

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

CHAPTER I: HEARINGS ON PERMIT APPLICATIONS

Application of these Rules

This Chapter applies to open record hearings on land use applications. *See Chapter 2.13 BMC.*¹

SECTION 1.1: DEFINITIONS

"Appellant" means a person, organization, association or other similar group who files a complete and timely appeal of a decision or other appealable action.

"Applicant" means a person who is the owner of the subject property or the authorized representative of the owner of the subject property, and who has applied for a land use permit.

"BMC" means Bremerton Municipal Code.

"City" means the City of Bremerton, Washington.

"City Council" means the Bremerton City Council.

"Clerk of the City of Bremerton" means the Director of the City of Bremerton Department of Administrative Services.

"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.

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

"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.

¹ The indicator "See" is used throughout these rules to refer the reader to an applicable section of the Bremerton Municipal Code, which may provide additional information or requirements.

"Hearing Examiner" or "Examiner" means the Administrative Hearing Examiner or the Administrative Hearing Examiner Pro Tem of the City of Bremerton.

"Interested Person" means any individual, partnership, corporation, association, or public or private organization of any character that may be affected by proceedings before the Hearing Examiner and shall include any party in a contested case.

"Motion" means a written request made to the Hearing Examiner, for an order or other ruling.

"Notice of Decision" means the written document of the Hearing Examiner that communicates a decision on an action before the Hearing Examiner.

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

"Party of record" means:

- a. the applicant;
- b. the property tax payer as identified by the records available from the Kitsap County assessor's office;
- c. persons submitting written comment about an action or proposed action before the Examiner, excluding persons who have only signed petitions or mechanically produced form letters; and
- d. persons who have testified at the open record hearing on the application and signed an official register requesting notice of further action;

"Record" means the oral testimony and written exhibits submitted at the hearing. The audio or video 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 1.2: JURISDICTION

The Hearing Examiner's jurisdiction is limited to those issues where ordinance or other appropriate authority grants the Hearing Examiner the authority to make a decision, recommendation, or issue an order. *See BMC 2.13.070.*

SECTION 1.3: EX PARTE COMMUNICATION

- 1.3.1 No person, nor his or her agent, employee, or representative, who is interested in a particular petition, application, or appeal 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, application, or appeal. 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.

- 1.3.2 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, application, or appeal.
- 1.3.3 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 1.4: NATURE OF PROCEEDINGS

1.4.1 Expeditious Proceedings

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

Unless otherwise scheduled, Hearings will be scheduled at City Hall on the third Tuesday of each month. Each case shall be noted to commence at a particular time. The Hearing Examiner shall have discretion in setting the order in which cases on the agenda will be heard.

1.4.3 Format

The format for a hearing will be informal, but designed allow evidence and facts relevant to a particular proceeding to be part of the official record and become available to the Hearing Examiner. The format will allow development of a record by parties.

1.4.4 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.

1.4.5 Record of Hearing

- a. Record. Hearings shall be electronically recorded in an audio or format and such recordings shall be part of the record. No minutes of the hearing will be kept.
- 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.

SECTION 1.5: RIGHTS AND RESPONSIBILITIES OF ALL INVOLVED PARTIES

1.5.1 Rights of City

The City staff shall have the right to present evidence and testimony, object, 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, cross-examination, presentation of evidence and testimony, objection, motion, argument, and all other rights essential to a fair hearing. Further, the applicant shall have the right to timely access to the City's staff report.

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 the Hearing Examiner shall control the amount and style of cross-examination.

1.5.3 Rights of Parties of Record

Every party of interest shall have the right to present evidence and testimony at a hearing for review of a permit request. The right of parties of interest to cross-examine, object, 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

The City Staff shall provide a staff report consistent with the provisions of Rule 1.7.6; provide notice of hearings; present materials at the hearings; and provide the Hearing Examiner with documentation relevant to the case. Staff reports should be available to the public at least seven calendar days before the hearing.

1.5.5 Responsibilities of Applicant

Whenever possible the applicant shall provide the Hearing Examiner with material that supports his/her case prior to the hearing; prepare for questions from the Hearing Examiner; and treat all who participate in these proceedings courteously.

An appellant shall be required to provide a specific and understandable written statement of the issues on appeal. Such statement shall be submitted prior to the hearing.

1.5.6 Responsibilities of All Involved 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 will result in removal from the hearing.

SECTION 1.6: PRESIDING OFFICIALS

1.6.1 Presiding Officials

- a. 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; to maintain order; and to issue decisions in the form of recommendations or final decisions. 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 prehearing 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 and file recommendations or decisions.
- 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.

1.6.2 Presence of Legal Counsel at Hearings or Meetings

- a. Although representation by legal counsel is not required at the 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 hearings or meetings to advise on matters of law and procedure.

- 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 (are of the Clerk of the Hearing Examiner) at least one week in advance of the scheduled hearing date.

SECTION 1.7: CONDUCT OF HEARINGS

1.7.1 Notice Requirements of Hearings and Filings

- a. All notice and time requirements and methods of notification shall be consistent with the provisions as set forth in the BMC.
- b. Affidavit of Notice: An affidavit attesting to the notice given of a hearing (including dates and places of publication and list of addressees) shall be part of each case record.

1.7.2 Prehearing Conference

- a. The Hearing Examiner may, on his/her own order, or at the request of a party, hold a conference prior to the hearing to consider:
 - 1. Identification, clarification, and simplification of the issues;
 - 2. Disclosure of witnesses to be called and exhibits to be presented;
 - 3. Motions; or
 - 4. Other matters deemed by the Hearing Examiner to be appropriate for the orderly and expeditious disposition of the proceedings.
- b. Prehearing conferences may be held by telephone conference call.
- c. The purpose of a pre-hearing conference is to identify the issues and set schedules. The Hearing Examiner shall have discretion to determine who shall participate in a pre-hearing conference.
- d. Following the pre-hearing conference, the Hearing Examiner may issue an order reciting the actions taken or ruling on motions made at the conference.

1.7.3 Oath or Affirmation

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

1.7.4 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 or petition;

- 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 and any written material submitted pursuant to Hearing Examiner order;
- d. A statement of all matters officially noticed;
- e. A decision or a recommended decision containing the findings and conclusions of the Hearing Examiner;
- f. Recordings made on electronic equipment; and
- g. An environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA) (if applicable).

1.7.5 Development of Record at the Hearing

A hearing usually will include, but not be limited to, the following elements: a brief introductory statement of the hearing process by the Hearing Examiner; a report by the departmental staff that shall include introduction of the staff report and supporting documents, reference to visual aids and a summary of the recommendation of the Department; testimony by the applicant or petitioner and cross examination of these witnesses; testimony in support; testimony of opposing parties; opportunity for cross-examination and rebuttal; and opportunity for questions by the Hearing Examiner.

1.7.6 Content and Form of Staff Reports

The staff report on a land use application should 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 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 of Bremerton zoning code regulations.
- e. A technical data summary of the Comprehensive Plan designation and zoning designation of the subject property; the current development of the subject property and the adjoining properties; topographical information; geological and soils information; information on the vegetation on the property; and any other relevant scientific, environmental or engineering information.
- f. The current access to the subject property and the proposed access to the subject property.

- g. An in-depth analysis of the proposed project. This analysis may include, 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 possible.
- i. A summary of any other requested land use permits in the area.
- j. A description of the compatibility and impact of the proposal on the existing development and the probable character of the proposal.
- k. A summary of the reports or recommendations of any other agencies consulted.
- l. Appropriate maps of the subject property. If photographs of the site are available the applicant is encouraged to provide color reproductions that shall be part of the staff report.
- m. The result of the determination pursuant to the State Environmental Policy Act.
- n. Staff's conclusions and recommendations.

The staff report shall be distributed to the Hearing Examiner, the applicant and the public.

1.7.7 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 he/she 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 BMC.

- 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 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 all requests for continuance.

1.7.8 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 of Bremerton.
- 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. Photographs. 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.
- e. 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.
- f. Additional evidence may only be submitted upon a Request for Reconsideration based on the discovery of new evidence, which could not reasonably be 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 OR PETITION

1.8.1 Withdrawal Prior to Service of Official Notice

If a withdrawal request is made before the official notice of the hearing is given, the applicant or petitioner shall notify the City of the withdrawal request and the withdrawal shall be automatically permitted.

1.8.2 Withdrawal Made Any Other Time

If a withdrawal request is made at any time other than that mentioned in Rule 1.8.1, the Hearing Examiner shall have discretion in allowing or disallowing the request.

SECTION 1.9: RECOMMENDATIONS / DECISIONS See BMC 2.13.110

1.9.1 Written Recommendations

For permits that require City Council approval, a written report of findings, conclusions and recommendations shall be forwarded to the City Council and the parties of record. The Hearing Examiner submittal shall be within the time allowed by law or agreed to by the Applicant and the City of Bremerton. The findings, conclusions and recommendations shall indicate how the recommendation carries out the goals, policies, plans and requirements of the BMC and other policies and objectives of the City.

1.9.2 Written Decisions

For permits on which the Hearing Examiner has final approval authority, a written report of findings, conclusions and decision shall be made and 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 of Bremerton. The findings, conclusions and decision shall indicate how the decision carries out the goals, policies, plans and requirements of the BMC and other policies and objectives of the City.

1.9.3 Content of Recommendation/Decision

A recommendation/decision shall include a statement of:

- a. The nature and background of the proceeding.
- b. Findings of Fact. The findings shall be based exclusively on the evidence presented in the hearing and those matters officially noticed.
- c. Conclusions shall include a resolution of the issue(s) based upon the findings. The conclusions may reference legal criteria, if applicable.

- d. Recommendation or Decision. The recommendation/decision shall be based upon a consideration of the whole record.

1.9.4 Procedure for Reconsideration and Reopening Hearing

a. Reopening of Hearings

1. At any time prior to the filing of the final decision or recommendation, the Hearing Examiner may reopen the proceeding for the reception of further evidence. All parties of record who participate at the hearing shall be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.
2. If within five working days after the Hearing any party of record petitions the Hearing Examiner for a reopening of the hearing, the Hearing Examiner shall have discretion to reopen the hearing to consider new testimony or new evidence that was unavailable at the time of the hearing.

b. Reconsideration.

1. City administrative staff or any party of record may file a written request for reconsideration with the Hearing Examiner within five working days of the date of the Hearing Examiner's recommendation or decision. The request shall explicitly set forth alleged errors of law or fact, or the discovery of new evidence which was not available at the hearing. The request may also include direction to a specific issue that was inadvertently omitted from the Hearing Examiner's recommendation or decision.
2. The Hearing Examiner shall respond to the request for reconsideration by either denying the request or approving the request by modifying or amending the recommendation / decision based on the established record or setting the matter for an additional hearing.
3. If an additional hearing is required the notice of said hearing shall be mailed to all parties of record not less than five working days from the date of the Order of the Hearing Examiner.

SECTION 1.10: APPEALS OF DECISIONS *See BMC 2.13.130*

When all reconsideration periods have expired and the Hearing Examiner has issued a final decision, the decision may be appealed to the City Council or to Superior Court as specified in the BMC. All appeals must clearly state the alleged errors of fact or law and include a specific request for relief. The City Council will receive no or limited new evidence and will only review the record developed at the Hearing Examiner Hearing.

SECTION 1.11: CONFLICTS

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

CHAPTER II:
RULES OF APPEAL
OF ADMINISTRATIVE DECISIONS

Application of these Rules

This chapter applies to appeals of administrative decisions that approve, deny, or condition a land use permit application. *See Chapter 2.13 BMC.*

SECTION 2.1: DEFINITIONS

The definitions for this chapter are set forth in Chapter 1, Section of the Rules of Procedure and are incorporated herein.

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 of Bremerton ordinance(s) under which the appeal is filed.

2.2.2 **Timeliness**

To be considered timely filed, an appeal must be received no later than 5 p.m. on the last day of the appeal period. The appeal must be filed with the Clerk of the City of Bremerton.

2.2.3 **Fee**

Any filing fee as required by the City of Bremerton 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. Signature, address, and phone number of the appellant, and name and address of 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 (1) 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 his discretion, waive or modify these page limits at the request of either of the parties in order to accommodate complex legal and factual issues.

Briefs must be limited to the specific issues set forth in the Appellant's statement of appeal.

2.2.6 Motions

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 by the parties.

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 CONFERENCE

- 2.4.1 The Hearing Examiner may, on his/her own order, or at the request of a party having standing, hold a conference prior to the hearing to structure the scope of the hearing. The Hearing Examiner may use the conference for:
 - a. Identification, clarification, and simplification of the issues;
 - b. Argument of motions based on law;

- c. Other matters deemed by the Hearing Examiner to be appropriate for the orderly and expeditious disposition of the proceedings.
- 2.4.2 Prehearing conferences may be held by telephone conference call.
- 2.4.3 The Hearing Examiner shall give reasonable notice to parties of any prehearing conference. Notice may be written or oral.
- 2.4.4 All parties of record have the right to be represented at any prehearing conference. Representation is not required.
- 2.4.5 Following the prehearing conference, the Hearing Examiner may issue an order reciting the actions taken or ruling on motions made at the conference that shall be controlling on all participants.
- 2.4.6 At the hearing the Hearing Examiner shall develop for the record the time, purpose and result of the conference. If any orders have been issued they will be part of the record.
- 2.4.7 Prehearing orders may not be appealed until the Hearing Examiner issues an appeal decision.

SECTION 2.5: WITHDRAWAL

- 2.5.1 An appeal may be withdrawn only by the appellant.
- 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

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's office 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 applicant and appellant should include:

- a. The time, place, and nature of the hearing;
- b. The legal authority and jurisdiction for the hearing;
- c. The file number, address, or other identifying information for the underlying decision or action being appealed;
- d. A brief statement as to the issue(s) to be considered;
- e. Reference to the applicable code section(s);
- f. The name and telephone number of the Department official responsible for the appeal.

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 applicable ordinances conflict, minimum notice shall be 10 days.

2.7.3 Responsibility

The Clerk of the Hearing Examiner shall be responsible for serving notice of hearing for appeals.

2.7.4 Record of Notice

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

SECTION 2.8: PARTIES' RIGHTS AND RESPONSIBILITIES

- 2.8.1 Although Appellants and Applicants 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.

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: HEARING FORMAT

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 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. Examiner's introductory statement;
- b. Background presentation by Department;
- c. Appellant's argument;
- d. Department's presentation;
- e. Applicant's presentation;
- f. Rebuttal;
- g. Closing argument of parties.

2.10.3 Notwithstanding the provisions of the City of Bremerton Code, the order of hearing may be modified or a different order established as the 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 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: HEARING EXAMINER'S DECISION

2.11.1 A decision of the Hearing Examiner on appeal 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 Examiner finds relevant, credible, and requisite to the decision, based on the record of proceedings.
- c. **Conclusions**. Legal and factual conclusions based upon specific provisions of law and the findings of fact.

- d. Decision. The Hearing Examiner's decision as to outcome of the appeal (affirm, modify, reverse) based upon a consideration of the whole record.

SECTION 2.12: RECORD

2.12.1 The record of an appeal shall include:

- a. The application or petition;
- 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;
- d. A statement of all matters officially noticed;
- e. A decision or a recommended decision containing the findings and conclusions of the Hearing Examiner;
- f. Recordings made on electronic equipment; and
- g. An environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA) (if applicable).

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

SECTION 2.13: RECONSIDERATION *See BMC 2.13.120*

2.13.1 Reconsideration of the appeal decision may be granted by the Hearing Examiner on a showing of one or more of the following:

- a. Irregularity in the proceedings by which the moving party was prevented from having a fair hearing;
- b. Newly discovered evidence of a material nature that could not, with reasonable diligence, have been produced at the hearing;
- c. Clear mistake as to a material fact.

2.13.2 Each party is limited to one (1) motion for reconsideration, even when the original decision is subsequently reversed or modified.

2.13.3 Motions for reconsideration must be filed within five working days of the date of the Hearing Examiner's decision on the appeal.

2.13.4 No party may file a response to a motion for reconsideration except at the request of the Hearing Examiner.

2.13.5 Reconsideration will not be granted to review pre-hearing orders.

SECTION 2.14. CLARIFICATION

2.14.1 Any party of record may request at any time clarification of the appeal decision upon notice to the other party.

SECTION 2.15. CONFLICTS

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