

**RULES OF PROCEDURE
CODE ENFORCEMENT HEARINGS OF CITY OF EVERETT**

SECTION 1: PURPOSE

The purpose of the Rules of Procedure is to provide a procedure to be used for code enforcement hearings that provide parties to a hearing a fair opportunity to participate in the process.

SECTION 2: INTERPRETATION AND WAIVER OF RULES

These rules shall be liberally construed to promote justice and facilitate fair hearings in code enforcement matters. The decisions of the Hearing Examiner will not be based on compliance or noncompliance with these rules. The Hearing Examiner may waive or alter the provisions of any of these rules in order to serve the ends of justice. The Hearing Examiner may amend these rules from time to time.

EXCEPTION: Notwithstanding the language of the above paragraph, Section 11 of these rules of procedure must be strictly complied with.

SECTION 3: DEFINITIONS

“*City*” means the City of Everett, Washington.

“*Clerk of the Hearing Examiner*” means a person designated by the City of Everett Office of the Mayor to assist the Hearing Examiner in his/her duties.

“*Code Enforcement Officer*” means an employee of the City who develops and presents the City’s allegations of code violations by the Respondent.

“*IPMC*” means the International Property Maintenance Code which has been adopted by the City of Everett.

“*EMC*” means Everett Municipal Code.

“*Ex parte communication*” means written or oral communications between the Hearing Examiner and a party about a matter pending before the Hearing Examiner. The prohibited communication is that which is outside of the hearing and involves an issue of the case and all other parties have not been given an opportunity to participate in the communication. Written or oral communication on issue’s relating to procedural are not considered ex parte communication.

“*Hearing Examiner*” or “*Examiner*” means the Hearing Examiner or the Hearing Examiner Pro Tem of the City of Everett as defined. All jurisdictions, powers and authority for the Hearing Examiner also apply to the Hearing Examiner Pro Tem.

“*Open record hearing*” means an administrative hearing in which an administrative record is developed through written and oral testimony and submission of evidence.

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

“*Party*” means the City of Everett and any and all Respondents identified in a violation citation for the enforcement of a violation of the EMC.

“*Record*” means all oral testimony and written exhibits submitted and admitted at the open record hearing. The audio recording of the proceeding shall be included as part of the record. At the discretion of the Hearing Examiner, the record may be supplemented after the closing of testimony.

“*Respondent*” means a person who has been cited for a violation which the enforcement of is governed by EMC 1.20.020. The Respondent may be any person, partnership, corporation, estate, tenant, landlord, occupant, or any other person who has some interest in the property that is subject of the City regulations.

SECTION 4: JURISDICTION

The Hearing Examiner has jurisdiction to hear and decide allegations of violations of the provisions of EMC 1.20.020, or the provisions of any City regulation or ordinance that identifies EMC 1.20 as the enforcement procedure for said regulation and ordinance. The duties and powers of the Hearing Examiner are set forth in EMC 1.20.040.

SECTION 5: HEARING EXAMINER

5.1 All hearings shall be presided over by the Hearing Examiner or the Hearing Examiner Pro Tem. All communication and material required, and allowed to be provided to the Examiner, shall be mailed or delivered to the Clerk of the Hearing Examiner at City of Everett, Code Enforcement, 3002 Wetmore Ave, Everett, Wa 98201. A copy of said communication and material shall be made available to the Respondents. If the Respondent has not provided a functioning address or phone number the communications and material shall be available at the City of Everett Police Department Records counter 24 hours before the hearing is scheduled.

5.2 The Hearing Examiner shall have all of the authority and duties as granted him/her in state statutes, EMC and other City ordinances. Included, without limitation, in the authorities and duties of the Hearing Examiner are the following:

- a. To administer oaths and affirmations;

- b. To at his or her discretion subpoena witnesses subject to the requirements of EMC 1.20.040 F2.
- c. To rule upon offers of proof and receive evidence;
- d. To regulate the course of the hearings and the conduct of the parties and their agents;
- e. To question any person presenting testimony at the hearing;
- f. To hold conferences for settlement or simplification of the issues, or any other proper purpose;
- g. To require briefs on legal issues;
- h. To consider and rule upon all procedural and other motions appropriate to the proceedings; and
- i. To make decisions, issue Orders, and assess monetary penalties.
- j. To allow a party to request a supplemental hearing after the close of the record if conditions set by the Hearing Examiner are met. For example, the Hearing Examiner may allow a respondent to request a fine reduction through a supplemental hearing if a violation is corrected by a certain date. The Hearing Examiner's has discretion over this procedure and any decision must be included in a written Order.

5.3 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 6: EX PARTE COMMUNICATION

6.1. No person, nor his or her agent, employee or representative, who is interested in a particular matter 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 matter. This rule shall not prohibit ex parte communications concerning procedural matters. All allowed ex parte procedural communications shall be directed to the Clerk of the Hearing Examiner.

6.2 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 matter.

6.3. If a 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 as to whether to disqualify him or her as Hearing Examiner for that particular hearing.

SECTION 7: NATURE OF PROCEEDINGS

7.1. 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.

7.2 Record of Hearing

- a. Decisions of the Hearing Examiner are based on the record of the hearing.
- b. All hearings are electronically recorded in an audio format which is part of the record.
- c. Copies of the record may be obtained by any interested person. Costs of reproduction of the record are the responsibility of the requesting party.

SECTION 8: RIGHTS AND RESPONSIBILITIES OF PARTIES

8.1. City of Everett

- a. The City may present evidence and testimony, examine and cross-examine witnesses, make recommendations to the Hearing Examiner, and exercise all other rights essential to a fair hearing. The Hearing Examiner may limit testimony and the admission of exhibits to that relevant to the alleged violations.
- b. The City staff shall:
 - 1) Provide notice of the hearing;
 - 2) Prepare a case file to be presented at the Hearing.
 - 3) Make available to the Hearing Examiner and the Respondent the documentation relevant to the case at least 24 hours prior to the hearing. If the City is unable to locate the Respondent for the purpose of providing said documentation, it shall provide an explanation at the hearing of its efforts. At that time the Hearing Examiner will make a determination to proceed with or continue the hearing to allow City to again attempt service of said documentation.

8.2. The following rules apply to the Respondent at the hearing:

- a. The Respondent shall be
 - 1) Given notice of the hearing within a reasonable time as set forth in the EMC. The Respondent may fully participate in the hearing and may present evidence and testimony, examine and cross-examine witnesses, and exercise all other rights essential to a fair hearing.
 - 2) The Respondent may provide the Hearing Examiner with material that supports his/her case. Any submittals may be accepted prior to or at the hearing. If submittals are made prior to the hearing they shall be delivered to the Code Enforcement Officer who is representing the City. The Hearing Examiner may limit testimony and the admission of submitted exhibits based on relevance.

8.3 Absent a voluntary agreement of compliance between the City and the Respondent (see: *Section 10.3*), parties who are named in the notice of violation citation must appear at the open record hearing. If adequate notice has been given, and a named party fails to appear at a scheduled hearing, the Hearing Examiner may issue a Default Order that includes directions for the abatement of the violation,

specific conditions for the abatement, and an assessment of a monetary penalty. The Default Order must be in writing and provide details of notice provided to the Respondent.

8.4 Presence of Legal Counsel at Open Record Hearings or Meetings

- a. Although representation by legal counsel is not required at the open record hearings, all parties participating in the hearings may be represented by legal counsel of their choice and at their expense.

SECTION 9: CONDUCT OF HEARINGS

9.1 Notice Requirements of Hearings and Filings

- a. A person to whom a violation citation has been issued shall appear before the Hearing Examiner at a public hearing on the date set in the violation. If proper notice has been given the absence of the Respondent will not prevent the Hearing from being held and a decision being issued.
- b. Affidavit of Notice. The City shall provide an affidavit or testimony attesting to the notice given of a hearing.

9.2 Behavior at Hearing

- a. All parties, witnesses and observers at the hearing must conduct themselves with civility, and show courtesy to all persons involved in the proceedings. There are to be no vocal outbursts at the hearing.
- b. All testimony at the hearing must be given at a designated microphone. When acknowledged by the Hearing Examiner, a party or witness shall state his/her name and provide testimony in a brief and concise manner. The Hearing Examiner may limit testimony based on relevance.

9.3 Oath or Affirmation. All testimony before the Hearing Examiner shall be given under oath or affirmation of truth.

9.4 Content of the Record. The record of the hearing shall include the testimony presented at the hearing and other materials admitted as exhibits at the hearing. The record shall also include the proposed Findings of Fact and any Orders issued by the Hearing Examiner. Proposed Findings of Fact and Order may be submitted as exhibits by the City and the Respondent. Each hearing must have a list of all exhibits submitted as an exhibit.

9.5. Development of Record at the Hearing

- a. City
 - 1) The City has the burden of proof which requires clear and convincing evidence to prove the violation has occurred. The City makes the initial presentation at the hearing.
 - 2) During its presentation at the Hearing the City shall describe the alleged violation. At this point of the hearing the City shall present all witnesses and evidence that it proposes to submit for the record.

- 3) After the City has presented its testimony and evidence it may submit a recommendation of corrective action for the violation.
- 4) The recommended corrective action may include actions that are necessary to remedy the alleged violation, a time schedule for completion, and Monetary penalties to be impose.

b. Respondent

- 1) After the City has presented its case, the Respondent may submit testimony, witnesses and evidence.
- 2) The Respondent's presentation shall consist of relevant information of the alleged violation. The presentation should also address and respond to the City's submitted testimony and evidence. The Respondent shall present all witnesses and evidence that it proposes to submit for the record.
- 3) The Respondent may submit evidence that describes any corrective action that he or she has taken to alleviate the alleged violation.
- 4) The Respondent may make his/ her own recommendation to the Examiner. The recommendation may include dismissal of the case, corrective action, a time schedule for completion and a proposal for waiver or reduction of the City's recommended monetary penalty, if any.

9.6 Continuance of Hearing

- a. Hearing Examiner. If, in the discretion of the Hearing Examiner, more information is necessary to make a decision or issue an Order, the hearing may be continued to a date certain with notice to the Respondent and City.
- b. At the request of a party. A Respondent or the City may request continuance of the hearing. The request shall be based on reasonable grounds. The Hearing Examiner shall have discretion to grant or deny the request for continuance.

9.7 Evidence

- a. All submitted evidence shall be relevant to the alleged violations.
- b. Copies. Copies of documents may be submitted in lieu of originals. Copies shall be provided whenever possible. If copies are not provided at the open record hearing, the Respondent may be charged for the cost of copying exhibits that are admitted during the hearing. Any documents submitted at the hearing shall become part of the permanent record and shall not be returned to the party.
- c. Photographs must include a date of the photograph. The Hearing Examiner shall have discretion to question the identity of the photographer.
- d. Only the Hearing Examiner has discretion to require a document 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.**

SECTION 10: DECISIONS OF THE HEARING EXAMINER

10.1 Written Decisions

- a. The Hearing Examiner may issue a written Order immediately after the close of the record for the hearing. If issued at that time, the Parties will be given a copy of the Order immediately after the hearing. If a Respondent failed to attend the hearing or leaves the hearing before receiving a copy of the Order will be mailed to the Respondent or posted on the property.
- b. The Hearing Examiner may take a matter under advisement and issue an Order at a later date. A copy of the Order will be mailed to the Respondent and provided to the City.

10.2 Content of Order

- a. Findings of Fact. The Findings shall be based on the evidence and testimony admitted in the record of the hearing and on those matters officially noticed.
- b. Conclusions. The Conclusions shall refer to the ordinances that have been violated. If no ordinances have been violated, it shall be stated in the Conclusions.
- c. Order. If the Hearing Examiner determines that a violation has occurred or is occurring, he/she shall issue an Order to the Respondent(s) responsible for the violation. The Order may be issued to any or all of the identified Respondents. The Order may include, but is not limited to:
 - 1) Findings of Fact and Conclusions;
 - 2) The required corrective action;
 - 3) The date which the correction must be completed;
 - 4) The monetary penalties and costs of enforcement and the date due.
- d. If the Hearing Examiner determines that a violation occurred and was abated prior to the hearing, the Hearing Examiner may issue an Order finding a violation occurred and was proven by the City. Notwithstanding any pre-hearing abatement, the Order may include monetary penalties and costs of enforcement of the violation. The Order will establish at what date the monetary penalty is payable. Violations established by an Order may serve as a first offense for subsequent repeat offenses pursuant to EMC 1.20.020.E.

- 10.3. Stipulated Agreements. The City and the Respondent may enter into a written stipulation for corrections of violations. The signed stipulation between the City and Respondent shall include a proposed Order for review by the Hearing Examiner. If the stipulation is consistent with the law and procedures and is presented at a public hearing, it may be signed by the Hearing Examiner. If signed, the Order has the same legal effect as any other Order issued by the Hearing Examiner.

SECTION 11: RECONSIDERATION

Any party may request that the Hearing Examiner reconsider a decision by filing a Request for Reconsideration with the Examiner no later than 7 calendar days from the date the decision is issued. Such request must identify any findings or conclusions alleged to be erroneous and include a supporting argument, but may not introduce new evidence unless allowed by this Section 11. Requests for Reconsideration shall be

limited to allegations of factual errors or mistakes of law, and limited new evidence. The Request for Reconsideration shall be filed with the Hearings Examiner of the City of Everett. A copy of the request shall be provided to the City of Everett Code Enforcement Officer assigned to the matter to provide a response to the request. A copy of any response provided by the Code Enforcement Officer shall be sent to the Respondent and the Hearings Examiner.

New evidence may only be alleged under extraordinary circumstances and at the sole discretion of the Hearing Examiner, be added to the record upon a showing that the evidence was unavailable at the time of hearing despite reasonable diligence.

SECTION 12: APPEALS OF DECISIONS

A final decision of the Hearing Examiner may be appealed to superior court in accordance with RCW 36.70C.

SECTION 13: CLERICAL ERRORS

Clerical errors in Orders or other parts of the record, and errors arising from oversight or omission, may be corrected by Order at the Hearing Examiner's initiative or in response to a motion of a party.

SECTION 14: CONFLICTS

In the event of a conflict between these rules and a provision of the EMC, the provision of the EMC controls.