

# ORIGINAL

## RESOLUTION NO. 88

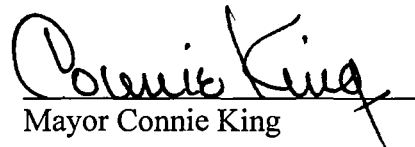
### A RESOLUTION OF THE CITY OF SHORELINE, WASHINGTON, ADOPTING RULES OF PROCEDURE FOR PROCEEDINGS BEFORE THE HEARING EXAMINER OR THE PLANNING COMMISSION OF THE CITY OF SHORELINE

WHEREAS, the City Council wishes to establish the rules of procedure by which proceedings before the Shoreline Hearing Examiner and the Planning Commission are conducted; NOW, THEREFORE,

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

Section 1. Establishment of Rules of Procedure. The City Council hereby adopts those "Rules of Procedure for proceedings before the Hearing Examiner or the Planning Commission of the City of Shoreline, Washington", a copy of said rules being attached hereto as "Exhibit A".

**ADOPTED BY THE CITY COUNCIL ON JUNE 24, 1996.**

  
Mayor Connie King

**ATTEST:**

  
Sharon Mattioli, CMC  
City Clerk

**RULES OF PROCEDURE FOR PROCEEDINGS BEFORE THE HEARINGS  
EXAMINER, PLANNING COMMISSION, OR CITY  
COUNCIL OF THE CITY OF SHORELINE, WASHINGTON**

**CHAPTER I: OPEN RECORD HEARINGS ON LAND USE  
APPLICATIONS AND APPEALS**

**Application of these Rules**

These Rules apply to pre-decision public hearings on land use applications and open record appeals of administrative decisions that approve, condition, or deny a land use application.

**SECTION 1: DEFINITIONS**

- 1.1 “Appellant” means a person, organization, association or other similar group who files a complete and timely appeal of a decision that provides for an open record appeal hearing.

“Applicant” means a person who is the owner of the subject property or the authorized representative of the owner of the subject property, and who has applied for land use permits.

“City Council” means the City of Shoreline City Council.

“City” means City of Shoreline, Washington.

“Comprehensive Plan” means all policies, resolution, and ordinances of the City that govern or apply to land use in the City.

“Closed Record Appeal” means an administrative appeal on the record to the Decision Making Body following an open record hearing on a project permit application when the appeal is on the record with no new evidence or information allowed to be submitted and only appeal argument allowed.

“Decision Making Body” means either the Hearings Examiner, the Planning Commission, or the City Council of the City of Shoreline.

“Ex parte communication” means written or oral communications to any member of the Decision Making Body about a matter pending before the Decision Making Body not included in the public record and made outside of a public hearing.

“Hearing” means the proceeding at which testimony and exhibits of evidence are presented to the Decision Making Body.

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“Hearings Examiner” means the Hearings Examiner or the Hearings Examiner Pro Tem of City of Shoreline.

“Interested Person” means any individual, partnership, corporation, association, or public or private organization of any character, that may be affected by proceedings before the Decision Making Body and shall include any party in a contested case.

“Land Use Application” means any application for a land use action undertaken in accordance with the Development Code of the City of Shoreline.

“Motion” means a written request made to the Decision Making Body, for an order or other ruling.

“Open Record Hearing” means a hearing that creates the record through testimony and submission of evidence and information. An open record hearing may be either a pre-decision hearing or an appeal of a decision made without an open record hearing.

“Party of record” means:

- a. A person who testifies at a hearing;
- b. The applicant;
- c. Persons submitting written testimony about a matter pending before the Decision Making Body.

“Record” means the oral testimony and written exhibits submitted at the hearing. The tape recording of the proceeding shall be included as part of the record.

“SCC” means City of Shoreline Code.

## **SECTION 2: JURISDICTION**

The Decision Making Body’s jurisdiction is limited to those issues where ordinance or other appropriate authority grants the Decision Making Body the authority to make a decision, recommendation, or issue an order.

## **SECTION 3: DISMISSAL**

- 3.1 An appeal may be dismissed without a hearing if the Decision Making Body determines that it fails to state a claim for which the Decision Making Body has jurisdiction to grant relief, or it is without merit on its face, frivolous, or brought merely to secure delay.

- 3.2 Any party may request dismissal of all or part of an appeal at any time with notice to all parties. The Decision Making Body may make a ruling on a motion to dismiss based upon written arguments or may call for oral arguments.

## **SECTION 4: EX PARTE COMMUNICATION**

- 4.1 a. No person, nor his or her agent, employee, or representative, who is interested in a particular application or appeal currently pending before the Decision Making Body shall communicate ex parte, directly or indirectly, with any member of the Decision Making Body concerning the merits of that or a factually related application or appeal. This rule shall not prohibit ex parte communications concerning procedural matters. All allowed ex parte procedural communications should be directed to the Development Services Coordinator.
- b. No member of the Decision Making Body shall communicate ex parte directly or indirectly with any person, nor his or her agent, employee or representative, interested in a particular application or appeal that is pending before the Decision Making Body with regard to the merits of that, or a factually related petition or application.
- c. If a prohibited ex parte communication is made to or by any member of the Decision Making Body, such communication shall be publicly disclosed, and proper discretion shall be exercised by the decision maker on whether to disqualify himself or herself from the Decision Making Body for that particular hearing.

## **SECTION 5: NATURE OF PROCEEDINGS**

### **5.1 Expeditious Proceedings**

It is the policy of the City of Shoreline that, to the extent practicable and consistent with requirements of law, public hearings shall be conducted expeditiously. In the conduct of such proceedings the Decision Making Body, City staff, and all parties, or their agents, shall make every effort at each stage of a proceeding to avoid delay.

### **5.2 Frequency**

Hearings will normally be scheduled on Wednesday evenings at 7:00 pm. Each case shall be noted to commence at a particular time. There may be more than one case scheduled to commence at the same time, and in such event the Decision Making Body shall have discretion in setting the agenda.

### **5.3 Format**

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The format for a public hearing will be of an informal nature designed in such a way that the evidence and facts relevant to a particular proceeding will become available to the Decision Making Body and easily ascertainable by a reviewing body. The format will allow development of a record by parties.

5.4 View Trip

When necessary, the Decision Making Body may inspect the site prior or subsequent to the hearing. The view trip is not part of the record. Failure to inspect the site will not render the Decision Making Body's recommendation or decision void.

5.5 Record of Hearing

- a. Record. Hearings shall be electronically recorded and such recordings shall be a part of the official case record. Copies of the electronic recordings, or transcripts thereof, of a particular proceeding shall be made available to the public on request. The reasonable cost of such copying or transcript shall be paid by the requester.
- 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.

5.6 Computation of Time

Computation of any period of time prescribed or allowed by these rules 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 a Saturday, Sunday or a City, national or State holiday, the period shall run until the end of the next following business day.

**SECTION 6: RIGHTS AND RESPONSIBILITIES OF PARTIES**

6.1 Rights of City

The City staff shall have the right to present evidence and testimony, object, make motions, arguments, recommendations and all other rights essential to a fair hearing.

6.2 Rights of Applicant

Every applicant or appellant shall have the right of notice, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing. Further, the applicant shall have right to timely access of the City's staff report.

The Decision Making Body 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 Decision Making Body shall control the amount and style of cross-examination.

6.3 Rights of Parties of Record

Every party of record shall have the right to present evidence and testimony at hearings. The right of parties of record to cross-examine, object, submit motions and arguments shall be at the discretion of the Decision Making Body. The Decision Making Body may impose reasonable limitations on the number of witnesses heard and the nature and length of their testimony.

6.4 Responsibilities of City Staff

The City Staff shall: provide a staff report consistent with Section 7.6 of these rules; provide notice of hearings; present materials at the hearings; provide the Decision Making Body with documentation relevant to the case; provide revised plans if received with 15 days of hearing.

6.5 Responsibilities of Applicant

Whenever possible the applicant shall, prior to the hearing, provide the Decision Making Body with material that supports his/her application; be prepared for questions by the Decision Making Body; and be courteous to all who participate in these proceedings.

6.6 Responsibilities of Parties of Record and All Others at Hearing

Parties, witnesses or observers shall conduct themselves with civility and deal courteously with all involved in the proceedings. Failure to do so will result in removal from the hearing.

**SECTION 7: FILING AN APPEAL**

7.1 Compliance with Rules

All appeals must comply with these Rules and with the requirements established in the applicable City of Shoreline ordinance(s) under which the appeal is filed.

7.2 Timeliness

To be considered timely filed, an appeal must be received no later than 5 p.m. on the last day of the appeal period.

7.3 Fee

Any filing fee as required by Shoreline City Code shall accompany an appeal.

#### 7.4 Contents

An appeal must be in writing and contain the following:

- a. A brief statement as to how the appellant is significantly affected by or interested in the matter appealed;
- b. A brief statement of the appellant's issues on appeal, noting appellant's specific exceptions and objections to the decision or action being appealed;
- c. The relief requested, such as reversal or modification;
- d. Signature, address, and phone number of the appellant, and name and address of appellant's designated representative, if any.

### **SECTION 8: PRESIDING OFFICIALS**

#### 8.1 Presiding Officials

- a. Hearings shall be presided over by a Hearings Examiner or the presiding official of the Planning Commission.
- b. The Decision Making Body shall have all of the authority and duties as granted in state statutes, SCC and other City rules or ordinances. Included in the duties of the Decision Making Body 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 Decision Making Body shall have all powers necessary to that end, including the following:
  1. To administer oaths and affirmations;
  2. To issue subpoenas;
  3. To rule upon offers of proof and receive evidence;
  4. To regulate the course of the hearings and the conduct of the parties and their agents;
  5. To question any party presenting testimony at the hearing;
  6. To hold conferences for settlement, simplification of the issues, or any other proper purpose;
  7. To require briefs on legal issues;
  8. To consider and rule upon all procedural and other motions appropriate to the proceedings; and,
  9. To make and file recommendations or decisions.

- c. Interference. In the performance of adjudicative functions, the Decision Making Body shall not be subject to the supervision or direction of any elected official, officer, employee or agent of any municipal department.

## 8.2 Presence of Legal Counsel at Public Hearings or Meetings

- a. Although representation by legal counsel is not required at the hearings, 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 a representative of the City of Shoreline Attorney's Office may be present at the public hearings or meetings to advise on matters of law and procedure. If there is no representative of the City Attorney's office at the hearing, the Decision Making Body shall have authority to seek legal memorandum of legal issues raised at hearing from the City Attorney.
- c. 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 Decision Making Body's office at least one week in advance of the scheduled hearing date. The above mentioned documents shall be available to the public in advance of the scheduled hearing date.

## **SECTION 9: CONDUCT OF HEARINGS**

### 9.1 Notice Requirements of Hearings and Filings

- a. All notice and time requirements and methods of notification shall be consistent with the provisions as set forth in the SCC.
- b. Certificate of Notice: An affidavit or declaration attesting to the notice given of a public hearing, including dates and places of publication and list of those mailed to, shall be made part of each official case record.

### 9.2 Prehearing Conference

- a. The Decision Making Body may hold a conference prior to the hearing to structure the scope of the hearing. The Decision Making Body may use the conference for:
  - 1. Identification, clarification, and simplification of the issues;
  - 2. Disclosure of witnesses to be called and exhibits to be presented;
  - 3. Argument of motions based on law;



4. Other matters deemed by the Decision Making Body appropriate for the orderly and expeditious disposition of the proceedings.
- b. Prehearing conferences may be held by telephone conference call.
- c. The Decision Making Body shall give reasonable notice to parties of any prehearing conference. Notice may be written or oral.
- d. All parties shall be represented at any prehearing conference unless they waive the right to be present or represented.
- e. Following the prehearing conference, the Decision Making Body may issue an order reciting the actions taken or ruling on motions made at the conference.
- f. At the hearing the Decision Making Body shall develop for the record the time, purpose and result of the conference.

### 9.3 Oath or Affirmation

All testimony before the Decision Making Body shall be given under oath or affirmation to tell the truth. Either the presiding official of the Planning Commission, the Hearings Examiner, or the clerk shall administer the oath or affirmation.

### 9.4 Content of the Record

The record of a hearing conducted by the Decision Making Body shall include, but not be limited to, the following materials:

- a. The application or appeal;
- 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 Decision Making Body;
- f. Recordings made on electronic equipment; and
- g. An environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA) (if applicable).

### 9.5 Development of Record at the Public Hearing

A public hearing usually will include, but not be limited to, the following elements: a brief introductory statement of the Decision Making Body's process by the Decision Making Body; a report by the departmental staff that shall include introduction of the official file, reference to visual aids and a summary of the recommendation of the Department; testimony by the applicant or petitioner and cross examination of these witnesses; testimony in support; testimony of opposing parties; opportunity for cross-examination and rebuttal; and, opportunity for questions by the Decision Making Body.

## 9.6 Content and Form of Staff Reports

The staff report on a land use application shall include the following, if relevant to the application:

- a. Names and addresses of the owner(s) and applicant(s) of the subject property and his/her property interest in the property that is the subject of the hearing.
- b. A brief summary of the requested action and the citation of the ordinance controlling the request.
- c. A common description of the subject property and a legal description of the subject property.
- d. A statement as to which zoning code regulations for City of Shoreline apply to the request.
- e. A technical data summary of the Comprehensive Plan designation and zoning designation of the subject property; the current development of the subject property and the adjoining properties; topographical information; geological and soils information; information on the vegetation on the property; and, any other relevant scientific, environmental or engineering information germane to the case.
- f. The current access to the subject property and the proposed access to the subject property.
- g. An in-depth analysis of the proposed project. This analysis may include, but not be limited to, the following elements of review:
  1. Natural features;
  2. Character and design, including population figures;
  3. Human resources;
  4. Housing;
  5. Economic development;
  6. Transportation;
  7. Community facilities, services and institutions;
  8. Government jurisdiction boundaries;

9. Neighborhoods;
  10. Land use plans; and,
  11. Land use regulations.
- 
- h. A history of the requested action and a history of the development in the surrounding properties. In making the analysis, the staff shall refer to applicable ordinances as often as possible.
  - i. A summary of any other requested land use permits in the area.
  - j. The compatibility and impact of the proposal on the existing development and the probable character of the proposal.
  - k. A summary of the reports or recommendations of any other agencies consulted.
  - l. Appropriate maps of the subject property.
  - m. The results of the determination pursuant to the State Environmental Policy Act.
  - n. Staff's conclusions and recommendations.

The staff report shall be distributed to the Decision Making Body, the applicant and made available to the public.

#### 9.7 Continuances of Hearings

##### a. Decision Making Body

If, in the opinion of the Decision Making Body, more information is necessary in order to make a recommendation or decision, or the Decision Making Body is unable to hear all of the public comments on the matter, the hearing may be continued with a certain date. If continued to a specific time and place, and posted on the door of the hearing room, no further notice of that hearing need be given. Continuances shall be consistent with the provisions of the SCC.

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

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. The request must be reasonable. If the request is made orally at the hearing it must be based on reasonable grounds. The Decision Making Body shall have discretion to grant or deny the request for continuance.

#### 9.8 Evidence

- a. Burden of proof. For an application, the applicant shall have the burden of establishing that the application is in compliance with applicable laws and regulations of Washington State and the City of Shoreline. For an appeal, the appellant shall have the burden of establishing that the recommendation or decision is not supported by the preponderance of the evidence.
- b. Admissibility. The hearing generally will not be conducted according to strict legal rules relating to evidence and procedure. 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 Decision Making Body 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 an extra copy of all documents to the Decision Making Body as a working copy.
- d. Judicial Notice. The Decision Making Body may take judicial notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within his or her specialized knowledge. The Decision Making Body shall not take notice of disputed adjudicative facts that are at the center of a particular proceeding.
- e. Occasionally the Decision Making Body may allow a document to be filed after the close of testimony but before the hearing Record is closed.
- f. Additional evidence may only be submitted upon a Request for Reconsideration based on a new evidence not available at the time of the public 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.
- g. 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 10: WITHDRAWAL OF APPLICATION OR PETITION**

### **10.1 Withdrawal Prior to Service of Official Notice**

If a withdrawal request is made before the official notice of the public hearing is given, the applicant or petitioner shall notify the City of the withdrawal request and the withdrawal shall be automatically permitted.

## 10.2 Withdrawal Made Any Other Time

If a withdrawal request is made at any time other than that mentioned in 10.1, the Decision Making Body shall use discretion in allowing or disallowing the request.

# **SECTION 11: RECOMMENDATIONS AND DECISIONS**

## 11.1 Written Recommendations and Decisions

For permits that require City Council approval, a written report of findings, conclusions and recommendations shall be forwarded to the City Council and the parties of record after the conclusion of a public hearing. The findings, conclusions and recommendations shall indicate how the recommendations carry out the goals, policies, plans and requirements of the SCC and other policies and objectives of the City.

## 11.2 Content of Recommendation or Decision

A recommendation shall include a statement of:

- a. The nature and background of the proceeding.
- b. Findings of Fact. The findings shall be based exclusively on the evidence presented in the hearing and those matters officially noticed. The Findings of Fact shall consist of a concise statement of facts necessary to support conclusions and each fact found upon each contested issue of fact.
- c. Conclusions. Whenever practical, the conclusions shall be referenced to specific provisions of the law and regulations or both, together with reasons and precedents relied upon to support the same. The conclusions shall make reference to the effect of the recommendation with reference to the Comprehensive Plan, as well as the effect of both approval and denial on property in the vicinity, business or commercial aspects, if relevant, and on the general public.
- d. The appropriate rule, order or relief. The recommendation shall be based upon a consideration of the whole record and supported by reliable, probative and substantial evidence. All decisions and recommendations may include conditions of approval.

## 11.3 Procedure for Reconsideration and Reopening Hearing

- a. At any time prior to the filing of the final decision or recommendation, the Decision Making Body 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 rebuttal arguments.

- b. If within five (5) days after the public hearing any party of record petitions the Decision Making Body for a reopening of the hearing, the Decision Making Body shall have discretion to reopen the hearing to consider new testimony or new evidence that was unavailable at the time of the hearing.
- c. Reconsideration.
  - 1. Any party of record may file with the Decision Making Body a written request for reconsideration. The request must be filed within five (5) working days of the date of the Decision Making Body's recommendation or decision. The request shall specifically set forth alleged errors of fact, law or procedure as addressed in the Decision Making Body's decision or recommendation. The request may also include direction to a specific issue that was inadvertently omitted from the Decision Making Body's recommendation or decision.
  - 2. The Decision Making Body shall act within five (5) working days after the date of the filing of the request for reconsideration, or at its next regular meeting, by either denying the request or approving the request.
  - 3. If the Decision Making Body approves the request, the original recommendation or decision shall be corrected or amended, or, the Decision Making Body can set the matter for additional hearing to correct the record or any deficiencies of the recommendation or decision. If an additional hearing is required the notice of said hearing shall be mailed to all parties of record not less than five (5) days from the order of the Decision Making Body.

## **SECTION 12: APPEALS**

- 12.1 When the Decision Making Body has issued a recommendation or decision, the recommendation or decision may be appealed to the Decision Making Body or the Superior Court as specified by City ordinance. Any appeal must clearly state the alleged errors of fact or law and include a specific request for relief.

## **SECTION 13: CONFLICTS**

- 13.1 These rules of procedure are adopted to supplement the requirements set forth of the SCC. Any conflicts between these rules and the provisions of the zoning code will be decided consistent with the provisions of the zoning code.

**RULES OF PROCEDURE FOR CLOSED RECORD HEARINGS BEFORE  
A DECISION MAKING BODY  
OF THE CITY OF SHORELINE, WASHINGTON**

**CHAPTER II:  
RULES OF APPEAL  
FOR LAND USE APPLICATION  
RECOMMENDATIONS AND DECISIONS**

**Application of these Rules**

These Rules apply to closed record appeals of recommendations and decisions that approve, deny, or condition a land use application. A closed record appeal is one where no additional evidence or information is allowed to be submitted and only appeal argument is allowed.

**SECTION 1: DEFINITIONS**

The definitions contained in Chapter I, "Open Record Hearings on Land Use Applications And Appeals," shall apply to this Chapter.

**SECTION 2: FILING AN APPEAL**

**2.1 Compliance with Rules**

All appeals must comply with these Rules and any supplementary requirements established in the applicable City of Shoreline ordinance(s) under which the appeal is filed.

**2.2 Timeliness**

To be considered timely filed, an appeal must be received no later than 5 p.m. on the last day of the appeal period.

**2.3 Fee**

Any filing fee as required by Shoreline City Code shall accompany an appeal.

**2.4 Contents**

An appeal must be in writing and contain the following:

- a. A brief statement as to how the appellant is specifically affected by or interested in the matter appealed;
- b. A brief statement of the appellant's issues on appeal, noting appellant's specific exceptions and objections to the decision or action being appealed;
- c. The relief requested, such as reversal or modification;
- d. Signature, address, and phone number of the appellant, and name and address of appellant's designated representative, if any.

### **SECTION 3: DISMISSAL**

- 3.1 An appeal may be dismissed without a hearing if the Decision Making Body determines that it fails to state a claim for which the Decision Making Body has jurisdiction to grant relief, or it is without merit on its face, frivolous, or brought merely to secure delay.
- 3.2 Any party may request dismissal of all or part of an appeal at any time with notice to all parties. The Decision Making Body may make a ruling on a motion to dismiss based upon written arguments or may call for oral arguments.

### **SECTION 4: EX PARTE COMMUNICATION**

- 4.1
  - a. No person, nor his or her agent, employee, or representative, who is interested in a particular appeal or application currently pending before the Decision Making Body shall communicate ex parte, directly or indirectly, with any member of the Decision Making Body concerning the merits of that or a factually related appeal or application. This rule shall not prohibit ex parte communications concerning procedural matters. All allowed ex parte procedural communications should be directed to the Development Services Coordinator.
  - b. No member of the Decision Making Body shall communicate ex parte directly or indirectly with any person, nor his or her agent, employee or representative, interested in a particular appeal or application that is pending before the Decision Making Body with regard to the merits of that, or a factually related appeal or application.
  - c. If a prohibited ex parte communication is made to or by any member of the Decision Making Body, such communication shall be publicly disclosed and proper discretion shall be exercised by the decision maker on whether to disqualify himself or herself from the Decision Making Body for that particular hearing.

### **SECTION 5: WITHDRAWAL**



- 5.1 An appeal may be withdrawn only by the appellant.
- 5.2 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.
- 5.3 An appellant's request to withdraw shall be granted as a matter of right and the appeal dismissed.

#### **SECTION 6: PARTIES REPRESENTATIVE REQUIRED**

- 6.1 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 Decision Making Body of the name, address and telephone number of that 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 7: NOTICE OF HEARING**

##### **7.1 Contents**

The notice of hearing shall be mailed to the applicant, appellant, and respondent, and shall include:

- a. The time, place, and nature of the hearing;
- b. The file number, address, or other identifying information for the underlying decision or action being appealed;
- c. A brief statement as to the issue(s) to be considered;
- d. The name and phone number of the Department official responsible for the appeal.
- e. The deadline for submitting any written argument to the Decision Making Body.

##### **7.2 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 10 calendar days.

### 7.3 Responsibility for Mailing

The City Clerk shall be responsible for mailing the notice of a closed record appeal hearing.

### 7.4 Certificate of Notice

An affidavit or declaration attesting to the notice given of the hearing, including dates and places of publication and a list of those mailed to, shall be made part of each official case record.

## **SECTION 8: PARTIES' RIGHTS AND RESPONSIBILITIES**

- 8.1 Parties have the right to be represented by an attorney. Representation by an attorney is not required.
- 8.2 Where a party has designated a representative, the representative shall exercise the rights of the party.
- 8.3 All parties and others participating in and observing hearings shall conduct themselves with civility and deal courteously with all persons involved in the proceedings.

## **SECTION 9: DEFAULT**

- 9.1 The Decision Making Body 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 10: HEARING FORMAT**

- 10.1 Appeal hearings, although generally informal in nature, shall have a structured format and shall be conducted in a manner deemed by the Decision Making Body to make the relevant evidence most readily and efficiently available to the Decision Making Body and to provide the parties a fair opportunity for hearing. The Decision Making Body may impose reasonable limitations on the length of argument.
- 10.2 The order of hearing will generally be as follows:
  - a. Decision Making Body's introductory statement;
  - b. Background presentation by Department;

- c. Appellant's argument;
  - d. Respondent's argument;
  - e. Appellant's rebuttal argument;
- 10.3 Notwithstanding the provisions of the Shoreline City Code, the order of hearing may be modified or a different order established as the Decision Making Body 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 Decision Making Body's approval.
- 10.4 The order of presentation at hearing shall not alter or shift any burden(s) or presumption(s) established by applicable law(s).

#### **SECTION 11: BURDEN OF PROOF**

- 11.1 The appellant shall have the burden of establishing that the recommendation or decision is not supported by the preponderance of the evidence.

#### **SECTION 12: RECORD**

- 12.1 The record on an appeal shall include:
- a. Land use application decision or action being appealed;
  - b. Appeal statement;
  - c. Record of open record hearing proceedings including the tape recording of open record hearing;
  - d. Transcript of open record hearing. The reasonable costs of preparing the transcript shall be paid by the appellant;
  - e. Written arguments submitted by parties (optional).

#### **SECTION 13: DECISION**

- 13.1 A decision of the Decision Making Body 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 Decision Making Body finds relevant, credible, and requisite to the decision, based on the record of proceedings.
- c. Conclusions. Conclusions based upon the evidence and specific provisions of law.
- d. Decision. The Decision Making Body's decision as to outcome of the appeal (affirm, modify, reverse, or remand) based upon a consideration of the whole record.

## **SECTION 14: RECONSIDERATION**

- 14.1 Any party of record may file with the Decision Making Body a written request for reconsideration. The request must be filed within five (5) working days of the date of the Decision Making Body's decision. The request shall specifically set forth alleged errors of fact, law or procedure as addressed in the Decision Making Body's decision. The request may also include direction to a specific issue that was inadvertently omitted from the Decision Making Body's decision.
- 14.2 The Decision Making Body shall act within five (5) working days after the date of the filing of the request for reconsideration by either denying the request or approving the request.
- 14.3 If the Decision Making Body approves the request, the original decision shall be corrected or amended, or, the Decision Making Body can set the matter for additional hearing to correct the record or any deficiencies of the decision. If an additional hearing is granted, the notice of said hearing shall be mailed to all parties of record not less than five (5) days from the order of the Decision Making Body.

## **SECTION 15: JUDICIAL APPEALS**

- 15.1 The final decision of the Decision Making Body may be appealed to the Superior Court as provided by RCW 36.70C.

## **SECTION 16: CONFLICTS**

- 16.1 These rules of procedure are adopted to supplement the requirements set forth in the City's zoning code. Any conflicts between these rules and the provisions of the zoning code will be decided consistent with the provisions of the zoning code.