



City of Tukwila

Washington

Resolution No. 1578

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, ADOPTING THE CITY OF TUKWILA HEARING EXAMINER RULES OF PRACTICE AND PROCEDURE.

WHEREAS, on May 5, 1997, the City Council passed Ordinance No. 1796, establishing the office of Hearing Examiner for the purpose of presiding over appeals; and

WHEREAS, the City of Tukwila contracts for the services of Hearing Examiner; and

WHEREAS, the City of Tukwila accordingly desires to adopt rules of practice and procedure for the Hearing Examiner to follow when hearing matters on behalf of Tukwila;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

The City of Tukwila hereby adopts by reference, as if fully set forth herein, the "Hearing Examiner Rules of Practice and Procedure," attached hereto as "Exhibit A."

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this 6th day of June, 2005.

ATTEST/AUTHENTICATED:

Pamela S. Linder
Pamela Linder, Council President

for Robert H. Baker
Jane E. Cantu, CMC, City Clerk

APPROVED AS TO FORM BY:

[Signature]
Office of the City Attorney

Filed with the City Clerk: 06.01.05
Passed by the City Council: 06.06.05
Resolution Number: 1578

EXHIBIT A

CITY OF TUKWILA

HEARING EXAMINER
RULES OF PRACTICE AND PROCEDURE

TO ALL INTERESTED PARTIES:

Please find enclosed a copy of the revised rules governing proceedings before the City of Tukwila Hearing Examiner. The amendments to the rules were adopted by the Tukwila City Council at its regular meeting of June 6, 2005 and are effective as of that date.

Extra copies of the Hearing Examiner Rules of Practice and Procedure may be obtained from the Department of Community Development, the Public Works Department, or the City Clerk.

**HEARING EXAMINER
RULES OF PRACTICE AND PROCEDURE**

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SECTION 1 GENERAL PROVISIONS

1.01 APPLICABILITY

These Hearing Examiner Rules (Rules) are adopted to supplement the ordinance requirements for matters within the Hearing Examiner's jurisdiction and govern administrative practice and procedures before the Hearing Examiner. In any case of conflict between a Hearing Examiner Rule (HER) and the Tukwila Municipal Code (Code), the Code shall control.

1.02 EFFECTIVE DATE

These Rules shall apply to all matters filed with or otherwise properly before the Hearing Examiner on or after the effective date of adoption of these Rules by the City Council.

1.03 INTERPRETATION OF RULES

(a) The Hearing Examiner shall interpret the Hearing Examiner Rules of Practice and Procedure and determine how the Rules apply in specific instances. An affected party may petition the Hearing Examiner during the pendency of an appeal to request a declaratory ruling regarding the applicability of these Rules to specific actual circumstances. Except during a hearing, such request must be in writing and clearly identify the subject Rule(s) and describe the circumstances for which the declaratory ruling is sought.

(b) Where questions of practice and procedure arise that are not addressed by these Rules, the Hearing Examiner shall determine the practice or procedure that she or he deems most appropriate and consistent with providing fair treatment and due process. In making such determinations, the Hearing Examiner may look to the current Civil Rules of Superior Court for guidance.

SECTION 2 RULES OF GENERAL APPLICATION

2.01 SCOPE

Rules in this section apply generally to all matters where the Hearing Examiner has authority to decide or recommend the outcome.

2.02 DEFINITIONS

The following definitions shall apply unless the context or subject matter requires otherwise:

(a) "Affidavit" - a written or printed statement declared or certified to be true and correct under penalty of perjury under the laws of the state of Washington.

(b) "Appeal" - a challenge to a decision or other action where the Code or other authority authorizes the City's Hearing Examiner to review and decide.

(c) “Appeal hearing” - a hearing held by the Hearing Examiner to consider an appeal of a decision or other action where the Hearing Examiner has been granted jurisdiction to hear and decide such an appeal. In these Rules an “appeal hearing” is distinguished from a “public hearing” where the Hearing Examiner is empowered to make a recommendation to the City Council, rather than to make a decision on an appeal.

(d) “Appellant” - the person(s), organization, association, corporation, or other entity who files a complete and timely appeal of a decision or other appealed action.

(e) “Applicant” - the person(s), organization, association, corporation or other entity who files an application or otherwise formally requests a permit or other type of City action, interpretation, or authorization which is the subject of an appeal or other review by the Hearing Examiner.

(f) “Code” - Tukwila Municipal Code (TMC).

(g) “Days” - calendar days.

(h) “Department” - the department, agency, board, commission or other City entity responsible for the decision or action that is subject to appeal or other review by the Hearing Examiner.

(i) “Director” - the head of the department, agency, board or commission, or other unit of City government responsible for the decision or other action that is subject to appeal or other review by the Hearing Examiner.

(j) “Examiner” - the Hearing Examiner, or a Deputy Hearing Examiner or a Hearing Examiner Pro Tempore who has been delegated responsibility by the Hearing Examiner to conduct the hearing or otherwise preside over a particular matter.

(k) “Ex parte communication” - a communication between one party and the Examiner in the absence of the other party(s).

(l) “Hearing Examiner” - the official contracted with the City to serve as the City’s Hearing Examiner; also used when referring to a Deputy Hearing Examiner or Hearing Examiner Pro Tempore appointed by the Hearing Examiner to preside over a particular matter.

(m) “Interested person” - any individual, or public or private organization of any character, significantly affected by or interested in proceedings before the Hearing Examiner, including any party.

(n) “Intervenor” – one who voluntarily enters a pending lawsuit because of a personal stake in it.

(o) “Motion” - a request made to the Hearing Examiner, whether written or oral, for an order or other ruling.

(p) "Offer of proof" - a chance to state for the record what the evidence would have shown if it had been admitted.

(q) "Order" - a ruling, instruction, or other directive issued by the Hearing Examiner in response to a request or motion by a party, or on the Hearing Examiner's own initiative. Where the underlying ordinance establishing the Hearing Examiner jurisdiction so provides, an order can direct how the Hearing Examiner's decision is to be implemented and may be issued as part of that decision or separately from it.

(r) "Party" - the person(s), group, organization, corporation, or other entity that has filed an appeal, or is granted right of appeal automatically by ordinance; the person(s), group, organization, corporation, or other entity granted party status through intervention; Director of the City department or other agency that made the decision or took the action that is subject to the appeal; the person(s), group, organization, corporation, or other entity who filed the application, request, or petition for a permit or other type of City authorization or action which is the subject of the appeal; and the owner(s) of the property subject to the City decision or other action.

(s) "Public hearing" - a hearing held by the Hearing Examiner for the purpose of preparing a recommendation for the City Council (see "Appeal hearing").

(t) "Representative" - that individual designated by a party to be the official contact person and to speak for the party. Unless the applicable underlying substantive law or regulation establishing the Hearing Examiner's jurisdiction specifies otherwise, a representative is not required to be an attorney.

(u) "Rules" - the Hearing Examiner Rules of Practice and Procedure, as currently adopted.

(v) "Timely" - within the time prescribed by applicable ordinance or, in the absence of ordinance provision, the time prescribed by Hearing Examiner rule, or within the time determined by the Hearing Examiner.

2.03 COMPUTATION OF TIME

Except as otherwise provided by the Code, computation of any period of time prescribed or allowed for matters before the Hearing Examiner shall begin with the first day following that on which the act or event initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or national, state or City holiday, the period shall extend to the end of the next business day.

2.04 FILING AND SERVICE OF DOCUMENTS

(a) Documents shall be deemed filed with the Hearing Examiner on receipt at the Office of Hearing Examiner unless the Hearing Examiner has specified otherwise.

(b) Documents shall be served personally or, unless otherwise provided by applicable ordinance, by first-class, registered, or certified mail, or by facsimile (fax)

2.08 INTERFERENCE PROHIBITED

In the performance of adjudicative functions in deciding appeals and in the preparation of recommendations, the Hearing Examiner is an independent official and shall not be responsible to or subject to the supervision or direction of any elected official, officer or employee of any department, or any other person whether or not associated with Tukwila City government.

2.09 PRESIDING OFFICIAL

(a) The Hearing Examiner shall assign a duly qualified Examiner to preside over hearings held under these Rules.

(b) The Examiner conducting a hearing shall have the duty to ensure a fair and impartial hearing, to take all necessary action to avoid undue delay in the disposition of proceedings, to gather facts necessary to make the decision or recommendation, and to maintain order. The Examiner shall have all powers necessary to these ends, including, but not necessarily limited to the following:

- (1) Determine the order of presentation of evidence;
- (2) Administer oaths and affirmations;
- (3) Issue subpoenas;
- (4) Rule on offers of proof and receive evidence;
- (5) Rule on procedural matters, objections and motions;
- (6) Question witnesses and request additional exhibits;
- (7) Permit or require oral or written argument or briefs and determine the timing and format for such submittals;
- (8) Regulate the course of the hearings and the conduct of the parties and others so as to maintain order and provide for fair hearing;
- (9) Hold conferences for settlement, simplification of issues, or for any other proper purpose; and
- (10) Make and issue the decision or recommendation.

2.10 WITNESSES

(a) All witnesses testifying at hearing must take an oath or affirmation to be truthful. All witnesses are subject to cross-examination by the other party(s).

(b) The rules of privilege shall be effective to the extent recognized by law.

(c) Hearing Examiner hearings are open to the public. However, in appeal hearings, persons who are not parties are generally not permitted to testify unless called as witnesses.

(d) The Examiner may limit the length of testimony to expedite the proceedings and avoid the necessity to continue the hearing. Maximum practicable advance notice will be provided if such time limitations are to be imposed. If parties are unable to complete their arguments and testimony within the allotted time, an opportunity will be granted to

submit written materials after the close of the hearing; other parties will be allowed an opportunity to offer written rebuttal to any such materials

(e) At the discretion of the Examiner, or where the parties agree and the rights of the parties will not be prejudiced, the Examiner may allow testimony via telephone or television or similar electronic means. Each party to the proceeding shall have the opportunity to hear (or, if televised, to both hear and see) testimony given in this manner and to question the person giving such testimony.

2.11 MOTIONS

(a) All motions, other than those made during a hearing, shall be in writing, and shall state the order or relief requested and the grounds for the motion. Every motion and answering statement, and accompanying papers, shall be served on each party representative on the day it is filed with the Hearing Examiner.

(b) Within seven (7) days after service of any written motion, or such longer or shorter period of time as may be designated by the Hearing Examiner, the other party(s) shall file a written answer. When the Hearing Examiner has received the answering statement(s), or the seven (7) days or other period of time designated by the Hearing Examiner has elapsed, the Hearing Examiner shall rule on the motion. Failure of a party to file a timely response may be considered by the Hearing Examiner as evidence of that party's consent to the motion.

(c) The Hearing Examiner may call for oral argument prior to ruling.

(d) For motions made at hearing or for motions made for the extension of time or the expedition of hearings, the Hearing Examiner may waive the requirements of this section and may also rule upon such motions orally.

2.12 HEARING ON WRITTEN SUBMISSIONS

When the parties so agree, an appeal may be submitted entirely on written submissions. If this option is selected, the Examiner shall establish a schedule for initial responsive submissions. The record shall close when this schedule is complete.

2.13 EVIDENCE

(a) Evidence, including hearsay, may be admitted if, in the judgment of the Examiner, it is relevant to the issue(s) on appeal, comes from a reliable source, and has probative (proving) value. Such evidence is that which would commonly be relied upon by responsible persons in the conduct of their important affairs.

(b) The Examiner may exclude evidence that is irrelevant, unreliable, immaterial, unduly repetitive, or privileged.

(c) Opinion evidence presented by non-experts at appeal hearings is discouraged but may be admitted, although it need not be given weight by the Examiner.

(d) Documentary evidence may be received in the form of copies or excerpts. The Examiner may require that the parties be given an opportunity to compare the copy with the original, and require that the complete document from which an excerpt is taken be made available for inspection by all parties.

2.14 OFFICIAL NOTICE

(a) The Examiner may take official notice of judicially cognizable facts. In addition, the Examiner may take notice of general, technical, or scientific facts within his or her specialized knowledge.

(b) Parties must be notified during the hearing, or before issuance of the decision, of the specified facts or material noticed and the source thereof, and afforded an opportunity to contest or rebut the facts or material so noticed. The Examiner shall not take such notice of disputed adjudicative facts that are at the center of an appeal.

(c) A Hearing Examiner ruling, decision, or recommendation may refer to and utilize any part of the Code and any issued Hearing Examiner decision.

2.15 SITE INSPECTION

Where it would assist the Examiner in clarifying or understanding the evidence adduced at hearing, the Examiner may inspect property subject to an appeal or recommendation prior to the close of the record. However, observations made at such an inspection are not evidence and shall not be considered as such.

2.16 CONTINUING OR REOPENING HEARING

(a) A scheduled hearing may be continued for good cause as determined by the Hearing Examiner. Written notice of the date, time, and place of the continued hearing shall be provided to each party. The notice of a rescheduled hearing need not observe the time requirements to which the original notice was subject.

(b) Requests for continuance must be made to the Examiner's office no later than 48 hours prior to the scheduled hearing time.

(c) Prior to the issuance of the subject decision or recommendation, the Examiner may continue or reopen proceedings for good cause and may permit or require written briefs or oral argument.

(d) If the Examiner determines at hearing that there is good cause to continue such proceeding and then and there specifies the date, time, and place of the new hearing, no further notice is required.

(e) If a matter is reopened after conclusion of the hearing, parties shall be provided not less than ten (10) days notice of the reopened hearing.

2.17 LEAVING THE RECORD OPEN

(a) The Examiner may leave the record of hearing open at the conclusion of a hearing in order to receive argument or for other good purpose. Parties shall be provided notice of the consideration of any evidence received after hearing and shall have an opportunity to review such evidence and to file rebuttal evidence or argument.

(b) Except as provided for in HER 2.16 and HER 2.19, information submitted after the close of the record shall not be included in the hearing record or considered by the Examiner making the decision or recommendation.

2.18 DISTRIBUTION OF DECISIONS AND RECOMMENDATIONS

A copy of the Hearing Examiner's decision or recommendation shall be distributed to each party representative, to those persons who have specifically requested a copy, and to others as specified by applicable ordinance(s).

2.19 REMAND

(a) Prior to the issuance of the Hearing Examiner's recommendation or Hearing Examiner's decision on an appeal, if the Examiner determines that information, analysis, or other material necessary to the Hearing Examiner's recommendation has not been provided, or, in the case of an appeal, that there is a lack of information, analysis, or other material needed to satisfy the provisions of relevant regulations, the matter may be remanded to the Department for the addition of that information, analysis, or other material.

(b) Where the Hearing Examiner's decision is to remand the matter to the Department for additional information, analyses, or other material, the Hearing Examiner shall retain jurisdiction in order to review the adequacy of that information, analysis, or other material. The decision shall expressly state that jurisdiction is retained and what information, analysis, or other material is to be provided, and it may indicate when it is to be submitted. A copy of that information, analysis, or other material shall also be provided to each party to the proceeding, except that where the size or condition of the required materials makes copying impractical, notification to the other parties of the submittal shall be sufficient. The parties shall have an opportunity to review, comment upon, and submit rebuttal to the information, analysis, or other material submitted. At the discretion of the Examiner, the hearing may be reopened following such submittal.

(c) Where the decision of the Hearing Examiner is to remand for the preparation of a new departmental decision, the Hearing Examiner's jurisdiction is terminated and the Director's subsequent decision shall be issued and subject to appeal in accordance with applicable ordinance(s).

2.20 CLERICAL ERRORS

Clerical mistakes in decisions, recommendations, orders, or other parts of the record, and errors arising from oversight or omission, may be corrected by Order at the Hearing Examiner's initiation, or in response to the motion of any party.

2.21 PROCEEDINGS RECORDED

All proceedings before the Hearing Examiner shall be electronically recorded. The recordings of hearings shall be part of the official case record. Copies of the recordings shall be made available to the public upon request, subject to payment of a reasonable fee for copying.

2.22 DISCLOSURE OF PUBLIC RECORDS

Hearing Examiner decisions and recommendations, the hearing record, and associated official files, are public records and shall be available for public review.

2.23 TRANSCRIPT OF PROCEEDINGS

(a) Anyone desiring a certified transcript of a hearing must obtain a duplicate copy of the hearing tapes from the Office of Hearing Examiner and be responsible for arranging and paying for the preparation of a verbatim transcript. See also HER 2.21. The completed transcript must be returned to the Hearing Examiner for certification.

(b) The parties shall have an opportunity to review and comment on the transcript. The Hearing Examiner shall resolve conflicts as to form and content of the transcript and provide a certification when such disputes are resolved and the Examiner is satisfied that the transcript provides a reliable record of the proceedings.

2.24 RETENTION OF RECORDS

The case file, including the tape recording(s) and exhibits, shall be retained by the Office of Hearing Examiner consistent with the requirements of the Public Records Act and applicable retention schedules.

2.25 TRANSMITTAL OF RECORDS

The Hearing Examiner shall promptly transmit the official records of a case upon the request of an entity having jurisdiction to review the decision or recommendation.

SECTION 3 APPEAL RULES

In addition to the Rules of General Application in Section 2, the Rules in Section 3 shall apply to appeals. In the event of conflict between the rules in Section 2 and the rules in Section 3, Section 3 shall control.

3.01 FILING

(a) Compliance with Rules. All appeals must comply with these Rules and with the requirements established in the applicable ordinance(s) under which the appeal is filed.

- (b) Contents A Notice of Appeal must be in writing and contain the following:
- (1) A brief statement as to how the appellant is significantly affected by or interested in the matter appealed;
 - (2) A brief statement of the appellant's issues on appeal, noting appellant's specific exceptions and objections to the decision or action being appealed;
 - (3) The relief requested, such as reversal or modification; and
 - (4) Signature, address, and phone number of the appellant, and name and address of appellant's designated representative, if any.

(c) Multiple appeals. More than one appeal may be filed concerning the same appealable decision or other action.

(d) The Notice of Appeal shall be accompanied by any filing fee required by law. Filing of the appeal shall not be complete until both the Notice of Appeal and any required filing fee have been received. For an appeal to be timely, filing must be complete before the appeal period has expired.

3.02 DISMISSAL

(a) 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 to secure delay.

(b) 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.

(c) When the decision or action being appealed is withdrawn by the issuing Department, the appeal becomes moot and shall be dismissed.

3.03 WITHDRAWAL

(a) An appeal may be withdrawn only by the appellant.

(b) Where an appeal is made by several persons, a group, organization, corporation, or other entity, withdrawal shall be made by the person who had been designated as the party representative. See HER 3.04.

(c) An appellant's request to withdraw shall be granted as a matter of right and the appeal dismissed by order of the Examiner.

(d) A withdrawal request shall be made in writing by the appellant.

3.04 PARTY 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 of the name, address and telephone number of that designated representative. The rights of such an appellant shall be exercised by the person designated as the party representative. Notice or other communication to the party representative is notice or communication to the party. See also HER 3.05.

3.05 NOTICE OF APPEARANCE

When a party is represented by an attorney, the attorney shall file a notice of appearance with the Hearing Examiner and send a copy of that notice to the other parties. Where the appellant's attorney filed the appeal and indicated his/her representative capacity, a notice of appearance does not need to be filed. The notice of appearance shall serve to designate the attorney as the party representative. See HER 3.04. If a notice of appearance is filed less than 48 hours prior to a scheduled hearing, the City shall be notified by the Examiner, and at the City's discretion, the matter will be rescheduled so that counsel for the City may be present at the hearing.

3.06 INTERVENTION

(a) Upon a showing of a substantial or significant interest that is not otherwise adequately represented, the Hearing Examiner may permit an interested person, group, organization, corporation, or other entity who has not filed an appeal to participate in that appeal.

(b) Except as provided in HER 3.06(d), a written request for intervention must be submitted to the Hearing Examiner at least five (5) days prior to the day on which the hearing begins. The intervention request must state the basis for the intervention and how the person, group, organization, corporation, or other entity making the request is affected by or interested in the matter appealed. In considering the requested intervention, the Hearing Examiner shall seek to ensure that intervention will not unduly delay the hearing process, will not expand the issues beyond those within the appeal, and will not prejudice the rights of any of the original parties. In granting intervention, the Hearing Examiner may limit the nature and scope of the intervention.

(c) Intervention is not a substitute means of appealing a decision for those who could have appealed but failed to do so.

(d) A substantially or significantly interested person, group, organization, corporation, or other entity who has not filed an appeal, may be allowed to intervene for the purpose of preserving the right of subsequent appeal. Such intervention may be permitted at any time up to the time of hearing.

3.07 NOTICE OF HEARING

(a) Contents. The notice of hearing shall include:

- (1) The time, place, and nature of the hearing;
- (2) The legal authority and jurisdiction for the hearing;
- (3) The file number, address, or other identifying information for the underlying decision or action being appealed;
- (4) A brief statement as to the issue(s) to be considered; and
- (5) Reference to the applicable Code section(s).

(b) 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 20 days.

(c) Responsibility. The City of Tukwila shall be responsible for serving notice of hearing.

(d) Method of Service. Notice of hearing shall be given to each party in person, by U.S. mail, or for City departments, by regular interoffice mail service, unless otherwise required by applicable ordinance.

(e) Record of Notice. A copy of the notice of hearing shall be made part of each official case record.

3.08 DISCOVERY

Appropriate prehearing discovery is permitted. The Hearing Examiner may prohibit or limit discovery where the Hearing Examiner determines it to be unduly burdensome, harassing, or unnecessary under the circumstances of the appeal.

3.09 SUBPOENAS

(a) A request or motion may be made in writing for a subpoena to require a person to appear and testify at a hearing, or for a person to produce specified documents or other physical exhibits at a prehearing conference or at hearing.

(b) A request for a subpoena for a person shall: include the person's name and address; show the relevance of that person's testimony; and, demonstrate the reasonableness of the scope of the subpoena sought. A request for a subpoena for documents or other physical exhibits shall: include the name and address of the person who is to produce the documents or other physical exhibit; specify the materials to be produced; indicate the relevance of the materials subpoenaed to the issues on appeal; and, demonstrate the reasonableness of the scope of the subpoena sought.

(c) The party requesting the subpoena shall be responsible for serving the subpoena. An affidavit or declaration of personal service or of mailing shall be submitted to the Hearing Examiner as proof of that service.

(d) Except as otherwise allowed by the Hearing Examiner, subpoenas shall be served no less than seven (7) days prior to the appearance or production ordered.

(e) A subpoena may be issued with like effect by an attorney of record in the proceeding. The issuing attorney must sign the subpoena.

(f) Any motion to limit or quash (*i.e.*, vacate or void) a subpoena shall be filed with the Hearing Examiner within seven (7) days of receipt of the subpoena or such other time as specified by the Hearing Examiner.

(g) Requests for subpoenas and the rulings upon such requests may be made *ex parte* unless otherwise ordered by the Hearing Examiner.

3.10 DEFAULT

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.

3.11 HEARING FORMAT

(a) Appeal hearings, although generally informal in nature, shall have a structured format and shall be conducted in a manner deemed by the Examiner to make the relevant evidence most readily and efficiently available to the Examiner and to provide the parties a fair opportunity for hearing.

(b) Where the Code provides that the appellant must overcome deference accorded the Director's decision being appealed, the order of hearing is generally as follows:

- (1) Examiner's introductory statement;
- (2) Parties' opening statements (optional);
- (3) Appellant's presentation of evidence;
- (4) Department's presentation of evidence;
- (5) Applicant's presentation of evidence (if applicant is not the appellant);
- (6) Rebuttal; and
- (7) Closing argument of parties.

(c) Where no deference is accorded the Director's decision, the order of hearing for appeals is generally as follows:

- (1) Examiner's introductory statement;
- (2) Parties' opening statements (optional);
- (3) Department's presentation of evidence;
- (4) Appellant's presentation of evidence;
- (5) Applicant's presentation of evidence (if applicant is not the appellant);
- (6) Rebuttal; and
- (7) Closing argument of parties.

(d) Notwithstanding the provisions of HER 3.11(b) and (c), the order of hearing may be modified or a different order established as the Examiner deems necessary for the clear and fair presentation of evidence. The order of the hearing may also be modified as agreed upon by the parties with the Examiner's approval.

(e) The order of presentation at hearing shall not alter or shift any burden(s) or presumption(s) established by applicable law(s).

3.12 RECORD

(a) The record of an appeal shall include:

- (1) Department's decision or action being appealed;
- (2) Appeal statement;
- (3) Evidence received or considered;
- (4) Pleadings, procedural rulings, and other non-evidentiary materials that are part of the Hearing Examiner's file;
- (5) Statement of matters officially noticed, if any;
- (6) Findings, conclusions and decision of the Hearing Examiner; and
- (7) Tape recording of the hearing.

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

3.13 RECONSIDERATION

(a) Reconsideration may be granted by the Hearing Examiner on a showing of one or more of the following:

- (1) Irregularity in the proceedings by which the moving party was prevented from having a fair hearing;
- (2) Newly discovered evidence of a material nature which could not, with reasonable diligence, have been produced at hearing;
- (3) Error in the computation of the amount of damages or other monetary element of the decision; or
- (4) Clear mistake as to a material fact.

(b) Motions for reconsideration must be filed within 10 days of the date of the Hearing Examiner's decision. Unless otherwise specifically provided by the applicable ordinance(s), the filing of a motion for reconsideration shall not stop or alter the running of the period provided to appeal the Hearing Examiner's decision.

3.14 SUBSEQUENT APPEAL

Hearing Examiner decisions may be appealed as provided for in applicable law. Information regarding subsequent appeal opportunities shall be provided as a postscript on the Hearing Examiner decision.