

EXCERPT OF

ORDINANCE NO. 1615

AN ORDINANCE OF THE CITY OF LYNDEN ADOPTING A NEW CHAPTER 2.09 TO THE LYNDEN MUNICIPAL CODE AND AMENDING NUMEROUS CHAPTERS OF THE LYNDEN MUNICIPAL CODE, FOR THE PURPOSE OF ESTABLISHING THE OFFICE OF HEARING EXAMINER, AND ADOPTING PROCEDURAL RULES FOR THE CITY OF LYNDEN HEARING EXAMINER

WHEREAS, the Lynden City Council and the Lynden Planning Commission have been devoting increasing time to regulatory land use decisions and appeals therefrom; and

WHEREAS, the Lynden City Council believes appointing a hearing examiner to render final regulatory land use decisions will better promote fairness, due process, and efficiency in the hearing and resolution of certain types of land use disputes; and

WHEREAS, the City has the authority to establish the office of the hearing examiner pursuant to the authority provided by Article 11, Section 11 of the Washington State Constitution, RCW 35A.63.170 and Chapter 58.17 RCW; and

WHEREAS, the hearing examiner will assume all duties currently assigned to the board of adjustment and the board of appeals, in addition to some tasks currently assigned to the planning commission and city council; and

WHEREAS, as part of this process, some duties of the public works director are being shifted to the planning director; and

WHEREAS, the public interest will be served by amending the Lynden Municipal Code to include an office of the hearing examiner; and

WHEREAS, the foregoing recitals are material findings and declarations of the Lynden City Council;

NOW THEREFORE LET IT BE ORDAINED BY THE CITY COUNCIL OF LYNDEN AS FOLLOWS:

SECTION 1:

A new Chapter 2.09 of the Lynden Municipal Code is hereby enacted. Underlines indicate additions to the Code:

Chapter 2.09

HEARING EXAMINER

Sections:

- 2.09.010** **Creation of Office—Purpose**
- 2.09.020** **Appointment—Contract—Pro Tem**
- 2.09.025** **Qualifications**

- 2.09.030 Freedom from Improper Influence
- 2.09.035 Conflicts
- 2.09.040 Jurisdiction—Duties—Powers
- 2.09.045 Open Record
- 2.09.050 Procedures

2.09.010 Creation of Office—Purpose

The office of the hearing examiner is hereby created. The office of the hearing examiner is independent of city departments, boards, and commissions. It is responsible for the impartial administration of administrative proceedings in accordance with this chapter and shall preside over all such proceedings. Unless context requires otherwise, the term “hearing examiner” in this chapter shall be interpreted as including any hearing examiners pro tem.

2.09.020 Appointment—Contract—Pro Tem

- A. The city council shall appoint the hearing examiner by the vote of the majority of the members. Appointment shall be made by professional service contract.
- B. The city council may appoint one or more hearing examiners pro tem for terms specified at the time of appointment to serve in case the hearing examiner has a conflict or is absent. A hearing examiner pro tem shall have the same powers as the hearing examiner.

2.09.025 Qualifications

The hearing examiner shall be appointed based on his or her qualifications for the duties of such office. The hearing examiner shall be an attorney in good standing and admitted to the bar of the State of Washington with experience in land use or as a hearing examiner. Hearing examiners shall hold no other elective or appointive office or position in the city’s government. The same qualifications apply to hearing examiners pro tem.

2.09.030 Freedom from Improper Influence

No city official or any other person shall interfere with or attempt to interfere with the hearing examiner in the performance of his or her designated duties. This section does not prohibit the City attorney from rendering legal services to the hearing examiner if requested by the hearing examiner and approved by the mayor.

2.09.035 Conflicts

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 improperly interfere with the decision-making process or violate the appearance of fairness doctrine or the codification of such doctrine in Chapter 42.36 RCW. Any actual or potential conflict of interest shall be disclosed to the parties immediately upon discovery of such conflict and the hearing

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.

2.09.040 Jurisdiction—Duties--Powers

- A. The hearing examiner shall have the power to receive and examine available information, conduct public hearings, prepare a record thereof, and enter decisions as provided by ordinance.
- B. The hearing examiner shall have the exclusive jurisdiction to hold an open record hearing and make a decision on the following matters:
 - 1. Appeals of the determinations of the fees and dedications made under Chs. 3.28, 3.40, 3.44, and 19.67 LMC;
 - 2. Appeals of dangerous dog declarations under Ch. 6.09 LMC;
 - 3. Appeals of determinations of eligibility for relocation assistance under Ch. 12.36 LMC;
 - 4. Appeals of the city's determination to suspend services, impose penalties, recover costs, establish compliance schedules, or terminate a user's wastewater and/or collection services, under Ch. 13.12 LMC;
 - 5. Appeals of the city's computation or application of the stormwater management utility service charge or FCI charges or imposition of sanctions or fines under Ch. 13.24 LMC;
 - 6. Challenges of the written interpretations and/or decisions of the public works director made under Ch. 13.28 LMC;
 - 7. Petitions for exemptions from payment of the utility fee or for conversion to exempt status, and appeals of the city's computation of the applicable fees assessed, under Ch. 13.32 LMC;
 - 8. Appeals of the determination of the planning director regarding moving buildings under Ch. 15.05 LMC;
 - 9. Appeals of the determination of the building code official as described in Ch. 15.14 LMC;
 - 10. Appeals of final SEPA threshold determinations and adequacy of final EISs, made under Ch. 16.05 LMC, including related procedural and substantive issues;
 - 11. Appeal of director's final critical area determinations;

~~11.12.~~ All applications for shoreline permits or revisions to shoreline permits under Ch. 16.08 LMC, except where the permit or revision is part of a project application being decided upon by a different hearing body;

~~12.13.~~ Under Ch. 16.12 LMC – Floodplain Management, all appeals of determinations of the director, and variance requests where not consolidated with an underlying project application being decided upon by a different hearing body;

~~13.14.~~ Appeals of the imposition of penalties or of the planning director's decision on mitigation or revision under Ch. 16.16 LMC;

~~14.15.~~ Appeals of the administrative approvals described in LMC 17.09.010 and 17.09.020;

~~15.16.~~ Appeals of administrative interpretations and approvals under LMC 17.11.010;

~~16.17.~~ Appeals of civil regulatory orders and civil fines issued under Ch. 17.13 LMC;

~~17.18.~~ Appeals of the results of concurrency tests, denials of proposed mitigation for transportation facilities, and any other determinations of capacity or calculations or assessments of any fees made under Ch. 17.15 LMC;

~~18.19.~~ Amortization periods for nonconforming signs;

~~19.20.~~ All variances from the requirements of Title 19, except variances from the requirements of Ch. 19.33 LMC and LMC 19.22.030, .040, and .050, and except where the variance is part of a project application being decided upon by a different hearing body;

~~20.21.~~ Appeals of determinations of building official as described in LMC 19.42.040;

~~21.22.~~ Appeals of administrative interpretations made under Ch. 19.59 LMC; and

~~22.23.~~ Other actions as required by this code.

- C. In order to avoid the city holding two hearings on one project, the hearing examiner shall only hear variance applications and shoreline permit applications or revisions that are not filed as part of an underlying project for which another hearing body will conduct a hearing. For example, if an applicant submits a long plat application along with a variance application to use a different an alternative cul-de-sac design, the hearing on the variance on the cul-de-sac shall be consolidated with the hearing on the

long plat, and the consolidated hearing shall be before the hearing body holding the hearing on the long plat.

- D. The hearing examiner is empowered to act in lieu of the board of adjustment, the board of appeals, the city council, the planning commission and such other officials, boards, or commissions as may be assigned for those matters listed in subsection (B) of this section. Wherever existing ordinances, codes or policies authorize or direct the board of adjustment, the board of appeals, the city council, the planning commission or other officials, boards, or commissions to undertake certain activities which the hearing examiner has been assigned under said subsection (B), such ordinances, codes or policies shall be construed to refer to the hearing examiner.
- E. The hearing examiner may include in a decision any conditions of approval that are necessary to ensure that the proposal complies with all applicable code criteria and comprehensive plan policies.
- F. The hearing examiner has such other powers as are necessary to carry out the purpose and intent of this chapter, including without limitation to conduct pre-hearing conferences; to require the submittal of information; to schedule and continue hearings; to administer oaths and affirmations; to issue subpoenas; to regulate the course of pre-hearing discovery; to preside over hearings and the conduct of parties; to question parties and witnesses at a hearing; to rule on all evidentiary, procedural and other matters, including all motions; to maintain order; to establish post-hearing procedures; to issue findings of fact and conclusions of law; to enter final decisions; and to adopt procedures consistent with 2.09.050.
- G. With the exception of shoreline permit applications and revisions heard by the hearing examiner, the hearing examiner's decision on these matters identified in subsection (B) shall be final unless timely appealed to the City Council following the procedures in Ch. 17.11 LMC. The City Council shall hear appeals of these matters as closed record appeals. The hearing examiner shall make the final decision of the city on the shoreline permit issues he or she hears. The determination of the hearing examiner on shoreline permit applications and revisions shall be subject to appeal to the Shoreline Hearings Board.

2.09.045 Open Record and Open to Public

For every matter over which the hearing examiner has jurisdiction, the hearing examiner will conduct an open record hearing, which shall be open to the public.

2.09.050 Procedures

The City Council shall approve rules and regulations for procedural matters related to the duties of the office of the hearing examiner.

SECTION 2:

The following sections of the Lynden Municipal Code are hereby amended. Underlines indicate additions and strikethroughs indicate deletions.

3.28.190 - Appeals to ~~council~~ hearing examiner.

Any taxpayer aggrieved by the amount of the fee or tax found by the city finance director to be required under the provisions of this chapter may appeal to the ~~city council~~ hearing examiner from such finding by filing a written notice of appeal with the city finance director within seven fourteen days from the time such taxpayer was given notice of such amount. The finance director shall, as soon as practicable, fix a time and place for the hearing of such appeal, and ~~he~~ shall cause a notice of the time and place thereof to be delivered or mailed to the appellant. ~~At such hearing~~ the taxpayer shall be entitled to be heard and to introduce evidence on his or her own behalf. The ~~city council~~ hearing examiner shall, following the hearing, thereupon ~~ascertain the correct amount of the fee or tax by resolution and render a decision. and t~~ The finance director shall immediately notify the appellant thereof, which amount, together with the costs of appeal, if such applicant is unsuccessful therein, must be paid within five days after such notice is given. The ~~mayor~~ hearing examiner may, by subpoena, require the attendance thereat of any person, and may also require him to produce any pertinent books and records. Any person served with such subpoena shall appear at the time and place therein stated, produce the records required, if any, and shall testify truthfully under oath administered by the hearing examiner ~~mayor~~ as to any matter required of him pertinent to the appeal, and it is unlawful for him to fail or refuse so to do.

3.40.110 – Appeals and adjustments.

Any person(s) seeking an adjustment to the dedication or mitigation assessments required by this chapter shall have a right to appeal to the ~~city council~~ hearing examiner. Any such appeal shall be filed with the city clerk in writing within ~~ten~~ fourteen days after the date of mailing or transmittal by the city of written notice of the specific dedication or mitigation assessments required by this chapter. Following receipt of such an appeal, the ~~city council~~ hearing examiner shall hold a public hearing to consider the appeal ~~at its next available meeting~~. In considering the appeal the ~~city council~~ hearing examiner may, in ~~its~~ his or her discretion, take into account unusual circumstances in a specific case and may consider studies and data submitted by the appellant(s). The ~~city council~~ hearing examiner shall issue such determination as he or she ~~it~~ deems fair and equitable. The decision of the ~~city council~~ hearing examiner shall be in writing. ~~and shall be the final decision of the city.~~

3.44.050 - Appeals and adjustments.

Any person desiring to appeal from a decision made in the enforcement of the provisions of this chapter or any person seeking an adjustment to the dedication or mitigation assessments required by this chapter due to unusual circumstances in specific cases, shall file ~~submit~~ an appeal with the city clerk in writing within fourteen days after the date of mailing or transmittal by the city of written notice of the specific dedication or mitigation assessments required. ~~in accordance with the provisions of Chapter 17.11 of the Lynden Municipal Code and~~ The appeal shall be heard by the ~~city council as an open record appeal as provided in Chapter 17.03 of the Lynden Municipal Code~~ hearing examiner in conformance with Ch. 2.09 LMC. Upon the conclusion of the hearing, the hearing examiner shall issue a written decision.

3.46.110 – Appeals.

A. A developer or property owner shall have the right to file an appeal of the amount of an impact fee determined by the director. All such appeals shall be filed and reviewed in conformance with the requirements established for filing appeals authorized by Title 17 of this code as set forth in Chapter 17.11; and shall be heard by the ~~city council~~ hearing examiner as an open record appeal as provided in Chapter 17.03 of this code. The developer or property owner shall bear the burden of proving:

1. That the director committed error in calculating the developer's/property owner's proportionate share, as determined by an individual fee calculation or, if relevant, as set forth in the fee schedule, or in granting credit for the benefit factors;
2. That the director based his/her determination upon incorrect data; or
3. That the director's decision was arbitrary and capricious.