

**RESOLUTION 134**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WOODINVILLE, WASHINGTON, ADOPTING RULES OF PROCEDURE FOR CITY COUNCIL CLOSED RECORD APPEALS.**

WHEREAS, the City from time to time receives closed record appeals on decisions relating to project permit applications, and

WHEREAS, the City Council desires to have standard procedures for dealing with closed record appeals, and

WHEREAS, such standard procedures will better inform the general public of their rights and responsibilities, and the scope of review on closed record appeals, now, therefore,

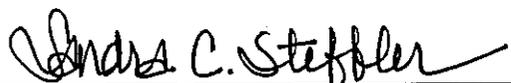
**THE CITY COUNCIL OF THE CITY OF WOODINVILLE, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

**Section 1.** The Rules of Procedure for City Council Closed Records Appeals, as set forth on Attachment A, incorporated by reference as if set forth in full, are hereby adopted.

**ADOPTED by the City Council this 22nd day of September, 1997.**

  
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**ROBERT R. MILLER, MAYOR**

**ATTEST/AUTHENTICATED:**

  
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**SANDRA STEFFLER, CITY CLERK**

**RULES OF PROCEDURE  
CITY COUNCIL CLOSED RECORD APPEALS**

- I. Party of Record May Appeal. Only a party of record may appeal a decision of the City Hearing Examiner (or Planning Commission) to the City Council.
- II. Ex Parte Communications to City Council.
- A. The City Council may not communicate, directly or indirectly, regarding any issue in the closed record appeal with any person not employed by the City, who has a direct or indirect interest in the outcome of the proceeding, without notice and opportunity for all parties to participate.
- B. If, before hearing a matter in a closed record appeal, a City Councilmember or the Mayor receives an ex parte communication concerning any issue in the appeal, then the City Councilmember or Mayor shall disclose the communication as follows:
1. The Councilmember or Mayor shall announce at each closed record appeal hearing, that a communication of the type described in II. A. was received, shall state the substance of the communication, the identity of each person from whom the communication was received, and any responses made.
  2. Upon request made at the closed record appeal, any party desiring to rebut the communication shall be allowed to make a statement for the record. Portions of the record pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the appeal.
- III. Official Hearing Record. The official hearing record shall consist of:
- A. The Hearing Examiner's Findings, Conclusions and Decision or the written decision or recommendation of the Planning Commission.
- B. Electronic Recording. The taped recording of the Hearing Examiner's (or Planning Commission's) hearing, which shall be available to the Mayor and Councilmembers at all times; and
- C. Copies of Record. Copies of any exhibits made a part of the record, by the Hearing Examiner or the Planning Commission,

IV. Procedures.

- A. Notice. Every applicant for a project permit and party of record shall be entitled to individual notice of the closed record appeal. Public notice shall be provided as required by WMC 17.17.040(f).
- B. Argument. The applicant and every party of record shall be entitled to present oral or written argument. No evidence not in the record may be presented or referred to in such argument. Arguments shall specifically reference supporting facts in the official record.
- C. Decisions. Except as provided in WMC 17.15.070(1)(b), the City Council shall not take notice, nor shall it base its decision upon, any new evidence presented in a close record appeal. The City Council may request any party presenting argument to specifically identify evidence in the record which supports the argument, and may continue the appeal to receive conformation of the existence of such evidence.
- D. Transcription. All of the Hearing Examiner hearing shall be transcribed and provided in advance to the City Council.
- E. Hearing Examiner. Another Hearing Examiner shall review the evidence presented at the Hearing Examiner hearing, conduct the closed record appeal on behalf of the Mayor and City Council, and ensure that no new evidence is submitted or discussed at the appeal proceedings.
- F. Staff Report. The staff report will be included in the official Record of Proceedings and a report may accompany the materials in the closed record appeal, which shall be a brief summary of the requested action.
- G. Testimony. No new testimony is allowed during the closed record appeal.
- H. Cross-examination. Because only appeal argument is allowed in a closed record appeal, there is no right for parties to cross examine one another.
- I. Questions from Councilmembers/Mayor. The Councilmembers and Mayor may ask questions of staff, the applicant or any party of record. However, such questions shall be posed in order to clarify points in the record, not to obtain new information that the Mayor or any Councilmember believes should have been included in the official record of proceedings.

V. Conduct of Hearing.

- A. Announcement of Closed Record Appeal. The Mayor shall announce and identify the closed record appeal to be heard during a regular Council meeting and that no new evidence shall be allowed.

- B. Ex Parte Contacts/Appearance of Fairness. The Mayor shall ask whether there have been any ex parte contacts, and allow time for anyone to announce an objection or rebuttal. If necessary, the Mayor shall ask the City Attorney to rule on any appearance of fairness issues.
  - C. Notice. The Mayor shall inquire whether all proper notice of the closed record appeal has been provided.
  - D. Staff Report. The Mayor shall allow the staff to present its report, as presented in the hearing.
  - E. Appeal Argument. The Mayor shall request argument first from the appellant(s), then the respondents, then from the other parties. The appellant shall then be given time for rebuttal.
  - F. Questions from Council. The Mayor shall solicit questions from the Council, and provide time for responses.
  - G. Deliberations. Upon a vote of a majority of the Council, the Mayor shall announce that the appeal is closed, and that the Council will begin its deliberations. Following its deliberations, the Council shall make its decision based solely upon evidence, in the official record.
  - H. Continuation of Closed Record Appeal. The Council may continue the closed record appeal to a stated date and time for any good cause, provided that the appeal is within the time limits set by WMC 17.15.090(2)(b) and/or the applicant has agreed, in writing, to a written extension of time. Notice of the continued hearing shall be as provided in WMC 17.11.030(7).
- VI. Effect of City Council Decision. The City Council may affirm, reverse or modify the decision of the Hearing Examiner (or Planning Commission).
- VII. Written Decision, Findings of Fact and Conclusions of Law. The City Council's decision, which shall be issued within the time frame set forth in WMC 17.09.060, shall contain written findings of fact and conclusions of law. The findings shall be based exclusively on the evidence presented in the official record, and shall consist of a concise statement of each fact found upon each contested issue of fact. Whenever possible, the conclusions shall reference to specific provisions of the law and City regulations, or both, together with reasons and precedents relied upon to support the same.