

CODE ORDINANCE

Requested by: City Clerk
Introduced: June 26, 2006
Public Hearing: July 10, 2006
Amended: July 10, 2006
Adopted: July 10, 2006

Vote: Cox, Ewing, Menard, Metiva, O'Neil & Straub in favor

**CITY OF WASILLA
ORDINANCE SERIAL NO. 06-29(AM)**

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 by adding a definition as follows:

“Applicant” means the applicant for the permit, variance or other administrative action that is the subject of an appeal under this chapter.

* **Section 3. Amendment of section.** WMC 16.36.030, Staff, is amended to read as follows:

The city clerk and city clerk's staff shall assist the hearing officer **in preparing for and conducting the hearing.** The city clerk shall **make an electronic recording** [KEEP MINUTES] of the hearing and conduct all correspondence, including the notification of decisions of the hearing officer.

* **Section 4. Amendment of section.** WMC 16.36.060, Appeal From Planning Commission, is amended to read as follows:

A. Any interested person adversely affected by a decision or order of the commission may appeal the decision or order to the hearing officer by filing an appeal

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

application with the clerk on a form provided by the clerk within five business days after the date of the decision or order. The appeal application shall state with specificity the grounds for the appeal, include the appellant's mailing address or that of the appellant's representative[.].

B. Except as provided in subsection C of this section,

1. An appeal application shall include [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 **a [THE] transcript of the proceedings before the planning commission, and** advertising[,] and mailing costs.

2. The appellant shall pay **the [ANY] cost of preparing** [FOR THE PREPARATION OF] the transcript, **and** 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.

C. Within the time for filing the appeal application, an appellant may request that the city waive payment of part or all of the fee and costs described in subsection B of this section because of the appellant's indigence. The request shall include a sworn financial statement in a form approved by the city clerk. The city clerk will grant or deny the request based on a determination whether the appellant is indigent.

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

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

A. Upon the timely filing of an appeal, **and any determination required under 16.36.060.C**, the clerk shall mail or personally serve notice of the appeal within five business days to the city planner and each interested person. The notice shall include:

1. A brief description of the decision or order appealed from;
2. A copy of the appellant's 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 subsections (A)(1) and (A)(2) of this section 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 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.

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,

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

the clerk shall assemble the record and mail or personally serve the record on the hearing officer, the appellant, **the applicant, if not the appellant,** each **other** interested person who has submitted a written request for a copy of the appeal record, 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 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. 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.

F. **An interested person must file any written argument with the city clerk** o[O]n or before the due date for **filing** written argument [ON AN APPEAL, A PERSON SUBMITTING WRITTEN ARGUMENT SHALL FILE THE ARGUMENT WITH THE CLERK]. Within three 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, **the applicant, if not the appellant,** each **other** interested person who requests a copy of the written arguments, and the city planner. Interested persons **requesting** [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:

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

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.

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. Applicant or representative, if the applicant is not the appellant, ten (10) minutes;

4[3]. Each **other** interested person supporting or opposing the appeal, five minutes;

5[4]. Appellant or representative, for rebuttal, ten (10) minutes.

6. Applicant or representative, if the applicant is not the appellant, 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.

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

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, the applicant, if not 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 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.

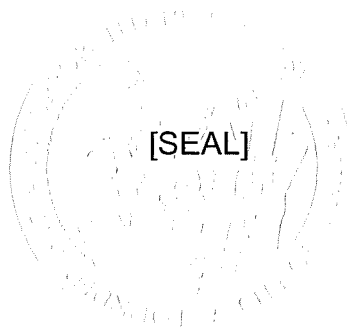
* **Section 8. Effective date.** This ordinance shall take effect upon adoption of the Wasilla City Council.

ADOPTED by the Wasilla City Council on July 10, 2006.


SANDRA GARLEY
Deputy Administrator

ATTEST:


KRISTIE SMITHERS, MMC
City Clerk



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**CITY OF WASILLA
LEGISLATION STAFF REPORT**

RE: ORDINANCE SERIAL NO. 06-29 AMENDING WMC 16.36 RELATED TO APPEALS OF DECISIONS OF THE PLANNING COMMISSION TO A HEARING OFFICER

Agenda of: June 26, 2006
Originator: Kristie Smithers, City Clerk

Date: June 12, 2006

Route to:	Department	Signature/Date
X	Deputy Administrator Planning, Economic Development, Human Resources	<i>S. Gouley</i>
X	City 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: I have reviewed WMC 16.36, Appeals to a Hearing Officer, and recommend that the council enact amendments as described below:

Section 2. Add a definition of applicant.

Section 3. This section clarifies that the clerk's office is responsible for assisting the hearing officer during the hearing and it strikes the words "keeps the minutes of the hearing" since no formal minutes are taken. Typically the hearing officer orders a transcript of the hearing and the transcript serves as the official record of the proceedings. Once an appeal file is closed, the file is transferred to the planning office to maintain with the property file.

Sections 4. During our last appeal we discovered that we do not have a process in place to waive filing fees for an appeal where the appellant claims to be indigent. The proposed ordinance provides an application process for those claiming indigent status and authorizes the city clerk to grant or deny the request.

Sections 5, 6 and 7. Also during our last appeal, we discovered that we lacked a mechanism to notify a property owner about an appeal that was filed against their property. This happens in cases where the property owner is not the appellant. Although we were not mandated to notify the property owner of the case, we certainly did so. Adding this provision will ensure that notification is standard practice and not overlooked.