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Motion 16961

Rules of Procedure and Mediation

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I. INTRODUCTION

A. Purpose

The examiner acts on behalf of the Council in considering and applying adopted county policies and regulations. The examiner separates regulatory controls from legislative planning, protects and promotes the community's public and private interests, and expands the principles of fairness, due process, openness, and equity in public hearings. These Rules further those purposes by reducing delays through active case management and efficient use of hearing time, minimizing costs to hearing participants, and facilitating adherence to codified time limits. These Rules replace the Rules of Procedure and Mediation (effective June 7, 2017).

B. Interpretation

These Rules are applied to accomplish the above-stated purposes. Their jurisdictional framework derives principally from KCC chapter 20.22. They are interpreted consistently with relevant KCC provisions. Examiners may be guided by provisions and interpretations of the Washington Administrative Procedure Act (chapter 34.05 RCW), the Rules of Civil Procedure, and the Rules of Evidence. If two Rules appear to conflict, or when the need for interpretation arises, the more specific statement governs, and headings may be considered in determining a Rule's applicability.

C. Special Exceptions

These Rules are designed to address most normal circumstances. An examiner may exercise reasonable flexibility and discretion when applying these Rules to unusual circumstances.

II. DEFINITIONS

A. "Agency" means the executive branch, including departments, divisions, sections, and offices, the assessor, the King County board of health, and any board, commission, or other body subject to examiner determinations.

B. "Burden of proof" means a party has the responsibility to persuade the examiner of a certain fact or issue.

C. "Council" means the metropolitan King County council.

D. "Decision" means a ruling by an examiner that is the county's final administrative action.

E. "Determination" means a decision or recommendation by an examiner.

F. "Examiner" means the hearing examiner, a deputy examiner, or an examiner pro tempore.

G. "*Ex parte* communication" means a direct or indirect communication between a proponent, opponent, party (or their designee) and the examiner, made outside a hearing or a scheduled conference or outside the presence of all other parties, and regarding the merits of a matter pending before the examiner. See XVI.B.

H. "Filing" means submitting documents to the examiner by physical delivery, including first class, registered, or certified mail, hand-delivery, or courier, or electronically as allowed by the rules for conducting the examiner process adopted under K.C.C. 20.22.330.

I. "Interested Person" means a person who is not a party but:

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1. has requested in writing, including by email, from the agency or examiner, notice of a proceeding or determination;
2. has submitted comments as referred to in K.C.C. 20.20.090.C.4. or the rules for conducting the examiner process adopted under K.C.C. 20.22.330; or
3. has participated in a hearing by providing evidence, comment, or argument, except as provided in the definition of "party".

The term does not include a person whose only communication is a signature on a petition or on a mechanically or electronically reproduced form, or who has made a standing request for notices or documents encompassing a case type or geographic area.

J. "Intervenor" means a person who has been granted party status in a proceeding by specific examiner order. See X.B.

K. "KCC" refers to the King County Code.

L. "Motion" means a request—presented either orally during a proceeding or in writing—that an examiner take some action.

M. "Named Party" is a party listed within the heading of an examiner-issued document.

N. "Party" means the applicant, proponent, petitioner, or appellant; the owner or owners of property subject to a hearing; the responsible agency; another agency with jurisdiction or review authority over a proposal or proceeding notifying the examiner in writing of its request to be a party; the entity issuing a ruling that is appealed to the examiner; a person participating substantively in the hearing, by providing comment, evidence, or argument, is considered a party only for purposes of a motion for reconsideration to an examiner determination or appeal of the examiner recommendation; or another person to whom the examiner grants party status.

O. "Person" includes individuals, corporations, partnerships, other formal associations, and governmental agencies.

P. "Recommendation" means a ruling by an examiner that goes to the council for final action.

Q. "Responsible Agency" means the agency that has the primary responsibility for coordinating the review of an application or appeal, that issued the decision or recommendation or took the action that is the subject of the examiner proceeding, or that prepares the report required by KCC 20.22.130.

R. "Rules" means these Rules of Procedure and Mediation, unless the context clearly indicates otherwise.

S. "Serve" or "Service" means submitting documents to other named parties. See IV.E.

T. "Transmit" refers to documents the examiner sends to all parties and interested persons.

III. JURISDICTION AND INITIATION OF PROCEEDINGS

A. Jurisdiction

1. Dependent upon Specific Delegation

The examiner's jurisdiction is limited to matters specifically identified in the KCC, assigned to the examiner by County ordinance or Council motion, or where the

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examiner has implied authority to act and doing so is necessary to carry out a delegated authority. Equitable or constitutional defenses are generally beyond the examiner's jurisdiction to decide, and claims challenging the constitutionality of County regulations are always beyond the examiner's jurisdiction to decide. Such items may be raised to exhaust administrative remedies, and the examiner may allow the parties to make a record to facilitate judicial review.

2. When Jurisdictional Issues can be Raised

At any time the examiner may consider the office's jurisdiction to hear a matter. A party or interested person raises jurisdictional issues promptly upon becoming aware of facts giving rise to the issue.

B. Commencing Proceedings

1. Examiner proceedings begin, in accordance with the applicable KCC, by:

a. For applications or other matters where an agency issues a recommendation and an examiner holds a public hearing and issues a determination, the responsible agency following III.C.1. & .2.;

b. Submitting an appeal to the responsible agency; the agency then files with the examiner the information described in III.C.1. & .3.;

c. Only if a KCC section mandates submitting an appeal directly to the examiner, filing an appeal with the examiner;

d. The Council enacting an ordinance or adopting a motion that refers a specific matter to the examiner; or

e. The King County Executive finalizing an interlocal agreement that calls for the examiner to act.

2. The examiner will not schedule or consolidate hearings, adjudicate motions or requests, provide advisory opinions, or take other action before a matter is appropriately commenced.

C. Information Responsible Agency Provides to Initiate Review

1. For each new case, the responsible agency sends the examiner:

a. A list containing names and contact information for the agency representative, the applicant (and any representative), appellant (and any representative), interested persons, and possible witnesses.

b. Information on whether an interpreter is needed, and if so in what language(s).

c. Whether a pre-hearing conference is desired.

d. The number of hours likely required to conduct the hearing.

e. Any threshold motions, such as a motion to dismiss an appeal as untimely.

2. For applications and other matters heard pursuant to KCC 20.22.060, the responsible agency adds a description of the proposal, a property description (if applicable), the expected number of hearing attendees, and a desired range of hearing dates.

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3. For appeals and other matters heard pursuant to KCC 20.22.040, the responsible agency adds the decision being appealed and the appeal, and sends that to the examiner within seventeen (17) days of the agency receiving the appeal.

4. The examiner may request additional information or materials.

D. Scheduling and Notice of Hearings and Pre-Hearing Conferences

1. Scheduling

The examiner schedules hearings in consultation with the responsible agency. Unless a pre-hearing conference is scheduled, or all parties agree to a later date, the examiner typically schedules *application* hearings so the examiner can complete the hearing and issue a determination within ninety (90) days of receiving the Council's referral or receiving the agency's materials as described in III.C., and typically schedules *appeal* hearings for within forty-five (45) days of receiving the agency's materials as described in III.C. materials.

2. Notice of Pre-hearing Conferences

a. If the examiner decides to conduct a pre-hearing conference, at least seven (7) days before the conference the examiner transmits notice to all parties and interested persons.

b. If a hearing has already been set when the examiner decides to conduct a pre-hearing conference a pending hearing date may be converted to a pre-hearing conference upon notice to all parties and interested persons.

3. Notice of Hearings

a. For applications and other matters heard pursuant to KCC 20.22.060, the responsible agency prepares a proposed ordinance (title only) to transmit to the Clerk of the Council. Once the examiner sets a hearing date, the agency and applicant provide any publication, notice by mail, and property posting required by the KCC and agency rules.

b. For all scheduled hearings, at least fourteen (14) days before the hearing the examiner transmits notice to all parties and interested persons. The examiner's notice advises the parties of the opportunity to request a conference.

IV. FILING REQUIREMENTS

A. General Filing

In this section IV., subsections B., C., and D. outline specific rules related to appeals. Subsection E. covers both appeals and applications.

B. Appeal: Procedure

1. The appeal, together with any fees required by KCC 4A.780.010, is submitted in accordance with applicable provisions of the KCC or other governing statutes, ordinances, or regulations.

2. Unless the KCC expressly indicates something to the contrary, the appeal is submitted directly to the agency that took the action or made the decision being appealed.

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3. KCC 20.22.070 and .080 set general requirements for appealing an agency decision, but neither those sections nor these Rules dictate how agencies issue appealable decisions or accept appeals. An agency decision appealable to the examiner should provide a would-be appellant with information on when and how to appeal, including how to pay an appeal fee (if applicable), the actual appeal deadline (i.e., "by January 10, 20xx"), where to send the appeal (including an email option), and a copy of these Rules and the relevant examiner's guide. If that information is unclear, a would-be appellant should contact the agency or the examiner well before the deadline to ensure that any appeal is timely and properly submitted.
4. Timely submittal of the appeal and appeal fee (if a fee is required under KCC 4A.780.010) are jurisdictional requirements. The examiner cannot consider appeals that do not meet these requirements.
5. No specific *form* of the appeal (i.e., email, letter, pleading, pre-printed form) is required, unless the KCC expressly requires it; the *content* of the appeal is detailed in IV.C.

C. Appeal: Content

The following are default requirements for appeals governed by KCC 20.22.080; for other types of appeals, such as those listed in KCC 20.22.070, consult the pertinent code as referenced in KCC 20.22.070.

1. Include a copy of the decision you are appealing, or clearly identify that decision, including the agency making the decision and the decision's date;
2. Provide your name, mailing and email addresses, and telephone number; it is your responsibility to update the examiner if your contact information later changes;
3. If you have an attorney or other representative, provide the representative's name, mailing and email addresses, and telephone number, and have them file a notice of appearance with the examiner;
4. If two or more persons join in a single appeal, name one person as the representative;
5. Identify your legal interest in the decision (such as owning the property or animal in dispute, a neighbor impacted by the agency decision, etc.);
6. Identify the errors you see in the decision;
7. State the specific reasons why you think the decision should be reversed or modified;
8. State the harm you have suffered or anticipate suffering because of the decision; if a group or organization, state the harm to one or more members; and
9. Identify the relief you want the examiner to grant.

D. Amending Appeals

1. Unless the examiner authorizes an appeal amendment, matters or issues raised in the appeal define and limit the issues the examiner considers.

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2. If, at least seventy-two (72) hours before the appeal deadline, an appellant requested from the County relevant information and has not timely received such, the appellant may include with the appeal a notice that such appeal is incomplete, the matters subject to the outstanding information request, the date of the request, the County employee to whom the request was directed, and the nature and relevance of the information solicited. Under such circumstances, the examiner authorizes an appeal amendment, consistent with the deadlines for timely appeal processing.

3. Beyond subsection IV.D.2., there is no right to amend an appeal after the appeal deadline, but the examiner has discretion to allow such. Where a pre-hearing conference is scheduled, any motion to amend should be offered by no later than the conference. Where a hearing is scheduled without a conference, a motion to amend is filed by any deadline the hearing notice sets.

E. Filing and Service

1. Overview

a. The following default rules apply after the agency submits an application or appeal to the examiner (as described in III.C.).

b. Unless the examiner sets alternative requirements for a particular case, all documents are emailed to the examiner and to the other named parties. Limited, technical assistance is available by emailing hearingexaminer@kingcounty.gov or by calling (206) 477-0860 well in advance of a filing deadline.

c. In certain circumstances, the examiner may accept documents by mail. It is the person's responsibility to call or email well in advance of a filing deadline to notify the examiner and request a special accommodation.

d. Information provided orally or by voice mail or a similar medium does not constitute filing or service, nor does it preserve any rights. A document is deemed filed only upon actual receipt. When delivery occurs after 4:00 p.m. or on a weekend or holiday, the document is deemed received on the next business day.

2. Filing and Serving Documents

a. Responsibility: It is the sender's responsibility to confirm the examiner's receipt and that the examiner can read, view, and/or listen to a filing, or else the submission may be excluded from the record. Requesting a confirmation receipt email is recommended.

b. Format: Email attachments should be in the following readable formats:

File type	*Format*
Documents	.pdf, .docx (preferred); .jpeg, and .xlsx (acceptable)
Audio	.mp3
Video	.mp4

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c. Naming: Emails and any attachments reference the case number, party name, and document title, and should clearly reflect the intended order (like exhibit A1, A2, etc.).

d. Multiple Emails Discouraged: Size permitting, a submission (such as a motion and its supporting evidence, including any images) should be organized as a single email.

e. Size: Emails are generally limited to ten (10) megabytes (MB) per email. Participants may break electronic documents into smaller pieces and send multiple emails to meet the MB limit. A shareable link containing the documents is acceptable, if the link is easily opened and can be downloaded by the deadline. Emails larger than ten (10) MB will likely bounce back and will not be considered filed.

f. Signatures: Digital signatures are not required, but emails should reference the sender's name, address, and phone number.

g. Copy Other Parties: Except for emails related to clarifying simple procedural matters (and not to the merits of a dispute), senders copy the other named parties on emails to the examiner.

V. MEDIATION

A. Introduction

Mediation is a voluntary and confidential dispute settlement process in which a trained, neutral individual called a mediator helps people work together to resolve disagreements and find mutually acceptable solutions. Mediation can save time and money, protect participants' privacy, allow participants to retain control over the process and outcome, allow consideration of options beyond those an examiner would have authority to address, and generally create more satisfactory results than what an examiner might otherwise impose. The examiner encourages using mediation to reach voluntary and mutually acceptable resolutions.

B. Initiation

1. Mediation may be requested at any time by any party or interested person, or it may be suggested by the examiner or Council.

2. Mediation does not automatically stay examiner timelines. If all parties agree to mediate and to extend the deadlines, the examiner continues the proceedings. In the absence of uniform agreement, the examiner may stay the case or extend deadlines where the examiner details why good cause supports such action.

C. Process

1. The examiner may provide information on mediation resources, including *pro bono* or low-cost mediation services, but the examiner does not warrant or represent the fitness or suitability of any such resource.

2. Mediators are generally responsible for the mediation process and conduct, such as: communicating with mediation participants; determining whether parties or interested persons other than those who had previously requested or agreed to pursue mediation should participate; and the terms, sequence, timing, cost, cost

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share, and other components of the mediation. Absent an explicit agreement to the contrary, mediations are conducted pursuant to the Uniform Mediation Act, chapter 7.07 RCW.

D. Conclusion

1. When the mediator determines the mediation process is complete, the mediator (consistent with RCW 7.07.060) reports to the examiner, attaching any signed agreement(s).

2. If no agreement was reached, the examiner process proceeds as if no mediation had occurred.

3. If an agreement is reached, the examiner may accord it substantial deference in determining a subsequent examiner action, but an agreement does not necessarily obviate the need for (nor limit the scope of) a public process otherwise required by law. The settlement's impact depends on several factors, such as: whether the case is an application (where the examiner has a duty to issue a determination) or an appeal (where the examiner's only jurisdiction is the appeal); whether the mediation resolved all issues for all parties and interested persons; and what the examiner is being requested to do (grant a motion withdrawing an order or appeal, versus issue an order on the merits).

VI. AGENCY FILES, REPORTS, AND RESPONSES

A. Agency File

The responsible agency maintains a file that includes all applications, reports, studies, reviews, responses, correspondence, memorandums, and other documents concerning a matter within the examiner's jurisdiction.

B. Timeliness of Staff Report

Failure of the responsible agency to timely issue the KCC 20.22.130 report does not void the examiner's jurisdiction, but it may be grounds for a continuance, if a party or interested person can demonstrate that the failure has resulted in prejudice to the movant that cannot be otherwise mitigated. In egregious circumstances, the examiner may apply the sanctions of IX.E.

C. Optional Written Responses

For applications, parties and interested persons may file written responses to issues raised by appeals, reports, and studies. For appeals, only parties may generally file. See X.A. The examiner may set requirements and deadlines. Unless otherwise ordered, responses is filed at least three (3) business days before a hearing, copying all named parties. The examiner may exclude responses not timely served.

VII. PRE-HEARING MOTIONS AND PROCEEDINGS

A. Consolidation or Concurrent Hearings

1. If a proposal requires more than one County permit or appeal hearing, or if multiple proceedings involve a significant, common issue of fact, law, or policy, any party may, at least twenty-one (21) days before the first hearing, request consolidated or concurrent hearings. The motion shall identify common issues, as

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well as major issues (if known) unique to each proceeding. The motion shall state whether the other parties consent.

2. The examiner considers whether consolidation or concurrent hearings will achieve greater efficiency of time and effort, and the extent to which issues unique to each proceeding likely require separate treatment. The examiner may also order consolidation or concurrent hearings without a motion.

B. Dispositive Motions

1. A party may move to dismiss an appeal, in whole or in part, if:
   a. The appellant lacks standing to appeal the decision or action challenged;
   b. The appeal or any required fee was not filed by the relevant deadline;
   c. The examiner lacks jurisdiction, in whole or in part, over the subject matter;
   d. The appeal is frivolous on its face; or
   e. The appeal is not sufficiently specific to inform the other parties of the appeal's factual basis
   f. The grounds stated are not a legally adequate basis for appeal.
2. Motions to dismiss an appeal that do not meet these requirements are reviewed as motions for summary judgment.
3. In lieu of dismissal, the examiner may clarify the appeal issues or may require the appellant to file a clarification.
4. Due to the efficiency and user-friendliness of the hearing process (relative to court trials) and tight KCC deadlines for completing the examiner process, summary judgment motions are disfavored. Summary judgment motions may be entertained when the moving party demonstrates that:
   a. The relevant matters primarily involve legal interpretations based on facts that are either uncontested or can be easily determined;
   b. The parties against whom the motion is made will not be unduly inconvenienced or prejudiced by participating in a more legally-complex proceeding; and
   c. The motion can be decided without rescheduling previously established procedural deadlines and hearing dates, or the other parties consent to an extension.
5. A party intending to file a dispositive motion (other than a threshold motion discussed in III.C.1.) requests a pre-hearing conference, if one has not been previously scheduled; failure to do so is grounds for motion denial.

C. Requests to Postpone or Continue

1. A party files a motion to postpone a proceeding as soon as the need becomes known, detailing the reasons for the request. The examiner may act on the motion alone, may request comment, or may schedule a motion hearing. The examiner considers the applicable KCC deadlines, the proceeding type (for example, a public hearing with published notice versus a status conference),

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reasonable alternatives to a continuance, and prejudice or undue inconvenience to other parties or interested persons.

2. Motions to postpone a hearing received less than seven (7) days prior to the hearing normally are granted only if the need was not reasonably foreseeable, all parties consent, or for an emergency.

3. A proceeding may be rescheduled (with or without a motion) at the examiner's discretion for safety or welfare reasons, to assure due process, or for other purposes consistent with these Rules.

D. Procedural Requirements

Except as otherwise provided by these Rules or by examiner order, pre-hearing motions conform to the following requirements:

1. All written pre-hearing motions are presented in a separate document labeled to clearly identify the motion.

2. Unless otherwise provided, or unless good cause is shown, pre-hearing motions are filed and served at least twenty-one (21) days before the hearing.

3. All parties are afforded a reasonable opportunity to respond to a dispositive motion.

4. Any pre-hearing motion requiring findings of fact are accompanied by competent declarations, unless such facts are already established in the record. The need for lengthy affidavits usually indicates the motion is inappropriate.

5. Declarations should state, "I certify under penalty of perjury pursuant to the laws of the State of Washington that the foregoing is true and correct" above the declarant's signature, and list the date and place signed.

VIII. PRE-HEARING CONFERENCES

A. Purpose

Pre-hearing conferences promote efficient case management by identifying issues and information needs early, resolving procedural matters in complex cases, and determining next steps. Evidence is not received at a pre-hearing conference, unless necessary to rule on a motion.

B. Initiation

A party requests a pre-hearing conference as soon as the need becomes known, stating the reasons for the request. The examiner, with or without a party motion, may convene a pre-hearing conference to:

1. Determine whether to proceed to hearing or whether the parties jointly wish to pursue an alternative track;

2. Identify, clarify, or limit the issues;

3. Discuss pre-hearing disclosures and motions and set pre-hearing deadlines;

4. Discuss potential witnesses and likely testimony length;

5. Schedule the hearing date, time, and approximate duration; and

6. Address other matters to make the hearing process more efficient.

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C. Settlement

The examiner may inquire about the *status* of settlement discussions, and future prospects for resolution. Participants should not, however, share with the examiner any substantive settlement offer *details*.

D. Future Motions

At the conference, parties, or interested persons who wish to become parties, identify any pre-hearing motions they intend to offer, if not already submitted. Failure to make or disclose a motion at conference is grounds for motion denial.

E. Pre-hearing Order

Following a pre-hearing conference, the examiner issues an order specifying the items determined at the conference and other requirements.

IX. DISCOVERY

A. Purpose

Discovery (gathering information prior to a hearing) in the examiner process is not designed to duplicate the robust pre-trial discovery common to the courts. And the KCC sets tight deadlines for the examiner to complete the entire hearing process. Thus, the primary means of discovery is through reviewing the agency's case file, reviewing the parties' exhibits and witness lists prior to hearing, and cross examining witnesses at hearing. Limited discovery beyond that is available only in compelling circumstances.

B. Agency File

Access to the County file for the application or appeal under review is presumptively available, either informally from the agency, pursuant to a public records request, or via examiner order.

C. Routine Disclosures Required

If no pre-hearing conference is held, the examiner's hearing notice will contain instructions and deadlines (typically starting two weeks before a hearing) for submitting exhibits, exhibit list, and fact and expert witness lists.

D. Discretionary Discovery

1. Unlike the courts, where the default is greater pre-trial discovery, outside of IX.B. and IX.C., in examiner proceedings the default is limited pre-hearing discovery.
2. Requests for discovery beyond those in IX.B. and IX.C. are made at a pre-hearing conference or as set forward in the hearing notice. The examiner may grant these requests upon finding that (a) the moving party or person has demonstrated a compelling need; and (b) the party or interested person to whom the request is directed will not be unreasonably inconvenienced or incur unreasonable cost complying.
3. Discretionary discovery requests target clearly identified, specific, relevant information. Requests to depose or interview individuals otherwise available to testify at hearing, requests for blanket production of documents (beyond the County file for the application or appeal under review), or interrogatories are disfavored and, in the absence of compelling circumstances, will not be granted.

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4. An interested person seeking discretionary discovery concurrently files a petition to intervene. See X.B.

5. The examiner, with or without a motion, may order discovery necessary for the record's fair and complete development.

E. Sanctions

1. The examiner may impose the following sanctions for failing to fully and timely respond to discovery:

   a. Continue a scheduled hearing to enable obtaining the information. A person who fails to respond waives KCC chapter 20.22's time limits;

   b. Exclude evidence concerning matters within the failure to respond's scope, or place terms and conditions on introducing that evidence;

   c. Modify the applicable burden of proof or make adverse evidentiary inferences;

   d. Order specific facts as admitted by the person who failed to respond;

   e. Require that the person who failed to respond pay the costs incurred by other persons to establish discoverable facts;

   f. Dismiss the order, application, or appeal of a person who failed to respond to a discovery request;

   g. Require or recommend future reconsideration of a decision if facts subject to the discovery request emerge; and/or

   h. Other relief the examiner determines appropriate.

2. To the extent feasible, the relief provided should not penalize or inconvenience other persons or unduly delay the proceedings. When determining appropriate sanctions, the examiner weighs the private and public interests affected by the failure to provide discovery and a sanction's impact on those interests.

F. Subpoenas

1. A party may move the examiner to issue a subpoena, a document compelling the attendance of—or documents from—a person. The party explains why the witness or documents are necessary, and why the witness or documents would be unavailable without a subpoena.

2. If the examiner decides to issue a subpoena, it becomes the party's responsibility to serve that subpoena on the person subpoenaed, according to the court's civil rule 45. Parties can enforce an examiner-issued subpoena under RCW 34.05.588(1). The party requesting a subpoena pays the cost of producing records and the witness fees and allowances as provided in King County superior courts by chapter 2.40 RCW and by RCW 5.56.010.

X. PARTIES AND REPRESENTATION

A. General Principles

1. For applications or other approvals over which the examiner has original jurisdiction (such as preliminary plats, road vacations, or public benefit ratings),

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any member of the public may offer exhibits or testimony, subject to these Rules or a specific examiner order.

2. For appeals, absent a specific examiner order participation is limited to the parties. Only parties may offer exhibits, and non-parties may only offer testimony if called as a witness by a party. Non-parties with a substantial interest in an appeal proceeding should file a petition for intervention, described below.

3. The standard for intervention as a matter of right is substantially higher in examiner proceeding than in the courts; while the standard for discretionary intervention is substantially lower in examiner proceeding than in the courts.

B. Intervention

1. Purpose

a. Intervention as a Matter of Right

The examiner allows intervention when the law confers an unconditional right to intervene, or:

(i) when a non-party demonstrates a substantial interest in the proceeding's subject matter;

(ii) that such interest is likely to be directly affected by the proceeding's result, that interest is not otherwise addressable or will not be adequately represented by existing parties; and

(iii) that intervention will not impair the orderly and prompt conduct of proceedings.

b. Discretionary Intervention

The examiner may allow intervention where the law confers a conditional right to intervene or when the intervenor's participation as a party would advance the public interest, and where intervention will not impair the orderly and prompt conduct of proceedings.

2. Procedure

A petition to intervene may be made orally or in writing. Every petition is supported by facts sufficient to justify the request. (A petition accompanied by a request for information is subject to the time limits of IX.)

a. Time Limits for Petition

1. A petition to intervene as a matter of right is submitted before or at the pre-hearing conference. If no pre-hearing conference is scheduled, a petition to intervene as a matter of right is submitted at least twenty-one (21) days before the hearing. Failure to timely petition to intervene waives that right.

2. A petition for discretionary intervention is submitted at the earliest point the petitioner knows facts giving rise to the need for intervention. Petitions submitted after substantial evidence is introduced are normally denied.

b. Petition Content

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A written petition to intervene should state:

1. The name, mailing and email addresses, and telephone number of the person seeking to intervene;
2. The name, mailing and email addresses, and telephone number of petitioner's attorney or other representative, if any;
3. The specific nature and extent of the petitioner's interests affected by the proceeding, or the specific reasons why intervention would advance the public interest;
4. Why the petitioner's interests will not be adequately represented by the existing parties; and
5. Petitioner's claim, concern, or other statement regarding the dispute, including the desired outcome.

c. Petition Processing

1. Existing parties are afforded a reasonable opportunity to provide written or oral response. Petitions to intervene may be resolved by written order or at a proceeding.
2. Upon approval, the petitioner becomes an intervenor with most procedural rights of a party, subject to limitations the examiner may impose, such as:
   (i) Limiting the intervenor's participation to certain issues;
   (ii) Requiring or limiting the intervenor's use of discovery, cross examination, and other procedures;
   (iii) Requiring two or more intervenors and/or parties with similar interests to combine their efforts; and
   (iv) Such other terms as the examiner determines appropriate.
3. The examiner may amend the intervention order at any time.
4. An intervenor typically can fully participate *if* a case proceeds to a determination of the merits, but an intervenor typically does not control *whether* a case proceeds to a determination of the merits.
5. Granting a petition to intervene does not confer or imply standing to bring an action in a court or other tribunal.

C. Representation Optional

1. Representation by an attorney is not required for full participation. The examiner may make reasonable allowances to enable persons unfamiliar with proceedings to participate effectively.
2. Any person, group, or organization may authorize another person (attorney or not) to present arguments, enter exhibits, or otherwise participate as a designated representative.
3. Any person (attorney or not) representing a party or parties promptly files a notice of appearance.

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D. Use of Representative Parties

Multiple parties and interested persons with similar interests should select one or two persons (who need not be attorneys) as representatives to accept document service, schedule proceedings, and otherwise facilitate efficient case management. Absent voluntary selection, the examiner may designate someone.

XI. ORDER AND CONDUCT OF PROCEEDINGS

To the extent practicable and consistent with legal requirements, hearings are conducted expeditiously. The examiner and all participants avoid unnecessary delay. Unless otherwise communicated, proceedings are held virtually. Hearings generally progress as follows:

A. Applications and Petitions

1. The responsible agency introduces the matter and may provide its written report, a summary, staff exhibits, and a preliminary recommendation.
2. The applicant or petitioner presents evidence.
3. Any party (such as an intervenor) generally aligned *with* the applicant or petitioner presents evidence.
4. The agency presents evidence (to the extent not provided during the agency's introduction.)
5. Any party (such as an intervenor) generally aligned *against* the applicant or petitioner presents evidence.
6. Members of the public present evidence and argument.
7. After the initial presentations, parties may present rebuttal evidence. The examiner may allow rebuttal by non-parties.
8. Parties' closing arguments.

B. Appeals Where Appellant Bears the Burden of Proof (See XIV.E.)

1. The responsible agency introduces the matter and may provide its written report, a summary, staff exhibits, and a preliminary recommendation.
2. Appellant presents evidence.
3. Any party (such as an intervenor, applicant, or property owner) generally aligned *with* appellant presents evidence.
4. The agency presents evidence (to the extent not provided during the agency's introduction).
5. Any party (such as an intervenor, applicant, or property owner) generally aligned *against* appellant presents evidence.
6. Rebuttal evidence, in the same order as initial presentation.
7. Parties' closing arguments.

C. Appeals Where Agency Bears the Burden of Proof (See XIV.E.)

1. The responsible agency presents evidence.
2. Any party (such as an intervenor, applicant, or property owner) generally aligned *against* appellant presents evidence.

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3. Appellant presents evidence.
4. Any party (such as an intervenor, applicant, or property owner) generally aligned *with* appellant presents evidence.
5. Rebuttal evidence, in the same order as initial presentation.
6. Parties' closing arguments.

D. Alternate Order of Proceedings

The examiner may modify proceeding order to produce a clear, fair, and efficient hearing. Where a hearing combines applications and appeals, or combines enforcement and non-enforcement appeals, the order of proceedings may necessarily involve some adjustments. Additionally, the parties may agree to a different order of proceedings than proscribed above and present to the examiner for consideration. Modifying the order of proceeding does not alter any applicable burdens.

E. Decorum, Recording, and Safety

1. All persons either physically or virtually attending an examiner proceeding conduct themselves with the decorum and courtesy appropriate to a court-like setting. If not, the examiner may mute or remove persons from a proceeding. The examiner may also recess a hearing and reconvene it, pursuant to oral or written notice, under conditions reasonable to prevent a repeat violation, including excluding identified persons from further participation.
2. No weapons are permitted in the hearing room, except when in the possession of a law enforcement officer.

XII. PRESENTATION AND RECEIPT OF EVIDENCE AT HEARINGS

A. Oath or Affirmation

1. All testimony before the examiner is given under oath or affirmation.
2. Any interpreter swears to make a true interpretation to the best of the interpreter's skill and judgment.
3. Statements made by an unsworn attorney or other representative are not evidence.

B. Admissibility of Evidence

1. Except as otherwise provided by these Rules, admissibility is not controlled by the Washington Rules of Evidence (ER). The examiner excludes unreliable, unduly repetitive, irrelevant, immaterial, privileged, or unconstitutionally obtained evidence, and may use the ER as a guide in evidentiary rulings.
2. There is no outright bar to hearsay. Any trustworthy oral or documentary evidence may be offered, including hearsay. Out-of-court written statements are typically admitted, but usually accorded less weight, than under-oath, cross-examinable testimony.
3. There is no formal process for admitting expert witness testimony, but the examiner considers an expert's knowledge, skill, experience, training, and education when weighing opinion testimony on scientific, technical, and other specialized subjects. The examiner usually admits lay witness opinions, even on

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matters normally within the purview of qualified experts, but considers lack of qualification when weighing such testimony.

4. The examiner may admit excerpts from public documents or from books, studies, or reports when the remainder of such material is either irrelevant or unnecessary.
5. In proceedings when King County seeks a significant penalty, forfeiture, or similar divestiture of legally cognizable rights, the examiner may more strictly apply the ER and may require adherence to other rules applied in superior court.
6. The examiner may admit evidence but limit its scope or probative value.

C. Objections

An objection to admitting evidence briefly states the ground for objection. Any evidence entered into the record without objection is deemed admissible.

D. Cross Examination

1. In addition to questions the examiner asks, cross examination of any witness is generally permitted.
2. Cross examination is generally limited to the subject matter of the direct testimony and to witness credibility.
3. Parties have the right to cross examine, although an examiner may limit intervenors' right to cross examine. Interested persons do not have a right to cross examine, although an examiner may permit it to create a complete record and enhance public confidence.
4. The examiner prohibits irrelevant, cumulative, unduly repetitious, argumentative, or abusive cross examination.
5. To achieve efficiency, the examiner may:
    1. Require consolidated cross examination by parties and interested persons sharing a common position or objective;
    2. Require or permit parties and interested persons to state their questions for the examiner to ask;
    3. Limit cross examination of opinion testimony offered by interested persons who do not claim to be experts;
    4. Establish reasonable time limits for cross examination, consistent with the requirements of due process; and
    5. Allow concurrent cross examination of two or more witnesses who have testified on the same subject matter.
6. If a witness refuses to answer any question the examiner rules proper, the examiner may strike some or all of that witness's testimony.

E. Limits on Testimony and Argument

1. While appropriate latitude may be provided for public testimony, testimony and argument is generally limited to matters material to the examiner's decision.

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2. The examiner admits and excludes evidence, as provided in XII.B. & .C. and XV.B.1.

3. The examiner may establish reasonable time limits on testimony and argument. The examiner also may provide an opportunity to submit written supplementary testimony, allowing opposing parties a reasonable opportunity to respond.

4. Legal opinions are argument, not evidence.

XIII. EXAMINER RECORD

A. General Standards

The examiner bases factual findings on evidence admitted into the record and on matters subject to official notice. Examiners may conduct site inspections for the purpose of understanding the hearing testimony and documentary evidence, but site inspection observations themselves are not evidence.

B. Official Notice

1. The examiner may take official notice of the following:

   a. The published regulations, rules, and adopted policies of a public agency;

   b. Decisions of other tribunals;

   c. Generally known facts or data beyond reasonable dispute; and

   d. Matters susceptible to judicial or official notice in administrative tribunals.

2. No advance statement of intent to take official notice is required before an examiner incorporates official notice into a finding. No fact may be officially noticed if there is a reasonable dispute as to its accuracy.

C. Information Received after Close of Hearing

Unless the examiner explicitly keeps the record open, material submitted after a hearing is not considered or included in the hearing record. The examiner may issue a discretionary order reopening the hearing to permit its introduction and to afford a reasonable opportunity for response.

XIV. HEARING OUTCOME

A. Continuances

1. If a hearing cannot be completed on the date set, the examiner may announce, before adjourning, the next hearing. No further notice is required.

2. The examiner may continue or postpone a hearing upon finding good cause or to prevent manifest injustice.

3. Unless waived by the parties or required by law, continuances are scheduled to meet KCC 20.22.100's time limits. Any party who requests or consents to a continuance beyond these time limits waives those limits. Unless otherwise specified, the waiver includes the date the hearing record closes, plus an additional ten (10) business days.

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4. As an alternative to continuing a hearing to receive further oral testimony, the examiner may leave the record open to allow written argument or specified additional evidence and may allow for a period of response or reply.

B. Inadequate Legal Notice

Lack of required legal notice may be raised before the hearing closes. To the extent possible and consistent with due process, the deficient notice is cured by providing (through continuances and other mechanisms) persons a reasonable opportunity to effectively participate. Receipt of actual timely notice generally cures a deficiency. If other available corrective actions are inadequate, the examiner may adjourn the hearing and order new notice issued. The examiner may waive KCC chapter 20.22's time limits to cure deficient notice.

C. Remand

The examiner may remand any matter to an applicant or agency for additional information, analysis, review, or modification.

D. Default

An examiner may enter an order of default against any party who fails to appear at a proceeding. Failure of a party to present evidence or argument in support of the application, petition, order, or appeal is cause for dismissal. Prior to entering a dismissal, the examiner ascertains whether the party has received legal notice.

E. Burden of Proof

1. Except as otherwise specified by law, the moving party (the applicant, appellant, or petitioner) bears the burden of proof.
2. Except as otherwise specified by law, in enforcement actions the agency bears the burden of proof on those matters or issues raised in the appeal or in any appeal amendment the examiner authorizes.
3. If the burdened party fails to introduce sufficient evidence, the examiner may deny the application, petition, order, or appeal without taking evidence or hearing argument in opposition.

F. Standard of Proof

1. Unless otherwise provided by law, the standard of proof is a preponderance of the evidence, meaning that something is more-likely-than-not.
2. For appeals from threshold determinations made pursuant to the State Environmental Policy Act, the appellant demonstrates that the determination was clearly erroneous based on the record as a whole.
3. The examiner only grants substantial weight or otherwise accords deference when directed to by an ordinance, statute, or pertinent case law.

G. Determination

Unless the examiner requests additional information or briefing or otherwise re-opens the record, the examiner transmits a determination within ten (10) business days of a hearing's close.

XV. POST-HEARING PROCEEDINGS

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A. Reconsideration

1. Upon a party's timely filing of a motion for reconsideration on the examiner's own ruling, an examiner may reconsider a determination based on the existing evidential record. A motion for reconsideration is not timely if filed after the appeal deadline.

2. A motion for reconsideration is not a prerequisite to appealing an examiner determination. However, a motion filed by the appeal deadline stays the appeal period until the examiner rules on the motion.

3. The examiner may grant the motion if the movant shows that the examiner's determination was based in whole or in part on erroneous information or failed to comply with existing laws, regulations, or adopted policies, or shows that a procedural error prevented consideration of directly affected persons' interests.

B. Reopened Hearing

1. Prior to Examiner Determination or on a Motion for Reconsideration

Upon notice to the parties and interested persons, and consistent with XIII.C., the examiner may reopen a hearing to permit additional consideration or to receive additional information.

2. Upon Remand

The examiner may reopen a hearing to address an issue remanded by the Council or another tribunal. If the examiner reopens the hearing for testimony, the examiner provides reasonable notice of the reopened hearing. If the examiner reopens a hearing for written submittals, the examiner provides at least seven (7) days for such filings. The examiner's notice sets forth the issues to be addressed in the reopened hearing.

C. Retained Jurisdiction

Examiner determinations may expressly retain jurisdiction over a matter.

D. Minor Corrections

Examiner determinations may be revised to correct textural errors. Unless otherwise specifically provided, such revisions do not alter or extend applicable appeal deadlines or the effective date of the examiner determination.

XVI. FAIRNESS

A. Disqualification

1. An examiner disqualifies from a proceeding in which that examiner's impartiality might reasonably be questioned.

2. Disqualification is mandatory whenever the examiner:

a. Has a personal bias or prejudice concerning a party;

b. Has served in a professional or business relationship with respect to the matter in issue, or is currently associated with a person who is or was so engaged; or

c. Has directly, or through a family member or fiduciary relationship, a financial or personal interest in the outcome of the matter or issue.

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3. An examiner's previous ruling on the same or a similar issue, or for or against a party, are not bases for disqualification.

4. The examiner is guided by the provisions and interpretations of Rule 2.11 of the Code of Judicial Conduct.

B. *Ex Parte* Contacts

1. Examiner proceedings are subject to the appearance of fairness doctrine. No person may contact an examiner off the record to discuss the merits of a case or to influence the examiner's determination.

2. *Ex parte* contacts limited strictly to the clarification of simple procedural matters (and not to the merits of a dispute) are permitted. A deliberate *ex parte* contact in violation of this section may be deemed an attempt to interfere with examiner duties in violation of KCC 20.22.020. If a substantive *ex parte* communication is made to or by the examiner, the examiner publicly discloses it.