

CITY OF MAPLE VALLEY, WASHINGTON

ORDINANCE NO. O-13-535

AN ORDINANCE OF THE CITY OF MAPLE VALLEY, WASHINGTON, AMENDING CHAPTER 2.65, HEARING EXAMINER, PROVIDING FOR SEVERABILITY, ESTABLISHING AN EFFECTIVE DATE, AND PROVIDING FOR CORRECTIONS.

WHEREAS, in 2000, the City Council adopted Chapter 2.65, Hearing Examiner, within the Maple Valley Municipal Code, thereby creating the office of Hearing Examiner; and

WHEREAS, upon staff recommendation, certain amendments are desired within Chapter 2.65;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MAPLE VALLEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Section 2.65.070 within Chapter 2.65, Hearing Examiner, of the Maple Valley Municipal Code is hereby amended as follows:

2.65.070 Duties of the Examiner.

The Examiner shall have authority to consider and decide the matters set forth below:

A. General. The Examiner shall receive and examine available information, conduct applicable public hearings and prepare records and reports thereof, and issue recommendations or decisions, including findings and conclusions based on the issues and evidence in the record, pursuant to applicable municipal code sections. Where no procedure for an appeal is set forth in the applicable chapter of the municipal code, or ordinance, the procedure for such appeal shall be as set forth in this section.

1. Any appeal rights granted by the municipal code or by ordinance must be exercised within fourteen calendar days of the decision being appealed by filing a Notice of Appeal. Any appeal fee specified in the municipal code or ordinance must be paid at the time the Notice of Appeal is filed. If the due date for the filing of a Notice of Appeal falls on a Saturday, Sunday or legal holiday, the next day that is not a Saturday, Sunday or legal holiday shall be the due date for the filing of a Notice of Appeal.
2. The Notice of Appeal shall be addressed to the applicable Department Director, or City Manager. The Notice of Appeal must be received by 5:00 PM of the deadline for filing the Notice of Appeal.
3. The Notice of Appeal shall specify:

- a. The name, address, and telephone number of the appellant;
 - b. Appellant's statement describing his or her standing to appeal;
 - c. Identity of the application which is the subject of the appeal;
 - d. Appellant's statement of grounds for appeal and the facts upon which the appeal is based; and
 - e. The relief sought, including the specific nature and extent of the request.
4. The Department Director or City Manager or his/her designee shall promptly notify the Examiner of the City's receipt of the Notice of Appeal and filing fee, and the Examiner shall set a date for a hearing on the appeal.
5. The Examiner may grant or deny the appeal, or may grant the appeal with such conditions, modifications, and restrictions as the Examiner finds necessary to carry out applicable law. The Examiner's decision may be accompanied by an Order, at the discretion of the Examiner, as necessary to implement the Examiner's decision. Sections 1 and 2 of the Maple Valley Hearing Examiner Rules of Procedure for Hearings are applicable.

B. Land Use Matters. The Examiner shall receive and examine available information, conduct applicable public hearings and prepare records and reports thereof, and issue recommendations or decisions, including findings and conclusions based on the issues and evidence in the record.

1. Process 2 Appeals. Process 2 appeals are governed by Chapter 18.100 MVMC and Sections 1 and 2 of the Maple Valley Hearing Examiner Rules of Procedure for Hearings. The Examiner may grant or deny the appeal, or may grant the appeal with such conditions, modifications, and restrictions as the Examiner finds necessary to carry out applicable law. The Examiner's decision may be accompanied by an Order, at the discretion of the Examiner, as necessary to implement the Examiner's decision.
2. Process 3 Land Use Decisions. Process 3 decisions are governed by Chapter 18.100 MVMC and Sections 1 and 3 of the Maple Valley Hearing Examiner Rules of Procedure for Hearings. The Examiner shall receive and examine available information, conduct an open record public hearing and prepare records and reports thereof, and issue a final decision for all Process 3 land use matters.
3. When an appeal or a recommendation has been set for public hearing, the Department of Community Development shall coordinate and assemble the comments and recommendations of other City departments and governmental agencies having an interest or authority in the subject application and shall prepare a report summarizing the

factors involved and the Department's findings and recommendations. At least seven calendar days prior to the scheduled hearing, the report shall be filed with the Examiner and copies thereof shall be mailed to the applicant and shall be made available for use by any interested party for the cost of reproduction. In the event the applicant is unable to attend the scheduled hearing, the Examiner may grant a continuance.

Section 2. Section 2.65.080, within Chapter 2.65, Hearing Examiner, is hereby amended as follows:

2.65.080 Examiner's Decision; Effect.

A. General. When the Examiner renders a decision or recommendation, the Examiner shall make and enter written findings and conclusions which support such decision, and may issue any orders deemed necessary to implement the decision. The findings and conclusions shall set forth and demonstrate the manner in which the decision or recommendation is consistent with applicable law. The decision or recommendation shall be rendered as soon as possible but in all events within 20 calendar days of the conclusion of the hearing.

B. Land Use Matters. The decision of the Examiner to approve, modify, or deny an application or an appeal pursuant to MVMC 18.100.040.B shall be final and conclusive unless, as applicable, a written appeal is filed according to the City's appeal procedures as set forth in MVMC 18.100.040.B. and 18.100.220.C. Non Land Use Matters. The decision of the Examiner is final and conclusive, and may be appealable pursuant to applicable city code and state law.

Section 3. Section 2.65.090, within Chapter 2.65, Hearing Examiner, is hereby amended as follows

2.65.090 Dismissal.

A. Land Use Matters. The requirements of MVMC 18.100.220 (D), (E), (F), and (G) are jurisdictional. On its own motion, or on the motion of any party, the Examiner shall dismiss an appeal for failure of an appellant to satisfy all the jurisdictional requirements set forth in MVMC 18.100.220 (D), (E), (F), and (G).

B. Non Land Use Matters. The requirements of MVMC 5.25.090, and MVMC 5.35.130, and any other municipal code or ordinance provision that sets forth a deadline for the filing of an appeal or Notice of Appeal are jurisdictional. On its own motion, or on the motion of any party, the Examiner shall dismiss an appeal for failure of an appellant to satisfy all the jurisdictional requirements set forth in MVMC 5.25.090 and MVMC 5.35.130 or any other applicable municipal code or ordinance.

Section 4. Section 2.65.100, within Chapter 2.65, Hearing Examiner, is hereby amended as follows:

2.65.100 Rules and regulations.

The Examiner shall have the authority to prescribe rules and regulations for the conduct of hearings under this chapter, for the purpose of, including but not limited to: administration of oaths, issuance of subpoenas, and the preservation of order and efficiency. The Examiner may adopt rules of procedure to carry out his or her specified authority and any authority necessarily implied by the grant of authority from the City Council. Such rules shall be applicable to all proceedings under the Hearing Examiner's authority.

Section 5. Section 2.65.110, within Chapter 2.65, Hearing Examiner, is hereby amended as follows:

2.65.110 Reconsideration.

A party of record may make a written request for reconsideration by the Examiner within 10 calendar days of the date the decision is rendered. Grounds for requesting reconsideration shall be limited to the following: (A) the decision or conditions of approval are not supported by facts in the record; (B) the decision contains one or more errors of law; (C) there is newly discovered evidence potentially material to the decision which could not reasonably have been produced before the appeal hearing; or (D) the applicant proposes changes to the proposal in response to deficiencies identified in the decision. There may be only one reconsideration request per application. No request for reconsideration shall be allowed for a revised/amended decision issued by the Examiner in response to a request for reconsideration.

Section 6. Section 2.65.120, within Chapter 2.65, Hearing Examiner, is hereby amended as follows:

2.65.120 Appeal of Examiner's Decision.

A. Land Use Matters. Any appeal of the Examiner's decision shall be to the superior court pursuant to MVMC 18.100.230.

B. Non Land Use Matters. Any appeal of the Examiner's decision shall be to the superior court.

Section 7. Section 2.65.130, within Chapter 2.65, Hearing Examiner, is hereby repealed.

Section 8. Section 2.65.150, within Chapter 2.65, Hearing Examiner, is hereby repealed.

Section 9. Severability. If any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 10. Effective Date. A summary of this ordinance shall be published in the official newspaper of the City, and this ordinance shall take effect and be in full force five days after adoption and publication pursuant to RCW 35A.13.190.

Section 11. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 13th DAY OF MAY, 2013.

William T. Allison, Mayor

ATTEST:

Shaunna Lee-Rice, City Clerk

APPROVED AS TO FORM:

Patricia Taraday, City Attorney

Date of Publication: May 21, 2013

Effective Date: May 25, 2013