

CHAPTER III
RULES OF PROCEDURE FOR NOTICE OF CIVIL VIOLATION

Application of these Rules

This Chapter applies to open record appeal hearings in response to a notice of civil violation.

SECTION 3.1: PURPOSE

The purpose of this Chapter is to provide all parties to an appeal hearing with a clear description of the order of procedure. The following rules are intended to provide all parties with the ability to participate in an appeal hearing in a manner that will facilitate an expeditious, just and fair result.

SECTION 3.2: DEFINITIONS

“Appellant” means a person who is accused of being responsible for the violation. The appellant may be any person who has titled ownership of the property or structure which is subject to the regulation, an occupant in control of the property or structure which is subject to the regulation, a developer, builder, or business operator or owner who is developing, building, or operating a business on the property or in a structure which is subject to the regulation and/or any person who created the violation or any person who has control over the property and allows the violation to continue.

“BMC” means Bremerton Municipal Code

“City” means the City of Bremerton, Washington

“Clerk of the Hearing Examiner” means a person designated by the City of Bremerton Department of Community Development to assist the Hearing Examiner in his/her duties.

“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 Examiner” or “Examiner” means the Hearing Examiner or the Hearing Examiner Pro Tem of the City of Bremerton.

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

“Order” means a written determination of the Hearing Examiner, which directs a party to the proceedings to act or to refrain from acting. *See 1.04.080(d).*¹

“Record” means the oral testimony and written exhibits submitted at the open record appeal hearing. The audio recording of the proceeding shall be included as part of the record. At the discretion and order of the Hearing Examiner, the record may be supplemented after the closing of testimony.

SECTION 3.3: JURISDICTION

The Hearing Examiner has jurisdiction to hear and decide appeals of notice of civil violations issue orders and assess monetary penalties. *See BMC 1.04.080, .090, 2.13.070.*

SECTION 3.4: EX PARTE COMMUNICATION

- 3.4.1 No person, nor his or her agent, employee, or representative, who is interested in a particular petition or application currently pending before the Examiner shall communicate ex parte, directly or indirectly, with the Hearing Examiner concerning the merits of that or a factually related petition or application. This rule shall not prohibit ex parte communications concerning procedural matters. All allowed ex parte procedural communications shall be directed to the Clerk of the Hearing Examiner.
- 3.4.2 The Examiner shall not communicate ex parte directly or indirectly with any interested person, nor his or her agent, employee or representative, with regard to the merits of a petition or application.
- 3.4.3 If a prohibited ex parte communication is made to or by the Examiner, such communication shall be publicly disclosed, and proper discretion shall be exercised by the Examiner on whether to disqualify himself or herself as Examiner for that particular hearing.

SECTION 3.5: NATURE OF PROCEEDINGS

3.5.1 Expeditious Proceedings

It is the policy of the Office of the Hearing Examiner that, to the extent practicable and consistent with requirements of law, hearings 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.

3.5.2 Format

The format for a hearing will be informal, designed to make the evidence and facts relevant to a particular proceeding become available to the Hearing Examiner and easily ascertainable by a reviewing body. The format will allow development of a record by parties.

3.5.3 Site Visit

When necessary, the Hearing Examiner may inspect the site prior or subsequent to the hearing. 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.

3.5.4 Record of Hearing

- a. Record. Hearings shall be electronically recorded in an audio format and such recordings shall be part of the record.
- b. Copies of any written materials in the record may be obtained by any interested person who may be responsible for paying the cost of reproducing such material.

SECTION 3.6: RIGHTS AND RESPONSIBILITIES OF ALL INVOLVED PARTIES

3.6.1 Rights of City

The City staff shall have the right to present evidence and testimony, cross-examine witnesses, make recommendations to the Hearing Examiner, and exercise all other rights essential to a fair appeal hearing. The Hearing Examiner may limit testimony to material that is relevant and pertinent to the alleged violation(s).

3.6.2 Rights of Appellant

The Appellant shall have the right to receive notice of the hearing, present evidence and testimony, cross-examine witnesses, and exercise all other rights essential to a fair appeal hearing. The Hearing Examiner may limit testimony to material that is relevant and pertinent to the alleged violations.

3.6.3 Responsibilities of City Staff

The City staff shall prepare a staff file as described in Rule 3.8.5, provide notice of the appeal hearing, provide the Hearing Examiner with documentation relevant to the case, and treat all who participate in the proceeding courteously.

3.6.4 Responsibilities of Appellant

The Appellant shall provide the Hearing Examiner with material that supports his/her case, prepare for questions from the Hearing Examiner, and treat all who participate in the proceedings courteously.

3.6.5 Responsibilities of all participants, witness and observers

All participants, witness and observers shall conduct themselves with civility and deal courteously with all persons involved in the proceedings.

3.6.6 Failure to Appear

Absent a voluntary agreement (See Section 3.8.8), parties who are named in the notice of civil violation must appear at the open record appeal hearing. If adequate notice has been given, and a named party fails to appear at a scheduled hearing, the Hearing Examiner may issue an order of default, assess an appropriate penalty, and order abatement of the violation at the expense of the person responsible for the violation. *See BMC 1.04.080(f).*

SECTION 3.7: PRESIDING OFFICIALS

3.7.1 Presiding Officials

- a. Open record appeal hearings shall be presided over by the Hearing Examiner.
- b. The Hearing Examiner shall have all of the authority and duties as granted him/her in state statutes, BMC and other City ordinances. Included in the duties of the Hearing Examiner are the following: to conduct fair and impartial hearings; to take all necessary action to avoid delay in the disposition of proceedings; and to maintain order. He/she shall have all powers necessary to that end, including the following:
 1. To administer oaths and affirmations;
 2. To issue subpoenas;
 3. To rule upon offers of proof and receive evidence;
 4. To regulate the course of the hearings and the conduct of the parties and their agents;
 5. To question any person presenting testimony at the hearing;
 6. To hold conferences for settlement or simplification of the issues, or any other proper purpose;
 7. To require briefs on legal issues;
 8. To consider and rule upon all procedural and other motions appropriate to the proceedings; and
 9. To make decisions, issue orders, and assess monetary penalties.
- c. Interference. 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.

3.7.2 Presence of Legal Counsel at Open Record Appeal Hearings or Meetings

- a. Although representation by legal counsel is not required at the open record appeal hearings, all parties participating in the hearings may be represented at the hearings by legal counsel of their choice.
- b. At the request of any department and in the discretion of the Hearing Examiner, a representative of the City of Bremerton Attorney's Office may be present at the open record appeal hearings.
- c. To the extent practicable, any legal memoranda upon which a party of record will be relying shall be submitted to the Hearing Examiner's office (care of the Clerk of the Hearing Examiner) at least one week in advance of the scheduled hearing date.

SECTION 3.8: CONDUCT OF HEARINGS

3.8.1 Notice Requirements of Hearings and Filings

- a. A person to whom a notice of civil violation is issued will be scheduled to appear before the Hearing Examiner not less than 10 calendar days from the date of service of the notice of violation or entrance into a voluntary correction agreement. *See BMC 1.04.080.*
- b. Affidavit of Notice. The City shall provide an affidavit or testimony attesting to the notice given of a hearing.

3.8.2 Oath or Affirmation

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

3.8.3 Content of the Record

The record of the appeal hearing conducted by the Hearing Examiner should include the testimony presented at the appeal hearing and those written materials submitted as exhibits at the appeal hearing. In addition, the record should include the following:

- a. A decision or order containing the findings and conclusions of the Hearing Examiner;
- b. Recordings of the appeal hearing made on electronic equipment; and
- c. Other related materials.

3.8.4 Development of Record at the Hearing

a. City

The City shall present its case first by describing the nature of the alleged violation and the documents that it proposes to submit into the appeal record. The City has the burden of proof, which requires it to show by a preponderance of the evidence that the violation occurred. Once the City has described the violation, it should recommend corrective action reasonably calculated to correct the violation. The recommended corrective action should include all actions that would be necessary to remedy the alleged violation, and a time schedule within which the actions must be complete. Monetary penalties may be recommended at the close of the City's presentation. *See BMC 1.04.090*. Testimony will only be allowed from members of the City staff or individuals that the City calls as witnesses. The City may submit proposed Findings of Fact and Conclusions to support a decision.

b. Appellant

After the City presents its case, the Appellant will have an opportunity to respond. The Appellant's response should consist of information that is related to the alleged violation and addresses the City's contentions. The Appellant may testify and/or provide exhibits that support his or her position. The Appellant may submit evidence that describes any corrective action that he or she has taken to improve the condition of the subject property. Testimony will only be accepted from the Appellant or individuals that the Appellant has called as witnesses. The appellant may submit proposed Findings of Facts and Conclusions to support a decision.

3.8.5 Content and Form of Staff File

The staff file for an appeal hearing should include at least the following

- a. Exhibit list containing names of appellants, file number, location of violation including address and tax parcel number, and a list of exhibits;
- b. Notice of Violation containing description of violation, recommended corrective action and hearing notice;
- c. Return of Service Affidavit; and
- d. Property profile.

3.8.6 Continuance of Appeal Hearing

a. Hearing Examiner

If, in the opinion of the Hearing Examiner, more information is necessary in order to make a decision or issue an order, the appeal hearing may be continued to a date certain with notice to the Appellant and City.

- b. At the request of a Party
Any party of record may request continuance of an appeal hearing. The request, if made prior to the appeal hearing, must be in writing 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.

3.8.7 Evidence

- a. The open record appeal hearing will not be conducted in strict adherence to the Rules of Evidence. However, in the spirit of providing an expeditious appeal process, all evidence that the parties to the proceeding submit should be related to the alleged violation(s).
- b. Copies. Copies should be provided whenever possible. If copies are not provided at the open record appeal hearing, the appellant may be charged for the cost of copying exhibits that are admitted during the hearing. Any documents submitted at the appeal hearing shall become part of the permanent record and shall not be returned to the party. Copies of documents may be submitted in lieu of originals in accordance with Rule 1.7.8(c).
- c. Any person submitting photographs in support of his or her case, must be prepared to identify (1) the subject of the photograph, (2) the date the photograph was taken, and (3) the individual who took the photograph.
- d. 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.

3.8.8 Voluntary Correction Agreement

At any time prior to the close of the appeal hearing, the Appellant may voluntarily offer to improve the condition of the subject property and correct the alleged violation. Such offers of settlement, which are presented during the appeal hearing shall be considered by the Hearing Examiner prior to acceptance. If the offer has been presented and approved by the Hearing Examiner, and if there is no opposition, the offer will be deemed accepted. *See BMC 1.04.030.*

SECTION 3.9: DECISIONS OF THE HEARING EXAMINER

3.9.1 Written Decisions

The Hearing Examiner shall issue a written decision or order within 10 business days from the close of the open record appeal hearing. Copies of the Hearing Examiner's decision shall be made available to the City and the Appellant.

3.9.2 Content of Decision or Order

The decision should include at least the following:

- a. Findings of Fact. The findings shall be based exclusively on the evidence presented in the hearing and those matters officially noticed.
- b. Conclusions. The conclusions shall include a resolution of the issue(s) based upon the findings. The conclusions may reference legal criteria, if applicable.
- c. The appropriate rule, order or relief. In the event that the Hearing Examiner determines that a violation occurred or is occurring, the Hearing Examiner shall issue an order to the person responsible for the violation, which contains the following information:
 - i. The decision regarding the alleged violation including findings of fact and conclusion based thereon in support of the decision;
 - ii. The required corrective action;
 - iii. The date and time by which the correction must be completed;
 - iv. The monetary penalties and costs of enforcement, if any, assessed pursuant to BMC 1.04.090 and costs of abatement, if any, assessed pursuant to BMC 1.04.110; and
 - v. The date and time after which the City may proceed with abatement of the unlawful condition if the required correction is not completed.

SECTION 3.10: APPEALS OF DECISIONS

- 3.10.1 The decision or order of the Hearing Examiner may be appealed to Superior Court in accordance with the provisions set forth in the Revised Code of Washington, Chapter 36.70C, and BMC 1.04.080(g).

SECTION 3.11: CONFLICTS

3.11.1 In the event of a conflict between these rules and the provisions of the BMC, the provisions of the BMC shall prevail.