

**RULES OF PROCEDURE FOR
PROCEEDINGS BEFORE THE HEARING EXAMINER
OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON**

CHAPTER 1: HEARINGS ON PERMIT APPLICATIONS

These Rules of Procedure (“Rules”) are intended to facilitate orderly open record hearings on land use applications. These Rules should be read in conjunction with the Bainbridge Island Municipal Code (“BIMC”), Chapters 2.14 and 2.16. Any conflict between these Rules and the BIMC will be resolved in favor of the BIMC. These Rules help ensure due process for hearings. The Rules may be waived, at the Hearing Examiner’s discretion, in order to promote hearing fairness and efficiency. Chapter 1 applies to open record hearings on land use applications, and Chapter 2 applies to open record appeal hearings.

SECTION 1.1: DEFINITIONS

“Appellant” means a person, corporation, organization, association, or other similar group who or which files a complete and timely appeal of a decision or other appealable action in accordance with the BIMC.

“Applicant” means those applying for approval of land uses or certain non-land use permits, licenses, or approvals pursuant to BIMC.

“City” means the City of Bainbridge Island, Washington.

“City Council” means the Bainbridge Island City Council.

“Clerk to the Hearing Examiner” means a person designated to assist in the duties of the Hearing Examiner.

“Comprehensive Plan” means the Comprehensive Plan that has been adopted by the City of Bainbridge Island.

“Department” means the City of Bainbridge Island Department of Planning and Community Development.

“Ex parte communication” means written or oral communications made to or by 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 is given the opportunity to provide written and oral testimony and the testimony is made 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 Tem of the City of Bainbridge Island.

“Motion” means an oral or written request made to the Hearing Examiner, for an order or other ruling.

“Open Record Appeal Hearing” means a hearing that creates the record on appeal through written and oral testimony and submission of evidence and information. An open record appeal hearing may only be held if no open record pre-decision hearing has been held on the application or on an appealable administrative decision.

“Open Record Hearing” means a hearing that is the type of hearing contemplated by RCW 36.70B.020(3) and conducted by the Hearing Examiner that creates the record through testimony and submission of evidence and information.

“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. The Applicant and/or any Appellant;
- b. The property owner, if different than the Applicant (land use only);
- c. The City;
- d. Any person or public agency that individually submitted written comments to the City prior to the closing of the comment period provided in a legal notice (land use only or if specifically allowed by BIMC);
- e. Any person or public agency submitting written comments or testifying at the open record hearing (land use only or if specifically allowed by BIMC);
- f. Any person or public agency who submitted to the City a written request to specifically receive the notice of decision or to be included as a party of record prior to the closing of an open record hearing (land use only or if specifically allowed by BIMC);
- g. The City.

“BIMC” means the Bainbridge Island Municipal Code.

“Record” means the oral testimony and written exhibits submitted at a hearing. The recording of the proceeding shall be included as part of the record.

“RCW” means the Revised Code of Washington.

“Staff Report” means the document prepared by the City’s planning or administrative staff.

“Working Day” means any day for which the City’s offices are open for usual business hours.

SECTION 1.2: JURISDICTION

1.2.1 The scope of the Hearing Examiner’s jurisdiction is defined by ordinance. The scope of this jurisdiction includes the power to issue orders and make a decision or recommendation on an application.

SECTION 1.3: EX PARTE COMMUNICATION

1.3.1 No person, nor his or her agent, employee, or representative, with an interest in an application pending before the Hearing Examiner shall communicate with the Hearing Examiner regarding the merits of the application. This rule shall not prohibit communications concerning procedural matters, such as setting hearing dates.

1.3.2 The Hearing Examiner shall not communicate ex parte with any person, nor his or her agent, employee, or representative, with regard to the merits of an application.

1.3.3 If a prohibited ex parte communication is made to or by the Hearing Examiner, the communication shall be publicly disclosed, and proper discretion shall be exercised by the Hearing Examiner on whether to seek recusal as Hearing Examiner for that particular hearing and have another Hearing Examiner preside.

SECTION 1.4: NATURE OF PROCEEDINGS

1.4.1 Expeditious Proceedings

To the extent practicable and consistent with requirements of law, hearings shall be conducted expeditiously. In the conduct of such proceedings, the Hearing Examiner, City staff, and all parties, or their agents, shall make every effort at each stage of a proceeding to avoid delay.

1.4.2 Frequency

Hearings will be scheduled through the Department in coordination with the Hearing Examiner. There may be more than one case scheduled to commence at the same time, and in such an event the Hearing Examiner shall have discretion in setting the agenda.

1.4.3 Format

The format for a hearing will be informal, yet designed to present relevant exhibits and testimony to the Hearing Examiner and allow development of the record.

1.4.4 Site Visit

The Hearing Examiner shall inspect the site prior or subsequent to the hearing unless the parties agree that such a visit is unnecessary or the Examiner determines that such a visit will be of no assistance in understanding the context in which the hearing issues arise. The site visit is not part of the record. Failure to inspect the site will not render the Hearing Examiner's recommendation or decision void.

1.4.5 Record of Hearing

- a. The City shall make a recording of all hearings and such recordings shall be a part of the record. No minutes of the hearing will be kept. Copies of the electronic recordings of a particular proceeding shall be made available to the public within three (3) working days of a request. The cost of copying shall be paid by the requester.
- b. Copies of any written materials in the record may be obtained by any interested person who shall be responsible for paying the cost of reproducing such material.

1.4.6 Computation of Time

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

1.4.7 Service of Documents

Except for original filing of an appeal, e-mail is allowed for service and filing of all documents subject to any time limits established herein or by City code or state law. Absent any otherwise established deadline, documents served by e-mail shall be received on or before 4:00 PM on the final day of the applicable time period in order to be considered timely filed.

SECTION 1.5: RIGHTS AND RESPONSIBILITIES
OF ALL INVOLVED PARTIES

1.5.1 Rights of City

The City shall have the right to notice, present evidence and testimony, object, cross-examine, and make motions, arguments, recommendations, and all other rights essential to a fair hearing.

1.5.2 Rights of Applicant

Every Applicant shall have the right to notice, testimony, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing.

The Hearing Examiner may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony. Cross-examination is permitted as necessary for a full disclosure of the facts, but consistent with fairness and due process the Hearing Examiner shall control the amount and style of cross-examination.

1.5.3 Rights of Parties of Record

Every party of record shall have the right to present evidence and testimony at hearings. The right of persons to cross-examine, object, and submit motions and arguments shall be 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

- a. All appropriate City staff who may be called upon to testify shall be present at the hearings.
- b. At least seven (7) calendar days prior to the hearing, appropriate City staff shall provide the hearing file to the Hearing Examiner and make it available for public review.
- c. The hearing file shall be tabbed and organized with separate exhibit numbers, and shall contain at least the following documents relevant to the application:

A staff report;

The application;

The affidavit of public notice, signed by Department personnel;

The determination of complete application;

Relevant studies and reports submitted by the Applicant, including dated plan sets; and

Public and agency comments received prior to the hearing.

1.5.5 Responsibilities of Applicant

The Applicant shall provide the Department any material that the Applicant wishes to have considered as part of the record at least seven (7) calendar days prior to the hearing. The intent of this rule and Rule 1.5.4 is to ensure that all documents and arguments to be relied upon by any of the principal parties in an open record hearing before the Examiner are available for review by all other principal parties prior to the open record hearing, thus preventing “surprise” at the hearing and facilitating efficiency. These rules will be interpreted by the Examiner to facilitate that purpose.

1.5.6 Responsibilities of All Parties, Witnesses, and Observers

Parties, witnesses, or observers shall conduct themselves with civility and deal courteously with all involved in the proceedings. Failure to do so may result in removal from the hearing at the discretion of the Hearing Examiner.

When a party consists of more than one individual, or is a group, organization, corporation, or other entity, the party shall designate an individual to be its representative and inform the Hearing Examiner of the name, address, and telephone number of that designated representative. The rights of such party shall be exercised by the person designated as the party representative. Except as otherwise provided in these rules, notice or other communication to the party representative is considered to be notice or communication to the party and all its members.

All parties of record submitting evidence at the hearing should submit the original to the Clerk to the Hearing Examiner. Copies shall also be given to the City staff and the Hearing Examiner.

SECTION 1.6: PERSONS PRESENT AT THE HEARING

1.6.1 Presiding Official

- a. Hearings shall be presided over by the Hearing Examiner.
- b. The Hearing Examiner shall have all of the authority and duties as granted in state statutes, BIMC, and other City ordinances. Included in the duties of the Hearing Examiner are the following: to conduct fair and impartial hearings; to avoid unnecessary delay in the disposition of proceedings; and to maintain order. The

Hearing Examiner shall have 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 question any person presenting testimony at the hearing;
 5. to hold conferences for settlement or simplification of the issues, or any other proper purpose;
 6. to require briefs on legal issues;
 7. to consider and rule upon all procedural and other motions appropriate to the proceedings;
 8. to make and file recommendations or decisions; and
 9. to issue any orders related to the hearing process.
- c. Noninterference. In the performance of his/her adjudicative functions, the Hearing Examiner shall 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 Meetings

- a. Although representation by legal counsel is not required at hearings before the Hearing Examiner, all parties participating in the hearings, including the City, may be represented at the hearings by legal counsel of their choice.
- b. At the request of any department, a representative of the City Attorney's Office may be present at the hearings or meetings to advise on matters of law and procedure.
- c. Attorneys engaged in the representation of clients before the Hearing Examiner shall 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.

SECTION 1.7: CONDUCT OF HEARINGS

1.7.1 Notice Requirements of Hearings and Filings

An affidavit attesting to the notice given of a hearing (including dates and places of publication and list of addressees) shall be signed by Department personnel and made part of each hearing record.

1.7.2 Oath or Affirmation

All testimony before the Hearing Examiner shall be given under oath or affirmation to tell the truth. Either the Hearing Examiner or the Clerk to the Hearing Examiner shall administer the oath or affirmation.

1.7.3 Content of the Record

The record of a hearing conducted by the Hearing Examiner shall include, but not be limited to, the following materials:

- a. the application;
- b. the departmental staff reports;
- c. all evidence received, which shall include oral testimony given at the hearing, all exhibits and other materials admitted as evidence, including any prehearing or post hearing briefs allowed by the Hearing Examiner;
- 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;
- g. an environmental determination made pursuant to the Washington State Environmental Policy Act (SEPA) (if applicable); and
- h. verification of public notification of the hearing.

1.7.4 Order of Hearing

A hearing will usually proceed in the following order:

- a. A brief introductory statement by the Hearing Examiner regarding the Hearing Examiner's process.
- b. Presentation of testimony by the City. At the discretion of the City, it may:
 1. Present the staff report or recommendation without the applicant first providing testimony; or
 2. Ask the applicant to present information on the application prior to presenting the City's recommendation.

- c. A brief opening statement by the applicant if requested and at the Examiner's discretion.
- d. Presentation of testimony by the applicant.
- e. Presentation of testimony by public.
- f. Rebuttal of testimony, if applicable.
- g. Closing remarks.

1.7.5 Content and Form of Staff Reports

The staff report on a land use application shall include the following, if relevant to the application:

- a. A list of the names and addresses of the owner(s) and applicant(s) of the subject property and his/her property interest in the property that is the subject of the hearing.
- b. A brief summary of the requested action and the citation of the ordinance(s) 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 and other 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, but not be limited to, the following elements of review:
 - 1. natural features;
 - 2. character and design, including population figures;
 - 3. human resources;
 - 4. housing;
 - 5. economic development;
 - 6. transportation;
 - 7. community facilities, services and institutions;
 - 8. government jurisdiction boundaries;
 - 9. neighborhoods;

- 10. land use plans; and
- 11. land use regulations.
- h. A history of the requested action and a history of the development in the surrounding properties. In making the analysis, the staff shall refer to applicable ordinances as often as necessary for the sake of clarity.
- 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 that shall be part of the staff report.
- m. The result of the determination pursuant to the State Environmental Policy Act.
- n. A brief summary of issues raised by comments received in response to the notice of application.
- o. Staff's conclusions, based upon the code-required findings for a particular land use case, and recommendations.

The staff report shall be distributed to the Hearing Examiner and the applicant and shall be made available to the public at least seven (7) days prior to the hearing.

1.7.6 Continuances of Hearings

a. Hearing Examiner

If, in the opinion of the Hearing Examiner, more information is necessary in order to make a recommendation or decision, or the Hearing Examiner is unable to hear all of the public comments on the matter, the hearing may be continued to a certain date. If the hearing is continued to a specific time and place, and notice is posted on the door of the hearing room, no further notice of that hearing need be given. Continuances shall be consistent with the provisions of the BIMC.

b. At the Request of a Party

Any party of record may request continuance of a hearing. The request, if made prior to the hearing, must be in writing; submitted five (5) working days prior to the hearing; 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 shall have discretion to grant or deny the request for continuance. Any party requesting a continuance should confer with the other parties to select a

mutually agreeable date to resume the hearing. Continuances will more likely be granted with the consent of all parties.

- c. Continuances shall be granted for a period of no longer than thirty (30) calendar days.

1.7.7 Evidence

- a. Burden of proof. In each proceeding, the Applicant shall have the burden of proof to show compliance with applicable laws and regulations of Washington State and the City.
- b. Admissibility. The hearing generally will not be conducted in strict adherence to Rules of Evidence. Any relevant evidence shall be admitted if it is the type that possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The rules of privilege shall be effective to the extent recognized by law. The Hearing Examiner shall have 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 shall be given an opportunity to compare the copy with the original. It is advisable to provide an extra copy of all documents to the Hearing Examiner as a working copy.
- 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 shall not take notice of disputed adjudicative facts.
- e. Occasionally the Hearing Examiner may request a document to be filed after the close of testimony. Only those documents referred to at the hearing and documents specifically requested by the Hearing Examiner may be submitted. Nothing in the subsection allows any ex parte submission of any document or communication to the Hearing Examiner. All parties of record shall have the opportunity to address, respond, and/or provide their own document for consideration by the Hearing Examiner.
- f. Additional evidence may only be submitted upon a request for reconsideration based on the discovery of new evidence that was 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.

- g. All parties will be allowed an opportunity to make a record of evidence admitted or denied during the course of the hearing. This record shall include offers of proof.

SECTION 1.8: WITHDRAWAL OF APPLICATION

- 1.8.1 If a withdrawal request is made before the official notice of the hearing is given, the Applicant shall notify the City of the withdrawal request and the withdrawal shall be automatically permitted.

SECTION 1.9: RECOMMENDATIONS / DECISIONS

1.9.1 Written Recommendations

For applications that require City Council approval, a written report of findings, conclusions, and recommendations shall be forwarded to all parties of record and, at an appropriate time commensurate with their subsequent action on the permit, to the City Council. The Hearing Examiner submittal shall be within the time allowed by law or agreed to by the Applicant and the City, unless the presiding officer determines that delay would not be in the public interest.

1.9.2 Written Decisions

The Hearing Examiner may approve, approve with conditions, deny, or remand an application. For permits on which the Hearing Examiner has final approval authority, a written report of findings, conclusions, and decision shall be forwarded to all parties of record. The Hearing Examiner decision shall be within the time allowed by law or agreed to by the Applicant and the City, unless the Hearing Examiner determines that delay would not be in the public interest.

1.9.3 Content of Recommendation/Decision

The Hearing Examiner's decision shall include:

- a. Findings of fact upon which the decision or recommendation, including any conditions, was based. The findings shall be based exclusively on the evidence presented as part of the hearing and those matters officially noticed. A statement of any threshold determination made under Chapter 43.21C RCW shall be included.
- b. Conclusions. Conclusions shall include a resolution of the issue(s) based upon the findings. The conclusions may reference legal criteria, if applicable. If the BIMC so provides, the conclusions may refer 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.

- c. Any conditions included as part of the decision or recommendation.

1.9.4 Procedure for Reconsideration

Any party of record may file a written request for reconsideration with the Hearing Examiner within ten (10) working days of the date that the Hearing Examiner's recommendation or decision is rendered. The request shall explicitly set forth alleged errors of law, fact, or procedure, or the discovery of new evidence that was not reasonably available at the time of the hearing conducted by the Hearing Examiner.

- 1.9.5 The Hearing Examiner shall respond to the request for reconsideration within five (5) working days by affirming in writing the previous decision, reopening the record and hearing process, or taking further action as appropriate. Prior to granting a request for reconsideration, the Hearing Examiner may request a response from all parties of record. No response from parties of record is necessary prior to a denial of a request for reconsideration.
- 1.9.6 The filing of a request for reconsideration shall effectively stay the appeal period until the Hearing Examiner takes final action.

SECTION 1.10: CONFLICTS

- 1.10.1 These rules of procedure are adopted to supplement the requirements set forth in the BIMC. Any conflicts between these rules and the provisions of the BIMC will be decided consistent with the provisions of the BIMC.

CHAPTER 2:
RULES OF APPEAL
OF ADMINISTRATIVE DECISIONS

This chapter applies to appeals of administrative decisions that approve, deny, or condition a land use permit application or that are otherwise designated by the Bainbridge Island Municipal Code (“BIMC”) as appealable to the Hearing Examiner.

SECTION 2.1: DEFINITIONS

2.1.1 See DEFINITIONS, Chapter 1, Section 1.

SECTION 2.2: FILING

2.2.1 Compliance with Rules

All appeals must comply with these Rules and with the requirements established in the applicable City ordinance(s) under which the appeal is filed, as well as applicable statutory provisions, including RCW 43.21C.075 (for SEPA appeals), and/or RCW 36.70C.040.

2.2.2 Timeliness

An appeal must be filed within ten (10) working days of the issuance of the decision being challenged unless another appeal period is stated in state law or the BIMC, in which case that appeal period shall control. To be considered timely, the appeal must be filed no later than 4:00 PM on the day the appeal period expires. The appeal must be filed with the City Clerk unless the BIMC explicitly states otherwise.

2.2.3 Fee

Any filing fee as required by the City Fee Schedule shall accompany an appeal.

2.2.4 Contents

An appeal must be in writing and contain the following:

- a. A brief statement as to how the Appellant is significantly affected by or interested in the matter appealed;
- b. A brief statement of the Appellant’s issues on appeal, noting Appellant’s specific exceptions and objections to the decision or action being appealed;
- c. The specific relief requested, such as reversal or modification;

- d. The signature, address, and phone number of the Appellant, and name and address of the Appellant's designated representative, if any.

2.2.5 Briefs

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 fifteen (15) double-spaced pages in length. In addition, the Appellant may submit a reply brief not exceeding ten (10) pages in length. The Hearing Examiner may, in the Examiner's discretion, waive or modify these page limits at the request of either of the parties (or a party of record in the event of a SEPA appeal) to accommodate complex legal and factual issues. A party's initial brief shall be presented at least two (2) weeks before the hearing and any reply memoranda shall be submitted at least one (1) week prior to the hearing unless a prehearing order states otherwise.

Briefs must be limited to the specific issues set forth in the Appellant's statement of appeal except that jurisdictional and other procedural type challenges may be raised in response.

2.2.6 Motions

A party to the proceeding may present a motion to the Hearing Examiner. All motions must be presented in writing and clearly noted as a motion. Motions may be presented at a scheduled hearing, as set out in a Prehearing Order, or by filing with the Clerk to the Hearing Examiner and serving the motion on the other parties at least ten (10) days prior to the scheduled hearing date unless leave to shorten time is granted by the Hearing Examiner. Notice of the motion and a copy of it must be given to all other parties of record. Motions and responses to motions are not to exceed fifteen (15) double-spaced pages in length without prior approval of the Hearing Examiner.

2.2.7 Proposed Findings and Conclusions

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

2.2.8 Service of Documents

Except for original filing of an appeal, e-mail is allowed for service and filing of all documents subject to any time limits established herein or by City code or state law. Absent any otherwise established deadline, including related to the filing of an appeal with the City Clerk (see above), documents served by e-mail shall be received on or before 5:00 PM on the final day of the applicable time period in order to be considered timely filed.

SECTION 2.3: DISMISSAL

- 2.3.1 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 for the purpose of delay.
- 2.3.2 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.
- 2.3.3 When the decision or action being appealed is withdrawn by the issuing Department, the appeal becomes moot and shall be dismissed.

SECTION 2.4: PREHEARING ORDERS

- 2.4.1 At the Hearing Examiner's discretion, a Prehearing Order ("PHO") may be issued to:
 - a. Identify, clarify, and simplify the issues;
 - b. Decide prehearing motions;
 - c. Establish a schedule for the hearing process, including orders for the exchange of briefs relating to the appeal; and
 - d. Address other matters deemed by the Hearing Examiner to be appropriate for the orderly and expeditious disposition of the proceedings.
- 2.4.2 The prehearing order may be circulated via e-mail or fax.
- 2.4.3 Prehearing orders may not be appealed.
- 2.4.4 At the Hearing Examiner's discretion, a preconference meeting or telephone conference may be held to facilitate the issuance of the PHO. A preconference meeting or telephone conference is not required for the issuance of a PHO.
 - a. All parties shall receive notice of the prehearing conference.
 - b. The prehearing conference may take place via telephone or videoconference equipment.
 - c. All parties of record have the right to be represented at any prehearing conference, but such representation is not required.

- 2.4.5 Discovery (including subpoenas, interrogatories, and depositions) is not allowed except in extraordinary circumstances upon a showing of need as determined and ordered by the presiding officer. In the event it is determined by the presiding officer that extraordinary circumstances exist, the scope of discovery shall be determined based on the necessity and unavailability of evidence by other means. In the determination of the scope of discovery, the presiding officer shall consider: (a) Whether all parties are represented by counsel; (b) whether undue expense or delay in bringing the case to hearing will result; (c) whether the discovery will promote the orderly and prompt conduct of the proceeding; and (d) whether the interests of justice will be promoted.

SECTION 2.5: WITHDRAWAL

- 2.5.1 Only an Appellant may withdraw an appeal.
- 2.5.2 Where an appeal is made by several persons, a group, organization, corporation, or other entity, withdrawal shall be made by the person designated as the party representative.
- 2.5.3 An Appellant's request to withdraw shall be granted as a matter of right and the appeal dismissed.

SECTION 2.6: PARTY'S REPRESENTATIVE REQUIRED

- 2.6.1 When a party consists of more than one individual, or is a group, organization, corporation, or other entity, the party shall designate an individual to be its representative and inform the Hearing Examiner of the name, address, and telephone number of that designated representative. The rights of the appellant shall 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 the party.

SECTION 2.7: NOTICE OF HEARING

2.7.1 Contents

The notice of hearing given to the parties shall conform to the provisions of the BIMC.

2.7.2 Time

Notice of the hearing shall be given within the time required by applicable ordinance(s). If the time for notice of hearing is not specified by the applicable ordinance(s), or if applicable ordinances conflict, the minimum notice shall be fourteen (14) calendar days.

2.7.3 Responsibility

The Clerk to the Hearing Examiner shall be responsible for providing notice of hearing for appeals beyond that given by the issuance of a PHO.

2.7.4 Record of Notice

A copy of the notice of hearing or PHO shall be made part of each case record.

SECTION 2.8: PARTIES' RIGHTS AND RESPONSIBILITIES

2.8.1 Although all parties have the right to be represented by an attorney, representation by an attorney is not required.

2.8.2 Where a party has designated a representative, the representative shall exercise the rights of the party.

2.8.3 All parties and others participating in and observing hearings shall conduct themselves with civility and deal courteously with all persons involved in the proceedings.

2.8.4 Every Appellant shall have the right to notice, testimony, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing.

2.8.5 The City shall have the right to notice, present evidence and testimony, object, cross-examine, and make motions, arguments, recommendations, and all other rights essential to a fair hearing.

2.8.6 The Applicant and every party of record shall have the right to present evidence and testimony at hearings. The right of persons to cross-examine, object, and submit motions and arguments shall be 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.

2.8.7 The Appellant shall provide the Clerk to the Hearing Examiner any material that the Appellant wishes to have considered as part of the record at least seven (7) calendar days prior to the hearing unless otherwise provided herein or by separate order of the Examiner.

2.8.8 The City staff may provide a staff report but is not required to do so, as staff may not know details of an appeal issue prior to a hearing. Staff shall provide notice of hearings, be present at the hearings, and provide the Hearing Examiner with documentation relevant to the case. Staff reports, if prepared, should be available to the public at least seven (7) calendar days prior to the hearing unless determined otherwise by separate order of the Examiner.

- 2.8.9 The Applicant shall provide the Clerk to the Hearing Examiner any material that the Applicant wishes to have considered as part of the record at least seven (7) calendar days prior to the hearing unless otherwise provided herein or by separate order of the Examiner. The intent of this rule is to ensure that all documents and arguments to be relied upon by any of the principal parties in an open record appeal hearing before the Examiner are available for review by all other principal parties prior to the open record hearing, thus preventing “surprise” at the hearing and facilitating efficiency. These rules will be interpreted by the Examiner to facilitate that purpose. Requirements of this Rule may be modified through the prehearing order process.
- 2.8.10 The Hearing Examiner may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony. Cross-examination is permitted as necessary for a full disclosure of the facts, but consistent with fairness and due process the Hearing Examiner shall control the amount and style of cross-examination.
- 2.8.11 All parties submitting evidence at the hearing should submit the original to the Clerk to the Hearing Examiner. Copies should also be given to the City staff and the Hearing Examiner.

SECTION 2.9: DEFAULT

- 2.9.1 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 2.10: ORDER OF HEARING

- 2.10.1 Appeal hearings, although generally informal in nature, shall have a structured format and shall 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.
- 2.10.2 The order of an appeal hearing will generally be as follows:
- a. Hearing Examiner’s introductory statement;
 - b. Background presentation by the Department;
 - c. Appellant’s witnesses and evidence;
 - d. Parties of Record (land use appeal or as allowed by the BIMC);
 - e. Department witnesses and evidence;
 - f. Applicant’s presentation (if not Appellant);
 - g. Rebuttal witnesses;

- h. Closing argument of parties.
- 2.10.3 Notwithstanding the provisions of the BIMC, 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.
- 2.10.4 The order of presentation at hearing shall not alter or shift any burden(s) or presumption(s) established by applicable law(s).

SECTION 2.11: RECORD

- 2.11.1 The record of an appeal shall include:
- a. The application or administrative decision being appealed;
 - b. The appeal;
 - c. The departmental staff reports;
 - d. All evidence received which shall include oral testimony given at the hearing, as well as all exhibits and other materials admitted as evidence including any prehearing or post hearing briefs allowed by the Hearing Examiner;
 - e. A statement of all matters officially noticed;
 - f. A decision or a recommended decision containing the findings and conclusions of the Hearing Examiner;
 - g. Recordings made on electronic equipment; and
 - h. An environmental determination made pursuant to the State Environmental Policy Act (SEPA) (if applicable).

SECTION 2.12: HEARING EXAMINER'S DECISION

- 2.12.1 The Hearing Examiner's appeal decision shall 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, prehearing 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 the outcome of the appeal (affirm, reverse, affirm with conditions, or remand) based upon a consideration of

the whole record. The administrative decision of the City shall be affirmed if the Hearing Examiner determines that decision to be supported by substantial evidence in the record, unless a different standard is mandated by City Code or State Law.

2.12.2 Procedure for Reconsideration

Any party of record may file a written request for reconsideration with the Hearing Examiner within ten (10) working days of the date of the Hearing Examiner's recommendation or decision is rendered. The request shall explicitly set forth alleged errors of law, fact, or procedure, or the discovery of new evidence that was not reasonably available at the time of the hearing conducted by the Hearing Examiner.

The Hearing Examiner shall respond to the request for reconsideration by affirming in writing the previous decision, reopening the record and hearing process, or taking further action as is appropriate. Prior to granting a request for reconsideration, the Hearing Examiner may request a response from all parties of record. No response from parties of record is necessary prior to a denial of a request for reconsideration.

The filing of a request for reconsideration by the Hearing Examiner shall effectively stay the appeal period until the Hearing Examiner takes further action.