

Ordinance No. 00585

[CITY COUNCIL MEETING MINUTES JUNE 2, 2014](#)

ORDINANCE NO. 585

AN ORDINANCE of the City Council of the City of Lakewood, Washington, amending Sections 01.36.021, 01.36.110, 01.36.280, 01.36.290, 03.38.120, 05.2.190, 05.16.080, 05.20.110, 05.35.150, 05.35.160, 05.37.140, 05.37.150, 06.4.091, 14.134.430, 17.22.090, 18A.2.740, 18A.2.870, 18A.40.445; creating Sections 01.36.092, 01.36.115, 01.36.123, 01.36.265 and 01.36.271; and repealing Sections 01.36.091, 05.35.220, 05.37.210, 05.37.220, 14.134.230, 14.134.450, 17.14.050, 18A.10.345, 18A.10.440, 18A.10.560, 18A.2.755 of the Lakewood Municipal Code relative to the Hearing Examiner Processes.

WHEREAS, as allowed by state law, the City of Lakewood maintains a Hearing Examiner system to adjudicate quasi-judicial administrative matters which might otherwise come before the City Council; and

WHEREAS, a number of chapters of the Lakewood Municipal Code refer matters to the Hearing Examiner for adjudication, however, each of these chapters contain different procedural requirements for initiating proceedings before the Hearing Examiner, conduct of the proceedings before the Hearing Examiner and procedures for when the Hearing Examiner's decision becomes final; and

WHEREAS, a centralized chapter of the Lakewood Municipal Code is desirable to ensure consistent protocols for those matters pending before the Hearing Examiner.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON DO ORDAIN as follows:

Section 1: Section 01.36.021 LMC entitled "Areas of Jurisdiction," is amended to read as follows:

The Examiner shall receive and examine relevant information, conduct public hearings, maintain a record thereof, and enter findings of fact, conclusions of law, and recommendations to the City Council or other order, as appropriate, ~~in the formation of Local Improvement Districts and in the approval of Local Improvement District assessments.~~

Section 2: Section 01.36.091 LMC entitled "Appeal of Recommendations of the Hearings Examiner" is repealed.

~~Appeal of those matters in which the Hearing Examiner enters a recommendation to the City Council as set forth in LMC 1.36.021 shall be made to the City Council within 14 calendar days of the entering of the Hearing Examiner' recommendation and in the manner set forth at Chapter 18.A of the Lakewood Municipal Code. Only those persons or entities having standing under the ordinance governing the application, or as otherwise provided by law, may appeal the Hearing Examiner's recommendation to the City Council. (Ord. 298 § 2, 2003.)~~

Section 3: Section 01.36.092 LMC entitled "Hearing Examiner's Recommendation," is created to read as follows:

A. For actions requiring the hearing examiner's recommendation, the examiner's recommendation shall be forwarded to the city council within 10 calendar days of the examiner's decision. The recommendation shall be placed on the next agenda of the city council. The city council upon its review of the record may:

1. Affirm the recommendation;
2. Remand the recommendation to the hearing examiner;
3. Schedule a closed record public hearing before the city council.

B. Any aggrieved person may request the city council to conduct its own closed record hearing. Upon its own closed record hearing the city council may affirm, reject, modify the hearing examiner's recommendation or take whatever action it deems appropriate pursuant to law.

Section 4: Section 01.36.110 LMC entitled "Decision of the Examiner which are Final," is amended to read as follows:

~~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 Process III permits, except as identified in LMC 18A.02.502 and LMC 1.36.090;~~

- ~~B. Appeals from Process I and II administrative decisions, except as identified in LMC 18A.02.502 and LMC 1.36.090;~~
- ~~C. Other applications or appeals which the Council may prescribe by ordinance.~~
- ~~D. Business license decisions and appeals;~~
- ~~E. Appeals pursuant to the State Environmental Policy Act;~~
- ~~F. 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;~~
- ~~G. Applications for preliminary plats;~~
- ~~H. Shoreline development permits.~~

Except as to those matters which are reviewed by the City Council, the Hearing Examiner shall be the final decision making authority of the City of Lakewood for all administrative matters and such other quasi-judicial matters which are subject to this chapter.

Section 5: A new Section 01.36.115 LMC entitled "Initiating Appeals," is created to read as follows:

A. Review Initiated by Notice. A party seeking review of a decision reviewable by the Hearing Examiner must file a notice of appeal.

B. Time for filing Notice of Appeal. A notice of appeal must be filed with the City Clerk within 10 days after the entry of the decision that the party filing the notice wants reviewed.

C. Filing Fee. The first party to file a notice of appeal must, at the time the notice is filed, pay the filing fee, as set forth in the City of Lakewood fee schedule adopted pursuant to LMC 03.20.010, to the City Clerk. If the appellant asserts that the matter is one for which a fee is not required pursuant to the provisions of this Code or other applicable law, the City Clerk shall receipt the notice of appeal without fee. The issue of whether a filing fee is required shall be promptly decided by the Hearing Examiner. If the Hearing Examiner determines that a filing fee is required, the appellant shall be required to tender the filing fee within ten days of the date of such decision. Where a filing fee is required, but not paid, on motion, the appeal shall be dismissed.

D. Contents of Notice of Appeal. A notice of appeal must (1) be titled a notice of appeal, (2) specify the party or parties seeking the review, (3) designate the decision or part of decision which the party wants reviewed; (4) A brief statement setting forth the legal interest of each of the appellants participating in the appeal; (5) A brief statement in concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant; (6). A brief statement in concise language of the relief sought, and the reasons why it is claimed the protested order or action should be reversed, modified, or otherwise set aside; (7) The signatures of all parties named as appellants, and their official mailing addresses;

The party filing the notice of appeal should attach to the notice of appeal a copy of the signed decision from which the appeal is made.

Section 6: A new Section 01.36.123 LMC entitled "Prehearing Conference," is created to read as follows:

The Hearing Examiner, at his/her discretion, or at the request of a party, may conduct a prehearing conference. The purpose of the prehearing conference shall be: (1) to determine the feasibility of settlement of the matter; (2) to obtain agreement as to issues of fact or law and facts to be presented at hearing and the simplification of limitation thereof; (3) to determine the possibility of obtaining admissions of facts and authenticity of documents, which will avoid unnecessary proof at hearing; (4) to determine the admissibility of exhibits; (5) to obtain stipulation as to all or part of the facts in the case; (6) to determine the number of expert and lay witnesses to be called by the parties and their names, when possible; (7) to determine the approximate time necessary for the presentation of the evidence of the respective parties; (8) to establish a hearing schedule; and (9) to obtain all other information which may aid in the prompt disposition of the cases.

The Examiner, following the prehearing conference, shall issue a prehearing order, which shall, unless properly amended, control the further course of proceedings in the matter.

Section 7: A new Section 01.36.265 LMC entitled "Decision on Appeals" is created to read as follows:

1. 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.

2. 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 or any other applicable laws or regulations.

3. Written Decision. Within 10 working days after completion of the public hearing, unless the parties 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.

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.

4. 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.

Section 8: A new Section 01.36.271 LMC entitled "Reconsideration," is created to read as follows:

Any party of record feeling that a decision of the examiner is based upon erroneous procedures, errors of law or of fact, error in judgment, or has discovered new evidence which could not be reasonably available at the open record public hearing, may make a written request to the examiner, filed with the City Clerk, together with any fee that may be set forth in the City's Fee Schedule pursuant to LMC 03.20.010, for reconsideration by the examiner within eight business days of the date the decision is rendered. The City Clerk shall forward the request for reconsideration to the examiner within three business days. The request shall set forth the specific errors or new information relied upon by such appellant, and the examiner, after review of the request(s) and the record, may:

(1) Affirm in writing the previous decision;

(2) Reopen the record and public hearing process;

(3) Take further action as he/she deems proper.

The filing of a request for reconsideration by the hearing examiner shall effectively stay the appeal period until the examiner takes further action. Such action shall occur within 10 business days of the date of filing a request for reconsideration

Section 9: Section 01.36.280 LMC entitled "Review of Final Decisions," is amended to read as follows:

A. Decisions of the Council shall be final and conclusive unless appealed pursuant to LMC 18A.02.755.

B. Decisions of the Examiner in cases identified in Section 1.36.110 of this Chapter shall be final and conclusive, unless appealed pursuant to LMC 18A.02.755.

C. Notwithstanding the foregoing provisions of this section, final decisions of the Council relating to matters governed by the State Shorelines Management Act may be appealed to the State Shorelines Hearing Board as specified in the said Act. (Ord. 264 ? 14, 2001; Ord. 13 ? 28, 1995.)

A. The decision of all matters decided hereunder shall be final and conclusive unless, within twenty-one days from the date of the final decision, an applicant or an aggrieved party makes an application to court of competent jurisdiction or competent administrative agency for review.

B. If a statute provides that an application for judicial review must be filed within a time period other than set forth in this Code, the application for judicial review, and the finality of the decision, shall be governed by the time period established by the statute.

Section 10: Section 01.36.290 LMC entitled "Precedence Over Conflicting Provisions," is retitled to read "Applicability of

Chapter,” and amended to read as follows:

A. If the provisions of this Chapter are in conflict with the provisions of Title 18A of the Lakewood Municipal Code, the provisions of Title 18A shall control.

B. If the provisions of this Chapter are in conflict with the provisions of any sections of the Lakewood Municipal Code, other than Title 18A, regarding decisions of the Hearing Examiner or review or appeals therefrom, the provisions of this Chapter shall control.

A. To What Proceedings Applicable. Except where inconsistent with those rules, statutes or provisions of the Code, this Chapter shall govern all matters before the Hearing Examiner. Where such rules, statutes or provisions of the Code relates to proceedings provide for procedure before the Hearing Examiner, the procedure shall be governed by those rules, statutes or provisions of the Code.

B. Conflicting Statutes and Rules. Subject to the provisions of paragraph (a) of this section, this chapter supersedes all procedural Codes and other rules that may be in conflict.

Section 11: Section 03.38.120 LMC entitled “Appeals,” is amended to read as follows:

Any decision of the City Manager or designee made pursuant to this Chapter may be appealed to the City of Lakewood Hearing Examiner upon payment of the fees and pursuant to ~~the procedures set forth in the City Code~~chapter 1.36 LMC.

Section 12: Section 05.2.190 LMC entitled “Appeals From Denial or From Notice and Order,” is amended to read as follows:

A. The City Hearing Examiner is designated to hear appeals by applicants or licensees aggrieved by actions of the City pertaining to any denial, or revocation of business licenses, pursuant to chapter 1.36 LMC.

B. Any applicant or licensee may, within ten (10) days after receipt of a notice of denial of application or of a notice and order, file with the City Clerk a written notice of appeal. ~~The notice of appeal shall contain the following: (1) be conspicuously identified as a notice of appeal; (2) set forth a brief statement setting forth the legal interest of the appellants; (3) a brief statement setting forth the legal interest of the appellants; (4) the specific order or action protested, together with any material facts claimed to support the contentions of the appellants; (5) the relief sought, and reasons why it is claimed, and why the protested action or notice and order should be reversed, modified or otherwise set aside; (6) the signatures of all persons named as appellants, and their official mailing addresses; (7) The verification (by declaration under penalty of perjury) of each appellant as to the truth of the matters stated in the appeal.~~

C. As soon as practicable after receiving the written appeal, the City Clerk shall fix a date, time, and place for the hearing of the appeal by the Hearing Examiner. Written notice of the time and place of the hearing shall be given at least ten (10) days prior to the date of the hearing by the City Clerk, by mailing a copy addressed to each appellant at his or her address shown on the notice of appeal.

D. At the hearing, the appellant or appellants shall be entitled to appear in person, and to be represented by counsel and to offer such evidence as may be pertinent and material to the denial or to the notice and order. The technical rules of evidence need not apply.

E. Only those matters or issues specifically raised by the appellant or appellants in the written notice of appeal shall be considered in the hearing of the appeal.

F. Within ten (10) business days following conclusion of the hearing, the Hearing Examiner shall make written findings of fact and conclusions of law, supported by the record, and a decision which may affirm, modify, or overrule the denial or order of the City, and may further impose terms and conditions to the issuance or continuation of a business license.

G. Failure of any applicant or licensee to file an appeal in accordance with the provisions of this Chapter shall constitute a waiver of the right to an administrative hearing and adjudication of the denial or of the notice and order.

~~H. Excepting those instances where, by law, a different time period applies, a decision by the Hearing Examiner under this Chapter shall be final and conclusive unless within twenty-one (21) days from the date of the decision, a party makes application to a court of competent jurisdiction for appropriate relief.~~

Section 13: Section 05.16.080 LMC entitled “Grounds for Suspension or Revocation, Notice and Order and Appeal,” is amended to read as follows:

A. General Business Licensing Provisions Referenced. The provisions of ~~Sections 5.02.170, 5.02.180 and 5.02.190 of the City Code~~chapter 5.02 LMC shall apply to licensing issues under this Chapter to the extent that ~~the those provisions of Sections~~

5.02.170, 5.02.180 and 5.02.190 of the City Code are not in specific conflict with the provisions hereof, and said provisions are thus incorporated herein by this reference as if fully set forth.

~~B. Appeal to Superior Court. Notwithstanding the provisions of Section 1.36.090 of the City Code, any appeals or requests for review by persons aggrieved by the decision of the Hearing Examiner related to a license or a provision under this Chapter shall be made to the Superior Court, whether as an appeal or a writ of certiorari, prohibition or mandamus.~~

Section 14: Section 05.20.110 LMC entitled "Appeal and Hearing," is amended to read as follows:

A. Any person aggrieved by the action of the City Manager or designee in refusing to issue or renew any license under this Chapter or in temporarily or permanently suspending or revoking any license issued under this Chapter shall have the right to appeal such action to the City's Hearing Examiner. ~~By filing a notice of appeal with the City Manager or designee within ten working days after receiving notice of the action from which appeal is taken.~~

~~B. The Hearing Examiner, upon receipt of a timely notice of appeal, shall set a date for a de novo hearing of such appeal. The Examiner shall hear testimony, take evidence, and may hear oral argument and receive written briefs. Except in cases of summary suspension of licenses because of the threat of immediate serious injury or damage to person or property pursuant to Section 5.20.100 B. of this Chapter, the filing of such appeal shall stay the action of the City Manager or designee, pending the decision of the Examiner. In cases of summary suspension of licenses because of the threat of immediate serious injury or damage to persons or property pursuant to Section 5.20.100 B., the Examiner shall render a decision within ten days of the conclusion of the hearing.~~

~~B. The decision of the Hearing Examiner on an appeal from a decision of the City Manager or designee shall be based upon a preponderance of the evidence. The burden of proof shall be on the City Manager or designee.~~

~~D. The decision of the Hearing Examiner shall be final unless appealed to the Superior Court within twenty days of the date the decision is entered by the filing of an appropriate action and serving of all necessary parties. (Ord. 53-23 (part), 1996.)~~

Section 15: Section 05.35.150 LMC entitled "Authority of Hearing Examiner," is amended to read as follows:

The city hearing examiner is designated to hear appeals by parties aggrieved by actions of the City Manager or designee in suspending, revoking or denying a license or assessing a civil penalty pursuant to this ~~article~~ chapter. ~~The hearing examiner may adopt reasonable rules or regulations for conducting its business. Copies of such rules and regulations shall be delivered to the City Manager or designee who shall make them freely accessible to the public. All decisions and findings of the hearing examiner shall be rendered to the appellant in writing with a copy to the City Manager or designee.~~

Section 16: Section 05.35.160 LMC entitled "Notice of Appeal," is amended to read as follows:

Any person falling under the provisions of this ~~article~~ chapter may appeal from any notice of suspension, denial or revocation or civil penalty assessment ~~by filing with the City Manager or designee within ten days from the date the notice is delivered or deemed received, a written appeal containing to the City's Hearing Examiner in accordance with chapter 1.36 LMC.:~~

A. A heading in the words "Before the Hearing Examiner for the City of Lakewood";

B. A caption reading "Appeal of _____" giving the names of all appellants participating in the appeal;

C. A brief statement setting forth the legal interest of each of the appellants participating in the appeal;

D. A brief statement in concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant;

E. A brief statement in concise language of the relief sought, and the reasons why it is claimed the protested order or action should be reversed, modified, or otherwise set aside;

F. The signatures of all parties named as appellants, and their official mailing addresses; and

G. The verification, by declaration under penalty of perjury, of at least one appellant as to the truth of the matters stated in the appeal.

Section 17: Section 5.35.220 LMC entitled "Action for Hearing" is repealed.

Upon completion of the hearing, the examiner shall:

1. Accept the City Manager or designee's recommendation as presented;

2. ~~Determine no action is warranted; or~~
3. ~~Modify the recommendation action.~~

(Ord. 80 § 1 (part), 1996.)

Section 18: Section 05.37.140 LMC entitled “Authority of Hearing Examiner,” is amended to read as follows:

The city hearing examiner is designated to hear appeals by parties aggrieved by actions of the City Manager or designee in suspending, revoking or denying a license or assessing a civil penalty pursuant to this ~~article~~ chapter. ~~The hearing examiner may adopt reasonable rules or regulations for conducting its business. Copies of such rules and regulations shall be delivered to the City Manager or designee who shall make them freely accessible to the public. All decisions and findings of the hearing examiner shall be rendered to the appellant in writing with a copy to the City Manager or designee.~~

Section 19: Section 05.37.150 LMC entitled “Notice of Appeal,” is amended to read as follows:

Any person falling under the provisions of this ~~article~~ chapter may appeal from any notice of suspension, denial or revocation or civil penalty assessment by filing with the City Manager or designee within ten days from the date the notice is delivered or deemed received, a written appeal containing: to the City’s Hearing Examiner in accordance with chapter 1.36 LMC.

A. ~~A heading in the words “Before the Hearing Examiner for the City of Lakewood”;~~

B. ~~A caption reading “Appeal of _____” giving the names of all appellants participating in the appeal;~~

C. ~~A brief statement setting forth the legal interest of each of the appellants participating in the appeal;~~

D. ~~A brief statement in concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant;~~

E. ~~A brief statement in concise language of the relief sought, and the reasons why it is claimed the protested order or action should be reversed, modified, or otherwise set aside;~~

F. ~~The signatures of all parties named as appellants, and their official mailing addresses; and~~

G. ~~The verification, by declaration under penalty of perjury, of at least one appellant as to the truth of the matters stated in the appeal.~~

Section 20: Section 5.37.210 LMC entitled “Action for Hearing” is repealed.

Upon completion of the hearing, the examiner shall:

1. ~~Accept the City Manager or designee’s recommendation as presented;~~
2. ~~Determine no action is warranted; or~~
3. ~~Modify the recommendation action.~~

(Ord. 80 § 2 (part), 1996.)

Section 21: Section 5.37.220 LMC entitled “Appeal from Hearing Examiner” is repealed.

An appeal from a decision of the hearing examiner shall be to Pierce County Superior Court and shall be served and filed with the City Manager or designee within 15 days of the decision of the hearing examiner. In the event the applicant or license holder does not follow the procedures within the time periods set forth in this division, the action of the hearing examiner shall be final. (Ord. 300 § 17, 2003; Ord. 80 § 2 (part), 1996.)

Section 22: Section 06.4.091 LMC entitled “Noise Nuisance – Notice,” is amended to read as follows:

A. If the ~~a~~ noise nuisance complaint (~~per Section 6.04.090 of the City Code~~) arising under this chapter is not corrected within a reasonable time period, an animal control officer may declare there to be an animal noise nuisance, and the animal control officer shall cause the animal owner or other person responsible for the animal to be served with a written Notice of Animal Noise Nuisance. The Notice of Animal Noise Nuisance shall include the following:

1. The description of the animal(s) involved.
2. The name(s) and address(es) of the owner(s) or other person(s) responsible for the animal(s).
3. The facts and circumstances upon which the declaration of animal noise nuisance is based.

4. The availability of a hearing, including the process set forth hereinbelow.

5. Any restrictions on the animal(s).

B. If the owner(s) or other person(s) responsible for the animal(s) wish to object to the declaration of animal noise nuisance, the owner(s) or other person(s) responsible for the animal(s) shall comply with the following: may appeal to the Hearing Examiner.

~~1. The owner(s) or other person(s) responsible for the animal(s) shall, within fourteen (14) calendar days after receipt of the written Notice of Animal Noise Nuisance, request a hearing before the Hearings Examiner and pay a hearing fee of \$125.00.~~

~~2. At such hearing, the other person(s) responsible for the animal(s) shall have the opportunity to present evidence, facts and argument to refute the evidence, facts and argument submitted in support of the declaration of animal noise nuisance.~~

~~C. If the Hearings Examiner determines that there are insufficient facts to support the declaration of animal noise nuisance, the declaration of animal noise nuisance shall be rescinded and any restrictions shall be removed.~~

~~D. If the Hearings Examiner determines that there are sufficient facts to support the declaration of animal noise nuisance, this decision is considered to be a final decision of the City of Lakewood for purpose of any further appeal.~~

~~E. During the pendency of any such hearings or appeals, any restrictions included in the Notice of Animal Noise Nuisance, including confinement, shall remain in effect.~~

Section 23: Section 14.134.230 LMC entitled "Reconsideration" is repealed.

Any aggrieved person feeling that the decision of the Examiner is based on errors of procedure or errors or misinterpretation of fact may make a written request for review by the Examiner filed with the Community Development Department within seven (7) working days of the date of the written decision. This request shall set forth the alleged errors or misinterpretations, and the Examiner may, after review of the record, take such further action as he deems proper and may render a revised decision. Only one request for reconsideration may be filed by any one person or party even if the Examiner reverses or modifies his original decision or changes the language in the decision originally rendered. (Ord. 57-3 (part), 1996.)

Section 24: Section 14.134.430 LMC entitled "Appeals – Time Limit," is amended to read as follows:

Any person aggrieved by a decision under this chapter may Appeals may be taken to the Hearing Examiner by any person aggrieved, or by any officer, department, board, or bureau of the City affected by any decision of an administrative official in the administration or enforcement of this Code. Such appeals shall be filed in writing in duplicate with the Community Development Department within twenty (20) days of the date of the action being appealed in accordance with chapter 1.36 LMC.

Section 25: Section 14.134.450 LMC entitled "Scope of Authority on Appeal" is repealed.

The Examiner may, in conformity with this Chapter, reverse or affirm, wholly or in part or may modify the order, requirement, decision, or determination appealed from and may take such order, requirement, decision, or determination as should be made and, to that end, shall have all powers of the officer from whom the appeal is taken, insofar as the decision on the particular issue is concerned, and in making its determination the Examiner may hear any pertinent facts bearing on the case. (Ord. 57-3 (part), 1996.)

Section 26: Section 17.14.050 LMC entitled "Reconsideration" is repealed.

Any aggrieved person feeling that the decision of the Examiner is based on errors of procedures or errors or misinterpretation of fact may make a written request for review by the Examiner within seven (7) working days of the date of the written decision. This request shall set forth the alleged errors or misinterpretations, and the Examiner may, after review of the record, take such further action as the Examiner deems proper and may render a revised decision. Only one request for reconsideration may be filed by any one person or party even if the Examiner reverses or modifies his or her original decision or changes the language in the decision originally rendered

Section 27: Section 17.22.090 LMC entitled "Appeal Procedure," is amended to read as follows:

Any aggrieved party with the City's Within fourteen (14) days following the City Community Development Director's decision on a short plat, any person directly affected may appeal such decision to the Hearing Examiner in accordance with chapter 1.36 LMC. The appeal shall be accomplished by the filing of a written request and paying an appeal fee as set forth in by separate Resolution of the City Council. Said notice of appeal shall briefly specify the issues of the case. Decisions not appealed are deemed final and conclusive. The appeal procedure is the same as set forth in the City Zoning Code for appeals of an Administrative Decision.

~~A request for reconsideration following a decision by the Examiner shall be accomplished by the filing of a written request and paying a reconsideration fee as set by separate Resolution with the Community Development Department. The reconsideration procedure is the same as set forth in section 17.14.050.~~

Section 28: Section 18A.2.740 LMC entitled "Appeals," is amended to read as follows:

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. 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.~~

conform to the requirements for the filing of a notice of appeal under chapter 1.36 LMC

~~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.~~

~~34.~~ 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.~~

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.~~

~~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.~~

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

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

F. Decision of the Hearing Examiner:

~~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.~~

~~2E. 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.~~

~~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 36.70G RCW.~~

~~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.~~

~~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.~~

~~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 36.70G RCW.~~

Section 29: Section 18A.2.755 LMC entitled “Judicial Appeals” is repealed.

A. Appeal. The City’s final decision or appeal decision on a Process I, II, III, IV, or V application may be appealed by a party of record with standing to file a land use petition in Pierce County Superior Court.

B. Petition period. A land use petition must be filed within twenty-one (21) calendar days of issuance of the notice of decision or appeal decision.

C. Filing and content of a land use petition. A land use petition shall be filed according to the procedural standards outlined in Chapter 36.70C RCW, Judicial Review of Land Use Decisions, also known as the “Land Use Petition Act.”

(Ord. 264 § 1 (part), 2001.)

Section 30: A new Section 18A.2.870 LMC entitled “Review of Administrative Decisions,” is created to read as follows:

The Community Development Director’s decision on an administrative decision under this chapter may be appealed to the Hearing Examiner, pursuant to chapter 1.36 LMC.

Section 31: Section 18A.10.345 LMC entitled “Appeals – Administrative Variances” is repealed.

The Community Development Director’s decision on an administrative variance application may be appealed to the Hearing Examiner, pursuant to LMC 18A.02.740. (Ord. 264 § 1 (part), 2001.)

Section 32: Section 18A.10.440 LMC entitled “Appeals – Design Review” is repealed.

The decision of the Community Development Director under the administrative design review process is final unless an appeal is made in accordance with the requirements of LMC 18A.02.740. (Ord. 264 § 1 (part), 2001.)

Section 33: Section 18A.10.560 LMC entitled “Appeals – Temporary Use Permits” is repealed.

The decision of the Community Development Director is final unless an appeal is made in accordance with the requirements of LMC 18A.02.740. (Ord. 264 § 1 (part), 2001.)

Section 34: Section 18A.40.455 LMC entitled “Notice and Order - Sexually Oriented Businesses,” is amended to read as follows:

A. Any SOB that becomes nonconforming upon the effective date of this Ordinance shall be given written notice of such nonconforming status by notice and order issued by the City Manager or designee pursuant to LMC 18A.40.435 and this section.

B. Whenever a completed application for a new SOB license or for a permit related to a SOB is denied, conditioned or modified, written notice shall be given to the applicant by notice and order issued by the City Manager or designee pursuant to this section.

C. A notice and order, and any amended or supplemental notice and order, shall be served upon the owner of the SOB either personally, by posting upon the property and personal service upon the manager or person responsible for the business during business hours, or by certified mail, postage prepaid, return receipt requested and addressed to the business owner at the address which appears on the most current license or permit application on file with the City.

D. Notice and orders issued pursuant to this Ordinance ~~section~~ shall contain the following information:

1. The street address, when available, and a legal description sufficient for identification of the premises upon which the nonconforming business is located.

2. A statement clearly informing the applicant that an administrative determination has been made in regard to the SOB.

3. A description of or specific statement as to the reason(s) justifying the administrative determination.

4. A statement advising the SOB owner that an appeal may be made from the notice and order or from any action of the City Manager or designee to the City’s Hearing Examiner. Appeals of notice and orders concerning licensing of SOBs shall be governed by the provisions of LMC sections 5.02.190 and 5.16.080 ~~chapter 1.36 LMC~~. Appeals of notice and orders related to zoning determinations, determinations of nonconformity, applications for permits, and land use regulations shall be governed by the regulations stated in LMC 18A.02.500 through 18A.02.575, LMC 18A.02.740 and LMC 18A.02.755. Failure to appeal shall constitute a waiver of all rights to an administrative hearing and appeal of the matter.

E. Timely Hearing of Appeals. ~~In addition to the requirements of LMC 5.02.190 concerning appeals, w~~Within forty-five (45) days of the receipt of a properly perfected appeal, the City Clerk shall set an appeal hearing before the Hearing Examiner and send notice of such hearing in writing to the SOB that requested the appeal. The Hearing Examiner hearing must be held within ninety (90) days after the receipt of an appeal under this chapter, unless the party, entity or person seeking appeal waives this requirement in writing. Upon closing of the record in such an appeal, the Hearing Examiner shall have ten (10) days within which to render a written decision upon the appeal. ~~Decisions of the Hearing Examiner regarding the issuance of licenses and permits to SOBs are final and conclusive.~~

F. Appeal to Superior Court. Any appeals or requests for review by persons, parties or entities aggrieved by a decision of the Hearing Examiner related to a decision made pursuant to any provision under this title shall be made to the Superior Court, whether pursuant to LMC 1.36.110, 18A.02.502 or 18A.02.755.

FG. General Business Licensing Provisions Referenced. The provisions of chapter 5.02 LMC ~~LMC 5.02.170, 5.02.180, and 5.02.190~~ shall apply to issues of licensing, zoning, development regulation, and notice and orders issued under this chapter to the extent that the provisions of ~~LMC 5.02.170, 5.02.180, and 5.02.190~~ chapter 5.02 LMC are not in specific conflict with the provisions set forth in this chapter, ~~and said provisions are thus incorporated herein by reference as if fully set forth herein.~~

Section 35: 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 of any other section, sentence, clause, or phrase of this ordinance.

Section 36: Effective Date. This ordinance shall take place thirty (30) days after its publication or publication of a summary of its intent and contents.

ADOPTED by the City Council this 2nd day of June, 2014.

CITY OF LAKEWOOD

Don Anderson, Mayor

Attest:

Alice M. Bush, MMC, City Clerk

Approved as to Form:

Heidi A. Wachter City Attorney