

CITY OF LYNNWOOD
ORDINANCE NO. 2071

City of Lynnwood
DEC 20 2000
SCANNED

AN ORDINANCE AMENDING AND ADDING NEW SECTIONS TO CHAPTER 1.35 OF THE LYNNWOOD MUNICIPAL CODE REGARDING APPLICATION PROCESSING AND REVIEW FOR LAND USE AND DEVELOPMENT PERMITS, ADOPTED TO IMPLEMENT CHAPTER 347, LAWS OF 1995 (REGULATORY REFORM)

WHEREAS, the City of Lynnwood is required to implement and adopt processes and regulations that are consistent with Chapter 347, Laws of 1995, Regular Session (also known as ESHB 1724 or Regulatory Reform), and

WHEREAS, the City Council of the City of Lynnwood determines that this Ordinance is necessary to comply with state law, namely ESHB 1724 and Chapter 36.70A (also known as the Growth Management Act "GMA"), and

WHEREAS, this Ordinance bears a substantial relationship to the public health, safety and welfare.

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

Section 1: New Sections. New sections are enacted and added to the Lynnwood Municipal Code (LMC) Chapter 1.35 and are codified as Sections 1.35.001 - 1.35.085, to read as follows:

CHAPTER 35
APPLICATION PROCESSING AND REVIEW

1.35.001 Administration of Development Regulations

Sections 1.35.001 through 1.35.099 contain requirements and procedures for all project permits and project permit applications.

1.35.004 Environmental Review and Limitation on Hearings and Appeals

Project permits

- A. Shall be combined with environmental review processes, both substantive and procedural; and,
- B. Except for the appeal of a determination of significance, as provided in RCW 43.21C.075, shall provide for no more than one open record hearing and one closed record appeal.

1.35.005 Project Permit - Definition

"Project permit" or "project permit application" means any land use or environmental permit or license required from the City for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this section.

1.35.010 Permit Applications

All applications for project permits shall be submitted on forms prescribed by the applicable Department Director. All applications shall include all materials required by the applicable development regulations and all information needed to evaluate the consistency of the application with the applicable standards and requirements of the Lynnwood Municipal Code and shall include all applicable fees.

1.35.015 Complete Application

A. Determination

Upon receiving an application that is to be processed under this Chapter, the applicable Department Director shall first determine if the application is complete. An application is complete when it meets the procedural submission requirements in the applicable Chapter or Title and is sufficient for continued processing, even though additional information may be required or project modifications may be undertaken subsequently. No application shall be considered complete if any required information is missing. Upon receipt of a written request from the applicant to waive any submittal requirement, the applicable Department Director may waive any submittal requirement if he/she finds that the information is not needed in order to review a particular project application. The determination of completeness shall not preclude the applicable Department Director from requesting additional information or studies either at the time of the Determination of A Complete Application (see below) or subsequently if new information is required or substantial changes in the proposed action occur.

B. Notice to the Applicant

If the application is found to be complete, the applicable Department Director shall send the applicant a "Determination of A Complete Application" and shall continue with review of the application. If the application is found not to be complete, the Director shall send the applicant a "Determination of Incomplete Application and Request for Additional Information" that shall indicate the additional information that is required.

C. Time Limit

The applicable Department Director shall complete its review of an application for completeness and send the appropriate notice under Subsection B, above, within 28 calendar days of receipt of the application. If no notice is sent to the applicant within 28 calendar days of submission of the application, the application is deemed complete and processing of the application shall proceed.

D. Submittal of Additional Information

Within 14 calendar days of receipt of additional information in response to a Request for Additional Information, the applicable Department Director shall notify the applicant whether the application is complete (by sending a Determination of A Complete Application) or incomplete (by sending a Determination of Incomplete Application and Request for Additional Information). Submission of information in response to a second or subsequent Request for Additional Information shall initiate a new 14-day period for determining completeness. If no notice is sent to the applicant within 14 calendar days of submission of the additional information, the application is deemed complete.

1.35.018 Close-out of Abandoned Application

If the applicant does not respond in writing to a Determination of Incomplete Application or a request for additional information within 90 calendar days of the mailing of the determination or request, or otherwise fails to respond in writing to a notice, written determination or other written communication from the City within 90 calendar days of mailing of the communication, the applicable Department Director shall determine that the application appears to be abandoned. Upon making this determination, the applicable department director shall mail the applicant a notice that the application will be considered abandoned and shall be closed-out and returned to the applicant if he/she does not submit the requested information within 30 calendar days.

1.35.020 Notice of Application

Within fourteen (14) calendar days of issuing a Notice of Completeness for an application, under Section 1.35.015, above, the applicable Department shall provide a Notice of Application to the public, other agencies, and other city departments. If an open record pre-decision hearing is required for the requested project permits, this Notice shall be provided at least fifteen (15) calendar days prior to that hearing. If, prior to issuing this Notice, the City has determined that a Determination of Significance will be issued for the application, the Notice of Application shall be combined with the Determination of Significance and scoping notice.

A. Content

The Notice of Application shall include, at a minimum, the following information:

1. The date of the application;
2. The date of the Notice of Completeness;
3. The date of issuance of the Notice of Application;
4. A description of the proposed project;
5. A list of the project permits included in the application;

6. A list of any studies required for reviewing the project;
7. A list of other permits that may be required for the project, to the extent known to the City;
8. A list of existing environmental documents that evaluate the proposed project and the location where the application and any studies or relevant documents may be reviewed;
9. The dates of the public comment period, which shall extend fourteen (14) calendar days following the date of issuance of the Notice of Application;
10. A statement of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights;
11. The date, time, place, and type of hearing, if applicable and if scheduled at the date of the Notice of Application;
12. A statement of the preliminary determination, if one has been made at the time of notice, of those development regulations that will be used for project mitigation and of consistency.
13. Date, place and time of the informal meeting, if any.

B. Distribution

The City shall use reasonable methods to give this Notice to the public. At a minimum, this Notice shall be distributed as follows:

1. Posting the property (for site-specific proposals);
2. Publishing the Notice (including at least the project location, description, type of permit(s) required, comment period dates, and location where the complete application may be reviewed), in the official newspaper of the City (see LMC 1.08);
3. Posting the Notice at each official posting place of the City (see LMC 1.12).

C. Public Comment

During the public comment period for the Notice of Application, the public may comment in writing on the application, including the possible impact of the project on the environment or the conformance (or lack of conformance) of the project with the City's Comprehensive Plan, Municipal Code, and other adopted City policies. Such comments shall become part of the record of the application. This opportunity to comment on an application is in addition to any comment period provided prior to decision on an application or an appeal of a decision on an application. Neither participation in this opportunity to comment, nor non-participation in it, shall preclude any person from participating in any other opportunity to comment on an application, including any public hearing or informal public meeting.

1.35.025 Time Limit

Except as otherwise provided in Subsection A of this section, the City shall make a decision on a permit application and issue the Notice of Decision on a project permit application within one hundred twenty (120) calendar days after the City notifies the applicant that the application is complete, as provided in Section 1.35.015.

A. Exceptions

In determining the number of days that have elapsed after the City has notified the applicant that the application is complete, the following periods shall be excluded:

1. Any period during which the applicant has been requested by the City to correct plans, perform required studies, or provide additional required information, pursuant to LMC 1.35.033. The period shall be calculated from the date the City notifies the applicant of the need for additional information until the earlier of the date the City determines whether the additional information satisfies the request for information or fourteen days after the date the information has been provided to the City. If the City determines that the information submitted by the applicant is insufficient, it shall notify the applicant of the deficiencies and this procedure shall apply as if a new request for studies had been made;
2. Any period during which an environmental impact statement is being prepared following a determination of significance pursuant to chapter 43.21C RCW.
3. Any period for administrative appeals of project permits, if an open record appeal hearing or a closed record appeal, or both, are allowed. The City shall consider and decide such appeals within ninety (90) calendar days for an open record appeal hearing and within sixty (60) calendar days for a closed record appeal. The parties to an appeal may agree to extend these time periods; and
4. Any extension of time mutually agreed upon by the applicant and the City.

B. Exemptions

The time limits established by Subsection A of this section do not apply if a project permit application:

1. Requires an amendment to the comprehensive plan or a development regulation;
2. Requires the siting of an essential public facility as provided in RCW 36.70A.200; or
3. Is substantially revised by the applicant, in which case the time period shall start from the date at which the revised project application is determined to be complete under Section 1.35.015.

C. Non-Compliance with Time Limit

If the City is unable to issue its final decision within the time limits provided for in this section, the applicable Department Director shall provide written notice of this fact to the project applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the notice of final decision.

1.35.030 Contact Person for Application Processing

The City shall require the applicant for a project permit to designate a single person or entity to receive determinations and notices required by this chapter.

1.35.033 Request for Additional Information During Application Processing

During processing of an application, City staff may request the applicant to correct plans, perform required studies, or provide additional required information, provided that the correction, study or additional information is needed to evaluate the application under the Comprehensive Plan, Municipal Code or other adopted City policy. Pursuant to LMC 1.35.025.A.1, the time period during which such a request has been made but has not been fulfilled shall not be included in the 120 days allowed for permit processing by LMC 1.35.025.

1.35.035 Combined Public Hearing

If requested by an applicant, the applicable Department Director shall arrange for any public hearing required by this Chapter to be held as a joint public hearing with any local, regional, state, federal, or other public agency, provided that the other agency consents to the holding of a joint public hearing, that the hearing shall be held within the corporate limits of the City of Lynnwood and that the joint public hearing can be held within the required time-frame for processing the application.

1.35.040 Notice of Decision

Within 3 working days of the City's decision on an application, the applicable Department Director shall distribute a Notice of Decision on the application indicating the content of the final decision of the City.

A. Contents of the Notice of Decision

The Notice of Decision shall contain all of the following:

1. A statement indicating that the application is approved, approved with modifications or conditions, or is denied;
2. A statement of any conditions included as part of an approval or approval with modifications;
3. The location where the complete decision (including the findings of fact and conclusions of law) may be reviewed;
4. A statement that any person who participated in the decision may appeal the decision, and the time limits and process for making an appeal;
5. A statement of any threshold determination made under RCW 43.21C.

B. Distribution of the Notice of Decision

The applicable Department Director shall distribute the Notice of Decision by:

1. regular mail to any person who participated in decision;

2. regular mail to any person who has requested such Notice and who has paid a fee of \$50.00 per year to the Finance Director;
3. posting a copy of the Notice at the site (for site-specific proposals);
4. publishing the Notice once in a newspaper of local circulation;
5. regular mail to the applicant; and,
6. delivery to the Finance Director for distribution to the City Council.

1.35.060 Exemptions from Project Permit Application Processing

A. Type A Exemptions

Applications for the following types of projects are exempt from the provisions of Sections 1.35.001 through 1.35.099, inclusive.

1. Landmark designations.
2. Street vacations.
3. Other approvals relating to the use of public areas or facilities.

B. Type B Exemptions

Lot line or boundary adjustments and building and other construction permits, or similar administrative approvals, categorically exempt from environmental review, or for which environmental review has been completed in connection with other project permits are exempt from the following procedures:

1. Notice of Application (LMC 1.35.020)
2. Determination of Completeness (LMC 1.35.015A)
3. Notice of Decision (LMC 1.35.040)
4. Except as provided in RCW 36.70B.140, optional consolidated project permit review processing.
5. Joint public hearings.
6. Single report stating all the decisions and recommendations made as of the date of the report that do not require an open record hearing.
7. Completion of project review within any applicable time period (including the 120-day permit processing time limit).

1.35.070 Determining Consistency with the Development Regulations and Comprehensive Plan.

The Comprehensive Plan and adopted zoning and other development regulations shall serve as the basis for review of land use and development applications. In particular, determinations of the type of land use, residential density and capacity of and funding for public facilities shall serve as the foundation for further project review. During review of an application for use or development of land, the City shall determine whether the proposed use or development conforms with the City's development regulations and Comprehensive Plan. This determination shall generally follow four steps, as follows:

A. Identify Criteria for Determining Consistency - Development Regulations

Review City development regulations to determine if they define or state the following for the proposed use or development of land:

1. Type of land use permitted at the site, including uses that may be allowed under certain circumstances if decision criteria are met;
2. Density of residential development (if applicable); and,
3. Availability and adequacy of public facilities (for those facilities identified in the Comprehensive Plan, if the Plan or the City's development regulations provide for funding of these facilities).

B. Identify Criteria for Determining Consistency - Comprehensive Plan

Refer to the Comprehensive Plan to define or state any of the three items criteria in Step A, above, that are not defined or stated in the development regulations.

C. Evaluate Conformance

Evaluate whether the application conforms with the definitions or statements in the development regulations (identified in Step A) or in the Comprehensive Plan (identified in Step B).

D. Continue Review

Evaluate the character of the proposed development or use and its compliance with other standards and requirements in this Title, the Municipal Code, and other adopted policies, standards and requirements.

1.35.075 Limit on Scope of Review

During application review, the City shall not reexamine alternatives to or hear appeals on the type of land use permitted at the site, the density of residential development, or the availability or adequacy of public facilities (for those facilities identified in the Comprehensive Plan), as determined under Subsections 1.35.070.A and 1.35.070.B, above. The City may ask more specific or related questions with respect to any of these issues.

1.35.080 Optional Consolidated Review Process

- A. Applications involving two or more permits will be consolidated, if the applicant requests consolidation, and if the permit applications are filed at the same time. Consolidation may otherwise be allowed by the City on the applicant's request. Applications involving consolidated permit review will be processed so that City review occurs in an orderly manner.
- B. When separate applications involving two or more processes are consolidated for review, the process involving the highest authority is utilized. The City Council is the highest authority, followed by the Hearing Examiner or Planning Commission (as applicable), and then the Department Director. By way of example, if an application involves a building permit, conditional use permit, and rezone, then the process for rezone shall apply to all permits, since the City Council (the highest authority) makes the final decision on rezones.
- C. Where separate applications are consolidated for review, the authority to issue permits remains with the applicable Department Director, but an administrative appeal of a Department Director's determination would be heard by the highest authority involved in any process consolidated for review. If any administrative decision is appealed, the administrative decision may be withdrawn and re-issued at a later date, in order that any appeal is allowed to be consolidated with appeals, if any, from other decisions. The appeal authority may retain experts as necessary if the matter involves technical matters. The highest authority may combine appeals with hearings.

1.35.085 Transcript

Any person requesting a transcript of a public hearing, informal meeting or other event for which the City has made an electronic recording shall pay the full cost of producing that transcript. Such payment shall be made prior to production of the transcript, and the amount of this payment shall be based on the estimated cost of producing the transcript. Any cost not paid in advance shall be paid when the transcript is delivered; any payment in excess of the actual final cost shall be refunded. Alternatively, any person may request a copy of the official tape, paying the cost to duplicate the tape, and provide their own transcription, verifying that the same is a correct transcription of the duplicate tape.

Section 2: New Sections. New sections are enacted and added to the Lynnwood Municipal Code (LMC) Chapter 1.35 and are codified as Sections 1.35.100 - 1.35.175, to read as follows:

1.35.100 Process I: Public Hearing and Decision by the Hearing Examiner - Scope

Sections 1.35.100 through 1.35.199 contain the procedures that the City will use in implementing Process I. This Process includes a public hearing and decision by the Hearing Examiner and allows a closed record appeal to the City Council.

1.35.105 Applicability

Sections 1.35.100 through 1.35.199 apply each time a provision of the Lynnwood Municipal Code requires a decision using Process I.

1.35.110 State Environmental Policy Act

The State Environmental Policy Act may apply to an action taken under this process. See LMC Title 17.

1.35.115 Authority

The Hearing Examiner shall conduct a public hearing and, following completion of the hearing, approve, approve with modifications or conditions, or deny an application reviewed under this process. The decision of the Hearing Examiner may be appealed to the City Council by any party of record.

1.35.125 Referral to City Departments and Other Agencies.

Concurrent with issuing the Notice of Application, staff of the applicable department shall refer the application to all other City departments and to local, regional, state or federal agencies who may provide service(s) to the proposal or who may have special expertise for reviewing the application.

1.35.130 Threshold Determination

A. Early Notice

Unless the application is exempt from review under the State Environmental Policy Act (SEPA), staff of the applicable department shall provide notice of the application to the City official(s) responsible for compliance with SEPA concurrent with issuing the Notice of Application.

B. Issue Determination

Following referral of the application to other City departments and other agencies (ref. LMC 1.35.125), staff of the applicable department shall send copies of the application, along with copies of all comments received from the public (ref. 1.35.020.C) and from other city departments and agencies to the City official(s) responsible for compliance with the SEPA. The SEPA official(s) shall complete and issue a Threshold Determination for the application following transmittal of the application and the comments on the application to the official(s).

1.35.140 Notice of Hearing

The applicable Department Director shall provide notice of the public hearing on the application, as follows:

A. Content

1. Name of the applicant and the project name;
2. Street address and/or a description of the property in non-legal terms;
3. Citation of the portion(s) of the Lynnwood Municipal Code requiring the permit(s) for which the application has been submitted;
4. A brief description of the proposed action and the requested permit(s);
5. Date, time and place of the hearing;

6. A statement of the right of any person to participate;
7. A statement that only those persons who participate may appeal to City Council.

B. Distribution

The applicable Department Director shall distribute the notice by:

1. Publishing the notice in the official newspaper of the City;
2. Posting the notice at official posting place(s) of the City and at the site;
3. Mailing the notice by regular mail to owners of property within at least 300 feet of the boundary of the subject property and of any property contiguous thereto in the applicant's ownership. For the purpose of this mailing, the applicable Department Director shall use the listing of ownership and addresses on the City of Lynnwood Utility billing records. If no record for any given lot is shown on those records, then notice to the last owner of record in the office of the County Treasurer shall be deemed proper notice;
4. Mailing the notice by regular mail to each person who has requested such notice in writing for the calendar year and who has paid a fee of \$50.00 for this service to the Finance Director;
5. This noticing requirement shall be satisfied by substantial compliance with this section.

C. Timing

The notice of the public hearing shall be provided at least 20 calendar days before the date of the hearing.

1.35.145 Conduct of the Public Hearing

Anyone may participate in the public hearing by presenting oral or written testimony. Participation may include submitting written comments before or at the hearing or signing the register of the Parties of Record. The Hearing Examiner shall make an electronic sound recording. The Hearing Examiner shall adopt rules and procedures for the conduct of the hearing.

1.35.148 Parties of Record

The Parties of Record for the application shall include:

- A. Persons who speak at the public hearing;
- B. Persons who present written testimony either at or before the public hearing,
- C. Persons who sign the register of the Parties of Record at the public hearing;
- D. The applicant; and,
- E. The members of the City Council.

1.35.150 Hearing Examiner Action

After the close of the public hearing, the Hearing Examiner shall either approve, approve with modifications or conditions, or deny the application.

1.35.155 Criteria

The Hearing Examiner may approve or approve with modifications or conditions an application if the Hearing Examiner finds that the applicant has carried the burden of proof and has produced evidence sufficient to support the conclusion that the application merits approval and that the proposal complies with the applicable decision criteria in the Municipal Code. In all other cases, the Hearing Examiner shall deny the application..

1.35.160 Written Decision

Within fourteen (14) calendar days of the conclusion of the hearing, the Hearing Examiner shall issue a written decision, containing:

- A. A statement indicating that the application is approved, approved with modifications or conditions, or denied;
- B. A statement of any conditions or modifications included as part of an approval;
- C. A statement of the facts upon which the decision, including any modifications or conditions, is based and the conclusions derived from those facts;
- D. A statement of the right of any Party of Record (see LMC 1.35.148) to appeal the decision to the City Council;

1.35.165 Distribution of Decision

Within 3 calendar days of the issuance of the written decision, the applicable Department Director shall send (by regular mail) a copy of the decision to the applicant and shall make a copy of the decision available for public review at the applicable department. The applicable Department Director shall also send a copy to the Finance Director for distribution to the City Council.

1.35.168 Request for Reconsideration

Any person who participated in the public hearing may submit a written request for reconsideration by the Hearing Examiner by filing the request with the applicable Department Director within seven (7) calendar 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 five (5) calendar 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 parties of record for the application shall be mailed the decision to reconsider no later than three (3) calendar days after the Examiner's decision. The Examiner shall determine whether to hold additional hearings on the matter. All parties of record shall be mailed notice of this hearing not later than five (5) calendar days prior to the hearing. The reconsidered decision shall be distributed in accordance with LMC 1.35.140. A request for reconsideration by an applicant shall be considered an extension of time mutually agreed to for purposes of timely permit processing.

1.35.170 Hearing Examiner Power to Correct or Clarify

Within 21 calendar days of the issuance of the decision, the Hearing Examiner may amend the decision to correct ministerial errors clearly identifiable from the public record or to clarify any statement in the written decision, as long as the clarification does not alter the intent or effect of the decision. Such a correction or clarification does not affect any time limit provided in this process.

1.35.175 Appeal to City Council

Any Party of Record may appeal the decision to the City Council by filing a written request for appeal with the applicable Department Director within 14 calendar days of the date of issuance of the decision. An appeal filed within this time limit shall be processed pursuant to Process VII (LMC 1.35.700 et.seq.).

Section 3: New Sections. New sections are enacted and added to the Lynnwood Municipal Code (LMC) Chapter 1.35 and are codified as Sections 1.35.200 - 1.35.260, to read as follows:

1.35.200 Process II: Administrative Decisions - Appeal to Hearing Examiner

Unless specifically provided otherwise in the Lynnwood Municipal Code, Sections 1.35.200 through 1.35.299 LMC shall apply to administrative decisions including decisions on permits and decisions of Department Directors, and whenever violations of the Lynnwood Municipal Code have occurred and the City has determined that civil penalties shall be imposed for such violations, or whenever a provision of the Lynnwood Municipal Code requires a decision using "PROCESS II".

1.35.210 Scope

LMC 1.35.200 through 1.35.299 set forth the procedures that the City shall use in implementing "PROCESS II". This process includes a hearing and decision by a Hearing Examiner.

1.35.220 Process on Appeal

An appeal from a Notice of Violation and Assessment of Civil Penalties or an appeal from a decision under a provision of the Lynnwood Municipal Code that provides for an appeal using Process II shall be processed as follows:

- A. The appeal shall be filed with the Department Director within 14 days of the issuance of the Notice of Violation and Assessment of Civil Penalties or from the issuance of the decision which is the basis for the appeal. The fee for filing an appeal shall be Thirty-five Dollars (\$35). The timely filing of an appeal shall stay the effective date of the Notice and Assessment or the Decision until such time as the Notice or Decision is adjudicated or is withdrawn.
- B. The appeal shall include a statement of why the appellant believes the Notice or the Decision is in error.

1.35.230 Notice of Appeal Hearing

- A. Upon timely appeal from a notice of violation and assessment of civil penalties or upon appeal from a decision under a provision of the Lynnwood Municipal Code that provides

for an appeal using Process II, the applicable department director shall prepare a written notice of appeal hearing containing all of the following:

1. The name of the appellant and, if applicable, the project name;
 2. The citation of the Lynnwood Municipal Code provision(s) which is the subject of the appeal;
 3. A brief description of the act or circumstances which is the basis of such determination;
 4. The date, time and place of the hearing which shall be not earlier than ten (10) calendar days nor more than thirty (30) days from the date of the notice of hearing, unless extended by agreement, or to combine with other pending or potential appeals;
 5. A statement of the appellant's right to call witnesses and present evidence;
 6. A statement that only the appellant and the appropriate department director may appeal the decision of the Hearing Examiner.
 7. A brief summary statement of the reason(s) for the appeal, as such a statement is provided by the appellant or is clear from the written appeal.
- B. The Notice of Appeal Hearing shall be sent to the appellant, at the address given in his notice of appeal, by certified mail, return receipt requested and by first class mail, postage pre-paid.

1.35.240 Appeal Hearing

A. Who May Participate

The appellant, the appropriate City staff, any witnesses called by the appellant or City staff, and any other person may participate in an appeal hearing.

B. Burden of Proof

The appellant has the burden of proof to establish, by a preponderance of the evidence, that the decision appealed from is incorrect, including as applicable, whether the action conforms to relevant elements of the City's development regulations, comprehensive plan, and that any significant adverse environmental impacts have been adequately addressed.

C. Hearing Record

An electronic sound recording of each hearing shall be made.

1.35.245 Authority and Action of Hearing Examiner

The Hearing Examiner shall conduct a hearing following which the Hearing Examiner shall determine whether the decision appealed from was correct, considering whether it conformed to relevant elements of the City's development regulations, comprehensive plan, and that any significant adverse environmental impacts have been adequately addressed, or whether violation(s) of the Lynnwood Municipal Code occurred. The Hearing Examiner shall issue a written decision

within ten (10) City of Lynnwood working days following the conclusion of all testimony and hearings. The decision shall contain findings of fact and conclusions of law and a statement of the appeal and reconsideration rights provided in this Code. If the Hearing Examiner determines that violation(s) occurred, the Hearing Examiner shall so indicate and enter an appropriate enforcement order, which may include upholding the staff assessment of civil penalty and/or imposing additional civil penalty, as provided by LMC 1.01.085 or otherwise provided. For violations where the Lynnwood Municipal Code allows abatement or corrective action, the Hearing Examiner, in addition to any civil penalties, may direct and order the appellant to take such steps as are necessary to abate the nuisance or correct to violation.

1.35.250 Distribution and Effect of Examiner's Decision

- A. Within three (3) City of Lynnwood working days of its issue, the Examiner's decision shall be distributed by the applicable department director to the appellant and all who participated in the public hearings.
- B. A Hearing Examiner's decision on the appeal is the final decision of the City, which may be appealed to the Superior Court as provided in LMC 1.35.260.

1.35.255 Request for Reconsideration

A. Time Period for Filing Request for Reconsideration

Within seven (7) calendar days of the date of the Hearing Examiner's decision, the appellant or the applicable department director may file, with the Examiner, a written request for reconsideration. Such request shall specify the error of law or fact, or new evidence which could not have been reasonably available at the time of the hearing, which is the basis of the request. An appellant or Department Director may file only one request for reconsideration, even if the reconsidered decision modifies the Hearing Examiner's initial decision.

B. Examiner's Action on Request for Reconsideration

- 1. Within seven (7) days from the filing of a request for reconsideration, the Examiner shall issue a written decision on the request. If the Examiner decides to reconsider, the decision to reconsider shall be mailed to all who participated in the prior hearings no later than three (3) days after the Examiner's decision.
- 2. The Examiner shall determine whether to hold additional hearings on the matter. Notice of any additional hearings shall be mailed to all who participated in the prior hearings no later than seven (7) days prior to the hearing.
- 3. The reconsidered decision shall be distributed to the appellant, the appropriate department director, and all who participated in the hearing(s).

C. Effect of Filing Request for Reconsideration

The filing of a request for reconsideration does not stay the appeal period provided in LMC 1.35.260. However, if the request for reconsideration is granted, the appeal period is stayed pending reconsideration.

1.35.260 Appeal of Hearing Examiner's Decision to Superior Court

Any appeal must be timely filed or it is barred. The appeal must be filed within twenty-one (21) days from the date on which a decision is issued. The date of issue is three days after mailing. The cost to produce any record, including transcript, shall be paid by the appellant.

Section 4: New Sections. New sections are enacted and added to the Lynnwood Municipal Code (LMC) Chapter 1.35 and are codified as Sections 1.35.400 - 1.35.480, to read as follows:

1.35.400 Process IV: Public Hearing and Decision by the City Council - Scope

Sections 1.35.400 through 1.35.499 contain the procedures that the City will use in implementing Process IV. This Process includes a public hearing and decision by the City Council.

1.35.405 Applicability

Sections 1.35.400 through 1.35.499 apply each time a provision of the Lynnwood Municipal Code requires a decision using Process IV.

1.35.410 State Environmental Policy Act

The State Environmental Policy Act may apply to an action taken under this process. See LMC Title 17.

1.35.415 Authority

The City Council shall conduct a public hearing and, following completion of the hearing, shall make the final decision of the City to approve, approve with modifications or conditions, or deny an application reviewed under this process. For applications for quasi-judicial permits the Planning Commission or Hearing Examiner may hold an informal public meeting and make a recommendation to the City Council. For legislative actions, the Planning Commission shall conduct a public hearing and make a recommendation to the City Council.

1.35.425 Referral to City Departments and Other Agencies

Concurrent with issuing Notice of Application, staff of the applicable department shall refer the application to all other City departments and to local, regional, state or federal agencies who may provide service(s) to the proposal or who may have special expertise for reviewing the application.

1.35.430 Threshold Determination

A. Early Notice

Unless the application is exempt from review under the State Environmental Policy Act (SEPA), staff of the applicable department shall provide notice of the application to the City

official(s) responsible for compliance with SEPA concurrent with issuing the Notice of Application.

B. Issue Determination

Staff of the applicable department shall send copies of the application, along with copies of all comments received from the public (ref. LMC 1.35.020.C) and from other City departments and agencies to the City official(s) responsible for compliance with the SEPA. The SEPA official(s) shall complete and issue a Threshold Determination for the application following transmittal of the application and the comments on the application.

1.35.434 Quasi-Judicial Permits: Informal Public Meeting

A. Reclassification of Property (Rezone)

The Planning Commission shall hold an informal public meeting on a proposed rezone. This meeting shall be held at a regularly scheduled meeting of the Planning Commission, and the Planning Commission may receive public comment on the application. Following any public comments, the Planning Commission shall make a recommendation to the City Council regarding the proposal and may recommend modifications to the proposal or conditions of approval that the Planning Commission believes are necessary to fulfill City requirements or other adopted policies regarding reclassifications of property. Notice of this informal public meeting may be provided in the Notice of Application (see LMC 1.35.020).

B. Subdivisions

The Hearing Examiner shall hold an informal public meeting on the proposal. This meeting shall be held at a regularly scheduled meeting of the Hearing Examiner, and the Hearing Examiner may receive public comment on the application. Following any public comments, the Hearing Examiner shall issue a written recommendation to the City Council regarding the proposal and may recommend modifications to the proposal or conditions of approval that the Hearing Examiner believes are necessary to fulfill City requirements or other adopted policies regarding subdivisions. Notice of this informal public meeting may be provided in the Notice of Application (see LMC 1.35.020). When a planned unit development is submitted for consolidated processing with a subdivision (see LMC 1.35.080), the informal meeting shall also consider the proposed planned unit development.

1.35.436 Legislative Actions: Public Hearing

For areawide rezonings, amendments to the Comprehensive Plan, Zoning Code, or Subdivision Code, or for other legislative actions processed through this procedure, the Planning Commission shall hold a public hearing and make a recommendation to the City Council. Notice of this public hearing shall be distributed following issuance of the Threshold Determination for the action, and shall be provided at least 20 calendar days prior to the hearing. The conduct of the hearing shall be as set forth in 1.35.445 and 1.35.448. Notice shall include publishing in the official newspaper of the City, posting the notice at official posting place(s) of the City. After the close of the public hearing, the Planning Commission shall make a recommendation to the City Council regarding the proposed action.

1.35.440 Notice of Hearing

The applicable Department Director shall provide notice of the public hearing, as follows:

A. Content

1. Name of the applicant and the project name;
2. Street address and/or a description of the property in non-legal terms;
3. Citation of the portion(s) of the Lynnwood Municipal Code requiring the permit(s) for which the application has been submitted;
4. A brief description of the proposed action and the requested permit(s);
5. Date, time and place of the hearing;
6. A statement of the right of any person to participate.

B. Distribution

The applicable Department Director shall distribute the notice by:

1. Publishing the notice in the official newspaper of the City;
2. Posting the notice at official posting place(s) of the City and at the site (if any);
3. Mailing the notice by regular mail to owners of property within at least 300 feet of the boundary of the subject property (if any) and of any property contiguous thereto in the applicant's ownership. For the purpose of this mailing, the applicable Department Director shall use the listing of ownership and addresses on the City of Lynnwood utility billing records. If no record for any given lot is shown on those records, then the last owner of record in the office of the County Treasurer shall be deemed proper notice;
4. Mailing the notice by regular mail to each person who have requested such notice in writing for the calendar year and who has paid a fee of \$50.00 for this service to the Finance Director;
5. This noticing requirement shall be satisfied by substantial compliance with this section.

C. Timing

The notice of the public hearing shall be provided at least 20 calendar days before the date of the hearing.

1.35.445 Conduct of a Public Hearing

Anyone may participate in a public hearing by presenting oral or written testimony. Participation may include submitting written comments before or at a hearing or signing the register of the Parties of Record. An electronic sound recording of a hearing shall be made. The hearing body may adopt rules and procedures for the conduct of a hearing.

1.35.448 Parties of Record

The Parties of Record for the application shall include:

- A. Persons who speak at a public hearing;
- B. Persons who present written testimony either at or before a public hearing;
- C. Persons who sign the register of the Parties of Record at a public hearing;
- D. The applicant; and,
- E. The members of the City Council.

1.35.450 Decision

After the close of the public hearing, the City Council shall either approve, approve with modifications or conditions, or deny the application. The City Council may continue the hearing, provided that, for applications subject to the time limit in LMC 1.35.025, final action is completed and a notice of decisions is issued in compliance with that time limit.

1.35.455 Criteria

The City Council may approve or approve with modifications or conditions an application if the City Council finds that the applicant has carried the burden of proof and has produced evidence sufficient to support the conclusion that the application merits approval and that the proposal complies with the applicable decision criteria in the Comprehensive Plan and the Municipal Code. In all other cases, the City Council shall deny the application..

1.35.460 Findings of Fact and Conclusions of Law

For site-specific rezones, planned unit developments, subdivisions, and other quasi-judicial permits, the City Council shall adopt findings of fact and conclusions derived from those facts which support the decision of the City Council to deny, approve or approve with modifications or conditions. The City Council may, by reference, adopt some or all of the findings and conclusions recommended by the Planning Commission or Hearing Examiner.

1.35.465 City Council Decision - Distribution

The applicable Department Director shall send by regular mail the decision of the City Council (including any findings of fact and conclusions of law) to each party of record and shall make a copy of the decision available for public review at the applicable department.

1.35.470 Finance Director Power to Correct or Clarify

Within 21 calendar days of the issuance of the City Council's decision, the Finance Director may amend the written decision to correct ministerial errors clearly identifiable from the public record or to clarify any statement in the decision, as long as the clarification does not alter the intent or effect of the action by the City Council. Such a correction or clarification does not affect any time limit provided in this process.

1.35.480 Appeal to Superior Court

Any person with standing, as defined by RCW 36.70C.060, appeal to Superior Court must be timely filed, or is thereafter barred. The decision must be appealed no more than 21 calendar days from the date on which a land use decision is issued. The date of issue is three calendar days after

mailing (ref. LMC 1.35.465). The cost to produce any record, including a transcript of any public hearing, shall be paid by the appellant.

Section 5: New Sections. New sections are enacted and added to the Lynnwood Municipal Code (LMC) Chapter 1.35 and are codified as Sections 1.35.600 - 1.35.640, to read as follows:

1.35.600 Process VI: Appeals of Administrative Determinations to the Hearing Examiner - Scope.

LMC 1.35.600 through 1.35.699 set forth the procedures for “Process VI,” which allows an open record appeal of an administrative decision to the Hearing Examiner. It also allows a closed-record appeal of the Hearing Examiner’s decision to the City Council.

1.35.605 Authority of Hearing Examiner

When considering an appeal of an administrative action under this Process, the Hearing Examiner may review all aspects of the decision and may uphold, revise, or reverse (in whole or in part) the decision. The Examiner shall complete action on the appeal and issue a written decision within 90 calendar days of receipt of the appeal by the applicable Department Director.

1.35.610 Set Date of Appeal Hearing

Upon receipt of an appeal of an administrative decision, the applicable Department Director shall set the date for a public hearing on the appeal before the Hearing Examiner. The date of the public hearing shall be at least 20 calendar days after notice of the hearing is provided (ref. LMC 1.35.615).

1.35.615 Notice of Appeal Hearing

The applicable Department Director shall prepare a notice of the appeal hearing that shall include, at a minimum, the following information:

- A. The name of the appellant.
- B. The project name.
- C. The action being appealed.
- D. The date, time, and place of the hearing.
- E. A brief statement of the basis of the appeal, as stated in the appeal.

1.35.620 Distribution of Notice of Appeal Hearing

The applicable Department Director shall distribute the notice of the appeal hearing as follows:

- A. By regular mail to the appellant and all parties of record.
- B. By publishing in the official newspaper of the City.
- C. By posting at each official posting place of the City and at the project site.

1.35.625 Appeal Hearing

A. Who May Participate.

Any person may participate in the appeal hearing by submitting written testimony before or at the hearing, or by speaking at the hearing

B. Parties of Record

The Parties of Record for the application shall include:

1. Persons who speak at the public hearing;
2. Persons who present written testimony either at or before the public hearing, and
3. Persons who sign the register of the Parties of Record at the public hearing.

The applicant and the members of the City Council shall be parties of record to any public hearing before the Hearing Examiner.

C. Burden of Proof.

At the hearing, the applicant has the burden of proof to establish, by a preponderance of evidence, that the staff erred in taking the action under appeal.

D. Hearing Record.

The Hearing Examiner shall make an electronic sound recording of each hearing.

1.35.630 Action by the Hearing Examiner

Within 14 calendar days following the conclusion of the hearing, the Hearing Examiner shall issue a written decision which shall contain:

- A. A statement of the decision.
- B. A statement of the facts upon which the action is based and the conclusions derived from those facts;
- C. A statement of the right of any person who participated in the public hearing to appeal the Hearing Examiner's decision to the City Council.

1.35.635 Distribution of Decision

The applicable Department Director shall distribute the written decision of the Hearing Examiner to each person who participated in the public hearing.

1.35.640 Appeal to City Council

Any Party of Record may appeal the Hearing Examiner's decision to the City Council by filing a written appeal of that decision with the applicable Department Director within 14 calendar days of the date of issue of that decision. The appeal shall state the reasons why the appellant believes that the Hearing Examiner's decision was in error. Any such appeal shall be processed pursuant to Process VII (1.35.700 et. seq.).

Section 6: New Sections. New sections are enacted and added to the Lynnwood Municipal Code (LMC) Chapter 1.35 and are codified as Sections 1.35.700 - 1.35.740, to read as follows:

1.35.700 Process VII: Appeals of Decisions by the Hearing Examiner to City Council - Scope.

LMC 1.35.700 through 1.35.799 set forth the procedures for ‘Process VII,’ which allows a closed record appeal of a decision by the Hearing Examiner to the City Council.

1.35.705 Authority of City Council

When considering an appeal of an action under this Process, the City Council may review all aspects of the decision and may uphold, revise, or reverse the decision being appealed. The City Council shall make the final decision of the City on the action, and shall exercise all the decision-making power that the City Council would have had to approve, approve with modifications or conditions, or deny, had the City Council presided over the hearing held by the Hearing Examiner. The City Council shall decide the appeal on the basis of the established record, with no or limited new evidence or information allowed to be submitted any only appeal argument allowed.

1.35.708 Time Limit

The City Council shall complete action on the appeal and adopt a final action within 60 calendar days of receipt of the appeal by the applicable Department Director. The parties to an appeal may agree to extend this time period. Parties to an appeal are the applicant, the appellant and the City.

1.35.710 Content of Request for Appeal

A Request for Appeal shall include, at a minimum, the following information:

- A. The name of the appellant.
- B. The project name.
- C. The action being appealed.
- D. A brief statement of the basis of the appeal.

1.35.715 Notice of Appeal Meeting

The applicable Department Director shall prepare a notice of the appeal that shall include, at a minimum, the following information:

- A. The name of the appellant.
- B. The project name.
- C. The action being appealed.
- D. The date, time, and place of the appeal meeting.
- E. A brief statement of the basis of the appeal, as stated in the appeal.
- F. A statement that the City Council may consider limited new information.

- G. A statement that the City Council will make the final decision on the application, which decision may vary from the decision of the Hearing Examiner.

1.35.720 Distribution of Notice of Appeal Meeting

The applicable Department Director shall distribute the notice of the appeal as follows:

- A. By regular mail to the appellant and all parties of record.
- B. By publishing in the official newspaper of the City.
- C. By posting at each official posting place of the City and at the project site.

1.35.725 Appeal Meeting

A. Who May Participate.

Any person may participate in the appeal meeting.

B. Conduct of Meeting.

The City Council is required to take action on the appeal based on the record established at a prior public hearing and the decision criteria of the underlying permit. The City Council will not receive, discuss or consider any information that was not part of the record, provided that the City Council may, for cause, allow limited new evidence or information to be submitted. The City Council may receive oral or written appeal argument that is limited to the established record.

1.35.730 Action by the City Council

At the appeal meeting, the City Council shall take action on the appeal, as provided in LMC 1.35.705, above. The City Council may continue consideration of the appeal to a subsequent meeting, provided that that meeting is not scheduled more than 60 calendar days from the date the appeal was received by the applicable Department Director, unless extended by agreement of the parties to the appeal.

1.35.733 Report of City Council Decision

A. Content

Following action on an appeal, the City Council shall make findings of fact and conclusions derived from those facts which support the decision of the Council to deny, approve or approve with modifications or conditions. The City Council may, by reference, adopt some or all of the findings and conclusions of the Hearing Examiner.

B. Distribution

The applicable Department Director shall send by regular mail a report of the decision of the City Council to each party of record.

1.35.735 Finance Director Power to Correct or Clarify

Within 30 calendar days of the issuance of the report, the Finance Director may amend the report to correct ministerial errors clearly identifiable from the public record or to clarify any statement in the written report, as long as the clarification does not alter the intent or effect of the action by the City Council. Such a correction or clarification does not affect any time limit provided in this process.

1.35.740 Appeal to Superior Court


Any appeal to Superior Court must be timely filed, or is thereafter barred. The decision must be appealed no more than 21 calendar days from the date on which a land use decision is issued. The date of issue is three calendar days after mailing (ref. LMC 1.35.733). The cost to produce any record, including a transcript of any public hearing, shall be paid by the appellant.

Section 7: Repealer. Sections 1 thru 32 and 34 thru 57 of Ordinance 2018, Sections 1 thru 8 of Ordinance 2010 and those sections currently codified as LMC 1.35.110 thru 1.35.175, LMC 1.35.200 thru 1.35.260, and LMC 1.35.410 thru 1.35.450 are hereby repealed.

Section 8: 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 9: Effective Date. This ordinance shall take effect and be in force five (5) days after its passage, approval and publication. However, the procedures set forth in this ordinance shall apply only to applications filed on or after April 1, 1996.

Passed this 25th day of March, 1996, and signed in authentication of its passage this 26th day of March, 1996.


TINA ROBERTS, Mayor

ATTEST:


Acting Finance Director

APPROVED AS TO FORM:


JOHN P. WATTS, City Attorney

PUBLISHED: