

**CITY OF GOLD BAR, WASHINGTON  
RESOLUTION NO. 12-03**

**A RESOLUTION FOR USING A HEARING EXAMINER**

**WHEREAS**, the City of Gold Bar uses a Planning Commission for quasi-judicial decisions on land use issues in accordance with RCW 35A.63.010; and

**WHEREAS** the City can utilize a Hearing Examiner as an alternate to a Planning Commission for land use issues in accordance with RCW 35A.63.110, RCW 35A.63.170, and RCW 58.17.330; and

**WHEREAS**, land use issues can include complicated legal and regulatory issues requiring specific training; and

**WHEREAS**, using a volunteer citizen Planning Commission puts the City at some legal risk for decisions made; and

**WHEREAS**, the City has been unsuccessful in getting volunteers to serve in this capacity.

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Gold Bar, Washington as follows:

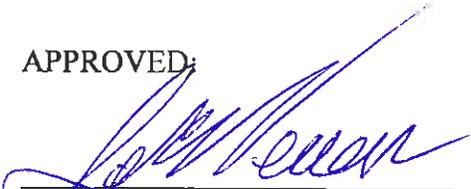
1. The City will modify GBMC 2.20 and Title 19 to reflect the use of a Hearing Examiner instead of a Planning Commission for land use issues;
2. The City will eliminate the Planning Commission as a formal body and use an ad hoc Planning Agency in accordance with RCW 35A.63.010(8);
3. The City Council will perform the duties of the Planning Commission while there is no quorum available until the Hearing Examiner is in place.

RESOLVED this 3rd day of April, 2012.

ATTEST/AUTHENTICATED:

  
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Laura Kelly, City Clerk/Treasurer

APPROVED:

  
\_\_\_\_\_  
Joe Beavers, Mayor

## **RCW 35A.63.010**

### **Definitions.**

The following words or terms as used in this chapter shall have the meanings set forth below unless different meanings are clearly indicated by the context:

(1) "Chief administrative officer" means the mayor in code cities operating under the mayor-council and commission forms, the city manager in code cities operating under the council-manager forms, or such other officer as the charter of a charter code city designates as the chief administrative officer.

(2) "City" means an incorporated city or town.

(3) "Code city" is used where the application of this chapter is limited to a code city; where joint, regional, or cooperative action is intended, a code city may be included in the unrestricted terms "city" or "municipality".

(4) "Comprehensive plan" means the policies and proposals approved by the legislative body as set forth in RCW 35A.63.060 through 35A.63.072 of this chapter and containing, at least, the elements set forth in RCW 35A.63.061.

(5) "Legislative body" means a code city council, a code city commission, and, in cases involving regional or cooperative planning or action, the governing body of a municipality.

(6) "Municipality" includes any code city and, in cases of regional or cooperative planning or action, any city, town, township, county, or special district.

(7) "Ordinance" means a legislative enactment by the legislative body of a municipality; in this chapter "ordinance" is synonymous with the term "resolution" when "resolution" is used as representing a legislative enactment.

(8) "Planning agency" means any person, body, or organization designated by the legislative body to perform a planning function or portion thereof for a municipality, and includes, without limitation, any commission, committee, department, or board together with its staff members, employees, agents, and consultants.

(9) "Special district" means that portion of the state, county, or other political subdivision created under general law for rendering of one or more local public services or for administrative, educational, judicial, or political purposes.

## **RCW 35A.63.110**

### **Board of adjustment — Creation — Powers and duties.**

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. A code city which pursuant to this chapter creates a planning agency and which has a population of less than twenty-five hundred may, by ordinance, similarly create a board of adjustment. In the event a code city with a population of less than twenty-five hundred creates a planning agency, but does not create a board of adjustment, the code city shall provide that the city legislative authority shall itself hear and decide the items listed in subdivisions (1), (2), and (3) of this section. The action of the board of adjustment shall be final and conclusive, unless, within twenty-one days from the date of the action, the original applicant or an adverse party makes application to the superior court for the county in which that city is located for a writ of certiorari, a writ of prohibition, or a writ of mandamus. No member of the board of adjustment shall be a member of the planning agency or the legislative body. Subject to conditions, safeguards, and procedures provided by ordinance, the board of adjustment may be empowered to hear and decide:

(1) Appeals from orders, recommendations, permits, decisions, or determinations made by a code city official in the administration or enforcement of the provisions of this chapter or any ordinances adopted pursuant to it.

(2) Applications for variances from the terms of the zoning ordinance, the official map ordinance or other land-use regulatory ordinances under procedures and conditions prescribed by city ordinance, which among other things shall provide that no application for a variance shall be granted unless the board of adjustment finds:

(a) The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located; and

(b) That such variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in

the vicinity and in the zone in which the subject property is located; and

(c) That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.

(3) Applications for conditional-use permits, unless such applications are to be heard and decided by the planning agency. A conditional use means a use listed among those classified in any given zone but permitted to locate only after review as herein provided in accordance with standards and criteria set forth in the zoning ordinance.

(4) Such other quasi-judicial and administrative determinations as may be delegated by ordinance.

In deciding any of the matters referred to in subsections (1), (2), (3), and (4) of this section, the board of adjustment shall issue a written report giving the reasons for its decision. If a code city provides for a hearing examiner and vests in him or her the authority to hear and decide the items listed in subdivisions (1), (2), and (3) of this section pursuant to RCW 35A.63.170, then the provisions of this section shall not apply to such a city.

## **RCW 35A.63.170**

### **Hearing examiner system — Adoption authorized — Alternative — Functions — Procedures.**

(1) As an alternative to those provisions of this chapter relating to powers or duties of the planning commission to hear and report on any proposal to amend a zoning ordinance, the legislative body of a city may adopt a hearing examiner system under which a hearing examiner or hearing examiners may hear and decide applications for amending the zoning ordinance when the amendment which is applied for is not of general applicability. In addition, the legislative body may vest in a hearing examiner the power to hear and decide those issues it believes should be reviewed and decided by a hearing examiner, including but not limited to:

(a) Applications for conditional uses, variances, subdivisions, shoreline permits, or any other class of applications for or pertaining to development of land or land use;

(b) Appeals of administrative decisions or determinations; and

(c) Appeals of administrative decisions or determinations pursuant to chapter 43.21C RCW.

The legislative body shall prescribe procedures to be followed by a hearing examiner. If the legislative authority vests in a hearing examiner the authority to hear and decide variances, then the provisions of RCW 35A.63.110 shall not apply to the city.

(2) Each city legislative body electing to use a hearing examiner pursuant to this section shall by ordinance specify the legal effect of the decisions made by the examiner. The legal effect of such decisions may vary for the different classes of applications decided by the examiner but shall include one of the following:

(a) The decision may be given the effect of a recommendation to the legislative body;

(b) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative body; or

(c) Except in the case of a rezone, the decision may be given the effect of a final decision of the legislative body.

(3) 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 a 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.

## **RCW 58.17.330**

### **Hearing examiner system — Adoption authorized — Procedures — Decisions.**

(1) As an alternative to those provisions of this chapter requiring a planning commission to hear and issue recommendations for plat approval, the county or city legislative body may adopt a hearing examiner system and shall specify by ordinance the legal effect of the decisions made by the examiner. The legal effect of such decisions shall include one of the following:

- (a) The decision may be given the effect of a recommendation to the legislative body;
- (b) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative body; or
- (c) The decision may be given the effect of a final decision of the legislative body.

The legislative authority shall prescribe procedures to be followed by a hearing examiner.

(2) 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. Each final decision of a hearing examiner, unless a longer period is mutually agreed to by the applicant and the hearing examiner, shall be rendered within ten working days following conclusion of all testimony and hearings.