INTRODUCTION

Purpose of Rules of Procedure - An independent Hearing Examiner conducts hearings to apply general policies and regulations adopted by the City Council to specific proposals or situations. These rules are established to make the hearings fair and efficient.

Type of Hearings - An examiner holds three basic types of hearings: (1) Pre-decision hearings, (2) Appeal hearings, and (3) Code Enforcement hearings.

(1) Pre-decision Hearings - held before a decision has been made on a proposal in order to gather information and create a record upon which a decision can be based. In a pre-decision hearing, the City staff makes a presentation and the applicant and public are invited to testify. Depending on the type of proceeding, after the hearing the examiner will either make a decision or make a recommendation to the City Council.

(2) Appeal Hearings - held after the City staff has made a decision on a request; designed to allow the applicant or others with an interest to challenge the decision. In an appeal hearing, the City, the appellant, and the applicant (if different from the appellant) are identified as parties. Such hearings are open to the public, but participation is generally limited to witnesses called by the parties. The examiner's decision on an appeal is the final City action on the appeal.

(3) Code Enforcement Hearings - held when the City has issued a notice alleging that a named party has violated a City regulation or the terms and conditions of a permit or approval issued by the City. Testimony is limited to witnesses called by the parties. The City has the burden of proof. The examiner's decision is the final City action.

Procedure. The intent is to insure that every hearing provides participants a fair opportunity to be heard. In all hearings the oral testimony is taken under oath or affirmation. The proceedings are voice recorded so that a written transcript can be prepared, if necessary.

Basis for Decisions - The examiner is concerned not with the popularity of a matter presented but whether it meets the requirements of the applicable ordinance. The examiner's decision or recommendation must be based on the record of the proceedings before the examiner.

Jurisdiction - Most matters the examiner hears are described in Bellevue City Code Chapter 20.35 (Land Use Decisions), Chapter 1.18 (Civil Violations), or Chapter 22.02 (Environmental Procedure). Other City Codes or ordinances may provide for hearings to be conducted by the examiner. These Code chapters and ordinances also set out procedures for appeals from determinations of the examiner. An outline of these appeal procedures appears as the final section of these rules.

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Section 1

RULES THAT APPLY TO ALL HEARINGS

1.1 EXPEDITIOUS PROCEEDINGS

The examiner and all parties shall make every reasonable effort to avoid delay at each stage of every proceeding consistent with fairness to all parties.

1.2 COMPUTATION OF TIME

A. In computing any period of time prescribed or allowed by these Rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included.

B. The last day of the period so computed shall be included, terminating at 5:00 p.m., unless the last day of the period is a Saturday, Sunday or legal holiday as defined in RCW 1.16.050, in which event the period shall run until 5:00 p.m. of the next day which is not a Saturday, Sunday or legal holiday.

C. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays or legal holidays shall be excluded from the computation.

D. "Working" days as referenced in these Rules exclude weekends and legal holidays.

1.3 DEFINITIONS

A. "Council" means the Bellevue City Council.

B. "Examiner" means the Bellevue Hearing Examiner.

C. "Interested Person" means any individual, partnership, corporation, association, or public or private organization of any character significantly affected by a proceeding before the examiner or identified by the ordinance or Code under which the proceeding is brought as having a right to participate.

D. "Party" means:

1. Pre-decision hearing - any interested person who has participated in the proceeding, either orally or in writing.

2. Appeal hearing - the appellant(s), the applicant(s) (if different from the appellant(s)), the applicable City department, and any intervenors allowed to join as parties.

1.4 POWERS AND DUTIES OF THE HEARING EXAMINER

A. Hearing Examiner Qualifications: Hearings shall be presided over by a duly qualified Hearing Examiner or Hearing Examiner Pro Tempore appointed by the City Manager.

B. Hearing Examiner Duties: The examiner shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order. The examiner shall have all powers necessary to that end, including the following:

1. To administer oaths and affirmations.

2. To issue subpoenas to compel witnesses to appear at the hearing.

3. To rule upon offers of proof and to admit evidence.

4. To regulate the course of the hearings and the conduct of the participants.

5. To hold prehearing or other conferences.

6. To consider and rule upon procedural and other motions appropriate to the proceedings.

7. To make and file orders, recommendations and decisions.

C. Hearing Examiner Independence:

In the performance of these duties, the examiner shall not be responsible to, or subject to the supervision or direction of, any elected official or any officer, employee or agent of any municipal department.

D. Disqualification:

1. The examiner on his or her own initiative may enter an order of disqualification in the event of personal bias or prejudice, or to preserve the appearance of fairness.

2. A party may file an affidavit (a statement in writing and under oath) stating facts supporting the belief that such party cannot have a fair and impartial hearing by reason of the personal bias, prejudice, or appearance of unfairness of the examiner.

   The affidavit shall be filed not less than ten (10) days before the hearing unless good cause is shown, and in any case before the examiner makes any discretionary ruling; provided an affidavit seeking disqualification on appearance of fairness grounds may be filed at any time, but must be filed promptly after the basis for disqualification is known or should have been known to the party seeking such disqualification.

   The examiner shall rule on the affidavit prior to making any other ruling and prior to proceeding with the hearing.

1.5 EX PARTE COMMUNICATION

A. For purposes of this rule, "ex parte communication" means a written or oral communication with the examiner outside of a public hearing and not included in the public record.

B. Pursuant to RCW 42.36, no interested person (nor his/her agent, employee or representative) shall communicate ex parte directly or indirectly with the examiner concerning the merits or facts of any matter being heard before the examiner, or any factually related matter. This rule shall

not prohibit ex parte communications about schedules and other procedural topics.

C. The examiner shall not communicate ex parte directly or indirectly with any interested person (nor his/her agent, employee or representative) in such matters except about procedural topics as identified above.

D. If a substantial, prohibited ex parte communication is made to or by the examiner, such communication shall be publicly disclosed at the next following and each succeeding public hearing regarding the subject petition or application or, if there is no further such hearing, disclosure shall be made in writing to all parties of record within ten (10) days of the date of the improper communication.

1.6 RIGHTS OF A PARTY

Every party in any proceeding before the examiner shall have a right to the following:

A. Due notice.

B. Presentation of evidence.

C. Objection.

D. Motion.

E. Argument.

F. Rebuttal.

G. Cross-examination.

H. Any other rights essential to a fair hearing.

1.7 NOTICES OF AND TIME AND PLACE OF HEARINGS

A. Time Requirement

Notice of any hearing before the examiner shall be given not less than fourteen (14) days before the date of the hearing, unless a different notice period is mandated by law or ordinance or by these Rules.

B. Time and Place of Hearing

Unless notice is given to the contrary, pre-decision hearings before the examiner shall be conducted beginning at 7:00 p.m. in the Bellevue City Hall at 450 110th Avenue Northeast, Bellevue, Washington. Appeal hearings and Code Enforcement hearings are generally scheduled during regular working hours.

C. Affidavit or Certificate of Notice

An affidavit or certificate of written notice of a given public hearing shall be made a part of the official case record.

1.8 PREHEARING AND OTHER CONFERENCES

The examiner may, on his or her own motion, or at the request of a party, hold a conference prior to the hearing to consider:

A. The issues to be addressed and the procedures to be followed.

B. Undisputed facts to which the parties present will agree.

C. Documents or other evidence that parties present agree may be admitted.

D. Witnesses to be called and evidence to be presented at the hearing.

E. Limitations on the number of persons testifying and on the nature and length of testimony.

F. Such other matters as may aid the efficient disposition of the action.

Based upon such a conference, the examiner may enter a prehearing order.

Should an opportunity for settlement arise out of a prehearing conference, the examiner will not participate in the substantive settlement discussions. The examiner may, when appropriate, review and approve, modify or deny a proposed settlement agreement.

Prehearing conferences shall be electronically recorded and the recordings shall be a part of the official case record. At the examiner's discretion, conferences may be held after the hearing commences.

1.9 EVIDENCE

A. Burden of Proof

The City shall have the burden of proof in a Code enforcement hearing. The applicant shall have the burden of proof in a pre-decision hearing. The appellant shall have the burden of proof in an appeal hearing.

B. Admissibility

The hearing generally will not be conducted according to technical rules relating to evidence and procedure. Any evidence that is relevant, material, and reliable may be admitted if in the examiner's judgment it possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

C. Copies

Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

D. Official Notice

The examiner may take official notice of generally accepted and recognized facts and law, including but not limited to City ordinances, resolutions, court decisions, and prior Hearing Examiner decisions. The examiner may also take notice of technical or scientific facts generally accepted as such within the relevant scientific or technical community.

E. Evidence Submitted Subsequent to the Close of the Record

1. If additional evidence is submitted after the record has closed, it will be considered only upon a showing of significant relevance, materiality, reliability and good cause for the delay in its submission.

2. A party submitting additional evidence after close of the record shall send copies to all other parties, who shall have five (5) working days to file any written objection to the admission of the evidence. The examiner, in his or her

discretion, shall decide within three (3) working days after the close of the period for filing objections whether the evidence shall be admitted.

3. If the offered evidence is not admitted, it shall be clearly so marked and placed in the case file, and the parties shall be informed in writing. If the evidence is admitted, the examiner shall so notify all parties of record and set the time for filing written replies to the evidence.

4. The examiner shall decide within three (3) working days after the date set for receipt of replies whether the new evidence warrants reopening the hearing, in which case a further public hearing shall be set to consider the matter in the light of the new evidence.

5. The examiner's final decision in the matter will be due ten (10) working days after the close of the period set for replies to the new evidence or, if a further public hearing is set, ten (10) working days after the further hearing.

1.10 RECORDING

Hearings shall be electronically recorded and such recordings shall be a part of the official case record. Copies of the electronic recordings and of any written materials in the record shall be made available to the public on request, and upon payment of costs as established by City ordinance.

1.11 OATH OR AFFIRMATION

All testimony shall be taken under oath or affirmation.

1.12 CROSS-EXAMINATION

Cross-examination shall be permitted as necessary for full disclosure of the facts and as required by law.

1.13 LIMIT ON TESTIMONY

The examiner may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony, in order to expedite the proceeding and avoid continuation of the hearing. Notice shall be given as early as practical when time limitations are to be imposed. If a party is unable to present his or her arguments and

testimony within the allotted time, the record may be kept open and an opportunity may be granted to submit written materials after the close of the hearing.

1.14 MOTIONS

Any application to the examiner for an order shall be by motion which, unless made during a public hearing, shall be in writing. The motion shall state explicitly the reasons for the request, and shall state the specific relief or order sought.

Motions in advance of the hearing shall be received by the examiner and all parties of record at least five (5) working days before the date of the hearing. Written replies to such a motion shall be received by the examiner and all parties of record before the time set for the hearing.

The examiner may issue an order based on the written motion and any replies, without oral arguments, or may call for oral arguments before ruling on the motion.

1.15 CONSOLIDATION OF HEARINGS

When practical and consistent with ordinance requirements, the examiner will consolidate land use matters for hearing. Any party may bring to the attention of the examiner the need for consolidation.

1.16 SITE VIEW

The examiner may view a site before or after a hearing. Failure to view a site will not invalidate the examiner's decision.

1.17 CONTINUATION OF HEARING

The examiner may continue proceedings for good cause on his or her own motion, or the motion of a party, announcing the continuance at a public hearing and specifying the date, time and place. No further notice is required.

1.18 REOPENING OF HEARING

If the examiner determines after the hearing record has closed that there is good cause to reopen a hearing, notice in writing of the further hearing shall be given to all parties who were present at the hearing, and shall specify the date, time and place.

1.19 RECOMMENDATION OR DECISION

Except as provided in 1.18 above, the examiner shall issue a recommendation or decision within ten (10) working days of the closure of the record. Copies of the recommendation or decision shall be mailed to all parties of record, and to any person who is not a party of record but who signs the sign-up sheet and provides his or her address at the hearing requesting a copy of the recommendation or decision. A copy of the list of parties of record may be obtained from the Hearing Examiner's Office upon request.

1.20 CONTENT OF RECOMMENDATION OR DECISION

The examiner's recommendation or decision shall contain findings of fact, conclusions based thereon, and a recommendation or decision consistent with those conclusions. In addition, the examiner's recommendation or decision may include conditions necessary to mitigate any impacts of the proposal and a brief statement of appeal rights of the parties.

1.21 CLARIFICATION OF A DECISION OR RECOMMENDATION OF THE EXAMINER

A party may file a written request for clarification of the decision or recommendation. Alternatively, the examiner may issue a clarification upon his or her own motion. A clarification may not materially alter the outcome of the decision or recommendation. A request for clarification does not stop the running of the time for filing appeals, whether to the City Council or Superior Court.

The written request for clarification must be received in the Office of the Hearing Examiner and by all parties within five (5) working days after the date of issuance of the examiner's decision or recommendation. The examiner, in his or her discretion, shall determine what further action is proper, and within five (5) working days after filing of the request shall issue that determination in writing to all parties of record.

1.22 RECONSIDERATION OF A DECISION OR RECOMMENDATION OF THE EXAMINER

A. A party who believes an examiner's decision or recommendation is in error because of (1) the existence of new evidence not available at the time of the hearing, (2) a procedural error, (3) a factual error which is material to the decision, or (4) an error in a

legal ruling, may file a written request for reconsideration of the decision or recommendation.

The written request for reconsideration must be received in the Office of the Hearing Examiner and by all parties within five (5) working days after the date of issuance of the examiner's decision or recommendation.

The examiner, in his or her discretion, shall determine what further action is proper, and within five (5) working days after filing of the request shall issue that determination in writing to all parties of record.

B. The examiner may either: (1) deny the request, (2) issue a revised decision or recommendation, or (3) schedule an additional public hearing. The examiner shall summarily dismiss a request for reconsideration that is without merit on its face, or brought merely to secure a delay.

C. A request for reconsideration does not stop the running of the time for filing appeals, whether to the City Council or Superior Court.

1.23 TERMINATION OF JURISDICTION

The jurisdiction of the examiner in a matter shall terminate upon the issuance of his or her final action in that matter. The examiner's final action is the issuance of a recommendation or decision unless a request for reconsideration or clarification is timely filed. If a request for reconsideration or clarification is timely filed, the final action of the examiner is his or her determination on the reconsideration or clarification request.

Upon termination of the Hearing Examiner's jurisdiction, matters which require City Council action are under the jurisdiction of the City Council. The City Council may, however, revive the jurisdiction of the examiner and remand a matter for clarification of specific issues, or to consider facts not available at the time of the original hearing. Remand hearings shall be processed in the same manner as the original proceeding before the examiner, using the same procedures for posting, public notice and the forwarding of the examiner's recommendation to the City Council.

1.24 DISPOSITION OF CASE RECORD

The official case record and other related materials shall be forwarded to the City Clerk for storage after a matter has been finally acted upon by the City Council or by the examiner. Tape recordings of all proceedings before the examiner shall be maintained in the Office of the Hearing Examiner for the period required by law.

Case records of the examiner are public records and available for review during normal business hours.

Section 2

PRE-DECISION HEARINGS

The rules of this section apply to land use proceedings before the Hearing Examiner in which a decision by the City on an application has not yet been made.

2.1 HEARING EXAMINER JURISDICTION

The examiner shall have the authority to conduct hearings, prepare a record, enter written findings and conclusions, and issue recommendations or decisions for any matter so designated by the City Code, other City ordinance, or by the City Council.

2.2 NOTICE OF HEARINGS

Rules governing notice of hearings before the examiner are provided in the Bellevue Land Use Code and Bellevue City Code.

2.3 DEPARTMENTAL STAFF REPORT ON APPLICATION

A written report by the involved City department(s) shall be either delivered to or placed in the mail to the examiner and the applicant at least five (5) working days prior to the date of the public hearing and, at the same time, copies shall be made available to the public at the respective departments.

In the examiner's discretion, failure to timely provide the report may constitute grounds for continuing the scheduled public hearing. In so determining, the examiner shall consider the particular circumstances of the case, the possible prejudice to the persons failing to receive a copy of the report, and the justification, if any, for the failure to comply.

2.4 FORMAT OF HEARING

The format for a public hearing will be informal, but organized so that the testimony and evidence can be presented quickly and efficiently.

A public hearing shall include, but need not be limited to, the following elements:

A. A brief introductory statement by the examiner.

B. A brief report by departmental staff which shall include introduction of the official City file, reference to visual aids such as maps, and a summary of the recommendation of the lead department.

C. Testimony by the applicant.

D. Testimony from interested persons.

E. Questions by the examiner of any party, witness or interested person.

F. Closing arguments.

2.5 CONTENT OF THE RECORD

The record of a hearing conducted by the examiner shall include, but need not be limited to, the following:

A. The application.

B. The departmental staff reports.

C. All other evidence received or considered, which shall include all exhibits and other materials filed.

D. A recommendation or decision containing findings and conclusions including a statement of matters officially noticed by the examiner.

E. Electronic recordings of the proceedings.

F. An affidavit or certificate of written notice given of the hearing.

Section 3

APPEALS TO THE HEARING EXAMINER

3.1 HEARING EXAMINER JURISDICTION

The examiner shall have the authority to conduct hearings, prepare a record, enter written findings and conclusions, and issue decisions or recommendations for any appeal for which the Bellevue City Code or other ordinance designates the examiner to be the Hearing Body.

3.2 NOTICE OF HEARING

Notice of the time and place of an appeal hearing as required by the applicable ordinance or Code shall be provided directly to the parties.

3.3 FEE FOR FILING OF THE APPEAL

The appellant shall pay any filing fee that may be required by ordinance or resolution of the City.

3.4 CONTENT OF THE APPEAL

An appeal must be in writing and shall contain the following:

A. A brief statement as to how the appellant is significantly affected by or interested in the appeal.

B. A brief statement containing explicit exceptions and objections with regard to the appealed matter.

C. The requested relief such as reversal or modification.

D. The signature, mailing address, and telephone number of the appellant. Where the appellant is other than an individual, a specific agent shall be designated.

E. Any other information required by the Bellevue City Code.

3.5 CLARIFICATION OF THE APPEAL STATEMENT

If, within five (5) working days of the receipt of an appeal, the examiner determines that the appeal is vague or ambiguous or does not sufficiently set forth the exceptions and objections with regard to the

appealed matter, the examiner may require that the appellant amend the appeal.

Within ten (10) days of notice to amend, the appellant shall file a written clarification of the appeal as required by the examiner. If the appeal is not amended by 5:00 p.m. of the last day of that time period, it shall be dismissed by the examiner.

3.6 DISMISSAL OF APPEALS

The examiner shall dismiss an appeal without hearing when it is determined by the examiner to be without merit on its face, frivolous, or brought merely to secure a delay.

3.7 PARTIES TO THE APPEAL

The parties to the appeal are the applicable department director(s), the appellant(s), the proponent of the action (if different from the appellant), and any intervenors allowed to join as parties. If multiple appellants or a group of appellants file an identical appeal, the examiner may request that a representative be appointed to receive notices and copies of documents. The appointed representative will receive copies of documents and notices for the group.

3.8 INTERVENTION

An interested person may petition the examiner to intervene as a party. The petition shall be filed at least five (5) working days prior to the appeal hearing and shall set forth reasons why the petitioner should be allowed to participate. The examiner may provide opportunity for reply. The petition shall be considered at or before the beginning of the hearing and intervention shall be allowed only if the examiner so orders, and upon such terms and conditions as the examiner determines to be appropriate.

3.9 WITHDRAWAL OF THE APPEAL

The appellant may withdraw an appeal at any time prior to the close of the record or expiration of the time for submittal of any post-hearing briefs, whichever is later.

3.10 RECEIPT OF CITY FILE AND CITY RESPONSE TO THE APPEAL

The official City file concerning the action which is the subject of the appeal shall be sent to the examiner at least fourteen (14) days

before the date of the appeal hearing. The official City file shall contain all documents used to reach the determination which is the subject of the appeal.

Copies of any written response to the appellant's objections and exceptions shall be sent to the examiner and all parties to the appeal by the responding department at least fourteen (14) days prior to the appeal hearing.

3.11 FORMAT OF APPEAL HEARING

The format for an appeal hearing will be informal, yet designed in such a way that the evidence and facts relevant to the proceeding will become readily and efficiently available to the examiner. Any appeal hearing shall include, but need not be limited to, the following elements:

A. A brief introductory statement by the examiner.

B. Opening Statement.

C. Testimony by the appellant.

D Testimony by the City official whose action is appealed.

E. Testimony by the proponent of the proposal (if different from the appellant).

F. Testimony by any witnesses called by such parties.

G. Cross-examination and rebuttal witnesses.

H. Questions by the examiner.

I. Concluding remarks or summations and rebuttal thereto as necessary.

3.12 PARTICIPATION BY NON-PARTY

Hearings are open to the public, but testimony is generally not allowed from a person who is not a party unless called as a witness by a party. The examiner at his or her discretion may call or allow a non-party witness to testify upon a determination that such testimony will be relevant and not repetitive.

3.13 CONTENT OF THE RECORD

The record of an appeal hearing conducted by the examiner shall include, but need not be limited to, the following:

A. The written appeal.

B. The official City file concerning the action and any written response that is prepared by the City official whose action is appealed.

C. All evidence received or considered, which shall include all exhibits and other materials filed.

D. A decision containing findings and conclusions and a statement of matters officially noticed by the examiner.

E. Recordings made on electronic equipment.

F. An affidavit or certificate of the written notice given of the appeal hearing.

Section 4

ENFORCEMENT HEARINGS

4.1 HEARING EXAMINER JURISDICTION

The Hearing Examiner has the authority to conduct hearings which determine whether a Civil Violation has occurred, what corrective action is reasonable, and whether a monetary penalty or other sanction is imposed. The examiner's authority includes determining the amount of penalty, within limits set by the City Code. The examiner's decision is the final decision of the City. Appeals are to the Superior Court.

4.2 NOTICE OF HEARINGS

Rules governing notice of hearings before the examiner are provided in Chapter 1.18 of the Bellevue City Code.

4.3 CIVIL VIOLATIONS

Chapter 1.18 of the Bellevue City Code governs enforcement procedures for Civil Violations. A Civil Violation is any act or omission contrary to the regulations of the City, as defined in BCC 1.18.020K.

4.4 PARTIES

The parties in a Civil Violation proceeding are the City and the person to whom the Notice of Civil Violation was directed (respondent). The participation of other persons in the hearing is normally as witnesses called by a party.

4.5 STAFF REPORT

At least five (5) working days before the hearing, the City shall file a written report with the examiner summarizing its case and making a recommendation for a monetary penalty. A copy of this report shall be mailed simultaneously to the respondent.

4.6 FORMAT OF HEARINGS

The hearing shall include, but need not be limited to, the following elements:

A. The examiner's introductory statement explaining procedures;

B. The City's presentation of its case;

C. The respondent's presentation of his or her case; and

D. Closing arguments.

4.7 BURDEN OF PROOF

The City shall have the burden of proving, by a preponderance of the evidence, that a violation has occurred and that the proposed corrective action is reasonable. The examiner shall make findings and reach a conclusion as to whether a violation has occurred and what, if any, monetary penalty is appropriate.

4.8 HEARING EXAMINER DECISION

Within ten (10) working days of the date the record closes, the examiner shall issue a written decision. The decision shall assess any monetary penalty the examiner determines to be appropriate pursuant to Chapter 1.18 of the Bellevue City Code and may modify the corrective action or the correction date where permitted by the Bellevue City Code.

Section 5

APPEALS FROM THE HEARING EXAMINER DECISIONS OR RECOMMENDATIONS

5.1 FINALITY OF EXAMINER'S ACTION

A. Rezones and Applications Within Community Council Boundaries. The examiner's action on a site-specific or project specific rezone, and certain applications within the boundaries of a Community Council as provided by the Land Use Code, are recommendations to the City Council.

B. All Other Matters. On all other matters heard, the examiner's action is the City's final decision, except where an allowed appeal to the City Council is taken.

1. Appeals to the City Council are allowed as provided in the applicable ordinance or Code.

2. When an appeal to the City Council is taken, the City Council's action is the City's final decision.

5.2 APPEALS TO THE CITY COUNCIL

A. Who May Appeal. Subject to the provisions of any applicable ordinance or Code, appeals to the City Council, where allowed, may be made by any person who participated in the public hearing (orally or in writing) and by the applicant and the City.

B. Form. Appeals consist of a written statement identifying those findings or conclusions being appealed, accompanied by any fee required by ordinance or resolution.

C. Timing. Appeal statements and fees must be received by the City Clerk no later than 5:00 o'clock p.m. on the fourteenth (14) day following the date the decision or recommendation of the examiner was mailed.

D. Procedure. The City Council will hold a closed record appeal hearing in which the appellant, the applicant, and the applicable department director (or representatives of these parties) may participate. A closed record hearing is strictly limited to argument

on information contained in the record developed before the examiner. Argument may be made in writing, or orally, or both.

5.3 APPEALS OF FINAL DECISIONS

A. Land Use Applications and Enforcement Decisions. The City's final decision may be appealed to Superior Court by filing a Land Use Petition, and serving the same on all necessary parties within twenty-one (21) days of the calendar date the final decision was issued. The governing statute is RCW Chapter 36.70C.

B. Shoreline Permits. Appeals of City decisions on Shoreline Permits must be made to the State Shoreline Hearings Board within twenty-one (21) days of the date of the filing of the final decision with the Department of Ecology. The governing statute is RCW Chapter 90.58.

5.4 EXHAUSTION OF REMEDIES

A. General Rule. Except as set forth in Subparagraph B below, appeals to Superior Court are not allowed unless the appellant has exhausted available appeal remedies within the City's process. This means the City's decision on the merits of any application must become final before an appeal may be made to the Court.

B. Exception for Consolidated Hearings. Where a pre-decision hearing and an appeal hearing are combined, some matters heard by the examiner will be appealable to the City Council and others will not. (For example, decisions on appeal of Determinations of Nonsignificance on environmental issues are not appealable to the Council, but decisions on Conditional Use Permits are.) Where this is the case, the City's decision becomes final when any appeal to the Council is decided. If no appeal to the City Council is timely filed, the City's decision becomes final fourteen (14) days following the date the examiner's decision was mailed.