

## City of Redmond, Hearing Examiner Rules of Procedure

### I. Authority.

The Rules of the Hearing Examiner shall be adopted pursuant to RMC 4.28.060.

### II. Definitions.

#### A. Definitions.

1. "Applicant" means as defined in RZC [21.78](#).
2. "Council" means the Redmond City Council.
3. "Departmental staff" means departments of the City of Redmond, Washington.
4. "Redmond Zoning Code" (RZC) means the City of Redmond Zoning Code.
5. "Examiner" means a duly designated Hearing Examiner of the City of Redmond.
6. "Ex parte communication" means written or oral communications not included in the public record and made outside of a public hearing.
7. "Interested person" means any individual, partnership, corporation, association, or public or private organization of any character, significantly affected by or interested in proceedings before the Hearing Examiner.
8. "Party of record" means as defined in RZC [21.78](#).

### III. Ex Parte Communication.

#### A. Ex Parte Communications.

1. No person, nor his or her agent, employee, or representative, shall communicate ex parte, directly or indirectly, with the Hearing Examiner concerning the merits of any pending application. 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.
2. The Hearing Examiner shall not communicate ex parte directly or indirectly with any person, nor his or her agent, employee or representative, interested in a particular petition or application which is designated for an adjudicatory hearing, with regard to the merits of that, or a factually related petition or application. This rule shall not prohibit ex parte communications concerning procedural matters, nor assistance to the Hearing Examiner in viewing the land or building involved in the hearings.
3. If a substantial 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 on whether to disqualify himself or herself as Hearing Examiner for that particular hearing.

### IV. Nature of Proceedings.

- A. **Frequency.** Hearings are regularly scheduled in accordance with the contract between the City of Redmond and the Hearing Examiner. Alternative times may be arranged at the request of a party subject to examiner, facilities, and opposing party availability.
- B. **Format.** The format for a public hearing will be of an informal nature yet designed in such a way that the evidence and facts relevant to a particular proceeding will become the most readily and efficiently available to the Hearing Examiner.

**C. View Trip.** When necessary to a full understanding of the case, at his or her discretion, the Hearing Examiner may inspect the site prior or subsequent to the hearing.

**D. Record of Hearing.**

**1. Electronic Recording.** Hearings shall be electronically recorded and such recordings shall be a part of the official case record. Copies of the electronic recordings of a particular proceeding shall be made available to the public on request and the reasonable cost of such copying shall be paid by the requester.

**2.** Copies of any written materials in the record may be obtained by any interested person through the City's public records request procedures. The requestor shall be responsible for paying the cost of reproducing such material.

**E. Computation of Time.** Computation of any period of time prescribed by these rules shall begin with the first day following the day on which the act or event initiating such period of time occurs. When the last day is a Saturday, Sunday or national or State holiday, the period shall run until the end of the next following business day.

**F. Expeditious Proceedings.** It is the policy of the Office of the Hearing Examiner that, to the extent practicable and consistent with requirements of law, public hearings shall be conducted expeditiously. In the conduct of such proceedings the Hearing Examiner and all parties, or their agents, shall make every effort at each stage of a proceeding to avoid delay.

**V. Rights and Responsibilities of Parties.**

**A. Rights of Parties.** Every applicant, appellant, and interested party shall have the right of due notice, rebuttal, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing. The Hearing Examiner may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony. Cross-examination is permitted at the Examiner's discretion as necessary for a full disclosure of the facts.

**B. Responsibilities of Parties.** 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.

**C. Notice Requirements of Hearings and Filings.**

**1.** All notice and time requirements and methods of notification shall be governed by the standards as set forth in RZC 21.76.

**2. Affidavit of Notice.** A notarized affidavit attesting to the written notice of a given public hearing shall be made a part of each official case record.

**VI. Presiding Officials.**

**A. Presiding Officials.**

**1.** Hearings shall be presided over by a duly appointed Hearing Examiner.

**2.** The Hearing Examiner shall have all of the authority and duties as granted him or her in RMC 4.28.020, Hearing Examiner. Included in the authority and duties of the Hearing Examiner 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. He or she shall have all powers necessary to that end, including the following:

**a.** To administer oaths and affirmations;

**b.** To issue subpoenas;

- 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 party presenting testimony at the Hearing;
  - f. To hold conferences for settlement, simplification of the issues, or any other proper purpose;
  - g. To consider and rule upon all procedural and other motions appropriate to the proceeding; and
  - h. To make and file recommendations or decisions.
3. **Interference.** In the performance of his or her adjudicative functions, the Hearing Examiner shall not be subject to the supervision or direction of any elected official, officer, employee or agent of any municipal department.
4. Should a Hearing Examiner be disqualified for any reason, an alternate Hearing Examiner may be assigned pursuant to RMC 4.28.090
- B. Presence of Legal Counsel at Public Hearings or Meetings.** At the request and discretion of the Hearing Examiner, a representative of the City Attorney shall be present at public hearings or meetings to advise on matters of law and procedure.

#### **VII. Prehearing Conference**

- A.** The Examiner may, on his/her own order, or at the request of a party, hold a conference prior to the hearing to consider:
- (1) Identification, clarification, and simplification of the issues;
  - (2) Disclosure of witnesses to be called and exhibits to be presented;
  - (3) Motions; and
  - (4) Other matters deemed by the Examiner appropriate for the orderly and expeditious disposition of the proceedings.
- B.** Prehearing conferences may be held by telephone conference call.
- C.** The Examiner shall give notice to all 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, and are granted permission by the Examiner not to attend.
- E.** Following the prehearing conference, the Examiner may issue an order reciting the actions taken or ruling on motions made at the conference.

#### **VIII. Conduct of Hearings.**

- A. Content of the Record.** The record of a hearing conducted by the Examiner shall include, but not be limited to, the following materials:
- 1. The application or petition for appeal;
  - 2. The departmental staff reports;
  - 3. All evidence received, or considered, which shall include all exhibits and other materials admitted;
  - 4. A statement of all matters officially noticed;
  - 5. A decision or a recommended decision containing the findings and conclusions of the Hearing Examiner;
  - 6. The electronic recording of the proceedings; and

7. The environmental determination made pursuant to the State Environmental Policy Act (SEPA), if any.

**B. Development of Record.**

1. A public hearing on a land use application shall include, but not be limited to, the following: a brief introductory statement by the Hearing Examiner; a report by departmental staff which shall include introduction of the official file, reference to visual aids (maps), and a summary of the recommendation of the department; testimony by the applicant and any witnesses; opportunity for cross-examination; testimony of other interested parties; public comment; and rebuttal by the City and the Applicant. The Examiner may ask questions of any person who testified.
2. An open record appeal hearing before the Examiner shall include but not be limited to the following: a brief introductory statement by the Examiner; a concise statement of the decision or action appealed from by City Staff; the Appellant's case, including all witnesses; cross examination of appellant witnesses; the City's case, including all witnesses; cross examination of City witnesses; the Applicant's case (if any) and all witnesses; cross examination of Applicant witnesses; closing statements from Applicant, City, and finally Appellant.

- C. Legal Counsel.** Parties may be represented by legal counsel at all stages of the hearings. The Examiner may, at his or her discretion, set page limits on legal briefing.

**D. Continuances of Hearings.**

1. **Hearing Examiner.** If, in the course of a hearing the Examiner determines information is necessary to make a decision that is not available at the time of the proceedings, the hearing may be continued.
2. **At the request of a Party.** A party may request continuance of a hearing. The request shall be based on reasonable grounds. The Hearing Examiner shall have discretion to grant or deny the request for continuance. If requested prior to the hearing, the request must be made through the Clerk of the Hearing Examiner.
3. **If the date of the continued proceedings is established on the record at a public hearing, no further notice is required.** If the continuance date is determined after adjournment, all parties of record shall be provided not less than 10 days' notice of the date, time, place and nature of the subsequent hearing. Such notice shall also be published in the City official newspaper.

**E. Evidence.**

1. **Burden of Proof.** In each proceeding, the petitioner (the applicant or the appellant) shall have the burden of proof.
2. **Admissibility.** The hearing generally will not be conducted according to court rules relating to evidence and procedure. At the discretion of the Examiner, relevant evidence will be admitted if it is the type which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs.
3. **Copies.** Documentary evidence may be received in the form of copies of excerpts, if the original is not readily available. Upon request, at the discretion of the Examiner, parties shall be given an opportunity to compare the copy with the original.

4. **Official Notice.** The Hearing Examiner may take official notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within his or her specialized knowledge. The Hearing Examiner shall not take notice of disputed adjudicative facts that are at the center of a particular proceeding.
  5. At his or her discretion, the Examiner may request a relevant document not available at the time of hearing to be submitted for the record after the hearing adjourns. Only those documents specifically requested by the Examiner will be admitted. The Examiner may allow parties of record to respond to documents submitted after the close of the record.
  6. **Evidence Received After Close of the Record Not Admitted.** Except for limited circumstances detailed in the reconsideration section, below, evidence will not be admitted after the close of the record.
  7. All parties will be allowed opportunity to make a record of evidence offered and not admitted during the course of the hearing. This record shall include offers of proof.
- G. Oath or Affirmation.** All testimony before the Examiner shall be given under oath or affirmation to tell the truth.

#### **IX. Withdrawal of Application or Appeal.**

- A. Withdrawal Requests.** If an Applicant or Appellant withdraws their petition after service of official notice of hearing, notice of withdrawal and cancellation of hearing shall be provided in the same manner as the notice of public hearing. The Planning Department shall notify the Hearing Examiner of any withdrawal at the time of receipt.

#### **X. Recommendations and Decisions.**

- A. Written Recommendations or Decisions.** A written report of findings, conclusions, and recommendation or shall be forwarded to the City Council and parties of record after issuance.
- B. Content of Recommendations and Decisions.** A recommendation or decision shall include a statement of:
1. The nature and background of the proceeding.
  2. **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 each fact found upon each contested issue.
  3. **Conclusions.** The conclusions shall reference specific provisions of the RZC and other applicable law and shall identify the findings containing evidence upon which each conclusion rests.
  4. **Decision or Recommendation.** The decision or recommendation shall be based upon a consideration of the whole record and shall be supported by reliable, probative and substantial evidence.
- C. Procedure for Reopening Hearing or Rehearing.**
1. At any time prior to the filing of the decision or recommendation, the Examiner may reopen the proceeding for the reception of further evidence. Parties of record shall be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.

## **2. Clarification.**

- a.** Any party of record may request at any time clarification of the decision upon notice to the parties. The Hearing Examiner shall have discretion to provide clarification. Such clarification shall not stay the effect of a decision or change or amend the conclusions of the Hearing Examiner's decision.
- b. Procedure for Clarification.** Any party of record may request at any time clarification of the appeal decision upon notice to other parties. The Hearing Examiner shall have discretion to provide clarification. Such clarification shall not stay the effect of a decision or change or amend the conclusions of the Hearing Examiner's decision

## **3. Reconsideration.**

- a.** Any party of record may file a written request with the Examiner for reconsideration as outlined within the Redmond Zoning Code, or otherwise within 10 business days of the date of the Examiner's decision or recommendation. The request shall explicitly set forth alleged errors of procedure or fact.
- b.** For Type I and Type II matters, new evidence may be offered on reconsideration only if the evidence was unavailable at the hearing and the person offering the evidence could not have discovered the evidence with reasonable diligence. 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.
- c.** For Type III and Type IV matters, no new evidence may be offered on reconsideration.
- d.** The Hearing Examiner shall act upon timely reconsideration requests within the timeline established in RZC 21.76; or otherwise within 10 business days after the date of the filing of the request for reconsideration. The Examiner will either deny the request, issue a revised decision or recommendation, or call for additional proceedings. If an additional hearing is called for, the notice of said hearing shall be mailed to all parties of record not less than seven days prior to the hearing date.

## **XI. Appeals of Final Decisions.**

- A.** When all reconsideration periods have expired and the Hearing Examiner decision is final, the decision may be appealed to the City Council. Appeals must be written and be filed with the Department of Planning and Community Development pursuant to the timelines required within the RZC, otherwise no later than 10 business days after the date of the Hearing Examiner's final action.

## **City of Redmond, Supplemental Hearing Examiner Rules of Procedure Local Improvement District (LID) Hearings**

### **Introduction**

The “Rules of General Application” of this appendix shall apply to all hearings involving LID formation or application of assessments within an LID except where clearly inapplicable or where specifically modified by these supplemental rules. If any conflict exists between the Hearing Examiner Rules and these supplemental rules, the supplemental rule shall control.

### **I. Definitions.**

- A.** “Petitioner” means the City or those individuals who desire to form a local improvement district.
- B.** “Affected property owner” means those individuals who are owners of record of property within a proposed LID.

### **II. Nature of Proceedings.**

- A. Frequency.** Hearings will be scheduled at a convenient time for all interested parties. Normally, hearings will be scheduled during the work hours of the City.

### **III. Rights of Parties.**

- A.** Notice Requirements of Hearings and Filings. A public hearing shall be held on the creation of a proposed local improvement district initiated by petition or by Council resolution. Notice of the hearing shall be provided as established in Chapters 35.43 and 35.44 RCW. The notice of hearing upon the assessment roll shall specify the time and place of hearing and shall notify all persons who may object thereto:
  - 1.** To make their objections in writing and to file them with the City or Town Clerk at or prior to the date fixed for hearing;
  - 2.** That the Council will sit as a board of equalization for the purpose of considering the roll. Pursuant to the authority of RCW 35.44.070, the Redmond City Council delegated the Redmond Hearing Examiner to hold hearings for the purpose of considering the roll;
  - 3.** That at the hearings the Examiner will consider the objections made and will correct, revise, raise, lower, change, or modify the roll or any part thereof or set aside the roll and order the assessment to be made de novo. RCW 35.44.080. Such information shall be provided to the Redmond City Council in the form of a recommendation from the Redmond Hearing Examiner.

### **IV. Conduct of Hearings. (Reserved).**

### **V. Recommendations.**

#### **A. Procedure for Reopening Hearing or Rehearing.**

- 1. Reconsideration.** Any interested person may file a written request for reconsideration of the Examiner’s Recommendation within five days of the date of the Hearing Examiner’s recommendation, unless the City Council has scheduled action on the recommendation sooner than five days following the date of the recommendation in which case a request

for reconsideration must be filed by 4:30 p.m. on the day preceding the day the Council has scheduled action on the recommendation. The request shall specifically set forth alleged errors of procedure or fact. If a request for reconsideration is filed, no Council action shall be taken on the recommendation until a decision on a reconsideration request is issued by the Hearing Examiner. The Hearing Examiner shall respond to the request for reconsideration within 10 business days from the date of filing of the request for reconsideration.

**VI. Appeals.**

- A.** The Hearing Examiner shall issue a recommendation only in LID proceedings to only the City Council which is authorized to issue final decisions. Consequently, there shall be no appeal of the recommendation of the Hearing Examiner. Any person aggrieved by the final action of the City Council may seek judicial review in a court of appropriate jurisdiction.