CITY OF KIRKLAND
PLANNING & COMMUNITY DEVELOPMENT
123 5th Avenue, Kirkland, WA 98033 425.587.3225
www.ci.kirkland.wa.us

KIRKLAND HEARING EXAMINER

A G E N D A

Council Chamber

123 5th Avenue

Date: August 21, 2008

Time: 9:00 A.M.

This meeting packet is also available online at the City of Kirkland Planning Department web page at http://www.ci.kirkland.wa.us/depart/Planning/Hearing_Examiner_Meeting_Information.htm

1. **CALL TO ORDER**

2. **PUBLIC HEARINGS - APPEALS**

   A. Appeal of Third Amended Notice of Violation and Order to Correct

   FILE NO. MIS07-00024

   ADDRESS: 8429 122nd Avenue NE

   STAFF CONTACT: Tom Phillips, Kirkland Building Official, 425-587-3604

3. **ADJOURNMENT**

Note: If you would like more information on an item on this agenda, please call the Planning Department at 425.587.3225. Please refer to the file number and the planner listed for that item. This meeting packet is also available online at the City of Kirkland Planning Department web page at http://www.ci.kirkland.wa.us/depart/Planning.htm.

The City of Kirkland strives to accommodate people with disabilities. Please contact the City Clerk's office at 425.587.3190, or for TTY service, call 425.587.3111 (by noon the working day prior to the meeting) if we can be of assistance. If you should experience difficulty hearing the proceedings, please bring this to the attention of the Chair by raising your hand.

CITY OF KIRKLAND
123 FIFTH AVENUE ● KIRKLAND, WASHINGTON 98033-6189 ● (425) 587-3225

Rules of Procedure for Appeals
Before the City of Kirkland Hearing Examiner

1. Authority

Kirkland Municipal Code Section 3.34.050 requires that the Hearing Examiner adopt rules of procedure to govern hearings conducted by the Hearing Examiner pursuant to the Code.

2. Applicability

A. Unless otherwise provided by Kirkland Municipal Code, these Rules apply to all matters for which the Kirkland Municipal Code allows an appeal to the Hearing Examiner. The Rules do not include all ordinance or Kirkland Municipal Code requirements. Parties are responsible for familiarizing themselves with those requirements. (Note: under Kirkland Municipal Code Section 170.40, appeals from Notices of Civil Infraction are governed by the Administrative Procedures Act, Chapter 34.05 RCW (APA). These Rules apply to such appeals only to the extent that they do not conflict with the APA.)

B. When questions of practice and procedure arise that are not addressed by these Rules, the Hearing Examiner shall determine the practice or procedure most appropriate and consistent with providing fair treatment and due process.

3. Definitions

A. "Appeal" – a challenge to a decision or other City action where the Code authorizes the Hearing Examiner to review and decide the challenge.

B. "Appellant" – the person, organization or other entity who files a complete and timely appeal of a City decision or other appealable action.

C. "Applicant" – the person, organization or other entity who files an application or otherwise formally requests a permit or other type of City action that is subject to an appeal to the Hearing Examiner.

D. "Code" – Kirkland Municipal Code as adopted or hereafter amended.

E. "Department" – the department or other City entity responsible for the decision or action that is subject to appeal to the Hearing Examiner.

F. "Motion" - a request made to the Hearing Examiner for an order or other ruling.

G. "Order" - A ruling, instruction, or other directive issued by the Hearing Examiner in response to a request or motion by a party, or on the Hearing Examiner's own initiative. Where allowed by law, an order may direct how the Hearing Examiner's decision is to be implemented and may be issued as part of that decision or separately.

H. "Party" - the person, group or other entity that has filed an appeal; the City department or other agency that made the decision or took the action that is the subject of the appeal; the person, group or other entity who filed the application or request for a permit or other type of City authorization that is the subject of the appeal; and the owner of the property subject to the City decision or other action.

4. Filing of Documents

Any documents intended for the Hearing Examiner shall be filed during regular business hours with the City department that made the decision being appealed. Once an appeal is filed and set for hearing, the Hearing Examiner may allow for alternative methods of filing for subsequent documents.

5. Service of Documents

All documents filed for consideration by the Hearing Examiner shall be served on all other parties during regular business hours on the date they are filed. The Hearing Examiner may allow for service of documents by methods other than personal service or service by mail.

6. Prehearing Conference

A. On the Hearing Examiner's own initiative, or at the request of a party, the Hearing Examiner may 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. Discovery;
4. Prehearing motions;
5. Other matters deemed by the Hearing Examiner appropriate for the orderly and efficient disposition of the appeal.

B. Prehearing conferences may be held by telephone conference call.

C. The Hearing Examiner shall give notice to all parties of any prehearing conference. Notice may be written or oral.

D. All parties shall appear, or be represented at a prehearing conference unless a party has waived the right to be present or represented and been excused by the Hearing Examiner.

E. Following the prehearing conference, the Hearing Examiner may issue an order reciting the actions taken and deadlines imposed, and ruling upon motions made at the conference.

7. Presiding Official

The Hearing Examiner conducting the hearing has the duty to ensure a fair and impartial hearing, to take all necessary action to avoid delay in the proceedings, to gather facts necessary for making the decision, and to regulate the course of the hearing and the conduct of the parties and others so as to maintain order.

8. Burden of Proof

The burden of proof on appeal shall be as specified by the applicable Code provision or applicable state law.

9. Party Representative Required

When a party consists of more than one person, or is a group or other entity, the party shall designate an individual to be its representative and inform the Hearing Examiner of the contact information for 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 notice or communication to the party.

10. Expected Conduct

A. All parties appearing before the Hearing Examiner shall conduct themselves with civility and courtesy to everyone involved in the hearing.

B. No one shall communicate with the Hearing Examiner outside the hearing in an attempt to discuss the merits or influence the outcome of an appeal.

11. Clarification

On the motion of a party, or at the Hearing Examiner's own initiative, the Hearing Examiner may require that the appellant provide clarification, additional information, or other submittals that the Hearing Examiner deems necessary to make the appeal complete and understandable.

12. Amendment

And appellant may file an amendment to an appeal within 10 business days of the date the appeal was filed. Amendment after the period provided by this Rule may be requested by motion. In determining whether to allow a later amendment, the Hearing Examiner shall consider whether the fair hearing opportunity of other parties would be prejudiced by the amendment.

13. Withdrawal

A. An appeal may be withdrawn only by the appellant in writing.

B. When an appeal is made by more than one person, or by a group or other entity, the appeal may be withdrawn only by the person designated as the party representative.

C. An appellant's request to withdraw an appeal shall be granted as a matter of right and the appeal dismissed.

14. Notice of Appearance

When a party is represented by an attorney, the attorney shall file a notice of appearance with the Hearing Examiner and send a copy to the other parties.

15. Discovery

Appropriate prehearing discovery is permitted. Discovery is generally left to the parties, and unless otherwise provided by the Hearing Examiner, the Hearing Examiner should not be copied on discovery documents, or correspondence and electronic-mail about discovery matters. In response to a motion, or on the Hearing Examiner's initiative, the Hearing Examiner may prohibit or limit discovery that the Examiner determines is unduly burdensome, harassing, or unnecessary.

16. Default

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

17. Site Inspection

The Hearing Examiner will inspect the property subject to an appeal prior to the close of the record. Failure to conduct a site inspection shall not affect the validity of the Hearing Examiner's decision.

18. Evidence at Hearing

A. All witnesses testifying at hearing must take an oath or affirmation to be truthful in their testimony and are subject to cross examination by the other party.

B. Evidence that is relevant to the appeal and comes from a reliable source is admissible at hearing. Such evidence is that which responsible people would commonly rely upon in the conduct of their important affairs.

C. The Hearing Examiner may impose reasonable limits on the number of witnesses testifying at the hearing, and the nature and length of the testimony. However, written testimony and other evidence may also be submitted.

19. Continuing the Hearing

A. A scheduled hearing may be continued to a different date for good cause as determined by the Hearing Examiner. Written notice of the date, time and place of the continued hearing shall be provided to each party, but need not observe the time requirements for the original notice.

B. If the Hearing Examiner determines at hearing that there is good cause to continue the hearing, and then and there specifies the date, time and place of the continued hearing, no further notice is required.

20. Hearing Format

The order of presentation at appeal hearings is generally as follows:

A. Examiner's introductory remarks;
B. Parties' opening statements (optional);
C. City's presentation of evidence;
D. Appellant's presentation of evidence;
E. Applicant's presentation of evidence (if applicable);
F. Testimony from others entitled to appeal (if applicable);
G. Parties' rebuttal evidence;
H. Parties' closing arguments.

The Hearing Examiner may modify the order of hearing to promote the clear and fair presentation of evidence. With the Hearing Examiner's approval, the order of presentation may be modified by agreement of the parties.

21. Leaving the Record Open

At the conclusion of the hearing, the Hearing Examiner may close the hearing, but leave the record open to receive additional evidence from the parties or for other good purpose. Parties shall be provided notice of any evidence received after hearing and have the opportunity to review the evidence and file evidence or argument rebutting it.

22. Hearing Examiner Decision

A. Issuance. The Hearing Examiner shall issue a written decision and provide a copy to each party representative within the time required by the applicable Code provision. Unless proscribed by Code, the Hearing Examiner's decision may affirm, reverse, modify, or remand the decision or other action being appealed.

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

1. Background. The nature and background of the proceeding, including identification of party representatives participating in the hearing, prehearing determinations, and similar information.
2. Findings. The individual facts that the Hearing Examiner finds relevant, credible, and requisite to the decision, based on the evidence presented at hearing and matters officially noticed.
3. Conclusions. Legal and factual conclusions based upon specific provisions of law and the findings of fact.
4. Decision. The Hearing Examiner's decision as to the outcome of the appeal based upon a consideration of the whole record and the applicable burden of proof.
5. Information regarding any subsequent procedural steps for appealing the Hearing Examiner's decision.

If applicable, the decision may also include an order disposing of contested issues and/or directing parties to take actions consistent with the decision.

23. Notice of Decision

The Hearing Examiner's decision shall be provided to the parties in accordance with the Code.

24. Subsequent Appeal

Hearing Examiner decisions may be appealed as provided by law.

(Adopted June 6, 2007 pursuant to KMC 3.34.050)