

**CITY OF WASILLA
ORDINANCE SERIAL NO. 04-72**

AN ORDINANCE OF THE WASILLA CITY COUNCIL AMENDING WMC CHAPTER 16.36 RELATED TO APPEALS OF DECISIONS OF THE PLANNING COMMISSION TO A HEARING OFFICER.

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

* **Section 2. Amendment of section.** WMC 16.36.010, definitions, is amended to read as follows:

The following words or phrases, when used i[l]n this chapter, shall have the meanings set forth in this section [UNLESS THE CONTEXT OTHERWISE REQUIRES]:

“Appellant” means a person [THE PARTY] who files [A NOTICE OF] an appeal application pursuant to Section 16.36.060 [16.36.040].

“Business day” means any day which is not a Saturday, Sunday or other day on which city offices are authorized or required by law to be closed.

“Hearing officer” means a [THE] hearing officer appointed under Section 16.36.020.

“Interested person” means, [WITH RESPECT TO A DECISION OF THE PLANNING COMMISSION,] the applicant, each record owner of the property that was the subject of the decision, and any person or governmental agency [ADVERSELY AFFECTED BY THE DECISION] who appeared before the planning

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commission and made an oral or written presentation[, AND ANY GOVERNMENTAL AGENCY] with respect to the decision of the planning commission under appeal.

* **Section 3. Amendment of section.** WMC 16.36.020, hearing officer, is amended to read as follows:

A. Appeals filed under this chapter shall be heard by a hearing officer. The hearing officer shall hear and decide appeals from decisions of the planning commission on conditional uses, variances, and other quasi-judicial zoning and land use determinations pursuant to Title 16 of this code. To be appointed as a hearing officer, a person must have knowledge of, or an ability to comprehend, for the purposes of the proposed hearing, this chapter and general land use regulation, principles of due process, and some familiarity with the development of the city. A person may not act as hearing officer in any case in which the person has any direct or indirect financial interest, and must [SO] certify to the absence of any such interest before receiving the appeal record [APPOINTMENT] on a form provided by the city clerk. A hearing officer may not be a current city employee or a current member of the council or commission.

B. The mayor or city clerk shall solicit persons who are willing to serve as hearing officers, and shall maintain a list of interested persons determined to be qualified.

C. Upon an appeal being filed, the mayor shall recommend to the council for approval, the appointment of the hearing officer to the case.

D. Compensation of the hearing officer shall be determined by council resolution prior to the hearing.

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* **Section 4. Amendment of section.** WMC 16.36.060, appeal from planning commission, is amended to read as follows:

Any interested person **adversely affected by** [MAY APPEAL] a decision or order of the commission **may appeal the decision or order** to the hearing officer by filing [A WRITTEN NOTICE OF] **an appeal application** with the clerk on a form provided by the clerk within five business days after **the** date of the decision or order. The [NOTICE OF] appeal **application** shall state with specificity the grounds for the appeal, include the appellant's mailing address or that of the appellant's **representative**[ATTORNEY], and be accompanied by a **nonrefundable** filing fee of five hundred dollars (\$500.00) **and a deposit of five hundred dollars (\$500.00) for the preparation of the transcript, advertising, and mailing costs. The appellant shall pay any cost for the preparation of the transcript, advertising, and mailing in excess of the amount of the deposit no later than the date written arguments are due, or the appeal will be dismissed. The city shall return any unexpended part of the deposit to the appellant.**

* **Section 5. Amendment of section.** WMC 16.36.070, preparation of record; notice of hearing date, is amended to read as follows:

A. Upon the timely filing of an appeal, the clerk shall mail or personally serve notice of the appeal within **five (5)** [THREE] business days to the city planner[, THE APPELLANT] and **each interested person** [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]

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2. A copy of the appellant's [NOTICE OF] appeal application; and
3. A statement that an interested person may request a copy of the appeal record by submitting to the clerk, a written request that includes the name, physical and mailing addresses of the person submitting the request, and a statement of the per page charge for a copy of the appeal record.

B. The clerk shall submit the items stated in A.1 and A.2 of this section [16.36.070.A] to the council at the next regular council meeting occurring at least ten (10) business days after the filing of an appeal. The submission also shall include the mayor's recommendation of the hearing officer to be appointed for the appeal.

C. The clerk shall request from the city planner a record of the appeal to be filed in the clerk's office within twenty (20) business days of the filing of the appeal. The appeal record shall consist of a transcript [TAPE RECORDING] of the proceedings before the planning commission, copies of all documentary evidence, memoranda and exhibits, correspondence and other written material submitted to the planning commission, a copy of the written decision of the planning commission, and mailing labels for each interested person. [PARTY AND EACH PROPERTY OWNER THAT MUST BE NOTIFIED OF THE APPEAL AS STATED IN SECTION 16.36.070.E]. [THE CITY PLANNER SHALL ASSEMBLE THESE ITEMS THAT ARE REQUIRED TO BE IN THE APPEAL RECORD. AN INTERESTED PARTY MAY CAUSE A VERBATIM TRANSCRIPT OF THE PROCEEDINGS BEFORE THE PLANNING COMMISSION BE INCLUDED IN THE APPEAL RECORD. BY ARRANGING FOR A COURT REPORTER TO PREPARE THE TRANSCRIPT AND FILING THE TRANSCRIPT WITH THE CLERK WITHIN TWENTY (20) BUSINESS DAYS OF THE SERVICE OF THE NOTICE OF

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

APPEAL. THE CITY SHALL PAY THE COST OF PREPARING THE VERBATIM TRANSCRIPT.]

D. Within ten (10) business days after receiving the entire appeal record from the city planner or after approval of the appeal officer by the council, whichever is later, the clerk shall assemble the record and mail or personally serve the record on the hearing officer, the appellant, each [ANY] interested person [PARTY] who has submitted a written request for [REQUESTED] a copy of the appeal record [IN WRITING], and the city planner. The clerk shall accompany the record with a notice stating the date on which written arguments must be filed, and the date of the appeal hearing. Interested persons requesting a copy of the record shall be charged on a per page basis.

E. The clerk shall publish notice of [AT LEAST TWICE] the time and place of the hearing at least twice in a newspaper of general circulation within the city. The first notice shall be published at least ten (10) calendar days prior to the date written arguments are due[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 person. [PARTY AND TO EACH OWNER AS LISTED ON THE MATANUSKA-SUSITNA BOROUGH PROPERTY TAX ROLLS, OF PROPERTY LOCATED WITHIN ONE THOUSAND, TWO HUNDRED (1200) FEET OF THE BOUNDARY OF 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.]

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F. On or before the due date for written argument on an appeal, a person submitting written argument shall file the argument with the clerk. Within three (3) business days after the date written arguments are due, the clerk shall provide a copy of the written arguments to the hearing officer, the appellant, each interested person who requests a copy of the written arguments, and the city planner. Interested persons receiving a copy of the written arguments shall be charged on a per page basis.

* **Section 6. Amendment of section.** WMC 16.36.080, hearing, is amended to read as follows:

A. Only **interested** persons who have submitted written arguments to the hearing officer prior to the due date, **and the city planner and appellant, or their representatives** 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. The hearing officer shall hold a hearing on the appeal within ten (10) business days after written arguments are due.

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

1. City planner or representative, ten (10) minutes to present the city position and to set forth the evidence and reasons relied upon for the decision;
2. Appellant or representative, ten (10) minutes;
3. Each interested person supporting or opposing the appeal five minutes;

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4. Appellant **or representative**, for rebuttal, ten (10) minutes.

* **Section 7. Amendment of section.** WMC 16.36.090, decision, is amended to read as follows:

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

B. The hearing officer's decision shall be in writing and shall state that it is a final decision, include the hearing officer's findings of fact and conclusions of law, and notify the parties of their right to appeal under Section 16.36.100.

C. The hearing officer's decision shall be mailed or personally delivered by the clerk within ten (10) business days after the hearing officer's decision was final to the appellant, **city planner** and each interested person **who has requested a copy of the appeal record in writing.**

D. Each appeal record shall be kept in accordance with **the city's records management policy**[STATE REGULATIONS] and shall be open to the public. Documents or other information considered by the hearing officer, which were not part of the appeal record shall become a part of the record before the hearing officer.

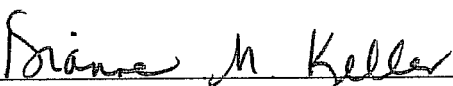
* **Section 8. Amendment of section.** WMC 16.36.100, judicial review, is amended to read as follows:

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

An interested person may appeal a decision of the hearing officer[, OR A CASE DENIED BY THE COUNCIL,] to the superior court within the time prescribed in the Alaska Rules of Appellate Procedure.

* **Section 9. Effective date.** This ordinance shall take effect upon adoption of the Wasilla City Council.

ADOPTED by the Wasilla City Council on October 11, 2004.



DIANNE M. KELLER, Mayor

ATTEST:



KRISTIE SMITHERS, MMC
City Clerk

[SEAL]

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**CITY OF WASILLA
LEGISLATION STAFF REPORT**

**RE: ORDINANCE SERIAL NO. 04-72: AMENDMENT TO WMC 16.36 REGARDING
PLANNING COMMISSION APPEALS TO THE APPEALS OFFICER.**

Agenda of: September 27, 2004
Originator: K. Smithers, City Clerk

Date: September 21, 2004

Route to:	Department	Signature/Date
X	Public Works Planning	<i>S. Garley</i> 9/21/04
X	Finance *signature required	<i>[Signature]</i>
X	Clerk	<i>K. Smithers</i>

REVIEWED BY MAYOR DIANNE M. KELLER: *Dianne M. Keller*

FISCAL IMPACT: yes\$ or no

Funds Available yes no

Account name/number:

Attachments: Proposed Ordinance

SUMMARY STATEMENT:

Earlier this year we had an appeal filed which was the first appeal that used the new appeal process since its adoption in 2002. During the appeal process, Sandra Garley, Dave Chappel, the appeals officer, and I, found some discrepancies in the process. These changes have been incorporated into the proposed ordinance for the council to consider for adoption. These changes will clarify, simplify and assist the staff with the process.

Both Council Members Straub and Bowen have expressed concern with the fees that are collected when filing an appeal. The proposed ordinance suggests that at the time an appeal is filed to collect \$500 for the filing fee, as well as, a \$500 deposit for preparation of a transcript, advertising and mailings. If the amount to prepare advertisements, mailing and transcripts goes over the \$500 deposit the applicant would pay the additional amount prior to the date written arguments are due or the case would not be heard by the appeals officer and the appeal process would cease.

Also, while following the current requirements in regard to notification of property owners, we discovered that only an "interested person" should be notified about the appeal. The proposed ordinance also corrects this discrepancy.