Rules of Procedure
for Proceedings Before
The Hearing Examiner
of the
City of Port Orchard
Washington

May 2008
CHAPTER I:
HEARINGS ON PERMIT APPLICATIONS

Application of Rules

This Chapter applies to open record hearings on land use applications, except for the Section 1.1: Definitions, which shall apply to all Chapters including those on appeals and recommendations.

SECTION 1.1: DEFINITIONS

"POMC” means the Port Orchard Municipal Code.

“Aggrieved person” means:

a. The applicant and the owner of property to which the land use decision is directed; or
b. Another person aggrieved or adversely affected by the land use decision, or who
   would be aggrieved or adversely affected by a reversal or modification of the land
   use decision. A person is aggrieved or adversely affected within the meaning of this
   section only when all of the following conditions are present:
   1. The land use decision has prejudiced or is likely to prejudice that person;
   2. That person's asserted interests are among those that the local jurisdiction
      was required to consider when it made the land use decision;
   3. A judgment in favor of that person would substantially eliminate or redress
      the prejudice to that person caused or likely to be caused by the land use
      decision; and
   4. The petitioner has exhausted his or her administrative remedies to the extent
      required by law. See POMC 16.08.022.

“Appeal” means to seek review of a decision or determination from a higher authority. An
appeal may be from a staff decision or determination to the examiner; or from an examiner
decision to the City Council; or from a City Council decision to the Superior Court or other court
of competent jurisdiction. See POMC 16.08.042.

“Appellant” means the person who files an appeal from a decision of an administrative official,
the hearing examiner; or the City Council. Only a “party,” “party of record,” or “aggrieved person”
as defined herein has standing to become an appellant. See POMC 16.08.044.

“Applicant” means the property owner, or his designated agent, applying to the City for a
permit or other regulatory approval under the provisions of the Land Use Regulatory Code. See
POMC 16.08.048.
"Business Day" or "working day" means any day for which the City's offices are open for normal business matters.

"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 Port Orchard, Washington.

"City Council" means the Port Orchard City Council.

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

"Comprehensive plan" means policies and proposals adopted by the City Council pursuant to RCW Chapters 36.70A and 35.63 to guide the development of the City and to promote the general welfare. See POMC 16.08.152.

"County" means Kitsap 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 a party 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 documents. See POMC 16.08.350.

"Hearing Examiner" or "Examiner" means the Administrative Hearing Examiner or the Pro Tem Hearing Examiner of the City of Port Orchard. See POMC 2.76.010; POMC 2.76.030; and POMC 16.01.021(3).

"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.

"Official record" means the written and oral information, exhibits, reports, testimony and other evidence submitted in a timely manner and accepted by the Hearing Examiner. An electronic recording or transcript certified as a true and correct transcript of an electronic recording of the hearing is a part of the official record. See POMC 16.08.518.

"Open Record Hearing" means a hearing held under Chapter 36.70B RCW and conducted by the Hearing Examiner, that creates the City's official record through testimony and submission of evidence and information under the procedures prescribed in Title 16 POMC. See POMC 16.08.520.
"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 an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or any local governmental unit however designated. See POMC 16.08.562.

"Party" or "party of record" means:

a. The applicant, or applicant's representative;
b. The property owner as identified by the records available from the Snohomish County assessor's office;
c. 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 who has testified as part of the official record of a land use action; or
d. The City's administrative staff.

See POMC 16.08.546.

"Staff Report" means the document prepared by the City's planning staff pursuant to POMC 2.76.100(2).

SECTION 1.2: EX PARTE COMMUNICATION

1.2.1 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 concerning the merits of that or a related petition or application. This rule shall not prohibit ex parte communication concerning procedural matters. Any material not submitted in this manner will not be considered a part of the record established on that application or petition.

1.2.2 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 Examiner, or a factually related petition or application.

1.2.3 If 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.

See POMC 2.76.050.

SECTION 1.3: NATURE OF PROCEEDINGS

1.3.1 Expeditious Proceedings

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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. See POMC 2.76.110. 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.

1.3.2 Frequency
Hearings will be scheduled through the City planning staff 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. See POMC 2.76.100.

1.3.3 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. See POMC 2.76.100(3).

1.3.4 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.

1.3.5 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. 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.

1.3.6 Computation of Time
Computation of any period of time prescribed or allowed by these rules, ordinances of the City of Port Orchard, 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 1.4: RIGHTS AND RESPONSIBILITIES OF PARTIES

1.4.1 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.

1.4.2 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.

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. See POMC 2.76.070(2).

1.4.3 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. See POMC 2.76.070(2).

1.4.4 Responsibilities of City Staff
The City staff shall provide a report 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. Staff reports shall be filed with the Hearing Examiner and copies shall be mailed to the applicant and made available for public inspection no later than five (5) working days before the hearing, unless a different date has been established by the Hearing Examiner pursuant to a scheduling order. See POMC 2.76.100(2).

1.4.5 Responsibilities of Applicant
The applicant shall provide the Hearing Examiner with material that supports his or her case prior, be prepared for questions by the Hearing Examiner, and treat all who participate in these proceedings courteously.

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

SECTION 1.5: PRESIDING OFFICIALS

1.5.1 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 POMC, and other local ordinances. Hearing Examiner duties include the responsibility to prescribe rules for procedural matters, to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order. He or she shall have all powers necessary to that end, including the following:

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1. To hold pre-hearing conferences;
2. To regulate the scheduling and conduct of hearings;
3. To rule upon legal motions;
4. To require briefs on legal issues;
5. To allow discovery;
6. To issue subpoenas;
7. To rule upon offers of proof and receive evidence;
8. To rule upon issues relating to settlement;
9. To consider and rule upon all procedural and other motions appropriate to the proceedings; and
10. To make and file recommendations or decisions.

See POMC 2.76.070(2) and POMC 2.76.080(1).

c. In the performance of his or her adjudicative functions, the Hearing Examiner shall not be subject to the direction of any elected official, officer, employee or agent of any city department. See POMC 2.76.070(1).

1.5.2 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 at least (5) working days in advance of the scheduled hearing date.

SECTION 1.6: CONDUCT OF HEARINGS

1.6.1 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 POMC 2.76.100 and POMC 16. 06.035, 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, posting on the property if required, and list of addressees) shall be part of each record.
1.6.2 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;
   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.
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.
e. Following the prehearing conference, the Hearing Examiner may issue an order reciting the actions taken or ruling on motions made at the conference.

See POMC 2.76.070(2).

1.6.3 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.

1.6.4 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 or petition, and any modifications of application submitted in accordance with Chapter 16.06 POMC.
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 or a transcript of those recordings; and
g. An environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA) (if applicable).

See POMC 16.08.518.

1.6.5 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.

1.6.6 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 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 and a vicinity map. 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 five (5) working 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. See POMC 2.76.100(2) and POMC 16.72.180.

1.6.7 Continuances 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.

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 in the form of a motion to the Hearing Examiner, with a copy to the City, 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.

1.6.8 Evidence
a. Burden of proof. In each proceeding, the applicant shall have the burden of proof to show, by a preponderance of the evidence, compliance with applicable laws and regulations of Washington State and the City of Port Orchard. See POMC 2.76.090.
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, including models or oversized exhibits that could present record storage problems.
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. 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

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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.

e. 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.

1.6.9 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 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.

SECTION 1.7: WITHDRAWAL OF APPLICATION OR PETITION

1.7.1 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.

1.7.2 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 1.8: DECISIONS

1.8.1 Written Decisions
For permits on which the Hearing Examiner has final approval authority, a written report of findings, conclusions, and decision shall be made and forwarded to all parties of record. 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 Applicant and Hearing Examiner. See POMC 2.76.100(1).

1.8.2 Content of Decision
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. A decision on a proposed preliminary plat (subdivision) and dedications shall include the findings set out in RCW 58.17.110.
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.

e. The decision will further specify the parties' appeal rights. See POMC 2.76.110(3).
f. Not later than five (5) calendar days following the issuance of the Hearing
Examiner's decision, copies shall be mailed to the applicant, to parties of record and
to any person who requested a copy of the decision. See POMC 2.76.120.

1.8.4 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. Pursuant to POMC 2.76.130, any party or aggrieved person may file a written
request for reconsideration with the Clerk of the Hearing Examiner within seven (7)
working days of the Hearing Examiner's decision. The request shall explicitly set
forth specific reference to the decision and each alleged error or law or fact, and any
discovery of new evidence 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.

c. The Hearing Examiner may deny the request; may set a hearing in order to
supplement the official record and issue a revised decision following that hearing; or
may revise the decision without hearing.

d. If the Hearing Examiner denies the request without further hearing or submission of
materials by other parties, the Hearing Examiner shall respond in writing to the
request for reconsideration within five (5) working days of the date of the request.

e. If the Hearing Examiner takes an action other than a denial, the Hearing Examiner
shall issue a response to the request within twenty-one (21) calendar days of the
date of the request.

f. If an additional hearing is required, the notice of said hearing shall be mailed to all
parties of record at least ten (10) working days prior to the hearing.

See POMC 2.76.130(2).

1.8.5 Stay of Appeal Period.
The filing of a request for reconsideration shall stay the running of the appeal period until
the Hearing Examiner issues a decision on the request. See POMC 2.76.130(2).

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

1.8.7 No party may file a response to a Request for Reconsideration except at the request of
the Hearing Examiner.
1.8.8 Reconsideration will not be granted to review Prehearing Orders.

1.8.9 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.

SECTION 1.9: APPEALS OF DECISIONS
When the Hearing Examiner has issued a notice of decision and all reconsideration periods have expired, the decision shall be final and may be appealed only to the City Council within fourteen (14) calendar days from the date of the final decision. All appeals must clearly state the alleged errors of fact or law and include a specific request for relief. POMC 2.76.110(3)(a) and POMC 2.76.140.

SECTION 1.11: CONFLICTS
These Rules of Procedure are adopted to supplement the requirements set forth in the POMC. Any conflict between the rules and the provisions of the POMC will be decided consistent with the provisions of the POMC.
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 POMC 2.76.080; POMC 16.01.021(3) and Chapter 16.06 POMC.

SECTION 2.1: DEFINITIONS

"POMC" means the Port Orchard Municipal Code.

"Aggrieved person" means:

a. The applicant and the owner of property to which the land use decision is directed; or
b. Another person aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:
   1. The land use decision has prejudiced or is likely to prejudice that person;
   2. That person's asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision;
   3. A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision; and
   4. The petitioner has exhausted his or her administrative remedies to the extent required by law. See POMC 16.08.022.

"Appeal" means to seek review of a decision or determination from a higher authority. An appeal may be from a staff decision or determination to the examiner; or from an examiner decision to the City Council; or from a City Council decision to the Superior Court or other court of competent jurisdiction. See POMC 16.08.042.

"Appellant" means the person who files an appeal from a decision of an administrative official, the hearing examiner; or the City Council. Only a "party," "party of record," or "aggrieved person" as defined herein has standing to become an appellant. See POMC 16.08.044.

"Applicant" means the property owner, or his designated agent, applying to the City for a permit or other regulatory approval under the provisions of the Land Use Regulatory Code. See POMC 16.08.048.

"Business Day" or "working day" means any day for which the City's offices are open for normal business matters.
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"City" means the City of Port Orchard, Washington.

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"Hearing" means the proceeding at which a party 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 documents. See POMC 16.08.350.

"Hearing Examiner" or "Examiner" means the Administrative Hearing Examiner or the Pro Tem Hearing Examiner of the City of Port Orchard. See POMC 2.76.010; POMC 2.76.030; and POMC 16.01.021(3).

"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.

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"Party" or "party of record" means:

a. The applicant, or applicant’s representative;
b. The property owner as identified by the records available from the Snohomish County assessor’s office;
c. 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 who has testified as part of the official record of a land use action; or
d. The City’s administrative staff.
See POMC 16.08.546.

"Staff Report" means the document prepared by the City’s planning staff pursuant to POMC 2.76.100(2).

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 POMC 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 4:30 p.m. on the last day of the appeal period. Such an appeal must be filed with the clerk of the City of Port Orchard. See POMC 16.06.072(1).

2.2.3 Fee

Appeals shall be accompanied by any filing fee required by the City of Port Orchard.

2.2.4 Contents

All appeals shall be filed in accordance with POMC 16.06.072 on forms provided by the City. 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 specific and understandable 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, and 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. 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 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 AND PREHEARING ORDER

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 a Prehearing 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 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.

See POMC 2.76.100(1).

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. See POMC 2.76.100(1).

2.7.3 Responsibility

The Planning Department shall, in coordination with the Hearing Examiner, be responsible for serving notice of hearing for appeals. See POMC 2.76.100(1).

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: CONTINUANCES OF HEARINGS

2.9.1 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 and the Hearing Examiner publicly announces the specific date, time, and place before adjournment, no further notice of the hearing need be given. POMC 17.06.110. Continuances shall be consistent with the provisions of the OSMC but shall be granted for a period of no longer than thirty (30) calendar days.

2.9.2 At the Request of a Party or Parties
Any party of record may request continuance of a hearing.

a. The request, if made prior to the hearing, must be in writing and state reasonable grounds for a continuance.

b. The request for continuance must be submitted to the Hearing Examiner and all parties of record a minimum of two (2) weeks prior to the date of the hearing. Other parties may submit a response to the request for continuance a minimum of one (1) week prior to the date of hearing.

c. The parties may submit a joint request for continuance to the Hearing Examiner a minimum of three (3) calendar days prior to the date of the hearing.

d. More than one request for continuance per party is disfavored.

e. If the request is made orally at the hearing it must be based on reasonable grounds.

f. The Hearing Examiner shall have discretion to grant or deny the request for continuance.

SECTION 2.10: 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 2.11: HEARING FORMAT

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

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

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

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

SECTION 2.12: HEARING EXAMINER'S DECISION

A decision of the Hearing Examiner on an 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 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.
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 2.13: RECORD

2.13.1 The record of an appeal shall include:

a. The application or petition, and any modifications of application submitted in accordance with Chapter 16.06 POMC.
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 or a transcript of those recordings; and
g. An environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA) (if applicable).

See POMC 16.08.518.

2.13.2 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 2.14: RECONSIDERATION

2.14.1 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. Pursuant to POMC 2.76.130, any party or aggrieved person may file a written request for reconsideration with the Clerk of the Hearing Examiner within seven (7) working days of the Hearing Examiner’s decision. The request shall explicitly set forth specific reference to the decision and each alleged error or law or fact, and any discovery of new evidence 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.

c. The Hearing Examiner may deny the request; may set a hearing in order to supplement the official record and issue a revised decision following that hearing; or may revise the decision without hearing.

d. If the Hearing Examiner denies the request without further hearing or submission of materials by other parties, the Hearing Examiner shall respond in writing to the request for reconsideration within five (5) working days of the date of the request.

e. If the Hearing Examiner takes an action other than a denial, the Hearing Examiner shall issue a response to the request within twenty-one (21) calendar days of the date of the request. See POMC 2.76.130(2).

f. If an additional hearing is required, the notice of said hearing shall be mailed to all parties of record at least ten (10) working days prior to the hearing.

See POMC 2.76.130.

2.14.2 Stay of Appeal Period.
The filing of a request for reconsideration shall stay the running of the appeal period until the Hearing Examiner issues a decision on the request. See POMC 2.76.130(2).

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

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

2.14.5 Reconsideration will not be granted to review Prehearing Orders.

RULES OF PROCEDURE FOR LAND USE APPLICATIONS AND APPEAL OF ADMINISTRATIVE DECISIONS (May 2008)
SECTION 2.15. 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.

SECTION 2.16: CONFLICTS
These Rules of Procedure are adopted to supplement the requirements set forth in the POMC. Any conflict between the rules and the provisions of the POMC will be decided consistent with the provisions of the POMC.