

DECLARATION OF SERVICE

On this day I served a copy of the document on which this declaration appears by email transmission to:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Sequim, WA this 29<sup>th</sup> day of September, 2020.

  
Erika Hamerquist, Secretary/Tellina Sandaine, Paralegal

OFFICE OF THE HEARING EXAMINER  
IN AND FOR THE CITY OF SEQUIM

RE: CDR20-001 )  
 )  
Consolidated Administrative Appeals )  
of January 24, 2020 Notice of ) File No. CDR20-001  
Determination of Procedure Type: )  
May 15, 2020 Director’s Report and ) CITY OF SEQUIM’S SUPPLEMENTAL  
Staff Decision; and May 11, 2020 ) BRIEFING  
MDNS for Jamestown S’Klallam Tribe )  
Outpatient Clinic )  
 )  
 )

I. INTRODUCTION

On September 27, 2020, Hearing Examiner Phil Olbrechts provided the Parties with the opportunity to submit supplemental briefing on the City Council’s adoption of Interim Control Ordinance 2020-009 at a special meeting convened on September 26, 2020. Ordinance 2020-

1 009 clarifies that all appeals of Type A-1 and A-2 administrative permit decisions are heard by  
2 the Hearing Examiner, with subsequent appeals to Superior Court.

3 The City asks the Hearing Examiner to confirm recent City Council action: namely that  
4 the City Council expressed its intent regarding the appeals of A-1 and A-2 administrative  
5 decisions, including the MAT Clinic appeals, when the Council passed an interim controls  
6 ordinance with a five to one vote<sup>1</sup> on Saturday, September 26, 2020; this Ordinance transferred  
7 all appeals of A-1 and A-2 decisions, including the MAT Clinic appeals, to the Hearing  
8 Examiner. Moreover, the Hearing Examiner has no authority to invalidate, bypass, or otherwise  
9 circumvent a properly noticed, fully authorized, and duly adopted ordinance that is wholly  
10 within the City Council's legislative authority. Consequently, any discussion of the Hearing  
11 Examiner's lack of jurisdiction to hear and decide the issues related to the MAT Clinic appeals  
12 is moot.

13  
14 The City incorporates by reference its earlier pleadings and offers a Declaration from  
15 Kristina Nelson-Gross and additional support as set forth below.

## 16 II. ARGUMENT

17 The City Council expressed its legislative intent regarding the Hearing Examiner's  
18 jurisdiction over the MAT Clinic appeals when it passed Ordinance 2020-009. The Ordinance  
19 made clear that all appeals of A-1 and A-2 decisions are to be heard by a Hearing Examiner and  
20 directs subsequent appeals to Superior Court. Consequently, the Hearing Examiner's Order on  
21 lack of jurisdiction is moot. Moreover, the Hearing Examiner has no authority to usurp,  
22 circumvent, or otherwise question the City Council's adoption of that Ordinance. Therefore, the  
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<sup>1</sup> The City Council has seven seats, but we are in the process of filling the vacant position.

1 City respectfully requests that the Hearing Examiner 1) confirm the Council’s transfer of  
2 jurisdiction and 2) continue its adjudication of all matters related to the MAT Clinic appeals.

- 3 1. Ordinance 2020-009 was lawfully adopted and is wholly within the City Council’s  
4 broad authority under its police power and under RCW 36.70A.390 and RCW  
5 35A.63.220.

6 RCW 36.70A.390 and RCW 35A.63.220 and interpretive judicial decisions authorize  
7 the City Council to adopt interim controls with an effective period of up to 6 months without  
8 first holding a public hearing, so long as a public hearing is held no more than 60 calendar days  
9 after the adoption of the interim controls<sup>2</sup>. The City Council also has authority to hold a special  
10 meeting with 24 hours’ notice; Council can also adopt an ordinance at a special meeting. RCW  
11 35A.12.110; RCW 42.30.080.

12 The City Council’s police power gives it broad authority to regulate matters that affect  
13 the general public health, safety, and welfare of its citizens. *Markham Advertising Co. v. State*,  
14 73 Wn.2d 405, 421 (1968), *abrogated by Yim v. City of Seattle*, 194 Wn.2d 692 (2019). Courts  
15 presume that municipal ordinances are validly enacted. *City of Bothell v. Gutschmidt*, 78 Wn.  
16 App. 654, 659 (1995). An interim control ordinance is an ordinance, and thus is presumed valid  
17 upon adoption. RCW 36.70A.390; RCW 35A.63.220; *City of Bothell* at 659. Well-established  
18 law allows jurisdictions to adopt substantive and procedural ordinances within their police  
19 power. “Subject to specific constitutional limitations, when the legislature has spoken, the  
20 public interest has been declared in terms well-nigh conclusive. In such cases the legislature, not  
21 the judiciary, is the main guardian of the public needs to be served by social legislation....”  
22 *Markham* at 422, *quoting, Berman v. Parker*, 348 U.S. 2632, (1954).

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25 <sup>2</sup> The City Council will hold a public hearing on Ordinance 2020-009 within the 60 days as required by law, and  
staff will bring the item back to the City Council for permanent adoption at a later date.

1 Here, the City Council expressed its legislative intent when it passed Ordinance 2020-  
2 009. The City Council properly held a special meeting and used the interim controls process to  
3 pass an ordinance with a five to one vote, demonstrating that it wanted the Hearing Examiner to  
4 have jurisdiction over appeals of A-1 and A-2 decisions. (Decl. K. Nelson-Gross, Ex. A.) That  
5 legislation also clearly outlines the City Council’s intent to give the Hearing Examiner  
6 jurisdiction over the MAT appeals and to have subsequent appeals of those decisions go directly  
7 to Superior Court. (Decl. K. Nelson-Gross, Ex. A.) The Hearing Examiner recognized Council’s  
8 intent when he said that it appears that his Interlocutory Order was moot. (Hr’g Examiner’s  
9 Order dated Sept. 26, 2020, p. 1 and pp. 22-23.) The Hearing Examiner lacks authority to usurp  
10 or otherwise invalidate the City Council’s demonstrated legislative intent as shown by  
11 Ordinance 2020-009. *See*, SMC 2.10.070; *see also*, *In re King Cty.*, *Hr’g Examiner*, 135 Wn.  
12 App. 312, 320-321 (2006). Thus, the Hearing Examiner has no option but to honor the City  
13 Council’s express legislative intent.  
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15 2. Land use procedures do not vest.

16 As the Hearing Examiner pointed out in his Sept. 20, 2020 email, land use procedures do  
17 not vest. *Graham Neighborhood Ass’n v. F.G. Assoc.*, 162 Wn. App. 98 (2011). Land use  
18 regulations are those that “exert or direct influence” over the land, such as zoning. *Id.* at 115.  
19 Other regulations, such as the appeals process ordinance, do not “exert or direct influence” over  
20 the land and can be changed to affect an application. *See, id.* at 116. Here, that is precisely what  
21 the City Council has done. The City Council articulated its reasons for adopting Ordinance  
22 2020-009 in its recitals. (Decl. K. Nelson-Gross, Ex. A.) As a result, the Hearing Examiner’s  
23 Sept. 26, 2020 Order is rendered moot.  
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III. CONCLUSION

In summary, the Hearing Examiner's Order dated Sept. 26, 2020 is moot because the City Council adopted Ordinance 2020-009, which transferred any authority it had to hear these appeals to the Hearing Examiner. The Hearing Examiner lacks authority to do anything other than fulfill the City Council's intent, which is for the Examiner to hear and decide the MAT Clinic appeals. The City asks the Hearing Examiner for an Order that confirms the Examiner's jurisdiction on this matter, with any future appeals of the Examiner's decision going directly to Superior Court.

RESPECTFULLY SUBMITTED this 29th day of September, 2020.

*Kristina Nelson-Gross*  
KRISTINA NELSON-GROSS WSBA#42487  
City Attorney