



Req. #8249

**RESOLUTION NO. 34935**

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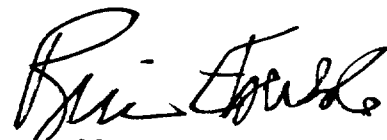
WHEREAS Tacoma Municipal Code Chapter 1.23 provides for Rules of Procedure ("Rules") for the Hearing Examiner, and

WHEREAS changes to the Rules for hearings are necessary in order to conform them to recent changes in the law, clarify ambiguities, and correct errors; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the proper officers of the City are hereby authorized to approve the Draft Amendments to the Rules of Procedure for Hearings for the Hearing Examiner for the purposes hereinabove enumerated, said document to be substantially in the form of the proposed amendment on file in the office of the City Clerk.

Adopted OCT 17 2000

  
Mayor

  
Attest: City Clerk

Approved as to form and legality:

  
Assistant City Attorney

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# REQUEST FOR ORDINANCE OR RESOLUTION

CITY CLERK USE

Request #:

8249

Ordinance #:

Resolution #:

34935

1. DATE: September 21, 2000

2. REQUESTING DEPARTMENT/DIVISION/PROGRAM HEARING EXAMINER	3. CONTACT PERSON (for questions): Sue Evans	PHONE/EXTENSION 5196
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4. PREPARATION OF RESOLUTION IS REQUESTED FOR THE CITY COUNCIL MEETING OF TUESDAY OCTOBER 17, 2000.

5. SUMMARY TITLE/RECOMMENDATION: (A concise sentence, as it will appear on the Council Agenda)

Request for approval of the Draft Amendments to the Rules of Procedure for Hearings for the Hearing Examiner.

6. BACKGROUND INFORMATION/GENERAL DISCUSSION: (Why is this request necessary? Are there legal requirements? What are the viable alternatives? Who has been involved in the process?)

The changes to the Rules of Procedure for Hearings is necessary to conform the Rules to recent changes in the law and to clarify ambiguities and to correct errors in the current Rules.

7. FINANCIAL IMPACT: (Future impact on the budget.)

8. LIST ALL MATERIAL AVAILABLE AS BACKUP INFORMATION FOR THE REQUEST AND INDICATE WHERE FILED:

Source Documents/Backup Material	Location of Document
Letter to the Honorable Mayor and City Council	Attached
Draft Amendments to Rules of Procedure	Attached

9. FUNDING SOURCE: (Enter amount of funding from each source)

Fund Number & Name:	State \$	City \$	Other \$	Total Amount
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If an expenditure, is it budgeted?  Yes  No Where? Org #

10. ATTORNEY CONTACT: (Enter Name of Attorney that you've been working with)

2000 SEP 22 AM 9:44  
CITY CLERK'S OFFICE  
RECEIVED

901

 11. Department Director/Utility Division Approval	Approved as to Availability of Funds  Director of Finance	 City Manager/Director Utilities Approval
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City of Tacoma  
Hearing Examiner

September 21, 2000

Honorable Mayor and Members  
of the City Council  
City of Tacoma, Washington

RE: Proposed Amendments to Hearing Examiner Rules of Procedure for  
Hearings

Attached are proposed amendments to the Hearing Examiner Rules of Procedures for Hearings. For the most part, the amendments proposed are intended to conform the Rules to recent changes in the law, to clarify ambiguities, and to correct errors in the current Rules. The changes proposed to the Rules are summarized below:

1. The proposed changes to Rule 1.04 are to conform the language of the rule to recently enacted *Tacoma Municipal Code (TMC)* 13.05.010.J.5 (Ordinance No. 26645) relating to time limits for issuance of Hearing Examiner's decisions and recommendations.
2. Changes to Rule 1.08.5 address the issuance of subpoenas in proceedings before the Hearing Examiner and track the language of *TMC* 1.23.105 and further clarify an ambiguity in the referred-to Code section as to whether an attorney for a party may issue subpoenas under his or her signature.
3. Proposed amendments to Rule 1.17 – Termination of Jurisdiction are intended to allow correction of Hearing Examiner decisions and recommendations beyond the time period for termination of jurisdiction.
4. Change in language to Rule 2.10(c) merely corrects an error in the existing rule.
5. The amendments proposed to Rule 2.20 and 3.10 reflect the recent change in the City's Code (Ordinance No. 26645) that now provides for reconsideration in land use cases.
6. The proposed deletion of "Application for open space current use assessments" in Rule 3.01 reflects the elimination of such matters from the jurisdiction of the Hearing Examiner.

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City Council  
September 21, 2000  
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7. New section 3.06.5 Default is intended to apply the same provisions applicable to appellants in appeal matters to applicants and petitioners (moving parties) in pre-decision cases.

Pursuant to *TMC* 1.23.100, the City Council is required to adopt the Rules under which Hearing Examiner proceedings are conducted.



RODNEY M. KERSLAKE  
Hearing Examiner

/ck

Attached: Draft Amendments Rules of Procedure for Hearings

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#### 1.04 Computation of Time

~~In the computation of any period of time prescribed or allowed in any matter before the Hearing Examiner, the day from which the time period begins to run shall not be included.~~

~~When the last day of the period falls on a weekend or legal holiday, the period shall run until the next working day.~~

Time Computation. In computing any time period set forth in this chapter, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither Saturday or Sunday, nor a legal holiday. Legal holidays are described in RCW 1.16.050.

#### 1.08.5 Subpoenas (New Section)

As authorized by TMC 1.23.100 and .105, subpoenas may be issued by the Examiner compelling the appearance of witnesses and the production of documents and may be served by any person 18 years of age or over, competent to be a witness, but who is not a party to the matter for which the subpoena is issued. Provided, that a subpoena may be issued with like effect by the attorney of record of the party to the matter in whose behalf the witness is required to appear and the form of such subpoena in each case may be the same as one issued by the Examiner except that it shall only be subscribed by the signature of such attorney.

Each witness subpoenaed shall be allowed the same fees and mileage as provided by law to be paid witnesses in the courts of records in the state.

Subpoenas issued in the matter before the Examiner may be enforced in the Tacoma Municipal Court in accordance with TMC 1.23.105.C.

Note: The foregoing rule in regard to the issuance of subpoenas closely tracks the language of TMC 1.23.100 and .105, except that it expressly authorizes subpoenas to be issued by and under signature of attorneys of record in a proceeding. TMC 1.23.105 is ambiguous in regard to service and signature by an attorney of record in a matter. Subsection .105.A only refers to issuance of a subpoena by the Hearing Examiner; however, in Subsection .105.C it is stated in pertinent part, “. . . The Hearing Examiner or attorney issuing a subpoena may petition the Tacoma Municipal Court. . .”

#### 1.17 Termination of Jurisdiction

The jurisdiction of the Examiner terminates upon the end of the period for appealing or seeking review of the Examiner's decision or recommendation. ~~Until that time, corrections in the decision or recommendation may be made by the Examiner on his or~~

her own motion or on motion of a party of record. Notwithstanding the foregoing, clerical mistakes in decisions, orders, or recommendations and errors therein arising from oversight or omission may be corrected by the Examiner at any time on his or her own motion or on the motion of a party of record or if such decision, order, or recommendation is appealed, such mistakes may be so corrected before review is accepted by the reviewing authority.

## 2.10 Dismissal Prior to Hearing

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(c) The appellant lacks standing to bring the appeal. (See Rule ~~2.03~~ 2.04)

## 2.20 Reconsideration

(a) ~~Except in cases involving appeals from decisions of the Land Use Administrator or of the responsible official under the State Environmental Policy Act,~~ Any party feeling that the decision of the Examiner is based on errors of procedure, fact or law may make a written request for reconsideration within 14 calendar days of the issuance of the Examiner's decision. This request shall set forth the alleged errors, and the Examiner may, after review of the record, take such further action as is deemed appropriate, which may include the issuance of a revised decision.

## Section 3

### RULES FOR PRE-DECISION HEARINGS

#### 3.01 Matters Subject to Pre-Decision Hearings

Pre-decision hearings will be held on the following matters:

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~~(b) Applications for open space current use assessments~~

(e)(b) Dangerous sidewalk proceedings

(d)(c) Petitions for street and alley vacations

(e)(d) Applications for preliminary plat approval

In all of these matters, except (e)(d), the Examiner makes a recommendation to the City Council and the Council makes the final decision. The Examiner's decision on a request for preliminary plat approval is the final decision of the City.

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Resolution No. 34935

Adopted: OCT 17 2000

Maker of Motion: Crowley

Seconded: McGavick

Roll Call Vote:

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Mr. Crowley	✓			
Mr. De Forrest	✓			
Mr. Evans	✓			
Mr. Kirby				✓
Dr. McGavick	✓			
Mr. Miller	✓			
Ms. Moss	✓			
Mr. Phelps	✓			
Mayor Ebersole	✓			

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Mr. Crowley				
Mr. De Forrest				
Mr. Evans				
Mr. Kirby				
Dr. McGavick				
Mr. Miller				
Ms. Moss				
Mr. Phelps				
Mayor Ebersole				