

2.36.010 Flood control zone advisory committee.² RCW 86.15.070 provides permissive authority to counties allowing creation of flood control zone district advisory committees. There shall be continued by this chapter advisory committees in the following flood control zone districts:

Cumberland
 Enumclaw
 Evans Creek
 Green River
 Greenwater River
 Kimball Creek
 Patterson Creek
 Sikes Lake
 Southwest Lake Sammamish
 West Lake Sammamish

Advisory committees shall consist of five members, appointed by the executive and confirmed by the council, who are residents of the flood control zone boundary, who shall serve two-year terms or until their successor is appointed and qualified.

Members of the committee shall serve without compensation.

Members of advisory committees will serve as information assemblers and disseminators in flood control zone districts and shall be advisory to the departments of transportation and development and environmental services. (Ord. 12075 § 7, 1995).

¹ CROSS REFERENCES:

Executive finance committee, see K.C.C. chapter 4.24.

Planning committees, see K.C.C. 20.20.040 through 20.20.130.

² [For statutory provisions regarding flood control zone advisory committees, see RCW 86.15.070.]

I. INTRODUCTION

A. Purpose

These rules are adopted as part of the initiative of the King County Council to accomplish regulatory reform. The operation of the hearing examiner system is an important part of the County's permitting and land development approval process.

The examiner system was established to separate the application of regulatory controls from planning; to protect and promote public and private interests; and to expand the principles of fairness and due process in public hearings.

In furtherance of the foregoing purposes, these rules are intended to:

Eliminate delays through the use of active case management and the more efficient use of hearing time;

Reduce costs to participants in the hearing process; and

Facilitate adherence to time limits established by law and ordinance.

B. Interpretation

The rules will be applied to accomplish the foregoing purposes.

The examiners also will be guided, where appropriate, by provisions and interpretations of the Washington Administrative Procedure Act (Chapter 34.05 RCW), the Rules of Civil Procedure (CR), and Rules of Evidence (ER) applicable in the Superior Courts of the State of Washington.

In situations of conflict within these rules, or when the need for interpretation arises, the more specific statement shall govern, and headings may be considered in determining the applicability of a rule.

II. DEFINITIONS

A. "Examiner" means the King County Hearing Examiner and includes a deputy or pro tem examiner assigned to a proceeding.

B. A "motion" is a request to the examiner to issue an order. A motion may be in the form of a written request, or may be made orally during the course of a hearing.

C. "Person" includes individuals, corporations, partnerships, other formal associations, and governmental agencies.

D. "Party" means the applicant, proponent, petitioner or appellant; the owner(s) of property subject to a hearing; the responsible King County agency and any other County department or division with jurisdiction or review authority over a proposal or proceeding which has notified the examiner's office in writing of its request to be a party to the proceeding.

A property owner who has authorized another individual to act as an agent for the development of a parcel of property is not a party unless he/she requests the examiner's office to be designated as such. Persons joining in or concurring with an appeal or

petition are not parties unless they have separately filed the requisite documents and fees for an appeal or petition.

- E. "Intervenor" means a person who has been granted status in a proceeding by specific order of the hearing examiner. Except as specifically limited by the order granting intervention, an intervenor has all the procedural rights of a party.
- F. "Interested Person" is any person who has requested of the responsible County agency or examiner's office notification of proceedings or copies of orders, reports, recommendations or decisions issued in the particular case, or who participates in a hearing by providing evidence, comment or argument. The term does not include a person whose only communication is a signature on a petition or a mechanically or electronically reproduced form, or who has made a standing request for notices or documents encompassing a type of case, or hearings which relate to a geographic area. All parties of record, as defined by KCC 21A.06.865, are interested persons unless they occupy the status of "party" or "intervenor".
- G. "Responsible County Agency" means the King County department, division or office of the executive branch which has the primary responsibility for coordinating the review of an application or appeal, or which issued the decision or recommendation, or took the action, which is the subject of the proceeding. The term includes, if different, the agency responsible for preparing the report required by KCC 20.24.150.

III. JURISDICTION AND INITIATION OF PROCEEDINGS

A. Jurisdiction

1. Dependent upon Specific Delegation

The hearing examiner's jurisdiction is limited to those matters specifically identified in the King County Code or assigned to the examiner by County ordinance or Council motion. Decisions and recommendations by the examiner may expressly retain jurisdiction for purposes which are within the scope of the original matter.

2. When Jurisdictional Issues Can Be Raised

The issue of the examiner's jurisdiction to hear a matter can be raised by the examiner at any time during the course of a proceeding. Jurisdictional questions should be raised by a party or interested person promptly upon becoming aware of facts which give rise to the question.

B. Commencement of Proceedings

Proceedings of the hearing examiner are commenced by:

- 1. Filing with the responsible County agency a notice of appeal to the examiner; or
- 2. Transmittal to the examiner by the responsible County agency of a request for hearing date stating that an application, or other request for action requiring a public hearing, is ready to be heard; or

IX. SUBPOENAS

A party may move for the issuance of a subpoena compelling the attendance of a witness who is necessary for the presentation of the party's case. The motion shall be supported by a statement as to why the witness is necessary and why the moving party believes such witness will be unavailable unless a subpoena is issued. Subpoenas will be issued at the discretion of the examiner and will be delivered to the moving party for service within King County according to law.

Witnesses subpoenaed shall be offered the same fees and allowances, in the same manner and under the same conditions, as provided for witnesses in the Superior Courts for King County by Chapter 2.40 RCW and by RCW 5.56.010. The party requesting issuance of a subpoena shall pay the fees and allowances and the cost of producing records required to be produced by subpoena.

X. PARTIES AND REPRESENTATION

A. Intervention

1. Purpose

a. Intervention as a matter of right.

The examiner shall allow intervention in a proceeding by a person who is not a party who has a substantial property interest in the subject matter of the proceeding, or whose property is likely to be directly affected by the result of the proceeding.

b. Discretionary intervention.

Intervention may be allowed in the discretion of the examiner when participation of the intervenor as a party would be in the public interest.

2. Method

A petition to intervene may be made orally or in writing, subject to the following limitations. Every petition shall be supported by facts sufficient to justify the request. Such facts may be presented by affidavit or, if the petition is oral, by testimony and exhibits.

a. Time limits for petition

- (1) If a pre-hearing conference has been scheduled for which the petitioner has had at least ten (10) days actual notice (or would have received actual notice by exercising reasonable diligence), a petition to intervene as a matter of right shall be submitted at or prior to the pre-hearing conference. (Failure to respond promptly to a written notice of the pendency of a proposed action normally indicates lack of reasonable diligence.) In all other circumstances, a petition to intervene as a matter of right must be submitted prior to or at the opening of the first hearing day.

Failure to submit a timely petition shall constitute waiver of the right to intervene. However, a person who has waived the right to intervene may subsequently petition to intervene at the discretion of the examiner.

- (2) A petition for intervention at the discretion of the examiner should be submitted at the earliest stage in the proceeding that the petitioner has knowledge of facts which give rise to the appropriateness or need for intervention. Petitions submitted subsequent to the introduction of substantial evidence will normally be denied for untimeliness in the absence of a strong showing of need.

b. Content of petition.

A written petition to intervene should state:

- The name, address and telephone number of the person seeking to intervene;
- The name, address and telephone number of petitioner's attorney or other representative, if any;
- The specific nature and extent of petitioner's property interest which may be affected by the proceeding, or the specific reason why intervention would be in the public interest; and
- Petitioner's claim, concern, or other statement of position in regard to the matter in controversy, including a statement as to the desired outcome with respect to petitioner's interest.

c. Disposition of petition.

- (1) Petitions to intervene may be considered and acted upon by the examiner at pre-hearing conferences, may be set for special argument, or may be considered at the hearing. A reasonable opportunity shall be afforded to parties to provide written or oral comment. Action by the examiner may be stated orally on the record, or by written order, or both. Any inconsistency between an oral statement and written order shall be resolved by reliance upon the written order.

- (2) Upon approval, the petitioner becomes an intervenor. The intervenor has all the procedural rights of a party in the county proceedings, subject to the terms of the order granting intervention and any subsequent limitation or expansion as the examiner may impose or direct. Conditions of intervention may include:

- Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest or expertise as shown by the petition or other available information;

- Requiring or limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings;
- Requiring two or more intervenors and/or parties with similar interests to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceeding; and
- Such other terms as will help further the purposes of the proceedings.

(3) The granting of a petition to intervene in proceedings before the examiner does not confer or imply standing to file a petition or bring an action for judicial review. Standing for that purpose will be determined by the court in which such review is sought.

B. Representation Optional

Representation by an attorney is not required as a condition of full participation in any proceeding before the examiner. The examiner will make reasonable accommodations and allowances to assure that persons unfamiliar with these proceedings are enabled to participate effectively.

Any person, group or organization may be assisted by any person of his, her or its choosing for the purpose of presenting written or oral arguments, entering exhibits, or otherwise participating in a hearing.

C. Use of Representative Parties

Multiple parties and interested persons who have similar interests are encouraged to select one or two persons (who may or may not be attorneys) as representatives for the purpose of accepting service of documents, motions and notices, scheduling of hearings, and otherwise facilitating the efficient and economical management of cases having numerous participants. In the absence of selection by the parties or interested persons, the examiner may designate a representative party or parties when reasonably necessary for efficient and economical case management purposes.

D. Rules of Professional Conduct Applicable

Attorneys engaged in the representation of clients before the hearing examiner shall conduct themselves in accordance with all applicable Rules of Professional Conduct, including the display of courtesy to other members of the bar, witnesses and all other persons present in the hearing room.

XI. CONDUCT OF HEARING

A. Order of Proceedings