

OKANOGAN COUNTY COMMISSIONERS

ORDINANCE NO. 2014 – 11

An Ordinance adopting a new section to Okanogan County Code titled 2.67 Administrative Appeals.

WHEREAS: The Okanogan Board of County Commissioners finds that a process for aggrieved parties to appeal the decisions made by county staff pursuant to the codes they administer benefits the public process, and

WHEREAS: Current Okanogan County Code has different processes for OCC 16 Subdivisions versus OCC 17 Zoning and that OCC 15 Buildings and Construction has no locally adopted process for administrative appeals, and

WHEREAS: In 2014 the Okanogan Board of County Commissioner opted to utilize the Office of Hearing Examiner for the review and decision of certain land use applications and appeal processes as authorized in OCC 2.65 adopted in 1994, and

WHEREAS: The Okanogan Board of County Commissioners finds that creating a process for the appeal of administrative decisions that is consistent for OCC 15, OCC 16, and OCC 17 and is compliant with RCW 36.70B and other applicable Washington State law, benefits the public process, and enhances the public health, safety, and

WHEREAS: Okanogan County is authorized by the Revised Code of Washington (RCW) 36.70 Planning Enabling Act, RCW 58.17, RCW 36.70B and other applicable statutes to adopt land use controls and regulatory processes by which those controls are enforced, be it therefore

THEREFORE BE IT ORDAINED: The Okanogan Board of County Commissioners amends Okanogan County Code by adopting a new section titled 2.67 found as attachment A to this ordinance and be it further

BE IT FURTHER ORDAINED: Adopts attachment B findings of fact and attachment C conclusions of law attached hereto.

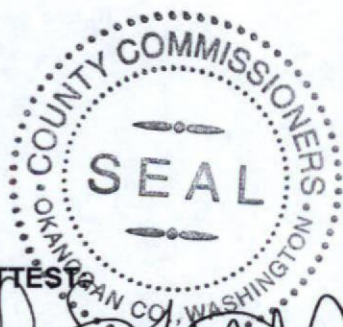
DATED at Okanogan, Washington this 29 day of September, 2014.

BOARD OF COUNTY COMMISSIONERS
OKANOGAN, WASHINGTON

Ray Campbell
Ray Campbell, Chairman

Sheilah Kennedy
Sheilah Kennedy, Member

Jim DeTro
Jim DeTro, Member



ATTEST

Laleña Johns, Clerk of the Board

**Ordinance 2014-11
Attachment A**

**Chapter 2.67
APPEALS OF ADMINISTRATIVE ACTIONS**

Sections:

- 2.67.010 Authority of Hearing Examiner
- 2.67.020 Who may appeal – Place of filing – Time limit.
- 2.67.030 Setting for hearing – Notice – Transmittal of records.
- 2.67.040 Scope of authority on appeal.
- 2.67.050 Decision – When reached.
- 2.67.060 Notice of decision.
- 2.67.070 Appeal from board of adjustment decision.
- 2.67.080 Records.

2.67.010 Authority of Hearing Examiner

The hearing examiner shall hear and decide appeals from any order, requirement, permit decision or determination made by the administrator under OCC 15, OCC 16, and OCC 17.

2.67.020 Who may appeal – Place of filing – Time limit.

Appeals may be taken to the hearing examiner by any person aggrieved, or by any officer, department, board or bureau of the county affected by any decision of an administrative official. Such appeals shall be filed in writing, or postmarked, with the administrator as secretary for the hearing examiner, within 20 days of the action being appealed. The section does not create any additional notice requirements of the administrator.

2.67.030 Setting for hearing – Notice – Transmittal of records.

Upon the filing of an appeal from an administrative determination the administrator as secretary for the hearing examiner shall schedule a hearing with the hearing examiner to be held within 60 days of the receipt of the appeal, at which time the matter will be considered. At least a ten-day notice of such time and place together with one copy of the written appeal, shall be given to the official whose decision is being appealed. At least 10-day notice of the time and place shall also be given to any adverse parties of record in the case. The officer from whom the appeal is being taken shall transmit to the hearing examiner all of the records pertaining to the decision being appealed from, together with such additional written reports as he or she deems pertinent.

2.67.040 Scope of authority on appeal.

The hearing examiner may reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as should be made and, to that end, shall have all the powers of the officer from whom the appeal was taken insofar as the decision on the particular issue is concerned.

2.67.050 Decision – When reached.

Within 10 days following the termination of the public hearing on an appeal from an administrative determination, the hearing examiner shall sign its written order. The order shall include the findings of fact upon which the decision is based.

2.67.060 Notice of decision.

Within five days of the decision, the order of the hearing examiner shall be mailed to the applicant and all persons who are specifically identified as parties of record or who have indicated an interest in being notified of the decision.

2.67.070 Appeal from Hearing Examiner decision.

The decision by the hearing examiner on an appeal from an administrative determination shall be final and conclusive unless a timely land use petition is filed and served pursuant to the Land Use Petition Act (Chapter 36.70C RCW). Appeals may only be submitted by those with standing according to RCW 36.70C.060.

2.67.080 Records.

The appeal filed pursuant to this code, the evidence of notice, the electronic verbatim record of proceedings although minutes of the proceedings may be non-verbatim, other material accepted as evidence, and the written order announcing a decision along with the findings of fact shall become a part of the official records of the hearing examiner.

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Attachment B
Findings of Fact

- 1) Revised Code of Washington (RCW) 36.70.970 authorizes counties to adopt a Hearing Examiners system for the review of certain land use proposals and decisions.
- 2) In 1994 Okanogan County adopted ordinance 94-15 creating the Office of Hearing Examiner as an alternative process for the review of land use applications. The ordinance was codified as Okanogan County Code (OCC) 2.65.
- 3) Beginning in 2014 The Okanogan Board of County Commissioners (BOCC) elected to utilize the Office of Hearing Examiner for certain land use applications and administrative appeals.
- 4) Staff review of OCC 2.65 discovered inconsistencies with the duties assigned to the Hearing Examiner (HE) by local code versus the duties the BOCC wanted the HE to perform. The language of OCC 2.65 as adopted in 1994 was outdated and inconsistent with applicable state statutes and other local codes such as OCC 16 Subdivisions and OCC 17 Zoning.
- 5) When the BOCC was made aware of the inconsistencies found in OCC 2.65 they ordered staff from the planning department, working with the Chief Civil Deputy to propose amendments to correct the inconsistencies and bring OCC 2.65 up to date.
- 6) During the course of review of OCC 2.65 staff determined a new code section creating a consistent process for processing the appeal of administrative decisions should be proposed concurrent with the review of OCC 2.65. After consultation with the BOCC staff created OCC 2.67 Administrative Appeals for consideration.
- 7) During the course of review of OCC 2.65 and the subsequent creation of new section OCC 2.67 staff determined the appeal process for OCC 14.04.220 Environmental policy should remain separate from the process for appeals of other administrative decisions due to the nature of the SEPA process and the direction for processing SEPA appeals found in RCW 43.21C and WAC 197-11 for the processing of appeals brought against SEPA decisions. After consultation with the BOCC staff prepared amendments to OCC 14.04.220 Appeals for consideration.

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Attachment B continued

- 8) Staff determined that amendments to OCC 15 Building and Construction, OCC 16 Subdivisions, and OCC 17 Zoning were necessary to bring the process for appeal of administrative decisions made pursuant to the enforcement of these codes consistent with the administrative appeals process proposed in new section OCC 2.67. Staff prepared amendments for consideration.
- 9) The SEPA Responsible Official for Okanogan County reviewed the proposed amendments and determined they were categorically exempt from SEPA review in accordance with WAC 197-11-800 (19) Procedural Actions.
- 10) A public notice was published on September 10, 2014 which scheduled a public hearing for September 22, 2014 to consider the proposed amendments to OCC 2.65, OCC 14.04.220, OCC 16, and OCC 17. The notice included the proposed new section OCC 2.67 and a new section to OCC 15.
- 11) The BOCC conducted the public hearing as scheduled at which the proposed amendments, staff report, and written comments submitted prior to the hearing were placed into the record. Testimony was taken from those present and wishing to be heard. Some submitted additional written comments.
- 12) The BOCC considered the verbal and written information placed into the record.
- 13) The BOCC finds that RCW 36.32.330 directs that decisions of the BOCC are appealed to Superior Court subject to applicable statutes.
- 14) The BOCC finds that RCW 36.70C Land Use Petition Act directs the process by which local land use final decisions are appealed to Superior Court.
- 15) The BOCC finds that RCW 36.70B.050 directs that each local government shall provide by ordinance or resolution for review of permit applications to achieve the following objectives: 1) Combine the environmental review process, both procedural and substantive, with the procedure for review of project permits, and 2) Except for the appeal of a determination of significance as provided in RCW 43.21C.075 provide for no more than one open record hearing and one closed record appeal.

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- 16) The BOCC voted to approve the amendments as proposed, noting a correction to OCC 2.67, and directed staff to prepare enabling documents.

- 17) The BOCC continued the public hearing to September 29, 2014 to consider this ordinance which creates a new section OCC 2.67 and to adopt to OCC 14.04, OCC 15, OCC 16, OCC 17 and OCC 2.65.

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Attachment C
Conclusions of Law

- 1) Okanogan County is authorized by the Revised Code of Washington (RCW) 36.70 Planning Enabling Act, RCW 58.17, RCW 36.70B and other applicable statutes to adopt land use controls and regulatory processes by which those controls are enforced.
- 2) Okanogan County is authorized by law to provide a process for the appeal of administrative decisions made by department staff in the course of enforcing the codes under their purview and concludes the availability of these processes promote the public health safety and welfare.
- 3) Okanogan County has authorized the appeal of administrative decisions made pursuant to Okanogan County Code (OCC) 16 Subdivisions and OCC 17 Zoning.
- 4) The Board of Okanogan County Commissioners has concluded it promotes the review of land use applications hence the public health, safety, and welfare to provide a consistent process for the appeal of administrative decisions made by department staff in the course of enforcing OCC 15 Building and Construction, OCC 16 Subdivisions, and OCC 17 Zoning.
- 5) At the direction of the BOCC staff prepared amendments to the aforementioned Okanogan County codes to create a consistent process for the appeal of administrative decisions.
- 6) On September 22, 2014 the BOCC conducted a properly noticed public hearing to consider amendments to OCC 15, OCC 16, and OCC 17 citing by reference a proposed new code section OCC 2.67 Administrative Appeals.
- 7) At the conclusion of the public hearing and after considering the public testimony and other information presented ordered the preparation of ordinances adopting the proposed amendments.
- 8) At a continued public hearing held on September 29, 2014 the BOCC adopted by ordinance amendments to OCC 15, OCC 16, and OCC 17 and adopted a new section OCC 2.67 to provide a consistent process that is compliant with Washington State law for the appeal of administrative decisions and said amendments are within the authority granted by law to county legislative authorities..