

CITY OF LYNDEN



PUBLIC WORKS DEPARTMENT

Steve Banham, Public Works Director
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Public Works Department Memorandum

To: Public Works Committee

From: Steve Banham, Public Works Director

Date: April 2, 2020

Re: Proposed Amendments to the LMC re Appeal and Variance Procedures

City Planning and Public Works Staff have been investigating the benefits of using a Hearing Examiner for certain appeals and variance decisions. This comes because of several appeals in recent years that placed high time demands on the Planning Commission. The Community Development Committee (CDC) has already looked at this list. Because the list also includes administrative decisions made by the Public Works Department (Director and Building Official), we are bringing it to you for your review and comments before ultimately taking it to the full City Council. Attached are the specific public works decisions that will be considered.

Staff recommendations are based on the concept that appeals which are technical in nature and/or include specific legal parameters, such as an appeal to the calculation of a transportation impact fee, are processes best directed to a hearing examiner. Decisions which should be made within the context of the Lynden community and history of the City, such as the appeal of a short plat decision, are best reviewed in-house by the City Council or Planning Commission.

Subject	Title & Section	Current Appeal Process	Proposed
Street Use Permit	Chapter 5.36.050	The vending permit application will be evaluated and approved by the Public Works Director in conjunction with the City Clerk's approval of the accompanying business license. An applicant or permittee may appeal a street use permit decision, including a cancellation, in writing, to the City Council. The applicant or permittee must file his/her request for an appeal within fifteen working days after the decision. The council shall hear the appeal within twenty working days after the receipt of the appeal.	Council
Sidewalk Repair and Replacement - Required of a Private Party	Chapter 12.08.010	Public Works Director requires repair or replacement of a private party who caused the damage. Private party may appeal. If the Public Works Director denies the party's written request, the party may appeal the decision of the <u>Public Works Director</u> to the <u>City Council</u> within twenty-one days of the date of the Public Works Director's denial of the party's request by filing a written notice of appeal with the city clerk.	Council <i>(recommended by PW Director)</i>

Subject	Title & Section	Current Appeal Process	Proposed
Relocation Appeal	Chapter 12.36	Any aggrieved person may file a written appeal with the City of Lynden in any case in which the person believes that the City has failed to properly consider the person's eligibility for relocation assistance. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under Chapter 12 of the Washington State Department of Transportation Right of Way Manual, or a relocation payment required under WAC 468-100-010. A person must file a written appeal with the <u>Public Works Director</u> within sixty calendar days of receipt of the City's written determination of eligibility or entitlement. If the appellant believes the Public Works Director has not correctly evaluated the appeal, the appellant may appeal the decision of the Public Works Director to the <u>City Council</u> by filing a written appeal with the Public Works Director within ten days of the date of mailing of the City Public Work Director's decision.	Revise process to provide for appeal to Hearing Examiner after the decision by the PW Director <i>(recommended by PW Director)</i>
Sewer System - Admin Enforcement Remedies	Chapter 13.12.285	A user shall be afforded the opportunity to an administrative hearing to contest the city's determination to suspend services, impose penalties, recover costs, or establish compliance schedules, through cease and desist orders (hereinafter called collectively "enforcement actions"). A user shall also have the right to a hearing prior to termination of a user's wastewater collection and treatment services. This administrative hearing shall be held before the <u>(PW) director</u> . It shall be heard within thirty days of receipt by the director of the notice of request for hearing. The user requesting the hearing shall receive at least ten days' notice of the date of the hearing. A user desiring to appeal the decision of the <u>(PW) director</u> at an administrative hearing shall, within ten days of receipt of such decision, file a notice of appeal of such decision with the <u>office of the City Administrator</u> . The appeal shall be heard as a closed record appeal in accordance with Chapters 17.09 and 17.11 of the Lynden Municipal Code.	Revise process to provide for appeal to Hearing Examiner <i>(recommended by PW Director)</i>
Stormwater Management Utility Service Charge	Chapter 13.24.090	Administrative Appeal to Council. If not satisfied with a determination of the Public Works Director made under Section 13.24.080 or 13.24.090, the property owner may appeal to the City Council within ten days of the <u>Director's decision</u> by filing a written statement of appeal with the director. The appeal to <u>City Council</u> shall be an open record appeal and shall be conducted according to the procedures for public hearings in Section 17.09.060 of this code. Any adjustments authorized by the appeal process shall only be effective against billings subsequent to the date the appeal is filed and shall not be retroactively applied.	Hearing Examiner <i>(recommended by PW Director)</i>

Subject	Title & Section	Current Appeal Process	Proposed
Latecomers Agreements	Chapter 13.28.150	Developer may file an appeal to the <u>City Council</u> challenging the written interpretations and/or decisions of the <u>Public Works Director</u> made pursuant to this chapter. The appeal must be filed within ten days of the date of mailing the interpretation or decision of the Public Works Director.	Hearing Examiner <i>(recommended by PW Director)</i>
Moving Buildings	Chapter 15.05.010	In any case in which the <u>Public Works Director</u> denies permission for such a move (moving a building under 15.01 conditions), the applicant may appeal the decision to the <u>City Council</u> under the provisions of Chapter 17.11 of the Lynden Municipal Code.	Council (no change) <i>(recommended by PW Director)</i>
Building Code Official Decisions	Chapter 15.14	After exhausting all administrative remedies, a person shall have the right to appeal a decision of the <u>code official</u> to the <u>board of appeals</u> . An application for appeal shall be based on a claim that the true intent of the codes adopted in this chapter or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better alternate material or method of construction is proposed. The application shall be filed (on a form obtained from the city building code official) within twenty days after the notice of the decision was mailed and shall be accompanied by an application fee in an amount of seventy-five dollars, until such time as it is changed by the City Council by resolution.	Hearing Examiner <i>(recommended by PW Director)</i> Per Building Official, the IRC - International Residential Code and IEBC - International Existing Building Code should be added. Also, he has requested that we provide an option for a 3rd party (another building official, for example) review the case before it would go to the Hearing Examiner.
Floodplain Management - Variance procedure	Chapter 16.12.110	The <u>Board of Adjustments</u> as established by the city shall hear and decide appeals and requests for variances from the requirements of this chapter (Chapter 16). The board of adjustment shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the <u>Public Works Director</u> in the enforcement or administration of this chapter. Those aggrieved by the decision of the board of adjustment, or any taxpayer, may appeal such decision to the <u>county superior court</u> as provided by law.	Dissolve BOA. Use Hearing Examiner. <i>(recommended by PW Director)</i>