

Adopted: 08/17/16

Effective: 08/28/16

1 SNOHOMISH COUNTY COUNCIL
2 Snohomish County, Washington

3
4 ORDINANCE NO. 16-056

5
6 RELATING TO HEARING EXAMINER PROCEDURES IN APPEALS OF CODE
7 ENFORCEMENT NOTICES OF VIOLATION; AMENDING SCC 30.85.200

8 WHEREAS, the county has the burden of proof by a preponderance of evidence when a
9 property owner appeals a notice of violation of title 30 SCC;

10 WHEREAS, SCC 30.85.200 requires the appealing property owner to disclose the
11 documents upon which he or she relies before knowing the documents upon which the
12 county will rely; and

13 WHEREAS, property owners who appeal notices of violation will be able to prepare their
14 appeals better by knowing the county's documentary evidence before disclosing their
15 own documentary evidence;

16 BE IT ORDAINED:

17 Section 1. Snohomish County Code section 30.85.200, last amended by
18 Amended Ordinance 13-043 on June 20, 2013, is amended to read:

19
20 (1) When the department receives an appeal of a notice of violation pursuant to SCC
21 30.85.190, the department shall transmit the request and a copy of the file to the
22 hearing examiner within three working days.

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

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

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

34 (b) Failure of the appellant to appear at the requested hearing may result in an order
35 being entered finding that the person(s) named in the notice of violation
36 committed the violation as stated and assessing monetary penalties in
37 accordance with SCC 30.85.170. For good cause shown, and upon terms the

1 hearing examiner finds just, the hearing examiner may set aside an order
2 entered upon a failure to appear.

3 (4) In order to facilitate and expedite fair and equitable hearings, the hearing examiner
4 may adopt rules of procedure that supplement the requirements set forth in this chapter;
5 provided, that in the event of any conflict between the requirements of the chapter and
6 any rules of procedure adopted by the hearing examiner, the requirements of this
7 chapter shall control.

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

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

12 (b) Introduce documentary and physical evidence;

13 (c) Rebut evidence; and

14 (d) Represent him/herself or to be represented by an attorney licensed to practice
15 law in the state of Washington.

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

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

21 (a) No later than three weeks prior to the date of the scheduled open record hearing,
22 the ~~((appellant(s)))~~ department shall ~~((submit))~~ file with the Hearing Examiner and
23 serve on the appellant:

24 (i) an original or copy of each substantive document the ~~((party))~~ department
25 desires to enter as an exhibit in the appeal record, including, but not limited to,
26 any and all scientific or technical documents, reports, studies, analyses,
27 photographs, maps, diagrams, or other 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 record hearing,
31 the ~~((respondent(s)))~~ appellant shall ~~((submit))~~ file with the hearing examiner and
32 serve on the department:

- 1 (i) an original or copy of each substantive document the ((party)) appellant desires
2 to enter as an exhibit in the appeal record, including, but not limited to, any and
3 all scientific or technical documents, reports, studies, analyses, photographs,
4 maps, diagrams, or other similar materials;
- 5 (ii) a list of all exhibits submitted; and
- 6 (iii) a list of witnesses.
- 7 (c) Parties have a duty to supplement at the earliest possible opportunity their
8 submittals made under subsection (7) of this section whenever a party discovers
9 that all or any part of the material submitted was incorrect or inaccurate when
10 submitted, or that all or any part of the material submitted is no longer correct or
11 accurate even though it was correct and accurate at the time of submittal.
- 12 (d) Written materials not disclosed through the exhibit pre-filing process may not be
13 entered as evidence or presented orally at the open record hearing except by
14 agreement of ((the)) all other ((parties(y/ies)) parties to the appeal or at the
15 hearing examiner's discretion for good cause shown.
- 16 (8) Optional prehearing briefing process:
- 17 (a) A prehearing briefing process may be conducted:
- 18 (i) by agreement of the parties to the appeal;
- 19 (ii) at the hearing examiner's discretion upon request of one or more of the parties
20 to the appeal; or
- 21 (iii) upon the hearing examiner's own initiative.
- 22 (b) The purpose of a prehearing briefing is to facilitate a full and fair hearing on the
23 merits in cases that may involve complex or confusing factual issues or legal
24 arguments. Accordingly, in determining whether to require a prehearing briefing,
25 the hearing examiner shall consider the number and complexity of issues, and
26 any other relevant facts and circumstances. The hearing examiner may modify
27 the schedule in section 7 in the interests of justice and efficiency.
- 28 (c) If a prehearing briefing process is employed in an appeal, such process shall
29 include submittal of an initial brief by the ((appellant(s))) department, optional
30 response brief by the appellant, and an optional reply brief by the ((appellant(s)))
31 department. Response briefs may be filed by all other parties to the appeal. The
32 department may choose to treat one of its briefs as the departmental report
33 required by SCC 2.02.130.

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

4 (i) the initial brief(s) by the department will be due three weeks before the hearing;

5 (ii) the optional response brief(s) by the appellant will be due one week before the
6 hearing; and

7 (iii) the optional reply brief(s) will be due not less than two working days before the
8 hearing.

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

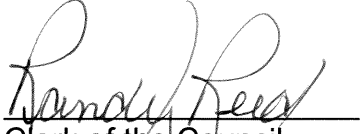
15 (10) The decision of the hearing examiner shall constitute a final decision and order in
16 accordance with SCC 30.85.260.

17 PASSED this 17th day of August, 2016.

18 SNOHOMISH COUNTY COUNCIL
19 Snohomish County, Washington


Chair


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21
22 ATTEST:

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24 Clerk of the Council

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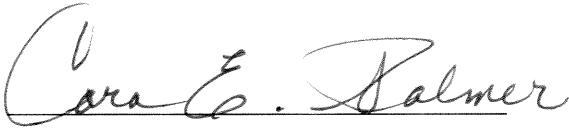
- APPROVED
- VETOED
- EMERGENCY

DATE: 8/18/16



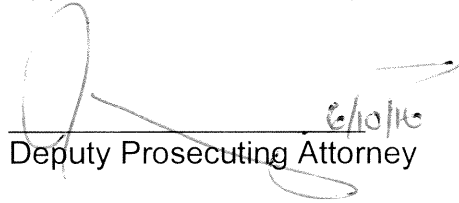
County Executive

1 ATTEST:

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Cara E. Palmer

3 Approved as to form only:

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Deputy Prosecuting Attorney

D.20