearing, in which case notice will be republished and provided to all Parties of Record; or
c. Confirm the original decision.

The Hearing Examiner's decision is subject to only one reconsideration, even if the Hearing Examiner reverses or modifies the original decision.

SECTION 2.19: CORRECTION OF CLERICAL ERRORS

Any Party of Record who participated at the Hearing may request at any time correction of a clerical error in the decision by notifying the Clerk to the Hearing Examiner of the error and proposed correction. The Hearing Examiner has discretion to issue a corrected decision. Such a corrected decision does not stay the effect of a decision or substance of the conclusions of the Hearing Examiner's decision.