ORDINANCE NO. 2007-36

AN ORDINANCE, of the City of Wenatchee, Washington, creating the office of hearing examiner and establishing all rules and regulations related thereto, and establishing an effective date.

THE CITY COUNCIL OF THE CITY OF WENATCHEE

FINDS as follows:

1. The City of Wenatchee did, in Ordinance No. 2007-07, passed April 26, 2007, adopt a comprehensive plan meeting the requirements of Chapter 36.70A RCW.

2. The City of Wenatchee is authorized by RCW 35A.63.170 to adopt a hearing examiner system.

3. The City of Wenatchee transmitted a draft copy of the ordinance implementing a hearing examiner system to the Washington State Department of Community, Trade and Economic Development in accordance with RCW 36.70A.106 on April 23, 2007.

4. In accordance with the State Environmental Policy Act, Chapter 43.21C RCW, a Determination of Significance and Adoption of Existing Environmental Documentation (Final Supplemental Environmental Impact Statement for the 2007 Wenatchee Urban Area Comprehensive Plan) for the Wenatchee zoning code was issued July 13, 2007.

5. The City of Wenatchee Planning Commission conducted duly advertised public hearings on August 1, August 15, and September 19, 2007, to which interested persons were invited to appear and comment.

6. The Planning Commission decided to make no recommendation on the ordinance to the City Council.

7. The City Council conducted a duly advertised public hearing on October 11, 2007.

8. The City Council has found that all applicable and substantive requirements of law have been met, that the adoption of this ordinance promotes the public health, safety and general welfare, and that the adoption of this ordinance serves the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE, as follows:

SECTION I

The Hearing Examiner Code attached hereto as Exhibit "A" and incorporated herein by this reference shall be and hereby is approved and adopted in its entirety.

SECTION II

As required by RCW 36.70A.106(2), a complete and accurate copy of this ordinance shall be transmitted to the State of Washington, Department of Community, Trade and Economic Development within ten (10) days of final adoption.

SECTION III

In the event any one or more of the provisions of this ordinance shall for any reason be held to be invalid, such invalidity shall not affect or invalidate any other provision of this ordinance, but this ordinance shall be construed and enforced as if such invalid provision had not been contained therein; provided, that any provision which shall for any reason be held invalid shall be in effect to the extent permitted by law.

SECTION IV

This Ordinance shall be in full force and effect thirty (30) days following publication of the summary hereof consisting of the title.

PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE at a regular meeting thereof this 12 day of October, 2007.

CITY OF WENATCHEE, a Municipal Corporation

By: _____
DENNIS JOHNSON, Mayor

ATTEST:

By: _____
VICKI REISTER, City Clerk

APPROVED:

By: _____
STEVE D. SMITH, City Attorney

EXHIBIT "A" TO ORDINANCE NO.

Chapter 1.09
HEARING EXAMINER

Sections:

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1.09.020 Hearing Examiner - Creation
1.09.030 Appointment of Hearing Examiner
1.09.040 Hearing Examiner - Qualifications
1.09.050 Hearing Examiner Pro-Temp-Qualifications and duties
1.09.060 Hearing Examiner- Conflict of Interest and Freedom From Improper Influence
1.09.070 Hearing Examiner-Authority and Duties
1.09.080 Applications
1.09.090 Report by City Staff
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1.09.110 Hearing Examiner's Decision and Recommendation-Findings Required
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1.09.140 Hearing Examiner's Report

1.09.010 Purpose

The purpose of this chapter is to provide an administrative land use regulatory system which will separate the City's land use regulatory function from its land use planning function; ensure and expand the principles of fairness and due process in public hearings; and to provide an efficient and effective land use regulatory system which integrates the public hearing and decision making processes for land use matters.

1.09.020 Hearing Examiner - Creation

The office of the hearing examiner is created by the City Council. The hearing examiner shall interpret, review and implement land use regulations, hear appeals from orders, recommendations, permits, decisions or determinations made by a City official as set forth in this chapter, and review and hear other matters as provided for in this code and other ordinances. The term "hearing examiner" shall likewise include the hearing examiner pro-tem.

1.09.030 Appointment of Hearing Examiner

The hearing examiner shall be appointed by and serve at the pleasure of the Mayor, with confirmation by the City Council. This position will be a contracted position, reimbursement for which will be prescribed by the contract between the City and the hearing examiner.

1.09.040 Hearing Examiner - Qualifications

The hearing examiner shall be appointed solely with regard to qualifications for the duties of such office and shall have such training or experience as will qualify the hearing examiner to conduct administrative or quasi judicial hearings utilizing land use regulatory codes. The hearing examiner shall have expertise and experience in land use planning, and shall be an attorney licensed to practice in the State of Washington. Additionally, the hearing examiner should have knowledge or experience in at least one of the following areas: environmental sciences, architecture, economics or engineering.

1.09.050 Hearing Examiner Pro-Tem - Qualifications and Duties

The hearing examiner pro-tem shall, in the event of the absence or the inability of the examiner to act, have all the duties and powers of the hearing examiner. The hearing examiner pro-tem shall have such training or experience as to satisfy Section 1.09.040.

1.09.060 Hearing Examiner – Conflict of Interest - Freedom From Improper Influence

(1) No hearing examiner shall conduct or participate in any hearing, decision or recommendation in which the hearing examiner has a direct or indirect substantial financial or familial interest, or concerning which the hearing examiner has had substantial pre-hearing contacts with proponents or opponents. A hearing examiner shall abide by the applicable provisions of state law, including without limitation the Appearance of Fairness Doctrine, and the Wenatchee City Code.

(2) No person, including city officials, elective or appointive, shall attempt to influence a hearing examiner in any matter pending before him/her, except at a public hearing duly called for such purposes, or to interfere with a hearing examiner in the performance of his/her duties in any other way; provided, that this section shall not prohibit the city attorney from rendering legal services to the hearing examiner upon request, or prohibit other persons or officials from responding in writing to requests for information from the hearing examiner; and further provided, that a City official or employee may, in the performance of his/her own official duties, provide information for the hearing examiner or process a City case before the hearing examiner, when such actions take place or are disclosed in the hearing examiner's hearing or meeting.

1.09.070 Hearing Examiner - Authority and Duties

(1) The hearing examiner shall receive and examine available relevant information, including environmental documents, conduct public hearings, cause preparation of a record thereof, prepare and enter findings and conclusions based on these facts for all quasi-judicial applications, including, without limitation, the following:

(a) Applications for variances, conditional use permits;
(b) Amendments and/or alterations to plats;
(c) Petitions for plat vacations;
(d) Appeals alleging an error in a decision of a City official in the interpretation or the enforcement of the zoning code or any other development regulation;
(e) Appeals alleging an error in a decision of a City official in taking an action on a short plat or binding site plan;
(f) Appeals alleging an error in administrative decisions or determinations pursuant to chapter 43.21C RCW;
(g) Any other matters as specifically assigned to the hearing examiner by the City council or as prescribed by the City code.

(2) The decision of the hearing examiner on all matters is final and conclusive, unless appealed pursuant to Chapter 13.11 of the WCC.

(3) The hearing examiner's decision shall be based upon the policies of the comprehensive planning documents of the City, the standards set forth in the various development regulations of the City or any other applicable program adopted by the City Council. When acting upon any of the above applications or appeals, the hearing examiner may grant or deny the application, or may attach reasonable conditions, modifications and restrictions found necessary to make the project

compatible with its location and to carry out the goals and policies of the applicable comprehensive plan, or other applicable plans or programs adopted by the City Council.

(4) The hearing examiner shall conduct public hearings and proceedings pursuant to WCC Titles 10,11,12 and 13, and conduct such other hearings or meetings as the City Council may from time to time deem appropriate.

1.09. 080 Applications

Applications for all matters to be heard by the hearing examiner shall be presented to the City staff, to be processed according to the applicable provisions of the WCC, including without limitation Title 13 Administration of Development Regulations. The City staff shall be responsible for assigning a date for the public hearing for each application as required. The hearing examiner may consider two or more applications relating to a single project concurrently, and the findings of fact, conclusions and decision on each application may be covered in one written decision.

1.09.090 Report by City Staff

City staff shall coordinate and assemble the comments and recommendations of other applicable city officials and governmental agencies having an interest in the application, and shall prepare a report summarizing the factors involved, including recommendations and suggested findings and conclusions. At least seven calendar days prior to the scheduled hearing, the report shall be filed with the hearing examiner and copies thereof shall be mailed to the applicant and shall be made available to any interested party at the cost of reproduction.

1.09.100 Public Hearing

(1) Before rendering a decision on any application, the hearing examiner shall hold at least one public hearing thereon, as applicable. Notice of the time and place of the public hearing shall be given as provided in the applicable City code governing the application.

(2) The hearing examiner shall have the authority to prescribe rules and regulations for the conduct of hearings before the hearing examiner, and also to administer oaths and to preserve order.

1.09.110 Hearing Examiner's Decision and Recommendation - Findings Required

(1) When the hearing examiner renders a decision or recommendation, he or she shall make and enter written findings from the record and conclusions thereof that support such decision.

(2) At the conclusion of oral testimony at a public hearing, the hearing examiner may establish the date and time at which the public record will close. The public record may be extended beyond the public hearing for the purpose of allowing written testimony to be submitted. The extension shall not exceed ten (10) working days after the conclusion of oral testimony. All decisions of the hearing examiner shall be rendered within ten (10) working days after the date the public record closes.

(3) Upon issuance of the hearing examiner's decision, the city staff shall transmit a copy of the decision by first class mail to the last address provided to the city by the applicant and send a notice of the decision by first class mail to other interested parties requesting the same.

1.09.120 Reconsideration

An applicant or party of record to a hearing examiner's public hearing may seek reconsideration only of a final decision by filing a written request for reconsideration with the City clerk within ten (10) calendar days of the date of the final decision. The request shall comply with WCC 13.11.030. The hearing examiner shall consider the request at a scheduled public meeting, without public comment or argument by the party filing the request. If the request is denied, the previous action shall become final, as of the date of the decision on the request for reconsideration. If the request is granted, the hearing examiner may immediately revise and reissue his/her decision or may call for argument in accordance with the

procedures for closed record appeals. Reconsideration is granted only when an obvious legal error has occurred, or when a material factual issue has been overlooked that would change the previous decision.

1.09.130 Appeal of Hearing Examiner's Decision

The final decision by the hearing examiner on any matter within his/her jurisdiction may be appealed in accordance with Chapter 13.11 of the WCC.

1.09.140 Hearing Examiner's Report

(1) The hearing examiner shall prepare an annual written report for the City council summarizing activities, actions and observations.

(2) The hearing examiner shall meet at least once per calendar year with the City Council and the Planning Commission for the purpose of reviewing his/her observations, including a review of the policies contained in the comprehensive plans, development regulations and the administration of these policies.