

ORDINANCE NO. 2009-04-010

**AN ORDINANCE TRANSFERRING JURISDICTION OVER APPEALS OF THE CITY'S BUILDING CODE DECISIONS FROM THE BOARD OF CODE APPEALS TO THE HEARING EXAMINER BY REPEALING BELLINGHAM MUNICIPAL CODE CHAPTER 2.63, AND AMENDING BELLINGHAM MUNICIPAL CODE SECTION 2.56.050 (B) AND THE APPEAL SECTIONS IN THE CITY'S BUILDING, RESIDENTIAL, EXISTING BUILDING, ELECTRICAL, FIRE, MECHANICAL, FUEL GAS, PLUMBING, AND PROPERTY MAINTENANCE CODES.**

**WHEREAS**, the City's Board of Code Appeals (Board) was formed to have the power and jurisdiction to receive and rule on appeals from any administrative decision concerning the City's building, residential, existing building, electrical, fire, mechanical, fuel gas, plumbing, and property maintenance codes (collectively the "building codes"), together with local amendments, which are adopted in Chapters 17.10, 17.16, 17.20, 17.30, 17.40, and 17.50 of the Bellingham Municipal Code, except for decisions relating to the administrative provisions of these codes; and

**WHEREAS**, in the last five years, the Board has considered only two appeals of administrative decisions concerning the City's building codes; and

**WHEREAS**, due to the infrequency of these appeals, the City has had a difficult time keeping the Board positions filled and Board members trained on how to conduct quasi-judicial hearings; and

**WHEREAS**, currently all three Board positions are vacant; and

**WHEREAS**, the City created the Office of Hearing Examiner under the authority provided by Article 11, Section 11 of the Washington State Constitution and RCW 58.17; and,

**WHEREAS**, the Hearing Examiner provides an efficient and effective administrative adjudicatory system for acting upon quasi-judicial matters and for review of contested administrative determinations; ensures that quasi-judicial administrative decisions are made in a fair and impartial manner; and ensures that the principles of due process and appearance of fairness are adhered to in quasi-judicial matters; and

**WHEREAS**, RCW 19.27.060 authorizes the City to amend its building codes as long as it does not reduce the minimum performance standards below those in the state building codes; and

**WHEREAS**, having the Hearing Examiner consider appeals of City decisions regarding its building codes instead of the Board would not reduce these performance standards; and

**WHEREAS**, other cities and counties in the State have amended their codes so that their hearing examiners consider appeals of building code decisions;

City of Bellingham  
City Attorney  
210 Lottie Street  
Bellingham, Washington 98225  
360-778-8270

**NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**

**Section 1.** Bellingham Municipal Code Chapter 2.63 Municipal Board of Code Appeals is repealed in its entirety.

**Section 2.** Bellingham Municipal Code Section 2.56.050 is amended as follows:

**2.56.050 - Powers And Jurisdiction**

The Hearing Examiner shall have the power to receive and examine available information, conduct public hearings and prepare a record thereof and enter decisions as provided by ordinance.

**A. [No change.]**

**B.** The decision of the Hearing Examiner on the following matters which shall be within the jurisdiction of the Hearing Examiner, notwithstanding any other provision in the Bellingham Municipal Code, shall be final, subject only to judicial challenge:

**1. – 15. [No change.]**

**16.** Appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of the City's Building, Residential, Existing Building, Electrical, Fire, Mechanical, Fuel Gas, Plumbing, or Property Management Codes.

**C. – G. [No change.]**

**Section 3.** Bellingham Municipal Code Section 17.10.020 is amended as follows:

**17.10.020 - International Building Code Chapter 1 - Amended**

The following sections of the International Building Code as adopted in BMC 17.10.010 are amended to read as follows:

**Section 101.1 – Section 108.2 [No change.]**

**Section 112 – Hearing Examiner.**

**112.1 General.** Appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of this code may be appealed to the City of Bellingham Hearing Examiner within 14 days of issuance of the order, decision, or determination.

City of Bellingham  
City Attorney  
210 Lottie Street  
Bellingham, Washington 98225  
360-778-8270

**112.2 Limitations on authority.** An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The Hearing Examiner shall have no authority to waive requirements of this code.

**Section 4.** Bellingham Municipal Code Section 17.10.030 is amended as follows:

**17.10.030 - International Residential Code - Amended**

Table R301.2(a), City of Bellingham climatic and geographic data, is established and attached hereto.

The following sections of the International Residential Code as adopted in BMC 17.10.010 are amended to read as follows:

**Section R112 – Hearing Examiner.**

**R112.1 General.** Appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of this code may be appealed to the City of Bellingham Hearing Examiner within 14 days of issuance of the order, decision, or determination.

**R112.2 Limitations on authority.** An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The Hearing Examiner shall have no authority to waive requirements of this code.

**Section 5.** Bellingham Municipal Code Section 17.10.050 is added as follows:

**17.10.050 International Existing Building Code – Amended**

The following sections of the International Existing Building Code as adopted in BMC 17.10.010 are amended to read as follows:

**Section 112 – Hearing Examiner.**

**112.1 General.** Appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of this code may be appealed to the City of Bellingham Hearing Examiner within 14 days of issuance of the order, decision, or determination.

**112.2 Limitations on authority.** An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good

City of Bellingham  
City Attorney  
210 Lottie Street  
Bellingham, Washington 98225  
360-778-8270

or better form of construction is proposed. The Hearing Examiner shall have no authority to waive requirements of this code.

**Section 6.** Bellingham Municipal Code Section 17.16.010 is amended as follows:

**17.16.010 - Purpose - Adopted**

This chapter is enacted as an exercise of the police power of the city for the benefit of the public at large. It is not intended to create a special relationship with any individual, or individuals, or to identify and protect any particular class of persons. The purpose of this chapter is to provide minimum standards to safeguard life or limb, health, property, and public welfare, by regulating and controlling building construction and work related thereto.

The National Electrical Code, 2005 Edition, and the International Electrical Code Council Electrical Code, 2003 Edition, Chapters 1 through 6 and Chapters 10 and 11, hereinafter referred to as the Electrical Code Administrative Provisions, except as modified by amendments contained in Washington Administrative Code Chapter 296-46B Safety Standards - Installing Electrical Wires and Equipment, which is incorporated herein by reference, and as modified herein, shall be in full force in the City of Bellingham, upon adoption of this chapter.

**Section 7.** Bellingham Municipal Code Section 17.16.030 is amended as follows:

**17.16.030 - Electrical Code Administrative Provisions, Chapter 3 Amended**

**Section 301.1 - 302.7.1 [No change.]**

**Section 302.8.4 [Deleted.]**

**Section 303.1 [No change.]**

**Section 8.** Bellingham Municipal Code Section 17.16.090 is added as follows:

**17.16.090 International Code Council Electrical Code – Amended**

Chapter 11 of the International Code Council Electrical Code as adopted in BMC 17.16.010 is amended to read as follows:

**Chapter 11 - Hearing Examiner.**

**1101 General.** Appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of this code may be appealed to the City of Bellingham Hearing Examiner within 14 days of issuance of the order, decision, or determination.

**1102 Limitations on authority.** An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good

City of Bellingham  
City Attorney  
210 Lottie Street  
Bellingham, Washington 98225  
360-778-8270

or better form of construction is proposed. The Hearing Examiner shall have no authority to waive requirements of this code.

**Section 9.** Bellingham Municipal Code Section 17.16.100 is added as follows:

**17.16.100 National Electrical Code – Amended**

Section 80.15 of Annex G of the National Electrical Code as adopted in BMC 17.16.010 is amended to read as follows:

**80.15 - Hearing Examiner.**

**(A) General.** Appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of this code may be appealed to the City of Bellingham Hearing Examiner within 14 days of issuance of the order, decision, or determination.

**(B) Limitations on authority.** An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The Hearing Examiner shall have no authority to waive requirements of this code.

**Section 10.** Bellingham Municipal Code Section 17.20.020 is amended as follows:

**17.20.020 - I F C Chapter 1, Administration**

The following sections of Chapter 1 of the International Fire Code as adopted in BMC 17.20.010 are amended as follows:

**Section 101.1 – Section 105.2(b) [No change.]**

**Section 108 – Hearing Examiner.**

**108.1 General.** Appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of this code may be appealed to the City of Bellingham Hearing Examiner within 14 days of issuance of the order, decision, or determination.

**108.2 Limitations on authority.** An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The Hearing Examiner shall have no authority to waive requirements of this code.

**Section 109.3 – Section 111.4 [No change.]**

City of Bellingham  
City Attorney  
210 Lottie Street  
Bellingham, Washington 98225  
360-778-8270

**Section 11.** Bellingham Municipal Code Section 17.30.020 is amended as follows:

**17.30.020 - International Mechanical Code - Amended**

The following sections of the International Mechanical Code as adopted in BMC 17.30.010 are amended to read as follows:

**Section 101.1 – Section 106.5.2 [No change.]**

**Section 109 – Hearing Examiner.**

**109.1 General.** Appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of this code may be appealed to the City of Bellingham Hearing Examiner within 14 days of issuance of the order, decision, or determination.

**109.2 Limitations on authority.** An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The Hearing Examiner shall have no authority to waive requirements of this code.

**Section 12.** Bellingham Municipal Code Section 17.30.040 is added as follows:

**17.30.040 International Fuel Gas Code – Amended**

The following sections of the International Fuel Gas Code as adopted in BMC 17.30.010 are amended to read as follows:

**Section 109 – Hearing Examiner.**

**109.1 General.** Appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of this code may be appealed to the City of Bellingham Hearing Examiner within 14 days of issuance of the order, decision, or determination.

**109.2 Limitations on authority.** An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The Hearing Examiner shall have no authority to waive requirements of this code.

**Section 13.** Bellingham Municipal Code Section 17.40.020 is amended as follows:

City of Bellingham  
City Attorney  
210 Lottie Street  
Bellingham, Washington 98225  
360-778-8270

**17.40.020 - Uniform Plumbing Code - Amended**

The following sections of the Uniform Plumbing Code as adopted in BMC 17.40.010 are amended to read as follows:

**Section 102.4 – Hearing Examiner**

**102.4.1 General.** Appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of this code may be appealed to the City of Bellingham Hearing Examiner within 14 days of issuance of the order, decision, or determination.

**102.4.2 Limitations on authority.** An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The Hearing Examiner shall have no authority to waive requirements of this code.

**Section 103.4.1 [No change.]**

**Section 14.** Bellingham Municipal Code Section 17.50.020 is amended as follows:

**17.50.020 – International Property Maintenance Code - Amended**

The following sections and chapters of the International Property Maintenance Code as adopted in BMC 17.50.010 are amended to read as follows:

**Section 101.1 – Section 103.1 [No change.]**

**Section 111 – Hearing Examiner.**

**111.1 General.** Appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of this code may be appealed to the City of Bellingham Hearing Examiner within 14 days of issuance of the order, decision, or determination.

**111.2 Limitations on authority.** An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The Hearing Examiner shall have no authority to waive requirements of this code.

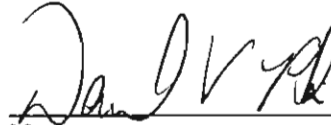
**Section 201.3 – Chapter 8 [No change.]**

City of Bellingham  
City Attorney  
210 Lottie Street  
Bellingham, Washington 98225  
360-778-8270

**PASSED** by the Council this 13th day of April, 2009.

  
\_\_\_\_\_  
Council President

**APPROVED** by me this 20th day of April, 2009.

  
\_\_\_\_\_  
Mayor

**ATTEST:**

  
\_\_\_\_\_  
Finance Director

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Office of the City Attorney

Published:

April 17, 2009  
\_\_\_\_\_

City of Bellingham  
City Attorney  
210 Lottie Street  
Bellingham, Washington 98225  
360-778-8270