TOWN OF COUPEVILLE  
Coupeville, Washington

ORDINANCE NO. 741

AN ORDINANCE OF THE TOWN OF COUPEVILLE, WASHINGTON, ADDING A NEW CHAPTER TO TITLE 2 ESTABLISHING A HEARING EXAMINER PROCESS, PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Town of Coupeville is a properly organized Town under Chapter 35.27 RCW; and

WHEREAS, the Town Council finds that the Town has a need for a quasi-judicial decision maker for adjudication of land use regulatory and enforcement matters; and

WHEREAS, the Town Council determined that a Hearing Examiner process will protect citizens’ rights while providing for smooth and efficient Town administration;

NOW THEREFORE, THE TOWN COUNCIL OF THE TOWN OF COUPEVILLE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Chapter 2.52 entitled “Hearing Examiner” is hereby added to read as follows:

Chapter 2.52 Hearing Examiner
2.52.010 Purpose.
2.52.020 Creation of office.
2.52.030 Appointment.
2.52.040 Qualifications.
2.52.050 Removal
2.52.060 Conflict of interest and appearance of fairness.
2.52.070 Freedom from improper influence.
2.52.080 Rules.
2.52.090 Duties.
2.52.100 Public hearings.
2.52.110 Examiner’s decision.
2.52.120 Notice of examiner’s decision.
2.52.130 Reconsideration
2.52.140 Decision final action by town.
2.52.150 Conflicting code provisions and rules of procedure.
2.52.010 Purpose.

The purpose of this chapter is to establish a quasi-judicial hearing system that will ensure procedural due process and appearance of fairness in land use regulatory and enforcement hearings and will provide an efficient and effective hearing process for quasi-judicial matters.

2.52.020 Creation of office.

The office of hearing examiner, hereinafter referred to as “examiner,” is created. The examiner shall perform the duties and functions specified in this chapter, together with such other quasi-judicial duties and functions as may be delegated by the mayor and town council. Unless the context requires otherwise, the term “examiner” as used herein shall include any examiner pro tem who may be appointed. The office of the examiner shall be under the administrative supervision of the examiner and shall be separate from and not part of the planning department.

2.52.030 Appointment.

The examiner shall be appointed by the mayor subject to confirmation by a majority vote of the town council. The terms of the examiner’s employment shall be specified by a professional service contract. An examiner pro tem may also be appointed by the mayor subject to confirmation by majority vote of the town council. An examiner pro tem shall serve in the event of absence or disqualification of the examiner.

2.52.040 Qualifications.

The examiner shall be appointed solely with regard to his or her qualification for the duties of the office, and will have such training and experience as will qualify the examiner to conduct administrative and quasi-judicial hearings on regulatory enactments and enforcement matters and to discharge such other functions conferred upon the examiner by the mayor and town council. The examiner shall hold no other elective or appointive office or position in Town of Coupeville government.

2.52.050 Removal.

The examiner may be removed from office for cause by the mayor, subject to confirmation by majority vote of the town council.

2.52.060 Conflict of interest and appearance of fairness.

The examiner shall not conduct or participate in any hearing or decision in which the examiner has a direct or indirect personal interest which might influence the examiner or interfere with the examiner’s decision-making process. Any actual or potential conflict of interest shall be disclosed to the parties immediately upon discovery of such conflict. The hearing shall then be conducted by an examiner pro tem.
The appearance of fairness doctrine, as specified in Chapter 42.36 RCW, shall apply to all proceedings conducted by the examiner, and may result in the examiner’s disqualification when necessary.

2.52.070 Freedom from improper influence.

No council member, city official or any other person shall attempt to interfere with or improperly influence the examiner in the performance of his or her designated duties.

2.52.080 Rules.

The examiner shall have the power to prescribe rules and regulations for the scheduling and conduct of hearings and other procedural matters related to the duties of the office.

2.52.090 Authority and duties.

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

1. Preliminary plats, binding site plans, and planned unit developments;

2. Conditional use permits when subject to public review;

3. Zoning code variances when subject to public review;

4. Shoreline substantial development permits, conditional use permits, variances and appeals from administrative determinations arising under Chapter 16.30 CTC;

5. Administrative appeals from administrative decisions, interpretations, and enforcement actions by town staff relating to land use, building, and construction codes and permits;

6. Variances and administrative appeals arising from the town’s floodplain management code; and

7. Such other regulatory, enforcement, or quasi-judicial matters as may be assigned to the examiner by the mayor and town council.

B. In the execution of such duties, the examiner may:

1. Administer oaths and affirmations.

2. Issue subpoenas.

3. Rule upon offers of proof and receive evidence.
4. Conduct site visits to inspect property subject to pending action by the examiner. 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.

5. Require briefs on legal issues.

6. Consider and rule upon procedural and other motions.

7. Hold pre-hearing conferences to clarify issues or structure the proceeding, provided all affected parties receive reasonable notice and either attend or waive their right to attend.

8. Issue decisions.

2.52.100 Public hearings.

Where quasi-judicial public hearings are required by state statute or town code, the examiner shall hold a hearing prior to rendering a decision on any matter. All testimony at any such hearing shall be taken under oath. Public notice of the time and place of the hearing shall be given as required by town code or other applicable statute or law.

2.52.110 Examiner’s decision.

Within ten working days after the conclusion of a hearing, unless a longer period is agreed to by the applicant in writing or verbally on the record at the public hearing, the examiner shall render a written decision which shall include at least the following:

A. Written findings of fact based upon the record and conclusions therefrom that support the decision;

B. In the case of an application, the written decision shall state whether the application is either granted, granted in part, granted with conditions, modifications or restrictions, returned to the applicant for modification, denied with prejudice or denied without prejudice. In other matters the written decision will address the relief requested and shall state the basis for the decision;

2.52.120 Notice of examiner’s decision.

Following the rendering of a written decision, copies thereof shall be mailed to the applicant and other parties of record in the case. “Parties of record” shall include the applicant and all other persons who specifically request notice of the decision. The examiner may establish rules for registering parties of record.
2.52.130 Reconsideration

Within ten calendar days of the date of notice of the examiner’s decision, a party of record may request reconsideration. The request shall set forth in writing alleged errors of fact, law, or procedure, or issues omitted from the examiner’s decision. Any request for reconsideration shall stay further issuance of town permits. Within seven days after receiving the request, the examiner shall either:

A. Accept reconsideration without additional evidence, in which case the examiner shall have the authority to modify or confirm the original decision; or

B. Accept reconsideration and, following notice to all parties of record, direct re-opening of the hearing to consider further evidence in support of and in opposition of the issues raised in the request for reconsideration, in which case the examiner shall have the authority to modify or confirm the original decision; or

C. Reject reconsideration.

2.52.140 Decision final action by town.

Unless specifically provided otherwise by ordinance, all decisions of the hearing examiner shall be final action by the town. Hearing examiner decisions shall be appealable pursuant to Section 16.06.060 CMC, Appeals.

2.52.150 Conflicting code provisions and rules of procedure.

Any and all provisions of town code, and any and all provisions of the rules of procedure adopted by the examiner, that are in conflict with this chapter are superseded.

Section 2. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the Town, and shall take effect and be in full force February 8, 2018.
ADOPTED by the Town Council and APPROVED by the Mayor this 23rd day of January 2018.

TOWN OF COUPEVILLE

By  
Molly Hughes, Mayor

ATTEST:

By  
Kelly Beech, Clerk-Treasurer

APPROVED AS TO FORM:

By  
Grant Weed, Town Attorney

Date of Publication:  February 3, 2018