

**RULES OF PROCEDURE FOR
PROCEEDINGS BEFORE THE HEARING EXAMINER
OF THE CITY OF BURIEN 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

"BMC" means the Burien Municipal Code.

"Applicant" means a property owner or any person or entity acting as an agent for the property owner in an application for a development proposal, permit or approval. *See BMC 19.10.030.*

"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 Burien, Washington.

"City Council" means the Burien City Council.

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

"Director's Recommendation" on an application means the document prepared by the City's Director of Community Development pursuant to BMC 19.65.070.4.

"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 Burien. *See chapter 2.15 BMC.*

"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.

*RULES OF PROCEDURE FOR
LAND USE APPLICATIONS AND
APPEAL OF ADMINISTRATIVE DECISIONS,*

"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 Hearing" means a hearing held under chapter 36.70B RCW and conducted by the Burien 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 any individual, firm, association, partnership, corporation or any entity, public or private.

"Party of record" means:

- (a) A person who has testified at the open record hearing on the application;
- (b) The applicant, or applicant's representative;
- (c) The property tax payer as identified by the records available from the King 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; or
- (e) The City's administrative staff.

"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 Department of Community Development pursuant to BMC 2.15.100.

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

SECTION 1.2: JURISDICTION

The City Council has authorized the Hearing Examiner to prescribe rules and regulation for the conduct of hearings. See *BMC 2.15.140*.

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, make

*RULES OF PROCEDURE FOR
LAND USE APPLICATIONS AND
APPEAL OF ADMINISTRATIVE DECISIONS,*

decisions or recommendations, and issue orders pursuant to chapters BMC 2.15 and BMC 19.65.

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 petition or 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 petition or application. 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 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 that is pending before the Hearing Examiner, or a factually related petition or application.
- 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 Examiner on whether to disqualify himself or herself as Examiner for that particular hearing.

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.
- 1.4.2 Frequency
Hearings will be scheduled through the Director in coordination with the Hearing Examiner. See *BMC 19.65.045*.
- 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 shall make an electronic recording of all hearings in an audio or video format. Hearings shall be electronically recorded and such recordings shall be a part of the record. No minutes of the hearing will be kept. Copies of the electronic recordings of a particular proceeding shall be made available to the public within three (3) working days of 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 Burien, 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.

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.

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. An Applicant shall have the right to timely access to the Director's Recommendation. 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.

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.

1.5.4 Responsibilities of the Director

The Director, or designated staff, shall provide a report containing recommendations consistent with the provisions of Section 1.7.6, provide notice of hearings, present materials at the hearings, and provide documentation relevant to the case. The Staff Report and Director's recommendation should be available to the public at least five (5) working days before the hearing.

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 Hearing Examiner a minimum of five (5) working 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.

SECTION 1.6: PRESIDING OFFICIALS

1.6.1 Presiding Officials

(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 BMC, 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. The Hearing Examiner 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 party presenting testimony at the hearing;
- (5) To hold conferences for settlement, 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
- (10) 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. See *BMC 2.15.060*.

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.
- (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 five (5) working days in advance of the scheduled hearing date. The above mentioned documents shall be available to the public, subject to payment, at least five (5) working days in advance of the scheduled hearing date.

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 chapter 19.65 BMC, 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 Oath or Affirmation

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

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.

1.7.3 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 in compliance with chapter 19.65 BMC;
- (b) The Staff Report and Director's recommendation;
- (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).

1.7.4 Development of Record

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.

1.7.5 Content and Form of Staff Report and Director's Recommendation

The Staff Report and Director's recommendation 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 and Director's recommendation shall be filed with the Hearing Examiner at least five (5) working days prior to the scheduled hearing and copies mailed to the applicant and made available for public inspection. Copies 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 recommendation, 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 BMC but shall be granted for a period of no longer than thirty (30) calendar days.

(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; 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.

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 Burien.
- (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 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.

- (e) 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. 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.
- (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.

1.7.9 Presentation of Motions

A party to the proceeding may present a motion to the Hearing Examiner. Written motions must be clearly noted as a motion, and be filed seven calendar (7) days prior to the hearing, with notice to all other parties. Motions and responses to motions are not to exceed fifteen (15) double-spaced pages in length without prior approval of the Hearing Examiner.

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 AND RECOMMENDATIONS

1.9.1 Written Decisions or Recommendation

For permits on which the Hearing Examiner has final approval authority, a written report of findings, conclusions, and decision shall be sent to all parties of record. The Hearing Examiner's decision or recommendation 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.

1.9.2 Content of Decision or Recommendation

- (a) The Hearing Examiner's decision;
- (b) Any conditions included as part of the decision or recommendation;

- (c) Findings of fact upon which the decision or recommendation, including any conditions, was based and the conclusions derived from those facts. The findings shall be based exclusively on the evidence presented in the hearing and those matters officially noticed. A statement of any threshold determination made under Chapter 43.21 RCW may be included.
- (d) 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.
- (e) A statement explaining the appeal process or the City Council decision process.

1.9.3 Procedure for Reconsideration and Reopening Hearing

- (a) At any time prior to the filing of the final decision or recommendation, 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.
- (c) Reconsideration
 - (1) Any party of record may file a written request for reconsideration with the Hearing Examiner within ten (10) calendar days of the date the decision is rendered. The request shall explicitly set forth erroneous procedures, errors of law or fact, or the discovery of new evidence that could not be 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 or recommendation.
 - (2) The Hearing Examiner shall respond to the request for reconsideration within five (5) 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 decision or recommendation based on the established record or by setting the matter for an additional hearing.
 - (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 the Hearing Examiner.

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

Judicial appeals should be filed as set forth in BMC 19.65.060.

SECTION 1.11: CONFLICTS

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

CHAPTER II:
RULES OF APPEAL OF ADMINISTRATIVE DECISIONS

Application of Rules

This chapter applies to appeals of administrative decisions that affirm, modify, or reverse a land use permit application. See *BMC 2.15.070; BMC 2.20.020; and BMC 19.65.065.5.*

SECTION 2.1: DEFINITIONS

"BMC" means the Burien 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 Burien Municipal Code.

"Applicant" means a property owner or any person or entity acting as an agent for the property owner in an application for a development proposal, permit or approval. See *BMC 19.10.030.*

"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 Burien, Washington.

"City Council" means the Burien City Council.

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

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

"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 parties to an appeal have 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 Burien.

"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

*RULES OF PROCEDURE FOR
LAND USE APPLICATIONS AND
APPEAL OF ADMINISTRATIVE DECISIONS,*

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 Hearing" means a hearing held under Chapter 36.70B RCW and conducted by the Burien 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 any individual, firm, association, partnership, corporation or any entity, public or private.

"Party of record" means:

- (a) A person who has testified at the open record hearing on the application;
- (b) The applicant, or applicant's representative;
- (c) The property tax payer as identified by the records available from the King 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; or
- (e) The City's administrative staff.

"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 Director for an appeal pursuant to BMC 19.65.065.7.

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

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 BMC ordinance(s) and/or RCW 36.70C.040 (as it exists now or as amended) under which the appeal is filed.

*RULES OF PROCEDURE FOR
LAND USE APPLICATIONS AND
APPEAL OF ADMINISTRATIVE DECISIONS,*

2.2.2 Timeliness

To be considered timely, an appeal from an administrative decision must be received no later than 5:00 p.m. on the last day of the appeal period. Such an appeal must be filed with the clerk of the City of Burien. See *BMC 2.20.020*; *BMC 19.65.065.5.B*.

2.2.3 Fee

Appeals shall be accompanied by any filing fee required by the BMC.

2.2.4 Contents

All appeals shall be filed in accordance with BMC 2.20.060. An appeal must be in writing and contain the following:

- (a) A heading in the words: "Before the Hearing Examiner, or City Council", whichever is appropriate.
- (b) A caption reading: "Appeal of _____" giving the names of all appellants participating in the appeal;
- (c) A brief statement setting forth the legal interest of each of the appellants;
- (d) A brief statement in concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant;
- (e) A brief statement in concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed, modified or otherwise set aside;
- (f) The signatures of all parties named as appellants, and their official mailing addresses;
- (g) The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

Appeals of Type I administrative decisions made by the Director shall be filed pursuant to BMC 19.65.065.5.

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. Written motions must be clearly noted as a motion, and be filed five (5) working days prior to the hearing, with notice to all other parties. 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. Staff Report

The Director shall prepare a staff report analyzing the specific elements of the Director's decision disputed in the letter of appeal. At least five (5) working days before the hearing, the Director shall distribute copies of the staff report to the Hearing Examiner and all parties of record. See *BMC 19.65.065.7*

2.2.8 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 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;
- (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.

2.4.4 All parties of record have the right to be represented 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.

- 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 In the event that a prehearing conference is not held, the Hearing Examiner may issue a prehearing order with procedural information including identification of the parties; date and time of the hearing appeal; issues identified in the appeal statement; a request and date for submission of lists of witnesses and documents; cross-examination of witnesses; and an order of presentation.
- 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 (for an appeal of a Type 1 Decision) should include:
- (a) Appellant name and project name (if applicable)
 - (b) The street address of the subject property or a description in non-legal terms of the property's location.
 - (c) A brief description of the decision of the Director that is being appealed.
 - (d) A statement of the scope of the appeal including a summary of the specific errors alleged in the letter of appeal.
 - (e) The date, time and place of the appeal hearing before the Hearing Examiner.
- See *BMC 19.65.065.6*.
- 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) working days before the scheduled hearing date.

2.7.3 Responsibility

The Director or his/her designee 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 and the City 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 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) Background presentation by department staff;
- (c) Appellant's argument;
- (d) Department's presentation;
- (e) Applicant's presentation;
- (f) Rebuttal; and
- (g) Closing argument of parties.

2.10.3 Notwithstanding the provisions of the BMC, 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).

2.10.5 Oath or Affirmation

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

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.

2.10.6 Continuance of Appeal Hearing

(a) Hearing Examiner

If the Hearing Examiner finds that 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, 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.

SECTION 2.11: HEARING EXAMINER'S DECISION

2.11.1 The Hearing Examiner shall issue a written decision on a Type 1 appeal within ninety (90) days from the date the original administrative appeal period closed unless this time limit is extended pursuant to BMC 19.65.065.10.

2.11.2 A decision of the Hearing Examiner on appeal should 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 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 (grant, grant with modifications, or deny) based upon a consideration of the whole record and supported by substantial evidence in the record. See *BMC 19.65.065.9*.

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 (Reserved)

SECTION 2.14. 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.