

Ordinance No. 00013

[\(Council Minutes 95/11/20\)](#)

ORDINANCE NO. 95-13

AN ORDINANCE of the City of Lakewood, Washington, establishing the office of Hearing Examiner; providing for appointment by the City Manager; defining powers and duties; providing for appeals; and specifying procedures

WHEREAS, Chapter 35A.63 of the Revised Code of Washington provides that cities operating as optional code cities shall establish a forum for hearing appeals from decisions on permits, appeals from determinations of code enforcement, applications for variances from the zoning ordinances, applications for non-general changes to zoning ordinances, applications for conditional use permits, and other quasi-judicial or administrative matters; and,

WHEREAS, the options for such forums are (1) a board of adjustment, and (2) a hearing examiner; and,

WHEREAS, among these two options, the hearing examiner system is generally better suited to the needs of larger cities, in that it avoids inserting private citizens into the decision-making role of zoning, land use and quasi-judicial matters, using instead, a trained professional to make such decisions.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON, DO ORDAIN that a Hearing Examiner System is established as follows:

Section 1 Purpose.

The purpose of this chapter is to establish a hearing examiner system under the provisions of Chapter 35A.63 RCW to hear and decide applications for amendments to land use regulations and other matters as specifically assigned by ordinance.

Section 2 Office created.

The office of Hearing Examiner is hereby created to act on behalf of the City Council by considering and applying zoning and regulatory ordinances to the land as provided herein. The Examiner shall also be authorized to act in a decision making role involving administrative matters and such other quasi-judicial matters as may be granted by ordinance or referred to the Hearing Examiner by the City Manager.

Section 3 Appointment and terms.

The Examiner shall be appointed by the City Manager, subject to confirmation by the Council, to serve for a term of two years.

Section 4 Removal.

The Examiner may be removed from office at any time for just cause by the affirmative vote of a majority of the whole membership of the Council.

Section 5 Qualifications.

The Examiner shall be appointed solely on the basis of qualifications for the duties of the office with special reference to training, actual experience in, and knowledge of administrative or quasi-judicial hearings on zoning, subdivision and other land use regulatory enactments.

Section 6 Examiner pro tem.

In the event of the absence or the inability of the Examiner to act on an application, a Hearing Examiner pro tem may be appointed, in the manner specified in Section 3 of this Ordinance, for such application or period of absence, and shall have all the duties and powers of the Examiner.

Section 7 Conflict of interest and freedom from improper influence.

The Examiner shall not conduct or participate in any hearing or decision in which the Examiner or any of the following persons has a direct or substantial financial interest: The Examiner=s spouse, sibling, child, parent, in-laws, partner; any business in which the Examiner is then serving or has served within the previous two (2) years; or any business with which such Examiner is negotiating for, or has had arrangement or understanding concerning, possible partnership or employment. Any actual or potential interest shall be disclosed prior to such hearing.

Participants in the hearing process have the right, insofar as possible, to have the Examiner and the City Council members free from personal interest or pre-hearing contacts on matters considered by them. It is recognized that there is a countervailing public right to free access to public officials on any matter. Therefore, the Examiner and City Council members shall reveal any substantial interest or pre-hearing contact made with them concerning the proceeding, at the commencement of such proceeding. If such interest or contact impairs the Examiner or Council member=s ability to act on the matter, such person shall so state and shall abstain therefrom to the end that the proceeding is fair and has the appearance of fairness.

Individual Councilmembers, City officials or any other persons shall not interfere or attempt to interfere with the performance of the Examiner's designated duties.

Section 8 Functions relating to area zoning.

Prior to adopting new area zoning provisions, the Council may choose to have the Examiner conduct public hearings to consider individual property requests for changes to the proposed area zoning, in which case such decisions shall be considered as recommendations to the Council.

Section 9 Decisions appealable to the Council.

For the following cases, the Examiner shall receive and examine available information, conduct public hearings, prepare records and reports thereof, and make decisions, which shall be given the effect of an administrative decision appealable to the Council:

- A. Applications for unclassified use permits;
- B. Appeals from permit denials or conditions imposed on environmental grounds pursuant to the State Environmental Policy Act;
- C. Appeals from threshold determinations concerning applications subject to Council action;
- D. Other applications or appeals which the Council may refer by ordinance, specifically declaring that the Hearing Examiner's decision shall be appealable to the Council.

Section 10 Recommendations to the Council.

For the following cases, the Examiner shall receive and examine available information, conduct public hearings, prepare records and reports thereof, and make decisions, which shall be given the effect of a recommendation to the Council:

- A. Applications for reclassifications of property;
- B. Applications for planned unit developments;
- C. Other applications or matters which the Council may refer by ordinance specifically declaring that the Hearing Examiner shall make a recommendation to the Council.
- D. Applications for preliminary plats;
- E. Applications for shoreline environment redesignation.

Section 11 Decisions of the Examiner which are final.

For the following cases, the Examiner shall receive and examine available information, conduct public hearings, prepare records and reports thereof, and make decisions, which shall be final and conclusive:

- A. Applications for conditional use permits;
- B. Applications for variances;
- C. Applications for shoreline permits when a public hearing is required;
- D. Appeals from the decisions of the City Manager, or designee, on applications for short subdivisions;
- E. Appeals from threshold determinations concerning applications not subject to Council action;
- F. Appeals from notices and orders issued as code enforcement actions;
- G. Appeals from decisions regarding the abatement of nonconforming uses;

H. Appeals from administrative decisions or determinations by City officials where the governing ordinance provides for an appeal to the Examiner;

I. Other applications or appeals which the Council may prescribe by ordinance.

Section 12 Hearing procedures.

The Examiner shall have the power to prescribe procedures for the conduct of hearings subject to confirmation of the Council; and also to issue summons and subpoena to compel the appearance of witnesses and production of documents and materials, to order discovery, to administer oaths, and to preserve order.

Section 13 Public hearing.

A. Before rendering a decision on any application or appeal, the Examiner shall hold at least one public hearing thereon. For applications subject to Council action, the public hearing by the Examiner shall constitute a hearing by the Council.

B. Whenever a project requires more than one permit or approval, the Examiner may order a consolidation of and conduct the required public hearings to avoid unnecessary costs or delays. Decisions of the Examiner to order and conduct consolidated hearings shall be final in all cases.

Section 14 Procedural notice requirements.

Unless otherwise provided by ordinance, the City Manager, or designee shall cause notice of the time and place of the public hearing to be mailed to all persons of record at least fourteen (14) calendar days prior to the scheduled hearing. Additional notice shall be given as provided in the ordinance governing the particular type of application or appeal. Public hearings may be continued or reopened by the Examiner with written notice to all persons of record at least fourteen (14) calendar days prior to the rescheduled hearing. Public hearings may be continued by the Examiner without additional written notice provided the continuance is made during open session to a specific date, time, and location.

Section 15 Community Development Department report.

When an application or appeal has been set for public hearing, the Community Development Department shall coordinate and assemble the reviews of other departments and governmental agencies having an interest in the subject application or appeal and shall prepare a report summarizing the factors involved and the department findings and recommendation or decision. At least fourteen (14) days prior to the scheduled hearing the report and in the case of appeals any written appeal arguments submitted to the City, shall be filed with the Examiner and copies thereof shall be mailed to all persons of record who have not previously received said materials.

Section 16 General criteria for Examiner decisions.

A. Each decision of the Examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision.

B. The Examiner's findings and conclusions shall set forth and demonstrate the manner in which the decision is consistent with, carries out and helps implement applicable state laws and regulations and the regulations, policies, objectives and goals of the comprehensive plan, the zoning code, the subdivision code and other official laws, policies and objectives of the City,

and that the decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

C. The Examiner shall accord substantial weight to the recommendation of the Community Development Department.

Section 17 Additional criteria for pending area zoning - Recommendations.

When the Examiner considers individual property owner requests for pending area zoning, the Examiner shall prepare a report which contains additional findings based on the applicable proposed comprehensive plan causing the pending area zoning.

Section 18 Additional criteria for zoning decisions.

When the Examiner issues a decision regarding an application for a reclassification of property, the decision shall include additional findings which support the conclusion that at least one of the following circumstances applies:

A. The property is potentially zoned for the reclassification being requested and conditions have been met which indicate the reclassification is appropriate; or

B. The adopted comprehensive plan or area zoning specifies that the property shall be subsequently considered through an individual reclassification application; or

C. The applicant has demonstrated with substantial evidence that:

1. Since the last previous area zoning, authorized public improvements, permitted private development or other conditions or circumstances affecting the subject property have undergone substantial and material change not anticipated or contemplated in the comprehensive plan or area zoning; and

2. The requested reclassification is required in the public interest.

Section 19 Additional criteria for subdivision decisions.

When the Examiner issues a decision regarding an application for a subdivision of property and there are conflicts between adopted plans, portions of plans, or zoning, the following criteria shall apply:

A. In case of conflict in use and density designations between adopted comprehensive plans, the most current adopted plan shall govern.

B. In case of conflict in use and density designations between adopted comprehensive plans and present zoning, the zoning shall govern.

Section 20 Additional criteria for variances.

A variance shall not be granted unless the Examiner finds:

A. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located; and

B. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and

C. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.

D. That the special circumstances necessitating the variance have not resulted from any action of the applicant.

E. That the requested variance will not create a use not generally permitted within the zone in which the subject property is located.

Section 21 Examiner actions.

Within ten (10) days of the conclusion of a hearing or rehearing, the Examiner shall render a written recommendation or decision and shall transmit a copy thereof to all persons of record.

A. The Examiner's decision may be to grant or deny the application or appeal, or the Examiner may grant the application or appeal with such conditions, modifications and restrictions as the Examiner finds necessary to make the application or appeal compatible with the environment and carry out applicable state laws and regulations and the regulations, policies, objectives and goals of the comprehensive plan, the zoning code, the subdivision code and other ordinance, policies and objectives of the City.

B. The conditions, modifications and restrictions that the Examiner may impose include additional setbacks, screenings in the form of landscaping or fencing, covenants, easements and dedications of additional road right-of-way. Performance bonds or equivalent measures may be required to insure compliance with the conditions, modifications and restrictions.

Section 22 Appeal to Examiner - Notice and content.

All notices of appeal regarding any decision being appealed to the Examiner shall be filed with the City Clerk within ten (10) calendar days from the date of the issuance of such decision together with a filing fee in the amount of fifty dollars (\$50.00) or in such other amount as may be specified by resolution of the City Council. All notices of appeal shall state with specificity the decision being appealed and the reasons why the appealed decision should be reversed or modified.

Section 23 Appeal to Council - Notice.

Decisions by the Examiner on cases subject to Council action may be appealed to the Council by an aggrieved party by filing a notice of appeal with the City Clerk within fourteen (14) calendar days of the date the Examiner's written decision is mailed, together with a filing fee in the amount of fifty dollars (\$50.00) or in such other amount as may be specified by resolution of the City Council. If no appeal is filed within fourteen calendar days, the Examiner's decision shall be considered as final and conclusive.

Section 24 Appeal to Council - Content.

If a notice of appeal has been filed, the appellant shall file written arguments within twenty-one (21) calendar days of the date the Examiner's written decision is mailed. The written arguments should specify the basis for the appeal and any arguments in support of the appeal. If appeal arguments are not timely filed, the Examiner's decision shall be considered as final and conclusive.

Section 25 Appeal to Council - Consideration.

Consideration by the Council of the appeal shall be based upon the record of the Examiner's public hearing and upon written appeal statements based upon the record; provided the Council may allow parties a period of time for

oral argument based on the record. The Examiner may conduct a conference with all parties to the appeal for the purpose of clarifying or attempting to resolve certain issues on appeal, provided such conference shall be informal and shall not be part of the public record. If, after consideration of the record, written appeal statements and any oral argument the Council may:

A. Affirm the decision of the Examiner; or

B. Determine that an error in fact or procedure may exist or additional information or clarification is desired, the Council shall remand the matter to the Examiner; or

C. Determine that the recommendation of the Examiner is based on an error in judgment of conclusion, the Council may modify or reverse the decision of the Examiner.

Section 26 Appeal to Council - Council action.

The Council shall take final action by ordinance or resolution on an Examiner's recommendation on area zoning or on any appeal of an Examiner's decision and when doing, the Council shall make and enter findings of fact and conclusions from the record which support its action. Said findings and conclusions shall set forth and demonstrate the manner in which the action is consistent with, carries out and helps implement objectives and goals of the comprehensive plan, the zoning code, the subdivision code and other official laws, policies and objectives of the City. The Council may adopt as its own all or portions of the Examiner's findings and conclusions.

Section 27 Reconsideration of final action.

The Council may reconsider any action after it has become final if:

A. The action was based in whole or in part on erroneous facts or information;

B. The action when taken failed to comply with existing laws or regulations applicable thereto; or

C. An error or procedure occurred which prevented consideration of the interests of persons directly affected by the action.

Section 28 Review of final decisions.

A. Decisions of the Council shall be final and conclusive unless within twenty (20) calendar days, or within thirty calendar (30) days for decisions approving or denying plats, from the date of the Council's action, an aggrieved person applies for a writ of certiorari from the Superior Court in and for the County of Pierce, State of Washington, for the purpose of review of the action taken; provided, no development or related action may occur during said twenty-day, or thirty-day for plat approvals, appeal period.

B. Decisions of the Examiner in cases identified in Section 11 of this Ordinance shall be final and conclusive, unless, within ten (10) days from the effective date of the action, the original applicant or an adverse party makes application to the Superior Court in and for the County of Pierce, State of Washington, for a writ of certiorari, a writ of prohibition, or a writ of mandamus.

C. Notwithstanding the foregoing provisions of this section, final decisions of the Council relating to matters governed by the State Shorelines Management Act shall be appealed to the State Shorelines Hearing Board as specified in the said Act.

Section 29 Severability.

If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 30 Effective date.

This ordinance shall be in full force and effect five days after publication of the Ordinance Summary and on February 28, 1996, provided that the terms of this Ordinance shall be in effect during the interim period of time prior to February 28, 1996.

ADOPTED by the City Council this 20th day of November, 1995.

/S/ Bill Harrison

Mayor

Attest:

/S/ Alice M. Bush

City Clerk

Approved as to Form:

/S/ Daniel B. Heid

City Attorney

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