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# Hearing Examiner Rules of Procedure

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**RULES OF PROCEDURE FOR  
PROCEEDINGS BEFORE THE HEARING EXAMINER  
OF THE CITY OF BONNEY LAKE, WASHINGTON**

**CHAPTER I:  
HEARINGS ON PERMIT APPLICATIONS**

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

**SECTION 1.1: DEFINITIONS**

"BLMC" means the Bonney Lake Municipal Code.

"Applicant" means a person (or persons) who is the owner of the subject property or the authorized representative of the owner of the subject property, and who has applied for a land use permit.

"Calendar Day" means each day of the calendar week. When the last day of a stated period should fall on a non-working day, the stated period shall run until the end of the following working day.

"City" means the City of Bonney Lake, Washington.

"City Council" means the Bonney Lake City Council.

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

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

"County" means Pierce County, Washington.

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

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

"Hearing Examiner" or "Examiner" means the Hearing Examiner or the Hearing Examiner Pro Tempore of the City of Bonney Lake.

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

be considered an Interested Person and shall have the same rights as any other Interested Person.

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

"Non-working day" means Saturday, Sunday, and any holiday identified in BLMC 2.32.010.A.1 through BLMC 2.23.010.A.11.

"Notice of Decision" means the written document distributed by the City that communicates a decision or recommendation on an action before the Hearing Examiner. RCW 36.70B.130. The date on which a land use decision is issued is three days after a written decision or recommendation is mailed by the City or, if not mailed, the date on which the City provides notice that a written decision or recommendation is publicly available. RCW 36.70C.040(a).

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

"Open Record Hearing" means a hearing held under chapter 36.70B RCW and conducted by the Bonney Lake 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, or who submitted substantive written comments on the application (excluding persons who have only signed petitions or mechanically produced form letters), or who, prior to the rendering of the decision, requested notice of the decision. RCW 36.70B.130.
- b. The Applicant, or Applicant's representative;
- c. The property tax payer for the property at issue as identified by the records available from the Pierce County assessor's office;
- d. 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 City staff.

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

## **SECTION 1.2: JURISDICTION**

- 1.2.1 BLMC 2.18.070 authorizes the Hearing Examiner to prescribe rules and regulation for the conduct of hearings.
- 1.2.2 The Hearing Examiner's jurisdiction is limited to those issues identified in BLMC 2.18.090.

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

- 1.3.1 No person, nor their 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 Clerk to the Hearing Examiner. Ex parte materials disallowed under this subsection will not be considered a part of the record established on that application or petition.
- 1.3.2 The Hearing Examiner shall not communicate ex parte directly or indirectly with any interested person, nor his or her agent, employee, or representative, with regard to the merits of 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 Hearing 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  
The City staff shall schedule hearings 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 and the order of proceedings.
- 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 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 will be posted on City website and can be requested through the City Clerk's office.
- 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 consistent Chapter 3.90 BLMC.

1.4.6 Computation of Time

Computation of any period of time prescribed or allowed by these rules, ordinances of the City of Bonney Lake, 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 non-working day, 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, examine and cross-examine witnesses, 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.

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 have the power to prescribe the length of time for cross-examination and the manner in which cross-examination is conducted.

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 City Staff

The City staff shall provide a report consistent with the provisions of Rule 1.7.6, provide notice of hearings, present materials at the hearings, and provide documentation relevant to the case.

1.5.5 Responsibilities of Applicant

The Applicant shall provide the City with material that supports their application as part of the submittal of their land use application, which will be transmitted to the Hearing Examiner as part of the City staff report, be prepared for questions by the Hearing Examiner, and treat all who participate in these proceedings courteously.

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. Consistent with the provision of BLMC 2.18.060, the Hearing Examiner shall not be subject to the supervision or direction of any elected official, officer, employee or agent of any municipal department in the performance of their adjudicative functions.
- c. The Hearing Examiner shall have all of the authority and duties as granted to them in state statutes, the Bonney Lake Municipal Code, 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:
  - i. To provide rules for the format for hearings and proceedings;
  - ii. To administer oaths and affirmations;
  - iii. To rule upon offers of proof and receive evidence;
  - iv. To regulate the course of the hearings and the conduct of the parties and their agents;
  - v. To question any party presenting testimony at the hearing;
  - vi. To hold conferences for settlement, simplification of the issues, or any other proper purpose;
  - vii. To require briefs on legal issues;
  - viii. To allow limited discovery if it is not unduly burdensome, will not unnecessarily delay the proceedings, and the information is not otherwise available;
  - ix. To consider and rule upon all procedural and other motions appropriate to the proceedings; and
  - x. To make and file recommendations or decisions.

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, the City Attorney or their designee may be present at the hearings or public meetings to advise on matters of law and procedure.
- c. Attorneys engaged in the representation of clients before the Hearing Examiner shall conduct themselves in accordance with all applicable Rules of Professional Conduct, including the display of courtesy to other members of the bar, witnesses, and all other persons present in the hearing room.
- d. All forms of legal authority including briefs, staff reports, and other legal memoranda upon which a party of record will be relying or presenting at the hearing must be submitted to the Hearing Examiner's office at least one (2) weeks in advance of the scheduled hearing date. The above-mentioned documents shall be available to the public, subject to the fees established in Chapter 3.90 BLMC, at least one (1) week 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 14.50 BLMC, as applicable, 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 addresses) 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 or petition;
- b. The departmental staff report;
- c. All evidence received, which shall include oral testimony given at the hearing, all exhibits, other materials admitted as evidence, and any written material submitted pursuant to Hearing Examiner order;
- d. A statement of all materials officially noticed;
- e. A decision or a recommended decision containing the findings and conclusions of the Hearing Examiner;
- f. Recordings made on electronic equipment; and
- g. An environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA) (if applicable).

#### 1.7.5 Development of Record

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 and cross-examination of the witnesses;
- d. Testimony of interested parties;
- e. Opportunity for cross-examination and rebuttal; and
- f. An opportunity for questions by the Hearing Examiner.

#### 1.7.6 Content and Form of Staff Reports

The City staff report on a land use application shall be consistent with the City's adopted procedures for Staff Reports.

The staff report shall be provided to the Hearing Examiner and the applicant electronically at least seven (7) calendar days prior to the scheduled hearing. Electronic copies of the staff report can be made available to public upon request. Physical copies can be provided upon request and payment of reproduction costs as provided in Chapter 3.90 BLMC.

#### 1.7.7 Continuances of Hearings

- a. As provided in BLMC 2.18.360, once legal notice has been given, no matter shall be postponed over the objection of any interested party, except for good cause shown. Continuances may be granted at the discretion of the Hearing Examiner; provided, the interested parties in attendance shall be given an opportunity to testify prior to the continuance. The applicant shall pay the actual cost for any hearing postponed or continued by request of the applicants after legal notice has been given; provided, that an applicant is not required to pay the continuance fee if the continuance is warranted by new information presented by the city or third parties not including the applicant or other proponents of the application.
- b. If the Hearing Examiner finds that more information is necessary in order to make a decision or recommendation, or that they are unable to hear all 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. Continuances shall be consistent with the provisions of BLMC 2.18.360 and shall be granted for a period of no longer than thirty (30) calendar days.

#### 1.7.8 Evidence

- a. Burden of proof. In each proceeding under this Chapter, the applicant shall have the burden of proof to show compliance with applicable laws and regulations of Washington State and the City of Bonney Lake.
- 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, of codes, regulations, and comprehensive plans of the City of Bonney Lake, 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.

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

#### **1.8.1 Withdrawal Prior to Notice of Hearing**

If an applicant provides written notification to the City of a request to withdraw the application before official notice of the hearing is given, 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 applications 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. The findings, conclusions and decision or recommendation may indicate how the decision or recommendation carries out the goals, policies, plans, and requirements of the Bonney Lake Municipal Code and other policies and objectives of the City.

#### **1.9.2 Content of Decision or Recommendation**

A decision or recommendation shall include a statement of:

- a. The Hearing Examiner's decision;
- b. The nature and background of the proceeding.
- c. 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 to support the review criteria. A statement of any threshold determination made under chapter 43.21 RCW shall be included.
- d. Conclusions. Conclusions shall include a resolution of the review criteria 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. The appropriate rule, order, or relief. The decision or recommendation shall be based upon a consideration of the whole record and supported by reliable, probative, and substantial evidence. All decisions may include conditions of approval, including the time limit after which any approval shall expire if not utilized.

#### 1.9.3 Procedure for 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 response comments.
- b. No testimony or oral statement regarding the substance or merits of an application is allowable after the close of the record associated with a public hearing. No documentary material submitted after the close of the record will be considered by the Hearing Examiner unless additional time to submit such material has been granted and all parties are given an opportunity to review the material and file rebuttal material or argument, if deemed appropriate and/or necessary by the Hearing Examiner.
- c. If within ten (10) calendar days closure of 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.

#### 1.9.4 Correction of Clerical Errors

Any party of record who participated at the hearing may request at any time correction of a clerical error in the decision by notifying the Clerk to the Hearing Examiner of the error and proposed correction. The Hearing Examiner shall have discretion to issue a corrected decision. Such a corrected decision shall not stay the effect of a decision or substance of the conclusions of the Hearing Examiner's decision.

### **SECTION 1.10: RECONSIDERATION [RESERVED]**

### **SECTION 1.11: APPEALS OF DECISIONS**

The decision of the hearing examiner shall be final unless an appeal is filed under Chapter 36.70C RCW pursuant to BLMC 2.18.180.A.

### **SECTION 1.12: CONFLICTS**

These Rules of Procedure are adopted under the authority granted by the Bonney Lake City Council to supplement the requirements set forth in the Bonney Lake Municipal Code. Any conflict between the rules and the provisions of the Bonney Lake Municipal Code will be decided consistent with the provisions of the Bonney Lake Municipal Code.

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

This chapter applies to appeals of administrative decisions that affirm, reverse, or remand a land use permit application.

**SECTION 2.1: DEFINITIONS**

The definitions established in Section 1.1 of these rules shall apply to Chapter II in addition to the following:.

"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 Bonney Lake Municipal Code.

**SECTION 2.2: PRESIDING OFFICIALS**

**2.2.1 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 Bonney Lake Municipal Code, 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:
  - i. To provide rules for the format for hearings and proceedings;
  - ii. To administer oaths and affirmations;
  - iii. To rule upon offers of proof and receive evidence;
  - iv. To regulate the course of the hearings and the conduct of the parties and their agents;
  - v. To question any party presenting testimony at the hearing;
  - vi. To hold conferences for settlement, simplification of the issues, or any other proper purpose;
  - vii. To require briefs on legal issues;
  - viii. To allow limited discovery if it is not unduly burdensome, will not unnecessarily delay the proceedings, and the information is not otherwise available;
  - ix. To consider and rule upon all procedural and other motions appropriate to the proceedings; and
  - x. To make and file recommendations or decisions
- c. In the performance of their 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.

## SECTION 2.3: FILING

### 2.3.1 Compliance with Rules

All appeals must comply with the Rules and with the requirements established in the applicable Bonney Lake Municipal Code ordinance(s) and/or RCW 36.70C.040 (as it exists now or as amended) under which the appeal is filed. All appeals and supporting briefs and materials shall be filed electronically utilizing the City's online submittal portal.

### 2.3.2 Timeliness Appeals must be filed within the timelines established by BLMC 14.120.020.A

### 2.3.3 Fee

Appeals shall be accompanied by the appropriate filing fee as required by Chapter 3.68 BLMC.

### 2.3.4 Contents

All appeals shall be filed in accordance with the BLMC. An appeal shall be in writing and should contain the following:

- a. A heading in the words: "Before the City of Bonney Lake Hearing Examiner".
- 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 and email 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.

### 2.3.5 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 their 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.

### 2.3.6 Motions

Motions and responses to motions are not to exceed fifteen (15) double-spaced pages in length without prior approval of the Hearing Examiner.

2.3.7 Proposed Findings and Conclusions

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

**SECTION 2.4: DISMISSAL**

2.4.1 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.

2.4.2 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.

2.4.3 When decision or action being appealed is withdrawn by the issuing department, the appeal becomes moot and shall be dismissed.

**SECTION 2.5: PREHEARING CONFERENCE**

2.5.1 The Hearing Examiner may, on their 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.

2.5.2 Prehearing conferences may be held by telephone conference call.

2.5.3 The Hearing Examiner shall give written or oral notice to all parties of any prehearing conference.

2.5.4 All parties of record have the right to be represented at any prehearing conference. Representation is not required.

2.5.5 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.

2.5.6 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.

2.5.7 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.



2.5.8 Prehearing orders may not be appealed until the Hearing Examiner issues an appeal decision.

### **SECTION 2.6: WITHDRAWAL**

2.6.1 Only the Appellant may withdraw an appeal.

2.6.2 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.

2.6.3 An Appellant's Request to Withdraw shall be granted as a matter of right and the appeal dismissed.

### **SECTION 2.7: 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 2.8: NOTICE OF HEARING**

#### **2.8.1 Contents**

The Notice of Hearing should include:

- a. Appellant name and project name (if applicable)
- b. The legal authority and jurisdiction for the hearing;
- c. The street address of the subject property or a description in non-legal terms of the property's location.
- d. A brief description of the decision of the Director that is being appealed.
- e. A statement of the scope of the appeal including a summary of the specific errors alleged in the letter of appeal.
- f. The date, time and place of the appeal hearing before the Hearing Examiner.

#### **2.8.2 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 fourteen (14) calendar days before the scheduled hearing date.

#### **2.8.3 Responsibility**

The City shall be responsible for serving the Notice of Hearing for appeals.

#### **2.8.4 Record of Notice**

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

## **SECTION 2.9: PARTIES' RIGHTS AND RESPONSIBILITIES**

- 2.9.1 Although Appellants and Applicants have the right to be represented by an attorney, representation by an attorney is not required.
- 2.9.2 Where a party has designated a representative, the representative shall exercise the rights of the party.
- 2.9.3 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 2.10: CONTINUANCES**

### **2.10.1 Continuances**

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

## **SECTION 2.11: 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 2.12: HEARING FORMAT**

- 2.12.1 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.
- 2.12.2 The order of an appeal hearing will generally be as follows:
- a. Hearing Examiner's introductory statement;
  - b. Appellant's argument;
  - c. Applicant's presentation;
  - d. City's presentation;
  - e. Rebuttal; and
  - f. Closing argument of parties.
- 2.12.3 Notwithstanding the provisions of the BLMC, 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.

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

### **SECTION 2.13: HEARING EXAMINER DECISION**

A decision of the Hearing Examiner on appeal shall include, but not be limited to, a statement regarding the following:

- a. Background. The nature and background of the proceeding, including identification of party representatives participating in the hearing, prehearing determinations, and other similar information.
- b. Findings. The individual facts that the Hearing Examiner finds relevant, credible, and requisite to the decision, based on the record of proceedings.
- c. Conclusions. Legal and factual conclusions based upon specific provisions of law and the findings of fact.
- d. Decision. The Hearing Examiner's decision as to outcome of the appeal (affirm wholly or in part, reverse, or modify the decision appealed) based upon a consideration of the whole record and supported by substantial evidence in the record.
- e. The Hearing Examiner shall hear evidence from all affected parties and shall render a decision on the appeal within ten (10) working days of the close of the hearing record.

### **SECTION 2.14: RECORD**

2.14.1 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).

2.14.2 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 2.15: RECONSIDERATION [RESERVED]**

### **SECTION 2.16: CORRECTION OF CLERICAL ERRORS**

Any party of record who participated at the hearing may request at any time correction of a clerical error in the decision by notifying the Clerk to the Hearing Examiner of the error and proposed correction. The Hearing Examiner shall have discretion to issue a corrected decision. Such a corrected decision shall not stay the effect of a decision or substance of the conclusions of the Hearing Examiner's decision.

**CHAPTER III**  
**RULES OF PROCEDURE FOR APPEALS OF CODE ENFORCEMENT**

**Application of these Rules**

This Chapter applies to open record appeal hearings in response to an appeal of a code enforcement action. See *Chapter 14.130 BLMC*.

**SECTION 3.1: PURPOSE**

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

**SECTION 3.2: DEFINITIONS**

“Appellant” means a person responsible for the violation(s).

“Business Day” means any day for which the City’s offices are open for normal business matters.

“Calendar Days” 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 business day.

“City” means the City of Bonney Lake, Washington

“Clerk to the Hearing Examiner” means a person designated by the City of Bonney Lake to assist the Hearing Examiner in their duties.

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

“Hearing Examiner” means the Hearing Examiner or the Hearing Examiner Pro Tem of the City of Bonney Lake.

“BLMC” means Bonney Lake Municipal Code

“Notice of Civil Violation” means a written statement, issued by a Code Enforcement Officer, which contains the information required under BLMC 14.130.080, and which notifies a person that they are responsible for one or more violations of the Bonney Lake Municipal Code.

“Open record appeal hearing” means an administrative hearing that creates the record on appeal through written and oral testimony and submission of evidence and information.

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

“Person responsible for the violation” means any person who is required by the applicable regulation to comply therewith, or who commits any act or omission which is a civil violation or causes or permits a civil violation to occur or remain upon property in the city, and includes but is not limited to the owner(s), lessor(s), tenant(s), or other person(s) entitled to control, use and/or occupy property where a civil violation occurs.

“Record” means the oral testimony and written exhibits submitted at the open record appeal hearing. The audio 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.

### **SECTION 3.3: JURISDICTION**

The Hearing Examiner has jurisdiction to hear and decide appeals of notice of civil violations issue orders and assess monetary penalties.

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

- 3.4.1 No person, nor his or her agent, employee, or representative, who is interested in a particular appeal currently pending before the Hearing Examiner shall communicate ex parte, directly or indirectly, with the Hearing Examiner concerning the merits of that or a factually related appeal. This rule shall not prohibit ex parte communications concerning procedural matters. All allowed ex parte procedural communications shall be directed to the Clerk to the Hearing Examiner.
- 3.4.2 The Hearing Examiner shall not communicate ex parte directly or indirectly with any interested person, nor his or her agent, employee or representative, with regard to the merits of an appeal.
- 3.4.3 If a prohibited ex parte communication is made to or by the Hearing Examiners, such communication shall be publicly disclosed, and proper discretion shall be exercised by the Hearing Examiner on whether to disqualify themselves as Hearing Examiner for that particular hearing.

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

- 3.5.1 Expeditious Proceedings  
It is the policy of the Office of the Hearing Examiner that, to the extent practicable and consistent with requirements of law, hearings shall be conducted expeditiously. In the conduct of such proceedings the Hearing Examiner, City staff, and all parties, or their agents, shall make every effort at each stage of a proceeding to avoid delay.
- 3.5.2 Format  
The format for a hearing will be informal, designed to make the evidence and facts relevant to a particular proceeding become available to the Hearing Examiner and easily ascertainable by a reviewing body. The format will allow development of a record by parties.

3.5.3 Site Visit

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

3.5.4 Record of Hearing

- a. Record. Hearing shall be electronically recorded in an audio format and such recordings shall be part of the record.
- b. Any interested person may obtain copies of any written materials in the record. The interested person may be responsible for paying the cost of reproducing such material.

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

3.6.1 Rights of City

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

3.6.2 Rights of Appellant

The Appellant (and Applicant, if not the Appellant) shall have the right of notice, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing.

The Hearing Examiner may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony. Cross-examination is permitted as necessary for a full disclosure of the facts, but the Hearing Examiner shall have the power to prescribe the length of time for cross-examination and the manner in which cross-examination is conducted.

3.6.3 Responsibilities of City Staff

City staff shall provide notice of the appeal hearing, provide the Hearing Examiner with documentation relevant to the case, and treat all who participate in the proceeding courteously.

3.6.4 Responsibilities of Appellant

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

3.6.5 Responsibilities of all participants, witness and observers

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

3.6.6 Failure to Appear

Parties named in the notice of civil violation must appear at the open record appeal hearing. If adequate notice has been given, and a named party fails to appear at a scheduled hearing, the

Hearing Examiner may issue an order of default, find that the violation(s) has occurred, and assess an appropriate penalty.

### **SECTION 3.7: PRESIDING OFFICIALS**

#### **3.7.1 Presiding Officials**

- a. Open record appeal Hearing shall be presided over by the Hearing Examiner.
- b. The Hearing Examiner shall have all of the authority and duties as granted him/her in state statutes and under the Bonney Lake Municipal Code. Included in the duties of the Hearing Examiner are the following: to conduct fair and impartial hearing; 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:
  - xi. To provide rules for the format for hearings and proceedings;
  - xii. To administer oaths and affirmations;
  - xiii. To rule upon offers of proof and receive evidence;
  - xiv. To regulate the course of the hearings and the conduct of the parties and their agents;
  - xv. To question any party presenting testimony at the hearing;
  - xvi. To hold conferences for settlement, simplification of the issues, or any other proper purpose;
  - xvii. To require briefs on legal issues;
  - xviii. To allow limited discovery if it is not unduly burdensome, will not unnecessarily delay the proceedings, and the information is not otherwise available;
  - xix. To consider and rule upon all procedural and other motions appropriate to the proceedings; and
  - xx. To make and file recommendations or decisions.
- c. Interference. In the performance of their 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.

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

- a. Although representation by legal counsel is not required at the open record appeal Hearing, all parties participating in the hearing may be represented at the hearing by legal counsel of their choice.
- b. To the extent practicable, any legal memoranda upon which a party of record will be relying shall be submitted to the Hearing Examiner's office (care of the Clerk to the Hearing Examiner) at least one week in advance of the scheduled hearing date.

### **SECTION 3.8: PREHEARING CONFERENCE**

3.8.1 The Hearing Examiner may, on their 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.
- 3.8.2 Prehearing conferences may be held by telephone conference call.
- 3.8.3 The Hearing Examiner shall give written or oral notice to all parties of any prehearing conference.
- 3.8.4 All parties of record have the right to be represented at any prehearing conference. Representation is not required.
- 3.8.5 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.
- 3.8.6 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 such orders will be part of the record.
- 3.8.7 In the event 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.
- 3.8.8 Prehearing orders may not be appealed until the Hearing Examiner issues an appeal decision.

### **SECTION 3.9: CONDUCT OF HEARING**

- 3.9.1 Notice Requirements of Hearing and Filings
  - a. The City and Appellant will coordinate with the Hearing Examiner to set the time and place of an appeal hearing.
  - b. Affidavit of Notice. The City shall provide an affidavit or testimony attesting to the notice given of a hearing.
- 3.9.2 Oath or Affirmation

All testimony before the Hearing Examiner shall be given under oath or affirmation to tell the truth.
- 3.9.3 Content of the Record

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

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



- a. City  
The City will present its case first by describing the nature of the alleged violation and the documents that it proposes to submit into the appeal record. The scope and standard of review is de novo. The City has the initial burden of proof in cases involving notice and orders, orders, or penalties to demonstrate by a preponderance of the evidence a violation exists and/or that the legal standard for imposing the penalty has been met. The Hearing Examiner will decide what weight should be granted to witness testimony. Once the City has described the violation, it will recommend corrective action reasonably calculated to correct the violation. The recommended corrective action should include all actions that would be necessary to remedy the alleged violation, and a time schedule within which the actions must be complete. Monetary penalties may be recommended at the close of the City's presentation. Testimony will only be allowed from members of the City staff or individuals the City calls as witnesses. The City may submit proposed Findings of Fact and Conclusions to support a decision.
- b. Appellant  
After the City presents its case, the Appellant will have an opportunity to respond. The Appellant's response will consist of information that is related to the alleged violation and addresses the City's contentions. The Appellant may testify and/or provide relevant exhibits that support his or her position. The Appellant may submit relevant evidence that describes any corrective action that he or she has taken to improve the condition of the subject property. Testimony will only be accepted from the Appellant or individuals the Appellant has called as witnesses. The Appellant may submit proposed Findings of Facts and Conclusions to support a decision.

### 3.9.5 Content and Form of Staff File

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

- a. Exhibit list containing name(s) of Appellant(s), file number, location of violation including address and tax parcel number, and a list of exhibits;
- b. Notice of Violation containing description of violation, recommended corrective action and hearing notice;
- c. Return of Service Affidavit; and
- d. Property profile showing ownership of the subject property.

### 3.9.6 Continuance of Appeal Hearing

#### a. Hearing Examiner

If, in the opinion of the Hearing Examiner, more information is necessary in order to make a decision or issue an order, the appeal hearing may be continued to a date certain with notice to the Appellant and City.

#### b. At the request of a Party

Any party of record may request continuance of an appeal hearing. The request, if made prior to the appeal hearing, must be in writing and state reasonable grounds for a continuance. If the request is made orally at the hearing, it must be based on reasonable grounds. The Hearing Examiner shall have discretion to grant or deny the request for continuance.

### 3.9.7 Evidence

- a. The open record appeal hearing will not be conducted in strict adherence to the Rules of Evidence. However, in the spirit of providing an expeditious appeal process, all evidence that the parties to the proceeding submit should be related to the alleged violation(s).
- b. Copies. Three copies of each document submitted shall be provided at the hearing. If copies are not provided at the open record appeal hearing, the Appellant may be charged for the cost of copying exhibits that are admitted during the hearing. Any documents submitted at the appeal hearing shall become part of the permanent record and shall not be returned to the party. Copies of documents may be submitted in lieu of originals if originals are not readily available.
- c. Any person submitting photographs in support of their case, must be prepared to identify (1) the subject of the photograph, (2) the date the photograph was taken, and (3) the individual who took the photograph.
- d. The Hearing Examiner may request a document to be filed after the close of testimony. Only those documents referred to at the hearing and documents specifically requested by the Hearing Examiner may be submitted.

### 3.9.8 Presentation of Motions

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

## **SECTION 3.10: DECISIONS OF THE HEARING EXAMINER**

### 3.10.1 Written Decisions

- a. The hearing examiner shall:
  - i. Prepare findings regarding whether a preponderance of evidence shows that the violation occurred and the required corrective action is reasonable;
  - ii. Accordingly affirm, vacate, or modify the particulars of the notice of violation; and
  - iii. Affirm, vacate, or modify the assessment of civil penalties. The hearing examiner may reduce civil penalties based on the following considerations; whether the violation was a first violation; whether the violator showed due diligence in correcting the violation; whether the penalty is more than necessary to neutralize any profit enjoyed by the violator as a result of the violation, make the public whole for environmental or other damages suffered as a result of the violation, recompense the city for the costs of enforcement, and other relevant factors.
- b. The Hearing Examiner shall issue a written decision or order within 10 (ten) business days from the close of the open record appeal hearing. Copies of the Hearing Examiner's decision shall be made available to the City and the Appellant.

### 3.10.2 Content of Decision or Order

The decision should include at least the following:

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

- c. The appropriate rule, order or relief. In the event that the Hearing Examiner determines that a violation occurred or is occurring, the Hearing Examiner shall issue an order to the person responsible for the violation, which contains the following information:
  - i. The decision regarding the alleged violation including findings and conclusion in support of the decision;
  - ii. The required corrective action;
  - iii. The date and time by which the correction must be completed;
  - iv. The monetary penalties assessed; and
  - v. The date and time after which the City may proceed with abatement of the unlawful condition if the required correction is not completed.

**SECTION 3.11: RECONSIDERATION [RESERVED]**

**SECTION 3.12: APPEALS OF DECISIONS**

To appeal the Hearing Examiner's decision on a notice and order, stop work order, emergency order, or the imposition of civil penalties, a person with standing to appeal must file an appeal of the decision the Pierce County Superior Court pursuant to Chapter 36.70C RCW.

**SECTION 3.13: CONFLICTS**

In the event of a conflict between these rules and the provisions of the Bonney Lake Municipal Code, the provisions of the Bonney Lake Municipal Code shall prevail.