



PLANNING & COMMUNITY DEVELOPMENT
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GUIDE TO HEARINGS BEFORE THE HEARING EXAMINER

Hearings before the Hearing Examiner are governed by constitutional principles, state law, the [Kirkland Municipal Code](#) and [Kirkland Zoning Code](#), and the rules of procedure for hearing examiner proceedings. This guide provides basic information about the hearing examiner system and process. It is important to consult the appropriate set of procedural rules, as well.

Rules of Procedure

1. [Rules of Procedure – Code Enforcement](#)
2. [Rules of Procedure – Appeals](#)
3. [Rules of Procedure - Applications](#)

PURPOSE OF THE HEARING EXAMINER SYSTEM

The Hearing Examiner is appointed by the City Manager in accordance with [Chapter 3.34 KMC](#) to provide independent review of: 1) Notices of Civil Violation; 2) appeals of some decisions by City departments; and 3) some applications for City permits. The Code specifies the types of applications for which the Hearing Examiner holds a hearing and issues a decision or a recommendation to the City Council, and the types of appeals that the Hearing Examiner hears and decides. The Hearing Examiner holds hearings to receive evidence (witness testimony and exhibits) about the facts important to a Notice of Civil Violation, appeal or application, and to hear argument on how the law applies to those facts and directs the outcome of the case.

NOTICES OF CIVIL VIOLATION (Code Enforcement)

Notices of Civil Violation are governed by [Chapter 1.12 KMC](#), which includes detailed information about the process. A hearing is scheduled at the time the Notice is issued, and the date and time are included in the Notice. The hearing is normally canceled if the required corrective action is completed, and approved by the Department, at least 48 hours prior to the hearing.

Hearings are held in the City Council Chambers in Kirkland City Hall, 123 Fifth Avenue. Only the Department and the person responding to the Notice of Civil Violation (the parties), and any witnesses they call, may participate in the hearing. All testimony is taken under oath or affirmation. Each party may ask questions of the other party's witnesses concerning their testimony, and the Hearing Examiner will indicate the appropriate time for doing so.

Any party who intends to use exhibits, such as documents, photographs, maps, etc. as part of the presentation must bring at least three copies of each exhibit to the hearing. One copy is submitted to the Hearing Examiner, and one copy must be given to the other party. Each exhibit will be given a number in sequence by the Hearing Examiner. It should be referred to by that number so that everyone in the hearing room, or listening to the recording of the hearing, will know what item is being discussed.

The Department presents its evidence (witness testimony and exhibits) about the violations alleged in the Notice and events that led to issuance of the Notice. The Department must prove to the Hearing Examiner by a preponderance of the evidence (more likely than not) that the violation occurred, and that the required corrective action is reasonable. The Code requires that the Hearing Examiner give substantial

weight to the Department's determination on required corrective action. When the Department's presentation is completed, the person responding to the Notice may present evidence (witness testimony and exhibits) disputing the existence, details or extent of the violation and/or the reasonableness of the requested corrective action or the requested deadline for corrective action.

The Hearing Examiner will visit the property and will issue a decision and order on the Notice of Civil Violation within 10 working days of the date of the hearing. In reaching a decision, the Hearing Examiner will consider the evidence presented at the hearing in light of what the applicable law requires. The Hearing Examiner does not have authority to create or change the law.

The decision will include findings of fact, which set forth the individual pieces of evidence that the Hearing Examiner has found relevant and credible; conclusions based on the findings, which determine the outcome of the hearing; and a decision on the hearing. If the Hearing Examiner affirms the Notice, the decision will also include an order to the person responsible for the violation: 1) stating the required corrective action and the date by which it must be completed; 2) requiring payment of any monetary penalties; and 3) stating the date after which the Department may remove the unlawful condition if the required corrective action is not completed. There will also be information about appealing the decision and order to superior court.

APPEALS

Filing an Appeal

The applicable code sections provide the substantive requirements for an appeal and the procedures for filing one. This information is also included at the end of a decision that can be appealed to the Hearing Examiner and must be carefully followed, including payment of any required appeal fee, to avoid having the appeal dismissed for failure to meet the requirements of the Code. As a general rule, appeals are filed with the department that made the disputed decision.

The participants in an appeal are referred to as "parties." The party who appeals is the "appellant." In most appeals, the City department responsible for the decision is the "respondent," i.e., the party who must respond to the objections raised in the appeal. If an appeal involves a permit or a license, and the applicant for the permit or license is not the appellant, the applicant is also a party who has a right to participate in the case as a respondent.

Party Representative

Parties have certain rights in the appeal process, such as the right to notice and participation in the hearing (presenting evidence and questioning witnesses). If more than one person appeals a decision each appellant is considered a party. However, when two or more people file one appeal, they are one party. They must select one person to represent the group in the proceedings and provide contact information for that person.

A party to an appeal is not required to be represented by an attorney, and many are not. If a party is represented by an attorney, the attorney must file a notice of appearance with the Hearing Examiner and send a copy to all other parties as early in the proceedings as possible.

Scheduling the Hearing

The department acts as staff for the Hearing Examiner in handling the logistics of the hearing. It contacts the parties and the Hearing Examiner to schedule a date and time for the appeal hearing and sends out notice of the hearing, provides a copy of the appeal to the Hearing Examiner, sends a copy of any required staff report to the parties and the Hearing Examiner, and sets up the room for the hearing and arranges for it to be recorded.

Prehearing Matters

Restrictions on Contacting the Hearing Examiner. Appeal hearings are quasi-judicial proceedings. State and local law prohibits anyone from contacting the Hearing Examiner about the merits of an appeal, or for the purpose of influencing a decision, except during the hearing. This is to prevent someone from trying to influence the Hearing Examiner or add information that is not presented at hearing where all parties can discuss and question it. Department staff can answer most procedural questions about appeal proceedings and should be consulted first. If it is essential to contact the Hearing Examiner outside of a hearing or a prehearing conference, the contact must be limited to procedural matters and should be made in writing, with a copy to all other parties. It is appropriate to address the Hearing Examiner by title (“Ms. Hearing Examiner”) or by last name (“Mr. Smith”).

Prehearing Conference. The Hearing Examiner may schedule a prehearing conference for complex matters or where the proceedings are expected to be lengthy. This is a meeting held prior to the hearing, either telephonically or in person, to clarify issues and address procedural matters, which leads to a more efficient hearing. Typical topics for the conference would include the issues on appeal, whether the subjects included in the appeal are within the Hearing Examiner's jurisdiction, who the expected witnesses will be, and how long the presentations are expected to take. Any party may request that a prehearing conference be scheduled if the Hearing Examiner does not do so.

The following suggestions may help an appellant prepare for the matters to be covered in the prehearing conference:

Carefully read the Department decision you are appealing and any Code sections cited in it. Ask the Department decision maker for any other Code sections, regulations or policies that were considered in reaching the decision, and read those.

Consider the issues in your appeal in light of what you have read. Are there any that should be dismissed? Are the remaining issues clear? If not, consider how you can clarify them, since you may be asked to do so at the conference. (Note: although you may clarify an issue, you may not raise a new issue in doing so.)

Determine generally what evidence (witness testimony and exhibits) you will need to present in order to prove the claims in your appeal statement. Put together preliminary witness and exhibit lists.

Discovery. “Discovery” occurs prior to the hearing and is the process whereby a party seeks from the other party disclosure of documents and information that are relevant to the appeal, or that are likely to lead to documents and information that are relevant to the appeal. The process is normally conducted by the parties without intervention by the Hearing Examiner, and often involves an informal exchange of documents and information. Each party has the right to learn as much as it can about the other party's case, so disclosure of most information is required. If a party fails to disclose information that should have

been disclosed, the Hearing Examiner may prohibit the party from using it in the hearing or impose other sanctions. However, if a party thinks a request for discovery is harassing, unnecessary or unduly burdensome, the party may request by motion that the Hearing Examiner limit or prohibit that part of the discovery request.

Motions and Orders. A "motion" is a request, or a way of asking the Hearing Examiner for something. It is not necessary to refer to a request as a motion. For example, if an emergency arose requiring the appellant to be out of town on the scheduled hearing date, the appellant might write to the Hearing Examiner and state: "I am unexpectedly required to be out of town on the scheduled hearing date because of _____." I request that you change the date to sometime after my expected return on _____." A lawyer might submit a "motion for continuance" with the same information. A motion, or request, should tell the Hearing Examiner all the relevant facts and include any argument that helps support the request, if necessary. A copy must be served on all other parties at the time it is filed with the Hearing Examiner. (Consult the Hearing Examiner's Rules of Procedure for Appeals for information on how to do this.)

A party to an appeal who receives a copy of a motion that another party has filed with the Hearing Examiner should read through the motion to determine what the Hearing Examiner is being asked to do. If the party receiving the motion disagrees with it, or wishes to support it, the party should file a written response to that effect with the Hearing Examiner, including all relevant facts and any argument that helps support the party's position. A copy of the response must be served on all other parties. Unless a different time is specified by the Hearing Examiner in a case, a party who does not file a response to a motion within five (5) business days may be presumed to agree with the motion.

The Hearing Examiner will issue an "order" deciding whether to grant or deny a motion or request. An "order" is direction to the parties from the Hearing Examiner and should be read carefully.

The Appeal Hearing

Preparation. All parties to an appeal try to show the Hearing Examiner that the facts and the law support their view. To do this, the parties should prepare by finding out about both. Beyond those steps, there is no set formula for preparation. The effort necessary depends on the number and nature of the issues on appeal. Preparing may simply involve figuring out what a party wants to say in his or her own testimony, or it may require organizing and coordinating the testimony of a number of lay witnesses and/or experts so that each covers a different part of the presentation.

Basic suggestions include:

Review the decision being appealed and examine it to find the area(s) you believe are incorrect. It is also helpful to review any file kept by the department regarding the decision.

Review the parts of the Code that control the decision being appealed. The Codes are available in a searchable format online. See the [Kirkland Zoning Code](#) or [Kirkland Municipal Code](#).

Find people who are knowledgeable about the situation that is the subject of the decision being appealed. For example, if there are environmental issues on appeal, you could talk with others who live nearby to learn more about the existing environmental conditions in the area. If there are technical issues, you may want to seek expert advice.

Review the information in this section about participating in the hearing. Decide what evidence you want to present about the issues on appeal, who you want to have testify,

and whether or not you will need to have subpoenas issued to assure your desired witnesses attend the hearing (see below).

Know what your witnesses are going to say. It is a good idea to get together before the hearing to discuss the testimony of the witnesses in some detail, and even practice. This allows you to coordinate the presentation and to anticipate questions that will be asked of each witness.

Request subpoenas. Some witnesses may agree to testify only under subpoena. A subpoena is a type of order issued by the Hearing Examiner that requires a person to appear and testify on a specified matter at a specified time. For example, if an appellant wishes to call an employee of an opposing party, such as the permit applicant, it would likely be necessary to request a subpoena for the employee to be sure that he or she attends the hearing. Other witnesses may need a subpoena in order to take time off from their jobs to testify at the hearing. You must request a subpoena from the Hearing Examiner and serve it on the witness at least five (5) business days before the hearing. The request must include the person's name and address, show the relevance of that person's testimony, and demonstrate the reasonableness of the scope of the subpoena sought. Be aware that some witnesses (usually experts) might agree to testify on your behalf only if you reimburse them for their time and/or travel expenses.

Order of Presentation. Generally, the order of presentation at appeal hearings is as follows:

- A. Hearing Examiner's introductory remarks
- B. Party's opening statements (optional - briefly summarize what will be presented)
- C. Department's presentation of evidence (witness testimony and exhibits)
- D. Appellant's presentation of evidence (witness testimony and exhibits)
- E. Applicant's presentation of evidence (if the applicant is not the appellant) (witness testimony and exhibits)
- F. Testimony from others entitled to appeal (if allowed by the Code)
- G. Parties' rebuttal evidence
- H. Parties' closing arguments (summarizing how the evidence presented supports the party's position)

Location. Most hearings are held in City Council Chambers at Kirkland City Hall, 123 5th Avenue. The room is arranged for a traditional "public hearing," with a dais, a large table with microphones, seating for City staff, a speaker's podium with presentation equipment, and rows of seating for the public. All parties other than the Department sit toward the front of the public seating area and come up to microphone at the speaker's podium to make their presentations. If an attorney or other party representative will be doing extensive questioning of the party's own witnesses and/or the witnesses called by other parties, that is best done from a seat at the table that faces the speaker's podium. If this is the desired arrangement, the party should notify the Department in advance of the hearing so that the appropriate number of live microphones can be placed at the table. It is also important to check with the Department about what audiovisual equipment will be available at the hearing.

How to Participate. All testimony is taken under oath or affirmation, and cross examination is allowed. To assure that the entire hearing is recorded, a microphone must be used for all testimony and comments. Each witness who testifies will be asked to state his or her name and give a mailing address. The name must be restated each time a witness speaks in order for the recorded testimony to be attributed to the correct person. Party representatives may use a question and answer format for each witness, but this format is not required. They may also simply call each witness and get the testimony

started by indicating the topic, e.g., "Mr. Smith will talk about the parking study conducted by the neighbors." A party should cover each appeal issue completely but avoid repetition.

Exhibits. Exhibits, such as documents, photographs, maps, drawings, etc., are not required, but they are frequently offered by parties because they can illustrate or make a point, or for clarity or understanding of the testimony. Exhibits will be submitted to the Hearing Examiner, and a copy of each one must be supplied to each of the other parties at the hearing, or at an earlier time if required by the Hearing Examiner, unless a party agrees in writing to accept an electronic copy of the exhibit. Also, for any PowerPoint or similar presentation made at the hearing, a party must provide to the Hearing Examiner and to each of the other parties a printed paper copy of each panel/image presented.

Each exhibit is given a number in sequence by Hearing Examiner so that everyone in the hearing room, or listening to the recording of the hearing, will know what item is being discussed in testimony. For this reason, when a party uses exhibits during a presentation, it is helpful to refer to them by the numbers assigned by the Hearing Examiner, e.g., "Here is a photograph of the garage, which is marked as Exhibit 4 ...". If a party wants to have an exhibit included in the record, the party should ask that it be made part of the record, and the Hearing Examiner will decide whether it is admissible. Other parties may ask questions about exhibits as well as testimony.

Objections. In quasi-judicial hearings, evidence that he is relevant, comes from a reliable source, and has value in proving something at issue in the appeal can be used. If a party believes certain testimony or an exhibit is not admissible, that party may object to having it made part of the record that the Hearing Examiner will consider in reaching a decision. When there is an objection, the witness testifying should stop and wait for the Hearing Examiner to ask for a response to the objection. The Hearing Examiner will then decide whether the objection will be "sustained," which means that the testimony or exhibits objected to will not be made part of the record, or "overruled," which means that it is admissible into the record.

Procedural Questions. If a party has a question about what is happening during a hearing, or is uncertain about how to proceed, the party should ask the Hearing Examiner for assistance. The Hearing Examiner is not allowed to help present anyone's case, but can explain or clarify the proceeding.

The Hearing Examiner's Decision

In reaching a decision on an appeal, the Hearing Examiner will consider the evidence presented at the hearing in light of what the applicable law requires. (In land use and certain other types of cases, the Hearing Examiner also visits the property.) The Hearing Examiner does not have authority to create or change the law. The decision includes findings of fact, which set forth the individual pieces of evidence that the Hearing Examiner has found relevant and credible, conclusions that are drawn from the findings and determine the outcome of the appeal, and the decision on the appeal. There will also be information on how to appeal the decision, although the appellant is ultimately responsible for determining the requirements for further appeal. Most Hearing Examiner decisions may be appealed to superior court.

The Hearing Examiner's decision will be issued in accordance with deadlines imposed by the applicable Code. The Hearing Examiner will usually cover this information in opening remarks at the hearing. A copy of the decision will be sent to each party representative and to administrative staff for the Department.

APPLICATIONS

The Hearing Examiner holds hearings on certain types of applications for permits, including applications subject to Zoning Code [Processes IIA](#) and [IIB](#) and issues either a recommendation to the City Council or a final decision on the application. The Hearing Examiner holds a public hearing on these applications to gather information that will inform the Hearing Examiner's recommendation to the City Council or decision on the application.

The hearing process for an application begins when the reviewing Department notifies the Hearing Examiner that the application is ready to be considered and issues a notice of hearing. The Department submits a staff report to the Hearing Examiner and makes it available to the public in advance of the hearing. The report reviews the known facts about the application, provides the Department's analysis of applicable laws and ordinances and includes a recommendation to the Hearing Examiner.

The hearing is held in the City Council Chambers at Kirkland City Hall, 123 Fifth Avenue. These hearings provide the public an opportunity to provide testimony and comments on the application and to obtain responses to questions about it. As a general rule, anyone who wishes to be heard will have the opportunity to speak, but it may be necessary in some cases to limit the amount of time available to each speaker. Written comments are acceptable, and for applications that require the Hearing Examiner's recommendation, the comments become part of the record sent to the City Council.

If an appeal related to the application is filed, such as an appeal of the Department's environmental determination on an application, the appeal will normally be combined with the application for hearing. For such a combined hearing, the appeal is subject to the Hearing Examiner Rules of Procedure for Appeals, and the sections of this Guide addressed to appeals should be consulted. The Hearing Examiner will discuss the procedures for the combined hearing during opening remarks or at a prehearing conference, if one is held.

Following the hearing, the Hearing Examiner will prepare findings of fact, conclusions drawn from the findings, and either a decision or a recommendation. For land use applications, the Hearing Examiner will also inspect the property. If a final decision is issued, information about appealing the decision will be included, but the appellant is ultimately responsible for determining the requirements for an appeal. The Hearing Examiner's decision or recommendation will be issued in accordance with deadlines imposed by the Code, and the Hearing Examiner will normally cover this issue in opening remarks. The decision is sent to the Department, which distributes it to the applicant and other parties of record.