

CITY OF LYNNWOOD

ORDINANCE NO. 2018

ORIGINAL
Do not remove from
the City Clerk's Office

City of Lynnwood

DEC 20 2000

SCANNED

AN ORDINANCE ADDING NEW SECTIONS TO CHAPTER 1.35 OF THE LYNNWOOD MUNICIPAL CODE; PROVIDING FOR HEARING PROCESSES AND PROCEDURES ("PROCESS I" AND "PROCESS IV") FOR LAND USE AND DEVELOPMENT APPLICATIONS.

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

Section 1. SCOPE OF PROCESS I. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.110 SCOPE:

Section 1.35.100 et. seq. contains the procedures that the City will use in implementing Process I. This Process includes a hearing and recommendation or decision by the Hearing Examiner. City Council action may be required following that of the Hearing Examiner.

Section 2. APPLICABILITY. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.115 APPLICABILITY:

Section 1.35.100 et. seq. applies each time a provision of the Lynnwood Municipal Code requires a decision using Process I.

Section 3. STATE ENVIRONMENTAL POLICY ACT. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.120 STATE ENVIRONMENTAL POLICY ACT:

The State Environmental Act may apply to an action taken under Section 1.35.100 et. seq. Read LMC Title 17 for additional notice provisions, decision authority and other review requirements.

Section 4. AUTHORITY. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.125 AUTHORITY:

In accordance with the provisions of Process I:

- A. The Hearing Examiner shall conduct a public hearing and either recommend approval or approval with modifications to the City Council or shall deny the proposal.
- B. The City Council shall approve, approve with modifications or deny each application which comes before it under Process I.

Section 5. CONTENT OF PUBLIC NOTICE OF HEARING. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.130 CONTENT OF PUBLIC NOTICE OF HEARING

The applicable Department Director shall prepare a notice of a public hearing on the application containing the following:

- A. The name of the applicant and, if applicable, the project name; and
- B. The street address of the subject property or a description in non-legal terms sufficient to identify its location; and
- C. The citation of the Lynnwood Municipal Code provision requiring a decision using Process I; and
- D. A brief description of the action, permit or approval requested in the application; and
- E. The date, time and place of the public hearing before the Hearing Examiner; and
- F. A statement of the right of any person to participate in the public hearing as provided for in LMC 1.35.135; and
- G. A statement that only those persons who participate in the public hearing as provided in LMC 1.35.135 (B) may appeal a Hearing Examiner decision of denial.

Section 6. NOTICE OF HEARING: A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.132 NOTICE OF HEARING

- A. The applicable Department Director shall provide notice of the public hearing at least 20 days prior to the date of the public hearing.
- B. The applicable Department Director shall provide notice of the public hearing by:
 - 1. Publishing notice of the public hearing in the official newspaper of the City (see LMC 1.08); and
 - 2. Posting notice of the public hearing at each official posting place of the City (see LMC 1.12); and
 - 3. Posting notice of the public hearing on the property.
 - 4. Mailing notice of the public hearing to each owner of real property within 300 feet of any boundary of the subject property and of any property contiguous thereto in the applicant's ownership. Notice mailed to the addressee found on the City of Lynnwood utility billing records, or if no

record for any given lot, then notice mailed to the last owner of record in the office of the County Treasurer shall be deemed proper notice; and

5. Mailing notice of the public hearing to each person who has requested such notice in writing for the calendar year and who has paid a fee of \$250.00 to the City Clerk.
6. The notice by mail requirement shall be satisfied by substantial compliance with this section.

Section 7. PUBLIC HEARING BEFORE HEARING EXAMINER. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.135 PUBLIC HEARING BEFORE HEARING EXAMINER:

- A. **Who May Participate:** Any person may participate in the public hearing.
- B. **How to Participate:** A person may participate in the public hearing by:
 1. Submitting written materials to the applicable Department Director prior to the public hearing; or
 2. Submitting written materials, other exhibits or making oral comments to the Hearing Examiner at the public hearing.
 3. Signing the Parties of Record Sheet at the Public Hearing.

The applicable Department Director shall transmit all written comments received prior to the public hearing to the Hearing Examiner no later than the date of that hearing.

- C. **Hearing Record:** The Hearing Examiner shall make an electronic sound recording of each hearing.

Section 8. EXAMINER MAY REOPEN HEARING. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.137 EXAMINER MAY REOPEN HEARING

When opportunity for additional testimony is warranted the Hearing Examiner may reopen the hearing in accordance with LMC 2.22.110 (B).

Section 9. HEARING EXAMINER ACTION. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.140 HEARING EXAMINER ACTION:

After the public hearing the Hearing Examiner shall either recommend approval, approval with modifications, or denial of the application, except as provided in LMC 1.35.151.

Section 10. CRITERIA. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.142 CRITERIA

The Hearing Examiner may recommend approval or approval with modifications if:

- A. The applicant has carried the burden of proof and produced evidence sufficient to support the conclusion that the application merits approval or approval with modifications; and
- B. The applicant has demonstrated that the proposal complies with the applicable decision criteria of the City Code.

In all other cases, the Hearing Examiner shall recommend denial of the application, except as provided in LMC 1.35.151.

Section 11. LIMITATION ON MODIFICATION. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.143 LIMITATION ON MODIFICATION

If the Hearing Examiner recommends a modification which results in a proposal not reasonably foreseeable from the description of the proposal contained in the public notice provided pursuant to LMC 1.35.130 and .132, the Hearing Examiner shall conduct a new hearing on the proposal as modified.

Section 12. CONDITIONS OF APPROVAL. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.144 CONDITIONS OF APPROVAL

The Hearing Examiner may include conditions as part of the recommendation of approval or approval with modifications to insure conformance with LMC 1.35.142.

Section 13. WRITTEN RECOMMENDATION/DECISION OF THE HEARING EXAMINER. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.145 WRITTEN RECOMMENDATION/DECISION OF THE HEARING EXAMINER:

Unless a longer period is agreed to in writing by the applicant, the Hearing Examiner shall within 14 days following the conclusion of all testimony and hearings issue a written recommendation or decision which contains:

- A. A statement indicating that the application is recommended for approval or approval with modifications or is denied; and
- B. A statement of any conditions included as part of the recommendation of approval or approval with modifications; and
- C. A statement of the facts upon which the recommendation or decision, including any conditions, was based and the conclusions derived from those facts; and

- D. A statement of the right of any person who participated in the public hearing as provided for in LMC 1.35.135 to:
1. Request a reconsideration by the Hearing Examiner as provided for in LMC 1.35.149, or
 2. Appeal the Hearing Examiner decision of denial or decision on a variance as provided for in LMC 1.35.150 and 1.35.151.

Section 14. DISTRIBUTION OF DECISION. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.146 DISTRIBUTION OF DECISION

Within 3 days of its issue, the applicable Department Director shall distribute the written recommendation or decision of the Hearing Examiner, bearing the effective date of the recommendation or decision, to each person who participated in the public hearing as provided for in LMC 1.35.135.

Section 15. LIMITATION ON COUNCIL ACTION. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.147 LIMITATION ON COUNCIL ACTION

The City Council may not consider the application for at least 15 days after the effective date of the recommendation of the Hearing Examiner, unless the applicant and all parties who participated in the hearing before the Examiner agree in writing to waive the request for reconsideration period.

Section 16. HEARING EXAMINER'S POWER TO CORRECT ERRORS OR CLARIFY. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.148 HEARING EXAMINER'S POWER TO CORRECT ERRORS OR CLARIFY

- A. The Hearing Examiner may, at any time prior to a City Council decision on the application, amend the recommendation or decision to correct ministerial errors clearly identifiable from the public record. Such a correction does not affect any time limit provided for in Process I.
- B. The Hearing Examiner may at any time prior to a City Council decision on the application clarify a statement in the written recommendation or decision as long as the clarification does not alter the intent or effect of the recommendation or decision.

Section 17. REQUEST FOR RECONSIDERATION. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.149 REQUEST FOR RECONSIDERATION

Any person who participated in the public hearing as provided for in LMC 1.35.135 may submit a written request for reconsideration by the Hearing Examiner by filing the request with the applicable Department Director within 7 days of the effective date of the Examiner's decision. Such requests shall specify the error of law or fact, or new evidence

which could not have been reasonably available at the time of the hearing conducted by the Hearing Examiner which is the basis of the request. Within 7 days of the date the request for reconsideration is filed with the applicable Department Director, the Examiner's decision on whether to reconsider shall be issued. All persons who participated in prior hearings shall be mailed the decision to reconsider no later than 3 days after the Examiner's decision. The Examiner shall determine whether to hold additional hearings on the matter. All parties who participated in prior hearings shall be mailed notice of this hearing not later than 5 days prior to the hearing. The reconsidered recommendation or decision shall be distributed in accordance with LMC 1.35.146.

Section 18. VACANT

Section 19. HEARING EXAMINER DECISION ON VARIANCE - FINALITY. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.151 HEARING EXAMINER DECISION ON VARIANCE - FINALITY

A decision of the Hearing Examiner on a variance application is the final decision of the City unless appealed.

Section 20. APPEAL OF EXAMINER DECISION. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.152 APPEAL OF EXAMINER DECISION

The decision of the Hearing Examiner to deny an application or proposal may be appealed to the City Council by the applicant. The decision of the Examiner on a variance application may be appealed to the City Council by any person who participated in the public hearing before the Examiner in conformance with LMC 1.35.135. A decision of the Examiner must be appealed to the City Council no more than 10 days following the effective date of the Examiner's decision or is thereafter barred. The City Council shall process such appeal in accordance with LMC 1.35.160 et. seq.

Section 21. CITY COUNCIL ACTION ON THE APPLICATION. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.160 CITY COUNCIL ACTION ON THE APPLICATION

The City Council shall, at a public meeting, consider and take final action on each matter processed under Process I except:

- A. Hearing Examiner decisions of denial that are not appealed; and
- B. Hearing Examiner decisions on variance applications that are not appealed.

Section 22. ELEMENTS TO BE CONSIDERED BY COUNCIL. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.161 ELEMENTS TO BE CONSIDERED BY COUNCIL

The City Council shall consider the following in deciding upon an application or an appeal of an Examiner's decision on a matter:

- A. The application; and
- B. The recommendation or decision of the Hearing Examiner; and
- C. The recommendation to the Hearing Examiner of the applicable City Department(s); and
- D. The criteria listed in each Section of the City Code under which the application was made, and
- E. Any other relevant information which is part of the record.

The City Council shall not accept new information, written or oral, on the application without conducting its own public hearing.

Section 23. ALTERNATIVE COUNCIL ACTION. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.162 ALTERNATIVE COUNCIL ACTION

- A. In deciding upon an application or other action the City Council shall either:
 - 1. Approve the application; or
 - 2. Approve the application with additional conditions, if the applicant stipulates in writing his acceptance of these conditions, provided that these conditions would not waive nor reduce any of the conditions recommended by the Hearing Examiner and would not increase the intensity of development, nor significantly alter the design or uses allowed by the proposal; or
 - 3. Conduct a hearing on the application or remand the application to the Hearing Examiner for an additional hearing; or
- B. In deciding upon an appeal of a Hearing Examiner decision to deny an application or of an Examiner decision on a variance application the City Council shall either:
 - 1. Uphold the Examiner's decision on the matter; or
 - 2. Conduct a hearing on the matter or remand the matter to the Hearing Examiner for an additional hearing. The City Council may limit the scope of the Examiner's hearing by detailing specific items to be considered by the Examiner.

Section 24. LIMITATION ON MODIFICATION. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.163 LIMITATION ON MODIFICATION

If the City Council desires to make a modification of the Hearing Examiner recommendation which results in a determination not reasonably foreseeable from the description of the

proposal contained in the public notice provided pursuant to LMC 1.35.130, the City Council shall conduct its own public hearing on the proposal as modified.

Section 25. CONDITIONS. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.164 CONDITIONS

To insure conformance with the City criteria under which the application was made, the City Council may, based on the record, include conditions in any ordinance or permit approving that application.

Section 26. FINDINGS OF FACT AND CONCLUSIONS OF LAW. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.165 FINDINGS OF FACT AND CONCLUSIONS OF LAW

The City Council shall adopt findings of fact and conclusions derived from those facts which support the decision of the Council, to deny, approve or approve with modifications the application, including any conditions placed on the proposal by the Council. The City Council may by reference adopt some or all of the findings and conclusions of the Hearing Examiner.

Section 27. REQUIRED VOTE. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.166 REQUIRED VOTE

- A. The City Council shall adopt an ordinance or grant a permit which approves or approves with modifications the application by a majority vote of the membership of the City Council.
- B. Any other vote constitutes a denial of the application.

Section 28. DISTRIBUTION OF DECISION. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.167 DISTRIBUTION OF DECISION

Within 3 days the City Clerk shall distribute a letter indicating the content of the final decision of the City to any person who participated in the public hearing on the application as provided for in LMC 1.35.135.

Section 29. EFFECT OF DECISION. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.168 EFFECT OF DECISION

Except for a Hearing Examiner decision that is final, the decision of the City Council on the application or appeal is the final decision of the City. The decision of the City Council on the application or appeal may be appealed to the Superior Court as provided for in LMC 1.35.175.

Section 30. COMMENCEMENT OF ACTIVITIES. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.169 COMMENCEMENT OF ACTIVITY

The applicant may commence activity or obtain other required approvals authorized by the City Council decision 14 days following the effective date of the City Council decision. The City may waive this requirement if the applicant and all parties who participated in the hearing(s) in conformance with LMC 1.35.135 agree in writing to waive the appeal period. Activity commenced prior to the expiration of the full appeal period (LMC 1.35.175) is at the sole risk of the applicant.

Section 31. ADDITIONAL HEARING PROCEDURES. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.170 ADDITIONAL HEARING PROCEDURE

- A. If the City Council directs the Hearing Examiner to hear an application, the provisions of LMC 1.35.130 through 1.35.147 apply. The applicable Department Director shall amend the notice of the public hearing as necessary to reflect this process.

- B. If the City Council holds a hearing on the application or on an appeal of an Examiner's decision on a variance or to deny a matter, the PROCESS I provisions for notice and hearing by the Examiner shall apply. The City Clerk shall amend the notice of the public hearing as necessary to reflect that the Hearing will be before the City Council and the rights of the parties who participate in such hearing.

Section 32. APPEAL OF CITY COUNCIL ACTION TO SUPERIOR COURT. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.175 APPEAL OF CITY COUNCIL ACTION TO SUPERIOR COURT

- A. **Who May Appeal:** The decision of the City Council may be appealed by:
 - 1. The applicant; or
 - 2. Any person who participated in the public hearing before the Hearing Examiner or the City Council in conformance with LMC 1.35.135 of this Chapter.

- B. **Form of Appeal:** A person filing an appeal must make application to the Superior Court for a writ of certiorari, writ of prohibition, or writ of mandamus.

- C. **Time to Appeal:** The decision of the City Council must be appealed to Superior Court no more than 14 days following the effective date of the Council decision on the application or is thereafter barred.

Section 33. AMENDMENT OF AN APPROVED PROJECT OR PERMIT. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.180 AMENDMENT OF AN APPROVED PROJECT OR PERMIT:

- A. **General.** Except as otherwise provided in this section, an amendment of a previously approved project or permit is treated as a new application for decision using Process I.

- B. Exemption from Administrative Amendment for Conditional Use Permits, Shoreline Conditional Use Permits and Planned Unit Developments. The following additions and activities to a previously approved project or decision are exempt from Conditional Use Permits, Development Plan Approval and Planned Unit Development review under this Section unless otherwise required by the City Code or by the terms of a concomitant agreement which requires review.
1. Repair without a change in the dimensions or configuration of the structure, or
 2. The addition of minor structural elements and elements such as fences, carports and mechanical equipment, or
 3. Re-striping of parking or circulation areas, minor adjustments to parking area layout, provided the total number of stalls does not fall below the minimum or exceed the maximum number required by the Zoning Code, or
 4. Minor adjustments in building height not to exceed 10 percent in height or minor adjustments in building location not to exceed 10 feet in any direction provided the structures do not modify the Zoning Code requirements to any greater extent than any modifications approved with the original application, or
 5. Changes in color or in plant material.
- C. Additional Criteria. In addition to those additions and activities listed in Subsection B the Planning Director may determine that a change to a previously approved project or permit is not subject to administrative amendment review if:
1. The proposal does not result in any significant impact beyond the site, and
 2. The proposal is outside the purpose of the administrative amendment and PUD/Conditional Use requirements, determined by review of the applicable decision criteria, and
 3. The proposal does not add more than 300 square feet of new floor area per building, to the approved building(s).
- D. Appeal The decision of the applicable Department Director defining an exemption pursuant to this Section may be appealed using Process II.
- E. Administrative Amendment Scope: The following sections contain the procedure that the City will use in deciding on an Administrative Amendment. A proposed amendment which the applicable Department Director determines is within the authority of Subsection F will be decided as an Administrative Amendment unless the applicant has chosen to have the amendment reviewed as a new application using Process I, LMC 1.35.110 through 1.35.165.
- F. Authority for Administrative Amendment: The applicable Department Director shall act on a proposed Amendment to an approved project or permit if:

1. The amendment maintains the design intent or purpose of the original approval, and
2. The amendment maintains the quality of design or product established by the original approval, and
3. The amendment does not add more than the following:
 - a. An addition of 20% gross square footage or more than 5,000 square feet for an existing or approved building, whichever is less, or
 - b. An addition of 5,000 square feet maximum for new structures, and
4. An addition of up to 1,500 square feet per existing or approved building is automatically treated as an administrative amendment unless the addition is exempt under Subsection B, and
5. The amendment does not cause a significant adverse environmental impact on or beyond the site, and
6. The amendment is not precluded by the terms of the City Code or by state law from being decided administratively.

G. Decision Criteria for Administrative Amendment. The applicable Department Director may approve or approve with modifications an administrative amendment if --

1. The applicant has carried the burden of proof and produced evidence sufficient to support the conclusion that the application merits approval or approval with modifications, and
2. The applicant has demonstrated that the proposal complies with the applicable decision criteria of the City Code.

In all other cases, the applicable Department Director shall deny the application.

H. Conditions: The applicable Department Director may include conditions as part of the approval or approval with modifications to insure conformance with Subsection G.

I. Written Proposed Decision: The applicable Department Director shall issue a written proposed decision on the administrative amendment which contains the following:

1. A description of the project or decision and the proposed administrative amendment, and
2. An analysis of the proposed administrative amendment using the applicable decision criteria and a determination that the administrative amendment is within the scope of an administrative amendment pursuant to Subsection E, and

3. A statement that the administrative amendment is proposed to be approved, approved with modifications or denied subject to the provisions of the Section, and
4. A statement of facts upon which the proposed decision, including any conditions, was based and conclusions derived from those facts.

J. Public Notice of Proposed Decision:

1. Content: The applicable Department Director shall prepare notice of the proposed decision containing the following:
 - a. The name of the applicant, and if applicable, the project name, and
 - b. The street address of the subject property and a description in non-legal terms sufficient to identify its location, and
 - c. A vicinity map indicating the location of the subject property, and
 - d. The file number of the previously approved project or decision, and
 - e. A brief description of the previously approved project or decision and of the proposed administrative amendment, and
 - f. A statement that the proposed administrative was approved, approved with modifications or denied subject to the filing of an objection pursuant to Subsection L, and
 - g. A statement that the proposed decision will become final unless an objection is filed pursuant Subsection L, and
 - h. A statement of the right of any person to whom notice was mailed to file an objection to the proposed decision pursuant to Subsection L, and
 - i. A statement that filing an objection pursuant to Subsection L will cause the proposed decision to be void and will result in the proposed amendment being treated as a new application under Process I Section .110-.170, and
 - j. A statement that if no objection is filed pursuant to Subsection L the proposed decision of the Director becomes final and may be appealed as provided in Subsection N.

K. Provision of Notice: The applicable Department Director shall mail notice of the proposed decision to --

1. The applicant, and

2. Each owner of real property abutting or directly across a public right-of-way from all contiguous property owned by the applicant determined by projecting the property line of that property, and
3. Each person who has requested such notice in writing for the calendar year and who has paid the fee established by the applicable Department Director, and
4. Each person who can be identified from existing City records as having participated in the original decision.

L. Objection to Administrative Amendment:

1. **Who May File:** Any person to whom notice was mailed pursuant to Subsection K or the applicant may file an objection to the proposed decision.
2. **How to File:** An objection must be in writing and state specific concerns which cause the objection, and must be filed with the applicable department by 5:00 p.m. within 17 calendar days of the date notice of the proposed decision was mailed. There is no fee for filing an objection.
3. **Effect of Objection:** If an objection is filed pursuant to this Subsection the proposed decision of the Director is void and the amendment will be processed as a new application using Process I, LMC 1.35.110 through 170.
4. **Effect of No Objection:** If no objection is filed pursuant to this Subsection the proposed decision of the Director becomes final and may be appealed pursuant to Subsection N.

M. Commencement of Activity: If no objection is filed pursuant to Subsection L, the applicant may commence activity or obtain other required approvals authorized by the Director's decision seven calendar days following the final decision of the City. Activity commenced prior to the expiration of the full appeal period provided in Subsection N is at the sole risk of the applicant.

N. Appeal of Director's Decision:

1. **Who May Appeal:** The decision of the applicable Department Director may be appealed by --
 - a. The applicant, or
 - b. Any person to whom notice of the proposed decision was mailed pursuant to Subsection K
2. **Form of Appeal:** A person filing an appeal must make application to Superior Court for a writ of certiorari, writ of prohibition or writ of mandamus.
3. **Time to Appeal:** The decision of the applicable Department Director must be appealed to Superior Court no more than 20 calendar days following the date on which the time to object expired or is thereafter barred.

Section 34. SCOPE OF PROCESS IV. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.410 SCOPE

LMC 1.35.400 et. seq. contains the procedures that the City will use in implementing Process IV. This Process includes a hearing and recommendation by the Planning Commission and a decision by the City Council.

Section 35. APPLICABILITY. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.415 APPLICABILITY

LMC 1.35.400 et. seq. applies each time a provision of the Lynnwood Municipal Code requires a decision using Process IV.

Section 36. STATE ENVIRONMENTAL POLICY ACT. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.420 STATE ENVIRONMENTAL POLICY ACT

The State Environmental Act may apply to an action taken under LMC 1.35.400 et. seq. Read Title 17 for additional notice provisions, decision authority and other review requirements.

Section 37. AUTHORITY. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.425 AUTHORITY

In accordance with the provisions of this LMC 1.35.400 et. seq.:

- A. The Planning Commission shall conduct a public hearing and make recommendation to the City Council regarding each application under Process IV.
- B. The City Council shall approve, approve with modifications or deny each application which comes before it under Process IV.

Section 38. CONTENT OF PUBLIC NOTICE. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.430 CONTENT OF PUBLIC NOTICE

The Planning Director shall prepare a notice of a public hearing on the application containing the following:

- A. The name of the applicant and, if applicable, the project name; and
- B. The citation of the Lynnwood Municipal Code provision requiring a decision using Process IV; and
- C. A brief description of the action, permit or approval requested in the application; and
- D. The date, time and place of the public hearing before the Planning Commission; and

- E. A statement of the right of any person to participate in the public hearing as provided for in LMC 1.35.432.
- F. If the matter involves specific property rather than an area or zone-wide change the street address of the subject property or a description in non-legal terms sufficient to identify its location.

Section 39. NOTICE OF HEARING. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.431 NOTICE OF HEARING

- A. The applicable Department Director shall provide notice of the public hearing at least 20 days prior to the date of the public hearing.
- B. The applicable Department Director shall provide notice of the public hearing by:
 - 1. Publishing notice of the public hearing in the official newspaper of the City (see LMC 1.08), and
 - 2. Posting notice of the public hearing at each official posting place of the City (see LMC 1.12), and
 - 3. Mailing notice of the public hearing to each person who has requested such notice in writing for the calendar year and who has paid the \$250.00 annual fee.
 - 4. If the application involves specific property rather than an area or zone-wide change:
 - a. Posting notice of the public hearing on the property, and
 - b. Mailing notice of the public hearing to each owner of real property within 300 feet of any boundary of the subject property and of any property contiguous thereto in the applicant's ownership. Notice mailed to the addressee found on the City of Lynnwood utility billing records, or if no record for any given lot, then notice mailed to the last owner of record in the office of the County Treasurer shall be deemed proper notice; and
 - 5. The notice by mail requirement shall be satisfied by substantial compliance with this section.

Section 40. PLANNING COMMISSION PUBLIC HEARING. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.432 PLANNING COMMISSION PUBLIC HEARING

- A. Who May Participate: Any person may participate in the public hearing.
- B. How to Participate: A person may participate in the public hearing by:

1. Submitting written comments to the Planning Department prior to the public hearing; or
2. Submitting written comments or making oral comments to the Planning Commission at the public hearing.
3. Signing the party of record sheet at the public hearing.

The Planning Director shall transmit all written comments received prior to the public hearing to the Planning Commission no later than the date of that hearing.

C. Hearing Record: The Planning Commission shall make:

1. An electronic sound recording of each hearing, and
2. Findings of Fact and Conclusions of Law except when the hearing involves an area or zone-wide change.

Section 41. PLANNING COMMISSION RECOMMENDATION. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.433 PLANNING COMMISSION RECOMMENDATION

After the public hearing and any necessary public study sessions on the application, the Planning Commission shall either recommend approval or approval with modifications of the application or shall deny the application.

Section 42. CRITERIA. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.434 CRITERIA

The Planning Commission may recommend approval or approval with modifications if:

- A. The applicant has carried the burden of proof and produced evidence sufficient to support the conclusion that the application merits approval or approval with modifications; and
- B. The applicant has demonstrated that the proposal complies with the applicable decision criteria of the City Code.

In all other cases, the Planning Commission shall recommend denial of the application.

Section 43. LIMITATION ON MODIFICATION. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.435 LIMITATION ON MODIFICATION

If the Planning Commission recommends a modification which results in a proposal not reasonably foreseeable from the description of the proposal contained in the public notice provided pursuant to LMC 1.35.430, the Planning Commission shall conduct a new public hearing on the proposal as modified.

Section 44. REQUIRED VOTE. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.437 REQUIRED VOTE

- A. A vote to recommend approval or approval with modifications must be by a majority vote of the members of the Planning Commission that are present.
- B. Any other vote constitutes a recommendation of denial of the application.

Section 45. PLANNING COMMISSION DENIAL - FINALITY. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.438 PLANNING COMMISSION DENIAL - FINALITY

A decision of the Planning Commission to deny an application or proposal is the final decision of the City unless appealed.

Section 46. APPEAL OF PLANNING COMMISSION DECISION TO DENY. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.439 APPEAL OF PLANNING COMMISSION DECISION TO DENY

The decision of the Planning Commission to deny an application or proposal may be appealed to the City Council by the applicant. A decision of the Planning Commission to deny an application or proposal must be appealed to the City Council no more than 10 days following the effective date of the Planning Commission decision or is thereafter barred. The City Council shall process such appeal in accordance with LMC 1.35.442 et. seq.

Section 47. TRANSMITTAL TO CITY COUNCIL. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.440 TRANSMITTAL TO CITY COUNCIL

A copy of the recommendation of the Planning Commission will be transmitted to the City Council through the Planning Director.

Section 48. CITY COUNCIL ACTION. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.441 CITY COUNCIL ACTION

The City Council shall, at a public meeting, consider and take final action on each matter processed under PROCESS IV except Planning Commission decisions of denial that are not appealed.

Section 49. ELEMENTS TO BE CONSIDERED. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.442 ELEMENTS TO BE CONSIDERED

The City Council shall consider the following in deciding upon an application:

- A. The application; and

- B. The minutes of any public hearing on the application, and any written material submitted in conformance with LMC 1.35.432; and
- C. The recommendation of the applicable City Department(s); and
- D. The recommendation or denial of the Planning Commission; and
- E. The criteria listed in each section of the Lynnwood Municipal Code under which the application was made; and
- F. Any comments on the application received at a public meeting of the City Council; and
- G. Any other relevant information.

Section 50. ALTERNATIVE CITY COUNCIL ACTION. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.443 ALTERNATIVE CITY COUNCIL ACTION

- A. In deciding upon an application or other proposal the City Council shall take one of the following actions:
 - 1. Adopt an ordinance approving the proposal; or
 - 2. Approve the application with additional conditions, if the applicant stipulates in writing his acceptance of these conditions, provided that these conditions would not waive nor reduce any of the conditions recommended by the Planning Commission and would not increase the intensity of development, nor significantly alter the design or uses allowed by the proposal; or
 - 3. Remand the proposal back to the Planning Commission for further proceedings, in which case the City Council shall specify the time within which the Planning Commission shall report back to the City Council with a recommendation on the proposal.
 - 4. Conduct a public hearing on the matter.
- B. In deciding upon an appeal of a Planning Commission decision to deny an application or proposal the City Council shall either:
 - 1. Uphold the Planning Commission's decision on the matter; or
 - 2. Remand the matter to the Planning Commission for further proceedings. The City Council may limit the scope of the Planning Commission's hearing by detailing specific items to be considered by the Planning Commission.
 - 3. Conduct a public hearing on the matter.

Section 51. LIMITATION ON MODIFICATION. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.444 LIMITATION ON MODIFICATION

If the City Council desires to make a modification of the Planning Commission recommendation which results in a decision not reasonably foreseeable from the description of the proposal contained in the public notice provided pursuant to LMC 1.35.430, the City Council shall conduct its own public hearing on the proposal as modified.

Section 52. FINDINGS OF FACT AND CONCLUSIONS OF LAW. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.445 FINDINGS OF FACT AND CONCLUSIONS OF LAW

Except when the matter involves an area or zone-wide change, the City Council shall adopt findings of fact and conclusions derived from those facts which support the decision of the Council, to deny, approve or approve with modifications the application, including any conditions placed on the proposal by the Council. The City Council may by reference adopt some or all of the findings and conclusions of the Planning Commission.

Section 53. REQUIRED VOTE. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.446 REQUIRED VOTE

- A. The City Council shall adopt an ordinance which approves, or approves with modifications, the proposal by a majority vote of the total membership of the City Council.
- B. Any other vote on the proposal constitutes a denial of the application.

Section 54. EFFECT OF DECISION. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.447 EFFECT OF DECISION

- A. Except for Planning Commission decisions to deny an application or proposal that are not appealed, the decision of the City Council is the final decision of the City.
- B. The decision of the City Council may be appealed to the Superior Court as provided for in LMC 1.35.450.

Section 55. COMMENCEMENT OF ACTIVITY. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.448 COMMENCEMENT OF ACTIVITY

The applicant may commence activity or obtain other required approvals following the date of the City Council decision on the matter. Activity commenced prior to the expiration of the full appeal period provided in LMC 1.35.450 is at the sole risk of the applicant.

Section 56. ADDITIONAL HEARING PROCEDURES. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.449 ADDITIONAL HEARING PROCEDURE

If the City Council conducts a public hearing on the matter, notice of the hearing shall be provided in accordance with LMC 1.35.430 through 1.35.432. The City Clerk shall amend the notice of public hearing to reflect this process.

Section 57. APPEAL OF CITY COUNCIL ACTION TO SUPERIOR COURT. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.450 APPEAL OF CITY COUNCIL ACTION TO SUPERIOR COURT

- A. Who May Appeal: The decision of the City Council may be appealed by any person who participated in the public hearing in conformance with LMC 1.35.432 or LMC 1.35.448

- B. Time to Appeal: The decision of the City Council must be appealed to Superior Court no more than 14 calendar days following the date of the City Council decision on the application or is thereafter barred.

Section 58. TIME - COMPUTATION. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.800 TIME - COMPUTATION

In computing any period of time prescribed or allowed by this chapter or any other law or regulation of the City of Lynnwood the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. For the purpose of this section legal holidays are those other than any "floating holiday" prescribed in RCW 1.16.050 and LMC 2.54.020 as they now read or as amended. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. Whenever a person has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

Section 59. RECORDATION OF PERMIT APPROVAL. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.810 RECORDATION OF PERMIT APPROVAL

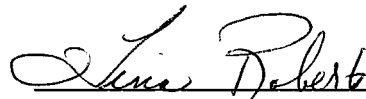
Upon the granting of any permit, application or other matter by the City the applicant may be required to pay for the recordation of such permit or other matter, and any conditions therein, as a matter of title of the property involved in the Snohomish County Auditor's Office.

Section 60. SEVERABILITY. If any section, subsection sentence, clause, phrase or word of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

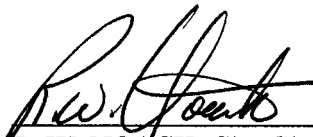
Section 61 REPEALER. Sections 11 through 16 of Ordinance 1208, Sections 2, 3, 4, 7, and 8 of Ordinance 1251, Section 1 of Ordinance 1481, Section 1 of Ordinance 1530, Section 1 of Ordinance 1567, Section 1 of Ordinance 1630, Section 2 of Ordinance 1789, and LMC Section 2.22.095 and Section 2.22.110 through 2.22.160 are hereby repealed in their entirety.

Section 62. EFFECTIVE DATE: This ordinance shall take effect and be in force five (5) days after its passage, approval and publication.

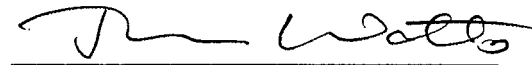
PASSED THIS 27th day of December, 1994, and signed in authentication of its passage this 29th day of December, 19 94.


TINA ROBERTS, Mayor

ATTEST:


R. W. NOACK, City Clerk

APPROVED AS TO FORM:


JOHN P. WATTS
Office of the City Attorney

File Number: 94-CAM-0005
File Name: Title 20A - Processes

SUMMARY OF ORDINANCE NO. 2018

of the City of Lynnwood, Washington

City of Lynnwood

DEC 20 2000

SCANNED

On the 27th day of December, 1994 the City Council of the City of Lynnwood passed Ordinance No. 2018. A summary of the content of said ordinance provides as follows:

An ordinance adding new sections to Chapter 1.35 of the Lynnwood Municipal Code; providing for Hearing Processes and Procedures ("Process I" and "Process IV") for land use and development applications.

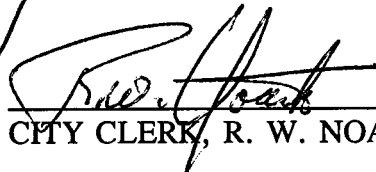
Ordinance No. 2018 consolidates existing hearing processes in Title 1. It makes one substantive change to existing processes: Special Use Permits will now have a public hearing before the Hearing Examiner prior to being considered by the City Council; under the prior code Special Use Permits were heard only by the City Council.

The reorganization of hearing Processes by Ordinance 2018 also includes clarification and consolidation of land use and development application review processes. These regulations specify the need for public hearings and the content of Notice of Public Hearing and the minimum period for providing notice of a hearing. Ordinance 2018 sets forth the procedures and process of hearings conducted in accordance with Process I and Process IV.

Ordinance 2018 provides that minor modifications to approved "Process I" permits would be reviewed administratively in accordance with specific criteria, and notice of any action would be mailed to nearby property owners, who would have the opportunity to request a full hearing or to appeal the action.

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

Dated this 12th day of January, 1995.


CITY CLERK, R. W. NOACK