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

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1. Applicability.

These Rules of Procedure (hereinafter "Rules") shall be followed in all proceedings before the Hearing Examiner of the City of Lynden, Washington. These Rules supplement the provisions of the Lynden Municipal Code relating to proceedings before the Hearing Examiner.

2. Amendment of Rules.

These Rules may be amended only by an ordinance of the City of Lynden adopting such amendment.

3. Interpretation.

The Hearing Examiner shall interpret the Rules and determine the application of the Rules to specific circumstances so that proceedings are fair and due process is achieved. Where there are questions of proceeding or practice not addressed by these Rules, the Hearing Examiner shall follow a practice or proceeding which provides fair treatment and due process of law to all Parties.

4. Definitions.

Terms used herein are defined below:

A. "Appeal" for the purposes of these rules means an appeal, petition, or challenge of an administrative decision over which the Hearing Examiner has jurisdiction pursuant to LMC 2.09.040.
B. "Appellant" means the person who submits a complete and timely Appeal.
C. "Applicant" means a person who has timely and completely submitted an Application.
D. "Application" for the purposes of these rules means an application over which the Hearing Examiner has jurisdiction, unless context clearly requires otherwise.
E. "City" has the meaning provided for it in LMC 17.01.030.
F. "City Code" has the meaning provided for it in LMC 17.01.030.
G. "Days" refers to calendar days unless explicitly stated otherwise.
H. "Department" refers to the city department issuing the administrative decision being appealed or administering the applicable section of the City Code. "Department" may refer to the planning department, public works department, or other department as context requires.
I. "Director" refers to the highest-ranking city staff person in the Department as defined above. For matters brought to the Hearing Examiner, the Director is usually, but not necessarily, the director of the planning department or public works department.
J. "Ex Parte Communication" is a communication that occurs between any person and the Hearing Examiner outside of the presence of the other Parties of Record.
K. "Hearing Examiner" has the meaning provided for it in LMC 17.01.030.
L. "Intervenor" means a person granted intervention pursuant to Rule 21. An Intervenor has the same rights of participation in the proceedings as the Appellant or Applicant and the City, unless such rights are expressly limited by the Hearing Examiner.
M. "Motion" means an oral or written request to the Hearing Examiner for an order or ruling.
N. "Open Record Hearing" has the meaning provided for it in LMC 17.01.030.
O. "Party" refers to a Party of Record.
P. "Party of Record" has the meaning provided for it in LMC 17.01.030.
Q. "Person" has the meaning provided for it in LMC 17.01.030.
R. "Rules" means these Rules of Procedure for Proceedings Before the Hearing Examiner of the City of Lynden, Washington.
S. "Record" means the official record of documents, briefs, motions, testimony, recordings, and other items submitted, created and/or relied on during the course of the proceedings before the Hearing Examiner, which will be the full and complete record of proceedings if the Hearing Examiner's decision is appealed.
T. "Timely" means within the time frame provided by City Code, these Rules, or within the time specified by the Hearing Examiner.
U. "Variance" as used in these Rules refers only to variances over which the Hearing Examiner has jurisdiction pursuant to LMC 2.09.040.

5. Expeditious Proceedings.

To the extent practicable and consistent with requirements of law, hearings shall be conducted expeditiously. The Hearing Examiner and all Parties shall make every reasonable effort to avoid delay.

6. Frequency and Scheduling of Proceedings.

Hearings before the Hearing Examiner shall be scheduled on an as-needed basis. Applications or Appeals requiring a proceeding before the Hearing Examiner shall be scheduled for hearing promptly after notification by the Director that the Application or Appeal is complete.

7. Consolidation.

Whenever practical and consistent with the City Code and state law, proceedings before the Hearing Examiner related to the same matter may be consolidated. The Hearing Examiner may order consolidation with or without a request from a Party of Record.

8. Format for Submission of Applications for Variances and Appeals of Administrative Decisions.

The format for Applications for variances from the requirements of Title 19 is laid out in LMC 19.47.070. The format for Appeals of administrative decisions made under Title 17 is laid out in LMC 17.11.020. The City Code may require specific information or a specific format for Applications or Appeals brought under other sections. The Director shall not accept an Application or Appeal if it does not conform to the requirements specified in the City Code.

9. Withdrawal of Application or Appeal.

A. If an Applicant or Appellant requests to withdraw its Application or Appeal before official notice of the public hearing is served, the Applicant or Appellant shall notify the Director and the withdrawal shall be permitted.
B. If a withdrawal request is made after official notice of the public hearing is served, the Hearing Examiner may permit or deny the withdrawal at his or her discretion.
C. The City may return any fees paid by the Applicant or Appellant if no City time has been spent on the Application or Appeal.

10. Presiding Officer.

The Hearing Examiner is the presiding officer over proceedings before him or her. The Hearing Examiner shall ensure a fair and impartial hearing, take all necessary action to avoid undue delay, gather facts necessary to make his or her decision, and maintain order. The Hearing Examiner shall have all powers necessary to achieve these ends.

11. Recusal.

Because of a conflict as defined in LMC 2.09.035 or another substantial reason, a Hearing Examiner may recuse him- or herself from a particular hearing, with or without a request for recusal from a Party. A Party requesting recusal must do so as soon as possible after the reason for the requested recusal is known. If a Hearing Examiner is recused, a Hearing Examiner pro tem will take his or her place. The recusal of the Hearing Examiner may be grounds for a continuance depending on the circumstances.

12. Ex Parte Communications.

A. No person, regardless of whether that person is a Party of Record, may communicate ex parte in any way with the Hearing Examiner regarding the merits of a particular hearing or a factually-related petition or Application. The Hearing Examiner may likewise not communicate ex parte in any way about the same topics with any person.
B. If prohibited ex parte communication occurs, it shall be immediately disclosed to all Parties of Record and made a part of the record. If a substantial prohibited ex parte communication occurs, the Hearing Examiner shall exercise his or her proper discretion and determine whether he or she must recuse him- or herself.
C. A person may communicate ex parte with the Hearing Examiner concerning strictly procedural matters or to make requests for publicly available documents.

13. Computation of Time.

Except as otherwise provided in the City Code or these Rules, any prescribed period of time begins on the first day following that on which the act initiating the period of time occurred. When the last day of the period of time is a Saturday, Sunday, or City holiday, the period shall extend to the following business day. All materials due on a given day must be served on all other Parties and submitted to the Hearing Examiner before 5:00 PM on that day unless otherwise agreed.

14. Extension of Deadlines.

Any Party may move to extend any deadline specified in these rules, except for the deadlines to file an Appeal or Application. The Hearing Examiner may grant or deny such motions at his or her discretion.

15. Rights of Applicants and Appellants to Fair Hearing.

All Applicants and Appellants have the rights of due notice, due process, cross-examination, rebuttal, presentation of evidence, objection, motion, argument, and all other rights essential to a fair open record hearing.

16. Rights of Parties of Record.

A. Appellants, Applicants, the City, and Intervenors may participate in any pre-hearing conference, submit legal briefing, motions, and witness and exhibit lists, present witnesses and testimony at the hearing, and perform other hearing-related functions as needed to protect their legal rights and interests.
B. Parties of Record who are not an Appellant, Applicant, the City, or an Intervenor may submit exhibits, written statements, and testimony to the Hearing Examiner at the hearing or after the hearing but before the close of the record. Such Parties shall participate in the other aspects of the hearing only at the Hearing Examiner's discretion, unless such Parties are granted Intervenor status.

17. Name, Address, and Telephone Number Required for Official Notifications and Service.

A. Each Party of Record shall supply the Hearing Examiner and other Parties with their name, mailing address, and telephone number for receipt of official notifications and service.

B. When a Party consists of more than one individual, such as an association, corporation, or other entity, that Party shall designate one individual to be its representative. The Party shall inform the Hearing Examiner and other Parties of the name, mailing address, and telephone number of the representative for receipt of official notifications and service. The representative alone shall exercise the rights of that Party, and notice or communication to the representative shall constitute notice or communication to the Party.
C. When an attorney enters a notice of appearance on behalf of a Party, all official notices and service shall be directed to the attorney instead of to the Party.

18. Filing and Service of Documents.

A. Appeals and Applications shall be submitted to the Director. The Director may also request additional information to be submitted to his or her office after receiving the initial Appeal or Application.
B. All documents filed subsequently shall be submitted directly to the Hearing Examiner at the mailing address or email address the Hearing Examiner specifies.
C. Documents shall be served personally or by first-class, registered, or certified mail. Service shall be regarded as complete upon the deposit of a properly addressed and stamped envelope in the regular facilities of the US Postal Service, or upon the time of personal service. One City office or agency may serve another City office or agency using the intra-city mail system. The Parties are encouraged to agree to at least one alternative method of service, such as fax, email, or other electronic transmission. Any such agreement shall be filed with the Hearing Examiner.

19. Legal Counsel.

A. Parties' counsel. All Parties participating in any hearing may be represented by legal counsel at all stages of the proceedings. A notice of appearance pursuant to Rule 20 is required.
B. City Attorney. The Hearing Examiner may at his or her discretion request the presence of the city attorney or his designee, at any hearing or meeting to advise on matters of law and procedure, subject to approval of the mayor.

20. Notice of Appearance.

When an attorney represents a Party, the attorney shall file a notice of appearance with the Hearing Examiner and send a copy of that notice to all other Parties, except that such notice of appearance shall not be required if the attorney representing the Party filed the Application or Appeal. Failure to file a notice of appearance at least seven days before a hearing shall be grounds for a continuance.

21. Intervention.

A. A person may intervene as a matter of right when the requirements of intervention in Washington State Superior Court Civil Rule 24(a), or its successor rule, are met.
B. At his or her discretion, the Hearing Examiner may permit the intervention of a person when the requirements for permissive intervention in Washington State Superior Court Civil Rule 24(b), Intervention, or its successor rule, are met.
C. A person desiring to intervene shall file a motion for intervention stating the legal ground for intervention with the Hearing Examiner before the date of the hearing.

D. A person granted intervention shall have a right to participate in all aspects of the proceedings, including without limitation pre-hearing conferences, briefing, motions, presentation of witnesses and exhibits, and oral argument, unless such right is expressly limited by the Hearing Examiner as a condition of permissive intervention.

22. Pre-Hearing Conference.

A. The Hearing Examiner may require one or more pre-hearing conferences, which may be in person, by virtual meeting, or telephonic, to discuss matters appropriate to ensure the orderly and expeditious disposition of the proceedings. Items discussed at a pre-hearing conference may include:
   i. Whether issue clarification statements, dispositive motions, exhibit lists and distribution, witness lists, hearing briefs, post-hearing briefs, and other submittals are needed, and if so, deadlines and methods of filing and service of the same;
   ii. The date, time, and location the hearing is to be held;
   iii. Issues related to discovery;
   iv. Issues related to intervention; and
   v. Other procedural issues as the Hearing Examiner deems appropriate.

B. The Appellant or Applicant, City, and all Intervenors shall receive written notice of a pre-hearing conference at least three business days in advance of the conference, unless otherwise agreed. All participants shall attend the conference either personally or via a representative or attorney, unless the Hearing Examiner grants permission to not attend.

C. Following a pre-hearing conference, the Hearing Examiner may issue orders reflecting the actions taken, decisions made, or rulings made during the conference.

23. Submission Deadline for Legal Authority.

All forms of legal authority, including briefs, staff reports, memoranda, upon which an Appellant or Applicant, the City, or an Intervenor will be relying or presenting at the hearing, must be submitted to the Hearing Examiner at least seven days in advance of the hearing. At his or her discretion, the Hearing Examiner may require legal authority to be submitted earlier than seven days prior to the hearing. When justified, the Hearing Examiner may refuse to consider or admit into the record any legal authority received late. The Hearing Examiner shall make all such documents available to the public at least five days in advance of the hearing, or if documents are submitted late but accepted by the Hearing Examiner, as soon as reasonably feasible.

24. Motions.

A. All motions, other than those made orally during a hearing, shall be in writing and shall state the relief requested and the grounds for that relief. Motions must be served on the Appellant or Applicant, City, and Intervenors the same day they are submitted to the Hearing Examiner.

B. Unless otherwise specified by the Hearing Examiner, the other Parties may file and serve a written answer to a motion within seven days of the filing of the motion.

C. Unless otherwise specified by the Hearing Examiner, the Hearing Examiner shall rule on the motion within 48 hours of the passing of the deadline for answers to the motion or within 48 hours of oral argument, whichever is later. There is no right to oral argument for a

motion filed outside of a hearing, but the Hearing Examiner may in his or her discretion grant a request for or require oral argument before ruling on the motion.

D. Motions made orally during a hearing may be answered and ruled on immediately.

25. Staff Reports Regarding Applications.

A staff report shall be submitted within fifteen days of the date an Application is filed with the Hearing Examiner. The staff report informs the Hearing Examiner of the Department's position regarding the application. It should contain the following elements:

A. Basic factual information about the property and the Applicant, such as name, ownership, address, parcel number, lot size, zone, availability of utilities and public services, and other relevant information;
B. A detailed description of the lot or lots, including location of existing structures and other improvements, vegetation, slope, critical areas and buffers, and other relevant factors;
C. A description of the Application and Applicant's objective;
D. Information about the zone the property occupies and neighboring uses;
E. A description of how public notice was achieved, a summary of the public comments the Department received, and a statement of whether the Department concludes that the public comments were adequately addressed in the staff report;
F. A statement describing the results of any related SEPA review, or a statement explaining why no SEPA review occurred;
G. Analysis of the proposal's consistency with the City Code and Comprehensive Plan; and
H. The Department's recommendation, including any recommended conditions of approval.

26. City Response to Submission of Appeal.

When an Appeal has been filed with Hearing Examiner, the Department shall file a written response to the Appeal if required by City Code or ordered by the Hearing Examiner, or may file a response on its own initiative. The response shall be submitted to the Hearing Examiner and served on other Parties within thirty days after the submission of the Appeal, unless otherwise ordered by the Hearing Examiner. The response should fully inform the Hearing Examiner of how the Department made the determination being appealed, including relevant facts and City Code citations as needed.

27. Discovery.

A. At his or her discretion, the Hearing Examiner may permit discovery upon the motion of the Applicant, Appellant, City or Intervenor. The Hearing Examiner may limit the scope of discovery as appropriate. The Hearing Examiner shall generally not permit discovery, except in exceptional circumstances and where good cause is shown.
B. Subpoenas. The Hearing Examiner is authorized by LMC 2.09.040(F) to issue subpoenas. To that end, the Hearing Examiner, in his or her sole discretion, may issue a subpoena consistently with the procedures described in Washington State Superior Court Civil Rule 45.

28. Dismissal without Hearing.

The Hearing Examiner may dismiss without a hearing and with or without a motion, any Appeal or Application over which the Hearing Examiner determines that he or she has no jurisdiction, or which is without merit on its face, frivolous, or brought only to secure delay.

29. Notice of Hearings.

Notice of hearings before the Hearing Examiner shall be made pursuant to LMC 17.07.030.

30. Format of Hearings.

Hearings shall be of an informal nature, but shall allow a reviewing body to easily ascertain the relevant facts, evidence, and arguments presented during the hearing and allow the Parties to develop a complete record. The order in which Parties present their cases shall not impact the applicable burden(s) of proof.

31. Format of Hearings for Applications.

A. When the Hearing Examiner holds a hearing to determine whether an Application should be granted, generally, the hearing should proceed according to the following outline:
   i. Hearing examiner's introductory statement;
   ii. Opening statements by the Parties, if any;
   iii. Presentation of staff report by the City;
   iv. Presentation and/or testimony by the Applicant;
   v. Presentation and/or testimony by Intervenors;
   vi. Public comment regarding the Application;
   vii. Opportunity for City, Applicant, Intervenors and the Hearing Examiner to ask questions to any Party, or to cross examine any witness immediately following direct testimony from that witness;
   viii. Opportunity for rebuttal.
B. The Hearing Examiner may alter the order of the proceedings as needed.

32. Format of Hearings for Appeals of Administrative Decisions.

A. When the Hearing Examiner holds a hearing of an Appeal of an administrative decision, generally, the hearing should proceed according to this outline:
   i. Hearing Examiner's introductory statement;
   ii. Opening statements by the Parties;
   iii. Presentation of evidence by the Appellant;
   iv. Presentation of evidence by the City;
   v. Presentation of evidence by the landowner or other Party who sought the administrative decision now being appealed, if different than the Appellant;
   vi. Presentation of evidence by Intervenors to appeal;
   vii. Limited public comment regarding the Appeal, if any;
   viii. Opportunity for rebuttal;
   ix. Closing statements of the Parties.
B. The Hearing Examiner may alter the order of the proceedings as needed.

33. Evidence.

A. The Hearing Examiner has discretion over the admission of evidence.
B. Admissibility. The federal district court or state superior court rules of evidence that would apply in a court setting need not be observed, but may serve to guide the Hearing Examiner in his or her discretion. Generally, any and all relevant evidence with probative value from a reliable source shall be admitted, including hearsay. It is the Hearing Examiner's prerogative to give weight to admitted evidence as they see appropriate.
C. Objection. Any Party may object to the admission of evidence into the record. The Hearing Examiner shall rule on all objections to evidence made during the hearing before the close of the record.
D. Testimony. The Hearing Examiner may limit testimony that would be repetitious or irrelevant, may impose a reasonable limit on the number of witnesses and the length of their testimony, and may limit cross examination only to what is necessary for the full disclosure of facts.
E. Documents. Documentary evidence may be received in the form of copies if the original is not readily available.
F. Privilege. To the extent recognized by law, the rules of privilege shall apply.
G. Judicial Notice. The Hearing Examiner may take judicial notice of a fact if the truth of the fact cannot reasonably be doubted. In addition, the Hearing Examiner may take judicial notice of facts within his or her specialized knowledge. The Hearing Examiner may give notice to the Parties that he or she is taking judicial notice of a fact; this can be accomplished by an announcement during the proceedings.
H. No additional evidence may be submitted after the close of the record. The Hearing Examiner may re-open the record to allow new evidence at his or her discretion if the evidence has significant relevance and there is good cause for the delay in its submission.

34. Witnesses.

A. All witnesses testifying before the Hearing Examiner shall take an oath or affirmation to be truthful.
B. If a witness testifies via an interpreter, the interpreter shall take an oath that a true interpretation shall be made.
C. As Hearing Examiner proceedings are open to the public, it is anticipated that some members of the public may wish to testify. Witnesses who are not Parties of Record and are not called by Parties of Record shall be allowed to testify in proceedings on an Application, subject to Rule 33.D. Witnesses who are not Parties of Record and are not called by Parties of Record may be allowed to testify in Appeal proceedings, at the Hearing Examiner's discretion. The Applicant, City, and Intervenors may in their discretion cross-examine members of the public testifying as witnesses in proceedings on an Application. The Appellant, City, and Intervenors may be allowed to cross-examine members of the public testifying as witnesses in proceedings on an Appeal, at the Hearing Examiner's discretion.
D. Witnesses may present their testimony via telephone, virtual meeting, or video-conference at the discretion of the Hearing Examiner, as long as all present can hear or hear and see the witness and the ability to cross-examine the witness is not impacted.

35. Site Inspection.

When helpful to develop a full understanding of the case or making a finding of fact, the Hearing Examiner may inspect the site(s) at issue prior to, during or subsequent to the hearing. The Hearing Examiner shall provide notice to the Applicant or Appellant, City, and Intervenors when the site inspection will occur. If Parties attend the site inspection, all persons must observe the ex parte communications rules at Rule 12. The Hearing Examiner's observations made during the site inspection shall be added to the official record including but not limited to the location, date, time, length and attendees at the site inspection.

36. Electronic Record of Hearing.

A. Hearings shall be electronically recorded or recorded by court reporter verbatim and such recordings shall be a part of the record.
B. Copies of the recording shall be made available upon request by a Party or a member of the public within a reasonable time. The City may charge a reasonable fee for the copying of the recording.
C. No minutes of the hearing will be kept.

37. Transcript.

Anyone desiring a transcript of a hearing shall be responsible for obtaining the electronic recording of the proceeding and arranging and paying for the creation of a verbatim transcript. The Applicant or Appellant, City, and Intervenors shall have an opportunity to review and comment on the transcript. The Hearing Examiner shall resolve any issues that the Parties raise regarding the transcript. When the Hearing Examiner has resolved all conflicts and is satisfied that the transcript provides a reliable record of the proceedings, the Hearing Examiner shall certify the transcript. No transcript shall be considered an official record of the proceedings without the Hearing Examiner's certification.

38. Contents of the Record.

A. The record shall include at least all of the following:
    i. The Application or Appeal;
    ii. The Department's report or recommendation;
    iii. All correspondence, memos, reports, studies, environmental documents, and other public documents contained in the Department's files on the issue before the Hearing Examiner;
    iv. Written comments from the public and other agencies submitted to either the Department or the Hearing Examiner in a timely manner;
    v. Statement of matters officially noted, if any;
    vi. The Hearing Examiner's written decision;
    vii. Mailing lists and notices for notice and decision;
    viii. The video or audio recording of the hearing;
    ix. The official transcript of the hearing, if any; and
    x. Any document, item, or other materials the Hearing Examiner admitted into evidence, made part of the record, relied on, or considered.

B. A Party may object to the inclusion of any particular document in the record. Such objections shall be made either by written motion before the hearing or by oral motion during the hearing. The Hearing Examiner shall rule on such objections prior to the close of the record.

39. Continuances.

A. The Hearing Examiner may continue or re-open proceedings for good cause by entering an order to that effect prior to issuing his or her decision.
B. If the Hearing Examiner continues proceedings during a hearing and announces the date, time, place, and nature of the future hearing, no further notice of the continuance is required. When the Hearing Examiner determines after a hearing that a future hearing is needed, all Parties of Record shall be provided at least seven days' notice of the date, time, place, and nature of the future hearing. Such notice shall also be published in the city official newspaper.

40. Leaving the Record Open.

The Hearing Examiner may leave the record open at the conclusion of a hearing to receive further evidence or argument or for other good cause, under conditions the Hearing Examiner deems appropriate. All Parties of Record shall be given notice that the record has been left open and the date it will be closed.

41. Re-Opening Proceedings.

At any time prior to the issuance of the decision, the Hearing Examiner may re-open proceedings for the reception of further evidence or legal briefing. All Parties of Record shall be given notice of re-opening of the proceedings.

42. Decision of the Hearing Examiner.

The written decision of the Hearing Examiner shall include all of the following elements:

A. A statement of the nature and background of the proceeding;
B. Findings of Fact. The findings of fact are a statement of all the facts that form the basis of the decision. The findings of fact must be derived exclusively from testimony and evidence presented during the hearing and facts of which the Hearing Examiner took official notice. The source of each finding of fact should be identified and cited;
C. Conclusions of Law. Conclusions of law should cite to specific provisions of law or regulations and include reasons and precedents relied on, whenever applicable. If relevant, the conclusions of law should address how the decision is supported by the comprehensive plan and the effect of the decision on properties in the vicinity; and
D. Order. The Hearing Examiner's order shall be based on the entire record and supported by reliable, probative, substantial evidence.

43. Notice of Decision.

Notice of the Hearing Examiner's decision shall be sent to all Parties of Record pursuant to LMC 17.07.050.

44. Clerical Errors.

Clerical errors in any part of the record or decision arising from an oversight or from errors in computation may be corrected by an order at the Hearing Examiner's initiation or in response to a motion of any Party.

45. Termination of Jurisdiction.

The jurisdiction of the Hearing Examiner is terminated upon the issuance of the Hearing Examiner's decision, except when the Hearing Examiner expressly retains jurisdiction, a reviewing court remands a matter to the Hearing Examiner, or as otherwise provided in these Rules or the City Code.

46. Reconsideration.

Any Party of Record may request reconsideration pursuant to LMC 17.09.080.

47. Appeals of Hearing Examiner Decisions.

The effect of the hearing examiner's decision may vary by type of Application or Appeal and is as stated in the City Code. For most matters, the hearing examiner's decision is the final decision of the City, subject to appeal to the City Council. For other matters, appeals may be made to superior court, the shoreline hearings board, or other reviewing body.