

ORDINANCE NO. 64

AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, ESTABLISHING THE OFFICE OF HEARING EXAMINER; PROVIDING FOR APPOINTMENT BY THE CITY MANAGER; DEFINING POWERS AND DUTIES; PROVIDING FOR APPEALS; AND SPECIFYING PROCEDURES.

THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. 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.

Section 2. Hearings Examiner -- Creation and purpose. 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.

Section 3. Hearings Examiner -- Appointment and terms. The Examiner shall be appointed by the City Manager.

Section 4. Hearings Examiner -- 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.

Section 5. Hearings Examiner -- 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 member's 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 Examiner's designated duties.

Section 6. 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 Section 9 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 coming before the Examiner, including appeals of administrative decisions, will be final; except for applications for quasi-judicial rezoning, in which case the Hearings Examiner's decision will be a recommendation to the City Council. Pursuant to Section 12 hereof, appeals of the Hearings Examiner's decisions may be taken to the City Council. The 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 adopted by the City Council. When acting upon any of the 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.

Section 7. Applications. Applications shall be submitted to the Planning Department, which shall be responsible for assigning a date of public hearing for such application.

Section 8. Report by department. When such application has been set for public hearing the Planning 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) 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.

Section 9. Public hearing. Before 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 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.

Section 10. Examiner's 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 re-zoning 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 re-zoning 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 re-zoning 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) days of the conclusion of a hearing, the Examiner shall render a written decision, including findings and conclusions, and shall transmit a copy of such decision by certified 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 re-zoning, 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.

Section 11. Reconsideration. 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 Examiner's 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.

Section 12. Appeal of Examiner's decision. Any aggrieved person having standing under the ordinance governing such application may submit an appeal in writing to the City Council requesting additional consideration. Appeals to the Council shall be made in the manner and within the time limits prescribed by Section 13 of this Ordinance. The cost of transcription of the hearing record shall be borne by the party or parties requesting such transcript. Notice of the filing of an appeal shall be made to all parties of record to the hearing, and said notice shall give the time and date when the Council will consider such appeal.

Whenever a decision of the Examiner is reviewed by the City Council pursuant to this Section, other parties of record may submit written memoranda in support of their positions. In addition, the Council shall allow each side no more than fifteen (15) minutes of oral presentation. However, no new evidence or testimony shall be presented to the Council during such presentation. The Council shall accept or reject any findings or conclusions, or remand the decision of the Examiner for further hearing; provided that any decision of the City Council shall be based on the record of the hearing conducted by the Examiner. The Council's decision shall be in writing and shall specify findings and conclusions. Each material finding shall be supported by substantial evidence in the record.

Section 13. Appeals to the City Council of Examiner's decisions or recommendations. Within fourteen (14) days of the issuance of the Examiner's decision or recommendation involving an application or appeal filed pursuant to the provisions of this chapter, the applicant or any aggrieved party shall have the right to appeal the decision or recommendation of the Hearings Examiner by filing written notice of the appeal in duplicate with the City Clerk, stating the reasons the Hearings Examiner's decision or recommendation was in error; provided, however, that in the event of application is made pursuant to Section 11 of this Ordinance for reconsideration by the Examiner, the appellant shall have seven (7) days from the date of issuance of the Examiner's decision on the reconsideration to appeal the Examiner's decision to the City Council. Appeals shall be reviewed and acted upon by the City Council in accordance with Section 12 of this Ordinance.

Section 14. Call up by the City Council. The City Council, on its own volition, may take jurisdiction of any decision of the Hearing Examiner by vote taken at the next regularly scheduled council meeting following the date that the final decision of the Hearing Examiner is rendered. Within 35 days of a vote by the Council to review the Hearing Examiner's decision,

the Council shall meet initially to review the decision. The Council's review shall follow the provisions of Sections 12 and 14 governing notice to parties, the submittal of written and oral argument by parties, the entry of findings and conclusion, and the Council's decision. No new evidence or testimony shall be presented to the Council.

Section 15. Council action. Any application requiring action by the City Council shall be taken by the adoption of a resolution or ordinance by the Council. When taking any such final action, the Council shall make and enter findings of fact from the record and conclusions therefrom which support its action.

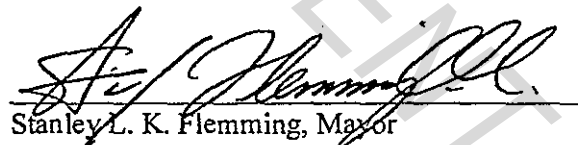
Said findings and conclusions regarding land use matters shall set forth and demonstrate the manner in which the action carries out and helps to implement the goals and policies of the Comprehensive Plan and the standards of the various land use regulatory codes. The City Council may adopt all or portions of the Examiner's findings and conclusions.

In the case of an ordinance for re-zoning of property, the City Clerk shall place the ordinance on the Council's agenda. Adoption of the ordinance shall not occur until all conditions, restrictions, or modifications which may have been stipulated by the Council have been accomplished or provisions for compliance made to the satisfaction of the City Attorney.

Section 16. Review of Council decision. Any court action to set-aside, enjoin, review, or otherwise challenge a final decision of the Hearings Examiner or the City Council on the ground of noncompliance with the provisions of this Code shall be commenced within twenty-one (21) days of the final action. Any other court action challenging a final decision on the grounds of non-compliance with this Code shall be brought within thirty (30) days of the final action. For those actions requiring the passage of an ordinance or adoption of a resolution, the final action of the City Council shall be deemed to be the effective date of such ordinance or resolution. For those actions which the Council takes by motion only, the date on which the motion is adopted shall be deemed to be final action by the Council.

Section 17. Effective Date. This ordinance shall take effect five days after its publication.

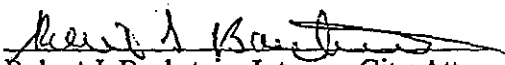
PASSED BY THE CITY COUNCIL ON AUGUST 28, 1995.


Stanley L. K. Flemming, Mayor

Attest:


Susan Matthew, Interim City Clerk

Approved as to Form:


Robert J. Backstein, Interim City Attorney

Date of Publication: August 31, 1995

Effective Date: September 5, 1995

UNOFFICIAL DOCUMENT