

RULES OF PROCEDURE FOR  
PROCEEDINGS BEFORE THE HEARING EXAMINER  
OF THE CITY OF SNOHOMISH, WASHINGTON

**CHAPTER I:**  
**HEARINGS ON PERMIT APPLICATIONS**

**Application of Rules**

This Chapter applies to open record hearings on land use applications.

**SECTION 1.1: DEFINITIONS**

"SMC" means the Snohomish Municipal Code.

"Appellant" means a person, organization, association, or other similar group who files a complete and timely appeal of a decision or other appealable action in accordance with the Snohomish Municipal Code.

"Applicant" means a person applying for permission for a land use or development regulated by Title 14 SMC. *SMC 14.100.*

"Calendar Day" means each day of the calendar week. When the last day of a stated period should fall on a Saturday, Sunday, or National, State, or City holiday, the stated period shall run until the end of the following working day.

"City" means the City of Snohomish, Washington.

"City Council" means the Snohomish City Council.

"Clerk of the Hearing Examiner" means a person designated by the City of Snohomish to assist the Hearing Examiner in his/her duties.

"Comprehensive Plan" means the Comprehensive Plan that has been adopted by the City of Snohomish.

"County" means Snohomish County, Washington.

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

"Hearing" means the proceeding at which the public has the opportunity to provide written and oral testimony and the testimony becomes part of the record. The hearing creates the record through testimony and submission of evidence and information.

"Hearing Examiner" or "Examiner" means the Hearing Examiner or the Hearing Examiner Pro Tem of the City of Snohomish. *SMC 2.33.020.*

"Interested Person" means any individual, partnership, corporation, association, or public or private organization of any character that may be affected by proceedings before the Hearing Examiner and shall include any party in a contested case. The City's administrative staff shall be considered an Interested Person and shall have the same rights as any other Interested Person.

"Motion" means an oral request during the course of a hearing or a written request made to the Hearing Examiner for an order or other ruling.

"Notice of Decision" means the written document of the Hearing Examiner that communicates a decision on an action before the Hearing Examiner.

"Open Record Appeal Hearing" means an administrative hearing that creates the record on appeal through written and oral testimony and submission of evidence and information.

"Open Record Hearing" means a hearing held under Chapter 36.70B RCW and conducted by the Snohomish Hearing Examiner who is authorized by the City to conduct such hearings, that creates the record through testimony and submission of evidence and information, under procedures prescribed by the City by ordinance or resolution.

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

"Person" means a person, party, firm, corporation, agency, or other entity. *SMC 14.100.*

"Party of record" means

- A. A person who has testified at the open record hearing on the application and signed an official register requesting notice of further action;
- B. The applicant, or applicant's representative;
- C. The property tax payer as identified by the records available from the Snohomish County assessor's office;
- D. A person submitting written testimony about a matter pending before the Hearing Examiner, excluding persons who have only signed petitions or mechanically produced form letters;
- E. The City's administrative staff; or
- F. A person who files a written request for a decision.

"Record" means the oral testimony and written exhibits submitted at a hearing. The electronic recording of the proceeding shall be included as part of the record. At the discretion and order of the Hearing Examiner, the record may be supplemented after the closing of testimony.

"RCW" means the Revised Code of Washington.

"Staff Report" means the document prepared by the City's planning manager pursuant to SMC 14.95.040A.

"Working Day" means any day for which the City's offices are open for normal business matters.

## **SECTION 1.2: JURISDICTION**

The Hearing Examiner's jurisdiction is limited to those issues where ordinance or other appropriate authority grants the Hearing Examiner the authority to hold hearings and make decisions or recommendations pursuant to SMC 2.33.080 and 14.95.010.

## **SECTION 1.3: EX PARTE COMMUNICATION**

- 1.3.1 No person, nor his or her agent, employee, or representative, who is interested in a particular application currently pending before the Hearing Examiner shall communicate ex parte, directly or indirectly, with the Hearing Examiner concerning the merits of that or a related application. *SMC 2.33.060*. This rule shall not prohibit ex parte communication concerning procedural matters. All allowed ex parte procedural communications shall be directed to the City Clerk. Any material not submitted in this manner will not be considered a part of the record established on that application or petition.
- 1.3.2 The Hearing Examiner shall not communicate ex parte directly or indirectly with any interested person, nor his or her agent, employee, or representative, with regard to the merits of an application or petition that is pending before the Hearing Examiner, or a factually related application. *SMC 14.95.020B*.
- 1.3.3 If prohibited ex parte communication is made to or by the Hearing Examiner, such communication shall be publicly disclosed, and proper discretion shall be exercised by the Hearing Examiner on whether to disqualify himself or herself as Hearing Examiner for that particular hearing. *SMC 14.95.020C*.

## **SECTION 1.4: NATURE OF PROCEEDINGS**

### 1.4.1 Expeditious Proceedings

It is the policy of the Office of the Hearing Examiner that, to the extent practicable and consistent with requirements of law, hearings shall be conducted expeditiously. In the conduct of such proceedings the Hearing Examiner, City staff, and all parties, or their agents, shall make every effort at each stage of a proceeding to avoid delay. *SMC 14.95.010A.2*.

### 1.4.2 Frequency

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

#### 1.4.3 Format

The format for a hearing will be of an informal nature yet designed in such a way that the evidence and facts relevant to a particular proceeding become available to the Hearing Examiner and easily ascertainable by a reviewing body. The format will allow development of a record by parties.

#### 1.4.4 Site Visit

When necessary in the judgment of the Hearing Examiner, the Hearing Examiner may inspect a site prior or subsequent to the hearing. The site visit is not part of the record. Failure to inspect the site will not render the Hearing Examiner's decision void.

#### 1.4.5 Record of Hearing

- A. The City should make an electronic recording of all hearings in an audio format. Hearings shall be electronically recorded and such recordings shall be a part of the record. No minutes of the hearing will be kept. *SMC 14.95.090*. Copies of the electronic recordings of a particular proceeding shall be made available to the public within three (3) working days of receiving a request. The requester shall pay the reasonable cost of such copying.
- B. Copies of any written materials in the record may be obtained by any interested person who shall be responsible for paying the cost of reproducing such material.

#### 1.4.6 Computation of Time

Computation of any period of time prescribed or allowed by these rules, ordinances of the City of Snohomish, and laws 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 national, state, or City holiday, the period shall run until the end of the next following working day. *SMC 14.05.080*.

### **SECTION 1.5: RIGHTS AND RESPONSIBILITIES OF PARTIES**

#### 1.5.1 Rights of City

The City staff shall have the right to present evidence and testimony, object, and make motions, arguments, recommendations, and all other rights essential to a fair hearing. *SMC 14.95.040B*.

#### 1.5.2 Rights of Applicant

Every applicant shall have the right of notice, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing. Further, the applicant shall have the right to timely access to the City staff report. *SMC 14.95.030D*.

The Hearing Examiner may limit the time allowed to parties testifying on an equal basis, may establish time limits for initial or rebuttal evidence, and may limit the number of witnesses to be heard. Cross-examination is permitted as necessary for a full disclosure of the facts, but the Hearing Examiner shall control the amount and style of cross-examination. *SMC 14.95.030F.*

### 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 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. *SMC 14.95.030E.*

### 1.5.4 Responsibilities of City Staff

The City staff shall provide a report consistent with the provisions of Rule 1.7.6, provide notice of hearings, present materials at the hearings, and provide documentation relevant to the case. Staff reports should be available to the public at least seven (7) calendar days before the hearing. *SMC 14.95.040A.*

### 1.5.5 Responsibilities of Applicant

Whenever possible the applicant shall provide the Hearing Examiner with material that supports his or her case prior to the hearing, be prepared for questions by the Hearing Examiner, and treat all who participate in these proceedings courteously. All supporting materials shall be provided to the Clerk of the Hearing Examiner a minimum of five (5) calendar days before the hearing.

### 1.5.6 Responsibilities of All Participants, Witness and Observers

Parties, witnesses, or observers shall conduct themselves with civility and deal courteously with all who participate in the proceedings. Failure to do so will result in removal from the hearing at the discretion of the Hearing Examiner. *SMC 14.95.030A.*

## **SECTION 1.6: PRESIDING OFFICIAL**

### 1.6.1 Presiding Official

- A. The Hearing Examiner shall preside over the hearings.
- B. The Hearing Examiner shall have all of the authority and duties as granted to him or her in state statutes, the SMC, and other local ordinances. Included in the duties of the Hearing Examiner are the following: to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order. In accordance with SMC 14.95.010B, he or she shall have all powers necessary to that end, including the following:

1. To administer oaths and affirmations;
  2. To issue subpoenas;
  3. To rule upon offers of proof and receive evidence;
  4. To regulate the course of the hearings and the conduct of the parties and their agents;
  5. To question any party presenting testimony at the hearing;
  6. To hold conferences for settlement, simplification of the issues, or any other proper purpose;
    - a. To require briefs on legal issues;
    - b. To allow limited discovery if it is not unduly burdensome, will not unnecessarily delay the proceedings, and the information is not otherwise available;
    - c. To consider and rule upon all procedural and other motions appropriate to the proceedings; and
    - d. To make and file recommendations or decisions.
- C. In the performance of his or 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. *SMC 14.95.010D.*

#### 1.6.2 Presence of Legal Counsel at Hearings or Public Meetings

- A. All parties participating in the hearings may be represented at the hearings by legal counsel of their choice. *SMC 14.95.030G.*
- B. At the request of any department and discretion of the Hearing Examiner, a representative of the City Attorney's Office may be present at the hearings or public 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.
- D. All forms of legal authority including briefs, staff reports, and other legal memoranda upon which a party of record will be relying or presenting at the hearing must be submitted to the Hearing Examiner's office at least one (1) week in advance of the scheduled hearing date. The above mentioned documents shall be available to the public, subject to payment, at least one (1) week in advance of the scheduled hearing date. *See SMC 14.95.030C.*

### **SECTION 1.7: CONDUCT OF HEARINGS**

#### 1.7.1 Notice Requirements of Hearings and Filings

- A. All notice, time requirements, and methods of notification shall be consistent with the provisions as set forth in SMC 14.55.040, in addition to the provisions of this Section.

- B. Affidavit of Notice: An affidavit attesting to the notice given of a hearing (including dates and places of publication, and list of addressees) shall be part of each record.

#### 1.7.2 Prehearing Conference

- A. The Hearing Examiner may, on his or her own order, or at the request of a party, hold a conference prior to the hearing to consider:
  - 1. Identification, clarification, and simplification of the issues; *SMC 14.95.010C*.
  - 2. Disclosure of witnesses to be called and exhibits to be presented;
  - 3. Motions; and
  - 4. Other matters deemed by the Hearing Examiner appropriate for the orderly and expeditious disposition of the proceedings.
- B. Prehearing conferences may be held by telephone conference call.
- C. The Hearing Examiner shall give written or oral notice to all parties of any prehearing conference. *SMC 14.95.010C*.
- D. All parties shall be represented at any prehearing conference unless they waive the right to be present or represented and are granted permission by the Hearing Examiner not to attend. *SMC 14.95.010C*.
- E. Following the prehearing conference, the Hearing Examiner may issue an order reciting the actions taken or ruling on motions made at the conference. *SMC 14.95.010C*.

#### 1.7.3 Oath or Affirmation

All testimony before the Hearing Examiner shall be given under oath or affirmation to tell the truth. *SMC 14.95.030B*.

An interpreter acting on behalf of any interested person shall take an oath that a true interpretation of the interested person's testimony shall be made.

#### 1.7.4 Content of the Record

In accordance with *SMC 14.95.090*, the record of a hearing conducted by the Hearing Examiner shall include, but not be limited to, the following materials:

- A. The application or petition;
- B. The departmental staff reports;
- C. All evidence received, which shall include oral testimony given at the hearing, all exhibits, other materials admitted as evidence, and any written material submitted pursuant to Hearing Examiner order;
- D. A statement of all materials officially noticed;

- E. A decision or a recommended decision containing the findings and conclusions of the Hearing Examiner;
- F. Recordings made on electronic equipment; and
- G. An environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA) (if applicable).

#### 1.7.5 Development of Record

In accordance with SMC 14.95.050, a hearing usually will include, but not be limited to, the following elements:

- A. A brief introductory statement of the Hearing Examiner's process;
- B. A report by the departmental staff that may include introduction of the request, reference to visual aids, and a summary of the recommendation of the department;
- C. Testimony by the applicant or petitioner, and cross-examination of the witnesses;
- D. Testimony of interested parties;
- E. Opportunity for cross-examination and rebuttal; and
- F. An opportunity for questions by the Hearing Examiner.

#### 1.7.6 Content and Form of Staff Reports

The City staff report on a land use application should include the following, if relevant to the application:

- A. A list of the names and addresses of the owner and applicant 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 controlling the request.
- C. A common description of the subject property and a legal description of the subject property.
- D. A statement identifying applicable City zoning 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 and vicinity map of the development in the surrounding properties. In making the analysis, the staff shall refer to applicable ordinances as often as possible.
- 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. Staff's conclusions and recommendations.

The staff report shall be filed with the Hearing Examiner at least seven (7) calendar days prior to the scheduled hearing and copies thereof mailed to the applicant and made available for public inspection. Copies thereof shall be provided to all interested parties upon payment of reproduction costs.

#### 1.7.7 Continuations of Hearings

##### A. Hearing Examiner

If the Hearing Examiner finds that more information is necessary in order to make a decision, or he or she is unable to hear all of the public comments on the matter, the hearing may be continued to a specified date. If the hearing is continued to a specific date, time, and place, and notice is posted on the door of the hearing room, no further notice of the hearing need be given. Continuances shall be consistent with the provisions of the SMC but shall be granted for a period of no longer than thirty (30) calendar days. See *SMC 14.95.070 and 14.55.040G*.

##### 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, must be in writing 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. *SMC 14.95.070.*

#### 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 City of Snohomish. *SMC 14.95.060A.*
- 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. *SMC 14.95.060B.*
- 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. *SMC 14.95.060C.* It is advisable to provide extra copies of all documents to the Hearing Examiner.
- 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 that are at the center of a particular proceeding. *SMC 14.95.060D.*
- E. Occasionally, the Hearing Examiner may request a document to be filed after the close of public testimony. Only those documents referred to at the hearing may be submitted and only those specifically requested by the Hearing Examiner. *SMC 14.95.060E.* Additional evidence may only be submitted upon a Request for Reconsideration based on new evidence not reasonably available at the time of the hearing. If additional evidence is submitted with a Request for Reconsideration, it will be considered only upon a showing of significant relevance and good cause for delay in its submission. All parties of record will be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments. *SMC 14.95.080.*
- F. All parties will be allowed opportunity to make a record of evidence admitted or denied during the course of the hearing. This record shall include offers of proof. *SMC 14.95.060F.*

## **SECTION 1.8: WITHDRAWAL OF APPLICATION OR PETITION**

### 1.8.1 Withdrawal Prior to Service of Notice

If a withdrawal request is made before official notice of the hearing is given, the applicant or petitioner shall notify the City of the withdrawal request and the withdrawal shall be automatically permitted.

### 1.8.2 Withdrawal Made Any Other Time

Withdrawal requests made at any time other than that mentioned in Section 1.8.1 shall be granted at the sole discretion of the Hearing Examiner.

## **SECTION 1.9: DECISIONS**

### 1.9.1 Written Decisions

For permits on which the Hearing Examiner has final approval authority, a written report of findings, conclusions, and decision shall be mailed to all parties of record. *SMC 14.95.100B*. The Hearing Examiner's decision shall be submitted within ten (10) working days following the conclusion of all testimony and hearings, unless a longer period is mutually agreed to by the City, Applicant, and Hearing Examiner. The findings, conclusions and decision may indicate how the decision carries out the goals, policies, plans, and requirements of the SMC, and other policies and objectives of the City.

### 1.9.2 Content of Decision

In accordance with SMC 14.95.100A, a decision shall include a statement of:

- A. The nature and background of the proceeding.
- B. Findings. The findings shall be based exclusively on the evidence presented in the hearing and those matters officially noticed. The findings shall consist of a concise statement of each fact found upon each contested issue of fact. A statement of any threshold determination made under Chapter 43.21 RCW may be included.
- C. Conclusions. Conclusions shall include a resolution of the issue(s) based upon the findings. The conclusions may reference legal criteria, if applicable. The conclusions may make reference 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.
- D. The appropriate rule, order, or relief. The decision shall be based upon a consideration of the whole record and supported by reliable, probative, and substantial evidence. All decisions may include conditions of approval, including the time limit after which any approval shall expire if not utilized.

### 1.9.3 Procedure for Reconsideration and Reopening Hearing

- A. At any time prior to the filing of the final decision, the Hearing Examiner may reopen the proceeding for the reception of further evidence. All parties of record who participate at the hearing shall be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.
- B. If within five (5) working days after the hearing any party of record petitions the Hearing Examiner for a reopening of the hearing, the Hearing Examiner shall have discretion to reopen the hearing to consider new testimony or new evidence that was unavailable at the time of the hearing. *SMC 14.95.080.*
- C. Reconsideration
  1. Pursuant to SMC 14.95.110, any party of record may file a written request for reconsideration with the Hearing Examiner within the time period for an appeal to superior court. The request shall explicitly set forth alleged errors of procedure or the facts that could not have been reasonably available at the time of the hearing conducted by the Hearing Examiner. The request may also include direction to a specific issue that was inadvertently omitted from the Hearing Examiner's decision.
  2. The Hearing Examiner shall respond to the request for reconsideration within seven (7) working days after the date the request for reconsideration is filed, by either denying the request or approving the request by modifying or amending the recommendation or decision based on the established record or by setting the matter for an additional hearing. *SMC 14.95.100.*
  3. If an additional hearing is required the notice of said hearing shall be mailed to all parties of record not less than three (3) working days from the date of the Order of Hearing Examiner. *SMC 14.95.100.*

### 1.9.4 Clarification

Any party of record who participated at the hearing may request at any time clarification of the decision. The Hearing Examiner shall have discretion to provide clarification. Such clarification shall not stay the effect of a decision or change or amend the conclusions of the Hearing Examiner's decision.

## **SECTION 1.10: APPEALS OF DECISIONS**

Appeals of actions of the Hearing Examiner are appealable to Snohomish County Superior Court pursuant to Chapter 36.70C RCW, except for shoreline permit actions, which are appealable to the State Shoreline Hearings Board pursuant to Chapter 90.58 RCW. *SMC 14.75.030A.*

## **SECTION 1.11: CONFLICTS**

These Rules of Procedure are adopted to supplement the requirements set forth in the SMC. Any conflict between the rules and the provisions of the SMC will be decided consistent with the provisions of the SMC.

**CHAPTER II:**  
**RULES OF APPEAL OF ADMINISTRATIVE DECISIONS**

**Application of Rules**

This chapter applies to appeals of administrative decisions that approve, deny, or condition a land use permit application. See *SMC Chapter 14.75*.

**SECTION 2.1: DEFINITIONS**

See DEFINITIONS, Chapter 1, Section 1.

**SECTION 2.2: FILING**

2.2.1 **Compliance with Rules**

All appeals must comply with the Rules and with the requirements established in the applicable SMC ordinance(s) and/or RCW 36.70C.040 (as it exists now or as amended) under which the appeal is filed.

2.2.2 **Timeliness**

To be considered timely, an appeal from an administrative decision must be received no later than 5 p.m. on the last day of the appeal period. Such an appeal must be filed with the Snohomish City Clerk. *SMC 14.75.010A*.

2.2.3 **Fee**

Appeals shall be accompanied by the appropriate filing fee as required by the SMC Fee Schedule. *SMC 14.75.010C*.

2.2.4 **Contents**

All appeals shall be filed in accordance with Chapter 14.75 SMC. In accordance with SMC 14.75.010A, an appeal must be in writing and contain the following:

- A. A brief statement as to how the Appellant is significantly affected by or interested in the matter appealed;
- B. A brief statement of the Appellant's issues on appeal, noting Appellant's specific exceptions and objections to the decision or action being appealed;
- C. The specific relief requested, such as reversal or modification; and
- D. Signature, address, phone and fax number of the Appellant, and name and address of Appellant's designated representative, if any.

### 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 (1) primary brief not exceeding fifteen (15) double-spaced pages in length. In addition, the appellant may submit a reply brief not exceeding ten (10) pages in length. The Hearing Examiner may, at his or her discretion, waive or modify these page limits at the request of either of the parties in order to accommodate complex legal and factual issues.

Briefs must be limited to the specific issues set forth in the Appellant's statement of appeal.

### 2.2.6 Motions

A party to the proceeding may present a motion to the Hearing Examiner. All motions must be presented in writing, clearly noted as a motion, and be presented, with a copy and notice to all other parties, to the Clerk of the Hearing Examiner, or at a scheduled hearing. 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.

## **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 to secure 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 a decision or action being appealed is withdrawn by the issuing department, the appeal becomes moot and shall be dismissed.

## **SECTION 2.4: PREHEARING CONFERENCE**

- 2.4.1 The Hearing Examiner may, on his or her own order, or at the request of a party, hold a conference prior to the hearing to consider:
  - A. Identification, clarification, and simplification of the issues; *SMC 14.95.010C*
  - B. Disclosure of witnesses to be called and exhibits to be presented;
  - C. Motions; and

D. Other matters deemed by the Hearing Examiner appropriate for the orderly and expeditious disposition of the proceedings.

- 2.4.2 Prehearing conferences may be held by telephone conference call.
- 2.4.3 The Hearing Examiner shall give written or oral notice to all parties of any prehearing conference. *SMC 14.95.010C.*
- 2.4.4 All parties of record have the right to be represented by an attorney at any prehearing conference. Representation is not required.
- 2.4.5 Following the prehearing conference, the Hearing Examiner may issue an order reciting the actions taken or ruling on motions made at the conference that shall be controlling on all participants. *SMC 14.95.010C.*
- 2.4.6 At the hearing the Hearing Examiner shall develop for the record the time, purpose and result of the conference. If any orders have been issued they will be part of the record.
- 2.4.7 If a prehearing conference is not held, the Hearing Examiner may issue a pre-hearing order setting out appeal procedures, which may including a schedule for motions, briefs, and exchange of witness and document lists.
- 2.4.8 Prehearing orders may not be appealed until the Hearing Examiner issues an appeal decision.

#### **SECTION 2.5: WITHDRAWAL**

- 2.5.1 Only the Appellant may withdraw an appeal.
- 2.5.2 Where an appeal is made by several persons, a group, organization, corporation, or other entity, withdrawal shall be made by the person who had been designated as the party representative.
- 2.5.3 An Appellant's Request to Withdraw shall be granted as a matter of right and the appeal dismissed.

#### **SECTION 2.6: PARTY REPRESENTATIVE**

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's office of the name, address, and telephone number of the designated representative. The rights of such an Appellant shall be exercised by the person designated as the party representative. Notice or other communication to the party representative is considered to be notice or communication to party.

## **SECTION 2.7: NOTICE OF HEARING**

### 2.7.1 Contents

The Notice of Hearing should include:

- A. The time, place, and nature of the hearing;
- B. The legal authority and jurisdiction for the hearing;
- C. The file number, address, and other identifying information for the underlying decision or action being appealed;
- D. A brief statement as to the issue(s) to be considered;
- E. Reference to the applicable code section(s); and
- F. The name and phone number of the department official responsible for the appeal.

### 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 applicable ordinances conflict, minimum notice shall be ten (10) calendar days. *SMC 14.75.010E*.

### 2.7.3 Responsibility

The Clerk for the Hearing Examiner shall be responsible for serving notice of hearing for appeals.

### 2.7.4 Record of Notice

A copy of the Notice of Hearing shall be made part of each record.

## **SECTION 2.8: PARTIES' RIGHTS AND RESPONSIBILITIES**

- 2.8.1 Although Appellants and Applicants 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 Parties, witnesses, and observers shall conduct themselves with civility and deal courteously with all who participate in the proceedings. Failure to do so will result in removal from the hearing at the discretion of the Hearing Examiner.

## **SECTION 2.9: DEFAULT**

The Hearing Examiner may dismiss an appeal by an Order of Default where the Appellant, without good cause, fails to appear or is unprepared to proceed at a scheduled and properly noticed hearing.

## **SECTION 2.10: HEARING FORMAT**

- 2.10.1 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.
- 2.10.2 The order of an appeal hearing will generally be as follows:
- A. Hearing Examiner's introductory statement;
  - B. Presentation of Appellant witnesses, and cross-examination of those witnesses by the City (and Applicant);
  - C. Presentation of the City's witnesses, and cross-examination of those witnesses by (the Applicant and) the Appellant;
  - D. (Presentation of Applicant's witnesses, and cross-examination of those witnesses by the City and Appellant);
  - E. Closing arguments, if any, by the City, (Applicant), and Appellant.
- 2.10.3 Notwithstanding the provisions of the SMC, 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.
- 2.10.4 The order of presentation at hearing shall not alter or shift any burden(s) or presumption(s) established by applicable law(s).

## **SECTION 2.11: HEARING EXAMINER'S DECISION**

A decision of the Hearing Examiner on appeal 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 outcome of the appeal (affirm, modify, or reverse) based upon a consideration of the whole record and supported by substantial evidence in the record.

## **SECTION 2.12: RECORD**

2.12.1 The record of an appeal shall include:

- A. The application or petition;

- B. The departmental staff reports;
- C. All evidence received which shall include oral testimony given at the hearing, all exhibits, and other materials admitted as evidence;
- 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 made on electronic equipment; and
- G. An environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA)(if applicable).

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

### **SECTION 2.13: RECONSIDERATION**

2.13.1 Reconsideration of the appeal decision may be granted by the Hearing Examiner on a showing of one or more of the following:

- A. A substantial change in circumstances affecting the subject property;
- B. Newly discovered evidence of a material nature which could not, with reasonable diligence, have been produced at hearing; and
- C. Clear mistake as to a material fact.

2.13.2 Each party is limited to one (1) Motion for Reconsideration, even though the original decision may be subsequently reversed or modified.

2.13.3 A Motion for Reconsideration must be filed within ten (10) working days of the date of the Hearing Examiner's decision on the appeal. Unless otherwise specifically provided by the applicable ordinance(s), the filing of a Motion for Reconsideration shall not stop the period provided to appeal the Hearing Examiner's decision.

2.13.4 No party may file a response to a Motion for Reconsideration except at the request of the Hearing Examiner.

2.14.5 Reconsideration will not be granted to review prehearing orders.

### **SECTION 2.14. CLARIFICATION**

Any party of record may request at any time clarification of the appeal decision upon notice to the other party. The Hearing Examiner shall have discretion to provide clarification. Such clarification shall not stay the effect of a decision or change or amend the conclusions of the Hearing Examiner's decision.

**CHAPTER III:**  
**FOR NOTICE OF CIVIL VIOLATION APPEAL HEARINGS**

**Application of Rules**

This Chapter applies to open record appeal hearings where a person responsible for the violation appears before the Hearing Examiner in response to a notice of civil violation. See *Chapter 1.14 SMC; Chapter 2.23 SMC; Chapter 14.75 SMC; and Chapter 14.85 SMC.*<sup>1</sup>

**SECTION 3.1: PURPOSE**

The purpose of this Chapter is to provide all parties to an appeal hearing with a clear description of the order of procedure. The following rules are intended to provide all parties with the ability to participate in an appeal hearing in a manner that will facilitate an expeditious, just and fair result.

**SECTION 3.2: DEFINITIONS**

“Abate” means to act to stop an activity, and/or to repair, replace, remove, or otherwise remedy a condition, where such activity or condition constitutes a violation of a regulation; provided, the actions must resolve the violation to the satisfaction of the City, or the Hearing Examiner if the matter has been mitigated or contested and found committed, and the actions taken and the manner in which they are performed must not endanger the general health, safety, and welfare of the community. For the purposes of this Chapter, the verbs “abate” and “correct” shall be interchangeable and have the same meaning.

“Act” means doing or performing something.

“City” means City of Snohomish, Washington.

“Code Enforcement Officer” means the City’s Code Enforcement Officers; building officials; building inspectors; construction inspectors; the Fire Marshal, or his or her designee; fire inspectors; the Chief of the Snohomish Police Department, or his or her designee; the City Planner, or his or her designee; the director of the Public Works Department, or his or her designee; or any other person or persons assigned or directed by the City Manager, or his or her designee, to enforce the regulations subject to the enforcement and penalty provisions of this Chapter 1.14 SMC.

“Correction Notice” means a written statement, issued by a Code Enforcement Officer, notifying a person that property under his or her control is in violation of one or more regulations and informing such person that a Notice of Violation may be issued and/or criminal charges filed if the violations are not abated.

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<sup>1</sup> Chapter 1.14 SMC addresses code enforcement in more detail for all regulations as defined in SMC 1.01.080. SMC 1.14.150 authorizes the Hearing Examiner to conduct a contested hearing pursuant to Chapter 2.33 SMC. Chapter 14.75 SMC sets out appeal requirements for appeals of notices of violations. Chapter 14.85 SMC grants the Hearing Examiner limited jurisdiction over violations of the Land Development Code (Title 14) and governs specifically Title 14 code enforcement.

“Day” or “Days,” as used in this Chapter, shall mean calendar days unless expressly stated otherwise in a given section or subsection. In addition, any portion of a twenty-four hour day shall constitute a full calendar day.

“Hearing Examiner” means the Snohomish Hearing Examiner and the office thereof established pursuant to Chapter 2.33 SMC.

“Notice of Violation” or “Notice of Civil Violation” means a written statement, issued by a Code Enforcement Officer, which contains the information required under Section 1.14.080 and which notifies a person that he or she is responsible for one or more violations of the Snohomish Municipal Code.

“Omission” means a failure to act.

“Person” means any individual, firm, business, association, partnership, corporation, or other legal entity, public or private, however organized. Because “person” shall include both human and nonhuman entities, any of the following pronouns may be used to describe a person: he, she, or it.

“Person Responsible for the Violation” means any of the following: a person who has titled ownership or legal control of the property or structure that is subject to the regulation; an occupant or other person in control of the property or structure that is subject to the regulation; a developer, builder, business operator, or owner who is developing, building, or operating a business on the property or in a structure that is subject to the regulation; or any person who created, caused, or has allowed the violation to occur.

“Regulation” means and includes any of the following, as now enacted or hereafter amended:

- A. All Snohomish Municipal Code provisions making reference to Chapter 1.14 SMC;
- B. All standards, regulations, and procedures adopted by the City that make reference to Chapter 1.14 SMC; and
- C. The terms and conditions of any permit or approval issued by the City, or any concomitant agreement with the City pursuant to code provisions that make reference to Chapter 1.14 SMC.

“Repeat Violation” means, as evidenced by the prior issuance of a correction notice or a notice of violation, that a violation has occurred on the same property within a two (2) year period, or a person responsible for a violation has committed a violation elsewhere within the City of Snohomish within a two (2) year period. To constitute a repeat violation, the violation need not be the same violation as the prior violation.

“Violation” or civil violation means an act or omission contrary to a regulation as defined in this section. A violation continues to exist until abated to the satisfaction of the City, with each day or portion thereof in which the violation continues constituting a separate violation. *SMC 1.14.020.*

*RULES OF PROCEDURE FOR  
NOTICE OF CIVIL VIOLATION APPEAL HEARINGS*

### **SECTION 3.3: JURISDICTION**

The Hearing Examiner has jurisdiction to hear and decide appeals of notice of civil violation, issue orders and assess monetary penalties. See *SMC 1.14.150; SMC 1.14.160; SMC 1.14.170; SMC 1.14.180; 14.75.010*.

### **SECTION 3.4: EX PARTE COMMUNICATION**

- 3.4.1 No person, nor his or her agent, employee, or representative, who is interested in a particular petition or application currently pending before the Examiner shall communicate ex parte, directly or indirectly, with the Hearing Examiner. *SMC 2.33.060*. This rule shall not prohibit ex parte communications concerning procedural matters.
- 3.4.2 The Examiner shall not communicate ex parte directly or indirectly with any interested person, nor his or her agent, employee or representative, with regard to the merits of a petition or application. *SMC 14.95.020B*.
- 3.4.3 If a prohibited ex parte communication is made to or by the Examiner, such communication shall be publicly disclosed, and proper discretion shall be exercised by the Examiner on whether to disqualify himself or herself as Examiner for that particular hearing. *SMC 14.95.020C*.

### **SECTION 3.5: NATURE OF PROCEEDINGS**

#### 3.5.1 Expeditious Proceedings

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

#### 3.5.2 Format

The format for a hearing will be informal, designed to make the evidence and facts relevant to a particular proceeding become available to the Hearing Examiner and easily ascertainable by a reviewing body. The format will allow development of a record by parties.

#### 3.5.3 Site Visit

When necessary, the Hearing Examiner may inspect the site prior or subsequent to the hearing. The site visit is not part of the record. Failure to inspect the site will not render the Hearing Examiner's recommendation or decision void.

#### 3.5.4 Record of Hearing

- A. Record. Hearings shall be electronically recorded in an audio format and such recordings shall be part of the record.
- B. Copies of any written materials in the record may be obtained by any interested person who may be responsible for paying the cost of reproducing such material.

### **SECTION 3.6: RIGHTS AND RESPONSIBILITIES OF ALL INVOLVED PARTIES**

#### 3.6.1 Rights of City

The City staff shall have the right to present evidence and testimony, cross-examine witnesses, make recommendations to the Hearing Examiner, and exercise all other rights essential to a fair appeal hearing. The Hearing Examiner may limit testimony to material that is relevant and pertinent to the alleged violation(s).

#### 3.6.2 Rights of Appellant

The Appellant shall have the right to receive notice of the hearing, present evidence and testimony, cross-examine witnesses, and exercise all other rights essential to a fair appeal hearing. The Hearing Examiner may limit testimony to material that is relevant and pertinent to the alleged violation(s).

#### 3.6.3 Responsibilities of City Staff

The City staff shall prepare a staff file as described in Rule 3.8.5, provide notice of the appeal hearing, provide the Hearing Examiner with documentation relevant to the case, and treat all that participate in the proceeding courteously.

#### 3.6.4 Responsibilities of Appellant

The Appellant shall provide the Hearing Examiner with material that supports his or her case, prepare for questions from the Hearing Examiner, and treat all that participate in the proceedings courteously.

#### 3.6.5 Responsibilities of All Participants, Witness and Observers

All participants, witness and observers shall conduct themselves with civility and deal courteously with all persons involved in the proceedings.

#### 3.6.6 Failure to Appear

Absent a voluntary agreement (See Section 3.8.8), parties who request a hearing to contest a violation or mitigate the penalty must appear at the open record appeal hearing. If adequate notice has been given, and a named party fails to appear at a

scheduled hearing, the Hearing Examiner shall immediately issue an order of default, assess a fine in the full amount indicated in the notice of violation, and shall cause a copy of the order of the decision to be served on the non-appearing party. *SMC 1.14.190.*

### **SECTION 3.7: PRESIDING OFFICIAL**

#### **3.7.1 Presiding Official**

- A. Open record appeal hearings shall be presided over by the Hearing Examiner.
- B. The Hearing Examiner shall have all of the authority and duties as granted him or her in state statutes and the SMC. Included in the duties of the Hearing Examiner are the following: to conduct fair and impartial hearings; to take all necessary action to avoid delay in the disposition of proceedings; and to maintain order. In accordance with SMC 14.95.010B, he or she shall have all powers necessary to that end, including the following:
  - 1. To administer oaths and affirmations;
  - 2. To rule upon offers of proof and receive evidence;
  - 3. To regulate the course of the hearings and the conduct of the parties and their agents;
  - 4. To question any person presenting testimony at the hearing;
  - 5. To hold conferences for settlement or simplification of the issues, or any other proper purpose;
  - 6. To require briefs on legal issues;
  - 7. To consider and rule upon all procedural and other motions appropriate to the proceedings; and
  - 8. To make decisions, issue orders, and assess monetary penalties.
- C. Interference. 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. *SMC 14.95.010D.*

#### **3.7.2 Presence of Legal Counsel at Open Record Appeal Hearings or Meetings**

- A. Although representation by legal counsel is not required at the open record appeal hearings, all parties participating in the hearings may be represented at the hearings by legal counsel of their choice.
- B. At the request of any City department and in the discretion of the Hearing Examiner, a representative of the City of Snohomish's Attorney's Office may be present at the open record appeal hearings.
- C. To the extent practicable, any legal memoranda upon which a party of record will be relying shall be submitted to the Hearing Examiner's office (care of the Clerk of the Hearing Examiner) at least one (1) week in advance of the scheduled hearing date.

## SECTION 3.8: CONDUCT OF HEARINGS

### 3.8.1 Notice Requirements of Hearings and Filings

- A. A person who has been served with a notice of violation must respond within fourteen (14) calendar days of the date the notice is served by paying the amount of the monetary penalty; or by requesting a contested hearing or mitigation hearing as described in SMC 1.14.120B.
- B. Affidavit of Notice. The City shall provide an affidavit or testimony attesting to the notice given of a contested or mitigation hearing.

### 3.8.2 Oath or Affirmation

All testimony before the Hearing Examiner shall be given under oath or affirmation to tell the truth. *SMC 14.95.030B.*

### 3.8.3 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.

### 3.8.4 Development of Record at the Hearing

#### A. Contested Hearing

##### 1. City

The City shall present its case first by describing the nature of the alleged violation and the documents that it proposes to submit into the appeal record. The City has the burden of proof to establish the commission of the civil infraction, which requires it to show by a preponderance of the evidence that the violation occurred. *SMC 1.14.150A.* Testimony will only be allowed from members of the City staff or individuals that the City calls as witnesses. The City may submit proposed Findings and Conclusions to support a decision.

##### 2. Appellant

After the City presents its case, the Appellant will have an opportunity to respond. The Appellant's response should consist of information that is related to the alleged violation and addresses the City's contentions. The Appellant may testify and/or provide exhibits that support his or her position. The Appellant may submit evidence that describes any corrective action that he or she has taken to improve the condition of the subject property.

Testimony will only be accepted from the Appellant or individuals that the Appellant has called as witnesses. The Appellant may submit proposed Findings and Conclusions to support a decision.

B. Mitigation Hearing

1. City

The City is relieved of any burden of proving that the violations were committed. The City may provide evidence of the nature of the violation or evidence to rebut assertions made by any party. *SMC 1.14.170A. and D.*

2. Appellant

The Appellant may explain or provide evidence regarding the nature of the violations, why the violations exist, or why the violations have not been abated or corrected. *SMC 1.14.170C.*

3.8.5 Content and Form of Staff File

The staff file for an appeal hearing should include at least the following

- A. Exhibit list containing names of appellant(s), file number, location of alleged violation including address and tax parcel number, and a list of exhibits;
- B. Notice of Violation containing description of violation, recommended corrective action and hearing notice;
- C. Return of Service Affidavit; and
- D. Property profile showing ownership of the subject property.

3.8.6 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 specified date with notice to the Appellant and City.

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 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.

3.8.7 Evidence

- A. The open record appeal hearing will not be conducted in strict adherence to the Rules of Evidence. However, in the spirit of providing an expeditious appeal process, all evidence that the parties to the proceeding submit should be related to the alleged violation(s).

- B. Copies. Three copies of each document submitted shall be provided at the hearing. If copies are not provided at the open record appeal hearing, the person responsible for the violation may be charged for the cost of copying exhibits that are admitted during the hearing. Any documents submitted at the appeal hearing shall become part of the permanent record and shall not be returned to the party. Copies of documents may be submitted in lieu of originals.
- C. Any person submitting photographs in support of his or her case, should be prepared to identify (1) the subject of the photograph, (2) the date the photograph was taken, and (3) the individual who took the photograph.
- D. 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.

### 3.8.8 Voluntary Correction Agreement

The hearing may be cancelled and the party requesting the hearing need not appear only if, at least two (2) working days prior to the scheduled hearing, the Code Enforcement Officer determines that the violation has been satisfactorily corrected or abated and the monetary penalty paid in full. *SMC 1.14.140B.*

### 3.8.9 Presentation of Motions

A party to the proceeding may present a motion to the Hearing Examiner. All motions must be presented in writing, clearly noted as a motion, and be presented, with a copy and notice to all other parties, to the Clerk of the Hearing Examiner, or at a scheduled hearing.

## **SECTION 3.9: DECISIONS OF THE HEARING EXAMINER**

### 3.9.1 Written Decisions

#### A. Contested Hearing

The Hearing Examiner shall issue a written decision or order within ten (10) business days from the close of the open record appeal hearing. *SMC 1.14.160A.* Copies of the Hearing Examiner's decision shall be served on the parties by mailing a copy to each party's last known address within ten (10) business days of the hearing. *SMC 1.14.160B.*

#### B. Mitigation Hearing

The Hearing Examiner shall issue a written decision using a standard form at the close of the hearing. The City shall provide a copy of the decision and order to the parties at the close of the mitigation hearing, unless the City requires more time to prepare a written order, the Hearing Examiner's decision shall be served on the parties by mailing a copy to each party's last known address within ten (10) business days of the hearing. *SMC 1.14.180B.*

### 3.9.2 Content of Decision or Order

- 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 issue(s) based upon the findings. The conclusions may reference legal criteria, if applicable.
- C. In the event of a Contested Hearing where the Hearing Examiner determines that a violation occurred or is occurring, the Hearing Examiner shall issue an order to the person responsible for the violation, which contains the following information:
  - 1. For each alleged violation, a statement indicating whether the violation has been found committed; *SMC 1.14.160A.1.*
  - 2. For each violation found committed, the monetary penalties and costs assessed; *SMC 1.14.160A.2.*
  - 3. For each violation found committed, any required corrective actions; *SMC 1.14.160A.3.*
  - 4. For each violation found committed, a finding that abatement is authorized at the expense of the person responsible for the violation; *SMC 1.14.160A.4.*
  - 5. A statement notifying the person responsible for the violation that he or she is subject to additional civil and/or criminal penalties if any violation that was the subject of the hearing has not been corrected or abated. *SMC 1.14.160A.5.*
- D. In the event of a Mitigation Hearing, the Hearing Examiner shall issue an order to the person responsible for the violation, which contains the following information:
  - 1. For each alleged violation, a statement indicating the violation has been found committed; *SMC 1.14.180A.1.*
  - 2. For each violation committed, the monetary penalties and costs assess; *SMC 1.14.180A.2.*
  - 3. For each violation committed, any required corrective action; *SMC 1.14.180A.3.*
  - 4. A statement notifying the person responsible for the violation that he or she is subject to additional civil and/or criminal penalties if any violation that was the subject of the hearing has not been corrected or abated. *SMC 1.14.180A.4.*
  - 5. A finding that abatement is authorized at the expense of the person responsible for the violation(s). *SMC 1.14.180A.5.*

### **SECTION 3.10: APPEALS OF DECISIONS**

- 3.10.1 The decision or order of the Hearing Examiner may be appealed to the Snohomish County Superior Court in accordance with the provisions set forth in the Revised Code of Washington, Chapter 36.70C, SMC 1.14.210, and SMC 14.75.030.

### **SECTION 3.11: CONFLICTS**

3.11.1 In the event of a conflict between these rules and the provisions of the SMC, the provisions of the SMC shall prevail.