

**RULES OF PROCEDURE FOR
PROCEEDINGS BEFORE THE HEARING EXAMINER
OF THE TOWN OF YARROW POINT, WASHINGTON**

CHAPTER I: HEARINGS ON PERMIT APPLICATIONS

Purpose

These Rules of Procedure exist to facilitate orderly open record hearings related to land use applications. As noted in Section 1.10, any conflict between the Rules of Procedure and the provisions of the YPMC will be resolved in favor of the YPMC. These rules exist to provide guidance. The provisions in these rules may, at the discretion of the Hearing Examiner, be waived in order to promote hearing fairness and efficiency.

Application of Rules

This Chapter applies to open record hearings on land use applications.

SECTION 1.1: DEFINITIONS

"Applicant" means a person applying for permission for a land use or development regulated by the YPMC.

"Calendar Day" means each day of the calendar week. When the last day of a stated period falls on a Saturday, Sunday, or legal holiday, the stated period shall run until the following work day.

"Clerk to the Hearing Examiner" means a person designated by the Town of Yarrow Point to assist the Hearing Examiner in his/her duties.

"Comprehensive Plan" means the Comprehensive Plan that has been adopted by the Town of Yarrow Point.

"County" means King County, Washington.

"Ex parte communication" means written or oral communications to the Hearing Examiner about a matter pending before the Hearing Examiner not included in the record and made outside of a hearing.

"Hearing" means the proceeding at which the public has the opportunity to provide written and oral testimony to the Hearing Examiner for the record.

"Hearing Examiner" means the Hearing Examiner or the Hearing Examiner Pro Tem of the town of Yarrow Point.

"Motion" means a written request made to the Hearing Examiner for an order or other ruling.

"Notice of Decision" means the written document of the Hearing Examiner that communicates a decision on an action before the Hearing Examiner.

"Open Record Hearing" means a hearing that creates the record on an application through testimony and submission of documents.

"Order" means a written determination of the Hearing Examiner, which directs a party to the proceedings to act or to refrain from acting.

"Party of record" means any person who has testified at the open record hearing on the application, or who submitted substantive written comments on the application (excluding persons who have only signed petitions or mechanically produced form letters), or who, prior to the rendering of the decision, requested notice of the decision; the applicant, or applicant's representative; the property taxpayer; and the Town's administrative staff.

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

"RCW" means the Revised Code of Washington.

"Town" means the Town of Yarrow Point.

"YPMC" means Yarrow Point Municipal Code.

SECTION 1.2: JURISDICTION

The Town Council has authorized the Hearing Examiner to adopt rules of procedure for the conduct of hearings. The Hearing Examiner's jurisdiction is limited to those issues where ordinance or other appropriate authority grants the Hearing Examiner the authority to hold hearings, make decisions or recommendations, and issue orders.

SECTION 1.3: EX PARTE COMMUNICATION

- 1.3.1 No person, nor his or her agent, employee, or representative, who is interested in a particular petition or application currently pending before the Hearing Examiner shall communicate ex parte, directly or indirectly, with the Hearing Examiner concerning the merits of that or a related petition or application. This rule shall not prohibit ex parte communication concerning procedural merits.

- 1.3.2 The Hearing Examiner shall not communicate ex parte directly or indirectly with any person, nor his or her agent, employee or representative, with regard to the merits of a petition or application.
- 1.3.3 If prohibited 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.

SECTION 1.4: NATURE OF PROCEEDINGS

- 1.4.1 Expeditious Proceedings
To the extent practicable and consistent with requirements of law, hearings shall be conducted expeditiously. In the conduct of such proceedings the Hearing Examiner, Town staff, and all parties, or their agents, shall make every effort at each stage of a proceeding to avoid delay.
- 1.4.2 Frequency
Hearings will be scheduled through the Town clerk in coordination with the Hearing Examiner. There may be more than one case scheduled to commence at the same time, and in such event the Hearing Examiner shall have discretion in setting the agenda.
- 1.4.3 Format
The format for a 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 available to the Hearing Examiner and easily ascertainable by a reviewing body. The format will allow development of a record by parties.
- 1.4.4 Site Visit
When necessary in the judgment of the Hearing Examiner, the Hearing Examiner may inspect a site prior or subsequent to the hearing. The site view is not part of the record. Failure to inspect the site will not render the Hearing Examiner's recommendation or decision void.
- 1.4.5 Record of Hearing
a. Hearings shall be electronically recorded and such recordings shall be a part of the record. Copies of the electronic recordings of a particular proceeding shall be made available to the public within three business days of a request. The requester shall pay the reasonable cost of such copying. No minutes of hearings will be kept.

- 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.

1.4.6 Computation of Time

Computation of any period of time prescribed or allowed by these rules, ordinances of the Town of Yarrow Point and the State of Washington 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 legal holiday, the period shall run until the end of the next following working day.

SECTION 1.5: RIGHTS AND RESPONSIBILITIES OF PARTIES

1.5.1 Rights of Town

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

1.5.2 Rights of Applicant

Every applicant shall have the right of notice, cross-examination, presentation of evidence and testimony, 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 as necessary for a full disclosure of the facts, but the Hearing Examiner shall control the amount and style of cross-examination.

1.5.3 Rights of Parties of Record

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

1.5.4 Responsibilities of Town Staff

The Town staff shall provide a staff report, provide notice of hearings, be present at the hearings, and provide the Hearing Examiner with documentation relevant to the case. Staff reports should be available to the public at least seven (7) calendar days before the hearing.

1.5.5 Responsibilities of Applicant

Whenever possible, the applicant shall provide the Hearing Examiner with material that supports his or her case prior to the hearing, be prepared for questions by the Hearing Examiner, and treat all who participate in these proceedings courteously. All supporting materials shall be provided to the Hearing Examiner a minimum of seven (7) calendar days before the hearing.

1.5.6 Responsibilities of All Involved Parties, Witnesses, and Observers

Parties, witnesses, or observers shall conduct themselves with civility and deal courteously with all who participate in the proceedings. Failure to do so will result in removal from the hearing at the discretion of the Hearing Examiner.

SECTION 1.6: PRESIDING OFFICIALS

1.6.1 Presiding Official

- a. The Hearing Examiner shall preside over hearings.
- b. The Hearing Examiner shall have all of the authority and duties as granted him/her in state statutes, YPMC and other Town ordinances. Included in the 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; to maintain order; and to issue decisions in the form of recommendations or final decisions. He/she shall have all powers necessary to that end, including the following:
 1. Receive and examine available information;
 2. Conduct public hearings in accordance with Chapter 42.32 RCW and all other applicable laws, and to prepare a record thereof;
 3. Administer oaths and affirmations;
 4. Issue subpoenas and examine witnesses; provided, that no person shall be compelled to divulge information which he or she could not be compelled to divulge in a court of law;
 5. Regulate the course of the hearing;
 6. Make and enter written findings of fact and conclusions to support his or her decisions;
 7. At the examiner's discretion, hold conferences for the settlement or simplification of the issues;
 8. Conduct discovery;
 9. Dispose of procedural requests or similar matters;
 10. Take official notice of matters of law or material facts;
 11. Issue summary orders in supplementary proceedings; and

12. Take any other action authorized by or necessary to carry out this chapter.
- c. Interference. In the performance of his/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.

1.6.2 Presence of Legal Counsel at Hearings or Public Meetings

- a. 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 and discretion of the Hearing Examiner, the Town attorney may be present at the hearings or public meetings to advise on matters of law and procedure.
- c. 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.
- d. 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 Hearing Examiner's office at least seven (7) calendar days in advance of the scheduled hearing date. The above mentioned documents shall be available to the public at least seven (7) calendar days in advance of the scheduled hearing date. This requirement may be waived by the Hearing Examiner if he deems reasonable to do so.

SECTION 1.7: CONDUCT OF HEARINGS

1.7.1 Notice Requirements of Hearings and Filings

- a. All notice, time requirements, and methods of notification shall be consistent with the provisions as set forth in the YPMC.
- b. Affidavit of Notice. An affidavit attesting to the notice given of a hearing (including dates and places of publication, and list of addressees) shall be part of each record.

1.7.2 Oath or Affirmation

All testimony before the Hearing Examiner shall be given under oath or affirmation to tell the truth.

1.7.3 Content of the Record

The record of a hearing conducted by the Hearing Examiner will usually include the following materials:

- a. The application or petition;
- b. The departmental staff report;
- c. All evidence received, which shall include oral testimony given at the hearing, all exhibits and other materials admitted as evidence, and any written material submitted pursuant to Hearing Examiner order;
- d. A statement of all materials officially noticed;
- e. A decision or a recommended decision containing the findings and conclusions of the Hearing Examiner;
- f. Recordings made on electronic equipment; and
- g. An environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA) (if applicable).

1.74 Development of Record

A hearing usually will include the following elements:

- a. A brief introductory statement of the Hearing Examiner's process;
- b. A report by the departmental staff that may include introduction of the request, reference to visual aids, and a summary of the recommendation of the department;
- c. Testimony by the applicant or petitioner, and cross-examiner of the witnesses;
- d. Testimony of interested parties;
- e. Opportunity for cross-examination and rebuttal; and
- f. An opportunity for questions by the Hearing Examiner.

1.7.5 Content and Form of Staff Reports

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

- a. A list of the 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 identifying applicable Town zoning code regulations;
- 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;
- 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;
- i. A summary of any other requested land use permits in the area;
- j. A description of 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. If photographs of the site are available the applicant is encouraged to provide color reproductions that shall be part of the staff report;
- m. The result of any determination pursuant to the State Environmental Policy Act; and
- n. Staff's conclusions and recommendations

In making the analysis, the staff shall refer to applicable ordinances as often as possible. The staff report shall be provided to the Hearing Examiner as least seven (7) calendar days prior the scheduled hearing with a copy mailed to the applicant and made available for public inspection. Copies shall be provided to all interested parties upon payment of reproduction costs.

1.7.6 Continuances of Hearings

a. Hearing Examiner

If the Hearing Examiner finds that more information is necessary in order to make a recommendation or decision, or he or she is unable to hear all of the public comments on the matter, the hearing may be continued to a specified date. If the hearing is continued to a specific date, time, and place, and notice is posted on the door of the hearing room, no further notice of the hearing need be given. Continuances shall be consistent with the provisions of the YPMC.

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. If the request is made orally at the hearing it must be based on reasonable grounds. The Hearing Examiner shall have discretion to grant or deny the request for continuance. Any party requesting a continuance should confer with the other parties to select a mutually agreeable date to resume the hearings; continuances will more likely be granted with the consent of all parties.

c. Continuances shall be granted for a period of no longer than thirty calendar days.

1.7.7 Evidence

a. Burden of proof. In each proceeding, the applicant shall have the burden of proof to show compliance with applicable laws and regulations of Washington State and the Town of Yarrow Point.

b. Admissibility. The hearing generally will not be conducted in strict adherence to Rules of Evidence. 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 Hearing Examiner 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. A copy of any document presented by any party of record at the hearing should be provided to the Hearing Examiner.

d. Judicial notice. The Hearing Examiner may take judicial notice of judicially cognizable facts, and 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.

- e. The Hearing Examiner may request a document to be filed after the close of public testimony. Only those documents referred to at the hearing may be submitted and only those specifically requested by the Hearing Examiner. Additional evidence may only be submitted upon a Request for Reconsideration based on new evidence not available at the time of the 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.
- f. 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 1.8: WITHDRAWAL OF APPLICATION OR PETITION

1.8.1 Withdrawal Prior to Notice of Hearing

If an applicant provides written notice to the Town of a request to withdraw the application before official notice of the hearing is given, the withdrawal shall be automatically permitted.

1.8.2 Withdrawal Made Any Other Time

Withdrawal requests made at any time other than that mentioned in Section 1.8.1 shall be granted at the sole discretion of the Hearing Examiner.

SECTION 1.9: DECISIONS

1.9.1 Written Decisions or Recommendations

For applications on which the Hearing Examiner has final approval authority, a written report of findings, conclusions and decision shall be sent to all parties of record. The Hearing Examiner's decision or recommendation shall be submitted within 14 calendar days following the conclusion of all testimony and hearings, unless a longer period is mutually agreed to by the Town, Applicant, and Hearing Examiner.

1.9.2 Content of Decision or Recommendation

A decision or recommendation should include a statement of:

- a. The Hearing Examiner's decision;
- b. The nature and background of the hearing;
- c. Findings. The findings are to be based exclusively on the evidence presented in the hearing and those matters officially noticed. The findings should consist of a concise statement of each fact found to support the review criteria.
- d. Conclusions. Conclusions are to discuss a resolution of the review criteria based upon the findings. The conclusions may reference legal criteria.

- e. The decision or recommendation should be based upon a consideration of the whole record and supported by substantial evidence. Decisions and recommendations may include conditions of approval, including the time limit after which any approval shall expire if the proposal is not implemented.
- f. The date of final decision is deemed to be three days after mailing of the decision by the Town, or by providing other reliable notice of the decision.

1.9.3 Procedure for Reopening Hearing

- a. At any time prior to the filing of the final decision or recommendation, the Hearing Examiner may reopen the proceedings for the reception of further evidence or testimony. 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 as required by the YPMC.
- b. If within seven (7) calendar days after the hearing any party of record petitions the Hearing Examiner for a reopening of the hearing, the Hearing Examiner shall have discretion to reopen the hearing to consider new testimony or new evidence that was unavailable at the time of the hearing.

1.9.4 Procedure for Reconsideration

- a. Any party of record may file a written request for reconsideration with the Hearing Examiner within fourteen calendar days of notification of the Hearing Examiner's recommendation or decision, except on a variance application. The request shall explicitly set forth any irregularity in the original open record public hearing prevented the applicant from receiving a fair hearing; new material evidence discovered which the party applying for reconsideration could not have reasonably discovered and produced at the hearing; or one or more errors in law that were objected to at the time of the hearing by the party filing the request for reconsideration and the objection is found to have merit.
- b. The Hearing Examiner shall respond to the request for reconsideration within ten working days after the date the request for reconsideration is filed, by either granting or denying the request. If the Hearing Examiner grants the request for reconsideration, no action shall be taken upon the permit application until after a new open record public hearing has been scheduled with notice given as in the case of a new application, together with notice to all persons entitled to notice of the original decision.
- c. The action of the Hearing Examiner on an application for a variance shall be final and conclusive unless, within 14 calendar days from the date of the action, the

original applicant or an adverse party makes application to the Town Council for reconsideration.

1.9.5 Request For Clarification

Any party who participated at the hearing may request at any time a clarification of the decision. The Hearing Examiner shall have the discretion to provide clarification. Such clarification shall not stay the effect of a decision or amend the conclusions of the Hearing Examiner's decision.

SECTION 1.10: CONFLICTS

The Rules of Procedure are adopted to supplement the requirements set forth in the YPMC. Any conflict between the rules and the provisions of the YPMC will be decided consistent with the provisions of the YPMC.