

RULES OF PROCEDURE
of the
King County Hearing Examiner

An agency of the
Metropolitan King County Council

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I. INTRODUCTION

A. Purpose

These rules are adopted as part of the initiative of the King County Council to accomplish regulatory reform. The operation of the hearing examiner system is an important part of the county's permitting and land development approval process.

The examiner system was established to separate the application of regulatory controls from planning; to protect and promote public and private interests; and to expand the principles of fairness and due process in public hearings.

In furtherance of the foregoing purposes, these rules are intended to:

- Eliminate delays through the use of active case management and the more efficient use of hearing time;
- Reduce costs to participants in the hearing process; and
- Facilitate adherence to time limits established by law and ordinance.

B. Interpretation

The rules will be applied to accomplish the foregoing purposes.

The examiners also will be guided, where appropriate, by provisions and interpretations of the Washington Administrative Procedure Act (Chapter 34.05 RCW), the Rules of Civil Procedure (CR), and Rules of Evidence (ER) applicable in the Superior Courts of the State of Washington.

In situations of conflict within these rules, or when the need for interpretation arises, the more specific statement shall govern, and hearings may be considered in determining the applicability of a rule.

II. DEFINITIONS

- A. "Examiner" means the King County Hearing Examiner and includes a deputy or pro tem examiner assigned to a proceeding.
- B. A "motion" is a request to the examiner to issue an order. A motion may be in the form of a written request, or may be made orally during the course of a hearing.
- C. "Person" includes individuals, corporations, partnerships, other formal associations, and governmental agencies.
- D. "Party" means the applicant, proponent, petitioner or appellant; the owner(s) or property subject to a hearing; the responsible King County agency and any other county department or division with jurisdiction or review authority over a proposal or proceeding which has notified the examiner's office in writing of its request to be party to the proceeding.

A property owner who has authorized another individual to act as an agent for the development of a parcel of property is not a party unless he/she requests the examiner's office to be designated as such. Persons joining in or concurring with an appeal or petition are not parties unless they have separately filed the requisite documents and fees for an appeal or petition.

- E. “Intervenor” means a person who has been granted status in a proceeding by specific order of the hearing examiner. Except as specifically limited by the order granting intervention, an intervenor has all the procedural rights of a party.
- F. “Interested Person” is any person who has requested of the responsible county agency or examiner's office notification of proceedings or copies of orders, reports, recommendations or decisions issued in the particular case, or who participates in a hearing by providing evidence, comment or argument. The term does not include a person whose only communication is a signature on a petition or a mechanically or electronically reproduced form, or who has made a standing request for notices or documents encompassing a type of case, or hearings, which relate to a geographic area. All parties or record, as defined by KCC 21A.06.865, are interested persons unless they occupy the status of “party” or “intervenor”.
- G. “Responsible County Agency” means the King County department, division or office of the executive branch which has the primary responsibility for coordinating the review of an application or appeal, or which issued the decision or recommendation, or took the action, which is the subject of the proceeding. The term includes, if different, the agency responsible for preparing the report required by KCC 20.24.150.

III. JURISDICITON AND INITIATION OF PROCEEDINGS

A. Jurisdiction

1. Dependent upon Specific Delegation

The hearing examiner's jurisdiction is limited to those matters specifically identified in the King County Code or assigned to the examiner by county ordinance or Council motion. Decisions and recommendations by the examiner may expressly retain jurisdiction for purposes which are within the scope of the original matter.

2. When Jurisdictional Issues Can Be Raised

The issue of the examiner's jurisdiction to hear a matter can be raised by the examiner at any time during the course of a proceeding. Jurisdictional questions should be raised by a party or interested person promptly upon becoming aware of facts which give rise to the question.

B. Commencement of Proceedings

Proceedings of the hearing examiner are commenced by:

- 1. Filing with the responsible county agency a notice of appeal to the examiner; or

2. Transmittal to the examiner by the responsible county agency of a request for hearing date stating that an application, or other request for action requiring a public hearing, is ready to be heard; or
3. Filing a request for a pre-hearing conference by any party in the office of the hearing examiner; or
4. Enactment of a county ordinance or adoption of a motion by the council which refers a specific matter to the examiner; or
5. Execution by the King County Executive of an inter-local agreement which calls for the hearing examiner to act in a particular proceeding.

The examiner will take no action on a matter prior to the commencement of proceedings as set forth above. Without limiting the generality of the foregoing, the examiner will not take action scheduling a public hearing, ordering a pre-hearing conference, consolidating hearings, adjudicating any motion or request or providing advisory opinions, in advance of the commencement of proceedings.

C. Scheduling and Notice of Hearings and Pre-hearing Conferences

1. Examiner's office will schedule all hearings will be scheduled by the office of the hearing examiner in consultation with the responsible county agency. Unless requested otherwise by the responsible county agency, property owner or applicant, hearings will normally be scheduled for the earliest available date which allows reasonable time for the provision of all notice required by charter, law, ordinance or these rules.

Unless a pre-hearing conference is scheduled, or all parties agree to a later date, hearings on appeal will be scheduled for a date not later than 45 days from the filing of the statement of appeal in the office of the hearing examiner.

2. Notice of Hearings
 - a. For plats, reclassifications and other matters heard pursuant to KCC 20.24.070, the responsible county agency will prepare a proposed ordinance (title only) and advise the Clerk of the Council of the scheduled date, time and location of the hearing.
 - b. Publication, notice by mail and posting of the property shall be provided by the responsible county agency and applicant in accordance with requirements of the King County Code and agency rules.
 - c. The hearing examiner will also notify all parties and interested persons on the responsible county agency's current mailing list of the hearing date. (This list shall include all persons who have corresponded, commented or requested notices with respect to the matter under consideration, including any environmental review thereof.) If a pre-hearing conference has not previously been ordered by the examiner, the examiner's notice of the hearing date will advise the parties of the opportunity to request a pre-hearing conference.

3. Notice of Pre-hearing Conferences

When a pre-hearing conference is ordered, the examiner shall set the date thereof and notify all parties and interested persons approximately 14 days prior to the scheduled conference date.

4. Usual Hearing Days and Times

- a. Hearings on development proposals and land use matters (including environmental appeals and most code enforcement appeals), generally will be scheduled to commence on Mondays and Tuesdays.
 - (1) Hearings which are expected to last one-half day or less will normally be scheduled for a Monday at 9:30 a.m. or 1:30 p.m.
 - (2) Hearings which are expected to last longer than one-half day will normally be scheduled to commence on a Tuesday at 9:30 a.m.
 - (3) When Monday is a county holiday, Tuesday and Wednesday will supplant Monday and Tuesday, respectively, for scheduling purposes. When Tuesday is a holiday, Wednesday will supplant Tuesday.
- b. Hearings concerning most matters other than land use will generally be scheduled on Wednesdays. This will include road vacations, TV cable rate proceedings, Health Department enforcement appeals and Department of Public Safety forfeitures. These hearings will be conducted as scheduled; they will not normally be pre-empted by continuances from the prior day.
- c. In most instances, when a hearing commences it will proceed on consecutive days during normal hearing hours (Monday – Friday, 9:30 a.m. to 4:00 p.m.) until conclusion. All parties, interested persons and their representatives are expected to make prior arrangements to accommodate reasonably anticipated conflicts, including trials and other judicial proceedings, scheduled vacations and medical appointments. Requests for departures from the normal schedule for hearing in progress will generally be denied except for emergencies or to accommodate the needs of the hearing.

5. Delays in Opening Scheduled Hearings

The setting of multiple hearings for the same day, and the requirement that hearings proceed to their conclusion without interruption, may occasionally require parties to wait for an earlier hearing to finish before the next scheduled hearing can begin. Waiting parties will be advised promptly when a substantial delay is expected, and will be given new anticipated starting times to the extent feasible. (Telephone and fax numbers should be provided to the examiner's office by persons who wish to receive such notice.) Telephone or fax notices of anticipated delays are not guaranteed, but the examiner's office will make a reasonable effort to minimize inconvenience to hearing participants.

6. Requests for Setting Public Hearings

- a. For all matters which are heard pursuant to KCC 20.24.070, and applications, petitions or claims (not appeals) for which the examiner conducts a hearing pursuant to KCC 20.24.080, the responsible county agency shall transmit a “Request for Hearing Date” to the hearing examiner when it is known that a matter will be ready to be heard by a specific date which shall be stated in the request.
- b. The request for hearing date shall provide an estimate of the length of time required to conduct the hearing, identify the principal staff whose attendance will be required throughout the hearing and include the agency’s current mailing list for the proposal.
- c. The request for hearing date should provide other information that will assist in scheduling the hearing and determining whether a pre-hearing conference would be of value, and should be accompanied by the following supporting documents, as applicable:
 - The environmental checklist and threshold determination;
 - The current plat map, building or grading plans, conceptual drawings or other relevant illustration of the proposal;
 - Copies of any special studies, other environmental documents, agency reviews or other correspondence or documents which identify or address issues relevant to the proposal;
 - Any other materials which the responsible county agency considers important to a general understanding of the issues of the case.

7. Hearings in the Community; Evening Hearings
(Limited to major items)

Upon timely request by a party or interested person, or upon the examiner’s own motion, a hearing may be scheduled at the discretion of the examiner in the vicinity of a proposed land use action and during evening hours when the matter is one of major community-wide interest, rather than a proposal which is of concern primarily to immediate neighbors. Examples are major shopping centers, community facilities, unusually large subdivisions or other development of unusual size or nature which are likely to have area-wide impacts.

Other criteria which will be considered by the examiner are:

- Whether significant additional information could be made available to the examiner and the council if the hearing were conducted in the evening or at a community location.
- The extent of community interested demonstrated by individual correspondence or contacts by area residents with the responsible county agency.

- Whether the information entered into the public record through testimony of technical experts and county personnel would be significantly reduced by changing the hearing from the customary time and location.
- If a convenient and suitable facility is available for the hearing at reasonable cost.
- If the change would cause substantial delay in the conduct of this or other hearings, cause serious disruption to the performance of other county staff duties, or result in unreasonable expense to the parties.

8. Scheduling and Notice of Pre-hearing Conferences

- a. If a hearing date has already been set when the decision is made to conduct a pre-hearing conference, the conference normally will be scheduled, if feasible, for a date of at least 14 days prior to the scheduled hearing date.
- b. The examiner's office will notify all parties and interested persons when a pre-hearing conference is scheduled.

9. Method of Transmittal of Notice

Unless otherwise specified, notice shall be provided by United States Postal Service first class mail, private delivery service or facsimile, at the option of the agency or person providing the notice. Receipt of notice in the ordinary course of business is presumed unless rebutted by substantial evidence.

IV. FILING REQUIREMENTS

A. Notice of Appeal

Notices of appeal to the examiner, together with any fees required by ordinance, are to be filed in accordance with applicable provisions of the King County Code or other governing statute, ordinance or regulation. Timely filing of the notice of appeal and appeal fee (if required) is a jurisdictional requirement; appeals which do not meet the filing requirements cannot be considered by the examiner.

B. Statement of Appeal

1. Required to Establish Jurisdiction

Filing a statement of appeal is a requirement separate from, and in addition to, filing the notice of appeal. The statement of appeal must be filed with the county department, division or office which took the action or made the decision being appealed. Filing is required within 15 days of the date of issuance of the decision appealed. This requirement is also jurisdictional; failure to timely file the statement of appeal results in the hearing examiner being unable to consider the appeal.

2. Form

No specific form of the notice of appeal and statement of appeal is required. Persons wishing to combine the notice of appeal and statement of appeal may do so, provided the intent to do so is clearly indicated in the heading, caption or text of the document, and the requirements for content of both notice and statement of appeal are met.

C. Content

1. Notice of Appeal

The notice of appeal must identify clearly and specifically:

- The action or decision appeal, including the date thereof;
- The county department, division or office which took the action or made the decision;
- The name and address of the appellant;
- The name, address, telephone and fax number of the attorney or other representative, if any, for the appellant;
- If more than one person joins in a single appeal, a single representative of all of the persons joining as appellants is required to be named for procedural purposes.

2. Statement of Appeal

The statement of appeal must identify clearly and specifically;

- The errors which the appellant believes were made in the action or decision which is being appealed, or the procedural irregularities associated with that action or decision.
- Specific reasons why the county's action should be reversed or modified.
- The harm suffered or anticipated by the appellant as a result of the action or decision being appealed. (If the appellant is a group or organization, the harm to any one or more members of the group or organization must be stated.)
- The desired outcome of the appeal.

Unless an amendment to the statement of appeal is authorized by the examiner, the identification of errors and statement of reasons for reversal or modification will define and limit the issues which the examiner will consider.

D. Amendment of Appeal Statements

1. If, at the expiration of the filing period for a statement of appeal, an appellant has not timely received requested information relevant to the decision or action being appealed, and such information was requested from the responsible county agency 72 hours or more before the appeal statement deadline, the appellant may file with the appeal statement a notice that such statement is incomplete. The notice shall identify the matters subject to the outstanding information request, the date on which the request was made, the county employee to whom the request was directed, the nature of the information solicited and why its receipt is believed necessary to a complete statement of appeal.
2. Based on the foregoing and any written response from the responsible county agency, the examiner may issue an order which authorizes the filing of an amended appeal statement.

E. Filing Methods; Electronic Filing and Service

A document is deemed filed with an agency or in the office of the hearing examiner only upon actual receipt.

Filing and service may be accomplished by physical delivery (including U.S. mail or other delivery service) or by electronic facsimile which provides a paper copy upon arrival. When delivery or completion of a transmission occurs after 4:30 p.m., the document is deemed received on the next business day. In every case, the risk of actual delivery or receipt not occurring within the required time period is borne by the person who intends that the document be filed or served. The examiner may place reasonable limitations on the length of documents which may be served by electronic facsimile.

Information provided orally or by electronic mail, voice mail or similar medium does not constitute filing or service, nor otherwise preserve any rights or initiate the running of any time period.

V. DEPARTMENT FILES: REPORTS, SPECIAL STUDIES, REVIEWS AND RESPONSES

A. Part of Hearing Record

The responsible county agency shall maintain a file which includes all reports, special studies, reviews, responses, correspondence, memos and other documents concerning a matter within the examiner's jurisdiction. Unless specifically excluded in whole or in part, this file automatically becomes part of the record of the hearing held by the examiner. As such, it may be considered by the examiner in reaching a recommendation or decision to the same extent as if each item in the file had been specifically offered as an exhibit and admitted into evidence.

Any party may object to the admission into evidence of specific items contained within the responsible county agency's file. To the extent feasible, all such objections should be raised prior to or at the opening of the hearing. The examiner shall rule on such objections, if reasonably possible, prior to the presentation of other evidence. When significant information within the responsible county agency's file is excluded on grounds other than immateriality or being unduly cumulative, the parties will be afforded a reasonable opportunity to provide other evidence on the issue.

Any party may offer a document contained in the responsible county agency's file as a separate exhibit. Parties are encouraged to offer separately those items which they consider to be of particular importance for the determination of a controverted issue.

B. Timely Report Not Jurisdictional; Continuance as Remedy

Absence of the required department or division report, or delay in its issuance, shall not affect the jurisdiction of the examiner.

Failure of the responsible county agency to timely issue the report required by KCC 20.24.150 shall constitute grounds for continuance upon motion by any party or interested person who demonstrates to the satisfaction of the examiner that the failure has resulted in prejudice to the moving party or person. In the absence of extenuating circumstances, a continuance granted on this ground shall be for no longer than two weeks.

C. Optional Written Responses and Statements

1. When Due

Parties and interested persons are encouraged to file with the examiner written responses to appeals, reports and special studies, and to submit written statements (including briefs) which support or oppose an appeal or application to be heard by the examiner. Written responses or statements may be filed with the examiner's office not later than two business days prior to the scheduled opening of the hearing, or may be delivered to the examiner at the opening of the hearing, unless ordered otherwise by the examiner.

2. Service of Copies

Copies of responses to an appeal shall be served upon the parties and the responsible county agency. Service shall be accomplished contemporaneously with filing with the examiner. Copies of responses to a department or division report shall be delivered to the department or division which issued the report prior to or concurrently with filing with the examiner. Copies of all responses, studies, briefs or other written statement should be served on opposing parties to the extent reasonable.

Special orders regarding requirements for service may be entered by the examiner to govern a hearing. The examiner may exclude from consideration documents which are not timely served in accordance with these rules or a special order.

VI. PRE-HEARING MOTIONS AND PROCEEDINGS

A. Consolidation

Consolidation of hearings may be ordered in either of the following circumstances:

1. Multiple Hearings on a Single Proposal

- a. If a proposal requires more than one county permit or appeal hearing, consolidation may be requested by written motion made by any party not less than 21 days prior to the date of the first scheduled hearing. The request shall identify issues likely to be addressed at each of the hearings which are sought to be consolidated. The examiner may solicit written comments on the request from other parties prior to acting thereon, or may grant or deny the motion at his/her discretion if it appears on its face to provide sufficient information to support the examiner's action. Consolidation may also be ordered by the examiner in appropriate circumstances without a motion by any party.
- b. Consolidation shall be ordered whenever feasible. The primary considerations shall be whether greater efficiency of time and effort, and a reduction of costs to the parties and county would be achieved by consolidation, without denying due process of law to any party.
- c. When the hearing on an application pursuant to KCC 20.24.070 is consolidated with an appeal hearing, the hearing on the application shall not be deemed opened for the purposes of [Ord. 11502, Sec. 15] prior to the completion of any studies required as a consequence of the appeal.

2. Multiple Proceedings Involving a Common Issue

If hearings concerning two or more separate matters involve a significant common issue of fact, law or policy, any party may file a written motion requesting consolidated or concurrent hearings. The motion shall identify the common issue to be resolved, as well as the other major issues, if known, which are unique to each proceeding. Such motion shall be filed at least 21 days prior to the scheduled hearing date of the first hearing included in the motion. No request to consolidate separate proceedings shall be granted without the consent of the necessary parties to each proceeding, although hearings may be scheduled concurrently by order of the examiner without agreement of the parties when doing so would not prejudice any party.

The principal consideration in acting on a request for consolidation or concurrent scheduling shall be whether greater efficiency of time and effort would be achieved thereby. In ruling on such requests, the examiner shall also consider the extent to which other issues unique to each proceeding are likely to require separate hearings.

B. Motion to Dismiss an Appeal

A pre-hearing motion may be made by any party to dismiss or limit an appeal for one or more of the following reasons:

- The appellant lacks standing to appeal the decision or action challenged.
- The notice of appeal, appeal fee or statement of appeal were not filed within the time period required by law or ordinance.
- The examiner lacks jurisdiction, in whole or in part, over the subject matter of the proceeding.

- The statement of appeal is not sufficiently specific to apprise King County and other necessary parties of the factual basis upon which relief is sought, or the grounds stated do not constitute a legally adequate basis for the appeal. In lieu of dismissal, the examiner's order may clarify the issues on appeal, or may require the appellant to file a bill of particulars to supplement the appeal statement.

C. Request for Continuance (Postponement)

1. Prior to the scheduled hearing date a party may move to continue a public hearing. The motion shall be filed as soon as reasonably possible after the need for the continuance becomes known, and shall state the reason for the request. The examiner may take action on the motion based upon the supporting statement alone, may provide an opportunity for comments by other parties and interested persons or may schedule a hearing on the motion. The examiner's action will consider whether the continuance request can be granted consistent with the time limit requirements stated in [Ordinance 11502, Sections 14 and 15], whether there are reasonable alternatives to a continuance and whether other parties or interested persons will be prejudiced or unduly inconvenienced.

Motions for continuance received less than seven days prior to the scheduled hearing date normally will be granted only if the need for a continuance was not reasonably foreseeable, all parties consent or on the basis of an emergency. Unless otherwise ordered, a continuance of a scheduled hearing shall not extend the deadlines for the conduct of pre-hearing discovery.

2. A public hearing may be continued or rescheduled by the examiner without a motion in his/her discretion for the safety or welfare of the public, parties and interested persons, to assure due process of law or for other purposes consistent with Section I of these rules.

D. Procedural Requirements

Except as otherwise provided by these rules, pre-hearing motions shall conform to the following requirements:

1. All pre-hearing motions shall be made to the examiner in writing. Unless good cause is shown in support of a shorter period, motions shall be filed at least 21 days prior to the scheduled hearing date or five days prior to a scheduled pre-hearing conference. Notice of opportunity to respond in writing or present oral argument on the motion, if allowed, will be provided by the examiner's office to other parties and interested persons. All parties shall be afforded a reasonable opportunity to be heard in response to a motion to dismiss. With respect to proceedings for which a pre-hearing conference is scheduled, oral argument on pre-hearing motions shall generally be set for the pre-hearing conference.
2. All pre-hearing motions or requests for action by the examiner shall be presented within a separate document headed or captioned to clearly identify the motion or request.

3. Any pre-hearing motion which can be granted only upon a finding of fact shall be accompanied by competent affidavits setting forth all factual matters necessary for the granting of the motion, unless such facts are already established in the record. A motion to dismiss an appeal shall be accompanied by a statement of the reasons why the motion should be granted and supported by competent sworn affidavits. Affidavits shall not exceed 10 pages in total length, unless leave is obtained from the examiner approving a longer submittal.
4. Affidavits may be made before a notary public, or without notarization if words to the following effect appear above the affiant's signature: "I certify under penalty of perjury pursuant to the laws of the State of Washington that the foregoing is true and correct."

VII. DISCOVERY

A. Purpose

Limited discovery is authorized to assist parties and interested persons prepare for a hearing and to make the hearing more efficient, consistent with the policy of keeping the hearing process accessible to lay participants. The principal purpose of discovery is timely ascertainment prior to the hearing of the issues that will be raised, and to give notice of the primary facts that will be relied on by parties and interested persons.

B. Routine Discovery Required

After receipt of a notice of appeal the following routine discovery requests will be communicated by the examiner to all parties with instructions for furnishing responsive information to the examiner and other parties:

1. Requests for the name, address, telephone number and qualifications of expert witnesses; and a summary of the testimony expected from each expert, including the principal facts and opinions to be offered;
2. Copies of any studies or reports (whether prepared by experts or others) which are planned to be offered at the hearing.

C. Discovery of County Documents

Discovery requests for county documents shall be made as follows:

Any party or interested person may submit a written request to any county department or agency to produce copies of documents within its possession which are material to the subject of the hearing. Such requests shall be made to the department or agency at least 21 days prior to the scheduled hearing. The department or agency shall promptly estimate the copying charges, if any, applicable to the request and provide the copies requested within seven days of receipt of a deposit of the estimated charge.

D. Other Discovery

1. Discovery by depositions upon oral and written examination; written interrogatories; production of documents or things; permission to enter upon land

for inspection or investigation and requests for admissions, may be made by a party or interested person only if such request is previously approved by the examiner. A request for discovery shall be made by written motion to the examiner, served upon all other parties and upon those interested persons subject to the request, at least 21 days prior to the scheduled hearing date. Such request may be granted by the examiner upon finding that (a) the moving party or person has demonstrated a substantial need for the information requested in the preparation of its case; and (b) the party or interested person to whom the request is directed will not be unreasonably inconvenienced, or incur unreasonable cost, by compliance therewith.

2. Without motion, the examiner also may require within a pre-hearing order any discovery authorized by these rules.

E. Sanctions

1. Failure of a department or agency to make a full and timely response to a request for discovery may result in a continuance of the hearing, an order prohibiting the department or agency from offering such documents in evidence against the requesting party or such other relief as is determined by the examiner to be appropriate.
2. If any party or interested person fails to respond fully by the deadline stated to a request for routine discovery or to an order for discovery issued by the examiner, without providing a satisfactory explanation therefore, the following actions may be taken or sanctions imposed, as appropriate:
 - a. Continuance of a scheduled hearing to enable the information requested to be obtained by other means. A party who fails to make discovery is deemed to have waived the time limits stated at [Ord. 11502, Sec. 14 and 15].
 - b. Testimony or studies which concern matters within the scope of the failure to respond may be excluded, or terms and conditions may be placed upon the introduction of such evidence.
 - c. To the extent permitted by law, an order may be issued that modifies the burden of proof applicable to the proceeding in a manner which compensates for the consequences of the failure to respond.
 - d. Specific facts subject to the discovery request may be ordered as having been admitted for purposes of the proceeding by the person who failed to respond.
 - e. Payment of the costs incurred by other parties or interested persons to establish discoverable facts may be required of the party or person who failed to provide discovery, as a condition of issuance of a permit or provision of the relief requested, or as a condition of further participation in the proceeding.

- f. Dismissal of the appeal or application of a party who has failed to respond to a request for discovery may be ordered; or a recommendation may be made for such action by the council. In the alternative, an order or recommendation may be made which requires future reconsideration of a decision if facts subject to the discovery request are subsequently called into question or established.
3. To the extent feasible, the relief provided shall not penalize or inconvenience the other parties or unduly delay the proceedings. The examiner shall weigh the private and public interests affected by the failure to provide discovery when determining appropriate sanctions.

VIII. PRE-HEARING CONFERENCES

A. Purpose and Initiation

Pre-hearing conferences promote efficient case management by providing an informal process for early identification of issues and resolution of procedural matters in complex cases. Evidence generally will not be received at a pre-hearing conference, except when required in order for the examiner to rule on a motion. (Pre-marking and introduction of exhibits to which there is no objection may occur at the discretion of the examiner.)

The examiner, on motion of any party or upon his/her own motion, may convene a pre-hearing conference to:

1. Identify, clarify, limit or simplify issues.
2. Hear and consider pre-hearing motions.
3. Schedule hearings, identify parties and witnesses, determine the order of and limits upon testimony, obtain stipulations as to facts and law, identify and admit exhibits, order discovery and consider and act upon any other matter which may aid in the efficient disposition of the hearing.

B. Requests for Conference

A motion to convene a pre-hearing conference shall be made to the examiner as soon as the need for a conference is recognized by the moving party (at least 21 days prior to the scheduled hearing date), and shall state the reasons for the request, including any motions to be presented. For good cause stated in the motion, the examiner may consider a request that fails to meet the 21-day requirement.

For hearings authorized under KCC 20.24.080, a motion by any party for a pre-hearing conference shall be granted if timely. However, unless consented to by all parties or otherwise ordered for good cause by the examiner, no pre-hearing conference on an appeal can be convened later than 45 days after receipt of the statement of appeal by the hearing examiner's office.

C. Proceedings at Conference

A party who has received timely notice of a pre-hearing conference shall identify at the conference any pre-hearing motions not previously made which he/she intends to make.

Parties or interested persons may also file timely written pre-hearing motions for consideration at the pre-hearing conference. Failure to make or disclose a motion which was available to the party at the time of the conference may be grounds for its denial if subsequently made.

D. Pre-hearing Order

Following a pre-hearing conference, the examiner shall issue an order specifying all items determined at the conference. The order shall be binding upon all parties and interested persons who received timely notice of the conference.

IX. SUBPOENAS

A party may move for the issuance of a subpoena compelling the attendance of a witness who is necessary for the presentation of the party's case. The motion shall be supported by a statement as to why the witness is necessary and why the moving party believes such witness will be unavailable unless a subpoena is issued. Subpoenas will be issued at the discretion of the examiner and will be delivered to the moving party for service within King County according to law.

Witnesses subpoenaed shall be offered the same fees and allowances, in the same manner and under the same conditions, as provided for witnesses in the Superior Courts for King County by Chapter 2.40 RCW and by RCW 5.56.010. The party requesting issuance of a subpoena shall pay the fees and allowances and the cost of producing records required to be produced by subpoena.

X. PARTIES AND REPRESENTATION

A. Intervention

1. Purpose

a. Intervention as a matter of right.

The examiner shall allow intervention in a proceeding by a person who is not a party who has a substantial property interest in the subject matter of the proceeding, or whose property is likely to be directly affected by the result of the proceeding.

b. Discretionary intervention.

Intervention may be allowed in the discretion of the examiner when participation of the intervenor as a party would be in the public interest.

2. Method

A petition to intervene may be made orally or in writing, subject to the following limitations. Every petition shall be supported by facts sufficient to justify the request. Such facts may be presented by affidavit or, if the petition is oral, by testimony and exhibits.

a. Time limits for petition

- (1) If a pre-hearing conference has been scheduled for which the petitioner has had at least 10 days actual notice (or would have received actual notice by exercising reasonable diligence), a petition to intervene as a matter of right shall be submitted at or prior to the pre-hearing conference. (Failure to respond promptly to a written notice of the pendency of a proposed action normally indicates lack of reasonable diligence.) In all other circumstances, a petition to intervene as a matter of right must be submitted prior to or at the opening of the first hearing day.

Failure to submit a timely petition shall constitute waiver of the right to intervene. However, a person who has waived the right to intervene may subsequently petition to intervene at the discretion of the examiner.

- (2) A petition for intervention at the discretion of the examiner should be submitted at the earliest stage in the proceeding that the petitioner has knowledge of facts which give rise to the appropriateness or need for intervention. Petitions submitted subsequent to the introduction of substantial evidence will normally be denied for untimeliness in the absence of a strong showing of need.

b. Content of petition.

A written petition to intervene should state:

- The name, address and telephone number of the person seeking to intervene;
- The name, address and telephone number of petitioner's attorney or other representative, if any;
- The specific nature and extent of petitioner's property interest which may be affected by the proceeding, or the specific reason why intervention would be in the public interest; and
- Petitioner's claim, concern or other statement of position in regard to the matter in controversy, including a statement as to the desired outcome with respect to petitioner's interest.

c. Disposition of petition.

- (1) Petitions to intervene may be considered and acted upon by the examiner at pre-hearing conferences, may be set for special argument or may be considered at the hearing. A reasonable opportunity shall be afforded to parties to provide written or oral comment. Action by the examiner may be stated orally on the

record, or by written order, or both. Any inconsistency between an oral statement and written order shall be resolved by reliance upon the written order.

- (2) Upon approval, the petitioner becomes an intervenor. The intervenor has all the procedural rights of a party in the county proceedings, subject to the terms of the order granting intervention and any subsequent limitation or expansion as the examiner may impose or direct. Conditions of intervention may include:
- Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest or expertise as shown by the petition or other available information;
 - Requiring or limiting the intervenor's use of discovery, cross examination and other procedures so as to promote the orderly and prompt conduct of the proceedings;
 - Requiring two or more intervenors and/or parties with similar interests to combine their presentations of evidence and argument, cross examination, discovery and other participation in the proceeding; and
 - Such other terms as will help further the purposes of the proceedings.
- (3) The granting of a petition to intervene in proceedings before the examiner does not confer or imply standing to file a petition or bring an action for judicial review. Standing for that purpose will be determined by the court in which such review is sought.

B. Representation Optional

Representation by an attorney is not required as a condition of full participation in any proceeding before the examiner. The examiner will make reasonable accommodations and allowances to assure that persons unfamiliar with these proceedings are enabled to participate effectively.

Any person, group or organization may be assisted by any person of his, her or its choosing for the purpose of presenting written or oral arguments, entering exhibits or otherwise participating in a hearing.

C. Use of Representative Parties

Multiple parties and interested persons who have similar interests are encouraged to select one or two persons (who may or may not be attorneys) as representatives for the purpose of accepting service of documents, motions and notices, scheduling of hearings and otherwise facilitating the efficient and economical management of cases having numerous participants. In the absence of selection by the parties or interested persons,

the examiner may designate a representative party or parties when reasonably necessary for efficient and economical case management purposes.

D. Rules of Professional Conduct Applicable

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.

XI. CONDUCT OF HEARING

A. Order of Proceedings

1. Hearings on Applications and Petitions

Following a formal announcement of the matter to be heard and introductory remarks by the examiner, a public hearing generally will proceed as follows:

a. Initial presentations

- (1) The responsible county agency will present its written report and provide a synopsis of the application or petition to be heard. This presentation will include introduction of exhibits, testimony and a preliminary recommendation.
- (2) The applicant or petitioner will present evidence and argument in support of the action sought.
- (3) Other parties and interested persons supporting the action may present evidence and argument.
- (4) Parties and interested persons opposing the requested action, or who have questions and concerns, may present evidence and argument and state their questions or concerns.
- (5) Following the testimony of any witness, cross examination will be permitted. See Section C.5., below.

b. Response and rebuttal

When the initial presentations are completed, parties will have an opportunity to present rebuttal evidence. Rebuttal by interested persons may be allowed in the discretion of the examiner.

c. Final argument

The parties may make final arguments, following the same order as initial presentations, except that the applicant shall have the opportunity to make the closing argument. In order to provide a more expeditious hearing, the examiner may require closing argument to be presented with

rebuttal evidence. In complex cases the examiner may provide for an administrative continuance or continued hearing for the presentation of closing argument.

d. Final recommendation

The responsible county agency, having heard all response, rebuttal and argument, shall make its final recommendation. If the final recommendation differs from the previous recommendation, or includes new facts or argument, parties may be permitted to respond to the final staff recommendation at the discretion of the examiner.

e. Proposed findings or report

The examiner may invite parties to submit proposed findings and conclusions by a specified deadline following the close of the hearing. Alternatively, the examiner may issue proposed findings or a proposed final report, allowing the parties a reasonable time to submit written comments.

2. Hearings on Appeals

Following a formal announcement of the matter to be heard, and introductory remarks by the examiner, a public hearing generally will proceed as follows:

- a. Introduction of the matter to be heard by the responsible county agency
- b. Parties' opening statements (optional)
- c. Appellant's presentation of evidence
- d. Responsible county agency's presentation of evidence
- e. Applicant's presentation of evidence (if applicant is not the appellant)
- f. Rebuttal, evidence; in the same order
- g. Final recommendation by the responsible county agency
- h. Final argument, commencing with the appellant, who shall also have an opportunity to make the closing argument

3. Cross Examination

Parties shall be permitted to cross examine witnesses. See Section B.6., below.

4. Alternate Order of Hearing

The order of proceedings may be modified by the examiner as necessary for the clear, fair and efficient presentation of evidence and argument. The order of the hearing may also be modified as agreed upon by the parties with the examiner's

approval. A modification to the order of presentation does not alter or affect any burden of proof or presumption established by applicable law.

B. Presentation of Evidence

1. Oath or Affirmation

- a. All testimony before the examiner shall be given under oath or affirmation.
- b. Any interpreter shall take an oath that a true interpretation will be made to the person testifying or being examined in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person testifying or being examined in the English language, to the best of the interpreter's skill and judgment.
- c. Statements made by an unsworn attorney or other representative shall not be considered as evidence.

2. Admissibility of Evidence

- a. Except as otherwise provided by these rules, evidence will not be limited by the Washington Rules of Evidence (ER). Any trustworthy oral or documentary evidence may be received, including reliable hearsay. However, the examiner shall exclude testimony or evidence which is unreliable, unduly repetitive, irrelevant, immaterial or privileged, and may use ER as a guide when making evidentiary rulings.
- b. Opinions of lay witnesses on matters normally within the purview of qualified experts ordinarily will not be excluded, but lack of qualification shall be considered when giving weight to such opinions.
- c. The examiner may admit excerpts from public documents or from books, studies or reports when the remainder of such material is either irrelevant or unnecessary for an adequate understanding of the issue.
- d. Copies of documents may be accepted as evidence, provided, that the examiner may exclude copies when there is reasonable doubt as to authenticity.
- e. In proceedings where a penalty, forfeiture or similar divestiture of legally cognizable rights is sought by King County, the examiner may apply the ER to govern the admissibility of evidence, and may require adherence to other rules applied in the Superior Court for King County to assure that due process of law is afforded to the parties.

3. Exhibits

- a. Copies of documents submitted as exhibits must be legible.

- b. A rare or one-of-a-kind exhibit which is held by a King County agency, and which cannot be conveniently reproduced, may be entered in the hearing record by reference. Examples of such exhibits include, but are not limited to, official zoning, land use or community plan maps or aerial photographs. If practical, duplicate reduced copies should be provided as an exhibit when possible to do so without excessive cost
- c. Physical evidence may be excluded by the examiner, even though relevant, on the basis of an unreasonable custodial burden if other relevant evidence having equivalent probative value is available. The examiner also may require the substitution of photographs or reduced size copies for exhibits which are difficult to store, and written or oral descriptions of water, rocks, dirt or other objects, instead of the actual items. Photographs, maps, charts, illustrations or similar materials which are mounted for presentation purposes shall be removable from their mounting and capable of being stored within a legal size filing cabinet drawer, unless reasonable need for submission of an exhibit not susceptible to reduction is demonstrated to the satisfaction of the examiner. (For charts, photo montages and similar materials, a common method to meet the requirements of this rule is to attach the item(s) presented to a plain paper backing prior to mounting on poster-board, so that the evidence can be readily removed from the poster board for storage.)
- d. Exhibits accepted into the record shall not normally be returned to parties, except that the responsible county agency may act as the official custodian of the case file. The examiner may order the return of an exhibit when there is no public or private need for retention by the examiner or responsible county agency.

4. Objections

- a. An objection to the admission or exclusion of evidence shall state briefly the ground for objection.
- b. Any evidence entered into the record without objection shall be deemed admissible.
- c. The examiner shall determine the probative value, if any, of all evidence entered into the record.

5. Official Notice

The examiner may take official notice of the following:

- a. The published regulations, rules and duly adopted policies of any public agency.
- b. Generally known facts or data which are beyond reasonable dispute; and,

- c. Any other matter susceptible to judicial or official notice in courts of record or administrative tribunals operating pursuant to the U.S. or State of Washington Administrative Procedures Acts.

When official notice of a matter is incorporated in a finding of fact, the parties and interested persons may file with the examiner a statement challenging the accuracy of the fact within seven days of the date of issue of the finding. The examiner will take such action in response to the challenge as is appropriate to assure that no fact is officially noticed if there is a reasonable dispute as to its accuracy. No statement of the examiner's intent to take official notice of a matter is required prior to issuance of the finding of fact in which it is incorporated.

6. Cross Examination

- a. Except as limited by these rules, cross examination of any witness is permitted to obtain full disclosure of necessary relevant and material facts and the basis for the direct testimony provided by that witness.
- b. Cross examination shall be limited to the subject matter of the direct testimony and to the credibility of the witness.
- c. Parties have the right to cross examination, but other interested persons do not. However, in appropriate circumstances, interested persons may be permitted to conduct cross examination when, in the opinion of the examiner, such cross examination will substantially assist in the creation of a complete record.
- d. The examiner will prohibit cross examination which is irrelevant, cumulative, unduly repetitious or which is argumentative.
- e. In order to achieve efficiency, the examiner may:
 - (1) Require consolidated cross examination by parties and interested persons sharing a common position or objective;
 - (2) Require submittal of written questions for presentation by the examiner;
 - (3) Require or permit parties and interested persons to state their questions to the examiner, so that the examiner may ask them of the appropriate witness as an alternative to cross examination;
 - (4) Limit cross examination of opinion testimony offered by interested persons who have not been qualified as experts; and
 - (5) Establish reasonable time limits for cross examination, consistent with the requirements of due process; and
 - (6) Allow concurrent cross examination of two or more witnesses who have testified on the same subject matter.

- f. If a witness refuses to answer any question which has been ruled by the examiner to be proper, such refusal may be grounds for striking all related testimony by the witness.

7. Limits on Testimony and Argument

- a. Testimony and argument shall be limited to matters which are material to the decision to be made, including consideration of relevant county regulations and policies.
- b. Testimony and argument shall be excluded which is irrelevant, immaterial, cumulative, unduly repetitious, abusive or offensive.
- c. The examiner may establish reasonable time limits on testimony and argument. The examiner also may provide opportunity to submit written supplementary testimony, in which case the examiner shall allow opposing parties reasonable opportunity to respond.
- d. Time limits ordinarily will be imposed on testimony or argument regarding motions and other procedural issues, and argument on appeals on the record.
- e. Any legal opinions offered will be accepted as argument, not as evidence.

8. Burden of Proof

- a. Except as may be otherwise specified by law or ordinance, the burden of proof rests upon the moving party; that is, upon the applicant, appellant or petitioner. If the burdened party fails to introduce evidence sufficient to sustain its burden of proof, the examiner may deny the application or petition, or dismiss the appeal, without taking evidence or hearing argument in opposition.
- b. In a proceeding to consider an appeal or challenge to a King County agency's imposition of a penalty or burden on a party or on his/her property, the agency shall be required to present a *prima facie* case based upon competent evidence demonstrating that the legal standard for imposing such burden or penalty has been met.

9. Standard of Proof

- a. Unless otherwise provided by law or ordinance, the standard of proof is a preponderance of the evidence.
- b. In the case of appeals from threshold determinations made pursuant to the State Environmental Policy Act, the burden rests with the appellant to demonstrate that the decision of the responsible official was clearly erroneous based on the record as a whole.

- c. The examiner shall grant substantial weight or otherwise accord deference whenever directed by ordinance or statute.
- d. Substantial weight also may be given to the factual determinations and conclusions (but not to conclusions of law), made by public agencies charged with the administration of statutes and ordinances, with respect to matters within their jurisdiction.

C. Documentary Record

1. Hearing Record

Unless specifically excluded, the record for review of a public hearing shall include, but is not limited to, the following:

- a. Application or petition;
- b. Environmental review documents and determination;
- c. The responsible county agency's preliminary report and recommendation;
- d. Written comments received from the public and other agencies during the responsible county agency's review;
- e. Exhibits and written comments received by the examiner prior to the close of the record;
- f. Examiner's findings, conclusions and decision or recommendation;
- g. Notice(s) issued and mailing list(s) used by the responsible county agency and examiner's office; and
- h. The tape recording of the public hearing made and maintained by the office of the hearing examiner. No other record shall be accepted as an official record of the hearing unless approved by the hearing examiner.

2. Information Received After Close of Hearing

Evidence or argument submitted following the close of a hearing will not be considered or included in the hearing record, unless the examiner decides in his/her discretion to reopen the hearing to permit its introduction and to afford reasonable opportunity for response.

D. Briefs and Written Arguments, and Proposed Findings

- a. The examiner may request parties to prepare and submit briefs, written arguments or proposed findings and conclusions.
- b. Any party or interested person may submit a brief, written arguments or proposed findings and conclusions subject to applicable deadlines.

- c. When a brief, memorandum or proposed findings and conclusions are filed, copies shall be served concurrently on all other parties.

E. Further Proceedings

1. Continuances

- a. If a public hearing cannot be completed on the date set, the examiner may publicly announce before adjournment the time and place of the continued hearing. No further notice shall be required.
- b. The examiner may continue or postpone a hearing upon a finding of good cause or in order to prevent manifest injustice.
- c. Unless waived by the parties or otherwise required by law, all continuances shall be scheduled so as to assure compliance with time limits established in KCC 20.24 as amended by Ordinance 11502.

2. Administrative Continuances

- a. The examiner may leave the record open at the conclusion of a hearing in order to receive written argument or specified additional evidence which the examiner deems necessary to assure a complete hearing record.
- b. At the examiner's discretion, interested persons may be permitted opportunity to respond in writing to evidence entered during an administrative continuance. Opposing parties shall be afforded reasonable opportunity to respond.

3. Reopened Public Hearing

a. Prior to report

Upon notice to the parties and other interested persons, the examiner may reopen a public hearing prior to issuance of a decision or recommendation to:

- (1) Permit additional consideration of issues inadequately addressed at the public hearing;
- (2) Receive responsive comment to proposed findings or a proposed final report.

b. Subsequent to report

Prior to council action on an appeal from a recommendation by the examiner, the examiner may reopen a hearing in order to address issues raised by an appeal when the examiner believes that the appeal may be meritorious, and the interests of the parties and public would be best served by corrective action by the examiner; or

c. Upon remand

A hearing may be reopened by the examiner to address an issue remanded by the council or court. If the examiner reopens the hearing to allow oral testimony, parties and interested persons shall be provided reasonable notice (generally not less than 10 days) of the date, time and place of the reopened hearing. If the hearing is administratively reopened, parties and interested persons shall be provided at least seven days to submit written materials. The examiner's notice of reopened hearing shall clearly state the issue(s) to be addressed in the reopened hearing.

d. Hearing reopened after one year or longer

If a hearing is reopened for any purpose more than one year following its close, and the hearing was previously conducted pursuant to public notice, the presently effective requirements for provision of public notice for a hearing of the type involved shall be met in accordance with Rule III.C.2.b, in addition to notice provided by the examiner by first class mail to existing parties and interested persons.

F. Procedural and Other Defects

1. Inadequate Legal Notice

Lack of required legal notice of the proceeding may be raised by any person at any time before the hearing is closed. To the extent possible consistent with due process, the effects of deficient notice shall be cured by providing adversely affected persons, through continuances and other procedural mechanisms, reasonable opportunity to effectively participate in the hearing. Unless otherwise required by law, the receipt of actual timely notice by a person of a proceeding shall generally be considered as having cured a deficiency in legal notice to that person. If other available corrective actions are not deemed adequate by the examiner, the examiner shall adjourn the hearing and order new notice to be issued. The examiner may waive the time limits of KCC 20.24 to effect a cure to deficient notice.

2. Dismissal of Appeals

An appeal, or portions thereof, shall be dismissed when:

- a. The examiner determines the appeal to be frivolous or without merit on its face; or,
- b. The decision or action being appealed is withdrawn.

3. Default

An order of default may be entered against any party who fails to appear at the public hearing. Failure of an appellant to present any evidence or argument in support of the appeal, either in person, through a representative or in writing prior to or at the time set for the hearing, may be cause for dismissal of the

appeal. Prior to entering an order of dismissal based upon default, the examiner shall ascertain whether the appellant has received legal notice of the hearing and if inclement weather or other conditions hazardous to the general public precluded attendance.

4. Remand

The examiner may remand any matter to an applicant or the responsible county agency for additional information, analysis, review or modification of the application or petition.

G. Reconsideration

Any decision or recommendation by the examiner may be reconsidered upon timely request, or upon the examiner's own motion, as a necessary adjunct of the original jurisdiction. A request for reconsideration is not timely if filed subsequent to the expiration of the period for filing a notice of appeal or petition for review of the examiner's recommendation or decision.

A request for reconsideration shall not be a prerequisite to review or appeal of a recommendation or decision by the examiner, and the filing of a request for reconsideration shall not stay the time limit for taking an appeal of the examiner's recommendation or decision unless an order to that effect is entered by the examiner.

XII. DECORUM; RECORDING; AND SAFETY

- A. All persons in attendance shall conduct themselves with reasonable decorum and courtesy consistent with quasi-judicial proceedings. The hearing examiner may recess a hearing at any time that a violation occurs. In that event, the examiner shall reconvene the hearing pursuant to oral notice given at the time of recessing, or pursuant to subsequent written notice to the parties and interested persons, under such conditions as are reasonable to assure that the violation is not repeated. Such conditions can include, when necessary, the exclusion of identified persons from further participation in the hearing.
- B. Recording and photographic equipment shall be permitted, subject to such conditions as may be imposed by the hearing examiner to prevent disruption and maintain the deliberative environment of the hearing. Flash photography and high intensity lighting is prohibited.
- C. No weapons shall be permitted in the hearing room except when in the possession of a law enforcement officer. Any person who enters the hearing room carrying a weapon is required to disclose that fact. If such person is not a law enforcement officer, a secure repository for the weapon will be provided by the hearing examiner, or the person bearing the weapon will be requested to remove the weapon to a secure location outside of the hearing room.

XIII. DISQUALIFICATION

An examiner should disqualify himself/herself from a proceeding in which the examiner's impartiality might reasonably be questioned. However, the fact that an examiner has considered the same or a similar proposal in another hearing, or has made a ruling adverse to the interests of

a party in this or another hearing, or has considered and ruled upon the same or a similar issue in the same or similar context, shall not be a basis for disqualification.

A request for disqualification shall be granted whenever the examiner:

- Has a personal bias or prejudice concerning a party;
- Has served in a professional or business relationship with respect to the matter in issue, or is currently associated with a person who is or was so engaged; or
- Has directly, or through a family member or fiduciary relationship, a financial or personal interest in the outcome of the matter or issue.

In the application of this rule the examiner will be guided by the provisions and interpretations of Canon 3 of the Code of Judicial Conduct.