

ORDINANCE NO. 226

**AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE, WASHINGTON AMENDING UNIVERSITY PLACE MUNICIPAL CODE (UPMC) CHAPTER 2.20 "HEARINGS EXAMINER" AND UPMC CHAPTER 22.01 "PERMIT PROCESSING" TO ELIMINATE REDUNDANCIES IN ORDER TO PROVIDE FOR CLEAR PROCEDURES TO PROCESS LAND USE APPLICATIONS.**

WHEREAS, on August 28, 1995 the City of University Place passed Ordinance No. 64 creating the office of the Hearings Examiner; and,

WHEREAS, on December 16, 1996 the City of University Place passed Ordinance No. 130 incorporating the ESHB 1724 Regulatory Reform Act provisions and establishing new administrative procedures for processing permit applications; and,

WHEREAS, Ordinance No. 130 repealed sections of Ordinance No. 64 but established administrative processes which created some redundancies to UPMC Chapter 2.20 Hearings Examiner; and,

WHEREAS, it is in the City's interest to eliminate redundancy in the University Place Municipal Code to provide for clear administrative procedures for the processing of land use applications;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON DOES ORDAIN AS FOLLOWS:**

Section 1. Amendments to UPMC Chapter 2.20 and Chapter 22.01. University Place Municipal Code (UPMC) Chapter 2.20, Hearings Examiner and UPMC Chapter 22.01, Permit Processing, are hereby amended as shown on "Exhibit A" attached hereto and incorporated by reference.

Section 2. Publication and Effective Date. A summary of this ordinance consisting of its title shall be published in the official newspaper. The ordinance shall be effective five (5) days after such publication.


**PASSED BY THE CITY COUNCIL ON MARCH 15, 1999.**

  
Debbie Klosowski, Mayor

ATTEST:

  
Susan Matthew, City Clerk

APPROVED AS TO FORM:

  
Timothy X. Sullivan, City Attorney

Published: 3/18/99  
Effective Date: 3/23/99

**"EXHIBIT A"**

1. Chapter 2.20 "Hearings Examiner" is hereby amended as follows,

**Chapter 2.20**

**HEARINGS EXAMINER**

Sections:

2.20.010	Purpose.
2.20.020	Creation of office.
2.20.030	Appointment and terms.
2.20.040	Qualifications.
2.20.050	Conflict of interest and freedom from improper influence.
2.20.060	Powers.
<del>2.20.070</del>	<del>Applications.</del>
2.20.0870	Report by department.
2.20.0980	Public hearing.
2.20.4090	Examiner's decision and recommendation – Findings required.
<del>2.20.110</del>	<del>Reconsideration.</del>

**2.20.010**      **Purpose.**

Recognizing:

- A. The need to separate the City's land use regulatory function from its land use planning function;
- B. The need to ensure and expand the principles of appearance of fairness and due process in public hearings; and
- C. The need to provide an efficient and effective land use regulatory system which integrates the public hearing and decision-making process for land use matters;

It is the purpose of this chapter to provide an administrative system which will best satisfy these needs.

**2.20.020**      **Creation of office.**

The office of hearings examiner is hereby created. The hearings examiner shall act on behalf of the city council in considering and applying the land use regulatory codes of the City of University Place, and such other matters as the city council deems it appropriate for the hearings examiner to handle.

**2.20.030**      **Appointment and terms.**

The hearings examiner shall be appointed by the city manager.

**2.20.040**      **Qualifications.**

The hearings 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 examiner to conduct administrative or quasi-judicial hearings on land use regulatory codes and other matters deemed appropriate by the city council, and must have expertise and experience in at least one of the following areas: Land use planning, environmental sciences, law, architecture or economics. The examiner shall hold no other appointive or elective public office or position in the city government.

**2.20.050**      **Conflict of interest and freedom from improper influence.**

The examiner shall not conduct or participate in any hearing or decision in which the examiner or any of the following persons has a direct or substantial financial interest: The examiner's spouse, sibling, child, parent, in-laws, partner; any business in which the examiner is then serving or has served within the previous two (2) years; or any business with which such examiner is negotiating for, or has had arrangement or understanding concerning, possible partnership or employment. Any actual or potential interest shall be disclosed prior to such hearing.

~~Participants in the hearing process have the right, insofar as possible, to have the examiner and the City Council members free from personal interest or pre-hearing contacts on matters considered by them. It is recognized that there is a countervailing public right to free access to public officials on any matter. Therefore, the examiner and City Council members shall reveal any substantial interest or pre-hearing contact made with them concerning the proceeding, at the commencement of such proceeding. If such interest or contact impairs the examiner or Council members ability to act on the matter, such person shall so state and shall abstain therefrom to the end that the proceeding is fair and has the appearance of fairness.~~

No council member, city official, or any other person shall interfere, or attempt to interfere, with the examiner in the performance of the examiners designated duties.

#### **2.20.060 Powers.**

The examiner shall receive and examine available information, including environmental impact statements, conduct public hearings, and prepare records thereof. ~~The hearing by the examiner, as provided for in UPMC 2.20.090 hereof, shall constitute the hearing by the city council except for area-wide zonings recommended to the city council by the planning commission, in which case the city council shall hold a public hearing.~~

The examiner's decision on all applications **matters** coming before the examiner, including appeals of administrative decisions, will be final; ~~except for applications for quasi-judicial rezoning, in which case the hearings examiners decision will be a recommendation to the city council. Pursuant to UPMC 2.20.120 hereof, appeals of the hearings examiners decisions may be taken to the city council. The examiners **examiner's** decision shall be based upon the policies of the Comprehensive Plan, Shoreline Master Program, standards set forth in the various land use regulatory codes of the City, or any other applicable program **ordinance** adopted by the city council. When acting upon any of the **land use** applications above, the examiner and/or city council may attach any reasonable conditions found necessary to make the project compatible with its environment and to carry out the goals and policies of the City's Comprehensive Plan, Shoreline Master Program, or other applicable plans or programs adopted by the City Council. Such conditions may include, but not be limited to the:~~

1. Exact location and nature of development, including additional building and parking area setbacks, screenings in the form of landscaped berms, landscaping, or fencing;
2. Mitigating measures to eliminate or lessen the environmental impact of the development;
3. Provision for low and moderate-income housing;
4. Hours of use or operation or type and intensity of activities;
5. Sequence and scheduling of development;
6. Maintenance of the development;
7. Duration of use and subsequent removal of structures;
8. Granting of easements for utilities or other purposes and dedication of land or other provisions for public facilities, the need for which the examiner finds would be generated in whole or in significant part by the proposed development.

#### **2.20.070 Applications.**

~~Applications shall be submitted to the planning department, which shall be responsible for assigning a date of public hearing for such application.~~

**2.20.0870 Report by department.**

When such a land use application has been set for public hearing the planning and community development department shall coordinate and assemble comments and recommendations of other city departments and governmental agencies having an interest in the subject application and shall prepare a report summarizing the factors involved and other appropriate departments findings and recommendations. At least seven (7) working five (5) 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 at the cost of reproduction.

**2.20.0980 Public hearing.**

Before rendering a decision on any application or appeal, 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 the ordinance governing the application or appeal.

The examiner shall have the power to prescribe rules and regulations for the conduct of hearings under this section, subject to confirmation by the city council; ~~and also~~ to issue summons for and compel the appearance of witnesses; to administer oaths, and to preserve order. The privilege of cross-examination of witnesses shall be accorded all interested parties or their counsel in accordance with the rules of the examiner.

**2.20.4090 Examiners decision and recommendation -- Findings required.**

When the examiner renders a decision ~~or recommendation~~, such examiner shall make and enter findings from the record and conclusions thereof which support such decision.

The findings and conclusions pertaining to land use regulatory matters shall set forth and demonstrate the manner in which the decision ~~or recommendation~~ carries out and helps to implement the goals and policies of the Comprehensive Plan and the standards set forth in the various land use regulatory codes; ~~provided that in any case where a quasi-judicial rezoning of property is recommended, at least one of the following circumstances shall be found to apply:~~

- ~~1. That substantial evidence was presented demonstrating the subject rezoning appears not to have been specifically considered at the time of the last area land use analysis and area zoning; or~~
- ~~2. That the property is potentially zoned for the rezoning being requested pursuant to the policies set forth in the Comprehensive Plan and conditions have been met which would indicated the change is appropriate; or~~
- ~~3. That since the last previous land use analysis of the area and area zoning of the subject property, authorized public improvements, permitted private development or other circumstances affecting the subject property have undergone significant and material change.~~

Within ~~thirty (30)~~ **twenty (20) working** days of the conclusion of a **public** hearing, the examiner shall render a written decision, including findings and conclusions, **which support the decision. The examiner may approve, conditionally approve, or deny the application.** ~~and The examiner shall transmit a copy of such decision by certified first class mail to the applicant and by first class mail to other parties of record in the case requesting the same; provided, however, upon a finding of the existence of unusual circumstances and with the concurrence of the applicant, the examiner may extend said thirty (30) day time period.~~

~~In the case of an application for quasi-judicial rezoning, the examiner shall file a recommendation with the City Clerk at the expiration of the fourteen (14) day period provided for a rehearing, or within seven (7) days from the date of decision on a reconsideration, if one is requested; provided, however,~~

upon a finding of the existence of unusual circumstances and with the concurrence of the applicant, the examiner may extend said seven (7) day period. Thereupon, the Clerk shall place the ordinance on the council agenda.

**2.20.110 Reconsideration.**

See section 22.02.013 UPMC.

~~Any aggrieved person having standing under the ordinance governing such application and feeling that the decision of the examiner is based on errors of procedure, law, or fact may make a written request for review by the examiner within fourteen (14) days of the issuance of the examiners decision or recommendation. This request shall set forth the alleged errors, and the examiner may, after review of the record, take such further action as he deems proper and may render a revised decision.~~

2. UPMC Chapter 22.01.003C.1. Permit Processing, Applicability, Type III Permits, Hearings Examiner Review is hereby amended as follows,

**"C. Type III Permits.**

1. Hearings Examiner Review. Hearings Examiner review is used when processing applications for project permits, including but not limited to decisions rendered in accordance with Chapter 43.21C RCW, conditional use, preliminary subdivision, nonconforming use, planned development district, major amendments, variances, shoreline substantial development, shoreline conditional use, shoreline nonconforming use, shoreline variance, critical areas permits and private road variances. An appeal of an administrative decision is also subject to hearings examiner review. ~~Unless otherwise stated herein, hearing examiner review shall be subject to the Chapter 2.20 UPMC, Hearings Examiner.~~