

**ORDINANCE NO. 27
CITY OF LIBERTY LAKE
SPOKANE COUNTY, WASHINGTON**

**AN ORDINANCE OF THE CITY OF LIBERTY LAKE, WASHINGTON,
ESTABLISHING THE OFFICE OF HEARING EXAMINER AND PROVIDING FOR
RULES AND REGULATIONS.**

WHEREAS, the City of Liberty Lake will incorporate on August 31, 2001:

WHEREAS, the City of Liberty Lake will adopt a Interim Comprehensive Plan and related development regulations to guide land use development in the City;

WHEREAS, the City Council believes a hearing examiner process will facilitate land use decisions, code interpretations and appeals of City action; and

NOW, THEREFORE, the City Council of the City of Liberty Lake, Washington, do ordain as follows:

Section 1. **Purpose.** The purpose of this ordinance is to establish the authority and process for regulatory hearings which will provide:

A. A prompt opportunity for a hearing and decision on certain land use permits, appeals, alleged violations of land use regulations, and such other matters as may be assigned to the hearing examiner.

B. Procedural due process and the appearance of fairness by conducting hearings before a fair and impartial examiner competent in the fields of land use and regulatory requirements.

Section 2. **Office Created-Duties.** Pursuant to Chapters 35A.63 and 58.17 RCW, the Office of Hearing Examiner ("Examiner") is created. The Examiner will interpret, review and implement land use regulations and other regulatory requirements and perform such other duties as may be assigned. The term "Examiner", includes deputy examiner, examiner pro tem, or substitute examiner.

Section 3. **Appointment.** The Examiner will be appointed through Interlocal Agreement.

Section 4. **Qualifications.** Examiners will be appointed solely with regard to their qualifications for the duties of the office and must have training and experience in land use planning and zoning issues including a license to practice law in the State of Washington. The experience must be such as will qualify them to conduct their administrative or quasi-judicial hearings or regulatory enactments and to discharge the other functions conferred upon them. Examiners will hold no other elective or appointive office or position in the City.

Section 5. **Compensation.** The Examiner is a contract position. Compensation will be as negotiated between the City and Examiner.

Section 6. Freedom From Improper Influence. No person shall attempt to influence an Examiner in any matter pending before the Examiner, except publicly at a public hearing duly called for such purpose, or to interfere with an Examiner in the performance of the Examiner's duties in any other way; provided, that this section will not prohibit the City Attorney from rendering legal services to the Examiner.

Section 7. Conflict of Interest. No Examiner shall conduct or participate in any hearing, decision or recommendation in which the Examiner has a direct or indirect substantial financial interest, or concerning which the Examiner has had substantial prehearing contacts with proponents or opponents wherein the issues were discussed; nor, on appeal from or review of an Examiner decision, shall any member of the legislative body who has such an interest or has had such contacts participate in the consideration thereof. This is not intended to prohibit necessary or proper inquiries on matters such as scheduling, but any such contacts are to be entered into the official record of the hearing. Whenever possible, such inquiries and the responses to such inquiries shall be in writing.

The office of the Examiner will be separate from and not a part of the Planning Department.

Section 8. Rules. The Examiner will prescribe rules for the scheduling and conduct of hearings and other procedural matters related to the duties of his office. The rules for a hearing will provide for the taking of sworn testimony and rebuttal, and may authorize the Examiner to limit the time allowed to parties testifying on an equal basis and time limits on rebutting. Cross examination of witnesses may be allowed by the Examiner.

Section 9. Decision-Legal Effect. The Examiner will receive and examine available information, conduct public hearings and prepare a record thereof, and enter findings, decision or recommendations as provided in this section.

A. The decision of the Examiner on the following matters will be final, unless such decision is appealed to Superior Court in writing by an aggrieved party:

1. Applications for variances from the zoning ordinance.
2. Conditional use permits.
3. Special use permits.
4. Shoreline Permits.

B. The decision of the Examiner on the following matters will be a recommendation to the City Council:

1. Rezone of property.
2. Planned unit development and binding site plans.
3. Preliminary plats.

4. Appeals of administrative determination of ordinance violations, interpretations or other matters.
5. Appeals from administrative determinations of interpretations of land use regulations or permits.

C. In the performance of duties prescribed by this chapter or other ordinances, the Examiner may:

1. Administer oaths and affirmations, examine witnesses, rule upon offers of proof, receive relevant evidence, and allow discovery pursuant to Washington State Court Rules; provided, that no person shall be compelled to divulge information which he could not be compelled to divulge in a Court of Law;

2. Upon the request of the City, any party, or upon the Examiner's own volition, issue and cause to be served subpoenas for the attendance of witnesses and for production for examination of any books, records, or other information in the possession of under the control of any witness; provided, that such subpoena will state the name and address of the witness sought, and if for the production of books, documents or things, will specifically identify the same and then relevance thereof to the issues involved. In case of failure or refusal without lawful excuse of any person duly subpoenaed to attend pursuant to such subpoena, or to be sworn, or to answer any material and proper question, or to produce upon reasonable notice any material or property books or records or other information in this possession and under his control, the Examiner may invoke the aid of the City Attorney who will apply to the appropriate court for an order or other court action necessary to secure enforcement of the subpoena;

3. Regulate the course of the hearing in accord with this ordinance and other applicable ordinances;

4. Hold conferences for the settlement or simplification of the issues by consent of the parties;

5. Dispose of procedural requests or similar matters;

6. Take such other action as is reasonable and necessary.

D. The Examiner is hereby empowered to act in lieu of the Board of Adjustment, the Planning Commission, and such other official, boards or commissions as may be assigned, for land use issues listed in Section 9, and other land use issues authorized by the City Council. Wherever existing ordinances, codes or policies authorize or direct the Board of Adjustment, Planning Commission or other official, boards or commissions to undertake certain activities which the Examiner has been assigned, such ordinances, codes or policies will be construed to refer to the Examiner.

Section 10. Land Use Issues-Report of Planning Department. On any land use issue coming before the Examiner, the Planning Department will coordinate and assemble the review of other City Departments, governmental agencies, and other interested parties and will prepare a report summarizing the factors involved and the Department's findings and recommendations. At least five calendar days prior to the scheduled hearing, the report will be filed with the Examiner and copies

thereof mailed to the applicant and made available for public inspection. Copies thereof will be provided to interested parties upon payment of reproduction costs. In the event that information to be provided by the applicant or other parties, outside of City control has not been provided in sufficient time for filing five days in advance of the hearing, the Hearing Examiner may reschedule the hearing and notify interested parties.

Section 11. Report to and Meeting with Planning Commission and City Council. The Examiner must report in writing to and if requested meet with the Planning Commission and City Council at least annually for the purpose of reviewing the administration of the land use policies and regulatory ordinances, and any amendments to City ordinances or other policies or procedures which would improve the performance of the Examiner process. Such report must include a summary of the Examiner's decision since the last report.

Section 12. Reconsideration. Any aggrieved person upon good cause that the decision of the Examiner is based on erroneous procedures, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing, may make a written request for reconsideration by the Examiner within fourteen (14) days of the date the decision is rendered. This request must set forth the specific errors or new information relied upon by such appellant. The Examiner may after review of the record take further action as appropriate.

Section 13. Appeals. Unless provided otherwise by this Ordinance or statute, any aggrieved person may submit a written appeal of the Examiner's Decision to the Council within fourteen (14) calendar days from the date the final decision of the Examiner is rendered. The Council shall hold a hearing on the appeal.

Such appeal must be upon the record, established and made at the hearing, provided that new evidence which was not available at the time of the hearing may be included in such appeal. The term "new evidence" means only evidence discovered after the hearing and shall not include evidence which was available or which could reasonably have been available and was simply not presented at the hearing for whatever reason.

Such written appeal shall allege specific errors of fact, specific procedural errors, omissions from the record, errors in the interpretation of the Comprehensive Plan or new evidence which was not available at the time of the hearing.

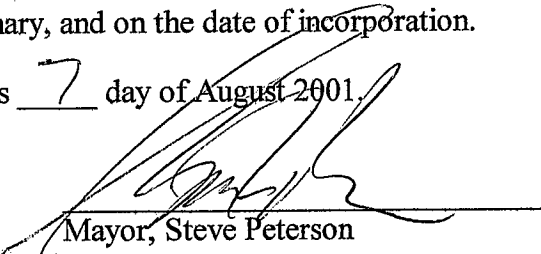
Upon such written appeal being filed within the time period allotted and upon payment of fees as required, a hearing will be held by the City Council. Such hearing will be held in accord with appeal procedures adopted by the City Council. If the Examiner has recommended approvals of the proposal, such recommendation will be considered by the City Council at the same time as the consideration of the appeal.

Section 14. Incorporation By Reference. Pursuant to RCW 35A.12.140, the City of Liberty Lake incorporates by reference Spokane County Resolutions 96-0171 and 96-0294, attached hereto to the extent they are not inconsistent with this Ordinance. In the event of an inconsistency between this Ordinance and the above Spokane County Resolutions, this Ordinance and other City Ordinances and rules shall supersede and control.

Section 15. Severability. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 16. Effective Date. This Ordinance shall be in full force and effect five (5) days after publication of the Ordinance Summary, and on the date of incorporation.

PASSED by the City Council this 7 day of August 2001.



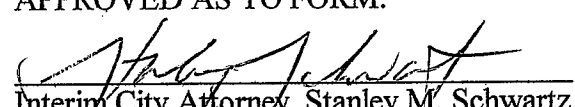
Mayor, Steve Peterson

ATTEST:



Interim City Clerk, Arlene Fisher

APPROVED AS TO FORM:



Interim City Attorney, Stanley M. Schwartz

Date of Publication: 8/16/01

Effective Date: Date of Incorporation

City of Liberty Lake
P.O. Box 370
Liberty Lake, WA 99019
(509) 755-6702

**NOTICE OF ORDINANCE PASSED
BY LIBERTY LAKE CITY COUNCIL**

The following is the title and summary of Ordinance No. 27 passed by the City of Liberty Lake City Council on the 7th day of August, 2001.

**AN ORDINANCE OF THE CITY OF LIBERTY LAKE, WASHINGTON,
ESTABLISHING THE OFFICE OF THE HEARING EXAMINER AND PROVIDING
FOR RULES AND REGULATIONS.**

The introductory paragraphs state this ordinance adopts a Hearing Examiner System.

Section 1 states the purpose of the Ordinance is to establish the authority and process for regulatory hearings.

Section 2 creates the office of the Hearing Examiner and sets forth the duties of such office.

Section 3 provides the Examiner will be appointed through Interlocal Agreement.

Section 4 establishes the qualifications for the Examiner.

Section 5 states the compensation will be as negotiated between the City and the Examiner.

Section 6 relates to attempting to improperly influence the Examiner's decision making.

Section 7 relates to the Examiner's conflict of interest in any hearing, decision or recommendation.

Section 8 allows the Examiner to prescribe rules for scheduling and hearings.

Section 9 establishes legal effect of the Examiner's decision and authorizes the Examiner to establish procedures for the hearings.

Section 10 provides the Planning Department will prepare a staff report relating to the matter being heard by the Examiner.

Section 11 provides the Examiner will deliver an annual report to the City Council.

Section 12 relates to reconsideration of an Examiner's decision.

Section 13 relates to appeals from the Examiner's decision.

Section 14 incorporates County Resolutions by reference.

Section 15 relates to severability with respect to any invalid or unconstitutional provision.

Section 16 establishes an effective date.

The full text of the Ordinance is available at the Interim City of Liberty Lake City offices as identified above. A copy will be mailed out upon request.

Arlene Fisher

Interim City Clerk

Published: 8/16/01