



MEMORANDUM

TO: WHATCOM COUNTY COUNCIL
FROM: RAJEEV D. MAJUMDAR, WHATCOM COUNTY HEARING EXAMINER
SUBJECT: 2024 PROMULGATION OF HEARING EXAMINER RULES
DATE: MARCH 22, 2024

Dear Council,

Enclosed is a copy of proposed 2024 Business Rules of The Whatcom County Hearing Examiner (BRWCHE) for your review and approval, updating a thirty-eight year-old set of rules and regulations. The attached set of rules represents a new standard of best practices, transparency, and clarity, for the public, attorneys, applicants, appellants, and other stakeholders who interact with the Office of the Hearing Examiner.

Enclosed also are memos in support from the Planning and Development Services Department and the Prosecuting Attorney's Office.

Background and Purpose

The Office of the Hearing Examiner as currently recognized was established by Whatcom County via Ord. Adopted December 17, 1981, via Ord. 81-99 under Whatcom County Code ("WCC") Title 20.92.¹ In 2018, the Whatcom County Hearing Examiner authority was recodified and restated under WCC 2.11 via Ord. 2018-032 § 1 (Exh. B).

WCC 2.11.220 authorizes the Hearing Examiner to prescribe rules and regulations for the conduct of hearings before them, subject to approval by the Council. This second promulgation of the Business Rules of The Whatcom County

¹ As amended numerous times over the years. See WCC 20.04.080 for record.

Hearing Examiner (BRWCHE) is being sent to the Council under those auspices. The first and only² prior promulgation BRWCHE occurred on August 7, 1986 via Res. 86-41, upon the authority of Hearing Examiner Charles R. Snyder and the Council.³

I have reviewed the existing rules and regulations that are in place and find they no longer meet the needs of Whatcom County, given the significant evolution of changes to the code, society, state law, the involvement of attorneys in the process, and the level of work done by the Office of the Hearing Examiner, since 1986, thirty-eight years ago.

I began my review with a draft set of rules that Royce Buckingham had begun pre-covid era with input from practitioner stakeholders for Hearing Examiner Michael Bobbink's review, but which was never finalized. I then drew on my experience from other jurisdictions, comparing more modern rules promulgated by other jurisdictions and the changes in State law to draft an updated proposal. Then, with the Hearing Examiner Coordinator in the Council's Office, the County Prosecutor's Office, and with the largest County department that makes use of the Office of the Hearing Examiner's services, the Department of Planning & Development Services, we collaboratively met and revised this draft a number of times between December 2023 and March of 2024.

The attached set of rules represents a new standard of best practices, transparency, and clarity, for the public, attorneys, applicants, appellants, and other stakeholders who interact with the Office of the Hearing Examiner. I am promulgating these rules to become effective upon your approval.

Funding Amount and Source

This proposal has no budgetary ask or expected impact.

Note of Appreciated Effort

This proposal has been refined many times, and I would like to note the following County employees as being critical in putting time and energy into bringing a diverse array of perspectives and talents into drafting this new set of rules: Lisa Bruner, the Hearing Examiner Coordinator; Royce Buckingham and Kellen Kooistra, from the Whatcom County Prosecutor's Office; and an unnumerable number of employees from the Department of Planning & Development Services, whose

² As far as I can determine from a review of the legislative record at hand.

³ As documented on the face and the signature page of those rules itself.

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communications and inputs were coordinated by the proactive leadership of Amy Keenan.

I would also be remiss not to thank former Hearing Examiner Charles Snyder for his input on the historical record, and former Hearing Examiner Michael Bobbink who discussed gaps in the rules with me extensively before his passing; both of which have served as mentors to me from the beginning of my career.

Differences from Previous Rules

The 1986 Rules were designed at a time that the concept of quasi-judicial review of administrative decisions was not as developed as it has become and was relatively new. Changes in the law, both statutory and case law, society, and the involvement of attorneys more frequently has in many cases made hearings more contentious on a regular basis than in the past, and thus requires more ground rules on how parties will interact procedurally with each other and the Office of the Hearing Examiner.

These changes and additions include: expanded definitions; clear guidance on how to submit pleadings and to avoid ex-parte contact; timelines for submissions; the consolidation of cases; the appearance of lawyers; discovery; the use of Staff Reports and their contents; pre-hearing conferences and motions; appointment of pro-tems; continuances; re-opening or correcting proceedings; appeals; site inspections; and the format of hearings, as well as many other minor issues.

Please feel free to call me with any questions or concerns at (360) 332-7000.

Sincerely,



Rajeev D. Majumdar
Whatcom County Hearing Examiner

RDM/jra
Encl (3)