



INFORMATION FOR Appeal Procedures ECDC 20.06

PERMITTING & DEVELOPMENT
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NOTE: This handout only addresses the appeal procedures for appeals of land use decisions. The appeal procedures and deadlines for appeals of other types of City decisions and/or actions may vary. Check the specific code section or with staff for other appeal procedures and timelines.

This handout summarizes the procedure for filing appeals of land use decisions in the City of Edmonds according to Chapter 20.06 of the Edmonds Community Development Code (ECDC). There are different appeal procedures depending on the permit type involved. Except for SEPA appeals where any interested person may appeal a threshold determination, only parties of record may file an appeal of a land use decision. A party of record means:

- The applicant;
- Any person who testified at the open record public hearing on the application;
- Any person who individually submitted written comments concerning the application at the open record public hearing (or to staff if an appeal of a Type II decision). Persons who have only signed petitions are not parties of record; and/or
- The City of Edmonds.

A "closed record appeal" is an administrative appeal on the record to the City Council, following an open record public hearing on a development project permit application, when the appeal is on the record with no new evidence or information allowed to be submitted, except as provided in ECDC 20.06.120, and only appeal argument allowed. Type III-B and IV permits may be appealed through a closed record appeal.

Closed record appeals are heard by the Edmonds City Council.

An "open record appeal" hearing is a public record hearing held if no open record pre-decision hearing has been held on the development project permit. Type II permits may be appealed through the open record appeal process. Open record appeals are heard before the Hearing Examiner.

FILING REQUIREMENTS:

All land use decision appeals must be filed within 14 calendar days after the date of issuance of the decision being appealed; however, the appeal period is extended an additional 7 days for SEPA determinations of non-significance that have a public comment period. Appeals, including the fee (see Fee Sheet), must be received by the Development Services Department before 4:00 p.m. on the last day of the appeal period. All appeals must be submitted through the MyBuildingPermit portal and include a cover letter with the following:

- Appellant's name, address and phone number;
- A statement describing appellant's standing to appeal;
- Identification of the application which is the subject of the appeal;
- Appellant's statement of grounds for appeal and the facts upon which the appeal is based with specific references to the facts in the record;
- The specific relief sought;
- A statement that the appellant has read the appeal and believes the contents to be true, followed by the appellant's signature.

TRANSCRIPTS:

While not required, a party to the appeal may have the official tape recording of the open record hearing transcribed at his/her own expense. To be admitted into the record, however, the transcription must be performed and certified by a transcriber contained on a pre-approved list maintained by the director. The certified transcription must be received by the City directly from the transcriber at least 16 working days before the date scheduled for the closed record review. It is each party of record's responsibility to obtain a copy of the transcription from the City.

NEW EVIDENCE:

Closed Record Appeals

No new testimony or other evidence will be accepted by the City Council except: (1) new information required to rebut the substance of any written or oral ex parte communication provided during an appearance of fairness disclosure; and (2) relevant information that, in the opinion of the City Council, was improperly excluded by the hearing body/officer.

- Appellants who believe that information was improperly excluded must specifically request in writing within 5 working days of the appeal deadline that the information be made part of the record. The request shall be addressed to the City Council president, describing the information excluded, its relevance to the issues appealed, the reason(s) that the information was excluded by the hearing body/officer, and the reason why the hearing body/officer erred in excluding it.
- In determining whether the information should be admitted, the City Council president may request other parties of record to submit written arguments rebutting the above. Non response by the City Council president within 5 working

days of the initial request that the information be made part of the record shall constitute a rejection of the same.

Open Record Appeals

New testimony and other evidence is accepted during an open record appeal hearing.

WRITTEN ARGUMENT:

Closed Record Appeals

Parties to the appeal may present written arguments to the City Council. Arguments shall describe the particular errors committed by the decision maker, with specific references to the administrative record. The appellant shall bear the burden to demonstrate that the decision below is clearly erroneous given the record.

The appellant may submit his or her written arguments 12 working days before the date scheduled for closed record review. Parties of record, except for the appellant, may respond in writing to the appellant's arguments no later than 7 working days before the closed record review. The appellant may rebut in writing to responses submitted by parties of record no later than 4 working days before the closed record review. If the applicant is not the appellant, he/she may submit a final surrebuttal in writing to the appellant's rebuttal no later than 2 working days before the closed record review.

Written arguments, responses, rebuttal and surrebuttals must be received by the city's Development Services Department by mail or personal delivery at or before 4:30 p.m. of the date due. Late submittals shall not be accepted. Submittals received by mail after 4:30 p.m. on the last day of the appeal period will not be accepted, no matter when such submittals were mailed or postmarked. It shall be the responsibility of the parties involved to obtain for their own use from the city copies of written arguments, responses, rebuttals and surrebuttals submitted.

Open Record Appeals

Testimony may be given orally or in writing at an open record appeal and may be submitted at any time prior the closing of the open record hearing.

As with closed record appeals, the appellant has the burden of proof with respect to points raised on appeal.

RECONSIDERATION

In an open record appeal, any party of record may request reconsideration of the Hearing Examiner's decision. Reconsideration is limited to:

- Error(s) of procedure;
- Error(s) of law or fact;
- Error(s) of judgment; and/or
- The discovery of new evidence that was not known and could not, in the exercise of reasonable diligence, have been discovered.

A request for reconsideration must be filed with the director within 10 calendar days of the Hearing Examiner's written decision. Such requests shall be delivered to the director before 4:30 p.m. on the last day of the reconsideration period. Requests for reconsideration that are received by mail after 4:30 p.m. on the last day of the reconsideration period will not be accepted, no matter when such requests were sent, mailed or postmarked.

Reconsideration requests must be submitted through the MyBuildingPermit portal, be accompanied by the required reconsideration fee (see Fee Sheet), and contain the following information:

- The name, address and phone number of the requestor;
- Identification of the application and final decision which is the subject of the request for reconsideration;
- Requestor's statement of grounds for reconsideration and the facts upon which the request is based;
- The specific relief requested;

- A statement that the requestor believes contents of the request to be true, followed by his/her signature.

Re-consideration notice. The Director provides notice that a request for reconsideration has been filed to all parties of record.

JUDICIAL APPEALS

The city's final decision on any type of application may be appealed by a party of record with standing to file a land use petition in Snohomish County superior court. Such petition must be filed within 21 days after issuance of the decision, as provided in Chapter 36.70C RCW.

Note: This information should not be used as a substitute for City codes and regulations. The Edmonds Community Development Code (ECDC) may be viewed at www.edmondswa.gov. The applicant is responsible for ensuring compliance with the fees and regulations that are applicable at the time of submittal. If you have a specific question about a certain aspect of your project, please contact the Planning Division at 121 Fifth Avenue North, (425) 771-0220. Please note that other local, state, and/or federal permits or approvals may be required.