

Chapter 14.95
HEARING EXAMINER

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14.95.010 Authority And Duties

A. The Hearing Examiner shall have all of the authority and duties granted in state statutes and the Snohomish Municipal Code. Among other duties, the Hearing Examiner shall:

- 1. Conduct fair and impartial hearings.
- 2. Avoid delaying proceedings.
- 3. Maintain order.

B. The Hearing Examiner may:

- 1. Administer oaths and affirmations.
- 2. Issue subpoenas.
- 3. Rule upon offers of proof and receive evidence.
- 4. Conduct view trips.

- 5. Regulate the course of the hearing and the conduct of the parties.
- 6. Question any party presenting testimony at the hearing.
- 7. Require briefs on legal issues.
- 8. Consider and rule upon procedural and other motions.
- 9. Make and file recommendations or decisions.

C. The Hearing Examiner may hold pre-hearing conferences to clarify issues or structure the proceeding, provided all affected parties receive reasonable notice and either attend or waive their right to attend. At the hearing, or by pre-hearing order, the Hearing Examiner shall communicate for the record the time, purpose, and result of the conference.

D. No elected official, officer, employee, or agent of the City shall supervise or direct the Hearing Examiner's adjudicative functions.

14.95.020 Ex Parte Communication/Appearance of Fairness/Conflict of Interest

A. The appearance of fairness doctrine, as specified in Chapter 42.36 RCW, shall apply to Hearing Examiner proceedings and shall result in the examiner's disqualification when necessary. The Hearing Examiner shall not participate in any proceeding in which the Examiner has a prohibited personal interest which might influence the Examiner. In the event of a conflict of interest, the hearing shall be conducted by a hearing examiner pro tem.

- B. The Hearing Examiner shall not communicate ex parte directly or indirectly with any person, or his or her agent or representative, having an interest in an application before the Hearing Examiner.
- C. If a prohibited ex parte communication occurs, it shall be publicly disclosed in accordance with Chapter 42.36 RCW, and the Hearing Examiner shall determine whether to disqualify himself or herself for that application.

14.95.030 Rights And Responsibilities Of Applicants, Appellants, And Parties Of Record

- A. Hearing attendees shall conduct themselves civilly and courteously or be removed from the hearing.
- B. All testimony before the Hearing Examiner shall be given under oath to tell the truth, administered by the Hearing Examiner.
- C. Whenever possible, the applicant and any parties planning to present legal briefs or testimony shall provide the City Planner and the Hearing Examiner with the material at least one week in advance. Such materials shall be available to the public, subject to payment therefore.
- D. The applicant or appellant shall have the right of notice, cross-examination, presentation of evidence, objection, motion, argument, timely access to the City's staff report, and all other rights essential to a fair hearing.
- E. Parties of record shall have the right to present evidence and testimony at hearings. The right of parties of record to cross-examine, object, submit motions

and arguments shall be at the discretion of the Hearing Examiner.

- F. The Hearing Examiner may reasonably limit the number of witnesses heard and the nature and length of testimony. Cross-examination is permitted as necessary for a full disclosure of the facts, but the Hearing Examiner shall control the amount and style of cross-examination.
- G. Participants in hearings, including the City itself, may be represented by legal counsel.

14.95.040 Rights And Responsibilities of the City Planner

- A. In addition to duties elsewhere stated, the City Planner shall deliver a staff report, a statement or proof of notices published, and any necessary plans and documentation to the Hearing Examiner at least seven days prior to a hearing. The City Planner shall also present materials at the hearing as necessary.
- B. The City Planner may present evidence and testimony, object, make motions, arguments, recommendations, and all other rights essential to a fair hearing.

14.95.050 Elements Of Public Hearing

A public hearing usually will include but not be limited to:

- A. The Hearing Examiner's brief explanation of the process.
- B. Presentation of staff report.
- C. Testimony by the applicant or petitioner and cross-examination of same.

- D. Testimony in support.
- E. Testimony of opposing parties.
- F. Opportunity for cross-examination and rebuttal.
- G. Opportunity for questions by the Hearing Examiner.

14.95.060 Evidence

- A. The applicant shall have the burden of proof to show compliance with applicable laws and regulations of Washington State and the City of Snohomish.
- B. The hearing generally will not be conducted according to strict legal rules of evidence and procedure. Any relevant and probative evidence shall be admitted. The rules of privilege shall be effective to the extent recognized by law. The Hearing Examiner shall decide the admissibility of evidence.
- C. Documentary evidence may be received in the form of copies. Upon request, parties shall be given an opportunity to compare the copy with the original.
- D. The Hearing Examiner may take judicial notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within his/her specialized knowledge. The Hearing Examiner shall not take notice of disputed adjudicative facts that are determinative of the outcome of a particular proceeding.
- E. If a document is referred to at a public hearing and the Hearing Examiner requests a copy of the document, said document may so enter the record.

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

14.95.070 Continuation Of Hearing

The Hearing Examiner may continue the hearing until a certain date to allow all comments to be heard or to gather more information. No further notice of that hearing need be given. Any party of record may request a hearing be continued, which request the Hearing Examiner shall grant or deny.

14.95.080 Additional Evidence

At any time prior to the filing of the final decision, the Hearing Examiner may reopen the proceeding to receive evidence that was unavailable at the time of the hearing. Such reopening may be initiated by a party of record requesting permission to present such evidence. The Hearing Examiner shall grant the request 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 rebuttals.

14.95.090 Record Of Hearing

Hearings shall be electronically recorded and such recordings shall be a part of the official case record, all components of which shall be available to the public, provided the requester pays reasonable costs of copying or transcripts. No minutes of the hearing will be kept. The record of hearing shall include:

- A. The application or petition.
- B. The staff report.

then shall mail copies of the decision to all parties of record. (Ord. 2092, 2006)

- C. A statement of notices published.
- D. Evidence received, including oral testimony and exhibits.
- E. Electronic recordings.
- F. The decision together with findings and conclusions.
- G. The SEPA threshold determination and other environmental documents, if applicable.

14.95.100 Decision

- A. The Hearing Examiner's written decision shall include:
 - 1. The nature and background of the proceeding.
 - 2. Concise findings of fact addressing contested issues of fact, based exclusively on the record.
 - 3. Conclusions referencing permit criteria and other specific provisions of the law, together with reasons and precedents relied upon.
 - 4. The Hearing Examiner's determination of the appropriate rule, order, or relief, based upon a consideration of the whole record and supported by reliable, probative and substantial evidence.
 - 5. The time frames for reconsideration and appeal.
- B. The Hearing Examiner shall deliver the written decision to the City Planner, who

14.95.110 Reconsideration

Prior to six days after the date of the Hearing Examiner's decision, a party of record may request reconsideration. The request shall set forth alleged errors of fact, law, or procedure, or issues omitted from the Hearing Examiner's decision. Any request for reconsideration shall stay further issuance of City permits but shall not stay the time frame for appeal of the Hearing Examiner's decision. Within seven days after receiving the request, the Hearing Examiner shall either:

- A. Correct or amend the decision without an additional public hearing; or
- B. Set the matter for additional public hearing, in which case notice shall be published anew, including to all parties of record; or
- C. Confirm the original decision. (Ord. 2082, 2005)