

Chapter 1.22

PIERCE COUNTY HEARING EXAMINER CODE

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1.22.010 Purpose.

The Council recognizes the need to provide efficient and effective hearing procedures which integrate land use and non land use matters. The purpose of this Chapter is:

- A. To provide orderly procedures for those matters considered within the Pierce County Hearing Examiner system; and
 - B. To create a single appeal system for license, land use, and administrative appeals.
- (Ord. 94-112S § 1 (part), 1994)

1.22.020 Application of Hearing Examiner Code.

The provisions of the Pierce County Hearing Examiner Code, as set forth in this Chapter, shall supersede any conflicting references to Hearing Examiner procedures in the Pierce County Code. (Ord. 94-112S § 1 (part), 1994)

1.22.030 Definitions.

As used in this Chapter, the following terms shall have the following meanings:

- A. "Aggrieved" means adversely affected by proceedings before or decisions of the Examiner, Council, or any Pierce County department.
- B. "Council" means the Pierce County Council.
- C. "County" means Pierce County, together with any of its subdivisions, departments, or agencies.
- D. "Examiner" means the Office of the Pierce County Hearing Examiner or Deputy Examiner.
- E. "Land use matters" includes the items enumerated in subsection 1.22.070 B.1.
- F. "May" means optional and permissive, and does not impose a requirement.

- G. "New evidence" means any and all evidence that is submitted or received after the date the Examiner closes the official record. The official record is closed at the end of the public hearing, unless the Examiner specifically allows the official record to remain open for a time certain.
 - H. "Newspaper of general circulation" means a newspaper which is regularly distributed in (i) one of the four geographic areas identified by the Planning Department and (ii) the area where the subject of the application has been proposed.
 - I. "Non land use matters" includes those items enumerated in subsection 1.22.070 B.2.
 - J. "Official record" means the written and oral information, exhibits, reports, testimony and other evidence submitted in a timely manner and accepted by the Examiner.
 - K. "Parties of record" means those persons or entities who:
 - 1. Testified before the Examiner; or
 - 2. Listed their names on a sign-up sheet, which shall be available during the Examiner's hearings; or
 - 3. Specifically advised the Planning Department or Examiner by individual written letter of their desire to become a party of record; or
 - 4. The applicant or appellant and any of the applicant's or appellant's agents.
 - L. "Person" means any individual, partnership, corporation, association, Pierce County department, or public or private organization.
 - M. "Planning Department" means the Pierce County Planning and Land Services Department, the Director thereof, or his or her designee.
 - N. "Shall" means mandatory and imposes a requirement.
- (Ord. 94-112S § 1 (part), 1994)

1.22.040 Hearing Examiner - Creation.

The office of Pierce County Hearing Examiner is hereby created. (Ord. 94-112S § 1 (part), 1994; Ord. 90-154 § 1 (part), 1990; Res. 20489 § 1, 1978)

1.22.050 Examiner - Qualifications.

The Examiner shall have such training or experience as will qualify the Examiner to conduct administrative or quasi-judicial hearings utilizing land use and other regulatory codes and must have expertise and experience in planning, and should have knowledge or experience in at least one of the following areas: environmental sciences, law, architecture, economics or engineering. (Ord. 94-112S § 1 (part), 1994; Ord. 90-154 § 1 (part), 1990; Res. 20489 § 1, 1978)

1.22.060 Selection of Examiner.

The Examiner shall be selected by the Council. (Ord. 94-112S § 1 (part), 1994; Ord. 90-154 § 1 (part), 1990; Res. 20489 § 1, 1978)

1.22.070 Examiner - Conflict of Interest and Freedom from Improper Influence.

- A. The Appearance of Fairness Doctrine, as set forth in Chapter 42.36 RCW, shall apply to the Examiner and Deputy Examiners.
 - B. No Councilmember, County official, or any other person shall interfere or attempt to interfere with the Examiner or Deputy Examiners in the performance of their designated duties.
- (Ord. 96-19S § 4 (part), 1996; Ord. 95-112 § 1 (part), 1995; Ord. 95-1 § 1, 1995; Ord. 94-112S § 1 (part), 1994)

1.22.080 Examiner - Powers and Duties.

- A. The Examiner shall have the power to appoint Deputy Hearing Examiners subject to confirmation by the Council. The Deputy Hearing Examiners shall assist the Examiner in the performance of the duties conferred upon the Examiner and shall have all the powers and duties of the Examiner.
- B. The Examiner shall receive and examine available relevant information, including environmental documents, conduct public hearings, cause preparation of the official record thereof, prepare and enter findings of fact and conclusions of law, and issue final decisions for:
 - 1. Land Use Matters.
 - a. Applications for zone changes or amendments to the classification of specific parcels of land; provided that area-wide amendments to the Zoning Atlas, amendments to the text of the Zoning Code, community plans, County-wide Comprehensive Plan initiated in whole or part by the County Council, County Departments or Planning Commission are not within the Examiner's jurisdiction.
 - b. Appeals of decisions or orders of a County Administrative Official under the Site Development Regulations.
 - c. Applications for preliminary and final plats.
 - d. Applications for, and major amendments to, Planned Development Districts - PDDs.
 - e. Application for Transfer of Development Rights.
 - f. Applications for Shoreline Management Substantial Development Permits, Variances, Conditional Use Permits and Nonconforming Use Permits pursuant to the Shoreline Management Use Regulations.
 - g. Appeals from any final administrative order or decision of the Planning Department in administration, interpretation or enforcement of the Pierce County Code.
 - h. Appeals contesting the approval or denial of short plats and large lot divisions.
 - i. Applications for, and major amendments to, variances, conditional use permits, public facility permits, permits for the alteration, or expansion or replacement of a nonconforming use.
 - j. Amendments to plats.
 - k. Appeals from the following environmental determinations:
 - (1) final threshold determinations, including revised threshold determinations;
 - (2) determinations of adequacy of final environmental impact statements and supplemental environmental impact statements;
 - (3) the exercise of SEPA substantive authority to condition or deny actions.
 - l. Petitions for Plat Vacations, Alterations, Time Extensions, Revocations, Modifications, Reclassifications.
 - m. Appeals of Cease and Desist Orders.
 - n. Applications for Youth Cabaret licenses.
 - o. Wetland variances and appeals of any order or decision of the Planning Department under the Pierce County Wetland Management Regulations.
 - p. Reasonable use exceptions and any order or decision of the Planning Department under the Critical Areas and Natural Resource Lands Regulations.

- q. Applications for a request for removal of development moratorium pursuant to Title 18H, Development Regulations - Forest Practices.
 - r. Appeals of decisions or orders of the Planning Department under Title 18H, Development Regulations - Forest Practices.
 - s. Any other land use matters assigned by the Council to the Examiner.
 - 2. Non Land Use Matters.
 - a. Appeals of issuance, denials, revocations, or suspensions of business licenses. (Title 5)
 - b. Appeals of potentially dangerous dog declarations. (6.07)
 - c. Appeals of denials of Solid Waste Handling Facility designations. (8.30)
 - d. Referrals from City of Tacoma's Department of Human Rights regarding complaints alleging violations of Fair Housing Regulations. (8.68)
 - e. Appeals from decisions of County in the administration or enforcement of the Road and Storm Drainage Design and Construction Standards. (12.03)
 - f. Appeals from decisions of Public Works Director regarding underground utility installations. (11.22)
 - g. Sewer Assessment Protests. (13.20)
 - h. Appeals from administrative decisions or orders of the Building Official or Fire Marshal regarding the Uniform Construction Codes. (15.04, 15.12)
 - i. Appeals from decisions of the Building and Fire Codes Board of Appeals regarding water mains, fire hydrants, and fire flow standards. (15.40)
 - j. Appeals from any final administrative order or decision of the Planning Department in administration, interpretation or enforcement of the Pierce County Code.
 - k. Any other non land use matter assigned by the Council to the Examiner by ordinance.
 - l. Reimbursement agreement appeals (13.05.080)
 - C. Decision of Hearing Examiner. When acting upon any of the above specific applications or appeals, the Examiner shall have the power to attach any reasonable conditions found necessary to make the project compatible with its environment and to carry out the goals and policies of the applicable comprehensive plan, Shoreline Master Program, or other relevant plan, regulations, Federal or State law, case law or Shorelines Hearing Board decisions.
 - D. The Examiner shall prescribe rules and regulations for the conduct of public hearings before the Examiner and shall distribute them to the Council and to each County Department. The Examiner's rules may also include, but are not limited to: provisions for the issuance of preliminary decisions in complex cases; authorization for parties to propose draft findings of fact; and criteria for determining "expert witnesses" establishment of prehearing conference procedures and mediation sessions.
- (Ord. 98-87 § 2, 1998; Ord. 96-19S § 4 (part), 1996; Ord. 94-112S § 1 (part), 1994; Ord. 90-154 § 1 (part), 1990; Res. 22571, § 2, 1980; Res. 21132 § 2, 1978; Res. 20489 § 1 (part), 1978)

1.22.090 Appeals of Administrative Decisions to the Examiner.

- A. **Right to Appeal.** Any person aggrieved, or any officer, department, board, agency, district or bureau of the County or State affected by any decision of an administrative official, as set forth in Section 1.22.080 B., may file a notice of appeal.

B. Time Limits.

1. Land Use Matters.

- a. A notice of appeal, together with the appropriate appeal fee, shall be filed at the Planning and Land Services Department within 14 days of the date of an Administrative Official's decision. In the case of an appeal of a Determination of Nonsignificance requiring a comment period which is issued concurrently with a final decision, the appeal period shall be extended to 21 days.
- b. The Administrative Official shall prepare a written report with findings of fact and conclusions of law regarding the administrative decision.
- c. Staff reports shall be filed with the Examiner, mailed to the applicant and appellant and made available to the public at least 10 working days prior to the public hearing scheduled to review the administrative appeal. Copies shall be provided to the public upon request at the cost of reproduction.
- d. The public hearing, if applicable, shall be scheduled no later than 70 days from the date a notice of appeal is filed. The Examiner shall render a final decision regarding the appeal no later than 90 days from the date a notice of appeal is filed.
- e. If the Examiner has been requested to render a decision on an appeal in writing without conducting a public hearing, as set forth in Section 1.22.090 F.2., then the written briefs shall be submitted to the Examiner within 30 days of the Department's receipt of a filed notice of appeal.

2. Non Land Use Matters. Refer to the applicable code.

C. Content of Notice of Appeal. A Notice of Appeal on an administrative decision shall, at a minimum, contain the following information:

1. Name and mailing address of the appellant and his/her agent or representative, if any;
2. A copy of any decision, license, order or environmental determination which is being appealed;
3. A concise statement of the factual and legal basis for the appeal citing specifically the alleged errors in the administrative official's decision; and
4. The specific relief sought.

D. Consolidation.

1. If more than one person files an appeal of an administrative decision on a proposal, the Examiner shall consolidate such appeals for review at one public hearing. However, the appeal of a Determination of Significance, as set forth in Title 18D, Development Regulations - Environmental, may occur separately and prior to the public hearing on the underlying permit as determined by the Hearing Examiner.
2. Appeals of the adequacy of an FEIS or SEIS or threshold determination of a DNS/MDNS, as set forth in Title 18D, Development Regulations - Environmental, shall be consolidated with the public hearing on the merits of the proposal. If no public hearing process exists for a proposal, review of the FEIS, SEIS or DNS/MDNS shall be heard as determined by the Hearing Examiner.

E. Notice Provisions. Notice for an appeal of an administrative decision to be reviewed at a public hearing shall be in conformance with Section 1.22.110, Public Hearing.

F. Review Procedure.

1. The Hearing Examiner shall conduct a public hearing to review appeals including:
 - a. the Administrative Official's findings, conclusions, and determination;
 - b. all evidence admitted into the record; and
 - c. by taking sworn testimony.
2. The Hearing Examiner may render a decision on an appeal, in writing, without holding a public hearing when the parties agree that no issues of fact are to be decided. When issues of law are to be determined and opposing parties agree, they may request the Hearing Examiner to render a decision based upon written briefs. The Hearing Examiner shall render a written decision within 10 working days of receipt of the briefs.

G. Burden of Proof. A decision of the Administrative Official shall be entitled to substantial weight. Parties appealing a decision of the Administrative Official shall have the burden of presenting the evidence necessary to prove to the Hearing Examiner that the Administrative Official's decision was clearly erroneous.

H. Scope of Authority. The Examiner may reverse or affirm, wholly or in part, or may modify the Administrative Official's order, requirement, decision or determination. If the Hearing Examiner reverses the Administrative Official's decision, the entire action shall be remanded to the Administrative Official for an action consistent with the Hearing Examiner's decision.

I. Dismissal of Appeal. The Hearing Examiner has the authority to summarily dismiss an appeal of an Administrative Official's decision without hearing when such appeal is determined by the Examiner to be without merit on its face, frivolous, or brought merely to secure a delay.

(Ord. 96-19S § 4 (part), 1996)

1.22.100 Departmental Report to the Examiner.

- A. Land Use Matters.** When a land use matter has been set for public hearing, the Planning Department shall coordinate and assemble the comments and recommendations of other County departments and governmental agencies having an interest in the subject application and shall prepare a report to include a summary of the facts involved and the Planning Department's findings and recommendations. The Planning Department shall also make a specific recommendation to approve, deny, modify, or conditionally approve the subject application based upon the contents of the application, the Planning Department's findings, the applicable comprehensive plan, and all other applicable plans or regulations adopted by the Council or Federal or State law.
- B. Non Land Use Matters.** When a non land use matter has been set for public hearing, the applicable department shall coordinate and assemble the comments and recommendations of other County departments and governmental agencies having an interest in the subject application and shall prepare a report to include a summary of the facts involved and the Department's findings and recommendations. The Department shall also make a specific recommendation to approve, deny, modify, or conditionally approve the subject application based upon the contents of the application, the Department's findings and all other application plans or regulations adopted by the Council.

- C. Staff reports shall be filed with the Examiner, mailed to the applicant and appellant, and made available to the public at least five working days prior to the scheduled hearing. Copies shall be provided to the public upon request at the cost of reproduction.
- D. If any person demonstrates to the Examiner that the staff report was not made available or mailed in a timely manner pursuant to subsection C. above, and requests a continuance, the Hearing Examiner may continue the hearing or leave the official record open to a date certain. If no request is made, the right to raise the issue of untimeliness shall be waived.

(Ord. 96-19S § 4 (part), 1996; Ord. 94-112S § 1 (part), 1994; Ord. 90-154 § 1 (part), 1990; Res. 20489, 1978)

1.22.110 Public Hearing.

- A. **Public Hearing Required.** Unless otherwise provided, the Hearing Examiner shall hold one public hearing before rendering a decision on any application or approval.
- B. **Notice Methods.** Notice of the time and place of the public hearing shall be given as provided in the ordinance governing the application or appeal. If the ordinance governing the application or appeal does not contain notice provisions, notice of the time and place of the hearing before the Examiner shall be published in a newspaper of general circulation at least 14 days prior to the hearing and mailed to the applicant, appellant, project sponsor and any individuals requesting notice.
- C. All public hearings conducted by the Hearing Examiner shall be tape-recorded. Any testimony provided shall be under oath.
- D. The Examiner may require County staff to appear at the public hearing.
- E. The opportunity to cross-examine expert witnesses, including County staff, shall be afforded all parties or their counsel during the public hearing process.
- F. The hearing by the Examiner shall constitute the hearing by the Council; however, except as otherwise provided by Pierce County Code, an aggrieved party of record may appeal certain decisions of the Examiner to the Council pursuant to Section 1.22.140 and Chapter 1.24 PCC, "Procedures for Quasi-Judicial Hearings."
- G. If for any reason the hearing on the matter set for public hearing cannot be completed on the date set for such hearing, the Examiner may direct that the hearing on the matter be continued. If the date, time, and place at which the continued hearing will be held is publicly announced at the hearing from which the continuance is made, then no further notice of the continued hearing is required.

(Ord. 97-84 § 5 (part), 1997; Ord. 96-19S § 4 (part), 1996; Ord. 94-112S § 1 (part), 1994; Ord. 90-154 § 1 (part), 1990; Res. 20489, 1978)

1.22.120 Examiner's Decision.

- A. When the Examiner renders a decision he or she shall make and enter findings of fact from the record and conclusions of law thereof which support such decision. The findings of fact shall be supported by substantial evidence in the record and the conclusions of law shall be based upon the policies of the applicable Comprehensive Plan, Shoreline Master Program, Subdivision Regulations, Environmental Regulations; the standards set forth in the various land use regulatory codes of the County or any other relevant plan, regulation, Federal or State law, case law, case specific Shorelines Hearing or Growth Management Hearing Board decisions, or any other applicable law.

- B. All decisions of the Examiner shall be rendered within ten working days following the conclusion of all testimony and hearings and closing of the record, unless a longer period is mutually agreed to by the applicant or appellant and the Examiner. Upon issuance of the Examiner's decision, the Examiner shall transmit a copy of the decision by certified mail to the applicant or appellant and by regular mail to other parties of record.

(Ord. 96-19S § 4 (part), 1996; Ord. 94-112S § 1 (part), 1994; Ord. 90-154 § 1 (part), 1990; Res. 20489, 1978)

1.22.130 Reconsideration.

Any aggrieved party or person affected by the decision of the Examiner may, within seven working days of the date of the Examiner's written decision, file with the department a written request for reconsideration based on any one of the following grounds materially affecting the substantial rights of said party or person:

- A. Errors of procedure or misinterpretation of fact, material to the party seeking the request for reconsideration.
- B. Irregularity in the proceedings before the Examiner by which such party was prevented from having a fair hearing.
- C. Clerical mistakes in the official file or record transmitted to the Examiner, including errors arising from inadvertence, oversight, or omission, which may have materially affected the Examiner's decision on the matter.

Upon receipt of a request for reconsideration, the Examiner shall review said request in light of the record and take such further action as is deemed proper; including, but not limited to, denying the request, granting the request, with or without oral argument, and may render a revised decision. The decision of the Examiner shall be subject to reconsideration only one time, even if the Examiner reverses or modifies the original decision.

(Ord. 96-19S § 4 (part), 1996; Ord. 95-112 § 1 (part), 1995; Ord. 94-112S § 1 (part), 1994; Ord. 90-154 § 1 (part), 1990; Res. 22487 § 1 (part), 1980; Res. 20489 § 1 (part), 1978)

1.22.140 Appeal of Examiner's Decision.

The Examiner's decision on all matters is final and conclusive unless appealed.

- A. **Environmental.** The decision of the Examiner on matters under Title 18D, Development Regulations - Environmental and Section 1.22.080 B.1.k. of this Chapter shall be appealable only to a court of competent jurisdiction.
- B. **Shoreline.** The decision of the Examiner on matters under Title 20 PCC and Section 1.22.080 B.1.f. of this Chapter shall be appealable to the State Shorelines Hearings Board in accordance with the provisions of Chapter RCW 90.58.
- C. **Land Use.** All land use decisions of the Examiner issued pursuant to Section 1.22.080 B.1., except rezones, shall constitute the final decision of the Council and shall be appealable to a court of competent jurisdiction.
- D. **Non-Land Use.** All non-land use decisions of the Examiner issued pursuant to Section 1.22.080 B.2. shall constitute the final decision of the Council and shall be appealable to a court of competent jurisdiction. This subsection shall supersede any and all provision of the Pierce County Code that contain appeal provisions for non-land use decisions of the Examiner.

E. **Rezones.** For rezones, the Examiner's decision is final unless an aggrieved party of record files a written notice of appeal and pays an appeal fee of \$350.00 to the Planning Department within ten working days from the date of mailing of the Examiner's final written decision; PROVIDED, if the Examiner was requested to reconsider a decision, then the appeal must be filed within ten working days from the mailing of the Examiner's decision on reconsideration. The notice of appeal shall concisely specify each error and/or issue the Council is asked to consider. Upon the timely filing of an appeal, the Planning Department shall forward the original tape(s) containing a verbatim record of the proceedings before the Examiner and ten copies of the Examiner's official record to the Legal Clerk of the Council. The procedures contained in Chapter 1.24 of the Pierce County Code shall govern appeals to the Council filed under this subsection. (Ord. 97-84 § 5 (part), 1997; Ord. 96-19S § 4 (part), 1996; Ord. 94-112S § 1 (part), 1994; Ord. 90-154 § 1 (part), 1990; Res. 22487 § 1 (part), 1980; Res. 20489 § 1 (part), 1978)

1.22.150 Examiner's Report to Council.

The Hearing Examiner shall submit to the Council a quarterly report summarizing the type and nature of the hearings held during the previous quarter. (Ord. 96-19S § 4 (part), 1996; Ord. 94-112S § 1 (part), 1994; Ord. 90-154 § 1 (part), 1990; res. 20489, 1978)

1.22.160 Multiple Applications - Consolidation.

The Examiner may consider two or more applications relating to a single project concurrently, and the findings of fact, conclusions and decision on each application may be covered in one written decision. Additionally, the Examiner may consolidate appeals of environmental determinations and the underlying land use determinations. (Ord. 96-19S § 4 (part), 1996; Ord. 94-112S § 1 (part), 1994; Ord. 90-154 § 1 (part), 1990; Res. 20489, 1978)

1.22.170 Severability.

If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of the Chapter or the application of the provision to other persons or circumstances shall not be affected. (Ord. 96-19S § 4 (part), 1996; 94-112S § 1 (part), 1994)