#12
Res. 31375

RESOLUTION 31375

A RESOLUTION adopting revised rules for City Council quasi-judicial proceedings, and repealing the previous rules that were adopted by Resolution 31001.

WHEREAS, on January 16, 1990 the City Council adopted Resolution 28118 establishing Council Rules for Quasi-Judicial Proceedings ; and

WHEREAS, those rules were revised by Resolution 29315 (1996) and Resolution 31001 (2007); and

WHEREAS, the Council wants to amend the existing Council Rules for Quasi-Judicial Proceedings to clarify procedures and make the Rules more readable, understandable, and easier to apply;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE:

Section 1. The rules attached to this Resolution as Attachment A, the Council Rules for Quasi-Judicial Proceedings (the "2012 Rules") are hereby adopted.

Section 2. Attachment B to this resolution is a version of Attachment A, in bill format, which shows the revisions to the previous rules adopted in 2007 by Resolution 31001.

Section 3. This resolution takes effect on the effective date of the ordinance introduced as Council Bill 117456.

Section 4. The Rules for Quasi-judicial Proceedings adopted by Resolution 31001 are repealed on the effective date of the ordinance introduced as Council Bill 117456.

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Adopted by the City Council the ____ day of _____, 2012, and signed by me in open session in authentication of its adoption this_____ day of _____, 2012.

_____

President _____of the City Council

Filed by me this ____ day of _____, 2012.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment A: City Council Rules for Quasi-Judicial Proceedings (2012 Rules)

Attachment B: Revisions to City Council Rules for Quasi- Judicial Proceedings (2007 Rules)

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CITY COUNCIL RULES FOR QUASI-JUDICIAL PROCEEDINGS (2012 Rules)

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I. APPLICABILITY AND PURPOSE

A. The purpose of these rules is to establish procedures for quasi-judicial actions before the City Council and to implement the Appearance of Fairness Doctrine, Revised Code of Washington (RCW) Chapter 42.36.

B. Pursuant to Seattle Municipal Code (SMC) Chapter 23.76, the following Type IV Land Use Decisions, along with any integrated decision to exercise substantive State Environmental Policy Act (SEPA) authority and any associated Type II land use decisions listed in Section 23.76.006.C.2, are governed by these rules:

1. Council conditional uses;
2. Amendments to the Official Land Use Map , except for area-wide amendments and correction of errors on the Official Land Use Map due to cartographic and clerical mistakes;
2. Approval of a property use and development agreement (PUDA) that is required as a condition of rezone approval, or an amendment of a PUDA that represents a major departure from the terms of the prior decision, pursuant to Section 23.76.058;
3. Major institution master plan adoption, major amendments to major institution master plans, and renewal of a major institution master plan development plan component pursuant to Chapter 23.69;
4. Public projects as defined in Section 23.84A.030 that require City Council approval.

C. The following quasi-judicial actions are also governed by these rules:

1. Amendments to a PUDA that was required as a condition of rezone approval and that represent a minor departure from the terms of the PUDA, pursuant to Section 23.76.058;
2. Requests to extend Type IV Land Use Decisions, pursuant to Section 23.76.060;
3. Appeals of an individual's final assessment for a Local Improvement District pursuant to Section 20.04.090;
4. Appeals of the Hearing Examiner's recommendation on controls and incentives for designated Seattle landmarks pursuant to Section 25.12.630;
5. Appeals of the Office of Housing Director's decision to deny an application for a multifamily housing property tax exemption pursuant to Section 5.73.060;
6. Other actions that are quasi-judicial or subject to the Appearance of Fairness Doctrine as

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defined in these rules.

D. All references to Chapters and Sections in these rules are to the SMC unless stated otherwise. In case of conflict between these rules and the SMC, the SMC controls.

II. DEFINITIONS

A. "Appearance of Fairness Doctrine" refers to the provisions of the Revised Code of Washington (RCW) chapter 42.36.

B. "Appellant" is a person who submits an appeal of a Hearing Examiner's recommendation or decision on a quasi-judicial action covered by these rules, or an appeal of the Office of Housing Director's decision to deny an application for a multifamily housing property tax exemption.

C. "Certificate of Service" means a signed sworn statement that a document has either been mailed by first class mail or e-mailed on the date stated in the certificate and to the persons named at the addresses listed in the certificate.

D. "Committee" means the City Council committee charged with making recommendations on a quasi-judicial action.

E. "Ex parte communication" means any direct or indirect communication between a Councilmember and a proponent, opponent, or a party of record that is made outside of a Council hearing or meeting considering a quasi-judicial action and that concerns the merits of the quasi-judicial action pending before the City Council.

F. "Party of record" means, as it relates to a quasi-judicial action pending before Council:

1. any person who appeals a recommendation or decision in a quasi-judicial action;
2. the City agency making a recommendation, decision or determination on a quasi-judicial action that is pending before the Council and any of its employees or agents;
3. the owner(s) of the property subject to the quasi-judicial action;
4. any person who filed an application for a permit or development approval that is the basis for the quasi-judicial action pending before the Council;
5. any person granted party status through intervention at the Hearing Examiner proceeding or during the City Council quasi-judicial proceeding; and
6. for extensions of Type IV Land Use Decisions and minor amendments to PUDAs, any person who commented to DPD on the request for extension or minor amendment.

G. "Pending" means the period of time during which a quasi-judicial action is under consideration

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by the Council. For purposes of these rules, a quasi-judicial action is considered to be under consideration by the Council beginning on the date shown on the front of the Clerk File as the "Date filed with City Clerk", which for actions based upon a Hearing Examiner recommendation is pursuant to subsection IV.D below. A quasi-judicial action remains under consideration before the Council until the final termination of all judicial appeals of the Council decision in the quasi-judicial matter.

H. "Person" means an individual, partnership, corporation, entity, association, or public or private organization of any character.

I. "Quasi-judicial action" or "quasi-judicial matter" means an action of the City Council that determines the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions do not include legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans, zoning regulations, other land use planning documents, or the adoption of area-wide amendments to the Official Land Use Map.

J. "Quasi-judicial proceeding" means the procedure by which Council considers a quasi-judicial action.

K. "Record, substantive" means the Hearing Examiner's record as supplemented by the Council pursuant to these rules, including the transcript and/or recording of the hearing before the Hearing Examiner, the exhibits admitted into evidence, and the other documents in the Hearing Examiner proceeding or, for an appeal of a denial of an application for a multifamily housing tax exemption by the Office of Housing Director, the exhibits and other documents compiled by the Office of Housing Director in denying the application.

L. "Record, procedural" means the procedural and pre-hearing documents and materials filed with and considered by the Council that are not part of the substantive record, and the disclosures of ex-parte communications placed on the record as required by RCW chapter 42.36 and these rules.

M. "Valid" means submitted in compliance with all requirements of the Seattle Municipal Code and these rules.

III. APPEARANCE OF FAIRNESS

A. While a quasi-judicial action is pending before Council, no member of the City Council may

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engage in ex parte communications.

B. If an ex parte communication occurs, then:

1. The Councilmember shall, either orally or in writing, place in the procedural record the substance of any such ex parte communications; and
2. The Councilmember shall make a public announcement at each meeting or hearing on the quasi-judicial action of the content of any such ex parte communications and the right of parties of record to rebut the substance of the communication (As one means of accomplishing this, the Council may announce at each meeting or hearing that there have been ex parte communications, that a written summary of such communications is available, and that the parties of record have an opportunity to rebut the substance of the communication).

C. The prohibition against ex parte communication does not preclude a member of the Council from questioning the parties of record concerning matters in the record during the meetings or hearings before the Council on the quasi-judicial action.

D. Anyone seeking to rely on the appearance of fairness doctrine to disqualify a Councilmember from participating in a decision must raise the challenge as soon as the basis for disqualification is made known to the person. Where the basis is known or reasonably should have been known prior to the issuance of a decision and is not raised prior to the issuance of the decision, it may not be relied on to invalidate the decision.

E. If a Councilmember is challenged for violating the appearance of fairness doctrine or for bias or prejudice, the Councilmember shall respond on the record either by:

1. Agreeing with the challenge and disqualifying himself or herself from acting on the quasi-judicial matter. The disqualified Councilmember may not vote and may not participate in the hearing and deliberation process, even if not voting. In addition, the disqualified Councilmember should not discuss the merits of the proposal with other Councilmembers; or
2. Disagreeing with the challenge and :
   a. Stating on the record why the Councilmember believes either that there have been no violations of the appearance of fairness doctrine ; or
   b. Stating on the record why the Councilmember believes that he or she is not biased or

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prejudiced.

F. In the event of a challenge to a Councilmember that would cause a lack of a quorum or would result in an inability to obtain a majority vote as required by law, any such challenged Councilmember(s) is permitted to fully participate in the proceeding and vote as though the challenge had not occurred, if the Councilmember(s) publicly discloses the basis for disqualification prior to rendering a decision. Such participation shall not subject the decision to a challenge by reason of violation of the appearance of fairness doctrine.

IV. GENERAL PROCEDURES

A. The Council may refer any quasi-judicial action to the appropriate Council committee to review the merits of the action and to make a recommendation to the full Council.

B. The committee chair is authorized to make rulings or determinations regarding procedural matters, or may refer such matters to the committee for discussion and vote.

C. Documents required to be filed with the City Clerk pursuant to these rules shall be filed by hard copy, and in addition to the hard copy that is filed, may also be filed electronically. Notices, requests, replies, and responses to those other than the City Clerk may be sent by either first class mail or electronic means, depending on the means of transmittal authorized or indicated by the recipient. If the City Clerk receives a mailing after a deadline, even if the mailing is postmarked on the day of the deadline, the mailing will not be considered as having met the deadline.

D. When the quasi-judicial proceeding includes a Hearing Examiner recommendation or decision, the date that is shown on the Clerk File as the "Date filed with the City Clerk" is one of the following:

1. The date that notice of the application for a Type IV Land Use Decision listed in subsection I.B above is filed by the Department of Planning and Development (DPD) with the City Clerk, pursuant to Section 23.76.040.
2. The date the Hearing Examiner's or other officer's decision on the final assessment roll for a Local Improvement District is filed with the City Clerk.
3. The date the Landmark Preservation Board recommendation on controls and incentives for a designated Seattle landmark about which the owner and Board staff are unable to reach an agreement is filed with the City Clerk.

E. When the last day of a period specified by these rules is a Saturday, Sunday or federal or City

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holiday, the deadline runs until 5 p.m. on the next day that is not a Saturday, Sunday or federal or City holiday.

F. When calculating the number of days that a notice or motion must be provided prior to a committee meeting or hearing, the day after the notice or motion is provided is the first day of the period, and the day of the meeting or hearing is the last day of the period.

G. Time requirements in these rules are strictly applied.

H. Motions are limited to 20 double-spaced pages, excluding declarations, exhibits, attachments and appendices.

V. PROCEDURES PRIOR TO COMMITTEE ACTION

A. How to Request Council Action.

1. Who May File an Appeal

a. An appeal of a Hearing Examiner's recommendation on any Type IV Land Use Decision, including any associated Type II land use decision and any integrated decision to approve, condition or deny based on substantive SEPA authority, may be filed by any person who submitted a written comment to the Director or an oral or written comment to the Hearing Examiner on the matter.

b. An appeal of an individual's final assessment for a Local Improvement District may be filed only by a party who made a timely protest at the initial hearing, pursuant to Section 20.04.090.D.

c. An appeal of the Hearing Examiner's recommendation on controls and incentives for designated Seattle landmarks may be filed only by a party of record to the Hearing Examiner process.

d. An appeal of the Office of Housing Director's decision to deny an application for a multifamily housing property tax exemption may be filed only by the applicant.

2. Filing Deadlines for an Appeal

a. An appeal of the Hearing Examiner recommendation on Type IV Land Use Decisions must be filed with the City Clerk by 5 p.m. of the 14th calendar day following the date of the Hearing Examiner's recommendation.

b. An appeal of an individual's final assessment for a Local Improvement District must be submitted to the City Clerk by 5 p.m. of the 14th calendar day following the date of the Hearing Examiner's decision.

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c. An appeal of the Hearing Examiner's recommendation on controls and incentives for designated Seattle landmarks must be filed with the City Clerk and served on all other parties of record by 5 p.m. of the 14th calendar day after the Hearing Examiner's decision is served on the party appealing.

d. An appeal of the Office of Housing Director's denial of an application for a multifamily housing property tax exemption must be filed with the City Clerk by 5 p.m. of the 30th calendar day following the receipt of the denial.

3. Form and Content of Appeal. An appeal shall be in writing and:

a. Clearly identify specific objections to the recommendation or decision;

b. Specify the relief sought;

c. For appeals of an individual's final assessment for a Local Improvement District, state clearly on the cover or cover page the number of the Local Improvement District and the appellant's name; and

d. If desired, include a request to supplement the record, pursuant to subsection V.B. of these rules.

4. Clarification of Appeal.

a. The Council may reject an appeal that does not comply with the form and content requirements or may request clarification of the appeal . Council staff will also provide the request for clarification to:

i. The parties of record for appeals of the Hearing Examiner's recommendation of Type IV Land Use Decisions;

ii. The parties of record for appeals of the Hearing Examiner's decision for controls and incentives for designated Seattle landmarks;

iii. those persons who were provided written notice of the Office of Housing Director's decision for appeals of the denial of a multifamily housing property tax exemption;

iv. those persons who were provided written notice of the Hearing Examiner's decision for appeals of an individual final assessment for a Local Improvement District, as well as the City Attorney.

b. Any response from the appellant must be filed, along with a certificate of service, with the City Clerk and copies provided to those who received a copy of the request

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for clarification by 5 p.m. of the 10th calendar day after the copies were provided by Council staff.

5. Circulation of appeal.
   a. Upon receipt of a valid appeal, Council staff will provide copies of the appeal to:
      i. those persons who were provided written notice of the Hearing Examiner's recommendation for appeals of Type IV Land Use Decisions, or of the Hearing Examiner's decision for controls and incentives for designated Seattle landmarks;
      ii. those persons who were provided written notice of the Office of Housing Director's decision for appeals of the denial of a multifamily housing property tax exemption;
      iii. those persons who were provided written notice of the Hearing Examiner's decision for appeals of an individual final assessment for a Local Improvement District, as well as the City Attorney.
   b. Copies must be provided at least 21 calendar days prior to the date the Committee is to consider the matter.
   c. The notice shall include:
      i. A copy of each appeal;
      ii. Instructions for filing a response, including a list of the parties of record on whom any response and certificate of service must be served;
      iii. If a request to supplement the record has been filed, a copy of the request to supplement the record and instructions for responding; and
      iv. Notice of the first committee meeting at which the matter will be considered.
6. Response. Only parties of record may respond to an appeal. Any response must be filed, along with a certificate of service, with the City Clerk and copies provided to the other parties of record , by 5 p.m. of the 10th calendar day after the copies were provided by Council staff.
7. Reply. Any reply from a person who filed an appeal must be filed with the City Clerk, along with a certificate ofservice, and copies provided to the other parties of record , by 5 p.m. of the 7th calendar day following the day the response was filed with the City Clerk.

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B. Request to Supplement the Record on Actions other than Extensions of Type IV Land Use Decisions and Minor Amendments to PUDAs.

1. Filing Deadlines for a Request to Supplement the Record. A request to supplement the record may be filed by a party of record, and must be filed with the City Clerk no later than:

   a. If an appeal has been filed, the deadline for filing a reply; or

   - If no appeal is filed, 28 calendar days after the Hearing Examiner provides copies of the recommendation or decision on the quasi-judicial action.

2. Form and Content of a Request to Supplement the Record.

   a. A request to supplement the record shall be in writing, and:

      i. include a brief description of the nature of and a copy of the evidence proposed to be added; and

      ii. explain how the evidence proposed to be added meets the standard for supplementation, i.e., why it was not available or could not reasonably have been produced at the time of the open record hearing before the Hearing Examiner, or, for an appeal of a denial of an application for a multifamily housing property tax exemption, at the time the Office of Housing Director denied the application for the exemption.

   b. Testimony proposed to be added to the record must be presented by affidavit, by declaration conforming to the standards of Revised Code of Washington (RCW) 9A.72.085, or in a transcript.

   c. A request to supplement the record must be submitted either as:

      i. a separate section of an appeal, a response or a reply; or

      ii. a separate document attached to an appeal, a response or a reply; or

      iii. If no appeal has been filed, as a separate document.

3. Circulation of a Request to Supplement the Record.

   a. If a request to supplement the record is filed with an appeal that is accepted, Council staff will provide it together with the appeal to the same persons to whom Council staff provides the copy of the appeal pursuant to V.A.5.a above, along with instructions for responding to the request to supplement the record.

   b. If a request to supplement the record is filed at some other time but before the

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deadline provided in subsection V.B.1.b above, the person making the request must also provide a copy of the request and a certificate of service to those to whom the Hearing Examiner provided copies of the recommendation or decision.

4. Responses to Requests to Supplement the Record. Any response must be filed together with a certificate of service with the City Clerk and copies provided to the other parties of record , by 5 p.m. of the 10th calendar day after the day the copy(ies) of the request(s) to supplement the record was provided as required by section V.B.3 above.
5. Content of Response. A response to a request to supplement shall be in writing and address the standards for supplementation, i.e., whether the evidence proposed to be added to the record is either evidence that was not available or could not reasonably have been produced at the time of the open record hearing before the Hearing Examiner or, for an appeal of an application for a multifamily housing property tax exemption certificate, at the time the Office of Housing Director denied the application for an exemption.
6. Reply. Any reply must be in writing and be filed along with a certificate of service with the City Clerk and copies provided to the other parties of record , by 5 p.m. of the 7th day calendar day following the day the response was filed. A reply must respond only to the arguments made in any response and not raise new issues.

C. Other Motions.

1. Filing of Other Motions. Any other motions may be filed by a party of record. Other motions shall be in writing and be filed along with a certificate of service with the City Clerk no later than 28 calendar days after the Hearing Examiner or Office of Housing Director provides copies of the recommendation or decision on the quasi-judicial action. The person making the motion must send a copy of the motion together with a copy of the certificate of service to those persons who were provided written notice of the Hearing Examiner's recommendation or decision, or, for appeals of the denial of a multifamily housing property tax exemption, of the Office of Housing Director's decision.
2. Response. Any response to a motion must be in writing and be filed by a party of record, along with a certificate of service with the City Clerk and copies provided to the other parties of record, by 5 p.m. on the 10th calendar day after the copy(ies) of the motion(s)

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was filed by the person making the motion.

3. Replies. Any reply must be in writing and be filed with the City Clerk together with a certificate of service and copies provided to the other parties of record , by 5 p.m. of the 7th calendar day following the date the response was filed with the City Clerk. A reply must respond only to the arguments made in any response and not raise new issues.

D. Intervention.

1. Motion for Intervention. A person may file a motion to intervene in order to participate in the quasi-judicial action as a party of record using the motion process provided by subsection V.C. above. The motion may not be filed prior to the provision of any notice of an appeal according to subsection V.A.5. The motion must state the basis for the intervention and how the person making the request is affected by or interested in the quasi-judicial action.
2. Criteria for Granting Intervenor Status. In considering a motion to intervene, the committee shall consider:

   a. Whether the motion to intervene shows a substantial or significant interest in a quasi-judicial action that is not otherwise adequately represented by another party of record;

   b. whether intervention will unduly delay the proceeding or will prejudice the rights of any of the current parties of record; and

   c. whether the person filing the motion could have participated in the Hearing Examiner proceeding but failed to do so.
3. In granting intervention, the committee may limit the nature and scope of the participation, including the issues the intervenor may address.

VI. COMMITTEE ACTION ON ALL QUASI-JUDICIAL ACTIONS

A. Committee Meeting. The committee shall schedule time at a committee meeting to consider the quasi-judicial action. For appeals of an individual's final assessment for a Local Improvement District, the time and place for the hearing on the appeal shall be set within 15 days following the filing of the appeal with the City Clerk.

B. Notice.

1. Unless some other time is required by law, Council staff shall provide notice of the committee meeting(s) at which a quasi-judicial action is considered to the parties of record

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as follows:

a. at least 21 calendar days prior to the first meeting; and

b. at least 7 calendar days prior to any subsequent meeting, except that notice shall be provided at least 21 calendar days prior to the first meeting at which a DPD Director or Hearing Examiner recommendation on a remanded quasi-judicial action is discussed.

2. For applications for minor PUDA amendments and extensions of Council land use decisions, Council staff shall provide notice of the committee meeting(s) at which the action is considered to the applicant, those who commented to DPD on the application, and those who have requested notification of Council meetings on the matter, at least 21 calendar days prior to the first meeting, and at least 7 calendar days prior to any subsequent meeting. The notice shall state that written comments will be accepted, and that oral comments may be permitted at the first meeting.

C. Committee Consideration of the Quasi-judicial Action. At committee meeting(s), the committee will take the following actions, except that subsections C1 and C2 below do not apply to minor amendments to PUDAs and requests to extend Type IV Land Use Decisions:

1. Consider and decide requests to supplement the record. The committee, at its discretion, may permit a person who submitted a request to supplement the record, and any parties of record who submitted responses, to orally address the committee concerning whether the evidence proposed to be added meets the standard for supplementation set forth in subsection V.B.2 of these rules. If the committee permits, each person generally will be allowed 5 minutes to address the committee, unless there are extraordinary circumstances, in which case the committee shall determine the amount of time to allow. The committee may:

a. Deny the request to supplement the record;

b. Determine that the evidence proposed to be added to the record meets the standard for supplementation set forth in subsection VB2 of these rules, and grant the request to supplement in whole or part. If the committee votes to supplement the record:

i. each document or exhibit so added shall be labeled as a Council exhibit, with consecutive letters [A, B, . . .Z, AA, etc.]. The name of the party submitting the exhibit shall be noted on the label.

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ii. the committee shall also determine whether to remand the matter to the Hearing Examiner or Office of Housing Director. The committee or Council may remand the matter only if it determines that the recommending or decision-making agency should reconsider the application in light of the new evidence or material.

2. Consider and decide any other motions, including motions to intervene. In ruling on any such motions, the committee may, in its discretion, permit the person who made the motion and any person who responded to orally address the committee concerning the motion. If the committee permits, each such party of record will generally be allowed 5 minutes to address the committee, unless the committee determines there are extraordinary circumstances, in which case the committee shall determine the amount of time to allow.
3. Consider the merits of the proposed action and vote on a recommendation to full Council.
   a. The committee, in its discretion, may hear oral argument from:
      i. those persons who submitted an appeal; and
      ii. those persons who submitted a response; and
      iii. those persons who were permitted to intervene.
   b. For minor amendments to PUDAs and requests to extend Type IV Land Use Decisions, the committee, in its discretion, may take oral or written comments from the applicant and any person who submitted comments to DPD on the proposed amendment or extension or who requested notification of Council meetings on the matter.
   c. Oral argument or comment, if permitted, must be based on the evidence admitted into the record, or for minor amendments to PUDAs and requests to extend Type IV Land Use Decisions, the materials submitted to DPD and the DPD recommendation.
   d. If oral argument or comment is permitted, each person who argues will generally be permitted 5 minutes, unless there are extraordinary circumstances, in which case the committee shall determine what amount of time to allow. The party who filed an appeal goes first and may reserve a portion of time for rebuttal. The committee may ask questions or extend the time for argument at the discretion of the committee chair.

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d. After the oral argument or comment, if allowed, the committee may discuss the merits and vote at this meeting on its recommendation to the Council, or it may continue the hearing to a subsequent committee meeting to discuss the merits and vote.

e. The committee may recommend:

i. that the Council approve, approve with conditions, modify, or deny the quasi-judicial action; or

ii. that the Council remand the application when it has voted to supplement the record and determines that the Hearing Examiner, DPD, Department of Neighborhoods (DON) or Office of Housing Director should reconsider the application in light of the new evidence; or

iii. that the Council remand the application for additional information and/or a new proposal, only for major institution master plans, amendments to major institution master plans and renewals of major institution master plan development plan components.

4. Site visit. Councilmembers may wish to visit the location of a quasi-judicial proposal in order to better understand the evidence in the record, but Council may not make any findings, conclusions or decisions based on information learned during the site visit, and may not go onto private property without the permission of the owner. A Councilmember shall not engage in ex parte communications during a site visit that occurs while a quasi-judicial action is pending.

5. Standard of Review.

a. In all quasi-judicial actions, Council's decision must apply applicable law and must, except as specified in subsection VI.C.5.b below and unless otherwise specified by law, be supported by substantial evidence in the record.

b. For appeals of an individual's final assessment for a Local Improvement District, the Hearing Examiner's decision shall be accorded substantial weight and the burden of establishing the contrary shall be upon the appealing party. The Council may adopt or reject, in whole or in part, the findings, recommendations and decisions of the Hearing Examiner or officer or make such other disposition of the matter as is authorized by RCW 35.44.100 and Section 20.04.090.B.

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VII. PREPARATION AND TRANSMITTAL OF COMMITTEE RECOMMENDATION TO COUNCIL

A. Preparation of Recommendation. After the committee votes on a recommendation, Council staff shall prepare proposed findings of fact and conclusions of law and a proposed decision for Council based on the committee's recommendation. Council staff shall make the proposed findings of fact, conclusions of law and proposed decision available to Council prior to any vote by Council.

B. Transmittal of Committee's Recommendation to Council. The committee recommendation, or recommendations if the committee vote is divided, will be transmitted to Council as soon as possible after the committee vote. If the committee vote is divided, Council staff will prepare a report explaining each position and proposed alternative findings and conclusions and a proposed decision based on the record for each position, to be made available to the Council prior to any vote.

C. Preparation of Ordinance. If an ordinance is required, Council staff shall prepare the ordinance and any related documents and make them available to Council prior to any vote. The ordinance shall be introduced according to Council procedures, except that it does not require Councilmember sponsorship.

D. Execution of PUDAs. Any PUDA or amendment to a PUDA shall be executed by all legal and beneficial owners of the property that is the subject of the contract rezone prior to any Council vote, pursuant to Section 23.76.058.

VIII. COUNCIL ACTION

A. The Council shall make its decision based solely on the evidence in the record.

B. No public comments addressing the merits of a quasi-judicial action are permitted at any Council meeting. If public comment does occur, the substance of the comment may not be considered by the Council in making its decision.

C. The Council may decide to approve, approve with conditions, modify, remand, or deny the quasi-judicial action. The Council may remand the application only when:

1. the Council has voted to supplement the record and determined that the Hearing Examiner, DPD, DON or Office of Housing should reconsider the application in light of the new evidence; or

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2. for major institution master plans, amendments to major institution master plans, and renewals of major institution master plan development plan components, the Council has determined that there is need for additional information or new proposal(s).

D. The Council shall adopt written findings of fact and conclusions to support its decision.

E. Adoption of Council decisions.

1. Decisions on the following quasi-judicial actions are adopted by ordinance:
   a. Amendments to the official land use map;
   b. Amendments to PUDAs;
   c. Adoption of, and major amendments to, major institution master plans, and renewal of a major institution master plan's development plan component;
   d. Appeals of the Hearing Examiner's recommendation on controls and incentives for a designated Seattle landmark;
   e. Extensions of Type IV Land Use Decisions originally adopted by ordinance.
2. Decisions on the following quasi-judicial actions are not adopted by ordinance:
   a. Council conditional uses;
   b. Public project approvals;
   c. Appeals of an individual's final assessment for a Local Improvement District;
   d. Appeals of the Office of Housing Director's denial of an application for a multifamily housing property tax exemption;
   e. Extensions of Type IV Land Use Decisions not originally adopted by ordinance.

F. The Council's decision on a Type IV Land Use Decision, to the extent such information is available to the Council, shall contain the name and address of the owner of the property, of the applicant, and of each person who filed an appeal with the Council, unless such person abandoned the request or the person's claims were dismissed before the hearing.

IX. ACTIONS SUBSEQUENT TO COUNCIL DECISION

A. Provision of Council Decision. The City Clerk shall promptly provide a copy of the Council's findings of fact, conclusions and decision to:

1. For Type IV Land Use Decisions, appeals of an individual's final assessment for a Local Improvement District, and appeals of the Hearing Examiner's recommendation on controls and incentives for a designated Seattle landmark: the Hearing Examiner and all parties of record.

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2. For appeals of the Office of Housing Director's denial of an application for a multifamily housing property tax exemption, minor amendments to a PUDA and extensions of Type IV Land Use Decisions: all parties of record.

B. Issuance Date of Council's Decision. The City Clerk shall prepare a letter of transmittal to accompany the findings, conclusion and decision. The letter shall state the time and place for seeking judicial review. The Council's decision is issued, for purpose of seeking judicial review pursuant to the Land Use Petition Act, on:

1. the date that the Council adopts the ordinance for decisions adopted by ordinance; or
2. the date three days after the decision is provided by the City Clerk for decisions not made by ordinance adoption.

C. Remand for Additional Information and/or New Proposal(s) for Major Institution Master Plans, Amendments to Major Institution Master Plans and Renewals of Major Institution Master Plan Components.

1. Request for Additional Information and/or New Proposal(s). If the Council remands a proposed new or amended major institution master plan or the renewal of a major institution master plan component, Council staff will send the request for submission of additional information and/or new proposal on the issue that was not adequately addressed to the major institution.
2. Circulation of Additional Information. The major institution shall submit the additional information and/or new proposal(s) to the DPD Director, the Citizen Advisory Committee and parties of record to the Council's decision to remand.
3. DPD review. The DPD Director shall analyze the additional information and/or new proposal(s) including any report of the Citizens Advisory Committee and comments from parties of record and make a recommendation to the Hearing Examiner on the issue that was not adequately addressed.
4. Hearing Examiner hearing and recommendation. The Hearing Examiner shall hold a public hearing on the additional information and/or new proposal(s) and DPD recommendation, and make a recommendation to the Council pursuant to Section 23.76.052.

D. Shoreline Reclassifications. For shoreline environment reclassifications, DPD shall file a copy of the Council's findings, conclusions and decision with the State Department of Ecology.

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Shoreline environment reclassifications are not effective until approved by the Department of Ecology.

E. Recording of PUDAs. The City Clerk shall record any executed PUDAs with the King County Recorder as soon as practicable, and no later than 30 days after the adoption of the ordinance.

F. Local Improvement Districts. The City Clerk shall file the original Council decision in the record of the Local Improvement District.

X. EFFECT OF COUNCIL DECISIONS

A. The Council's decision is final and conclusive unless the Council retains jurisdiction. Unless the decision is reversed or remanded on appeal, the Director of DPD, DON, the Office of Housing Director, and other agencies are bound by and shall incorporate the terms and conditions of the Council's decision in permits issued to the applicant or in approved plans.

B. No ordinance confirming an assessment roll for a Local Improvement District shall be enacted by the Council until all appeals to the City Council about the assessment roll are decided.

XI. MAINTENANCE OF RECORDS OF QUASI-JUDICIAL PROCEEDINGS

The City Clerk shall maintain the official record of the Council's decisions in quasi-judicial matters. The following documents shall be included in the permanent file of the quasi-judicial Council actions addressed by these Rules:

A. If there is one, the Hearing Examiner's record, including exhibits and recordings and transcripts of hearings. However, the City Clerk shall maintain oversize exhibits only for a period of 3 months after the Council's decision, or, if a judicial appeal is filed, until such time as the judicial appeal is resolved. After the three months or the termination of any judicial appeal, the City Clerk may substitute photographs of oversize exhibits for the oversize exhibits and may destroy the oversize exhibits unless the party who submitted the oversized exhibits requests that they be returned.

B. Any evidence admitted by the Council to the substantive record as a result of a motion to supplement the record;

C. The Council's procedural record; and

D. The Council's findings, conclusions and decision.

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REVISIONS TO CITY COUNCIL RULES FOR QUASI-JUDICIAL PROCEEDINGS

(2007 Rules)

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I. APPLICABILITY AND PURPOSE

A. The purpose of these rules is to establish procedures for quasi-judicial actions before the City Council and to implement the Appearance of Fairness Doctrine, Revised Code of Washington (RCW) Chapter 42.36.

B. Pursuant to Seattle Municipal Code (SMC) ((~~chapter~~)) Chapter 23.76, the following Type IV Land Use Decisions, along with any integrated decision to exercise substantive State Environmental Policy Act (SEPA) authority and any associated Type II land use decisions listed in ((~~SMC~~))Section 23.76.006.C.2, are governed by these rules:

1. Council conditional uses;
2. Amendments to the Official Land Use Map (((~~rezones~~))), except for area-wide amendments and correction of errors on the Official Land Use Map due to cartographic and clerical mistakes;
2. Approval of a property use and development agreement (PUDA) that is required as a condition of rezone approval, or an amendment of a PUDA that represents a major departure from the terms of the prior decision, pursuant to ((~~SMC~~))Section 23.76.058;
3. Major institution master plan adoption, major amendments to major institution master plans, and renewal of a major institution master plan development plan component pursuant to ((~~SMC~~))Chapter 23.69;
4. Public projects as defined in ((~~SMC~~))Section 23.84A.030 that require City Council approval.

C. The following quasi-judicial actions are also governed by these rules:

1. Amendments to a PUDA that was required as a condition of rezone approval and that represent a minor departure from the terms of the PUDA, pursuant to ((~~SMC~~))Section 23.76.058;
2. Requests to extend Type IV Land Use Decisions, pursuant to ((~~SMC~~))Section 23.76.060;
3. Appeals of an individual's final assessment for a Local Improvement District pursuant to ((~~SMC~~))Section 20.04.090;
4. Appeals of the Hearing Examiner's recommendation on controls and incentives for

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designated Seattle landmarks pursuant to ((~~SMC~~))Section 25.12.630;

5. Appeals of the Office of Housing (((~~OH~~))) Director's decision to deny an application for a multifamily housing property tax exemption pursuant to ((~~SMC~~))Section 5.73.060;
6. Other actions that are quasi-judicial or subject to the Appearance of Fairness Doctrine as defined in these rules.

D. All references to Chapters and Sections in these rules are to the SMC unless stated otherwise. In case of conflict between these rules and the SMC, the SMC controls.

II. DEFINITIONS

A. "Appearance of Fairness Doctrine" refers to the provisions of the Revised Code of Washington (RCW) chapter 42.36.

B. "Appellant" is a person who submits an appeal of a Hearing Examiner's recommendation or decision on a quasi-judicial action covered by these rules, or an appeal of the ((~~OH~~)) Office of Housing Director's decision to deny an application for a multifamily housing property tax exemption.

C. "Certificate of ((~~Mailing~~))Service" means a signed sworn statement that a document has either been mailed by first class mail or e-mailed on the date stated in the certificate and to the persons named at the addresses listed in the certificate.

D. "Committee" means the City Council committee charged with making recommendations on a quasi-judicial action.

E. "Ex parte communication" means any direct or indirect communication between a Councilmember and a proponent, opponent, or a party of record that is made outside of a Council hearing or meeting considering a quasi-judicial action and that concerns the merits of the quasi-judicial action pending before the City Council.

F. "Party of record" means, as it relates to a quasi-judicial action pending before Council:

1. any person who appeals a recommendation or decision in a quasi-judicial action;
2. the City agency making a recommendation, decision or determination on a quasi-judicial action that is pending before the Council and any of its employees or agents;
3. the owner(s) of the property subject to the quasi-judicial action;
4. any person who filed an application for a permit or development approval that is the

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basis for the quasi-judicial action pending before the Council; ((~~and~~))

5. any person granted party status through intervention at the Hearing Examiner proceeding or during the City Council quasi-judicial proceeding((~~.~~)); and
6. for extensions of Type IV Land Use Decisions and minor amendments to PUDAs, any person who commented to DPD on the request for extension or minor amendment.

G. "Pending" means the period of time during which a quasi-judicial action is under consideration by the Council. For purposes of these rules, a quasi-judicial action is considered to be under consideration by the Council beginning on the date shown on the front of the Clerk File as the "Date filed with City Clerk", which for actions based upon a Hearing Examiner recommendation((~~,~~)) is pursuant to subsection IV.D below. A quasi-judicial action remains under consideration before the Council until the final termination of all judicial appeals of the Council decision in the quasi-judicial matter.

H. "Person" means an individual, partnership, corporation, entity, association, or public or private organization of any character.

I. "Quasi-judicial action" or "quasi-judicial matter" means an action of the City Council that determines the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions do not include legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans, zoning regulations, other land use planning documents, or the adoption of area-wide amendments to the Official Land Use Map.

J. "Quasi-judicial proceeding" means the procedure by which Council considers a quasi-judicial action.

K. "Record, substantive" means the Hearing Examiner's record as supplemented by the Council pursuant to these rules, including the transcript and/or recording of the hearing before the Hearing Examiner, the exhibits admitted into evidence, and the other documents in the Hearing Examiner proceeding or, for an appeal of a denial of an application for a multifamily housing tax exemption by the ((~~OH~~)) Office of Housing Director, the exhibits and other documents compiled by the ((~~OH~~)) Office of Housing Director in denying the application.

L. "Record, procedural" means the procedural and pre-hearing documents and materials filed with and considered by the Council that are not part of the substantive record, and the

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disclosures of ex-parte communications placed on the record as required by RCW chapter 42.36 and these rules.

M. "Valid" means submitted in compliance with all requirements of the Seattle Municipal Code and these rules.

III. APPEARANCE OF FAIRNESS

A. While a quasi-judicial action is pending before Council, no member of the City Council may engage in ex parte communications. ((~~Council staff shall take precautions to assist City Councilmembers in avoiding ex parte communications, such as screening Councilmember phone calls and written communications and sending notice of pending quasi-judicial actions to Councilmembers.~~

B. If an ex parte communication ((~~does~~)) occurs, then:

1. The Councilmember shall, either orally or in writing, place in the procedural record the substance of any such ex parte communications; and
2. The Councilmember shall make a public announcement at each meeting or hearing on the quasi-judicial action of the content of any such ex parte communications and the right of parties of record to rebut the substance of the communication (As one means of accomplishing this, the Council may announce at each meeting or hearing that there have been ex parte communications, that a written summary of such communications is available, and that the parties of record have an opportunity ((~~for rebuttal at that meeting or hearing~~))to rebut the substance of the communication).

C. The prohibition against ex parte communication does not preclude a member of the Council from questioning the parties of record concerning matters in the record during the meetings or hearings before the Council on the quasi-judicial action.

((~~D. An ex-parte communication disclosed and announced pursuant to these rules and any rebuttal thereto is part of the Council's procedural record, and the substance of the communication shall not be considered by Council in making its decision.~~))

((~~E~~))D. Anyone seeking to rely on the appearance of fairness doctrine to disqualify a Councilmember from participating in a decision must raise the challenge as soon as the basis for disqualification is made known to the person. Where the basis is known or reasonably should have been known prior to the issuance of a decision and is not raised prior to the issuance of the

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decision, it may not be relied on to invalidate the decision.

((~~F~~))E. If a Councilmember is challenged for violating the appearance of fairness doctrine or for bias or prejudice, the Councilmember shall respond on the record either by:

1. Agreeing with the challenge and disqualifying himself or herself from acting on the quasi-judicial matter. The disqualified Councilmember may not vote and may not participate in the hearing and deliberation process, even if not voting. In addition, the disqualified Councilmember should not discuss the merits of the proposal with other Councilmembers; or
2. Disagreeing with the challenge and ((~~either~~)):
   a. Stating on the record why the Councilmember believes either that there have been no violations of the appearance of fairness doctrine ((~~because there have been no ex parte communications or why any violations have been cured by placing all ex parte communications on the record and providing an opportunity for rebuttal~~)); or
   b. Stating on the record why the Councilmember believes that he or she is not biased or prejudiced ((~~and/or has not prejudged the merits and can therefore fairly and impartially hear and decide the matter~~)).

((~~G~~))F.In the event of a challenge to a Councilmember that would cause a lack of a quorum or would result in an inability to obtain a majority vote as required by law, any such challenged Councilmember(s) ((~~shall be~~))is permitted to fully participate in the proceeding and vote as though the challenge had not occurred, if the Councilmember(s) publicly discloses the basis for disqualification prior to rendering a decision. Such participation shall not subject the decision to a challenge by reason of violation of the appearance of fairness doctrine.

IV. GENERAL PROCEDURES

A. The Council may refer any quasi-judicial action to the appropriate Council committee to review the merits of the action and to make a recommendation to the full Council.

B. The committee chair is authorized to make rulings or determinations regarding procedural matters, or may refer such matters to the committee for discussion and vote.

C. ((~~Electronic filing of documents~~)) Documents required to be filed with the City Clerk pursuant to these rules shall be filed by hard copy, and in addition to the hard copy that is filed, may also be filed electronically. ((~~is not permitted of documents allowed or required to be filed~~))

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Notices, requests, replies, and responses to those other than the City Clerk may be sent by either first class mail or electronic means, depending on the means of transmittal authorized or indicated by the recipient. If the City Clerk receives a mailing after a deadline, even if the mailing is postmarked on the day of the deadline, the mailing will not be considered as having met the deadline.

D. When the quasi-judicial proceeding includes a Hearing Examiner recommendation or decision, the date that is shown on the Clerk File as the "Date filed with the City Clerk" is one of the following:

1. The date that notice of the application for a Type IV Land Use Decision listed in subsection I.B above is filed by the Department of Planning and Development (DPD) with the City Clerk, pursuant to ((~~section~~)) Section 23.76.040.
2. The date the Hearing Examiner's or other officer's decision on the final assessment roll for a Local Improvement District is filed with the City Clerk.
3. The date the Landmark Preservation Board recommendation on controls and incentives for a designated Seattle landmark about which the owner and Board staff are unable to reach an agreement is filed with the City Clerk.

E. When the last day of a period specified by these rules is a Saturday, Sunday or federal or City holiday, the deadline runs until ((~~five (~~))5((~~:00~~))) p.m. on the next ((~~business~~)) day that is not a Saturday, Sunday or federal or City holiday.

F. When calculating the number of days that a notice or motion must be ((~~mailed~~))provided prior to a committee meeting or hearing, the day after the ((~~mailing~~))notice or motion is provided is the first day of the period, and the day of the meeting or hearing ((~~the period~~)) is the last day of the period.

G. Time requirements in these rules are strictly applied.

H. Motions are limited to ((~~twenty (~~))20((~~)~~)) double-spaced pages, excluding declarations, exhibits, attachments and appendices.

V. PROCEDURES PRIOR TO COMMITTEE ACTION

A. How to Request Council Action.

1. Who May File an Appeal

a. An appeal of a Hearing Examiner's recommendation on any Type IV Land Use

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Decision, including any associated Type II land use decision and any integrated decision to approve, condition or deny based on substantive SEPA authority, may be filed by any person who submitted a written comment to the Director or an oral or written comment to the Hearing Examiner on the matter ((~~substantially affected by or interested in the Hearing Examiner recommendation~~)).

b. An appeal of an individual's final assessment for a Local Improvement District may be filed only by a party who made a timely protest at the initial hearing, pursuant to ((~~SMC~~))Section 20.04.090.D.

c. An appeal of the Hearing Examiner's recommendation on controls and incentives for designated Seattle landmarks may be filed only by a party of record to the Hearing Examiner process.

d. An appeal of the ((~~OH~~)) Office of Housing Director's decision to deny an application for a multifamily housing property tax exemption may be filed only by the applicant.

2. Filing Deadlines for an Appeal

a. An appeal of the Hearing Examiner recommendation on Type IV Land Use Decisions must be filed with the City Clerk by ((~~five (~~))5((~~)~~)) p.m. of the ((~~fourteenth (~~))14th((~~)~~)) calendar day following the date of the Hearing Examiner's recommendation.

b. An appeal of an individual's final assessment for a Local Improvement District must be submitted to the City Clerk by ((~~five (~~))5((~~)~~)) p.m. of the ((~~fourteenth (~~))14th((~~)~~)) calendar day following the date of the Hearing Examiner's decision.

c. An appeal of the Hearing Examiner's recommendation on controls and incentives for designated Seattle landmarks must be filed with the City Clerk and served on all other parties of record by ((~~five (~~))5((~~)~~)) p.m. of the ((~~fourteenth (~~))14th((~~)~~)) calendar day after the Hearing Examiner's decision is served on the party appealing.

d. An appeal of the ((~~OH~~))Office of Housing Director's denial of an application for a multifamily housing property tax exemption must be filed with the City Clerk by ((~~five (~~))5((~~)~~)) p.m. of the ((~~thirtieth (~~))30th((~~)~~)) calendar day following the receipt of the denial.

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3. Form and Content of Appeal. An appeal shall be in writing and:
   a. Clearly identify specific objections to the recommendation or decision;
   b. Specify the relief sought;
   c. For appeals of an individual's final assessment for a Local Improvement District, state clearly on the cover or cover page the number of the Local Improvement District and the appellant's name; and
   d. If desired, include a request to supplement the record, pursuant to subsection V.B. of these rules.
4. Clarification of Appeal.
   a. The Council may ((~~return~~))reject an appeal that does not comply with the form and content requirements ((~~of these rules to the appellant, and~~))or may request clarification of the appeal ((~~from the appellant if it is not clear whether the appeal complies with these rules~~)). Council staff will also provide the request for clarification to:
      i. The parties of record for appeals of the Hearing Examiner's recommendation of Type IV Land Use Decisions;
      ii. The parties of record for appeals of the Hearing Examiner's decision for controls and incentives for designated Seattle landmarks;
      iii. those persons who were provided written notice of the Office of Housing Director's decision for appeals of the denial of a multifamily housing property tax exemption;
      iv. those persons who were provided written notice of the Hearing Examiner's decision for appeals of an individual final assessment for a Local Improvement District, as well as the City Attorney.
   b. Any response from the appellant must be filed, along with a certificate of service, with the City Clerk and copies provided to those who received a copy of the request for clarification by 5 p.m. of the 10th calendar day after the copies were provided by Council staff.
5. Circulation of appeal.
   a. Upon receipt of a valid appeal, Council staff will ((~~mail~~)) provide copies of the

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appeal to:

i. those persons who were provided written notice of the Hearing Examiner's recommendation ((~~or decision~~)) for appeals of Type IV Land Use Decisions, or of the Hearing Examiner's decision for controls and incentives for designated Seattle landmarks;

ii. those persons who were provided written notice of the ((~~OH~~))Office of Housing Director's decision for appeals of the denial of a multifamily housing property tax exemption;

iii. those persons who were provided written notice of the Hearing Examiner's decision for appeals of an individual final assessment for a Local Improvement District, as well as the City Attorney.

b. Copies must be ((~~mailed~~))provided at least ((~~twenty-one (~~))21((~~)~~)) calendar days prior to the date the Committee is to consider the matter.

c. The ((~~mailing~~))notice shall include:

i. A copy of each appeal;

ii. Instructions for filing a response, including a list of the parties of record on whom any response and certificate of ((~~mailing~~))service must be served;

iii. If a request to supplement the record has been filed, a copy of the request to supplement the record and instructions for responding; and

iv. Notice of the first committee meeting at which the matter will be considered.

6. Response. Only parties of record may respond to an appeal. Any response ((~~from a person receiving the mailing from Council staff~~)) must be filed, along with a certificate of ((~~mailing~~))service, with the City Clerk and copies ((~~sent~~))provided to the other parties of record ((~~by first class mail~~)), by ((~~five (~~))5((~~)~~)) p.m. of the ((~~tenth (~~))10th((~~)~~)) calendar day after the copies were ((~~mailed~~))provided by Council staff.

7. Reply. Any reply from a person who filed an appeal must be filed with the City Clerk, along with a certificate of((~~mailing~~))service, and copies ((~~sent~~))provided to the other parties of record ((~~by first class mail~~)), by ((~~five (~~))5((~~)~~)) p.m. of the ((~~seventh (~~))7th((~~)~~)) calendar day following the day the response was filed with the City Clerk.

B. Request to Supplement the Record on Actions other than Extensions of Type IV Land Use

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Decisions and Minor Amendments to PUDAs.

1. Filing Deadlines for a Request to Supplement the Record. A request to supplement the record may be filed by a party of record, and must be filed with the City Clerk no later than:
   a. If an appeal has been filed, the deadline for filing a reply; or
   - If no appeal is filed, ((~~twenty-eight (~~))28((~~)~~)) calendar days after the Hearing Examiner ((~~mails~~))provides copies of the recommendation or decision on the quasi-judicial action.
2. Form and Content of a Request to Supplement the Record.
   a. A request to supplement the record shall be in writing, and:
      i. include a brief description of the nature of and a copy of the evidence proposed to be added; and
      ii. explain how the evidence proposed to be added meets the standard for supplementation, i.e., why it was not available or could not reasonably have been produced at the time of the open record hearing before the Hearing Examiner, or, for an appeal of a denial of an application for a multifamily housing property tax exemption, at the time the ((~~OH~~)) Office of Housing Director denied the application for the exemption.
   b. Testimony proposed to be added to the record must be presented by affidavit, by declaration conforming to the standards of Revised Code of Washington (RCW) 9A.72.085, or in a transcript.
   c. A request to supplement the record must be submitted either as:
      i. a separate section of an appeal, a response or a reply; or
      ii. a separate document attached to an appeal, a response or a reply; or
      iii. If no appeal has been filed, as a separate document.
3. Circulation of a Request to Supplement the Record.
   a. If a request to supplement the record is filed with an appeal that is accepted, Council staff will ((~~send~~))provide it together with the appeal to the same persons to whom Council staff ((~~sends~~))provides the copy of the appeal pursuant to V.A.5.a above, along with instructions for responding to the request to supplement the record.

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b. If a request to supplement the record is filed at some other time but before the deadline provided in subsection V.B.1.b above, the person making the request must also ((~~mail~~))provide a copy of the request and a certificate of ((~~mailing~~))service to those to whom the Hearing Examiner ((~~mailed~~))provided copies of the recommendation or decision.

4. Responses to Requests to Supplement the Record. Any response must be filed together with a certificate of ((~~mailing~~))service with the City Clerk and copies ((~~sent~~))provided to the other parties of record ((~~by first class mail~~)), by ((~~five (~~))5((~~)~~)) p.m. of the ((~~tenth (~~))10th((~~)~~)) calendar day after the day the copy(ies) of the request(s) to supplement the record was ((~~mailed~~))provided as required by section V.B.3 above.

5. Content of Response. A response to a request to supplement shall be in writing and address the standards for supplementation, i.e., whether the evidence proposed to be added to the record is either evidence that was not available or could not reasonably have been produced at the time of the open record hearing before the Hearing Examiner or, for an appeal of an application for a multifamily housing property tax exemption certificate, at the time the ((~~OH~~)) Office of Housing Director denied the application for an exemption.

6. Reply. Any reply must be in writing and be filed along with a certificate of ((~~mailing~~))service with the City Clerk and copies ((~~mailed~~))provided to the other parties of record ((~~by first class mail~~)), by ((~~five (~~))5((~~)~~)) p.m. of the ((~~seventh~~)) 7th day ((~~(7th)~~)) calendar day following the day the response was filed. A reply must respond only to the arguments made in any response and not raise new issues.

C. Other Motions.

1. Filing of Other Motions. Any other motions may be filed by a party of record((~~, or for extensions of Type IV Land Use Decisions and minor amendments to PUDAs by a person who commented to DPD on the request for extension or minor amendment~~)). Other motions shall be in writing and be filed along with a certificate of ((~~mailing~~))service with the City Clerk no later than ((~~at least twenty-eight (~~))28((~~)~~)) calendar days after the Hearing Examiner((~~, DPD Director~~)) or ((~~OH~~))Office of Housing Director ((~~mails~~))provides copies of the recommendation or decision on the

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quasi-judicial action. The person making the motion must send a copy of the motion together with a copy of the certificate of ((~~mailing~~))service ((~~by first class mail~~)) to those persons who were provided written notice of the Hearing Examiner's recommendation or decision, or, for appeals of the denial of a multifamily housing property tax exemption, of the ((~~OH~~))Office of Housing Director's decision.

2. Response. Any response to a motion must be in writing and be filed by a party of record, along with a certificate of ((~~mailing~~))service with the City Clerk and copies ((~~sent~~))provided to the other parties of record ((~~by first class mail~~)), by ((~~five (~~))5((~~)~~)) p.m. on the ((~~tenth (~~))10th((~~)~~)) calendar day after the copy(ies) of the motion(s) was filed by the person making the motion.
3. Replies. Any reply must be in writing and be filed with the City Clerk together with a certificate of ((~~mailing~~))service and copies ((~~sent~~))provided to the other parties of record ((~~by first class mail~~)), by ((~~five (~~))5((~~)~~)) p.m. of the ((~~seventh (~~))7th((~~)~~)) calendar day following the date the response was filed with the City Clerk. A reply must respond only to the arguments made in any response and not raise new issues.

D. Intervention.

1. Motion for Intervention. ((~~Upon showing a substantial or significant interest in a quasi-judicial action that is not otherwise adequately represented by another party of record, the committee may allow a~~)) A person may file a motion to intervene in order to participate in the quasi-judicial action as a party of record ((~~after filing a motion to intervene~~)) using the motion process provided by subsection V.C. above. The motion may not be filed prior to the provision of any notice of an appeal according to subsection V.A.5. The motion must state the basis for the intervention and how the person making the request is affected by or interested in the quasi-judicial action.
2. Criteria for Granting Intervenor Status. In considering a motion to intervene, the committee shall consider:

   a. Whether the motion to intervene shows a substantial or significant interest in a quasi-judicial action that is not otherwise adequately represented by another party of record;

   b. whether intervention will unduly delay the proceeding or will prejudice the rights

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of any of the current parties of record((~~, and whether this interest is already adequately represented.~~)); and

c. whether the person filing the motion could have participated in the Hearing Examiner proceeding but failed to do so.

3. In granting intervention, the committee may limit the nature and scope of the participation, including the issues the intervenor may address.

VI. COMMITTEE ACTION ON ALL QUASI-JUDICIAL ACTIONS

A. Committee Meeting. The committee shall schedule time at a committee meeting to consider the quasi-judicial action. For appeals of an individual's final assessment for a Local Improvement District, the time and place for the hearing on the appeal shall be set within ((~~fifteen (~~))15((~~)~~)) days following the filing of the appeal with the City Clerk.

B. Notice.

1. Unless some other time is required by law, Council staff shall ((~~mail~~))provide notice of the committee meeting(s) at which ((~~the~~)) a quasi-judicial action is considered to the parties of record as follows:

a. at least ((~~twenty-one (~~))21((~~)~~)) calendar days prior to the first meeting; and

b. at least ((~~seven (~~))7((~~)~~)) calendar days prior to any subsequent meeting, except that notice shall be provided at least 21 calendar days prior to the first meeting at which a DPD Director or Hearing Examiner recommendation on a remanded quasi-judicial action is discussed.

2. For applications for minor PUDA amendments and extensions of Council land use decisions, Council staff shall provide notice of the committee meeting(s) at which the action is considered to the applicant, those who commented to DPD on the application, and those who have requested notification of Council meetings on the matter, at least 21 calendar days prior to the first meeting, and at least 7 calendar days prior to any subsequent meeting. The notice shall state that written comments will be accepted, and that oral comments may be permitted at the first meeting.

C. Committee Consideration of the Quasi-judicial Action. At committee meeting(s), the committee will take the following actions, except that subsections C1 and C2 below ((~~does~~))

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do not apply to minor amendments to PUDAs and requests to extend Type IV Land Use Decisions:

1. Consider and decide requests to supplement the record. The committee, at its discretion, may permit a person who submitted a request to supplement the record, and any parties of record who submitted responses, to orally address the committee concerning whether the evidence proposed to be added meets the standard for supplementation set forth in subsection V.B.2 of these rules. If the committee permits, each person generally will be allowed ((~~five (~~))5((~~)~~)) minutes to address the committee, unless there are extraordinary circumstances, in which case the committee shall determine the amount of time to allow. The committee may:
   a. Deny the request to supplement the record;
   b. Determine that the evidence proposed to be added to the record meets the standard for supplementation set forth in subsection VB2 of these rules, and grant the request to supplement in whole or part. If the committee votes to supplement the record:
      i. each document or exhibit so added shall be labeled as a Council exhibit, with consecutive letters [A, B, . . .Z, AA, etc.]. The name of the party submitting the exhibit shall be noted on the label.
      ii. the committee shall also determine whether to remand the matter to the Hearing Examiner or ((~~OH~~))Office of Housing Director. The committee or Council may remand the matter only if it determines that the recommending or decision-making agency should reconsider the application in light of the new evidence or material.
2. Consider and decide any other motions, including motions to intervene. In ruling on any such motions, the committee may, in its discretion, permit the person who made the motion and any person who responded to orally address the committee concerning the motion. If the committee permits, each such party of record will generally be allowed ((~~five (~~))5((~~)~~)) minutes to address the committee, unless the committee determines there are extraordinary circumstances, in which case the committee shall determine the amount of time to allow.
3. Consider the merits of the proposed action and vote on a recommendation to full Council.

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a. The committee, in its discretion, may hear oral argument from:

i. those persons who submitted an appeal; and

ii. those persons who submitted a response; and

iii. those persons who were permitted to intervene((~~; and~~)).

b. ((~~for~~)) For minor amendments to PUDAs and requests to extend Type IV Land Use Decisions, the committee, in its discretion, may take oral or written comments from the applicant and any person who submitted comments to DPD on the proposed amendment or extension or who requested notification of Council meetings on the matter.

c. Oral argument or comment, if permitted, must be based on the evidence admitted into the record, or for minor amendments to PUDAs and requests to extend Type IV Land Use Decisions, the materials submitted to DPD and the DPD recommendation.

d. If oral argument or comment is permitted, each person who argues will generally be permitted ((~~five (~~))5((~~)~~)) minutes, unless there are extraordinary circumstances, in which case the committee shall determine what amount of time to allow. The party who filed an appeal goes first and may reserve a portion of time for rebuttal. The committee may ask questions or extend the time for argument at the discretion of the committee chair.

d. After the oral argument or comment, if allowed, the committee may discuss the merits and vote at this meeting on its recommendation to the Council, or it may continue the hearing to a subsequent committee meeting to discuss the merits and vote.

e. The committee may recommend:

i. that the Council approve, approve with conditions, modify, or deny the quasi-judicial action; or

ii. that the Council remand the application when it has voted to supplement the record and determines that the Hearing Examiner, DPD, Department of Neighborhoods (DON) or ((~~OH~~)) Office of Housing Director should reconsider the application in light of the new evidence; or

iii. that the Council remand the application for additional information and/or a new

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proposal, only for major institution master plans, amendments to major institution master plans and renewals of major institution master plan development plan components.

4. Site visit. Councilmembers may wish to visit the location of a quasi-judicial proposal in order to better understand the evidence in the record, but Council may not make any findings, conclusions or decisions based on information learned during the site visit, and may not go onto private property without the permission of the owner. A Councilmember shall not engage in ex parte communications during a site visit that occurs while a quasi-judicial action is pending.
5. Standard of Review.
   a. In all quasi-judicial actions, Council's decision must apply applicable law and must, except as specified in subsection VI.C.5.b below and unless otherwise specified by law, be supported by substantial evidence in the record.
   b. For appeals of an individual's final assessment for a Local Improvement District, the Hearing Examiner's decision shall be accorded substantial weight and the burden of establishing the contrary shall be upon the appealing party. The Council may adopt or reject, in whole or in part, the findings, recommendations and decisions of the Hearing Examiner or officer or make such other disposition of the matter as is authorized by RCW 35.44.100 and ((~~SMC~~))Section 20.04.090.B.

VII. PREPARATION AND TRANSMITTAL OF COMMITTEE RECOMMENDATION TO COUNCIL

A. Preparation of Recommendation. After the committee votes on a recommendation, Council staff shall prepare proposed findings of fact and conclusions of law and a proposed decision for Council based on the committee's recommendation. Council staff shall make the proposed findings of fact, conclusions of law and proposed decision available to Council prior to any vote by Council.

B. Transmittal of Committee's Recommendation to Council. The committee recommendation, or recommendations if the committee vote is divided, will be transmitted to Council as soon as possible after the committee vote. If the committee vote is divided, Council staff will prepare a report explaining each position and proposed alternative findings and conclusions and a

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proposed decision based on the record for each position, to be made available to the Council prior to any vote.

C. Preparation of Ordinance. If an ordinance is required, Council staff shall prepare the ordinance and any related documents and make them available to Council prior to any vote. The ordinance shall be introduced according to Council procedures, except that it does not require Councilmember sponsorship.

D. Execution of PUDAs. Any PUDA or amendment to a PUDA shall be executed by all legal and beneficial owners of the property that is the subject of the contract rezone prior to any Council vote, pursuant to ((~~SMC~~))Section 23.76.058.

VIII. COUNCIL ACTION

A. The Council shall make its decision based solely on the evidence in the record.

B. No public comments addressing the merits of a quasi-judicial action are permitted at any Council meeting. If public comment does occur, the substance of the comment may not be considered by the Council in making its decision.

C. The Council may decide to approve, approve with conditions, modify, remand, or deny the quasi-judicial action. The Council may remand the application only when:

1. the Council has voted to supplement the record and determined that the Hearing Examiner, DPD, DON or ((~~OH~~)) Office of Housing should reconsider the application in light of the new evidence; or
2. for major institution master plans, amendments to major institution master plans, and renewals of major institution master plan development plan components, the Council has determined that there is need for additional information or new proposal(s).

D. The Council shall adopt written findings of fact and conclusions to support its decision.

E. Adoption of Council decisions.

1. Decisions on the following quasi-judicial actions are adopted by ordinance:
   a. Amendments to the official land use map;
   b. Amendments to PUDAs;
   c. Adoption of, and major amendments to, major institution master plans, and renewal of a major institution master plan's development plan component;

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d. Appeals of the Hearing Examiner's recommendation on controls and incentives for a designated Seattle landmark;

e. Extensions of Type IV Land Use Decisions originally adopted by ordinance.

2. Decisions on the following quasi-judicial actions are not adopted by ordinance:

a. Council conditional uses;

b. Public project approvals;

c. Appeals of an individual's final assessment for a Local Improvement District;

d. Appeals of the ((~~OH~~)) Office of Housing Director's denial of an application for a multifamily housing property tax exemption;

e. Extensions of Type IV Land Use Decisions not originally adopted by ordinance.

F. The Council's decision on a Type IV Land Use Decision, to the extent such information is available to the Council, shall contain the name and address of the owner of the property, of the applicant, and of each person who filed an appeal with the Council, unless such person abandoned the request or the person's claims were dismissed before the hearing.

IX. ACTIONS SUBSEQUENT TO COUNCIL DECISION

A. ((~~Mailing~~))Provision of Council Decision. The City Clerk shall promptly ((~~mail~~))provide a copy of the Council's findings of fact, conclusions and decision to:

1. For Type IV Land Use Decisions, appeals of an individual's final assessment for a Local Improvement District, and appeals of the Hearing Examiner's recommendation on controls and incentives for a designated Seattle landmark: the Hearing Examiner and all parties of record.

2. For appeals of the ((~~OH~~)) Office of Housing Director's denial of an application for a multifamily housing property tax exemption, minor amendments to a PUDA and extensions of Type IV Land Use Decisions: all parties of record.

B. Issuance Date of Council's Decision. The City Clerk shall prepare a letter of transmittal to accompany the findings, conclusion and decision. The letter shall state the time and place for seeking judicial review. The Council's decision is issued, for purpose of seeking judicial review pursuant to the Land Use Petition Act, on:

1. the date that the Council adopts the ordinance for decisions adopted by ordinance; or

2. the date three days after the decision is ((~~mailed~~))provided by the City Clerk for

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decisions not made by ordinance adoption.

C. Remand for Additional Information and/or New Proposal(s) for Major Institution Master Plans, Amendments to Major Institution Master Plans and Renewals of Major Institution Master Plan Components.

1. Request for Additional Information and/or New Proposal(s). If the Council remands a proposed new or amended major institution master plan or the renewal of a major institution master plan component, Council staff will send the request for submission of additional information and/or new proposal on the issue that was not adequately addressed to the major institution.
2. Circulation of Additional Information. The major institution shall submit the additional information and/or new proposal(s) to the DPD Director, the Citizen Advisory Committee and parties of record to the Council's decision to remand.
3. DPD review. The DPD Director shall analyze the additional information and/or new proposal(s) including any report of the Citizens Advisory Committee and comments from parties of record and make a recommendation to the Hearing Examiner on the issue that was not adequately addressed.
4. Hearing Examiner hearing and recommendation. The Hearing Examiner shall hold a public hearing on the additional information and/or new proposal(s) and DPD recommendation, and make a recommendation to the Council pursuant to ((~~SMC~~))Section 23.76.052.

D. Shoreline Reclassifications. For shoreline environment reclassifications, DPD shall file a copy of the Council's findings, conclusions and decision with the State Department of Ecology. Shoreline environment reclassifications are not effective until approved by the Department of Ecology.

E. Recording of PUDAs. The City Clerk shall record any executed PUDAs with the King County ((~~Office of Records and Elections~~))Recorder as soon as practicable, and no later than ((~~thirty (~~))30((~~)~~)) days after the adoption of the ordinance.

F. Local Improvement Districts. The City Clerk shall file the original Council decision in the record of the Local Improvement District.

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X. EFFECT OF COUNCIL DECISIONS

A. The Council's decision is final and conclusive unless the Council retains jurisdiction. Unless the decision is reversed or remanded on appeal, the Director of DPD, DON, the ((~~OH~~)) Office of Housing Director, and other agencies are bound by and shall incorporate the terms and conditions of the Council's decision in permits issued to the applicant or in approved plans.

B. No ordinance confirming an assessment roll for a Local Improvement District shall be enacted by the Council until all appeals to the City Council about the assessment roll are decided.

XI. MAINTENANCE OF RECORDS OF QUASI-JUDICIAL PROCEEDINGS

The City Clerk shall maintain the official record of the Council's decisions in quasi-judicial matters. The following documents shall be included in the permanent file of the quasi-judicial Council actions addressed by these Rules:

A. If there is one, the Hearing Examiner's record, including exhibits and recordings and transcripts of hearings. However, the City Clerk shall maintain oversize exhibits only for a period of ((~~three (~~))3((~~)~~)) months after the Council's decision, or, if a judicial appeal is filed, until such time as the judicial appeal is resolved. After the three months or the termination of any judicial appeal, the City Clerk may substitute photographs of oversize exhibits for the oversize exhibits and may destroy the oversize exhibits unless the party who submitted the oversized exhibits requests that they be returned.

B. Any evidence admitted by the Council to the substantive record as a result of a motion to supplement the record;

C. The Council's procedural record; and

D. The Council's findings, conclusions and decision.

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Form revised: July 12, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Legislative	Rebecca Herzfeld/684-8148	Not applicable.

Legislation Title:
A RESOLUTION adopting revised rules for City Council quasi-judicial proceedings, and repealing the previous rules that were adopted by Resolution 31001.

Summary of the Legislation:
This resolution amends the existing Council Rules for Quasi-Judicial Proceedings to clarify procedures and make the Rules more readable, understandable, and easier to apply.

Background:
The City Council makes decisions on an average of six quasi-judicial actions annually. Quasi-judicial actions are those in which the Council is acting as a panel of judges, rather than a legislative body, to "determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding" (RCW 42.36.010). On September 17, 2007, the Council adopted Resolution 31001, which repealed its previous set of rules for quasi-judicial proceedings and adopted a new set of clearer and more specific rules. The Council now has four years of experience in using the new rules, and the proposed resolution would adopt amendments to clarify procedural questions that have been raised during that time.

Please check one of the following:

__X__ **This legislation does not have any financial implications.**
(Please skip to "Other Implications" section at the end of the document and answer questions a-h. Earlier sections that are left blank should be deleted. Please delete the instructions provided in parentheses at the end of each question.)

____ **This legislation has financial implications.**
(If the legislation has direct fiscal impacts (e.g., appropriations, revenue, positions), fill out the relevant sections below. If the financial implications are indirect or longer-term, describe them in narrative in the "Other Implications" Section. Please delete the instructions provided in parentheses at the end of each title and question.)

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
Over time, the legislation could save money by allowing the use of e-mail for some notices, which would reducing the postage and paper costs as well as staff time.

b) **What is the financial cost of not implementing the legislation?**
Not applicable.

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c) **Does this legislation affect any departments besides the originating department?**
The legislation would affect the Department of Planning and Development, the Office of Housing, the Hearing Examiner, the Seattle Department of Transportation, and the Department of Neighborhoods, all of which play a role in processing various quasi-judicial actions.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**
Not applicable.

e) **Is a public hearing required for this legislation?**
A public hearing is not required. However, this resolution will be the subject of a public hearing together with a companion bill that amends the permitting procedures in the Land Use Code for Council land use decisions. That hearing is tentatively scheduled for June 13, 2012.

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
Notice of the public hearing on the companion bill in the Daily Journal of Commerce is required.

g) **Does this legislation affect a piece of property?**
No.

h) **Other Issues:**
Not applicable.

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