

# SULTAN CITY COUNCIL

## AGENDA ITEM COVER SHEET

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**ITEM NUMBER:** Consent C-8

**DATE:** November 8, 2007

**SUBJECT:**  
Professional Service Contract for Hearing Examiner Services

**CONTACT PERSON:**  
Rick Cisar, Director of Community Development 

**SUMMARY:**  
Mr. John Galt, Hearing Examiner for the City since July 2<sup>nd</sup> of 1999 has requested a billing rate increase from \$100.00 to \$110.00 per hour (Attachment 1). The last increase in 2003 increased the rate from \$90.00 per hour to the current \$100.00 per hour rate.

The current contract with Mr. John Galt (Attachment 2) is opened ended and has no specific time period. City Staff has therefore prepared a new standard "Professional Services Contract" (Attachment 3) as recommended by the City Attorney. The revised contract establishes, in addition to the requested rate increase, a two (2) year term with automatic one (1) year renewals. Either party may terminate the contract upon 60-days notice. The new contract and hourly rate would become effective upon signature of the contract by the Mayor. The duties provided by the Hearing Examiner are defined in Chapter 2.26 of the Sultan Municipal Code (Attachment 4).

**FISCAL IMPACT:**  
Hearing Examiner costs are paid by the Applicants with a \$1,500.00 deposit plus any direct costs as set forth in the City's Fee Ordinance. Contract Administration and billing are handled by City Staff.

**RECOMMENDED ACTION:**  
Authorize the Mayor to sign a Professional Services Contract with Mr. John Galt for Hearing Examiner Services.

**RECOMMENDED MOTION:**  
Authorize the Mayor to sign a Professional Services Contract with Mr. John Galt for Hearing Examiner Services.

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**COUNCIL ACTION:**

**DATE:**

**ATTACHMENTS:**

1. September 7, 2007 letter from Mr. John Galt requesting Contract Amendment
2. John Galt current Contract
3. New Professional Services Contract
4. Chapter 2.26 Hearing Examiner Duties

**JOHN E. GALT**  
*Quasi-Judicial Hearing Services*  
927 Grand Avenue  
Everett, Washington 98201  
Voice/FAX: (425) 259-3144  
E-mail: jegalt@gte.net

September 7, 2007

Rick Cisar, City Planner  
City of Sultan  
P.O. Box 1199  
Sultan, WA 98294

Subject: Request to amend Hearing Examiner Contract

Dear Rick:

I presently serve as your Hearing Examiner under the terms of a Personal Services Contract which the City and I entered into effective July 2, 1999, last amended effective January 1, 2003. The contract is open-ended. I would be pleased to continue to serve as your Hearing Examiner, but find that I must request an increase in compensation.

The present contract provides that I be paid at the rate of \$100.00 per hour, not including travel time, for actual time spent in hearing, deliberating, and preparing decisions on the cases which come before me. (Personal Services Contract, § 8)

The change which I request is an increase in the \$100 billing rate to \$110.00. It has been four years since I requested any rate increase. I believe the request is justified based on cost of living increases, if not on any other basis. I am enclosing a signed, simple amendment that would effect the requested change.

I would be pleased to discuss my requests with you or other City officials.

Sincerely,

  
John E. Galt

encl.: Proposed contract (2 signed copies)

**AMENDMENT TO  
PERSONAL SERVICES CONTRACT  
HEARING EXAMINER**

**THIS AMENDMENT** to a contract for professional services is entered into this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the City of Sultan, a municipal corporation under the laws of the State of Washington, hereafter referred to as the "City", and John E. Galt of 927 Grand Avenue, Everett, Washington, 98201, hereafter referred to as "Galt". This Amendment shall be effective January 1, 2008.

**WHEREAS**, Galt has served as the City's Hearing Examiner since July 2, 1999, pursuant to a personal services contract, last amended effective January 1, 2003; and

**WHEREAS**, Galt has requested and the City has agreed to an increase in compensation rate to be effective January 1, 2008.

**NOW, THEREFORE**, the City and Galt mutually agree to amend Section 8 of the current contract as follows:

8. Galt shall initially be paid at the rate of \$110.00 per hour for actual time spent on the City's work, not including travel time to and from the City. The hourly compensation rate may be adjusted annually by the City. Galt shall keep accurate time records and shall provide such records to or for review by the City whenever requested by the City.

In all other respects the contract between the City and Galt remains in effect.

**IN WITNESS WHEREOF**, the parties have hereto set their hands the day and year first above written.

  
\_\_\_\_\_  
John E. Galt, Hearing Officer

\_\_\_\_\_  
Name and Title: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Name and Title: \_\_\_\_\_

**PERSONAL SERVICES CONTRACT  
HEARING EXAMINER**

**THIS CONTRACT** for professional services is entered into this 2<sup>nd</sup> day of July, 1999 by and between the City of Sultan, a municipal corporation under the laws of the State of Washington, hereafter referred to as the "City", and John E. Galt of 927 Grand Avenue, Everett, Washington, 98201, hereafter referred to as "Galt".

**WHEREAS**, it is in the best interest of the City and its citizens to provide a hearing examiner system for the conduct of certain land use hearings within the City; and

**WHEREAS**, Galt has experience conducting such hearings and rendering decisions in accordance with applicable state and local land use law and policy; and

**WHEREAS**, the City has investigated the specific expertise of Galt and finds that he is, in fact, qualified to serve the City as hearing examiner.

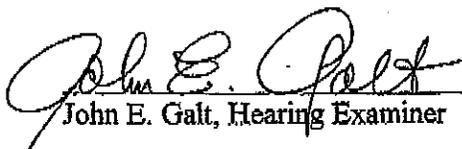
**NOW, THEREFORE**, the City and Galt mutually agree as follows:

1. Galt shall serve as hearing examiner for the City on those cases assigned to him by the City. In this capacity he: shall receive and examine available information, including, but not limited to, application materials, environmental checklists and impact statements; staff reports and citizen comments; shall conduct open record hearings and prepare a record thereof; shall enter findings of fact and conclusions based thereupon; and shall render decisions and/or recommendations as provided by City ordinance. Galt shall provide a signed original of each decision to the City.
2. Galt may, at his sole discretion, excuse himself from hearing any item that may pose a conflict of interest on his part or which may otherwise conflict with previously scheduled obligations. Galt shall endeavor to give the City as much advance notice as possible of his inability to hear any item so that a *pro tem* hearing examiner can be selected.
3. All required open record hearings shall be held within the City.
4. The City shall arrange for and provide: a hearing room and facilities (including recording and sound systems); public notice of hearings as is required under City ordinance and rule; a hearing clerk or equivalent for each hearing; and decision copying and distribution services as required under City ordinance and rule. The City shall provide Galt with a current copy of all City land use plans, policies and ordinances and shall timely provide Galt with amendments thereto passed during the term of this contract. The City shall pay all costs and expenses associated with such support.
5. Galt agrees to render his services as required under this contract pursuant to the time constraints identified in City ordinances and rules.

Attachment 2

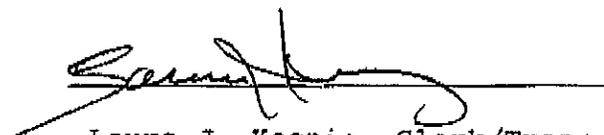
- 6. The City shall actively represent Galt and defend any and all legal challenges filed against any action taken and/or any decision rendered by Galt when performing the quasi-judicial duties called for by this contract to the same extent as it would for any other City quasi-judicial body or decision maker. The costs of such legal representation shall not be charged to Galt.
- 7. This contract shall not constitute nor create an employer/employee relationship and Galt shall not acquire as a result of this contract, unless specifically stated herein, any "employee benefits" which may now exist or hereafter be established by the City for its employees, either by ordinance, practice, contract or otherwise, including but not limited to, annual vacation leave, sick leave, health and accident insurance coverage or retirement benefits. Galt shall be solely responsible for payment of all taxes and fees, including business license fees and social security taxes.
- 8. Galt shall initially be paid at the rate of \$80.00 per hour for actual time spent on the City's work, not including travel time to and from the City. The hourly compensation rate may be adjusted annually by the City. Galt shall keep accurate time records and shall provide such records to or for review by the City whenever requested by the City.
- 9. Nothing herein shall constitute a guarantee to provide a minimum amount of work or a promise to supply work to Galt by the City. Nothing herein shall be deemed to prevent the City from assigning hearing examiner duties to other persons, either by way of contract or employment.
- 10. This contract shall be effective as of the date first written above and shall continue in effect until such time as it is terminated. Either party may terminate this contract upon sixty (60) days written notice of termination to the other party.

IN WITNESS WHEREOF, the parties have hereto set their hands the day and year first above written.

  
 \_\_\_\_\_  
 John E. Galt, Hearing Examiner

  
 \_\_\_\_\_  
 Name and Title: Robert Broughton, Mayor

ATTEST:

  
 \_\_\_\_\_  
 Laura J. Koenig, Clerk/Treasurer

**AMENDMENT TO  
PERSONAL SERVICES CONTRACT  
HEARING EXAMINER**

**THIS AMENDMENT** to a contract for professional services is entered into this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the City of Sultan, a municipal corporation under the laws of the State of Washington, hereafter referred to as the "City", and John E. Galt of 927 Grand Avenue, Everett, Washington, 98201, hereafter referred to as "Galt". This Amendment shall be effective January 1, 2008.

**WHEREAS**, Galt has served as the City's Hearing Examiner since July 2, 1999, pursuant to a personal services contract, last amended effective January 1, 2003; and

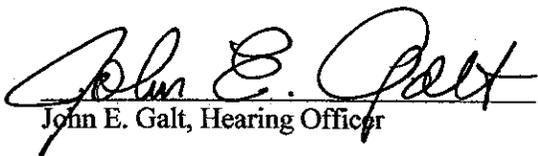
**WHEREAS**, Galt has requested and the City has agreed to an increase in compensation rate to be effective January 1, 2008.

**NOW, THEREFORE**, the City and Galt mutually agree to amend Section 8 of the current contract as follows:

8. Galt shall initially be paid at the rate of \$110.00 per hour for actual time spent on the City's work, not including travel time to and from the City. The hourly compensation rate may be adjusted annually by the City. Galt shall keep accurate time records and shall provide such records to or for review by the City whenever requested by the City.

In all other respects the contract between the City and Galt remains in effect.

**IN WITNESS WHEREOF**, the parties have hereto set their hands the day and year first above written.

  
John E. Galt, Hearing Officer

\_\_\_\_\_  
Name and Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Name and Title: \_\_\_\_\_

**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
CITY OF SULTAN AND JOHN E. GALT  
FOR HEARING EXAMINER SERVICES**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007 in Snohomish County, Washington, by and between the CITY OF SULTAN, hereinafter called the "City", and JOHN E. GALT of 927 Grand Avenue, Everett WA 98201, hereinafter called "GALT" or "Hearing Examiner".

WHEREAS, the Sultan Municipal Code in Chapter 2.26 creates the Office of Hearing Examiner for certain land use hearings and processes in the City; and

WHEREAS, Galt has experience conducting such hearings and rendering decisions in accordance with applicable state and local land use law and policy; and

WHEREAS, Galt has represented, and by entering into this Agreement now represents, that, when assigned to work on any City project, Galt will be in full compliance with the statutes of the State of Washington governing activities to be performed and that Galt is fully qualified and properly licensed to perform the work which will be assigned to him .

**NOW THEREFORE**, in consideration of the terms, conditions, covenants and performances contained herein below, the parties hereto agree as follows:

**1. PURPOSE**

The purpose of this agreement is to provide the City with Hearing Examiner Services during the term of the contract. The general terms and conditions of the relationship between the City and Galt are specified in this agreement.

**2. DUTIES**

**A. HEARING EXAMINER DUTIES:**

1. The Hearing Examiner shall perform all of the duties set forth in Chapter 2.26 of the Sultan Municipal Code and all other actions reasonably necessary to fulfill the obligations of the position, as established by state statute or City ordinance.

2. Galt shall serve as hearing examiner for the City on those cases assigned to him by the City. In this capacity he shall receive and examine available information, including but not limited to, application materials, environmental checklists and impact statements, staff reports, and citizen comments. He shall conduct open record hearings and prepare a record thereof. He shall enter findings of fact and conclusions based thereupon; and shall render a decision and/or recommendations as provided by City Ordinance. Galt shall provide a signed original of each decision/recommendation to the City.

3. Galt may, at his sole discretion, excuse himself from hearing any item that may pose a conflict of interest on his part or which may otherwise conflict with previously scheduled obligations. Galt shall endeavor to give the City as much advanced notice as possible of his inability to hear any item so that a pro tem hearing examiner can be selected.

4. All required open record hearings shall be held within the City.

5. Galt agrees to render his services as required under this contract pursuant to the time constraints identified in City ordinances and rules.

6. Galt shall keep accurate time records and shall provide such records to or for review by the City whenever requested by the City.

7. Upon termination, the City may take possession of all records and documents in the Hearing Examiner's possession pertaining to or arising out of the Hearing Examiner's duties under this Agreement.

8. **Ownership of Work Product.**  
Any and all documents, drawings, reports, and other work product produced by the Hearing Examiner under this Agreement shall become the property of the City upon payment of the fees and charges therefore. The City shall have the complete right to use and re-use such work product in any manner deemed appropriate by the City, provided, that use on any project other than that for which the work product is prepared shall be at the City's risk unless such use is agreed to by the Hearing Examiner.

9. **Assignment and Subcontracting.**  
No portion of this contract may be subcontracted to any other individual, firm or entity without the express and prior written approval of the City.

**B. CITY DUTIES:**

1. The City shall arrange for and provide: a hearing room and facilities (including recording and sound systems); public notice of hearings as required under City ordinance and rule; a hearing clerk or equivalent for each hearing; and decision copying and distribution services as required under City ordinance or rule.

2. The City shall provide Galt with a current copy of all City land use plans, policies and ordinances and shall timely provide Galt with amendments thereto passed during the term of this contract.

3. The City shall pay all costs associated with such support.

**3. COMPENSATION / BILLING AND PAYMENT**

A. The Hearing Examiner shall provide services to the City at an hourly rate of One Hundred and Ten dollars per hour (\$110.00) for performance of the duties described herein for actual time spent on the City's work not including travel time to and from the City.

In the event of termination, the City shall pay for all services satisfactorily performed by the Hearing Examiner to the effective date of termination. No payment shall be made for any work completed after the termination date unless by written agreement of the parties.

**B. BILLING AND PAYMENT**

The Hearing Examiner shall be paid by the City for completed work for services rendered under this agreement. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the work. Payment shall be on a time and expense basis.

1. Invoices shall be submitted by the Hearing Examiner to the City for payment. The invoice will state the time expended, the hourly rate, a detailed description of the work performed, and the expenses incurred during the preceding month. The City will pay timely submitted and approved invoices received before the 10th of each month within thirty (30) days of receipt.

**4. TERM / DURATION / NOTICE / MODIFICATION**

A. This Agreement shall be effective as of the date first written above and shall continue in effect for a period of two years until November 8, 2009. After that date the contract shall automatically renew for one year periods of time unless written notice of termination is provided by either party. Either party may terminate this agreement upon sixty (60) days written notice to the other party.

B. NOTICE: Notice given pursuant to this Agreement shall be given in writing to the parties as follows:

CITY OF SULTAN  
Deborah Knight City Administrator  
319 Main Street  
PO Box 1199  
SULTAN, WA 98258

JOHN E. GALT  
927 Grand Avenue  
Everett WA 98201

C. MODIFICATIONS: Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by the parties.

**5. INDEMNIFICATION**

A. The Hearing Examiner is also an appointed City Official under SMC 2.26 and SMC 2.54. The City pursuant to SMC 2.54 shall represent, indemnify, defend and hold harmless any and all challenges files against any action taken and/or any decision rendered by Galt when performing the quasi-judicial duties of Hearing Examiner called for by this contract to the same

extent as it would for any other City quasi-judicial body or decision maker under the provisions of SMC 2.54.

B. Galt will defend, indemnify and hold harmless the City, its officers, agents or employees from and against all loss or expense, including but not limited judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its officers, agents or employees for damages because of personal or bodily injury, including death, sustained by any person or persons and on account of damage to property including loss of use thereof due to Galt's negligence[? Delete?] or intentional tortious actions or actions excluded under the provisions of SMC 2.54.030.

C. The provisions of this section shall survive the expiration or termination of this agreement.

#### 6 **NONEXCLUSIVE CONTRACT – NO MINIMUM AMOUNT OF WORK**

This shall be a non-exclusive contract. Nothing herein shall constitute a guarantee to provide a minimum amount of work or a promise to supply work to Galt by the City. The City reserves the right to appoint additional Hearing Examiners or Pro Tem Hearing Examiners as needed and to contract for additional services in the future. Nothing herein shall be interpreted to prohibit such future appointments nor to guarantee renewal of this Agreement, its level of payment, nor the level of cases forwarded to the Hearing Examiner in future years. The City reserves the right to renegotiate any and all provisions of this Agreement for future contract terms.

#### 7. **INDEPENDENT CONTRACTOR.**

The Hearing Examiner is an independent contractor for the performance of services under this Agreement. This agreement shall not constitute or create an employer/employee relationship and Galt shall not acquire as a result of this agreement, unless specifically stated herein, any "employee benefits" which many now exist or hereafter be established for the City for its employees, either by ordinance, practice, contract or otherwise, including but not limited to, annual sick leave, vacation pay, over time, health and accident insurance coverage or retirement benefits, or any other benefit applicable to employees of the City nor shall the City pay or deduct any social security, income tax, or other tax from the payments made to the Hearing Examiner. Galt shall be solely responsible for payment of all taxes and fees, including business license and social security.

The City shall not be obligated to pay industrial insurance for services rendered by the Hearing Examiner.

Any and all employees of Galt, while engaged in the performance of any work or services required by Galt under this agreement, shall be considered employees of Galt only and not of the City, and any and all claims that may or might arise under the Workman's Compensation Act on behalf of any said employees while so engaged, and any and all claims made by any third party as a consequence of any negligent act or omission on the part of Galt or his employees while so engaged in any of the work or services provided herein shall be the sole obligation of the Galt.

Galt will defend, indemnify and hold harmless the City, its officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorney's fees or costs incurred by reason or demands because of breach of this Section 7.

The provisions of this section shall survive the expiration or termination of this agreement.

**8. LEGAL RELATIONS.**

The Hearing Examiner shall comply with all federal, state and local laws and ordinances applicable to work to be done under this agreement. This contract shall be interpreted and construed in accordance with the laws of Washington. Venue for any action commenced relating to the interpretation, breach or enforcement of this agreement shall be in Snohomish County Superior Court.

**9. DISPUTES.** The parties agree that, following reasonable attempts at negotiation and compromise, any unresolved dispute arising under this contract may be resolved by a mutually agreed-upon alternative dispute resolution of arbitration or mediation.

**10. WAIVER.**

The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed to be a waiver or relinquishment of said Agreement provision, and the same shall remain in full force and effect.

**11. SEVERABILITY.**

In the event that any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, the remaining provisions shall remain in full force and effect.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

CITY OF SULTAN

By \_\_\_\_\_  
Ben Tolson, MAYOR

John E. Galt, Hearing Examiner

By \_\_\_\_\_  
John E. Galt, Hearing Examiner

Attest:

\_\_\_\_\_  
Laura J. Koenig, City Clerk

34

Approved as to form:

THOM GRAAFSTRA, City Attorney

3.5

## Chapter 2.26

## HEARING EXAMINER

## Sections:

- 2.26.010 Purpose.
- 2.26.020 Creation of hearing examiner position.
- 2.26.030 Appointment.
- 2.26.040 Qualifications.
- 2.26.050 Removal.
- 2.26.060 Freedom from improper influence.
- 2.26.070 Conflict of interest.
- 2.26.080 Rules.
- 2.26.090 Duties of the examiner – Applications.
- 2.26.100 Reports of city departments.
- 2.26.110 Public hearing.
- 2.26.120 Examiner's decision.
- 2.26.130 Notice of examiner's decision.
- 2.26.140 Appeal from examiner's decision.
- 2.26.150 Council consideration.
- 2.26.160 Effect of council action.
- 2.26.180 Local improvement district assessment roll hearings.

**2.26.010 Purpose.**

The purpose of this chapter is to establish a system of land use regulatory hearings which will satisfy the following basic needs:

A. A more prompt opportunity for a hearing and decision on alleged violations of land use regulations, and such other regulations as may be assigned to the hearing examiner;

B. To provide an efficient and effective system for deciding variances and appeals from administrative decisions;

C. To help ensure procedural due process and appearance of fairness by holding such hearings before a neutral party, competent in the fields of land use and procedural requirements. (Ord. 550, 1990)

**2.26.020 Creation of hearing examiner position.**

Pursuant to Chapter 35A.63 RCW, the office of hearing examiner, hereinafter referred to as examiner, is created. All land use matters of a quasi-judicial nature, not requiring a modification of any ordinance or legislation shall be referred to the examiner who shall interpret, review and implement land use regulations in accordance with the procedures set forth herein. (Ord. 701, 1999; Ord. 550, 1990)

**2.26.030 Appointment.**

The hearing examiner shall be appointed by the mayor from a list of qualified persons approved by the council. The compensation of the hearing examiner shall be approved by the council as with other professional and consultant positions. (Ord. 701, 1999; Ord. 550, 1990)

**2.26.040 Qualifications.**

Examiners shall be appointed solely with regard to their qualifications for the duties of their office and will have such training and experience as will qualify them to conduct administrative or quasi-judicial hearings on regulatory enactments and to discharge the other functions conferred upon them. Examiners shall hold no other elective or appointive office of position in the city of Sultan. (Ord. 550, 1990)

**2.26.050 Removal.**

An examiner may be removed from office for cause by the mayor with concurrent majority vote of the city council. (Ord. 550, 1990)

**2.26.060 Freedom from improper influence.**

No person, including city officials, elected or appointed, shall attempt to influence an examiner in any matter pending before him, except at a public hearing duly called for such purpose, or to interfere with an examiner in the performance of his duties in any other way; provided, that this section shall not prohibit the city's attorney from rendering legal service to the examiner upon request. (Ord. 550, 1990)

**2.26.070 Conflict of interest.**

No examiner shall conduct or participate in any hearing, decision or recommendation in which the examiner has a direct or indirect substantial financial or familial interest or concerning which the examiner has had substantial prehearing contacts with proponents or opponents. Nor, on appeal from an examiner's decision, shall any member of the council who has such an interest or has had such contacts participate in consideration thereof. (Ord. 550, 1990)

**2.26.080 Rules.**

The examiner shall have the power to prescribe rules for the scheduling and conduct of hearings and other procedural matters related to the duties of his office. Such rules may provide for cross-examination of witnesses. (Ord. 550, 1990)

**2.26.090 Duties of the examiner – Applications.**

The examiner shall receive and examine available information, conduct public hearings, prepare a record thereof, and enter findings of fact and conclusions based upon those facts, which conclusions shall represent the final action on the application unless appeal, as specified in this section, for the following types of applications:

- A. Denials of conditional use permits;
- B. Denials of variance;
- C. Appeals on short plats and subdivisions;
- D. Appeals from administrative determination of the city's land use regulation codes;
- E. The examiner is empowered to act in lieu of the board of adjustment, and such other officials, boards or commissions as may be assigned. Whenever existing ordinances, codes or policies authorize or direct the board of adjustment, or other officials, boards or commissions to undertake certain activities which the examiner has been assigned, such ordinances, codes or policies shall be construed to refer to the examiner.
- F. The hearing examiner is empowered consistent with SMC 2.26.120(D) and rules adopted by the hearing examiner to reconsider decisions or recommendations of the hearing examiner. (Ord. 764-01; Ord. 550, 1990)

**2.26.100 Reports of city departments.**

On any land use issue coming before the examiner, the building official shall coordinate and assemble the reviews of other city's departments, governmental agencies, and other interested parties and shall prepare a report summarizing the factors involved and the planning commission/city council findings and recommendations. At least seven calendar days prior to the scheduled hearing, the report shall be filed with the examiner and copies thereof shall be mailed to the applicant and made available for public inspection. Copies thereof shall be provided to interested parties upon payment of reproduction costs. In the event that information to be provided by the applicant or other parties outside of city control has not been provided in sufficient time for filing seven days in advance of the hearing, the examiner may reschedule the hearing and notify interested parties. (Ord. 550, 1990)

**2.26.110 Public hearing.**

A. Before rendering a decision or recommendation on any application, the examiner shall hold at least one public hearing thereon.

B. Notice of the time and place of the public hearing shall be given as provided in the ordinance governing the application. If none is specifically set forth, such notice shall be given no less than 10 days before the public hearing.

C. The examiner shall have the power to prescribe rules and regulations for the conduct of hearings under this chapter and also to administer oaths, and preserve order. (Ord. 821-03 § 1; Ord. 550, 1990)

**2.26.120 Examiner's decision.**

The examiner shall render a written decision within 10 working days of the conclusion of a hearing, unless a longer period is agreed to in writing by the applicant. The decision shall include at least the following:

- A. Findings of fact and conclusions of law based upon and supported by the record;
- B. A decision on the applicant to grant, deny or grant with such conditions, modification and restrictions as the examiner finds reasonable to make the application compatible with its environment, zoning ordinance, comprehensive plan, other official policies and objectives, and land use regulatory enactments. Examples of the kinds of conditions, modifications and restrictions which may be imposed include, but are not limited to, additional setbacks, screenings in the form of fencing or landscaping, easements, dedications or additional right-of-way and performance bonds;

C. No application for a variance shall be granted unless the examiner finds:

1. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which their application was filed is located; and

2. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated; and

3. That such variance is necessary:

a. Because of special circumstances set forth in the findings relating to size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and

b. Because for reasons set forth in the findings, the variance as approved would contribute significantly to the improvement of environ-

mental conditions, either existing or potentially arising from the proposed improvement;

D. All decisions or recommendations of the hearing examiner are subject to reconsideration, unless reconsideration is waived. Reconsideration is waived unless within seven calendar days of the date of mailing of the decision or recommendation, the applicant, the city or a party of record submits a written request for reconsideration in accordance with rules issued by the hearing examiner. Pending reconsideration by the hearing examiner, a decision or recommendation shall not be deemed final for the purpose of commencement of the period of time in which to commence an appeal. If reconsideration is waived because no timely request for reconsideration is made, the initial decision or recommendation of the hearing examiner, subject to any right of appeal, shall be deemed final as of the eighth calendar day after the date of mailing of the decision or recommendation. If a timely request for reconsideration is made, the hearing examiner shall grant or deny reconsideration within 10 calendar days of the date of receipt of the request for reconsideration. All periods of time provided for in this code for filing an appeal of a hearing examiner's decision, or for council consideration of a hearing examiner's recommendation, shall commence to run from the later of the eighth calendar day after mailing of the hearing examiner's decision or recommendation or the date of the hearing examiner's order granting or denying reconsideration.

E. All fees associated with the reconsideration shall be set by council resolution.

F. A statement of the date the decision will become final unless appealed, together with a description of the appeal procedure. (Ord. 764-01; Ord. 550, 1990)

#### **2.26.130 Notice of examiner's decision.**

Not later than three working days following the rendering of a written decision, copies thereof shall be mailed to the applicant and to other parties of record in the case. "Parties of record" shall include the applicant and all other persons who specifically request notice of decision by signing a register provided for such purpose at the public hearing, or otherwise provide written request for such notice. (Ord. 550, 1990)

#### **2.26.140 Appeal from examiner's decision.**

A. The grounds for filing an appeal of an examiner's decision shall be limited to the following:

1. Newly discovered evidence which is material to the examiner's decision and which

could not reasonably have been produced at the examiner's hearing;

2. The examiner exceeded his jurisdiction;

3. The examiner failed to follow the applicable procedure in reaching his decision;

4. The examiner committed an error of law or misinterpreted the applicable zoning ordinance, comprehensive plan, provisions of the city's code or other city or state law or regulation; or

5. The examiner's findings and conclusions are not supported by the record.

B. 1. Where the examiner's decision is final and conclusive with right of appeal to the council, any such appeal shall be filed by the applicant, a department of the city, or other aggrieved person or agency with the city clerk/treasurer within 10 calendar days following the rendering of the examiner's decision pursuant to SMC 2.26.120. In computing the time in which to file an appeal with the council, the date the examiner's decision is rendered shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or a legal holiday.

2. Appeals filed with the city clerk/treasurer shall be in writing, shall contain a detailed statement of grounds for appeal and the facts upon which the appeal is based, and shall be accompanied by a fee of \$50.00; provided, that such appeal fee shall not be charged to a department of the city or to other than the first appellant. All council proceedings shall be limited to those matters expressly raised in a timely written appeal or appeals.

3. The timely filing of an appeal shall stay the effective date of the examiner's decision until such time as the appeal is adjudicated by the council or withdrawn.

C. 1. If the appeal is to the council, the timely filing of an appeal shall stay the effective date of the examiner's decision until such time as the appeal is adjudicated or withdrawn.

2. Within seven calendar days following the timely filing of an appeal with the city clerk/treasurer, notice thereof and of the date, time and place for council consideration shall be mailed by the clerk's office to the applicant, to the examiner and to all other parties of record. Such notice shall additionally indicate the deadline for submittal of written comments as prescribed in SMC 2.26.150.

D. Where the examiner's decision is final and conclusive, with right of appeal to court, the procedures for appeal are as set out in the underlying ordinance or statute governing the land use permit or other quasi-judicial hearing. (Ord. 550, 1990)

#### **2.26.150 Council consideration.**

A. An examiner's decision which has been timely appealed pursuant to SMC 2.26.140 shall come on for council consideration in open public meeting no sooner than 21 nor longer than 35 calendar days from the date the appeal was filed. The council shall consider the matter based upon the record before the examiner, the examiner's decision, the written appeal statement and any written comments received by the council before closure of the city clerk/treasurer's office seven days prior to the public meeting date set for council consideration.

B. At the public meeting, the council may concur with the findings and conclusions of the examiner and affirm the examiner's decision; remand the matter to the examiner for further proceedings in accordance with the council's findings and conclusions; or the council may determine to hear the appeal at public hearing. In those instances in which the council affirms the examiner's decision or remands the matter to the examiner, the council's decision shall be reduced to writing and entered into the record of the proceeding within 15 days of the public meeting. Copies of the decision shall be mailed to all parties of record.

C. In those instances in which the council determines to conduct a public hearing, notice of the hearing shall be given by publication in the city newspaper no less than 10 days prior to the date set for the hearing and written notice shall also be given by the council by mail to all parties of record before the hearing examiner.

D. All council hearings conducted pursuant to this section shall be de novo and shall be limited to those matters raised in the appeal. The council shall consider the appeal based upon the record before the examiner and all written and oral testimony presented at the council hearing. All testimony at any public hearing shall be taken under oath.

E. At the conclusion of the public hearing, the council shall enter its decision which shall set forth the findings and conclusions of the council in support of its decision. The council may adopt any or all of the findings or conclusions of the examiner which support the council's decision. The council may affirm the decision of the examiner, reverse the decision of the examiner either wholly or in

part, or may remand the matter to the examiner for further proceedings in accordance with the council's findings and conclusions.

F. The council's decision shall be reduced to writing and entered into the record of the proceedings within 15 days of the conclusion of the hearing. Copies of the decision shall be mailed to all parties of record. (Ord. 550, 1990)

#### **2.26.160 Effect of council action.**

The council's decision to affirm an examiner's decision or remand a matter to the examiner pursuant to SMC 2.26.150(B), or the council's decision after public hearing on an appeal, shall be final and conclusive with right of appeal to the Superior Court of Snohomish County by writ of certiorari, writ of prohibition or writ of mandamus within 15 calendar days of the council's decision. The cost of transcription of all records ordered certified by the court for such review shall be borne by the applicant for the writ. (Ord. 550, 1990)

#### **2.26.180 Local improvement district assessment roll hearings.**

A. As authorized by RCW 35.44.070, the city council hereby provides for delegating, whenever directed by majority vote of the city council, the duty of conducting public hearings for the purpose of considering and making recommendations on final assessment rolls and the individual assessments upon property within local improvement districts to a hearing examiner appointed under this section, and the hearing examiner is directed to conduct such hearings and make those recommendations when thus authorized by the city council.

B. All objections to the confirmation of the assessment roll shall be in writing and identify the property, be signed by the owners and clearly state the grounds of the objection. Objections not made within the time and in the manner prescribed and as required by law shall be conclusively presumed to have been waived.

C. The hearing examiner shall conduct the hearing to be commenced at the time and place designated by the city council, cause an adequate record to be made of the proceedings, and make written findings, conclusions and recommendations to the city council following the completion of such hearings, which may be continued and reconvened as provided by law whenever deemed proper by the hearing examiner, and the city council shall either adopt or reject the recommendations of the hearing examiner.

D. The recommendations of the hearing examiner shall be that the city council correct, revise, lower, change or modify the roll or any part thereof, or set aside the roll in order for the assessment to be made de novo, or that the city council adopt or correct the roll or take other action on the roll as appropriate, including confirmation of the roll without change. The recommendations of the hearing examiner shall be filed with the city clerk and be open to public inspection. All persons whose names appear upon the recommended assessment roll who timely filed written objections to their assessments shall receive mailed written notification of their recommended assessments.

E. Any persons who shall have timely filed objections to their assessments may appeal the recommendations of the hearing examiner regarding their properties to the city council by filing written notice of such appeal with the city clerk within 10 calendar days after the date of mailing of the hearing examiner's recommendations.

F. The appeal shall be based exclusively upon the record made before the hearing examiner and shall be considered by the city council at a public meeting. No new evidence may be presented. Arguments on appeal shall be either oral or written as the city council may order.

G. The city council shall adopt or reject the recommendations of the hearing examiner at a public meeting, after considering any appeals, and shall act by ordinance in confirming the final assessment roll.

H. Any appeal from a decision of the city council regarding any assessment may be made to the superior court within the time and in the manner provided by law.

I. The procedures set forth in this section are independent of and alternative to any other hearing or review processes heretofore or hereafter established by the city, and shall govern the conduct and review of final assessment hearings conducted before hearing examiners and related proceedings when authorized by the city council. (Ord. 775-01 § 1)

## Chapter 2.28

### CITY ELECTIONS

#### Sections:

2.28.010 Publication of notice setting forth dates and offices to be filled.

#### **2.28.010 Publication of notice setting forth dates and offices to be filled.**

Not more than 10 days nor less than five days prior to the date upon which the county auditor may accept declaration of candidacy for an ensuing election, the city clerk/treasurer shall publish a notice in any legal newspaper of general circulation in the city, setting forth the dates between which declaration of candidacy will be accepted for the ensuing election, and setting forth the elective positions and offices to be filled at such ensuing elections. (Ord. 388 § 1, 1980; Ord. 254 § 2, 1961; Ord. 243 § 1, 1960)