

**RULES OF PROCEDURE FOR
PROCEEDINGS BEFORE THE HEARING EXAMINER
OF PIERCE COUNTY, WASHINGTON**

CHAPTER I: HEARINGS ON APPLICATIONS

These Rules of Procedure (“Rules”) are intended to facilitate orderly open record hearings on applications subject to Hearing Examiner jurisdiction under the Pierce County Code (PCC). These Rules should be read in conjunction with the PCC. Any conflict between these Rules and the PCC will be resolved in favor of the PCC. These Rules help ensure due process for hearings. The Rules may be waived, at the Hearing Examiner’s discretion, to promote hearing fairness and efficiency. Chapter I applies to open record hearings on applications; Chapter II applies to open record appeal hearings. Sections 1.10 and 2.15 address the use of remote meeting technology.

SECTION 1.1: DEFINITIONS

“Applicant” means those applying for approval of land uses or certain non-land use permits, licenses, or approvals pursuant to PCC.

“County” means Pierce County, Washington.

“Clerk to the Hearing Examiner” means a person designated to assist in the duties of the Hearing Examiner.

“Comprehensive Plan” means the Comprehensive Plan that has been adopted by the Pierce County.

“Planning Department” means the Pierce County Planning and Public Works Department.

“Ex parte communication” means written or oral communications made to or by the Hearing Examiner about a matter pending before the Hearing Examiner, not included in the record, and made outside of a hearing and outside the presence of other parties.

“Hearing Examiner” means the Hearing Examiner or Deputy Hearing Examiner of Pierce County.

“Motion” means an oral or written request made to the Hearing Examiner, for an order or other ruling.

“Open Record Hearing” means a hearing that is contemplated by RCW 36.70B.020(3) and conducted by the Hearing Examiner that creates the record through testimony and submission of evidence and information on an application.

“Order” means a written determination of the Hearing Examiner which directs a party to the proceedings to act or to refrain from acting.

“Party” is a person or entity that participates in the process of a land use hearing but does not necessarily submit specific exhibits or testimony to be considered by the Hearing Examiner. For instance, an Applicant may submit a petition signed by several dozen members of the public. A signatory to such a petition may be considered “a party” but not necessarily a “party of record” (if they have not submitted additional testimony or individual comments). Neither the County nor Hearing Examiner would be obliged to send any final decision to such a “party” at the conclusion of the Hearing Examiner process whereas all “parties of record” do receive the Hearing Examiner’s decision. For purposes of the Land Use Petition Act (LUPA), or similar appellate laws, such “party” *may* have standing to pursue further legal relief. Any such determination, however, would occur during the appellate phase of review and neither the County nor Hearing Examiner would have any obligation to advise such a “party” as to his/her/their/its legal rights in pursuing an appeal.

“Party of record” includes all entities that should receive notice of any matter subject to a hearing before the Hearing Examiner, and/or along with those that should receive a copy of any decision issued by the Hearing Examiner, including:

- a. The Applicant or representative;
- b. The property owner, if different than the Applicant;
- c. The County;
- d. Any person or public agency that individually submitted written comments to the County prior to the closing of the comment period provided in a legal notice;
- e. Any person or public agency submitting written comments or testifying at the open record hearing or indicating on a sign-up that they wish to become a party of record;
- f. Any person or public agency who submitted to the County a written request to specifically receive the notice of decision or to be included as a party of record prior to the closing of an open record hearing (land use only or if specifically allowed by PCC).

“PCC” means the Pierce County Code.

“Record” means the oral testimony and written exhibits submitted and entered at a hearing. The recording of the proceeding shall be included as part of the record.

“RCW” means the Revised Code of Washington.

“Staff Report” means the document prepared by the County’s planning or administrative staff.

“Working Day” means any day for which the County’s offices are open for usual business hours.

SECTION 1.2: JURISDICTION

1.2.1 The scope of the Hearing Examiner’s jurisdiction is defined by ordinance. The scope of this jurisdiction includes the power to issue orders and make decisions or recommendations related to any application brought before the Hearing Examiner. Ultimately, the Hearing Examiner has the authority bestowed by PCC 1.22.080, any other municipal ordinance granting such authority, and any other authority appropriate under, and not circumscribed by, state and federal law.

SECTION 1.3: EX PARTE COMMUNICATION

1.3.1 No person, nor his or her agent, employee, or representative, with an interest in an application pending before the Hearing Examiner shall communicate with the Hearing Examiner regarding the merits of the application outside the presence of the other parties. This rule shall not prohibit communications concerning procedural matters, such as setting hearing dates.

1.3.2 The Hearing Examiner shall not communicate ex parte with any person, nor his or her agent, employee, or representative, with regard to the merits of an application.

1.3.3 If a prohibited ex parte communication is made to or by the Hearing Examiner, the communication shall be publicly disclosed, and proper discretion shall be exercised by the Hearing Examiner on whether to seek recusal as Hearing Examiner for that particular hearing and have another Hearing Examiner preside.

SECTION 1.4: NATURE OF PROCEEDINGS

1.4.1 Expeditious Proceedings

To the extent practicable and consistent with requirements of law, hearings shall be conducted expeditiously. In the conduct of such proceedings, the Hearing Examiner, County staff, and all parties, or their agents, shall make every effort at each stage of a proceeding to avoid delay.

1.4.2 Frequency

Hearings will be scheduled through the Planning Department in coordination with the Hearing Examiner. There may be more than one case scheduled to commence at the same time, and, in such an event, the Hearing Examiner shall have discretion in setting the agenda.

1.4.3 Format

The format for a hearing will be informal yet designed to present relevant exhibits and testimony to the Hearing Examiner and allow development of the record.

1.4.4 Site Visit

The Hearing Examiner may inspect a site prior or after the hearing. A site visit is not part of the record. Failure to inspect a site will not render the Hearing Examiner's recommendation or decision void. If a site visit occurs, it shall be taken out of the presence of any interested party, whenever feasible. Where accompaniment by an interested party is necessary to fully view the property, no substantive discussion may occur during a site visit.

1.4.5 Record of Hearing

- a. A recording shall be made of all hearings and such recordings shall be a part of the record. No official "minutes" of the hearing will be kept. Such recording shall be available to the public through a request under the Public Records Act (PRA) or otherwise.
- b. Copies of any written materials in the record may be obtained by paying the cost of reproducing such materials.

1.4.6 Computation of Time

Computation of any period of time prescribed or allowed by these rules, ordinances of the County, and laws and rules of the State of Washington 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 a holiday recognized by the County, the period shall run until the end of the next following business day.

1.4.7 Service of Documents

E-mail is allowed for service and filing of all documents and comments subject to any time limits established by County code. Absent any otherwise established deadline, documents served by e-mail shall be received on or before 4:30 PM on the final day of the applicable time period in order to be considered timely filed.

SECTION 1.5: RIGHTS AND RESPONSIBILITIES OF ALL INVOLVED PARTIES

1.5.1 Rights of the County

The County shall have the right to notice, present evidence and testimony, object, and make motions, arguments, recommendations, and all other rights essential to a fair hearing.

1.5.2 Rights of Applicant

Every Applicant shall have the right to notice, testimony, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing.

The Hearing Examiner may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony. Cross-examination is permitted as necessary for a full disclosure of the facts, but consistent with fairness and due process the Hearing Examiner shall control the amount and style of cross-examination.

1.5.3 Rights of Parties of Record

Every party of record shall have the right to present evidence and testimony at hearings. The right of persons to object, and submit motions and arguments shall be at the discretion of the Hearing Examiner. The Hearing Examiner may impose reasonable limitations on the number of witnesses heard and the nature and length of their testimony.

1.5.4 Responsibilities of County Staff

- a. All appropriate County staff who may be called upon to testify shall be present at the hearing or available to participate using remote access technology.
- b. At least five (5) business days prior to the hearing, the hearing file shall be provided to the Hearing Examiner and to the Applicant and made available for public review.

Any material (such as additional public comments) that has not been provided to the County five (5) business days in advance of the hearing shall be submitted at the hearing itself and the Hearing Examiner shall have discretion in determining how to address such material.

- c. The hearing file shall be tabbed and organized with separate exhibit numbers, and shall contain at least the following documents relevant to the application:

- A staff report;

- The application;

- An affidavit of public notice, signed by Department personnel;

- The determination of complete application;

- Relevant studies and reports submitted by the Applicant, including dated plan sets;

- State Environmental Policy Act (“SEPA”) Environmental Checklist and threshold determination, if applicable;

- Public and agency comments received prior to the hearing.

1.5.5 Responsibilities of Applicant

The Applicant shall provide the County any material that the Applicant wishes to have considered as part of the record at least ten (10) calendar days prior to the hearing. The intent of this rule and Rule 1.5.4 is to ensure that all documents and arguments to be relied upon by the Applicant in an open record hearing before the Hearing Examiner are available for review by the public prior to the open record hearing, thus preventing “surprise” at the hearing and facilitating efficiency. These rules will be interpreted by the Hearing Examiner to facilitate that purpose. Should the Applicant wish to have additional information submitted within ten (10) calendar days before the hearing, the Applicant shall submit copies of such evidence at the hearing itself and the Hearing Examiner shall have discretion in determining how to address such material.

1.5.6 Responsibilities of All Parties, Witnesses, and Observers

Parties, witnesses, or observers shall conduct themselves with civility and deal courteously with all involved in the proceedings. Failure to do so may result in removal from the hearing at the discretion of the Hearing Examiner.

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 party shall be exercised by the person designated as the party representative. Except as otherwise provided in these rules, notice or other communication to the party representative is considered to be notice or communication to the party and all its members.

All parties submitting evidence at the hearing should submit the original to the Clerk to the Hearing Examiner. Copies shall also be given to the County staff and the Hearing Examiner. Absent a request to have such materials returned (and at the discretion of the Hearing Examiner), submitted originals will remain part of the official record.

SECTION 1.6: PERSONS PRESENT AT THE HEARING

1.6.1 Presiding Official

- a. Hearings shall be presided over by the Hearing Examiner.
- b. The Hearing Examiner shall have all of the authority and duties as granted in state statutes, the PCC, and other County ordinances. Included in the duties of the Hearing Examiner are the following: to conduct fair and impartial hearings; to avoid unnecessary delay in the disposition of proceedings; and to maintain order. The Hearing Examiner shall have all powers necessary to that end, including the following:
 1. To administer oaths and affirmations, examine witnesses, rule upon offers of proof, and receive evidence.
 2. To regulate the course of the hearing in accordance with rules of this chapter and other applicable ordinances;
 3. To dispose of procedural requests or similar matters;
 4. To make such decisions or recommendations within the jurisdiction on the Hearing Examiner;
 5. To take any other action authorized by ordinance;
 6. To make rules for the conduct of hearings, notices and other proceedings and procedures not inconsistent with this chapter and any other applicable

ordinance. An audio or video record of the hearing proceedings shall be maintained and shall be made available for public review;

- c. Noninterference. The Hearing Examiner shall not be subject to the supervision or direction of any elected official, officer, employee, or agent of any municipal department.

1.6.2 Presence of Legal Counsel at Hearings or Meetings

- a. Although representation by legal counsel is not required at hearings before the Hearing Examiner, all parties participating in the hearings, including the County, may be represented at the hearings by legal counsel of their choice.
- b. At the request of any department, a representative of the County Attorney's Office may be present at the hearings or meetings to advise on matters of law and procedure.
- c. Attorneys engaged in the representation of clients before the Hearing Examiner shall conduct themselves in accordance with all applicable Rules of Professional Conduct, including the display of courtesy to other members of the bar, witnesses, and all other persons present in the hearing room.

SECTION 1.7: CONDUCT OF HEARINGS

1.7.1 Notice Requirements of Hearings and Filings

An affidavit attesting to the notice given of a hearing (including dates and places of publication) shall be signed by Department personnel and made part of each hearing record.

1.7.2 Oath or Affirmation

All testimony before the Hearing Examiner shall be given under oath or affirmation to tell the truth. The Hearing Examiner shall administer the oath or affirmation.

1.7.3 Content of the Record

The record of a hearing conducted by the Hearing Examiner shall include, but not be limited to, the following materials:

- a. the application;

- b. the departmental staff report
- c. all evidence received, which shall include oral testimony given at the hearing, all exhibits and other materials admitted as evidence, including any prehearing or post hearing briefs allowed by the Hearing Examiner;
- d. a statement of all matters officially noticed;
- e. a decision or a recommended decision containing the findings and conclusions of the Hearing Examiner;
- f. recordings of the hearing made on electronic equipment;
- g. an environmental determination made pursuant to SEPA (if applicable); and
- h. verification of public notification of the application and hearing.

Copies of any written materials in the record may be obtained by any person by paying the cost of reproducing such material.

1.7.4 Order of Hearing

A hearing will usually proceed in the following order:

- a. A brief introductory statement by the Hearing Examiner regarding the Hearing Examiner's process.
- b. Presentation of testimony by the County. At the discretion of the County, it may:
 - 1. Present the staff report or recommendation without the Applicant first providing testimony; or
 - 2. Ask the Applicant to present information on the application prior to presenting the County's recommendation.
- c. A brief opening statement by the Applicant if requested and at the Hearing Examiner's discretion.
- d. Presentation of testimony by the Applicant.
- e. Presentation of testimony by public.
- f. Response to testimony, if applicable.
- g. Closing remarks.

1.7.5 Content and Form of Staff Reports

The staff report on an application, permit, or license, shall include the following, if relevant:

- a. A list of the names and addresses of the owner(s) and Applicant(s) of the subject property and his/her property interest in the property that is the subject of the hearing.
- b. A brief summary of the requested action and the citation of the ordinance(s) controlling the request.
- c. A common description of the subject property and a legal description of the subject property.
- d. A statement identifying applicable County zoning and other code regulations.
- e. A technical data summary of the Comprehensive Plan designation and zoning designation of the subject property; the current development of the subject property and the adjoining properties; topographical information; geological and soils information; information on the vegetation on the property; and any other relevant scientific, environmental, or engineering information.
- f. The current access to the subject property and the proposed access to the subject property.
- g. An in-depth analysis of the proposed project. This analysis may include, but not be limited to, the following elements of review:
 1. natural features;
 2. character and design, including population figures;
 3. human resources;
 4. housing;
 5. economic development;
 6. transportation;
 7. community facilities, services and institutions;
 8. government jurisdiction boundaries;
 9. neighborhoods;
 10. land use plans; and
 11. land use regulations.
- h. A history of the requested action and a history of the development in the surrounding properties. In making the analysis, the staff shall refer to applicable ordinances as often as necessary for the sake of clarity.

- i. A summary of any other requested land use permits in the area.
- j. A description of the compatibility and impact of the proposal on the existing development and the probable character of the proposal.
- k. A summary of the reports or recommendations of any other agencies consulted.
- l. Appropriate maps of the subject property. If photographs of the site are available, the Applicant is encouraged to provide color reproductions that shall be part of the staff report.
- m. The result of the determination pursuant to the State Environmental Policy Act.
- n. A brief summary of issues raised by comments received in response to the notice of application.
- o. The recommendation of the Land Use Advisory Commissions and meeting minutes.
- o. Staff's recommendation, including conditions, if applicable, based upon the PCC criteria for a particular hearing.

The staff report shall be distributed to the Hearing Examiner and the Applicant and shall be made available to the public at least seven (7) calendar days prior to the hearing. Copies shall be provided to the public upon request at the cost of reproduction.

1.7.6 Continuances of Hearings

a. Hearing Examiner

If, in the opinion of the Hearing Examiner, more information is necessary in order to make a recommendation or decision, or the Hearing Examiner is unable to hear all of the public comments on the matter, the hearing may be continued to a certain date. If the hearing is continued to a specific time and place, and announced at the hearing no further notice of that hearing need be given.

b. At the Request of a Party

Any party of record may request continuance of a hearing. The request, if made prior to the hearing, should be in writing; submitted five (5) working days prior to the hearing; and state reasonable grounds for a continuance. If the request is made orally at the hearing, it must be based on reasonable grounds. The Hearing Examiner shall have discretion to grant or deny the request for continuance. Any party requesting a continuance should confer with the other parties to select a mutually agreeable date to resume the hearing. Continuances will more likely be granted with the consent of the Applicant and the County.

1.7.7 Withdrawal of Application

If a withdrawal request is made before the official notice of the hearing is given, the Applicant shall notify the County of the withdrawal request and the withdrawal shall be automatically permitted.

1.7.8 Evidence

- a. Burden of proof. In each proceeding, the Applicant shall have the burden of proof to show compliance with applicable laws and regulations of Washington State and the County.
- b. Admissibility. The hearing generally will not be conducted in strict adherence to Rules of Evidence. Any relevant evidence shall be admitted if it is the type that possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The rules of privilege shall be effective to the extent recognized by law. The Hearing Examiner shall have discretion on the admissibility of all evidence.
- c. Copies. Documentary evidence may be received in the form of copies of excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. It is advisable to provide an extra copy of all documents to the Hearing Examiner as a working copy. *Working copies of materials are not needed, however, if materials are submitted electronically in advance of the hearing.*
- d. Judicial notice. The Hearing Examiner may take judicial notice of judicially cognizable facts and may take notice of general, technical, or scientific facts within his or her specialized knowledge. The Hearing Examiner shall not take notice of disputed adjudicative facts.
- e. Occasionally the Hearing Examiner may request a document to be filed after the close of testimony. Only those documents referred to at the hearing and documents specifically requested by the Hearing Examiner may be submitted. Nothing in the subsection allows any ex parte submission of any document or communication to the Hearing Examiner. All parties of record shall have the opportunity to address, respond, and/or provide their own document for consideration, at the discretion of the Hearing Examiner.

- f. All parties will be allowed an opportunity to make a record of evidence admitted or denied during the course of the hearing. This record shall include offers of proof.

SECTION 1.8: RECOMMENDATIONS / DECISIONS

1.8.1 Written Recommendations [Reserved]

1.8.2 Written Decisions

The Hearing Examiner may approve, approve with conditions, deny, or remand an application. The Hearing Examiner decision shall be made within ten working days following the close of the hearing record, or to a date agreed to by the Applicant and the County, unless the Hearing Examiner determines that delay would not be in the public interest.

1.8.3. Content of Recommendation/Decision

The Hearing Examiner's decision shall include:

- a. Findings upon which the decision, including any conditions, was based. The findings shall be based exclusively on the evidence presented as part of the hearing and those matters officially noticed. A statement of any threshold determination made under Chapter 43.21C RCW shall be included.
- b. Conclusions. Conclusions shall include a determination of whether the application meets the applicable PCC criteria for approval, based upon the findings. The conclusions may reference legal criteria, if applicable. If the PCC so provides, the conclusions may refer to the Comprehensive Plan, as well as to the effect of both approval and denial on property in the vicinity, on businesses, if relevant, and on the general public.
- c. Any conditions included as part of the decision.

1.8.4 Procedure for Reconsideration

Any aggrieved party or person affected by the decision of the Hearing Examiner may, within seven working days of the date of the Hearing Examiner's written decision, file with the Planning Department a written request for reconsideration based on any one of the following grounds materially affecting the substantial rights of said party or person:

- a. Errors of procedure or misinterpretations of fact, material to the party seeking the request for reconsideration.
- b. Irregularity in the proceedings before the Hearing Examiner by which such party was prevented from having a fair hearing.
- c. Clerical mistakes in the official file or record transmitted to the Hearing Examiner, including errors arising from inadvertence, oversight, or omission, which may have materially affected the Hearing Examiner's decision on the matter.

Upon receipt of a request for reconsideration, the Hearing Examiner shall review the request and take action; including, but not limited to, requesting a response from another party, denying the request, granting the request, with or without oral argument, and may render a revised decision. The decision of the Hearing Examiner shall be subject to reconsideration only one time, even if the Hearing Examiner reverses or modifies the original decision.

If a request for reconsideration is filed, a decision is not final for purposes of further appeal until the Hearing Examiner issues a final order on the request for reconsideration.

SECTION 1.9: CONFLICTS

- 1.9.1 These rules of procedure are adopted to supplement the requirements set forth in the PCC. Any conflicts between these rules and the provisions of the PCC will be decided consistent with the provisions of the PCC.

SECTION 1.10: VIRTUAL ACCESS HEARINGS

- 1.10.1 This section addresses virtual access application hearings when held instead of in-person hearings in order to assure due process in the conduct of hearings. Written comments received prior to a land use application hearing may be given the same weight as if presented at the hearing.
- 1.10.2 The County shall include in all Notices of Application a statement when a virtual access public hearing is proposed. The County shall make the virtual access information available at least five (5) business days prior to the hearing, by either:
 - a. providing access information in the Notice of Public Hearing,
 - b. posting on the County's website, or

c. providing contact information where the access information may be obtained.

1.10.3 The County shall provide hearing virtual access by the internet and by phone.

1.10.4 All parties, including members of the public, will be placed on mute during the hearing, until it is their time to speak.

1.10.5 If a party is not able to access the hearing due to a technological failure, the party shall notify the County immediately, in order for the Hearing Examiner to make a ruling on whether to keep the hearing record open. The Hearing Examiner may determine it is appropriate to leave the record open for a reasonable period of time to allow additional written public comments to be submitted, in lieu of in-person testimony, in such situations.

CHAPTER II:
RULES OF APPEAL
OF ADMINISTRATIVE DECISIONS

This chapter applies to appeals of administrative decisions designated by the Pierce County Code (“PCC”) as appealable to the Hearing Examiner, including licenses, and any final administrative order or decision of the Planning Department concerning the administration, interpretation, or enforcement of the PCC.

SECTION 2.1: DEFINITIONS

“Appellant” means a person, corporation, organization, association, or other similar group who or which files a complete and timely appeal of a decision or other appealable action in accordance with the PCC.

“Applicant” means those applying for approval of land uses or certain non-land use permits, licenses, or approvals pursuant to PCC.

“County” means the Pierce County, Washington.

“County Council” means the Pierce County Council.

“Clerk to the Hearing Examiner” means a person designated to assist in the duties of the Hearing Examiner.

“Comprehensive Plan” means the Comprehensive Plan that has been adopted by the Pierce County.

“Planning Department” means the Pierce County Planning and Public Works Department.

“Ex parte communication” means written or oral communications made to or by the Hearing Examiner about a matter pending before the Hearing Examiner, not included in the record, and made outside of a hearing and outside the presence of other parties.

“Hearing Examiner” means the Hearing Examiner of Pierce County or Deputy Hearing Examiner of Pierce County.

“Motion” means an oral or written request made to the Hearing Examiner, for an order or other ruling.

“Open Record Hearing” means a hearing that is contemplated by RCW 36.70B.020(3) and conducted by the Hearing Examiner that creates the record through testimony and submission of evidence and information on an application.

“Open Record Appeal Hearing” means a hearing that creates the record on appeal through written and oral testimony and submission of evidence and information from the parties to the appeal.

“Order” means a written determination of the Hearing Examiner which directs a party to the proceedings to act or to refrain from acting.

“Party of record” means:

- a. The Appellant;
- b. The Applicant, if different than the Appellant;
- c. The County;
- d. Any person or public agency that individually submitted written comments to the County prior to the closing of the comment period provided in a legal notice;
- e. Any person or public agency submitting written comments or testifying at the open record hearing or indicating on a sign-up that they wish to become a party of record;
- f. Any person or public agency who submitted to the County a written request to specifically receive the notice of decision or to be included as a party of record prior to the closing of an open record hearing (land use only or if specifically allowed by PCC).

“PCC” means the Pierce County Code.

“Record” means the oral testimony and written exhibits submitted at a hearing. The recording of the proceeding shall be included as part of the record.

“RCW” means the Revised Code of Washington.

“Staff Report” means the document prepared by the County’s planning or administrative staff.

“Working Day” means any day for which the County’s offices are open for usual business hours.

SECTION 2.2: FILING

2.2.1 Compliance with Rules

All appeals must comply with these Rules and with the requirements established in the applicable County ordinance(s) under which the appeal is filed, as well as applicable statutory provisions, including RCW 43.21C.075 (for SEPA appeals), and/or RCW 36.70C.040.

2.2.2 Timeliness

An appeal must be filed after 14 days of the issuance of the decision being challenged. All appeals must arrive at the Pierce County Development Center, whether delivered in person or by mail (or electronically, where allowed), within this 14-day period unless another appeal period is stated in state law or the PCC, in which case such appeal period shall control. To be considered timely, the appeal must be filed no later than 4:30 PM on the day the appeal period expires. The appeal must be filed at the Pierce County Development Center unless the PCC explicitly states otherwise.

2.2.3 Fee

Any filing fee as required by the County Fee Schedule shall accompany an appeal.

2.2.4 Contents

An appeal must be in writing and contain the following, consistent with PCC 1.22.090(C):

- a. Name, mailing address, and electronic mail address of the appellant and his/her agent or representative, if any;
- b. A copy of any decision, license, order or environmental determination which is being appealed;
- c. A concise statement of the factual and legal basis for the appeal citing specifically the alleged errors in the administrative official's decision; and
- d. The specific relief sought.

2.2.5 Briefs

Briefs or other memoranda of law may be submitted by the parties in support of or in response to an appeal. Each party is permitted one primary brief not exceeding fifteen

(15) double-spaced pages in length, unless otherwise set out in a Pre-Hearing Order. In addition, the Appellant may submit a reply brief not exceeding ten (10) pages in length. The Hearing Examiner may, in the Hearing Examiner's discretion, waive or modify these page limits at the request of the parties to accommodate complex legal and factual issues. A party's initial brief shall be presented at least two (2) weeks before the hearing and any reply memoranda shall be submitted at least one (1) week prior to the hearing, unless a Pre-Hearing Order states otherwise.

Briefs must be limited to the specific issues set forth in the Appellant's statement of appeal except that jurisdictional and other procedural type challenges may be raised in response.

2.2.6 Motions

A party to the proceeding may present a motion to the Hearing Examiner. All motions must be presented in writing and clearly noted as a motion. Motions may be presented at, or in advance of, a scheduled hearing, as set out in a Pre-Hearing Order, or by filing with the Clerk to the Hearing Examiner and serving the motion on the other parties at least ten (10) days prior to the scheduled hearing date unless leave to shorten time is granted by the Hearing Examiner. Motions and responses to motions are not to exceed fifteen (15) double-spaced pages in length without prior approval of the Hearing Examiner.

2.2.7 Proposed Findings and Conclusions

The Hearing Examiner may request proposed Findings and Conclusions to be submitted at the option of the parties.

2.2.8 Service of Documents

Except for original filing of an appeal, e-mail is allowed for service and filing of all documents with the Clerk to the Hearing Examiner who will forward a copy to the Hearing examiner, subject to any time limits established by County code or by a Hearing Examiner's Pre-Hearing Order. Absent any otherwise established deadline documents served by e-mail shall be received on or before 4:30 PM on the final day of the applicable time period in order to be considered timely filed.

SECTION 2.3: DISMISSAL

- 2.3.1 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 for the purpose of delay.
- 2.3.2 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.
- 2.3.3 When the decision or action being appealed is withdrawn by the issuing Department, the appeal becomes moot and shall be dismissed.

SECTION 2.4: WITHDRAWAL

- 2.4.1 Only an Appellant may withdraw an appeal.
- 2.4.2 Where an appeal is made by several persons, a group, organization, corporation, or other entity, withdrawal shall be made by the person designated as the party representative.
- 2.4.3 An Appellant's request to withdraw shall be granted as a matter of right and the appeal dismissed.

SECTION 2.5: PREHEARING ORDERS

- 2.5.1 At the Hearing Examiner's discretion, a Pre-Hearing Order ("PHO") may be issued to:
 - a. Identify, clarify, and simplify the issues;
 - b. Decide prehearing motions;
 - c. Establish a briefing schedule for the hearing process, including dates for motions, briefs, and witness and document lists, and documents, relating to the appeal; and
 - d. Address other matters deemed by the Hearing Examiner to be appropriate for the orderly and expeditious disposition of the proceedings.
- 2.5.2 A PHO may be circulated via e-mail or fax. A PHO may not be appealed.
- 2.5.3. At the Hearing Examiner's discretion, a prehearing meeting or telephone conference may be held to facilitate the issuance of a PHO. A prehearing meeting or telephone

conference is not required for the issuance of a PHO. If the Hearing Examiner determines, however, that a prehearing conference or meeting is appropriate, then:

- a. All parties shall receive notice of the prehearing conference.
- b. The prehearing conference may take place via use of remote access technology.

SECTION 2.6: PARTY'S REPRESENTATIVE REQUIRED

- 2.6.1 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 the appellant shall be exercised by the person designated as the party representative. Notice or other communication to the party representative is considered to be notice or communication to the party.

SECTION 2.7: NOTICE OF HEARING

2.7.1 Contents

The notice of hearing given to the parties shall conform to the provisions of the PCC.

2.7.2 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 if applicable ordinances conflict, the minimum notice shall be fourteen (14) calendar days.

2.7.3 Responsibility

The Clerk to the Hearing Examiner shall be responsible for providing notice of hearing for appeals beyond that given by the issuance of a PHO.

2.7.4 Record of Notice

A copy of the notice of hearing or PHO shall be made part of each case record.

SECTION 2.8: PARTIES' RIGHTS AND RESPONSIBILITIES

- 2.8.1 Although all parties have the right to be represented by an attorney, representation by an attorney is not required.

- 2.8.2 Where a party has designated a representative, the representative shall exercise the rights of the party.
- 2.8.3 All parties and others participating in and observing hearings shall conduct themselves with civility and deal courteously with all persons involved in the proceedings.
- 2.8.4 Every Appellant shall have the right to notice, testimony, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing.
- 2.8.5 The County shall have the right to notice, present evidence and testimony, object, cross-examine, and make motions, arguments, recommendations, and all other rights essential to a fair hearing. A decision of the Administrative Official shall be entitled to substantial weight.
- 2.8.6 The Appellant/Applicant shall have the right to present evidence and testimony at hearings. The right of persons to cross-examine, object, and submit motions and arguments shall be at the discretion of the Hearing Examiner. The Hearing Examiner may impose reasonable limitations on the number of witnesses heard and the nature and length of their testimony. Appealing parties have the burden of presenting evidence that the Administrative Official's decision was clearly erroneous, except as provided in Sec. 2.14, below.
- 2.8.7 The Appellant and Applicant (if different) shall provide the Clerk to the Hearing Examiner any material that the Appellant wishes to have considered as part of the record at least seven (7) calendar days prior to the hearing unless otherwise provided herein or by separate Pre-Hearing Order of the Hearing Examiner. The intent of this rule is to ensure that all documents and arguments to be relied upon by any of the principal parties in an open record appeal hearing before the Hearing Examiner are available for review by all other principal parties prior to the open record hearing, thus preventing "surprise" at the hearing and facilitating efficiency. These rules will be interpreted by the Hearing Examiner to facilitate that purpose. Requirements of this Rule may be modified through the Pre-Hearing Order process.
- 2.8.8 The County staff may provide a staff report but is not required to do so. Staff shall provide notice of hearings, be present at the hearings, and provide the Hearing Examiner with documentation relevant to the case. Staff reports, if prepared, should be available to the Appellant, Applicant, and public, at least seven (7) calendar days prior to the hearing unless determined otherwise by separate order of the Hearing Examiner.

- 2.8.9 The Hearing Examiner may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony. Cross-examination is permitted as necessary for a full disclosure of the facts, but consistent with fairness and due process the Hearing Examiner shall control the amount and style of cross-examination.
- 2.8.10 All parties submitting evidence at the hearing should submit the original to the Clerk to the Hearing Examiner. Copies should also be given to the County staff and the Hearing Examiner. If documents are submitted electronically, original copies need not be submitted.

SECTION 2.9: DEFAULT

- 2.9.1 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.

SECTION 2.10: CONDUCT OF HEARING

2.10.1 Presiding Officials

- a. Hearings shall be presided over by the Hearing Examiner.
- b. The Hearing Examiner shall have all of the authority and duties as granted in state statutes, PCC, and other County ordinances. Included in the duties of the Hearing Examiner are the following: to conduct fair and impartial hearings; to avoid unnecessary delay in the disposition of proceedings; and to maintain order. The Hearing Examiner shall have all powers necessary to that end, including the following:
 1. To administer oaths and affirmations, examine witnesses, rule upon offers of proof, and receive evidence, and issue subpoenas compelling the appearance of witnesses and the production of documents.
 2. To regulate the course of the hearing in accordance with rules of this chapter and other applicable ordinances;
 3. To dispose of procedural requests or similar matters;
 4. To make such decisions or recommendations within the jurisdiction on the Hearing Examiner;

5. To take any other action authorized by ordinance;
 6. To make rules for the conduct of hearings, notices and other proceedings and procedures not inconsistent with this chapter and any other applicable ordinance. An audio or video record of the hearing proceedings shall be maintained and shall be made available for public review;
- c. Noninterference. In the performance of his/her adjudicative functions, the Hearing Examiner shall not be subject to the supervision or direction of any elected official, officer, employee, or agent of any municipal department.
 - d. Judicial notice. The Hearing Examiner may take judicial notice of judicially cognizable facts and may take notice of general, technical, or scientific facts within his or her specialized knowledge. The Hearing Examiner shall not take notice of disputed adjudicative facts.

SECTION 2.11: ORDER OF HEARING

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

2.11.2 The order of an appeal hearing will generally be as follows:

- a. Hearing Examiner's introductory statement;
- b. Background presentation by the Department;
- c. Appellant's witnesses and evidence;
- d. Department witnesses and evidence;
- e. Applicant's presentation (if not Appellant);
- f. Rebuttal witnesses;

2.11.3 Notwithstanding the provisions of the PCC, the order of hearing may be modified or a different order established as the Hearing Examiner deems necessary for a clear and fair presentation. The order of the hearing may also be modified as agreed upon by the parties, with the Hearing Examiner's approval.

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

SECTION 2.12: RECORD

2.12.1 The record of an appeal shall include:

- a. The application or administrative decision being appealed;
- b. The appeal;
- c. Any departmental staff reports;
- d. All evidence received which shall include oral testimony given at the hearing, as well as all exhibits and other materials admitted as evidence including any prehearing or post hearing briefs allowed by the Hearing Examiner;
- e. A statement of all matters officially noticed;
- f. A decision containing the findings and conclusions of the Hearing Examiner;
- g. Recordings of the hearing made on electronic equipment; and
- h. Any environmental determination made pursuant to SEPA (if applicable).

SECTION 2.13: HEARING EXAMINER'S DECISION

2.13.1 The Hearing Examiner's appeal decision shall include, but not be limited to, a statement regarding the following:

- a. Background. The nature and background of the proceeding, including identification of party representatives participating in the hearing, prehearing determinations, and other similar information.
- b. Findings. The individual facts that the Hearing Examiner finds relevant, credible, and requisite to the decision, based on the record of proceedings.
- c. Conclusions. Legal and factual conclusions based upon specific provisions of law and the findings of fact.
- d. Decision. The Hearing Examiner's decision as to the outcome of the appeal (affirm, reverse, affirm with conditions, or remand) based upon a consideration of the whole record. The administrative decision of the County shall be affirmed if the Hearing Examiner determines that decision is supported by substantial evidence in the record, unless the Appellant has presented evidence that the Administrative Official's decision was clearly erroneous, or a different standard is mandated by County Code or State Law.

- e. The Hearing Examiner decision shall be within the time allowed by law or agreed to by the Appellant, Applicant (if not the Appellant), and the County, unless the Hearing Examiner determines that delay would not be in the public interest.

2.13.2 Procedure for Reconsideration

Any aggrieved party or person affected by the decision of the Hearing Examiner may, within seven working days of the date of the Hearing Examiner's written decision, file with the Planning Department a written request for reconsideration based on any one of the following grounds materially affecting the substantial rights of said party or person:

- a. Errors of procedure or misinterpretations of fact, material to the party seeking the request for reconsideration.
- b. Irregularity in the proceedings before the Hearing Examiner by which such party was prevented from having a fair hearing.
- c. Clerical mistakes in the official file or record transmitted to the Hearing Examiner, including errors arising from inadvertence, oversight, or omission, which may have materially affected the Hearing Examiner's decision on the matter.

Upon receipt of a request for reconsideration, the Hearing Examiner shall review said request in light of the record and take such further action as is deemed proper; including, but not limited to, requesting a response from another party, denying the request, granting the request, with or without oral argument, and may render a revised decision. The decision of the Hearing Examiner shall be subject to reconsideration only one time, even if the Hearing Examiner reverses or modifies the original decision. If a request for reconsideration is filed, a decision is not final for purposes of further appeal until the Hearing Examiner issues a final order on the request for reconsideration.

SECTION 2.14: RULES OF PROCEDURE FOR APPEALS OF A FINAL ENFORCEMENT DECISION OR ORDER

In addition to the above Chapter II rules, this section applies to open record appeal hearings where a person responsible for the violation appears before the Hearing Examiner in response to an appeal from any final enforcement decision or order.

2.14.1 Service of Documents

Except for original filing of an appeal, e-mail is allowed for service and filing of all documents subject to any time limits established herein or by County code or state law.

2.14.2 Dismissal

An appeal of an enforcement decision or order 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 for the purpose of delay. 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. Only an Appellant may withdraw an appeal. An Appellant's request to withdraw shall be granted as a matter of right and the appeal dismissed. When the decision or action being appealed is withdrawn by the issuing Department or the parties have reached a settlement agreement, the appeal becomes moot and shall be dismissed.

2.14.3 Failure to Appear

Absent a voluntary agreement, parties who appeal a final enforcement decision or order must appear at the open record appeal hearing. If adequate notice has been given, and an appellant fails to appear at a scheduled hearing, the Hearing Examiner may issue and have served an order of default on the person responsible for the violation.

2.14.4 Notice Requirements of Hearings and Filings

Affidavit of Notice. The County shall provide an affidavit or testimony attesting to the notice given of a hearing.

2.14.5 Oath or Affirmation

All testimony before the Hearing Examiner shall be given under oath or affirmation to tell the truth.

2.14.6 Order of Hearing

Final enforcement decision or order appeal hearings, although generally informal in nature, shall have a structured format and shall be conducted in a manner deemed by the Hearing Examiner to make the relevant evidence most readily and efficiently

available to the Hearing Examiner and to provide the parties a fair opportunity for hearing. The order of an appeal hearing will generally be as follows:

- a. Hearing Examiner's introductory statement;
- b. Background presentation by the County;
- c. County witnesses and evidence;
- d. Appellant witnesses and evidence;
- e. Rebuttal witnesses (if necessary);

Notwithstanding the provisions of the PCC, the order of hearing may be modified or a different order established as the Hearing Examiner deems necessary for a clear and fair presentation. The order of the hearing may also be modified as agreed upon by the parties, with the Hearing Examiner's approval. The order of presentation at hearing shall not alter or shift any burden(s) or presumption(s) established by applicable law(s).

2.14.7 Content of the Record

The record of the appeal hearing conducted by the Hearing Examiner should include the testimony presented at the appeal hearing and those written materials submitted as exhibits at the appeal hearing. In addition, the record should include the following:

- a. A decision or order containing the findings and conclusions of the Hearing Examiner;
- b. Recordings of the appeal hearing made on electronic equipment; and
- c. Other related materials.

2.14.8 Development of Record at the Hearing – Notice of Violation Appeal

- a. County
As noted above, the County shall present its case first. It shall do this by describing the nature of the alleged violation and the documents that it proposes to submit into the appeal record. The County has the burden of proof, which requires it to show by a preponderance of the evidence that the violation occurred. Once the County has described the violation, it should recommend corrective action reasonably calculated to correct the violation. The recommended corrective action should include all actions that would be necessary to remedy the alleged violation, and a time schedule within which the actions must be complete. Testimony will only be permitted from members of the County staff or individuals that the County calls as witnesses.

- b. Person Responsible for the Violation
After the County presents its case, the person responsible for the violation will have an opportunity to respond. The response should consist of information that is related to the alleged violation and addresses the County's contentions. He or she may testify and/or provide exhibits that support his or her position. He or she may submit evidence that describes any corrective action that has been taken to improve the condition of the subject property. Testimony will only be accepted from the person responsible for the violation or individuals that he or she has called as witnesses.

2.14.9 Content and Form of Staff File

The staff file for a final enforcement decision or order appeal hearing should include at least the following:

- a. Exhibit list containing names of person(s) responsible for the violation(s), file number, location of violation including address and tax parcel number, and a list of exhibits;
- b. Correction Notices;
- c. Notice of Violation containing description of violation and recommended corrective action;
- d. Hearing notice;
- e. Return of Service Affidavit; and
- f. Property profile showing ownership of the subject property.

2.14.10 Continuance of Appeal Hearing

- a. Hearing Examiner
If, in the opinion of the Hearing Examiner, more information is necessary in order to make a decision or issue an order, the appeal hearing may be continued to a date certain with notice to the person responsible for the violation and County.
- b. At the request of a Party
Any party of record may request continuance of an appeal hearing. The request, if made prior to the appeal hearing, must be in writing and state reasonable grounds for a continuance. If a party makes an oral request at the hearing, the party must base the request on reasonable grounds. The Hearing Examiner shall have discretion to grant or deny the request for continuance.

2.14.11 Written Decisions

The Hearing Examiner shall make written findings and conclusions and shall affirm or modify the notice and order previously issued if the Hearing Examiner finds that a violation has occurred. The Hearing Examiner shall uphold the appeal and reverse the order if the Hearing Examiner finds that no violation has occurred. The Hearing Examiner shall issue a written decision or order within 14 calendar days from the close of the open record appeal hearing. Copies of the Hearing Examiner's decision shall be made available to the County and the person(s) responsible for the violation.

2.14.12 Content of Decision or Order

The decision should include at least the following:

- a. Findings. The findings shall be based exclusively on the evidence presented in the hearing and those matters officially noticed.
- b. Conclusions. The conclusions shall include a resolution of the violation(s) based upon the findings. The conclusions may reference legal criteria, if applicable.
- c. The modified notice and order if appropriate.

SECTION 2.15: VIRTUAL ACCESS HEARINGS

2.15.1 These rules address virtual access appeal hearings when held instead of in-person hearings in order to assure due process in the conduct of hearings.

2.15.2 The County shall include in all Notices of Hearing a statement when a virtual access appeal hearing is proposed. The County shall make the virtual access information available at least seven working days prior to the hearing, by either:

- a. providing access information in the Notice of Public Hearing,
- b. posting on the County's website, or
- c. providing contact information where the access information may be obtained.

2.15.3 The County shall provide hearing virtual access by the internet and by phone.

2.15.4 All parties to the appeal will be placed on mute during the hearing, until it is their time to speak. Attorneys, however, may remain unmuted to allow for objections to be made.

2.15.5 If a party is not able to access the hearing due to a technological failure, the party shall notify the County immediately, in order for the Hearing Examiner to make a ruling on whether to keep the hearing record open.