

Thurston County Public Health and Social Services
Environmental Health Division
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**RULES OF PROCEDURE FOR HEARINGS BEFORE THE
ADMINISTRATIVE HEARING OFFICER**

1. APPLICABILITY

- 1.1 The procedures established in this document shall apply to open record hearings before the Administrative Hearing Officer (Hearing Officer) for the Thurston County Public Health and Social Services Department.

These rules do not apply to decisions rendered without a hearing including but not limited to waiver decisions without a hearing, civil penalties pursuant to Article I, 19.7, Article IV, Disciplinary Reprimands and Food Establishment Expedited Hearings under Article I, 8.10.

2. DEFINITIONS

- 2.1 “Administrative decision” means an order, requirement, permit, decision, or determination of the Health Officer.

“Aggrieved person” (as defined in Article I of the Sanitary Code) means a person whose interests are, or will likely be, specifically and perceptibly harmed by a requirement, permit, decision, or determination made by the Health Officer or an administrative official, and where a decision in favor of that person would substantially eliminate the harm caused by the requirement, permit, decision, or determination.

“Appellant” means a person, organization, or other similar group who files a complete and timely appeal of an order, requirement, permit, decision, or determination of the Health Officer.

“Applicant” means a person who has applied for a permit, certificate or a waiver from the Thurston County Public Health and Social Services Department.

“Board” means the Thurston County Board of Health.

“Burden of proof” means the responsibility or obligation to provide sufficient evidence to show that a party’s position should prevail when the facts are applied to the applicable regulations. A party must satisfy its burden of proof in order to prevail in an action.

“County” means Thurston County, Washington.

“County Code” means Thurston County Code.

“Department” or “Health Department” means the Thurston County Public Health and Social Services Department.

“Ex parte communication” means written or oral communications to the Hearing Officer about a matter pending before the Hearing Officer made outside of a public hearing or pre-hearing conference and outside of the presence of all other parties.

“Health Officer” means the Health Officer of the Thurston County Public Health and Social Services Department as provided for in RCW 70.05.050 or his/her designee.

“Hearing” means the open record proceeding at which testimony and exhibits of evidence are presented to the Hearing Officer.

“Hearing Officer” means the Administrative Hearing Officer of the Thurston County Public Health and Social Services Department.

“Motion” means a request made to the Hearing Officer for an order or other ruling.

“Party” means the Applicant, Appellant, or person requesting a waiver hearing, and the Health Officer or other County personnel involved in the matter.

“Party of record” includes Parties and additional persons who testify, submit written comments, or sign the sign-in sheet at an open record hearing, consistent with the Sanitary Code.

“Record” means the oral testimony and exhibits submitted at the hearing. The audio recording of the proceeding shall be included as part of the record.

“Sanitary Code” means the Sanitary Code for Thurston County.

“Staff” means the staff member of the Thurston County Public Health and Social Services Department assigned to and presenting a case before the Hearing Officer.

“Subject property” means the real property that is the subject of a hearing.

“TCC” means the Thurston County Code.

3. JURISDICTION

- 3.1 The Hearing Officer’s jurisdiction is limited to those issues where the Sanitary Code, the County Code, or other appropriate written authorization grants the Hearing Officer the authority to make a decision or issue an order, including but not limited to appeals of administrative decisions and requests for waivers from the Sanitary Code (when a hearing is requested).
- 3.2 Timely filing of an appeal or request for hearing on a waiver is required for the Hearing Officer to acquire jurisdiction over the matter.

- 3.3 An Applicant, Appellant, Health Officer, or party entitled to notice of open record hearing pursuant to Sanitary Code and County Code provisions who is present at the hearing may challenge the Hearing Officer's jurisdiction to hear an appeal or other matter on jurisdictional grounds, or the Hearing Officer may independently raise a jurisdictional issue. If the Hearing Officer is satisfied that he/she does not have jurisdiction, the appeal will be dismissed.

4. EX PARTE COMMUNICATION

- 4.1 a. No person shall communicate ex parte, directly or indirectly, with the Hearing Officer concerning the merits of a pending application or appeal. Communications on purely procedural matters such as scheduling and logistics are permitted on an ex parte basis. All allowed ex parte communications should be directed to the Hearing Officer in care of the Hearing Clerk at the Health Department.
- b. The Hearing Officer shall not communicate ex parte directly or indirectly with any person who is an interested party in an application or appeal currently pending before the Hearing Officer concerning the merits of the pending application or appeal.
- c. If a prohibited ex parte communication is made to or by the Hearing Officer, such communication shall be publicly disclosed at hearing. The Hearing Officer shall exercise discretion as to whether to disqualify himself or herself as Hearing Officer for that particular hearing consistent with the appearance of fairness doctrine.

5. NATURE OF PROCEEDINGS

5.1 Expeditious Proceedings

It is the policy of the Hearing Officer that, to the extent practicable and consistent with the requirements of law, public hearings shall be conducted expeditiously. In the conduct of such proceedings, the Hearing Officer, County staff, and all parties, agents, and witnesses shall make every effort at each stage of a proceeding to avoid delay.

5.2 Scheduling

Hearings will be scheduled on an as-needed basis. Each case shall be noted to commence at a given time. In the event that more than one case is scheduled to commence at the same time, the Hearing Officer shall have discretion in setting the agenda.

5.3 Site View

When necessary, the Hearing Officer may inspect the site that is the subject of the hearing. The site view is not part of the record. Failure to inspect the site will not render the Hearing Officer's decision void.

5.4 Record of Hearing

- a. Hearings shall be electronically recorded and such recordings shall be part of the official case record. Copies of the electronic recordings of a particular proceeding may be obtained from the Hearing Clerk at the Health Department. The requester shall be responsible for the reasonable cost of copying the recording. No minutes of the hearing will be kept.
- b. Copies of written materials in the record may be obtained from the Hearing Clerk at the Health Department. The requester shall be responsible for paying the reasonable cost of copying.

5.5 Computation of Time

Computation of any period of time prescribed or allowed by these rules shall begin with the first day following the day on which the act or event initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or holiday, the period shall run until the end of the next business day.

6. **RIGHTS AND RESPONSIBILITIES OF PARTIES**

6.1 Rights of County

The County staff (including the Health Officer and others) shall have the right to cross-examination, present evidence and testimony, object, make motions, arguments, recommendations, and all other rights essential to a fair hearing.

6.2 Rights of Applicant and Appellant

Every Applicant and Appellant shall have the right to notice, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing.

6.3 Rights of Parties

Applicants, Appellants, persons requesting waivers, the Health Officer, and persons entitled to notice of hearing pursuant to applicable Sanitary Code or Thurston County Code provisions shall have the right to present evidence and testimony at hearing. The right of parties to cross-examine, object, and submit motions and arguments shall be at the discretion of the Hearing Officer. The Hearing Officer may impose reasonable limitations on the number of witnesses heard and the nature and length of their testimony.

6.4 Responsibilities of County Staff

County Staff shall provide notice of hearing consistent with the Sanitary Code; provide a staff report consistent with the provisions of Rule 9.3; present materials at the hearing; provide the Hearing Officer with documentation relevant to the case; electronically record the proceedings; and maintain possession of the official record in each matter, including the audio recording of proceedings.

6.5 Responsibilities of Applicants

The Applicant or his/her representative shall be responsible for the following: be familiar with the criteria for review; be prepared to present his/her case; provide the Hearing Officer with any material that supports his/her case; and answer questions from the Hearing Officer. Regarding documentary evidence, the Applicant shall serve a copy on all parties and provide three copies of each document on or before the hearing date (one for staff, one for the official record, and one working copy for the Hearing Officer).

6.6 Responsibilities of Appellant

Appellants have the same responsibilities as Applicants, and in addition shall be required to provide a specific and comprehensible written statement of the issues on appeal prior to the hearing.

6.7 Responsibilities of All Parties

Parties, witnesses, and others who may be present shall conduct themselves with civility and deal courteously with all persons involved in the proceedings. Failure to do so will result in removal from the hearing.

6.8 Time Limits on Witness Testimony

Where the Hearing Officer finds that testimony would be repetitious or irrelevant to the matters before him/her, the Hearing Officer may impose reasonable limitations on the number of witnesses heard and on the nature and length of their testimony. Cross-examination is permitted as necessary for a full disclosure of the facts, but the Hearing Officer shall control the amount and style of cross-examination.

7. PRESIDING OFFICIALS

7.1 Presiding Officials

- a. The Hearing Officer shall preside over all hearings.
- b. The Hearing Officer shall have the authority and duties granted to him/her in state statutes, the Sanitary Code, and other County ordinances. Included in the duties of the Hearing Officer are the following: to conduct fair and impartial hearings; to take all

necessary action to avoid delay in the disposition of proceedings; and, to maintain order. He/she shall have all powers necessary to those ends, including the following:

1. to administer oaths and affirmations;
2. to rule upon offers of proof and receive evidence;
3. to regulate the course of the hearing and the conduct of the parties and their agents;
4. to question any party presenting testimony at the hearing;
5. to hold conferences for settlement, simplification of the issues, or any other proper purpose;
6. to require briefs on legal issues;
7. to consider and rule upon all procedural and other motions appropriate to the proceedings; and,
8. to make and file decisions or orders, as authorized by the Sanitary Code or other applicable code.

8. PRE-HEARING PROCEDURES

8.1 Pre-hearing Conference

- a. The Hearing Officer may, on his/her own order or at the request of a party, hold a conference no fewer than three days prior to the scheduled hearing to consider:
 - (1) Identification, clarification, and simplification of the issues;
 - (2) Disclosure of witnesses to be called and exhibits to be presented;
 - (3) Motions;
 - (4) Establish a schedule for submission of documents or evidence.
 - (5) Other matters deemed by the Hearing Officer appropriate for the orderly and expeditious disposition of the proceedings.
- b. Pre-hearing conferences may be held by telephone conference call.
- c. The Hearing Officer shall give notice to all parties (who before the hearing include the Applicant, Appellant, requestor of waiver hearing, and the Health Officer) of any pre-hearing conference. Notice may be written or oral.
- d. All parties shall participate in any pre-hearing conference unless they waive the right to be present or represented and are granted permission by the Hearing Officer not to attend.
- e. Following the pre-hearing conference, the Hearing Officer may issue an order reciting the actions taken and/or ruling on motions made at the conference.
- f. Pre-hearing orders may not be appealed until the Hearing Officer issues an appeal or waiver decision.

8.2 Timeliness

To be considered timely filed, an appeal must be received prior to close of business on the last day of the appeal period.

The appeal must be filed by mail to:

Thurston County Public Health and Social Services Department
Attention: Administrative Hearing Clerk
2000 Lakeridge Drive S.W.
Olympia, WA 98502

Or delivered to:

Administrative Hearing Clerk
Thurston County Courthouse
2000 Lakeridge Drive SW
Building 1, 2nd Floor
Permit Assistance Center – Hours are Monday thru Friday 8:00 AM to 12:00 Noon

8.3 Fee

Any filing fee established by the Health Department shall accompany an appeal; failure to submit the fee shall render the appeal incomplete.

8.4 Contents

A hearing request must be in writing and, in addition to any requirements of the Sanitary Code, must contain the following:

- a. A brief statement as to how the Appellant/Applicant is significantly affected by or interested in the matter appealed;
- b. A brief statement of the Appellant's/Applicant's issues on appeal, noting Appellant's/Applicant's specific exceptions and objections to the decision or action being appealed;
- c. The specific relief requested, such as reversal or modification;
- d. Signature, address, and phone number of the Appellant/Applicant, and name and address of Appellant's/Applicant's designated representative, if any.

8.5 Briefs

Briefs or other memoranda of law, limited to the specific issues set forth in the Appellant's/Applicant's statement of appeal, may be submitted by the parties in support of or in response to an appeal or hearing request. Each party is permitted one primary brief not exceeding 20 double-spaced pages in length. In addition, the Appellant/Applicant may submit a reply brief not exceeding ten double-spaced pages in length. The Hearing Officer may, in his/her discretion, waive or modify these page limits at the request of either of the parties in order to accommodate complex legal and factual issues.

The schedule for briefing is often established through a pre-hearing conference and/or pre-hearing order. Unless pre-hearing proceedings establish an alternate schedule, the following briefing schedule shall apply:

- The Appellant/Applicant shall file its primary brief at least 14 calendar days prior to the scheduled hearing date.
- The County shall file its primary brief at least seven calendar days prior to the scheduled hearing date.
- The Appellant/Applicant shall file its reply brief at least two business days prior to the scheduled hearing date.

The Hearing Officer shall have discretion to waive or modify the default schedule at the request of a party.

Unless otherwise specified by the Hearing Officer, briefs must be served on all parties of record and three copies filed with the Hearing Clerk at the Health Department personally, by first-class mail, or by facsimile transmission. Email is not an acceptable method of service without prior approval of the Hearing Officer, in which case email submission to the Hearing Officer would be done via the Hearing Clerk.

8.6 Motions

Written motions may be submitted prior to a hearing. Such motions shall be served on all parties of record and filed with the Hearing Clerk consistent with Rule 8.5 above. Unless the Hearing Officer establishes an alternate schedule, the nonmoving parties shall have one week to file a written response to the motion. Motions and responses to motions shall not exceed fifteen double-spaced pages in length without prior approval of the Hearing Officer.

- 8.7 In cases where a group, association, or several individuals with mutual interests are parties to a proceeding before the Hearing Office, one person shall be designated as party representative, who shall be made known to the Hearing Officer. Notice or other communication to the party representative is considered notice to the party.

9. CONDUCT OF OPEN RECORD HEARINGS

9.1 Notice Requirements of Hearing and Filings

- a. All notice and time requirements and methods of notification shall be consistent with the provisions as set forth in the Sanitary Code and/or the Thurston County Code, as applicable.
- b. Declaration of Notice: A declaration attesting to the notice given of an open record hearing, including a list of those mailed to, shall be part of each official case record.

9.2 Oath or Affirmation

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

9.3 Development of Record at a Hearing on a Waiver Request

- a. Open Record Hearing. A hearing on a waiver request generally includes, but is not limited to, the following elements:
 - A brief introductory statement of the hearing process by the Hearing Officer, which includes the elements set forth in Article 1, Section 8.6 of the Sanitary Code; a summary of the request, identification of applicable criteria and regulations, and recommendation by County staff;
 - A detailed presentation of the request by the Appellant/Applicant;
 - An analysis of the proposal and summary of the recommendation of the Department by staff;
 - Testimony from interested parties to the extent authorized by the Sanitary Code;
 - Opportunity for cross-examination and rebuttal; and,
 - Opportunity for questions by the Hearing Officer.
- b. Content of the Record. The record of a hearing on a waiver request hearing conducted by the Hearing Officer shall include, at a minimum, the following materials:
 - The application;
 - The Department's staff report;
 - All evidence received, including oral testimony given at the hearing, all exhibits and other materials admitted as evidence;
 - A statement of all matters officially noticed;
 - A recommendation by Staff as to the outcome; and
 - Audio recordings of the proceedings.
- c. Content and Form of Staff Reports on Waiver Requests. The staff report, including attachments, shall be distributed to the Hearing Officer and the Appellant/Applicant, and

it shall be made available for review in County offices to anyone else entitled to notice of the hearing. The staff report shall include the following, as appropriate:

- Names and addresses of the owner(s) of the subject property and the Applicant/Appellant, and the Applicant/Appellant's interest in the property if not an owner;
- A brief summary of the requested action and the regulations controlling the request;
- If real property is involved, the following descriptive information about the subject property;
 - The address and legal description of the subject property;
 - A description of existing development on the subject property;
 - A description of surrounding development, if relevant;
- Any scientific, environmental, or engineering information germane to the case;
- An in-depth analysis of the request's consistency with the criteria for approval. In making the analysis, the staff shall refer to applicable regulations as often as possible;
- A summary of the reports or recommendations of any other agencies consulted;
- Appropriate maps or photographs of the subject property; and
- Staff's recommendation, including recommended conditions of approval.

9.4 Development of Hearing Record

Staff reports and content of hearing records are generally the same as those established for waiver request hearings in Rule 9.3 above. Hearing proceedings generally include, but are not limited to, the following elements:

- A brief introductory statement of the hearing process by the Hearing Officer, which includes the elements set forth in Article 1, Section 8.6 of the Sanitary Code;
- A brief background of the decision appealed from County staff;
- A detailed presentation, including witnesses if any, on the merits of the appeal from the Appellant/Applicant;
- County staff response, including witnesses if any, to the appeal;
- Applicant's response (if the Applicant is not the Appellant);
- Cross examination of parties and witnesses;
- Opportunity for rebuttal; and
- Opportunity for questions by the Hearing Officer.

9.5 Continuances of Hearing

If in the course of proceedings the Hearing Officer determines that more information is necessary in order to make a decision, or if he/she is unable to hear all of the testimony on the matter, the hearing may be continued to a later date. If continued to a specific time and place, no further notice of that hearing need be given. Continuances shall be consistent with the provisions of the Sanitary Code.

9.6 Evidence

- a. Burden of proof.
 - (1) In appeals pursuant to Sanitary Code Article I Section 19.8, the Health Officer shall bear the burden of proof.
 - (2) In disciplinary hearings pursuant to Sanitary Code Article IV, the Health Officer shall bear the burden of proof.
 - (3) In hearings pursuant to Thurston County Code, Section 10.92.020 et seq. the Health Officer shall bear the burden of proof.
 - (4) In all types of appeals not specifically listed above, the Appellant shall bear the burden of proof.
 - (5) In any application, including requests for waivers, pursuant to Sanitary Code Article I, Section 13, the Applicant shall bear the burden of proof. In open record hearings pursuant to Sanitary Code Article I Section 13, the party requesting the waiver shall bear the burden of proof.
- b. Admissibility. Relevant evidence, including hearsay, shall be admitted if:
 - (1) it possesses probative value such as would be commonly accepted by reasonably prudent persons in the conduct of their affairs, and
 - (2) in the opinion of the Hearing Officer, it is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness.
- c. Hearing Officer Discretion: The Hearing Officer shall have discretion on the admissibility of all evidence. Objections to admissibility of evidence will be noted in the record. In ruling on the admissibility of evidence, the Hearing Officer shall give consideration to the rules of evidence governing civil proceedings before the superior courts in the State of Washington, but conformance to the rules of evidence shall not be required. All parties will be allowed opportunity to make a record of evidence admitted or denied during the course of the hearing. This record shall include offers of proof.
- d. Copies of documentary evidence. Parties bringing documentary evidence to hearings are advised to bring sufficient copies such that there is one for each of the other parties, one for the permanent record, and one to serve as the Hearing Officer's working copy.
- e. Record held open for submission of relevant evidence. The Hearing Officer may request a document to be filed after the close of testimony. In such cases, only those documents specifically requested by the Hearing Officer on the record during the hearing may be admitted.

9.7 Presence of Legal Counsel at Hearings

Although representation by legal counsel is not required at the hearing, all parties participating in the hearing may be represented by legal counsel of their choice.

10. WITHDRAWAL

10.1 Withdrawal of Waiver Request Application

Only the party requesting hearing on a waiver request may withdraw the hearing request. Where the hearing request is filed by several persons or a group, withdrawal shall be made by the person designated as the party representative.

10.2 Withdrawal of Appeal

Only an Appellant may withdraw an appeal. Where the appeal is filed by several persons or a group, withdrawal shall be made by the person designated as the party representative.

11. DECISIONS

11.1 Written Decisions

The Hearing Officer's written decision shall be issued within 15 calendar days after the date of the hearing or as otherwise agreed upon by the Hearing Officer and the parties.

11.2 Content of Decision

At a minimum, each decision shall include the following:

- a. The nature and background of the proceeding.
- b. A synopsis of the testimony and arguments presented.
- c. Findings. The findings shall be a statement of the facts that are the basis of the conclusions and decision of the Hearing Officer and shall be based exclusively on the evidence entered into the record and any matters officially noticed. The source of each finding shall be identified.
- d. Conclusions. Whenever practical, the conclusions shall reference specific provisions of the law and regulations or both, together with reasons and precedents relied upon to support the same.
- e. A decision or order. The decision or order shall be based upon a consideration of the whole record and supported by reliable, probative and substantial evidence. Decisions may include conditions of approval and may order specific actions.

11.3 Procedure for Reconsideration and Reopening Hearing

- a. At any time prior to the filing of the decision, the Hearing Officer may reopen the proceeding for the reception of further evidence.
- b. Reconsideration.
 - 1) Any party of record may file a written request for reconsideration of a decision of the Hearing Officer within ten calendar days of the date of the decision. The request must allege a specific error of law or fact and state the basis for the request. Each party of record is allowed only one request for reconsideration. The party requesting reconsideration must serve a copy of the request on all other parties of record. Other parties may not submit a response to the request for reconsideration unless requested by the Hearing Officer.
 - 2) New material evidence offered with a request for reconsideration will only be considered upon a showing of significant relevance and good cause for delay in its submission. All parties of record will be given notice of the consideration of such evidence and granted an opportunity to review it. The Hearing Officer shall exercise discretion in determining whether parties of record must be granted an opportunity to submit responsive comments.
 - 3) The Hearing Officer shall respond to the request for reconsideration within 15 calendar days by issuing an Order on Reconsideration. The Order on Reconsideration may:
 - a) deny the request for reconsideration;
 - b) approve the request by modifying or amending the decision based on the established record;
 - c) establish a schedule for parties to respond in writing to the request for reconsideration; or
 - d) set the matter for additional hearing.
 - 4) If the Hearing Officer responds to the request for reconsideration per subsections 3(c) or (d) above, the Hearing Officer must issue a decision on reconsideration within 15 calendar days after the hearing or the final deadline to submit a response.

12. APPEALS OF HEARING OFFICER DECISIONS

- 12.1 Any party of record aggrieved by a decision of the Hearing Officer, except in the case of a decision issued pursuant to Article I, Section 19 of the Sanitary Code or a disciplinary action taken pursuant to Article IV, Section 23 of the Sanitary Code, may appeal the decision to the Board of Health. The written appeal and the required appeal fee must be filed at the Permit Assistance Center at 2000 Lakeridge Drive SW; Building 1, 2nd Floor within 15 calendar days of the date of the Hearing Officer's final written decision, or if a timely request for reconsideration has been filed, within 15 calendar days of the Hearing Officer's final written decision on reconsideration. Refer to Article I, Section 9 of the Sanitary Code for detailed appeal instructions.

- 12.2 A decision of the Hearing Officer issued pursuant to Article I, Section 19 of the Sanitary Code (Administrative Civil Penalties) may be appealed to Superior Court. To be timely, the appeal must be filed within 24 calendar days from the date the Hearing Officer's decision was mailed to the person to whom the Notice of Civil Penalty was sent.
- 12.3 Any person aggrieved by a disciplinary action taken by the Hearing Officer pursuant to Article IV of the Sanitary Code (Certification of Designers, Installers, Pumpers, Inspectors, and Maintenance Personnel) may appeal the action to the Thurston County On-Site Sewage Disciplinary Board of Appeals. The appeal application form and the appeal fee must be filed with the Thurston County Public Health and Social Services Department at the Thurston County Courthouse within ten days after the date the order, decision or determination to be appealed was served on the Appellant. Refer to Article IV of the Sanitary Code for detailed appeal instructions.
- 12.4 Appeals from Hearing Officer decisions pursuant to Thurston County Code Chapter 10.92 may be filed with the Thurston County Board of Health. Consistent with the requirements of TCC 10.92.030, such an appeal shall be filed with the Health Officer, along with the appeal fee specified in Article I, Appendix A of the Sanitary Code for Thurston County, within thirty calendar days of the date of service of the Hearing Officer's decision, or is thereafter barred.

13. CONFLICTS

These rules of procedure are adopted to supplement the requirements set forth in Article I of the Sanitary Code and applicable provisions of Thurston County Code Chapter 10.92. In the case of any conflict between these rules and the provisions of the Sanitary Code or the County Code the applicable code will have precedence over any conflicting portions of these rules.