



TO: Elizabeth Pauli, City Manager
FROM: Jeff H. Capell, Hearing Examiner *JHC*
COPY: City Council and City Clerk
SUBJECT: Ordinance Request No. 18-0131 – An ordinance amending Tacoma Municipal Code Chapter 1.23 (Hearing Examiner) to make needed corrections – February 20, 2018
DATE: February 8, 2018

SUMMARY:

An ordinance amending Tacoma Municipal Code Chapter 1.23 (Hearing Examiner) to make needed corrections.

COUNCIL SPONSORS:

N/A

STRATEGIC POLICY PRIORITY:

The proposed action would be aligned with the following strategic policy priorities:

- Encourage and promote an efficient and effective government, which is fiscally sustainable and guided by engaged residents.

BACKGROUND:

Tacoma Municipal Code (“TMC”) Chapter 1.23 is the chapter of the TMC that governs the Hearing Examiner’s role with the City of Tacoma in conducting administrative hearings, and issuing recommendations to the Council and administrative decisions on appeals. Section .050 of Chapter 1.23 is divided into two subsections, A and B. Subsection A sets forth subject matter areas where the Hearing Examiner acts as the hearing officer for the Council, conducting a public hearing, and then making a written recommendation to assist the Council as the ultimate decision maker. Subsection B sets forth subject matter areas where the Hearing Examiner conducts (primarily appeal) hearings and issues the City’s final administrative decision.

Subsection 1.23.050.A.6-8 are currently worded in a way that makes them look misplaced in TMC 1.23.050.A. These subsections read as appeals of City Council decisions. It would make no sense for the Hearing Examiner to conduct a hearing on something the Council has already decided, and then make a recommendation back to the Council to decide the matter a second time. That is the effect of being located in TMC 1.23.050.A with the current wording, however. The related sections of TMC 1.06 and 1.46 actually specify certain matters that can go to the Hearing Examiner for a hearing and recommendation by delegation of the Council, City Manager, or Director of Utilities, or at the request of a City employee facing an allegation of an ethics violation. The proposed rewording of these sections of TMC 1.23.050.A better reflects the foregoing.

TMC 13.05.047.G.3 states that “The Hearing Examiner’s decision [on Landmarks Preservation Commission (“LPC”) appeals] shall be final.” This provision does not square with Subsection 1.23.050.A.7, which calls for a recommendation to the Council. These appeals were originally



included at TMC 1.23.050.B.28.¹ Appeals of LPC decisions cannot be final at the Hearing Examiner level if the Hearing Examiner is only issuing a recommendation for Council ultimately to decide.

ISSUE:

Should Tacoma Municipal Code Chapter 1.23 (Hearing Examiner) be amended to clarify the language of TMC 1.23.050.A.6 and .8, and to return subsection .7 of the same section to TMC 1.23.050.B?

ALTERNATIVES:

The City Council can adopt the proposed ordinance amending Tacoma Municipal Code Chapter 1.23 (Hearing Examiner) as proposed by the Office of the Hearing Examiner to clarify language and properly locate one jurisdictional subsection, or the City Council could reject the proposed ordinance, but doing so would leave TMC Chapter 1.23 with confusing language and conflicting internal references.

RECOMMENDATION:

The Office of the Hearing Examiner recommends adopting the ordinance amendments proposed by this Council Action Memorandum and its accompanying draft ordinance in order for the TMC to be clearer and more internally consistent than at present.

FISCAL IMPACT:

N/A

¹ See Ordinance No. 27429, Nov. 15, 2005. This subsection was moved to TMC 1.23.050.A. as Subsection .7 in Substitute Ordinance No. 27431 without any explanation in the Ordinance for the relocation.