

The hearing concerning the final assessment roll for the Seattle Waterfront LID will be conducted in accordance with [Chapter 35.44 RCW](#).

Below are specific sections of note from the City of Seattle Office of Hearing Examiner, Hearing Examiner Rules of Practice and Procedure (“HER”) that relate to the Waterfront LID Assessment Roll Hearing. The subsection of rules below are provided for reference only. A copy of the HERs can be found at - [http://www.seattle.gov/Documents/Departments/HearingExaminer/HE%20Rules%20of%20Practice%20and%20Procedure\\_042414.pdf](http://www.seattle.gov/Documents/Departments/HearingExaminer/HE%20Rules%20of%20Practice%20and%20Procedure_042414.pdf)

For additional requirements concerning notice, filing, hearing dates, and additional information [see the Notice from the City Clerk](#) concerning the final assessment roll for the Seattle Waterfront. The Waterfront LID Assessment Roll Hearing will be conducted in accordance with any other applicable laws, ordinances and procedures.

## Select Rules from City of Seattle Office of Hearing Examiner, Hearing Examiner Rules of Practice and Procedure

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## Section 1 General Provisions – Subsections: 1.01; 1.02; 1.03; 1.05.

### 1.01 APPLICABILITY

These Hearing Examiner Rules (Rules) supplement Seattle Municipal Code and ordinances and other applicable law, for matters within the Hearing Examiner's jurisdiction, and govern administrative practice and procedure before the Hearing Examiner. In case of conflict between a Hearing Examiner Rule (HER) and the Seattle Municipal Code or other applicable law, the Seattle Municipal Code or other applicable law controls.

### 1.02 EFFECTIVE DATE

These Rules apply to all matters properly before the Hearing Examiner on or after the Rules' effective date.

### 1.03 INTERPRETATION OF RULES

The Hearing Examiner shall interpret the Hearing Examiner Rules of Practice and Procedure and determine their application.

While a matter is pending before the Hearing Examiner, an affected party may request by motion that the Hearing Examiner issue a declaratory ruling on the applicability of a Rule to identified, existing circumstances. The motion must clearly identify the Rule and describe the circumstances for which the declaratory ruling is sought. Unless brought during a hearing, the motion must be in writing.

When questions of practice or procedure arise that are not addressed by these Rules, the Hearing Examiner shall determine the practice or procedure most appropriate and consistent with providing fair treatment and due process. The Hearing Examiner may look to the Superior Court Civil Rules for guidance.

### 1.05 PUBLIC RECORDS (SMC 3.02.070)

The Office of Hearing Examiner is a separate and independent City office and is responsible for conducting administrative hearings and issuing decisions and recommendations in matters where

jurisdiction has been granted by the Seattle Municipal Code. The Office is located on the 40th floor of Seattle Municipal Tower, 700 Fifth Avenue, in Seattle, Washington, and is open from 8:00 a.m. to 5:00 p.m. on business days. The mailing address is PO Box 94279, Seattle, Washington 98124.

All case files, including recordings, exhibits, and decisions or recommendations, are retained by the Office of Hearing Examiner in accordance with applicable retention schedules, and are available to the public during normal business hours for inspection and copying in accordance with the requirements of the Public Records Act and other laws governing public records. Procedures for making a public records request are available at the Office's website: [www.seattle.gov/examiner](http://www.seattle.gov/examiner).

## Section 2 Rules of General Application – Subsections: 2.01; 2.02; 2.03; 2.04; 2.06; 2.10; 2.12; 2.14; 2.15; 2.17; 2.18; 2.19; 2.20; 2.21; 2.23; 2.24; 2.25; 2.26; 2.31; 2.33.

### 2.01 SCOPE

Unless stated otherwise, Rules in this section apply to all matters before the Hearing Examiner.

### 2.02 DEFINITIONS

The following definitions apply unless the context requires otherwise:

- (a) "Affidavit" - a written or printed statement of facts confirmed by oath or affirmation of the person making it, before one having authority to administer oaths.
- (b) "Appeal" - a challenge to a decision or other action that the Hearing Examiner is authorized to review and decide.
- (c) "Appeal hearing" - a hearing held by the Hearing Examiner to consider an appeal of a decision or other action within the Hearing Examiner's jurisdiction. In these Rules an "appeal hearing" is distinguished from a "public hearing".
- (d) "Appellant" - the person, organization, or other entity who files a complete and timely appeal of a decision or other appealable action.
- (e) "Applicant" - the person, organization, or other entity who files an application or otherwise formally requests a permit or other type of City action that is the subject of an appeal or other review by the Hearing Examiner.
- (f) "Business days" - days other than Saturday, Sunday, and legal holidays.
- (g) "Code" - Seattle Municipal Code (SMC).
- (h) "Days" - calendar days.
- (i) "Declaration" - a written or printed statement of facts declared or certified to be true and correct under penalty of perjury under the laws of the State of Washington.
- (j) "Department" - the City entity responsible for the decision or action that is subject to appeal or other review by the Hearing Examiner.
- (k) "Director" - the head of the unit of City government responsible for the decision or other action that is subject to appeal or other review by the Hearing Examiner.

- (l) "Discovery" - the disclosure by one party to another party of documents and information that are relevant to the subject matter of an appeal, or are reasonably calculated to lead to documents and information that are relevant to the subject matter of an appeal.
- (m) "Ex parte communication" - a direct or indirect communication between a proponent, opponent, or a party and the Hearing Examiner, made outside a hearing or properly scheduled conference, and outside the presence of all other parties, regarding the merits of a matter pending before the Hearing Examiner.
- (n) "Hearing Examiner" or "Examiner" – The Hearing Examiner is the official appointed by the City Council pursuant to Chapter 3.02 SMC to serve as the City's Hearing Examiner. However, in these Rules, the terms "Hearing Examiner" and "Examiner" are used interchangeably to refer to the Hearing Examiner, or to a Deputy Hearing Examiner or Hearing Examiner Pro Tempore who has been delegated responsibility by the Hearing Examiner to preside over a particular matter.
- (o) "Interested person" - any person, organization, or other entity significantly affected by, or interested in proceedings before the Hearing Examiner, including any party.
- (p) "Law" - federal or state statute or regulation, Code, City ordinance or regulation, or common law.
- (q) "Motion" - a request made to the Hearing Examiner for an order or other ruling.
- (r) "Offer of proof" - a party's statement for the record of what excluded evidence would show had it been admitted.
- (s) "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 allowed by law, an order may direct how the Hearing Examiner's decision is to be implemented and may be issued as part of that decision or separately.
- (t) "Party" - the person, organization, or other entity that has filed an appeal or application or is granted a hearing automatically by law; the person, organization, or other entity granted party status through intervention; the Director who made the decision or took the action that is the subject of the hearing or appeal; the person, organization, or other entity who filed the application, request, or petition for a permit or other type of City authorization or action that is the subject of the hearing or appeal; the owner of the property subject to the City decision or other action; floating home moorage site lessees petitioning for review of rate increases; and the owner of the moorage subject to the petition filed by floating home moorage site lessees.
- (u) "Public hearing" - a hearing held by the Hearing Examiner for the purpose of gathering evidence from which to prepare a final decision on a preliminary subdivision application, or a recommendation for the City Council on matters for which the Code provides for a recommendation. (See also "Appeal hearing").
- (v) "Regular business hours" – 8 a.m. to 5 p.m.
- (w) "Representative" - the individual or firm designated by a party to be the official contact person and to speak for the party. Unless the law establishing the Hearing Examiner's jurisdiction requires otherwise, a representative is not required to be an attorney.
- (x) "Rules" - the Hearing Examiner Rules of Practice and Procedure, as currently amended.

- (y) "Timely" - within the time prescribed by applicable law or, in the absence of applicable law, the time prescribed by Hearing Examiner Rule or order.

### 2.03 HEARING EXAMINER'S JURISDICTION

The Hearing Examiner has jurisdiction to hear and decide appeals and other contested cases, make decisions on preliminary subdivisions, and make recommendations to the City Council only as authorized by law.

### 2.04 COMPUTATION OF TIME

Unless otherwise provided by law, computation of any period of time for matters before the Hearing Examiner begins with the first day after the day on which the act or event that started the time period occurred. When the last day of the time period so computed is a Saturday, Sunday, or national, state or City holiday, the time period extends to the end of the next business day.

### 2.06 EXPEDITIOUS PROCEEDINGS

Hearings shall be conducted expeditiously. At every stage in the proceedings, all parties shall make every effort to avoid delay.

### 2.10 INTERFERENCE PROHIBITED

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

### 2.12 DISQUALIFICATION OR RECUSAL OF AN EXAMINER

In the event of personal bias, prejudice, financial interest, or other reason substantially affecting the examiner's objectivity, an Examiner should recuse himself/herself from hearing a matter.

Prior to hearing, a party who reasonably believes that the Examiner assigned to a matter cannot remain objective in hearing it due to personal bias, prejudice, financial interest, or other substantial reason, may request by written motion that a different Examiner be assigned to the matter. The request should be made at the earliest possible time, preferably no later than 7 business days prior to the day the hearing is to begin. The request must set forth the reasons for the belief that the assigned Examiner cannot remain objective in hearing the matter.

The fact that an Examiner has considered the same or a similar issue or proposal in another matter, or has made a ruling adverse to the interests of the party in the same or another matter, is not a basis for disqualification.

In case of disqualification or recusal, the matter shall be assigned to a different Examiner.

### 2.14 TESTIMONY AND ARGUMENT

- (a) All witnesses testifying at hearing must take an oath or affirmation to be truthful in their testimony. All witnesses are subject to cross-examination by the other party.
- (b) Before beginning to interpret, every interpreter shall take an oath that to the best of the interpreter's ability, a true interpretation shall be made that is understandable for the person

utilizing the interpreter, and that the interpreter shall repeat statements in English to the Examiner and the other parties. (See also HER 2.33(b)).

- (c) The rules of privilege apply to the extent recognized by law.
- (d) Although Hearing Examiner hearings are open to the public, those who are not parties are generally not permitted to testify in appeal hearings unless called as witnesses by a party.
- (e) The Examiner may limit the length of testimony to expedite the proceedings. The maximum practicable advance notice of such time limitations will be provided. If parties are unable to complete their testimony and arguments within the allotted time, and the hearing will not be continued, an opportunity will be provided 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.
- (f) The Examiner may allow testimony via teleconference or videoconference or similar electronic means. Each party to the proceeding shall have the opportunity to hear (or for a videoconference, to both hear and see) testimony given in this manner and to question the person giving such testimony. Any costs associated with electronic conferencing shall be borne by the party requesting it.

## 2.15 EXPECTED CONDUCT AND APPEARANCE OF FAIRNESS

- (a) All persons appearing before the Hearing Examiner shall conduct themselves with civility and courtesy to all persons involved in the hearing.
- (b) The appearance of fairness doctrine applies to proceedings under these Rules.
- (c) Except for communications regarding procedural matters (which are permitted), no party or other person, organization or other entity shall communicate or attempt to communicate *ex parte* with the Examiner.
- (d) If a prohibited *ex parte* communication is made, the communication shall be publicly disclosed by the Examiner: any written communications, and a memorandum summarizing the substance of and participants in all oral communications, shall promptly be made available to the parties for review and an opportunity provided for them to rebut the communications.

## 2.17 EVIDENCE

- (a) Evidence, including hearsay, may be admitted if the Examiner determines that it is relevant to the issue on appeal, comes from a reliable source, and has probative (proving) value. Such evidence is that on which responsible persons would commonly rely in the conduct of their important affairs.
- (b) The Examiner may exclude evidence that is irrelevant, unreliable, immaterial, unduly repetitive, or privileged.
- (c) At public hearings on matters in which the Hearing Examiner is to prepare a recommendation for the City Council, opinion evidence of non-experts may be admitted into the record. At appeal hearings, opinion evidence from non-experts is discouraged but may be admitted and given appropriate 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 that the complete document from which an excerpt is taken be made available for inspection by all parties.

## 2.18 OFFICIAL NOTICE

- (a) The Hearing 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) Before a decision or recommendation is issued, parties must be notified of the facts or material noticed and their source, and afforded an opportunity to contest or rebut them.
- (c) A Hearing Examiner ruling, decision, or recommendation may refer to and utilize any part of the Code and any issued Hearing Examiner decision.

## 2.19 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. Unless otherwise provided by the Examiner, site visits include only the Examiner; interested parties may not accompany or approach the Examiner during a site visit.

## 2.20 CONTINUING OR REOPENING HEARING

- (a) A scheduled hearing may be continued on the Examiner's initiative, or on the motion of a party for good cause shown. Written notice of the date, time, and place of the continued hearing shall be provided to each party. The notice of a continued hearing need not conform to the time requirements for the original notice.
- (b) If the Examiner determines at hearing that there is good cause to continue the hearing, and then and there specifies the date, time, and place of the new hearing, no further notice is required.
- (c) Following the close of the hearing and/or the record, but prior to issuing a decision or recommendation, the Examiner may reopen the record and/or the hearing for good cause and may permit or require written briefs or oral argument.
- (d) If a matter is reopened after conclusion of the hearing, parties shall be provided no less than 10 days notice of the reopened hearing.

## 2.21 LEAVING THE RECORD OPEN

- (a) At the conclusion of the hearing, the Examiner may close the hearing, but leave the record open to receive argument or for other good purpose. Parties shall be provided notice of any evidence received after hearing and shall have an opportunity to review the evidence and file rebuttal evidence or argument.
- (b) Except as provided in this Rule, HER 2.20 and HER 2.23, information submitted after the close of the record shall not be included in the hearing record or considered by the Examiner.

## 2.23 REMAND

- (a) Prior to issuing a recommendation, if the Hearing Examiner determines that information, analysis, or other material necessary to the Examiner's recommendation has not been provided, the Examiner may remand the matter for the addition of the requisite information, analysis, or other material.
- (b) Prior to issuing a decision on an appeal or a preliminary subdivision application, if the Hearing Examiner determines that information, analysis, or other material needed to satisfy the provisions

of relevant law has not been provided, the Examiner may remand the matter for the addition of the requisite information, analysis, or other material.

- (c) If the Hearing Examiner remands a matter for additional information, analysis, or other material, the Hearing Examiner shall retain jurisdiction in order to review the adequacy of the information, analysis, or other material submitted in response to the remand. The decision shall expressly state that jurisdiction is retained and what information, analysis, or other material is to be provided, and may indicate when it is to be submitted.
- (d) A copy of the information, analysis, or other material filed with the Hearing Examiner in response to a remand shall also be served on all parties to the proceeding. If the size or condition of the required materials makes copying impractical, notifying the other parties of the filing is sufficient. The parties shall have an opportunity to review and file rebuttal to the information, analysis, or other material filed in response to a remand.
- (e) After receiving information, analysis or other material in response to a remand, and any rebuttal, the Examiner may reopen the hearing.

## 2.24 TERMINATION OF JURISDICTION

- (a) The jurisdiction of the Hearing Examiner is terminated on the date a decision or recommendation is issued unless the Hearing Examiner expressly retains jurisdiction, or the law or these Rules provide otherwise (see e.g., HER 2.23 and 3.20).

## 2.25 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 on the Hearing Examiner's initiative, or in response to the motion of a party.

## 2.26 PROCEEDINGS RECORDED

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

## 2.31 RECORDING DEVICES

Photographic and recording equipment may be permitted at hearings with the approval of the Hearing Examiner. The Examiner may deny or condition use of such equipment as she or he deems necessary to avoid disruption to the proceedings or prejudice to any party.

## 2.33 ACCESSIBILITY AND ACCOMMODATION

- (a) Proceedings before the Hearing Examiner shall be accessible to the greatest extent practicable.
- (b) If a hearing impaired or non-English speaking party requires an interpreter or other accommodation in order to fully and fairly participate in a contested case hearing, the Examiner shall appoint a qualified and impartial interpreter in accord with the Hearing Examiner's adopted procedures for using interpreters, or provide other necessary accommodation.



## Section 3 Appeal Rules – Subsections: 3.12; 3.13.

### 3.12 SUBPOENAS

- (a) A motion may be made in writing for a subpoena to require a person to appear and testify at a deposition or hearing, or for a person to produce specified documents or other physical exhibits at a prehearing conference, deposition, or at hearing. (Note: expert witnesses often require reimbursement for their time and/or travel expenses, in addition to a subpoena for testimony.)
- (b) A motion 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 it. An affidavit or declaration of personal service or mailing shall be filed with the Hearing Examiner and a copy served on all other parties.
- (d) Unless otherwise allowed by the Hearing Examiner, subpoenas shall be served no later than 7 days prior to the date the appearance or production is 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) Unless otherwise allowed by the Hearing Examiner, any motion to limit or quash (*i.e.*, vacate or void) a subpoena shall be filed with the Hearing Examiner no later than 5 days after the date the subpoena was received.
- (g) Requests for subpoenas and the rulings upon such requests may be made *ex parte* unless otherwise ordered by the Hearing Examiner. Requests for subpoenas normally require at least 2 business days for the Office of Hearing Examiner to process.

### 3.13 PARTIES' RIGHTS AND RESPONSIBILITIES

- (a) Each party in an appeal proceeding has the right to notice of hearing, presentation of evidence, rebuttal, objection, cross-examination, argument, and other rights determined by the Hearing Examiner as necessary for the full disclosure of facts and a fair hearing.
- (b) Parties have the right to be represented by an attorney. Representation by an attorney is not required.
- (c) Where a party has designated a representative, the representative shall exercise the rights of the party.
- (d) Unless otherwise provided by order of the Hearing Examiner, if a party expects to offer a document as an exhibit at the hearing, the party shall supply a copy of the document to each party either before or at the hearing.

## Section 5 Recommendations to City Council – Subsections: 5.02; 5.05; 5.06.

### 5.02 NATURE AND PURPOSE OF PROCEEDINGS

Public hearings are generally informal in nature, but are conducted so that the relevant facts are efficiently available to the Examiner. The Examiner may exclude irrelevant, immaterial, unreliable or unduly repetitious testimony, exhibits, or other information.

### 5.05 HEARING EXAMINER'S RECOMMENDATION

- (a) Issuance. The Hearing Examiner shall issue a written recommendation as required by applicable law. A copy of the recommendation and the certificate of service shall be made part of the case record.
- (b) Contents. The Hearing Examiner's recommendation shall include, but not be limited to, a statement of the following:
  - (1) Background. The nature and background of the proceeding;
  - (2) Findings. The individual facts that the Examiner finds relevant, credible, and requisite to inform the City Council's deliberations and decision in the matter;
  - (3) Conclusions. Legal and factual conclusions based upon specific provisions of law and the findings of fact;
  - (4) Recommendation. Hearing Examiner's recommendation to the City Council as to whether the application or petition should be approved, denied, or remanded;
  - (5) Postscript. Information regarding subsequent procedural steps.

### 5.06 RECORD OF THE HEARING EXAMINER'S RECOMMENDATION

The record of a public hearing shall include, but need not be limited to, the following materials:

- (a) Application or petition;
- (b) Director's report and recommendation;
- (c) Written comments from the public and other agencies received during the Director's review;
- (d) Exhibits and written comments received by the Hearing Examiner prior to the close of the record;
- (e) Statement of matters officially noticed (if any);
- (f) Hearing Examiner's findings, conclusions, and recommendation;
- (g) Notice and mailing list for notice and decision;
- (h) Recording of the public hearing.