

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Ordinance No. 405 updating the appeal fee and amending the Hearing Examiner powers and duties in Chapter 2.15 of the Shoreline Municipal Code
DEPARTMENT: City Attorney's Office
PRESENTED BY: Flannary P. Collins, Assistant City Attorney

PROBLEM/ISSUE STATEMENT:

First, a discrepancy was noted in the appeal fee set forth in 2.15.060, Division of Responsibilities between the Hearing Examiner and City Manager or Designee, and the PADS fee schedule set forth in SMC 3.01.010. The proposed change corrects this discrepancy.

Second, the language currently describing the powers and duties of the Hearing Examiner is unclear. The proposed change clarifies the Examiner's powers and duties.

ANALYSIS:

1. Appeal Fee

SMC 2.15.060 states that the fee for appeals is \$350. The current appeal fee, set forth in the fee schedule in SMC 3.01.010, is \$380. When SMC 3.01.010 was updated, SMC 2.15.060 was not; thus, it still reflects the old \$350 appeal fee. Since all fees charged by the City are set forth in Chapter 3.01, there is no need to also refer to the appeal fee in 2.15.060. Striking the reference will eliminate customer confusion with regard to which fee is correct and also eliminate the need to update two sections of the Code simultaneously.

2. Hearing Examiner Powers and Duties

SMC 2.15.070(B) setting forth the powers and duties of the Hearing Examiner currently authorizes the Hearing Examiner to:

Issue and witness, upon the request of a city officer or any party, or upon the hearing examiner's own volition; provided, that any such subpoena shall state the name and address of the witness sought, and, if for the production of books, documents or things, shall specifically identify the same and the relevance thereof to the issues involved."

The language has been changed to read:

Issue summons for and compel the appearance of witnesses and production of documents, upon the request of a city officer or party, or upon the hearing examiner's own volition; provided, that any such subpoena shall state the name and address of the witness sought, and, if for the production of books, documents or things, shall specifically identify the same and the relevance thereof to the issues involved.

This change corrects the section, more clearly stating that the Hearing Examiner has the authority to issue subpoenas, both for witnesses and for production of documents.

A typo in SMC 20.15.070(D) is also corrected to read "[h]old conferences for the settlement or simplification of the issues by consent of the parties."

RECOMMENDATION

Staff recommends that Council adopt Ordinance No. 405, amending Chapter 2.15 to clarify the appeal fee and the powers and duties of the Hearing Examiner.

Approved By: City Manager  City Attorney 

ATTACHMENTS

Attachment A: Ordinance No. 405

ORDINANCE NO. 405

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON
AMENDING TITLE 2 OF THE SHORELINE MUNICIPAL CODE.**

WHEREAS all fees charged by the City, including the fee charged for appeals, are set forth in the fee schedule in SMC 3.01.010;

WHEREAS the fee changed for appeals is also mentioned in SMC 2.15.060;

WHEREAS the proposed change to SMC 2.15.060 deletes the reference to appeal fees;

WHEREAS the language in SMC 2.15.070 authorizing the Hearing Examiner's powers and duties does not adequately set forth the Examiner's duties;

WHEREAS the addition to SMC 2.15.070 clarifies that the Hearing Examiner has the power to issue summons for and compel the appearance of witnesses and the production of documents; NOW THEREFORE

THE CITY COUNCIL OF THE CITY OF SHORELINE DO ORDAIN AS FOLLOWS:

Section 1. Amendment. SMC 2.15.060 is amended as follows:

2.15.060 Division of responsibilities between hearing examiner and city manager or designee.

A. The city manager or designee is authorized to make decisions on land use matters to the extent permitted under Washington law and the King County Code sections adopted by reference by the city, including permit applications.

B. Any person aggrieved by a final decision made by the city manager or designee shall have the right to an appeal before the hearing examiner; provided, that for land use applications which are required to have a public hearing, except as otherwise set forth by ordinance, the hearing examiner shall conduct the public hearing and issue a final decision. ~~The fee for an appeal is set at \$350.00.~~

Section 2. Amendment. SMC 2.15.070 is amended to read as follows:

2.15.070 Powers – Duties.

In the performance of duties prescribed by this chapter or other ordinance, the hearing examiner is authorized to:

A. Administer oaths and affirmations, examine witnesses, rule upon offers of proof, receive evidence, and conduct discovery procedures which may include propounding interrogatories and taking oral depositions; provided, that no person shall be compelled to divulge information which he or she could not be compelled to divulge in a court of law;

B. Issue summons for and compel the appearance of witnesses or production of documents, upon the request of a city officer or any party, or upon the hearing examiner's own volition; provided, that any such subpoena shall state the name and address of the witness sought, and, if for the production of books, documents or things, shall specifically identify the same and the relevance thereof to the issues involved;

C. Regulate the course of the hearing in accordance with rules of this chapter and other applicable ordinances;

D. Hold conferences for the settlement of or simplification of the issues by consent of the parties;

E. Dispose of procedural requests or similar matters;

F. Make such decisions or recommendations as are contemplated herein and by other ordinances conferring jurisdiction on the hearing examiner;

G. Take any other action authorized by ordinance;

H. Make rules for the conduct of hearings, notices and other proceedings and procedures not inconsistent with this chapter and any other applicable ordinance. An audio or video record of the hearing proceedings shall be maintained and shall be made available for public review;

I. Make recommendations for revision to relevant codes and ordinances which will clarify or otherwise improve the development review process.

PASSED BY THE CITY COUNCIL ON this 27th day of February, 2006.

Mayor Robert L. Ransom

ATTEST:

APPROVED AS TO FORM:

Scott Passey
City Clerk

Ian Sievers
City Attorney

Date of Publication: March 2, 2006
Effective Date: March 7, 2006