

ORDINANCE 720

CITY OF LACEY

AN ORDINANCE READOPTING CHAPTER 2.30 OF THE LACEY MUNICIPAL CODE RELATING TO THE OFFICE OF LAND USE HEARING EXAMINER AND THE POWERS OF SUCH OFFICE

WHEREAS, the City Council duly considered, passed, and published an ordinance or ordinances enacting the chapter of the Lacey Municipal Code identified in the title to this ordinance relating to the subject matter so identified, and

WHEREAS, it has been asserted that ordinances of the City should have been posted in three public places in the City rather than published in the City's official newspaper, and if said assertion is upheld, the validity of that portion of the Lacey Municipal Code identified in the title to this ordinance may be in jeopardy and the Council takes this action in readopting the substantive provisions of said chapter solely for the purpose of protecting the City and its citizens against such a contingency; now, therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, as follows:

Section 1. Chapter 2.30 of the Lacey Municipal Code is hereby readopted to read as follows:

Chapter 2.30

LAND USE HEARING EXAMINER

Sections:

- 2.30.010 Creation of land use hearing examiner.
- 2.30.020 Appointment and term.
- 2.30.030 Qualifications.
- 2.30.040 Removal.
- 2.30.050 Freedom from improper influence.
- 2.30.060 Conflict of interest.
- 2.30.070 Organization.
- 2.30.080 Rules.
- 2.30.090 Powers of the examiner.
- 2.30.100 Applications for permits or approvals.
- 2.30.110 Master applications.
- 2.30.120 Report of planning department.
- 2.30.130 Public hearing.
- 2.30.140 Examiner's decision.
- 2.30.150 Notice of examiner's decision.
- 2.30.160 Appeal from examiner's decision.
- 2.30.170 City council consideration.
- 2.30.180 City council action.
- 2.30.190 Examiner's report to planning commission.
- 2.30.200 Examiner services for other municipalities.
- 2.30.210 Planning commission/hearing examiner authority.

2.30.010 Creation of land use hearing examiner. Pursuant to RCW Chapter 35A.63, the office of land use hearing 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. Unless the context requires otherwise, the term examiner, as used in this chapter, shall include deputy examiner and examiners pro tem. (Ord. 549 §1(part), 1979).

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 hearing 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 tem to serve in the event of absence or inability to act of the examiner and deputy examiners. (Ord. 549 §1(part), 1979).

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. (Ord. 549 §1(part), 1979).

2.30.040 Removal. An examiner may be removed from office for cause by majority vote of the city council. (Ord. 549 §1(part), 1979).

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. (Ord. 549 §1(part), 1979).

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. (Ord. 549 §1(part), 1979).

2.30.070 Organization. The operation of the hearing examiner's office shall be under the administrative supervision of the examiner and said office shall be separate and not a part of the planning department or any other department providing staff planning services. (Ord. 549 §1(part), 1979).

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. (Ord. 549 §1(part), 1979).

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 hearing examiner on the following matters shall be final unless such decision is appealed to the city council pursuant to Section 2.30.160:

1. Short plat modification or variance requests;
2. Short plat appeals;
3. Site plan review appeals;
4. Shoreline variance permit appeals;
5. Administrative zoning appeals;
6. Preliminary plat approval extension requests;
7. Nonplatted street application appeals;
8. The variance requests from the terms of Title 16,

Zoning.

B. The decision of the hearing examiner on the following matters shall constitute a recommendation to the city council:

1. Rezone applications; provided, that rezone applications initiated by the city or county to implement a newly adopted or amended comprehensive plan shall be heard by the planning commission;
2. Preliminary plat applications;
3. Preliminary plat modification requests;
4. Shoreline substantial development and shoreline conditional use permits and permit rescissions;
5. Planned residential development applications;
6. Conditional use applications.

(Ord. 560 §1, 1979; Ord. 549 §1(part), 1979).

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 planning department. The department shall accept such applications only if applicable filing requirements 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 the statute or ordinance governing the application. (Ord. 549 §1(part), 1979).

2.30.110 Master applications. Any person proposing a land use project which would require more than one of the permits or approvals listed in Section 2.30.090 may submit a master application to the planning department on forms furnished by the department containing all necessary information. The master application shall thereafter be processed by the examiner subject to the longest time limitation applicable to any one of the required permits or approvals included in said master application.

The planning department may prescribe a reduced fee schedule for master application reflecting cost savings realized through unified processing. (Ord. 549 §1(part), 1979).

2.30.120 Report of planning department. The planning department shall coordinate and assemble the reviews of other city or county departments and governmental agencies having an interest 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 made available for public inspection. Copies thereof shall be provided to interested parties upon payment of reproduction costs. (Ord. 549 §1(part), 1979).

2.30.130 Public hearing. Prior to rendering a decision on any application, the examiner shall hold at least one public hearing thereon. Notice of the time and place of the public hearing shall be given as provided in this code for the particular permit or approval which forms the subject matter of the public hearing. At the commencement of the hearing, the examiner shall give oral notice regarding the register provided for in Section 2.30.150. (Ord. 549 §1 (part), 1979).

2.30.140 Examiner's decision. Within ten working 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 or planning commission together with the date, time and place for consideration by said body and the deadline for submitting written comments thereon as provided in Section 2.30.170, or (2) the decision will become final in fourteen calendar days unless appealed to the city council together with a description

of the appeal procedure prescribed in Section 2.30.160. (Ord. 549 §1(part), 1979).

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 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. (Ord. 549 §1(part), 1979).

2.30.160 Appeal from examiner's decision. The decision of the examiner as to those applications listed in subsection A of Section 2.30.090 shall be final and conclusive unless within ten working 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. Such appeal shall be in writing, shall contain a brief statement of the reason why error is assigned to the examiner's decision and shall be accompanied by a fee as established by resolution of the city council; provided, that such appeal fee shall not be charged to the city council, a department of the city or county or to other than the first appellant.

The timely filing of an appeal shall stay the effective date of the examiner's decision until such time as the appeal is adjudicated by the city council or is withdrawn.

Within five working days following the timely filing of an appeal, notice thereof and of the date, time and place for city council consideration shall be mailed to the applicant and to all other parties of record. Such notice shall additionally indicate the deadline for submittal of written comments as prescribed in Section 2.30.170. (Ord. 666 §2, 1982; Ord. 549 §1(part), 1979).

2.30.170 City council consideration. An examiner decision which constitutes a recommendation or which has been timely appealed pursuant to Section 2.30.160 shall come on for city council consideration in open public meeting no sooner than ten nor longer than twenty working days from the date a decision constituting a recommendation was rendered or an appeal filed from a decision which is final unless appealed. The city council shall consider the matter based upon the written record before the examiner, the examiner's decision, the written appeal, if any, and any written comments received by the city before closure of city offices on a date three days prior to the date set for consideration by the city council; provided, that the city council may

publicly request additional specific information from the applicant, the examiner, or city or county departments; and, provided further, if the city council determines that further testimony or argument other than such specific information requested is necessary prior to action by such body, the matter shall either be returned to the examiner or a public hearing shall be scheduled before the city council for the receipt of such testimony or argument. (Ord. 549 §1(part), 1979).

2.30.180 City council action. The city council may accept, modify or reject the examiner's decision, or any findings or conclusions therein, or may remand the decision to the examiner for further hearing. A decision by the city council to modify, reject or remand shall be supported by findings and conclusions.

The action of the city council in approving or rejecting a decision of the examiner shall be final and conclusive unless within 30 days from the date of such action an aggrieved party obtains a writ of certiorari from the Thurston County Superior Court for the purpose of review of the action taken; provided, that appeals from a decision to grant, deny or rescind a shoreline permit shall be governed by the provisions of RCW Chapter 90.58. (Ord. 549 §1(part), 1979).

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. (Ord. 549 §1(part), 1979).

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. (Ord. 549 §1(part), 1979).

2.30.210 Planning commission/hearing 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. (Ord. 549 §1(part), 1979).

Section 2. It is the intent of the City Council in passing this ordinance to readopt the provisions set forth herein only if said readoption is ruled necessary. It is further the intent of the City Council to reaffirm all of the provisions of Chapter 2.30 of the Lacey Municipal Code as originally adopted and further amended by ordinances of this Council.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY,
WASHINGTON this 28th day of March, 1985.

CITY COUNCIL
By *M. Brown*
Mayor

Attest:

Timothy McGuire
City Clerk

Approved as to form:
[Signature]
City Attorney

Posted: March 29, 1985