

**CITY OF BUCKLEY, WASHINGTON**

**ORDINANCE NO. 12-15**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON, ADOPTING A SIX-MONTH INTERIM ORDINANCE AMENDING THE CITY'S PERMIT PROCESSING PROCEDURES IN ORDER TO REFER CONDITIONAL USE AND SEPA APPEAL HEARINGS TO THE HEARING EXAMINER INSTEAD OF THE CITY COUNCIL AND DECLARING AN EMERGENCY IN ORDER TO PROVIDE FOR AN IMMEDIATE EFFECTIVE DATE.**

**WHEREAS**, currently BMC 12.04.340(3) and BMC 20.01.030 require the City Council to hear appeals of threshold determinations made under the State Environmental Policy Act ("SEPA"); and

**WHEREAS**, hearings on conditional use permits associated with a SEPA appeal would have to be heard by the City Council pursuant to the City's permit consolidation requirements and the SEPA rules, specifically BMC 20.01.050(2) and WAC 197-11-680(3)(a)(v); and

**WHEREAS**, the City of Buckley is currently reviewing a controversial conditional use permit and associated SEPA appeal that directly affects a neighboring City Council member; and

**WHEREAS**, the City Council member has already been involved in opposition to the project; and

**WHEREAS**, under the appearance of fairness doctrine, Chapter 42.36 RCW, the City Council member would be required to recuse himself from the Council review and would not be allowed to be present in the Council meeting room during Council consideration or otherwise present any evidence or argument, and

**WHEREAS**, the City Council has no authority to compel the Council member to recuse himself if he refused to do so and if the Council member stayed on the Council or participated in the conditional use/SEPA appeal hearing, the final decision of the Council would be overturned on appeal as violating the appearance of fairness doctrine and a damages claim may even be possible under Chapter 64.40 RCW; and

**WHEREAS**, City code provisions requiring City Council review of SEPA appeals were adopted before the City Council adopted a hearing examiner review process; and

**WHEREAS**, the City Council has not had the opportunity to consider the benefits of hearing examiner review of SEPA appeals; and

**WHEREAS**, hearing examiner review of SEPA appeals may be most appropriate for the City since SEPA appeals are very time consuming and legally complicated, which is inconsistent with the other time commitments of the City Council and is well suited for the expertise and time resources of the hearing examiner; and

**WHEREAS**, due to conflict of interest issues, the City would have to pay for the services of two attorneys to provide guidance in a SEPA appeal hearing – one attorney to represent the City Council and one to represent the staff, resulting in significant legal fees; and

**WHEREAS**, the immediate adoption of an interim regulation providing for examiner review would enable the City’s hearing examiner to review the pending conditional use/SEPA appeal, thus enabling the adversely affected City Council member to fully defend his property interests without creating any legal jeopardy for the City; and

**WHEREAS**, state law requires the City to act quickly on permit applications and immediate adoption of this ordinance is necessary to enable the City to issue a timely decision on the conditional use/SEPA appeal; and

**WHEREAS**, procedural requirements such as assignment of land use decision making authority are not subject to the vested rights doctrine per *Graham Neighborhood Ass'n v. F.G. Associates*, 162 Wn. App. 98 (2011) and conditional use permits probably have no vested rights in any event due to the recently issued *Potala Village v. Kirkland*, 334 P.3d 1143 (2014);

NOW THEREFORE THE CITY OF BUCKLEY, PIERCE COUNTY, DOES ORDAIN AS FOLLOWS:

**Section 1.** That the Recitals above are hereby adopted by reference as the City Council’s findings of fact, as if fully set forth herein. The City Council may, in its discretion, modify and/or adopt additional findings of fact at the conclusion of the public hearing set by this ordinance.

**Section 2.** That pursuant to the provisions of RCW 35A.63.220, an interim ordinance is hereby enacted that reclassifies conditional use permits as Type C-2 permits in BMC 20.01.030; replaces Footnote No. 2 to Table 1 BMC 20.01.030 with “*SEPA appeals shall be consolidated with the hearing of the underlying governmental action*”; repeals BMC 12.04.340; and replaces all references to “Board of Adjustment” in BMC 19.40.120 – BMC 19.40.210 with “Hearing Examiner”. The intent of these amendments is to ensure that SEPA appeals consolidated with conditional use permit hearings shall be heard by the hearing examiner for a final decision, appealable to superior court. Any code provisions to the contrary shall be considered superseded.

**Section 3.** The City Council deems it to be in the public interest to establish this ordinance as an emergency interim ordinance in order to provide additional time for the Planning Commission and City Council to consider permanent regulations to address the issue of whether the hearing examiner should be responsible for reviewing and issuing final decisions on conditional use permits and SEPA appeals.

**Section 4.** That as required by RCW 35A.63.220, the City Council hereby refers this interim ordinance to the Planning Commission to make a recommendation for permanent zoning regulations, if any, regulating the review of conditional use permits and SEPA permits.

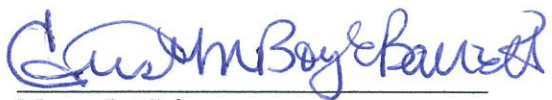
**Section 5.** That as required by RCW 35A.63.220, the City Clerk shall schedule a public hearing within 60 days of the adoption of this ordinance in order to take public testimony and to consider adopting further findings to justify the adoption of this ordinance.

**Section 6.** That this ordinance shall be transmitted to the Washington State Department of Commerce, pursuant to RCW 36.70A.106.

**Section 7. Declaration of Emergency and Immediate Effective Date.** That for the reasons identified in the whereas clauses of this ordinance, the City Council hereby finds and declares that an emergency exists and that the 180-day interim regulations adopted by this ordinance shall become effective immediately upon passage of this ordinance and that an immediate effective date and this declaration of emergency is necessary for the protection of the public health, public safety, public property and public peace. The findings adopted by this ordinance are further adopted in support of this declaration of emergency.

**Section 8.** If any provision of this ordinance is held invalid, such invalidity shall not affect any other provision, or the applications thereof, which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are to be declared severable.


Introduced, passed, and approved by at least five members of the Buckley City Council on this 2nd day of June, 2015.

  
for Mayor Pat Johnson

Attest:

  
Joanne Starr, City Clerk

APPROVED AS TO FORM:

  
Phil A. Olbrechts

City Attorney

PUBLISHED: June 10, 2015

EFFECTIVE: Immediately