

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

AMENDED ORDINANCE NO. 13-043

RELATING TO ADMINISTRATION OF QUASI-JUDICIAL HEARINGS; AMENDING
CHAPTERS 2.02, 2.50, 2.76, 3.52, 3.68, 30.43A, 30.43B, 30.71, 30.72, 30.85, 30.91H
and 30.91P SNOHOMISH COUNTY CODE; PROVIDING EFFECTIVE DATES

BE IT ORDAINED:

Section 1. The heading of Chapter 2.02 Snohomish County Code, adopted by
Ordinance 80-115 on December 29, 1980, is amended to read:

Chapter 2.02
((HEARING EXAMINER))OFFICE OF HEARINGS ADMINISTRATION

Sections:

- 2.02.010 ((Purpose))Creation and Purposes.
2.02.015 Office Administrator.
2.02.020 ((Creation of))Hearing Examiner.
2.02.030 Appointment and Terms of Deputy and Pro Tem Examiners.
2.02.040 Qualifications.
2.02.050 Removal.
2.02.060 Freedom from Improper Influence.
2.02.070 Conflict of Interest.
2.02.080 Organization.
2.02.090 Rules.
2.02.100 Examiner Powers.
2.02.122 Procedures for ((appeal-of)) Land Use Decisions Authorized under
Title 30 SCC.
2.02.125 Procedures for Appeals Within the Examiner's Jurisdiction.
2.02.127 Filing Location for Appeals.
2.02.130 Report of Department.
2.02.140 ((Open Record))Public Hearings.
2.02.155 ((Hearing examiner's))Examiner's Decision.
2.02.160 Notice of Examiner's Decision.
2.02.165 Definitions.
2.02.170 Reconsideration of ((hearing examiner))Examiner's Decision.
2.02.185 Clerical Mistakes -- Authority to Correct.
2.02.195 ((Appeal to Court from))Judicial Review of Examiner's Decision.
2.02.200 ((Examiner's)) Report to Council and Planning Commission.

- 1 2.02.210 Interlocal Agreements.
- 2 2.02.215 Severability.

3
4 Section 2. Snohomish County Code section 2.02.010, last amended by
5 Ordinance 96-003 on February 21, 1996, is amended to read:

6
7 **2.02.010 ((Purpose))Creation and Purposes.**

8 Pursuant to those powers inherent in the home rule charter county, the
9 office of hearings administration is hereby created. The ((purpose))purposes of
10 this chapter ((is))are:

11 (1) ~~((to))~~To establish a quasi-judicial hearing system which will ensure
12 procedural due process and appearance of fairness in regulatory hearings;
13 provide an efficient and effective hearing process for quasi-judicial matters; and
14 comply with state laws regarding quasi-judicial land use hearings.

15 (2) Provide for the management of the office of hearings administration
16 and the administrative management, assignment and supervision of the required
17 clerks and staff of the board of equalization and boundary review board and for
18 the assignment of an employee to serve as ex officio clerk of the ethics
19 commission in accordance with county code.

20
21 Section 3. A new section 2.02.015 is added to Snohomish County Code chapter
22 2.02 to read:

23
24 **2.02.015 Office Administrator.**

25 (1) The office of hearings administration shall be under the administrative
26 supervision of the administrator and shall be separate and not a part of the
27 executive branch. The administrator of the office of hearings administration shall
28 be appointed by the council for terms which shall initially expire one year
29 following the date of original appointment and thereafter expire two years
30 following the date of each reappointment. The administrator shall be subject to
31 the county exempt personnel system.

32 (2) The administrator shall manage and administer the activities of the
33 office and shall establish policies and procedures for such management and
34 administration and submit any required reports. The administrator shall prepare
35 and submit to the executive annual budget estimates for the office as provided in
36 SCC 4.26.030. Except for deputy examiners and examiners pro tem appointed
37 by the county council pursuant to SCC 2.02.030, the administrator shall appoint
38 all employees of the office in accordance with the rules of the county personnel
39 system and exempt personnel system. The administrator may delegate functions,
40 powers and duties to other officers and employees of the office as the
41 administrator deems expedient to further the purposes of this chapter. Subject to
42 the provisions of the county charter, the provisions of Title 3A SCC, and
43 amendments thereto, and budget and appropriation controls, the administrator

1 may create, assign, and reassign functions and positions within the office and
2 direct and supervise all functions of the office.
3

4 Section 4. Snohomish County Code section 2.02.020, adopted by Ordinance 80-
5 115 on December 29, 1980, is amended to read:
6

7 **2.02.020 ((Creation of))Hearing Examiner**

8 Pursuant to those powers inherent in the home rule charter county, the
9 ((office))position of Snohomish county hearing examiner, hereinafter referred to
10 as examiner, is hereby created. The administrator shall serve as the examiner.
11 The examiner shall interpret, review and implement land use regulations as
12 provided by ordinance and may perform such other quasi-judicial functions as
13 are delegated by ordinance. Unless the context requires otherwise, the term
14 examiner as used herein shall include deputy examiners and examiners pro tem.
15

16 Section 5. Snohomish County Code section 2.02.030, last amended by
17 Ordinance 00-008 on March 29, 2000, is amended to read:
18

19 **2.02.030 Appointment and Terms of Deputy and Pro Tem Examiners.**

20 The council shall appoint ((the examiner and)) any deputy examiners for
21 terms which shall initially expire one year following the date of original
22 appointment and thereafter expire two years following the date of each
23 reappointment. The council may also by professional service contract appoint for
24 terms and functions deemed appropriate by the council, examiners pro tem to
25 serve in the event of absence or inability to act of the examiner or deputy
26 examiners.
27

28 Section 6. Snohomish County Code section 2.02.040, adopted by Ordinance 80-
29 115 on December 29, 1980, is amended to read:
30

31 **2.02.040 Qualifications.**

32 Examiners shall be appointed solely with regard to their qualifications for
33 the duties of their office and will have such training and experience as will qualify
34 them to conduct administrative or quasi-judicial hearings on regulatory
35 enactments and to discharge such other functions conferred upon them.
36 Examiners shall hold no other elective or appointive office or position in county
37 government. Service as administrator as provided in this chapter shall not be
38 considered a separate appointive office or position.
39
40

1 Section 7. Snohomish County Code section 2.02.050, adopted by Ordinance 80-
2 115 on December 29, 1980, is amended to read:

3
4 **2.02.050 Removal.**

5 The administrator or ((An))a deputy or pro tem examiner may be removed
6 from office for cause by the affirmative vote of the majority of the council.
7

8 Section 8. Snohomish County Code section 2.02.080, adopted by Ordinance 80-
9 115 on December 29, 1980, is repealed.

10
11 Section 9. Snohomish County Code section 2.02.100, last amended by
12 Ordinance 12-007 on March 21, 2012, is amended to read:

13
14 **2.02.100 Examiner Powers.**

15 ~~((The examiner))~~All examiners shall have the authority to:

- 16 (1) Receive and examine available information,
17 (2) Conduct public hearings and prepare a record thereof,
18 (3) Administer oaths and affirmations,
19 (4) Examine witnesses, PROVIDED That no person shall be compelled to
20 divulge information which he or she could not be compelled to divulge in a court
21 of law,
22 (5) Regulate the course of ~~((the))~~ hearings,
23 (6) Make and enter decisions,
24 (7) At the examiner's discretion, hold conferences for the settlement or
25 simplification of issues and/or for establishment of special hearing procedures,
26 (8) Dispose of procedural requests or similar matters,
27 (9) Issue summary orders as provided for in SCC 2.02.125 and in
28 supplementary proceedings,
29 (10) Issue and enforce subpoenas as provided by rule under SCC
30 2.02.090, and
31 (11) Take any other action authorized by or necessary to carry out this
32 chapter.

33 The above authorities may be exercised on all matters for which
34 jurisdiction is assigned to the examiner either by county ordinance or by other
35 legal action of the county or its elected officials. The examiner's decision shall be
36 final and conclusive and may be reviewable by the council, the shorelines
37 hearings board or court, as applicable. The nature of the examiner's decision
38 shall be as specified in this chapter and in each ordinance which grants
39 jurisdiction.
40
41

1 Section 10. Snohomish County Code section 2.02.122, adopted by Ordinance
2 02-098 on December 9, 2002, is amended to read:

3
4 **2.02.122 Procedures for ((appeal of)) Land Use Decisions Authorized**
5 **Under Title 30 SCC.**

6 ((The provisions of this chapter relating to procedures for appeals within
7 the hearing examiner's jurisdiction shall not apply to decisions and appeals
8 authorized pursuant to Title 30 SCC. The provisions of Title 30 SCC pertaining to
9 decisions and administrative appeals for permits and approvals authorized by
10 Title 30 SCC shall be the exclusive procedures for such administrative decisions
11 and appeals.)) Examiner land use decisions authorized under title 30 SCC shall
12 be governed by the applicable procedures set forth in that title; PROVIDED, that
13 the provisions of this chapter shall supplement any procedures set forth in title 30
14 SCC to the extent the provisions of this chapter do not conflict with provisions of
15 title 30 SCC.
16

17 Section 11. Snohomish County Code section 2.02.125, last amended by
18 Ordinance 12-007 on March 21, 2012, is amended to read:

19
20 **2.02.125 Procedures for Appeals Within the Examiner's Jurisdiction.**

21 Administrative appeals over which the examiner has jurisdiction shall be
22 subject to the following procedural requirements:

23 (1) Appeals shall be addressed to the hearing examiner but shall be filed
24 in writing with the department whose decision is being appealed within 14
25 calendar days of the date of action or, in those cases requiring personal or
26 certified mail service, the date of service of the administrative action being
27 appealed.

28 (2) An appeal must contain the following items in order to be complete.
29 The examiner, if procedural time limitations allow, may allow an appellant not
30 more than 15 calendar days to perfect an otherwise timely filed appeal if such
31 appeal is incomplete in some manner.

32 (a) Specific identification of the order, permit, decision, determination or
33 other action being appealed (including the county's file number whenever such
34 exists). A complete copy of the document being appealed must be filed with the
35 appeal;

36 (b) The specific grounds upon which the appellant relies, including a
37 concise statement of the factual reasons for the appeal and, if known,
38 identification of the policies, statutes, codes, or regulations that the appellant
39 claims are violated;

40 (c) The name, mailing address and daytime telephone number of each
41 appellant together with the signature of at least one of the appellants or of the
42 attorney for the appellant(s), if any;

43 (d) The name, mailing address, daytime telephone number and signature
44 of the appellant's agent or representative, if any; and

1 (e) The required filing fee.

2 (3) ~~((Timely))~~ Except for appeals filed under SCC 9.10.030(2), the timely
3 filing of an appeal shall stay the effect of the order, permit, decision,
4 determination or other action being appealed until the appeal is finally disposed
5 of by the examiner or withdrawn; PROVIDED, That filing of an appeal from the
6 denial of a permit shall not stay such denial. Failure to file a timely and complete
7 appeal shall constitute waiver of all rights to an administrative appeal under
8 county code.

9 (4) No new appeal issues may be raised or submitted after the close of the
10 time period for filing of the original appeal.

11 (5) The department whose decision is being appealed shall forward the
12 appeal to the ~~((examiner's))~~ office within three working days of its filing.

13 (6) The ~~((examiner's))~~ office, within three working days after receipt of the
14 appeal, shall send written notice of the filing of the appeal by first class mail, to
15 the person named in an order or to the person who initially sought the permit,
16 decision, determination or other action being appealed, whenever the appeal is
17 filed by other than such person.

18 (7) The examiner may summarily dismiss an appeal in whole or in part
19 without hearing if the examiner determines that the appeal is untimely,
20 incomplete, without merit on its face, frivolous, beyond the scope of the
21 examiner's jurisdiction or brought merely to secure a delay. The examiner may
22 also summarily dismiss an appeal if he/she finds, in response to a challenge
23 raised by the respondent and/or by the permit applicant and after allowing the
24 appellant a reasonable period in which to reply to the challenge, that the
25 appellant lacks legal standing to appeal. Except in extraordinary circumstances,
26 summary dismissal orders shall be issued within 15 working days following
27 receipt of either a complete appeal or a request for issuance of such an order,
28 whichever is later.

29 (8) Appeals shall be processed by the examiner as expeditiously as
30 possible, giving proper consideration to the procedural due process rights of the
31 parties. An appeal hearing shall be held before a final decision is issued unless
32 the summary dismissal provisions of subsection (7), above, are utilized or the
33 appeal is withdrawn. The examiner may consolidate multiple appeals of the same
34 action for hearing and decision making purposes where to do so would facilitate
35 expeditious and thorough consideration of the appeals without adversely
36 affecting the due process rights of any of the parties.

37 (9) Notice of appeal hearings conducted pursuant to this section shall be
38 given as provided below not less than 15 calendar days prior to the hearing:

39 (a) The ~~((examiner's))~~ office shall give notice of all appeal hearings by first
40 class mail (unless otherwise required herein) to:

41 (i) the appellant;

42 (ii) the appellant's agent/representative, if any; and

43 (iii) the respondent (by interoffice mail); and

1 (iv) to the person named in an order or to the person who initially sought
2 the permit, decision, determination or other action being appealed, whenever the
3 appeal is filed by other than such person; and

4 (v) parties of record as defined by SCC 2.02.165.

5 (b) At a minimum, the following information shall be included in the notice:

6 (i) description of order, decision, determination, or other action being
7 appealed, assigned county file number, and county contact person,

8 (ii) the date, time and place of public hearing if scheduled at the time of
9 notice, and

10 (iii) any other information determined appropriate by the applicable
11 department.

12 (10) Notices required by the above subsections shall be deemed adequate
13 where a good-faith effort has been made by the county to identify and mail notice
14 to each person entitled thereto. Notices mailed pursuant to the above
15 subsections shall be deemed received by those persons named in an affidavit of
16 mailing executed by the person designated to mail the notices. The failure of any
17 person to actually receive the notice shall not invalidate any action.

18 (11) The appeal hearing and examiner consideration of the appeal shall
19 be limited solely to the issues identified by the appellant pursuant to SCC
20 2.02.125(2).

21
22 Section 12. Snohomish County Code section 2.02.140, last amended by
23 Ordinance 96-003 on February 21, 1996, is amended to read:

24
25 **2.02.140 ((Open Record))Public Hearings.**

26 (1) Where a public hearing is required by statute or ordinance, the
27 examiner shall hold at least one ~~((open record))~~public hearing prior to rendering a
28 decision on any such matter. All testimony at any such hearing shall be taken
29 under oath. Notice of the time and place of the ~~((open record))~~public hearing
30 shall be given as required by county ordinance. At the commencement of the
31 hearing the examiner shall give oral notice of the opportunity to become a party
32 of record as provided for in SCC 2.02.165.

33 (2) Each ~~((person))~~principal party participating in ~~((an open record))~~a
34 public hearing shall have the following rights, among others:

35 (a) To call, examine and cross-examine witnesses (subject to reasonable
36 limitation by the examiner in accordance with the ~~((examiner's))~~ adopted rules of
37 procedure) on any matter relevant to the issues of the hearing;

38 (b) To introduce documentary and physical evidence;

39 (c) To rebut evidence against him/her; and

40 (d) To represent him/herself or to be represented by ~~((anyone of his~~
41 ~~choice who is lawfully permitted to do so))~~ an attorney licensed to practice law in
42 the state of Washington.

43

1 Section 13. Snohomish County Code section 2.02.155, adopted by Ordinance
2 02-098 on December 9, 2002, is amended to read:

3
4 **2.02.155 (~~Hearing examiner's~~)Examiner's Decision.**

5 (1) A final decision on appeal shall be issued within 15 (~~calendar~~)
6 working days of the conclusion of a hearing, unless the appellant agrees in
7 writing to extend the time period, or the time period has been extended by a
8 request for reconsideration, or under some other authority.

9 (2) The (~~hearing~~) examiner may affirm, may reverse in whole or in part,
10 or may modify the permit or decision being appealed, or may remand the
11 application to the applicable department for further processing.

12 (3) If the application is remanded to the applicable department for further
13 processing, the (~~hearing~~) examiner's decision shall not be considered a final
14 decision except for purposes of the applicable time limitations contained in this
15 section. The (~~hearing~~) examiner's decision shall specify procedures for
16 responding to the order. If a new decision is issued by the applicable department,
17 a new appeal period shall commence in accordance with SCC 2.02.125.

18 (4) The (~~appeal~~) decision shall include findings of fact based upon the
19 record and conclusions of law therefrom which support the decision.

20 (5) The (~~hearing~~) examiner's decision shall include information on, and
21 any applicable time limitations for, requesting reconsideration or for appealing the
22 decision.

23
24 Section 14. Snohomish County Code section 2.02.160, last amended by
25 Ordinance 02-098 on December 9, 2002, is amended to read:

26
27 **2.02.160 Notice of Examiner's Decision.**

28 (~~A~~)The office shall mail a copy of the examiner's decision (~~shall be~~
29 ~~mailed~~) by certified mail, return receipt requested, to the appellant, and by inter-
30 office or regular mail, as appropriate, to any other party of record within the time
31 period allowed by SCC 2.02.155.

32
33 Section 15. Snohomish County Code section 2.02.165, last amended by
34 Ordinance 02-098 on December 9, 2002, is amended to read:

35
36 **2.02.165 Definitions.**

37 Unless the context clearly requires otherwise, the definitions in this section
38 shall apply throughout this chapter.

39 (1) "Parties of record" means for each appeal:

40 (a) The appellant;

41 (b) All persons, county departments and/or public agencies who
42 testified at the appeal hearing;

43 (c) All persons, county departments and/or public agencies who
44 individually submitted written comments concerning the specific matter

1 into the hearing record prior to the close of the appeal hearing (excluding
2 persons who have only signed petitions or mechanically produced form
3 letters); and

4 (d) All persons, county departments and/or public agencies who
5 specifically request notice of decision by entering their name and mailing
6 address on a register provided for such purpose at the appeal hearing.
7

8 A party of record to an application/appeal shall remain such through subsequent
9 county proceedings involving the same appeal; PROVIDED A new parties of
10 record register shall be started whenever an appeal comes on for supplementary
11 hearing eighteen or more months after the most recent examiner decision was
12 issued. The county may cease mailing material to any party of record whose mail
13 is returned by the postal service as undeliverable.

14 (2) "Principal party" means the applicant (if any), the appellant and the
15 respondent in a matter pending before the examiner or county council.

16 (3) "Appeal hearing" means a hearing that creates the record on an
17 appeal through testimony and submission of evidence and information.

18 (4) "Administrator" means the administrator of the office of hearings
19 administration.

20 (5) "Office" means the office of hearings administration created by this
21 chapter.

22 (6) "Examiner" means the hearing examiner or a deputy examiner or
23 examiner pro tem appointed by the council as provided in this chapter.

24 (7) "Exempt personnel system" means the conditions of employment
25 under the provisions of chapter 3.68 SCC and amendments thereto.
26

27 Section 16. Snohomish County Code section 2.02.170, adopted by Ordinance
28 02-098 on December 9, 2002, is amended to read:
29

30 **2.02.170 Reconsideration of ((hearing examiner))Examiner's Decision.**

31 (1) Any party to an appeal may file a written petition for reconsideration
32 with the ((hearing)) examiner within 10 calendar days following the date of the
33 ((hearing)) examiner's written decision. The petitioner for reconsideration shall
34 mail or otherwise provide a copy of the petition for reconsideration to all parties to
35 the appeal on the date of filing. The timely filing of a petition for reconsideration
36 shall stay the ((hearing)) examiner's decision until such time as the petition has
37 been disposed of by the ((hearing)) examiner.

38 (2) The grounds for seeking reconsideration shall be limited to the
39 following:

40 (a) The ((hearing)) examiner exceeded the ((hearing)) examiner's
41 jurisdiction;

42 (b) The ((hearing)) examiner failed to follow the applicable procedure in
43 reaching the ((hearing)) examiner's decision;

44 (c) The ((hearing)) examiner committed an error of law;

1 (d) The ~~((hearing))~~ examiner's findings, conclusions, and/or conditions are
2 not supported by the record; or

3 (e) New evidence is discovered which could not reasonably have been
4 produced at the appeal hearing and which is material to the decision ~~((is
5 discovered))~~.

6 (3) The petition for reconsideration must:

7 (a) Contain the name, mailing address, and daytime telephone number of
8 the petitioner or petitioner's representative, together with the signature of the
9 petitioner or of the petitioner's representative;

10 (b) Identify the specific findings, conclusions, actions, and/or conditions for
11 which reconsideration is requested;

12 (c) State the specific grounds upon which relief is requested;

13 (d) Describe the specific relief requested; and

14 (e) Where applicable, identify the specific nature of any newly discovered
15 evidence.

16 (4) The petition for reconsideration shall be decided by the same
17 ~~((hearing))~~ examiner who rendered the decision, if reasonably available. The
18 ~~((hearing))~~ examiner shall provide notice of the decision on reconsideration in
19 accordance with SCC 2.02.160. Within ~~((14))~~ 15 working days, the ~~((hearing))~~
20 examiner shall:

21 (a) Deny the petition in writing;

22 (b) Grant the petition and issue an amended decision in accordance with
23 the provisions of SCC 2.02.155 following reconsideration;

24 (c) Accept the petition and give notice to all parties to the appeal of the
25 opportunity to submit written comment. Parties to the appeal shall have 10
26 calendar days from the date of such notice in which to submit written comments.
27 Within 15 working days after the close of the comment period, the ~~((The hearing))~~
28 examiner shall either issue a decision in accordance with the provisions of SCC
29 2.02.155 or issue an order ~~((within 15 days after the close of the comment period~~
30 setting the matter for further))re-opening the hearing. If ~~((further))the~~ hearing is
31 ~~((ordered))re-opened~~, the ~~((hearing examiner's))~~ office shall mail notice not less
32 than 15 calendar days prior to the hearing date to all parties of record; or

33 (d) Accept the petition and ~~((set the matter for further open record))re-~~
34 open the public hearing to consider new evidence, and/or the arguments of the
35 parties. Notice of such ~~((further))re-opened~~ hearing shall be mailed by the
36 ~~((hearing examiner's))~~ office not less than 15 calendar days prior to the hearing
37 date to all parties of record. The ~~((hearing))~~ examiner shall issue a decision
38 following the ~~((further))re-opened~~ hearing in accordance with the provisions of
39 SCC 2.02.155.

40 (5) A decision which has been subjected to the reconsideration process
41 shall not again be subject to reconsideration.

42 (6) The ~~((hearing))~~ examiner may consolidate for action, in whole or in
43 part, multiple petitions for reconsideration of the same decision where such
44 consolidation would facilitate procedural efficiency.

1
2 Section 17. Snohomish County Code section 2.02.185, last amended by
3 Ordinance 02-098 on December 9, 2002, is amended to read:
4

5 **2.02.185 Clerical Mistakes -- Authority to Correct.**

6 Clerical mistakes and errors arising from oversight or omission in
7 ~~((hearing))~~ examiner and council decisions and/or orders issued pursuant to this
8 chapter may be corrected by the ~~((hearing))~~ examiner at any time either on
9 ~~((his/her))~~the examiner's own initiative or on the motion of a party of record. A
10 copy of each page affected by the correction, with the correction clearly
11 identified, shall be mailed to all parties of record.
12

13 Section 18. Snohomish County Code Section 2.02.195, last amended by
14 Amended Ordinance 02-098 on December 9, 2002, is amended to read:
15

16 **2.02.195 ~~((Appeal to court from))~~Judicial Review of Examiner's**
17 **Decision.**

18 ~~((Where the examiner's decision is final and conclusive, it may be~~
19 ~~appealed to))~~ Judicial review may be sought for any final decision of the
20 examiner in the superior court by an aggrieved party of record as may be
21 provided by applicable law within 21 calendar days of the issuance of the
22 examiner's final decision on the matter. The following shall apply to any action for
23 judicial review of the examiner's decision:

24 (1) Where the reconsideration process of SCC 2.02.170 has been utilized,
25 no action for judicial review may be filed until the reconsideration process has
26 been completed and no action for judicial review by the petitioner for
27 reconsideration may raise an issue which has not been the subject of a petition
28 for reconsideration.

29 (2) An action for judicial review may be brought by any aggrieved party of
30 record within 21 calendar days following the date of the examiner's decision on
31 reconsideration; PROVIDED, ~~((That))~~that only the petitioner for reconsideration
32 may file an action for judicial review of the denial of a petition for reconsideration.
33 The cost of transcribing the record of proceedings, of copying photographs, video
34 tapes, and oversized documents, and of staff time spent copying and assembling
35 the record and preparing the return for filing with the court shall be borne by the
36 appellant.
37

38 Section 19. Snohomish County Code section 2.02.200, last amended by
39 Ordinance 97-075 on September 24, 1997, is amended to read:
40

41 **2.02.200 ~~((Examiner's))~~ Report to Council and Planning Commission.**

42 The ~~((examiner))~~administrator shall report in writing to and meet with the
43 Snohomish county council and the planning commission at least annually for the
44 purpose of reviewing the administration of the county's land use policy and

1 regulatory ordinances. Such report shall include a summary of the ((examiner's))
2 decisions issued by examiners since the last report.

3
4 Section 20. Snohomish County Code section 2.02.210, adopted by Ordinance
5 80-115 on December 29, 1980, is amended to read:

6
7 **2.02.210 Interlocal Agreements.**

8 The ((examiner))office may provide hearing examiner services similar to
9 those prescribed herein for other municipalities when authorized by interlocal
10 agreement.

11
12 Section 21. Snohomish County Code section 2.50.095, adopted by Ordinance
13 09-024 on April 22, 2009, is amended to read:

14
15 **2.50.095 Commission staff.**

16 Except for the performance of those duties assigned to the ex officio clerk
17 designated by ((of)) the ((board of equalization by)) administrator of the office of
18 hearings administration in accordance with SCC 2.50.110 and 2.50.115, the clerk
19 of the county council shall serve as clerk of the commission. Staff support for the
20 commission shall be provided by the county as necessary. In circumstances in
21 which ((the)) an ex officio clerk ((of the board of equalization serves as ex officio
22 clerk of the commission)) is designated by the administrator of the office of
23 hearings administration, staff support for the commission shall be provided by
24 ((staff of the board of equalization)) the office of hearings administration.

25
26 Section 22. Snohomish County Code section 2.50.110, last amended by
27 Ordinance 09-024 on April 22, 2009, is amended to read:

28
29 **2.50.110 Complaint procedures.**

30 (1) Any natural person who believes a person subject to the code of ethics
31 has committed a violation of the code may file a complaint with the ethics
32 commission. Complaints shall be subject to the following requirements:

33 (a) The complaint must be based upon facts within the personal
34 knowledge of the complainant;

35 (b) The complaint must be submitted in writing and signed under oath by
36 the complainant;

37 (c) The complaint must include a detailed factual description of the alleged
38 violation including the date, time and place of each occurrence and the name of
39 the person or persons who are alleged to have committed a violation. The
40 complaint must also refer to the specific provisions of the code of ethics which
41 are alleged to have been violated;

42 (d) The complaint must be accompanied by all available documentation or
43 other evidence known to the complainant to support the allegations of the
44 complaint;

1 (e) The complaint must be filed within five years of the date of the
2 occurrence or occurrences alleged to constitute a violation of the code of ethics.

3 (2) Complaints shall be filed with the clerk of the ethics commission.
4 Except for complaints alleging a violation by a member of the county council, a
5 candidate for a county council position, or a councilmember-elect, the clerk shall
6 process the complaint as provided in the following subsections of this section.
7 The clerk shall immediately forward complaints alleging a violation by a member
8 of the county council, a candidate for a county council position or a
9 councilmember-elect to the ~~((clerk of the board of equalization))~~ administrator of
10 the office of hearings administration who shall ~~((serve as))~~ designate an
11 employee of that office to serve as ex officio clerk of the ethics commission for
12 the processing of such complaints as provided in the following subsections of this
13 section.

14 (3) The clerk shall forward the complaint and any accompanying
15 documentation and evidence forthwith to the chairperson of the ethics
16 commission. The chairperson shall review the complaint for compliance with the
17 requirements of subsection (1) of this section. Should the chairperson find that:

18 (a) The complaint is untimely; or

19 (b) The complaint has not been signed under oath; or

20 (c) The complaint does not, on its face, state facts which, if proven to be
21 true, constitute a violation of the code of ethics referred to in the complaint; or

22 (d) The complaint fails to refer to a specific provision of the code of ethics
23 which is alleged to have been violated, the chairperson shall, within five working
24 days of the filing of the complaint, enter a written order stating the chairperson's
25 findings and, except as hereinafter provided, dismissing the complaint. If the
26 chairperson finds that the complaint is deficient pursuant to findings (b) or (d), the
27 chairperson shall issue an order notifying the complainant that unless a corrected
28 complaint is filed within 5 days of the issuance of such order, the complaint shall
29 be dismissed. The complainant may appeal the dismissal of a complaint under
30 this subsection by filing an action in the Snohomish County Superior Court for a
31 Writ of Certiorari pursuant to Chapter 7.16 RCW within 10 days of the date of
32 issuance of the order dismissing the complaint.

33 (4) For complaints which are not dismissed under subsection (3), the
34 chairperson shall direct the clerk to serve a complete copy of the complaint and
35 any accompanying documentation and evidence to the person (hereinafter
36 referred to as the respondent) alleged to have committed a violation of the code
37 of ethics. The clerk shall serve a copy of the complaint and accompanying
38 information upon the respondent by certified mail or by personal service not later
39 than seven working days following the filing of the complaint.

40 (5) The respondent shall, within twenty days of the date of mailing or
41 personal service of the complaint by the clerk of the commission, file with the
42 clerk any response to the complaint the respondent wishes to make. A response
43 to a complaint shall be made in writing signed under oath by the respondent. A
44 response may include a detailed statement of facts pertaining to the complaint

1 made on personal knowledge of the respondent and may include any matter
2 constituting a defense to the complaint. A response should be accompanied by
3 all available documentation or other evidence known to the respondent which the
4 respondent wishes the commission to consider. The respondent may stipulate to
5 some or all of the facts alleged in the complaint and shall either admit or deny the
6 alleged violation. If the violation is admitted, the respondent may also submit an
7 explanatory statement and may request a particular disposition.

8 (6) Upon receipt of a response to a complaint, the chairperson shall review
9 the complaint and response, together with all supporting documentation and
10 evidence submitted by the complainant and the respondent. Within ten days of
11 receipt of the response (or, if no timely response is submitted, within thirty days
12 of the date of mailing the complaint to the respondent by the clerk of the
13 commission), the chairperson shall issue a preliminary decision in writing. A
14 preliminary decision shall include one of the following determinations:

15 (a) Determine that a hearing is necessary in order to obtain a clear
16 determination of the facts relevant to the complaint; or

17 (b) Determine that, based upon the complaint and response, the facts
18 relevant to the complaint are clearly established and no hearing is necessary.

19 (7) When a preliminary decision is issued pursuant to subsection (6)(b), it
20 shall contain findings and conclusions and a disposition of the complaint. If the
21 chairperson concludes a violation of the code of ethics was committed, the
22 preliminary decision shall include a penalty as provided for in section 2.50.160.
23 Copies of the preliminary decisions shall be served forthwith on all members of
24 the commission by the clerk. Until it becomes a final decision, a preliminary
25 decision issued pursuant to subsection (6)(b) shall be confidential and shall not
26 be released to either the complainant, the respondent, or any other person with
27 the exception of commission members and commission staff. Commission
28 members may either concur in the preliminary decision or request a hearing. A
29 hearing on the complaint before the full commission shall be scheduled by the
30 clerk if a request for hearing is filed with the clerk by one or more commission
31 members within ten days of the issuance of the preliminary decision,
32 PROVIDED: that commission members shall have 15 days from the date of
33 issuance of the preliminary decision to request a hearing if the chairperson so
34 provides in the preliminary decision. If a commission member does not file a
35 timely request for hearing, it shall be conclusively presumed that the commission
36 member concurs in the preliminary decision.

37 (8) If no timely request for hearing is made by any commission member, a
38 preliminary decision issued pursuant to subsection (6)(b) shall become a final
39 decision of the commission and shall be signed and dated by the commission
40 chairperson within two working days following the expiration of the review period
41 provided in subsection (7) above. The clerk shall immediately notify the
42 complainant and the respondent of the final decision and shall deliver a copy of
43 the final decision to each of them and to any other person who has submitted a
44 written request therefore. Either the complainant or the respondent may, within

1 thirty days of the date of the final decision, appeal it to the Snohomish County
2 Superior Court by writ of certiorari pursuant to Chapter 7.16 RCW.

3 (9) When a decision to hold a hearing is issued pursuant to subsection
4 (6)(a) or when a request for hearing is filed by a commission member pursuant to
5 subsection (7), the clerk shall schedule a hearing not more than thirty days from
6 the date of the preliminary decision and shall mail written notice of the hearing to
7 the complainant, the respondent, each member of the commission and to any
8 other person who has submitted a written request therefore. In addition, notice
9 shall be provided by publication in the official county newspaper not less than five
10 days prior to the date of the hearing.

11 (10) All hearings on complaints before the ethics commission shall be de
12 novo and a preliminary decision issued pursuant to subsection (6)(b), if any, shall
13 have no force or effect and shall remain confidential. The parties may appear in
14 person or through attorneys. Hearings shall be conducted in accordance with the
15 following provisions:

16 (a) The complainant shall have the burden to prove by a preponderance of
17 evidence that the violation or violations alleged in the complaint occurred.

18 (b) Not less than two days prior to the hearing date, the complainant and
19 respondent shall each file with the clerk and serve upon the other party, a list of
20 witnesses they wish to call at the hearing. Only those witnesses whose names
21 appear on the witness lists may testify at the hearing. In exceptional
22 circumstances and for good cause shown, the commission chairperson may, in
23 his or her discretion, permit additional witnesses to testify.

24 (c) At the commencement of the hearing, the commission chairperson
25 shall ask the parties to provide an estimate of the time required to present their
26 evidence and arguments. The chairperson shall then issue an order establishing
27 a reasonable limit on the time for each party to present his or her case which
28 shall be equal for each party. The complainant may divide his or her allotted time
29 between an opening presentation and rebuttal of the respondent's case. Each
30 party may present opening and closing arguments.

31 (d) All testimony shall be given under oath administered by the clerk of the
32 commission. Subject to control by the chairperson, each party shall be permitted
33 to cross-examine the witnesses of the other party.

34 (e) The clerk shall electronically record all proceedings and shall assign
35 exhibit numbers to, and become the custodian of, all documentary evidence.

36 (f) The chairperson shall have full authority to regulate the conduct of the
37 hearing and may take any actions reasonably necessary to maintain an orderly
38 proceeding. The chairperson may continue a hearing to a date and time certain
39 should the chairperson determine that such continuance is necessary.

40 (11) At the conclusion of a hearing on a complaint, the commission shall
41 deliberate and enter its oral decision which shall include findings and conclusions
42 in support of the decision. The chairperson shall direct commission staff to
43 prepare a draft written decision reflecting the commission's oral decision and
44 shall continue the hearing to a date and time certain for commission

1 consideration and approval of the written decision. The final written decision shall
2 be signed and dated by the commission chairperson. The clerk shall deliver a
3 copy of the final written decision to each party and to any other person who has
4 submitted a written request therefore.

5 (12) A final written decision may, within thirty days of the date of the
6 written decision, be appealed by either the complainant or the respondent to the
7 Snohomish County Superior Court by writ of certiorari pursuant to Chapter 7.16
8 RCW.

9
10 Section 23. Snohomish County Code section 2.50.115, last amended by
11 Ordinance 09-024 on April 22, 2009, is amended to read:

12
13 **2.50.115 Complaints filed close to elections -- Limitations on filing --**
14 **Expedited proceedings.**

15 (1) From the date four weeks prior to any election through and including
16 the date of the election, only those complaints may be filed which allege a
17 violation of the code of ethics which occurred not more than one week prior to the
18 date of filing the complaint. Except for complaints alleging a violation by a
19 member of the county council, a candidate for a county council position or a
20 councilmember-elect, the clerk shall process the complaint as provided in the
21 following subsections of this section. The clerk shall immediately forward
22 complaints alleging a violation by a member of the county council, a candidate for
23 a county council position or a councilmember-elect to the ~~((clerk of the board of~~
24 ~~equalization))~~ administrator of the office of hearings administration who shall
25 ~~((serve as))~~ designate an employee of that office to serve as ex officio clerk of
26 the ethics commission for the processing of such complaints as provided in the
27 following subsections of this section.

28 (2) Immediately upon receipt of such a complaint, the clerk shall notify the
29 chairperson and the respondent named in the complaint and shall deliver a copy
30 of the complaint and its supporting documentation and evidence to them. Copies
31 shall also be delivered forthwith to the remaining commission members. The
32 clerk's notice to the respondent shall also state that the respondent may file a
33 written response to the complaint within 5 days of the date the complaint was
34 filed with the commission.

35 (3) Immediately upon receipt of the complaint, the chairperson shall review
36 the complaint pursuant to subsection 2.50.110(3) and, if the complaint is
37 defective, shall, within two days of the filing of the complaint, enter an order
38 stating the chair-person's findings and dismissing the complaint.

39 (4) For those complaints which are not dismissed under subsection (3)
40 above, the clerk shall confer with the commission chairperson and shall set a
41 date and time for an expedited hearing on the complaint to be held not less than
42 five nor more than ten days from the date of filing the complaint.

43 (5) The clerk shall deliver to the complainant, the respondent and each
44 commission member a notice of expedited hearing on the complaint. Notice of

1 the expedited hearing shall also be delivered to any person who has, at or prior
2 to the time the complaint is filed, submitted a written request therefore. Notice of
3 the hearing shall be published once in the official county newspaper prior to the
4 hearing.

5 (6) The expedited hearing shall be conducted in accordance with
6 subsections 2.50.110(10, (11) and (12) except that the parties shall not be
7 required to file witness lists prior to the hearing.
8

9 Section 24. Snohomish County Code section 2.76.050, last amended by
10 Ordinance 09-024 on April 22, 2009, is amended to read:
11

12 **2.76.050 Assistants.**

13 The ~~((board of equalization may appoint a))~~ administrator of the office of
14 hearings administration created pursuant to Chapter 2.02 SCC shall provide and
15 supervise the clerk of the board and such assistants, legal advisors and
16 appraisers as are necessary in order for the board to perform its functions as
17 authorized by chapter 84.48 RCW and chapter 458-14 WAC and as provided in
18 such budget as is approved by the county council. ~~((The appointment of clerk~~
19 ~~and assistants shall be subject to the approval of the county council. In addition~~
20 ~~to performing the duties of clerk of the board of equalization, the clerk shall also~~
21 ~~perform the duties of ex officio clerk of the ethics commission in accordance with~~
22 ~~SCC 2.50.110 and 2.50.115.))~~
23

24 Section 25. Snohomish County Code section 3.52.080 adopted by Section 8 of
25 the Resolution adopted on October 12, 1971, is amended to read:
26

27 **3.52.080 Succeeding terms.**

28 Upon the expiration of the term of the initial members first to be appointed,
29 each succeeding member shall be appointed and hold office for a term of
30 ~~((six))~~ four years
31

32 Section 26. A new section 3.52.115 is added to chapter 3.52 Snohomish County
33 Code to read:
34

35 **3.52.115 Clerks.**

36 The administrator of the office of hearings administration created pursuant
37 to Chapter 2.02 SCC shall provide and supervise the chief clerk of the board and
38 such assistants as are necessary in order for the board to perform its functions
39 as authorized by chapter 36.93 RCW and as provided in such budget as is
40 approved by the county council.
41

42 Section 27. Snohomish County Code section 3.68.010, last amended by
43 Ordinance 12-015 on April 4, 2012, is amended to read:
44

1 **3.68.010 Scope of chapter.**

2 The provisions of this chapter apply to the following positions:

3 (1) Two positions designated by each district court judge;

4 (2) Two positions designated by each of the following elected officials:
5 assessor, auditor, clerk, treasurer, prosecuting attorney, and each county
6 councilmember;

7 (3) Four positions designated by the county executive;

8 (4) Eight positions designated by the sheriff in accordance with RCW
9 41.14.070; the chief of the corrections bureau established by SCC 2.15.010 plus
10 a deputy bureau chief, director of administration, detention commander,
11 community corrections commander, health services administrator, and
12 psychiatrist; and the Commander of the Snohomish Regional Drug Task Force
13 appointed by the sheriff in accordance with SCC 3.67.020;

14 (5) The department heads appointed by the executive and confirmed by
15 the council;

16 (6) The division directors and division managers and deputy department
17 heads of executive and administrative departments whose department head is
18 appointed by the executive and confirmed by the council;

19 (7) The professional employees within the executive's office;

20 (8) Deputy prosecuting attorneys in the prosecuting attorney's office
21 except as provided in Snohomish county Ordinance 83-147;

22 (9) The professional employees within the county council's office;

23 (10) Two positions designated by each superior court judge, the superior
24 court commissioners, the administrator, superior/juvenile court, the assistant
25 administrator, superior court operations, the assistant administrator, juvenile
26 court operations, the case flow administrative manager, superior court, the
27 programs administrator, superior court, the human resources manager,
28 superior/juvenile court, and the administrative assistant, superior/juvenile court;
29 except that no law clerk/bailiff hired and designated pursuant to this chapter
30 subsequent to December 31, 1992, shall be entitled to the leave benefits
31 conferred by this chapter, but instead they shall receive, use and accrue
32 vacation, sick and holiday benefits in accordance with chapter 3A.06 SCC;

33 (11) The ~~((hearing examiner))~~administrator of the office of hearings
34 administration and any deputy examiners selected and appointed pursuant to
35 SCC 2.02.030 and 2.02.040;

36 (12) Any classified employee transferred, reclassified or promoted to an
37 exempt position on or after the effective date of this subsection;

38 ~~((13) The chief clerk of the boundary review board and the clerk of the
39 board of equalization appointed pursuant to the authority of RCW 36.93 and
40 RCW 84.48;))~~

41 ~~((14))~~ (13) The law and justice cabinet FTE appointed pursuant to SCC
42 3.68.030(7); and

43 ~~((15))~~ (14) The professional county employees within the office of county
44 performance auditor established by SCC 2.700.010, if any.

1
2 Section 28. Snohomish County Code section 30.43A.110, adopted by Amended
3 Ordinance 02-064 on December 9, 2002, is amended to read:

4
5 **30.43A.110 Review or revocation of permit.**

6 The ((office of the)) hearing examiner shall have jurisdiction to review and
7 modify or revoke all administrative conditional uses. Any review or revocation
8 proceeding shall be conducted in accordance with SCC 30.71.027.
9

10 Section 29. Snohomish County Code section 30.43B.130, adopted by Amended
11 Ordinance 02-064 on December 9, 2002, is amended to read:

12
13 **30.43B.130 Variance - review or revocation.**

14 The ((office of the)) hearing examiner shall have jurisdiction to review or
15 revoke all variance in accordance with SCC 30.71.027.
16

17 Section 30. Snohomish County Code section 30.71.050, last amended by
18 Amended Ordinance 12-025 on June 6, 2012, is amended to read:

19
20 **30.71.050 Appeal of Type 1 decision.**

21 (1) Who may appeal. Any aggrieved party of record may file an appeal of
22 a Type 1 decision.

23 (2) Time and place to appeal. Appeals of a Type 1 decision, except as
24 provided in SCC 30.71.050(3), shall be addressed to the hearing examiner and
25 filed in writing with the department within 14 calendar days of the notice of the
26 decision, except that appeals of a Type 1 decision issued concurrently with a
27 SEPA threshold determination shall be filed within 21 calendar days of the notice
28 of the decision, if the SEPA decision is a determination of nonsignificance that is
29 required to have a public comment period pursuant to SCC 30.44.250 and WAC
30 197-11-340.

31 (3) Shoreline appeals. Appeals of a shoreline substantial development
32 permit, shoreline conditional use permit, or shoreline variance shall be filed with
33 the state shorelines hearings board pursuant to SCC 30.44.250 and RCW
34 90.58.180.

35 (4) Fees. Each appeal filed on a non-shoreline Type 1 decision shall be
36 accompanied by a filing fee in the amount of \$500.00; provided that the filing fee
37 shall not be charged to a department of the county; and provided further that the
38 filing fee shall be refunded in any case where an appeal is dismissed in whole
39 without hearing pursuant to SCC 30.71.060.

40 (5) Form of appeal. A person appealing a Type 1 decision must file a
41 written statement setting forth:

42 (a) Facts demonstrating that the person is aggrieved by the decision;

43 (b) A concise statement identifying each alleged error and the manner in
44 which the decision fails to satisfy the applicable decision criteria. An appeal of a

1 SEPA environmental document shall describe any alleged inadequacy in the
2 threshold determination or environmental impact statement with respect to
3 evaluation of a specific environmental element;

4 (c) The specific relief requested; and

5 (d) Any other information reasonably necessary to make a decision on
6 appeal.

7 (6) Limitation on new appeal issues. No new substantive appeal issues
8 may be raised or submitted after the close of the time period for filing of the
9 original appeal. The hearing examiner, if procedural limitations allow, may allow
10 an appellant not more than 15 calendar days to perfect an otherwise timely filed
11 appeal.

12 (7) Matters within the jurisdiction of the building code board of appeals.
13 Matters within the jurisdiction of the building code board of appeals pursuant to
14 SCC 30.50.020 shall not be subject to appeal pursuant to chapter 30.71 SCC.
15

16 Section 31. Snohomish County Code Section 30.71.110, adopted by Amended
17 Ordinance No. 02-064 on December 9, 2002, is amended to read:
18

19 **30.71.110 Hearing examiner's decision on Type 1 appeal.**

20 (1) A final decision on appeal shall be issued within 15 (~~calendar~~)
21 working days of the conclusion of a hearing, but not later than 90 calendar days
22 after the filing of a complete appeal, unless the appellant agrees in writing to
23 extend the time period, or the time period has been extended by a request for
24 reconsideration, or under some other authority.

25 (2) The hearing examiner may affirm, may reverse in whole or in part, or
26 may modify the permit or decision being appealed, or may remand the
27 application to the applicable department for further processing.

28 (3) If the application is remanded to the applicable department for further
29 processing, the hearing examiner's decision shall not be considered a final
30 decision except for purposes of applicable time limitations contained in (~~SCC~~
31 ~~30.71.110~~)this section. The hearing examiner's decision shall specify
32 procedures for responding to the order. If a new decision is issued by the
33 department, a new appeal period shall commence in accordance with SCC
34 30.71.050.

35 (4) The decision shall include findings of fact based upon the record and
36 conclusions of law therefrom which support the decision.

37 (5) The hearing examiner's decision shall include information on, and any
38 applicable time limitations for, requesting reconsideration or for appealing the
39 decision.
40

41 Section 32. Snohomish County Code section 30.71.120, adopted by Amended
42 Ordinance 02-064 on December 9, 2002, is amended to read:
43

1 **30.71.120 Reconsideration of hearing examiner decision on Type 1**
2 **appeal.**

3 (1) Any party to the appeal may file a written petition for reconsideration
4 with the hearing examiner within 10 calendar days following the date of the
5 hearing examiner's written decision. The petitioner for reconsideration shall mail
6 or otherwise provide a copy of the petition for reconsideration to all parties to the
7 appeal on the date of filing. The timely filing of a petition for reconsideration shall
8 stay the hearing examiner's decision until such time as the petition has been
9 disposed of by the hearing examiner.

10 (2) The grounds for seeking reconsideration shall be limited to the
11 following:

12 (a) The hearing examiner exceeded the hearing examiner's jurisdiction;

13 (b) The hearing examiner failed to follow the applicable procedure in
14 reaching the hearing examiner's decision;

15 (c) The hearing examiner committed an error of law;

16 (d) The hearing examiner's findings, conclusions, and/or conditions are
17 not supported by the record;

18 (e) New evidence is discovered which could not reasonably have been
19 produced at the open record hearing and which is material to the decision ((is
20 discovered)); or

21 (f) The applicant proposed changes to the application in response to
22 deficiencies identified in the decision.

23 (3) The petition for reconsideration must:

24 (a) Contain the name, mailing address, and daytime telephone number of
25 the petitioner or petitioner's representative, together with the signature of the
26 petitioner or of the petitioner's representative;

27 (b) Identify the specific findings, conclusions, actions, and/or conditions for
28 which reconsideration is requested;

29 (c) State the specific grounds upon which relief is requested;

30 (d) Describe the specific relief requested; and

31 (e) Where applicable, identify the specific nature of any newly discovered
32 evidence or changes proposed.

33 (4) The petition for reconsideration shall be decided by the same hearing
34 examiner who rendered the decision, if reasonably available. The hearing
35 examiner shall provide notice of the decision on reconsideration in accordance
36 with SCC 30.71.115. Within ((44)) 15 working days, the hearing examiner shall:

37 (a) Deny the petition in writing;

38 (b) Grant the petition and issue an amended decision in accordance with
39 the provisions of SCC 30.71.110 following reconsideration;

40 (c) Accept the petition and give notice to all parties to the appeal of the
41 opportunity to submit written comment. Parties to the appeal shall have 10
42 calendar days from the date of such notice in which to submit written comments.
43 Within 15 working days after the close of the comment period, ((The))the hearing
44 examiner shall either issue a decision in accordance with the provisions of SCC

1 30.71.110 or issue an order (~~within 15 days after the close of the comment~~
2 ~~period setting the matter for further~~)re-opening the hearing. If (~~further~~)the
3 hearing is (~~ordered~~)re-opened, the hearing examiner's office shall mail notice
4 not less than 15 calendar days prior to the hearing date to all parties of record; or

5 (d) Accept the petition and (~~set the matter for further~~) re-open the open
6 record hearing to consider new evidence, proposed changes in the application,
7 and/or the arguments of the parties. Notice of such (~~further~~)re-opened hearing
8 shall be mailed by the hearing examiner's office not less than 15 calendar days
9 prior to the hearing date to all parties of record. The hearing examiner shall issue
10 a decision following the (~~further~~)re-opened hearing in accordance with the
11 provisions of SCC 30.71.110.

12 (5) A decision which has been subjected to the reconsideration process
13 shall not again be subject to reconsideration; provided that a decision which has
14 been revised on reconsideration from any form of denial to any form of approval
15 with preconditions and/or conditions shall be subject to reconsideration.

16 (6) The hearing examiner may consolidate for action, in whole or in part,
17 multiple petitions for reconsideration of the same decision where such
18 consolidation would facilitate procedural efficiency.

19
20 Section 33. Snohomish County Code Section 30.72.060 adopted by Amended
21 Ordinance No. 02-064 on December 9, 2002, is amended to read:

22
23 **30.72.060 Hearing examiner's decision on Type 2 application.**

24 (1) A decision on the Type 2 application shall be issued within 15
25 (~~calendar~~) working days of the conclusion of a hearing, and not later than 120
26 calendar days after a determination of completeness pursuant to SCC 30.70.110,
27 unless the appellant agrees in writing to extend the time period or the time period
28 has been extended under some other authority.

29 (2) If an appeal of a Type 1 administrative decision was heard at the open
30 record pre-decision hearing, a final decision on the Type 1 appeal shall be issued
31 concurrently with the Type 2 decision.

32 (3) The hearing examiner may grant, grant in part, return to the applicable
33 department and applicant for processing or modification deny without prejudice,
34 deny, or grant with such conditions or modifications as the hearing examiner
35 finds appropriate based on the applicable decision criteria.

36 (4) The decision shall include findings of fact based upon the record and
37 conclusions of law therefrom which support the decision.

38 (5) Reconsideration of the hearing examiner's decision may be requested
39 only in accordance with SCC 30.72.065.

40 (6) The hearing examiner's decision shall include information on, and any
41 applicable time limitations for, requesting reconsideration or for appealing the
42 decision.

43
44 Section 34. Snohomish County Code Section 30.72.065 adopted by Amended
45 Ordinance No. 02-064 on December 9, 2002, is amended to read:

1
2 **30.72.065 Reconsideration of Type 2 decision.**

3 (1) Any aggrieved party of record may file a written petition for
4 reconsideration with the hearing examiner within 10 calendar days following the
5 date of the hearing examiner's written decision. The petitioner for
6 reconsideration shall mail or otherwise provide a copy of the petition for
7 reconsideration to all parties of record on the date of filing. The timely filing of a
8 petition for reconsideration shall stay the hearing examiner's decision until such
9 time as the petition has been disposed of by the hearing examiner.

10 (2) The grounds for seeking reconsideration shall be limited to the
11 following:

12 (a) The hearing examiner exceeded the hearing examiner's
13 jurisdiction;

14 (b) The hearing examiner failed to follow the applicable procedure
15 in reaching the hearing examiner's decision;

16 (c) The hearing examiner committed an error of law;

17 (d) The hearing examiner's findings, conclusions and/or conditions
18 are not supported by the record;

19 (e) New evidence is discovered which could not reasonably have
20 been produced at the open record hearing and which is material to the
21 decision (~~is discovered~~); or

22 (f) The applicant proposed changes to the application in response
23 to deficiencies identified in the decision.

24 (3) The petition for reconsideration must :

25 (a) Contain the name, mailing address, and daytime telephone
26 number of the petitioner, or the petitioner's representative, together with
27 the signature of the petitioner or of the petitioner's representative;

28 (b) Identify the specific findings, conclusions, actions, and/or
29 conditions for which reconsideration is requested;

30 (c) State the specific grounds upon which relief is requested;

31 (d) Describe the specific relief requested; and

32 (e) Where applicable, identify the specific nature of any newly
33 discovered evidence or changes proposed.

34 (4) The petition for reconsideration shall be decided by the same hearing
35 examiner who rendered the decision, if reasonably available. The hearing
36 examiner shall provide notice of the decision on reconsideration in accordance
37 with SCC 30.72.062. Within ~~((44))~~ 15 working days the hearing examiner shall:

38 (a) Deny the petition in writing;

39 (b) Grant the petition and issue an amended decision in
40 accordance with the provisions of SCC 2.02.155 following reconsideration;

41 (c) Accept the petition and give notice to all parties to the appeal of
42 the opportunity to submit written comment. Parties to the appeal shall
43 have 10 calendar days from the date of such notice in which to submit
44 written comments. Within 15 working days after the close of the comment
45 period, ((The))the hearing examiner shall either issue a decision in

1 accordance with the provisions of SCC 2.02.155 or issue an order (~~within~~
2 ~~15 days after the close of the comment period setting the matter for~~
3 ~~further~~)re-opening the hearing. If (~~further~~)the hearing is (~~ordered~~)re-
4 opened, the hearing examiner's office shall mail notice not less than 15
5 calendar days prior to the hearing date to all parties of record; or

6 (d) Accept the petition and (~~set the matter for further~~)re-open the
7 open record hearing to consider new evidence, and/or the arguments of
8 the parties. Notice of such (~~further~~)re-opened hearing shall be mailed by
9 the hearing examiner's office not less than 15 calendar days prior to the
10 hearing date to all parties of record. The hearing examiner shall issue a
11 decision following the (~~further~~)re-opened hearing in accordance with the
12 provisions of SCC 2.02.155.

13 (5) A decision which has been subjected to the reconsideration process
14 shall not again be subject to reconsideration.

15 (6) The hearing examiner may consolidate for action, in whole or in part,
16 multiple petitions for reconsideration of the same decision where such
17 consolidation would facilitate procedural efficiency.

18
19 Section 35. Snohomish County Code Section 30.85.200 adopted by Amended
20 Ord. 08-062 on October 1, 2008 is amended to read:

21
22 **30.85.200 Notice of violation appeal hearing procedures.**

23 (1) When the department receives an appeal of a notice of violation
24 pursuant to SCC 30.85.190, the department shall transmit the request and a
25 copy of the file to the hearing examiner within three (~~business~~)working days.

26 (2) The hearing examiner shall review the appeal document and may
27 summarily dismiss the appeal if the filing is untimely, incomplete, frivolous, or
28 beyond the hearing examiner's jurisdiction. In such event, a summary dismissal
29 order shall be issued by the hearing examiner within 15 working days following
30 receipt of the appeal.

31 (3) If the appeal is not summarily dismissed the hearing examiner shall
32 hold an open record hearing on the notice of violation within 60 calendar days
33 after the date on which the hearing examiner received the notice of appeal. All
34 testimony at the open record hearing shall be taken under oath.

35 (a) The hearing examiner shall notify the parties in writing of the
36 time, place and date of the hearing at least 30 calendar days prior to the
37 date of the hearing, unless the parties stipulate to a shorter time period.

38 (b) Failure of the appellant to appear at the requested hearing may
39 result in an order being entered finding that the persons(s) named in the
40 notice of violation committed the violation as stated and assessing
41 monetary penalties in accordance with SCC 30.85.170. For good cause
42 shown, and upon terms the hearing examiner finds just, the hearing
43 examiner may set aside an order entered upon a failure to appear.

44 (4) In order to facilitate and expedite fair and equitable hearings, the
45 hearing examiner may adopt rules of procedure that supplement the

1 requirements set forth in this chapter 30.85; provided that in the event of any
2 conflict between the requirements of the chapter and any rules of procedure
3 adopted by the hearing examiner, the requirements of this chapter shall control.

4 (5) Each ~~((person))~~principal party participating in an open record hearing
5 shall be allowed to:

6 (a) Call, examine and cross-examine witnesses (subject to
7 reasonable limitation by the examiner in accordance with the examiner's
8 adopted rules of procedure) on any matter relevant to the issues of the
9 hearing;

10 (b) Introduce documentary and physical evidence;

11 (c) Rebut evidence; and

12 (d) Represent him/herself or to be represented by ~~((anyone of his
13 choice who is lawfully permitted to do so))~~ an attorney licensed to practice
14 law in the state of Washington.

15 (6) The county has the burden of proof by a preponderance of the
16 evidence that the appellant(s) committed the violation.

17 (7) Each party participating in an open record hearing for appeal of a
18 notice of violation shall submit a copy of its written materials to the hearing
19 examiner and to each of the other parties appearing in the appeal pursuant to the
20 following schedule:

21 (a) No later than three weeks prior to the date of the scheduled
22 open record hearing, the appellant(s) shall submit:

23 (i) an original or copy of each substantive document the
24 party desires to enter as an exhibit in the appeal record, including
25 but not limited to, any and all scientific or technical documents,
26 reports, studies, analyses, photographs, maps, diagrams, or other
27 similar materials;

28 (ii) a list of all exhibits submitted; and

29 (iii) a list of witnesses.

30 (b) No later than one week prior to the date of the scheduled open
31 record hearing, the respondent(s) shall submit:

32 (i) an original or copy of each substantive document the
33 party desires to enter as an exhibit in the appeal record, including,
34 but not limited to, any and all scientific or technical documents,
35 reports, studies, analyses, photographs, maps, diagrams, or other
36 similar materials;

37 (ii) a list of all exhibits submitted; and

38 (iii) a list of witnesses.

39 (c) Parties have a duty to supplement at the earliest possible
40 opportunity their submittals made under SCC 30.85.200(7) whenever a
41 party discovers that all or any part of the material submitted was incorrect
42 or inaccurate when submitted, or that all or any part of the material
43 submitted is no longer correct or accurate even though it was correct and
44 accurate at the time of submittal.

1 (d) Written materials not disclosed through the exhibit pre-filing
2 process may not be entered as evidence or presented orally at the open
3 record hearing except by agreement of the other part(y/ies) to the appeal
4 or at the hearing examiner's discretion for good cause shown.

5 (8) Optional prehearing briefing process:

6 (a) A prehearing briefing process may be conducted:

7 (i) by agreement of the parties to the appeal;

8 (ii) at the hearing examiner's discretion upon request of one
9 or more of the parties to the appeal; or

10 (iii) upon the hearing examiner's own initiative.

11 (b) The purpose of a prehearing briefing is to facilitate a full and fair
12 hearing on the merits in cases that may involve complex or confusing
13 factual issues or legal arguments. Accordingly, in determining whether to
14 require a prehearing briefing, the hearing examiner shall consider the
15 number and complexity of issues, and any other relevant facts and
16 circumstances.

17 (c) If a prehearing briefing process is employed in an appeal, such
18 process shall include submittal of an initial brief by the appellant(s), and an
19 optional reply brief by the appellant(s). Response briefs may be filed by all
20 other parties to the appeal. The Department may choose to treat one of its
21 briefs as the departmental report required by SCC 2.02.130.

22 (d) Prehearing briefs shall be submitted pursuant to the following
23 schedule, unless a different schedule is established by the hearing
24 examiner and agreed to by the parties:

25 (i) the initial brief(s) will be due three weeks before the
26 hearing;

27 (ii) the response brief(s) will be due one week before the
28 hearing; and

29 (iii) the reply brief(s) will be due not less than two
30 ((business))working days before the hearing.

31 (9) The hearing examiner shall consider the evidence and testimony
32 presented at the hearing and, based on this information, shall issue a written
33 decision reversing or affirming the notice of violation, in whole or in part, and
34 addressing the amount of monetary penalties, if any, to be imposed on the
35 appellant(s). The final decision shall be issued within 15 working days of the
36 conclusion of the open record hearing with an optional right of reconsideration
37 pursuant to SCC 30.85.210.

38 (10) The decision of the hearing examiner shall constitute a final decision
39 and order in accordance with SCC 30.85.260.

40
41 Section 36. Snohomish County Code Section 30.85.210 adopted by Amended
42 Ord. 08-062 on October 1, 2008 is amended to read:

43
44 **30.85.210 Notice of violation optional reconsideration procedures.**

1 (1) Any party to the appeal of a notice of violation may submit a written
2 petition for reconsideration to the hearing examiner within 10 calendar days
3 following the date of the hearing examiner's written decision. The party seeking
4 reconsideration shall mail or otherwise provide a copy of the petition for
5 reconsideration to all parties to the appeal on the date of filing. Enforcement of a
6 hearing examiner decision and order and any penalty accruing thereunder shall
7 be stayed during the pendency of a petition for reconsideration.

8 (2) The grounds for seeking reconsideration shall be limited to the
9 following:

10 (a) The hearing examiner exceeded the hearing examiner's
11 jurisdiction;

12 (b) The hearing examiner failed to follow the applicable procedure
13 in reaching the hearing examiner's decision;

14 (c) The hearing examiner committed an error of law;

15 (d) The hearing examiner's findings, conclusions, and/or other
16 elements of the decision, are not supported by the record; and/or

17 (e) New evidence is discovered which could not reasonably have
18 been discovered prior to the hearing and which is material to the decision
19 (~~has been discovered~~).

20 (3) The petition for reconsideration shall:

21 (a) Contain the name, mailing address, and daytime telephone
22 number of the party seeking reconsideration or their representative,
23 together with the signature of the party seeking reconsideration or their
24 representative;

25 (b) Identify the specific findings, conclusions, and/or other elements
26 of the decision for which reconsideration is requested;

27 (c) State the specific grounds upon which relief is requested; and

28 (d) Describe the specific relief requested.

29 (4) The petition for reconsideration shall be decided by the same hearing
30 examiner who rendered the decision, if such person is reasonably available.

31 (5) The hearing examiner shall provide written notice of the request for
32 reconsideration to all parties to the appeal within five calendar days after
33 receiving said petition.

34 (6) Within 15 working days after the date on which the hearing examiner
35 received the request for reconsideration, the hearing examiner shall issue a
36 written decision (i) denying the petition for reconsideration, (ii) granting the
37 petition for reconsideration in whole or in part, or (iii) requesting additional
38 information, comments and/or oral argument from the parties prior to rendering
39 a decision on the petition for reconsideration.

40 (7) A decision which has been subjected to the reconsideration process
41 shall not again be subject to reconsideration.

42
43 Section 37. Snohomish County Code section 30.91H.100, adopted by Ordinance
44 02-064 on December 9, 2002, is amended to read:

1
2 **30.91H.100 Hearing examiner.**

3 "hearing examiner" or "examiner" means the ((office of Snohomish
4 County)) hearing examiner or a deputy hearing examiner or pro tem hearing
5 ~~examiner ((created by))~~ appointed in accordance with chapter 2.02 SCC.

6
7 Section 38. A new section 30.91P.123 is added to Snohomish County Code
8 chapter 30.91P to read:

9
10 **30.91P.123 Principal party.**

11 "Principal party" means the applicant (if any), the appellant and the
12 respondent in a matter pending before the hearing examiner.

13
14 Section 39. Transition.

15 (1) The Hearing Examiner, the Board of Equalization, the Boundary Review
16 Board, the Department of Human Resources, the Department of Finance and other
17 county offices and departments are authorized to take all actions necessary to enable
18 the Office of Hearings Administration to begin functioning in accordance with this
19 ordinance on January 1, 2014.

20 (2) In the interim period between the enactment of this ordinance and January 1,
21 2014, the Hearing Examiner shall have full authority to supervise and manage the staff
22 and budget of the Board of Equalization and Boundary Review Board.

23 (3) The appointment of the person then serving as Hearing Examiner to become
24 the first Administrator of the Office of Hearings Administration shall not be considered
25 an original appointment for the purposes of determining the term length under the
26 provisions of SCC 2.02.015.

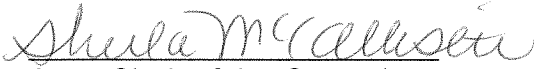
1 Section 40. Effective dates. Sections 1 through 8; 15; 19 through 24; 26 and 27
2 of this ordinance shall take effect on January 1, 2014. Sections 9 through 14; 16
3 through 18; 25; and 28 through 39 shall take effect ten days after this ordinance is
4 signed by the County Executive or otherwise enacted, as provided in Charter Section
5 2.110.

6
7 PASSED this 19th day of Jun, 2013.

8
9 SNOHOMISH COUNTY COUNCIL
10 Snohomish County, Washington

11 
12 _____
13 Vice-Chairperson
14

15 ATTEST:

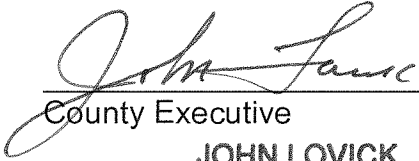
16 
17 _____
18 Asst. Clerk of the Council
19
20
21

22 (✓) APPROVED

23 () EMERGENCY


24 () VETOED

25
26 DATE: 6/20/13
27

28 
29 _____
30 County Executive

31 **JOHN LOVICK**
32 **County Executive**

33 ATTEST:

34 
35 _____
36 Approved as to form only:
37
38 _____
Deputy Prosecuting Attorney

D-15