

**CITY OF WASILLA  
ORDINANCE SERIAL NO. 04-03**

**AN ORDINANCE OF THE WASILLA CITY COUNCIL ADOPTING WMC CHAPTER 16.34, APPEALS TO THE PLANNING COMMISSION, AMENDING WMC CHAPTER 16.36, APPEALS, AND REPEALING WMC 16.08.100, APPEALS TO THE COMMISSION.**

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\* **Section 1. Classification.** This ordinance is of a general and permanent nature and shall become part of the city code.

\* **Section 2. Adoption chapter.** WMC 16.34, Appeals to the Planning Commission, is adopted to read as follows:

**Chapter 16.34**

**APPEALS TO THE PLANNING COMMISSION**

**16.34.010 Definition.**

**“Interested person” means, with respect to a decision of the city planner or planning commission, the applicant, any person adversely affected by the decision who appears before the city planner or planning commission and made an oral or written presentation, and any governmental agency.**

**16.34.010 Ex parte contact.**

**A planning commissioner shall be impartial in all decisions, both in fact and in appearance. No planning commissioner may engage in ex parte contact**

**Bold and underline added. [CAPS AND BRACKETS, DELETED.]**

with any person interested in an appeal concerning the appeal either before or after the appeal hearing.

16.34.020 Stay.

An appeal to the planning commission stays the effectiveness of the decision or order of the city planner until the planning commission finally decides the appeal; provided that the planning commission may vacate the stay if doing so is necessary to avoid immediate danger to public health and safety.

16.34.030 Appeal to the planning commission.

Any interested person may appeal a decision or order of the city planner to the planning commission by filing a written notice of appeal with the city planner on a form provided by the city planner within five business days after date of the decision or order. The notice of appeal shall state with specificity the grounds for the appeal, include the appellant's mailing address or that of the appellant's attorney, and be accompanied by a filing fee of \$250.

16.34.040 Preparation of record; Notice of hearing date.

A. Upon the timely filing of an appeal, the city planner by regular mail or personal service shall deliver notice of the appeal within three (3) business days to the appellant and the owner of each property that is the subject of the decision or order appealed from. The notice shall include:

1. A brief description of the decision or order appealed from; and
2. The appellant's notice of appeal.

16.34.050 Preparation of record; Notice of hearing date.

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A. The city planner shall submit the appeal to the planning commission at the next regular planning commission meeting occurring at least fifteen (15) business days after the filing of an appeal. The city planner shall forward all pertinent information related to the appeal to the planning commission for review.

B. The city planner shall publish at least once the time and place of the hearing in a newspaper of general circulation within the city at least five (5) calendar days prior to the hearing. Such notice shall state the nature of the appeal, the location of the property that is the subject of the appeal, and the time and place of hearing. Notice by regular mail of the time and place of hearing shall be given to each interested party and to each record owner of any property that immediately adjoins the property that is the subject of the appeal. A notice of hearing shall be posted in a conspicuous manner on the property that is the subject of the appeal.

16.34.060 Hearing.

A. Only persons who have submitted written arguments to the planning commission prior to the meeting may present oral arguments at the hearing. A written argument must include the name, physical and mailing addresses of the person submitting the argument.

B. At the hearing, oral argument shall be subject to the following order and time limitations, unless the planning commission, for good cause shown, permits a change in the order or an extension of time:

1. City planner or representative, 10 minutes to present the city position and to set forth the evidence and reasons relied upon for the decision.

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2. Appellant or representative, 10 minutes.

3. Each interested person supporting or opposing the appeal, five minutes.

4. Appellant, for rebuttal, 10 minutes.

16.34.070 Decision.

A. The planning commission shall base the decision upon the record and argument presented at the hearing. The planning commission may affirm, reverse, or modify the decision or order of the city planner in whole or in part.

B. The planning commission's decision shall be in writing and shall state that it is a final decision, include the planning commission's findings of fact and conclusions of law, and notify the parties of their right to appeal under section 16.36.060.

C. The planning commission's decision shall be mailed by regular mail or personally delivered by the city planner within 10 business days after the planning commission's decision was final to the appellant and each interested person submitting written testimony at the hearing.

\* Section 3. Amendment of chapter. WMC 16.36, Appeals, is amended to reflect in the title section, appeals of the planning commission to read as follows:

CHAPTER 16.36

APPEALS TO A HEARING OFFICER

Section 4. Repeal of section. WMC 16.08.100, Appeals to the commission, is hereby repealed in its entirety:

[16.08.100 APPEALS TO THE COMMISSION.

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

A. ANY AGGRIEVED PERSON, INCLUDING THE DEVELOPER, MAY APPEAL ANY DECISION OF THE PLANNER BY SERVING WRITTEN NOTICE OF APPEAL TO THE PLANNING CLERK AND THE DEVELOPER WITHIN FIVE DAYS OF THE DECISION. NOTICE OF AN APPEAL IS CONSIDERED SERVED WHEN ACTUALLY RECEIVED OR WHEN PROPERLY MAILED. APPROVED USES MAY PROCEED DURING THE APPEAL PROCESS UNLESS SPECIFICALLY ORDERED BY THE PLANNER TO CEASE.

B. THE APPEAL MUST CONTAIN A CLEAR DESCRIPTION OF THE DECISION OR DECISIONS BEING APPEALED, THE DATE OF THE DECISION, THE ERROR CLAIMED AND AN EXPLANATION OF THE ERROR. UPON RECEIPT OF A TIMELY FILED APPEAL AND THE REQUIRED FEE, THE PLANNER SHALL CALENDAR THE APPEAL FOR THE NEXT COMMISSION MEETING FOR WHICH THE AGENDA HAS NOT CLOSED. THE PLANNER SHALL FORWARD TO THE COMMISSION WITH THE APPEAL A COPY OF ANY PERMIT APPLICATION, THE PLANNERS' ANALYSIS AND DECISION AND ANY OTHER RELEVANT MATERIAL.

C. PUBLIC NOTICE, COMMENT PERIOD AND THE HEARING FORMAT OF THE APPEAL SHALL BE CONDUCTED FOLLOWING THE PROCEDURES FOR A CONDITIONAL USE IN SECTION 16.16.040. THE PROVISIONS FOR A SUPER MAJORITY DO NOT APPLY TO APPEALS TO THE COMMISSION.

D. AT THE MEETING AT WHICH THE COMMISSION RECEIVES THE APPEAL, IT SHALL DETERMINE WHETHER TO HEAR THE APPEAL. THE FAILURE OF THE COMMISSION TO TAKE ACTION ON THE APPEAL CONSTITUTES A REFUSAL TO HEAR THE APPEAL. IF THE COMMISSION DETERMINES TO HEAR ALL OR ANY

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PART OF THE PLANNERS' DECISION, IT MAY HEAR AND DECIDE THE APPEAL AT ITS NEXT REGULAR MEETING.

E. IF THE COMMISSION DETERMINES TO HEAR THE APPEAL; IT WILL HEAR ONLY THOSE PARTS OF THE PLANNERS' DECISION IDENTIFIED IN THE APPEAL AS BEING IN ERROR UNLESS IT DETERMINES TO HEAR ONLY A PORTION OF THOSE PARTS OF THE DECISION APPEALED OR TO HEAR THE ENTIRE DECISION. THE EVIDENCE SHALL BE LIMITED TO A REVIEW OF THE RECORD, ALTHOUGH FURTHER ARGUMENT MAY BE ALLOWED. THE COMMISSION SHALL GIVE DUE DEFERENCE TO THE JUDGMENT OF THE CITY STAFF AND OTHER REVIEW AGENCIES REGARDING DISPUTED ISSUES OF FACT. FINDINGS OF FACT ADOPTED EXPRESSLY OR BY NECESSARY IMPLICATION SHALL BE CONSIDERED AS TRUE IF, BASED UPON A REVIEW OF THE WHOLE RECORD; THEY ARE SUPPORTED BY SUBSTANTIAL EVIDENCE. SUBSTANTIAL EVIDENCE MEANS SUCH RELEVANT EVIDENCE AS A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION. IF THE RECORD AS A WHOLE AFFORDS A SUBSTANTIAL BASIS OF FACT FROM WHICH THE FACT IN ISSUE MAY BE REASONABLY INFERRED, THE FACT IS SUPPORTED BY SUBSTANTIAL EVIDENCE. THE BURDEN OF PROOF SHALL BE ON THE APPELLANT TO DEMONSTRATE THE FACTS AND RESOLUTION OF THE ISSUES ON APPEAL BY SUBSTANTIAL EVIDENCE.

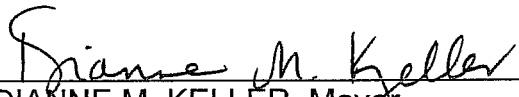
F. THE COMMISSION MAY AFFIRM OR REVERSE THE PLANNERS' DECISION, RETURN THE MATTER TO THE PLANNER FOR FURTHER EVIDENCE AND ACTION, OR CHANGE THE CONDITIONS ATTACHED TO ANY APPROVAL

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ISSUED BY THE PLANNER. THE PLANNING CLERK SHALL, BY CERTIFIED MAIL, SERVE A COPY OF THE COMMISSIONS' DECISION AND APPEAL RECORD ON THE APPLICANT. A COPY OF THE APPEAL RECORD SHALL BE AVAILABLE FOR PUBLIC INSPECTION AT THE PLANNERS' OFFICE.]

\* **Section 5. Effective date.** This ordinance shall take effect upon adoption by the Wasilla City Council.

ADOPTED by the Wasilla City Council on January 12, 2004.

  
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DIANNE M. KELLER, Mayor

ATTEST:

  
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KRISTIE SMITHERS, CMC  
City Clerk

[SEAL]

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**CITY OF WASILLA**

**290 E. HERNING AVE.  
WASILLA, AK 99654-7091  
PHONE: (907) 373-9090  
FAX: (907) 373-9092**

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**TO:** Wasilla City Council  
**THRU:** Mayor Dianne M. Keller *DMK*  
**FROM:** Kristie Smithers *KS* City Clerk & Tim Krug, City Planner  
**DATE:** December 2, 2003  
**SUBJECT: Ordinance Serial No. 04-03**

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**SUMMARY:**

Attached is a proposed ordinance to adopt a new chapter in Title 16, Appeals to the Planning Commission. This ordinance revises the existing procedure for appeals to the planning commission to be similar to appeals of the planning commission to a Hearing Officer.

**FISCAL IMPACT:** If yes, amount requested:  
Account No.:

**RECOMMENDED ACTION:**  
Introduce and set for public hearing.

**ATTACHMENTS:**