

TOWN OF EATONVILLE

Agenda Staff Report

Agenda Item No.:		Meeting Date:	June 14, 2021
Subject:	Ordinance No. 2021-6 Creating a	Prepared by:	Gregory A. Jacoby
	Hearing Examiner Position For Certain		Town Attorney
	Land Use Matters and Adding a New	Atty Routing No:	014-20
	Chapter 2.18 to the Eatonville		
	Municipal Code	Atty Review Date:	June 9, 2021

Summary: This Ordinance creates the position of hearing examiner. RCW 35.63.130 authorizes the Council to adopt a hearing examiner system and to designate the land use matters it believes the hearing examiner should review and decide.

Following adoption of this ordinance, staff will send out a Request for Proposal and interview qualified candidates. No person will be appointed until after the council's approval of a professional services agreement. Following approval of the hearing examiner's contract, staff will prepare a second ordinance amending the Eatonville Municipal Code and substituting the hearing examiner as the person who hears land use matters currently heard by the planning commission and board of adjustment.

The Municipal Research and Services Center (MRSC) offers three reasons why a municipality should consider using a hearing examiner.

1. Eliminates the financial risk of having lay elected officials with no training or background in the law attempting to, in effect, practice law.
2. Quasi-judicial cases can be extremely time intensive. Councils have many demands on their agenda time including issues with far greater impact on the well-being of the entire community.
3. The quasi-judicial role frequently places city council members in an untenable lose-lose predicament. Elected officials can be caught between the need to be responsive to the desires of their constituents and their duty to be responsible to the clear legal criteria governing the permit decision before them.

Recommendation: Staff recommends adoption of Ordinance No. 2021-6 creating a hearing examiner position for certain land use matters and adding a new Chapter 2.18 to the Eatonville Municipal Code.

Motion for consideration: I move to approve the first reading of Ordinance No. 2021-6 creating a hearing examiner position for certain land use matters and adding a new Chapter 2.18 to the Eatonville Municipal Code.

Fiscal Impact: To be addressed when a professional services agreement is presented.

Attachments: Ordinance No. 2021-6 and Exhibit A

ORDINANCE NO. 2021-6

AN ORDINANCE OF THE TOWN OF EATONVILLE, WASHINGTON, CREATING A HEARING EXAMINER POSITION FOR CERTAIN LAND USE MATTERS AND ADDING A NEW CHAPTER 2.18 TO TITLE 2 OF THE EATONVILLE MUNICIPAL CODE

WHEREAS, RCW 35.63.130 authorize a town's legislative body to use a hearing examiner to hear and decide matters within the examiner's authority, as determined by the legislative body; and

WHEREAS, the Town Council finds that the use of a hearing examiner will provide improved compliance with legal requirements, including due process, appearance of fairness, and record preparation, and allows local legislative and advisory bodies that might otherwise conduct these hearings to better concentrate on policymaking; and

WHEREAS, the Town's insurer supports the use of a hearing examiner system because it is believed to reduce land use liability exposure through what should be more consistent and legally sustainable quasi-judicial decisions; and

WHEREAS, on June 28, 2021, the Town Council held a public hearing to consider instituting a hearing examiner system in accordance with RCW 35.63.130; and

WHEREAS, based on the public hearing and for the above-stated reasons, the Town Council has decided to institute a hearing examiner system as specifically set forth below; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF EATONVILLE AS FOLLOWS:

Section 1. Title 2 of the Eatonville Municipal Code is amended by adding a new Chapter 2.18 "Hearing Examiner" in the form attached hereto as Exhibit A and incorporated by this reference.

Section 2. Should 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 3. This ordinance shall take effect after publication of a summary, consisting of the title, pursuant to RCW 35.27.300.

1ST READING: 06/14/2021

2ND READING: 06/28/2021

PASSED by the Town Council of the Town of Eatonville and attested by the Clerk in authentication of such passage this ____ day of June 2021.

Mike Schaub
Mayor

ATTEST:

Miranda Doll
Town Clerk

APPROVED AS TO FORM:

Gregory A. Jacoby
Town Attorney

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Chapter 2.18 Hearing Examiner

2.18.010 Purpose.

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2.18.160 Examiner's coordination with planning, building, or public works departments.

2.18.170 Public hearing – Record keeping.

2.18.010 Purpose.

The purpose of this chapter is to:

A. Ensure procedural due process and appearance of fairness in land use regulatory hearings and decisions;

B. Provide an efficient and effective land use regulatory system which integrates the public hearing and decision-making processes for land use matters;

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C. Provide for consistency and predictability in land use decision-making and the application of policies and regulations adopted by the town;

D. Establish clear and understandable rules governing the land use decision-making process.

2.18.020 Definitions.

A. “Aggrieved” means adversely affected by proceedings before or decisions of the examiner, council, or any town department.

B. “Applicant” means a person or entity applying to the town for approval of land uses that conform to the city’s goals, policies, plans and programs of development.

C. “Application” means a completed application. An application is complete when all applicable filing requirements are met, appropriate fees have been paid, and a determination of completeness has been issued by the department.

D. “Department” means the planning department for the town of Eatonville.

E. “Director” means the planning director for the town of Eatonville.

F. “Examiner” means the regular hearing examiner or hearing examiner pro tem of the town of Eatonville.

G. “May” means optional and permissive, and does not impose a requirement.

H. “New evidence” means any and all evidence that is submitted or received after the date the examiner closes the official record. The official record is closed at the end of the public hearing, unless the examiner specifically allows the official record to remain open for a time certain.

I. “Official record” means the written and oral information, exhibits, reports, testimony and other evidence submitted in a timely manner and accepted by the examiner.

J. “Party of record” means:

1. A person who testifies before the examiner;

2. The applicant and any of the applicant’s agents;

3. A person who submits written comments pertaining to the merits of a case prior to when the hearing examiner closes the record on the case; or

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4. The town of Eatonville.

K. "Shall" and "must" mean mandatory and impose a requirement.

2.18.030 Office created.

Pursuant to RCW [35.63.130](#), [58.17.330](#), the office of 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 ordinances. Unless the context requires otherwise, the term "examiner," as used in this chapter, shall include "examiner(s) pro tem."

2.18.040 Appointment – Term.

The examiner shall be appointed by the mayor for an initial one-year term and serve at the will of the mayor. The mayor may also appoint the examiner(s) pro tem to serve in the event of the examiner's absence for terms specified in writing, but which shall not exceed the term of the appointing mayor. Subsequent terms shall be for a period of four years.

2.18.050 Qualifications.

The examiner and examiner pro tem shall be appointed solely with regard to their qualifications for the duties of the office. Minimum qualifications shall consist of five or more years' experience in at least one of the following areas: land use planning, environmental sciences, law, architecture, engineering, or economics as well as such training or experience as will qualify the examiner to conduct quasi-judicial or administrative hearings. The examiner shall hold no other appointive or elected public office or position in Eatonville's town government.

2.18.060 Compensation.

The examiner and examiner pro tem shall be retained on a professional services contract for the performance of duties described in this chapter and upon such terms and conditions as the city council determines are appropriate. The total compensation to be paid the examiner and examiner pro tem shall not exceed that in the annual planning and community development department budget, or building department budget when appropriate.

2.18.070 Examiner(s) pro tem – Qualifications and duties.

The examiner pro tem shall, in the event of the absence or inability of the examiner to act, \ have all the qualifications, duties and powers of the examiner.

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2.18.080 Freedom from improper influence.

No person, including town 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 town attorney from rendering legal services to the examiner upon request.

2.18.090 Conflict of interest.

A. The examiner shall be subject to the provisions of state and local law regarding conflict of interest, ethics, open public meetings, and appearance of fairness. The examiner shall not conduct or participate in any hearing or decision in which the examiner has a direct or indirect personal interest which might influence or interfere with his or her decision-making process or give rise to a violation of the appearance of fairness doctrine. Any actual or potential conflict of interest shall be disclosed to the parties immediately upon discovery of such conflict.

B. The examiner shall disclose matters involving ex parte contacts, conflicts of interest issues or appearance of fairness issues prior to or at the beginning of any matter. The examiner shall recuse him/herself if the examiner believes his/her review of the case would be deemed a conflict of interest or appearance of fairness violation. In the event the examiner recuses him/herself, the city manager shall appoint an examiner pro tem to conduct the hearing.

2.18.100 Hearings.

Before rendering a decision on any application or appeal, the examiner shall hold one open record public hearing thereon. The town shall, in coordination with the examiner, be responsible for assigning a date and assuring due notice of the hearing on the matter to come before the examiner. Notice of the time, place, location, and subject matter of the hearing shall be consistent with applicable law. Such notice shall be given a minimum of 10 days prior to the scheduled hearing.

2.18.110 Powers and duties of the examiner.

A. The examiner shall be empowered to adopt rules for the scheduling and conduct of hearings and other procedural matters related to the duties of his/her office; provided such rules are consistent with the provisions for open record hearings set forth in this code. Such rules may provide for but are not limited to conducting discovery, administering oaths, examining witnesses, issuing subpoenas for the attendance of witnesses or the production of information, receiving evidence, and establishing pre-hearing conference procedures and settlement sessions.

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B. The following applications and appeals shall be within the jurisdiction of the examiner under the terms and procedures of this chapter:

1. Variances from the zoning code;
2. Conditional use permits;
3. Preliminary plats;
4. Site-specific rezone applications;
5. Shoreline permits;
6. Short plat appeals;
7. State Environmental Protection Act (SEPA) appeals;
8. Critical areas reasonable use exceptions, variances or appeals of any order or decision by the director regarding the critical areas ordinance;
9. Appeals of issuance, denials, revocations or suspensions of business or other city-issued licenses;
10. Appeals of decisions or requests for variances in the administration or enforcement of the water, sewer, road, flood damage prevention, surface water drainage or stormwater facility design and construction standards;
11. Appeals of administrative decisions;
12. Appeals of building or other construction-related permits, including street use;
13. Appeals of lot line adjustments;
14. Appeals of special event permits;
15. Appeals of sign permits and requests for variances from the sign code;
16. Appeals of special use permits;
17. Appeals of revocation of permits; and

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18. All other appeals, hearings and interpretations where the examiner retains authority pursuant to other ordinances and provisions of the Eatonville Municipal Code.

2.18.120 Hearing examiner's recommendation and decision.

A.. For actions requiring the examiner's recommendation as provided by ordinance, the examiner's recommendation shall be forwarded to the town council. The town council upon its review of the record may:

1. Affirm the recommendation;
2. Remand the recommendation to the hearing examiner;
3. Schedule a closed record public hearing before the town council.

Any aggrieved person may request the town council to conduct its own closed record hearing. Upon its own closed record hearing, the town council may affirm, reject, or modify the hearing examiner's recommendation or take whatever action it deems appropriate pursuant to law.

B. Hearing examiner's decision.

1. All decisions of the examiner must be supported by findings of fact and conclusions of law. The findings of fact must be supported by substantial evidence in the record and the conclusions of law must be based upon the policies of the comprehensive plan, subdivision regulations, environmental regulations, the standards set forth in the various land use codes of the town, or any other relevant plan, regulation, federal or state law, case law, Growth Management Hearings Board decisions, or any other applicable law. The examiner may approve, conditionally approve, or deny the application or appeal.

2. All decisions of the examiner will be rendered within 10 working days following the conclusion of all testimony and hearings and closing of the record, unless a longer period is mutually agreed to by the applicant or appellant and the examiner. Upon issuance of the examiner's decision, the examiner will transmit a copy of the decision to the planning director and, by certified mail, to the applicant or appellant and by regular mail to other parties of record.

3. Unless specifically provided for elsewhere in this code or in another applicable ordinance, decisions of the examiner will become final in 21 business days subject to options for reconsideration and appeal. If any of the permits or approvals require town council action, then the decision of the examiner as to all

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such permits or approvals shall constitute a recommendation to the town council; otherwise, the decision of the examiner shall be final subject to options for reconsideration and appeal under EMC 2.18.140 and 2.92.150.

2.18.130 Report of the planning and building department.

The planning department shall coordinate and assemble the reviews of other town 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 five working 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.

2.18.140 Reconsideration.

A. Any party of record may, within seven (7) working days of the date of the examiner's written decision, file with the department a written request for reconsideration based on any one of the following grounds: errors of procedure, errors of law or fact, error in judgment, or the discovery of new evidence which was not reasonably available at the open record public hearing.

B. The request shall set forth the specific errors or new information relied upon. The department shall forward the request for reconsideration to the examiner within three (3) working days. Upon receipt of a request for reconsideration, the examiner will review the request in light of the record and take such further action as is deemed proper, including, but not limited to: denying the request; granting the request; reopening the record and public hearing process, and may render a revised decision. The examiner shall take such action as he deems appropriate within 10 days of receipt of the request. The decision of the examiner will be subject to reconsideration only one time, even if the examiner reverses or modifies the original decision.

C. The filing of a request for reconsideration shall effectively stay the appeal period until the examiner issues his decision on the request.

2.18.150 Appeal from examiner's decision.

Unless specifically provided for elsewhere in this code or in another applicable ordinance, the decision of the examiner shall be the final administrative decision of the town and may be appealed by a party of record with standing to the Pierce County superior court. A petition for a judicial appeal must be filed within 21 days of the issuance of a decision.

2.18.160 Examiner's coordination with planning, building, or public works departments.

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The examiner may at any time, on the examiner's own motion, request advice and counsel of the planning, building or public works departments regarding interpretation of the applicable codes, policies and regulations.

2.18.170 Public hearing – Record keeping.

All hearings shall be public. Records of the examiner shall be kept by the planning staff and shall be made available to the public upon request. The planning department will provide a recording secretary or will subcontract secretary's duties to the office of the hearing examiner.