

ORDINANCE NO. 2000-05-023

AN ORDINANCE ESTABLISHING THE OFFICE OF HEARING EXAMINER AND SETTING FORTH DUTIES AND POWERS

WHEREAS, the City Council, Planning and Development Commission and Board of Adjustment currently conduct hearings and make decisions relating to land use applications; and

WHEREAS, it is the desire of the City Council to focus its time and energy, as well as that of the Planning and Development Commission, on policy matters; and

WHEREAS, the City is authorized to utilize the services of a hearing examiner to conduct quasi-judicial hearings and to make determinations on land use and other quasi-judicial and administrative matters; and

WHEREAS, the creation of the office of hearing examiner will result in fulfillment of a variety of goals of the city, including the separation of the application of regulatory controls from the planning process, efficiency and timeliness of administrative adjudications, and the furtherance of fairness and due process in open record hearings,

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. A new chapter shall be added to the Bellingham Municipal Code to read as follows:

Chapter 2.56 Hearing Examiner

.010 Purpose and Creation

Recognizing the need:

- A. To provide an efficient and effective administrative adjudicatory system for acting upon quasi-judicial matters and for review of contested administrative determinations;
- B. To insure, to the extent possible, that quasi-judicial administrative decisions are made in a fair and impartial manner; and
- C. To insure that the principles of due process and appearance of fairness are adhered to in regard to quasi-judicial matters.

The office of Hearing Examiner is hereby created under the authority provided by Article 11, Section 11 of the Washington State Constitution and RCW 58.17 in order to best satisfy these needs. The office shall be independent of City departments, boards and commissions and shall be responsible for impartial administration of administrative hearings in accordance with the provisions of this chapter. The term Hearing Examiner shall include the Hearing Examiner Pro Tem.

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.020 Appointment, Term

The Hearing Examiner shall be appointed by the Mayor, with the concurrence of not less than four members of the City Council, for an initial term of two years. Reappointment shall be for a term of four years. The Hearing Examiner may be removed from office during a term by the Mayor with the concurrence of at least four members of the City Council only for just cause. One or more Hearing Examiners Pro Tem may be appointed by the Mayor, for such terms as may be specified at the time of appointment, to serve in the case of a conflict or absence of the Hearing Examiner.

The Hearing Examiner shall be exempt from Civil Service.

.030 Qualifications

The Hearing Examiner shall be appointed solely with regard to qualifications for the duties of such office and shall have such training and experience as will qualify the Hearing Examiner to conduct administrative quasi-judicial proceedings, including at least five years experience in land use planning and law. The Hearing Examiner shall be an attorney, or possess such other qualifications as may be specified by ordinance.

.040 Conflict of Interest, Freedom from Improper Influence

The Hearing Examiner shall not conduct or participate in any hearing or decision in which the hearing examiner has a direct or indirect personal interest which might exert such influence upon the examiner that might improperly interfere with the decision-making process. Any actual or potential conflict of interest shall be disclosed to the parties immediately upon discovery of such conflict and the examiner shall abstain from any further proceedings in the matter unless all parties agree in writing to have the matter heard by that hearing examiner

No person shall attempt to interfere with, or improperly influence the Hearing Examiner in the performance of designated duties. This provision shall not prohibit the City Attorney from providing legal advice to the Hearing Examiner.

.050 Powers and Jurisdiction

The Hearing Examiner shall have the power to receive and examine available information, conduct public hearings and prepare a record thereof and enter decisions as provided by ordinance.

A. The decision of the Hearing Examiner on the following matters which shall be within the jurisdiction of the Hearing Examiner shall be final unless such decision is appealed to the City Council as provided in this chapter:

1. Applications for preliminary plat approval for subdivisions exceeding nine lots and applications for one and one-half rule short plats and cluster short plats, except for those that are decided by the Director of the Planning and Community Development Department;

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2. Appeals from the determination of the Planning and Community Development Director relating to Planned Development Contracts, including Institutional Site Plans, and Design Review Contracts;
3. Appeals provided for in Title 6 of the Bellingham Municipal Code;
4. Appeals and non-administrative variances provided for in Title 16 of the Bellingham Municipal Code;
5. Appeals provided for in Title 18 of the Bellingham Municipal Code;
6. Variances from the terms of Title 18 of the Bellingham Municipal Code;
7. Appeals of determinations of the Public Works Director provided for in Titles 13, 14 or 15 of the Bellingham Municipal Code;
8. Appeals of determinations of the Parks and Recreation Director provided for in Title 8 or Chapter 13.40 of the Bellingham Municipal Code

B. The decision of the Hearing Examiner on the following matters which shall be within the jurisdiction of the Hearing Examiner shall be final, subject only to judicial challenge:

1. Applications for conditional use permits pursuant to Chapter 20.16 of the Bellingham Municipal Code;
2. Applications for variance pursuant to Chapter 20.18 of the Bellingham Municipal Code;
3. Applications for permits, certificates or approvals relating to non-conforming uses pursuant to Chapter 20.14 of the Bellingham Municipal Code;
4. Appeals from determinations and interpretations of the Director of Planning and Community Development provided for in Title 20 of the Bellingham Municipal Code, except for decisions relating to Planned Development Contracts and Design Review Contracts;
5. Applications for permanent, non-exempt home occupation permits, and such temporary, non-exempt home occupation permits as shall be referred to the Hearing Examiner by the Director of Planning and Community Development, pursuant to Section 20.10.045 of the Bellingham Municipal Code;

C. On the following matters, which shall be within the jurisdiction of the Hearing Examiner the Hearing Examiner shall enter findings of fact, conclusions of law, and recommendations to the City Council:

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1. Applications for rezoning of property, except when such rezoning is to be considered as part of adoption of an area-wide comprehensive plan;
2. Formation of a local improvement district;
3. Approval of local improvement district assessments;
4. Petitions for street and alley vacations;
5. Applications relating to Landmark Preservation pursuant to Chapter 17.80 of the Bellingham Municipal Code

D. In the performance of duties prescribed by this chapter or other ordinances, the Hearing Examiner may:

1. Administer oaths and affirmations, examine witnesses, rule upon offers of proof, receive relevant evidence, and conduct discovery procedures which may include propounding interrogatories and taking oral depositions pursuant to Washington State Court Rules; provided, that no person shall be compelled to divulge information which he could not be compelled to divulge in a court of law;
2. Upon the request of the Planning and Community Development Department or any party, or upon the Hearing Examiner's own volition, issue and cause to be served subpoenas for the attendance of witnesses and for the production for examination of any books, records, or other information in the possession or under the control of any witness; provided that such subpoena shall state the name and address of the witness sought, and if for the production of books, documents or things, shall specifically identify the same and the relevance thereof to the issues involved;
3. Regulate the course of the hearing in accordance with this chapter and other applicable ordinances;
4. Hold conferences for the settlement or simplification of the issues by consent of the parties;
5. Dispose of procedural requests or similar matters;
6. Take any other action authorized by ordinance.

In case of failure or refusal without lawful excuse of any person duly subpoenaed to attend pursuant to such subpoena, or to be sworn, or to answer any material and proper question, or to produce upon reasonable notice any material, books, records or other information in his possession and under his control, the Hearing Examiner may invoke the aid of the City Attorney

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who shall apply to the appropriate court for an order or other court action necessary to secure enforcement of the subpoena.

E. The Hearing Examiner is hereby empowered to act in lieu of the Board of Adjustment, the City Council, the Planning Commission and such other officials, Boards or Commissions as may be assigned for those matters listed in subsections A., B. and C. above. Wherever existing ordinances, codes or policies authorize or direct the Board of Adjustment, or other officials, Boards or Commissions to undertake certain activities which the Hearing Examiner has been assigned, such ordinances, codes or policies shall be construed to refer to the Hearing Examiner.

F. The Hearing Examiner may include in a decision any conditions of approval that are necessary to insure that the proposal complies with all applicable code criteria and comprehensive plan policies and does not adversely affect surrounding properties.

G. The Hearing Examiner may also serve as a Municipal Court Judge Pro Tem or Commissioner, subject to the appointment provisions of RCW Chapter 3.50.

.060 Semi-Annual Report and Meeting with City Council

The Hearing Examiner shall report in writing and meet with the City Council at least semi-annually for the purpose of reviewing the administration of the land use policies and regulatory ordinances and any amendments to City ordinances or other policies or procedures which would improve the performance of the Hearing Examiner process. Such report shall include a summary of the Hearing Examiner's decisions since the last report.

.070 Procedures

The Hearing Examiner shall adopt rules concerning procedures for scheduling and conduct of hearings and otherwise related to the duties of the office, not inconsistent with the terms of this chapter.

.080 Appeals to City Council

The decision of the Hearing Examiner on those matters specified in section 2.56.050A of this chapter shall be final unless an aggrieved party or a city department files a written notice of appeal with the City Council within ten days of the final decision of the Hearing Examiner. Any parties of record from the Hearing Examiner's proceedings who wish to continue to be considered parties of record must register with the City Council in writing no later than ten days after the date a notification of appeal letter is sent to such party. A fee, as prescribed by resolution of the City Council, shall be paid upon the filing of any appeal, except for appeals initiated by a City department. The decision of the City Council shall be based upon the record established in the Hearing Examiner's proceedings, written argument submitted by the parties, and such oral argument as may be allowed at the discretion of the City Council.

The City Council may, within its discretion, remand the matter back to the Hearing Examiner if it finds: (1) That new evidence is available that could affect the outcome of the case and was not available at the first hearing; or (2) That the record, in whole or in part, is not sufficient for the Council to make a

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reasoned decision on the appeal; or (3) That the decision of the Hearing Examiner should be reversed and that additional information is necessary before a final decision can be made.

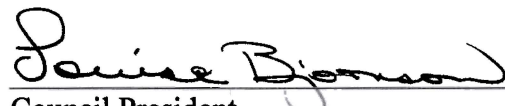
.090 Fees

Each application for a permit or approval which requires a hearing before the Hearing Examiner, and each appeal to the Hearing Examiner, shall be accompanied by payment of a fee which shall be set by resolution of the City Council.

.100 Pending Applications

Applicants and Appellants in matters which were filed prior to the effective date of this Chapter may opt to have their applications and appeals heard by the bodies which were authorized to hear them at the time they were filed, or by the Hearing Examiner as provided in this Chapter; provided that this option shall expire no later than 120 days after the effective date of this Chapter and all such applications and appeals assigned to the Hearing Examiner in this Chapter not heard prior to that date shall be heard by the Hearing Examiner.

PASSED by Council this 15th day of May, 2000.



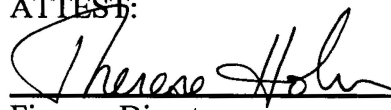
Council President

APPROVED by me this 1st day of June, 2000.



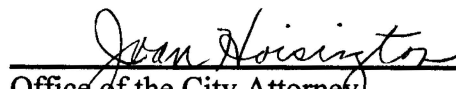
Mayor

ATTEST:



Finance Director

APPROVED AS TO FORM:



Office of the City Attorney
Published:

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