

March 24, 2015

**CITY OF NORTH BONNEVILLE
ORDINANCE NUMBER 1051**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORTH BONNEVILLE, WASHINGTON AMENDING NORTH BONNEVILLE MUNICIPAL CODE CHAPTER 18 FOR PURPOSES OF ESTABLISHING HEARING EXAMINER PROCEDURE AND DECISION PROTOCOL AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City hires or contracts with a hearing examiner to address land use matters in place of the Planning Administrator, Planning Commission or the City Council; and,

WHEREAS, Code Cities in Washington State have statutory authorization to establish a hearing examiner system under RCW 35A 63.170, and RCW 58.17.330; and,

WHEREAS, the City Council of the City of North Bonneville recently adopted Ordinance 1048 which provides the option for use of a hearing examiner in land use hearings; and,

WHEREAS, the City Council shall prescribe procedures to be followed by a hearing examiner and specify the legal effect of the decisions made by the examiner.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BONNEVILLE, WASHINGTON DO HEREBY ORDAIN AS FOLLOWS:

Section 1

Adopting Chapter Sections 18.01.400 – 475 Hearing Examiner

Chapter 18.01.400 Hearing Examiner

Sections:

18.01.400 Purpose:

18.01.405 Policy:

18. 01.410 Qualifications:

18.01.415 Powers:

18.01.420 Procedures:

18.01.425 Responsibilities

18.01.430 Scope of Review:

18.01.435 Duties:

18.01.440 Noninterference in Performance of Duties:

18.01.445 Conflict of Interest:

18.01.450 Legal Counsel for Hearing Examiner:

18.01.455 Disqualification of Hearing Examiner:

18.01.460 Final Decision:

18.01.465 Legal Effect of Decision:

18.01.470 Appeal to City Council:

18.01.475 Fees:

18.01.400 - **Purpose:** The hearing examiner position is established to provide an efficient and effective administrative adjudicatory system for acting upon quasi-judicial matters and reviewing contested administrative determinations.

18.01.405 - **Policy:** Whenever the city requires a public hearing to be conducted by the hearing examiner, the hearing shall be conducted in accordance with the procedures established in 18.01.400 NBMC.

18.01.410 - **Qualifications:** The party selected to serve the City in this role must be an experienced attorney, with expertise presiding over hearings often involving private citizens without counsel, in matters typically addressing land use, planning, code enforcement, and development issues. The hearing examiner must be familiar with due process, appearance of fairness rules, applicable Washington State law and become familiar with the City of North Bonneville development codes and other relevant codes, ordinances, regulations and policies.

18.01.415 - **Powers:** The hearing examiner may only hear matters where they have expressed authority as outlined in the scope of review as noted in 18.01.430. The hearing examiner is empowered to act in lieu of the city council, the planning commission and other officials as may be assigned for those matters listed in the scope of review. Wherever existing ordinances, codes or policies authorize or direct the aforementioned authorities to undertake certain activities which the hearing examiner has been assigned, such ordinances, codes or policies shall be construed to refer to the hearing examiner. The hearing examiner shall have the power to receive and examine available information, conduct public hearings and prepare a record thereof and enter decisions as provided by ordinance. The decision of the hearing examiner shall be appealable according to how the land use matter would be appealed based on the type of decision making role they are assuming as noted in 18.01.040.

18.01.420 - **Procedures:** The hearing examiner shall adopt rules concerning procedures for scheduling and conduct of hearings and as otherwise related to the duties of the office, not inconsistent with the terms of this chapter.

18.01.425 - **Responsibilities:** The hearing examiner is responsible for conducting hearings involving a variety of complex land use and regulatory compliance issues, and other issues which the city council may delegate to the hearing examiner by ordinance or resolution. The hearing examiner shall issue decisions or recommendations based on relevant ordinances, regulations, policies and statutes.

18.01.430 - **Scope of Review:** The hearing examiner may hear land use applications consistent with the provisions of RCW 35A 63.170 and RCW 58.17.330, to include the following type land use applications: conditional use permits, variances, subdivisions, shoreline permits, or any other class of applications for or pertaining to development of land or land use; appeals of administrative decisions or determinations; land use matters dealing with amending the zoning ordinance when the amendment, which is applied for is not of general applicability; and, appeals of administrative decisions or determinations pursuant to RCW Chapter 43.21C relating to state environmental policy and preliminary and final plat approval recommendations.

18.01.435 - **Duties:**

- The hearing examiner's duties include but are not limited to the following:

- Develop procedural rules for the scheduling and conduct of hearings and related matters;
- Review properties that are the subject of hearings to become familiar with the terrain and relationships to other properties;
- Receive and examine hearing related documents and review case files, city codes and policies, environmental impact statements, plot plans and topographical maps and other pertinent information;
- Regulate the course of the hearing in accordance with this chapter and other applicable ordinances;
- Evaluate testimony and evidence, prepare records, enter final written findings, conclusions of law, and recommendations to the city council;
- Include in a decision any condition of approval that is necessary to ensure that the proposal complies with all applicable code criteria and comprehensive plan policies and does not adversely affect surrounding properties;
- Prepare reports and correspondence as requested;
- Identify weaknesses inherent in municipal code procedures and suggest remedies;
- Maintain knowledge of current relevant state and city land use laws, policies and related state and federal court decisions.

18.01.440 - **Noninterference in Performance of Duties:** No person shall attempt to interfere with or improperly influence the hearing examiner in the performance of designated duties. This provision shall not prohibit the city attorney from providing legal advice to the hearing examiner.

18.01.445 - **Conflict of Interest:** The hearing examiner shall not conduct or participate in any hearing or decision in which they have a direct or indirect personal interest, which might exert such influence upon the examiner that might improperly interfere with the decision-making process. Any actual or potential conflict of interest shall be disclosed to the parties immediately upon discovery of such conflict and the examiner shall abstain from any further proceedings in the matter unless all parties agree in writing to have the matter heard by that hearing examiner.

18.01.450 - **Legal Counsel for Hearing Examiner:** General legal advice to the hearing examiner will be provided by the city attorney, except that in a contested case where the city will be represented by the city attorney, the mayor with input from the city council may appoint independent counsel to render legal advice to the hearing examiner, the cost of which shall be borne by the city.

18.01.455 - **Disqualification of Hearing Examiner:** The hearing examiner may enter an order of disqualification in the event of personal bias or prejudice or to preserve the appearance of fairness. Prior to any hearing on a matter, a party may file an affidavit, which is a sworn statement in writing and under oath, stating that such party cannot have a fair and impartial hearing by reason of the hearing examiner's personal bias or prejudice. The hearing examiner shall rule on the affidavit prior to making other ruling and prior to the hearing.

18.01.460 - **Final Decision:** Each final decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. Such findings and conclusions shall also set forth the manner in which the decision would carry out and conform to the city's comprehensive plan and the city's development regulations. Each final decision of a hearing examiner, unless a longer period is mutually agreed to in writing by the applicant and the hearing examiner, shall be rendered within ten [10] working days following conclusion of all testimony and hearings.

18.01.465 - **Legal Effect of Decisions:** The legal effect of the hearing examiner's decision may vary for the different classes of applications decided by the examiner but shall include one of the following:

- (a) The decision may be given the effect of a recommendation to the legislative body;
- (b) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative body, or, if applicable, to Superior Court; or
- (c) Except in the case of a rezone, the decision may be given the effect of a final decision of the legislative body.

18.01.470 - **Appeal to City Council:** The decision of the hearing examiner shall be appealable according to how the land use matter would be appealed based on the type of decision making role they are substituting as noted in 18.01.040. An aggrieved party or a city department may file a hearing decision to the city council by filing a written notice of appeal with the city clerk within 14 days, or as otherwise provided by this code or RCW 36.70B.110, of the final decision of the hearing examiner.

The notice of appeal shall state clearly the error of fact, law, or procedure alleged to have been made by the hearing examiner and the effect of the alleged error on the recommendation, and state the redress sought by the appellant. The notice of appeal shall be filed, together with a fee of \$ _____, in accordance with NBMC 18.01.475.

The city council will set a time and place for a hearing on the appeal before the city council, provided the time shall be as soon as practicable. Notice of the time and place for the appeal proceeding shall be sent to the appellant.

Review by the city council on appeal shall be limited to and shall be based solely on the record from the public hearing; provided, however, that the city council may permit oral or written arguments or comments when confined to the content of the record of the hearing below. No new evidence may be presented. In respect to the matter appealed, the city council may adopt or reject, in whole or in part, the findings and recommendations of the hearing examiner or make such other dispositions of the matter, including, without limitation, remand for further hearing. The city council will reduce its determination to writing.

Any appeal from a decision of the city council regarding any assessment may be made to the superior court within the time and in the manner provided by law.

18.01.475 - **Fees:** Each application for a permit or approval which requires a hearing before the hearing examiner, and each appeal to the hearing examiner, shall be accompanied by payment of a fee which shall be set by resolution of the city council.

Section 2

Severability: If any section, sentence, clause or phrase of this Ordinance shall 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 3

Effective Date and Publication: This Ordinance shall be effective five days after publication of the Ordinance, or a summary thereof consisting of its title, in the official newspaper of the City.

PASSED BY THE CITY COUNCIL ON APRIL 14th, 2015
cb

Don Stevens, Mayor

Attest: *[Signature]*

Steven Hasson City Administrator

Approved as to Form:
[Signature]

Ken Woodrich City Attorney