

Ordinance No. 00408

[City Council meeting minutes of Feb 21 2006](#)

ORDINANCE NO. 408

AN ORDINANCE of the City Council of the City of Lakewood, Washington, amending Lakewood Municipal Code sections 18A.02.502, 18A.02.740 and 18A.10.160, and repealing section 18A.10.170, relating to the administrative procedures and processes applicable to appeals of decisions actions under the City's Land Use and Development Code

WHEREAS, pursuant to RCW Title 36.70A, the Washington State Growth Management Act, the City of Lakewood adopted a comprehensive plan in July of 2000 and a Land Use and Development Code (Chapter 18A of the Lakewood Municipal Code) on August 20, 2001; and,

WHEREAS, since the time of adoption of the Land Use and Development Code, the City has received comment on the Code from citizens and project proponents, staff has gained experience in the administrative procedures and processes outline in the Code; and,

WHEREAS, based upon said public comment and practical experience, the City's Community Development Department introduced specific suggested changes to the Code for the Planning Advisory Board review and consideration; and,

WHEREAS, the Planning Advisory Board held a duly-noticed public hearing on July 20, 2005, to receive and consider public testimony on said proposed code changes; and,

WHEREAS, upon review of these suggested changes, the Planning Advisory Board found that the current procedures for the processing of appeals do not clearly reflect the individual characteristics of each particular type of appeal proceedings, and in some situations administrative processes regarding appeals were internally inconsistent; and,

WHEREAS, the Planning Advisory Board further found that the proposed changes to the Land Use and Development Code as recommended to the City Council are consistent with the adopted City of Lakewood Comprehensive Plan; and,

WHEREAS, the City Council for the City of Lakewood does hereby adopt the findings and recommendations of its Planning Advisory Board in this regard, and does make the amendments and repeal noted herein in the interests of clarifying and improving administrative appeal processes found under the City's Land Use and Development Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON, DO ORDAIN AS FOLLOWS:

(Language to be added is underlined, and language to be deleted is ~~struck through~~).

Section 1. That section 18A.02.502 (Table 3) of the Lakewood Municipal Code is hereby amended to read as follows:

TABLE 3: APPLICATION PROCESSING PROCEDURES

	Process I Administrative Action	Process II Administrative Action	Process III Hearing Action	Process IV Hearing Action	Process V Legislative Action
Permits	Zoning certification; Building permit; Design Review; Sign permit; Temporary Sign permit; Accessory Living Quarters; Limited Home Occupation; Temporary Use; Manufactured or Mobile Home permit; Boundary Line Adjustments; Minor modification of Process II and III permits; Final Site Certification; Certificate of Occupancy; ***Sexually Oriented Business extensions	Administrative Uses; Short Plat; SEPA; Home Occupation; Administrative Variance; Binding Site Plans, Minor Plat Amendment, Major modification of Process II permits:	Conditional Use; Major Variance; Preliminary Plat; Major Plat Amendment; Major modification of Process III permits: Shoreline Conditional Use; Shoreline Variance; Shoreline Substantial Development Permit SEPA Appeals	Zoning Map Amendments; Site-specific Comprehensive Plan map amendments; Specific Comprehensive Plan text amendments; Shoreline Redesignation, **Final Plat** ; **Development Agreement** **No hearing required or recommendation made by Planning Advisory Board**	Generalized or comprehensive ordinance text amendments; Area-wide map amendments; Annexation; Adoption of new planning-related ordinances;
Impacts	Minimal or no effect on others, so issuance of permit is not dependent on others	Application of the standards may require some knowledge of impacts and effect upon others	Potential significant effect on some persons or broad impact on a number of persons	Potential significant effect on some persons or broad impact on a number of persons	Potential significant effect on some persons or broad impact on a number of persons
Notice & Comment	Participation of applicant only	Nearby property owners invited to comment on an application	In addition to applicant, others affected invited to present initial information	In addition to applicant, others affected invited to present initial information	Anyone invited to present information
Recomm.	NA	NA	Community	Planning Advisory	Planning

Recommendation	NA	NA	Community Development Department Staff	Planning Advisory Board, except for Final Plat and Development Agreement as noted ** above	Planning Advisory Board
Decision-Making Body	Community Development Director	Community Development Director	Hearing Examiner	City Council	City Council
Appeal	Hearing Examiner Community Development Director's decision on permits noted *** above is appealable to Superior Court.	Hearing Examiner	Superior Court	Superior Court	Superior Court

Section 2. That section 18A.02.740 of the Lakewood Municipal Code is hereby amended to read as follows:

18A.02.740- Appeals

A. Appeals of decisions. This section allows for appeals as provided in the framework in LMC 18A.02.500, Decision Making Processes. All appeals are heard by the Hearing Examiner.

B. Consolidated appeals.

1. All appeals of project permit application decisions, other than an appeal of a Determination of Significance (DS), shall be considered together in a consolidated appeal.

2. Appeals of environmental determinations under LMC 14.02. Environmental Rules and Procedures, including administrative appeals of a threshold determination shall proceed as provided in that chapter.

C. Administrative appeals. Only parties of record may initiate an administrative appeal on a project permit application.

D. Time to file. An appeal must be filed within fourteen (14) calendar days following issuance of the notice of decision. Appeals must be delivered to the Community Development Department by mail, personal delivery or by fax before 5 p.m. on the last business day of the appeal period and shall be accompanied by the appeal fee. An administrative appeal of both a project decision and of any environmental determination issued at the same time as the project decision may be appealed if an applicant files the appeal within twenty-one (21) calendar days after the notice of decision has been issued.

E. Content of appeal. Appeals shall be in writing, be accompanied by an appeal fee as set by the City Council, and contain the following information:

1. Appellant's name, address and phone number.
2. Appellant's statement describing his or her standing to appeal.
3. Identify, with specificity, the decision, or portion of the decision, of the application being appealed.
4. Appellant's statement of grounds for appeal, the facts upon which the appeal is based, and the reasons why the appealed decision should be reversed or modified.
5. The relief sought, including the specific nature, extent and manner of any modification being sought.
6. A statement that the appellant has read the appeal and believes the contents to be true, followed by the appellant's signature.

F. Effect. The timely filing of an appeal shall stay the effective date of the decision until such time as the appeal is adjudicated by the hearing examiner, or is withdrawn.

G. Notice of administrative appeal. Public notice of the appeal shall be given as provided in LMC 18A.02.700, Notice of Public Hearing.

H. Procedure for appeal. The following subsections of this title shall apply to an appeal hearing:

1. LMC 18A.02.720.B, Conflict of Interest.
2. LMC 18A.02.720.C, Ex Parte Communications.
3. LMC 18A.02.720.D, Disqualification.
4. LMC 18A.02.720.E, Burden and Nature of Proof.
5. LMC 18A.02.720.F, Order of Proceedings.
6. LMC 18A.02.730, Notice of Decision.

C. Filing of an Appeal.

1. Any person aggrieved by a Process I or II administrative action, as described in LMC 18A.02.530, may file an appeal with the City Clerk within 14 days after the date of the action. Pursuant to WAC 197-11-680, if the appeal is of both a project decision and a SEPA Determination of Non-Significance (DNS) for which a public comment period is required by state or local law, and where the DNS is issued at the same time as the project decision, said decisions may be appealed within twenty-one (21) calendar days after the notice of decision/ threshold determination has been issued.

2. All appeals shall be filed in writing with the city clerk and shall identify, with specificity:

- a. Appellant's name, address and phone number.
- b. The specific action being appealed and the date of the action.
- c. The appellant's statement of grounds for appeal.
- d. The facts upon which the appeal is based.
- e. The reasons why the appealed action should be reversed or modified.
- f. The relief being sought, including the specific nature, extent and manner of any modification being sought.
- g. A statement that the appellant has read the appeal and believes the contents to be true, followed by the appellant's signature.

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3. The appeal shall be accompanied by the appropriate fee as established by city resolution. The appeal fee must be paid upon filing of the notice of appeal. No appeal will be processed without receipt of the appropriate fee before expiration of the period for filing the appeal.

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4. Following receipt of an appeal and payment of the appropriate fee, an appeal hearing shall be set by the hearing examiner. Notice of filing of the appeal and the date, time and location of the scheduled open record appeal hearing shall be mailed to the applicant, appellant, and any persons that have submitted substantive comments on the proposal. The notice shall include a copy of the written appeal. In addition, upon a motion by the appellant or the City at least thirty (30) days prior to the hearing date, the hearing examiner may order that notice of the open record hearing be publicly advertised or announced in any appropriate manner within the hearing examiner's discretion. The form of this public notice may be different from the form of the notice provided to the parties of record and need not include a copy of the appeal.

5. At the hearing examiner's initiative, or at the request of any party to the appeal or the City, the hearing examiner may hold a conference prior to the hearing in order to entertain and act on motions, clarify issues, establish procedures, or consider other relevant matters.

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D. Effect. The timely filing of an appeal shall stay the effective date of the decision until such time as the appeal is adjudicated by the hearing examiner, or is withdrawn.

E. Appeal Hearing. The appeal shall be heard at an open record hearing. Participation in an appeal hearing is limited to the applicant, the applicant's representative, the appellant, the appellant's representative, appropriate city staff, and any witnesses called by each.

1. All written comments and related documents received prior to the appeal hearing shall be transmitted to the hearing examiner no later than the hearing date. The appeal staff report shall be provided to the hearing examiner and parties to the appeal a minimum of five (5) days prior to the hearing date.

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2. The hearing examiner(s) may propose rules of procedure or evidence applicable to appeal hearings in general. Such proposed rules shall be submitted to the City Council for consideration, and, if approved, may be adopted by Resolution. Rules enacted in this manner may be amended, changed or deleted by Resolution of the City Council. Any rules of procedure for appeal hearings adopted by the hearing examiner and approved by the City Council shall be kept on file with the Office of the City Clerk and the Community Development Department, and shall be provided to any person filing an appeal.

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3. Issues- Limitation. Appeal hearings shall be limited to the issues specified in the written appeal.

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4. Continuation of Hearing. A hearing may be continued to a date certain without additional notice.

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F. Decision of the Hearing Examiner.

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1. Actions. In considering appeals, the hearing examiner shall do one of the following:

a. Affirm the decision;

b. Reverse the decision;

c. Affirm the decision with modifications; or

d. Remand the decision to the appropriate department director for further consideration. The hearing examiner shall include in the order the issues to be reviewed on remand.

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2. Standard of Review. The administrative decision under appeal shall be given substantial weight by the hearing examiner. On any such appeal, the standard of review shall be whether the administrative decision was clearly erroneous based on a review of all evidence, or the administrative decision was arbitrary or capricious. Failure of a party to request review by the hearing examiner of an administrative decision shall be a bar to any further judicial review.

3. Conditions. The hearing examiner may include conditions as part of a decision granting, or granting with modifications an appeal to ensure conformance with this code, the city's comprehensive plan and other applicable laws or regulations.

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4. Written Decision. Within 10 working days after completion of the public hearing, unless the appellant and the hearing examiner have agreed to an extension of time, the hearing examiner should issue a written decision on the appeal which contains the following:

a. The decision of the hearing examiner granting or denying the appeal in whole or in part;

b. Any conditions included as part of the decision on the appeal;

c. Findings of facts upon which the decision, including any conditions, is based and the conclusions of law derived from those facts; and

d. A statement of the right of a person with standing to appeal the decision of the hearing examiner in accordance with Chapter 36.70C RCW.

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If the Examiner is unable to issue a written decision within 10 working days, the Examiner shall inform the applicant, appellant, and the Community Development Department that additional time will be required and shall provide an estimated date for issuance of a decision on the appeal.

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5. Distribution. The hearing examiner or designee shall mail a copy of the written decision to the applicant, the appellant, the applicable department director, and any person requesting the written decision or who submitted substantive comments on the application prior to the decision.

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6. Appeal of the Decision of the Hearing Examiner. The decision of the hearing examiner shall be final unless, within 21 days after issuance of a decision, a person with standing appeals the decision in accordance with Chapter 36.70C RCW.

Section 3. That section 18A.10.160 of the Lakewood Municipal Code is hereby amended to read as follows:

18A.10.160- Action of Hearing Examiner - Conditional Use Permit

A. In addition to demonstrating compliance with the criteria as determined by the Hearing Examiner, the applicant shall accept those conditions that the Hearing Examiner finds are appropriate to obtain compliance with the criteria.

B. In permitting a conditional use, the Hearing Examiner may impose any or all of the following conditions:

1. Limit the manner in which the use is conducted, including restricting the time an activity may take place and restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor.
2. Establish a special yard or other open space or lot area or dimension.
3. Limit the height, size or location of a building or other structure.
4. Designate the size, number, location or nature of vehicle access points.
5. Increase the amount of street dedication, roadway width or improvements within the street right-of-way.
6. Designate the size, location, screening, drainage, surfacing or other improvement of a parking or truck loading areas.
7. Limit or otherwise designate the number, size, location, and height of lighting of signs.
8. Limit the location and intensity of outdoor lighting or require its shielding.
9. Require screening, landscaping or another facility to protect adjacent or nearby property and designate standards for installation or maintenance of the facility.
10. Design the size, height, location or materials for a fence.
11. Protect existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.
12. Require provisions for public access, physical and visual, to natural, scenic and recreational resources.
13. Require provisions for stormwater drainage including designating the size, location, screening, or other improvements of detention ponds and other facilities
14. Impose special conditions on the proposed development to ensure that development is in conformance with the surrounding neighborhood and the intent and purpose of the zoning district classification.
15. Require such financial guarantees and evidence that any applied conditions will be complied with.

C. The decision of the Hearing Examiner is considered final and conclusive by the City.

Section 4. That section 18A.10.170 be and the same is hereby repealed, as follows:

~~18A.10.170- Appeals - Conditional Use Permit~~

~~The decision of the Hearing Examiner shall be final, unless an appeal is made to the City Council within fourteen (14) calendar days pursuant to LMC 18A.02.740.~~

Section 5. Severability. If any portion of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances shall not be effected.

Section 6. Effective Date. This ordinance shall be in full force and effect five days after publication of the Ordinance Summary. ADOPTED by the City Council this 21st day of February, 2006.

CITY OF LAKEWOOD

Attest:

Claudia Thomas, Mayor

Alice M. Bush, MMC, City Clerk
Approved as to Form:

Heidi Ann Wachter, City Attorney