

ORDINANCE NO. 10- ~~2010-891~~

AN ORDINANCE OF THE CITY OF DEER PARK, WASHINGTON, AMENDING CHAPTER 2.48 OF THE DEER PARK MUNICIPAL CODE; AMENDING THE CITY HEARING EXAMINER SYSTEM; REPEALING CHAPTER 18.92 OF THE DEER PARK MUNICIPAL CODE; CONTAINING A SEVERABILITY PROVISION; AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City has created a planning agency known as the City Planning Commission and presently relies upon the City Council and/or City Planning Commission to decide certain quasi-judicial matters related to land use and development, including decisions on variances and conditional use permits; and

WHEREAS, RCW 35A.63.110 provides in relevant part as follows: “[a] code city which pursuant to this chapter creates a planning agency and which has twenty-five hundred or more inhabitants, by ordinance, shall create a board of adjustment and provide for its membership, terms of office, organization, jurisdiction...No member of the board of adjustment shall be a member of the planning agency or legislative body...”; and

WHEREAS, RCW 35A.63.110 sets forth the powers of the board of adjustment, which include the power to decide appeals from orders, recommendations, permits, decisions, or determinations of a City planning official, applications for variances, applications for conditional use permits, and other quasi-judicial matters which may be delegated to the board of adjustment by City ordinance; and

WHEREAS, as an alternative to providing for a board of adjustment, RCW 35A.63.170 authorizes cities whose populations exceed twenty-five hundred inhabitants to contract with a hearing examiner to perform the statutorily defined planning-related services otherwise required to be performed by the board of adjustment; and

WHEREAS, the City's population exceeds twenty-five hundred inhabitants, but the City does not utilize a board of adjustment for the procedures identified in RCW 35A.63.110; and

WHEREAS, the Deer Park Municipal Code currently contains hearing examiner systems in both Chapters 2.48 and 18.92; and

WHEREAS, the City does not presently utilize either of these adopted hearing examiner systems; and

WHEREAS, the Mayor, and City staff have been studying the options available to the City to replace the existing City Council/Planning Commission system for performing the RCW 35A.63.110 quasi-judicial planning services, which by state law may be performed by either a separate board of adjustment or a hearing examiner system; and

WHEREAS, based upon the research and analysis of the Mayor and City staff, and consistent with the trend of other municipalities across the state, the Mayor and City staff recommend that a hearing examiner system be utilized in the City in lieu of a lay person board of adjustment to perform certain statutory planning functions currently performed by the City Planning Commission and/or City Council, and required to be performed by a hearing examiner or board of adjustment; and

WHEREAS, City staff recommend modification of the existing Deer Park Municipal Code hearing examiner provisions in Chapter 2.48, and repeal of the hearing examiner provisions in Chapter 18.92 of the Deer Park Municipal Code as set forth in this Ordinance; and

WHEREAS, the City Council has had an opportunity to review and consider this matter and concurs with the recommendation of the Mayor and City staff; now, therefore,

**THE CITY COUNCIL OF THE CITY OF DEER PARK, WASHINGTON, DO
ORDAIN AS FOLLOWS:**

Section 1. Chapter 2.48 of the Deer Park Municipal Code is hereby amended to read as follows:

Chapter 2.48

HEARING EXAMINER

Sections:

- 2.48.010 Hearing Examiner Appointment.
- 2.48.020 Hearing Examiner Pro Tempore.
- 2.48.030 Powers and Authority.
- 2.48.040 Jurisdiction.
- 2.48.050 Applications to the Hearing Examiner.
- 2.48.060 Notice of Hearing – Effect of Notice.
- 2.48.070 Hearings.
- 2.48.080 Presentation of Evidence.
- 2.48.090 Site Inspections.
- 2.48.100 Reopening or Continuing Hearings.
- 2.48.110 Dismissal of Application.
- 2.48.120 Findings and Decision.
- 2.48.130 Record of Hearing.
- 2.48.140 Reconsideration – Grounds – Petition – Clerical Errors.
- 2.48.150 Appeals.
- 2.48.160 Conflict.
- 2.48.170 Cross References.

2.48.010 Hearing Examiner Appointment.

The position of Hearing Examiner is hereby established. The Mayor shall have the power to appoint an individual necessary to fulfill the function of Hearing Examiner for the City, subject to the prior confirmation of the appointee by the City Council, subject further to the execution of an agreement between the City and the appointee providing for the terms of the appointment including compensation. The appointment of the Hearing Examiner by the Mayor, as approved by the City Council, shall be for the period of time set forth in the appointment. For purposes of this chapter, the appointed individual may be another government agency appointed through an interlocal agreement approved by the City Council.

2.48.020 Hearing Examiner Pro Tempore.

The Mayor may appoint one or more Hearing Examiner pro tempore to serve in absence of the Hearing Examiner, if the absence is the result of the Hearing

Examiner having a conflict of interest in any specific matter. Appointment of a Hearing Examiner pro tempore does not require prior City Council confirmation. A Hearing Examiner pro tempore shall have all of the power and authority of the Hearing Examiner as set forth in this chapter and the Deer Park Municipal Code. Compensation for a Hearing Examiner pro tempore shall be established by the Mayor consistent with the compensation of the Hearing Examiner.

2.48.030 Powers and Authority.

The Hearing Examiner shall have the power and authority to hear and make final decisions on all matters coming before the Hearing Examiner and specifically shall hear and decide applications for the following:

- A. Conditional use permits;
- B. Variances;
- C. Appeals of administrative decisions or determinations relating to City development regulations or zoning provisions; and
- D. Such other matters assigned to be heard by the Hearing Examiner or Board of Adjustment by ordinances of the City or the Deer Park Municipal Code, as the same presently exist or as may hereafter be adopted or amended by the City.

2.48.040 Jurisdiction.

A. The powers and authority of the Hearing Examiner shall be subject to all applicable ordinances of the City and the Deer Park Municipal Code. All orders, recommendations, permits, decisions or determinations made by the Hearing Examiner shall be consistent with City ordinances and Deer Park Municipal Code provisions.

B. The Hearing Examiner shall not rehear any case on the same grounds within a period of one year following the date of the Hearing Examiner's final decision.

2.48.050 Applications to the Hearing Examiner.

Applicants to be heard by the Hearing Examiner shall make application on forms provided by the City Community Services Director, or his or her designee, and shall supply such information as the Hearing Examiner may require. The application shall be accompanied by any applicable filing fees related to the process being pursued by the applicant.

2.48.060 Notice of Hearing -- Effect of Notice.

A. Each public notice requirement for the hearing of an application before the Hearing Examiner shall conform to applicable statutory, ordinance, and Deer Park Municipal Code requirements.

B. Unless otherwise set forth in this chapter, the City Community Services Director, or his or her designee, shall provide all notices required by state law, City ordinance, the Deer Park Municipal Code, and/or the Hearing Examiner for matters coming before the Hearing Examiner and comply with all applicable requirements for the posting of notices on any property involved in an application before the Hearing Examiner. The notice shall contain a statement that the hearing will be conducted in the manner set forth in this chapter.

C. Failure of a person entitled to receive notice to appear at the hearing does not affect the jurisdiction of the Hearing Examiner to hear the application when scheduled and render a decision, if the notice was properly published, mailed and posted.

D. A person is deemed to have received notice if the person appears at the hearing, or submits written comments on the merits of the application, and the person fails to object to the lack of notice promptly after the person obtains actual knowledge of the hearing date.

E. If required notice is not given and actual notice is not received, the Hearing Examiner may reschedule the hearing or keep the record open on the matter to receive additional evidence.

2.48.070 Hearings.

A. The Hearing Examiner shall hold hearings to consider matters at such times as are specially set by the Hearing Examiner.

B. All hearings before the Hearing Examiner shall be public, and conducted pursuant to the rules and procedures set forth in this chapter and/or established by the Hearing Examiner. Any interested person may appear and be heard subject to the rules and procedures adopted by the Hearing Examiner. Attendance at hearings by City officials may be compelled by the Hearing Examiner. The applicant, opponents, and proponents may submit written materials for consideration by the Hearing Examiner, provided the materials are submitted prior to the close of the receipt of public comment at the public hearing.

C. The Hearing Examiner may continue a hearing, as further set forth herein, in the event the Hearing Examiner deems that a continuance is necessary.

2.48.080 Presentation of Evidence.

A. The format of the public hearing shall be organized such that the testimony and written evidence may be presented quickly and efficiently. The format will generally be as follows:

1. A brief introduction of the matter by the Hearing Examiner;
2. A report by City staff including introduction of the official file on the application and its procedural history, an explanation of the application, including the use of visual aids, and the recommendation of the department of the City on the application;
3. The submittal of testimony and documents by the party with the burden of proof at the hearing, typically the applicant on an initial application or the appellant in the case of an appeal; followed by persons testifying in support of such party's position;
4. The submittal of testimony and documents by opposing parties;
5. Rebuttal;
6. Questions and clarifications;
7. Closure of the hearing;
8. Closure of the record and continuation of the matter for final decision.

B. All reasonably probative evidence is admissible by the Hearing Examiner. The Hearing Examiner may exclude all evidence that is irrelevant, immaterial, or unduly repetitious. The Washington Rules of Evidence are not strictly applied, but may be used by the Hearing Examiner for guidance. The Hearing Examiner shall accord such weight to the evidence as he or she deems appropriate.

C. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference, at the Hearing Examiner's discretion. The Hearing Examiner may require that the original of a document be produced. A party submitting documentary material at the hearing should make copies available at the hearing for review by the opposing parties.

D. The Hearing Examiner may take official notice of judicially cognizable facts; federal, state, and local laws, ordinances, resolutions, and/or regulations; the City and County Comprehensive Plans and other adopted plans or

policies of the City; and general, technical and scientific facts within the Hearing Examiner's specialized knowledge; so long as any noticed facts are included in the record and referenced or are apparent in the Hearing Examiner's final decision.

E. The Hearing Examiner may require that testimony be given under oath or affirmation.

F. The Hearing Examiner may allow the cross-examination of witnesses. The Hearing Examiner is authorized to call witnesses and request written evidence in order to obtain the information necessary to make a decision. The Hearing Examiner may also request written information from, or the appearance of a representative from any City department having an interest in or impacting an application.

G. The Hearing Examiner may impose reasonable limitations on the number of witnesses to be heard and the nature and length of their testimony to avoid repetitious testimony, expedite the hearing, or avoid continuation of the hearing.

H. The Hearing Examiner may cause the removal of any person who is being disruptive to the proceedings, or continue the proceedings if order cannot be maintained. The Hearing Examiner shall first issue a warning if practicable.

I. No testimony or oral statement regarding the substance or merits of an application is allowable after the close of the public hearing. No documentary material submitted after the close of hearing will be considered by the Hearing Examiner unless the Hearing Examiner has left the record open for the submittal of such material and all parties are given additional time to review and rebut such material.

2.48.090 Site Inspections.

A. The Hearing Examiner may make site inspections, which may occur at any time after the staff report on an application has been filed with the Hearing Examiner and before the Hearing Examiner renders a final decision. The Hearing Examiner need not give notice of the intention to make an inspection.

B. The inspection and the information obtained from it shall not be construed as new evidence or evidence outside the record. If an inspection reveals new and unanticipated information, the Hearing Examiner may, upon notice to all parties of record, request written response to such information or reopen the hearing to consider the information.

2.48.100 Reopening or Continuing Hearings.

A. The Hearing Examiner may reopen or continue a hearing to take additional testimony or evidence, or other compelling cause, provided a final decision has not been entered.

B. If the Hearing Examiner announces the time and place of the continued hearing on the record before the hearing is closed, no further notice is required. If the hearing is reopened after the close of the hearing, all parties of record must be given at least five (5) days' written notice of the date, time, place, and nature of the reopened hearing.

C. Motions by a party for continuation or to reopen a hearing must state the reasons therefor and be made as soon as reasonably possible. The motion must be submitted in writing unless made at the hearing. The Hearing Examiner may continue or reopen a hearing on his or her own motion, citing the reasons therefor.

D. If the decision of the Hearing Examiner rests upon issues of fact or law not raised by any party at the time of the hearing, the Hearing Examiner shall continue and/or reopen the hearing to a later date to allow the parties an opportunity to comment and/or present evidence on those issues of fact or law.

2.48.110 Dismissal of Application.

A. The Hearing Examiner shall conduct the public hearing based upon the completed application. If the Hearing Examiner deems that the application has been substantially changed since it was deemed complete, the Hearing Examiner shall dismiss the application without prejudice and direct that a new application be submitted by the applicant and appropriate fees paid therefor. If the Hearing Examiner determines that the proposal has been changed, but not substantially, the Hearing Examiner may continue the hearing to give reviewing agencies an opportunity to review the changes made and make recommendations deemed to be necessary under applicable rules and regulations.

B. The Hearing Examiner may dismiss an application pursuant to a request by the applicant to withdraw an application, or for failure by the applicant to attend required hearings or provide requested information. If the applicant notified the City Community Service Director in writing of the desire to withdraw an application prior to notice of hearing being mailed to the persons entitled thereto, the dismissal shall be allowed without prejudice, and noted in the application file. If the request for withdrawal of an application is received after such notice being mailed and before a final decision is rendered, the application shall be dismissed with prejudice with the same effect as a denial of the application on the merits, in that the same or similar application cannot be

considered by the Hearing Examiner for a one (1) year period commencing with the date the application is requested to be withdrawn.

2.48.120 Findings and Decision.

Each final decision of the Hearing Examiner shall be in writing and shall include findings and conclusions, based upon the record, to support the decision. Such findings and conclusions shall also set forth the manner in which the decision would carry out and conform to the City Comprehensive Plan and the City development regulations, as applicable. Each final written decision of the Hearing Examiner, unless a longer period is mutually agreed to in writing by the applicant and the Hearing Examiner, shall be rendered within ten (10) working days following conclusion of all testimony and hearings.

2.48.130 Record of Hearing.

A. The hearing examiner shall establish and maintain a record of all proceedings and hearings conducted by the Hearing Examiner, including an electronic recording capable of being accurately transcribed and reproduced. Copies of the recording and any written portions of the record shall be made available to the public upon request for the cost of reproduction or transcription, as determined by the Hearing Examiner.

B. The record shall include, but is not limited to:

1. The application;
2. Department staff reports;
3. All evidence received or considered by the Hearing Examiner;
4. The final written decision of the Hearing Examiner;
5. Affidavits of notice for the hearing;
6. The environmental determination regarding the application;
7. The electronic recordings of the hearings and proceedings before the Hearing Examiner; and
8. The City's departmental file for the application, if incorporated into the record by the Hearing Examiner.

C. The Hearing Examiner may authorize a party to have the proceedings reported by a court reporter and have a stenographic transcription made at the party's expense.

D. The Hearing Examiner shall have custody of the hearing records and shall maintain such record until the period for appeal of the Hearing Examiner's final decision has expired, or the record is transmitted to the Superior Court pursuant to an appeal of the Hearing Examiner's final decision.

2.48.140 Reconsideration – Grounds – Petition -- Clerical Errors.

A. Any aggrieved party of record may file a written petition for reconsideration with the Hearing Examiner within ten (10) calendar days following the date of the Hearing Examiner's final written decision. The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing. The timely filing of a petition for reconsideration shall stay the Hearing Examiner's decision for purposes of enforcement and for purposes of appeals, pursuant to Deer Park Municipal Code 2.48.150, until such time as the petition has been disposed of in writing by the Hearing Examiner, which action shall then be deemed the final written decision for purposes of appeals pursuant to Deer Park Municipal Code 2.48.150.

B. The grounds for seeking reconsideration shall be limited to the following:

1. The Hearing Examiner exceeded the Hearing Examiner's jurisdiction;
2. The Hearing Examiner failed to follow the applicable procedure(s) in reaching the Hearing Examiner's decision;
3. The Hearing Examiner committed an error of law;
4. The Hearing Examiner's findings, conclusions, and/or conditions are not supported by the record;
5. New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
6. The applicant proposes changes to the application in response to deficiencies identified in the Hearing Examiner's final decision.

C. The petition for reconsideration must:

1. Contain the name, mailing address, and daytime telephone number of the petitioner, or the petitioner's representative, together with the signature of the petitioner or of the petitioner's representative;

2. Identify the specific findings, conclusions, actions, and/or conditions for which reconsideration is requested;

3. State the specific grounds upon which relief is requested;

4. Describe the specific relief requested;

5. Where applicable, identify the specific nature of any newly discovered evidence or changes proposed; and

6. Be accompanied by the reconsideration fee deposit and commitment to pay the reconsideration fees established by City Council Resolution.

D. The petition for reconsideration shall be decided by the same Hearing Examiner who rendered the final decision on the application, if reasonably available. The Hearing Examiner shall provide notice of the decision on reconsideration in the same manner as required for notice of the final decision. Within ten (10) working days the Hearing Examiner shall:

1. Deny the petition in writing;

2. Grant the petition and issue an amended decision;

3. Accept the petition and give notice to all parties of record of the opportunity to submit written comment. Parties of record shall have ten (10) calendar days from the date of such notice in which to submit written comments. The Hearing Examiner shall either deny the petition in writing, grant the petition and issue an amended decision, or issue an order within ten (10) working days after the close of the comment period setting the matter for further hearing. If further hearing is ordered, the Hearing Examiner's office shall mail notice not less than fifteen (15) days prior to the hearing date to all parties of record; or

4. Accept the petition and set the matter for further open record hearing to consider new evidence, proposed changes in the application and/or the arguments of the parties. Notice of such further hearing shall be mailed by the Hearing Examiner's office not less than fifteen (15) days prior to the hearing date to all parties of record. The Hearing Examiner shall deny the petition in writing, or grant the petition and issue an amended decision following the further hearing.

E. A decision which has been subjected to the reconsideration process shall not again be subject to reconsideration; provided, that a decision which has been revised on reconsideration from any form of denial to any form of approval with preconditions and/or conditions shall be subject to reconsideration.

F. The Hearing Examiner may consolidate for action, in whole or in part, multiple petitions for reconsideration of the same decision where such consolidation would facilitate procedural efficiency.

G. Clerical mistakes and errors arising from oversight or omission in Hearing Examiner decisions may be corrected by the Hearing Examiner at any time either on the Hearing Examiner's initiative or on the motion of a party of record. A copy of each page affected by the correction, with the correction clearly identified, shall be mailed to all parties of record. This shall not extend the appeal period from the decision.

2.48.150 Appeals.

An appeal from a decision of the Hearing Examiner shall be a direct appeal to court and must be filed in Spokane County Superior Court and served on all appropriate parties within twenty-one (21) days following the issuance of the final written decision of the Hearing Examiner, unless a specific state law provides that the appeal should be filed somewhere other than in Spokane County Superior Court, or in a different time frame, in which case the other specifically stated timeframe within which the appeal must be filed and the place where the appeal must be filed shall apply.

2.48.160 Conflict.

To the extent there is any conflict between the provisions of this Chapter and any previously adopted provisions of the Deer Park Municipal Code, or any previously adopted ordinances or resolutions of the City, the provisions of this Chapter shall control.

2.48.170 Cross References.

Whenever any currently existing provision of the Deer Park Municipal Code identifies or makes reference to the Board of Adjustment, City Planning Commission, and/or City Council as performing any function assigned to the Hearing Examiner in this Chapter those references shall be interpreted as references to the Hearing Examiner and the procedures set forth in this Chapter.

Section 2. Chapter 18.92 of the Deer Park Municipal Code is hereby repealed.

Section 3. If any section, sentence, clause or phrase of this Ordinance should be held to

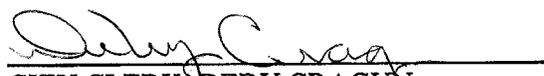
be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or the constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 4. This Ordinance shall take effect and be in full force five (5) days after this ordinance or a summary thereof consisting of the title is published.

APPROVED:


MAYOR ROBERT WHISMAN

ATTEST/AUTHENTICATED:


CITY CLERK, DEBY CRAGUN

APPROVED AS TO FORM:


CHARLES D. ZIMMERMAN, CITY ATTORNEY

FILED WITH THE CITY CLERK	:	<u>07-01-2010</u>
PASSED BY THE CITY COUNCIL	:	<u>09-15-2010</u>
PUBLISHED	:	<u>09-18-2010</u>
EFFECTIVE DATE	:	<u>09-24-2010</u>
ORDINANCE NO.	:	<u>2010-891</u>

SUMMARY OF ORDINANCE NO. 10- 2010-891

of the City of Deer Park, Washington

On 15th of Sept, 2010, the City Council of the City of Deer Park, Washington, approved Ordinance No. 10- 891, the main point of which may be summarized by its title as follows:

AN ORDINANCE OF THE CITY OF DEER PARK, WASHINGTON, AMENDING CHAPTER 2.48 OF THE DEER PARK MUNICIPAL CODE; AMENDING THE CITY HEARING EXAMINER SYSTEM; REPEALING CHAPTER 18.92 OF THE DEER PARK MUNICIPAL CODE; CONTAINING A SEVERABILITY PROVISION; AND SETTING AN EFFECTIVE DATE.

The full text of this Ordinance will be mailed upon request.

DATED this 16 day of Sept, 2010.


CITY CLERK, DEBY CRAGUN