

**CITY OF WHITE SALMON
ORDINANCE NO. 2019-06-1044**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITE SALMON,
WASHINGTON ADOPTING WHITE SALMON MUNICIPAL CODE CHAPTER 2.21
FOR PURPOSES OF ESTABLISHING HEARING EXAMINER PROCEDURE AND
DECISION PROTOCOL AND PROVIDING FOR SEVERABILITY AND AN
EFFECTIVE DATE**

WHEREAS, the City desires to hire or contract with a hearing examiner to address land use matters in place of the Planning Administrator, Planning Commission or the City Council; and,

WHEREAS, Code Cities in Washington State have statutory authorization to establish a hearing examiner system under RCW 35A 63.170, and RCW 58.17.330; and,

WHEREAS, the City Council shall prescribe procedures to be followed by a hearing examiner and specify the legal effect of the decisions made by the examiner.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WHITE SALMON, WASHINGTON DO HEREBY ORDAIN AS FOLLOWS:

Section 1

Adopting Chapter 2.21 -- Hearing Examiner

Chapter 2.21 - HEARING EXAMINER

Sections:

2.21.010 - Created—Powers and duties.

2.21.020 - Appointment—Removal.

2.21.030 - Optional use of hearing examiner.

2.21.040 - Challenges to optional use of hearing examiner.

2.21.050 - Conflict of interest.

2.21.060 - Disqualification of hearing examiner.

2.21.070 - Legal counsel for hearing examiner.

2.21.080 - Noninterference in performance of duties.

2.21.090 - Decisions—Hearing examiner conduct.

2.21.100 - Decisions—Finality and appeals.

2.21.110 - Fees.

2.21.010 - Created—Powers and duties.

- A. There shall be a hearing examiner for the city. Known as the "City of White Salmon Hearing Examiner," the position is established to provide an efficient and effective administrative adjudicatory system for acting upon quasi-judicial matters and reviewing contested administrative determinations.

- B. Except for amendments to the comprehensive plan, zoning code or zoning map, the hearing examiner may be empowered to hear and decide any adjudicative land use proceeding or appeal arising from White Salmon Municipal Code Titles 16 – Land Divisions, 17 - Zoning, and 18 - Environment.
- C. When performing its role as the city's adjudicative or appellate authority, the hearing examiner shall have the same powers and duties as are granted to the adjudicative or appellate authority the hearing examiner is empowered to replace.
- D. The hearing examiner shall adopt rules concerning procedures for scheduling and conduct of hearings and as otherwise related to the duties of the office, not inconsistent with the terms of this chapter.

2.21.020 - Appointment—Removal.

- A. The hearing examiner shall be appointed by the mayor and confirmed by the council. Appointments may occur on a case-by-case basis or for longer terms not to exceed three years.
- B. The party appointed to serve the City in this role must be an experienced attorney, with expertise presiding over hearings often involving private citizens without counsel, in matters typically addressing land use, planning, code enforcement, and development issues. The Examiner must be familiar with due process, appearance of fairness rules, applicable Washington State law and become familiar with the city of White Salmon development codes and other relevant codes, ordinances, regulations and policies.
- C. The hearing examiner may be removed by the council at any time. upon request of the hearing examiner proposed for removal, the council may hold a hearing on the removal before it becomes effective.
- D. Vacancies in the Hearing Examiner position shall be filled as soon as possible.

2.21.030 - Optional use of hearing examiner:

After consultation with the planning administrator, the council may, in its discretion, elect to use the hearing examiner in lieu of the council, planning commission, or board of adjustment for adjudicative or appellate land use proceedings. Except regarding decisions below, code provisions relating to the council, to the planning commission, or to the board of adjustment as an adjudicative body (including on remand) shall be construed as including the alternate use of the hearing examiner, where applicable.

2.21.040 - Challenges to optional use of hearing examiner.

- A. Prior to any hearing on a matter, a party may file an affidavit, which is a sworn statement in writing and under oath, challenging the city council's optional use of the hearing examiner.
- B. The hearing examiner shall rule on the affidavit prior to making other rulings and prior to the hearing.

- C. The hearing examiner may remand the matter back to the city council to reconsider the use of the adjudicative or appellate authority the council originally empowered the hearing examiner to replace.

2.21.050 - Conflict of interest.

The hearing examiner shall not conduct or participate in any hearing or decision in which they have a direct or indirect personal interest, which might exert such influence upon the examiner that might improperly interfere with the decision-making process. Any actual or potential conflict of interest shall be disclosed to the parties immediately upon discovery of such conflict and the examiner shall abstain from any further proceedings in the matter unless all parties agree in writing to have the matter heard by that hearing examiner.

2.21.060 - Disqualification of hearing examiner.

- A. Prior to any hearing on a matter, a party may file an affidavit, which is a sworn statement in writing and under oath, stating that such party cannot have a fair and impartial hearing by reason of the hearing examiner's personal bias or prejudice.
- B. The hearing examiner shall rule on the affidavit only after ruling on a challenge brought under WSMC 2.21.050, above and prior to making other rulings and prior to the hearing.
- C. The hearing examiner may enter an order of disqualification to in the event of personal bias or prejudice or to preserve the appearance of fairness.

2.21.070 - Legal counsel for hearing examiner.

General legal advice to the hearing examiner will be provided by the city attorney, except that in a contested case where the city will be represented by the city attorney, the mayor with input from the city council may appoint independent counsel to render legal advice to the hearing examiner, the cost of which shall be borne by the city.

2.21.080 - Noninterference in performance of duties.

No person shall attempt to interfere with or improperly influence the hearing examiner in the performance of designated duties. This provision shall not prohibit the city attorney from providing legal advice to the hearing examiner.

2.21.090 - Decisions—Hearing examiner conduct.

Each final decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on 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's comprehensive plan and the city's development regulations. Each final 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 working days following conclusion of all testimony and hearings.

2.21.100 - Decisions—Finality and appeals.

The action by the hearing examiner on a matter shall be final and conclusive unless an appeal is timely filed in accordance with RCW 36.70C, Judicial Review of Land Use Decisions.

2.21.110 - Fees.

Each application brought before the hearing examiner shall be accompanied by payment of a fee which shall be set by resolution of the city council.

Section 2.

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 3.

Effective Date and Publication: This Ordinance shall be effective five days after publication of the Ordinance, or a summary thereof consisting of its title, in the official newspaper of the City.

Passed by the City Council on the 19th day of June 2019.




David Poucher Mayor

Attest:



Jan Brending, City Clerk/Treasurer

Approved as to Form:



Ken Woodrich City Attorney