



## Memorandum

**To: Mayor Samuelson, City Council**

**Re: Hearings Examiner and Land Use Fee Schedule**

### *Hearings Examiner*

The final draft of the hearings examiner ordinance is attached for the second reading and public hearing. No significant changes have been made to the ordinance since the first reading. Minor technical corrections have been made based on the first reading of the ordinance and subsequent input from individual council members.

Also before the council is the draft contract for hearings examiner services with Soundlaw Center. Staff has reviewed the contract and recommends approval. A flat fee structure has been established based on each type of hearing and is enclosed in the contract. The flat fee structure guarantees predictability in terms of the total costs unless there are unusual circumstances that warrant additional time.

If approved, Ted Hunger, principal at Sound Law Center will attend the October 19, 2011 council meeting to present rules of procedure and an educational brochure for the community on the hearings examiner system.

### *Land Use Fee Schedule*

The updated land use fee schedule is attached for consideration as part of the second reading and public hearing. The fees have not been amended since the first reading. However, the flat fee for the hearings examiner has been incorporated by reference to require the applicants pay the direct cost of the hearings examiner service with the exception of administrative appeals, which is proposed to remain the same as the existing fee of \$840.

**Recommendation:**

The planning department recommends the City Council adopt the hearings examiner ordinance and execute the contract with Sound Law Center to provide hearings examiner services.

The planning department recommends approval of the land use fee schedule as presented.

**ORDINANCE NO. \_\_\_\_\_ CITY OF LANGLEY, ISLAND COUNTY, WASHINGTON**

**AN ORDINANCE OF THE CITY OF LANGLEY, WASHINGTON, ADOPTING A HEARING EXAMINER SYSTEM IN ORDER TO CONDUCT PUBLIC HEARINGS AND RENDER DECISIONS ON MATTERS DELEGATED BY THE CITY COUNCIL THROUGH THE ADOPTION OF NEW CHAPTER 18.37 AND AMENDING OR REPEALING THE FOLLOWING SECTIONS OF THE LANGLEY MUNICIPAL CODE:**

2.06.24, 15.01.720, 15.01.735, 16.04.070, 16.04.140.E., 16.04.150, 16.20.080.C.1, 17.04.090.A., 17.04.135, 17.04.150, 17.04.190, 17.08.130, 18.02.050, 18.20.050, 18.20.060, 18.22.130.G. and N, 18.22.150, 18.26.060, 18.28.050, 18.30.030, 18.31.20, 18.34.060, 18.34.130, 18.35.160.A, 18.36.010, 18.36.030.A, 18.36.040, 18.36.050, 18.36.060, 18.36.065, 18.36.090, 18.36.100, 18.36.105.B., 18.36.120, 18.36.125, 18.36.130, 18.36.140;

**WHEREAS**, pursuant to RCW 35A.63.170, 36.70B.120(3), 35A.11.020, and 35A.21.160, the City Council has the authority and desires to adopt a Hearing Examiner system as an alternative to delegating to a planning commission (or other citizen comprised decision-making body) the power and duty to hear and decide various quasi-judicial matters.

**WHEREAS**, pursuant to the provisions of RCW Section 58.17.330, as an alternative to the provisions of chapter 58.17 RCW requiring a planning commission to hear and issue recommendations for plat approval, the City Council may adopt a Hearing Examiner system and shall specify by ordinance the legal effect of the decisions made by the Hearing Examiner; and

**WHEREAS**, the City Council desires the services of a Hearing Examiner to conduct public hearings and render decisions on matters duly delegated by the City Council; and

**WHEREAS**, pursuant to WAC 197-11-800(20) the proposal or adoption of rules, regulations, resolutions or ordinances or of any plan or program relating solely to governmental procedures and containing no substantive standards respecting use or modification of the environment are categorically exempt from SEPA threshold determination and EIS requirements; and

**WHEREAS**, the proposal is not a development regulation as defined in RCW 36.70A.030 and therefore not subject to the State agency review and transmittal requirements of RCW 36.70A.106; and

**WHEREAS**, the proposal to adopt a Hearing Examiner system is not a "development regulation" as set forth in RCW 36.70A.030 and therefore is not subject to a Planning Advisory Board's notice and hearing requirement under RCW 35A.63.070; and

**WHEREAS**, to promote efficiency in land use decision-making, the City Council desires to expeditiously adopt a Hearing Examiner as the main hearing body and final decision-maker for quasi-judicial actions and retain the Planning Advisory Board to continue to review legislative and rezone proposals;

**WHEREAS**, the City Council also makes the following findings and conclusions regarding the establishment of a Land Use Hearing Examiner system:

1. Hearing examiners should be used to hear and decide land use project permit applications where a hearing is required, such as in the case of applications for subdivisions, shoreline permits, conditional use permits, rezones, and variances

2. The Hearing Examiner system improves land development review integration under chapter 36. 70B RCW;
3. Use of a specialized land use Hearing Examiner is an effective method of consolidating and coordinating multiple review processes and appeals of administrative SEPA determinations, which in most cases are combined with the open record hearing on the application;
4. The Hearing Examiner system provides more professional and timely decisions, ensuring fairness and consistency;
5. The Hearing Examiner system is time-saving for legislative body, freeing legislators to focus on legislative policy and other priority issues;
6. The Hearing Examiner system separates of policy-making or advisory functions from Quasi-Judicial functions;
7. The Hearing Examiner system results in improved compliance with legal requirements, including due process, appearance of fairness, and record preparation; and
8. The Hearing Examiner system reduces liability relating to land use decisions and/or procedural challenges to decisions.

**WHEREAS**, on the \_\_\_\_ day of \_\_\_\_\_, 2011, the City Council held a public hearing to consider the proposed ordinance establishing a Hearing Examiner system;

**WHEREAS**, following a Request for Proposal process, the City of Langley desires to execute a contract for the services of a Hearing Examiner;

**NOW, THEREFORE**, the City Council of the City of Langley do ordain as follows:

Section 1 – A New Chapter 18.37 of the Langley Municipal Code attached hereto as Exhibit A entitled “Hearing Examiner” is adopted by this reference.

Section 2 –Langley Municipal Code, Section 2.06.24 Quasi-judicial hearings, is hereby amended to read as follows:

RCW 43.21C.060 – (~~SEPA~~) provides that when a proposal, not requiring a legislative decision, is conditioned or denied by a non-elected official, that decision shall be appealable to the legislative authority to the Hearing Examiner unless the legislative authority formally eliminates such appeals. The city has established an administrative appeal procedure in Section 16.04.150 of this code. SEPA, the DOE SEPA Rules, the city's ordinances and pertinent case law will be utilized in connection with a quasi-judicial hearing.

Section 3 –Langley Municipal Code, Section 15.01.720 Appeals, is hereby amended to read as follows:

Any person or persons aggrieved by any action of the City Engineer may within ten (10) days of such action file a notice of appeal with the Hearing Examiner ~~City Council~~ setting forth the reasons for such appeal. The Hearing Examiner ~~City Council~~ shall hear and determine the matter and may affirm, modify or disaffirm the administrative decision within forty-five (45) days of the filling of notice of appeal.

Section 4 –Langley Municipal Code, Section 15.01.735 Modifications and appeals, is hereby amended to read as follows:

A. In cases where unusual topographic conditions, nature of existing construction, unique development design or similar factors would make adherence to the width, design or

alignment standards of LMC 15.01 undesirable or impracticable, the requirements may be modified, if not otherwise provided herein, upon written request as follows:

1. Up to ten (10) percent variation from any numerical standard contained within this ordinance by the Planning Official in cases involving short subdivisions.
2. By final approval of the City Planning Official approving any development actions or permits listed in 15.01.020 over which the Planning Official has final authority. Conditions may be attached to an approval which are necessary to protect the public interest and carry out the purpose of this ordinance.
3. By the ~~City Council~~ Hearing Examiner of Langley in approving any development actions listed in 15.01.020 over which the ~~City Council~~ Hearing Examiner of Langley has final approval authority.

Section 5 –Langley Municipal Code, Section 16.04.070 Additional timing considerations, is hereby amended to read as follows:

A. For nonexempt proposals, the DNS or final EIS for the proposal shall accompany the city's staff recommendation to any appropriate ~~advisory decision making body~~, such as the ~~planning commission~~ Hearing Examiner.

Section 6 –Langley Municipal Code, Section 16.04.140. E. Substantive authority is hereby amended to read as follows:

E. Except for permits and variances issued pursuant to Chapter 16.08 of this title, when any proposal or action not requiring a decision of the ~~city council~~ Hearing Examiner is conditioned or denied on the basis of SEPA by a nonelected official, the decision shall be appealable to the ~~city council~~ Hearing Examiner. Review by the ~~city council~~ Hearing Examiner shall be on the de novo basis.

Section 7 –Langley Municipal Code, Section 16.04.150 Appeals, is hereby amended to read as follows:

The city establishes the following administrative appeal procedure for appeals of determinations relating to SEPA:

A. Administrative appeals of determinations relating to SEPA shall be taken within the following time limits:

1. Final determination of significance (DNS): Appeal of the DNS and the substantive determination of the action must be made within ten days of the date the permit or other approval is issued;
2. Determination of significance (DS):

The appeal of a DS must be made within ten days of the date the DS is issued;

3. Final environment impact statement (FEIS): Appeal of the FEIS and the substantive determination on the action must be made within ten days of the date the permit or other approval is issued; and

4. Condition or denial on the basis of SEPA: When any proposal or action not requiring a decision of the city council is conditioned or denied on the basis of SEPA by a nonelected official, an appeal of such condition or denial must be made within ten days of the date such decision is made.

B. All appeals made pursuant to this section shall be perfected in the following manner:

1. All appeals shall be in writing;

2. The written notice of appeal must specify the basis for the appeal and the argument made in support of the appeal;
3. The written notice of appeal must be made to the city planning ~~officer~~ official, and filed at City Hall;
4. The written notice of appeal, together with the required appeal fee as established by city ordinance, must be filed prior to four-thirty p.m. on the last day of the applicable time period for appealing; provided, however, that if City Hall is not open on the last day of the applicable appeal time period, then the appeal period shall be extended until four-thirty p.m. on the next day in which City Hall is open; and
5. Filing requires actual delivery to City Hall prior to four-thirty p.m. on the date due, and prior mailing is not sufficient if actual receipt by the city does not occur within the applicable time period.

C. For any appeal made pursuant to this section, a record shall be prepared, which shall consist of findings and conclusions, testimony under oath, and a taped or written transcript.

D. Procedural determinations made by the responsible official shall be entitled to substantial weight in any appeal proceeding.

E. Only one administrative appeal of a threshold determination or of the adequacy of an EIS shall be permitted.

F. Only parties of record shall be permitted to participate at the appeal hearing. The parties of record shall include, and be limited to, the city, the applicant for the proposal that is the subject of the appeal, and those persons, organizations or agencies which have filed written appeal statements within the specified appeal period. No other persons may testify at the hearing. The hearing shall be limited to consideration of the matters raised in the appeal statements filed within the specified time.

G. The state environmental policy act is not intended to create a cause of action unrelated to a specific governmental action. Consequently, appeals under this chapter shall be of the governmental action, together with its accompanying environmental determination, provided that, the appeal proceeding on a determination of significance may occur before the final decision on a proposed action. There shall not be more than one administrative appeal proceeding per underlying land use action. Further appeals must be to Island County Superior Court per the procedures in Chapter 16.04.55 of this code.

H. Following the public hearing upon such appeal, the ~~H~~Hearing board Examiner may affirm, remand, modify or reverse the determination of the responsible official, recognizing the weight that is to be accorded the determination of the responsible official per 16.04.150D above. The ~~H~~Hearing board Examiner's decision shall be in the form of a report setting forth its findings, conclusions and decision.

#### 1. Environmental Review

For some projects, an Environmental Checklist must be completed by the applicant and submitted along with plans, specifications, and other information when approval or permits are being requested for a project. The Planning Official conducts the Environmental Review and issues a SEPA Threshold Determination for the City. An applicant should consult with the ~~Land Use Coordinator~~ Planning Official to determine if an environmental checklist is required.

Section 8 –Langley Municipal Code, Section 16.20.080.C.1. Wetlands and streams – permitted uses, uses requiring alteration approval (including reasonable use provisions); exceptions - Public agency and utility exceptions, is hereby amended to read as follows:

1. If the application of the wetland and stream provisions of this chapter would prohibit a street, road or utility line proposal by a public agency or utility or the installation of necessary utilities for a development proposal by a public agency or utility, the agency, utility or private applicant may apply for an exception pursuant to this section. The public agency, utility or private applicant shall prepare an application and report justifying the requested exception. Projects affecting Category I and II wetlands, Type 1 or 2 streams or otherwise requiring review and decision by the ~~Planning Advisory Board~~ Hearing Examiner shall be decided by ~~that board~~ the Hearing Examiner Projects affecting Category III and Category IV wetlands, and Type 3, 4, or 5 streams shall be decided by the Planning Official.

Section 9 –Langley Municipal Code, Sections 17.04.045.E. through H, including correction of duplicate subsection, Subdivision Procedures, are hereby amended to read as follows:

~~F.E.~~ The applicant shall complete or shall make provision to satisfy all preliminary plat conditions and code requirements as per the requirements of Section 17.04.140 of this Chapter.

~~G.F.~~ Within the time frame specified in RCW 58.17.140 ~~three years of the date of preliminary subdivision approval by the city council~~, the sub-divider shall submit the original of a proposed final subdivision consistent with the final subdivision submittal requirements of this Chapter.

~~H.G.~~ The final subdivision application is reviewed by the city staff ~~and Planning Advisory Board~~ and action is taken on the application by the City Council within sixty days from the date of filing a complete application, unless the applicant consents to an extension.

~~I. F.~~ Within ~~three years~~ the timeframe specified under RCW 58.17.140 ~~of the date of preliminary subdivision approval by the city council~~, the sub-divider shall submit the original of a proposed the final subdivision shall be submitted consistent with the final subdivision submittal requirements of this Chapter.

~~J. H.~~ The final subdivision becomes effective upon recording.

Section 10 –Langley Municipal Code, Section 17.04.090.A. Preliminary Subdivision – Decision criteria, is hereby amended to read as follows:

A. ~~The Planning Advisory Board's recommendation and the City Council~~ Hearing Examiner's decision to approve a subdivision or approve a subdivision with modifications shall include findings of fact that the application meets all of the following requirements:

Section 11 –Langley Municipal Code, Section 17.04.135 Evaluation Criteria, is hereby amended to read as follows:

In evaluating the layout of lots and open space, the following criteria will be considered by the Hearing Examiner as indicating design appropriate to the site's natural, historic and cultural features, and meeting the purposes of this code. Diversity and originality in lot layout shall be encouraged to achieve the best possible relationship between development and conservation areas. Accordingly, proposals shall be evaluated to determine whether the proposed conceptual preliminary plat:

Section 12 –Langley Municipal Code, Section 17.04.150 Final plat —Preparation, is hereby amended to read as follows:

After approval of the preliminary plat by the ~~City Council~~ Hearing Examiner and the fulfillment of the preliminary plat conditions and the requirements of these regulations and any other requirement specified by the ~~Hearing Examiner~~ planning commission, one tracing of the final plat shall be prepared to be filed for record.

Section 13 –Langley Municipal Code, Section 17.04.190 Final plat — Filing —Fees. is hereby amended to read as follows:

On completion of site improvements to the satisfaction of the city staff, or upon delivery of a performance bond in lieu thereof, the final plat shall be submitted to the ~~City Council~~ planning advisory board, accompanied by the following:

Section 14 –Langley Municipal Code, Section 17.08.130 Procedure for dedications, is hereby amended to read as follows:

Lands shall be deeded to the public by quitclaim deed. Refusal of the city council to accept a dedication shall not be grounds for disapproval of the short plat submitted for final approval and recording ~~by the planning-official~~ advisory board, unless the subdivider will not otherwise provide required dedication or reservation.

Section 15 –Langley Municipal Code, Section 18.02.050 Compliance required, is hereby amended to read as follows:

All uses and structures shall conform to the special requirements of the zone district within which they are located and the other general requirements of this title. All uses not classified in a zone district shall comply with the requirements of the most similar use as determined by the ~~planning official~~ advisory board.

Section 16 –Langley Municipal Code, Section 18.20.050 Planning Advisory Board - Duties, is hereby amended to read as follows:

The planning advisory board shall be responsible for the review and recommendation to the city council ~~on all applications for subdivision, variance, conditional use, rezone, and~~ for the development or revision of land use regulations, including the zoning code and shoreline master program. The planning advisory board shall have such other powers and duties as contained in RCW Chapter 35A.63 and as provided by Ordinance ~~except for those sections concerning comprehensive planning (e.g. sections 35A.63.060-100).~~

Section 17 –Langley Municipal Code, Section 18.20.060 ~~Planning Officer~~ Official- Duties, is hereby amended to read as follows:

The ~~planning officer~~ official shall provide regular staff services to the planning advisory board and such staff services to the comprehensive plan group as the executive team of the comprehensive plan group may request. The ~~planning officer~~ official shall submit to the planning advisory board a report and recommendation on all ~~applications or~~ proposed land use regulations. The ~~planning officer~~ official shall convey to the city council the majority report of the planning advisory board, any minority report and the recommendation of the ~~planning officer~~ official on any ~~land use application or~~ proposed regulation which requires city council action as currently provided by ordinance.

Section 18 –Langley Municipal Code, Section 18.22.130G. and N. Off-street parking., is hereby amended to read as follows:

G. Uses Not Specified. Any use not listed above shall meet the requirements of the most similar use as determined by the ~~planning official~~ advisory board.

N. Downtown Business Area Parking Requirements.

1. In-lieu Fee.1. In-lieu Fee.

a. An option for meeting parking requirements in the downtown business area is a fee in-lieu. The planning ~~official advisory board~~ shall approve the method of meeting the parking requirements after review of an applicant's proposal and considering the characteristics of the use and the development site. The amount of the fee shall be established annually by the city council with the advice of the city's public works director based on the current prices for purchase of land and construction of off-street parking spaces or a rental fee for each required space. The fee shall be paid before a building permit or occupancy permit is issued, whichever is earlier.

Section 19–Langley Municipal Code, Section 18.22.150 In-Home Family Day Care, is hereby amended to read as follows:

The following conditions apply to in-home family day care facilities:

A. Comply with all city building, fire, safety, and health codes and all business licensing requirements.

B. Conform to lot size, building size, setbacks and lot coverage standards applicable to the zone district.

C. Be certified by the State Department of Licensing as providing a safe passenger loading/unloading area.

D. Signage shall conform to the city sign regulations.

E. The hours of operation are subject to the determination of the Planning ~~Official Advisory Board~~ to ensure neighborhood compatibility, while also providing appropriate opportunity for persons who use family day care and who work a non-standard work shift.

Section 20 –Langley Municipal Code, Section 18.26.060 Required open space and recreation facilities is hereby amended to read as follows:

In planned unit developments, twenty percent of the net development area shall be established as open space and/or planned unit development community recreation facilities. Upon approval of the ~~Hearing Examiner planning advisory board~~, up to five percent of the unbuildable land may be considered for inclusion in the required open space land upon a showing that such lands can and will be used for a specified recreational purpose.

Section 21 –Langley Municipal Code, Section 18.28.050 General requirements, is hereby amended to read as follows:

A. The city shall determine whether the conditional use permit will run with the land or be personal. If the conditional use is personal, the permit is non-transferable to other persons. The city may require the permit to be recorded with the county auditor as a covenant on the property.

B. The conditional use permit must be acted upon within one year from the date of approval or the permit shall expire. The holder of the permit may request an extension of time before the expiration date and the mayor, upon the recommendation of the planning ~~official advisory board~~, may grant one extension of time of up to one year past the original expiration date.

Section 22 –Langley Municipal Code, Section 18.30.030 Time limits., is hereby amended to read as follows:

The variance must be acted upon within one year from the date of approval or the variance shall expire. The holder of the variance may request an extension of time before the expiration of the variance and the mayor, upon recommendation of the planning officer ~~advisory board~~, may grant one extension of time up to six months past the original date of expiration.

Section 23 –Langley Municipal Code, Section 18.31.20 Shoreline Permit Procedures, is hereby amended to read as follows:

A. Administration of the shoreline permit system shall be carried out by the City Planning Official in accordance with the procedures, time lines and other requirements of Chapter 173-14 WAC.

B. The following local procedures shall apply exclusively to all requests for shoreline substantial development, conditional use, and variance permits:

1. To the fullest extent possible, the shoreline permit process shall be integrated with other planning and licensing procedures of this title.

2. Pursuant to Chapter 18.36 of this title, the city planning official has authority to issue shoreline substantial development permits in certain circumstances. In all other cases, shoreline permits are issued after a public hearing by the Hearing Examiner ~~planning advisory board~~ and final decision by the ~~city council~~.

3. Appeals of permit decisions shall be as set forth in Chapter 18.36 LMC and RCW 90.58.180.

Section 24 –Langley Municipal Code, Section 18.31.20 Review of application, is hereby amended to read as follows:

The city ~~Land Use Coordinator~~ Planning Official shall immediately review the application as provided in Section 18.34.050 and schedule the item for the next scheduled meeting of the design review board. The design review board shall review the proposed development at a public meeting and approve, conditionally approval, or deny the proposal. The decision of the design review board is final unless appealed pursuant to Section 18.34.130 of this chapter. The board may continue the meeting on the proposal to allow changes in the proposal or to obtain information needed to allow changes in the proposal, or to obtain information needed to properly review the proposal. After approval by the design review board or by the Hearing Examiner ~~city council~~, after review on appeal, the ~~Land Use Coordinator~~ Planning Official shall have the authority to approve design modifications that maintain the intent of the original approval

Section 25 –Langley Municipal Code, Section 18.34.130 Appeals, is hereby amended to read as follows:

Any interested party may appeal a decision of the design review board to the Hearing Examiner ~~pursuant to Section 18.36.120 LMC~~ ~~city council~~ by filing notice with the city ~~clerk/treasurer~~ within seven days of the date of the design review board's decision. The appeal shall be scheduled for consideration at the next regularly scheduled city council meeting. ~~council shall consider the record and such additional evidence as may be submitted. The council may affirm or modify the action of the board or refer the matter back to the board for further consideration. A written copy of the action of the council shall be transmitted to the applicant.~~

Section 26–Langley Municipal Code, Sections 18.35.160.A. and B. Variance procedure, are hereby amended to read as follows:

A. Special Circumstances Required. A variance from the requirements of this chapter can be considered by the ~~planning advisory board~~ Hearing Examiner when special circumstances applicable to a specific piece of property exist and it is considered necessary to provide a means to modify the regulations contained in this chapter as they might apply to a particular property. Modifications to the regulations in this chapter are permitted only after obtaining a variance.

B. B. Criteria for Granting a Variance. The applicant shall demonstrate to the Hearing Examiner's ~~planning advisory board's~~ satisfaction that:

Section 27 –Langley Municipal Code, Section 18.36.010 Applications, is hereby amended to read as follows:

A. Applications Defined. These procedures apply to rezones, plats (short and regular), conditional use permits, variances, and shoreline development permits, binding site plans, and related land use approvals as well as to proposals that require administrative action by the City planning official.

B. Pre-application Conference. An applicant shall meet with the city planning and other city staff and consultants as appropriate, before submittal of an application for city action under this title to determine the general nature of the proposed action and seek advice on the applicable plans, policies, and regulations, submittal requirements, fees and expenses and the review and approval process. Preapplication conferences are mandatory for proposals requiring a decision by the Hearing Examiner ~~recommendation by the Planning Advisory Board and action by the City Council~~. A pre-application conference may also be necessary for a proposal requiring administrative action by the Planning Official.

Section 28 –Langley Municipal Code, Section 18.36.030.A. Staff Report, is hereby amended to read as follows:

For all permit applications and other proposals requiring a decision by the Hearing Examiner ~~recommendation by the planning advisory board and action by the city council~~, the city planning official shall prepare a staff report on the proposed development or action summarizing the comments and recommendations of the City departments, agencies with jurisdiction and the general public, incorporate all other pertinent information, comments and correspondence related to the application, and evaluate the proposal's consistency with the City's plans, policies, and regulations. The staff report shall include the staff findings, conclusions, and recommendations.

Section 29 –Langley Municipal Code, Section 18.36.040 Planning Advisory Board Actions, is hereby amended to read as follows:

A. Public Hearings. After notification and receipt of the staff report, the planning advisory board shall hold a public hearing for the purpose of taking testimony, hearing evidence, considering the facts germane to the proposal, and evaluating the proposal for consistency with the City's adopted plans, policies, and regulations. Hearings shall be held on the following applications and subjects:

1. Amendments to the comprehensive plan when these are the responsibility of the Planning Advisory Board (see Chapter 18.20);
2. Amendments to the zoning code (in Title 18);
3. Amendments to the subdivision code (Title 17);

4. Amendments to the environmental code (Title 16);
5. Preliminary plats of subdivisions;
6. Binding site plans;
7. Variances and conditional use permits;
8. Shoreline substantial development permits subject to public hearing;
9. Appeals of SEPA determinations of non-significance and of the adequacy of a final environmental impact statement of the underlying land use action.
10. Other actions requested or remanded by the city council.

**B. Required Findings.** The planning advisory board shall not recommend approval of a proposed development or other proposal unless it first makes the following findings and conclusions;

1. The development is consistent with the Comprehensive Plan and meets the requirements and intent of the applicable City code and regulations.
2. The development makes adequate provisions for open space, drainage ways, streets and other public ways, transit stops, water supply, sanitary waste, and parks and recreation facilities.
3. The development is beneficial to the public health, safety and welfare and in the public interest.
4. The development does not lower the level of service of transportation and/or neighborhood park facilities below the minimum standards established within the Comprehensive Plan. If the development results in a level of service lower than those set forth in the Comprehensive Plan, the development may be approved if improvements or strategies to raise the level of service above the minimum standard are made concurrent with the development. For the purpose of this section, "concurrent with the development" is defined as the required improvements or strategies in place at the time of occupancy, or a financial commitment is in place to complete the improvements or strategies within six (6) years of approval of the development.
5. The area, location and features of land proposed for dedication are a direct result of the development proposal, are reasonably needed to mitigate the effects of the development, and are proportional to the impacts created by the development.

**C. Recommendations.** After review of the staff report and public testimony, the planning advisory board shall act on the proposal, voting to recommend one of the following to the city council: approval, approval with conditions, denial, or denial without prejudice of the applications or other action before it. The recommendation shall include a summary of the testimony heard and the findings and conclusions of the planning advisory board and be promptly forwarded to the City Council for consideration. A copy and the procedure for filing an appeal of the planning advisory board's decision shall be mailed to the applicant, and to any person requesting a copy.

Following the Public hearing and after due consideration of the testimony received the Planning Advisory Board shall forward their written recommendation to the City Council with their Findings of Fact and Conclusions of Law.

Section 30 –Langley Municipal Code, Section 18.36.050 City Council Actions/Decisions, is hereby amended to read as follows:

A. Actions. Upon receiving a recommendation from the planning advisory board or any other matter requiring the council's attention, the council shall perform the following actions as appropriate:

1. Make a decision on a planning advisory board recommendation.
2. At the council's discretion, hold a public hearing and make a decision on ~~the following matters: a Planning Advisory Board recommendation.~~
  - a. ~~Appeals of administrative approvals;~~
  - b. ~~Appeals of administrative interpretations;~~
  - e. ~~Appeals of determinations of significance.~~
3. ~~Hold a closed record hearing and make a decision on the following;~~
  - a. ~~Appeal of a planning advisory board recommendation~~

B. Decisions. The City Council shall make its decision by motion, resolution or ordinance as appropriate.

1. A Council decision on a planning advisory board recommendation or following a public hearing shall include one of the following actions:

- a. Approve as recommended.
- b. Approve with additional conditions.
- c. Modify; ~~provided that the modifications do not:~~
  - (1) ~~Enlarge the area or scope of the project.~~
  - (2) ~~Increase the density or proposed building size.~~
  - (3) ~~Significantly increase adverse environmental impacts as determined by the responsible official.~~
- d. ~~Deny (reapplication or re-submittal is permitted).~~
- e. ~~Deny with prejudice (reapplication or re-submittal is not allowed for one year).~~
- df. Remand a recommendation from the Planning Advisory Board back to the Planning Advisory Board for further consideration in accordance with Section 18.36.090.

2. ~~A Council decision following a closed record appeal hearing shall include one of the following actions;~~

- a. ~~Grant the appeal in whole or in part.~~
- b. ~~Deny the appeal in whole or in part.~~
- e. ~~Remand for further consideration in accordance with Section 18.36.090.~~

Section 31 –Langley Municipal Code, Section 18.36.060 Council Closed Record Hearing and Action, is hereby repealed.

Section 32 –Langley Municipal Code, Section 18.36.065 Procedures for Public Hearings is renumbered as Section 18.36.060.

Section 33 –Langley Municipal Code, Section 18.36.090 Remanded Actions is hereby repealed.

Section 34 –Langley Municipal Code, Section 18.36.100 Procedural Irregularities is renumbered as Section 18.36.090.

Section 35 –Langley Municipal Code, Section 18.36.105.B. Final Decision is hereby amended to read as follows

- A. Time. The final decision on a development proposal shall be made within 120 days from the date of the letter of completeness. Exceptions to this include:
1. Amendments to the comprehensive plan or development code.
  2. Any time required to correct plans, perform studies or provide additional information, provided that within fourteen (14) days of receiving the requested additional information, the planning official shall determine whether the information is adequate to resume the project review.
  3. Substantial project revisions made or requested by an applicant, in which case the 120 days will be calculated from the time that the City determines the revised application to be complete.
  4. All time required for the preparation and review of an environmental impact statement.
  5. Projects involving the siting of an essential public facility.
  6. An extension of time mutually agreed upon by the City and the applicant.
  7. All time required to obtain a variance.
  8. Any remand to the hearing body.
  9. All time required for the administration appeal of a determination of significance.

B. Effective Date. The final project decision ~~of the council or planning advisory board~~ shall be effective on the date stated in the decision, motion, resolution, or ordinance; ~~provided that the date from which appeal periods shall be calculated shall be the date the council or planning advisory board takes action on the motion, resolution, or ordinance.~~

Section 36 –Langley Municipal Code, Section 18.36.120 Appeals, is hereby amended to read as follows:

- A. Appeal of Administrative Interpretations and Approvals. Appeal of decisions specified in Section 18.37.070 LMC, Administrative interpretations and administrative approvals may be appealed, by applicants or parties of record, to the Hearing Examiner City Council or planning advisory board, as appropriate.
- B. Appeal of Planning Advisory Board Recommendations. Recommendations of the planning advisory board may be appealed, by applicants or parties of record from the planning advisory board hearing to the city council.
- BC. Filing. Except where otherwise specified, a written notice of appeal shall be filed with the city clerk within ten days after the date of the decision or recommendation being appealed.
12. Contents. The notice of appeal shall contain:
- a. The decision being appealed;
  - b. The name and address of the appellant and his/her interest in the matter;
  - c. The specific reason(s) why the appellant believes the decision to be wrong. The appellant shall bear the burden of proof that the decision was wrong;

- d. The desired outcome or changes to the decision; and
- e. The appeals fee.

CD. Effect of Filing. Upon the filing of a complete and timely notice of appeal, the appealed decision shall be suspended until the notice of appeal is acted upon. The time of suspended decision shall not be included in the computation of the expiration date of any permit or approval granted on the matter under appeal.

DE. Notification. A copy of the appeal shall be sent to the applicant for the decision being appealed. Notification of review shall be mailed to the parties of record to the original application.

Section 37 –Langley Municipal Code, Section 18.36.125 Notice of Appeal Hearings is hereby amended as follows:

In addition to the posting and publication requirements of Chapter 18.36.020 A(2), notice of appeal hearings shall be as follows:

A. For administrative approvals appeal of decisions specified in Section 18.37.070 LMC, notice shall be mailed to the applicant, adjacent property owners and to parties of record.

B. For planning advisory board recommendations, mailing to parties of record from the board hearing.

Section 38 –Langley Municipal Code, Section 18.36.130 Notice of Decision is hereby amended to read as follows:

A written notice of all final decisions shall be sent to the applicant and all parties of record. For development applications requiring planning advisory board review and City Council Hearing Examiner approval, the notice shall be the signed decision ordinance or resolution.

Section 39 –Langley Municipal Code, Section 18.36.140 Judicial Appeal is hereby amended to read as follows

A. Appeals from the final decision of the City Council or Hearing Examiner or other City board or body and for which all other appeals specifically authorized have been timely exhausted, shall be made to Island County Superior Court pursuant to the Land Use Petition Act, Chapter 36.70C RCW within twenty-one (21) days of the date the decision or action became final, unless another time period is established by state law or local ordinance. Provided, in the case of appeals from the City's final decision on Shoreline Management Substantial Development Permits, appeals shall be to the Shoreline Hearings Board.

B. Notice of the appeal and any other pleadings required to be filed with the court shall be served on the City Clerk, ~~Planning Official~~, and City Attorney within the applicable time period.

C. The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant. The appellant shall post with the City Clerk prior to the preparation of any records an advance fee deposit in the amount specified by the City Clerk. Any overage will be promptly returned to the appellant.

Section 40. 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 41. Conflicts. All ordinances or parts of ordinances of the City of Langley in conflict herewith, be and the same, are hereby repealed.

Section 42. Summary. This Ordinance, or a summary thereof consisting of the title, shall be published in the official newspaper of the City of Langley and shall take effect and be in full force five days after the date of publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LANGLEY, WASHINGTON, and approved by the Mayor at a regular meeting held this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
PAUL O. SAMUELSON, Mayor

ATTEST:

\_\_\_\_\_  
DEBBIE L. MAHLER, Clerk-Treasurer

APPROVED AS TO FORM:

\_\_\_\_\_  
GRANT K. WEED, City Attorney

PUBLISHED: South Whidbey Record: \_\_\_\_\_

## **EXHIBIT A**

### **Chapter 18.37**

#### **HEARING EXAMINER**

##### **18.37.010 Purpose**

The general purposes of this chapter are:

- A. To separate the land use regulatory function from the land use planning process;
- B. To ensure procedural due process and adherence to the appearance of fairness doctrine in land use regulatory hearings;
- C. To provide an efficient and effective land use regulatory system which integrates the public hearing and decision-making processes for land use matters;
- D. To provide for consistency and predictability in decision making and the application of policies and regulations adopted by the city; and
- E. To separate land use policy formulation from land use policy administration processes.

##### **18.37.020 Creation of the office of the hearing examiner.**

The office of the hearing examiner, hereinafter referred to as "Examiner," is hereby created. The Examiner shall interpret, review, and implement land use regulations as provided in this title and other ordinances, with regard to issues and matters as assigned, delegated and/or referred to the Examiner. The term Examiner shall likewise include the Examiner pro tem.

##### **18.37.030 Appointment and Terms**

The City Council shall appoint the Examiner for terms which shall initially expire one (1) year following the date of original appointment, and thereafter expire three (3) years following the date of each reappointment. The Council may also, by professional service contract, appoint for terms and functions deemed appropriate by the Council, Examiners pro tem to serve in the event of the Examiner's absence or inability to act due to conflict of interest as the Examiner or as the Examiner's hearing schedule requires.

##### **18.37.040 Qualifications**

The Examiner and Examiners pro tem shall be appointed solely with regard to their qualifications for the duties of such office and shall have such training and experience as will qualify them to conduct administrative or quasi-judicial hearings on regulatory matters and to discharge the other functions conferred upon them. Examiners shall hold no other elective or appointive office or position in City government.

##### **18.37.050 Removal**

An Examiner may be removed from office for cause by majority vote of the Council.

##### **18.37.060 Organization**

The office of the Examiner shall be under the administrative supervision of the Examiner and shall be separate from and not a part of the Planning Department.

##### **18.37.070 Authority and Duties**

- A. The Examiner is vested with the duty and authority to hold public meetings and hearings and render final decisions on the following matters:

1. Preliminary plats and Planned Unit Developments when subject to public review;
  2. Preliminary binding site plan approvals when subject to public review;
  3. Conditional use permits, when subject to public review;
  4. Zoning code variances, when subject to public review;
  5. Shoreline substantial development permits when subject to public review, shoreline conditional development permits, shoreline variances, and appeals of administrative determinations and Design Review Board decisions;
  6. Variances from the city's sign code;
  7. Variances from the city's floodplain management code;
  8. Such other regulatory, enforcement or quasi-judicial matters as may be assigned to the Examiner by the City Council.
  9. Complaints by citizens or city staff seeking administrative enforcement of provisions of city land use codes or conditions in development permits and approvals, or seeking rescission or modification of such permits or approvals;
- B. The Hearing Examiner shall make decisions on the following appeals:
1. Administrative appeals from decisions and interpretations by city staff relating to land use codes, SEPA and permits;
  2. Appeals from administrative decisions on short plats;
  3. Appeals from administrative decisions on Critical Area alteration decisions;
  4. Appeals from administrative decisions on shoreline exemptions, shoreline substantial development permits, shoreline conditional use and shoreline variance decisions; and appeals of rescissions of such permits;
  5. Appeals of administrative decisions/interpretations of the Flood Damage Prevention Ordinance;
  6. Appeals regarding administrative zoning Code enforcement; zoning variances; interpretations of the zoning code; and zoning setback reduction;
  7. Appeals of all State Environmental Policy Act (SEPA) Threshold Determinations. SEPA Exemption decisions are not appealable;
  8. Appeals of enforcement orders issued by the Planning Official, including shoreline enforcement orders and those enforcement orders where the civil penalties for violation are set forth in RCW 90.50.210.0;
  9. Appeals of administrative Revocation of Approvals or Permits;
  10. Appeals of Design Review Board decisions;
  11. Appeals of decisions of the Public Works Director; and
  12. Appeals of decisions of the City Building Official.
- B. The Hearing Examiner may:
1. Administer oaths and affirmations.
  2. Issue subpoenas.
  3. Rule upon offers of proof and receive evidence.

4. Conduct view trips.
5. Regulate the course of the hearing and the conduct of the parties.
6. Question any party presenting testimony at the hearing.
7. Require briefs on legal issues.
8. Consider and rule upon procedural and other motions.
9. Make decisions.

C. The Hearing Examiner may hold prehearing conferences to clarify issues or structure the proceeding, provided all affected parties receive reasonable notice and either attend or waive their right to attend. At the hearing, or by pre-hearing order, the Hearing Examiner shall communicate for the record the time, purpose, and result of the conference.

D. Where it would assist the Examiner in clarifying or understanding the evidence adduced at hearing, the Examiner may inspect property subject to an appeal, application or recommendation. The site inspection shall be taken out of the presence of any interested party whenever feasible. If accompaniment by an interested party is necessary to fully view the property no substantive discussion shall occur during the inspection. An accompanied site inspection should be, but is not required to be disclosed at the outset of the hearing.

E. No elected official, officer, employee, or agent of the City shall supervise or direct the Hearing Examiner's adjudicative functions.

#### **18.37.080 Ex Parte Communication/Appearance of Fairness/Conflict of Interest**

A. The appearance of fairness doctrine, as specified in Chapter 42.36 RCW, shall apply to Hearing Examiner proceedings and shall result in the Examiner's disqualification when necessary. The Hearing Examiner shall not participate in any proceeding in which the Examiner has a prohibited personal interest which might influence the Examiner. In the event of a conflict of interest, the hearing shall be conducted by a Hearing Examiner pro tem. The Hearing Examiner shall not communicate ex parte directly or indirectly with any person, or his or her agent or representative, having an interest in an application before the Hearing Examiner.

C. If a prohibited ex parte communication occurs, it shall be publicly disclosed in accordance with Chapter 42.36 RCW, and the Hearing Examiner shall determine whether to disqualify himself or herself for that application.

#### **18.37.090 Rights And Responsibilities Of Applicants, Appellants, And Parties Of Record**

A. Hearing attendees shall conduct themselves civilly and courteously or be removed from the hearing.

B. All testimony before the Hearing Examiner shall be given under oath to tell the truth, administered by the Hearing Examiner.

C. The applicant and any parties planning to present legal briefs or testimony shall provide the Planning Official and the Hearing Examiner with the material at least one week in advance. Such materials shall be available to the public, subject to payment therefore.

D. The applicant or appellant shall have the right of notice, cross-examination, presentation of evidence, objection, motion, argument, timely access to the City's staff report, and all other rights essential to a fair hearing.

E. Applicant or appellant shall have the right to present evidence and testimony at hearings. The right of applicant or appellant to cross-examine, object, submit motions and arguments shall be at the discretion of the Hearing Examiner.

F. When an applicant or appellant consists of more than one (1) individual, or as a group, organization, corporation, or other entity, the applicant or appellant shall designate an individual to be its representative and inform the Hearing Examiner of the name, address and telephone number of that designated representative. The rights of such applicant or appellant shall be exercised by the person designated as the party representative. Notice or other communication to the applicant or appellant representative, is notice or communication to the party.

F. The Hearing Examiner may reasonably limit the number of witnesses heard and the nature and length of testimony. Cross-examination is permitted as necessary for a full disclosure of the facts, but the Hearing Examiner shall control the amount and style of cross examination.

G. Participants in hearings, including the City itself, may be represented by legal counsel.

#### **18.37.100 Rights And Responsibilities of the Planning Official**

A. In addition to duties elsewhere stated, the Planning Official shall deliver a staff report, a statement or proof of notices published, and any necessary plans and documentation to the Hearing Examiner at least seven days prior to a hearing. The Planning Official shall also provide a copy of said documents to the applicant or appellant. The Planning Official shall also present materials at the hearing as necessary.

B. The Planning Official may present evidence and testimony, object, make motions, arguments, recommendations, and all other rights essential to a fair hearing.

#### **18.37.110 Scheduling Hearings**

A. To the extent practicable and consistent with requirements of law, hearings shall be conducted expeditiously. At every stage in the proceedings, all parties shall make every reasonable effort to avoid delay.

B. Promptly following receipt of a timely appeal, the Hearing Examiner shall schedule a hearing consistent with the requirements of this Chapter. A notarized affidavit attesting to the written notice of a given public hearing shall be made a part of each official case record.

C. Applications requiring a Hearing Examiner decision shall be scheduled for hearing promptly upon notification by the Department that the application is complete and ready for scheduling.

D. All applicable fees, unless waived in accordance with the LMC, shall be paid prior to scheduling a hearing in any matter.

E. Where practical, feasible, and consistent with ordinance requirements, all matters under the jurisdiction of the Hearing Examiner relating to the same matter, should be consolidated for hearing. The Hearing Examiner may order consolidation with or without a request from any applicant or appellant.

#### **18.37.120 Elements Of Public Hearing**

A public hearing usually will include but not be limited to:

A. The Hearing Examiner's brief explanation of the process.

B. Presentation of staff report.

C. Testimony by the applicant, petitioner or appellant and cross-examination of same. All testimony before the Hearing Examiner at hearing shall be taken under oath or affirmation to tell the truth.

D. Testimony in support.

E. Testimony of opposing parties.

- F. Opportunity for cross-examination and rebuttal.
- G. Opportunity for questions by the Hearing Examiner.
- H. Opportunity for public comment.

#### **18.37.130 Expected Conduct**

- A All persons appearing before the Hearing Examiner shall conduct themselves with civility and courtesy to all persons involved in the hearing.
- B. No party or other person shall communicate with an Examiner presiding over a matter or with any employee of the Hearing Examiner's Office in an attempt to influence the outcome or to discuss the merits of that matter, except on the record.
- C. Except for communications regarding procedural matters (which are permitted), no party or other person shall make or attempt ex parte communication with the Examiner regarding a pending appeal, application or other contested case.
- D. If a substantial, prohibited ex parte communication is made, such communication, including a summary of the substance and participants, shall be publicly disclosed by the Examiner. Any written communications shall be made available to the parties for review. Parties shall have an opportunity to rebut those communications. Ex parte communications that are disclosed in this manner shall not be grounds for disqualification of the Examiner.

#### **18.37.140 Evidence**

- A. The applicant or appellant shall have the burden of proof to show compliance with applicable laws and regulations of Washington State and the City of Langley.
- B. An initial exhibit list shall be prepared by the Office of the Hearing Examiner identifying all documents submitted to the Examiner as part of the record prior to preparation of the agenda for the hearing. This list shall be included in the agenda packet for the hearing.
- C. The hearing generally will not be conducted according to strict legal rules of evidence and procedure. Any relevant and probative evidence shall be admitted. The rules of privilege shall be effective to the extent recognized by law. The Hearing Examiner shall decide the admissibility of evidence.
- D. Documentary evidence may be received in the form of copies. Upon request, parties shall be given an opportunity to compare the copy with the original.
- E. The Hearing Examiner may take judicial notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within his/her specialized knowledge. The Hearing Examiner shall not take notice of disputed adjudicative facts that are determinative of the outcome of a particular proceeding.
- F. If a document is referred to at a public hearing and the Hearing Examiner requests a copy of the document, said document may so enter the record.
- G. All parties will be allowed opportunity to make a record of evidence admitted or denied during the course of the hearing. This record shall include offers of proof.

#### **18.37.150 Continuation Of Hearing**

The Hearing Examiner may continue the hearing until a date and time certain to allow all comments to be heard or to gather more information. No further notice of that hearing need be given. Any applicant or appellant may request a hearing be continued, which request the Hearing Examiner shall grant or deny.

### **18.37.160 Additional Evidence**

A. At any time prior to the filing of a recommendation or the final decision, the Hearing Examiner may reopen the proceeding to receive evidence that was unavailable at the time of the hearing. Such reopening may be initiated by an applicant or appellant requesting permission to present such evidence. The Hearing Examiner shall grant the request only upon a showing of significant relevance and good cause for delay in its submission. All parties of record will be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttals.

B. If within seven calendar days after the public hearing any applicant or appellant petitions the Examiner for a re-opening of the hearing, the Examiner shall have the discrimination to re-open the hearing to consider new testimony or new evidence that was unavailable at the time of the hearing.

### **18.37.170 Record Of Hearing**

Hearings shall be electronically recorded and such recordings shall be a part of the official case record, all components of which shall be available to the public, provided the requester pays reasonable costs of copying or transcripts. No minutes of the hearing will be kept. The record of hearing shall include:

- A. The application or petition.
- B. The staff report.
- C. A statement of notices published.
- D. Evidence received, including oral testimony and exhibits.
- E. Electronic recordings.
- F. The decision together with findings and conclusions.
- G. The SEPA threshold determination and other environmental documents, if applicable.

### **18.37.180 Decision**

- A. The Hearing Examiner's written decision shall include:
- 1. The nature and background of the proceeding.
  - 2. Concise findings of fact addressing contested issues of fact, based exclusively on the record.
  - 3. Conclusions of law referencing permit criteria and other specific provisions of the law, together with reasons and precedents relied upon.
  - 4. The Hearing Examiner's determination of the appropriate rule, order, or relief, based upon a consideration of the whole record and supported by reliable, probative and substantial evidence.
  - 5. The time frames for reconsideration and appeal.
- B. The Hearing Examiner shall deliver the written decision to the Planning Official, who then shall mail copies of the decision to all parties of record who have requested in writing a copy of the decision.

### **18.37.190 Reconsideration**

Within ten days of the date of the Hearing Examiner's decision, a party of record may request reconsideration. The request shall set forth alleged errors of fact, law, or procedure, or issues omitted from the Hearing Examiner's decision. Any request for reconsideration shall stay further

issuance of City permits but shall not stay the time frame for appeal of the Hearing Examiner's decision. Within seven days after receiving the request, the Hearing Examiner shall either:

- A. Correct or amend the decision without an additional public hearing; or
- B. Set the matter for additional public hearing, in which case notice shall be published anew, including to all parties of record, requesting such notice, not less than ten working days prior to the hearing date; or
- C. Confirm the original decision.

If an additional hearing is reconvened, the Examiner's written decision shall be rendered within fifteen working days of the conclusion of the hearing.

#### **18.37.200 Decision final action by city.**

Unless specifically provided otherwise by ordinance, all decisions of the Hearing Examiner shall be final action by the city.

#### **18.37.210 Subsequent Appeal**

Hearing Examiner decisions shall be appealable to the Island County Superior Court pursuant to the Land Use Petition Act, Chapter 36.70C RCW, within 21 days of the date the decision or action became final, unless another applicable appeal process or time period is established by state law or local ordinance. Provided, in the case of appeals from the City's final decision on Shoreline Management Substantial Development Permits, appeals shall be to the Shoreline Hearings Board.

#### **18.37.220 Continuing Jurisdiction.**

The Hearing Examiner shall retain continuing jurisdiction over all variances and conditional use permits. Upon a petition being filed by any person with a substantial and direct interest in a variance or conditional use permit, or by any public official, alleging that a condition has been violated or that modifications to the variance or conditional use permit are necessary, the Hearing Examiner may call a public hearing for the purpose of reviewing that variance or conditional use permit. Notice of the public hearing shall be as provided in accordance with the requirements of the applicable section of the Langley Municipal Code, as amended. Immediately upon a petition for review being accepted by the Hearing Examiner, the Planning Official may, for good cause shown, issue a stop work order to temporarily stay the force and effect of all or any part of the variance or conditional use permit in question until such time as the review is finally adjudicated.

Following a hearing the Hearing Examiner may reaffirm, modify or rescind all or any part of the variance or conditional use permit being reviewed. Appeal of the Hearing Examiner decision shall be to the Island County Superior Court pursuant to LMC 18.37.210.

#### **18.37.230 Examiner's Quarterly Report**

The Examiner shall report quarterly in writing to the City Council. Each quarterly report shall include a summary of the Examiner's decisions since the last quarterly report and any recommendations the Examiner may have for improving the city's land use regulatory framework.

The Examiner shall meet with the City Council at a public meeting at least annually for the purpose of reviewing the administration of the city's land use policies and regulatory ordinances. Such meetings may be held on a quarterly or semi-annual basis if the planning director determines that emergent issues require more timely review.

**18.37.240 Repealer**

Any and all ordinances or parts of ordinances in conflict with the provisions of this Chapter are hereby repealed.

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF LANGLEY  
AND SOUND LAW CENTER, LLC**

SEP 1 - 2011  
BY: .....

**THIS AGREEMENT** (hereinafter the "Agreement") is made this 31st day of August, 2011, between the City of Langley, (hereinafter the "City") and Sound Law Center, LLC (hereinafter "Consultant").

**WHEREAS**, the City requires Hearing Examiner services; and

**WHEREAS**, Consultant is in the business of providing Hearing Examiner services and is willing to provide said services to the City in accordance with the terms and conditions; and

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein, it is agreed between the parties as follows:

I. **Description of Services.** Consultant shall perform the Hearing Examiner services as described in Exhibit A, "Scope of Services," which is attached hereto and incorporated herein by this reference. All services and materials necessary to accomplish the tasks outlined in the Scope of Services shall be provided by the Consultant unless noted otherwise in the Scope of Services or this Agreement. All such services shall be provided in accordance with the standards of the Consultant's profession. Consultant shall not perform any additional services without the express permission of the City.

II. **Payment.**

- A. The City shall pay Consultant for services provided under this Agreement in accordance with Exhibit A.
- B. Consultant shall submit payment invoice to the City after such services have been performed, and the City shall make payment within thirty (30) calendar days after the submittal of the approved invoice. Such invoice shall detail the work, and a description of the tasks performed.
- C. If the City objects to all or any portion of any invoice, it shall so notify Consultant of the same within ten (10) days from the date of receipt and shall pay that portion of the invoice not in dispute. The parties shall immediately make reasonable efforts to resolve the disputed portion.
- D. The Consultant shall maintain all books, records, documents and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the

Consultant shall afford the proper facilities for such inspection and audit. Representatives of the City and/or the Washington State Auditor may copy such books, accounts and records where necessary to conduct or document an audit. The Consultant shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the Consultant shall provide the City with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

III. **Relationship of Parties.** The parties intend that an independent contractor – client relationship will be created by this Agreement. The Consultant is customarily engaged in an independently established trade which encompasses the specific services provided to the City hereunder; no agent, employee, representative or subcontractor of Consultant shall be or shall be deemed to be the employee, agent, representative or subcontractor of the City. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance and unemployment insurance, are available from the City to the Consultant or his employees, agents, representatives or subcontractors. Nothing in this Agreement shall be considered to create the relation of employer and employee or principal and agent between the parties hereto. Consultant will be solely and entirely responsible for his acts and for the acts of Consultant's agents, employees, representatives and subcontractors during the performance of this Agreement. The Consultant, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing this Agreement.

IV. **Conflict of Interest.** The Consultant represents to the City that it has no conflict of interest in performing any of the services described herein. It is recognized that the Consultant will be performing services during the term for other parties; provided, however that such performance of other services shall not conflict with or interfere with the Consultant's ability to perform the services required hereunder. In the event that the Consultant is asked to perform services for a project with which it may have a conflict, the Consultant shall immediately disclose such potential conflict to the City. The Consultant agrees to resolve any actual conflicts of interest in favor of the City.

V. **Work Schedule and Conflicts.** The parties anticipate that the City will use the services of the Consultant on a demand basis, and thus, the parties agree to schedule hearings or related services within the time constraints or deadlines that are applicable to each matter, while making accommodations for the parties' schedules. Otherwise, the Consultant shall work according to the Consultant's own schedule. However, nothing herein shall preclude the parties from establishing a mutually agreeable hearing schedule. The Consultant shall promptly notify the City of any conflicts of interest or other circumstances that prevent the Consultant from acting as the City's Hearing Examiner pursuant to this Agreement. If all of the Hearing Examiners associated with Sound Law Center, LLC, have a conflict with a particular matter, or must recuse themselves or withdraw from a matter, the Consultant may suggest candidates to serve as Pro Tempore Hearing Examiners. The City shall have full authority to select any Pro Tempore Hearing Examiners.

VI. **Term of this Agreement.** This Agreement shall be effective for a term commencing from the date of signature to August 30, 2014, unless the Agreement is terminated earlier in accordance with Section VII below. This Agreement may be extended automatically in three (3) month increments by mutual written agreement of both parties until a new agreement is executed between the parties.

VII. **Termination.**

- A. Termination by the City. An Examiner may be removed from office for cause by majority vote of the Council, as provided in LMC 18.37.050. Termination shall be effective after thirty (30) calendar days upon delivery of written notice of termination to the Consultant.
- B. Termination by the Consultant. The Consultant shall have the option to terminate this Agreement after thirty (30) calendar days upon delivery of written of termination notice to the City.
- C. Termination for Cause. If Consultant refuses or fails to complete the tasks described in Exhibit A, or to complete such work in a manner satisfactory to the City, then the City may, by written notice to Consultant, give notice of its intention to terminate this Agreement. After such notice, Consultant shall have ten (10) calendar days to cure to the satisfaction of the City or its representative. If Consultant fails to cure to the satisfaction of the City, the City shall send Consultant a written termination letter which shall be effective upon deposit in the United States mail to Consultant's address as stated below.
- D. Rights upon Termination. In the event of termination, the City shall only be responsible to pay for all services satisfactorily performed by Consultant to the effective date of termination as described in the final invoice to the City. The Mayor shall make the final determination about what services have been satisfactorily performed which decision shall be final, binding and conclusive.

VIII. **Discrimination.** In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, Consultant, its subcontractors or any person acting on behalf of Consultant shall not, by reason of race, religion, color, marital status, sex, sexual orientation, national origin or the presence of any sensory, mental, or physical handicap discriminate against any person who is qualified and available to perform the work to which the employment relates.

IX. **Indemnification.**

- A. Consultant hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, elected officials, employees, agents and representatives from any and all claims, costs, judgments, losses or suits including attorneys' fees, awards or liabilities to any person, including claims by Consultant's own employees to which Consultant might otherwise be immune under Title 51 RCW, arising out of or in connection with the Consultant's negligent performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

- B. In the event of liability for any reason described above which is caused by or results from the concurrent negligence of the Consultant (and his employees, agents and representatives) and the City (and its officers, officials, employees, agents or representatives), each party's liability shall only be to the extent of its negligence. Such indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.
- C. Nothing contained in this section or Agreement shall be construed to create a liability or a right of indemnification by any third party.
- D. The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

X. **Insurance.**

- A. Minimum Limits of Insurance. The Consultant shall procure, and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work and services hereunder by the Consultant, its agents, representatives, employees or subcontractors. The Consultant shall, before commencing work under this Agreement, file with the City certificates of insurance coverage and the policy endorsement to be kept in force continuously during this Agreement, in a form acceptable to the City. Said certificates and policy endorsement shall name the City, its officers, elected officials, agents and/or employees as an additional named insured with respect to all coverages except professional liability insurance and workers' compensation. The minimum insurance requirements shall be as follows:
  - (1) Comprehensive General Liability. \$1,000,000 combined single limit per occurrence for bodily injury personal injury and property damage; \$2,000,000 general aggregate.
  - (2) Automobile Liability. \$1,000,000 combined single limit per accident for bodily injury and property damage.
  - (3) Workers' Compensation. Workers' compensation limits as required by the Workers' Compensation Act of Washington.
  - (4) Professional Liability Insurance. \$1,000,000 per occurrence and as an annual aggregate.
- B. Notice of Cancellation. In the event that the Consultant receives notice (written, electronic or otherwise) that any of the above required insurance coverage is being cancelled and/or terminated, the Consultant shall immediately (within forty-eight (48) hours) provide written notification of such cancellation/termination to the City.

- C. Acceptability of Insurers. Insurance to be provided by Consultant shall be with a Bests rating of no less than A:VII, or if not rated by Bests, with minimum surpluses the equivalent of Bests' VII rating.
- D. Verification of Coverage. In signing this Agreement, the Consultant is acknowledging and representing that required insurance is active and current. Further, throughout the term of this Agreement, the Consultant shall provide the City with proof of insurance upon request by the City.
- E. Insurance shall be Primary. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
- F. No Limitation. Consultant's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance or otherwise limit the recourse to any remedy available at law or in equity.

XI. **Modification.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Consultant.

XII. **Assignment.** Any assignment of this Agreement by Consultant without the written consent of the City shall be void.

XIII. **Written Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

Notices should be sent to:

Sound Law Center, LLC  
Ted Hunter, Managing Attorney  
4500 9<sup>th</sup> Ave. NE, Suite 300  
Seattle, WA 98105

Planning Director, City of Langley  
112 Second Street  
Langley, WA 98260

XIV. **Non-Waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.

XV. **Fair Meaning.** The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

XVI. **Resolution of Disputes, Governing Law.** Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall be referred to the Mayor, whose decision shall be final. Any appeal from the decision of the City Mayor shall be to Island County Superior Court. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for its reasonable attorney fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

XVII. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

XVIII. **Authority to Bind Parties and Enter Into Agreement.** The undersigned represent that they have full authority to enter into this Agreement and to bind the parties for and on behalf of the legal entities set forth below.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

SOUND LAW CENTER, LLC  
Ted Hunter, Principal

CITY OF LANGLEY

By

  
\_\_\_\_\_

By

\_\_\_\_\_

## **EXHIBIT A**

### **SERVICES AGREEMENT**

A. The Hearing Examiner services provided by Sound Law Center, LLC, to the City of Langley shall consist of the following:

The Hearing Examiner shall provide those services and fulfill those duties as identified in the City's ordinances relating to the Hearing Examiner, and carry out such other responsibilities as may be agreed to between the City and the Hearing Examiner. Those services, duties and responsibilities include preparing Rules of Procedure; preparing for land use hearings by reviewing files and applicable laws; conducting site views of properties that are the topic of a land use hearing; conducting hearings on appeals; and preparing a written decision including findings and conclusions on all appeals heard. The Hearing Examiner shall also be available to present to the City Council and staff a training session on land use law and procedures as well as to provide quarterly updates on the law affecting land use hearings if requested.

B. The City agrees to pay Sound Law Center, LLC on a time and materials basis for services performed in accordance with the following hourly billing rates, provided that a flat fee shall be paid for specific applications as identified in paragraph C. below:

Hearing Examiner	- \$175
Senior Associates/Planners	- \$150
Associates/Planners II	- \$140
Law Clerks	- \$60

Hourly rates include **all costs**, we do not invoice separately for mileage, phone calls, copies and other direct costs incurred by SLC when providing services.

Each Hearing Examiner, Mediator or Arbitrator providing services under this Agreement has over 15 years of experience providing such services. Ted Hunter and Kim Allen are the primary service providers. Other qualified individuals may provide hearing officer services with the consent of the client and shall have equivalent qualifications and experience. Senior Associates are members of the Bar and/or AICP with at least five years experience in land use/municipal law; Associates II are members of the Bar and/or AICP with fewer than five years experience in land use/municipal law; and Law Clerks are those without a professional degree, but are advanced students at an accredited graduate school.

C. As an alternative to a time and materials compensation, the City agrees to pay the Consultant an agreed to fixed rate for certain services. The services to which the flat rate applies are the following:

1. Single Family Residence Variances & CUPs = \$1,200.00
2. Commercial/Multi-Family/Industrial Variances & CUPs = \$2,500.00
3. Multi-Permit Applications, Plats, Shoreline Variances and CUPs, Wireless Communication Facilities, and Critical Area/Reasonable Use Permits = \$3,100.00
4. Administrative Appeals = \$1,200;
5. SEPA Appeal as Part of Underlying Permit Appeal = \$500 + Fee for Permit Decision.

The flat rate shall include compensation for all ordinary costs such as mileage, copies and telephone charges. Extraordinary costs may be invoiced.

The flat fee approach to applications and appeals is designed to cover a typical application and appeal. It is recognized that there may be circumstances where the application or appeal is considered by the City to be unusual or extraordinary, in which case an hourly compensation structure may be offered to the Hearing Examiner to help ensure sufficient compensation to cover the professional time involved in hearing and deciding these applications and appeals.

**EXHIBIT A to Ordinance No. 925  
Land Use Fee Schedule – 2012**

<b>Type of Application</b>	<b>Base Fee (\$)¹</b>	<b>Engineering Hours included in Base Fee²</b>
Accessory Dwelling Unit	200	1
Annexation	3000	10
Administrative Appeal – Hearing Examiner	840	2
Bed & Breakfast Rooms	300	1
Bed & Breakfast Inns	700	1
Binding Site Plan – Preliminary*	2,900-5 or 6 units 3,800-7 to 10 units 4,800-over 10 units	10
Binding Site Plan - Final	1,700	5
Binding Site Plan Amendment	1000	2
Boundary Line Adjustment	400	1
Occupancy Review (zoning compliance)	100	1
Code Interpretation-Written	No Charge	0
Comprehensive Plan Amendment	No Charge	0
Conditional Use Permit-Minor*	300	0
Conditional Use Permit – Major*	2000	2
Cottage Housing Development*	2,900-6 units or fewer 3,800-7 to 10 units 4,800-over 10 units	10
Design Review³	50-paint color only 100-\$20,000 or less 200-\$20,000 to \$50,000 250-\$50,000 to \$100,000 350-\$100,000 or more	0
Sign Permit	50	0
Sign Permit – After the fact	100	
Clearing and Grading	300	0
Home Occupation-Class I	100	0
Home Occupation-Class II	250	0
Home Occupation-Class III	500	1
Nonconforming Use/Building Review	200	0
Other Applications	400	1
Open Space Taxation	No charge	0
Planned Unit Development**	2,900-5 or 6 units 3,800-7 to 10 units	

¹ Fee amounts listed cover staff costs accrued during land use application review only. This fee does not cover other costs that must be borne by the applicant, such as the costs of outside consultants hired by the City to perform peer or specialized reviews, staff or outside consultant costs associated with inspection during plan review and construction inspection and legal costs incurred by the City during project review, appeals and inspection. All such additional costs are subject to a 10% administrative fee.

² Engineering hours in excess of the hours listed shall be billed at the engineer's hourly rate plus 10% administrative fee.

³ Dollar ranges are based on building permit valuation as determined by the Langley Building Official.

	4,800-over 10 units	
Pre-application Conference	570	1
Rezone – Lower Classification	200	0
Rezone – Higher Classification	1,200	0
Critical Area Permit	400	0
Critical Area Permit Amendment	200	
Shoreline Substantial Development	1,500 – upland 3000 - overwater	10
Shoreline Conditional Use**	1500	0
Shoreline Variance**	1500	0
Shoreline Exemption	300	0
Shoreline Permit Amendment	1000	0
Short Plat Preliminary	1,700-2 lots	5
	2,700-3 or 4 lots	10
	3800 - 5 to 9 lots	
Short Plat Final	600	2
Short Plat Amendment	1,000	5
SEPA Review – DNS, MDNS, DS**	400	5
SEPA – DS Scoping and Impact Statement Preparation	1000 + actual cost	2
Street Vacation	680 + appraisal	1
Long Plat Preliminary**	2,900-5 or 6 lots	10
	3,800-7 to 10 lots	
	4,800-over 10 lots	
Long Plat Final	1,700	5
Long Plat Alteration	2,000	5
Temporary Use	250	0
Time Extension Request	200	0
Variance**	1500	0
Zoning Text Amendment	No Charge	0
<b>HOURLY CHARGES</b> <b>(subject to 10% administrative fee)</b>		
City Staff	City Hired Consultants	
\$45/hour	Actual Costs	

\*Applications requiring a public hearing before the hearing examiner shall include the fee as identified in Exhibit A of the Agreement for Professional Services between the City of Langley and Sound Law Center dated September 1, 2011 or as amended. The fee for an administrative appeal shall include only the fee as described above (\$840). Direct costs above and beyond the base fee will be charged to the applicant at the rates described in the Exhibit A of the professional services agreement.

\*\*SEPA review (DNS, MDNS, or DS) associated with land divisions, binding site plans, or shoreline permits, included in project application. SEPA threshold decisions on clearing and grading, building permits, or other nonexempt project to be billed separately per the fee schedule.