

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Ordinance No. 621 Transferring Review Authority for all Quasi-Judicial Hearings from the Planning Commission to the Hearing Examiner; and Amending Chapter 2.20.060 and Table 20.30.060 of the Shoreline Municipal Code
DEPARTMENT:	Planning and Community Development
PRESENTED BY:	Joseph W. Tovar, FAICP, Planning Director Steven Cohn, Senior Planner
ACTION:	<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Discussion

PROBLEM/ISSUE STATEMENT:

The Shoreline Municipal Code (SMC) Chapter 2.20 sets forth the duties of the Planning Commission. SMC Chapter 2.15 states that the Hearing Examiner shall hold public hearings on land use actions that are not otherwise assigned. It also states that the Hearing Examiner has the ability to make both recommendations and decisions on land use matters.

The Planning Commission's work program for the foreseeable future is burdened with high-priority legislative tasks (e.g., updating of the Comprehensive Plan and amendments to the Development Code), which greatly reduces its capacity to reach quasi-judicial hearing items in a timely fashion. Because prompt and expeditious processing of development permits is a City Council priority (Council Goal 1 calls for a "timely, clear, and predictable permit process" and Council Goal 3 calls for "improving economic development opportunities in Shoreline," which includes expediting development permit applications) it is appropriate to permanently shift the hearing responsibility for all open record, quasi-judicial permit hearings from the Planning Commission to the Hearing Examiner.

On August 18, 2011, the Planning Commission held a public hearing about which quasi-judicial permits should retain final decision making for the City Council and which should be transferred to the Hearing Examiner for public hearing and final decision making. The proposal, that was the subject of the Planning Commission public hearing on August 18 for application 301702, proposed that the hearing examiner be authorized to both hear and decide on all quasi-judicial permits, except for the following:

- Preliminary formal subdivisions (five or more lots)
- Final Formal Subdivision (Planning & Community Development Director makes an administrative recommendation and Council makes decision)
- Quasi-judicial rezones.

For these three types of quasi-judicial permits, the Hearing Examiner would conduct the public hearing and forward a recommendation to the City Council for the final decision.

As recommended by the Planning Commission, the City Council would not make the final decisions on:

- Special Use Permits
- Secure Community Transition Facilities
- Campus Master Development Plans
- Critical Area Special Use and Reasonable Use Permits
- Appeals of decisions made by the City's SEPA Responsible Official.

The Planning Commission voted 5-0 to recommend that the City Council adopt the proposed recommendations. Table 20.30.060 of the City's Development Code summarizes the Planning Commission's recommendation and is Attachment B.

This item was discussed by the City Council at the November 14 study session (<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/Council/Staffreports/2011/Staffreport111411-9b.pdf>) and Council directed staff to present an ordinance for implementation of the Planning Commission recommendation as proposed.

RESOURCE/FINANCIAL IMPACT:

This action will not have any financial impact to the City. There will be an added cost to pay for the Hearing Examiner's time which would be borne by the applicant. The impact to staff resources will be minimal because staff currently prepares a recommendation to the Planning Commission and attends the public hearing.

RECOMMENDATION

Staff recommends that the Council adopt Ordinance 621 transferring review authority for all quasi-judicial hearings from the Planning Commission to the Hearing Examiner and amending Chapter 2.20.060 and Table 20.30.060 of the Shoreline Municipal Code.

Approved By: City Manager gc City Attorney nc

INTRODUCTION

Under Shoreline's Development Code (Table 20.30.060), the Planning Commission is empowered to hold hearings on most quasi-judicial land use matters and to forward recommendations to the City Council which acts as the decision-making body. Table 20.30.360 is also the basis for the Hearing Examiner's authority to hold hearings for some land use matters (Critical Areas Special Use Permit and Critical Areas Reasonable Use Permit), and act as the decision authority in these cases.

For the past few years, the Council adopted limited-term ordinances that temporarily modified the process and transferred hearing authority for quasi-judicial matters such as rezones and street vacations to the Hearing Examiner. The most recent Council ordinance that directed this change, Ordinance 568, expired on December 31, 2010. (The interim ordinance did not affect two permits, which stayed with the Planning Commission for hearing: Master Development Plan Permits (such as CRISTA and the Public Health Lab) and a rezone in a subarea that is the subject of a subarea study. Since then, all quasi-judicial land use matters have been heard by the Planning Commission.

The Shoreline Municipal Code (SMC) Chapter 2.20 sets forth the duties of the Planning Commission. SMC Chapter 2.15 states that the Hearing Examiner has the ability to make recommendations to the City Council on certain quasi-judicial matters and final decisions on others.

The Planning Commission's work program for the foreseeable future is burdened with high-priority legislative tasks (e.g., updating of the Comprehensive Plan and amendments to the Development Code), which greatly reduces its capacity to reach quasi-judicial hearing items in a timely fashion. Because prompt and expeditious processing of development permits is a high City Council priority (Council Goal 1 calls for a "timely, clear, and predictable permit process" and Council Goal 3 calls for "improving economic development opportunities in Shoreline," which includes expediting development permit applications) it is appropriate to permanently shift the hearing responsibility for all open record, quasi-judicial permit hearings from the Planning Commission to the Hearing Examiner.

PLANNING COMMISSION'S RECOMMENDED AMENDMENTS

The Planning Commission held a public hearing on the proposed amendments on August 18, 2011.

To implement the proposed changes, both the Shoreline Municipal Code (SMC 2.20.060) and the Development Code would need to be modified. However, since the SMC is not within the jurisdiction of the Planning Commission, the Commission's recommendation only dealt with modifying Table 20.30.060 in the Development Code. Ordinance No. 621 (Attachment A) includes the required modifications to SMC 2.20.060 and the Development Code.

Under this proposal, the Hearing Examiner would continue to hear appeals on specified Type A and Type B actions. For Type C actions where the Hearing Examiner is the

hearing body, the Examiner will hear the associated State Environment Policy Act (SEPA) appeal, if there is one. The Examiner's decision is appealable to Superior Court, as are final decisions of the City Council. SMC 2.15 addresses the Hearing Examiner functions.

On August 18, 2011, the Planning Commission held a public hearing about which quasi-judicial permits should retain final decision making for the City Council and which should be transferred to the Hearing Examiner for public hearing and final decision making. The proposal, that was the subject of the Planning Commission public hearing on August 18 for application 301702, proposed that the hearing examiner be authorized to both hear and decide on all quasi-judicial permits, except for the following:

- Preliminary formal subdivisions (five or more lots)
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For these three types of quasi-judicial permits, the Hearing Examiner would conduct the public hearing and forward a recommendation to the City Council for the final decision.

As recommended by the Planning Commission, the City Council would not make the final decisions on:

- Special Use Permits
- Secure Community Transition Facilities
- Campus Master Development Plans
- Critical Area Special Use and Reasonable Use Permits
- Appeals of decisions made by the City's SEPA Responsible Official.

How would this amendment change the appeals process?

The Hearing Examiner would continue to hear appeals on specific Type A and Type B actions. For Type C actions where the Hearing Examiner is the hearing body, the Examiner would hear the associated SEPA appeal, if there is one. (Currently, if the Planning Commission holds a public hearing on a quasi-judicial matter, the public is precluded from appealing a SEPA determination decision until the Council takes action on the Commission's recommendation. The SEPA determination decision together with the underlying Council decision would be appealed to Superior Court.) Under the proposal, the Examiner's decision is appealable to Superior Court as are decisions of the City Council. Appeals of legislative decisions would be to the Superior Court as they are today.

ALTERNATIVES TO THE PROPOSAL

The alternatives available for consideration range from doing nothing (i.e., adopt no amendments) up to adopting all of the amendments contained in Ordinance No. 621. The Council could choose to adopt any or all of the changes shown in Ordinance No. 621.

There are several arguments for retaining a greater number of quasi-judicial permits for hearing by the Planning Commission and final decision by the City Council. Some argue that citizens are better served by a hearing body and decision-makers who live in the community rather than a hearing examiner who does not. Another argument is that the hearing process before the Planning Commission and public meeting where the Council deliberates and takes action is less formal-looking than the proceeding before a hearing examiner. A final argument for Council retaining authority over appeals is that it is easier and less expensive for citizens to file an appeal with the Council than to appeal an examiner's decision to Superior Court.

On balance, the Commission concluded that the merits of the proposed amendments (enhances economic development, reduces City costs and legal/fiscal risks, enables elected officials to be accessible to citizen concerns) outweigh the above summarized arguments against it. Note that even if the Planning Commission recommendation is adopted, state law requires that the following quasi-judicial decisions remain with the Council: quasi-judicial rezones, street vacations, and preliminary formal plats.

PUBLIC INVOLVEMENT

This item was the subject of a public hearing and subsequent deliberations by the Planning Commission at its August 18, 2011 meeting.

TIMING AND SCHEDULE

The proposed action is exempt from SEPA per WAC197-11-800(19). The notice of Public Hearing was given on July 20, 2011 and again on August 1, 2011. The Commission held a public hearing on August 18, 2011.

DISCUSSION

Commission conclusions on responses to Development Code Amendment Criteria

Section 20.30.350 lists the decision criteria for amendments to the Development Code. The proposed amendments have been reviewed for consistency with the following criteria:

1. *The amendment is in accordance with the Comprehensive Plan.*

The City's Comprehensive Plan must be consistent with the Goals and Requirements of the Growth Management Act (GMA). Two of the relevant provisions are as follows:

RCW 36.70A.020(7) Permit Processes. "Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability."

RCW 36.70A.040(3)(d) ". . . if the county has a population of fifty thousand or more, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan."
(Underlined emphases added.)

The Planning Commission historically has focused on both legislative policy-related issues and site-specific quasi-judicial issues. These have to be addressed within the constraints of the Planning Commission schedule and abilities of volunteer Commissioners to hold additional meetings. This has become less of an immediate issue in the recent past because of the relatively small number of quasi-judicial permit applications, but is likely to be more of an issue in the coming years for two reasons.

First, the City Council has assigned a very heavy legislative workload to the Planning Commission, starting with the update of the Comprehensive Plan. Second, as the economy begins its recovery, the city expects to see an increasing number of permit applications, including quasi-judicial permits.

The Hearing Examiner's role is more focused, dealing only with quasi-judicial hearings and decisions, not legislative policy items like the Comprehensive Plan and development code amendments. The Hearing Examiner also has more leeway as to the frequency and available times that a hearing can be held. This flexibility and the change that would allow the Examiner (rather than the City Council) to be the decision authority on some items would result in a more timely, clear, and predictable permit process. This is likely to become more important as the economic recovery results in upticks in permit activity in 2013 and beyond.

2. The amendment will not adversely affect the public health, safety or general welfare.

The public will see little change—notice requirements for public hearings will not change, the formats for hearings of the Hearing Examiner and the Planning Commission hearings are quite similar, and most hearings will likely be held in the evening to make it convenient for members of the public to attend. The major difference that the public will notice is that the Hearing Examiner generally does not make a ruling or a recommendation the night of the hearing; rather, the recommendation will be released about two weeks after the hearing.

As to Special Use Permits, Secure Community Transition Facility (SCTF) permits and appeals, and Master Development Plan Permits, the Commission recommends that the Hearing Examiner make the final decision. As to quasi-judicial rezones, formal plats, and street vacations, the recommendation is that the City Council would continue to make the final decisions.

3. The amendment is not contrary to the best interest of the citizens and property owners of the City of Shoreline.

It is in the best interest of the citizens and property owners that they be able to communicate their concerns about development in Shoreline, however, the ex-parte prohibitions of a quasi-judicial process prevent that communication from taking place until after the final decision has been made. By having the Hearing Examiner become the decision-maker on these quasi-judicial decisions, Councilmembers would then be free to discuss with individual citizens their concerns regarding the project. Currently, such discussions can only happen after the fact (i.e., after all decisions and appeals have been exhausted), which limits accessibility of citizens to their elected officials.

While the Council could not intervene or influence such a project while underway through the Hearing Examiner process, they would be aware of the issues and concerns of citizens as they occur and could ask, after that particular project's permit process has been completed, for a debrief from staff. In this way, the Council could identify areas where decision criteria may require amendment or addition that would apply to future permit applications. Some jurisdictions invite an annual report from their Examiners to see if there are criteria that perhaps might merit a review and possible clarification.

It is also in the interest of citizens and property owners that the City's permit process not place the City at financial risk. Quasi-judicial decisions must be made according to the facts in the record and the specific criteria listed in the adopted regulations for the permit in question. A letter from the City's insurance carrier, the Washington Cities Insurance Authority (WCIA) advised its member jurisdictions as follows:

"We strongly urge the [town or city] to maintain its use of a professional hearing examiner for quasi-judicial land use decision making. And, in the interest of good legal risk management, economic efficiency and customer service, we also recommend that the town consider modifying the [ordinance] to make the decision of the hearing examiner on those identified matters a "final" and binding decision, appealable only to Superior Court. We encourage the [town or city] to make the fullest use of a professional hearing examiner for all quasi-judicial matters authorized by law and to make those hearing examiner decisions final decisions, appealable only to Court."

Letter from WCIA legal counsel Michael Walter, Exhibit 5 in the Planning Commission record.

A number of cities have followed this advice by divesting their Councils entirely of involvement in quasi-judicial permit decision making and appeals, including Sultan, Kirkland, Kent, and Tacoma. Staff believes that these cities are at a competitive advantage in attracting investment decisions from developers who crave a process that is timely, fair, and predictable.

Commission recommendations

On August 18, 2011, the Commission held a public hearing. There was no public testimony, either written or oral. The Commissioners deliberated and voted 5-0 (Commissioners Wagner and Broili absent) to recommend the attached proposal to modify the Development Code. The Commissioners discussed the pros and cons of maintaining Master Development Plan Permits as a Commission hearing, and ultimately concluded that they preferred to leave that policy choice to the City Council.

At the November 14 Council meeting, the Council members who spoke indicated support for the proposal as drafted which would have the Hearing Examiner conduct the hearing and make a decision on Master Development Plan Permits.

COUNCIL GOAL ADDRESSED

The City Council, in its Goals for 2010-2011, has identified as a major priority the implementation of the community's vision which includes an objective to create permit processes that are more timely and predictable.

Goal 1: Implement the adopted Community Vision by updating the Comprehensive Plan and key development regulations in partnership with residents, neighborhoods, and businesses.

Major Objectives:

- Adopt amendments to the City's development regulations to make the permit process more timely, clear and predictable, e.g., administrative design review, planned actions, subarea plans, and other appropriate planning tools.
- Adopt amendments to the tree regulations, adopt a policy of increasing tree canopy through voluntary programs, and become a Tree City USA
- Amend the citywide Comprehensive Plan to make it consistent with the adopted 2029 Vision and Framework Goals while also reducing its length and complexity
- Adopt the Town Center Subarea Plan and code

RECOMMENDATION

Staff recommends that the Council adopt Ordinance 621 transferring review authority for all quasi-judicial hearings from the Planning Commission to the Hearing Examiner and amending Chapter 2.20.060 and Table 20.30.060 of the Shoreline Municipal Code.

ATTACHMENT

A. Ordinance No. 621

ORDINANCE NO. 621

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON TRANSFERRING REVIEW AUTHORITY FOR ALL QUASI-JUDICIAL HEARINGS FROM THE PLANNING COMMISSION TO THE HEARING EXAMINER; AND AMENDING CHAPTER 2.20.060 AND TABLE 20.30.060 OF THE SHORELINE MUNICIPAL CODE.

WHEREAS, a public participation process was conducted to develop and review the proposed amendment to the Development Code to transfer review authority for quasi-judicial hearings from the Planning Commission to the Hearing Examiner, including:

WHEREAS, the Planning Commission held a Public Hearing on August 18, 2011, where it formulated its recommendation to Council on the proposed amendments;

WHEREAS, the proposed action is exempt from SEPA under WAC 197-11-800(19); and

WHEREAS, the proposed amendments were submitted to the State Department of Commerce on February 10, 2011 for comment pursuant to RCW 36.70A.106; and

WHEREAS, no comments were received from the State Department of Commerce; and

WHEREAS, the Council finds that the amendments adopted by this ordinance meet the criteria in SMC 20.30.350 for adoption of amendments to the Development Code;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Amendment. Shoreline Municipal Code 2.20.060 is amended as follows:

2.20.060 Duties – Responsibilities

[A-H unchanged]

I. ~~———— The planning commission shall make recommendations to the city council regarding the subdivision of land pursuant to RCW 58.17.100 and in conformity with other ordinances of the city.~~

J. The planning commission shall have such other duties and powers as may be conferred upon the commission from time to time by ordinance, resolution or motion of the city council.

K. Unless otherwise assigned by ordinance to another body, all public hearings required to be held in the course of adoption or amendment to the comprehensive plan, the zoning code, ~~adoption or amendment of the zoning map,~~ or adoption or amendment of regulations for the subdivision of land, shorelines management and environmental protection regulations shall be heard by the planning commission.

Section 2. Amendment. Shoreline Municipal Code Table 20.30.060 is hereby amended as follows:

Table 20.30.060 – Summary of Type C Actions, Notice Requirements, Review Authority, Decision Making Authority, and Target Time Limits for Decisions

Action	Notice Requirements for Application and Decision ⁽³⁾ , ⁽⁴⁾	Review Authority, Open Record Public Hearing	Decision Making Authority (Public Meeting)	Target Time Limits for Decisions	Section
Type C Permits:					
1. Preliminary Formal Subdivision	Mail, Post Site, Newspaper	<u>HE</u> ^{(1), (2)} PC ⁽³⁾	City Council	120 days	20.30.410
2. Rezone of Property ⁽²⁾ and Zoning Map Change	Mail, Post Site, Newspaper	<u>HE</u> ^{(1), (2)} PC ⁽³⁾	City Council	120 days	20.30.320
3. Special Use Permit (SUP)	Mail, Post Site, Newspaper	<u>HE</u> ^{(1), (2)} PC ⁽³⁾	HE City Council	120 days	20.30.330
4. Critical Areas Special Use	Mail, Post Site, Newspaper	<u>HE</u> ^{(1), (2)}		120 days	20.30.333
5. Critical Areas Reasonable Use	Mail, Post Site, Newspaper	<u>HE</u> ^{(1), (2)}		120 days	20.30.336
6. Final Formal Plat	None	Review by Director	City Council	30 days	20.30.450
7. SCTF – Special Use Permit	Mail, Post Site, Newspaper	<u>HE</u> ^{(1), (2)} PC ⁽³⁾	HE City Council	120 days	20.40.505
8. Street Vacation	PC ⁽³⁾ , <u>Mail, Post Site, Newspaper</u>	<u>HE</u> ^{(1), (2)} PC ⁽³⁾	City Council	120 days	See Ch. 12.17 SMC
9. Master Development Plan	Mail, Post Site, Newspaper	<u>HE</u> ^{(1), (2)} PC ⁽³⁾	HE City Council	120 days	20.30.353

⁽¹⁾ Including consolidated SEPA threshold determination appeal, ⁽²⁾ ~~The rezone must be consistent with the adopted Comprehensive Plan,~~ ⁽²⁾ HE = Hearing Examiner, ⁽³⁾ Notice of application requirements are specified in SMC 20.30.120,
⁽⁴⁾ Notice of decision requirements are specified in SMC 20.30.150

Section 3. Severability. 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 4. Effective Date and Publication. A summary of this ordinance consisting of its title shall be published in the official newspaper of the City. The ordinance shall take effect and be in full force five days after passage and publication

PASSED BY THE CITY COUNCIL ON NOVEMBER 28, 2011.

Mayor Keith McGlashan

ATTEST:

APPROVED AS TO FORM:

Scott Passey
City Clerk

Ian Sievers
City Attorney

Date of Publication:
Effective Date:

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