

RESOLUTION NO. 498

**A RESOLUTION OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, ADOPTING  
HEARING EXAMINER RULES OF PRACTICE AND PROCEDURE**

WHEREAS, the City conducts administrative hearings pertaining to various land use, code enforcement and other issues; and

WHEREAS, the City contracts with independent attorneys, who are not City employees, for Hearing Examiner services; and

WHEREAS, it would be helpful to the Hearing Examiners to have Rules of Practice and Procedure to supplement the University Place Municipal Code (UPMC), and such Rules would help provide consistency in Hearing Examiner rulings; NOW, THEREFORE,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE,  
WASHINGTON, AS FOLLOWS:**

Section 1. Implementation of City of University Place Hearing Examiner Rules of Practice and Procedure. City of University Place Hearing Examiner Rules of Practice and Procedure are hereby adopted in the form attached hereto.

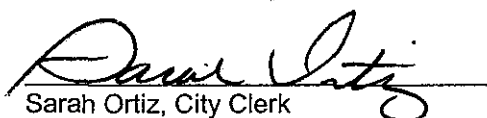
Section 2. Effective Date. This resolution shall take effect immediately upon its adoption.

**ADOPTED BY THE CITY COUNCIL OCTOBER 3, 2005.**



Ken Grassi, Mayor

ATTEST:



Sarah Ortiz, City Clerk

**CITY OF UNIVERSITY PLACE**

**HEARING EXAMINER**

**RULES OF PRACTICE &  
PROCEDURE**

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**(Adopted by Resolution No. 498 - October 3, 2005)**

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## **PURPOSE:**

The purpose of the Hearing Examiner Rules of Practice and Procedure is to clarify hearing procedures, to supplement requirements of the UPMC (University Place Municipal Code) for matters within the Hearing Examiner's jurisdiction, and to provide the Hearing Examiner with guidelines for governing administrative practices and procedures allowed by the UPMC.

## **AUTHORITY:**

UPMC Chapter 1.20 Enforcement  
UPMC Chapter 2.20 Hearings Examiner  
UPMC Chapter 19.90 Amendments  
UPMC Chapter 22.10 Open Record Public Hearings

## **CONFLICTS:**

If there is a conflict between the Hearing Examiner Rules of Practice and Procedure and the University Place Municipal Code (UPMC), the UPMC shall control.

If there is a question about practice or procedure that is not addressed by these Rules, the Hearing Examiner shall determine the practice or procedure that he or she deems most appropriate and consistent with providing fair treatment and due process. In making any such determination, the Hearing Examiner may look to the current Civil Rules of Superior Court for guidance.

## **DEFINITIONS:**

**Appellant** – The person(s), organization, association, corporation, or other entity who files a complete and timely appeal challenging a final administrative decision or other action that the City Code or other authority authorizes the City's Hearing Examiner to review and decide.

**Applicant** – The person(s), organization, association, corporation or other entity who files an application or otherwise formally requests a permit or other type of City action, interpretation, or authorization which is the subject of an appeal or other review by the Hearing Examiner.

**Department** – The department, agency, board, commission or other City entity responsible for the decision, action, or recommendation that is subject to appeal or other review by the Hearing Examiner.

**Director** – The head of the department, agency, board or commission, or other unit of City government responsible for the decision, recommendation, or other action that is subject to appeal or other review by the Hearing Examiner.

Hearing Examiner – The person appointed by the City to serve as the City’s Hearing Examiner, who has the qualifications to conduct administrative or quasi-judicial hearings on land use regulatory codes and other matters deemed appropriate by the City Council; said person shall hold no other appointive or elective public office or position in the City government.

Interested Person – Any individual, or public or private organization of any character, significantly affected by or interested in proceedings before the Hearing Examiner, including any party.

Motion – A request made to the Hearing Examiner, whether written or oral, for an order or other ruling.

Party – The person(s), group, organization, corporation, or other entity that has filed an appeal, or is granted right of appeal automatically by ordinance; the person(s), group, organization, corporation, or other entity granted party status through intervention; Director of the City department or other agency that made the decision or took the action that is subject to the appeal; the person(s), group, organization, corporation, or other entity who filed the application, request, or petition for a permit or other type of City authorization or action which is the subject of the appeal; the person, group, organization, corporation, or other entity issued a Notice of Civil Violation; and the owner(s) of the property subject to the City decision or other action.

**SUMMONS, SUBPOENAS, OATHS:**

The Hearing Examiner is authorized to issue Summons or Subpoenas to compel the appearance of witnesses. The Hearing Examiner has authority to administer oaths. A written request or motion may be made to the Hearing Examiner for a Subpoena to compel a person to appear and testify at hearing, or for a person to produce specified documents or other physical exhibits at a pre-hearing conference or at a hearing.

**FILING AND SERVICE OF DOCUMENTS BY PARTIES:** Except as otherwise provided by the UPMC:

(A) Documents shall be deemed filed with the Hearing Examiner on receipt at the Office of Hearing Examiner unless the Hearing Examiner has specified otherwise.

(B) Documents shall be served personally or, unless otherwise provided by applicable ordinance, by first-class, registered, or certified mail, or by facsimile (fax) transmission, or in the case of service to City agencies, by the City’s regular interoffice mail. Service shall be regarded as complete upon deposit in the

regular facilities of the U.S. Mail of a properly stamped and addressed letter or packet, or at the time personally delivered, or transmitted by fax.

(C) If the person responsible for the violation cannot be personally served within Pierce County and if an address for mailed service cannot be ascertained, Notice shall be served by posting a copy of the Notice of Civil Violation conspicuously on the affected property or structure.

#### **PRE-HEARING DISCOVERY:**

Appropriate pre-hearing discovery is permitted. The Hearing Examiner may prohibit or limit discovery if she or he determines it to be unduly burdensome, harassing, or unnecessary under the circumstances of the case.

#### **PRE-HEARING CONFERENCES:**

(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:

- Identification, clarification, and simplification of the issues;
- Disclosure of witnesses to be called and exhibits to be presented;
- Motions;
- The possibility of obtaining stipulations relating to undisputed facts, the admission of documents, or other matters that will avoid unnecessary proof;
- The conduct of reasonable discovery prior to hearing and the setting of a discovery schedule, if applicable;
- Settlement of the appeal; and/or
- Other matters deemed by the Hearing Examiner appropriate for the orderly and expeditious disposition of the proceedings.

(B) Pre-hearing conferences may be held by telephone conference call or in-person.

(C) The Hearing Examiner shall give notice to all parties of any pre-hearing conference. Notice may be written or oral.

(D) All parties shall be represented at any pre-hearing 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 pre-hearing conference, the Hearing Examiner may issue an order reciting the actions taken or ruling on motions made at the conference.

(F) All parties and interested persons who received timely notice of the pre-hearing conference are bound by decisions of the Hearing Examiner at pre-hearing conferences.

#### **ORDER OF HEARING:**

In accordance with the provisions of the UPMC, the order in which a hearing is conducted may be modified or a different order established as the Hearing Examiner deems necessary for the clear and fair presentation of evidence. The order of the hearing may also be modified as agreed upon by the parties with the Hearing Examiner's approval. The order of presentation at hearing shall not alter or shift any burden or presumption established by applicable law.

#### **MOTIONS:**

(A) All motions, other than those made during a hearing, shall be in writing and shall state the order or relief requested and the grounds for the motion. Such motions shall be filed and served at least seven (7) business days prior to hearing unless a shorter or longer time has been designated by the Hearing Examiner. Every motion and answering statement (including accompanying papers) shall be served on each party representative on the day it is filed with the Hearing Examiner.

(B) Within seven (7) business days after service of any written motion, or such longer or shorter prior of time as may be designated by the Hearing Examiner, the other party(ies) may file a written answer. When the Hearing Examiner has received the answering statement(s), or the seven (7) business days or other period of time designated by the Hearing Examiner has elapsed, the Hearing Examiner shall rule on the motion. Failure of a party to file a timely response may be considered by the Hearing Examiner as evidence of that party's consent to the motion.

(C) The Hearing Examiner may call for oral argument prior to ruling.

(D) For motions made at hearing, for motions made for the extension of time or the expedition of hearings, or for motions for continuance, the Hearing Examiner may waive the requirements of this section and may also rule upon such motions orally.

#### **TESTIMONY – CROSS EXAMINATION - PRESERVATION OF ORDER:**

Testimony. All oral testimony shall be taken under oath or affirmation. In order to keep hearings within reasonable time frames and to avoid hearing continuances, the Hearing Examiner may limit the length of witness testimony. Maximum, practicable advanced notice will be given if time limitations are to be

imposed. If the parties are unable to complete arguments and testimony within the allotted time, an opportunity will be granted for them to submit written materials after the close of hearing, and the other parties to the case will be allowed to submit written rebuttals to any such materials. The Hearing Examiner shall allow rebuttal evidence to respond to both expert and non-expert testimony.

**Cross-Examination.** The Hearing Examiner shall allow cross-examination of all testimony of parties and shall give all parties an opportunity to cross examine expert witnesses, including City staff. The Hearing Examiner may allow cross-examination of members of the public when, in the opinion of the Hearing Examiner, such cross-examination will substantially assist in making a complete record. Normally, cross-examination of non-experts will be limited to authentication of documents, photographs, physical evidence, or expert studies offered as part of the witness' presentation.

The Hearing Examiner shall rule as to cross-examination of witnesses in general and may establish reasonable time limits on cross-examination consistent with requirements of due process. In so doing, the Hearing Examiner may require non-attorney parties and interested persons to express their areas of concern in order for the Hearing Examiner to ask appropriate questions of witnesses, as consistent with Washington Supreme Court requirements.

**Preservation of Order.** The Hearing Examiner has the power to prescribe rules and regulations for conduct at hearings to preserve order and to ensure expeditious completion of hearings. No combative, rude or degrading questioning will be allowed.

**EVIDENCE:**

(A) **Admission.** Evidence, including hearsay, may be admitted if, in the judgment of the Hearing Examiner, it is relevant to the issue(s) on appeal, comes from a reliable source, and has probative (proving) value. Such evidence is that which would commonly be relied upon by responsible persons in the conduct of their important affairs.

(B) **Judicial Notice.** With formal entry into the record, the Hearing Examiner may take official notice of and consider known information that relates to the issue at hand. Inclusion of such information may be determined by the Hearing Examiner and need not be established by evidence. Examples of such information include, but are not limited to: Ordinances, resolutions, rules, officially adopted development standards, state laws, other public records and facts judicially noticeable by law. Parties to the case may request official notice of information, but must do so on the record. Any matter given official notice may be rebutted.



(C) Exclusion. The Hearing Examiner may exclude evidence that is irrelevant, unreliable, immaterial, unduly repetitive, or privileged.

#### **PUBLIC PARTICIPATION:**

**Non-Appeal Matters.** Members of the public may express their views and offer factual testimony and exhibits. Public testimony may be presented orally, in writing, or both. Written public testimony may be submitted either in advance of or during the hearing. Copies of any written testimony submitted to the Hearing Examiner should also be submitted to the City and to the parties. The Hearing Examiner may leave the record open to provide opportunity for written responses to evidence and testimony by other participants. The City and other parties may reply to any such written responses.

**Appeal Matters.** With respect to appeal cases, upon a showing of substantial or significant interest that is not otherwise adequately represented, the Hearing Examiner may permit an interested person, group, organization, corporation, or other entity who has not filed an appeal to intervene in that appeal. Such intervention must be requested in writing to the Hearing Examiner at least seven (7) business days prior to the date of hearing. When considering a request to intervene, the Hearing Examiner shall seek to ensure that intervention will not unduly delay the hearing process, expand issues beyond those of the appeal, nor prejudice the rights of any of the original parties. The Hearing Examiner may limit the nature and scope of the intervention.

#### **CONTINUANCES:**

Prior to hearing, the Hearing Examiner may continue the hearing for good cause. Requests for continuance must be made to the Hearing Examiner no later than forty-eight (48) hours prior to the scheduled hearing time. Written notice of the date, time and place of the continued hearing shall be provided to each party. Notice of a rescheduled hearing need not observe the time requirements to which the original notice was subject.

#### **LEAVING RECORD OPEN – Conclusion of Hearing:**

The Hearing Examiner may leave the record of hearing open at the conclusion of a hearing in order to receive written argument or for other good purpose. The parties of record shall be provided notice of consideration of any evidence received after hearing and shall have an opportunity to review such evidence and to file rebuttal evidence or argument. The hearing will be closed only upon the closing of the record.

## **REMAND:**

Where the decision of the Hearing Examiner is to remand the matter for the preparation of a new departmental decision, the Hearing Examiner's jurisdiction is terminated and the Director's subsequent decision shall be issued and subject to appeal in accordance with applicable code.

## **CLERICAL ERRORS:**

*Clerical mistakes in decisions, recommendations, orders, or other parts of the record, and errors arising from oversight or omission, may be corrected by Order at the Hearing Examiner's initiation or in response to the Motion of any party.*

## **DISMISSALS BY HEARING EXAMINER:**

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

The Hearing Examiner may dismiss an appeal without hearing if the Appellant 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. Any party may request dismissal of all or part of an appeal at a hearing or earlier by written motion 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.

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

## **RECONSIDERATION:**

A party may file and serve a written request for reconsideration to the parties and to the Hearing Examiner if they feel that the decision was based on procedural or factual error. Any such written request for reconsideration must set forth the alleged errors and must be made within seven (7) business days of the written decision. The City may require payment of a filing fee for reconsideration requests. The Hearing Examiner may grant reconsideration of an application decision under UPMC Title 22 only if an applicant has agreed at the time of application to such re-examination. If granted by the Hearing Examiner, reconsideration will extend the time period for an appeal.

**APPEALS:**

(A) Project Permits & Appeals of Administrative Decisions. Hearing Examiner decisions with respect to project permits and/or appeals of administrative decisions are final in that there is no closed record appeal to the City Council. Any action to challenge the final decision of the Hearing Examiner must be filed with the courts or reviewing agency within the appropriate statutory limits.

(B) Code Enforcement Cases. Any party in a code enforcement action may appeal the Hearing Examiner's decision to Superior Court within the appropriate statutory limits.

(C) Quasi-Judicial. Hearing Examiner decisions with respect to site specific rezone requests are not final but go to the City Council for closed record appeal.

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