

ORDINANCE NO. 959

AN ORDINANCE OF THE CITY OF CLYDE HILL, WASHINGTON, REPEALING CLYDE HILL MUNICIPAL CODE (CHMC) CHAPTER 2.21 “BOARD OF ADJUSTMENT” IN ITS ENTIRETY AND REPLACING IT WITH NEW CHAPTER 2.21 “HEARING EXAMINER” AS SET FORTH HEREIN; SUBSTITUTING THE HEARING EXAMINER IN ALL CURRENT REFERENCES TO THE BOARD OF ADJUSTMENT IN THE CHMC; AMENDING CHMC SECTIONS 19.01.003, 2.14.010 AND 8.30.190; AMENDING CERTAIN OTHER SECTIONS OF THE CHMC BY REPLACING REFERENCE TO THE BOARD OF ADJUSTMENT OR THE PLANNING COMMISSION, TO THE HEARING EXAMINER; PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE, AND FOR SUMMARY PUBLICATION OF THIS ORDINANCE BY ORDINANCE TITLE ONLY.

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**WHEREAS**, the City is authorized under RCW 35A.63.170, RCW 35.63.130 RCW 58.17.330, and WAC 51.04.030 to establish an office of Hearing Examiner in the City and a Hearing Examiner System to conduct quasi-judicial hearings; and

**WHEREAS**, the City Council has determined it to be in the interest of the City and the public to establish a Hearing Examiner System and to transfer certain duties of the Board of Adjustment under current ordinances and code provisions to the Hearing Examiner and in other cases the duties of the Planning Commission to the Hearing Examiner;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLYDE HILL, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1.** **Chapter repealed and re-established.** Chapter 2.21 CHMC (“Board of Adjustment”) is hereby repealed in its entirety and replaced and reestablished to read as follows:

CHAPTER 2.21  
HEARING EXAMINER SYSTEM

Sections:

2.21.010 Hearing Examiner  
2.21.020 Office of Hearing Examiner

- 2.21.030 Appointment
- 2.21.040 Appointment of hearing examiner pro tempore
- 2.21.050 Hearing examiner – Conflict of interest and freedom from improper influence
- 2.21.060 Powers
- 2.21.070 Payment of cost of transcription of verbatim written transcript

### **2.21.010 Hearing Examiner.**

The purpose of this chapter is to establish the office of hearing examiner and the authority of the hearing examiner, which shall include conducting administrative hearings and other proceedings as prescribed by this code or other city ordinance, and to provide an administrative land use regulatory system which will best satisfy the following basic needs:

- 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 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 processes for land use matters.

### **2.21.020 Office of Hearing Examiner**

The hearing examiner shall exercise the authority of the hearing body, for the matters designated in this chapter. The hearing examiner shall also have any duties and related authority prescribed to the hearing examiner by this code or other city ordinance.

### **2.21.030 Appointment**

The examiner shall be appointed by the mayor or the mayor’s designee, the 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 and other regulatory matters. The examiner shall hold no other appointive or elective public office or position in the city government except as herein provided.

### **2.21.040 Appointment of hearing examiner pro tempore**

The mayor or mayor’s designee may appoint one or more hearing examiners pro tempore to act in the absence of the regular hearing examiner. Such appointment shall be from qualified applicants to be recommended by the hearing examiner. Hearing examiners pro tempore, when acting in such capacity, shall have all powers and duties of the hearing examiner as prescribed in this code or elsewhere.

### **2.21.050 Hearing examiner – Conflict of interest and freedom from improper influence**

A. The examiner shall not conduct or participate in any hearing or decision in which the examiner has a direct or substantial financial interest.

B. No councilmember, city official or any other person shall attempt to influence or in any way interfere with the examiner in the performance of his designated duties.

#### **2.21.060 Powers**

A. The examiner shall have the authority to and shall conduct hearings and prepare a record thereof, and enter written findings and conclusions, recommendations or decisions for the following land use and other matters:

1. Applications for zoning reclassifications;
2. Applications for conditional uses;
3. Applications for variances and special exceptions;
4. Applications for plats and the amendment of existing plats;
5. Appeals of administrative short plat decisions;
6. Appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of the City Building code;
7. Appeals of State Environmental Policy Act threshold determinations;
8. Appeals of notices of violation when the appeal is assigned by the mayor to the hearing examiner in lieu of the mayor conducting the hearing and/or making the written determination. The mayor may designate the hearing examiner to conduct the hearing and recommend to the mayor a written determination, which the mayor may adopt or modify in making the written determination; and
8. Any other matter designated by this code or other city ordinance; or by the Mayor or the Mayor's designee, not required by statute to be heard or determined by the city council or other city official.

B. The examiner's decision shall be based upon the policies of the comprehensive plan, State Environmental Policy Act, the standards set forth in the various land use regulatory codes of the city, or any other applicable program adopted by the city council. In land use matters, the examiner may attach reasonable conditions found necessary to make a project compatible with its environment and to carry out the goals and policies of the city's comprehensive plan or other applicable plan or program adopted by the city council.

Such conditions may include but are not limited to the following:

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. Impact of the development upon other lands;
3. Hours of use of operation or type and intensity of activities;
4. Sequence and scheduling of development;
5. Maintenance of the development;
6. Duration of use and subsequent removal of structures;
7. 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;
8. Mitigation of any adverse environmental impacts; and
9. Provisions which would bring the proposal into compliance with the comprehensive plan policy.

C. The examiner shall have any duties and related authority prescribed to the hearing examiner by this code or other city ordinance.

D. The examiner shall have any duties and related authority prescribed to the Board of Adjustment by this code or other city ordinance.

E. The examiner shall have the power to prescribe rules and regulations concerning procedures for hearings and other proceedings authorized herein, 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 rules of the examiner.

#### **2.21.070 Payment of cost of transcription of verbatim written transcript**

Whenever the city is required to prepare a verbatim written transcript of any proceedings of the city in response to a writ of review or other action filed in the superior court or any other state or federal court the cost of preparing the same shall be borne by the party filing the action. Within 10 days of the service of such writ of review or other action on the city, the city clerk shall notify the party filing the action that it will be necessary for the city to prepare a verbatim written transcript of the proceedings involved. In such notice, the city clerk shall state the date and subject matter of the public meeting(s) and/or hearing(s) involved and the estimated cost of the preparation of the transcript, including copying costs. Within 10 days of the receipt of such notification, the party

filing such action shall pay said estimated cost to the city clerk as a non-refundable deposit, and the city clerk shall thereafter make provision for the preparation of the transcript.

Should the actual cost incurred by the city in preparation of the transcript exceed the amount deposited with the city clerk, the party making such deposit shall be required to reimburse the city for such additional amount within 10 days of notification that such amount is due.

**Section 2.** **Section Amendment.** Section 19.01.003 is hereby amended for consistency with Section 1 of this ordinance, to read as follows:

19.01.003 Project permit application framework.

**Action Type**

PROCEDURE PROJECT PERMIT APPLICATIONS (TYPE I – IV) LEGISLATIVE						
	TYPE I	TYPE II	TYPE III	TYPE IVA	TYPE IVB	TYPE V
Recommendation made by:	N/A	N/A	N/A	Hearing Examiner	N/A	Planning commission
Final decision made by:	Administrator	Administrator/ <del>planning commission</del> Hearing Examiner	Hearing Examiner	City council	City council	City council
Notice of application:	No, unless SEPA applies	No, unless SEPA applies	Yes	Yes	Yes	No
Open record public hearing:	No	Only if appealed, open record hearing before City Council Hearing Examiner	Yes, before hearing examiner to render final decision	Yes, before hearing examiner	Yes, before council to render final decision	Yes, before planning commission to make recommendation to council

PROCEDURE PROJECT PERMIT APPLICATIONS (TYPE I – IV) LEGISLATIVE						
	TYPE I	TYPE II	TYPE III	TYPE IVA	TYPE IVB	TYPE V
Closed record appeal/final decision:	No	No	Only if appealed, then before hearing examiner	City council to make final decision	No	Yes, or council could hold its own hearing
Judicial appeal:	Yes	Yes	Yes	Yes	Yes	Yes

### Decisions

TYPE I	TYPE II	TYPE III	TYPE IVA	TYPE IVB	TYPE V
Building, grading, mechanical permits (non-SEPA) CHMC <a href="#">15.04.080</a>	Short plat Chapter <a href="#">16.12</a> CHMC	Variances and special exceptions CHMC <a href="#">17.72</a>	Preliminary plat Chapter <a href="#">16.16</a> CHMC	Final plat Chapter <a href="#">16.20</a> CHMC	Comp. plan and amendments CHMC <a href="#">19.01.005</a>
Sign permits Chapter <a href="#">17.56</a> CHMC	Boundary line adjustment Chapter <a href="#">16.10</a> CHMC	Interpretations CHMC <a href="#">17.72.060</a>	Plat amendments Chapter <a href="#">16.36</a> CHMC	Site-specific rezone ( <del>planning commission</del> hearing examiner) Chapter <a href="#">17.76</a> CHMC	Development regulations and amendments CHMC <a href="#">19.01.005</a>
Swimming pool permits Chapter <a href="#">17.48</a> CHMC	Recreational facilities permits Chapter <a href="#">17.40</a> CHMC	Variations and exceptions ( <del>planning commission</del> hearing examiner) Chapter <a href="#">16.32</a> CHMC			

TYPE I	TYPE II	TYPE III	TYPE IVA	TYPE IVB	TYPE V
Public place use permit Chapter <a href="#">12.14</a> CHMC	Building, grading, mechanical permits (SEPA) CHMC <a href="#">15.04.080</a>	Variances and exceptions <a href="#">15.10.070</a>	Conditional use permits Chapter <a href="#">17.10</a> CHMC		

**Section 3. Amendment.** Subsection 2.14.010(F) CHMC is hereby amended to read as follows (additions shown by underline and deletions by strikeout):

F. Attendance at ~~all board of adjustment~~ hearings before the hearing examiner and planning commission meetings;

**Section 4. Amendment.** Section 8.30.190 CHMC is hereby amended to read as follows (additions shown by underline and deletions by strikeout):

8.30.190 Application – Procedure.

An application for any variance from the provisions of this chapter is a Type III application. All applications made under this section shall be made in writing ~~at least 35 days in advance of any meeting of the board of adjustment for hearing and determination by the hearing examiner.~~ The fee for such application shall be set by resolution of the city council.

**Section 5. Other CHMC Section Amendments.** The following sections of the CHMC are hereby amending by replacing all references to the Board of Adjustment or to the Planning Commission with “hearing examiner.” 8.30.220; 15.04.050(N); 15.10.070(B); 15.13.010; 16.32.010; 17.04. 010(B); and 19.01.002(C).

**Section 6. Severability.** If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

**Section 7. Effective Date.** This ordinance shall be in full force and effect five days after publication of the summary of this ordinance, consisting of its title.

**PASSED by the City Council and APPROVED by the Mayor of the City of Clyde Hill, at a regular meeting held this \_\_ day of August, 2018.**

CITY OF CLYDE HILL, WASHINGTON:

\_\_\_\_\_  
MAYOR, GEORGE MARTIN

Published: \_\_\_\_\_

Effective: \_\_\_\_\_

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
CITY CLERK, MITCHELL WASSERMAN

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY \_\_\_\_\_  
GREG A. RUBSTELLO, CITY ATTORNEY



**SUMMARY OF ORDINANCE NO. 959**

of the City of Clyde Hill, Washington

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On \_\_\_\_\_, 2018, the City Council of the City of Clyde Hill, Washington, approved Ordinance No. \_\_\_\_, the main points of which are summarized by its title as follows:

AN ORDINANCE OF THE CITY OF CLYDE HILL, WASHINGTON, REPEALING CLYDE HILL MUNICIPAL CODE (CHMC) CHAPTER 2.21 “BOARD OF ADJUSTMENT” IN ITS ENTIRETY AND REPLACING IT WITH NEW CHAPTER 2.21 “HEARING EXAMINER” AS SET FORTH HEREIN; SUBSTITUTING THE HEARING EXAMINER IN ALL CURRENT REFERENCES TO THE BOARD OF ADJUSTMENT IN THE CHMC; AMENDING CHMC SECTIONS 19.01.003, 2.14.010 AND 8.30.190; AMENDING CERTAIN OTHER SECTIONS OF THE CHMC BY REPLACING REFERENCE TO THE BOARD OF ADJUSTMENT OR THE PLANNING COMMISSION, TO THE HEARING EXAMINER; PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE, AND FOR SUMMARY PUBLICATION OF THIS ORDINANCE BY ORDINANCE TITLE ONLY.

The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their meeting of \_\_\_\_\_, 2018.

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CITY CLERK, MITCHELL WASSERMAN