



City of Lacey, Washington Land Use & Environment Committee Agenda

Refer to the bottom of the agenda for meeting information.

Tuesday, June 27, 2023

10:30 AM

Council Chambers and Online

1. Agenda Items

- A. **Amendments to Lacey Municipal Code 2.30 Hearing Examiner**
Grant Beck, Planning and Development Services Manager
- B. **Legislative Update - Land Use**
Sarah Schelling, Senior Planner
- C. **Energy Efficiency Rebate Update**
Linsey Fields, Climate and Sustainability Coordinator

2. Adjourn

Attend Remote or In Person

The public may attend the meeting in person, or you may watch or listen to the meeting using one of the following platforms:

In Person: Council Chambers at Lacey City Hall, 420 College Street SE, Lacey, WA 98503

Via Zoom: <https://us02web.zoom.us/j/82780807936>

City Website: <https://cityoflacey.org/upcoming-meetings/>

Facebook: <https://www.facebook.com/cityoflacey>

YouTube: <https://www.youtube.com/watch?v=qloBAUBLxdY>

TC Media: Channel 3 with your local cable provider

By Phone: (888) 788-0099 or (877) 853-5247 (Webinar ID 827 8080 7936)



LAND USE & ENVIRONMENT COMMITTEE

April 14, 2021

SUBJECT: Amendment to LMC 2.30 – Land Use Hearings Examiner

RECOMMENDATION: Forward to full Council for consideration of proposed amendments.

STAFF CONTACT: Rick Walk, Interim City Manager *RW*
Grant Beck, Planning & Development Services Manager *←*

ORIGINATED BY: Community & Economic Development Department

ATTACHMENTS: [Sample Code Updates](#)

FISCAL NOTE: None

WORK PLAN GOAL AND STRATEGY: Coordinated & Collaborative Planning - (B)(2)
Review Development Regulations
Ongoing Services

OTHER POLICY DOC. ALIGNMENT: Comprehensive Plan Economic Development Element (1)(B)
Ensure Lacey’s development process remains clear, predictable, timely, and efficient.

COMMUNICATIONS PLAN: None

HOUSING ACTION PLAN: Many goals reference a streamlined permitting process.

PRIOR REVIEW: November 17, 2022, Council Meeting
September 27, 2022, Land Use Committee

BACKGROUND:

The Lacey City Council adopted the Hearings Examiner system for review of quasi-judicial land use permits in 1979 by Ordinance 549 and 560 to replace the Board of Adjustment system pursuant to Section 35A.63.170 RCW.

Chapter 2.30 Lacey Municipal Code – Land Use Hearings Examiner has not been significantly updated since first adopted in 1979, at a time when the Thurston Regional Planning Council provided long range planning and land use permitting services to Lacey.

In 2022, the Council considered a code update which would have made the Hearings Examiners decision on land use permits and appeals be final. As part of the preparation of that draft Ordinance, staff from the Community & Economic Development Department along with the City Attorney's office proposed many other changes to Chapter 2.30 to clarify and correct the code.

The Council chose not to adopt changes to the quasi-judicial process and the clarifications and corrections were also not adopted and the code remains outdated.

The proposed amendments to LMC 2.30 are summarized as follows:

- Revise broad code and ordinance citations to be specific to the Lacey Municipal Code.
- Update the Hearing Examiner appointment process outline in LMC 2.30.020 by deleting reference of a joint hearings examiner committee established by ILA with Olympia and Thurston County.
- Remove language related to application submittal process and review procedures that are redundant and/or conflict with the City's procedural codes.
- Update language related to the notice of decision process.
- Remove outdated provisions related to coordinating with the Planning Commission which is no longer the role of the Planning Commission.

The City currently contracts for Hearings Examiner Services with Sound Law Center under a contract first executed in 1997 when the firm was known as Driscoll & Hunter. The most recent amendment to the contract was in 2007.

It would be appropriate at this time to consider updating Chapter 2.30 LMC with the previously proposed clarifications and corrections, after which to review the City's contract with Sound Law Center and update as needed.

ADVANTAGES:

1. Clear and consistent codes are easier to administer and explain to constituents than outdated or unclear codes.

DISADVANTAGES:

1. As with any code update, staff time will be required from the Community & Economic Development Department and City Attorney's Office.

CHAPTER 2.30 LAND USE HEARINGS EXAMINER

2.30.010 Creation of land use hearings examiner.

Pursuant to Chapter 35A.63 RCW, the office of land use hearings examiner, hereinafter referred to as "examiner," is created. The examiner shall interpret, review and implement land use regulations as provided ~~in this chapter or by other ordinance~~ in the Lacey Municipal Code. In addition, the examiner shall hear appeals relating to potentially dangerous or dangerous dogs pursuant to ~~LMC Chapter 7.04.070 LMC~~ and the city's construction codes as described in ~~LMC Chapter 14.18.030 LMC~~. Unless the context requires otherwise, the term "examiner," as used in this chapter, shall include deputy examiner and examiners pro-pro-tem.

2.30.020 Appointment and term.

The examiner and any deputy examiners shall be appointed by the mayor and confirmed by the city council ~~after receipt of recommendation from the joint hearings examiner committee established by interlocal agreement between the cities of Lacey and Olympia and Thurston County for terms which shall initially expire one year following the date of original appointment and thereafter expire four years following the date of each reappointment~~. The mayor may also, by professional service contract, appoint in the same manner for terms and functions deemed appropriate, examiners pro-pro-tem to serve in the event of absence or inability to act of the examiner and deputy examiners.

2.30.030 Qualifications.

Examiners shall be appointed solely with regard to their qualifications for the duties of their office and will have such training and experience as will qualify them to conduct administrative or quasi-judicial hearings on regulatory enactments and to discharge the other functions conferred upon them. ~~Examiners shall hold no other elective or appointive office or position in the governmental structure of Thurston County or the cities of Lacey or Olympia.~~

2.30.040 Removal.

An examiner may be removed from office for cause by majority vote of the city council.

2.30.050 Freedom from improper influence.

No person, including city or county officials, elective or appointive, shall attempt to influence an examiner in any matter pending before the examiner, except at a public hearing duly called for such purpose, or to interfere with an examiner in the performance of the examiner's duties in any other way; provided, that this section shall not prohibit the city attorney ~~or county prosecuting attorney~~ from rendering legal services to the examiner upon request.

2.30.060 Conflict of interest.

No examiner shall conduct or participate in any hearing, decision or recommendation in which the examiner has a direct or indirect substantial financial or familial interest, or concerning which the examiner has had substantial prehearing contacts with proponents or opponents. ~~No member of the city council or planning commission who has such an interest or has had such contacts shall participate in the consideration of an appeal from or a review of an examiner's decision.~~

2.30.070 Organization.

The operation of the hearings examiner's office shall be under the administrative supervision of the examiner and said office shall be separate and not a part of the community development department or any other department providing staff planning services.

2.30.080 Rules.

The examiner shall have the power to prescribe rules not in conflict with this chapter for the scheduling and conduct of hearings and other procedural matters related to the duties of this office.

2.30.090 Powers of the examiner.

The examiner shall receive and examine all available information, conduct public hearings and prepare a record thereof and enter decisions as provided for herein:

- A. The decision of the hearings examiner on the following matters shall be final unless such decision is appealed to the city council pursuant to LMC 2.30.160:
 - 1. Appeals of decisions made pursuant to limited administrative review as defined in Section 1.030 of the City of Lacey Development Guidelines and Public Works Standards;
 - 2. Appeals of decisions made pursuant to full administrative review as defined in Section 1.030 of the City of Lacey Development Guidelines and Public Works Standards;
 - 3. Variance requests;
 - 4. Preliminary plat approval extension requests;

- B. The decision of the hearings examiner on the following matters shall constitute a recommendation to the city council:
 - 1. Preliminary plat applications;
 - 2. Preliminary plat modification requests;
 - 3. Shoreline substantial development, shoreline variance and shoreline conditional use permits and permit revisions;
 - 4. Planned residential development applications;
 - 5. Conditional use permit applications.

- C. The decision of the hearings examiner on any matters relating to potentially dangerous or dangerous dogs pursuant to LMC 7.04.070 or the duties described in LMC 14.18.030 for the building construction and life safety codes shall be final. Appeals of such determinations by the city hearings examiner shall be appealable to Thurston County superior court. An appeal of the hearings examiner decision must be filed with Thurston County superior court within twenty calendar days from the date the hearings examiner decision was mailed to the person to whom the notice of civil penalty was directed.

2.30.100 Applications for permits or approvals.

Applications for permits or approvals within the jurisdiction of the hearing examiner shall be presented to the community development department. ~~The department shall accept such applications only if applicable filing requirements set forth in Section 1B.050 of the City of Lacey Development Guidelines and Public Works Standards are met. The department shall be responsible for assigning a date for and assuring due notice of public hearing for each application, which date and notice shall be in accordance with Section 1C.050 of the City of Lacey Development Guidelines and Public Works Standards.~~

~~2.30.110 Consolidated review.~~

~~When more than one application for a proposed development is required, the applicant may elect to have the applications be consolidated under one review process in accordance with Section 1B.030 of the City of Lacey Development Guidelines and Public Works Standards.~~

2.30.120 Report of community and economic development department.

The community and economic development department shall provide a written staff report to the Hearing Examiner and all other interested parties ten days prior to the public hearing in accordance with Section 1C.050 of the City of Lacey Development Guidelines and Public Works Standards.

2.30.130 Public hearing.

Prior to rendering a decision on any application, the examiner shall hold one public hearing thereon. Notice of the time and place of the public hearing shall be given as provided in Section 1C.050 of the City of Lacey Development Guidelines and Public Works Standards. At the commencement of the hearing, the examiner shall give oral notice regarding the register provided for in LMC 2.30.150.

2.30.140 Examiner's decision.

Within fourteen business days of the conclusion of a hearing, unless a longer period is agreed to in writing by the applicant, the examiner shall render a written decision which shall include at least the following:

- A. Findings based upon the record and conclusions therefrom which support the decision. Such findings and conclusions shall also set

forth the manner by which the decision would carry out and conform to the city's comprehensive plan, other official policies and objectives, and land use regulatory enactments;

- B. A decision on the application which may be to grant, deny or grant with such conditions, limitations, modifications and restrictions as the examiner finds necessary to make the application compatible with its environment, the comprehensive plan, other official policies and objectives, and land use regulatory enactments;
- C. A statement that either:
 - 1. The decision constitutes a recommendation to the city council together with the date, time and place for consideration by said body, or
 - 2. The decision will become final in fourteen days unless appealed to the city council together with a description of the appeal procedure prescribed in Chapter 1D of the City of Lacey Development Guidelines and Public Works Standards.

2.30.150 Notice of examiner's decision.

Not later than three working days following the rendering of a written decision, copies thereof shall be ~~mailed-provided~~ to the applicant and to other parties of record in the case. "Parties of record" shall include the applicant and all other persons who specifically request notice of decision ~~by signing a register provided for such purpose at the public hearing. If the effect of the decision is a recommendation to the city council or planning commission, the original thereof shall be transmitted to that body.~~

2.30.160 Appeal from examiner's decision.

The decision of the examiner as to those applications listed in LMC 2.30.090(A) shall be final and conclusive unless within fourteen days following rendering of such decision an appeal therefrom is filed with the office of the examiner by the applicant, the city council, a department of the city or county, or other interested person or agency in accordance with Chapter 1D of the City of Lacey Development Guidelines and Public Works Standards.

2.30.170 City council consideration.

An examiner decision which constitutes a recommendation or which has been timely appealed pursuant to LMC 2.30.160 and Chapter 1D of the City of Lacey Development Guidelines and Public Works Standards shall come before the city council for consideration in open public meeting no longer than thirty days from the date a decision constituting a recommendation was rendered or an appeal is filed. The city council shall consider the matter based upon the written record before the examiner, the examiner's decision and the written appeal.

2.30.180 City council action.

The city council may accept, modify or reject the examiner's decision, or any findings or conclusions therein. A decision by the city council to modify or reject shall be supported by findings and conclusions. The City Council's decision shall be rendered within twenty-one days after consideration in open public meeting unless all parties affected agree to an extension of such date.

The action of the city council in approving or rejecting a decision of the examiner shall be final and conclusive unless a Land Use Petition is timely filed with the Thurston County Superior Court in accordance with Chapter 1D of the City of Lacey Development Guidelines and Public Works Standards and applicable state laws; provided, that appeals from a decision to grant, deny or rescind a shoreline permit shall be governed by the provisions of Chapter 90.58 RCW.

~~2.30.190 Examiner's report to planning commission.~~

~~The examiner shall report in writing to and meet with the planning commission at least annually for the purpose of reviewing the administration of the land use policies and regulatory ordinances. Such report shall include a summary of the examiner's decisions since the last planning commission report. The examiner may at any time, on the examiner's own motion, request advice and counsel of the planning commission regarding interpretation of land use policies and ordinances.~~

~~2.30.200 — Examiner services for other municipalities.~~

~~The examiner may provide services similar to those prescribed herein for other municipalities when authorized by interlocal agreement.~~

~~2.30.210 — Planning commission/hearings examiner authority.~~

~~In the event of the examiner's disqualification, incapacity or inability to timely process the volume of applications submitted, the planning commission may assume and carry the duties and responsibilities of the examiner in the manner prescribed by this chapter; provided, that if, after considering the matter at public meeting, the city council deems a change in the planning commission's recommendation on a preliminary plat or rezone application is necessary, such change shall not be made until the city council shall conduct its own public hearing, giving notice thereof as required by law.~~

~~The examiner may promulgate rules governing such transfer of applications; provided, that the examiner shall retain hearing jurisdiction over preliminary plat applications to the extent feasible.~~