

CLEARANCES	Initial	Date	Date Received in Council Office:	Agenda date	Assigned to:
Originator: Council Clerk		5/16		6/6/95	Council Introduction
Division Head:				6/20/95	Council
Dept. Head:					
Prosecutor:	DG	5/25			
Purchasing/Budget:					
Executive:					

SUBJECT: Ordinance amending Whatcom County Code Section 20.92, regarding appeals of Hearing Examiner decisions to the County Council

ATTACHMENTS:

Proposed ordinance

SUMMARY STATEMENT:

Please complete sections of box as appropriate & explain the item below.

Related County contract #: n/a	Should Clerk schedule a hearing? NO / / YES / / Requested date:
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The Hearing Examiner appeal process has become cumbersome for the public Adoption of this ordinance would streamline the process for staff and for the public.

CLERK'S RECOMMENDED MOTION (for final action):

"I move that the Council adopt the ordinance."

COUNCIL ACTION TAKEN:

6/6/95: Council introduction
 6/20/95: Amended, Adopted 6-0

Related File Numbers:

Ordinance or Resolution Number (this item only):

SPONSORED BY: Consent

PROPOSED BY: Council Clerk

INTRODUCTION DATE: 6/6/95

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ORDINANCE NO. 95-033

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4

AMENDING WHATCOM COUNTY CODE SECTION 20.92, REGARDING
APPEALS OF HEARING EXAMINER DECISIONS TO THE COUNTY COUNCIL

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WHEREAS, Whatcom County Code Section 20.92 provides a process for appealing a decision rendered by the Whatcom County Hearing Examiner, and;

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WHEREAS, the existing process needs to be streamlined for the benefit of the public and county staff, to encourage a "one-stop shopping" approach to government services when possible; and

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WHEREAS, the achievement of this goal will be assisted if the revision to Whatcom County Code 20.92, attached hereto as Exhibit A, is adopted;

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NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code Chapter 20.92 of the official Whatcom County Code is hereby amended as indicated in Exhibit A to this ordinance, to be effective for appeals from decisions rendered on or after July 1, 1995.

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ADOPTED this 20 day of June, 1995.

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ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY,
WASHINGTON

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Dana Brown-Davis, Clerk of the Council


Robert A. Imhof, Council Chair

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APPROVED AS TO FORM:

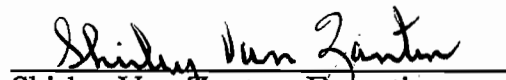
Approved Denied

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Civil Deputy Prosecutor


Shirley Van Zanten, Executive
Date: _____

1 EXHIBIT A

2 **20.92.600 APPEAL TO COUNTY COUNCIL**

3 .610 The applicant, any party of record, or any county department may appeal any final
4 decision of the Hearing Examiner to the County Council. The appellant shall file a
5 written notice of appeal at the County Council office within (10) days of the final
6 decision of the Hearing Examiner. Any parties of record from the Hearing
7 Examiner's proceedings who wish to continue to be considered parties of record must
8 register with the County Council in writing no later than ten (10) days after the date
9 of the notification of appeal letter which is sent from the Hearing Examiner's office.
10 The notification of appeal letter will be sent from the Hearing Examiner's office
11 within 3 (three) working days of receiving written notification from the County
12 Council office that an appeal has been filed.

13 .620 A fee, as established in the Unified Fee Schedule, shall be paid to the County
14 Council office upon filing of any appeal. This fee shall not apply to appeals initiated
15 by a county department.

16 **.630 Transcript**

17 (1) The appellant shall make arrangements for the preparation of the transcript
18 with the court reporter present at the Hearing Examiner's hearing and shall
19 forward the transcript to the County Council office within 30 days of filing the
20 appeal. Upon request of the Council office, the Hearing Examiner's office
21 shall prepare and transmit to the Council office the Hearing Examiner's file,
22 together with exhibits.

23 If all parties of record and the County Council agree, a summary of the facts
24 or an abridged transcript may be substituted for a full transcript. Parties
25 requesting such a substitution shall present such request to the County
26 Council in the form of a motion. The motion shall be accompanied by proof
27 that agreement of all parties of record has been obtained.

28 (2) A copy of the record on appeal shall be provided by the appellant to the
29 Council office and copies shall be made available to parties on request at a
30 cost to be fixed by the Council office.

31 **.640 Written Argument**

32 (1) Within two working days after receipt of either the transcript of the hearing
33 conducted by the Hearing Examiner, a summary of facts, or an abridged
34 transcript, the County Council office shall send a letter of notification to the
35 appellant that a statement containing the appellant's basis for appeal and

1 argument is due. The statement and argument, and a proof of service
2 (affidavit of mailing) upon those parties who have registered with the County
3 Council, must be filed in writing, along with ten (10) copies, with the Clerk
4 of the County Council within fifteen (15) calendar days after the postmark
5 date of the letter of notification.

6 (2) Any argument or response by any person or entity opposing the appeal must
7 be filed in writing along with ten (10) copies, within fourteen (14) calendar
8 days after the date of filing of the appellant's argument with the Council
9 office.

10 (3) Failure of the appellant to abide by the time limits contained herein will
11 result in automatic dismissal of the appeal.

12 .645 **Time Extension:** Extensions of timelines established hereinabove may be
13 granted by the Council Chair upon demonstration of good cause. Requests
14 for extensions shall be presented to the Clerk of the Council in writing.

15 .650 **Time Limitation on County Council:** Within thirty-five (35) days after the filing of
16 the respondent's written argument, the County Council shall render a decision.
17 Thereafter the County Council will issue findings of fact and conclusions of law no
18 later than fifteen (15) days following the decision. This time limitation shall not apply
19 when a remand procedure is initiated.

20 .660 **Appeal on Record:** The decision of the County Council shall be based solely upon
21 the record and the written argument that has been submitted by the parties. Oral
22 argument may be scheduled at the discretion of the County Council.

23 **20.92.700 REMAND TO HEARING EXAMINER**

24 .710 The County Council may, within its discretion, remand the case back to the Hearing
25 Examiner, if the Council finds:

26 (1) That new evidence is available that could affect the outcome of the
27 case and was not available at the first hearing.

28 (2) That the record, in whole or in part, is not sufficient for the Council
29 to make a reasoned decision on the appeal.

30 (3) That the decision of the Hearing Examiner should be reversed and
31 that additional information is necessary before a final decision can be
32 made.

- 1 .720 **Remand Order:** The remand shall be in the form of a written order and shall state
2 the specific areas to be considered by the Hearing Examiner at the remand hearing.
3 The remand hearing shall be limited to the specific areas of concern stated in the
4 remand order from the County Council.
- 5 .730 **Public Hearing Notice:** Upon receipt of the remand order, the Hearing Examiner
6 shall set the matter for public hearing. Such hearing shall be expedited to the extent
7 that is practical, not to exceed twenty (20) working days from receipt of the remand
8 order. Notice of the hearing shall be given to the applicant and all parties of record
9 by mail at their last known address. No other notice is required.
- 10 .740 **Filing of Information:** The Hearing Examiner shall file the information request in
11 the remand order with the Clerk of the County Council as soon as possible but not
12 to exceed fifteen (15) working days from the date of the hearing.
- 13 .750 **Final Decision of County Council:** The County Council shall, within twenty-eight
14 (28) working days of filing of the information from the remand hearing, issue their
15 final written decision together with findings of fact and conclusions of law.

16 **20.92.800 COUNTY COUNCIL-FUNCTION IN HEARING EXAMINER PROCESS**

- 17 .810 **Reversal of Hearing Examiner Decisions:** The County Council shall affirm the
18 decision of the Hearing Examiner unless a majority of the entire County Council
19 finds that the decision of the Hearing Examiner is:
- 20 (1) Based upon an error of law, or
- 21 (2) Clearly erroneous on the entire record.
- 22 .820 **Conditions:** The County Council may, where their decision results in project
23 approval, impose, modify or delete conditions upon the license, permit approval,
24 variances or appeal, consistent with WCC 20.92.310, and may exercise the powers
25 granted therein.
- 26 .830 **No Interference With the County Council:** No individual or county official shall
27 interfere with or attempt to interfere with the individual Council members of the
28 County Council in the execution of the quasi-judicial duties they have assumed,
29 pursuant to this Ordinance.
- 30 .840 **Appeal of County Council Decision:** The decision of the County Council shall be
31 final unless appealed within ten (10) days of the issuance of the written decision, in
32 the same manner as appeals from the Board of Adjustment to Superior Court,
33 pursuant to RCW 36.70.890.
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