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## City Council

### Potential Code Amendment Regarding Rezone Hearing Body

**Agenda Date:** 10/27/2015  
**Agenda Item Number:** 6.A  
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#### **Title**

Potential Code Amendment Regarding Rezone Hearing Body

#### **Recommended Action**

##### **Planning Commission Recommendation:**

Move to direct staff to prepare an ordinance amending the Development Code to provide that the Planning Commission, instead of the Hearing Examiner, will hold public hearings related to site-specific rezone applications. (Option 3)

*Note: City staff did not provide a recommendation when this issue was considered by the Planning Commission.*

#### **Recommended Action**

##### **Land use and Environment Committee Recommendation:**

Move to retain existing Development Code provision so that the Hearing Examiner continues to hold public hearings and makes recommendations to the City Council regarding site-specific rezone applications; and direct staff to report to the Land Use and Environment Committee in 2016 regarding the experience with this approach. (Option 2)

##### **City Manager Recommendation:**

Move to retain existing Development Code provision so that the Hearing Examiner holds public hearings and makes recommendations to the City Council regarding site specific rezone applications and direct City staff to prepare an ordinance amending the Code to remove ambiguities as described below with regard to that process. (Option 1)

#### **Report**

##### **Issue:**

Whether Olympia's Hearing Examiner or the Planning Commission should hold public hearings before making a recommendation to the City Council regarding proposed changes in the land use zoning of individual properties.

#### **Staff Contact:**

Todd Stamm, Principal Planner, Community Planning and Development Department, 360.753.8597

**Presenter:**

Todd Stamm, Principal Planner

**Background and Analysis:**

During the recent update of the Comprehensive Plan, some members of the public suggested that if the Plan were to allow for more rezone applications, the City's Development Code should be amended to provide that rezone hearings would be held by the Planning Commission instead of the Hearing Examiner. On September 23, 2013, the Commission held a public hearing regarding this proposal and following deliberation on October 21, 2013, the Commission unanimously recommended that the City Council amend the Development Code accordingly. (See attached minutes' excerpts.) This proposal was placed on hold until the Council approved the updated Plan in December of 2014. On May 19, 2015, the Council referred the rezone-hearing-body issue to the Land Use and Environment Committee for review.

The Committee considered the issue on July 16, 2015. Following discussion, which included Planning Commission Chair Carole Richmond and Commissioner Roger Horn, the Committee recommended continuing the current practice and recommended that staff report to the Committee in 2016 after the City has more experience with Examiner-led reviews of rezone proposals.

Legal Framework

Land use zoning, i.e., limiting land uses in each part of the community, is one of the primary means by which most cities seek to implement their Comprehensive Plans. Changes in the zoning map, commonly referred to as "rezones," may be proposed for individual properties or large areas of the City. As required by State law, the City Council makes the final decision for the City regarding all such zoning and Development Code amendments.

However, a series of court decisions have outlined that the process for reviewing '**site-specific**' zoning changes should be different than for '**area-wide**' zoning changes. (Although these terms are commonly used by the courts and in State law, they do not have specific definitions.) Olympia's current Development Code provides that **area-wide** zoning changes and any proposed rezone that would be inconsistent with the City's Comprehensive Plan are to be the subject of a Planning Commission public hearing and recommendation prior to a decision by the City Council. In contrast, the Code provides that the 'open record' public hearing regarding a proposed '**site specific**' rezone is to be held by the Olympia Hearing Examiner prior to the Examiner making a recommendation to the Council. Such **site-specific** rezone proposals are first referred to the Commission for review and recommendation prior to the Examiner's consideration, but because State law allows only one such hearing, the Commission does not hold a public hearing.

History of Olympia's Rezone Process

Olympia first adopted land use zoning during the 1930s. For about fifty years, all rezone hearings were held by the Planning Commission. However, in the 1980s Olympia and many other cities instituted a 'Hearing Examiner system' in response to court directives requiring that certain land use actions conform with 'quasi-judicial' procedures. The courts noted that certain actions, including site specific rezones, determined the property rights of a few individuals and accordingly that these proceedings should be more akin to judicial processes.

These 'quasi-judicial' practices -- intended to achieve a fair hearing and result -- include specific review criteria, sworn testimony, the opportunity for cross-examining witnesses, limited contact

outside the hearing, and ultimately specific written findings of fact and conclusions of law. These proceedings differ greatly from the more common “legislative” processes to which the courts give much greater deference to local government decisions and thus the City has broader discretion with regard to procedures.

To ensure compliance with these strict quasi-judicial procedural requirements, Olympia’s Code was amended and for about ten years the Olympia Hearing Examiner held hearings regarding site-specific rezone proposals. However, in the mid-1990s Olympia’s Comprehensive Plan became more specific, with the result that rezone applications were routinely joined with ‘legislative’ Plan amendments, and as a result subject to Planning Commission hearings.

The revised Comprehensive Plan adopted by the City in December of 2014 is less specific with regard to the zoning of each parcel of land. As a result, the staff anticipates that a few (maybe 2 or 3) site-specific rezone applications will be received each year hereafter. The first such request, submitted by the Medela Group in January of 2015, was recently preliminarily decided by the Council. Another rezone application has been received and pursuant to the City’s ‘twice each year’ review process will be presented to the Council early in 2016.

State law requires that one and only one ‘open record’ public hearing be held by a city when considering a proposed site-specific rezone. The question now presented for the Council’s consideration is whether the public hearing for these types of proposals should be heard by a Hearing Examiner or the Planning Commission. Neither Olympia’s Comprehensive Plan nor State law designates whether the Commission or the Examiner should hold such hearings and make recommendations to the Council - so ultimately this choice of processes is at the Council’s discretion. Some of the factors to consider in making this determination are listed in the attached document.

### Conclusions

A survey of Olympia’s peer cities (over a dozen similarly sized Washington cities plus Tumwater and Salem) revealed a broad range of approaches. For example, in Richland, Lacey, Longview, and Edmonds all rezones are reviewed by their Planning Commissions. In contrast, in Salem and Bremerton all rezones are reviewed by Hearing Examiners. Puyallup and Sammamish have split processes similar to Olympia. Many cities responded that they have tried or considered alternatives and each approach has advantages and disadvantages. As noted above, except for the Medela rezone, Olympia has little recent experience with site-specific rezone applications independent of Comprehensive Plan amendments. Review of another rezone application began on October 1.

The Washington Cities Insurance Authority (WCIA) recommends that all quasi-judicial matters, including site specific rezones, be heard by a Hearing Examiner. (See attached WCIA guidance.) On balance, it is the staff’s opinion that, given the procedural complexity similar to other development proposals, the Examiner is the more appropriate officer to hold site-specific rezone hearings.

If the Examiner is to continue to hold site-specific rezone hearings, the staff recommends that the relevant code be clarified in three respects:

- To the \$3200 rezone application fee of Title 4, add “plus \$1,000 Hearing Examiner deposit” to clarify that site-specific rezone applicants are subject to reimbursing the City for Examiner costs

- Amend OMC 18.58.060 by inserting the clause “not associated with a Comprehensive Plan amendment” to clarify that only those types of site-specific rezones are subject to the twice-each-year process; others are limited to once each year
- Amend OMC 18.59.050 to clarify that site-specific rezone applications shall be forwarded to both the Planning Commission and Hearing Examiner for review and recommendation; and to clarify that any Planning Commission recommendation is to be issued prior to the Examiner’s public hearing

Note, these process clarifications were not considered by the Land Use and Environment Committee.

**Neighborhood/Community Interests (if known):**

Public interest in this topic has been minimal, but those citizens who have commented have generally favored the Planning Commission holding hearings regarding site-specific rezones.

**Options:**

1. Move to retain the existing Development Code provision so that the Hearing Examiner holds public hearings and makes recommendations to the City Council regarding site-specific rezone applications; and direct City staff to present an ordinance amending the Code to remove process ambiguities as described above.
2. Move to retain the existing Development Code provision so that the Hearing Examiner continues to hold public hearings and makes recommendations to the City Council regarding site-specific rezone applications; and direct staff to report to the Land Use and Environment Committee in 2016 regarding experience with this approach.
3. Move to direct staff to present an ordinance amending the Development Code to provide that the Planning Commission, instead of the Hearing Examiner, will hold public hearings related to site-specific rezone applications.
4. Schedule a public hearing regarding this topic.

**Financial Impact:**

No direct impact; Examiner’s hearing costs are borne by rezone applicants. As discussed above, increases in secondary costs could result from the proposed change.