

PROPOSED BY: _____
INTRODUCTION DATE: 1/23/2024

ORDINANCE NO. _____

AN ORDINANCE ADOPTING AMENDMENTS TO WHATCOM COUNTY CODE TITLE 2 (ADMINISTRATION AND PERSONNEL) TO ABOLISH THE APPEALS BOARD AND ASSIGN ITS DUTIES TO THE HEARING EXAMINER

WHEREAS, the Whatcom County Appeals Board had not met in over 8 years, having had no appeals; and,

WHEREAS, Whatcom County has been assigning most administrative appeals to the Hearing Examiner in the last decade;

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. Amendments to the Whatcom County Code are hereby adopted as shown in Exhibit A.

Section 2. Staff is authorized to work with Code Publishing to correct and update any cross-references made ineffective by these amendments.

Section 3. Adjudication of invalidity of any of the sections, clauses, or provisions of this Ordinance shall not affect or impair the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this _____ day of _____, 2024.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk

APPROVED as to form:

/s/Royce Buckingham approved via email on 1/31/2024/MR

Royce Buckingham, Civil Deputy Prosecutor

Barry Buchanan, Council Chair

() Approved () Denied

Satpal Sidhu, Executive

Date: _____

Exhibit A: Proposed Amendments to Abolish the Board of Appeals and Transfer Duties to the Hearing Examiner

TITLE 2 ADMINISTRATION AND PERSONNEL

Chapter 2.11 Hearing Examiner

(...)

2.11.210 Final Decisions.

In accordance with the provisions of Chapter 22.05 WCC, the hearing examiner shall conduct open record hearings and prepare a record thereof, and make a final decision upon the following matters:

- A. Appeals from any order, permits, decisions or final determinations made by an administrative official or committee in the administration of this Title, WCC Title 15, ~~except for building and fire code requirements,~~ WCC Title 16, Environment, WCC Title 17, Flood Damage Prevention, WCC Title 20, Zoning, WCC Title 21, Land Division Regulations, WCC Title 22, Project Permit Procedures, WCC Title 23, Shoreline Management Program, or WCC Title 24, Health Code.

(...)

2.11.220 Rules and regulations.

The Hearing Examiner shall have the power to prescribe rules and regulations for the conduct of hearings before him or her, subject to approval by the County Council; and also, to issue summons for and compel the appearance of witnesses, to administer oath, and preserve order. The opportunity of cross-examination of witnesses shall be afforded all ~~interested parties~~ **with standing** or their counsel in accordance with the rules of the hearing examiner.

Commented [CES1]: Pursuant to previous amendments, where we have changed this term and defined it, per the P.A.'s recommendation.

Chapter 2.80

COUNTY APPEALS BOARD

~~2.80.010 Purpose.~~

~~The purpose of this chapter is to establish a single board of appeals to be known as the county appeals board with the authority, duties and responsibilities to function in the capacity of the board of appeals as set forth in the currently adopted editions of the International Building Code and related codes as adopted by the county, specifically Appendix B of the IBC entitled "BOARD OF APPEALS," attached to the ordinance codified in this chapter.~~

~~2.80.020 Board established — Appointment of members.~~

~~The board shall be established as provided for in Addendum A (Appendix B, Board of Appeals). Whatcom County may appoint board members simultaneously or staggered as per Addendum A (Appendix B, Board of Appeals). Whatcom County may choose to substitute a lay person in place of the electrical engineer or contractor.~~

2.80.030 Regulations regarding compensation and interest in subject matter.

Members shall not receive compensation from the county for their services as a member for the board; provided, that if the board, by majority vote, convenes a special board meeting at a location within Whatcom County other than that established by board rules, the members of the board shall be reimbursed for travel expenses at the usual county per mile travel expense rate computed at twice the distance from the board member's place of residence to the special board meeting location. A member, the member's firm, or any agent or representative of the member shall not be precluded from receiving compensation from the county for services rendered outside his/her duties as a board member; provided, that any member having an interest or who is contemplating acquiring an interest in any particular transaction, contract or project must abstain from any participation in the deliberations of the board regarding said subject matter; and provided further, that in any event a board member shall abstain from any deliberation upon a given subject if a disinterested person, having been apprised of the totality of a board member's personal interest in a matter being acted upon, whether financial or otherwise, would be reasonably justified in thinking that partiality may exist.

2.80.040 Fees.

Fees may be charged in accordance with the currently adopted Unified Fee Schedule. If a specific fee is not specified then the current hourly rate may be utilized to cover some of the cost of the appeal.

2.80.050 Cooperation of county officials.

The board may request and shall receive, so far as may be necessary in the discharge of its duties, the assistance and cooperation of the county.

2.80.060 Powers designated — Appellate function.

The board shall have the power and jurisdiction to receive and rule on appeals from any administrative decision concerning the currently adopted International Building Code and related codes.

Any person aggrieved by a ruling made pursuant to the administration of the above-listed codes and ordinances may obtain review thereof by filing an appeal within 20 days of the date of the administrative decision. The appeal shall be initiated by submitting a written notice of appeal to the clerk of the board. Notice of appeal shall be on a form provided by the clerk of the board and shall include at a minimum the following information: name, address and telephone number of appellant, location of the job or building site, decision being appealed, and applicable code or ordinance. Answer to the appeal shall be made by the official whose decision is being appealed within 20 days of receipt of the appeal notice.

2.80.070 Record and findings on appeal.

All hearings on appeals before the board shall be open to the public. Each final decision of the board shall be in writing and shall include findings and conclusions, based upon the record, to support the decision.

2.80.080 Scope of review.

In exercising the powers granted herein, the board may, in conformity with the applicable code or ordinance, reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or

determination appealed from, and may make such order, requirement, decision, or determination as should be made, and to that end, shall have all powers for the officer from whom the appeal is being taken, insofar as the decision on the particular issue is concerned, and in making its determination the board may hear any pertinent facts bearing on the case.

2.80.090 Finality of board decision— Reconsideration.

A. The decision of the board shall be deemed final, except that the board may reconsider any decision made by it upon a timely motion in writing submitted by a party to appeal within seven days of the date of mailing of the board's decision.

B. Reconsideration may be granted to all or any of the parties and on all or part of the issues, when such issues are clearly and fairly separable and distinct, on the motion of the party aggrieved for any one of the following causes materially affecting the substantial rights of such parties:

1. Irregularity in the proceedings of the board, by which such party was prevented from having a fair hearing;

2. Misconduct of a prevailing party; or

3. Newly discovered evidence, material for the party making the application which he could not with reasonable diligence have discovered and produced at the hearing.

C. When a motion for reconsideration is served and filed, the board shall determine whether the motion shall be heard and, if so, schedule the time and nature of the hearing. The board shall notify the parties whether the motion or motions shall be heard on oral argument or submitted on briefs, and if on brief, shall fix the time within which the brief shall be served and filed.

D. The decision of the board, upon reconsideration, shall be made in writing. In the event that the board modifies its previous decision or deems that new findings and conclusions of law are necessary as a part of the decision then the board shall proceed to have new findings and conclusions drafted.

E. Should a party aggrieved by a decision of the board desire to seek judicial review of the board's decision, as hereinafter provided, it shall not be deemed necessary for the party to first seek a reconsideration of the board's decision in order to satisfy the doctrine of the exhaustion of administrative remedies.

2.80.100 Appeal of board decision.

Any party to an appeal who is aggrieved by a final decision of the board may appeal said decision by filing the appropriate pleadings in the superior court of Whatcom County within 30 days of notification of the board's decision in accordance with RCW 34.04.130. For purposes of measuring the 30 day period, the period shall begin from the date of mailing such decision.

Provided, in the event a timely motion for reconsideration is filed pursuant to WCC 2.80.090, the time period for appeal shall be 10 days from the date on which the motion is decided. The 10 day period in

such instance shall begin from the date of mailing such decision; provided, that such period may not expire less than 30 days from the time of the original decision.

2.80.110 Quorum.

A majority of the board shall constitute a quorum. A quorum of the board shall be necessary to hear all appeals. A quorum shall constitute the membership at any given time.

2.80.120 Emergency hearings.

In the event that it appears that the public health, safety or welfare may be significantly affected by a delay in scheduling a hearing or rendering a decision, the chairperson of the board shall be empowered to convene the board for purposes of hearing said appeal, or rendering such decision, at such earlier date, time, and location as he or she shall deem appropriate.

Notice of such hearing shall be given to the parties at the earliest point in time possible and shall also be posted in the county courthouse.

2.80.130 Records— Notice of meetings and hearings.

A. Notice shall be given prior to any hearing on an appeal to all parties to the appeal by placement of the notice in the mail at least 10 days prior to the date of hearing, except as hereinbefore provided.

B. Notice shall also be posted in the county courthouse of any and all hearings and meetings at least 10 days in advance of such hearings or meetings except as hereinbefore provided.

C. The board shall maintain records and minutes of all meetings, hearings, and of any actions it may take. Such records shall be kept in a file open to the public in the office of the building official by such person as he may delegate, and for such time period as may be required by law.

D. The director of planning and development shall designate a clerk of the board.

2.80.140 IBC adopted.

The currently adopted IBC with the current appendix chapter on the board of appeals (Appendix B, attached to the ordinance codified in this chapter) is hereby adopted along with these provisions except those that remain in effect.