

ORDINANCE NO. 4083

AN ORDINANCE OF THE CITY OF KIRKLAND DISSOLVING THE BUILDING BOARD OF APPEALS AND PROVIDING THAT ADMINISTRATIVE APPEALS OF FIRE AND BUILDING DEPARTMENT DECISIONS SHALL BE HEARD BY THE CITY OF KIRKLAND HEARING EXAMINER.

The City Council of the City of Kirkland do ordain as follows:

Section 1. The City of Kirkland Building Board of Appeals is hereby dissolved as of the effective date of this Ordinance.

Section 2. Section 21.06.170 of the Kirkland Municipal Code is hereby amended to read as follows:

21.06.170 Liability.

The building official ~~member of the board of appeals~~ or employee charged with the enforcement of this chapter and the technical codes, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The building official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

Section 3. Sections 21.06.570 through 21.06.585 of the Kirkland Municipal Code are hereby repealed.

Section 4. A new Section 21.06.570 of the Kirkland Municipal Code is hereby adopted to read as follows:

21.06.570 Appeals to Hearing Examiner.

Appeals of orders, decisions and determinations of the building official shall be heard and decided by the City of Kirkland Hearing Examiner. To the extent the codes adopted by reference in this Title refer to a "board of appeals" or a "building board of appeals," those references shall be deemed to refer to the City of Kirkland Hearing Examiner.

Section 5. A new Section 21.06.572 of the Kirkland Municipal Code is hereby adopted to read as follows:

21.06.572 Limitations on Appeals.

An appeal under this chapter shall be based on a claim that this code or the technical codes have been incorrectly interpreted, that the provisions of this code or the technical codes do not apply or that an equally good or better form of construction, method of protection or safety is proposed.

Section 6. A new Section 21.06.574 of the Kirkland Municipal Code is hereby adopted to read as follows:

21.06.574 When to Appeal and Appeal Fee.

An appellant shall file a written appeal of the order, decision or determination of the building official with the Kirkland Fire and Building Department within 30 days of the date of the decision of the building official. The written appeal shall include a clear reference to the matter being appealed and a statement of the specific elements of the building official's order, decision or determination disputed by the appellant. There shall not be an appeal fee for appeals of stop work orders or code enforcement orders. For all other matters, the appeal fee shall be \$125 and shall accompany the written appeal. Failure to timely file the appeal or pay the appeal fee shall result in dismissal of the appeal.

Section 7. A new Section 21.06.576 of the Kirkland Municipal Code is hereby adopted to read as follows:

21.06.576 Contents of Notice of Appeal.

The appeal shall contain a clear reference to the matter being appealed and a statement of the specific elements of the building official's order, decision or determination disputed by the appellant.

Section 8. A new Section 21.06.578 of the Kirkland Municipal Code is hereby adopted to read as follows:

21.06.578 Notice of the Appeal Hearing.

(a) The building official shall prepare a notice of the appeal hearing containing the following:

- (1) the file number and a brief description of the matter being appealed;
- (2) a statement of the scope of the appeal including a summary of the elements of the building official's order, decision or determination that are contested in the appeal;
- (3) the time and place of the hearing on appeal before the hearing examiner; and
- (4) a statement of who may participate in the appeal.

(b) At least 14 days before the hearing on the appeal, the building official shall send a copy of the notice of appeal hearing to each person who has appealed the building official's order, decision or determination.

Section 9. A new Section 21.06.580 of the Kirkland Municipal Code is hereby adopted to read as follows:

21.06.580 Participation in the Appeal.

Only those persons who have appealed the building official's order, decision or determination may participate in the appeal. Appellants may participate on either or both of the following ways:

- (1) by submitting written comments or testimony to the Hearing Examiner prior to the commencement of the hearing; or
- (2) by appearing in person, or through a representative, at the hearing. The Hearing Examiner may reasonably limit the extent of oral testimony or oral argument to facilitate the orderly and timely conduct of the hearing.

Section 10. A new Section 21.06.582 of the Kirkland Municipal Code is hereby adopted to read as follows:

21.06.582 Scope of Appeal.

The appeal will be an open record appeal hearing. The scope of the appeal is limited to the specific elements of the building official's order, decision or determination disputed by the appellant and the Hearing Examiner shall only consider comments, testimony and arguments on these specific elements.

Section 11. A new Section 21.06.584 of the Kirkland Municipal Code is hereby adopted to read as follows:

21.06.584 Record of Appeal Hearing.

The City shall make an electronic sound recording of the hearing.

Section 12. A new Section 21.06.586 of the Kirkland Municipal Code is hereby adopted to read as follows:

21.06.586 Decision on the Appeal.

The Hearing Examiner shall consider all information and material within the scope of the appeal submitted by persons entitled to participate in the appeal. Based on the Hearing Examiner's findings and conclusions, the Hearing Examiner may affirm, reverse or modify the order, decision or determination being appealed. The Hearing Examiner shall issue his or her decision within 15 days of the appeal hearing. Within four business days after it is issued, the Hearing Examiner's decision shall be mailed to the applicant and to each person who has requested notice of the decision. The decision by the Hearing Examiner is the final decision of the City.

Section 13. A new Section 21.06.588 of the Kirkland Municipal Code is hereby adopted to read as follows:

21.06.588 Judicial Review.

Any judicial appeal of the Hearing Examiner's decision shall be reviewed in King County Superior Court pursuant to RCW 36.70C, the Land Use Petition Act ("LUPA"). The Land Use Petition must be filed within 21 calendar days of the issuance of the Hearing Examiner's decision.

Section 14. Section 21.20.035 of the Kirkland Municipal Code is hereby amended to read as follows:

21.20.035 IFC Section 108 amended.

Section 108 of the International Fire Code is amended to read as follows:

Section 108. Appeals. Whenever the Fire Chief disapproves an application or refuses to grant a permit, or when it is claimed that the provisions of the International Fire Code do not apply or that the true intent and meaning of the Code have been misconstrued or wrongly interpreted, the applicant may appeal the decision of the Fire Chief to the City of Kirkland Hearing Examiner Building Code Board of Appeals, within thirty days from the date of the decision appealed.

Section 15. Section 21.33.025 of the Kirkland Municipal Code is hereby amended to read as follows:

21.33.025 Appeals.

Appeals from any ruling made under this chapter may be made to the City of Kirkland Hearing Examiner building code board of appeal. Procedural rules concerning appeals shall be as provided in KMC Chapter 21.06 the building code.

Section 16. Section 21.40.040 of the Kirkland Municipal Code is hereby amended to read as follows:

21.40.040 Requirements—Satisfactory alternate.

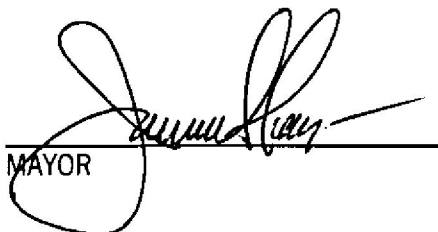
Notwithstanding any precise requirements of this chapter, the building official may approve alternate methods of protection and construction and maintenance of swimming pools, provided such alternate methods meet the same essential safety requirements of this chapter, and it can be demonstrated that such alternate methods are better suited because of peculiar or unusual circumstances and that it is not practical to meet the precise requirements of this chapter. Any person who seeks to obtain approval of any such alternate and who is denied approval by the building official may appeal his decision to the City of Kirkland Hearing Examiner building code board of appeals by filing a notice of appeal with the Department of Fire and Building within 30 days city clerk stating the grounds for the appeal and requesting a hearing to review the decision by the building official.

Section 17. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

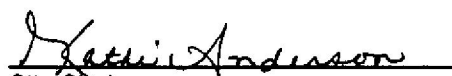
Section 18. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this 6th day of February, 2007.


Signed in authentication thereof this 6th day of February, 2007.


MAYOR

Attest:


City Clerk

Approved as to Form:


City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. 4083

AN ORDINANCE OF THE CITY OF KIRKLAND DISSOLVING THE BUILDING BOARD OF APPEALS AND PROVIDING THAT ADMINISTRATIVE APPEALS OF FIRE AND BUILDING DEPARTMENT DECISIONS SHALL BE HEARD BY THE CITY OF KIRKLAND HEARING EXAMINER.

SECTION 1. Dissolves the Building Board of Appeals.

SECTION 2. Amends Section 21.06.170 of the Kirkland Municipal Code relating liability of building officials and employees.

SECTION 3. Repeals Sections 21.06.570 through 21.06.585 of the Kirkland Municipal Code.

SECTIONS 4-13. Add new sections to the Kirkland Municipal Code (Sections 21.06.570 through 21.06.588) relating to the hearing of administrative appeals of decisions of the building official.

SECTION 14. Amends Section 21.20.035 of the Kirkland Municipal Code relating to administrative appeals under the International Fire Code.

SECTION 15. Amends Section 21.33.025 of the Kirkland Municipal Code relating to administrative appeals of fire extinguishing system decisions.


SECTION 16. Amends Section 21.40.040 of the Kirkland Municipal Code relating to administrative appeals of swimming pool decisions.

SECTION 17. Provides a severability clause for the ordinance.

SECTION 18. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 6th day of February, 2007.

I certify that the foregoing is a summary of Ordinance 4083 approved by the Kirkland City Council for summary publication.



City Clerk