

Chapter 2.02 HEARING EXAMINER

2.02.010 Purpose.

The purpose of this chapter is to establish a quasi-judicial hearing system which will ensure procedural due process and appearance of fairness in regulatory hearings; provide an efficient and effective hearing process for quasi-judicial matters; and comply with state laws regarding quasi-judicial land use hearings.

(Ord. 80-115 § 2, adopted December 29, 1980; Amended Ord. 96-003, § 2, Feb. 21, 1996, Effective April 1, 1996).

2.02.020 Creation of Hearing Examiner.

Pursuant to those powers inherent in the home rule charter county, the office of Snohomish county hearing examiner, hereinafter referred to as examiner, is hereby created. The examiner shall interpret, review and implement land use regulations as provided by ordinance and may perform such other quasi-judicial functions as are delegated by ordinance. Unless the context requires otherwise, the term examiner as used herein shall include deputy examiners and examiners pro tem.

(Ord. 80-115 § 1, adopted December 29, 1980).

2.02.030 Appointment and Terms.

The council shall appoint the examiner and any deputy examiners for terms which shall initially expire one year following the date of original appointment and thereafter expire two years following the date of each reappointment. The council may also by professional service contract appoint for terms and functions deemed appropriate by the council, examiners pro tem to serve in the event of absence or inability to act of the examiner or deputy examiners.

(Ord. 80-115 § 1, adopted December 29, 1980; Amended Ord. 00-008, § 1, March 29, 2000, Eff date April 10, 2000).

2.02.040 Qualifications.

Examiners shall be appointed solely with regard to their qualifications for the duties of their office and will have such training and experience as will qualify them to conduct administrative or quasi-judicial hearings on regulatory enactments and to discharge such other functions conferred upon them. Examiners shall hold no other elective or appointive office or position in county government.

(Ord. 80-115 § 1, adopted December 29, 1980).

2.02.050 Removal.

An examiner may be removed from office for cause by the affirmative vote of the majority of the council.

(Ord. 80-115 § 1, adopted December 29, 1980).

2.02.060 Freedom from Improper Influence.

No person, including county officials, elected or appointed, shall attempt to influence an examiner in any matter pending before him, except at a public hearing duly called for such purpose, or to interfere with an examiner in the performance of his duties in any other way; PROVIDED, That this section shall not prohibit the county prosecuting attorney from rendering legal service to the examiner upon request.

(Ord. 80-115 § 1, adopted December 29, 1980).

2.02.070 Conflict of Interest.

No examiner shall conduct or participate in any hearing, decision or recommendation in which the examiner has a direct or indirect substantial financial or familial interest or concerning which the examiner has had substantial prehearing contacts with proponents or opponents. In an appeal from an examiner decision, the council shall be subject to the county ethics code, chapter 2.50 SCC.

(Ord. 80-115 § 1, adopted December 29, 1980; Amended Ord. 02-047, October 16, 2002, Eff date December 1, 2002).

2.02.080 Organization.

The office of the examiner shall be under the administrative supervision of the examiner and shall be separate and not a part of the executive branch and shall be considered a part of the county council support staff for purposes of budget consideration.

(Ord. 80-115 § 1, adopted December 29, 1980).

2.02.090 Rules.

The examiner shall have the power to adopt and amend rules governing the scheduling and conduct of hearings and other procedural matters related to the duties of his or her office. Such rules may provide for cross examination of witnesses and, except in a SEPA appeal under chapter 30.61 SCC or a Type 1 or Type 2 proceeding under chapter 30.71 or 30.72 SCC, for issuance and enforcement of subpoenas to compel the appearance of witnesses and production of documents or materials. The examiner shall within five days after adoption or amendment of any such rule transmit a copy of such rule to the clerk of the

council for council review, which rule shall remain in effect unless rejected or modified by the council. The council may by motion modify or reject the rule. The examiner shall incorporate any such action within ten days after adoption of the motion.

(Ord. 80-115 § 1, adopted December 29, 1980; Amended Ord. 00-008, § 2, March 29, 2000, Eff date April 10, 2000; Amended by Amended Ord. 12-007, Mar. 21, 2012, Eff date April 5, 2012).

2.02.100 Powers.

The examiner shall have authority to:

- (1) Receive and examine available information,
- (2) Conduct public hearings and prepare a record thereof,
- (3) Administer oaths and affirmations,
- (4) Examine witnesses, PROVIDED That no person shall be compelled to divulge information which he or she could not be compelled to divulge in a court of law,
- (5) Regulate the course of the hearing,
- (6) Make and enter decisions,
- (7) At the examiner's discretion, hold conferences for the settlement or simplification of issues and/or for establishment of special hearing procedures,
- (8) Dispose of procedural requests or similar matters,
- (9) Issue summary orders as provided for in SCC 2.02.125 and in supplementary proceedings,
- (10) Issue and enforce subpoenas as provided by rule under SCC 2.02.090, and
- (11) Take any other action authorized by or necessary to carry out this chapter.

The above authorities may be exercised on all matters for which jurisdiction is assigned either by county ordinance or by other legal action of the county or its elected officials. The examiner's decision shall be final and conclusive and may be reviewable by the council, the shorelines hearings board or court, as applicable. The nature of the examiner's decision shall be as specified in this chapter and in each ordinance which grants jurisdiction.

(Ord. 80-115 § 1, adopted December 29, 1980; Amended Ord. 85-105, § 1, December 4, 1985; Amended Ord. 93-077, Sept. 8, 1993, Eff date Jan. 1, 1994; Amended Ord. 96-003, § 3, Feb. 21, 1996, Eff date April 1, 1996; Amended by Amended Ord. 12-007, Mar. 21, 2012, Eff date April 5, 2012).

2.02.122 Procedures for appeal of land use decisions authorized under Title 30 SCC.

The provisions of this chapter relating to procedures for appeals within the hearing examiner's jurisdiction shall not apply to decisions and appeals authorized pursuant to Title 30 SCC. The provisions of Title 30 SCC pertaining to decisions and administrative appeals for permits and approvals authorized by Title 30 SCC shall be the exclusive procedures for such administrative decisions and appeals.

(Added Ord. 02-098, Dec. 9, 2002, Eff date February 1, 2002)

2.02.125 Procedures for Appeals within the Examiner's Jurisdiction.

Administrative appeals over which the examiner has jurisdiction shall be subject to the following procedural requirements:

(1) Appeals shall be addressed to the hearing examiner but shall be filed in writing with the department whose decision is being appealed within 14 calendar days of the date of action or, in those cases requiring personal or certified mail service, the date of service of the administrative action being appealed.

(2) An appeal must contain the following items in order to be complete. The examiner, if procedural time limitations allow, may allow an appellant not more than 15 days to perfect an otherwise timely filed appeal if such appeal is incomplete in some manner.

(a) Specific identification of the order, permit, decision, determination or other action being appealed (including the county's file number whenever such exists). A complete copy of the document being appealed must be filed with the appeal;

(b) The specific grounds upon which the appellant relies, including a concise statement of the factual reasons for the appeal and, if known, identification of the policies, statutes, codes, or regulations that the appellant claims are violated;

(c) The name, mailing address and daytime telephone number of each appellant together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any;

(d) The name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and

(e) The required filing fee.

(3) Timely filing of an appeal shall stay the effect of the order, permit, decision, determination or other action being appealed until the appeal is finally disposed of by the examiner or withdrawn; PROVIDED, That filing of an appeal from the denial of a permit shall not stay such denial. Failure to file a timely and complete appeal shall constitute waiver of all rights to an administrative appeal under county code.

(4) No new appeal issues may be raised or submitted after the close of the time period for filing of the original appeal.

(5) The department whose decision is being appealed shall forward the appeal to the examiner's office within three working days of its filing.

(6) The examiner's office, within three working days after receipt of the appeal, shall send written notice of the filing of the appeal by first class mail, to the person named in an order or to the person who initially sought the permit, decision, determination or other action being appealed, whenever the appeal is filed by other than such person.

(7) The examiner may summarily dismiss an appeal in whole or in part without hearing if the examiner determines that the appeal is untimely, incomplete, without merit on its face, frivolous, beyond the scope of the examiner's jurisdiction or brought merely to secure a delay. The examiner may also summarily dismiss an appeal if he/she finds, in response to a challenge raised by the respondent and/or by the permit applicant and after allowing the appellant a reasonable period in which to reply to the challenge, that the appellant lacks legal standing to appeal. Except in extraordinary circumstances, summary dismissal orders shall be issued within 15 days following receipt of either a complete appeal or a request for issuance of such an order, whichever is later.

(8) Appeals shall be processed by the examiner as expeditiously as possible, giving proper consideration to the procedural due process rights of the parties. An appeal hearing shall be held before a final decision is issued unless the summary dismissal provisions of subsection (7), above, are utilized or the appeal is withdrawn. The examiner may consolidate multiple appeals of the same action for hearing and decision making purposes where to do so would facilitate expeditious and thorough consideration of the appeals without adversely affecting the due process rights of any of the parties.

(9) Notice of appeal hearings conducted pursuant to this section shall be given as provided below not less than 15 calendar days prior to the hearing:

(a) The examiner's office shall give notice of all appeal hearings by first class mail (unless otherwise required herein) to:

(i) the appellant;

(ii) the appellant's agent/representative, if any; and

(iii) the respondent (by interoffice mail); and

(iv) to the person named in an order or to the person who initially sought the permit, decision, determination or other action being appealed, whenever the appeal is filed by other than such person; and

(v) parties of record as defined by SCC 2.02.165.

(b) At a minimum, the following information shall be included in the notice:

- (i) description of order, decision, determination, or other action being appealed, assigned county file number, and county contact person,
- (ii) the date, time and place of public hearing if scheduled at the time of notice, and
- (iii) any other information determined appropriate by the applicable department.

(10) Notices required by the above subsections shall be deemed adequate where a good-faith effort has been made by the county to identify and mail notice to each person entitled thereto. Notices mailed pursuant to the above subsections shall be deemed received by those persons named in an affidavit of mailing executed by the person designated to mail the notices. The failure of any person to actually receive the notice shall not invalidate any action.

(11) The appeal hearing and examiner consideration of the appeal shall be limited solely to the issues identified by the appellant pursuant to SCC 2.02.125(2).

(Added Amended Ord. 93-077, Sept. 8, 1993, Eff date Jan. 1, 1994; Ord. 95-004, § 5, Feb. 15, 1995, Eff date Feb. 27, 1995; Amended Ord. 95-032, § 1, June 28, 1995, Eff date July 20, 1995; Amended Ord. 96-003, § 4, Feb. 21, 1996, Eff date April 1, 1996; Amended Ord. 97-057, § 1, July 2, 1997, Eff date July 17, 1997; Amended Ord. 97-075, § 1, Sept. 24, 1997, Eff date Oct. 8, 1997; Ord. 02-098, Dec. 9, 2002, Eff date February 1, 2003; Amended by Amended Ord. 12-007, Mar. 21, 2012, Eff date retroactive to Jan. 10, 2012).

2.02.127 Filing location for appeals.

Any decision subject to administrative appeal under this chapter shall specify the county office at which the appeal must be filed.

(Added Ord. 02-098, Dec. 9, 2002, Eff date February 1, 2003)

2.02.130 Report of Department.

(1) Where an appeal hearing is conducted before the examiner, the responsible department shall prepare a report summarizing the factors involved and the department's findings and recommendations.

(2) At least seven calendar days prior to the scheduled appeal hearing, the report shall be filed with the examiner and copies thereof shall be mailed by the responsible department to the appellant and made available for public inspection. Copies thereof shall be provided to interested persons upon payment of reproduction costs.

(Ord. 80-115 § 1, adopted December 29, 1980; Amended Ord. 85-105, § 4, December 4, 1985; Amended Ord. 93-077, Sept. 8, 1993, Eff date Jan. 1, 1994; Ord. 95-004, § 6, Feb. 15, 1995, Eff date Feb. 27, 1995; Amended Ord. 96-003, § 5, Feb. 21, 1996, Eff date April 1, 1996; Ord. 02-098, Dec. 9, 2002, Eff date February 1, 2003).

2.02.140 Open Record Hearings.

(1) Where a public hearing is required by statute or ordinance, the examiner shall hold at least one open record hearing prior to rendering a decision on any such matter. All testimony at any such hearing shall be taken under oath. Notice of the time and place of the open record hearing shall be given as required by county ordinance. At the commencement of the hearing the examiner shall give oral notice of the opportunity to become a party of record as provided for in SCC 2.02.165.

(2) Each person participating in an open record hearing shall have the following rights, among others:

(a) To call, examine and cross-examine witnesses (subject to reasonable limitation by the examiner in accordance with the examiner's adopted rules of procedure) on any matter relevant to the issues of the hearing;

(b) To introduce documentary and physical evidence;

(c) To rebut evidence against him/her; and

(d) To represent him/herself or to be represented by anyone of his choice who is lawfully permitted to do so.

(Ord. 80-115 § 1, adopted December 29, 1980; Amended Ord. 84-116, November 7, 1984; Amended Ord. 90-174, § 1, November 14, 1990; Amended Ord. 93-077, Sept. 8, 1993, Eff date Jan. 1, 1994; Amended Ord. 96-003, § 6, Feb. 21, 1996, Eff date April 1, 1996).

2.02.155 Hearing examiner's decision.

(1) A final decision on appeal shall be issued within 15 calendar days of the conclusion of a hearing, unless the appellant agrees in writing to extend the time period, or the time period has been extended by a request for reconsideration, or under some other authority.

(2) The hearing examiner may affirm, may reverse in whole or in part, or may modify the permit or decision being appealed, or may remand the application to the applicable department for further processing.

(3) If the application is remanded to the applicable department for further processing, the hearing examiner's decision shall not be considered a final decision. The hearing examiner's decision shall specify procedures for responding to the order. If a new decision

is issued by the applicable department, a new appeal period shall commence in accordance with SCC 2.02.125.

(4) The appeal decision shall include findings based upon the record and conclusions therefrom which support the decision.

(5) The hearing examiner's decision shall include information on, and any applicable time limitations for, requesting reconsideration or for appealing the decision.

(Added Ord. 02-098, Dec. 9, 2002, Eff date February 1, 2003)

2.02.160 Notice of Examiner's Decision.

A copy of the examiner decision shall be mailed by certified mail, return receipt requested, to the appellant, and by inter-office or regular mail, as appropriate, to any other party of record within the time period allowed by SCC 2.02.155.

(Ord. 80-115 § 1, adopted December 29, 1980; Amended Ord. 90-174, § 2, November 14, 1990; Amended Ord. 93-077, Sept. 8, 1993, Eff date Jan. 1, 1994; Amended Ord. 96-003, § 8, Feb. 21 1996, Eff date April 1, 1996; Ord. 02-098, Dec. 9, 2002, Eff date February 1, 2003).

2.02.165 Definitions.

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Parties of record" means for each appeal:

(a) The appellant;

(b) All persons, county departments and/or public agencies who testified at the appeal hearing;

(c) All persons, county departments and/or public agencies who individually submitted written comments concerning the specific matter into the hearing record prior to the close of the appeal hearing (excluding persons who have only signed petitions or mechanically produced form letters); and

(d) All persons, county departments and/or public agencies who specifically request notice of decision by entering their name and mailing address on a register provided for such purpose at the appeal hearing.

A party of record to an application/appeal shall remain such through subsequent county proceedings involving the same appeal; PROVIDED A new parties of record register shall be started whenever an appeal comes on for supplementary hearing eighteen or more

months after the most recent examiner decision was issued. The county may cease mailing material to any party of record whose mail is returned by the postal service as undeliverable.

(2) "Appeal hearing" means a hearing that creates the record on an appeal through testimony and submission of evidence and information.

(Added Ord. 90-174, § 3, November 14, 1990; Amended Ord. 92-075, July 22, 1992; Amended Ord. 96-003, § 9, Feb. 21, 1996, Eff date April 1, 1996, Ord. 02-098, Dec. 9, 2002, Eff date February 1, 2003).

2.02.170 Reconsideration of hearing examiner decision.

(1) Any party to an appeal may file a written petition for reconsideration with the hearing examiner within 10 calendar days following the date of the hearing examiner's written decision. The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties to the appeal on the date of filing. The timely filing of a petition for reconsideration shall stay the hearing examiner's decision until such time as the petition has been disposed of by the hearing examiner.

(2) The grounds for seeking reconsideration shall be limited to the following:

(a) The hearing examiner exceeded the hearing examiner's jurisdiction;

(b) The hearing examiner failed to follow the applicable procedure in reaching the hearing examiner's decision;

(c) The hearing examiner committed an error of law;

(d) The hearing examiner's findings, conclusions, and/or conditions are not supported by the record; or

(e) New evidence which could not reasonably have been produced and which is material to the decision is discovered.

(3) The petition for reconsideration must:

(a) Contain the name, mailing address, and daytime telephone number of the petitioner or petitioner's representative, together with the signature of the petitioner or of the petitioner's representative;

(b) Identify the specific findings, conclusions, actions, and/or conditions for which reconsideration is requested;

(c) State the specific grounds upon which relief is requested;

(d) Describe the specific relief requested; and

(e) Where applicable, identify the specific nature of any newly discovered evidence.

(4) The petition for reconsideration shall be decided by the same hearing examiner who rendered the decision, if reasonably available. The hearing examiner shall provide notice of the decision on reconsideration in accordance with SCC 2.02.160. Within 14 days, the hearing examiner shall:

(a) Deny the petition in writing;

(b) Grant the petition and issue an amended decision in accordance with the provisions of SCC 2.02.155 following reconsideration;

(c) Accept the petition and give notice to all parties to the appeal of the opportunity to submit written comment. Parties to the appeal shall have 10 calendar days from the date of such notice in which to submit written comments. The hearing examiner shall either issue a decision in accordance with the provisions of SCC 2.02.155 or issue an order within 15 days after the close of the comment period setting the matter for further hearing. If further hearing is ordered, the hearing examiner's office shall mail notice not less than 15 days prior to the hearing date to all parties of record; or

(d) Accept the petition and set the matter for further open record hearing to consider new evidence, and/or the arguments of the parties. Notice of such further hearing shall be mailed by the hearing examiner's office not less than 15 days prior to the hearing date to all parties of record. The hearing examiner shall issue a decision following the further hearing in accordance with the provisions of SCC 2.02.155.

(5) A decision which has been subjected to the reconsideration process shall not again be subject to reconsideration.

(6) The hearing examiner may consolidate for action, in whole or in part, multiple petitions for reconsideration of the same decision where such consolidation would facilitate procedural efficiency.

(Added Ord. 02-098, December 9, 2002, Eff date February 1, 2003)

2.02.185 Clerical Mistakes -- Authority to Correct.

Clerical mistakes and errors arising from oversight or omission in hearing examiner and council decisions and/or orders issued pursuant to this chapter may be corrected by the hearing examiner at any time either on his/her own initiative or on the motion of a party of record. A copy of each page affected by the correction, with the correction clearly identified, shall be mailed to all parties of record.

(Added Ord. 93-077, Sept. 8, 1993, Eff date Jan. 1, 1994; Ord. 02-098I, Dec. 9, 2002, Eff date February 1, 2003).

2.02.195 Appeal to Court from Examiner's Decision.

Where the examiner's decision is final and conclusive, it may be appealed to superior court by an aggrieved party of record as may be provided by applicable law within 21 days of the issuance of the examiner's final decision on the matter. The following shall apply to any action for judicial review of the examiner's decision:

(1) Where the reconsideration process of SCC 2.02.170 has been utilized, no action for judicial review may be filed until the reconsideration process has been completed and no action for judicial review by the petitioner for reconsideration may raise an issue which has not been the subject of a petition for reconsideration.

(2) An action for judicial review may be brought by any aggrieved party of record within 21 calendar days following the date of the examiner's decision on reconsideration; PROVIDED, That only the petitioner for reconsideration may file an action for judicial review of the denial of a petition for reconsideration. The cost of transcribing the record of proceedings, of copying photographs, video tapes, and oversized documents, and of staff time spent copying and assembling the record and preparing the return for filing with the court shall be borne by the appellant.

(Added Amended Ord. 93-077, Sept. 8, 1993, Eff date Jan. 1, 1994; Amended Ord. 96-003, § 15, Feb. 21, 1996, Eff date April 1, 1996; Amended Ord. 99-115, § 2, Jan. 12, 2000, Eff date Jan. 23, 2000; Ord. 02-098, December 9, 2002, Eff date February 1, 2003).

2.02.200 Examiner's Report to Council and Planning Commission.

The examiner shall report in writing to and meet with the Snohomish county council and the planning commission at least annually for the purpose of reviewing the administration of the county's land use policy and regulatory ordinances. Such report shall include a summary of the examiner's decisions since the last report.

(Ord. 80-115, § 1, adopted December 29, 1980; Amended Ord. 97-075, § 3, Sept. 24, 1997, Eff date Oct. 8, 1997).

2.02.210 Interlocal Agreements.

The examiner may provide services similar to those prescribed herein for other municipalities when authorized by interlocal agreement.

(Ord. 80-115 § 1, adopted December 29, 1980).

2.02.215 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provisions to other persons or circumstances is not affected.

(Added Amended Ord. 93-077, Sept. 8, 1993, Eff date Jan. 1, 1994).