

**City of Wasilla
Ordinance Serial No. 15-22**

An Ordinance of the Wasilla City Council amending Wasilla Municipal Code 2.76 and 16.36, in regard to Appeals to an Administrative 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 2.76.020, Qualifications, is amended to read as follows:

2.76.020 Qualifications.

An administrative hearing officer shall be an attorney duly licensed to practice law in the state of Alaska, or have training and experience in arbitration, mediation, or contract law, and **must also have knowledge of, or an ability to comprehend, for the purposes of the proposed hearing, Title 6, 7 and/or 16 of this code and principles of due process, and, for an appeal of a planning commission decision, general land use regulation and some familiarity with the development of the city.** An administrative hearing officer shall hold no other appointed or elected office or position with the city.

Section 3. Amendment of section. WMC 2.76.060, Ex parte contacts prohibited, is amended to read as follows:

2.76.060 Ex parte communications ~~contacts prohibited.~~

(A) An administrative hearing officer acts in a quasi-judicial capacity and shall not engage in ex parte communications concerning the appeal with city employees, interested **parties** ~~persons~~, members of the council, the appellant, or any parties associated with the decision pertaining to the appeal.

(B) If an ex parte communication occurs, the administrative hearing officer shall disclose the communication on the record prior to rendering a decision. The administrative hearing officer shall only take information brought forward in an appropriate manner into consideration.

Section 4. Amendment of section. WMC 2.76.070, Appeal procedures, is amended to read as follows:

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2.76.070 Appeal procedures.

(A) The procedures defined in:

(1) Chapter 16.36 shall govern appeals pursuant to Title 16, land development code; and

(2) Chapter 7.08 shall govern appeals pursuant to Title 7, animal care and regulation; and

(3) Section 6.04.065 shall govern appeals from the suspension or revocation of a business license.

Section 5. Amendment of chapter. WMC 16.36, Appeals to a Hearing Officer, is amended to read as follows:

Chapter 16.36
Appeals to an Administrative Hearing Officer.

16.36.010 Definitions.

In ~~When used in~~ this chapter, the following words and phrases shall have the meanings set forth in this section:

APPELLANT. A ~~means~~ a person who files an appeal application pursuant to Section 16.36.060.

APPLICANT. The ~~means~~ the applicant for the permit, variance, conditional use, or other quasi-judicial zoning and land use determination ~~administrative action~~ that is the subject of an appeal under this chapter.

ADMINISTRATIVE HEARING OFFICER. A person that is appointed as an administrative hearing officer pursuant to Chapter 2.76 to hear appeals related to a planning commission decision. ~~means a hearing officer appointed under Section 16.36.020.~~

INTERESTED PARTY PERSON. Any of the following with regard to a planning commission decision pursuant to Title 16: ~~means~~

- (1) The applicant;
- (2) Each record owner of the property that was the subject of the decision; and
- (3) Any person or governmental agency;
- (4) Any person that actively and substantively participated in the proceedings ~~who appeared before the planning commission and made an oral or written presentation with respect to the decision of the planning commission under appeal;~~ and
- (5) The city.

16.36.020 Administrative hearing officer.

(A) Appeals filed under this chapter shall be heard by an administrative hearing officer appointed under WMC 2.76.010. The

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administrative 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 certify to the absence of any such interest before receiving the appeal record 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.~~

16.36.030 Staff.

The city clerk and city clerk's staff shall assist the administrative hearing officer in preparing for and conducting the hearing. This includes making The city clerk shall make an electronic recording of the appeal hearing and preparing ~~conduct~~ all correspondence, including the notification of decisions of the administrative hearing officer's decision.

16.36.040, Ex parte contact.

~~A hearing officer shall be impartial in all decisions, both in fact and in appearance. No hearing officer may engage in ex parte contact with any person interested in an appeal concerning the appeal either before or after the appeal hearing.~~

16.36.050 Stay.

An appeal stays the effectiveness of the decision or order appealed from until the administrative hearing officer finally decides the appeal; provided that the administrative hearing officer may vacate the stay if doing so is necessary to avoid immediate danger to public health and safety.

16.36.060 Appeal application~~from planning commission.~~

(A) Any interested party ~~person~~ adversely affected by a decision or order of the planning commission, other than a recommendation to the city council regarding a rezoning or an amendment to this title, may appeal the decision or order to the administrative hearing officer by filing an appeal application with the city clerk on a form provided by the city clerk within fifteen (15) calendar days after the effective date of the decision or order. The appeal application shall state with specificity the grounds for the appeal, and include

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contact information for 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 a nonrefundable filing fee of ~~five hundred dollars (\$500.00)~~, and a deposit of ~~five hundred dollars (\$500.00)~~ for the costs the appellant is required to pay under subsection (B)(2) of this section.

(2) The appellant shall pay the cost of preparing the transcript of the proceedings before the planning commission, ~~and advertising~~ and mailing the notices required in Section 16.36.070. If such costs exceed the amount of the deposit paid by the appellant under subsection (B)(1) of this section, the appellant shall pay the excess to the city no later than the date written arguments are due, or the appeal will be dismissed; provided, that the city clerk may waive payment of an excess amount that is less than ~~\$100 twenty five dollars (\$25.00)~~. The city shall return any unexpended part of the deposit to the appellant within ~~thirty (30)~~ business days after issuance of the **administrative** hearing officer's decision.

(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 **from the appellant and be submitted to 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.

(D) If a final decision of the **administrative** hearing officer or a court on an appeal under this chapter reverses or remands the decision or order of the **planning** commission, the city shall refund to the appellant the filing fee and costs paid by the appellant under subsection B of this section.

16.36.070 Preparation of record – Notice of hearing date and process.

(A) Upon the timely filing of an appeal, and any determination required under Section 16.36.060(C), ~~the clerk shall:~~

(1) **List of Interested Parties.** The city clerk shall notify the city planner and the city attorney of receipt of the appeal application. The city planner shall provide the city clerk with a list and mailing labels for each interested party in the appeal within five business days of the request; and

(2) **Notice of Appeal.** Upon timely receipt of the mailing labels of each interested party, the city clerk shall mail or personally serve notice of the appeal within five business days to each interested ~~person~~ party, the appellant, the applicant if not the appellant, the city attorney and the city planner; if a party is represented by counsel the city clerk shall notify their counsel in lieu of the party.

(B) **Content of Notice.** The notice of appeal shall include:

(1) A brief description of the decision ~~or order~~ appealed from;

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(2) A copy of the appellant's appeal application; and

(3) A statement that ~~an interested person may~~ **the record and documents relating to the appeal may be viewed on the city's website after they have been compiled.** 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.

~~(C)~~**B.** *Appointment of Administrative Hearing Officer.* The **city** clerk shall submit the items stated in subsections ~~(BA)~~(1) and ~~(BA)~~(2) of this section to the council **by information memorandum** 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 **city clerk's appointment** ~~mayor's~~ recommendation of the **administrative** hearing officer ~~to be appointed~~ for the appeal.

~~(D)~~**C.** *Record on Appeal.* The clerk shall notify the city planner upon receipt of a timely appeal application, and the city planner shall provide the **city** clerk with the mailing labels for each interested person in time to meet the notice requirement in subsection a of this section, and **an electronic version of the record on** of the appeal within ~~twenty~~ (20) business days after the filing of the appeal. The appeal record shall consist of **the** 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, and a copy of the **final** written decision of the planning commission. **The record shall be organized in chronological order, paginated, and include a detailed table of contents.**

~~(E)~~**D.** *Service of Record.* Within **15** ~~ten~~ (10) business days after receiving the entire appeal record from the city planner ~~or after approval of the hearing officer by the council, whichever is later,~~ the **city** clerk shall **assemble the record and post the record on the city's website, and notify the administrative hearing officer, the appellant, the applicant if not the appellant, the city attorney, the city planner, and each interested party who has requested to be notified, that the record is available for viewing on the city's website; if a party is represented by counsel the city clerk shall notify the counsel in lieu of the party. The city clerk may accompany the notice with the notice required in subsection 16.36.070(F).** 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 the notice required in subsection F of this section. Interested **parties** persons requesting a **paper** copy of the record shall be charged on a per page basis.

~~(F)~~**E.** *Notice of hearing date.* The **city** clerk shall **post a** publish notice **on the city's website, at least 15 business days before written arguments are**

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due, stating the nature of the appeal, the location of the property that is the subject of the appeal, and the time and place of the hearing, and the date written arguments are due to the city clerk. The city clerk shall notify the administrative hearing officer, the appellant, the applicant if not the appellant, the city attorney, and the city planner; if a party is represented by counsel the city clerk shall notify the counsel in lieu of the party. The city clerk shall also send notice by regular mail to each interested party. ~~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.~~

~~(G).F~~ **Written Arguments.** ~~At least ten (10) business days before written arguments are due, the clerk shall give notice by regular mail to each interested person stating the nature of the appeal, the location of the property that is the subject of the appeal, the time and place of the hearing, and the date written arguments are due. An interested party person must submit file any written argument with the city clerk on or before the due date for filing written argument.~~ **Written arguments submitted in a timely manner shall become part of the record on appeal.** Within ~~five~~ **three** business days after the date written arguments are due, the ~~city~~ clerk shall **post the timely written arguments on the city's website and notify the administrative hearing officer, the appellant, the applicant if not the appellant, the city attorney, the city planner, and each interested party who has requested to be notified, that the written arguments are available for viewing on the city's website; if a party is represented by counsel the city clerk shall notify the counsel in lieu of the party.** ~~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 parties persons requesting a paper copy of the written arguments shall be charged on a per page basis.~~

16.36.075 Appeal procedure Authority of administrative hearing officer.

The **administrative** hearing officer may change the prehearing schedule, the date of the hearing, or the procedure at the hearing, notwithstanding any other provision of this chapter, in response to a written request to the **city** clerk from the appellant or an interested party, for good cause shown; provided, that the appellant and all interested parties shall receive written notice of the **administrative** hearing officer's action at least five **business** days before the change becomes effective. The **administrative** hearing officer may determine all other matters of procedures in the appeal that are not prescribed in this chapter.

16.36.080 Hearing.

(A) Only interested **parties** persons who have submitted written arguments to the **administrative** hearing officer prior to the due date, and the city planner and appellant, or their representatives, may present oral arguments at the hearing.

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(B) The **administrative** hearing officer shall hold a hearing on the appeal within **15** ~~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 **administrative** hearing officer, for good cause shown, permits a change in the order or an extension of time:

(1) City planner or representative, **20** ~~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, **20** ~~ten (10)~~ minutes;

(3) Applicant or representative, if the applicant is not the appellant, **20** ~~ten (10)~~ minutes;

(4) Each other interested **party** ~~person~~ supporting or opposing the appeal, **10** ~~five~~ minutes;

(5) **City planner or representative, for rebuttal, 10 minutes;**

(6) Appellant or representative, for rebuttal, ~~ten (10)~~ minutes;

and

(7) ~~6.~~ Applicant or representative, if the applicant is not the appellant, for rebuttal, ~~ten (10)~~ minutes.

16.36.090 Decision.

(A) The **administrative** hearing officer shall base the decision upon the record and argument presented at the hearing. The **administrative** hearing officer may affirm, reverse, ~~or~~ modify, **or remand** the decision or order of the **planning** commission in whole or in part.

(B) The **administrative** hearing officer's decision shall be **provided to the city clerk** in writing **within 45 business days after the conclusion of the hearing** and shall state that it is a final decision, include the **administrative** 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 **administrative** hearing officer's decision shall be mailed or personally **served** ~~delivered~~ by the **city** clerk within ~~ten (10)~~ business days after the ~~hearing officer's decision is final~~ to the appellant, the applicant if not the appellant, city planner and each interested **party** ~~person~~ who has requested a copy of the appeal record in writing. **The city clerk shall also post the decision on the city's website.**

(D) Each appeal record shall be kept in accordance with the city's records management policy and shall be open to the public. **The city planner shall include the hearing officer's decision in the related land use file of the city.** Documents or other information considered by the hearing officer, **that** ~~which~~ were not part of the appeal record, shall become a part of the record before the **administrative** hearing officer.

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(E) Within 45 business days after the administrative hearing officer issues a decision, the city clerk shall submit an information memorandum to the city council with a copy of the decision and an accounting of costs for the services of the administrative hearing officer in the case.

16.36.100 Judicial review.

An interested ~~party~~ ~~person~~ may appeal a decision of the **administrative** hearing officer to the superior court within the time prescribed in the Alaska Rules of Appellate Procedure.

Section 6. Adoption of section. WMC 16.36.065, Filing and service of documents, is hereby adopted to read as follows:

16.36.065 Filing and service of documents.

A document is filed in an appeal on the date it is received by the city clerk. All documents filed in an appeal must be served on each interested party; if an interested party is represented by counsel the document shall be served on the counsel in lieu of the interested party.

Section 7. Effective date. This ordinance shall take effect upon adoption by the Wasilla City Council.

ADOPTED by the Wasilla City Council on August 24, 2015.


BERT L. COTTLE, Mayor

ATTEST:


KRISTIE SMITHERS, MMC, City Clerk

[SEAL]

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CITY COUNCIL LEGISLATION STAFF REPORT

Ordinance Serial No. 15-22: Amending Wasilla Municipal Code 2.76 and 16.36, in regard to Appeals to an Administrative Hearing Officer.

Originator: Kristie Smithers, MMC, City Clerk *KS*
 Date: 6/11/2015 Agenda of: 7/27/2015

Route to:	Department Head	Signature	Date
X	City Planner	<i>J. Wood</i>	7/13/15
X	Public Works Director	<i>[Signature]</i>	7/15/15
X	Finance Director	<i>[Signature]</i>	7-15-15
X	Deputy Administrator	<i>[Signature]</i>	7/20/15
X	City Clerk	<i>[Signature]</i>	7.15.15

Reviewed by Mayor Bert L. Cottle: *[Signature]* 07:15:15

Fiscal Impact: yes or no **Funds Available:** yes or no

Attachments: Ordinance Serial No. 15-22 (8 pages)

Summary Statement: Ordinance Serial No. 15-22 updates the Wasilla Municipal Code in regard to Chapters 2.76, Administrative Hearing Officer and 16.36 Appeals to an Administrative Hearing Officer.

When working on the last case, we incorporated using the City’s website most beneficial for posting all documents and materials related to the appeal case. This ordinance updates the process allowing us to use the website and also provides for clarity in the process. This ordinance:

Section 2. In Chapter 2.76, adds reference to Title 16 in the administrative hearing officer’s qualifications and includes minor revisions for clarification.

Section 3. Adds minor amendment to Ex parte Communications.

Section 4. Adds reference to Chapter 6.04 in Appeal Procedures.

- Section 5.** In Chapter 16.36, Appeals to an Administrative Hearing Office for Land Use:
- Updates definitions for clarity.
 - Strikes redundant subsections in regard to appointment of the administrative hearing officer and subsection .040 in regard to Ex-parte contact, as these items are already included in Chapter 2.76.

- Waives excess charges in regard to the appellant's costs to be \$100; it takes too much staff time to track and invoice a small amount of \$25 in excess charges.
- 16.36.070 clarifies each step of the appeal process, adds the use of the website in all aspects of processing an appeal, and gives more days for the process.
- Clarifies the hearing schedule and allows more time for presentations during the hearing.
- Allows the administrative hearing officer to remand the decision back to the planning commission as allowed by 16.36.060(D).
- Gives the administrative hearing officer a deadline of 45 business days to make a decision on the case.
- Requires the City Planner to include the decision in the land use file.
- Requires the City Clerk to give the Council a copy of the decision and a cost accounting in regard to the case.
- Provides general clerical update throughout this chapter.

Section 6. Adds a new section requiring documents be filed with the clerk and accepted on the date of receipt by the City Clerk.

Staff Recommendation: Introduce and set for public hearing Ordinance Serial No. 15-22.